THE TRADE UNIONS' PROTECTIVE ACT

Smith Curtis Baits an Hook to Catch the Votes of Unthinking Workmen.

The bill introduced into the provincial legislature by Smith Curtis respecting actions against trade unions and kindred associations, printed below, which forms the subject of the communication from our correspondent, "Britisher," published today, is causing severe comment from nearly every quarter. It is hardly possible to believe that Mr. Curtis introduced the bill in the utmost good faith. It partakes of the worst features of class legislation, and would be productive of no end of trouble and disaster.

One paragraph reads: "No trade union, whether registered or not, nor any kindred voluntary association of workmen, artisans, laborers or employees, shall be enjoined, nor shall it or its funds be liable in damages for any threat or act of intimidation or conspiracy made, done or caused to be made or done by any officer, member, agent or servant of such union or association," and almost the same language is employed in regard to injunctions and enjoining unions in certain cases, besides making the act retrospective and declarative of the existing law.

Trades union and the members thereof are entitled to the same protection under the law as any other class of citizens, but no more. The merchant, the mine owner, the professional man is entitled to the same protection under the law, but only to the same extent. Suppose the provisions of this bill were changed and made to read that no business or professional man or mine owner could be enjoined or made responsible for his acts in certain cases, what would be thought of the proposition? It would be no more class legislation than the one under consideration. Every man should be made responsible for his acts. He should respect life and property, and on no other principle can the society grow and endure. Mr. Curtis knows this as well as anyone. It is the foundation on which all government rests, and the structure cannot stand unless all the people are treated alike and the laws are made to apply to each alike.

No one objects to trade unions as such. Workingmen have as much right to organize for their mutual benefit and protection as any other class of citizens, and should be protected in the free enjoyment of their right. They form a large and influential class of our people. And here, perhaps, can be found the milk in the cocoanut. Men like Smith Curtis can be found in every community who make the grandstand play of being the particular friend and champion of the downtrodden laboring man. It is their stock in trade. By it they hope to get office or remain in power. The near approach of an election generally finds these gentlemen with spider webs hanging out to catch votes. It is generally understood that an election will take place this coming summer, and we find a bill introduced in the legislature that is as much, if not more, of an insult to the workingmen of this province as it is to all engaged in business. The honest workingman asks for no special privileges. Under our free and beneficent form of government it is within the power of each to rise to wealth and distinction. A thousand avenues are open. The trades, the arts, the sciences, literature and the wide field of business are open to the ambitious and worthy. Each according to his liking, and success mainly depends on individual effort.

There is no "irrepressible conflict" between capital and labor. Their interests lie in common. This is fully understood by all right thinking men. They should go hand in hand and work in harmony. If Mr. Curtis has the welfare of the workingman at heart he will throw around him the equal protection of the law, which is all any law-abiding citizen asks for.

"TRADE UNIONS PROTECTIVE ACT."

1. This Act may be cited as the "Trade Unions Protection Act, 1902."

2. No trade union, whether registered or not, nor any kindred voluntary association, of workmen, artisans, laborers, or employers, shall be enjoined, nor shall it or its funds be liable in damages for any threat or act of intimidation or conspiracy made, done or caused to be made or done by any officer, member, agent or servant of such union or association, but the foregoing provision shall not relieve any such officer, member, agent or servant for any such act, if he would be otherwise liable in damages, or to be enjoined for the same.

3. No such trade union or association shall be enjoined, nor shall any officer, member, agent or servant of such union or association nor any other person be enjoined, nor shall it or its funds, nor any such officer, member, agent, servant or other person be made liable in damages for communicating to any workman, artisan, laborer, employee or person facts respecting employing or hiring by or with any employer, producer or consumer or distributor of the products of labor or the purchase of such products, or for persuading or endeavoring to persuade by fair or reasonable argument, without unlawful threat, intimidation or other unlawful acts, such last named workman, artisan, laborer, employee or person, at the expiration of any existing contract, not to renew the same with or to refuse to become the employee or consumer of any such employer, producer, consumer or distributor of the products of labor.

4. No such trade union or association, or its officer, member, agent, or servant, or any other person, shall be enjoined or liable for damages, nor shall its funds be liable in damages for publishing information with regard to a strike or lock-out, or proposed or expected strike or lock-out, or other labor grievance or trouble, or for warning workmen, artisans, laborers or employees or other persons against seeking or urging workmen, artisans, laborers, employees, or other persons not to seek employment in the locality affected by such strike, lock-out, labor grievance or trouble, or from purchasing, buying or consuming products produced or distributed by the employer of labor to such strike, lock-out, labor grievance or trouble, during its continuance.

5. This Act shall be retrospective in effect, and be considered as declarative of the existing law, but in the case of any action now pending against any such union or association, or against any person, which is not maintainable on account of the passing of this Act, the defendants in such action, or any of them, may apply summarily within a reasonable time to the court or judge for a discontinuance or dismissal of such action against the applying defendant or defendants, and shall be entitled to have such discontinuance or dismissal upon payment of the taxed costs of the plaintiff, or, where all the defendants do not apply, upon payment of a proportionate part of such costs, such proportionate part to be fixed by the court or judge. Where no such application for discontinuance or dismissal is made within a reasonable time, the action shall be tried and decided as if this Act had never been passed; provided, however, that where the action includes other causes of action outside of the purview of the Act, the action may be discontinued or dismissed, so far only as it is affected by the foregoing sections 2 to 5 inclusive, and the costs to be paid shall, in such case, be varied accordingly, as the court or judge may direct.

ACTIONS AGAINST TRADE UNIONS

To the Editor of the Miner:

Sir: In his determination to out-Herod Herod as a social reformer Mr. Smith Curtis has reached the climax by lately introducing into the legislature a bill: "An Act respecting actions against trade unions and kindred associations."

The whole tenor of this bill is decidedly revolutionary as it strikes at the very foundation of all that is sacred in the eyes of a Britisher, namely, his inherent right to enjoy his property and to protect the same from injury.

The first clause of the bill provides that trades unions shall not be enjoined. In other words no matter how flagrant may be the acts of the members of trades unions and how serious their interference may be with the rights of another in the peaceful enjoyment of his property as the law now provides, such trades union and its officers and members (if Mr. Curtis' bill becomes law), will not be amenable to the law. To put it another way, any and all other bodies of men, corporations or entities shall be subject to civic remedies for infractions of the laws, but trades unions and members thereof shall be exempt. Now, why should this be? Have the people of this community or of British Columbia generally, have had such a delightful experience of the modes and methods adopted by unions and union men as to put these organizations and their members on a pinnacle and place them above other institutions and other men? We think on the contrary that all law abiding citizens and those who are anxious for the peace and prosperity of British Columbia will say with us that instead of the law being relaxed in reference of these unions it should be strengthened and augmented.

All the trouble which comes to trades unions and their members and which necessitates the resort to injunctions and criminal proceedings arises out of strikes. Strikes are not illegal in themselves. Trades unions are legalized under Dominion statutes. A strike can be conducted up to a certain point with perfect legality. There is nothing illegal in an individual refusing to work for a master except upon his own terms and workmen can combine for that purpose. They can combine together for the purpose of demanding a raise in wages and if such demands are not met they can combine to leave their master's employment. Trades unions can legally assist these workmen in withdrawing their own labor and declining to work and can assist them in supporting themselves during the strike.

Up to this point all is well; it is here that the difficulties arise. Where works have been shut down and their production stopped through a strike of the workmen employed, the owners naturally look about them to see if they can get men to fill the places of those who have gone on strike. Then comes the tug of war. As an eminent English law lord has said:

"Now, parliament has not yet conferred upon trades unions the power "to coerce people, and to prevent them "working for whomsoever they like "upon any terms that they like, and "yet in the absence of such power it "is obvious that a strike may not be "effective, and may not answer its "purpose. Some strikes are perfectly "effective by virtue of the mere "strike, and other strikes are not effective unless the next step can be "taken and unless other people can "be prevented from taking the places "of the strikers. That is the pinch of "the case in trade disputes; and until "parliament confers upon trade unions "the power of saying to other people, "You shall not work for those who are "desirous of employing you upon such "terms as you and they may mutually "agree upon, trades unions exceed "their power when they try to compel "people not to work except on the "terms fixed by the unions. I need "hardly say that up to the present "moment no suh power as that exists. "By the law of this county no one has "ever, and no set of people have ever "had that right or that power. If parliament chooses to confer it on trades "unions it will do so as and when it "thinks proper; but it is idle to pretend not to see that this struggle exists. Trade unions have now been recognized up to a certain point as organs for good. They are the only "means by which workmen can protect themselves from tyranny on the "part of those who employ them; but "the moment that trades unions become tyrants in their turn, they are "engines for evil. They have no right "to prevent any man from working "upon such terms as he chooses."

In granting an interlocutory injunction against the officers of a union Mr. North remarked: "There is this to be borne in mind also, that is most "of these cases in which trades unions "are concerned the persons who are "defendants are such that a decision "that there can be no remedy but damages, would be equivalent that there "can be any remedy at all."

And upon the question of the mode of procedure to enforce the rights of the employer, it having been insisted by counsel for the defense that resort should be had to the criminal law, Lord Justice Lindley says: "The second "point which is that we ought to leave "these people to the summary jurisdiction of a magistrate. I do not think "so. This is obviously a case in which "a man's property, his trade, his livelihood and the goodwill of his business will be absolutely ruined if what "is complained of is not peremptorily "stopped; and according to the well "known principles by which the court "of chancery has been guided, it is "a case in which a person's property "and trade are so interfered with that "HE MAY COME TO THE COURT "FOR THE PROTECTION WHICH "AN INJUNCTION AFFORDS HIM."

The capitals are mine because I desire to emphasize the remarks of this eminent judge in this direction. While our criminal code provides against intimidation and punishment can be inflicted against the individual found guilty of the wrong, full justice is not done in the premises. First, because a conviction of one man does not always stop a repitition of the offense; secondly, because the real culprits have gone Scott free. Experience has shown that in many of the depredations committed during the heat of strikes the offender has been found to be a mere tool, and the men who put up the job and are the real offenders are not touched.

The law is designed to protect a man's propert and such protection cannot be adequately afforded by having a man committed to gaol for two months. Mr. Curtis by his proposed legislation would do away with "the protection which an injunction affords." By the decision of the house of lords in the celebrated case of the TAFF VALE RAILWAY COMPANY AGAINST THE AMALGAMATED SOCIETY OR RAILWAY SERVANTS, a registered trade union may now be sued in its registered name. This does away with the clumsy method of having to proceed against a multitude of officials of labor unions and making all the members of a labor union parties to the action. The procedure is much simplified. In his judgment Mr. Justice Farwell says: "If the contention of the defendant so-"ciety was well founded the legisla-"lature has authorized the creation of "numerous bodies of men capable of "owning great wealth and of acting "by agents with absolutely no respon-"sibility for the wrongs that they "may do to other persons by the use "of that wealth and the employment "of those agents. They would be at "liberty (I do not at all suggest that "the defendant society would so act), "to disseminate libels broadcast, or to "hire men to reproduce the ratting "methods that disgraced Sheffield "thirt or forty years ago, and their "victims would have nothing to look "for damages but the pockets of the "individuals, usually men of small "means who acted as their agents. "* * * * * The acts complained of "are the acts of the association. They "are acts done by their agents in the "course of the management and di-"rection of a strike; the undertaking "such management and direction is "one of the main objects of the defend-"ant society is perfectly lawful; but the "society in undertaking such manage-"ment and direction undertook also "the responsibility for the manner in "which the strike is carried out. * * * "It is not a question of the rights of "members of the society, BUT OF THE "WRONG DONE TO PERSONS OUT-"SIDE THE SOCIETY. For such "wrongs arising as they do from the "wrongful conduct of the agents of "the society in the course of manag-"ing a strike which is a lawful object "of that society, the defendant society "is in my opinion liable."

Again the capitals are mine. The remedy by injunction is not sought or granted for the purpose of invading the rights of members of trades unions, but to prevent wrong being done by members of the society to those who are not members of the same. There is an old equity maxim well known to Mr. Curtis, namely, "Where there's a wrong there's a remedy," yet by his proposed legislation Mr. Curtis seeks to wipe out this equitable doctrine which has obtained in the law of England from time immemorial.

We do not require a better illustration of the necessity and effectiveness of trades unions being made responsible and their funds leable for wrongs done to others than the case of BAILEY VS. PYE. The plaintiffs were a firm of glass merchants who obtained judgment in 1897 for £1218 damages (including costs), by the acts of the defendants' officials and members of the Plate Glass Bevellers Trade Union, as well as a perpetual injunction. The total amount Messrs. Bailey recovered by execution against the principal defendants was £5. I cannot conceive a greater injustice than this. The case for the union was defended out of the funds of the labor union at fault and ninety-nine other labor unions giving financial support, yet no recovery of the damages awarded was possible. In case there should be an idea abroad that the courts of the United States have not followed the equitable doctrines enunciated by the courts of England in dealing with these matters, I may say that I find upon investigation that from a period of time dating back to the year 1809 the United States federal courts and courts in the different states of the Union have invariably followed the practice and procedure adopted by the Court of Chancery in England and the law reports of the different states abound with cases where injunctions have been granted restraining unions and associations and the members of the same from the illegal conduct of a strike.

In a New York case the question came up as to whether the plaintiff had the right to select his own workmen and to regulate his own prices and to determine whom he should employ and whom discharge. It was held by the court that the defendants were attempting by an organized effort to force printers to come into the union, and the court said: "At common "law an agreement to control the will "of employers by improper molestation "was illegal conspiracy." In this case the court held that a combination to boycott a newspaper for refusing to unionize its office is illegal and will be enjoined by a Court of Equity. In another case of Emack vs. Kane, reported in 34 Federal Reporter, page 47, where a bill had been filed in equity to restrain the defendant from sending circulars injurious to complainant's trade and business and after citing various opinions Judge Blodgett decided: "That it may not be libel-"lous for an owner of a patent to "charge that an article made by an-"other infringes his patent, but I can-"not believe that a man is remediless "against persistent and continuous at-"tacks upon his business and property "rights in his business. It shocks my "sense of justice to say that a court "of equity cannot restrain systemati-"cal and methodical outrages like this "by one man upon another's property "rights. An action at law would do "no good, and the court grants the "injunction."

In another case of the United States vs. Kane, 23 Federal Reporter 148, the judgment of the court was given by Judge Brewer, who has been for some years one of the most eminent members of the supreme court of the United States. In his opinion Judge Brewer says: "Every man has a right "to work for whom he pleases provid-"ed in so doing he does not trespass "upon the rights of others. By way "of illustrating what is a threat, sup-"pose one of two workmen is discharg-"ed, the other is satisfied with his em-"ployment and wishes to stay. The "discharged party comes with a large "number of friends armed with revol-"vers and muskets and says: 'Now "my friends are here; you better leave; "I request you to leave.' In terms "there is no threat, but it a request "backed by a determination of force "intended and calculated to intimidate, "and the man leaves because he is in-"timidated.

"Armed robbers stop a coach and "politely request the passengers to "step out and hand over their valu-"ables, which they do. The defence is "made that there was no violence, no "threats, but a polite request which "was complied with. Any judge who "would recognize such a defence de-"serves to be despised."

I will conclude my reference to American cases by citing some extracts from the judgment of Judge Sage of the United States court for the northern district of Ohio in the case of Consolidated Steel Wire Company vs. Murray et al, 80 Federal Reporter 811: "It conclusively appears "from the authorities above referred "to that the English courts, the Ameri-"can state courts and the Federal "courts are in perfect harmony and "that while they recognize the rights "of employees of whatsoever rank or "degree to combine for the purpose of "resisting any measures of oppression "or coercion by their employers, and "even for the purpose of instituting "strikes and adopting other measures "for their own protection or for the "bettering of their condition, they are "agreed that they must not interfere "with the rights of employers to man-"age their own business in their own "way so long as they do not trespass "upon the rights of others."

Counsel for defendants closed his argument with a somewhat impassioned appeal to the court coupled with the expression of his hope and confidence that the decision would not be calculated to drive his clients to become anarchists. So long as labor organizations keep themselves within the limits of the law they will not be interferred with by the courts and they will have the sympathy and good will of a vast majority of well disposed citizens. When they exceed these limits they will be restrained by the courts and dealt with whatever the consequences may be, and they will lose the sympathy and good will of the public. The extraordinary character of the appeal made to the court justifies me in adding that the courts will be ready for the emergency whenever and wherever the spirit of anarchy may manifest itself, whether within or without their lodges, and the American people, if need be, will rise in their majesty and their might and crush it as a trip-hammer would crush an egg shell.

In the second clause of his bill, as we have seen, Mr. Curtis seeks to provide against unions and their members being enjoined for intimidation or conspiracy.

By section 524 of the Criminal Code of Canada, "Every one is guilty of an "indictable offence and liable to two "years' imprisonment who, in pursu-"ance of any unlawful combination or "conspiracy respecting any trade, "business or manufacture, or respect-"ing any person concerned or employ-"ed therein, unlawfully assaults any "person, or, in pursuance of such com-"bination or conspiracy, uses any vio-"lence or threat of violence to any "person, with a view to hinder him "from working or being employed at "such trade, business or manufacture."

Now, it will be seen by this that any officer, member, agent or servant of a trade union or association who unlawfully combines or conspires to commit the offences mentioned is liable to conviction and to the punishment given. Now, why, if members of trade unions are criminally liable and can be punished for the offence of unlawful combination and conspiracy, should not the organization of which he is a member be liable in damages and be enjoined as a union or organization and be made civilly responsible for the acts of its officers and agents? All corporations, organizations and public bodies act through their servants and agents and are held civilly responsible in damages for wrongs committed by these servants and agents. Every corporate body is liable in tort for the tortious (wrongful) acts of its agents and servants acting in the ordinary service of the corporation. An action for a wrong lies against a corporation when the thing done is within the purpose of the corporation, and has been done in such a manner as to constitute what would be an actionable wrong if done by a private individual. Why should trades unions be exempt? The contention on the part of the defendant union in the Taff Vale cases was that a trade union is not a corporation, nor an individual, nor a partnership, and not a legal entity. But the answer to this, by quoting from the judgment of the Lord Chancellor in the Taff Vale case, is: "If "the legislature has created a thing "which can own property, which can "employ servants and which can in-"flict injury, it must be taken, I "think, to have impliedly given the "power to make it suitable in a court "of law for injuries purposely done by "its authority and procurement." Lord Lindley in the course of his judgment in the same case says: "I entirely re-"pudiate the notion that the effect of "the Trade Union Act, 1871, is to "legalize trades unions and confer on "them the right to acquire and hold "property and at the same time to "protect the union from legal proceed-"ings if their managers or agents act-"ing for the whole body violate the "rights of other people. For such vio-"lation the property of trade unions "can unquestionably in my opinion be "reached by legal proceedings prop-"erly framed."

Now, what argument, what reason can Mr. Curtis give for wanting to legislate trades unions and their members into a position not occupied by any other body of men or class of men? If Mr. Curtis was personally injured through, or his property rights interefered with by, the agent or servant of a corporation in the course of and within the terms of an agent's employment I do not think Mr. Curtis would be content to sue the employee. I think we would find Mr. Curtis after the corporation for damages; and why? Because Mr. Curtis realizes that as it is damages he is after for the injury inflicted upon him he wants those damages from a source that will ensure payment on recovery of judgment. It seems to me that the introduction of such legislation as Bill No. 10 is an insult to the workingmen of British Columbia; first, because it implies that a member of a trade union is an irresponsible being not capable of controlling his actions, and, secondly, because it implies that workingmen are not capable of managing their organization as other men and must have legislative protection against allowing their angry passions to rise. It seems to me that the right-thinking, self-respecting workingman feels that he is capable of using proper judgment in the managing of the affairs of his union and of so conducting its business and influencing his fellow members so that they will neither bring trouble upon themselves nor their associates. Mr. Curtis by his bill says to the workingmen of British Columbia: "You are not as other men; "you are an inferior class not capable "or willing of conducting yourselves "or the affairs of your unions in a "lawful way, and so we must have "you protected against yourselves by "special legislation."

For it is always to be remembered that if citizens and organized bodies of citizens conduct themselves and the affairs of their organizations in a lawful way and do not illegally interfere with the rights or property of other people in turn neither their rights individually or collectively can be interfered with.

The third clause of Bill No. 10 deals with communications by workmen with their fellow workmen of facts respecting employment and persuading, without threats, workmen from renewing their contracts of labor.

The wording is rather confusing, but I presume what Mr. Curtis means is that picketing shall not in future be prevented by injunction.

The Criminal Law on the subject of intimidation in Canada is found in Section 523 of the Criminal Code, as follows:

"523. INTIMIDATION. Everyone is "guilty of an indictable offence and "liable, on indictment, or on sum-"mary conviction before two justices "of the peace, to a fine of not exceed-"ing one hundred dollars or to three "months' imprisonment with or with-"out hard labor, who, wrongfully and "without lawful authority with a view "to compel any other person to ab-"stain from doing anything which "he has a lawful right to do, or to do "anything from which he has a law-"ful right to abstain.

"(a.) Uses violence to such other "person, or his wife or children, or in-"jures his property; or

"(b.) Intimidates such other person "or his wife or children, by threats "of using violence to him, her or any "of them, or of injuring his property; "or

"(c.) Persistently follows such other "person about from place to place; or

"(d.) Hides any tools, clothes or "other property owned or used by "such other person, or deprives him of, "or hinders him in, the use thereof; "or

"(e.) With one or more other per-"sons, in a disorderly manner, in or "through any street or road; or

"(f.) Besets or watches the house "or any other place where such other "person resides or works, or carries "on business or happens to be."

Experience shows that in the conduct of strikes nearly all the offences covered by this section of the code arises out of picketing.

In the case of Lyons vs. Wilkins, to which I have previously referred, it was contended before the court of appeal by counsel on behalf of the defendants that "the Court of Chancery "does not sit to restrain acts of picket-"ing and the legislature has provided "a summary procedure before a mag-"istrate of the speedier and cheaper "kind for deciding what workmen may "do in that way."

In his judgment Lord Justice Lindley says: "That leads one to the sec-"ond point, which is that we ought "to leave these people to the summary "jurisdiction of a magistrate. I do not "think so. This is obviously a case "in which a man's property, his trade, "his livelihood and the goodwill of "his business will be absolutely ruined "if what is complained of is not per-"emptorily stopped; and according to "the well known principles by which "the Court of Chancery has been "guided it is a case in which a per-"son's property and trade are so in-"terfered with that he may come to "the Court of Chancery for the pro-"tection which an injunction affords "him."

And in the same case Lord Justice Kay says: "This is an appeal from an "interlocutory injunction and in all "these cases of interlocutory injunc-"tions where a man's trade is affected "one sees the enormous importance "that there may be in interfering at "once before the action can be brought "on for trial; because during the in-"terval, which may be long or short, "according to the state of business "in the courts a man's trade might

(Continued on Page Eight.)

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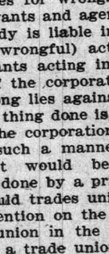

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