to be true of the principle as stated in the syllabus to Miller *v.* Com., the corrected statement assumes the creation of a mixed fund for the general purposes of administration and is inapplicable to the case of money directed to be laid out in land.

In conclusion, we submit, that if a testator intends his realty to be converted into personalty, out and out, and for all purposes, so that the proceeds are to be brought within the jurisdiction, and indiscriminately mingled with the general residuary estate, and pass through the executors' general accounts, there would seem to be no sound reason for exempting such property from the burdens incident to other property within the jurisdiction, and that common sense and sound legal principle both justified JAMES, L.J., in saying, in Forbes *v.* Steven, L. R., 10 Eq., 192: "It would take a good deal more than I have yet heard to satisfy me that a man can with the same breath say effectually in this court, 'Give me the money because it is residuary personal estate,' and declare it is not taxable because it is not residuary personal estate."

HOWARD W. PAGE.

EDITORIAL NOTES.

THE COURTS AND STRIKING RAILROAD EMPLOYEES.

THE ANN ARBOR CASES.

IT is indeed fortunate for the country that as able a judge as Judge TAFT should have had the opportunity to expand the principles of equity to meet the growing evil of the modern boycott. Cases in which there has been so much popular interest, as in that of Toledo, Ann Arbor and North Michigan R. R. Co. *v.* Pennsylvania Company, and in the case between the same parties, decided by Judge RICKS, are apt to be misunderstood; the confused notions in the lay mind effecting the opinion of the cases entertained by the profession. Perhaps, therefore, we will serve a useful purpose if we state, as shortly and clearly as may be, the questions which the judges of the Sixth Circuit were called upon to decide.

The case before Judge TAFT was that affecting Mr. Arthur, the able head of the locomotive engineers. Mr. Arthur had issued an order to the engineers of the defendant railroad, which caused them to refuse to handle freight passing to or from the Ann Arbor road. In short, he had established a boycott against Ann Arbor freight. The injunction was in the form of a command to rescind the order and to permanently restrain him from issuing it again. It was a mandatory injunction.

What Mr. Arthur was about to do was a crime; made so, if it was not already at the common law, by express act of Congress. A glance at the Interstate Commerce Law will show this. The second paragraph of the third section of the Act provides that "All common carriers subject to the provisions of this Act shall, according to the provisions of their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic." Section 10 makes any one who defeats any act required by the statute guilty of a misdemeanor.

Besides being a crime, the act was a civil wrong to the plaintiff company, for every crime involves a civil injury to those particularly affected. It is also a settled principle of law that he who, with malice against A, tries to induce B not to perform his obligation toward A, is liable to A in an action of tort. That a continuance of the boycott order threatened an irreparable injury to the Ann Arbor road goes without saying.

At one time it might have been successfully argued that the act of Arthur's, being primarily a crime, could not be restrained in equity. But, as we pointed out in the November number, 1892, in our note on "Injunctions to Restrain Libels and Courts of Criminal Equity,"[1] except in a case of a libel, the fact that an act is a tort or crime will not prevent the court of equity from issuing an injunction restraining the act, provided that the act threatens an irreparable damage to property. The wisdom of this may be questioned. As we said in the note, if injunctions

[1] Vol. xxxi, p. 782.

are to be issued in these cases, our legislatures should pass acts to enable one charged with having broken the injunction by committing the crime, to have the fact determined by a jury, with all the safeguards of formal trial.

The form of the injunction being mandatory, *i. e.*, ordering Mr. Arthur to rescind an order, while unusual, was not without precedent. As long ago as the case of Robinson *v.* Lord Byron[1] an order was made restraining the poet from not "raising his dam heads so as the water will not escape as it will otherwise."[2] There is also the case of Lane *v.* Newgate,[2] where the defendant was restrained "from further keeping a cannal out of repair," and numerous other cases.[3] The object of the injunction is to protect property. This can usually be done, but not always, by an injunction prohibitory in form. Sometimes the defendant, as in this case, has done something, as issued an order, or erected a wall, which is a continuing and irreparable injury to the plaintiff. The Court will in such cases order that to be rescinded which has already been done.

The case then, although rightly given great prominence in the public press, was one which contained not one legal principle which was new to an American Court, though the opinion was remarkable for its clearness.

Let us now turn to the decision of Judge RICKS. The Court in that case had previously issued an injunction directed to the Pennsylvania Company, its servants and employees, from continuing to refuse to handle Ann Arbor freight. The grounds were similar to those on which Judge

[1] 1 Bro. Ch., 188.

[2] 10 Ves., 192.

[3] Beadle *v.* Perry R. R. Co., L. R., 3 Eq., 465; L. & N. W. R R. *v.* T. & L. R. R., L. R., 4 Eq., 174, where the defendant was ordered to take down a wall he had erected: Whitecar *v.* Michenor, 47 N. J. Eq., 6 (1883); Broome *v.* N. J. Tel. Co., 42 N. J., 141. The only difference between these cases and the order issued by Judge TAFT was that in the cases cited the irreparable injury was always committed on real property or against real property, and the act was for the benefit of the person acting. These, however, are distinctions which do not create fundamental differences. The jurisdiction to issue the injunction rests on the irreparable injury to property.

TAFT granted the injunction against Mr. Arthur. As explained, the injunction did not pretend to require any one to remain in the employ of the railroad, either the president or any engineer. It only declared that any one who acted for the company should not refuse to handle interstate freight. Four engineers were charged with disobeying the order of the Court. As to three of these, the facts as assumed by the Court were that they took their engines to the yards, but abandoned them and quit the service of the company when they were asked to haul cars for the Ann Arbor road. This, it was held, was not disobedience of the injunction. The injunction gave them their choice of quitting the service of the railroad, or of carrying out the obligations of the road to the Ann Arbor Company. In the fourth case the Court held that an engineer who had run his engine to the junction of the Ann Arbor road, and then refused to haul an Ann Arbor car, had not resigned from the road, but that his supposed resignation was a mere trick and device to evade the order of the Court. Judge RICKS, therefore, imposed a fine of fifty dollars and costs.[1]

The case is portentous of much further litigation Judge RICKS, by his decision construed the injunction he had issued to mean that all the employees of the company had, as we said, their choice of getting out, or hauling Ann Arbor freight. This is, in itself, of considerable importance; but in the course of his decision he raised a further question of supreme interest. Can employees in leaving do so suddenly and in a body? In other words, is a sudden strike of a large body of men legal? In answer to this question and in speaking of the freedom of the employees Judge RICKS says: "But these relative rights and powers of employer and employed may become quite different in the case of the employees of a great public corporation, charged by the law with certain great trusts and duties to the public. An engineer and fireman, who start from Toledo with a train of cars filled with passengers destined for Cleveland, begin that journey under

[1] Did he not deprive him of his property without due process of law?

contract to drive their engine and draw the cars to the destination agreed upon. Will it be claimed that this engineer and fireman could quit their employment when the train is part way on its route, and abandon it at some point where the lives of the passengers would be imperiled and the safety of the property jeopardized? The simple statement of the proposition carries its own condemnation with it. The very nature of their service, involving as it does the custody of human life and the safety of millions of property, imposes upon them obligations and duties commensurate with the character of the trusts submitted to them. They represent a class of skilled laborers, limited in number, whose places cannot always be filled. The engineers on the Lake Shore and M. S. R. R. operate steam engines moving over its different divisions 2500 cars of freight per day. These cars carry supplies and materials upon the delivery of which the labor of tens of thousands of mechanics is dependent. These cars carry the products of factories, whose output must be speedily carried away to keep their employees in labor. The suspension of work on the line of such a vast railroad, by the arbitrary action of the body of its engineers and firemen, would paralyze the business of the entire country, entailing losses and bringing disaster to thousands of unoffending citizens. Contracts would be broken, perishable property destroyed, the traveling public embarrassed, injuries sustained too many and too vast to be enumerated.

"All these evil results would follow to the public because of the arbitrary action of a few hundred men, who without any grievance of their own, without any dispute with their own employer as to wages or hours of service, as appears from the evidence in this case, quit their employment to aid men, it may be, on some road of minor importance, who have a difference with their employer which they fail to settle by ordinary methods. If such ruin to the business of employers and such disasters to thousands of the business public who are helpless and innocent is the

result of the conspiracy, combination, intimidation, or unlawful acts of organizations of employees, the courts have the power to grant partial relief at least by restraining employees from acts of commission, of violence or intimidation, or from enforcing rules and regulations of organizations which result in irremediable injuries to their employers and to the public." Judge TAFT says to the same effect, though he elsewhere draws a distinction between strikes for a lawful and for an unlawful purpose: "But it is said that it cannot be unlawful for an employee either to threaten to quit or actually to quit the service when not in violation of his contract, because a man has the inalienable right to bestow his labor where he will, and to withhold his labor as he will. Generally speaking this is true, but not absolutely. If he uses the benefit which his labor is or will be to another, by threatening to withhold it, or agreeing to bestow it, or by actually withholding it or bestowing it for the purpose of inducing, procuring or compelling that other to commit an unlawful or criminal act, the withholding or bestowing his labor for such a purpose is itself an unlawful and criminal act. The same thing is true with regard to the exercise of the right of property. A man has the right to give or sell his property where he will, but if he give or sell it, or refuse to give or sell it, as a means of inducing or compelling another ot commit an unlawful act, his giving or selling it, or refusal to do so, is itself unlawful."

The learned jurists here recognize the fact that an act which was only a civil wrong to the employer, when industry was not so interdependent as it is now, may become in altered industrial conditions a wrong to society. "An act," says Judge RICKS, "when done by an individual in the exercise of a right may be lawful, but when done by a number conspiring to injure or improperly influence another may be unlawful. One or more employees may lawfully quit their employer's service at will; but a combination of a number of them to do so for the purpose of injuring the public and oppressing employees by unjustly

subjecting them to the power of the confederates for extortion, or for mischief, is criminal." Whether an injunction can be used to restrain such sudden strikes is a question concerning which there seems to be some difference of opinion between the two Judges. Judge RICKS says: "It is not necessary for the purposes of this case to undertake to define with greater certainty the exact relief which such cases may properly invoke; but that the necessities growing out of the vast and rapidly multiplying interests following our extending railway business make new and correspondingly efficient measures for relief essential is evident, and the courts, in the exercise of their equity jurisprudence, must meet the emergencies as far as possible within the limits of existing laws, until needed additional legislation can be secured." On the other hand, we find Judge TAFT, saying: "They may avoid or evade obedience to the injunction by actually ceasing to be employees of the company. Otherwise the injunction is in effect an order on them to remain in the service of the company, and no such order was ever, so far as the authorities show, issued by a court of equity. It is true that if they quit the service of the company in order to procure or compel defendant companies to injure the complainant company, they are doing an unlawful act, rendering themselves liable in damages to the complainant if any injury is thereby inflicted, and that they may be incurring a criminal penalty as already explained, but no matter how inadequate the remedy at law, the arm of a court of equity cannot be extended by mandatory injunction to compel the performance of a contract for personal service as against either the employer or the employed."[1]

Judge RICKS may think that the act of leaving under certain circumstances may amount to a wrong sufficiently great to warrant an injunction against such action. Judge TAFT distinguishes between the case where the purpose

[1] Citing Stocker *v.* Borckenbank, 3 Mac. & G., 250; Johnson *v.* Shrewsbury Railroad Company, 3 DeGex, M. & G., 914; Pickering *v.* The Bishop of Ely, 2 Y. & C. C. C., 249; Lumley *v.* Wagner, 1 DeGex. M. & G., 604.

sought to be enforced by the strike is legal and where it is illegal, and while he admits that a strike to accomplish a boycott be an illegal and indictable offense, clearly disclaims for the court of equity any power to restrain an employee from leaving a road either to accomplish a legal or illegal purpose.

But suppose this last and conservative position of Judge TAFT to be the wise one for the present, how long will it remain so? As a result of his position, a railroad employee acting in concert to enforce a boycott as well as for a legal purpose can leave a road practically without a moment's notice. The power of the employees to effect irreparable damage to property is thus as strong as ever. If we are not mistaken, however, the courts will use this decision, as also that of Judge RICKS, to develop, as necessity arises, the doctrine that the employees of a large transportation company in their relations to their employer have not that same freedom of stay or go as a man's servants, and *vice versa*—for it is a rule which works both ways, that an employer, *i. e.*, the directors of a large transportation company, in relation to their employees have not the same freedom of discharge and hire as a man has with his servants. This is not asserting that the doctrine will ever be successfully maintained that any employee has a vested right to work, or any employer a vested right to a man's work. But it is beginning to be generally understood that the State has an interest in the continuation of the relations of employer and employed in specific instances, and thus where the sudden determination of such a relation also, as is invariably the case, inflicts an irreparable injury on specific property, the courts will be prone to grant the owner an injunction. The fact that there is an injury to the public, theoretically has nothing to do with the issuing of such an injunction, and at one time might have even formed an objection, but it will practically act as a powerful lever to induce the judges to issue such injunctions, just as it is evident in the present cases that the wrong to the community at large was a power-