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## COLLATERAL ATTACK UPON LABOR INJUNCTIONS ISSUED IN DISREGARD OF ANTI-INJUNCTION STATUTES

THE TREND of recent appellate decisions has dispelled much of the doubt which beclouded the status of Norris-LaGuardia type statutes.<sup>1</sup> At long last, misgivings of unconstitutionality seem definitely to have been dissipated.<sup>2</sup> Even more important, the definition of a "labor dispute" has gradually been given the broad meaning originally contemplated by the authors of the legis-

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1. See Comments (1937) 50 HARV. L. REV. 1295; (1938) 6 I. J. A. BULL. 111; (1937) 35 MICH. L. REV. 1320; (1937) 46 YALE L. J. 1064.

2. *Senn v. Tile Layers Protective Union*, 301 U. S. 468 (1937), (1937) 46 YALE L. J. 1064, (1937) 37 COL. L. REV. 1227; *Lauf v. Shinner & Co.*, 58 S. Ct. 578 (U. S. 1938), (1938) 6 I. J. A. BULL. 111; *United Elec. Coal Co. v. Rice*, 80 F. (2d) 1 (C. C. A. 7th, 1935), *cert. denied*, 297 U. S. 714 (1936), (1936) 45 YALE L. J. 1320; *Levering & Garrigues Co. v. Morrin*, 71 F. (2d) 284 (C. C. A. 2d, 1934) *cert. denied*, 293 U. S. 595 (1934).

lation.<sup>3</sup> Unfortunately, however, the protective features of anti-injunction legislation may still be vitiated by hostile lower court judges. Despite the admonition of appellate courts, these judges may, by the device of calling an obvious labor dispute not a "labor dispute,"<sup>4</sup> still endow their improperly-issued restraining orders and temporary injunctions with the same decisive effect upon the particular industrial conflict that motivated the enactment of this type of legislation.<sup>5</sup> The problem of salvaging the most from such judicial sabotage becomes essentially one of providing a speedy method of reviewing such orders and injunctions. The purpose of this comment is to explore the possible techniques for accomplishing this result.

It has long been recognized that the ordinary processes of appeal leave labor with at most a pyrrhic legal victory.<sup>6</sup> To remedy this deficiency, anti-injunction statutes have made special provision for a "speedy appeal." But the typical statutory language apparently restricts this procedure to review of the propriety of an injunction in a case involving an admitted "labor dispute," not the question of whether a "labor dispute" exists.<sup>7</sup> If, therefore,

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3. *Lauf v. Shinner & Co.*, 58 S. Ct. 578 (1938); *New Negro Alliance v. Sanitary Grocery Co., Inc.*, 58 S. Ct. 703 (U. S., 1938); *Dehan v. Hotel & Restaurant Employees & Beverage Dispensers, Local Union No. 183*, 159 So. 637 (La. App., 1935); *American Furn. Co. v. Int. Brotherhood of Teamsters*, 222 Wis. 338, 268 N. W. 250 (1935), (1936) 85 U. OF PA. L. REV. 224.

4. The statutory definition is broad and all-inclusive:

"(c) . . . 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee." 47 STAT. 73 (1932), 29 U.S.C. § 113 (1934). However, this device of hostile judges is notorious. See Comment (1937) 50 HARV. L. REV. 1295.

5. See FRANKFURTER & GREENE, *THE LABOR INJUNCTION* (1930) 80. The effect of a labor injunction in alienating public support has often been pointed out. See, e.g., *Wood Mow. & Reap. Mach. Co. v. Toohey*, 114 Misc. 185, 196, 186 N. Y. Supp. 95, 102 (Sup. Ct., 1921).

6. In hardly any of the few cases in the Federal courts between 1901 and 1923 where some form of appeal from a temporary injunction was sought was an appellate decision rendered in less than three months after the issuance of the temporary injunction. None was rendered in less than one month. FRANKFURTER & GREENE, *THE LABOR INJUNCTION* (1930) Appendix II. Yet during the same period the great majority of disputes were ended in less than one month, and practically none lasted as long as three months. See (1927) 24 MONTHLY LABOR REV. 101 (June); (1928) 26 MONTHLY LABOR REV. 113 (Jan.). The average duration of strikes is no longer today. (1938) 46 MONTHLY LABOR REV. 178 (average duration of strikes in Sept., 1937, was 22 calendar days).

7. ". . . in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings . . ., forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record . . ., the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same char-

a judge grants an injunction without conforming to the statutory requirement on the ground that the case does not involve or grow out of a "labor dispute," the defendant is confronted with a serious doctrinal difficulty in obtaining a "speedy appeal," because the statute only provides for this method of review in a "case involving or growing out of a labor dispute."<sup>8</sup> Moreover, even where courts are properly willing to hurdle this logical obstacle,<sup>9</sup> "speedy appeals" may prove to be inadequate remedies.<sup>10</sup> Appellate tribunals are not always in session, and even when they are, it is doubtful whether they can and will act with sufficient expedition to meet labor's needs. In these contingencies, a swift review must be obtained by other means.

Since Norris-La Guardia type acts are framed in terms of jurisdiction,<sup>11</sup> some form of collateral attack would seem to afford the most effective method of reviewing such improperly-issued injunctions. Ordinarily, in order to give a court jurisdiction of the subject matter,<sup>12</sup> the allegations of the complaint must disclose a controversy within the jurisdiction conferred by the

acter." 47 STAT. 72 (1932), 29 U. S. C. § 110 (1934). The wording of the state statutes is similar. See, e.g., N. Y. C. P. A. § 876-a, ¶ 9.

8. See *Boise Grocery Co. v. Stevenson*, 73 P. (2d) 947, 948 (Idaho, 1937); *New Negro Alliance v. Harry Kaufman, Inc.*, 78 F. (2d) 415, 416 (App. D. C., 1935) *semble*.

9. In *Reid v. Independent Union of All Workers*, 275 N. W. 300 (Minn. 1937) the trial and appellate courts apparently overlooked the doctrinal necessity that a "labor dispute" exist in order to grant a "speedy appeal" and stated that the defendant should have made use of the "speedy appeal" procedure.

10. It is not yet possible to ascertain, with any accuracy, how rapidly an appellate decision may be had under the "speedy appeal" provisions. Curbstone opinions of labor lawyers indicate a general feeling that the process should take from one to two months. Yet the majority of labor disputes are ended in less than a month. See note 6, *supra*.

11. See, e.g., 47 STAT. 70-1 (1932), 29 U. S. C. §§ 104, 107 (1934).

12. The term "jurisdiction over the subject matter" is here used, in its broadest sense, to include the constitutional and statutory power of a court to issue the particular kind of decree rendered. The distinction between jurisdiction over the subject matter and jurisdiction to render the particular decree is but rarely made, for the two are closely akin. See *In re Wooley's Estate*, 96 Vt. 60, 63, 117 Atl. 370 (1922); 1 FREEMAN, JUDGMENTS (5th ed. 1925) 734. Apparently the American Law Institute does not make the distinction. RESTATEMENT, CONFLICT OF LAWS (1934) § 429b. A lack of such jurisdiction renders a judgment subject to collateral attack. *In re Bonner*, 151 U. S. 242 (1894); *People v. Burke*, 72 Colo. 486, 212 Pac. 837 (1923); see FERRIS, EXTRAORDINARY LEGAL REMEDIES (1926) 37.

It has been suggested that the statutes simply refer to "equity-jurisdiction," which generally does not give rise to collateral attack. See (1938) 51 HARV. L. REV. 747. But it is significant that, in introducing the bill Senator Norris stated that "the bill takes away from all Federal courts the power to issue such [labor] injunctions." SEN. REP. NO. 1060 part 2, 71st Cong., 2d Sess. (1930) 15. Cf. *Fauntleroy v. Lum*, 210 U. S. 230, 235 (1908). Moreover, the industrial struggle which led to the enactment of the statutes suggests that something more was intended than a mere instruction to the courts that they should not issue such injunctions, and that, if they did so they would be reversed upon appeal.

constitution and statutes.<sup>13</sup> The typical anti-injunction act expressly deprives the court of jurisdiction to issue a temporary injunction in any case "involving or growing out of a labor dispute," unless certain procedural and substantive requirements have been complied with.<sup>14</sup> Thus, if the allegations clearly indicate a "labor dispute," a persuasive argument might be made that an enjoining court which does not conform to those requirements loses jurisdiction over the subject matter even though it possesses jurisdiction over the persons of the defendants through their appearance in the injunction proceedings. The injunctive order would be rendered void and might be attacked collaterally.<sup>15</sup>

While this interpretation seems clearly authorized by the statutes<sup>16</sup> the contention may still be made that since the trial court, in entertaining the bill for an injunction, has undoubted jurisdiction to determine whether or not a "labor dispute" exists, exercise of that jurisdiction may be reviewed only by direct appeal.<sup>17</sup> Some authority for this position may be deduced from the *Baldwin* cases, which held that a party who has appeared and participated in a proceeding cannot later attack the judgment collaterally on the ground that it was rendered by a court lacking jurisdiction over his person.<sup>18</sup> So

13. See *Grubb v. Public Utilities Commission*, 281 U. S. 470, 475 (1930); 1 *FREEMAN, JUDGMENTS* (5th ed., 1925) §§ 336-338.

14. Substantively, the courts lack jurisdiction to restrain joining labor unions, aiding strikers, patrolling or otherwise publicizing the facts involved in the dispute, paying strike benefits, etc. 47 *STAT. 70* (1932), 29 U. S. C. § 104 (1934). Procedurally, they are deprived of jurisdiction to enjoin any act at all unless they have made findings of fact that (a) unlawful acts will be committed, (b) irreparable damage to complainant's property will follow, (c) greater injury will be done to complainant by denial than to defendants by the grant of the requested relief, (d) complainant has no adequate remedy at law, (e) that the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection. 47 *STAT. 71* (1932), 29 U. S. C. § 107 (1934). State statutes are similar. See, e.g., N. Y. C. P. A. 876-3, ¶ 1.

15. *People ex rel. Sandnes v. Sheriff*, 299 N. Y. Supp. 9 (Sup. Ct., 1937), (1938) 51 *HARV. L. REV.* 747, (1938) 86 U. OF PA. L. REV. 676. The likelihood of such an occurrence is increased by the common practice of adopting wholesale the allegations of petitions in other labor cases. The stereotyped language of these highly-exaggerated allegations accords well with the definition of a "labor dispute." See *FRANKFURTER & GREENE, THE LABOR INJUNCTION* (1930) pp. 60-66.

16. "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person . . . from doing . . . any of the following acts: . . ." 47 *STAT. 70* (1932), 29 U. S. C. § 104 (1934). "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute . . . except after findings of fact by the court to the effect . . ." 47 *STAT. 71* (1932), 29 U. S. C. § 107 (1934).

17. See *Reid v. Independent Union of All Workers*, 275 N. W. 300, 301, 304 (1937), (1938) 38 *COL. L. REV.* 499, (1938) 51 *HARV. L. REV.* 747, (1938) 22 *MINN. L. REV.* 432, (1938) 86 U. OF PA. L. REV. 676.

18. *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U. S. 522 (1931); *American Surety Co. v. Baldwin*, 287 U. S. 156 (1932).

questionable, however, is the applicability of this doctrine to jurisdiction over the subject matter that the American Law Institute has expressly reserved opinion.<sup>19</sup> Admittedly, the parties can confer personal jurisdiction upon the tribunal by waiver or even by the mere act of contesting the issue of jurisdiction.<sup>20</sup> Jurisdiction over the subject-matter, however, cannot be waived<sup>21</sup> but must stem from constitutional or statutory provisions.<sup>22</sup> Moreover, basic to the *Baldwin* doctrine is the assumption that at some time a procedure for effectually reviewing the trial court's judgment actually existed.<sup>23</sup> In labor injunction cases that assumption is invalid, for the impossibility of preserving the *status quo* renders ordinary appellate procedure of slight practical use. Therefore, it could be argued that application of the *Baldwin* doctrine to cases involving the construction of anti-injunction statutes would unduly extend its scope.<sup>24</sup>

Several procedural devices of varying usefulness are available to translate this doctrine of collateral attack into an effective check upon improperly-issued labor injunctions. In one category may be placed writs of habeas corpus and appeals from contempt proceedings, both of which involve risking the consequences of a violation of the injunction order; in another, writs of prohibition and counter-injunctions, the primary purpose of which is to enjoin enforcement of the injunction.

The writ of habeas corpus has often been utilized to afford relief from a contempt commitment which is void because the court order was issued without jurisdiction.<sup>25</sup> Comparatively new in labor cases,<sup>26</sup> this device has

19. RESTATEMENT, CONFLICT OF LAWS (1934) § 451 *caveat*. Accord: *Valley v. Northern Fire Ins. Co.*, 254 U. S. 348 (1920). But *cf.* ARNOLD & JAMES, CASES ON TRIALS, JUDGMENTS AND APPEALS (1936) 131-6. However, even if the *Baldwin* doctrine is admitted to be generally applicable to jurisdiction over the subject matter, it would not seem to apply to a situation where the issue of jurisdiction is not "judicably inquirable," *i.e.*, where there is no doubt that the court lacked jurisdiction over the subject matter. See *Baldwin v. Anderson*, 50 Idaho 606, 616, 299 Pac. 341, 344 (1931). In such cases collateral attack may be permitted even though the parties appeared and participated in the proceedings.

20. *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U. S. 522 (1931); *John Simmons Co. v. Sloan*, 104 N. J. Law 612, 142 Atl. 15 (1928).

21. *Woolsey v. Security Trust Co.*, 74 F. (2d) 334 (C. C. A. 5th, 1934); *Northwestern Fuel Co. v. Live Stock State Bank*, 182 Minn. 276, 234 N. W. 304 (1931); see *Jackson & Sons v. Lumbermen's Mut. Cas. Co.*, 86 N. H. 341, 342, 168 Atl. 895, 896 (1933). But *cf.*, *In re DeLue*, 295 Fed. 130 (C. C. A. 1st, 1924); *In re N. Y. Tunnel Co.*, 166 Fed. 284 (C. C. A. 2d, 1908).

22. *Baltimore Mail S. C. Co. v. Fawcett*, 269 N. Y. 379, 199 N. E. 628 (1936), *cert. denied*, 298 U. S. 675 (1936); see *Grubb v. Public Utilities Comm.*, 281 U. S. 470, 475 (1930).

23. See *American Surety Co. v. Baldwin*, 287 U. S. 156, 164-5 (1932).

24. Even if the *Baldwin* doctrine should be deemed generally applicable to the subject matter, nevertheless there are many cogent reasons for not considering it to apply in this type of labor case. See *infra* p. 1142, *et seq.*

25. *Ex parte Fisk*, 113 U. S. 713 (1885); *In re Depue*, 185 N. Y. 60, 77 N. E. 798 (1906); See (1934) 12 N. C. L. REV. 258.

the advantage of broadening the defendant's field of search for a favorably disposed judge, since the power to issue a writ of habeas corpus is practically universal.<sup>27</sup> Furthermore, delay is minimized and dependence upon appellate court sessions is eliminated. On the other hand, an appeal from the contempt citation, a method of collateral attack attempted in a recent widely discussed case,<sup>28</sup> lacks the practical advantages of the remedy of habeas corpus. Besides not permitting the selection of favorable judicial personnel, it is no less time-consuming than a direct appeal from the injunctive order itself, and at the same time is subject to all the disadvantages of a collateral attack.<sup>29</sup>

A writ of prohibition is particularly adapted to those situations where the defendants deem it inexpedient to risk contempt proceedings and where the trial court refuses to permit a "speedy appeal" because it has already determined that the case did not "involve or grow out of a labor dispute."<sup>30</sup> Although this remedy is ordinarily regarded as "direct" rather than "collateral," the usual requirement that it be based upon the trial court's want or excess of jurisdiction places it, for this purpose, in the category of collateral attack.<sup>31</sup> While swifter than an ordinary appeal, a writ of prohibition is dependent upon the sessions of an appellate tribunal and is slower than a

26. *People ex rel. Sandnes v. Sheriff*, 299 N. Y. Supp. 9 (Sup. Ct., 1937); see *Giltner v. Becker*, 133 Kan. 170, 174, 298 Pac. 780, 782 (1931) (Clayton Act type of state statute).

27. In many jurisdictions, the writ may be issued by any judge of either the lower or appellate courts without requiring the full court to be sitting. See, e.g., 43 STAT. 940 (1925), 28 U. S. C. § 452 (1934). In New York any justice of the Supreme Court has statewide jurisdiction to issue the writ. N. Y. C. P. A. § 1232.

28. *Reid v. Independent Union of All Workers*, 275 N. W. 300 (Minn. 1937). Notes on this case are listed in note 17, *supra*.

29. *State ex rel. Tuthill v. Giddings*, 98 Minn. 102, 107 N. W. 1043 (1906); *Reid v. Independent Union of All Workers*, 275 N. W. 300 (Minn. 1937); see FRANKFURTER & GREENE, *THE LABOR INJUNCTION* (1930) 56. But the automatic application of the rules of "collateral attack" to criminal contempt proceedings for violation of a "labor injunction" may seriously be questioned. Although such actions have frequently been described as "independent" proceedings [see *Gompers v. Buck Stove & Range Co.*, 221 U. S. 418, 445 (1911)] so that vacation of the injunction will not terminate the court's power to punish for contumacy, they are not necessarily "collateral" proceedings. Indeed the idea of "collateral attack" appears incongruous when it is remembered that the contempt proceeding really arises from the injunction, is but a means of enforcing the injunctive order, is almost invariably begun not by a complaint, but by an affidavit, involves the same controversy instituted in the injunction proceedings, and is, for all practical purposes, between the same parties. See SWAYZEE, *CONTEMPT IN LABOR INJUNCTION CASES* (1935) 25 n. 3.

30. *Cf. Baltimore Mail S. S. Co. v. Fawcett*, 269 N. Y. 379, 199 N. E. 628 (1936), *cert. denied*, 298 U. S. 675 (1936); *Olroyd v. McCrea*, 65 Utah 142, 235 Pac. 580 (1925); see FERRIS, *EXTRAORDINARY LEGAL REMEDIES* (1926) § 310.

31. *State ex rel. Terminal R. R. Ass'n v. Tracy*, 237 Mo. 109, 140 S. W. 888 (1911); *Bullard v. Thorpe*, 66 Vt. 599, 30 Atl. 36 (1894); see 2 BAILEY, *JURISDICTION* (1899) § 446. Some courts will allow the writ merely if there is no adequate remedy by appeal. *State v. Superior Court*, 97 Wash. 358, 166 Pac. 630 (1917).

writ of habeas corpus.<sup>32</sup> A final technique, as yet untried in labor cases, is a suit in a second court to enjoin the employer from enforcing his injunction on the ground that it would be unconscionable to give effect to a void judgment.<sup>33</sup> Insofar as a violation of the first injunction is punishable as a criminal contempt, proceedings under it cannot be prevented for that would amount to enjoining the first court itself.<sup>34</sup> However, if the violation is to be punished only at the instance of the employer as a civil contempt, there appears to be little reason for not enjoining enforcement of the first injunction.<sup>35</sup>

Discussion thus far has been based upon the assumption that instead of differentiating among various categories of cases, the concept of collateral attack must be treated with equal rigidity in labor controversies. But inasmuch as collateral attack is largely a judge-made doctrine and therefore supposedly flexible, that hypothesis warrants close examination. If the rule performs no useful functions in connection with the type of labor case under consideration, it should either be modified or entirely abandoned. *Cessante ratione legis, cessat ipsa lex*. Although the doctrine is still of value in protecting titles,<sup>36</sup> much more important today is its function as a concomitant of an orderly system of administering justice.<sup>37</sup> Far from being an immutable constitutional canon, restriction upon collateral attack, as applied to judgments of courts in the same judicial system, is mainly the result of a pragmatic adaptation to the needs of judicial administration. A state could, conceivably, provide no appellate machinery but instead permit great freedom of collateral attack. On the other hand, there would be no constitutional objection to prohibition of collateral attack in all cases except those in which the defendant was given no notice and opportunity to defend, thereby forcing litigants to

32. In some jurisdictions the writ of prohibition may prove to be swifter than a "speedy appeal" because of a difference in the rules regarding notice of appeal, printing and filing of records and briefs, etc.

33. Cf. *Georgia Power Co. v. T.V.A.*, 17 F. Supp. 769 (D. Ga., 1937), *aff'd sub. nom. In re Georgia Power Co.*, 89 F. (2d) 218 (C. C. A. 5th, 1937); *Mann v. Flowers*, 26 Minn. 479, 5 N. W. 365 (1880); *Schneider v. Leizman*, 57 Hun 561, 11 N. Y. Supp. 434 (Sup. Ct. 1890).

34. *Johnston Min. Co. v. Morse*, 44 Misc. 504, 90 N. Y. Supp. 107 (Sup. Ct., 1904); see *Ex parte Young*, 209 U. S. U. S. 123, 163 (1908).

35. Injunctions have been used for the somewhat similar purpose of preventing the enforcement of other than injunctive decrees. *Mann v. Flowers*, 26 Minn. 479, 5 N. W. 365 (1880); *Erie R. R. v. Ramsey*, 45 N. Y. 637 (1871). Similarly, injunctions against proceedings in other courts under the guise of "protecting the jurisdiction" of the enjoining court are familiar. *Looney v. Eastern Texas R.R.*, 247 U. S. 214 (1918); *Georgia Power Co. v. T.V.A.*, 17 F. Supp. 769 (D. Ga., 1936), *aff'd sub. nom. In re Georgia Power Co.*, 89 F. (2d) 218 (C. C. A. 5th, 1937), (1937) 4 U. OF CHI. L. REV. 496; *New York, C. & St. L. R.R. v. Perdiue*, 97 Ind. App. 517, 187 N. E. 349 (1933).

36. See VANFLEET, *COLLATERAL ATTACK* (1892) 3.

37. See 1 FREEMAN, *JUDGMENTS* (5th ed. 1925) § 305. For a graphic comparison of collateral attack and regular appellate machinery, see ARNOLD AND JAMES, *op. cit. supra* note 19, at 131-36.

rely exclusively upon appellate procedures.<sup>38</sup> Naturally, when provision is made for effective appellate machinery, it is to be expected that restrictions will be placed upon the scope of collateral attack. In ordinary cases it is in the interest of efficient and orderly judicial administration to proscribe collateral attack whenever the defendant had a real opportunity to contest issues and to get an *effective* review by appeal.<sup>39</sup> To accomplish this result, it might even be wise to ignore the doctrinal distinctions between jurisdiction over the person and over the subject-matter, and to apply the rule of the *Baldwin* cases to both.<sup>40</sup> Possibly, exceptions should be made in cases where *no* court within the sovereignty is granted jurisdiction over the particular subject-matter,<sup>41</sup> or where, after affirmance on appeal in criminal cases, a collateral attack is permitted because of the dramatic nature of the defendant's plight.<sup>42</sup> At all events, except where there would be a denial of due process because the defendant had no notice or opportunity to defend, the allowable area of collateral attack is entirely a matter of local policy to be determined by the legislature and the courts. Some variation between types of cases is therefore clearly proper.

When a collateral attack is made upon a judgment of a court within the same judicial system, *after* a decision in the matter by the highest state court, it seems clear that the policy in favor of definitiveness of adjudication should generally control and collateral attack should be permitted only in exceptional circumstances.<sup>43</sup> But when the attack is made *before* a decision by

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38. Cf. *York v. Texas*, 137 U. S. 15 (1890); *Chicago Life Ins. Co. v. Cherry*, 244 U. S. 25 (1917); *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U. S. 522 (1931); *American Surety Co. v. Baldwin*, 287 U. S. 156 (1932).

39. See ARNOLD AND JAMES, *op. cit. supra* note 19, at 131-36; 1 FREEMAN, JUDGMENTS (5th ed. 1925) § 305; Medina, *Conclusiveness of Rulings on Jurisdiction*, (1931) 31 COL. L. REV. 238, 263. Such is the purpose of the familiar rule that domestic judgments of courts of general jurisdiction can be attacked collaterally only when the want of jurisdiction appears upon the face of the record, and that extrinsic evidence may not be produced to impeach the record. *Coit v. Haven*, 30 Conn. 190 (1861).

40. The practical reasons for putting an end to litigation are as compelling in one case as in the other. See Comment (1936) 45 YALE L. J. 1100; (1936) 46 YALE L. J. 159. A few cases tacitly apply the doctrine of *res adjudicata* to jurisdiction over the subject-matter. See *In re N. Y. Tunnel Co.*, 166 Fed. 283 (C. C. A. 2d, 1903); *In re De Lue*, 295 Fed. 130 (C. C. A. 1st, 1924).

41. Cf. *People v. Burke*, 72 Colo. 486, 212 Pac. 837 (1923); 1 FREEMAN, JUDGMENTS (5th ed. 1925) 759.

42. *Herndon v. Lowry*, 301 U. S. 242 (1937), (1937) 35 MICH. L. REV. 1373. The Supreme Court also refused to grant Thomas J. Mooney's petition for an original writ of habeas corpus until he had first attempted to secure a similar writ from a state court. *Mooney v. Holohan*, 294 U. S. 103 (1935).

43. Cf. *Baldwin v. Iowa State Traveling Men's Ass'n*, 283 U. S. 522, (1931); *Coit v. Haven*, 30 Conn. 190 (1861). However, some commentators have instead focused attention upon the issue of the conclusiveness of adjudications of one court in the courts of another sovereign. See Medina, *Conclusiveness of Rulings on Jurisdiction*, (1931) 31 COL. L. REV. 238; Comment (1936) 45 YALE L. J. 1100.

the highest state court, the availability of collateral attack should depend upon the extent to which this procedure can be coordinated with normal appellate machinery. If that machinery is adequate, collateral attack should be denied. But when reversal on appeal cannot undo the effects of a temporary usurpation of jurisdiction, there is no reason why collateral attack should not be regarded as an appropriate way of preventing courts from hoisting themselves by their own bootstraps. In these cases the consequences of a collateral attack are hardly calculated to disrupt judicial administration, for if there is any real doubt as to the propriety of the second court's action, the ultimate decision will be rendered by the appellate court much as if the ordinary appellate procedure had been used. A further safeguard would be found in the self-restraint of the second coordinate court, which would hardly entertain such a collateral attack unless it clearly appeared that the first court had acted arbitrarily, and that an appeal would be futile. Obviously, the occasion for this brand of collateral attack is particularly opportune in labor injunction cases where an appeal from the injunctive order is inadequate as a remedy, for the strike would be smothered beyond hope of revival, pending appeal.<sup>44</sup> True, the employer will, in large measure, lose the benefits of the injunction. But since the situation under consideration is one where the injunction clearly contravenes the anti-injunction act and should never have been issued, the balance of equity and convenience is undoubtedly with the defendant. Since anti-injunction legislation is definitely committed to the policy of favoring defendant unions in case of doubt,<sup>45</sup> and since the injunctive remedy itself is an extraordinary one to be used only sparingly,<sup>46</sup> the risk of a possible error by the second court might well be borne by the employer.

The close connection between the doctrine of collateral attack and the availability of effective appellate machinery is further evidenced by the greater scope permitted to such attacks in the courts of one state against judgments rendered by courts of another state.<sup>47</sup> The lack of a common appellate superior (except on federal questions) to coordinate collateral attack in one state with appeals in another state militates in favor of allowing this irregular method of review. Otherwise a defendant would be subjected to the hardship of answering charges brought against him in the courts of another sovereign and the territorial independence of the states would be undermined. The prime consideration is not so much the power over the defendant of the particular *court* in the foreign state, but rather with the power of the foreign *state* itself.

44. See p. 1137, *supra*.

45. See, e.g., Witte, *The Federal Anti-Injunction Act*, (1932) 16 MINN. L. REV. 638, 658; Comment (1933) 21 GEO. L. J. 344, 351.

46. The employer always retains his remedy at law for damages.

47. Compare *Coit v. Haven*, 30 Conn. 190 (1861) with *Thompson v. Whitman*, 18 Wall. 457 (U. S. 1873).

With respect to the federal courts, the problem is much the same as in the state judicial systems. When a collateral attack by one federal court upon the judgment of another federal court is involved, the issue is simply one of providing an efficient machinery for review. If the normal processes of appeal afford adequate relief, collateral attack is unnecessary; if not, collateral attack is desirable and should be allowed. Moreover, since there can be no fear of giving extraterritorial effect to federal decrees, collateral attack in state courts upon the judgments of the federal tribunals should be allowed but sparingly. Indeed, if "federal jurisdiction" were subject to collateral attack by state courts, every federal court judgment could be attacked collaterally and definitive adjudication by federal tribunals would be virtually impossible. Hence the Supreme Court has ruled that diversity of citizenship and the amount in controversy can only be examined by ordinary appellate processes, since these are quite sufficient to remedy any error.<sup>48</sup> Labor injunction cases obviously present totally different considerations.

On the whole, the devices presently available to remedy injunctions issued in flagrant disregard of Norris-La Guardia type statutes are merely of random utility. But a few amendments to anti-injunction legislation could eliminate much of the present confusion. A mild reform would be achieved by specifically providing for a "speedy appeal" whenever a party *claims* that the case "involves or grows out of a labor dispute." More fundamental would be an amendment providing that in any controversy where such a claim is made and an injunction requested, trial is to be by a multiple-judge court similar to those already required to try constitutional,<sup>49</sup> rate,<sup>50</sup> and anti-trust<sup>51</sup> cases. Certainly such special treatment is merited by the large numbers affected by labor injunctions and the urgency of the issues involved. Although no legislation can guarantee labor complete insulation from judicial abuse, such a system would at least avoid the crushing consequences of a single judge's unjustified assumption of jurisdiction.<sup>52</sup>

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48. *Dowell v. Applegate*, 152 U. S. 327 (1894); *Chesapeake & O. Ry. v. McCabe*, 213 U. S. 207 (1909).

49. 50 STAT. 752, 28 U. S. C. A. § 380a (1937) (federal statutes); 37 STAT. 1013 (1913) as amended 43 STAT. 938 (1925), 28 U. S. C. § 380 (1934) (state statutes).

50. 37 STAT. 1013 (1913), as amended 43 STAT. 938 (1925), 28 U. S. C. § 380 (1934) as modified by 48 STAT. 775, 28 U. S. C. § 41(1) (1934).

51. 36 STAT. 854 (1910), 15 U. S. C. § 28 (1934).

52. Pending such legislation, much of the sting could be withdrawn from these improperly-issued temporary labor injunctions by extending the use of the stay of execution pending appeal. Usually obtainable from any appellate judge, this device is designed to preserve the *status quo* pending final adjudication. Since a temporary injunction is supposed to perform a similar function, issuance of a stay would flatly contradict the holding that the temporary injunction was necessary. But when a hostile trial judge has disregarded the express legislative mandate, this contradiction by an appellate judge finds ready justification.