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PROPOSED CHANCERY RULES REGARDING INJUNCTIONS IN LABOR DISPUTES

To prevent the repetition of past disasters, organized labor has presented to the Chancellor of New Jersey a petition[1] setting forth proposed rules relating to the issuance of "the outrageous, impudent, revolutionary invention of a lawless plutocracy"[2]—the injunction! No less vehemently has capital voiced its opposition[3] to rules proposed by "intermeddlers"[4] with disruptive influence, in what it considers an unwarranted attempt to obtain discriminatory privileges for the favored few.

There can be no question that many courts have granted improvidently damaging injunctions against the unions just as there can be no question but that these same unions have richly deserved on occasion this severe restraint. Here, then, are two groups, capital and labor, each acting collectively, pitted against one another. The problem now raised is the use of the instrumentality—the injunction. The proposed rules would stringently restrict its issuance. The opposition would naturally prefer the present discretionary application.

This article, then, will consider:

1. The limitations imposed by the Federal Constitution upon the control of labor disputes.
2. The power of the Chancellor to promulgate rules as vested in him by inherent, constitutional, and legislative authority.
3. The proposed rules by way of itemized comment.

I. The Constitutional Aspect

Before the Chancellor of New Jersey issues the proposed Chancery Rules regarding labor injunctions, his power to do so must be considered. In this respect the limitations of the Fourteenth Amendment of the United States Constitution as interpreted by the Supreme Court in *Truax v. Corrigan*[5] should be explained.

Let it be recalled that the question involved in *Truax v. Corrigan* was whether a state statute could entirely do away with injunctions of the equity court when labor was a party. The Supreme Court by a five to four decision ruled that a state law which specially exempted ex-employees when committing tortious and irreparable injury to the business of their former employer, from restraint by injunction, while leaving subject to such restraint all other tort-feasors engaged in like wrong-

[1] Petition of N. J. State Federation of Labor et al., Oct. 31, 1934.
[2] Samuel Gompers, in editorial comment in *Am. Fed. of Labor Weekly News Serv.*, March 23, 1929.
[3] Memorandum on Behalf of Chamber of Commerce of Newark, etc.
[4] Elkind & Sons, Inc. v. Retail Clerks, etc. Ass'n., 114 N.J.Eq. 586 (Ch. 1933).
[5] 257 U.S. 312 (1921).

doing, was an unreasonable classification and violative of the equal protection given by the Fourteenth Amendment.

But the petition to the Chancellor does not attempt to do away entirely with injunctions in labor disputes, nor even nearly so; and cannot be said to go beyond legislation conditioning the issuance of labor injunctions enacted by several other states.[6]

Viewed as lying within the inherent power of the states, this legislation has presented no federal question to our knowledge, nor could it, to our belief. Then whether the step is taken by the legislative branch of the state governments or by the judicial branch under their power to make rules for the conduct of court cases, these proposed Chancery rules cannot be objected to on the score of lack of power of the State of New Jersey. The late Justice Holmes said in *Truax v. Corrigan*:

> "There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the insulated chambers afforded by the several States, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect."

On the other hand it must be realized that the Norris-LaGuardia Act[7] passed by Congress has no pertinency on the constitutional law question as to the right of New Jersey to act in a similar manner by means of its Legislature or Chancellor. The Norris-LaGuardia Act was held to be constitutional[8] upon the ground that Congress had the absolute right to circumscribe the jurisdiction of the Federal District Court which is a product of its own legislation and changeable therefore at its will.

No difficulty is presented by the Constitution of New Jersey, for that document having no equal protection or due process clause, would not prevent the total abolition of the injunction in labor disputes.

II. Power of the Chancellor

There remains then the problem of power given to the Chancellor

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[6] Oregon Laws, 1933, ch. 355, page 559-565.
Idaho Laws, 1933, ch. 215, p. 543 *eq seq.*
Wyoming Laws, 1933, ch. 37, p. 31 *eq seq.*
Minnesota Laws, 1933, ch. 415, p. 777 *eq seq.*
Wisconsin Laws, 1933, ch. 133 .07.
Indiana Laws, 1933, ch. 12, p. 28-38.
Pennsylvania Laws, 1931, p. 926, No. 311.
Oklahoma Laws, Revised 1910, sec. 3768.
New York Laws, 1935.

[7] Norris-LaGuardia Act, U.S.C.A., Title 29, sec. 101 *eq seq.* pocket part 1934.

[8] Levering and Garrigues Co. v. Morrin, 71 Fed. (2d) 234.

to condition the issuance of injunctions in the Court of Chancery in labor disputes.

The power of the Chancellor over matters in the Court of Chancery is basically that power which is his inherently by development of the Court and limited or amplified by constitutional and legislative pronouncements.

The Court of Chancery as such was created during the reign of Edward III[9] although there is some recognition of the Chancellor as early as Edward I.[10] Because of the increased efficiency and justice of the Court, Chancery soon became immensely popular and, as a consequence, the Chancellor was forced to the creation of new writs and methods of procedure.[11] This action on the part of the Chancellor was essentially a creation and in some instances a denial of remedy as distinguished from right. However, the creation of novel remedies was so revolutionary in some regards that it may be questioned whether or not the acts of the Chancellor varied the substantive rights.[12] Although cognizance of the independent jurisdiction of the Chancellor was made by Parliament[13] in conferring some rights there seems to be no express grant of rule-making power. Such power as the Chancellor possessed in this regard was developed by self-initiative when it became expedient to control the practice in Chancery.[14]

In New Jersey the Court of Chancery was first recognized in 1682 and again in 1698.[15] Little was done concerning the Court until 1705 when, in pursuance of the royal grant in 1702, Lord Cornbury by ordinance in council created the High Court of Chancery. Power was given thereby to the Court

> "to make and ordain such rules and orders for regulating the practice of the said court, and the officers thereof, as they shall think fit."

All Chancery powers were subsequently vested exclusively in Governor Franklin by ordinance in 1770 which empowered him among other things:

> "to make such rules, orders and regulations for carrying on the business of the said court as to him, from time to time, shall seem necessary."

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[9] 1 POM. EQ. JUR. 38; BISHOP EQ. 10; 1 SPENCE EQ. 336.
[10] BISHOP EQ. 10.
[11] See treatises cited note 9, *supra*. Also STORY, EQ. JURIS.
[12] 1 POM. EQ. JUR. 34, 40; 1 SPENCE, EQ. JUR. 237 *et seq.* The remedy of injunction was originally used freely and without regard to rules. Subsequently, the issuance of the writ became uniform in accordance with settled rules.
[13] 17 Rich. II.
[14] See treatises cited notes 9 and 10, *supra*.
[15] Appendix, 19 N.J Eq. 577.

It is significant that these early pronouncements in New Jersey in conjunction with the powers exercised in England pertained only to practice, procedure and the formulation of remedies. This status was preserved after the creation of New Jersey as a state. By the Constitution of July 2, 1776, Art. 8, the Governor was declared to be the Chancellor and the original Act respecting the Court of Chancery provided:[16]

> "That it shall be lawful for the court of Chancery, from time to time, to make, alter, amend, or revoke any rule of practice, so as to obviate doubts, advance justice, and expedite suits in the said court, so that the same be not contrary to the provisions of this act."[17]

The final and most recent expression of the Legislature is the Chancery Act of 1915.[18] This act, however, did not amplify so much as it clarified the rule-making power of the Chancellor when it said:[19]

> "In addition to the power now vested in the Chancellor to make rules, he shall prescribe rules to give effect to the provisions of this act, and otherwise to simplify procedure in the Court of Chancery. Such rules shall supersede (so far as they conflict with) statutory and other regulations heretofore existing. Until such rules shall be made the rules hereto annexed in Schedule A shall be deemed to be rules of the Court of Chancery, subject to suspension and amendment in any part thereof by the Chancellor, as experience shall show to be expedient."

This statement is no more than an acknowledgment by the Legislature of the independent jurisdiction of the Chancellor to control exclusively the affairs of this court. This status had been gradually assumed by the early English Chancellors, exercised by their successors, and through a series of pronouncements confirmed and acknowledged by the legislature.[20]

The Chancellor, then, is invested with exclusive and complete control of all affairs in his court. But this control as it has been observed through the activities of the Chancellors both in England and New Jer-

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[16] P.L. 1799, Sec. 58; Revision of 1820, p. 494 at 501.

[17] This provision was substantially preserved after the Constitution of 1844. Insignificant changes in wording were made by P.L. 1852, p. 256, Rev. Stat. 1877, p. 125, sec. 109; P.L. 1902 p. 539, C.S. 1910, p. 444, sec. 87.

[18] P.L. 1915, c. 116, p. 184.

[19] Sec. 11, at 186.

[20] See Larky v. Larky, 88 N.J.Eq. 591 (E. & A. 1917), where the court in a brief *per curiam* opinion said: "The making, enforcement and suspension of the rules of the Court of Chancery are the exclusive province of the chancellor both by inherent power and by express legislative authority."

sey is exercised only as to matters of procedure and compliance with rules in that regard. Creation of remedies and requirements regarding the issuance of relief are clearly within the province of the Chancellor. The right to vary, alter, or change in any way substantive rights does not exist and cannot be grounded either in history, the Constitution, or legislative enactment.

III. Chancery Rules Proposed by Union Labor

The rules submitted to the Chancellor for promulgation are suggested in a sincere attempt to obtain for organized labor an equalization of the odds now against it in its struggle for betterment of working conditions and improvement of the workers' welfare. Without commenting on the merits of the capital-labor dispute it will nevertheless be necessary to examine the present situation.

Organized labor received its first impression of the injunction in its infancy.[21] At an early age this impression was dramatically confirmed during the railway strike of 1885 and '86. At that time an injunction had issued restraining unlawful activities. An employee of the Wabash Railway and also an officer of the union sent to his shop foreman the following note:[22]

> "You are requested to stay away from the shop until the present difficulty is settled. Your compliance with this will command the protection of the Wabash employees. But in no case are you to consider this an intimidation."

The court sentenced the sender to two months' imprisonment for contempt! This was the baptism of labor by the courts.

In its adolescence, labor was inundated with a flood of injunctions sought by the employer and with few exceptions granted.[23] Small wonder, then, that it cried out:[24]

> "In an equity court the accused is assumed to be guilty. He must prove his innocence to the satisfaction of the equity judge who is unfettered by constitution, law, or precedent. The equity judge is governed by his conscience. His views are

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[21] See Nelles, *A Strike and Its Legal Consequences*, 40 Yale L. J. 507 (1931) for a graphic description of the strike of 1877.

[22] Abstracted from *In re* Wabash Railway Co., 24 Fed. 217 (CC. W.D., Mo. 1885). See also note, 34 Col. L. R. 175 (1934).

[23] E. E. Witte, *Labor's Resort to Injunctions*, 39 Yale L. J. 374 (1930). Of 2,000 injunctions sought, 1,800 were granted on behalf of the employer. This is only a haphazard selection of instances. As against this, Mr. Witte after diligent research lists 73 instances of applications by labor, 38 of which were granted with nine of this number subsequently dissolved. See also, Mason, *Organized Labor as Party Plaintiff in Injunction Cases*, 30 Col. L.R. 466 (1930).

[24] *Am. Fed. of Labor Weekly News Serv.*, March 23, 1929.

largely determined by education and the self-interest of the strata in society from which he usually comes."

Those drops of judicial understanding[25] which did emanate from the courts were small encouragement in the face of decisions[26] holding constitutional an ordinance or statute prohibiting all picketing.

It is but natural that organized labor reared in an atmosphere of countless injunctions should feel acutely a sense of social injustice.[27] It is not surprising, therefore, to find labor submitting proposed rules to limit the issuance of the injunction.

Obviously, the unions are dissatisfied with the present rules and probably not without cause. It is essential that in a period of economic duress such as this both capital and labor should be amenable and tractable to all branches of government in order to foster a coordinated drive for increased productivity. If then, the Chancellor may promulgate rules to control the issuance of injunctions in labor disputes without the violation of any substantive rights every tradition of equitable justice demands his action.

The proposed rules will be considered by way of comment on each rule as suggested.

RULE 1.

"When used in these rules and for the purposes of these rules

(a) A case shall be held to involve or grow out of a 'dispute concerning terms or conditions of employment' when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have a direct or indirect interest therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; where such dispute is (1) between one or more employees or associations of employees; (2) between one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employers or associations of employers; or when the case involves any conflicting or competing interests in a 'dispute concerning terms or conditions of employment'

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[25] Karges Furniture Co. v. Amalgamated Woodworkers Union, 165 Ind. 421, 75 N.E. 877 (1908); Hardie Tynes Mfg. Co. v. Cruse, 189 Ala. 66, 66 So. 657 (1914).

[26] *In re* Williams, 158 Cal. 550, 111 Pac. 1035 (1910), *ex parte* Stout, 82 Tex. Crim. Rep. 183, 198 S.W. 967 (1917).

[27] See in this regard comment in Rice, *Collective Labor Agreements*, 44 HARV. L. R. 572 (1930).

(as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

(b) The term 'dispute concerning terms or conditions of employment' includes any controversy concerning such terms or conditions, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange such terms or conditions, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(c) A person or association shall be held to be a person participating or interested in a dispute concerning terms or conditions of employment if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs, or has a direct or *indirect* interest therein, or is a member, officer or agent of any association composed in whole or in part of employers and employees engaged in such industry, trade, craft or occupation, or having a direct or *indirect* interest therein."

This is in effect a request to define the intent of the Legislature in using "terms and conditions of employment" in P. L. 1926, c. 207, p. 348. Viewed from this angle it is well-nigh a practical impossibility. "The search for legislative 'intent' is too often a matter of mere extravagant pretense, smacking of the prestidigitator's art."[28] Should such an attempt be made it would be akin to the showman's game of uncovering peas of meaning under shells that the Legislature has so far left empty. Nevertheless, in passing it is obvious that in using "others so to do" (*supra* P. L. 1926) the Legislature went beyond the language of the Clayton Act and in so doing indicated a broader interpretation than that received by the early Federal Act.[29] From this point of view the scope of the proposed definition is justified.[30]

However, there is a more basic question, namely, the power of the Chancellor to make such a rule. It resembles a predetermination of a party's status without the party being before the court in an actually litigated cause. As such its validity may be questioned.[31] Undoubtedly, the better way to achieve the desired result is by legislation.[32] Although theoretically invalid, the successful promulgation

[28] Radin, *Statutory Interpretation*, 43 HARV. L. R. 863 (1930).

[29] Duplex Printing Co. v. Deering, 254 U.S. 443, 65 L. ed. 349 (1921) holding employer-employee relationship essential.

[30] See in this regard the able discussion of "terms and conditions of employment" in Vonnegut Machinery Co. v. Toledo Mach. Co., 263 Fed. 192 (D.C.C.N.D. Ohio, 1920), *reversed* for want of jurisdiction, 274 Fed. 66 (C.C.A. 6th, 1921); also OAKES, ORGANIZED LABOR AND INDUSTRIAL CONFLICTS, 958 and 9.

[31] California v. San Pablo & T. Ry. Co., 149 U.S. 309 (1893).

[32] See proposed bill, Assembly 176, introduced Jan. 28, 1935. This contains an adequate and inclusive definition. Although not within the scope or purpose of this article, a cursory reading of the bill would indicate that the constitutionality in certain aspects is open to question.

of such a rule should be conceded as a practicality. The Chancellor has power to make decrees personally in any instance[33] and a rule then laid down would be binding subsequently upon the Vice-Chancellors. It must be conceded that the promulgation of such a rule for the guidance of the Vice-Chancellors is infinitely more convenient than direct action by the Chancellor in removing a cause from a Vice-Chancellor in order to apply such a definition and thereby indirectly promulgate the rule. In the final analysis, if the rule as promulgated was properly phrased for the guidance of the Court of Chancery, it should not be considered a prior adjudication of a party's status and, therefore,. would be proper.

As to the desirability of such a rule there can be no doubt. There has been a startling lack of uniformity in the decisions involving labor disputes. Within five months of the passage of P.L. 1926, c. 207, permitting communication of information, there were expressed in the Court of Chancery two such widely divergent views as those contained in the *Gevas* case[34] and the *Forstmann* case.[35] And this in the face of the pronouncement of the Court of Errors & Appeals in the *Keuffel & Esser* case.[36] Such divergence[37] of view can only result in divergence of justice, in direct relation to the vicinage wherein the action is entertained. A general exposition of a formula to be followed would secure the now-lacking uniformity in basic attitude.

RULE II.

> "No *ad interim* restraint or temporary or permanent injunction in a case involving or growing out of any dispute concerning terms or conditions of employment shall be issued except in strict conformity with these rules; and no rule nor any provisions thereof shall be waived except in extreme cases where equity and justice requires such waiver, and then only by order of the Court setting forth such waiver and the specific reasons therefor."

This is obviously a rule of procedure for the guidance of the Court. As such, it is valid and proper. It should be noted in regard to this as well as the other acceptable rules that they are not in the nature of an ultimatum enunciated by the Chancellor. All rules are

[33] This must be conceded under inherent power. See treatise cited *ante*, notes 9 and 10.

[34] Gevas v. Greek Restaurant Workers' Club, 99 N.J.Eq. 770 (Ch. 1926).

[35] Forstmann & Huffman Co. v. United etc. Workers, 99 N.J.Eq. 230 (1926).

[36] Keuffel & Esser v. Internat'l etc. Machinists, 93 N.J.Eq. 429 (E. & A. 1921).

[37] In the *Keuffel* case the court said, "Picketing may or may not be lawful." Adopting this view the *Forstmann* case goes further and says, "It is the legal right of employees to picket." The *Gevas* case suggests that there can be no such thing as peaceful picketing.

subject to the provisions of General Rule 4, Chancery Act, P. L. 1915, c. 116, p. 187 as follows:

> "These rules shall be considered as general rules for the government of the court and the conduct of causes, and as the design of them is to facilitate business and advance justice, they may be relaxed or dispensed with by the court in any case where it shall be manifest to the court that a strict adherence to them will work surprise or injustice."

RULE III.

> "No *ad interim* restraint shall be granted *ex parte* in any cause involving or growing out of any dispute concerning terms or conditions of employment. Such restraint may be granted only on such advance notice of the application therefor and opportunity to be heard to the person or persons sought to be restrained, as the Court shall, by order served on such person, direct. No papers shall be read in support of the application for the *ad interim* restraint which are not served together with said order."

Here again is a matter of procedure. The right to withhold or abolish a particular form of relief is well-settled.[38] The manner in which relief may be obtained is equally a matter of practice.[39] Should the Court find the injury so irreparable and immediate as to warrant a restraint *ex parte*, then, as previously suggested, the rules may be suspended for reasons to be set forth. An expressed policy of denial of *ex parte* restraint will be conducive to checking what would otherwise be a larger margin of error in granting injunctive relief.[40] Naturally some mistakes are inevitable in the nature of things. Just as naturally the opportunity for such mistakes is larger on an *ex parte* application. It is equitable, therefore, to obviate the opportunity for error.

The requirement of service of papers to be used in support of the application is theoretically sound[41] but decidedly impractical. The rule should require service of the papers but permit compliance therewith by service upon an officer, agent, or authorized

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[38] See discussion *ante re* power of Chancellor. Also present rule III c *re* corporate receiverships.

[39] The Civil Practice Act of New York, section 882, uses substantially the same language as to notice.

[40] See in this regard Bayonne Textile Corp. v. Am. Fed. Workers, 116 N.J.Eq. 146 (E. & A. 1935); Keuffel & Esser v. Internat'l etc. Machinists, 93 N.J.Eq. 429 (E. & A. 1921).

[41] This restriction of affidavits to be used was originally promulgated in Rule 41 *et seq.* of Rules of Ct. of Chan., POTTS, NEW JERSEY CHANCERY PRECEDENTS, p. 20-21 (1872).

representative of any defendant.[42] Service of all papers upon each defendant is obviously an improper burden upon the applicant.

RULE IV.

"Every *ad interim* restraint in a cause involving or growing out of any dispute concerning terms or conditions of employment shall provide that the complainant's application for a temporary injunction be set down for hearing on the next motion day but not less than five days from the date of said restraint; and the hearing thereon shall take precedence over all matters except older matters of like character, and shall be held on the said return day without adjournment, except as herein provided or except as consented to by the parties. On application of the defendant the hearing may be once adjourned to the next succeeding motion day. If on the date set for said hearing or on said adjourned date, as the case may be, the complainant does not proceed with his application for a temporary injunction, the *ad interim* restraint shall thereupon expire and no order shall be required therefor. The application shall be determined as expeditiously as justice may permit.

"In any cause involving or growing out of a dispute concerning terms or conditions of employment only the following papers may be considered upon the hearing of an application for a temporary injunction: (1) The Bill of Complaint and the affidavits annexed thereto and served therewith; (2) Defendants' answering affidavits served at least two days in advance of the hearing; (3) Complainants' reply affidavits served at least one day in advance of the hearing. Reply affidavits may contain only matter in direct response to new matter contained in the said answering affidavits of defendants not anticipated in the Bill of Complaint."

Nothing contained herein is objectional from the standpoint of validity, it being exclusively a rule of practice. The preference suggested is warranted because of the public interest involved in any labor dispute but more urgent matters are conceivable and in the court's discretion should be given precedence.

The original purpose of Chancery rules was to obviate doubts and advance justice.[43] The necessity of a change in the present

[42] Gilchrist Co. v. Metal Polishers etc. Local Union, 113 Atl. 320 (Ch. 1919).
[43] Chancery Act, P.L. 1799, Sec. 58; Rev. of 1820, p. 494 at 501.

rules is based upon the need for clarification of court policy and procedure. In this respect the provision for expiration of the *ad interim* restraint is defective. To avoid misunderstanding and increased disputes the expiration of the restraint should be made dependent upon an order entered upon application of the defendant which is to be accorded as a matter of right.

The exposition of proper papers to be considered on hearing for temporary injunction is a codification of already established practice. Limitation of reply affidavits to matter contained in answering affidavits is no more than proper practice. Nothing contained in the proposed rule excludes in any way facts which are properly the subject-matter of supplemental affidavits. New incidents should be before the court and would still be available under the rule.

RULE V.

> "In cases involving or growing out of any dispute concerning terms and conditions of employment, the defendant on two days' written notice and the complainant on one day's written notice, served on opposing counsel, may demand the production at the hearing on the application for temporary injunction, for the purpose of cross examination, any affiant whose affidavit is to be read at the said hearing. Upon the failure so to produce any such affiant, the affidavit of such affiant shall not be read."

Promulgation of this rule is a matter of policy. The present Rule 204 leaves oral examination of an affiant subject to order by the Court. The proposed rule would transfer this right of examination to the order of counsel. Inasmuch as counsel may be presumed to be thoroughly conversant with the cause, he should be in a better position than the Court to know what affidavits are subject to discredit through cross-examination.

RULE VI.

> "In cases involving or growing out of any dispute concerning terms or conditions of employment, no restraint, temporary or permanent injunction shall be issued except after findings of fact by the Court set forth in such restraint or injunction:
>
> "(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained but no injunction or temporary restraining order shall be issued on

account of any threat or unlawful act excepting against the person or persons, association or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That immediate, substantial and irreparable injury to complainant's property will follow and why the injury is immediate and irreparable;

"(c) That as to each item of relief granted greater injury will be inflicted upon the complainant by the denial of relief than will be inflicted upon defendant by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

The very nature of this rule presents essentially a matter of policy. It is suggested as the prescribed formula whereby the catalytic reaction of organized labor upon employees is to be analyzed. Its language is stringent, its effect even more so. The importance of such a rule warrants detailed consideration of the subdivisions.

(a) The requirement of a finding that unlawful acts will be committed is eminently proper. Such a requirement will effectively prevent judicial circumvention of legislative pronouncements specifically legalizing certain acts. While still leaving the ultimate interpretation of the threat or act to the court, it will curb the hitherto unchecked proclivity toward varied interpretations. The further restriction as to parties against whom an injunction may issue is reasonable. However, the limitation to actual authorization or ratification after actual knowledge is too narrow. In accordance with the Bayonne case previously discussed the moving spirit of a labor dispute should be held responsible for acts properly attributable to it. This is not to be construed as affixing liability to an organization for the unauthorized acts of a militant minority. With this qualification the proposed rule is acceptable.

b. Irreparable injury has always been recognized as a basic ground upon which to predicate the issuance of an injunction.[44] The requirement of reasons for such a belief merely calls for expression of what must already be in the mind of the Court.

c. This provision is essentially a balancing of the equities involved. Such action is not necessary. There are but three con-

[44] Stevens v. Busch Cleaners, 116 N.J.Eq. 331 (Ch. 1934), substantially expressed this view by way of *dicta*.

ceivable factual situations. The Court may conclude that the acts committed or to be committed by both parties are lawful, that the acts by both parties are unlawful or that the acts of one party are lawful and the other party unlawful. In the first instance if all acts are lawful the rules do not apply because under section a of this rule the acts must be found to be unlawful. In the second instance acts of both parties are unlawful and here again the rules should not apply because the complainant is confronted with the well-settled rule that he who comes into equity must come with clean hands and keep his hands clean. The complainant not being entitled to relief under that principle there is no need of balancing equities. In the third instance the acts of one party are unlawful. If that party is the complainant the previously mentioned rule applies. If the party be the defendant, established practice would indicate that an injunction should issue to restrain the unlawful acts without the balancing of so-called equities. There can be but small conflict of equities when one party is guilty of unlawful acts and the opposing party entirely blameless.

d. This requirement is so well-recognized a prerequisite to all equitable relief that it requires no comment.

e. A provision such as this would at first blush seem to entail a criticism of police officials by the Court. However, if the Court finds as a fact that the threatened acts will cause immediate and irreparable injury such a conclusion would almost inevitably include a finding that the public officers could not or would not furnish adequate protection. If completely adequate protection is available through public officers the complainant's remedy is in that quarter. If such be the case complainant would be degrading the established dignity of the Court of Chancery by using it as a Police Court. The Chancellor certainly has every right to prevent and avoid such practice. Nevertheless, this required fact finding appears more logically to be placed in subsection b of this rule as a reason for the finding required there.

RULE VII

"Every *ad interim* restraint, temporary or permanent injunction issued or granted in a cause involving or growing out of any dispute concerning terms or conditions of employment, shall be deemed to include the following provisions:

"Nothing contained herein shall be deemed or construed to enjoin or restrain any person or persons, either singly or in concert

(1) From terminating any relation of employment or from ceasing to perform any work or labor, or from peaceably and without threats or intimidation recommending, advising or persuading others so to do; or

(2) From peaceably and without threats or intimidation being upon any street or public highway or thoroughfare for the purpose of obtaining or communicating information, or to peaceably and without threats or intimidation persuade any person or persons to work or abstain from working, or employ or cease to employ any party to a labor dispute, or to peaceably and without threats or intimidation recommend, advise or persuade others so to do, provided such persons remain separated one from the other at intervals of 10 paces or more."

In view of the interpretation put on P. L. 1926, p. 348, by the Chancery Court, labor can gain nothing by having this rule promulgated. In the case of *Gevas v. Greek Workers' Club,* 99 N.J.Eq. 770 (1926) the court said that the law did not apply when on the facts found by the court, no dispute existed concerning terms or conditions of employment. In the *Elkind* case, 114 N.J.Eq. 586 (1933) and the *Lichtman* case, 114 N.J.Eq. 596 (1933) the court considered the law did not apply if the strike was illegal, presumably meaning that a dispute over a "closed shop" was not a dispute concerning terms and conditions of employment. Thus the word "every" in the rule has been hedged 'round by the courts in interpreting "terms and conditions of employment." These decisions still stand[45] and smack of systematic emasculation of the law by the application of personal economic and social philosophy. For what value there may be contained therein, this rule should receive favorable consideration.[46]

RULE VIII.

"In a cause involving or growing out of any dispute concerning terms or conditions of employment in which a temporary injunction has been granted, issue shall be deemed joined upon filing of the answer; provided, however, that by leave of the court the complainant may file a special replication setting up new matter to meet defenses not anticipated in the Bill of Complaint; but such special replication shall not break the issue."

There is no doubt that in labor disputes where physical violence is always latent that any procedural rule which will expedite the final hearing on the merits without prejudice to either side, should be adopted by the court.

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[45] To the same effect Snead & Co. v. Local No. 7, 103 N.J.Eq. 332 (E. & A. 1928).

[46] The employer's brief, previously referred to, questions the validity of this rule because counsel feels it may permit picketing when no dispute exists. The initial provision of these rules requires "a dispute." In view of the agility with which the court has already hurdled this same obstacle in the 1926 Act, it may be safely assumed that the court will continue its circumventive interpretation.

RULE IX.

"In a cause involving or growing out of any dispute concerning terms or conditions of employment in which a temporary injunction has been granted, upon application to the Vice-Chancellor to whom the said cause has been referred, the final hearing of said cause shall be given precedence over all matters except older causes of like character, but such final hearing shall not take place prior to 30 days from the date of issue joined. After such final hearing, the cause shall be determined as speedily as justice may permit."

Although labor disputes should not be given precedence over "all matters" by an inflexible rule, the pressure of public interest and social welfare demands that these questions be privileged procedurally in order to arrive at an expeditious determination.

CONCLUSIONS

1. The Constitutional limitations presented by federal decisions do not prevent the promulgation of the proposed rules nor would they impair the effect of promulgation.

2. The power of the Chancellor to promulgate rules of practice and procedure is clear and unquestioned both by inherent right, Constitutional provision and legislative grant.

3. The proposed rules are practically in toto rules for the guidance of the Court of Chancery and control practice therein.

In view of these facts the proposed rules as limited or amended by the foregoing comments should be promulgated. By so doing the Chancellor may effectively prevent judicial interpretations which denature legislative enactments and "limit workmen to methods akin to pink teas and scented notes of invitation."[47]

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[47] Gt. Northern R. Co. v. Local Gt. Falls Lodge, 283 Fed. 557 (D.C., D. Mont., 1922).