Previous to this decision, it seems to have been generally assumed that the statutory provision for "making false entries" included "causing false entries to be made." *United States v. Youtsey*, 91 Fed. 864, 875 (C.C. Ky. 1898); *Morse v. United States*, 174 Fed. 539, 554 (C.C.A. 2d 1909), *cert.* denied, 215 U.S. 605 (1909); *United States v. Reece*, 280 Fed. 913, 916 (D.C. Idaho 1922); note the indictment in the principal case set out above. If the statute had expressly contained these words, the court intimated that it probably would have upheld the defendant's conviction. 84 F. (2d) 943, 946. This decision would embody an approach similar to the common law courts' refusal to be misled by indirect causation. See *Aldrich v. People*, 224 Ill. 622, 79 N.E. 964 (1906) (defendant convicted of larceny for exchanging check on his own trunk for one on another so that the carrier in possession of the trunks delivered the wrong one to the defendant); *Commonwealth v. Barry*, 125 Mass. 390 (1878) (same); 1 Wharton, Criminal Law § 203 (12th ed. 1932). Unless, therefore, the rule requiring strict construction of a criminal statute is conclusive, the decision in the principal case is erroneous. The making of false entries *per se* was not a crime at common law. The statute involved in the principal case was enacted simultaneously with the establishment of the federal reserve system and was intended to prevent misdealings with bank funds. The provision for the making of false entries was intended to operate as a double-check on misappropriations: It is a part of the embezzlement section (40 Stat. 972 (1918); 12 U.S.C.A. § 592 (1936)); and most cases involve a misapplication of funds as the basis for the false entry. *Agnew v. United States*, 165 U.S. 36 (1897); *United States v. Fish*, 24 Fed. 585 (C.C. N.Y. 1885); and most of the cases cited herein. The technical difficulty of proving an embezzlement in the principal case, therefore, would seem to have set the stage for a conviction on the false entries charge.

Domestic Relations—Constitutional Law—Statutory Construction—Validity of Illinois Separate Maintenance Act—[Illinois].—The Illinois Separate Maintenance Act, passed in 1935, reads, in part, as follows: "Provided there are no living children, born of such marriage no person having once received separate maintenance or temporary alimony for a period of two years or a fraction thereof shall be entitled to further separate maintenance or temporary alimony against the same spouse, except for the portion of the two years as remains unexpired. Provided, also, that there are no living children . . . . the time during which the husband or wife is living . . . . apart . . . . under a decree of separate maintenance, shall be for the purpose of divorce regarded as desertion by the husband or wife." Smith-Hurd's Ill. Rev. Stat. 1935, c. 68, § 22. The plaintiff-wife, who had secured a separate maintenance decree in 1925, petitioned for a rule against her husband to show cause why he should not be held in contempt for failure to pay support money. The husband, relying on the Separate Maintenance Act, filed a complaint for divorce and alleged that he was no longer liable to pay. The cases were consolidated, and the lower court discharged the rule as to payment of support money and dismissed the divorce complaint for want of equity. Both parties appealed. *Held*, the Separate Maintenance Act is constitutional, creates a new ground for divorce and is retroactive (April 24, 1936, not reported). On rehearing, *held*, the Separate Maintenance Act is unconstitutional because (1) it amends the Divorce Act without incorporating the amended section in the new act as is required by art. 4, § 13 of the Illinois Constitution; (2) it makes an arbitrary classification which violates the due process requirement of § 2 of art. 2, and the prohibition against special laws in

§ 22 of art. 4 of the Illinois Constitution. *De Motte v. De Motte*, 364 Ill. 421, 4 N.E. (2d) 960 (1936).

The failure of the attempt by the Illinois legislature to limit the right to separate maintenance is unfortunate: Separate maintenance has long been arraigned as an institution which enables spiteful wives to prevent the remarriage of their husbands and which encourages adultery by preserving the marital tie after destroying the reciprocal rights to consortium. See 1 Bishop, Marriage, Divorce, Separation § 68 (1891); 2 Vernier, American Family Laws § 114 (1932). Invalidation of the Act in the present case might easily have been avoided. The formal objection based on non-compliance with § 13 of art. 4 of the Illinois Constitution might have been disposed of by reliance on the flexible Illinois rule that additions to statutes or "incidental changes" thereof need not incorporate the affected section. See *People v. Exton*, 298 Ill. 119, 131 N.E. 275 (1921); *Steinhagen v. Trull*, 320 Ill. 382, 151 N.E. 250 (1926). But *cf. Nelson v. Hoffman*, 314 Ill. 616, 145 N.E. 688 (1924); *Chicago Motor Club v. Kinney*, 329 Ill. 120, 160 N.E. 163 (1928). The unreasonable classification was found only after a rather novel excursion into the field of statutory construction. Although the second proviso expressly makes living apart under a separate maintenance decree equivalent to desertion, the court construed the act as requiring payment under a separate maintenance decree for desertion. Then, by the following argument the court found an arbitrary classification: Under the act, separate maintenance payments for at least one year are necessary before there are grounds for divorce. But under the first proviso the aggregate time during which temporary alimony and separate maintenance payments may be required is limited to two years. Thus once a party has paid temporary alimony for more than one year, a court may not order him to make separate maintenance payments for another full year. Consequently, the act discriminates against those who have paid temporary alimony for more than a year by denying them the power to create grounds for divorce under the act.

Despite the desirable policy expressed by the Act and the slender legalistic basis for the court's result, the decision will prove valuable if it induces the legislature to draft a new act with greater care. The act bristles with ambiguities and potential litigation. Thus, as construed by the court, payment under a separate maintenance decree is desertion. Payment for one year would be desertion for one year and, as such, would be grounds for absolute divorce under the Divorce Act. Smith-Hurd's Ill. Rev. Stat. 1935, c. 40, § 1. But absolute divorce would prevent payments for two years as is contemplated by the first proviso. The same difficulty would obtain if the act were read to make living under a decree desertion. Moreover, it is not clear whether the plaintiff or the defendant in the separate maintenance action or both may base a complaint for absolute divorce upon the act. The language of the act as well as the opinion in the instant case apparently restricts the remedy to the defendant who has made payments. But such a construction would often place the plaintiff in an unfortunate position: A court would not decree separate maintenance payments for more than two years. After the expiration of two years the plaintiff could not obtain further payments of any kind unless the defendant either sued for divorce or by his conduct had given the plaintiff provable grounds for divorce.

In framing another statute, the legislature should not only resolve the ambiguities of the old Act, but should consider also a revision of its substantive provisions. The denial of the new grounds for divorce to all couples with living children has been crit-

icized as an unreasonable classification and if re-enacted will probably raise a constitutional question. See 31 Ill. L. Rev. 267,268 (1936). A classification excluding only couples with dependent children from the operation of the divorce provisions would be more reasonable since the remarriage made possible by the Act might impair the ability of a parent to support the children of his former marriage. Moreover the scheme envisaged by the old act is unnecessarily dilatory and cumbersome because a two year delay and two distinct judicial proceedings are necessary for absolute divorce. The policy against separate maintenance would receive a more logical expression by a complete abolition of separate maintenance and a provision making existing grounds for separate maintenance grounds for divorce. Although it might be suggested that the two year delay would promote reconciliation, experience with interlocutory decrees does not support this suggestion. See 2 Vernier, American Family Laws 152 (1932). The delay, however, may be justified as a prophylactic against hasty divorces by couples who may be able to adjust their marital difficulties.

Labor Law—Strikes—Ineffectiveness of a Strike as Grounds for an Injunction—[Massachusetts].—The Park Corporation, an operator of a theater in Boston, made an agreement with its employees providing for minimum wages and a closed shop. Upon the employer's violation of the agreement by reducing wages, the employees struck. The union maintained pickets who verbally informed passers-by that the corporation did not employ union labor. The corporation hired non-union men and resumed normal operations. The picketing was suspended for a time, but upon its resumption the plaintiff, subsidiary of and successor to the Park Corporation, sought an injunction against further picketing. From a decree enjoining the strike the defendants, officers of the union, appeal. *Held*, affirmed. Picketing, although lawful *ab initio*, will be enjoined when the employer has resumed normal operations and the strikers no longer have a genuine hope of success. *Hertzig v. Gibbs*, 3 N.E. (2d) 831 (Mass. 1936).

The decision is in harmony with results reached by the application of the flexible Massachusetts rule that union aggression will be enjoined unless it has a direct relationship to the welfare of the complaining workers. See Holmes, J., dissenting in *Vegelahn v. Guntner*, 167 Mass. 92, 105, 44 N.E. 1077, 1080 (1896); *Plant v. Woods*, 176 Mass. 492, 499, 57 N.E. 1011, 1014 (1900). This rule is merely a particular application of the doctrine that intentional interference with lawful activity must have an affirmative justification. In applying this rule, the Massachusetts court has sanctioned strikes for higher wages, shorter hours, and better shop conditions for here the workers' self-interest is patently direct. See Frankfurter and Greene, The Labor Injunction 28 (1930). However, on the ground that the benefits from the aggression were too remote, the court has proscribed strikes for a closed shop as well as "peaceful picketing" when there is no strike, *i.e.*, when the enterpriser's own employees have not quit work. See Frankfurter and Greene, The Labor Injunction 28, n. 131 (1930). It is noteworthy, however, that in *Densten Hair Co. v. United Leather Workers* (237 Mass. 199, 203, 129 N.E. 450, 451 (1921)), cited as authority by the instant court, the precise question raised by the instant case was left open. But language in a few federal and state cases affords some support to the decision. See *Dail Overland Co. v. Willys Over-*