nan, 263 U.S. 345 (1923) (presumption of sanity of testator); *Wilson v. Hodges*, 2 East 312 (1802) (surety relying on death of principal to avoid liability on bail bond required to prove the death). In the present case, however, the plaintiff was not aided by any presumption that the defendant hit her, and she should have been required to sustain the burden of showing that he did. Of course, it might be argued that the evidence recited in the opinion reveals that the trial court should have directed a verdict for the plaintiff; but that is not the ground on which this decision was based.

Labor Law—Constitutionality of Procedural Provisions of State Model of Norris–La Guardia Act—[Washington].—Two rival unions, the Brewery Workers Union and the Teamsters Union, were engaged in a struggle for jurisdiction over truckers and teamsters employed in the brewing industry. A trade association representing the employers agreed with representatives allegedly acting for members of both unions to follow the decision of the American Federation of Labor which had awarded jurisdiction to the Teamsters Union. A supplemental agreement provided that upon the "expressed desire" of the association, the "unions interested" would "organize" (presumably in the Teamsters Union) members of the Brewery Workers Union if the latter did not comply with the decision of the American Federation of Labor. Pressure from the Teamsters Union induced the employers to exercise their option. Members of the Brewery Union sued to enjoin the Teamsters Union and the employers from proceeding under the supplemental agreement. The Washington model of the Norris-La Guardia Act provides, *inter alia*, that no injunction shall issue in a labor dispute unless: there is testimony by witnesses in open court that unlawful acts will be committed; the balance of convenience is on the plaintiffs' side as to each item of relief granted; the public officers are unwilling or unable to furnish protection (§ 7); the plaintiff has made a reasonable attempt at mediation (§ 8). It further provides that an injunction shall issue only on the basis of facts found and shall be restricted to specific acts complained of (§ 9). Remington's Rev. Wash. Stat. 1933, § 7612. Although these conditions precedent were not fulfilled, the lower court issued an injunction restraining, *inter alia*, the Teamsters Union from coercing by strike or boycott the members of the Brewery Union to join the Teamsters Union. The defendant was adjudged guilty of contempt for violating the injunction and appealed. *Held*, the controversy was a labor dispute within the meaning of the act. The provisions setting up procedural conditions to the issuance of an injunction violate the provision of the Washington constitution vesting the superior court with original equity jurisdiction. Consequently, the injunction and the citation for contempt were valid. *Blanchard v. Golden Age Brewing Co.*, 63 P. (2d) 397 (Wash. 1936).

The procedural conditions precedent to the issuance of an injunction were designed primarily to prevent the crippling of strikes by the issuance of temporary injunctions on the basis of flimsy partisan testimony. See Frankfurter and Greene, The Labor Injunction 47, 221 (1930); Sayre, Labor and the Courts, 39 Yale L. J. 682 (1930). Previous decisions of the Washington court, made in a different social context, suggest that the objective of these provisions rather than any compelling constitutional doctrine gave rise to the instant decision. In passing on the validity of legislation affecting the procedure and jurisdiction of courts, the Washington court has held that although the legislature may not abridge the jurisdiction granted to courts by the constitution, it

may impose regulations upon the exercise of that jurisdiction. See *Daniel v. Daniel*, 116 Wash. 82, 198 Pac. 728 (1921); *Campbell v. Campbell*, 146 Wash. 478, 263 Pac. 957 (1928); *United Rys. of San Francisco v. Superior Court*, 170 Cal. 755, 151 Pac. 129 (1915); *cf.* 21 Iowa L. Rev. 595, 610 (1936). However, these cases establish no criterion by which a regulation may be distinguished from an abridgment of jurisdiction. See *Lorraine v. McComb*, 220 Cal. 753, 32 P. (2d) 960, 961 (1934); with which *cf. United Rys. of San Francisco v. Superior Court*, 170 Cal. 755, 151 Pac. 129 (1915). And a court disposed to uphold the act might have attached the validating label "regulation" to the procedural provisions in question. Moreover, without discussing the distinction between abridgment and regulation, the court has upheld a statute completely abolishing the right to enjoin the collection of excessive taxes. *Casco Co. v. Thurston County*, 163 Wash. 666, 2 P. (2d) 677 (1931). *Cf. American Furniture Co. v. I. B. of T. C. & H. of A.*, 268 N.W. 250 (Wis. 1936) (anti-injunction statute denying remedy of injunction for peaceful picketing held not encroachment on court); *Shea v. Olson*, 185 Wash. 143, 53 P. (2d) 615 (1936) (statute depriving auto guest of cause of action for host's negligence not encroachment on courts). It would seem that a statute merely imposing conditions precedent to the issuance of an injunction falls more easily within the legislative power. However, it is arguable that although a legislature may completely destroy a remedy, it cannot prescribe the method of determining whether an existing remedy should be granted. But this argument is inconsistent with unquestioned acceptance in Washington of legislative modification of rules of evidence and practice. See Remington's Rev. Wash. Stats. 1932, tits. 2, 8; *Campbell v. Campbell*, 146 Wash. 478, 263 Pac. 957 (1928).

The judicial reception accorded the state models of the Norris-La Guardia Act suggests that these acts, like the Clayton Act, have not significantly enlarged the scope of permissible union activity. In jurisdictions where courts have been traditionally hostile to labor, the acts have been invalidated on one ground or another or have been reduced in scope by construction. *In re Opinion of the Justices*, 275 Mass. 580, 176 N.E. 649 (1931). *In re Opinion of the Justices*, 86 N.H. 597, 166 Atl. 640 (1933) (procedural provisions of act unconstitutional as a violation of equal protection clause); *Safeway Stores Inc. v. Retail Clerks' Union*, 184 Wash. 322, 51 P. (2d) 372 (1935), noted in 11 Wash. L. Rev. 53 (1936), 84 U. of Pa. L. Rev. 1027 (1936) (strike to unionize shop not a labor dispute, so statute inapplicable). See Konvitz, Chancery and the New Labor Legislation, 59 N.J. L. J. 1, 5 (1936); but see *Penna. Anthracite Mining Co. v. Anthracite Miners*, 318 Pa. 401, 178 Atl. 291 (1935) (provision for jury trial for contemnors held not to encroach on judicial power of legislative courts). In these jurisdictions, a remedy for the abuse of the labor injunction probably must await a change of heart on the part of the agency responsible for the abuses—the courts. It may be noted that in jurisdictions with legislatively constituted courts the procedural conditions precedent will not be subject to the objection that they encroach upon the judiciary. However, even in these jurisdictions provisions for jury trial for contemnors will probably raise this objection. See 21 Iowa L. Rev. 595 (1936); but see *Penna. Anthracite Mining Co. v. Anthracite Miners*, 318 Pa. 401, 178 Atl. 291 (1935). Such acts have, however, been held valid and respected in jurisdictions traditionally sympathetic to labor. *Kronowitz v. Schlansky*, 156 Misc. 717, 282 N.Y.S. 564 (1935) (contempt provision of the act does not encroach upon the jurisdiction of the courts); followed, *De Agostina v. Holmden*, 157 Misc. 819, 285 N.Y.S. 909 (1935); *American*

Furniture Co. v. I. B. of T. C. & H. of A., 268 N.W. 250 (Wis. 1936) (provisions of act denying injunction for peaceful picketing constitutional); *Dehan v. Hotel & Rest. Employees*, 159 So. 637 (La. 1935). But even in such jurisdictions, although the act has probably reduced the work of labor counsel, it has not substantially increased the power of organized labor because the substantive provisions were substantially declaratory of the pre-existing law, and the procedural restrictions had generally been imposed by judicial self-limitation. See 13 N.Y. U. L. Q. Rev. 92 (1935); 22 Va. L. Rev. 83, 86 (1935). For a discussion of jurisdictional disputes between rival labor unions, see 46 Harv. L. Rev. 125 (1932); 21 Corn. L. Q. 640 (1936).

Mortgages—Priorities between the Mortgagee and Assignees of Part of the Notes Secured by a Mortgage—[Illinois].—As collateral for a loan from a bank, the mortgagor executed to the bank thirty-two notes, all bearing the same maturity date and secured by a mortgage on his property. The bank, for which the defendant is receiver, assigned most of the notes without recourse to the various plaintiffs, keeping the remainder itself. On default, the plaintiff assignees filed a bill for foreclosure and sale, asking that the proceeds be applied *pro rata* to the payment of their notes, but that they be preferred to the mortgagee. *Held*, since the act of assignment does not imply a warranty by the mortgagee that the notes will be paid, and since an assignment of a portion of a debt can carry with it only a proportionate part of the security, no preference should be given to the assignees over the mortgagee. *Domeyer v. O'Connell*, 364 Ill. 467, 4 N.E. (2d) 830 (1936).

Although the decision in the instant case was almost a necessary one, the court's language in discussing related problems makes appropriate a study of the conflicting results in mortgagee-assignee priority cases. Many courts hold that all the notes secured by the same mortgage carry with them a proportionate part of the security and all share *pro rata* in the proceeds on foreclosure, regardless of whether or not there is an acceleration clause, and regardless of the time of assignment or the stated time of maturity. *Donley v. Hays*, 17 Serg. & R. (Pa.) 400 (1828); *Pugh v. Holt & Wheless*, 27 Miss. 461 (1854); *Andrews v. Hobgood*, 69 Tenn. 693 (1878); *Studebaker Bros. v. McCurgur*, 20 Neb. 500, 30 N.W. 686 (1886). According to these courts, rights in the property begin with the date of the mortgage, and not with the date of maturity of the notes; so that the fact that one note matures before another should not affect the result. *Penzel v. Brookmire*, 51 Ark. 105, 10 S.W. 15 (1888). Finally, by holding that the fact that an assignee's interest comes to him through an intermediate assignment does not affect his rights, these courts achieve a uniform *pro rata* rule. *Kelly v. Middlesex Title Co.*, 115 N.J.Eq. 592, 171 Atl. 823 (1934). Many other courts, including Illinois, have held that as among assignees priority is to be granted to the holder of the earliest maturing note, others taking after him in the order of maturity of their notes. *Gardner v. Diederichs*, 41 Ill. 158 (1866); 3 Pomeroy, Equity Jurisprudence § 1202 (4th ed. 1918). A few courts hold that the order of assignment of the notes governs priority. *Solberg v. Wright*, 33 Minn. 224, 22 N.W. 381 (1885) (the first assignment transfers the mortgage; later assignments transfer only the mortgagee's remaining equitable interest).

In the "early maturity" jurisdictions, it is held that the assignment of a note is an assignment *pro tanto* of the mortgage; and since upon default the holder of the first