adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."[2] This section of the act apparently was not considered by the federal district court inasmuch as its assumption of jurisdiction would seem to deprive the Board of "exclusive" power to prevent unfair labor practices.[3] However, even if the court found that no such practices existed and that consequently the Board's power was not being curtailed, such determination would be tantamount to a finding on a jurisdictional fact, and should not be conclusive on other tribunals asserting jurisdiction.[4]

It is likely that the Circuit Court of Appeals of the Second District, where an appeal is now pending, will uphold the Board in its finding of the existence of unfair labor practices. Apart from the possible use of such practices at the negotiation stage, the contract itself apparently falls within the definition of unfair labor practices set forth in section 8 (3) of the act, ". . . . discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. . . . ."[5] Any constitutional objections as to the act itself, or to the existence or procedure of the Board would seem to be precluded by the findings of the Supreme Court in the case of *The National Labor Relations Board v. Jones & Laughlin Steel Corp.*[6]

If the Board is to be an effective body, it must have exclusive jurisdiction in its sphere of action. But assertion of concurrent jurisdiction by other bodies will be possible unless the National Labor Relations Act is construed or amended so as to preclude other tribunals from making a determination on the jurisdictional fact of the existence or non-existence of unfair labor practices.

Labor Law—Injunction—Sherman Act—[Federal].—Members of a trade union seeking a closed shop agreement seized and retained the factory of the plaintiff, a Pennsylvania manufacturer, whose raw materials come from other states and from abroad, and most of whose finished product, amounting to $5,000,000 annually, was shipped across state lines. The plaintiff filed a bill praying: (1) restoration of his factory; (2) an injunction enjoining the defendants from performing further acts restraining interstate commerce; and, (3) triple damage for losses sustained. *Held*, reversing the district court, the plaintiff was engaged in interstate commerce and the injunction should issue and the bill be re-instated. *Apex Hosiery v. Leader.*[1]

The Supreme Court in deciding on the constitutionality[2] of the Wagner Labor Relations Act broadened the limits of the jurisdiction of the federal courts under the interstate commerce clause so as to include those engaged primarily in production and

[2] 49 Stat. 453 (1935); 29 U.S.C.A. § 160 (a) (1936).

[3] *Cf.* Louisville Provision Co. v. Glenn, 12 F. Supp. 545 (Ky. 1935); Kline v. Burke Construction Co., 260 U.S. 226 (1922).

[4] For various qualifications see 1 Freeman on Judgments, parts IV and V (5th ed. 1925).

[5] 49 Stat. 452 (1935); 29 U.S.C.A. § 158 (3) (1936). [6] 301 U.S. 1, 47 (1936).

[1] 90 F. (2d) 155 (C.C.A. 3d 1937). Petition for *certiorari* will be filed. The strike was settled by a conditional closed shop agreement and the Supreme Court may consider the question moot.

[2] National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937); National Labor Relations Board v. Fruhauf Trailer Co., 301 U.S. 49 (1937); National Labor Relations Board v. Friedman-Harry Marks Clothing Co., 301 U.S. 58 (1937).

manufacturing.[3] Following the *Friedman-Harry Marks* case[4] the plaintiff would clearly seem to be engaged in interstate commerce.[5] The conclusion seems inescapable that this enlarged jurisdiction should apply to the federal courts when acting under the Sherman Act as well as the Wagner Act. Thus labor's so-called victory in the *Jones-Laughlin* case results in labor's being subjected to injunctions and triple damages over a much wider field.

The right of labor unions to use the strike in labor disputes has received statutory[6] and judicial[7] recognition. A strike, used in the narrow sense of a collective ceasing to work, seemingly cannot be enjoined even if a complete stoppage of interstate commerce results.[8] This the court recognizes.[9] Any restraint of interstate trade resulting from illegal means, however, violates the Sherman Act.[10] Thus, in the instant case the means being criminal[11] the court seems entirely correct in concluding the resulting restraint illegal.

Almost all of the sanctions that have been employed by labor to make strikes successful, at some time or other, have been adjudicated as illegal.[12] Since, in the light of past and current events, it would seem quite difficult to wage a successful strike without some illegal incidents,[13] labor might well feel that as a practical matter there was no "right to strike," and that every effective strike, by very reason of its effectiveness would subject labor to the criminal sanctions of the Sherman Act.[14] Such a result would

[3] See Carter v. Carter Coal Co., 298 U.S. 238 (1936); Oliver Mining Co. v. Lord, 262 U.S. 172 (1923); Utah P. & L. v. Pfast, 286 U.S. 165 (1932); Shechter Corp. v. United States, 295 U.S. 495 (1935).

[4] 301 U.S. 58 (1937).

[5] See also National Labor Relations Board v. Santa Cruz Packing Co., 91 F. (2d) 790 (1937), where a fruit canning company whose raw material was local and only thirty-nine per cent of whose finished product entered interstate commerce was held to be within jurisdiction of the National Labor Relations Board. 1 Labor Relations Rep., No. 1, 22 (1937).

[6] Clayton Act § 20, 38 Stat. 738 (1914), 29 U.S.C.A. § 52 (1927); Norris-LaGuardia Anti-Injunction Bill, 47 Stat. 70 (1933), 29 U.S.C.A. § 105 (1936); Wagner Act § 13, 49 Stat. 449 (1935), 29 U.S.C.A. § 163 (1936).

[7] Parkinson Co. v. Building Trades Council, 154 Cal. 581, 98 Pac. 1027 (1908); American Steel Foundries v. Tri-City Trades Council, 257 U.S. 184, 209 (1921) (*dictum*).

[8] See also 15 U.S.C.A. 15 (1926); 38 Stat. 738 (1914), 29 U.S.C.A. § 52 (1927); 47 Stat. 70 (1933), 29 U.S.C.A. § 105 (1936).

[9] P. 160.

[10] Coronado Co. v. United Mine Workers, 268 U.S. 295 (1925); Bedford Cut Stone Co. v. Journeyman Stone Cutter's Ass'n, 274 U.S. 37 (1927); Duplex Printing Press Co. v. Deering, 254 U.S. 433 (1921); Gompers v. Buck Stove and Range Co., 221 U.S. 418 (1911); *cf.* United Leather Workers v. Herkort and Meisel Trunk Co., 265 U.S. 457 (1924).

[11] 18 Purdon's Pa. Stat. § 511 (1930).

[12] See Witte, The Government in Labor Disputes, 53–54, 58–59 (1932); Bull v. International Alliance, 119 Kan. 713 (1925), 241 Pac. 459; State v. Perry, 196 Minn. 481, 265 N.W. 302 (1936); Note 10 *supra*.

[13] See Cooper, The Fiction of Peaceful Picketing, 35 Mich. L.R. 73, 87 (1936); Frankfurter and Greene, The Labor Injunction 73 (1930); Sokolsky, Law and Labor, Atlantic Monthly 429 (1937).

[14] 1. Labor Relations Report No. 1, 3 (1937).

necessitate either: (1) abandoning the strike as a weapon—a course unthinkable to labor; (2) attempting to strike effectively without technical violations of the law—a feat well nigh impossible;[15] (3) continuing to strike and to defy the law[16]—a choice intolerable to organized society; or, (4) working for amendment of the Sherman Act[17] and for legislation exempting labor unions and officers from liability for tortious acts committed on their behalf during industrial disputes.[18]

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*Mortgages—Priorities—Purchaser without Notice under Recording Act—[Oregon]. —The defendant, a first mortgagee, released the mortgagor from liability in exchange for a conveyance of the fee. Before doing so, however, the defendant procured and had recorded a satisfaction of a junior mortgage upon part payment to the junior mortgagee, without requesting the production of the junior mortgage and note which had previously been transferred to the plaintiff under an unrecorded assignment. An Oregon statute provides, ". . . . a satisfaction or release of said mortgage by the party appearing upon said record to be the owner and holder of said mortgage shall operate to free the land described in such mortgage from the lien of such mortgage, so far as regards all subsequent purchasers and incumbrances for value, and without notice."[1] The plaintiff commenced suit to enforce his lien, and a decree of foreclosure was rendered. On appeal, *held*, reversed. The defendant comes within the protection of the statute. *Willamette Collection & Credit Service v Gray*.[2]

The rule is well settled under recording acts that a bona fide purchaser of property from a mortgagor, who finds upon the record a satisfaction or release by the record mortgagee and relies thereupon, is given priority over one whose claim is based upon an unrecorded assignment from the mortgagee.[3] The principle upon which this rule rests is that where one of two innocent parties must suffer a loss, he whose negligence caused the injury should bear it.[4] The assignee may record his assignment and avert the loss, while there is nothing feasible the purchaser can do. Purchasers who fail to exert reasonable efforts in a practicable search for unrecorded conveyances and encumbrances, however, are not necessarily within the protection of the recording acts. Thus, a purchaser is deemed to have constructive notice of encumbrances referred to in instruments in his chain of title.[5] In a purchase from one not in possession, a purchaser is put upon inquiry to determine the interest of one whose possession is inconsistent with the record title.[6] And when the record shows an unsatisfied mortgage and the re-

[15] See note 12 *supra*.

[16] Garrison, Government and Labor—The Latest Phase, 37 Col. L.R. 897, 905 (1937); Sat. Eve. Post, October 2, 1937.

[17] Woll, 147 Ann. Amer. Acad. 185 (1930).

[18] Note British Trades Disputes Act of 1906, 6 Edw. VII, c. 47 (1906).

[1] Ore. Code 1930 § 54–109. [2] 70 P. (2d) 39 (Ore. 1937).

[3] Porter v. Ourada, 51 Neb. 510, 71 N.W. 52 (1897); Swasey v. Emerson, 168 Mass. 118, 46 N.E. 426 (1897); Newman v. Fidelity Sav. & Loan Ass'n., 14 Ariz. 354, 128 Pac. 53 (1912); Stetler v. Winegar, 75 Colo. 500, 226 Pac. 858 (1924).

[4] See Porter v. Ourada, 51 Neb. 510, 71 N.W. 52 (1897).

[5] Crawford v. C. B. & Q. R. Co., 112 Ill. 314 (1884); Sweet v. Henry, 175 N.Y. 268, 67 N.E. 574 (1903); Carter v. Leonard, 65 Neb. 679, 91 N.W. 574 (1902).

[6] Kirby v. Tallmage, 160 U.S. 379 (1895); Phelan v. Brady, 119 N.Y. 587, 23 N.E. 1109 (1890); Rayburn v. Davisson, 22 Ore. 242, 29 Pac. 738 (1892).