picketing will appear coercive to the public may be met by the suggestion that the injunction against further violence should allay such fears.

It should be further considered that the protection accorded the plaintiff in the principal case is unusual in equity in cases other than labor disputes. Ordinarily, unlawful acts alone are enjoined.[19] Hence, if it be assumed that peaceful picketing is legal, courts which enjoin it because of its previous connection with illegal activity thereby enlarge the area of protected interest in this special case. The policy of providing such added relief where social and economic conflict is severe and where the relative right is difficult to weigh may well be doubted.[20]

These considerations point to the desirability of the third solution, enjoining violent acts only.[21] It is suggested that such a rule is in accord with the provisions of the statute, is not properly assailable on constitutional grounds, and allows as great a measure of relief as has been usual in equity cases other than in labor disputes.

Postal Laws—Right of Third Party to Recover upon a Postmaster's Bond—[Federal].—The plaintiff finance company purchased conditional sales contracts from an automobile dealer and for credit information regarding the makers of the contracts relied upon the answers to mailed inquiries sent to such makers and to their credit references. At the dealer's request, the postmaster delivered these letters to him for the addressees. The dealer fraudulently answered the letters himself and was thereby enabled to sell to the plaintiff $40,000 worth of spurious contracts. Without the express consent of the United States the plaintiff sued the defendant, surety on the postmaster's bond to the United States, the bond being conditioned on the postmaster's "faithful discharge of all duties and trusts imposed on him as acting postmaster either by law or by the regulations of the Post Office Department. . . . ." *Held,* in requiring a postmaster's bond the United States did not impliedly consent to a suit thereon by a user of the mails. The judgment of dismissal was affirmed. *United States for use and benefit of Midland Loan Finance Co. v. National Surety Co.*[1]

The statutes which require bonds of government officers frequently provide expressly that third parties injured by breaches of the conditions of the bonds may sue the sureties in the name of the obligee.[2] Even in the absence of such express provisions courts have sometimes found a "legal intendment" to permit third parties to sue in

[19] In Hunnicutt v. Eaton, 184 Ga. 485, 191 S.E. 919 (1937) the maintenance of a dance pavilion was enjoined because certain acts constituting a nuisance had been committed, notwithstanding that some of the business was lawful. Although the court relied on its general equity powers it is suggested in 16 N.C.L. Rev. 33 (1937) that the decision may have been on analogy with statutes in other Southern jurisdictions enlarging the powers of courts of equity in such cases.

[20] Prior Illegal Acts as a Ground for Blanket Injunctions against Picketing, 44 Harv. L. Rev. 971 (1931).

[21] Houston & North Texas Motor Freight Lines v. Local Union No. 886, 24 F. Supp. 619 (Okla. 1938); Newton v. Laclede Steel Co., 80 F. (2d) 636 (C.C.A. 7th 1935); cf. Rosen v. United Shoe and Leather Workers' Union, 287 Ill. App. 49, 4 N.E. (2d) 507 (1936). At common law: Wise Shoe Co. v. Lowenthal, 266 N.Y. 264, 194 N.E. 749 (1935).

[1] 103 F. (2d) 450 (C.C.A. 8th 1939), cert. granted, 7 U.S. Law Week 355 (1939).

[2] E.g., Rev. Stat. § 1735 (1878), 22 U.S.C.A. § 103 (1927) (consular officers); cf. Rev. Stat. § 784 (1878), 28 U.S.C.A. § 500 (1928) (marshals).

the name of the obligee.[3] This is in effect a finding that the interests which the statute intends to protect by requiring the bond can best be served by allowing third parties to sue the sureties; hence it may be inferred that the legislature intended to consent to such suits.

In the principal case the court decided that the bond was required primarily to protect the government in its financial dealings with postal employees. The statutes which govern postmaster's bonds lend strong support to this view.[4] To permit suits by third persons might defeat the purpose of the bond by exhausting the penalty and leaving nothing for the protection of the government.[5] In these respects the principal case can be distinguished from *Howard v. United States*,[6] where a litigant who had been found to be entitled to certain moneys left with a clerk of court was permitted to sue without government consent on the clerk's bond to the United States. In that case it was recognized that the clerk's financial dealings were chiefly with litigants, whether public or private, and not with the government as such. Hence an implied permission to litigants to sue in the name of the United States could easily be found. But such an implied consent to suits by third parties has been found in the case of no other federal bond,[7] and state and territorial courts have twice denied third parties the right to recover upon a postmaster's bond.[8]

[3] People v. Wipfler, 167 Mich. 13, 132 N.W. 444 (1911) (creditor suing on receiver's bond to the state); Beckley v. Moran, 61 F. (2d) 238 (C.C.A. 4th 1932) (person falsely imprisoned suing on bond of chief of police to city). Contra: Washington v. Young, 10 Wheat. (U.S.) 406 (1825) (unpaid holder of a winning lottery ticket suing on manager's bond to municipality); Graton v. Cambridge, 259 Mass. 310, 156 N.E. 431 (1927) (purchaser of realty relying on collector's erroneous certificate of liens thereon suing on collector's bond to city).

[4] Rev. Stat. § 403 (1878), 5 U.S.C.A. § 377 (1927), requiring bonds to be made to the United States; Rev. Stat. § 3835 (1878), 39 U.S.C.A. § 36 (1928), applying payments made by postmaster under a new bond to discharge any balance still due from him under his old bond; Rev. Stat. § 3836 (1878), 39 U.S.C.A. § 38 (1928), "sureties shall be responsible under their bond for the safekeeping of the public property of the post office, and the due performance of the duties thereof, until the expiration of the commission, or until a successor has been duly appointed and qualified . . . ."; Rev. Stat. § 3838 (1878), 39 U.S.C.A. § 40 (1928), releasing sureties if the United States does not sue to recover debt of postmaster within three years; and Rev. Stat. § 3845 (1878), 39 U.S.C.A. § 44 (1928), providing that if a postmaster fails to render his accounts, "he and his sureties shall forfeit and pay double the amount of the gross receipts of such office during any previous or subsequent equal period of time. . . . ."

[5] This problem arose under the Heard Act, 28 Stat. 278 (1894), which expressly permitted suits by laborers and material men on public contractors' bonds to the United States. The result was several changes in the law. By 33 Stat. 811 (1904), suits on the bond were forbidden until six months after completion of the project, and the government was given priority. The Miller Act, 49 Stat. 793 (1935), 40 U.S.C.A. § 270a (Supp. 1938), required public contractors to give two bonds—a performance bond for the protection of the government and a payment bond for the protection of persons supplying labor and materials.

[6] 184 U.S. 676 (1902).

[7] But in these situations suits on a federal bond for the benefit of third parties have been maintained: United States v. Ward, 257 Fed. 372 (C.C.A. 8th 1919) (suit by United States); United States ex rel. Brimberg Bros. v. Globe Indemnity Co., 26 F. (2d) 191 (C.C.A. 2d 1928) (suit with express consent of United States).

[8] Idaho Gold Reduction Co. v. Croghan, 6 Idaho 471, 56 Pac. 164 (1899); Wile v. United States Fidelity & Guaranty Co., 6 Alaska 48 (1918); see United States v. Griswold, 8 Ariz. 453, 76 Pac. 596 (1904); cf. United States v. United States Lines Co., 24 F. Supp. 427 (N.Y. 1938).

If the plaintiff could not recover on the bond, the question is next presented whether it had recourse against the government itself. Although the plaintiff might have sued the postmaster individually,[9] no action on the theory of *respondeat superior* would lie against the United States for the wrongful act of its agents.[10] There appears to be little authority as to the contractual relationship, if any, between the United States and users of the mail, but it seems that the United States assumes no liability by the acceptance of ordinary mail matter.[11] The carriage of mails is regarded as a government function to be performed at a low rate for public convenience. That protection may be had, if paid for, by insuring or registering mail[12] tends to show that there is no intention to assume liability to persons who do not make this additional payment. But even if it were arguable that the United States, by accepting ordinary mail matter, undertook the liability of a common carrier, it is questionable whether consequential damages such as resulted in the principal case could be recovered.[13]

There remain three other possibilities of redress. On the theory that a bailee can recover not only his own loss but that of the bailor also, the United States has recovered losses suffered by users of the mails on postmaster's bonds[14] and has held sums so collected for distribution among their owners by a procedure set forth in the statutes and postal regulations.[15] If the plaintiff had been successful in persuading the Attorney General to give consent to this suit,[16] the plaintiff probably could have sued on the bond.[17] Should these means of redress have failed, the plaintiff might have tried to take advantage of administrative procedures for settlement of limited claims against the government arising from the negligence of employees in the operation of the departments.[18] The government apparently did not act in any of these ways to aid the plaintiff because its damages were consequential[19] and because the postmaster did not di-

[9] Teal v. Felton, 12 How. (U.S.) 284 (1851); Raisler v. Oliver & Co., 97 Ala. 710, 12 So. 238 (1893).

[10] Gibbons v. United States, 8 Wall. (U.S.) 269 (1869).

[11] See United States v. American Surety Co., 161 Fed. 149, 151 (D.C. Md. 1908); United States v. Atlantic Coast Line R., 206 Fed. 190, 196 (D.C. N.C. 1913); cf. Western Union Tel. Co. v. Poston, 256 U.S. 662 (1920).

[12] Cases speak of the United States as bailee for hire of registered mail. See Nat'l Surety Co. v. United States, 129 Fed. 70, 73 (C.C.A. 8th 1904); United States v. United States Fidelity & Guaranty Co., 247 Fed. 16, 18 (C.C.A. 6th 1918). 47 Stat. 338, 339 (1932), 39 U.S.C.A. §§ 381–4 (Supp. 1938).

[13] 5 Williston, Contracts §§ 1344, 1344A, 1356, 1357 (rev. ed. 1937). The sender of a coded telegram, the contents of which, like a sealed letter, are unknown to the transmitting company, usually cannot recover consequential damages caused by delay or non-delivery. Kerr Steamship Co. v. Radio Corporation of America, 245 N.Y. 284, 157 N.E. 140 (1927).

[14] Nat'l Surety Co. v. United States, 129 Fed. 70 (C.C.A. 8th 1904); United States v. United States Fidelity & Guaranty Co., 247 Fed. 16 (C.C.A. 6th 1918).

[15] Postal Laws and Regulations of 1932, § 816, 17 Stat. 291 (1872), 39 U.S.C.A. § 790 (1928).

[16] The Department of Justice declined to take any action with regard to the plaintiff's request for permission to sue in the name of the United States. Later the United States filed a brief as amicus curiae denying the plaintiff's right to sue.

[17] Cf. United States ex rel. Brimberg Bros. v. Globe Indemnity Co., 26 F. (2d) 191 (C.C.A. 2d 1928).

[18] 42 Stat. 1066 (1922), 31 U.S.C.A. § 215 (1927); 48 Stat. 1207 (1934), 5 U.S.C.A. § 392 (Supp. 1938).

[19] Note 13 supra.

rectly violate any postal regulation.[20] Since the application of these remedies is discretionary with government officers, no mandamus would lie to compel them to act.[21] But the existence of these remedies, together with the opportunity of insuring or registering may indicate that Congress did not intend to provide further protection to third parties by allowing suit on a postmaster's bond.

Receivers—Jurisdiction to Appoint as Means of Abating Usury—Use of Receiver to Obtain Evidence—[Minnesota].—An action was brought by a Minnesota county attorney to enjoin the defendant from conducting a small loan business wherein the usury law was allegedly continually violated, and to secure the appointment of a receiver of the defendant's business pendente lite. Usury is not a crime in Minnesota, but civil penalties are attached by statutes which provide that usurious notes may be canceled and any action thereon enjoined,[1] and that usurious interest paid to the lender may be sued for by the borrower, collected by an officer of the court, and remitted, one-half to the borrower, and one-half to the treasurer of the county in which the act of usury was committed.[2] *Held*, the defendant's repeated violation of the statutes constituted an enjoinable public nuisance,[3] a proper ancillary remedy for which was the appointment of a receiver pendente lite of the defendant's business' assets and records. Judgment for the plaintiff affirmed, with two justices dissenting. *State ex rel. Goff v. O'Neil.*[4]

The court granted a receivership of all of the defendant's business assets and records, on the theory that there was threatened impairment of the county's specific claim to usurious interest theretofore paid to the defendant. The legal justification for this holding is not apparent. Ordinarily the remedy of receivership is denied a simple contract creditor[5] in order "to protect . . . . debtor[s] from the too hasty onslaught of . . . . impatient creditor[s]."[6] It seems clear that the state has even less of an interest than that of a simple contract creditor, since it can maintain no direct action against the usurer.[7]

[20] The postmaster was subsequently promoted. Postal Laws and Regulations of 1932, ¶I § 777(2), reads: "Where a person requests delivery to him of mail of another claiming that the addressee has verbally given him authority to receive it, the postmaster, if he doubts the authority, may require it to be in writing, signed and filed in his office." The postmaster might have delivered the mail to the dealer without violating this regulation.

[21] United States ex rel. Chicago G. W. R. v. ICC, 294 U.S. 50 (1935).

[1] Minn. Stat. (Mason, 1927) § 7040.

[2] Minn. Stat. (Mason, 1927) § 7037.

[3] Commonwealth ex rel. Grauman v. Continental Co., 275 Ky. 238, 121 S.W. (2d) 49 (1938); State ex rel. Beck v. Bashan, 146 Kan. 181, 70 P. (2d) 24 (1937); State ex rel. Smith v. McMahon, 128 Kan. 772, 280 Pac. 906 (1929), noted in 30 Col. L. Rev. 125 (1930), 15 Cornell L. Q. 472 (1930), 28 Mich. L. Rev. 939 (1930), 39 Yale L. J. 590 (1930). Contra: People ex rel. Stephens v. Seccombe, 103 Cal. App. 306, 284 Pac. 725 (1930); Means v. State, 75 S.W. (2d) 953 (Tex. Civ. App. 1934). In the instant case the court attempted to distinguish the Stephens and the Means cases.

[4] 286 N.W. 316 (Minn. 1939).

[5] Minn. Stat. (Mason, 1927) § 9389 (1); 1 Clark, Receivers § 180 (2d ed. 1929).

[6] Use of Receiverships to Enforce Restrictive Regulations of Oil Production, 43 Yale L. J. 1156, 1161 (1934).

[7] Minn. Stat. (Mason, 1927) § 7037.