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FURTHER RESTRICTIONS ON THE ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE.—[U. S.] The Supreme Court has long protected the privacy of the individual by excluding evidence obtained by virtue of unreasonable search and seizure, even though such a rule was in derogation of the common law that evidence from an illegal source was admissible. Against such a background, the Court, apparently influenced by the wave of lawlessness that accompanied the Volstead Act, held by a divided court in *Olmstead* v. *United States,* 277 U. S. 438 (1928) that wire tapping did not violate the search and seizure provision of the Fourth Amendment of the Federal Constitution, and its introduction into evidence was not self incrimination within the purview of the Fifth Amendment. A vigorous dissent by Brandeis pointed out that a liberal construction of the Amendments should be made to give effect to their underlying purpose, i.e. to prevent "unjustifiable intrusion by the Government upon the privacy of the individual." Subsequently section 605 of the Federal Communications Act, 48 Stat. 1064, 1103 (1934), 47 U. S. C. A. §605 (1939), was passed which provided that "no person not being authorized by the sender shall intercept any communication and divulge or published the existence, contents . . ." In the first *Nardone* case, 302 U. S. 379 (1937); (1938) 29 J. Crim. L. 134, the Supreme Court interpreted this section to bar the *direct* introduction of wire tapping evidence. The Court suggested that the probable congressional policy was to protect the privacy of the individual, even though it is achieved at the expense of leaving unpunished many lawbreakers. However, the history of the act, plus a congressional reluctance to legislate expressly against wire tapping, suggests a strained construction of the statute, and that the policy was really that of the Court's instead of Congress. And in light of such, the holding must be acknowledged as a strong tendency toward the Brandeis dissent in the *Olmstead* case.

Recently, the "second" *Nardone* case, in interpreting the same section, amplified the holding of the

earlier case. Nardone sought to strike the testimony of certain of the prosecution's witnesses on the ground that the prosecution had discovered the existence of these witnesses and their knowledge of the alleged past criminal acts by means of the taps. The trial court overruled the motion to strike and the jury found Nardone guilty. The Supreme Court reversed the conviction on the ground that the defendant had the right, if promptly asserted, to strike the testimony, by showing that it was secured by derivative use of wire tapping information. *Nardone* v. *U. S.*, 60 S. Ct. 266 (1939).

The court is ambiguous as to the extent of its holding, but seems to suggest some limitation for it declares "as a matter of good sense, however, such connection [between the illegal wire tapping and the testimony] may have become so attenuated as to dissipate the taint." It warns against using this decision as a means to bar competent evidence by "sophisticated arguments" proving a causal connection between the wire tapping and the government proof, and declares that the means for avoiding such abuse, "ought to be within the reach of experienced trial judges." It is hard to draw any lines on the basis of such a nebulous formula. While the holding seems to exclude evidence of past criminal conduct obtained directly through wire tapping information it leaves open the question of whether testimony of a witness who was present at the scene of the crime as the result of wire tapping information, would be competent. Perhaps, the court would hold that the testimony of witnesses in such a situation would be dissipated of the taint of wire tapping.

In addition to using wire tapping information sufficiently remote to fall without the derivative use doctrine of the second *Nardone* case, the possibility remains that the taint may be removed by obtaining the consent of the sender as provided in the statute. In *Weiss* v. *United States*, 60 S. Ct. 269 (1939) a companion case to the second *Nardone* decision, the government attempted to do just this by having the sender of the message turn state's evidence. Records of telephone conversations were played to several defendants and under the influence of promised leniency they consented to the use in evidence of these transcripts. The court held this consent was not sufficient under the statute because it was not voluntary but secured by pressure which existed in part from the fact that the government already knew of the sender's criminal acts through the wire taps. Since such knowledge will almost invariably accompany any turning of state's evidence, this important means of avoiding the prohibition of section 605 and aiding criminal prosecution seems fairly well closed. The court does, however, leave open the possibility of introducing wire tapping evidence where the consent of the sender was obtained without coercion.

But the *Weiss* case has a more important aspect. The first *Nardone* case involved the tapping of *interstate* communications only. After the latter case, the lower federal courts reached conflicting decisions as to whether the statute covered tapping of *intrastate* communications. The *Weiss* case re-

solved the conflict by holding that *intrastate* communications are within the purview of the Act. The Court inferred that Congress, under the analogy of the *Shreveport* case, 234 U. S. 342 (1914), intended to protect *interstate* communications by prohibiting the tapping of *intrastate* communications. Exactly why the protection to interstate communication should extend so far is not made clear, unless, as the defendant contended, the inability of the interceptor to distinguish between inter and intrastate messages required that he be barred from intercepting either. Under this reasoning, the statute would not be applicable to wires, such as house phones, which are devoid of interstate communications. Tapping of such by federal agents would bring the validity of the *Olmstead* case, *supra,* directly into question.

Akin to the question of extending the statute to intrastate wires for federal purposes, is the use of wire taps by state officers to obtain evidence for prosecution in the state courts. An attempt to stop such practice by reversing decisions based on such evidence would raise the grave constitutional question of whether the interstate commerce clause gives Congress the power to invade the procedure in the state courts in this manner. See (1940) 34 Ill. L. Rev. 758. In line with this is the question of the application of the penal provisions of section 501 of the Act on state officers tapping wires in the enforcement of state laws. This latter is not quite so close a case as the prohibiting of the introduction of the wire information into evidence. The violation is more direct in the sense that the wording expressly forbids such, and in the sense that the offense involves a direct burdening of the interstate commerce. Hence, there is less of a possibility of violation of the Tenth Amendment. In addition, it should be noted that many states have laws forbidding wire tapping, but they ordinarily have not been a bar to the introduction of evidence. See (1940) 34 Ill. L. Rev. 758, 761, footnote 22 cases and statutes. A narrow construction of the federal statute would leave the burden of stopping wire tapping on the efficacy of these laws. The interpretation given the Federal Communications Act by the Supreme Court in the principal cases, undoubtedly will be very persuasive on the state courts in construing their own statutes in the future.

Even assuming that wire tapping evidence will be barred in the state courts, the question remains whether the statute has destroyed all motives for law enforcing agencies to tap wires. Agents still may tap wires, if for no other purpose than to substantiate and clarify their investigations, and perhaps, prevent crimes. The fact that the information may not be introduced into evidence, or be derivatively used to obtain such, would not destroy the function of the tap in this respect. This possibility is strengthened by the wording of the statute which emphasizes the *divulgence* rather than the *interception* as the crime. Thus, the officers may tap so long as they do not expose the contents of the message. In addition, there is the practical difficulty of proving that the evidence came from a wire tap. It would not be very hard for

the prosecution to fabricate a source of evidence independent of the interception.

Moreover, the penal provisions of section 501 of the Act may not be depended on to stop wire tapping. To make them effective would require a stern enforcement of the provision, and it is doubtful whether the law enforcing agencies are going to be subject to rigid prosecution.

In light of these loopholes in the statute, so far as the holdings in the principal cases are based on the premise that barring the evidence will stop the practice of wire tapping, the efficacy of the decisions is open to doubt.

JACK JACOBS.

"BOOKIES" AS DISORDERLY PERSONS.—[N. Y.] Recent increased activities by the U. S. Department of Justice in an attempt to dispel the "bookie" nuisance through cutting off telephone communications and "wire systems" may be the result of ineffective state action in curbing this form of gambling. Various impediments in the way of State action may be the reason for that ineffectiveness—legalized betting on horse races; absence of any definite constitutional or statutory outlawing of gambling and, more particularly, book-making; difficulty of fitting book-making into any of the statutory crime provisions; the difficulty of getting sufficient admissible evidence to support the charge and secure conviction; and, possibly, ineffectual provisions for punishment. Against that background a recent New York case is of interest; it shows how one jurisdiction has dealt with the problem in a rather unusual way.

Defendant, in *People* v. *Erickson*, 13 N. Y. S. (2d) 997 (1939), was charged with being a disorderly person under the "Disorderly Persons" provision, Penal Law of N. Y. §899(5), which designates as disorderly those "Persons who have no visible profession or calling by which to maintain themselves, but who do so, for the most part, by gaming." Defendant voluntarily testified that he was a professional bookmaker, specializing in betting on horse races, that he maintained offices in New York and New Jersey, that he maintained a "wire room" and a number of telephones to communicate with "agents" in the city and in various parts of the country, many of his bets originating outside of New York, and that his New York office was the "collect and pay off" headquarters. Defendant's counsel argued that the Disorderly Persons section was directed at those people who could not maintain themselves and thereby would be a burden on the public, and, as evidence was introduced showing that the defendant had more than $250,000 in cash and securities the defendant could not be a "Disorderly Person." The City Magistrate's Court found defendant to be a disorderly person within the statute and required $10,000 surety that he would be of good behavior for one year.

The instant case illustrates a novel method of convicting "bookies." It raises the question of how broad a field of activity is circumscribed by the misdemeanor of being a disorderly person, and whether such activities as bookmaking, not disorderly in the sense

that a disturbance is created, are included in its limits and may be stopped thereby.

The practice of bookmaking is prohibited in most states either by anti-gambling statutes, which have generally been construed to include betting on horse races and selling turf pools, though a few jurisdictions have held otherwise (see 24 Am. Juris. 412; and anno. in 7 L. R. A. (N. S.) 899; 33 L. R. A. (N. S.) 827; 6 Ann. Cases 693; 52 A. L. R. 51), or by specific statutes making bookmaking illegal. Since New York has statutes of both types (Penal Law of N. Y.: §970 on "Common Gamblers" and §986 on "persons who engage in pool-selling or bookmaking") it is interesting to notice the use of a disorderly person statute in the instant case—obviously an indirect means of convicting the offender.

"Bookies", however, have often been convicted indirectly under statutory and common law offenses other than the specific offense of gaming. These include common law and statutory nuisance, "disorderly house," common gambler provisions, and vagrancy. Probably the one most commonly used has been public nuisance. At common law gaming was not of itself unlawful. See *Jenks v. Turpin*, 13 L. A. Q. B. D. 505 (1884); Clark & Marshall, Crimes (2d ed., 1915) §466. However, the common law did recognize the offense of "public nuisance," and this comprehended the keeping of gaming houses. Russell, Crimes and Misdemeanors (8th ed., 1923) 1754, says of gaming houses: "Common Gaming Houses are a public nuisance at Common Law, being a detriment to the public as they promote cheating and other corrupt practices; and incite to idleness and avaricious ways of gaining property persons whose time might otherwise be employed for the good of the community." cf. 21 L. R. A. (N. S.) 836.

The Penal Law of New York, §1530, provides that anything which "offends against the public decency" is a public nuisance, a provision broad enough, perhaps, to include bookmaking.

Another related offense which has been used is that of keeping a disorderly house. According to Bishop on Criminal Law this offense is of wide meaning. It includes "bawdy houses, common gaming-houses, and other places of like character, to which people promiscuously resort for purposes injurious to the public morals, or health, or convenience, or safety, all of which are indictable as public nuisance." 1 Bishop, Criminal Law (9th ed., 1923) §1106.

It is interesting to note that under neither of these offenses must the act create a disturbance or actually be disorderly. Thus where the bookie business was conducted in a private office no actual disturbance was required to make it a public nuisance. *Ehrlich v. Commonwealth*, 125 Ky. 742, 102 S. W. 289 (1907); comment (1921) Mich. L. Rev. 449. This is the general rule. And so in *King v. People*, 83 N. Y. 587 (1881) it was said that it was not an essential element of the offense of keeping a disorderly or gaming house that the public should be disturbed by noise.

In contrast to "public nuisance" and "disorderly house," which are aimed at preventing the maintenance of gambling places them-

selves, are statutory offenses based upon the conduct and habits of the accused. These, primarily common gambler (see 24 Am. Jur. 430) and vagrancy, have provided a further indirect means of attacking bookmaking. Because the statute under which defendant was indicted in the instant case closely resembles the ordinary vagrancy statute it is interesting to see whether bookmaking is one of acts which a vagrancy provision ordinarily includes. The English Vagrancy Act of 1824 made the practice of gaming in public places or maintaining lotteries punishable. Comment (1931) 72 Law Jour. 225. A similar statute exists in Ontario. See *Rex v. Ellis,* 20 Ont. L. 218 (1909). The offense generally includes a variety of acts such as consorting with criminal offenders, being a habitual drunkard, loitering in public without a visible means of livelihood, etc. While some vagrancy statutes, e. g. Ill. Rev. Stat. (1939) §578, include provisions concerning habitual frequenting of gaming houses, these provisions have seldom been invoked to convict persons operating betting exchanges. The primary purpose of the vagrancy statutes, however, is to prevent idlers and others from becoming a public charge and in this line of reasoning some cases under typical vagrancy statutes have said it is essential there be no visible means of support. *Horton v. State,* 103 Tex. Cr. 218, 280 S. W. 804 (1926). The New York Vagrancy statute also seems to make lack of a visible means of support an essential fact to conviction. It reads, in part: "The following are persons who are vagrants. 1. A person who, not having visible means to maintain himself, lives without employment; [going on to drunkards, prostitutes, etc.] . . ." Penal Law of N. Y., §887. The employment requirement, however, has been interpreted to mean only work of a lawfully gainful nature. *People* v. *Cramer,* 247 N. Y. S. 821 (1930). The defense, in the case at bar, relied on the close similarity between the Disorderly Persons and Vagrancy provisions, arguing that the evidence of wealth foreclosed any conviction. In light of the case on lawful nature of employment, *supra,* and the fact that the conduct of defendant was admittedly unlawful, this defense, as the court suggested, becomes very tenuous even if the defendant's construction of the disorderly persons provision is accepted.

But it seems impossible to accept the defendant's contention that the statute was only aimed at those who are likely to become public charges, without doing injustice to the language of the statute which directly states that it applies to people "who have no visible profession or calling by which to *maintain* themselves but who do so [maintain themselves] for the most part by gaming." (Italics supplied.) The word maintain in the latter phrase (included by implication by the words "do so") can clearly not be synonymous with its use in the first part without cutting the heart out of the statute. The effect of saying, as did the instant case, that lack of visible means of support is unnecessary where the support is that of gaming seems, however, to make the first phrase meaningless. In other words, while lack of visible means of support is not suffi-

cient of itself, if it is shown that defendant maintained himself in the most part by gaming that is sufficient and constitutes the offense. The fact is, that the provision seems to be a hybrid of a gaming offense and a vagrancy offense anomalously placed under a Disorderly Persons statute.

This disorderly persons statute is in broad terms, made up of nine sections covering crimes varying in nature from abandoning one's wife to telling fortunes. Evidently it is not a statutory designation of the offense disorderly "conduct" specifically but rather a defining of who are disorderly "persons." Though it seems to comprehend a mode of behavior or habit, a general practice of engaging in certain conduct, rather than particular acts themselves, there does not seem to be any substantial difference in result from the situation where the offense is disorderly "conduct." Both offenses are misdemeanors, and are directed at socially undesirable action of a similar nature.

In so far as the instant statute tries to bring bookmaking into the general category of disorderly conduct it is rather unusual. At common law there was no offense of disorderly conduct as such and it apparently is a purely statutory offense. *People* v. *Galpern,* 259 N. Y. 279, 181 N. E. 572, 83 A. L. R. 785 (1932). The common law offenses most nearly akin to and probably the origin of disorderly conduct are "Affray" and "Breach of the Peace." May, Criminal Law (1938, 4th Ed.) §107. However, the statutes have not been limited to acts which disturb the peace, but have rather embraced those acts which tend to corrupt morals or offend the public's sense of decency. They commonly include such conduct as the use of obscene language, disobeying a policeman, etc., though they may include idleness or vagrancy. *Re Wm. Stegenga,* 133 Mich. 55, 61 L. R. A. 763 (1903). Whether acts punishable as disorderly must in fact be disorderly, i.e., must create a disturbance, seems to be in doubt. There was no apparent attempt by counsel in instant case to defend on that ground, although some writers and cases indicate that the general requirement is that the conduct disturb the public or annoy individuals. 10 Minn. L. R. 538 (1926); L. R. A. 1917 D 694; *Larson* v. *Feeney,* 196 Mich. 1, 162 N. W. 275 (1917). And that seems to have been one of the elements in the related common law offenses of affray and breach of the peace. Many courts have, however, been liberal in construing these statutes and have not required that the action be disorderly to be punishable. *Mt. Sterling* v. *Holly,* 108 Ky. 621, 57 S. W. 491 (1900); *Garvin* v. *Waynesboro,* 15 Ga. App. 633, 84 S. E. 90 (1915); and anno. 18 Corpus Juris. (1919) 1217. This has its roots in the common-law concept that breach of peace included conduct ordinarily tending to disturb the peace. May, Criminal Law (4th ed., 1938) §107.

The statute in the instant case goes beyond codification of the common law offense of breach of peace from which disorderly conduct seems to have sprung, and includes matter generally found in vagrancy, nuisance, and gaming statutes. The particular subdivision involved had been in exist-

ence for 110 years, and, said the court, had never been used in any opinion. In light of the several other New York provisions which either directly or indirectly cover bookmaking this is not unusual; but it does raise a question as to what motivated the prosecutor to use this statute. Of course, he may merely have desired to test its validity, but other more cogent reasons come to mind.

The problem of proof may, perhaps, be more difficult under the gambling statute. If either the betting, gambling, or bookmaking provisions were used it is probable that the state would have to prove that an actual wager was made. While this is by no means impossible to prove (See *Commonwealth* v. *Clancy,* 154 Mass. 128, 27 N. E. 1001 (1891); *People* v. *Weithoff,* 51 Mich. 203, 16 N. W. 442 (1883) it is hampered by problems of entrapment and illegal evidence since witnesses are hard to obtain and officers must make their own bets. While most courts say proof need only be inferential under gaming statutes, the New York Court has said that mere possession of gambling devices cannot constitute a crime. *People* v. *Wynn,* 12 N. Y. S. 379, L. R. A. 1915 D. 682 (1890); and see 43 L. R. A. (N. S.) 546; *Parkes* v. *Judge of Recorder's Court,* 236 Mich. 460, 210 N. W. 492 (1926). Moreover, since persons fostering these "rackets" are the ones that must be punished in order to combat these practices, and because they are usually in the background directing the crime activities, it becomes difficult to sufficiently prove commission of acts amounting to gambling which are usually done by agents. Likewise, it might also be difficult to show that the "head of the racket" would come within gambling provisions aimed at punishing persons who "own, lease, hire, and superintend rooms and apparatus used in gambling" since he may be so far removed from actual gaming that it is difficult to prove he is owner or superintendent. Consequently, to apprehend persons running the racket from behind the scenes, a statute such as the one used here seems indispensable. Though the defendant here made admissions sufficient to convict him under the gaming statutes, such voluntary admission generally cannot be obtained and, therefore, this method of looking to the source of the racketeer's income and livelihood (witness the recent use of income tax evasion to punish gamblers) becomes a useful and more workable means for securing conviction. Since accused must show a visible means of support in order to defend himself, he will have to do some "high-class" falsifying to avoid conviction if that means of support turns out to be gambling.

Another explanation, apart from the difficulty of proof and fitting defendant into a gaming act provision, may be the difference in punishment. The gaming statute provides for a $50.00 fine and six months imprisonment; under the Disorderly Persons section the defendant must be of good behavior for the period of one year and surety may be required therefore, the surety being forfeited on the doing of any act which made him a disorderly person. In the instant case $10,000 surety was required; this, coupled with the threat of forfeiture may be more effective in

restraining the crime than six months in jail and may explain the use of this particular statute.

Regardless of the motive behind the use of this statute it does appear to be an effective means for dealing with this class of offenders which often defies conviction. And it affords an example that other jurisdictions might follow either by application and judicial expansion of existing vagrancy statutes or enacting similar legislation. However, it may be unnecessary to do either of these since as this court says, quoting Blackstone, "Our laws against gaming are not so deficient as ourselves and our magistrates in putting those laws into execution."

LYNDON GAMELSON

PEACEFUL PICKETING AS DISORDERLY CONDUCT.—[N. Y.] The case of *People* v. *Bellows,* 22 N. E. (2d) 238 (N. Y., 1939) presents a questionable application of the comprehensive New York disorderly conduct statute. (Penal Law of N. Y., §722(2).)

The complainant in this case was the sole proprietor and operator of a small shop in Brooklyn. He purchased a neon sign which was erected by members of a union. A rival union affiliated with the A. F. of L. immediately picketed the store, the two defendants carrying posters stating that the maintenance of certain signs on the premises was unfair to their union. The complaint alleged that the defendants committed the crime of disorderly conduct in violation of subdivision 2 of section 722 of the Penal Code in that, "with intent to provoke a breach of the peace and whereby a breach of the peace might be occasioned the defendants committed acts which annoyed, disturbed, interfered with, obstructed and was offensive to the complainant."

The magistrate in *People* v. *Bellows* found that the defendants were guilty of disorderly conduct, that they had annoyed the plaintiff, obstructed his place of business and created a disturbance to the extent that a breach of the peace might have been occasioned. On appeal the Court of Special Sessions reversed this decision, saying, "In our opinion the record abundantly justifies the finding that the picketing was peaceful and free from disorder. That being so the defendant is entitled to an acquittal." *People* v. *Bellows,* 9 N. Y. S. (2d) 850 (1939). The Court of Appeals reversed and ordered a new trial after stating: "We differ from the Special Sessions and hold that such picketing which has been declared unlawful does constitute disorderly conduct according to the conceded facts of the case. *People* v. *Jenkins,* 246 N. Y. S. 444, 255 N. Y. 637 (1931); *Goldfinger* v. *Finetuch,* 276 N. Y. 281, 11 N. E. (2d) 910 (1937); *Canepa* v. *Doe,* 277 N. Y. 52, 12 N. E. (2d) 790 (1938). Lehman, J., dissented on the ground, "that the picketing in the case, even if unlawful, did not constitute disorderly conduct."

Judge Lehman's statement in *People* v. *Bellows* of what he believes the law to be is more compatible with earlier New York holdings than is the majority holding. The prior attitude of the court had been that notwithstanding the fact that a magistrate was entitled to a reasonable exercise of dis-

cretion in determining that conduct that did not fall strictly within the offense defined by the legislature may nevertheless constitute disorderly conduct, that discretion is not without limits and must be limited to acts which reasonably tend to a breach of the peace. *People* v. *Schroedman,* 232 N. Y. S. 302 (1929); *People* v. *Sinclair,* 149 N. Y. S. 54 (1914); *People* v. *Squires,* 238 N. Y. S. 152 (1929); *People* v. *Nixon,* 248 N. Y. 182, 161 N. E. 463 (1928). While it may be true that disorderly conduct need not create a disturbance to be punishable that is generally true where the statute is based upon conduct that offends public morals or decency. See *supra,* at —; 17 Am. Juris. 99; 18 Corpus Juris. 1217. Where, however, the statute is based upon breach of peace, as in the instant case, the statutory intent would seem to require that some disorder be created or threatened, and a holding that mere illegality of the conduct (for civil purposes) makes it disorderly seems an unduly harsh interpretation of the law. See *Larson* v. *Feeney,* 196 Mich. 1, 162 N. W. 538 (1917); Anno. 17 L. R. A. (N. S.) 75.

The question of the legality of the picketing which seems to be the basis of the holding in *People* v. *Bellows* was mentioned in earlier New York cases (*Sengenfeld* v. *Friedman,* 193 N. Y. S. 128 (1922); *People* v. *Wecker,* 246 N. Y. S. 708 (1930)), which hold that peaceful picketing is lawful if carried on for a lawful purpose. The logical inference is that picketing which is illegal will be enjoined. This was the view of the Special Sessions which reversed the findings of the magistrate in the *Bellows* case; the court said, "The answer to the question of whether or not the defendants were guilty of disorderly conduct under section 722 of the Penal Code is not to be found in an analysis of the relation between the unions or in a consideration of the rights of the parties concerned to seek injunctive relief upon appropriate application to the civil courts. . . . There exists a confusion of civil and criminal remedies. No burden rests upon the defendant to establish his right to picket. The burden is upon the People to establish the guilt of the defendant beyond a reasonable doubt." Any such hiatus between civil and criminal remedies was evidently disregarded by the Court of Appeals as two of the cases cited to support its position, *Goldfinger* v. *Finetuch, supra,* and *Canepa* v. *Doe, supra,* involve applications for injunctive relief, the granting or refusal of which was contingent upon the establishment of a recognized labor dispute. The case of *People* v. *Jenkins, supra,* was a disorderly conduct conviction for carrying untruthful signs in the absence of a strike.

Though the result in *People* v. *Bellows* is not incomprehensible it is nevertheless questionable. A disorderly conduct statute which included a provision specifically stating that peaceful picketing in a secondary boycott was illegal and hence disorderly might be in danger of being declared partially if not completely invalid under the provisions of many state constitutions which require that no legislative act shall embrace more than expressed in the title. Cooley, Const. Lim. (8th ed., 1927) 291-313;

Cf. *People* v. *Hoffman*, 322 Ill. 174, 152 N. E. 597 (1926).

Though not generally recognized, by far the greatest number of arrests and prosecutions arising out of the labor disputes are for criminal offenses rather than for violations of labor injunctions. Few of the arrests are made under statutes relating specifically to labor disputes and the majority of all arrests have been for misdemeanors rather than for felonies. Disorderly conduct, obstructing traffic, disturbing the peace, trespass, intimidation, malicious mischief and unlawful assembly are the most frequently utilized charges under the state statutes. At times the wholesale utilization of criminal statutes produces rather disconcerting results as in the case of an Indianapolis ordinance prohibiting the placing of signs over sidewalks or streets without a permit, which was made the basis of police court prosecution in 1916 of pickets who carried placards on their backs calling attention to a labor union boycott. There have been, however, grave and inexcusable abuses, such as the imposition of excessive bail in petty offenses and long imprisonments awaiting trials which may never take place. See Witte, *The Government in Labor Disputes* (1932) 156. The invariable consequences of the injudicious application of criminal statutes to situations in which they are clearly inapplicable is resentment, antagonism and misunderstanding on the part of those affected. The decision in *People* v. *Bellows* serves ends of expediency primarily rather than adhering to the purpose of the Penal statute. One possible explanation of the decision might be the recent limitations on injunctive relief in New York, N. Y. Civil Practice Act, §876a, and the statutory requirement of a jury trial in suits to punish for contempt may have prompted the use of the charge of disorderly conduct as a means of combatting unlawful picketing. 5 Brooklyn L. Rev. 216 (1936). The result is a perversion, not only of the disorderly conduct statute, but of the policy of the anti-injunction act.

PERRY PATTERSON.