been adopted is capable of conveying a meaning detrimental to the plaintiff. Newell on slander and libel, 4th ed., 267. The fact that a person's name is not mentioned in a publication alleged to be a libel on him does not render it less libelous if the publication would be understood as referring to him. *Barron* v. *Smith*, 19 S.D. 50 (1904). Some persons might know the plaintiff by sight and not by name, or else believe that he gave a fictitious name. Thus the defamatory article is easily capable of conveying a meaning detrimental to the plaintiff.

The publication is libelous if it harms the party alluded to in the estimation of an important and respectable part of the community, and it is no excuse that the picture is published by mistake or in good faith. *Peck* v. *Tribune Co.*, 214 U.S. 185, 29 S. Ct. 154 (1908). Innocence in a mistake, however, may mitigate damages. *Van Wiginton* v. *Pulitzer Pub. Co.*, 218 Fed. 795, 134 C.C.A. 483 (1915). The defendant also argued that under modern conditions, a publisher should not be held to such strict accountability, because of the manner in which news must be obtained and published. The court replied to this argument with the following quotation from Lord Mansfield: "Whatever a man publishes, he publishes at his peril."

The principal case is in accord with the majority rule. *Peck* v. *Tribune Co.*, supra; *De Sando* v. *New York Herald*, supra; *Wandt* v. *Hearst's Chicago American*, 129 Wis. 419 (1906); *Farley* v. *Chronicle Pub. Co.*, 113 Mo. App. 216, 87 S.W. 565 (1905); *James* v. *Ft. Worth Telegram*, 117 S.W. 1028 (1909). It is believed that this view reaches the better result. It conforms to the generally accepted definitions of libel, and will compensate a person for injuries to his reputation caused by an innocent mistake where the defendant has used the greatest of care possible under the circumstances as well as for those injuries caused by the defendant's negligence or malice.

GEORGE COLE.

EVIDENCE

BURDEN OF PROOF IN PROBATE AND CONTEST PROCEEDINGS

Corneal J. McWilliams, one day before his death, executed a codicil wherein he revoked the prior appointment of the Central Trust Co. of Cincinnati as executor-trustee of his will. Arthur J. O'Connell was substituted in its place. The will was admitted to probate, but the codicil was rejected. Upon appeal the judgment of the common pleas court was affirmed upon the ground that McWilliams was not of sound mind

and memory and free from restraint and that the writing was not his last will and testament. The court of appeals reversed the judgment holding that: (1) a proceeding to probate a will is not adversary; (2) when the proponents have made out a *prima facie* case establishing the facts of Ohio G.C. Sec. 10504-22 admission to probate becomes mandatory. *McWilliams et al.* v. *The Central Trust Co. et al.*, 51 Ohio App. 246, 200 N.E. 532, 20 Abs. 544, 5 Ohio Op. 104 (1935).

In considering the problems involved in the above case, it is pertinent to distinguish an action for the probate of a will from an action for the contest of a will. The former is governed by G.C. 10504-22 and auxiliary statutes; the latter by G.C. 12072 to 12087. Sec. 10504-22 provides that "if it appears that such will was duly attested and executed and that the testator, at the time of executing it, was of full age, of sound mind and memory and not under restraint, the court shall admit the will to probate." The section on appeal from probate, Ohio G.C. Sec. 10504-30, states: "When the probate court decides not to admit a will to probate a person thereby aggrieved may appeal from this decision to the common pleas court . . . . "; and further Sec. 10504-31: " . . . . the court on hearing shall take testimony touching the execution of such will and have it reduced to writing . . . ." Prior to the passing of the above statutes an action for the probate of a will was not considered adversary but ex parte. If it were refused probate, no appeal was allowed but "another application may be made, and probate established on new and better proof." *In re Chapman's will*, 6 Ohio 149 (1833); *accord, In re Hunter's will*, 6 Ohio 500 (1834). In discussing these decisions in the light of the application of the subsequent statutes, Sec. 5934 (now 10504-30) and Sec. 5935 (now 10504-31), *supra*, Justice Spear writes: "But the statute as to two important particulars is essentially different now. Notice to executors, the widow or husband, and next of kin of the testator is to be given and any person aggrieved may appeal to the common pleas court by filing an intention within ten days. *These changes do not transform proceeding into a strictly adversary one for no testimony can be given against the will*, but they do provide for bringing interested parties who are permitted to cross examine witnesses and afford an opportunity to appeal if any are aggrieved by an order refusing to admit the will to probate and try the question again in the common pleas court." [Italics writer's] "The court, by mandatory requirement of the statute, is called upon to determine as to the existence of the right and it being ascertained that the paper presented is the last will of the deceased, the admission of probate follows as a legal necessity." *Missionary Society of*

M. E. Church v. *Ely*, 56 Ohio St. 405, 47 N.E. 537 (1897). *Accord: In re Hathway*, 4 Ohio St. 383 (1854); *Fouke* v. *Fouke*, 32 Ohio App. 226, 167 N.E. 698 (1928); *In re Jones*, 2 Ohio Nisi Prius 194, 2 Ohio Dec. 404 (1895); *Barr* v. *Closterman*, 3 Ohio C.C. 441, 2 Ohio Cir. Dec. 251 (1888).

The rationalization of this position is based upon three grounds. The first is found in the interpretation of the words of the statute as followed by the principal case. Here the judge contends that the words "If it appears" in G.C. 10504-22 and "the court shall take testimony touching the execution" in G.C. 10504-31 bear a restricted meaning, limiting the proceeding in probate to an introduction of affirmative materials. Added weight may be given to this interpretation in view of Sec. 10504-18 and a comment thereon in the Ohio Probate code, annotated, edited by Frank M. Raymund: "The committee on revision presented an amendment of this section intended to permit witnesses to be called by opponents, but this was rejected by a sub-committee of the house judiciary committee 1935. So the hearing remains strictly ex parte."

The second ground upon which this conclusion is based is the absurdity of having two will contests. *In re Hathway, supra.* The argument is that, if an adversary proceeding were permitted in the probate court, there would be no need of having a will contest, since the contest would have already taken place in the probate court. If such were permitted there would be two methods of adjudicating the same fact, "and the adjudication of the first tribunal, although not appealed from, [would be] no bar to the second proceeding." It is unlikely that the legislature would have provided for two modes of trial where one would have been sufficient. In the contest proceedings "all the natural facts in issue are to be heard and determined *de novo* as though order of probate had not been made . . . ." *Haynes* v. *Haynes*, 33 Ohio St. 598, 31 Am. Rep. 579 (1878); *Kammann* v. *Kammann*, 6 Ohio App. 455, 26 Ohio C.C. (N.S.) 60 (1916). But in the statutory "appeal" from probate the case is taken up on error. *Missionary Society of M. E. Church* v. *Ely, supra; Hollrah* v. *Lasance*, 63 Ohio St. 58, 57 N.E. 964 (1900); *Roth* v. *Seifert*, 77 Ohio St. 417, 83 N.E. 611 (1908).

The third justification is founded upon the theory that the will has no legal existence before probate and therefore is not subject to contest. *In re Hathway, supra; Sours* v. *Shuler*, 42 Ohio App. 393, 181 N.E. 908, 12 Abs. 108 (1932); *Petitt* v. *Morton*, 28 Ohio App. 227, 162 N.E. 627 (1928).

The probate court, in considering the evidence introduced, is limited

"to the inquiry as to whether the forms of law had been complied with in the execution of the will, and the condition of mind and capacity of the testatrix to make a disposition of her property as revealed by testimony of the witnesses to the will." *In re Mrs. Oskamp's will*, 7 Ohio Nisi Prius 665, 5 Ohio Dec. 584 (1898); *accord: Mitchel* v. *Long*, 9 Ohio Nisi Prius (N.S.) 113, 20 Ohio Dec. 41 (1909). This is a virtual limitation to the subject matter of Ohio G.C. Sec. 10504-22.

The burden of proof is placed upon "the proponent to establish . . . . soundness of mind, freedom of restraint, undue influence and observance of the formalities of the statute." *In re Will Ludlow*, 6 Ohio Dec. (N.P.) 344, 4 Ohio Nisi Prius 155 (1897); *accord: Mears* v. *Mears*, 15 Ohio St. 90 (1864); *In re Son-Se-Gra's will*, 78 Okl. 213, 189 Pac. 865 (1920); *In re Ralph's estate*, 192 Cal. 451, 221 Pac. 361 (1923). Such a conclusion would naturally follow from the fact that the proponent is the only one permitted to introduce evidence. A *prima facie* case is enough to sustain this burden. *In re Hathway, supra; In re Stacey*, 7 Ohio Nisi Prius 277, 6 Ohio Dec. (N.P.) 499 (1897); *In re Will Ludlow, supra.*

In ascertaining the nature of a *prima facie case*, in either probate or other courts, two different interpretations have been used: one, when the plaintiff has introduced enough evidence to get to the jury; the other, when the plaintiff has made out a case so strong that he would, in the absence of evidence to the contrary, be entitled to a directed verdict in his favor. Under the first view the trier might find in favor of the party having the *prima facie* case, but would not be compelled to; under the latter view the party would be entitled to a directed verdict in his favor. See 5 Wigmore, Evidence, (2nd ed.) Sec. 2494. Both views are considered in the instant case, but even though there is no jury, the court adopts the first: "If the matter is one to be submitted to the jury, and sufficient evidence is offered on all issues to send the issues to the jury, we have a *prima facie* case, even though there may be some parts of the testimony of the proponent's witnesses which tend to negative one or more of the essentials established." Whichever view the judge takes, it is mandatory on his part to admit the will to probate when the *prima facie* case is shown. *Missionary Society of the M.E. Church* v. *Ely, supra; In re Will Ludlow, supra; In re Stacey, supra.*

According to the definition of the court in the instant case, strictly speaking, a will may be admitted to probate where, if it had been tried before a jury, there might have resulted a verdict either for or against it. It is not certain to which rule the probate courts are to adhere in

Ohio although there are some decisions which disagree with the principal case. *Gomien* v. *Eda Weidemer*, 27 O.C.A. 177, 29 Ohio Cir. Dec. 1 (1917); *Chaney* v. *Coulter*, 29 O.C.A. 177, 35 Ohio Cir. Dec. 481 (1918); dictum, *West* v. *Lucas*, 106 Ohio St. 255, 139 N.E. 859 (1922). It is certain that slight evidence is necessary to admit the will to probate. In *In re Stacey*, *supra*, the court permitted probate where the witnesses denied flatly the requirements of the statute. *In re Stocker*, *supra*, probate was permitted upon the testimony of one witness, although the other witnesses' testimony was to the contrary. *Accord: In re Watts*, 19 Ohio Nisi Prius (N.S.) 225, 27 Ohio Dec. 87 (1916). The judge in *Stark* v. *Cress*, 4 Ohio App. 92, 22 Ohio C.C. (N.S.) 188 (1914) went so far as to say that a witness who attaches his name to a will implicitly certifies that the testator is of sound mind and competent to make a will.

If the will is once admitted to probate, the only means of challenging its validity is by will contest proceedings provided by Ohio G.C. Sec. 12072 to Sec. 12087, *Mosier* v. *Harmond*, 29 Ohio St. 220 (1876); *Hollrah* v. *Lasance*, 63 Ohio St. 58, 57 N.E. 964 (1900); *Roth* v. *Seibert*, 77 Ohio St. 417, 83 N.E. 611 (1908). The will contest, however, is in the nature of an appeal from probate "where all the material facts in issue are to be heard *de novo* as though such order of probate had never been made." *Kammann* v. *Kammann*, 6 Ohio App. 455, 26 Ohio C.C. (N.S.) 60, 29 Ohio Cir. Dec. 349 (1916); *Haynes* v. *Haynes*, 33 Ohio St. 598, 31 Am. Rep. 579 (1878); *Dew* v. *Reid*, 52 Ohio St. 519, 40 N.E. 718 (1895).

Under the statute the proponent first produces the order of probate and rests, then the contestant introduces his evidence, followed by the proponent offering his other evidence, Ohio G.C. 12085. The contestant must take the initiative and bring the case into the district court, but the proponent introduces the first evidence. The proponent, although the defendant, has the advantage of opening and closing. In this manner the procedure differs from the ordinary practice at law where the party seeking action by the court and the party having the burden of convincing the court or jury, has the advantage of opening and closing, Ohio G.C. 11447. Here the contestant has the burden of convincing the jury. *Kennedy* v. *Walcutt*, 118 Ohio St. 442, 161 N.E. 336 (1928); *Mears* v. *Mears*, 15 Ohio St. 90 (1864); *Behrens* v. *Behrens*, 47 Ohio St. 323, 25 N.E. 209 (1890).

The burden of convincing the jury should be distinguished from the burden of going forward with the evidence. The latter is the amount of evidence necessary to meet the *prima facie* case of the

proponent and avoid a directed verdict in his favor, while the former is the quantum of evidence necessary to sustain the whole issue, i.e., in a will contest, the proof of the invalidity of the will. See *Mears* v. *Mears, supra.* In Ohio it has been said that the ultimate burden is upon the party having the affirmative. *Klunk* v. *Hocking Val. R.R. Co.*, 74 Ohio St. 125, 77 N.E. 752 (1906); *Lexington Fire, Life & Ins. Co.* v. *Paver*, 16 Ohio 324 (1847); *Industrial Commission* v. *Sutter*, 7 Ohio Abs. 37 (1929). In fact, the placing of this burden "is merely a question of policy and fairness based upon experience in different situations," 4 Wigmore, Evidence, (2nd Ed.), Sec. 2486. A plausible argument in favor of placing the burden upon the contestant is that ordinarily the testator should be allowed to dispose of his property as he pleases, and those who attack his will should bear the burden. A contrary policy argument might be that since heirs usually inherit the property of their ancestor, the side which seeks to sustain a disposition which cuts off the heirs should bear the burden. Courts differ on the allocation of the burden, Costigan, Cases on Wills, note page 224. Ohio, as has been indicated, has placed it upon the contestant. The court in *Mears* v. *Mears, supra,* attributed this to Ohio G.C. Sec. 12083, "The necessary effect of the provision is to change the burden of proof . . . . from the propounders or contestees to the contestants of the will."

Early Ohio cases decided that the contestant must meet the *prima facie* case of the order of probate and satisfy the jury by a preponderance of all evidence that the will was not that of the testator. " . . . . that the order of probate is *prima facie* evidence of due attestation, execution and validity of the will, and that to authorize a verdict that the will is not the last will and testament of the deceased, the plaintiff must prove by a preponderance of the evidence either the want of mental capacity . . . ." *Bloor* v. *Platt*, 78 Ohio St. 46, 84 N.E. 604 (1908); *accord: Behrens* v. *Behrens, supra; Banning* v. *Banning*, 12 Ohio St. 437 (1861).

This burden was increased in *Hall* v. *Hall*, 78 Ohio St. 415, 85 N.E. 1125 (1908). This case required that the evidence "adduced by the contestant [must] outweigh both the evidence adduced by the defendant and the presumption arising from the order of the probate." The court reasoned that a presumption of validity was raised by the statute. Sec. 12083 which provides that, "On the trial of such issue, the order of probate shall be *prima facie* evidence of due attestation, execution and validity of the will." Since this decision, the Ohio courts have followed the ruling without dissent. *Van Demark* v. *Tompkins*, 121 Ohio St. 129; 167 N.E. 370 (1929); *Kennedy* v. *Walcutt*, 118

Ohio St. 442, 161 N.E. 336 (1928); *West* v. *Lucas*, 106 Ohio St. 255, 139 N.E. 859 (1922); *McFarland* v. *Clark*, 8 Ohio App. 326, 28 O.C.A. 317 (1918); *Kellner* v. *Hagood*, 39 Ohio App. 351, 177 N.E. 637 (1930); *Steinle* v. *Kester*, 46 Ohio App. 245, 188 N.E. 395 (1932); *Helmig, Exr.* v. *Kramer*, 48 Ohio App. 71, 192 N.E. 388, 1 Ohio Op. 93 (1934).

In the *Van Demark* case, *supra*, the contestant vehemently protested against the rule, claiming that by an application of such a doctrine he would be deprived of the favorable testimony of the proponent's witnesses, the benefit of cross examination, and the privilege of permitting the jury to judge the demeanor of the proponent's witnesses. Judge Day thought the objections of little consequence, since the contestant was permitted to call the proponent's witnesses as well as to introduce any evidence he desired to sustain his case, and pointed out that the rule had been followed in the courts of Ohio "for over twenty years."

In analyzing the increased burden of the contestant in the terms of the *Hall* case, it is necessary to inquire into the weight given the presumption. Judge Day, in the *Van Demark* case, *supra*, recommends the following charge to the jury, " . . . . the evidence tending to invalidate the will must outweigh both the evidence tending to sustain the will and the presumption rising from the order of the probate court admitting the will to probate." This charge naturally raises the question as to what is the true significance of the presumption.

"Legal presumptions are founded upon the experience and observations of distinguished jurists as to what is usually found to be the fact resulting from any given circumstances and the result being thus ascertained whenever such circumstances occur, they are *prima facie* evidence of the fact presumed." *Behrens* v. *Behrens, supra; McKesson* v. *McKesson*, 3 Ohio St. 156 (1853). Presumptions are divided into three classes, "(1) conclusive presumptions, (2) disputable presumptions [presumptions of law], (3) presumptions of fact [inference]." *Beresford* v. *Stanley*, 6 N.P. 38, 9 O.D. 134 (1898).

The presumption of validity is probably a presumption of law, although in the light of Judge Wilkin's definitions of inference and presumption in *Ensel* v. *Lumber Ins. Co. of N. Y.*, 88 Ohio St. 269, 102 N.E. 955 (1913), approved by Chief Justice Marshall in *Glowacki* v. *North Western Ohio R. R. Co.*, 116 O.S. 451, 157 N.E. 21 (1927) it might as easily be called an inference. However, assuming that it is a presumption, what is its nature and what weight is it to be given by the jury? Ohio courts are agreed that "facts presumed are as effectively established as facts proved as long as the presumption

remains unrebutted." *The Lessee of Coombs* v. *Lane*, 4 Ohio St. 112 (1854). *Accord: Silvus* v. *State*, 22 Ohio St. 90 (1871); *Beresford* v. *Stanley*, 6 Ohio Nisi Prius 38, 9 Ohio Dec. N.P. 134 (1894); *Dalrymple* v. *Ohio*, 5 Ohio C.C. (N.S.) 185, 16 Cir. Dec. 562 (1904). However, as soon as evidence is introduced against the presumption, there is a sharp conflict among the courts as to its effect upon the presumption. "According to some courts a legal presumption is to be regarded as a piece of evidence to be weighed for the party for whom it operates and to be overcome by evidence of the other party." 10 R.C.L. 871. Opposed to this view is that of Wigmore and others. Under this theory a rebuttable presumption is a compelled inference. It places upon the party the burden of going forward but does not alter the ultimate burden of proof. No artificial probative weight is attached to it and "when one offers evidence to the contrary (sufficient to satisfy the judge's requirement of some evidence), the presumption disappears as a rule of law and the case is in the jury's hands free from the presumption." See Wigmore, Evidence, (2nd Ed.), Sec. 2490, 2491.

Upon this proposition Ohio cases are not in accord. Views vary from the statement that a presumption is evidence, *Citizens Nat'l. Bank* v. *C.N.O. & L.P. R.R. Co.*, 9 Ohio Dec. Reprint 147, 11 Bull. 86 (1883) to a full compliance with Wigmore's doctrine. "In a civil action the office of a presumption that one has obeyed the law is to cast the burden of proving otherwise upon the party claiming that the law was not obeyed; the presumption sustains the burden of evidence until conflicting facts on the point are shown and where evidence of facts is introduced, the presumption is *functus officio* and drops out of sight; *Breman* v. *Puget Sound T. Co.*, 79 Wash. 137; *Peters* v. *Lohr*, 124 N.W. 853; *Savage* v. *Rhode Island*, 67 Atl. 633 *and it is never error to refuse to charge the presumption.*" *Pletcher* v. *Bodle*, 13 Abs. 708, 38 O.L.R. 482 (Ohio App., 1933). [Italics writer's]. Some Ohio cases confuse a presumption with the conception of a *prima facie* case such as in *Klunk* v. *Hocking Valley R. R. Co.*, 74 Ohio St. 125, 77 N.E. 752 (1906), where the court considers Ohio G.C. 3365-21, " . . . . such defect . . . . shall be *prima facie* evidence of negligence"; a statute worded similarly to Ohio G.C. 12085. The court says the effect of the statute is to create a "*prima facie* presumption of negligence. Yet the statute neither changes nor affects the rule as to the question or degree of evidence to rebut or control the *prima facie* case so raised." Likewise in *Russell* v. *Russell*, 6 Ohio C.C. 294, 3 Cir. Dec. 460 (1891), a will contest proceeding, the court states that a presumption makes a *prima facie* case and declares that the contestant's burden is

sustained by a "bare preponderance." The nearest the Ohio Supreme Court has come to adopting Wigmore's view is in the *Glowacki* case, *supra*, in which Chief Justice Marshall quotes with approval from the sections of Wigmore above indicated. However, he was not adjudicating a point upon presumption, but upon inference. Although he approved Wigmore's doctrine on inferences, it is not clear whether he adopted his theory on presumptions.

However, if Wigmore's test is applied to *Hall* v. *Hall*, the court has erred in giving artificial probative effect to the presumption and in requiring that it be included in a charge to a jury. Such weight reasonably should not be given to the presumption.

The legislature in a recent statute, 113 Ohio Laws 123 (1929), enacted into law the following: "But the effect of this presumption of innocence is only to place upon the state the burden of proving him guilty beyond a reasonable doubt." Prior to the statute such a conclusion was followed in *Moorehead* v. *State of Ohio*, 34 Ohio St. 212 (1877), stating that it was no error to refuse to charge the presumption of innocence. Since the burden of proving the defendant guilty beyond a reasonable doubt is already upon the state, the presumption of innocence adds nothing to it. In the will contest, the burden of proving the invalidity of the will is on the contestant, in the same manner, the presumption of probate, even a weaker presumption, should add nothing to that burden.

Not only is the conclusion of the *Hall* case not in harmony with the better accepted legal doctrine of presumptions but it places upon the contestant both an undue and unreasonable burden of proof. In analyzing the procedure for probate of a will from the time of its inception until the will is admitted or rejected, these facts bear out the above conclusion: (1) The *prima facie* case necessary for probate is achieved when there is enough evidence introduced for the trier to find for or against the will as is indicated in the principal case, (2) when the *prima facie* case is established, the will must be admitted to probate whether a verdict would be for or against it in the mind of the trier, (3) the contestant has no opportunity to introduce evidence in the probate court, (4) the admission to probate raises a *prima facie* case of validity to which is added a presumption of validity, (5) The presumption is given artificial probative effect by the judge and in the charge to the jury. In short, the weak *prima facie* case necessary in the probate court, by the time it reaches the charge to the jury in the contest, has been elevated by artificial rules of law, until the contestant must not only produce enough evidence to outweigh it, but must also

outweigh a presumption of due validity of probate, which he has not had an opportunity to meet in the probate court.

LOWELL M. GOERLICH.

LABOR LAW

THE RIGHT TO PICKET IN THE ABSENCE OF A TRADE DISPUTE.

Three recent cases decided in the Court of Common Pleas of Cuyahoga County involved the use of the injunction to restrain picketing. In none of these cases was there a strike in process, nor was there any legitimate trade dispute between the employer and his employees.

In the first case the labor union demanded that the employer raise the prices charged for the dry cleaning of clothes, and that he stop advertising low prices. Upon his refusal to comply, the union picketed his place of business without using force or coercion. The Court enjoined the picketing, finding that there was no legitimate trade dispute and that the union's activities violated the Valentine Act. *Markowitz* v. *The Dry Cleaners Union et al.*, 19 Abs. 445, 3 Ohio Op. 366 (1935).

The remaining two cases involved a demand by the union for a closed shop. Upon the employer's refusal, his apartment houses were picketed. The employer-employee relationship was entirely amicable. The defendant unions, however, were engaged in using force in both cases. The Court granted the injunction in these cases on the ground of an illegal secondary boycott. *Savoy Realty Co.* v. *McGee*, 19 Abs. 682, 4 Ohio Op. 88 (1935); *Mutual Benefit Life Ins. Co.* v. *McGee*, 19 Abs. 691, 4 Ohio Op. 99 (1935).

The court in these last two cases intimates that had the picketing been peaceful, without the use of force and coercion, and in furtherance of a legitimate trade dispute, there would have been no ground for injunction. In distinguishing between these cases and a California case, *Lisse et al.* v. *Local Union No. 31, Cooks, Waiters, & Waitresses, et al.*, 2 Cal. (2d) 312 (1935), 41 Pac. (2d) 314, in which both elements were present, the court said each case must be judged upon its own facts. "However we find no analogy . . . . In the California case we find that the employees . . . . becoming dissatisfied, called a strike, which was followed by picketing." The California Court granted the injunction on the ground of undue force and coercion, but saying in the course of its decision, "A trade union, besides having the right to call a strike, has the legal right to carry on a boycott, both primary and secondary."