gation to assist each other in obtaining testimony upon which the right of a cause may depend. There must be the judicial power somewhere to prevent what may amount to the defeat of justice through the recalcitrant conduct of a material witness.

This obligation of courts of independent jurisdictions grows out of necessity—the necessity that the administration of justice be untrammeled and unobstructed. It rests upon the comity of states, and may be said to proceed from the law of nations. The issuance of letters rogatory for the purpose is derived from the civil law. The power is one which has always obtained in courts of chancery.

[2] The court to which the letter rogatory, or request, is addressed, is under no compulsion to respect it. It is within its discretion to refuse to honor it. It is a matter, as has been said, resting upon comity. But if it be a court of appropriate jurisdiction, there is no question as to its power to honor it and by its process execute it.

[3] In the execution of the request, it is the duty of the court to see that the witness is protected in all of his legal rights. In general, the relevancy and materiality of the testimony adduced is for the determination of the court having jurisdiction of the cause; but the court executing the request will see, for instance, that the witness is not compelled to give evidence which is privileged.

[4] Under the general jurisdiction possessed under the Constitution by the District Courts, it was within the power of the District Court of Dallas County to honor the request of the Illinois court and to order the witness to appear before the notary and give his oral deposition, a method for taking the testimony of witnesses having the express sanction of the laws of this State.

The following authorities may be consulted upon the general question, and sustain the ruling here made: Greenleaf on Evidence, sec. 320; 4 Jones on Evidence, sec. 400; Weeks on Depositions, sec. 128; State v. Bourne, 21 Or. 218, 27 Pac. 1048; Keller v. Goodrich Co., 117 Ind. 556, 19 N. E. 196, 10 Am. St. Rep. 88; In re Whitlock, 51 Hun, 351, 3 N. Y. Supp. 855; Anonymous, 59 N. Y. 313; In re Martinelli, 219 Mass. 58, 106 N. E. 557; Dowagiac Mfg. Co. v. Lochren, 143 Fed. 211, 74 C. C. A. 341, 6 Ann. Cas. 573.

The case of Marshall v. Irwin, 280 Ill. 90, 117 N. E. 483, cited by the relator,—the further citation from 18 Corpus Juris, 682, being founded upon its holding,—is not an opposing authority. There, the commissioner attempting to obtain the deposition of a witness in Illinois upon a commission issued by the court of another State, filed a proceeding in the Illinois court to have the witness adjudged in contempt for refusing to testify, and he was so adjudged by the court. It was held that the commissioner had no authority under the Illinois statutes to procure such an order. The case did not, in any way, involve the power of the court to respect the request of another court to aid it in obtaining the deposition of a witness within its jurisdiction. The court's assistance, there, had not been invoked by the court of the other State, and it was not attempting to enforce any order made in virtue of such application to it.

The relator is remanded to the custody of the Sheriff of Dallas County.

Ex parte TUCKER. (No. 3358.)

(Supreme Court of Texas. March 31, 1920.)

1. Injunction ⇐98(1) — Injunction against slander cannot issue.

In view of Const. Bill of Rights, § 8, declaring that every person shall be at liberty to write or publish his opinions, being responsible for the privilege, and that no law shall ever be passed curtailing liberty of speech or the press, an injunction against slander, or restraining the members of a union on a strike from vilifying persons employed, etc., is beyond the power of a court of equity.

2. Injunction ⇐101(3)—Injunction may issue to restrain strikers from threatening persons still at work.

An injunction may issue to restrain strikers from threatening persons still at work, for equity will protect the exercise of natural and contractual rights from interference or attempts at coercion.

Original application by George Tucker for writ of habeas corpus. Writ issued, and relator discharged.

Campbell, Greenwood & Barton, of Palestine, for applicant.

B. F. Dent, Dist. Atty., of Crockett, and Clay Cotten, Co. Atty., and Campbell & Sewell, all of Palestine, opposed.

PHILLIPS, C. J. The District Court of Anderson County, in a suit of the Palestine Telephone Company against the International Brotherhood of Electrical Workers' Department, Local No. 388 of Palestine, and other organizations, in Palestine, their officers and members, enjoined the defendants from, among other things, "vilifying, abusing, or using opprobrious epithets to or concerning any party or parties in the employment of plaintiff," and "from any and all conduct" toward such employees, or concerning them, "which might be calculated to provoke or inspire a breach of the peace."

The relator was an officer and member of one of the defendant organizations.

The plaintiff in the cause, later, filed an

affidavit charging him with a violation of the injunction in having applied, in a conversation with one Duncan, slanderous epithets to the female telephone operators in its employ. The relator, on the hearing, denied having used the language charged or the making of any remark reflecting upon such employees, but the court found him guilty of the charge and adjudged him in contempt. It appears from the record here that the relator was indicted for slander for the use of the same language charged against him in the contempt proceedings.

[1] The existence of any power in a court of equity to supervise one person's opinion of another, or to dictate what one person may say of another, is plainly and emphatically refuted by the 8th section of the Bill of Rights.

That section, in part, reads:

"Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press."

The purpose of this provision is to preserve what we call "liberty of speech" and "the freedom of the press," and at the same time hold all persons accountable to the law for the misuse of that liberty or freedom. Responsibility for the abuse of the privilege is as fully emphasized by its language as that the privilege itself shall be free from all species of restraint. But the abuse of the privilege, the provision commands, shall be dealt with in no other way. It is not to be remedied by denial of the right to speak, but only by appropriate penalties for what is wrongfully spoken. Punishment for the abuse of the right, not prevention of its exercise, is what the provision contemplates. There can be no liberty in the individual to speak, without the unhindered right to speak. It cannot co-exist with a power to compel his silence or fashion the form of his speech. Responsibility for the abuse of the right, in its nature pre-supposes freedom in the exercise of the right. It is a denial of the authority, anywhere, to prevent its exercise.

It has never been the theory of free institutions that the citizen could say only what courts or legislatures might license him to say, or that his sentiments on any subject or concerning any person should be supervised before he could utter them. Nothing could be more odious, more violative or destructive of freedom, than a system of only licensed speech or licensed printing. The experience of the English nation and some of the American colonies under the tyranny of such systems is the reason this provision in the Bill of Rights is one common to the Constitutions of the American States, and for its incorporation, in like words, in the First Amendment to the Federal Constitution. Hallam characterized the liberty of the press as finally gained in England, as but exemption from a licenser.

The theory of the provision is that no man or set of men are to be found, so infallible in mind and character as to be clothed with an absolute authority of determining what other men may think, speak, write or publish; that freedom of speech is essential to the nature of a free state; that the ills suffered from its abuse are less than would be imposed by its suppression; and, therefore, that every person shall be left at liberty to speak his mind on all subjects, and for the abuse of the privilege be responsible in civil damages and subject to the penalties of the criminal law.

Let it once be admitted that courts may arrogate the authority of deciding what the individual may say and may not say, what he may write and may not write, and by an injunction writ require him to adapt the expression of his sentiments to only what some judge may deem fitting and proper, and there may be readily brought about the very condition against which the constitutional guaranty was intended as a permanent protection. Liberty of speech will end where such control of it begins.

The courts of this country, to their credit, have steadily refused to recognize that the powers of equity may be so used. Pomeroy's Equitable Remedies, Sections 481, 629; Story's Equity, Section 1279; High on Injunctions, Section 1093; Newell on Slander and Libel, Section 265.

There can be no justification for the utterance of a slander. It cannot be too strongly condemned. The law makes it a crime. But there is no power in courts to make one person speak only well of another. The Constitution leaves him free to speak well or ill; and if he wrongs another by abusing this privilege, he is responsible in damages or punishable by the criminal law.

[2] Equity will protect the exercise of natural and contractual rights from interference by attempts at intimidation or coercion. Verbal or written threats may assume that character. When they do, they amount to conduct, or threatened conduct, and for that reason may properly be restrained. Cases of that sort, or of analogous nature, are not to be confounded with this one.

That part of the injunction which attempted to control the relator in his speech, was beyond the power of the court to issue and therefore void.

The relator is discharged.

GREENWOOD, J., took no part in this decision.