

President Kirby's Address

(Continued From Last Issue.)

Among the magazines, *The Century* has been foremost in the publication of articles condemning the lawless and unjust methods of labor unions. Many highly commendable articles of such character have not only appeared in its pages, but they have been printed in pamphlet form as well, and freely distributed.

I need hardly say to you that such publications should receive our patronage in preference to those whose columns and pages are filled with cheap sensational trash tending to breed discontent, chaos and anarchy, and it is well that we should remember this.

Death of William H. Corbett.

And now, in conclusion, it is with pain and sorrow that I call your attention to the death of our vice-president for Oregon, Mr. William H. Corbett, which occurred February 6, 1911.

In the death of Mr. Corbett this Association has lost one of its truest and best members. Although separated from our headquarters by some 3,000 miles' distance, he was none the less enthusiastic in its work and in the principles for which the Association stands.

Mr. Corbett was a man of sterling qualities and a born leader of men and movements. He was a powerful factor in the struggles of the Pacific Coast cities for the maintenance of free labor conditions, and I think I am correct in saying that through his influence more than any other man's, excepting General Otis, has the battle against the efforts of the American Federation of Labor to "San Franciscoize" the cities of the Pacific Coast been as successful as it has.

Mr. Corbett was a man of resourceful ability, and while possessed of a sympathetic nature which led him into many movements for the real uplift of humanity, he was a man of strong convictions who despised wrong and injustice, in whatever form.

He was President of the Willamette Iron Works of Portland, also of the Oregon Dry Dock Company and of the Ajax Auto Traction Company; First President of the United Metal Trades Association of the Northwest; First Vice-President of the Engineers' Association of the Northwest and a Director in a number of large corporations.

I now express the hope and request that this Convention adopt a resolution expressive of the sympathy of the Association and tendering its condolence to the bereaved family and associates of the deceased.

James W. Van Cleave.

It is also both timely and fitting that I should speak of our beloved departed co-worker and former president, Mr. Van Cleave.

A year ago, from this platform, there was conducted a solemn memorial service coincident with the last sad rites which were being held at St. Louis preparatory to the placing of his body in its final resting place.

Those of you who were in this room during that service will recall the solemnity of the occasion. We felt then, as we feel now, that not only had the National Association of Manufacturers lost one of its ablest and most earnest supporters, but that the whole country had sustained the loss of an exceedingly useful and patriotic citizen; a man who was the embodiment of all that stands for Christian civilization in its highest and best analysis.

At the opening of our last Convention the secretary read to you Mr. Van Cleave's letter to me dictated only a few days before his death, and which, I believe, was his last letter.

His force of character, his earnest interest in the welfare of this Association and in the solidity of his belief in the principle of industrial freedom were so inspiringly expressed in that letter that I feel constrained to quote briefly from it. Speaking of the Convention held at New Orleans in 1903, Mr. Van Cleave said:

You and I and all those who were present then felt that a turning point had come in the Association's history. There were those at that meeting who were fearful lest our declarations of opposition to un-American principles in our industries would wipe out the Association and destroy the business of many of its members.

Those were days when strong faith and absolute courage were required to do right. Those were times like those of Washington at Valley Forge, when none but Americans could be allowed on guard duty. Not only our enemies, but some of our best friends were willing to betray us, because they felt that we must be saved from our own folly. They knew we were right, but they felt that principle must be sacri-

ficed for policy. Those were the days that bound together, with bonds stronger than steel, those of us who were willing to sacrifice everything—or principle, if must be.

Some of us must do our cheering from the sick bed, because the body is unable to bear the hardship and the strain.

Some of us feel badly because we must withdraw, even temporarily, from the firing line where we have served equally faithfully as privates and as generals.

But, my brother, remember that principles are greater than men. Our movement is greater than individuals. Our cause must go on and on, and there is special need of vigorous action now. Men in high places are again willing to substitute policy for principle, politics for right. They feel embarrassed at our friendship; at our persistent effort to save them from themselves. I see danger signs ahead, and it will again require strong leadership and brave fighting to bring our good old ship safe and sound over the political reefs, socialist whirlpools and demagogic maelstroms.

From my bed of suffering, with a sick body, I say to you with a sound heart and an unbroken spirit, "Go on, my faithful ones; keep on fighting the right fight."

More could scarcely be said than Mr. Van Cleave himself said in that letter written as it was, while he was standing upon the threshold of eternity, to express the character of the man, his love for his country and his devotion to the cause of industrial peace founded upon the rock which the great Master, who called him to Himself, fixed as the base upon which the superstructure of peace among all nations and among all men should be built.

Never was Mr. Van Cleave swayed by sentiment when principle was involved.

No soldier ever engaged in battle for his country with higher patriotic motives than Mr. Van Cleave displayed, when, after mature deliberation, he decided to risk his all upon the altar of his country that the generations to follow him might enjoy the blessed heritage which was handed down to him and to us by the revolutionary fathers.

With never-failing courage Mr. Van Cleave pressed on, and on, until he went down in the storm of battle and passed over to the great majority, but his name is not dead, nor will it die, for it will be written in all history among the names of America's triumphant dead.

THE BOYCOTT

(By Walter Drew, Counsel for National Erectors' Association.)

Discussion under the auspices of the National Civic Federation, at the New York Board of Trade rooms, on April 2, 1909, of the following question:

"Has any portion of society the right to use its combined purchasing power for its own benefit, and if so, in what manner and to what extent?"

Speakers: Prof. John Bates Clark, Columbia University; Prof. Frederic J. Stimson, Harvard University; Judge R. D. Silliman, New York Bar; Walter Drew, Counsel National Erectors' Association; Samuel Gompers, President American Federation of Labor.

Remarks of Mr. Drew.

A "portion of society" is an ambiguous term. It may mean a number of disassociated individuals who, from common interests but from individual inclinations, adopt a common course of action. An individual may deal or refuse to deal where he will with or without reason. It is conceivable that a man might be ruined by the withdrawal of the patronage of a large portion of society acting upon individual impulse or initiative, but from common motives, and in such case he has no legal remedy, nor has any legal wrong been committed. So that covers your white list; it covers the trade union label; it covers all methods whereby the individual from his own inclination and upon his own initiative is led to bestow or to withhold his patronage.

Combinations.

If, however, a portion of society organizes and through organization acts in concert to a common end, it becomes in the eyes of the law a combination. A combination in law is a new personality or entity. It has rights, responsibilities and powers separate and distinct from those of the individuals composing it. Its motives and purposes are not those of any one individual, and the individual in the effort to carry out the common purpose, does not act on his individual judgment and initiative, but in accordance with a common plan, the plan of the combination.

Such a combination has much greater power than is represented even by the sum total of the powers of the individuals that com-

pose it. Take a football team, for instance. Eleven men, actuated by the common purpose of advancing the ball over the goal line, might act as individuals and not accomplish much; but when they act as a football team, obeying certain signals and following certain formations, they gain irresistible power. So with your industrial combinations.

Greater Responsibilities.

This immense increase of power coming from combination brings with it greater responsibilities, and in law is the basis of the principle that men may not do in combination all the things they may do as individuals. The report of the Anthracite Coal Strike Commission, speaking of combinations, said: "Combinations are more than mere aggregations of the rights and powers of the individuals composing them. They become new and powerful entities and factors for good or ill." Said Mr. Justice Harlan, of the Federal Supreme Court, in the case of *Arthur vs. Oaks*: "An intent on the part of a single person to injure the rights of others or of the public, is not in itself a wrong of which the law will take cognizance, unless some injurious act be done in execution of the unlawful intent. But a combination of two or more persons with such an intent and under circumstances that give them when so combined a power to do an injury they would not possess as individuals acting jointly, has always been recognized as in itself wrongful and illegal." Said the Supreme Court of Massachusetts, in the case of *Pickett vs. Walsh*, speaking of this increased power of combinations: "The result of this greater power of coercion on the part of a combination of individuals is that what is lawful for an individual is not the test of what is lawful for a combination of individuals; or, to state it another way, there are things which it is lawful for an individual to do which it is not lawful for a combination of individuals to do."

Popular Misconceptions.

Much fallacy of reasoning and misconception in the discussion of this whole subject comes from the refusal to recognize that men may not do in combination what they may do as individuals. It is a common defense on the part of a combination, when called to account, to point to the single acts of its individual members and to say, "These things are lawful." In labor controversies, it is the familiar assertion that "men are enjoined from doing what they have a legal right to do," that "they are denied the ordinary rights of free speech and free press," that they are prohibited from walking the streets, accosting others, and doing other "ordinarily legal and innocent acts." All such defenses in actions against combinations, of course, are based upon an attempt to ignore the principle of law we have noted and to free men from all the responsibility that comes with combined rather than individual action.

This defense was urged in the celebrated *Buck's Stove & Range Co. case*, and the Supreme Court of the District of Columbia said concerning it: "It was next contended on behalf of defendants that to restrain the publication of plaintiff's name on the 'Unfair' or 'We Don't Patronize' list would be an infringement on their constitutional rights and an assault upon the freedom of the press; or that if plaintiff had any redress for such publication, it was by action for the libel, and that equity will not enjoin the publication of a libel. All this would have merit, if the act of defendants in making such publication stood alone, unconnected with other conduct both preceding and following it. But it is not an isolated fact; according to the allegations of the bill and the supporting affidavits it is an act in conspiracy to destroy plaintiff's business, an act which has a definite meaning and instruction to those associated with defendants and an act which is the basis for conduct on the part of defendants' associates which unlawfully interferes with plaintiff's right of freedom to trade with whom he pleases. The argument of counsel is fully answered by the language of Mr. Justice Holmes in the case of *Atken vs. Wisconsin*, 195 U. S. 194: 'No conduct has such an absolute privilege as to justify all possible schemes of which it may be a part. The most innocent and constitutionally protected acts or omissions may be made a step in a criminal plot, and if it is a step in a plot, neither its innocence nor the constitution is sufficient to prevent the punishment of the plot by law.'"

The same defense was also urged in the Northern Securities case—the case of a combination of

capital rather than of labor. The Northern Securities Company was lawfully organized under the laws of the State of New Jersey. It began the purchase of the stock of the Great Northern and the Northern Pacific Railway Companies. The stock was secured in the open market and in accordance with all the forms of law. Proceedings were begun under the Sherman Anti-Trust Act, and the injunction was called into use to dissolve the Northern Securities Company. And in what manner was it dissolved? The injunction prohibited the Northern Securities Company from acquiring any more stock in the Great Northern and the Northern Pacific Railway Companies. It prohibited it from voting the stock it already owned in those companies, and it finally prohibited the Great Northern and the Northern Pacific from paying any dividends on the stock held by the Northern Securities Company. But, as urged by counsel in that case, each one of these things prohibited by the injunction was in itself absolutely innocent and lawful. On what theory could it be enjoined? Said Mr. Justice Harlan: "If there was a combination or conspiracy in violation of the act of Congress, between the stockholders of the Great Northern and the Northern Pacific Companies, whereby the Northern Securities Company was formed as a holding corporation, and whereby interstate commerce over the lines of the constituent companies was restrained, it must follow that the court, in execution of that act, and to defeat the efforts to evade it, could prohibit the parties to the combination from doing the specific things which being done would affect the result denounced by the act. To say that the court could not go so far is to say that it is powerless to enforce the act or to suppress the illegal combination." Said Mr. Justice Brewer, "The prohibition of such a combination is not at all inconsistent with the right of an individual to purchase stock. The transfer of the stock to the Securities Company was a mere incident, the manner in which the combination to destroy competition and thus unlawfully restrain trade was carried out."

It is thus clear that when the acts of an individual, ordinarily innocent, are done in order to carry out the unlawful purposes of a combination of which the individual is a member, those acts cease to be judged as standing alone and become colored with the unlawful purposes of the combination which directed them, and this is so whether it be a combination of workmen or of capitalists.

Malicious Injury Unlawful.

We now come to the distinction drawn by the courts between a

combination and an individual in determining what conduct is lawful and what is not. This distinction rests upon the question of intent—and at this point I begin to trespass upon the remarks of Prof. Stimson. It usually does not affect the legal quality of an individual's act if he be influenced by hate or malice, so long as he otherwise stays within his legal rights. He may inflict a great deal of malicious injury upon others by staying upon his own side of the legal fence, as it were, without incurring any liability, civil or criminal. On account of the greater power of a combination for injury and evil, which we have noted, a different rule is applied to it, and it is universally agreed by our courts that malice on the part of a combination constitutes an unlawful purpose and that a combination which inflicts injury upon others wantonly and from mere malice is unlawful and a conspiracy. Its conduct must have some legitimate and proper motive, some legal excuse or justification, when it results in harm to others.

On this point Mr. Judge Taft in the famous Toledo and Ann Arbor case—a case involving strike and boycott—is very clear. He said, "Ordinarily when such a combination of persons does not use violence, actual or threatened, to accomplish their purpose, it is difficult to point out with clearness the illegal means, or end, which makes the combination an unlawful conspiracy; for it is generally lawful for the combiners to withdraw their intercourse and its benefits from any person, and to announce their intention of doing so, and it is generally lawful for the others, of their own motion, to do that which the combiners seek to compel them to do. Such combinations are said to be unlawful conspiracies, though the acts in themselves and considered singly are innocent, when the acts are done with malice, i. e., with the intention to injure another without lawful excuse." Mr. Justice Holmes of the Federal Supreme Court, used the following language when he was upon the Massachusetts Supreme Court in the case of *Vegetahn vs. Gunther*: "I agree, whatever may be the law in the case of a single defendant, that when a plaintiff proves that several persons have combined and

PLACES OF AMUSEMENT

ARCADE—Moving pictures.

BAKER—"Polly of the Circus."

BUNGALOW—Welsh Singers.

EMPRESS—Vaudeville.

HEILIG—"The Fortune Hunter."

LYRIC—"The Henpecked Family."

MAJESTIC—Moving pictures.

ORPHEUM—"Babes a la Carte."

PANTAGES—"The Garden of Mystery."

PEOPLES—Moving pictures.

STAR—Moving pictures.

HEILIG THEATER—Seventh and Taylor. Phones: Main 1 and A 1122. Starts now selling—7 Nights beginning Tomorrow. Special price matinees Wed. and Sat. Cohan & Harris present Winchell Smith's Comedy Triumph, "The Fortune Hunter," with Fred Niblo and Perfect Company, including Josephine Cohan.

BUNGALOW THEATER—2 nights, Monday and Tuesday, Dec. 11-12, 8:15 p. m., World's Famous Male Chorus, the celebrated Mountain Ash Male Choir, Welsh singers, Wales, Great Britain.

BAKER THEATER—Main 2, A 5360. Geo. L. Baker, Mgr.—Next Week, Ida St. Leon in "Polly of the Circus."

ORPHEUM THEATER—Main 6, A 1020. Matinee Every Day—Week December 4—Dorothy Rogers & Co., presenting "Babes a la Carte"; Charles F. Semon, Conrad and Whidden, Rice, Sully and Scott, W. B. Patton & Co., Patty and Desperado, Stuart & Keeley.

PANTAGES—Unequaled Vaudeville. Week Dec. 4—Mile, Palermo, assisted by Chelato & Co., "The Garden of Mystery"; Swan and Bamard, Jenkins and Covert, The Sandros Brothers, The Diamond Four, Pantagescope, Pantages Orchestra. Matinee daily, Curtain 2:30, 7:15, 9 p. m. Boxes and first row balcony reserved. Main 4636, A 2236.

EMPRESS—(Formerly Grand), Sullivan & Considine. Refined Vaudeville. Matinee every day. Week Dec. 4—Joe Tinker, Maude and Gill, Donahue and Stewart, The Livinos, Owen Wright, Kara, Grandescopie.

LYRIC THEATER—Fourth & Stark. The Keating & Flood Musical Comedy Co., presenting next week, "The Henpecked Family."

conspired to injure his business, and have done acts producing that effect, he shows temporal damage and a cause of action, unless the facts disclose or the defendants prove some ground of excuse or justification. And I take it to be settled, and rightly settled, that doing that damage by combined persuasion is actionable, as well as doing it by falsehood or by force."

(Continued in Next Issue.)

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