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PORTLAND, THURSDAY, JULY 30, 1908.

MR. TAFT ON INJUNCTIONS.

The sound judgment and courage with which Mr. Taft dealt with the subject of strikes and injunctions in his address of acceptance are certain to increase confidence in him and bring to him the support of many fair-minded people who may have been in doubt as to the attitude they would take in this campaign. Mr. Taft made no appeal to the unthinking. He resorted to no artifice of uncertain language for the purpose of evading the issue. His statement of his views came with peculiar force in view of the senseless language in which the Democratic party worded the injunction plank of its platform adopted at Denver. Because Mr. Bryan's party took particular pains to conceal its position upon this important question, and because Mr. Taft has spoken first, the Democratic nominee will have difficulty in setting forth his own opinions without either acknowledging the bad faith of his platform-builders or indorsing the position of Mr. Taft.

The Democratic platform declared that "injunctions should not be issued in any cases in which injunctions would not be issued if no industrial dispute were involved." The platform does not say, nor has any one ever said, that injunctions have been issued in cases in which they would not be issued if no industrial disputes were involved. The clause quoted has no meaning whatever, and Mr. Taft has completely exposed the sophistry of the Democratic platform-builders. Whether a dispute is an industrial one has never been of influence in determining whether an injunction shall be issued. Mr. Taft challenges the Democrats to cite the cases in which that has been done, and he will wait long for an answer. Mr. Bryan, who can reasonably be held responsible for his party's platform, has set up a bogie man of straw and made a great display of destroying it.

Mr. Taft asserts the right of laboring men to form unions and to select leaders with authority to call them out on strike for the purpose of securing changed conditions of employment. Since this is their right, they cannot be enjoined from doing it. They also have a right to persuade others to strike. They have no right to boycott the employer with whom they have a dispute, and to persuade others to boycott him. They are at liberty to patronize whom they will and to refuse to patronize those with whom they do not wish to deal. They cannot be enjoined from doing this. But the things they have no right to do are stated with equal clearness. They have no right to use duress, violence or threats of violence in order to compel others to strike or to engage in a boycott. They have no right to engage in a boycott against one not a party to their dispute in order to compel this third party to boycott their adversary. For example, if electric railway employes strike they have a right to boycott the road, but they have no right to boycott a manufacturing establishment because it buys electric power from the same company. The secondary boycott would be a form of duress for the purpose of compelling the manufacturing concern to join in the first boycott against its will.

One of the important features of Mr. Taft's utterances upon the subject of injunctions is his exposure of the manner in which injunctions have been misused by employers whose employes have struck. This is the practice of securing injunctions against acts which have not been threatened. For illustration, let it be supposed that a thousand miners have gone on a strike and are striving to persuade others to join in the strike, as Mr. Taft declares they have a perfect right to do. They are mostly men without education—probably a majority of them cannot read the English language. The mineowner goes before the court with a list of the names of all the strikers, alleges that they threaten damage to the property, and secures an injunction forbidding them to do injury. This injunction in itself would be entirely proper if the facts were as alleged. These writs of injunction are served upon the miners. The documents are long, couched in legal language, and few if any of the workmen understand their meaning. While the injunction merely forbids doing damage to property, the ignorant miner fears to exercise his legal rights lest he be guilty of violating the terms of a document he does not understand.

Against this practice Mr. Taft protests, and he advocates return to the old plan of having a hearing before an injunction shall be issued, except in those rare cases where immediate action is necessary, and in that case the temporary injunction shall be effective for only a few days necessary to serve papers and hold a hearing. Mr. Taft's position is entirely sound. A moment's thought will show that it is sound. Those who oppose issuance of any injunction without hearing are blind to the real conditions which frequently confront property-owners. For example, a railroad company is about to enter the premises of a farmer unlawfully and destroy some of his property. The farmer rushes off to the courthouse and asks for an injunction. If the judge should be deprived of the power to issue a temporary injunction without hearing, the damage would be done before the farmer could get the relief he desired. In numerable cases could be cited to prove that Mr. Taft is right in saying that temporary injunctions without hearing cannot be entirely abolished. At the same time he proposes an adequate remedy by requiring that an immediate hearing shall be had.

Neither labor nor capital, if disposed to engage in legitimate efforts to secure their respective rights, can find fault with the views Mr. Taft set forth in his address of acceptance. He upholds the right of an individual, or all the individual members of a union to strike in a peaceable manner and induce others to strike. He asserts the right of the property-owner to be protected from the vicious acts of the few irresponsible and vicious men who are willing to go to any length in the hope of getting revenge if not compelling submission. He upholds the dignity and authority of the courts, yet denounces the practice of abusing the processes of the courts, and would prevent such abuses in the future. The hope of getting labor votes won't induce him to impair the efficiency of one of our departments of government, nor will the desire to get the support of large property-owners cause him to deny those rights to which labor is entitled. His address shows that he has opinions of his own and that he has the courage of his convictions.

AS TO A PORTLAND PUBLICATION.

A magazine which persistently and systematically aids in the dissemination of anarchistic ideas, and which strives in season and out of season to spread the doctrine of discontent, may very reasonably expect encouragement and support from all those who approve its teachings. It has no right to pose as the literary leader of a vast and growing section of the country and at the same time convey to the rest of the country wrong impressions of the thought and feeling of those who maintain it.

We refer to the Pacific Monthly, published in Portland.

WOOLGROWING IN OREGON.

Reports that woolgrowing in Linn, Marion and Polk Counties is on the increase and that the growers are optimistic as to the outlook may readily be credited. The whole Willamette Valley is adapted to woolgrowing, and there are many tracts of land which are particularly adapted to this industry, but which, owing to the steepness of hillsides, are not suited to agriculture. The climate is mild, making the feeding season short, and such sheds as are necessary need afford only protection from heavy rains. Forage crops grow nowhere better than they do in the Willamette Valley. Moreover, sheep may be pastured to a larger extent than most farmers understand, upon the fields of Fall-sown grain, with benefit rather than injury to the grain. Many a farmer who understands his business pastures sheep on his grain fields for several weeks, thus securing for them the feed that they may need from six to twelve inches' growth of the grain. Thus pastured, the grain not only "stools out" better, but the tramping seems to aid in holding the moisture in the soil.

New England's experience seems to be different from that of the Willamette Valley so far as development of woolgrowing is concerned. At the same time that reports are received of increased attention to sheep in Valley counties, there comes to hand the Boston Transcript, which is bewailing the low point to which the sheep industry has declined in Massachusetts. A few years ago sheep roamed the hills of Massachusetts by the hundred thousand. In 1900 the flocks totaled but 34,000, and the number has been decreasing steadily since then. The Agricultural College authorities of that state say there is no good reason for the decline, and an effort will be made to arouse interest in the industry. Oregon has many advantages over Massachusetts as a sheepgrowing state, of particular importance being the milder climate, the shorter feeding season and the cheaper lands.

THE TURKISH CRISIS.

Constitutional government for Turkey is an experiment that will be watched with much interest by the rest of the world. The experiment will attract more than ordinary interest at this time for the reason that Persia, which is on a plane of civilization similar to that of Turkey, has made a failure of the new government. That a like fate may befall the Ottoman Empire is not at all improbable, for, according to yesterday's news from Constantinople, the victorious people are clamoring for a clean sweep of all palace officials. It was on a similar rock that the Shah of Persia and his people split, after constitutional government had been in effect for more than a year. The Persian people through their Parliament attempted to dominate the executive branch of the government so completely that, had they been successful, the Shah would have been a mere figurehead with no voice whatever in the management of the affairs of his country.

It was the extravagance of the demands made on the Shah by the people of Persia that brought on the present trouble, and for similar reasons constitutional government for Turkey may not prove the unqualified success that is expected. The transition from a monarchical system that has been the custom for centuries to constitutional government is so radical that it is easily misunderstood by the masses, and they overlook the good effects which might follow by going to extremes. This is what forced the Shah of Persia to fight against the political beneficiaries of Persian government and may end in a return to the old system. The revolt of the Sultan's Albanian and Macedonian subjects was far more sudden than that of the Persians when they were first granted a constitution, but even in be-nighted Turkey constitutional government, or something akin thereto, has been tried in the past.

When the Turkish throne last week came so near to getting out of the hands of Abdul Hamid, the predicament was no worse than that of Sultan Abdul Medjid, who as far back as 1839 was forced to inaugurate a policy of reform which to all intents and purposes was a constitutional government. This was maintained until the Crimean war brought with it complications that hastened a return to the old order of things. In 1876 the people took advantage of the Balkan troubles, and demanded and received a full-fledged constitution. The first Turkish Parliament met in March, 1877, and it was so much more progressive in its demands than the Persian Parliament has been that in less than a year Turkey was back into the old groove with a good many reformers without heads.

The intervening thirty years have kept the Sultan fairly active, treason, plots and attempted assassination continually reminding him that his style of government was not indorsed by all of his subjects. Now the crisis has been reached, and, if the reformers are moderate in their demands, they will command the support of some of the foreign powers who have never had an overwhelming love for Abdul Hamid, and Turkey will move upward to a higher plane of civilization.

HEALTHY FOREIGN TRADE.

The current number of the World's Work magazine is devoted almost exclusively to the over-sea traffic of the United States, and this interesting topic is handled in a masterly manner by a number of writers. The gem of the collection, however, is a brief essay on "American Trading Around the World," in which the writer administers some well-deserved rebukes to that class of theorists who are always insisting that we are neglecting our foreign trade opportunities and that we need a subsidized fleet of ships. "There is an awakening," says this bright writer, "for the manufacturer who imagines that Johannesburg and Buenos Ayres will throw away all their European stock as soon as the smoke of an American steamer is sighted."

In equally pointed language the writer explains that "when a man's factories are working full time to fill orders from Chicago and San Francisco, their owner may be excused from lack of enthusiasm about Valparaiso and Shanghai." The European competition bugaboo is dismissed with the curt admission that "certain European countries are getting more foreign trade than we are. They ought to, for they have been at it longer. But let us be glad, for they need it worse." No special mention is made of that old chestnut about trade following the flag, but some statistics are given on a single month's business out of New York showing that 220 vessels of nearly every nationality known on the high seas had cleared with American exports for thirty different ports, including every country of importance on earth, while inquiry at the shipping offices resulted in an offer to accept cargo for any or all ports that could be reached by seagoing vessels.

These unvarnished facts regarding our foreign trade are of special value at this time, when an effort is being made to revive ante-election interest in the ship-subsidy scheme. What is true of the port of New York is equally true of other American ports, for there has never been a period in the commercial history of the Pacific Coast when it was possible to secure so much tonnage at such low rates as is now obtainable to any part of the world. American products today have a wider sale in foreign countries than ever. This is not due to the application of any artificial methods in either manufacturing, shipping or for encouraging the shipment.

The trade has come to this country because nowhere else in the known world can the foreign buyers get so much in the way of quantity or quality for the money he has to spend as in the United States. Theorists and subsidy-hunters to the contrary notwithstanding, the foreign trade of the United States, with no forcing or unnatural encouragement, is still breaking records, and has never for a moment felt the need of any artificial aid from the National Treasury, either for a ship subsidy or for protection.

TARIFF PROTECTED TRUSTS.

Notwithstanding the contention of the American Tariff League that the Republican platform does not promise a revision of the tariff downward, the American people understand that it does, at least so far as relates to tariffs on trust-made goods. If the league should succeed in convincing the people of this country that such revision is not contemplated by the Republican party the effect will be to throw to the Democratic candidates many votes that do and should belong to the Republican. When the opponents of tariff revision express satisfaction with the tariff plank and profess to see in it a safeguard against substantial changes in the schedules in the interests of American consumers who pay more for certain American-made goods than is paid by foreign consumers, there is likely to arise a suspicion of double-dealing in the wording of the platform. It is improbable that the league will find many campaign speakers, especial candidates for Congress, who will place upon the platform the same interpretation the league has given it. The clause which gives so much satisfaction to the opponents of tariff revision is that which reads:

"In all tariff legislation the true principle of protection is best maintained by the imposition of such duties as will equal the difference between the cost of production at home and abroad, together with a reasonable profit to American industries."

The insertion of the "reasonable profit" reservation is what furnishes the foundation for the claim that there will be no material reduction in tariffs, for the trust manufacturers expect to be able to convince members of Congress that present schedules cover no more than the difference in cost of production, plus a "reasonable profit." But in their calculations they do not assume that a reasonable profit for the foreign competitor is to be taken into consideration at all in fixing the protection for the American manufacturer. In showing the unwarranted advantage that would be given the trust manufacturer under a liberal interpretation of the reasonable profit clause, Mr. H. E. Miles, chairman of the tariff committee of the National Association of Manufacturers, and an opponent of the reasonable profit clause, says:

> These trusts, having full control of the domestic market, as at present, and deeming, say 20 per cent a reasonable profit, can charge $1.30 for an article costing 90 cents to produce in Europe and $1 here, and the European would have to pay 45 per cent duty with only a real difference of 10 cents in cost of production. And when he has paid this 45 per cent he is still selling his product in the United States at his own bare cost, with no profit. He will not ship on this basis, it is hardly necessary to say, but will insist upon at least 10 per cent. This he will not get, and so the home trusts can add all or a part of this additional 10 per cent to their selling price before any relief comes from foreign competition.

To be fair, the tariff should be the difference between the cost of production at home and abroad plus the difference between a reasonable profit at home and abroad. In other words, the reasonable profit should be figured as a part of the cost of production both at home and abroad. But it is easy to imagine that the American manufacturer who has been accustomed to extortionate protection will expect to count interest and dividends as a part of the cost of production and then add a reasonable profit above that in determining the amount of the tariff. There is no reason for assuming that the foreign manufacturer will place his goods in our market at the cost of production, making no profit himself, but, if he should, why not let the American consumer get the benefit of this generosity?

The South is evidently very much aroused over Mr. Bryan's attitude on the negro question, and there is strong probability that he has miscalculated the temper of the Southern whites. He made a bid for the support of Northern negroes, assuming that the Southern States are safely Democratic and that he will get them regardless of anything he may say that is displeasing to them. The Charleston News and Courier is one paper that has been vigorously criticising his effort to play both sides in the South, and it has demanded from him plain answers to the following questions upon the subject of the negro:

> First—If elected President, Mr. Bryan, will you attempt any interference with the conditions of negro suffrage in the Southern States?
>
> Second—Will you make any effort to restore the negro soldiers who were dismissed from the military service of the country because of the affair at Brownsville, Texas?
>
> Third—Will you appoint negroes to official places in the Federal service?

Mr. Bryan can hardly refuse an answer to questions from that source.

Five carloads of new-crop wheat reached Portland Tuesday, the first of the season to arrive at tidewater. The date of arrival is a few days later than last year, and is earlier than in some previous seasons, but is an interesting commercial event, marking as it does the beginning of what is expected to be the best grain season in the history of the port. It will be nearly a month before any of this new-crop wheat is put afloat, but there is still a large number of old-crop cargoes en route from Portland, and long before the last of those vessels arrive out the endless procession of grain ships that moves between Portland and Europe will have had numerous additions from this end of the line.

The old wooden shacks still standing among the modern brick structures are a constant menace to the city, and yet there seems no practical means of getting rid of them. They furnish the material upon which fires may spread to buildings which could be easily saved but for the presence of these old structures. So far as the city as a whole is concerned, a fire that destroys a lot of the old wooden shacks is a blessing, but, unfortunately, an occasional brick building must go with the wooden. In the fire Tuesday a large portion of the city was endangered, and but for the efficient work of the fire department the loss would have been many times greater than it was.

Judge Grosscup found no evidence that the Standard Oil Company of Indiana was the same Standard Oil Company that operates in New Jersey. Strange no one had ever thought of this before. When a man goes into a business which violates the postal laws, or some other Federal statutes, he should be known as John Smith of New Jersey and John Smith of Indiana, according to the place in which he may be operating, and thus, perhaps, he can avoid responsibility for some of his misdeeds.

The American Sheep Breeder, of Chicago, says that there are 60,000 sheepowners in Ohio and that 59,500 of them are for Taft for President. Here in Oregon there may be some doubt whether the sheepmen are for a Democrat or a Republican for President. It is said that a lot of them voted for a Democrat for Senator, and a Senator has pretty nearly as much to say about tariffs as a President has.

What to do with our ex-Presidents is a question that would be answered to the satisfaction of a great many people if Roosevelt were appointed a member of the Supreme Court, notwithstanding he knows more law by reason of his sense of justice than he does because of legal study.

The suit brought by Count Boni Castellane against his former wife has been put over to the Fall term of court. If Helie de Sagan rolls 'em as high as reported, there will be nothing left worth suing for by the time the Parisian court meets next Fall.

The Boston Transcript describes the killing of the leader of its desperado band as an "unparalleled scene." Not even the sensational performances of Tracy and Merrill can surpass the desperate deeds of the daredevils of wild and woolly Boston.

Nebraska has demonstrated that gambling is not an essential feature of a successful race meet. Such, too, was Oregon's experience. The best races ever seen at Salem were without the aid of the interest bookmakers can bring.

A Los Angeles man has created a sensation by digging up some gold nuggets in his back yard. Any kind of gold in Los Angeles that was not brought in by a tourist would naturally be expected to make a sensation.

The proverbial nine lives of the cat will fall far short of the record unless something is done to prevent the steamer Minnie E. Kelton from becoming a wreck every day or two, and sometimes twice a day.

There's a poor prospect of President Roosevelt coming to Oregon to hunt with Harriman in Klamath County. When Roosevelt "roughs it" he doesn't want the luxurious surroundings of Pelican Bay Lodge.

Licenses have been granted permitting the sale of beer "with meals" at Mayfield, adjacent to the Stanford University campus. Do pretzels constitute a "meal"?

All three parties—that is, the Republican, Democratic and Independence—declare in positive terms for a strong Navy. Hobson did it—we don't think.

ARE THE LIQUOR MEN TO BLAME?

Remarkable Interview With a Portland Wholesale Dealer.

Sacramento (Cal.) Bee.

The writer was engaged in conversation with a wholesale liquor dealer the other day coming down from Portland, Or., and the conversation turned upon the saloon question.

To the surprise of the writer, the liquor dealer acquiesced in everything put forth—that the liquor men had brought upon their own heads the wave of Prohibition; that they had been arrogant, insolent, dictatorial, contemptuous of the rights of others, utterly regardless of the pleas for home and family, trampling upon all moral considerations and all public and communal decency in their insane greed for the almighty dollar.

The wholesale liquor dealer went on to state, from his own personal knowledge, that in the cities of the great Northwest the lowest dives were under the control if not the ownership of the great breweries and wholesale liquor interests, and he was certain that a somewhat similar condition existed in every city on the Pacific Coast. He called attention to the prominence now in the reform calcium light of those same wholesalers, and gave it as his belief that their repentance came too late; that the people proposed to give them a much severer lesson before they got through; that the wave of Prohibition would go farther and farther before the waters would recede, that ultimately he believed the pendulum of public indignation would swing back, and that the liquor question would be treated sensibly and with a proper regard for individual rights and individual liberty; but that never again would Bacchus, and Gambrinus, and John Barleycorn be permitted to lord it as they had been lording it; that hereafter they would have to be servants of the public, and very respectful servants, too—they would no longer be tolerated as masters.

And that wholesale liquor dealer went on to declare that personally he was glad the liquor men were being taught a severe lesson, and would be taught a severer one yet before public wrath was appeased. He was willing to say that, although he is in the business, and although it would cost him a pretty penny before the lesson was over.

The Bee does not think this wonderful forward movement to Prohibition is permanent. It believes it to be the result of a great public wrath, long smothered under the most arrogant and insolent imposition, but irresistible when once it breaks forth. It will have to spend its fury, no matter how much the wholesalers in their 11th-hour repentance may strive to check its onward march. And, its fury expended, the pendulum will swing back to common sense, and reason, and justice.

And then the hands of the law will not point to Prohibition, but to a sane, just regulation and control under a high license—a regulation and control which will tolerate none of the arrogant indecencies of the past; but that will protect the home and the fireside; that will wipe out the dirty dive and the low saloon; that will confine the saloon business to certain districts, and that will forever wipe it out from the residence portion of our cities.

OREGON LEGISLATURE OF 1860

Effort to Find if Any but Mr. Conyers Are Living.

SALEM, Or., July 27.—(To the Editor.)—Referring to the items in The Oregonian on July 26 and 27, regarding the membership of the Oregon Legislature of 1860, I inclose to you the entire membership:

Senate—J. S. McIteeny, Benton; James K. Kelly, Clackamas and Wasco; Solomon Fitzhugh, Douglas; A. M. Berry, Jackson; D. S. Holt, Josephine; A. B. Florence, Lane; James Munroe, Lane; Luther Elkins, Linn; H. L. Brown, Linn; J. W. Grim and E. F. Colby, Marion; J. A. Williams, Multnomah; William Taylor, Polk; William Tichnor, Umpqua, Coos and Curry; Thomas R. Cornelius, Washington, Columbia, Clatsop and Tillamook; John R. McBride, Yamhill.

House—Reuben C. Hill and M. H. Walker, Benton; A. Holbrook, W. A. Starkweather and H. W. Eddy, Clackamas; C. J. Trenchard, Clatsop and Tillamook; S. E. Morton, Coos and Curry; R. A. Cowles and James F. Gazley, Douglas; G. W. Keeler, J. B. White and J. N. T. Miller, Jackson; George T. Vining, Josephine; Joseph Bailey, John Duvall and R. B. Cochran, Lane; J. Q. A. Worth, Bartlett Curl, Asa McCully and James P. Tate, Linn; Samuel Parker, Robert Newell, C. P. Crandall and B. F. Harding, Marion; Benjamin Stark and A. C. Gibbs, Multnomah; Ira F. M. Butler and C. C. Cram, Polk; J. W. P. Huntington, Umpqua; Robert Mays, Wasco; Wilson Bowlby, Washington; E. W. Conyers, Columbia and Washington; Medorem Crawford and S. M. Gilmore, Yamhill.

John Duvall, one of the members from Lane, was living, so I understand, not a great while ago, somewhere in Nevada. But, unless it is he, all are dead, so far as I know. I send this list to be published, so as to ascertain, if possible, if any others are living save Mr. Conyers. It is certainly worthy of more than a passing notice that one who was a member of the Legislature in 1860, and passed through the stirring scenes of that day, should be returned 48 years afterward, in his full vigor.

J. C. MORELAND.

DO NOT WIDEN UNION AVENUE

No Reason to Destroy Property Built Up With Care.

PORTLAND, July 27.—(To the Editor.)—It being the wish of those having in prospect the widening of Union avenue that property-owners "speak up" on the matter, I wish to be known as being unalterably opposed to the idea. I feel the loss would be greater than any possible gain. Wide streets, well paved, are things of beauty and utility, if properly made and cared for; but in such a case as this one, there is no good accruing at all commensurate with the loss of miles of cement sidewalks already laid, lawns of many homes ruined for all time, shade trees that are a delight and comfort and joy converted into brushwood, and our already small city blocks made smaller by a process equivalent to removing the eyelids from one's face. Oh, no; don't huddle the occupants closer together in order to give a broad avenue through which to view the wholesale destruction. A modern, hard-surface pavement (preferably bitulithic from my standpoint) I heartily favor; but widening the avenue—never! The end does not justify the means.

LILLIAN C. OLDS.

Hobnails in Boots Cause Bad Fire.

Jersey City (N. J.) Dispatch.

Hobnails in boots worn by Mrs. Josephine Fabo struck grains of powder in a fireworks factory in Jersey City, causing an explosion in which the woman was fatally burned.

LAW THAT DOES NOT PUNISH

Murderers and Other Offenders Freed on Impractical Technicalities.

In view of the decision in the Standard Oil case in Chicago the following trenchant criticism of the tendency of the courts to "follow abstract reasoning to the vanishing point" regardless of practical results, will be read with interest. It was written by a Denver lawyer, James G. Rogers, and appeared in the New York Independent:

That "the administration of the criminal law in all the states of the Union is a disgrace to our civilization," is a statement credited to William H. Taft. Sidney Brooks, in the London Chronicle, says, "the criminal law of America is a refuge and a comfort to the lawyer and the criminal, and a menace and vexation to the rest of the community."

What do these charges mean? Such affairs as the following:

In 1900 a man named Huntington was indicted in California for performing a criminal operation. He was tried for murder, and convicted of manslaughter, a lesser degree of crime. The court sentenced him to ten years' imprisonment, a substantial penalty. He appealed. Three yeears later the Appellate Court reversed the whole conviction, because the trial judge told the jury that he might be convicted of manslaughter — an instruction that could and did act only in his favor. In March, 1907, they started to try him again. The doctrine that no man can be twice tried for the same offense met the court at the threshold. The conviction of manslaughter had, the decisions declare, acted as an acquittal of murder, a greater degree of homicide. The judge, in an effort to find some road to justice, attempted to try him for murder, but to punish him, if convicted again, only for manslaughter. The Appellate Court blocked the whole proceeding, and ordered the convicted criminal discharged. He cannot, the court says, be tried for manslaughter because he could never be accused of it; nor for murder, because he has been acquitted. "He may not be convicted," the court argues, "of a crime which the evidence shows he did not commit, for the reason that the evidence shows he did commit another crime of which he has been acquitted." That they unquestionably thought he had committed something was quite immaterial. He went free.

* * *

In Georgia, about the same date in 1907, the second trial, for murder, of a man named Bagwell came up. On the first trial the jury had disagreed, and had hurriedly been discharged by the judge, without haling the prisoner out of his cell into the courtroom. The Supreme Court would not permit him to be tried again. Why? Because the constitution declares that no man shall be twice tried for the same offense except in case of mistrial, and, moreover, a man must be brought face to face with the witnesses against him. The dismissal of the jury in his absence amounted to an acquittal.

A few months before the same court in Georgia reversed a conviction for receiving stolen cotton. The prisoner had been caught with the 800 pounds of cotton of a peculiar sort, the sort stolen, locked in his storehouse and wet with the night rain. But in the trial the prosecutor had forgotten to ask somebody, anybody, whether cotton was a thing of value. The court or jury, it appears, could not be permitted to know that 803 pounds of seed cotton had value without being told.

* * *

In Montana a jury convicted a man named Penna of murdering another man's wife. He was sentenced to death. He had followed her across the ocean. Then, one day, he learned that she was a married woman. Penna knocked at the door and shot her dead. The defense was insanity. On appeal the conviction was reversed. The trial judge, among a string of other instructions to the jury, had happened to mention the fact that if they found from the evidence that the defendant had a good character, they might consider that as a circumstance tending to establish his innocence. As a matter of fact there was no evidence at all introduced regarding Penna's character. The instruction to the ears of the Appellate Court was clearly prejudicial to Penna. The conviction was unfair.

In Indiana, in 1903, one James Gillespie was to be tried along with three others for the murder of a woman of the same name. It was evening when the jury was finally impaneled and sworn. The court adjourned over night. In the morning the public prosecutor, before the case was opened, asked that one juror be removed and another substituted in his place. The juror, the prosecutor had learned over night, had falsely sworn the day before that he was not related to any of the defendants. As a matter of fact he was related. The court gave an opportunity to substitute another juror. The case went on; the jury disagreed. On a second trial Gillespie was convicted and given a life sentence. The Supreme Court turned him loose. The substitution of that first juror was manifestly an acquittal of the crime. It is quite plain.

* * *

In Illinois, in 1907, a defendant, Elgin by name, was found guilty of setting fire to a creamery to defraud an insurance company. But the judge, in describing the elements of the offense (and describing them correctly) had casually used the word "arson." Moreover the jury, in finding Elgin guilty, had found him "guilty of arson, as charged in the indictment." The indictment was invulnerable, the conviction was clear; the jury had had no opportunity to be misled, the instructions were all fair, but "arson" is the burning of a dwelling-house and not a creamery. Reversed.

In Montana, somebody stole $7000 from the Bank of Somers. A jury convicted Peterson. In instruction No. 11, the trial judge had told the jury that "to find the defendant guilty you must find that he appropriated the property without color of right and authority and with intent to steal the same." Peterson appealed, and the Supreme Court sent him back for a new trial. It was clear to them that the jury was not instructed that there must be a criminal intent in the act. That the court had told the jury so much in so many words in instruction 6 was quite beyond the question. Instruction 11 did not say so. It only said intent to steal. The jury had unquestionably been misled.

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These examples are not abnormal, and absurd cases singled out from the long history of American jurisprudence. They are cited almost at random from the decisions of the year 1907. For the purpose here required, they should be so chosen, as fair samples of the sort of criminal procedure that American courts are administering. The cases, moreover, are not stated in the strict legal phraseology and detail that a lawyer would require. Behind every decision mentioned there is more or less of a chain of legal logic, which is here abbreviated or omitted. That chain of reasoning is of no interest to the lay citizen. At best it is only a means to an end. When that end, namely, the intelligent administration of criminal justice, fails, the logic is rubbish.

That these decisions are perverted law, that the legal conditions which permit such decisions are vicious and unsafe, that the preservation of order has been lost sight of in an effort to follow abstract reasoning to the vanishing point — in short, that the charges of Taft and Brooks are justified, seems to the writer very clear. In only one of these cases was there any other ground than that named above assigned as a reason for reversal. In none of them did the court find that the prisoner's guilt was doubtful. In none of them did the court express any regret that justice was being tripped. It was examining merely a problem in mathematics. The problem had not been solved according to a formula. The court's eyes were on the formula and not the answer. It was not the prisoner, but the judge, who had been on trial.

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The cases fall chiefly under the operation of three or four dogmas. The doctrine of double jeopardy, mentioned above and expressed in over 40 American constitutions, is at the root a provision against political persecution. "No man once acquitted shall be tried again for the same offense." This doctrine has been distorted out of all resemblance to its sense or origin. Intelligently used it is an inestimable safeguard against such occurrences as the recent persecution and conviction of Harden, editor of the Berlin Zukunft. As used in the United States, it produces monstrosities like the Gillespie and Huntington trials cited above. Something the same is true of our doctrine regarding the impartiality of instructions given by the court to a jury. It is a defense against untrustworthy judges. In the English courts, even in our own Federal courts, the judges without any miscarriage of justice habitually add the advantage of their own intelligence to that of the "twelve good men and true." Not so with the state courts. The judges are trimmed and measured to delicacies of expression that not one juror in a thousand could detect, much less feel the influence of. To the rules of evidence, to the construction of indictments, to a dozen other legal rubrics, the same criticism fairly fits. Some of these evils legislation can eradicate. But legislation cannot bind a court to any interpretation of a constitution, and legislation, when it tampers with legal procedure, is a risky instrument.

The fault lies, of course, in the attitude of the legal profession, and chiefly in that of the judges. Such an attitude does not exist in England. It exists in America mainly for one reason. The balance of ability and intellectual force is on the wrong side of the bar that separates court from counsel. The job, is still looking for the man in America, and not the man for the job. As a result, the attraction of a fixed income, even of a very considerable income, is not equal in the eyes of the capable lawyer to the advantage of freedom and the possibilities of big fees and big speculations that exist outside the judiciary. This situation exists most strikingly in the Western and Northwestern States; and it is in those states that the most frequent failures of legal procedure occur. It may be that the short terms of American judges play some part in the matter. Be that as it may, the most forceful lawyers of America are not the judges, but the advocates. As lawyers are bound to do, as lawyers always will do, these advocates urge the defense of their clients to the minutest quibble that may avail. Instead of being capable of meeting and defeating this tendency to mere microscopic sophistry, the courts have given way before superior force.

Perhaps the solution lies with time and economic growth. Today the average lawyer is too close to the law, the average citizen too far from it, to detect, at any rate to comprehend, how far the criminal law has swung from its orbit. Newspaper writers, whose occupation it is to follow the course of criminal trials, make occasional hue and cry. A bombshell like the Schmitz fiasco in California ought to stir even the Man on the Street.

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