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PORTLAND, WEDNESDAY, OCT. 28, 1908.


### MERELY A "RATTY" CAMPAIGN EXPEDIENT.

A country might, doubtless, convert every important activity of its citizens into a public function, but it doesn't. That, however, is what the Socialists contend for. Yet some things are accepted as public functions. Government undertakes transportation and delivery of the mails. It controls and directs and pays for maintenance of the public schools. It creates and supports courts of law and of justice, through which you may establish and maintain your rights. It makes general rules for control of fire and life insurance companies, but doesn't require you to insure. You may insure your crop of grain if you want to, either in the field, in the barn or in the warehouse; but Government does not require your crop to be insured. Yet if a man wantonly burns it in the field or barn, or fails to account for it after he receives it in warehouse, Government has provided you with a remedy at law. Not otherwise with your money in bank. If you don't get it on demand, Government will support your claim for it at law. But it will not make other bankers (or warehousemen) pay your loss. That, however, is what the demand for insurance of bank deposits means.

The line here is perfectly distinct and clear. To insure bank deposits, or to require them to be insured, is not a function of Government, any more than to insure your wheat. If you are wronged, the law is at your service, and Government will assist you to obtain redress. But it will neither pay your losses, nor compel sound warehouses or banks to pay your losses, suffered through unsound ones. In fact, it could not do so, if it tried. It doesn't attempt to compel fire insurance or life insurance companies, carefully conducted, to contribute to payment of losses through those improperly conducted. The same, precisely, as to insurance of bank deposits. You must judge for yourself where you will deposit your wheat or your money.

The Bryan babble about this matter is exceedingly tiresome. The proposition is not an economic one; it is simply a shallow political expedient for the purposes of an election. Finding it impossible to promote the silver folly any further, Bryan has taken up this bank deposit scheme as one of his expedients for a political campaign. It never will be adopted nor even tried; because it is not possible to compel good banks to insure bad ones.

### THE SALOON MAN'S ERROR.

If the better element in the saloon business were gifted with a sense of humor, they would smile whenever any of their disreputable companions express surprise at the increasing public sentiment against the traffic. Two officials of the local Retail Liquor Dealers' Association appeared before the license committee of the City Council Monday, and, without the privilege of the floor being granted them, poured out a tirade of profane and abusive language against Councilman Driscoll, who failed to accede to their wishes. Incidents of this nature, together with repeated violation of the laws, is one most powerful influence now aiding the prohibitionists. Arrogant attempts of liquor dealers to override the law and intrude their presence where it is not wanted are steadily lessening the territory in which they will be permitted to do business.

The saloon that will not close and remain closed in accordance with the reasonable laws provided will soon be permanently closed by local option or some other form of prohibition. So forcibly has this fact been driven home in the minds of the better element of the saloon fraternity that in most places they are actually aiding the authorities in prosecuting the lawbreakers. This effort to stay the march of prohibition by demanding reform in the liquor traffic and a strict obedience of the law has become a National issue among the better class of saloon men, and they are giving general circulation to a very sensible address by President Gilmore, of the National Model License League, in which he says, among other things:

> The edict has gone forth that saloons must obey all laws; that they must not sell to intoxicated men, nor to habitual drunkards, nor to minors; that they must not exhibit improper pictures nor connect themselves with gambling resorts; in a word, that the saloon must not be a nuisance. The press of the country has so declared, the ministers have so declared, the law and order leagues have so declared, the great conservative element in society has so declared. These forces for good are all-powerful in society, and our trade cannot afford to oppose them.

President Gilmore concludes his remarkably clear summary of the situation with the statement that "our trade needs a housecleaning, and we should aid the good work along. The saloon that is run in violation of the law or of decency should be put out of business, and the better element in the trade should continue to lead in the reform." These plain facts, so tersely stated by Mr. Gilmore, have been understood by the more intelligent liquor men for a long time; but the ignorant and disreputable element have not yet learned the lesson, nor will they be convinced of their error until a still larger area throughout the country becomes "dry."

Portland's regulations of the liquor traffic as provided by law are not unreasonable, and when they are subject to continued and flagrant violation the effect is to drive into the prohibition forces at election time large numbers of broad-minded people who under other conditions would have refused to vote with the temperance people. If the saloon men do not wish to have their privileges still further curtailed and their territory still more restricted, they will do well to adopt the suggestions made by Mr. Gilmore and join forces with the authorities in the prosecution of every lawbreaker in the business.

### SUPREME COURT AND INCOME TAX.

We have from Kalama (Wash.) an inquiry as to the decision of the Supreme Court of the United States on the income tax, and as to the political or party association of the judges who divided on it.

There were nine judges. Chief Justice Fuller delivered the opinion against the constitutionality of the tax. Field, Gray, Brewer and Shiras coincided.

The dissenting judges, who stood for the constitutionality of the tax, were Harlan, Brown, Jackson and White.

Chief Justice Fuller, who delivered the opinion, was and is a Democrat. He was appointed by President Cleveland. Justice Field, of California, also a Democrat, was appointed by President Lincoln. Field's opinions, throughout his whole career, were among the clearest and ablest ever delivered from the Supreme Bench. Gray, Brewer and Shiras, whose opinions agreed with those of Fuller and Field on this question, were Republicans.

Of the dissenting judges, Harlan and Brown were Republicans and Jackson and White were Democrats.

Observe that of the five who turned the income tax down two were Democrats. One of the two (the Chief Justice) wrote the opinion. Hence, the assertion of several eminent Democratic campaigners in Oregon and Washington, including that of our distinguished friend, Alex Sweek, jurist, chairman also, and right-hand man of the great Governor of Oregon and prospective Senator,—that the decision against the income tax was made by a Supreme Court whose members divided on party lines—the Republicans pronouncing against the tax and the Democrats upholding it—is only just about as erroneous as everything else in Bryan campaign literature and effort,—yet perhaps not more so.

It might be stated that the minority dissented only on unimportant and secondary points. But it is not necessary to go into this detail.

### DISTRUST, AND THE REASON.

Much indignation is manifested by supporters of Mr. Bryan against those citizens who express apprehension of unfavorable consequences to the business of the country, should Bryan be elected. There is no need of any distrust whatever, they exclaim, for Mr. Bryan will earnestly desire a successful administration, which will be impossible except in a period of prosperity. And besides, who can imagine that he would wish to see the prosperity of the country arrested?

This does not meet the point of distrust. They who have the apprehension about Mr. Bryan do not suppose him an intentional wrecker. They think he has defects of judgment and of temperament that unfit him for the great office. It is known that he has advocated doctrines dangerous to the Nation; and distrust of his qualities for the Presidency cannot be answered nor removed by assertion of his good intentions.

The remembrance of Mr. Bryan's assaults on the gold standard, as "a conspiracy against the human race," and the fact that he has not abandoned his "bimetalism," would alone explain, as the Chicago Tribune justly puts it, "the profound distrust of him among business men, investors, and all voters who sufficiently realize their interest in the restoration of confidence."

Again, as the same journal remarks, the dangerous character of Mr. Bryan's political judgment is not revealed by his financial heresy alone. His declarations on the subject of Government ownership of railroads are also kept in mind.

On this socialistic doctrine, as on the money standard, he is silent for the present, but the remembrance creates apprehension, which is not relieved by the features of his present platform, which more or less threaten business stability and cause men to say, "Wait till we know whether Bryan is to be President, or not."

Nobody supposes the country will sink—in any event. But Bryan's candidacy is a source of fear and distrust throughout the country. Nobody, however, has apprehension of any ill consequences to business, industry and investments from the election of Taft. Bryan has made himself known, during many years, as a revolutionary radical. Herein is the reason of the distrust.

### THE RETURN OF PROSPERITY.

The surplus revenues of the New York Clearing-House banks for the week ending last Saturday were $32,880,000 in excess of legal requirements, and had reached a total of $387,413,000. The statement was particularly interesting, as it is the last to appear before the anniversary of the rich man's panic, which played such havoc in financial circles one year ago. The marvelous recuperative powers of the country are nowhere shown to better advantage than in the figures for last week as compared with those for a year ago. The big slump in reserves came in the last week in October, and between October 26 and November 2 the reserves shrank from $254,000,000 to $224,000,000, the figures being nearly $39,000,000 below the legal requirements.

This shortage in the surplus reserve reached $52,000,000 at the end of the week of November 9, and on November 23 touched high-water mark with a shortage of $54,000,000 below the legal requirements. That date marked the turn of the tide, and between January 4 and January 11 there was a sudden jump in the reserves from nearly $12,000,000 under legal requirements to more than $6,000,000 in excess of those requirements. From that date the financial condition began to improve, and the last week in June, before the crop-moving demands became very heavy, the surplus above legal requirements had reached the great total of $66,000,000. Since that date the demands for crop-moving and other purposes have reduced the size of this surplus about one-half. It still remains far enough above the amount required to indicate a great plethora of money, and, as the demand for crop-moving funds is about over, it is hardly probable that it will be reduced. The prosperity of New York, which in degree always reflects the prosperity of other parts of the country, is shown in deposits in the clearing-house banks and other banks and trust companies of more than $2,500,000,000.

The trust companies, being exempt from the regulation of the clearing-house banks, are not carrying such large stocks of cash on hand, but the total cash held by all of the New York banks is in excess of $500,000,000. There will be no material reduction in the size of this surplus reserve that remains inactive and comparatively useless until after the election of Mr. Taft. It will then get back into the channels of trade, where it can be earning something. There is an abundance of money in the country, and all that is lacking to get it to work is the possibility—daily becoming more faint, but still a possibility—of Bryan's election. With that uncertainty removed, the last vestige of the rich man's panic of a year ago will speedily vanish.

### ROOSEVELT'S BIRTHDAY.

Mr. Roosevelt at 50 may reasonably expect to enjoy thirty years more of life and work. In all essentials he is still a young man. His physical vigor is unimpaired. Mentally it is quite likely that he has not yet reached the acme of his attainments. We may expect his mind to grow for some years yet and his character to gain in judicial poise though not in decision or conviction. Thus far it is the militant side of Mr. Roosevelt's being which has been most conspicuous. As the years pass the philosophic, reflective side will appear. His conduct has been guided in the past more by sound instincts and innate principles of justice than by deep study or wide information. Leisure will give him an opportunity which he has never seen since the days of his boyhood to read, to ponder, to theorize.

What will be the fruit of the meditations of that wonderful brain upon the problems of life as they present themselves to our generation? Will his mature philosophizing confirm his instinctive convictions? Will he remain in his riper years the same protagonist of the square deal which he became in his youthful enthusiasm? Or will age bring to him that same chilling of the sympathies and hardening of the heart which it has brought to so many others? Roosevelt championing the rights of money against the rights of man would be a startling spectacle, but one not by any means unheard-of. Still it is more likely that he will develop as Gladstone did, becoming more and more liberal with advancing years and deeper study. Gladstone died the revered leader of the Radicals, whom in his youth he abhorred. Roosevelt has had much to say against the most radical of our great parties. Would it not be interesting if his 80th year found him their leader?

### MR. TAFT'S RECORD.

There is an article in the September McClure's by George W. Alger which the President advises Mr. Gompers to read. It gives an account of Mr. Taft's labor decisions with some instructive comment upon them. Other people besides Mr. Gompers might find the article edifying, since it clears up much misrepresentation and presents the respective rights and duties of both labor and capital with admirable temper and clearness. The Oregonian reprints this morning enough of Mr. Alger's essay to give a connected understanding of his train of thought, but it will be well for the reader to turn to the magazine and go over the omitted sections also.

Mr. Alger is not a partisan. He has written much on social topics and in everything he has published there is a deep sympathy with the trials of the workingman and an unmistakable desire to see his condition bettered. No writer of recent times has more clearly perceived the shortcomings of the courts in their "labor" decisions or has criticised unjust judges more boldly. In this very article Mr. Alger pillories the West Virginia Judge, who, in 1902, calumniated the Miners' Union and forbade the striking men to assemble on the highways. This bitterly biased jurist declared when he made his order that no injunction had ever issued in a labor case which was not justified by the facts. Mr. Taft says this statement is not true. He knows of many injunctions which were never justified, and some of them he has himself dissolved. "I agree," he says, "that there has been abuse in this regard."

Mr. Alger points out that the country could not be well governed under an administration which represented a class, whether this class consisted of the laborers or the capitalists. The President must stand for all sections of the Nation and all ranks of the people. In Mr. Alger's estimation, Taft's greatest merit is his universally representative character. In his decisions when he was a Judge he held the balance even between the workmen and their employers. Neither side received any special favors from him, and to both he meted out the same unwavering justice. Surely this was all that a fair-minded man could have asked of him. Is it honest or patriotic to expect a Judge on the bench to load the scales of justice? If one Judge loads them for the advantage of labor, who can complain if his colleagues do the same for capital? We have had enough of bias and shiftiness in the courts. Let us do away with it altogether. Let our Judges be appointed not upon the recommendation of Mr. Archbold, of the railroads or of the labor unions, but solely because they are great lawyers and courageous men of unblemished integrity, and then all the courts will begin to measure up to the standard which Mr. Taft set long ago when he was on the Federal bench.

In the current number of The Independent there is a significant article entitled "The Issue Behind the Issues." Mr. Taft is singularly qualified for the chief magistracy of the Nation just at this time because there is much reason to believe that he understands the issue behind the issues. He recognizes the struggle of the people to cast off the entanglement of false representation which thwarts and baffles their best efforts. Roosevelt is immeasurably popular because he has aided the voters to escape from the enchantment of delusive politics and come face to face with public questions. Taft would do the same thing. He would work just as vigorously and perhaps even more wisely than his predecessor to emancipate the Nation from the thralldom of dishonest representation. He would labor just as earnestly to save us from that slavery to precedent and forms which the privileged interests have sought to impose. Mr. Taft is a man of realities. Dead technicalities which mock the substance of justice mean nothing to him. If he is elected President, he will be a great reforming power in the Government. No laboring man need fear that Mr. Taft will not hold the balance of justice perfectly even between him who works and him who employs the worker.

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The German steamship Dieke Rickmers, carrying 7000 tons of wheat and drawing twenty-five feet of water, crossed out of the Columbia Sunday without feeling the ground or experiencing the slightest difficulty. The gasoline schooner Della, drawing about seven feet of water and carrying about twenty tons of produce, while crossing into the river a day later struck on the sands at the lower end of Sand Island and narrowly escaped destruction on Clatsop Spit. These two items pair off to excellent advantage, and are referred to some of the Columbia River "knockers" who have a tendency to magnify the mishaps that are occasionally noted at the entrance of the Columbia as well as in all other ports where there is a considerable tonnage moving. When a twenty-ton schooner grounds near a channel through which a 7000-ton steamer passes in safety without difficulty, the odium of the disaster cannot be placed on the channel.

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Governor Patterson, of Tennessee, seems determined to make night riding, arson and murder very unpleasant in his state. He has already succeeded in rounding up more than sixty of the cowardly assassins who participated in the lynching of an unarmed man, whose only offense was his refusal to allow trespassers on his premises. It is, of course, quite plain that any man who would, under cover of darkness and behind a mask, commit a dastardly crime, is a physical as well as a moral coward. Fear of punishment maintained by the actual infliction of a penalty is the only deterrent from a general epidemic of outrages of the Tennessee type, and the dark hues which the night riders have given this blot on our civilization will be brightened a little if punishment, swift and ample, is inflicted on every guilty man in any way connected with the outrage.

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Negotiations for the purchase by Miss Elkins, of Virginia, of the Duke of Abruzzi have apparently been completed, and the transfer will take place at Baltimore in the near future. The reported reluctance of the King of Italy to giving his consent to the marriage has all vanished, and the American millions which go with Miss Elkins will be received with a hearty welcome. The previous hitch in the negotiations was probably caused by desire on the part of Italy to get more of a bonus. While this country is, of course, a gainer by the removal of such snobocracy as the Elkins trash, from an economic standpoint Italy gets far the best of the transaction. Italy "getta da mon," while we get nothing but the disagreeable reputation for trading our cash and females for moth-eaten European titles.

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Weyerhaeuser, the timber king, is said to contemplate following the example of Mr. Harriman by building a Summer resort in the Klamath region. The lumber king, like the railroad king, will be welcome, and if he does as much "boosting" for the scenic beauties and hunting and fishing preserves of Oregon as Mr. Harriman has done, we shall eventually have a large colony of Eastern millionaires spending their Summers and some of their money with us. Localities in which the natural surrounding and the fishing and hunting possibilities are ideal are by no means confined to the Klamath region, for the entire coast country from the Columbia River south abounds in undeveloped Summer resorts of wondrous beauty.

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Democratic organs declare that Republicans everywhere who have voted nothing but the Republican ticket for thirty years are now open and pronounced advocates of the election of Bryan. Well, publish a few of their names. In 1898 and in 1900 The Oregonian published the names of scores of Democrats who were openly advocating the election of the Republican candidates. And they were the names of prominent men, too. If there is such a slump of Republicans to Bryan, surely there are some whose names would be recognized by the voters of Oregon.

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The "gentleman's agreement," which has become quite a feature in modern trusts, has resulted in the conviction at Seattle of a milkman who had effected a combination with other milkmen by which the price was lifted from 8 cents to 10 cents per quart. The unfortunate man who was thus caught in the attempt to "milk" the public was fined $500 and sentenced to ten days in jail. The case should serve as a warning, and if any other Seattle milkmen have a hankering for increased profits, they will probably secure them from the old, reliable method of dilution.

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Those who do not like The Oregonian's estimate of the vote of Oregon next month are at liberty to compile and publish estimates of their own. But it is likely that they will not get much credit unless they happen to conform to The Oregonian's figures.

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The unlawful trusts are all supporting Taft, remarks Candidate Kern. Then the lawful trusts are doubtless all supporting Bryan. That will make it easy for Bryan to separate the sheep from the goats when he is President.

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The Mayor of Seattle is horrified to learn that gambling has been going on there right under the nose of the police. If the Mayor will look around a bit, he will find out that that is where gambling usually is done.

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Mr. Archbold didn't expect those judges ever to do anything for Standard Oil and never asked them to. Mr. Archbold would have the country think he is "easy," but the public isn't as easy as that.

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There is no way to account for the persistent refusal of the Elkins family to acknowledge the engagement of their daughter to a foreign Duke except on the ground that they are ashamed.

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Astoria denies it and says it treated Cap. Hobson well. We believe it. But why did they send Hobson here, where the Japs might "git" him? Though perhaps that is the reason they did send him.

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Bryan narrowly missed running into Taft in a New York town Monday. But there should be room enough in New York for both—before November 3.

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Two women publicly kissed Mr. Bryan right on his fair young cheek. And Hobson four thousand miles away, where the women know better.

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When Mr. Bryan is through here, he might go to Russia and run for Czar. He would have Count Leo Tolstoi's support.

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There are a few more questions Mr. Chanler would like to ask Governor Hughes, but he can't think of them now.

## Rights of a Neutral Public During Labor Strikes

**Attitude of Judge Taft in Three Famous Injunction Cases, Toward Organized Labor—His Decisions Now Quoted on Behalf of Union Labor.**

This is the article that President Roosevelt honestly wished Mr. Gompers to read, as stated in yesterday's dispatches. It is by George W. Alger, another of "Moral Overstrain," and was published in McClure's Magazine for September:

It happens that all the so-called labor decisions which Judge Taft made when on the bench involve directly and primarily the rights of the general public and of outsiders having no direct part in any industrial quarrel, who against their will have been drawn into the warfare between capital and labor. In deciding these cases it has been necessary not only to consider the rights of labor in industrial disputes, **but to pass upon the right of the general public and of disinterested outsiders to be let alone.**

**Veto to Economic Excommunication.**

The first of these cases was one decided by Judge Taft in 1890, when he was a Judge of the Superior Court of Cincinnati. A bricklayers' union in Cincinnati, having about 400 members, had a dispute with the firm of Parker Bros., contracting bricklayers. The union wanted Parker Bros. to pay a fine it had imposed upon one of their employes who was a member of the union, to reinstate an apprentice who had left them, and to discharge another apprentice. Parker Brothers refused to do so. A strike was accordingly called. The union also declared a boycott against Parker Bros., and its business agent issued a circular to material men, contractors and owners, which concluded with this announcement: "Any firm dealing in building materials who ignores this request is hereby notified that we will not work his material upon any building nor for any contractor by whom we are employed. (Signed) Bricklayers' Union No. 1." One of the contractors to whom this notice was sent was the Moore Lime Company, engaged in selling lime in Cincinnati. Parker Bros. were customers of the Moores and the Moores continued selling lime to them, notwithstanding the notice. Another circular was then sent out by the union to its members, which read as follows: "Bricklayers Union No. 1, Ohio. We, the members of the bricklayers' union, will not use material supplied by the following dealers until further notice." And in the list they put Moore & Company. The effect of the circular was to interfere with Moore & Company's business and to cause loss to their customers, who feared a similar fate. On these facts the Moores sued the union for damages, which they claimed had been done to their business by a wrongful and malicious conspiracy. The case was tried by a jury, which gave the Moores $2250 damages. An appeal was taken by the union to the Superior Court of Cincinnati, where Judge Taft presided.

The facts just related show the issue involved. The Moores' employes had no grievance against them. The only grievance which the bricklayers had against them was that they refused to permit themselves to be used as a battering-ram in an assault on Parker Bros. The union insisted on the right to boycott Moore's Lime Company because Moore's Lime Company would not assist them in injuring the Parkers. Judge Taft decided, as other Judges have decided in many cases, that such a combination to injure the Moores **was without just cause or legal excuse and was illegal.** This, so far as the Moores were concerned, was not a strike case, but a boycott, and in his decision **Taft was very careful to draw the distinction and so express himself that the legal rights of labor in a lawful strike should not be impaired.**

The doctrine of excommunication, the great engine of the church in the Middle Ages, has not been revived and transferred from the Pope to the labor unions.

**Engineers' Famous "Rule 12."**

The next decision of Taft's in a labor dispute came after his elevation to the Federal bench, and again involved the same principle—the extent to which the rights of a third party against whom neither labor nor capital has any grievance, can be impaired by involving him against his will in labor disputes. This case arose out of a strike of locomotive engineers on the Toledo-Ann Arbor Railroad in 1893. The strike had been called after numerous conferences between the railroad officials and Mr. Arthur, the representative of the Brotherhood of Locomotive Engineers. It was a legitimate strike, as against the Toledo-Ann Arbor Railroad, for higher wages. The phase of the controversy which came into court for Judge Taft's consideration, however, was not the strike itself, but grew out of an attempt by the union to compel other railroads to refuse to receive freight from the Toledo Road and thereby paralyze that road and coerce it into granting the demands of the engineers.

Some of these railroads thereafter notified the management of the Toledo Railroad that, in view of the threatened actions of their own engineers, they would be obliged to discontinue receiving or forwarding freight for the road. The Toledo thereupon obtained from Judge Taft, in the United States Circuit Court, an injunction against the Pennsylvania Railroad and other railroad companies, enjoining them from refusing to handle its freight and commanding them to perform their railroad functions as required by the Interstate Commerce act, **which made it a criminal offense for connecting railroads to refuse to receive or transport freight from one another's lines.** Mr. Arthur was made a party, and the injunction issued, and sustained after hearing, directed him to rescind his order putting into effect rule 12 of his organization. **The decree did not require the employes of these other railroads to continue to work for the railroads if they saw fit to strike,** but it did require them, as long as they were in the employ of those railroads, to handle the freight of the Toledo Railroad as they would the freight of any other road.

The opinion which Judge Taft wrote in this case is a long one. He quotes the provisions of the interstate commerce act, which clearly made it a criminal offense for the officers, agents, or employes of any of these connecting roads wilfully to refuse to receive and transmit the freight of the Toledo Road, **and declares that the attempt of the locomotive engineers to compel the railroads to commit this criminal offense through this rule 12 was unlawful.** As to the rule itself, he says, after an exhaustive examination of it in connection with the provisions of the Interstate commerce law:

> We have thus considered with some care the criminal character of Rule 12 and its enforcement, not only, as will presently be seen, because it assists in determining the civil liabilities which grow out of them, but also because we wish to make it plain, if we can, to the intelligent and generally law-abiding men who compose the Brotherhood of Locomotive Engineers, as well as to their usually conservative chief officer, what we cannot believe they appreciate, that notwithstanding their perfect organization and their charitable, temperance and other elevated and useful purposes, the existence of Rule 12 under their organic law makes the Brotherhood a criminal conspiracy against the laws of their country.

**The Brotherhood of Locomotive Engineers acquiesced in the criticism of this section of their laws and removed it.** The fact that this organization is in existence today, unimpaired in power and authority throughout the American railroad world, **is an indication of its willingness to recognize and obey the law of the land.** Its conduct in subsequently withdrawing the rule shows that Judge Taft was justified in setting forth with such painstaking clearness the illegality of the rule, with the expectation that its illegality would be recognized and the rule abolished—a confidence which was justified by its results.

**Phelan Sentence in Pullman Strike.**

The next labor decision made by Judge Taft was in the well-known Phelan case, in the great Pullman strike of 1894. The organization with which he was then called upon to deal was of a totally different character from that of the locomotive engineers. **It was one managed in entire disregard of the law, the courts and the public.** Eugene V. Debs, the chief agent of that organization, the American Railway Union, is today the Socialist candidate for the Presidency. In the Pullman strike of 1894 Judge Taft sent one of Debs' chief assistants—Phelan—to jail for six months. If his judicial conduct in this matter merits criticism, here are the facts on which that criticism must be based:

Some of us have fairly hazy notions today as to the Pullman strike and what it was all about. It began in May, 1894. The employes of the Pullman Company, engaged in making cars at Pullman, Ill., went on a strike because of the refusal of the company to restore wages which had been reduced in the preceding year. The American Railway Union, which then comprised some 250,000 railway employes which Debs had organized and over which he was master in control, later indorsed this strike and started in actively to make it a success. The principal means by which that success was sought was by declaring a boycott on Pullman cars.

Phelan came to Cincinnati to carry on this warfare against the Pullman Company by paralyzing, if he could, all the railroads centering there. He did not stop even with the railroads using Pullman cars, but ordered a strike against the Big Four, which used none of these cars. On the day Phelan called the strike in Cincinnati, Debs telegraphed to him to let the Big Four alone if it was not using Pullman cars, to which Phelan answered: "I cannot keep others out if Big Four is excepted. The rest are emphatic on all together or none. The tie-up is successful." Debs replied: "About 25 lines are paralyzed. More following. Tremendous blockade." A few days later Debs telegraphed: "Advices from all points show our position strengthened. Baltimore & Ohio, Panhandle, Big Four, Lake Shore, Erie, Grand Trunk, and Michigan Central are now in the fight. Take measure to paralyze all those which enter Cincinnati. Not a wheel turning between here and the Canadian line."

**"Starvation of a Nation" Illegal.**

On the day that Debs telegraphed Phelan to take measures to paralyze all those lines which entered Cincinnati—work which was already well under way—at the very crisis of the strike, on the application of the receiver of the Cincinnati, New Orleans & Texas Pacific Railway Company, and on a petition which alleged a malicious conspiracy to prevent the receiver from operating that road, Phelan was arrested by an order of Judge Taft for inciting the employes of the receiver to quit their employment and for urging them to prevent others from taking their places, by persuasion if possible, by clubbing if necessary. The receiver asked for the commitment of Phelan for contempt, alleging that the whole boycott was an unlawful and criminal conspiracy, and that, for his acts in maliciously inciting the employes of the receiver, who was operating the railroad under order of the United States Court, to leave his employ in pursuance of that unlawful combination, Phelan was in contempt of court.

Was the combination of Debs and his associates illegal? Judge Taft said that it was, not only because boycotts are illegal under the law of every state in the Union, where the question has arisen, with one possible exception, but because this combination of men, in their efforts to gain their own personal ends, had trampled upon the rights of the public.

After a protracted and exciting trial, in which many witnesses were called and Phelan was fully heard in his own defense, Taft sent Phelan to jail for six months. **Those who believe that the starvation of a nation is within the rights of labor engaged in a private quarrel must tell us wherein this Judge did wrong.**

These three cases are legal landmarks showing the limitations of industrial warfare. They are what the lawyers call "leading cases." **They lay down clearly and dispassionately the law which marks the rights of the public to remain unmolested by the conflict of labor and capital at war.** Such decisions are in American law what the Treaty of Paris is in the law of nations—a declaration of the rights of neutrals.

If, as a candidate for the Presidency, Mr. Taft is to suffer from unpopularity created in any quarter by these decisions which he made as Judge, he must endure it, for the search for popularity is not a part of the functions of a Judge.

The two qualities which make a great Judge are wisdom and moral courage. No great Judge ever lived who did not possess them both. When the Phelan case was on trial before Judge Taft, it was a time of tremendous excitement. It was the very crisis of a great strike. The friends of the Judge feared for his life and asked him not to read his decision from the bench. He read it. The last sentence of that decision directed the Marshal safely to convey Phelan to the Warren County Jail. When he read that final sentence he turned to the packed courtroom and looking squarely into the angry faces before him, said: "If there is any power in the Army of the United States to run those trains, the trains will be run." **To those who honor judicial courage no less than judicial wisdom, such occasions deserve to be recalled and remembered, for they are part of the great traditions of the bench.**

But these decisions are not solely declarations of public rights. They contain statements of the legal rights of labor organizations in strikes, stated so clearly that **the decisions have been cited time and again in subsequent litigation by labor organizations themselves as precedents in their favor. They affirm unequivocally the right of labor organizations to strike to better the condition of their members,** and the right to use peaceable persuasion to prevent other employes from taking the place of the strikers, a right which in some jurisdictions, particularly Pennsylvania, has been denied.

**The Right to Strike.**

Quite apart from his judicial decisions, Taft's position on the strike question is clearly stated in public addresses. Last January, at Cooper Institute, he said to an audience of workingmen: "Now what is the right of labor unions with respect to the strike? I know that there has been at times a suggestion in the law that no strike can be legal. I deny this. **Men have the right to leave the employ of their employer in a body in order to impose on him as great an inconvenience, as possible to induce him to come to their terms.** They have the right in their labor unions to delegate to a leader power to say when to strike. They have the right in advance to accumulate by contributions of all members of the labor union a fund which shall enable them to live during the strike. They have the right to use persuasion with all other employes who are invited to take their places in order to convince them of the advantage to labor of united action. **It is the business of the courts and the police to respect these rights with the same degree of care that they respect the owners of capital in the protection of their property and business."**

**No public man has placed himself more clearly on record on the so-called injunction question.** In his Cooper Union address he said:

> But it is said that the writ of injunction has been abused in this country in labor disputes and that a number of injunctions have been issued which ought never to have been issued. I agree that there has been abuse in this regard. President Roosevelt referred to it in his last message. I think it has grown largely from the practice of issuing injunctions ex parte, that is, without giving notice or hearing to the defendants . . . Under the original Federal judiciary act it was not permissible for the Federal courts to issue an injunction without notice. There had to be notice, and, of course, a hearing. I think it would be entirely right in this class of cases to amend the law and provide that **no temporary restraining order should issue until after notice and a hearing.**

He at the same time expressed himself in favor of having contempt proceedings for violations of injunctions heard by a judge other than the one who issued the injunction. But to the proposal that in such cases the ancient power of the courts to protect their own dignity and authority be taken from them and turned over to juries of laymen selected by interested parties and subject to all the passions and prejudices inevitable in such trials—to this he is opposed.

**The Laborer's Right to Protection.**

The interests of labor in the law are not confined to strike questions. Its rights in peace are no less important than in war. The working people are deeply interested in the enforcement of laws which protect them against unnecessary dangers in employment. The position of Judge Taft on this important question is best shown by the contrast made by one of his decisions (Narramore vs. C., C., C. & St. Louis Railroad Co.) with the leading case in New York on the same subject. Both of these cases involve statutes directing employers to furnish certain specific protection for the safety of employes. In both cases the employer failed to obey the law which required the furnishing of that protection. The New York Court of Appeals decided that notwithstanding the statute, if the employe stayed at work knowing that the employer had not obeyed the law, and knowing the danger created by the employer's failure to obey the law, by the mere fact of his remaining at work, the employe assumed as a matter of law the risks of being injured and could have no claims against the employer for injuries so sustained. This construction obviously makes the protective statute a dead letter and absolutely worthless.

Judge Taft, in a case in which this same reasoning was advanced, and in which the decision of this New York Court of Appeals was cited as an authority, refused to follow it and **rendered a decision which leaves full vitality to protective legislation.** The case was one in which a railroad company had failed to obey the law which required to fill or block frogs and furnish guard rails on their tracks. The plaintiff, a railway employe, kept at work knowing that the frogs were not blocked, and was hurt through the absence of the protection which the statute required the railroad to furnish him. He had a verdict from the jury, the railroad appealed, and its lawyer, Judson Harmon, argued that the verdict should be set aside because the man had kept at work knowing the railroad's violation of the law, and had therefore, by legal implication contracted with the railroad to take all the chances of being hurt. Judge Taft refused to follow the New York case, declaring:

> The only ground for passing such a statute is found in the inequality of terms upon which the railroad company and its servants deal in regard to the dangers of their employment. The manifest legislative purpose was to protect the servant by positive law, because he had not previously shown himself capable of protecting himself by contract, and it would entirely defeat its purpose thus to permit the servant to contract the master out of the statute.

This case has been cited all over the United States by counsel for workmen injured through the failure of their employers to furnish the protection required by statute for their safety.

Judge Taft decided that when a law is made applying to a dangerous business, in which 4000 men are killed and 65,000 are injured every year, the intention was that the **railroads should obey that law, and it should not be nullified "by construction."** In this conclusion he does not lack judicial support of high character.

This, in substance, is Taft's labor record so far as his judicial career is concerned. Its consideration by the general public can be useful but for one purpose, which is this: **A country like ours cannot afford to elect a class President. It cannot afford to elect a President in whose mind the distinction between lawlessness and personal rights is not clear and distinct;** who to please one class will weaken the foundations of the liberty and peace of a whole nation. It can still less afford to elect a President to whom the working people are but pawns on the chessboard, and to whom prosperity means peace at any price by the sacrifice of the rights of the working people, so long as the mills are at work and property is secure in the possessions which it has somehow acquired. The enemies of our democracy are at both extremes.

**We need for President a man who will recognize and protect the just rights of both rich and poor and thereby protect American democracy against its class enemies. By these standards Mr. Taft must be judged.**