JURY TRIAL IN CASES OF INDIRECT CONTEMPT

In the democratic national platform it is said:

"Experience has proven the necessity of a modification of the present law relating to injunctions, and we reiterate the pledge of our national platforms of 1896 and 1904 in favor of the measure which passed the United States senate in 1896, but which a republican congress has ever since refused to enact, relating to contempts in federal courts and providing for trial by jury in case of indirect contempt."

The measure referred to passed the United States senate June 10, 1896. The sentiment in its behalf was so nearly unanimous that no roll call was taken on the passage of the bill. Senator Platt of Connecticut alone made vigorous opposition to it.

This measure then was passed by republican as well as democratic votes.

A cloud of dust has been raised by republican leaders for the purpose of misrepresenting this measure, but the fact remains that it simply proposed to change the existing law by providing that when a person was charged with a contempt of court committed outside the judge's presence, then the accused could, if he desired, have a jury trial.

Although there was no roll call on the passage of this bill, a roll call was taken for the purpose of discovering whether there was a quorum present, and this roll call showed that among the distinguished republicans who were present, and acquiescing in the passage of this measure were the following: John Sherman of Ohio, William B. Allison of Iowa, Eugene Hale of Maine, Joseph B. Hawley of Connecticut, Justin S. Morrill of Vermont, Knute Nelson of Minnesota, Francis E. Warren of Wyoming.

The measure grew out of a resolution introduced January 23, 1896, by Senator Call of Florida. This resolution provided for the appointment of a special committee of seven senators who should be charged with the duty of inquiring into the imprisonment of Eugene V. Debs for an alleged contempt of court. The committee was directed to recommend such legislation "as may be necessary for the just enforcement of the law and the protection of citizens from arbitrary and oppressive exercise of judicial power."

On January 28, Senator Hill of New York offered, as an amendment to the Call resolution, the following:

"Resolved, That the judiciary committee is hereby directed to investigate the whole subject of contempts of court as enforced by the federal court and report to the senate whether any additional legislation is necessary for the protection of the rights of citizens."

These two resolutions were referred to the judiciary committee and on February 4, 1896, that committee speaking through Mr. Hill reported in favor of passing the resolution in this form:

"Resolved, That the judiciary committee is hereby directed to investigate the law upon the whole subject of 'contempts of court' as enforced by the federal courts and report to the senate whether any additional legislation is necessary for the protection of the rights of citizens; and if so to report such legislation."

On March 5, 1896, the resolution as amended by the judiciary committee was agreed to.

On May 6, 1896, the judiciary committee reported the bill favorably. On that day Senator Allen introduced an amendment providing for the right of trial by jury.

When on May 13, 1896, a bill for the government of the courts in the Indian Territory was under consideration, Senator Allen offered an amendment to that measure in these words: "Provided, that in all trials for contempt of court in any United States court, except the supreme court in the United States, the accused shall, on demand, be entitled to a trial by jury." Senator Vilas, who had charge of the bill, protested that Senator Allen's amendment would not be germane to the measure. Senator Allen insisted that it was and he made his speech vigorously supporting his point. Senator Hill of New York, Senator Vilas of Wisconsin, Senator Pugh of Alabama, and Senator George of Mississippi, assured Mr. Allen that if he would withdraw his amendment they would endeavor to co-operate with him in the passage of some such provision in the regular bill relating to contempt. Senator Allen then said that with this understanding he would withdraw his amendment.

On June 9, 1896, the senate, in committee of the whole, proceeded to consider the bill. Senator Hill pointed out in his address to the committee of the whole that the then existing law on the subject was as follows:

> "The said courts (federal courts) shall have power to impose and administer all necessary oaths and to punish by fine or imprisonment at the discretion of the courts contempt of their authority; provided that such power to punish contempt shall not be construed to extend to any cases except the misbehavior be by any person in their presence or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official transactions and the disobedience or resistence by any such officer or by any party, juror, witness or other persons to any lawful writ, process, order, rule, decree, or command of the said courts."

Senator Hill said that it was not intended in the presentation of his bill to reflect upon the judiciary, but "it was intended simply to say that experience has shown that this power may be abused and therefore it is wise to regulate it and restrict it, to prescribe certain rights that the accused shall enjoy, and that, Mr. President, is the object of the pending bill." Senator Hill said that the committee had thought it wise to declare that there shall be two forms of contempt, "direct contempt" or that committed in the presence of the judge, and "indirect contempt," that committed outside the judge's presence. Senator Hill pointed out that these terms, "direct" and "indirect" contempt, had been coined by the federal courts themselves. He pointed out that his bill provided that in any case of indirect contempt "the trial shall proceed upon testimony produced as in criminal cases and the accused shall be entitled to be confronted with the witnesses against him, but such trial shall be by the court or in its discretion upon application of the accused a trial by jury may be had as in any criminal case. If the accused be found guilty judgment will be entered accordingly, prescribing the punishment."

Mr. Hill explained that part of the committee thought that the party should be of right entitled to a trial by jury and that such a privilege should not depend upon the discretion of the court. He said that while the committee was equally divided on this proposition they thought it wise to report the bill in this form and he said that he expected that an amendment would be offered to strike out the words "in its discretion" and changing the "may" to "shall."

Mr. Butler of North Carolina offered an amendment to strike out so that the bill would read "such trial shall, upon application of the accused, be a trial by jury as in any criminal case."

Senator Hill pointed out that, according to the language of the Butler amendment, if the defendant did not make the application for a jury trial there was no provision left for trial by the court. And so Senator Hill suggested that the bill be changed to read in this way: "But such trial shall be by the court or upon application of the accused a trial by jury shall be had as in any criminal case."

Senator Butler accepted Senator Hill's suggestion.

On June 10, 1896, the bill came up for consideration. Senator Allen of Nebraska, who had, on the previous day, again introduced an amendment withdrew his amendment and the amendment as proposed by Senator Butler and corrected by Senator Hill, was agreed to.

The bill was then reported to the senate as amended, and the amendments were concurred in. Then the bill was ordered to be engrossed for a third reading and was read the third time. Mr. Platt of Connecticut, who had vigorously fought the bill, protested against the passage of it "in this way." And he asked that the vote be put. The vice president submitted to the senate the question, "Shall the bill pass?" The sentiment in its favor was so nearly unanimous that the bill passed without a roll call.

Although on the day of the bill's passage the amendment actually accepted was offered by Senator Butler it was Senator Allen who first offered the jury trial amendment and fought at every opportunity for its adoption. Because of this the jury trial bill was known as "the Hill bill and the Allen amendment."

This was the measure which the republican house refused to pass—the measure which the democratic national platform of 1908 endorses.

Republican leaders dare not discuss this proposition on its merits for who in a republic would undertake openly to say that trial by jury is not a right to which the individual is entitled or that such a right may safely be denied so far as society is concerned?

STANDARD OIL DECISION DESCRIBED BY A REPUBLICAN PAPER

> "If this is law it must cease to be law. This artificial creature, the corporation, must not in its ubiquity forever escape the single justice which the natural individual must face. If, through defects in our procedure, an actual identity is now able to escape its own misdeeds by a mere fiction, that fiction should be destroyed by statute.—Chicago Tribune (rep.) Thursday, July 23.

If your republican neighbor is unable to understand, from news reports, the Standard Oil decision, ask him to read an editorial that appeared in the Chicago Tribune (rep.) issue of July 23. For your convenience The Commoner prints that editorial in full. It follows:

THE STANDARD OIL DECISION

With the adverse decision of the United States circuit court of appeals for the Seventh district the twenty-nine million dollar fine passes into our politico-economic history. It was a striking and significant incident, the importance of which will dwindle rapidly in the perspective of time.

Judge Landis' decision is reversed on three chief points. Upon the first the court in effect holds that in prosecution under the Elkins act the burden is upon the government to prove, as bearing upon the question of intent, that the shipper was aware of the lawful published rate. The court in thus placing the burden upon the prosecution distinguishes cases under the Elkins act from cases brought under the statutes against smuggling, the sale of liquor to minors, and other fiscal and police regulations, in which penalties attach irrespective of proved intent.

In thus deciding the court's reasoning follows the general objection made to the Landis decision to the effect that it placed upon shippers a burden of extreme caution and if strictly enforced would necessitate every small shipper's careful and expert examination of confusing tariff schedules to ascertain whether or not the rate he was charged and was paying was actually the legal published rate. This, the court declares, would restrain commerce, whereas the interstate commerce law was enacted to promote commerce by securing fair dealing through uniformity.

Upon the second point, that the number of offenses was the number of cars shipped, the court holds that as the offense denounced by the statute is the acceptance of a concession in respect to the transportation of property, the gist of the offense is the acceptance of the concession irrespective of whether the property involved was carloads, trainloads, or pounds, and that the act punishable is consummated only by the actual payment of the concession by money payment or the offsetting of mutual accounts.

Upon the third point, did the trial court in the fine imposed abuse its discretion, or, in other words, was the fine excessive; the appel-