

The Commoner.

can be misconstrued or misinterpreted, even by one desiring to find a double meaning. Why do the republican leaders attempt to read ambiguity into those words? Simply because they cannot meet the proposition presented. Even Mr. Taft attempts to avoid the issue by saying that "no one has ever maintained that the fact that a dispute was industrial gave any basis for the issuing of an injunction in reference thereto." If it is true that no one now maintains that, then why find fault with our platform on that subject? If nobody opposes our position, we ought to have no difficulty in securing the passage of a law in harmony with this plank.

Upon the jury question Mr. Taft clearly takes issue with us. He is thoroughly aroused by what he regards as a menace to the courts. Here is his lament:

"Never in the history of the country has there been such an insidious attack upon the judicial system as the proposal to interject a jury trial between all orders of the court made after full hearing and the enforcement of such orders."

This would come under the head of "Important, if true." But the fact is, our platform specifically declares that we favor a measure "which passed the United States Senate in 1896, and which a republican Congress has ever since refused to enact," etc., providing for trial by jury in cases of *indirect contempt*. Are not the proceedings of the United States Senate a part of the history of the country? This measure passed the United States Senate more than twelve years ago, and the vote upon it was so nearly unanimous that no roll call was demanded. The bill was not smuggled through without discussion. It was amended in open Senate and the members of the Senate had ample opportunity to understand it. It would have passed Congress and become a law long ago but for the fact that a few large corporate employers of labor have kept a lobby in Washington ever since, and have been able to coerce Congress into ignoring the laboring men's plea.

Mr. Taft is not an unbiased judge where the jury system is under consideration. He is not only known as the father of government by injunction, but he is prejudiced against the jury system. Every man is unconsciously influenced by his environment, and Mr. Taft's long service upon the bench has led him to underrate the importance of the jury system. In his address to the students of Yale, entitled, "A Judge on the Bench," he shows a decided leaning toward an increase of the authority of the judge, and praises the procedure in the federal court at the expense of the western courts, even though he admits that "the jury system popularizes the court and gives the people to understand that they have, not only an interest, but also a part, in the administration of justice." He has fallen into the error of assuming that any improvement in the method of court procedure is an attack upon the authority of the court. This is an ancient method of opposing reforms. Lord Macaulay had to encounter a similar objection when he favored the reform of the rotten borough system of England. Those who were opposed to the reform construed it as an attack upon the throne and as a menace to the stability of government, but the reform was secured and the government of England was improved rather than impaired. So the reform attempted by the Senate twelve years ago, and endorsed by three democratic national conventions, is in the interest of justice and has for its object the strengthening of the court in public estimation.

It is not a reflection upon the judge of a criminal court to say that he shall not decide upon the guilt of the accused. Our criminal courts are the better, not the worse, for the substitution of trial by jury. No common law judge feels that it is a reflection upon him when a party to a suit asks for a trial before a jury. It is the special function of a jury to decide upon the credibility of witnesses, and the manner of a witness upon the stand is often as important as his words in determining the weight to be attached to his testimony. A judge is apt to be hampered by precedent. He wants this decision to harmonize with former decisions rendered by him, although the facts are never the same in two cases. The jury is better able to decide each case upon its merits.

It must be remembered, too, that in cases of *indirect contempt*, the charge is a criminal one and that the punishment is by fine or imprisonment. All the reasons that apply to criminal cases apply to these cases of *indirect contempt*, and the abuses to be removed by the proposed law are those that have grown up because of the increased tendency of the great corporations to use the writ of injunction to avoid the jury trial.

The democratic platform proposes no interference with the right of the judge to decide the cases of *direct contempt*—contempt committed in the presence of the court; neither is it proposed to interfere with the right of the judge to determine the punishment for *indirect contempt*. All that is sought is the substitution of trial by jury for trial by judge when the violation of the court's decree must be established by evidence.

Not only is the prosecution for contempt a criminal prosecution, but there is even more reason for a jury than in the ordinary criminal case. In the criminal court the judge acts in a judicial capacity

only. He is not responsible for the law which is being enforced in his court, and therefore he has no personal grievance against the defendant, and not being the prosecutor in the case, he does not feel a personal interest in the result of the trial; but in a contempt proceeding the judge is the lawmaker and public prosecutor as well as the judge. It is the judge's order which the accused is charged with violating, and it is the judge who appears to prosecute the case, upon which he is to render a decision. In our federal and state constitutions we have carefully separated the three departments of government, and each department is jealous of any encroachment upon its sphere of activity. The judge resents any attempt of the legislator or of the executive to usurp the functions of the court; the executive resents any attempt of the court or of the lawmaker to enter his domain, and the lawmaker is equally insistent upon the preservation of his independence. If there is any time or place where a jury is needed, it is in a case of *indirect contempt*. It is not strange that abuses have crept in, for a man would have to be more than human to unite in himself the deliberation of the legislator, the zeal of the public prosecutor and the impartiality of the judge.

While the laboring men have been the first to complain of this denial of the right of trial by jury in cases of *indirect contempt*, it ought not to be considered a labor question. The jury system is so essential to the administration of justice that the subject ought to appeal to all who make a study of the science of government. If citizens would only be on their guard against the beginnings of evils, it would be very easy to apply necessary remedies, but in the struggle for existence the voters are often indifferent to the application of an erroneous principle until repeated applications establish a custom, and in time a custom crystallizes into law. It behooves us, as lovers of our country and as the friends of liberty, to insist upon the independence of the different departments of our government and upon the maintenance of the rights which have been shown by experience to be essential to freedom and self-government. The jury system must be preserved, and we cannot hope to preserve it if, for any reason or under any pretext, we permit any citizen to be denied the protection which it furnishes.

According to the Declaration of Independence, governments are instituted among men to secure to them the enjoyment of their inalienable rights. Among these inalienable rights, three are specifically enumerated—life, liberty and the pursuit of happiness. The second and third, however, are really parts of the first, for life means nothing to the individual if it is confined to mere animal existence. Man is distinguished from the brute in that the latter merely eats and sleeps and dies, while man is endowed by the Creator with infinite possibilities. Liberty is necessary for the realization of man's possibilities. His conscience must be left free that he may fix for himself the relation between himself and his God. His mind must be left free that he may devise and plan for himself, his family and for his fellows. His speech must be free to give to the world the results of his investigation, to others the ideal which he is trying to realize in his work. His pen must be free that he may scatter seed thoughts to the uttermost parts of the earth and leave to posterity a record of his work. He finds in government the cheapest, as well as the surest, protection of this liberty, to be, to think, to speak, to act.

And what constitutes the pursuit of happiness? Man must have home and friends—family and society. He must have food or he will starve. He must have clothing and shelter; he must have books, he must have instruments with which to work. He must provide during the period of strength for the years when age dulls his energies and benumbs his hands. He may have ambition, he may have willingness to work and an environment that spurs him on; but the government may encourage or it may discourage his efforts. Government may bid him hope or leave him to despair.

When I visited the valley of Jordan I learned that it is fertile and productive, and yet, instead of being cultivated like the valley of the Nile, vast stretches of territory lie untilled. Why? I was told that under the reign of the Sultan the toiler is not protected in the enjoyment of the fruits of his toil. If the farmer plants and tends his crop, the roaving Bedouins will sweep down from the hills at harvest time and carry away the fruits of his industry.

If the government does not assure to the individual the enjoyment of the result of his effort, there is no stimulus to work.

We have the best government on earth. It is the largest liberty, the greatest hope and the most encouragement to the citizens, and yet, even in this country, it is always necessary to be on the watch to keep the instrumentalities of government from being turned to private gain.

One of the great problems of today is to secure an equitable distribution of the proceeds of toil. The material wealth of this country is largely a joint product; in factories few people work alone, and on the farm a certain amount of co-operation is necessary. Where men work together, the army organization applies to some degree; that is, some direct, others are directed. The difficulty has been to divide the results fairly between the captains of industry