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supreme court, the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal. Nor is there in this view any assault upon the courts or the judges. Lincoln actually applied in successful fashion the principle of the recall in the Dred Scott case. He denounced the supreme court for that iniquitous decision in language much stronger than I have ever used in criticizing any court, and appealed to the people to recall the decision—the word 'recall' if this connection was not then known, but the phrase exactly describes what he advocated. He was successful, the people took his view, and the decision was practically recalled. It became a dead letter without the need of any constitutional amendment. In any contest today where the people stand for justice and the courts against the people is untrue to the memory of Lincoln, and shows that he is the spiritual heir, not of the men who followed and supported Lincoln, but of the cotton whigs who supported Chief Justice Taney and denounced Lincoln for attacking the courts and the constitution.

PEOPLE SHOULD HAVE LAST SAY

"Under our federal system the remedy for a wrong such as Abraham Lincoln described is difficult. But the remedy is not difficult in a state. What the supreme court of the nation decides to be law binds both the national and state courts and all the people within the boundaries of the nation. But the decision of a state court on a constitutional question should be subject to revision by the people of the state. Again and again in the past justice has been scandalously obstructed by state courts declaring state laws in conflict with the federal constitution, although the supreme court of the nation had never so decided or had even decided in a contrary sense. When the supreme court of the state declares a given statute unconstitutional because in conflict with the state or national constitution, its opinion should be subject to revision by the people themselves. Such an opinion ought always to be treated with great respect by the people, and unquestionably in the majority of cases would be accepted and followed by them. But actual experience has shown the vital need of the people reserving to themselves the right to pass upon such opinion. If any considerable number of the people feel that the decision is in defiance of justice, they should be given the right by petition to bring before the voters at some subsequent election, special or otherwise, as might be decided, and after the fullest opportunity for deliberation and debate, the question whether or not the judges' interpretation of the constitution is to be sustained. If it is sustained, well and good. If not, then the popular verdict is to be accepted as final, the decision is to be treated as reversed and the construction of the constitution definitely decided—subject only to action by the supreme court of the United States.

ENEMIES OF POPULAR RULE

"Many eminent lawyers who more or less frankly disbelieve in our entire American system of government for, by and of the people, violently antagonize this proposal. They believe, and sometimes assert, that the American people are not fitted for popular government, and that it is necessary to keep the judiciary 'independent of the majority or of all the people;' that there must be no appeal to the people from the decision of a court in any case; and that therefore, the judges are to be established as sovereign rulers over the people. I take absolute issue with all those who hold such a position.

I regard it as a complete negation of our whole system of government; and if it became the dominant position in this country, it would mean the absolute upsetting of both the rights and the rule of the people. If the American people are not fit for popular government, and if they should of right be the servants and not the masters of the men whom they themselves put in office, then Lincoln's work was wasted and the whole system of government upon which this great democratic republic rests is a failure. I believe, on the contrary, with all my heart that the American people are fit for complete self-government, and that, in spite of all our failings and shortcomings, we of this republic have more nearly realized than any other people on earth the ideal of justice attained through genuine popular rule. The position which these eminent lawyers take and applaud is of necessity a condemnation of Lincoln's whole life; for his great public career began, and was throughout conditioned by his insistence in the Dred Scott case, upon the fact that the American people were the masters and not the servants of even the highest court in the land, and were thereby the final interpreters of the constitution.

"If the courts have the final say on all legislative acts, and if no appeal can lie from them to the people, then they are irresponsible masters of the people. The only tenable excuse for such a position is the frank avowal that the people lack sufficient intelligence and morality to be fit to govern themselves. In other words those who take this position hold that the people have enough intelligence to frame and adopt a constitution, but not enough intelligence to apply and interpret the constitution which they have themselves made. Those who take this position hold that the people are competent to choose officials to whom they delegate certain powers, but not competent to hold these officials responsible for the way they exercise these powers. Now the power to interpret is the power to establish; and if the people are not to be allowed finally to interpret the fundamental law, ours is not a popular government. The true view is that legislators and judges alike are the servants of the people, who have been created by the people just as the people have created the constitution; and they hold only such power as the people have for the time being delegated to them. If these two sets of public servants disagree as to the amounts of power respectively delegated to them by the people under the constitution, and if the case is of sufficient importance, then, as a matter of course, it should be the right of the people themselves to decide between them.

"I do not say that the people are infallible. But I do say that our whole history shows that the American people are more often sound in their decisions than is the case with any of the governmental bodies to whom, for their convenience they have delegated portions of their power. If this is not so, then there is no justification for the existence of our government; and if it is so, then there is no justification for refusing to give the people the real, and not merely the nominal ultimate decision on questions of constitutional law. Just as the people and not the supreme court, under Chief Justice Taney, were wise in their decisions of the vital questions of their day, so I hold that now the American people as a whole have shown they have approached and dealt with such vital questions of our day as those concerning the proper control of big corporations and of securing their rights to industrial workers.

"Here I am not dealing with theories; I am dealing with actual facts. In New York, in Illinois, in

Connecticut, lamentable injustice has been perpetuated, often for many years, by decisions of the state courts refusing to permit the people of the state to exercise their right as a free people in removing grave wrong and social injustice. These foolish and iniquitous decisions have almost always been rendered at the expense of the weak; they have almost always been the means of putting a stop to the effort to remove the burdens from wage-workers, to secure for men who toil on the farm and on the railway, or in the factory, better and safer conditions of labor and of life. Often the judges who have rendered these decisions have been entirely well-meaning men, who, however, did not know life as they knew law, and who championed some outworn political philosophy which they assumed to impose on the people. Their associations and surroundings were such that they had no conception of the cruelty and wrong their decisions caused and perpetuated. Their prime concern was with the empty ceremonial of perfunctory legalism, and not with the living spirit of justice. A typical case was the decision rendered but a few months ago by the court of appeals of my own state, the state of New York, declaring unconstitutional the workman's compensation act. In their decision the judges admitted the wrong and suffering caused by the practices against which the law was aimed. They admitted that other civilized nations had abolished these wrongs and practices. But they took the ground that the constitution of the United States, instead of being an instrument to secure justice had been ingeniously devised absolutely to prevent justice. They insisted that the clause in the constitution which forbade the taking of property without due process of law forbade the effort which had been made in the law to distribute among all the partners in an enterprise the effects of the injuries to life or limb of a wage-worker. In other words, they insisted that the constitution had permanently cursed our people with impotence to right wrong, and had perpetuated a cruel iniquity; for cruel iniquity is not too harsh a term to use in describing the law which, in the event of such an accident, binds the whole burden of crippling disaster on the shoulders least able to bear it—the shoulders of the crippled man himself, or of the dead man's helpless wife and child. No anarchist orator, raving against the constitution, ever framed an indictment of it so severe as these worthy and well-meaning judges must be held to have framed if their reasoning be accepted as true. But, as a matter of fact, their reasoning was unsound and was as repugnant to every sound defender of the constitution as to every believer in justice and righteousness. In effect, their decision was that we could not remedy these wrongs unless we amended the constitution (not the constitution of the state, but the constitution of the nation) by saying that property could be taken without due process of law! It seems incredible that any one should be willing to take such a position. It is a position that has been condemned over and over again by the wisest and most far-seeing courts. In its essence it was revised by the decision of state courts in states like Washington and Iowa, and by the supreme court of the nation in a case but a few weeks old.

AN INSTANCE IN POINT

"I call this decision to the attention of those who shake their heads at the proposal to trust the people to decide for themselves what their own governmental policy shall be in these matters. I know of no popular vote by any state of the union more flagrant in its defiance of right and jus-