

DO OUR COURTS STAND IN THE WAY OF SOCIAL AND ECONOMIC PROGRESS?

(Continued from Page 7.)

conduct," was clearly within the constitutional prohibition against the taking of a man's property without due process of law. Nevertheless, many if not most of us did not see then, nor are we able to see yet, after due reflection, that there was any taking by the statute of the employer's property at all, even indirectly. Did not the legislature have the power to shift the necessary and inherent risks from workman to employer? And did it not have the power to modify or do away with the common law rule of contributory negligence, and also the like rule of negligence of a fellow servant? Such a statute does no more than add the expense of such accidents to the employer's cost of production, and it is elementary that the cost of production is included in the value or sale price of the finished article, and that therefore the expense of such accidents would fall on the community or those who buy the product. The employer would meet with no loss in the end. And yet they said his "property" was being taken by the addition of this new expense of production.

We are soon to have a new constitutional convention in this state, and I trust that it will make short work of this decision—that it will "recall" it without scruple or hesitation. It is pitiful to see such decisions in this country. Thirty-two different governments of the world, in fact every civilized government in the world outside of this country, has an employers' liability act, also

embracing provisions for the taxation of business in which workmen are employed to raise a fund for the payment of such damages for deaths and injuries by accidents. Russia has a model employers' liability and compensation statute. Three or four years ago England amended its meagre employers' liability statute by following the Russian and other European statutes. Prussia had such a statute as early as 1847. We are only beginning to think of passing such statutes in this country. In this as in other modern social and economic progress we lag behind the world. And the first attempt we make at it is met by these court decisions. If the courts persist in such decisions, it will be necessary to amend every constitution we have in this country, although the people in enacting them never meant that they should stand in the way of such legislation.

But some of the decisions, like those I have enumerated, are already becoming obsolete. Every one is beginning to see that they are far-fetched and unsound, not to say, in more plain speech, a usurpation of legislative power. If we do not pass any constitutional amendments to do away with them, it is inevitable that we shall shed them as a snake sheds its skin; we will in the course of time just shuffle them off and go along without them.

Any one who wants to realize how futile decisions of the courts, and even statutes, are to frustrate economic and commercial progress in the long run, has only to read the former statutes and court decisions of England against "forestallers, regraters and engrossers." A "forestaller" was one who bought goods while they were on their way to market. He forestalled the market. It was made a criminal offense. The "regrater" was one who sold goods in the same market in which he had bought them. That was a criminal offense. An "engrosser" was one who purchased food products, and stored them up in gross, "engrossed" them, as it was called, and held them to sell at his own time at

a higher price if he could. He was the arch-monopolist, and severely punished by statute also. If such laws had existed in the time of Joseph in Egypt he could not have laid up during the years of plenty for the coming period of famine. But they knew no such folly in those days. Instead of doing good, these and like laws worked nothing but mischief and injury in England, and in the other countries of Europe in which they were enacted. They could not change the natural course of trade. By hampering it, however, and subjecting merchants to constant penal danger, and extraordinary expense, they did the exact opposite of what was intended; they lessened production, caused an imperfect distribution, made prices unstable, and even brought on famine. The legislature might as well try to regulate the seasons. In the words of Macaulay, "In spite of the legislature the snow would fall when the sun was in Capricorn, and the flowers would bloom when it was in Cancer." And the same may be just as well said of judicial decisions. These laws were finally repealed in the latter part of the eighteenth century, a few years before Adam Smith published his great economic work, "The Wealth of Nations." I never read a chapter of this incomparable man without mentally saying of him what our Emerson has so finely said of Shakespeare: "He was a wonder; he struck 12 every time." But when parliament repealed these laws, the courts of law forthwith placed themselves obstinately in the way of the reform. The judges said that the common law had from the beginning been the same as the repealed statutes, and that the repeal revived the common law. This left the law unchanged, and they continued to try and convict offenders the same as under the statutes. You have only to read the trial of poor Rusby before Lord Kenyon in the last year of the eighteenth century for "regrating" 30 quarters of oats, as it is given in Peake's Reports. "Though in an evil hour all the statutes which had been existing for a century were at one blow repealed, I thank God the provisions of the common law were not destroyed," exclaimed Lord Kenyon in charging the jury. Adam Smith, who had recently died, was denounced by the judge. He had written that fear of the things made criminal offenses by these statutes regulating trade was ridiculous; that they were no more to be feared than witchcraft. Lord Kenyon exclaimed, "I wish Dr. Adam Smith had lived to hear the evidence in this court today, and then he would have seen whether such an offense exists and whether it is to be feared." Poor Adam Smith! How little he appeared that day in that court compared with the "great" Judge Kenyon who spoke out so dogmatically and self-confidently. But how is it now? And let me ask, will the decisions of our courts interfering with and regulating the course of business, trade and commerce at the present time appear any less absurd in the next generation than the like decisions of Lord Kenyon and his associates appeared to the generation which followed them?

The courts themselves came to see after awhile that the indirect and extreme construction they were putting on this "liberty" and "property" provision of the constitution, instead of keeping to the plain and ordinary sense in which these words had always been used and understood in England and here in constitutional provisions and statutes, was untenable and mischievous. It stood in the way of legislation necessary for the general welfare, and that would not be tolerated by enlightened pub-

lic sentiment in this country any more than it is or ever has been anywhere else in the world. It was opposed to the long-settled maxim in human as well as in natural law, that the use of private property was subordinate to the general welfare, and could be restricted to conform thereto, although made less valuable thereby. They therefore began to slide by or climb over their decisions by declaring that notwithstanding this constitutional provision, i. e., the indirect and far-fetched construction they had put upon it, legislation tending to the health, comfort, safety, and general welfare of society, would be excepted and upheld. This they assumed to do under what they called the general police power of government—an elastic, undefinable and even misleading phrase, as they freely admit in their decisions. But who was to be the judge of such legislation, i. e., as to whether it tended to the general health, comfort, safety and welfare? The legislature, representing the community? No; the judges took that unto themselves. They judge thereof over the head of the legislature, and declare legislation unconstitutional which exceeds their opinion of what is economically or socially wise or beneficial. No such power was ever given to the courts. They have simply taken it away from the legislative department of government. They have set themselves up as the "protectors" of society against the law-making power, safe-guarded as it is by the consent of two houses and the executive veto. They do not seem to consider who is to protect us against them in their judicial legislation. In the cases of the underground bakeries, the manufacture of tobacco in tenements, the working of women in factories at night, and so on, was not the legislature, representing the community, as fit, at least, as any judge, or a bench of a few judges, mere mortals like the rest of us, to judge of the wisdom or advisability of the laws passed, from the standpoint of the moral, economic and social welfare and progress of society?

Song-Poems Wanted, cash or royalty to you. Needham Music House, 102-5, St. Louis, Mo.

ECZEMA

CAN BE CURED. My mild, soothing, guaranteed cure does it and FREE SAMPLE PROVES IT. STOPS THE ITCHING and cures to stay. WRITE NOW—TODAY. Dr. CANNADAY, 174 Park Square, Sedalia, Mo.

BARGAIN OFFER

for Limited Time to New or Renewing Subscribers

THE COMMONER AND THRICE-A-WEEK NEW YORK WORLD, both One Year for Only One Dollar.

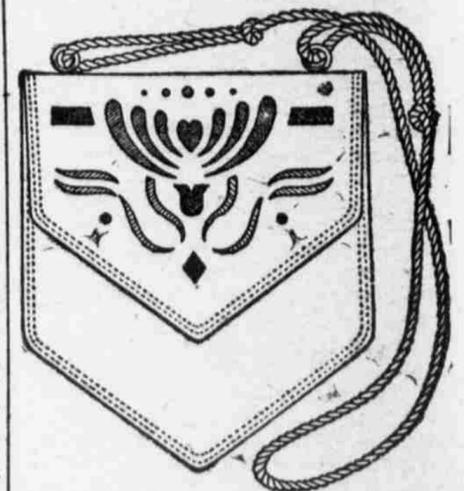
Address Orders to THE COMMONER, Lincoln, Nebr

Twelve Special One Dollar Club Offers

The Thrice-a-Week New York World.....	Our Special Price	\$1.00	The Housewife.....	Our Special Price	\$1.00
The Commoner.....	Our Special Price	\$1.00	American Homestead.....	Our Special Price	\$1.00
American Homestead.....	Our Special Price	\$1.00	Weekly Kans. City Star.....	Our Special Price	\$1.00
Woman's World.....	Our Special Price	\$1.00	The Commoner.....	Our Special Price	\$1.00
The Commoner.....	Our Special Price	\$1.00	People Popular Monthly.....	Our Special Price	\$1.00
Chattanooga News.....	Our Special Price	\$1.00	American Homestead.....	Our Special Price	\$1.00
American Homestead.....	Our Special Price	\$1.00	The Commoner.....	Our Special Price	\$1.00
The Commoner.....	Our Special Price	\$1.00	Reliable Poultry Journal.....	Our Special Price	\$1.00
Commercial Appeal.....	Our Special Price	\$1.00	American Homestead.....	Our Special Price	\$1.00
American Homestead.....	Our Special Price	\$1.00	The Commoner.....	Our Special Price	\$1.00
The Commoner.....	Our Special Price	\$1.00	Southern Fruit Grower.....	Our Special Price	\$1.00
Weekly Enquirer.....	Our Special Price	\$1.00	American Homestead.....	Our Special Price	\$1.00
American Homestead.....	Our Special Price	\$1.00	The Commoner.....	Our Special Price	\$1.00
The Commoner.....	Our Special Price	\$1.00	Boy's World.....	Our Special Price	\$1.00
Industrious Hen.....	Our Special Price	\$1.00	American Homestead.....	Our Special Price	\$1.00
American Homestead.....	Our Special Price	\$1.00	The Commoner.....	Our Special Price	\$1.00
The Commoner.....	Our Special Price	\$1.00			

ADDRESS ALL ORDERS TO THE COMMONER, LINCOLN, NEB.

BEAUTIFUL UP-TO-DATE HAND BAG



Here is a premium that will delight a number of our lady friends. Think of it, a beautiful Ecru Crash Bag all ready made given away as a premium. This dainty Bag is embellished with a simple conventional design, hand-painted in two shades of green and blue; it is not necessary to embroider the design unless desired. Remember the bag is all ready made, including the cord.

Our Offer: Send us two new or renewal subscriptions to The American Homestead at 25 cents each, or one two-year new or renewal subscription at 50 cents and we will send you one of the dainty bags by return mail absolutely free of charge, postpaid. Order as No. 66.

Address THE AMERICAN HOMESTEAD, Lincoln, Neb.