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Current Topics.

It may not be the province of this journal to take part in partisan discussions or to attempt to urge the claims of one or the other of the great political parties of this country, but we feel that we are particularly charged with defending our courts and the members of our profession from the malicious and unjust attacks of those who consider themselves "in the enemy's country." Under such conditions the best thing a person could do would be to act as discreetly as possible, while it would appear that those who invade "the enemy's country" follow exactly the other method and theory. We do not believe that Governor Altgeld is as bad as he is painted, nor would we class him among those who are ignorant enough to use abuse as their only weapon, for we recall that we have read something about gold clauses in certain leases and mortgages. Every dog has his day, and evidently some dogs gain satisfaction from the constant barking and growling which they are wont to indulge in, while later their plaintive yelpings remind us that their joy is gone and that their character has displayed lamentable weakness and a lack of personal bravery.

And so as long as Governor Altgeld has taken the trouble to notice our courts and our prominent lawyers, let us see how amusing his mutterings are in the light of facts and reason.

First he speaks of the usurpation of power by the Federal courts. Here he says:

"I have not the time to point out the alarming encroachments and usurpations of the Federal courts since the days of Jefferson. I will only call attention to their most recent and astounding pretension and usurpation of power. During the last decade they have established a form of government that is government by injunction, under which the Federal judge becomes at once legislator, judge and executioner. Sitting in his chambers, and without notice to anybody, he issues a ukase, which he calls an injunction, against all the people of a State, forbidding anything that he sees fit to forbid and which the law does not forbid, for when the law forbids a thing there is no need of an injunction. When the law is violated, provision has been made for punishment, and if it is found at any time to be inadequate it can always be remedied by legislation. But by this injunction the judge can forbid anything which whim, prejudice, or caprice may suggest, and his order is law, and must stand until it is reversed by a superior authority, and this may take months and even years, and when any individual disregards this injunction he is arrested by the United States marshal and dragged to the point where the court is held, sometimes a distance of a hundred or a hundred and fifty miles away from his friends, on a charge, not of committing a crime, not of violating the law, but on a charge of being guilty of contempt of court; that is, of having disregarded the judge's injunction; and he is tried, not by a jury, as guaranteed by the Constitution and laws of the land, not according to the forms of law even, but he is tried by the same judge whose dignity he is charged with having offended, and then he is sent to prison indefinitely. Had he committed a murder or a heinous crime, had he violated the law in a flagrant manner, he would have been entitled to be tried by a jury, according to the forms of law, and in the county where the offence was committed and where he could produce his witnesses, but not so when he is guilty of showing a want of respect for the order of a judge which was made outside of the law and in violation of the Constitution."

From this we would gather that the governor believes that laws are only created to be broken, and that the mandates of courts are as nothing when in opposition to his own ideas and desires. How effective does he believe the law would be if the judges were powerless to punish for contempt or in other ways enforce their orders?

Again, he makes a few remarks on the subject of "government by injunction. But before he can do justice to his theme he takes us on a pleasant little trip to see the czar of Russia and the sultan of Turkey, whose power he contrasts with that of the Federal courts. On this subject he says:

"When the sultan of Turkey or the czar of Russia issues a ukase forbidding something that the law had not forbidden he at least leaves the

task of trying those who are charged with disregarding this ukase to some other individual. Common decency and common justice would suggest such a course, but in our country a Federal judge assumes to do things which would be discountenanced even in Russia or Turkey.

"Judge Ross, of California, issued an injunction compelling the employes of a railroad to go to work. Think of a judge legislating that way. When an individual has an employe who won't work he discharges him, but this judge ordered railroad employes sent to jail if they did not go to work. He undertook to run a railroad, and just sat down and made law to suit him. He legislated, judged, and executed. The Constitution, the law, trial by jury, and the rights of the citizen were all brushed aside by this Federal judge. During the railroad strike of 1894 Judges Wood and Grosscup, in the United States Court at Chicago, issued a number of these injunctions, which, in so far as they forbade what the law forbade, were unnecessary, and in so far as they forbade what the law did not forbid, amounted to new legislation. After they were issued the farce was enacted of having an officer attempt to read them to a mob, which, under the circumstances, could neither hear nor understand them, and the United States marshal at Chicago swore in 4,402 deputy marshals for the purpose of enforcing these injunctions. Some of these injunctions were obtained as early as June 29 and June 30, a number of days ahead of any trouble, yet as a preventive they were total failures and accomplished nothing. The trouble kept spreading and growing just as if there had been no injunctions. According to their own statements, the United States marshals arrested about 450 men on a mere charge of being guilty of a contempt of court, and these had nearly all to be discharged after having been dragged to the court, because nothing whatever could be proved against them.

"A mere glance at this invasion shows that government by injunction is incompatible with republican institutions, and if it is to be sustained, then there is an end to trial by jury in our country, and instead of being governed by law we will be subject to government by judges; and if government by injunction is to be sustained as to Federal judges, then we will soon have it on the part of State judges, and the very foundations of free institutions will have disappeared. These injunctions are outside of the regular machinery of government; so far as they are outside of the law, they are usurpations, and where they are not usurpations, they are wrong, because the Constitution has created other machinery to enforce the criminal law. Courts of chancery were not created for this purpose. In Chicago they did not prevent the burning of a freight car or the ditching of a train. Our country has existed for more than a hundred years. During this time all our greatness and our glory has been achieved. Property has been protected, law and order has been maintained by the machinery established by the Constitution. This machinery has at all times been found to be sufficient for every emergency.

"If both the Constitution and our past experience are now to be disregarded and the courts are to be permitted to set up this new form of government, then the affairs of life will soon be regulated, not by law, but by the personal pleasure, prejudice or caprice of a multitude of judges. Formerly, when a man charged with contempt filed an affidavit purging himself of the contempt, that is, denying it, the matter ended. All that could be done was to prosecute him for perjury if he had sworn to what was not true. But after thus purging himself he could not be tried for contempt by the very judge whose dignity he was charged with having offended. In other words, when a man denied his guilt he could not be sentenced to prison without a trial by jury. But this protection of the citizen is now brushed away with a mere wave of the hand. The citizen is robbed of a trial by jury, and he is tried by the judge for whom he is alleged to have shown a want of respect, and is sent to prison indefinitely.

"It was the extraordinary action of a few judges that called the attention of the American people to the possibilities and to the extremely dangerous character of this system, and which makes law-abiding and patriotic men feel that if not checked, it must destroy free institutions."

And, so having, as he believes, absolutely wiped out all distasteful particulars of law and order, he comes to the wicked Supreme Court,

and he decides that no man, either a judge or a private citizen, has any right to change his mind. He seems to reason that if one does change his mind, he is dishonest; and if he does not alter his views and believe as he does, then he is worse than dishonest. But just at the time that he has executed the Supreme Court he gives us a little of his own personal history, and rings in something about a flag and a country, which is sufficiently indefinite to allow any one to decide for himself what flag and what country he refers to. But whatever flag it was and of whatever country, it is satisfying to know that he has spent his life in defending both, because the governor is pleased with his past actions in these matters, and, we, of course, should be. In order that the full benefit of the ideas of the distinguished governor may be obtained and appreciated, it is well to read his remarks, which are as follows:

"The Chicago platform denounces the peculiar conduct of the Supreme Court in the income tax case.

"The platform declares that the income tax law had been passed in strict pursuance of the uniform decisions of that court for nearly one hundred years; that the court had in the last decision sustained objections to that law which had previously been overruled by the same court, and the platform, therefore, in substance declares in favor of securing the reversal of that decision if possible and of having congress do all in its power to equalize the burdens of taxation so that wealth may bear its due proportion of the expense of government.

"This criticism of the Supreme Court is denounced as *subversive* of order and destructive of the respect that is due that tribunal. Astonishing as it may appear, men formerly connected with the Democratic party and men connected with the Republican party insist that courts are of a sacred character and above the reach of criticism. My friends, I give way to no man in admiration for American institutions. My life has been spent in trying to protect the flag of my country and trying to advance the educational institutions of the country, and as an officer of the court serving in the capacity of prosecutor and for five years as a judge of the Superior Court of Chicago, and after this experience at the bar and on the bench, I say to my countrymen that there cannot be in a republic any institution exempt from criticism, and that when any institute is permitted to assume that attitude it will destroy republican government.

"The judicial branch of the government is just as much subject to the criticism of the American people as are the legislative or executive branches, and it needs this criticism more than does either of the other two branches, because by reason of frequent changes the people can make their will felt in the legislative and executive offices, but the Federal judges are not appointed by the people and are not responsible to them, and for all practicable purposes cannot be reached except by the moral sentiment and sense of justice created in the public mind by free criticism. The judges of our Federal courts are as honest as other men and no more so. They have the same passions and prejudices that other men have, and are just as liable to make mistakes and to move in the wrong direction as other men are, and the safety of the public not only permits, but actually requires, that the action of the courts should be honestly and thoroughly scanned and be freely criticised, not with a view of arousing resistance to the decision of the court, but for the purpose of forcing the court in the end to see its error and to correct it. The mere fact that the Supreme Court has all through its career repeatedly reversed its own decisions shows its fallibility. Everybody admits that the decision of a court is binding in the case in which it was rendered, and until it is reversed constitutes a precedent to indicate how the courts will decide the same question again, but this fact does not prevent men from doing what they can to get the court to reverse its decision. Nor does the decision of the Supreme Court in any case become a rule of political action the correctness of which the voter dare not question. The Supreme Court cannot, by mere decision upon a constitutional question, rob the people of the powers of self-government nor prevent the American people from deciding for themselves, through the properly constituted machinery, whether they will accept the decision of the Supreme Court as being final or whether they will refuse to accept it as a rule of action."

And then in order that the judges may ap-

preciate how they came to be appointed or how they came to be elected, he fittingly indicates that they should send their thanks and small remembrances to the corporations, both great and small, of which the bench, remarks he, is the willing tool.

Some people would not be satisfied if they could make laws and break them at will, because they would be disappointed that they could not respect and obey them at the same time. After all egotism may act as a sop to satisfaction, and its predominant element is cheapness.

There seems to be considerable misapprehension as to the recent decisions of the Court of Appeals of Kansas in divorce cases. It appears to have principally arisen from the decision in the case of Shepherd v. Shepherd, 45 Pac. Rep. 658, where the court holds as unconstitutional a provision of the statute that a husband and wife are incompetent to testify against each other in an action for divorce or alimony, on the ground that the act did not comply with the Constitution which requires that the subject-matter should be contained in the title, and that there should not be more than one subject. It appears, however, that this decision will not affect divorces which have already been obtained, because such question was not raised in those cases and the judgments and decrees have already been entered. On this subject the court says :

"We are reluctantly compelled to hold that the title to this act is not broad enough to cover the subject attempted to be enacted by said section 6. The title only covers the amending of certain sections of chapter 80 already in existence, but it does not attempt to cover any new enactment; and while the subject-matter of section 6 might have been an amendment to paragraph 4418, it could not be so amended, unless it should contain the entire section as amended. The counsel for the plaintiff in error in his brief argues this question upon the theory that the status of parties and the custody of children and valuable property rights have been adjudicated and settled during the past twenty-five years upon evidence authorized by said section 6, and that this court should not now declare this section invalid, for the reason that such rights will be disturbed thereby; and cites several Kansas decisions to show that our Supreme Court has been loth to disturb the rights of persons and property by declaring a law invalid which has been in operation for a considerable length of time. The results pointed out by counsel cannot follow from a decision declaring this law invalid, for the reason that it relates to the competency of evidence of which no advantage can be taken, except by saving an exception to each particular case, and having a review thereof. No rights of property or persons already adjudicated and settled can be changed or disturbed. The only cases which will be disturbed by this ruling will be those in which this question will arise hereafter. We think the law should be that a husband or wife should be permitted to testify in all actions for a divorce or for alimony, or for both; but it is the province of the legislature, and not of this court, to create the law.

"We are asked to reverse this case because the amount of alimony granted by the judge of the district court is too large. None of the evidence offered in the court below appears in the record; hence we are unable to say whether the amount is too large or not. No error appearing in the record the judgment of the district court is affirmed."

We publish in this issue of the LAW JOURNAL the decision of the Court of Appeals in the Matter of the Estate of George Morgan, deceased. This is the fourth of the recent decisions made by the Court of Appeals in regard to the Transfer Tax Act, the first three of which we published last week.

Our contention as to the amount of property which is brought by these decisions within the provisions of the law, is considerably strengthened by the recent statement made by Comptroller Fitch, of the city of New York, who says in regard to this subject :

"The true effect of the decisions of the Court of Appeals in the matter of Whiting and in the other inheritance tax cases recently decided seems to have been misapprehended. The decision that United States bonds held by a non-resident are not taxable, while adverse to the State and a matter of interest in itself, is really unimportant in comparison with the other findings of the court. For example, it