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For several days one of those newspaper contempt cases by means of which judges occasionally assert despotic authority over the press, has been in progress in Chicago. It was concluded last week.

The essential facts of this case may be briefly stated. A quo warranto proceeding was pending in the Chicago courts, which sought a judgment depriving the local gas trust of its charter, under which competing gas companies had been consolidated. The Chicago American had promoted this litigation, not as an injured party, but as an act of public spirit. The hearing came on before Judge Haney, who was the republican candidate for mayor last spring, and he decided the case favorably to the gas trust. He made this decision on the 28th of October, publicly, and it was immediately reported by the press; but he did not at once enter the formal order dismissing the quo warranto proceedings. After his decision, but before the entry of the order, the Chicago American assailed Judge Haney and his decision, both in writing and by cartoon, whereupon the judge instituted summary proceedings before himself against the managing editor and a reporter of the American, who afterward acknowledged that they alone were responsible for the publications complained of.

After extended arguments upon the law of the case, Judge Haney adjudged these two men guilty of contempt of court and sentenced one to 40 and the other to 30 days' imprisonment. The vital point in the matter, as a contempt proceeding, relates to the time when the offending comment was published. According to decisions of the Illinois supreme court, it is contempt of court to publish, pending the decision of a case, any comment upon it which is calculated to influence the result; and Judge Haney holds that these decisions apply to comments made before the formal order or decree which records the decision, even though made after the decision is officially announced from the bench.

An explanation of contempt proceedings may make the position of Judge Haney in the American case more clear. It is a long established and entirely proper thing for courts to punish for contempt persons who willfully disobey lawful orders of the court. But that practice has no application to this case. The only other class of contempt proceedings is that which rests upon disorderly behavior in the presence of the court, which is calculated to disturb, interrupt, or otherwise interfere with the orderly administration of justice. This second kind of prosecution for contempt of court is also proper. It is manifest that unless judges may summarily punish disorder in their presence when sitting as courts of justice, they might be unable to conduct judicial proceedings with becoming and necessary dignity. But on the basis of that authority for the protection of judicial decorum, some judges have asserted the right; and the supreme court of Illinois appears to have acquiesced in this judicial usurpation, to summarily punish for conduct not actually but only constructively in the presence of the court.

An unscrupulous litigant, for illustration, meets the judge upon the street during a recess of the court, or calls upon him at his house, and coaxes, threatens, assaults or attempts to bribe him, or otherwise by personal conduct toward the judge while off the bench endeavors to affect the action of the court. Instead of turning this matter over to the grand jury for orderly prosecution under circumstances and safeguards that would enable the accused to get a fair trial before a jury and a disinterested judge, the judge in question wrathfully hales the alleged delinquent before himself for contempt of court constructively in the court's presence; denies him a jury; tries him himself; and sentences him at his own discretion. The mere statement of the theory of constructive contempt condemns it. Yet it is upon this theory that newspapers are held in contempt for commenting upon court proceedings. Asserting that the printed comment is calculated to obstruct the due administration of justice, if published of a pending case, judges whose personal feelings are hurt by such comment, sometimes summarily arrest, summarily try without a jury and before themselves, summarily convict (they never acquit, for they usually decide the question of guilt in advance), and summarily sentence newspaper men whose publications offend them. The proceeding is in reality a device to enable judges to try their own libel suits.

This is what Judge Haney has done in the case of the two American employes. The American's criticism was leveled at him personally. It was bitter, and may have been unjust and unlawful. If it seemed to be so, a disinterested judge, and not the injured Judge Haney, should have presided at the trial; a jury, and not Judge Haney, should have passed upon the facts; the disinterested judge, and not Judge Haney, should

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have imposed sentence. But that was not done. Judge Hanecy in his own person acted as judge and jury in what was substantially his own case. Asked for a change of venue to a disinterested judge he denied the application. Asked to impanel a jury, he denied that. The whole atmosphere of the proceeding was autocratic, and calculated to cast suspicion upon its fairness.

If judges may in this arbitrary fashion try their own libel suits, under cover of proceedings to punish for publications as contempt of court committed constructively in the presence of the court, a corrupt judge could arbitrarily punish an honest and vigilant newspaper man for exposing his corruption, and the judicial bench might become putrid, while newspapers were silent under fears of judicial vengeance. Though it is important that courts should be treated with respect, it is more important that the avenues of information about courts be kept open, so that the people may know whether the judges deserve the respect which a faithful administration of their sacred office ought to command.

Whether Judge Hanecy's decision is supported by judicial authority, makes no difference to the vital question, which is the American doctrine of a free press. If courts are trying to acquire autocratic power over the press, it would be strange if judicial precedents were lacking. But courts must not be allowed to make their own law for exercising arbitrary authority in derogation of constitutional rights. While it is true, as Judge Hanecy says in his opinion, that unwarranted attacks upon the judiciary cannot safely be allowed to go unpunished, it is also true, as Gov. Altgeld said in his argument for the American employes that—

whenever you have institutions under which the press is muzzled, under which the writer has the jail before him constantly, where the iron hand of the law is constantly at his throat, republican institutions are impossible, they cannot exist. Free government cannot exist under these circumstances. We must have a free press, an unmuzzled press, holding them responsible for what they do, and whenever we wish to bring them to justice they must be tried by due process of law. They must be tried by the machinery which the law has created for trying offenders. They cannot be tried by the very men whom they are accused of having maligned.

Gov. Altgeld forcibly and truly added:

If we are to choose between a licentious press, if you will, using its power recklessly and viciously, and a muzzled press, subject to censorship and with writers subject to the orders of governmental agents, there is not a man who understands the theory of American institutions but who would unhesitatingly choose the former. The one can be punished if it invades private rights, the other would mean the destruction of free institutions; the difference between the two is that of America and Russia, of free and despotic institutions.

It does not follow that judges should be open to malicious or reckless newspaper assaults. What does follow is that such crimes must be inquired into like other crimes, by the regular processes of the criminal law. While a case is on trial, it is the duty of newspapers, beyond publishing an unvarnished story of the proceedings and commenting argumentatively and fairly upon such questions of public policy as may be involved, to be silent. That duty is seldom adhered to, and judges are almost criminally negligent in not noticing the breach. Men upon trial for their lives have been hounded by newspapers, before the trial and at the trial, the writers making their notes in the actual presence of the court. This is a common thing. But what judge has ever noticed it? Constructive contempt cases against newspapers are almost if not quite invariably based upon libels upon the judge who institutes them. They are seldom or never based upon reports and comments which, while not personally prejudicial to the judge are prejudicial to litigants or prisoners on trial. This was so in the case under consideration. It was evidently less the administration of justice than himself, that Judge Hanecy was sensitive about. No judge should exercise the power of punishment for contempt in cases which concern only his own probity, even if he has the power. No judge worthy the title will do so. If newspapers are to be prosecuted at all for constructive contempt, it should be for articles which concern the rights of the parties to the lawsuit commented upon rather than the self-esteem of the judge who presides. He should be quicker to punish as contemptuous, newspaper stories and comments published pending a trial and designed to sway public opinion and through that the verdict of the jury, than to act in his his own case. But in the best interests of good government judges should not have the power to institute summary proceedings for contempt for acts committed outside the court, such as newspaper comment. What they should do is to bring the offense to the attention of the grand jury. By pursuing that course they could maintain the dignity of the court and protect the administration of justice, while properly punishing the offender, without themselves acting as complainant, prosecutor, judge and jury, all in one.

Though prosecutions for contempt constructively in the presence of the court are not usually associated with "government by injunction," they belong in that category. The objectionable thing about government by injunction" is that it is a method of giving autocratic power to judges. It enables them to make laws as well as to interpret and enforce them, and to do so summarily without the intervention of a jury. Denial of jury trial is one of the broad characteristics both of newspaper contempt cases and of labor injunction cases. Judge Hanecy exemplified this as to newspaper cases in his prosecution of the American employes; Judge Kohlsaat has done so as to labor injunction cases in the injunction case against the striking machinists of Chicago. In proceedings to punish some of these men for contempt for vio-

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lation of the injunction, Judge Kohlsaat was asked to impanel a jury to try the question of guilt, and he refused. It should be noted, therefore, that the question for the people to consider is not whether strikers may do what these novel injunctions forbid, but whether, when accused of it, and they deny the accusation, their guilt should be inquired into by a jury or passed upon by a judge. Jefferson expressed deep concern with reference to the powers of the American judiciary. He said it is of the nature of courts to draw power to themselves, and that if they get a little they will take more. His fears are in process of realization.

It is a good move, even if dilatory, which is being started in labor circles to petition congress with reference to government by injunction. It would be somewhat remarkable, however, if congress, as now constituted, after two presidential elections which virtually endorsed "government by injunction," should give the matter any consideration. As to impeaching Judge Kohlsaat, which is also proposed, no congress, however constituted, could decently do that. Judge Kohlsaat is not especially blameable. His action rests upon a body of precedents which have been accumulating for several years. Even if he has gone beyond the letter of these precedents he has not gone beyond their spirit. "Government by injunction" cannot be stayed by voting for it at election time and complaining between elections of judges who practice it.

A movement is reported to be on foot in Chicago for the organization of a labor party. It is assumed that the result in San Francisco, where the labor union candidate for mayor was elected this month over the candidates of the other parties, can be perpetuated and everywhere repeated. What gives plausibility to this mistaken idea is the fact that the labor vote, if concentrated, would hold the balance of power. The "if" is the big obstacle. Except temporarily, under extraordinary circumstances, the labor vote cannot be concentrated.

Upon all class voting, as such, abstract principle has little or no effect. It does not appeal to class interests. But it does appeal to individuals, and with such force as to disarrange class lines. The history of party politics goes far to prove that this is so. Abstract party principle, and not party machines, holds great political parties permanently together. Though these parties do not seem to be conspicuous custodians of principle, it is nevertheless true that they do represent principle. In all countries and at all times, there are two opposing currents, one setting toward democracy and the other toward some form of centralized power (aristocracy, monarchy, plutocracy, or the like). These two tendencies are the great primary political principles, and they are always represented permanently by two great parties.

Sometimes these parties are armed with guns and sometimes with ballots. Sometimes they change front without changing banners. But always their power depends not upon organization merely, but chiefly upon popular convictions or instincts with reference to democracy and some opposite of democracy. This is a fact which no one who reflects will deny, and which labor politicians should take to heart. Were it possible to concentrate the labor vote at all, it would be most effective in the long run if concentrated as a faction in that one of the two great parties which could be most easily propelled in the direction of serving labor interests. But no permanent concentration of the labor vote is possible. For workingmen in politics, like other men in politics, are as a rule either democrats or anti-democrats before everything else. When President Roosevelt, a free trader, abandoned that principle, saying he was a Republican first and a free trader afterward, he stood forth as the type not of a class but of the voter, even of the labor voter. It seems contradictory, but it is true, that among workingmen there are aristocrats and plutocrats in abundance. The backbone of monarchy, aristocracy, and plutocracy, is always supplied by the working masses. Of all aristocrats the "Alameda citizen" is most devoted to aristocratic ideals; of all plutocrats the "penniless plute" has most respect for government of the dollar, by the dollar and for the dollar.

Harris R. Cooley, the Cleveland director of charities under Mayor Johnson, has excited criticism for liberality in pardoning workhouse convicts. We are inclined to the belief that thoughtful men who know the facts will agree with Mr. Cooley rather than with his critics. One ground of criticism is that he has pardoned "repeaters"—men and women sentenced repeatedly for intoxication. But the results of this leniency justify it. Mr. Cooley has recommended pardons in these cases when the prisoners had been sentenced for the seventieth or eightieth time. They had never been pardoned before. No one had ever taken any interest in their misfortunes except to punish them by imprisonment and to exact the last hour of their sentences. Pathetic descriptions have been published in the Cleveland press of the gratitude which these unfortunates have expressed for the unprecedented and unexpected intervention of the authorities under the new and less heartless regime. And of all the many persons pardoned upon Mr. Cooley's recommendation, only a small percentage have been sentenced again. So the philanthropic method of dealing with "repeaters" appears to have been more effective than the vindictive policy.

Another kind of case in which Mayor Johnson has granted pardons upon Mr. Cooley's recommendation is that in which the prisoner is imprisoned merely upon a fine that he cannot pay. Two men, for illustration, are convicted of petty theft and

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