

permit the courts to create property rights in things which are not recognized by custom or legislation as property. But now that a "great" interest makes this appeal it does not make it in vain. If there is no legislation the courts must legislate, if there is no precedent the courts must make one—where great corporations instead of little authors seek protection.

In the case in question the court sustains an injunction forbidding the republication by one concern of news gathered and published by another. This is in the face of the established legal principle that after publication of anything printable, the right to republish is a common right, unless prevented by legislation in the nature of copyright laws. It was conceded by the judges that there was no legislative protection in this case, and that there was no judicial precedent to warrant interference; but the judges chose, to report their own language, "to make a precedent," and they did so. In other words they abandoned the judicial function of interpreting and applying existing law and assumed the legislative function of making new law.

That the news gatherer should be protected against the piracy of republication by people who have done none of the work and incurred none of the expense, and who would therefore reap where they have not sown, may well be true. That the courts should protect him, if they can find in existing laws a recognition of private property rights in his publication, is certainly true. But if there is no such recognition in existing laws, then the news gatherer should be sent to the legislature for relief, and judges who undertake to give it by "making a precedent," usurp legislative power and would be impeached for judicial crime if the people were at all jealous of their liberties or solicitous for the integrity of their form of government. When courts usurp authority to make these precedents for the protection of what Judge Grosscup describes as "great"

interests, similar protection having been uniformly denied to what we may in contradistinction describe as "little" interests, the administration of justice is rightly brought into contempt.

Bankers on both sides of the Atlantic are busily speculating upon the possibilities of paying off the "American indebtedness to Europe." Will it be done with merchandise to be exported from the United States, or must we export gold? That is the speculative question. But there is to the American people a deeper question yet. Why should there be an indebtedness from America to Europe? Have not the Republican leaders boasted these several years that our excess of exports, our "favorable balances of trade," are up in the hundreds upon hundreds of millions? And did not the lamented Mr. McKinley himself assure the people that all this would come back to us "in pure gold?" Then how happens it that our "favorable exporting" has got us into debt?

The census authorities, whose misleading tables H. L. Bliss recently exposed, express surprise that they should be criticised for tabulating comparisons of wages notwithstanding that they say in their text that accurate comparisons are impossible because the figures are incomparable. But they did not make that statement until close upon the election, and they do not now explain why they tabulated incomparable figures. This explanation was left apparently to the Republican spellbinders and newspapers that have been quoting the tabulated comparisons while ignoring the discrediting statements in the text. Census tables of this misleading character are "good enough Morgans" until after election, which is probably the reason they are made.

Some years ago the United States imported a statistician of the name of Porter, who proved to be of great use to our plutocratic interests. Recently he was reexported, and the London Times undertook to utilize

him for the purpose of checking the tide that is setting in in Great Britain in favor of municipal ownership of municipal property. His menu of figures pleased the London Times immensely. But investigation by more reliable investigators discloses a different situation from what the Times has set forth as the "unprofitable results" of what it calls "municipal socialism." Says the London correspondent of the Chicago Tribune:

A municipal journal which has been taking a serious view of the criticisms of the London Times of the administration of English and Scotch cities and resenting Robert P. Porter's comparisons with American electric undertakings publishes detailed figures respecting the results of municipal operation in general and street railway ownership by corporations in particular. The results disclose a larger municipal profit than has been heretofore claimed, Darlington, Birmingham, Bolton, Manchester, Leeds and Nottingham being conspicuous examples of the remunerative enterprise. Advocates of municipal socialism assert that the street railway business as managed by town councils is profitable enough to float another electrical trust, and do not hesitate to attribute interested motives to all critics and opponents of municipal enterprises.

The usefulness of queens consort was demonstrated in London on the 1st. King Edward's consort was reported in a half column cable dispatch to have eaten an eight-course dinner in 16 minutes! Judged by the newspaper space given to the affair, this is the most important act of her life; but that reflects less upon her, perhaps, than upon the snobbish people on either side of the water who delight in that kind of news.

MR. ROOSEVELT'S STRIKE COMMISSION.

For political purposes during the recent campaign, much was made by Republican speakers and papers of the action of the President in settling the coal strike. Much more will doubtless be made of the same incident as we advance toward the presidential election. It is important, therefore, to emphasize the fact that the President, as president, has done nothing whatever to settle the

strike. This is necessary, lest we fall into the habit of regarding what would be a usurpation of power as a proper official act.

It was not the President, but Theodore Roosevelt, as a distinguished citizen and only so, that appointed the arbitrators who are now considering the merits of this strike. The President has no such power as Mr. Roosevelt has exercised. That Mr. Roosevelt himself recognizes this is evident from his omission of his official title from the documents he has signed in connection with the matter.

Parties to a dispute always have the privilege of referring their quarrel to arbitrators. No legal authority is necessary. It is their right. Likewise they may agree upon a man to select arbitrators for them, and he may accept the trust. Whether he holds a public office at the time makes no difference, be he president or constable; but it is not as president or constable that he can be chosen or can act. It is only as a common friend.

This is the capacity in which Mr. Roosevelt has acted. The arbitrators he has appointed do not in reality constitute a presidential commission. They are not commissioners at all in any legal sense, but only in the sense that a newspaper reporter is a "commissioner" when the editor so describes him. He would as truly be a "tycoon" if the editor preferred that title.

As some one has said, the only analogy to Mr. Roosevelt's strike commission is the old paradox of "the bat that was not a bat, which sat on a stump that was not a stump, and was knocked off by a man that was not a man, with a stone that was not a stone." In no legal sense is it a commission at all. Yet there is danger of its coming to be regarded as a legalized body, through neglect to distinguish in connection with it the difference between Theodore Roosevelt, the simple citizen, and President Roosevelt, the chief servant of the republic.

If this action of Mr. Roosevelt's should come to be regarded as official, and be followed in the future as a precedent, the Federal constitution might very easily be once more dis-

torted, and the president come to acquire a power it was never intended he should exercise. If it is as president that Roosevelt has appointed the strike "commission" he has usurped both legislative and judicial functions. He has appointed a commission without authority from Congress, and invested it with functions which the constitution reserves to the judiciary.

In all probability Congress will be called upon to provide for paying the expenses of this body. Should that be done great care should be observed to make the appropriation in such manner as definitely to disclaim the authority of the President as president to have made the appointments. Otherwise a precedent will have been acknowledged of which presidents may easily take advantage to play in the role that Napoleon played in when he passed from First Consul to Emperor. Inconsiderate precedents are dangerous things in a free country.

NEWS

With a few individual exceptions not enough to give Democratic color to the general result, the elections all over the United States are pronouncedly in favor of the Republicans.

Returns have come in so slowly that only approximate figures can be given at this time (Nov. 6th), and a trustworthy comparison of results with previous elections as well as reports upon the votes of side parties must be postponed at least until next week. The returns so far disclosed indicate results on leading State candidates about as follows:

	Rep.	Dem.
Alabama .....	.....	25,000
California	2,000	.....
Colorado	2,000	.....
Connecticut	15,000	.....
Florida .....	.....	12,000
Georgia .....	.....	40,000
Idaho	6,000	.....
Illinois	54,000	.....
Indiana	30,000	.....
Iowa	65,000	.....
Kansas	20,000	.....
Kentucky .....	.....	20,000
Massachusetts	37,084	.....
Michigan	36,864	.....
Minnesota	40,000	.....
Missouri .....	.....	25,000
Montana	10,000	.....
Nebraska	3,000	.....
Nevada	1,700	.....
New Jersey .....	.....	.....
New Hampshire	9,000	.....
New York	10,000	.....
North Dakota	6,000	.....

	Rep.	Dem.
Ohio	87,443	.....
Pennsylvania	140,000	.....
Rhode Island .....	.....	6,350
South Carolina .....	.....	3,500
South Dakota	20,000	.....
Tennessee .....	.....	37,830
Texas .....	.....	130,000
Utah	2,500	.....
Virginia .....	.....	30,000
West Virginia	12,500	.....
Wisconsin	55,334	.....
Wyoming	4,000	.....

In consequence of the Congressional elections, the lower House of the next Congress will be divided between the two parties as follows:

	Next Congress.		Present Congress.	
	Rep.	Dem.	Rep.	Dem.
Alabama	1	3	0	9
Arkansas	0	7	0	6
California	6	2	7	0
Colorado	1	2	0	*2
Connecticut	1	0	4	0
Delaware	5	0	1	0
Florida	0	3	0	2
Georgia	0	11	0	11
Idaho	1	0	0	*1
Illinois	17	8	11	11
Indiana	9	4	9	4
Iowa	10	1	11	0
Kansas	8	10	7	9
Kentucky	1	10	2	6
Louisiana	0	7	0	0
Maine	4	0	4	0
Maryland	4	2	6	0
Massachusetts	10	4	10	3
Michigan	11	1	12	0
Minnesota	8	1	7	0
Mississippi	0	8	0	7
Missouri	1	15	2	13
Montana	1	0	0	*1
Nebraska	5	1	2	1
Nevada	1	0	0	*3
New Hampshire	2	0	2	2
New Jersey	7	3	6	2
New York	20	17	21	13
North Carolina	0	10	2	7
North Dakota	2	0	1	4
Ohio	17	4	17	4
Oregon	2	0	2	0
Pennsylvania	25	7	26	4
Rhode Island	1	1	2	0
South Carolina	0	7	0	7
South Dakota	2	0	2	0
Tennessee	2	3	2	8
Texas	0	15	0	13
Utah	1	0	1	0
Vermont	2	0	2	0
Virginia	1	9	0	10
Washington	3	0	2	0
West Virginia	3	2	4	0
Wisconsin	10	1	10	0
Wyoming	1	0	1	0
	205	181	197	152
			Peo.,	6
			Silv.,	3

* People's. ** Silver.

With this reduction of the Republican plurality from 32 to 24 in the lower House, the Senate will probably stand at about 54 Republicans to 36 Democrats, a majority of 18. In the present Congress the Republican majority in the Senate is 27.

The vote in Ohio has attracted widespread attention, owing to the contest there between Senator Hanna and Mayor Johnson. Full returns are not yet in, but the Republicans claim the State by a plurality of 87,000 over Herbert S. Bigelow, the Democratic candidate for secretary of state. This would be an increase of 18,000 over the Republican plurality of last year. It is made up almost altogether of Democratic losses in Hamilton county, where the Republican plurality is increased 21,000.