

LIVE QUESTIONS.

A Series of Articles Contributed by Advanced Thinkers.

CONSTITUTIONAL AND JUDICIAL OBSTACLES TO REFORM.

Were you looking to be held together by the lawyers? Or by an agreement on a paper? Or by arms? Nay, Nor the world nor any living thing will so cohere.

—Walt Whitman.

Story, in the preface to his "Commentaries," speaks of the constitution as "in the highest sense the palladium of American liberty." Hamilton showed a clearer conception of its scope. In The Federalist he stated that its adoption would afford additional security to "the preservation of republican government, to liberty and to property." Popular opinion up to the present day sustains Judge Story, and it is as bulwarks of liberty that the constitutions of the nation and of the state are usually regarded. It is the object of this article to point out briefly some reasons for revising this opinion and for recognizing the fact that our constitutions have become the bulwarks of property and of little else. To this end I will cite at random three leading cases which have been decided within a year or two.

First.—The income tax case (Pollock versus Farmers' Loan and Trust Co., 15 Sup. Court Rep., 912) holds that congress cannot impose an income tax on account of a provision in our constitution adopted in 1789, which declares that representation and direct taxes must be apportioned among the several states according to their population (Constitution of the U. S., article 1, sections 2 and 3). The dissenting opinion of Mr. Justice Harlan shows clearly that in deciding that an income tax is a "direct tax" the supreme court has run counter to the tendency of all the decisions of the last century. It is admitted that this paragraph of the constitution was inserted as a part of the compromise between the north and south on the subject of the representation of the slaves in congress. The reason for the provision ceased with the amendments adopted during the war, and yet our highest court in interpreting this clause, instead of taking a broad view of the question, has applied to the case a kind of pott-fogging logic which might not, perhaps, be out of place in an action on a prom-

of the employer, is so drawn as to lead one to suppose that it is really the women and children who have won the lawsuit, and that it is their interest and ambition to be allowed to work 24 hours a day.

Now, what class of the community has been protected by those three decisions? In the income tax case it is the class whose incomes are over \$4,000 a year. This includes persons who receive large salaries and also the more important class of those who have large invested estates. It was the latter class that attacked the act, as is shown by the character of the parties in the two cases—viz, the Farmers' Loan and Trust company and the Continental Trust company.

In the Hyattsville case protection is afforded to landlords.

In the Illinois eight hour case it is the factory owner who is protected against the women and children in his employ. In connection with this decision it is worth while to note a recent newspaper item, which sets forth that "in Canton, Ill., a city of about 9,000, there is a plow factory and numerous cigar factories where children work for \$1.50 and \$2.50 a week of 10 and 12 hours a day."

Are there any recent constitutional decisions protecting life and liberty to set off against these three protecting property? If there are any, I should be glad to cite them, but I do not know of one—not by any means that no occasion for such a decision has presented itself. In the case of Debs (15 Supreme Court Reporter, page 900) the right of a single judge to imprison a defendant for contempt of court, although his alleged acts constituted crimes and misdemeanors, is upheld, which decision certainly does away with "due process of law" in the case of "life and liberty" and throws jury trials to the winds. It is unnecessary here to dilate on the opinion of the court below, which, while admitting that Debs counseled moderation, calmly holds that he did not mean what he said. It is stamped with prejudice from beginning to end.

There are two reasons for this failure of our constitution to protect life and liberty while they go much too far in protecting property. In the first place, our judges are prejudicial; in the second place, our constitutions are in some respects antiquated.

First.—As to the judges, I am far from believing that they have any intention to render unjust decisions, but all their prepossessions run in one direction. Corporations pay the best fees, hence every young lawyer hopes to become a corporation lawyer. Practically every successful lawyer is a corporation lawyer. From this class our judges are selected. It is therefore perfectly natural that they should look upon invested wealth as the one important thing in the world. They naturally regard all movements in favor of "life and liberty" at the expense of "property" as unholy combinations, to suppress which—as in the case of dynamites or armed brigands—a court is justified in exercising all its ingenuity. It is this kind of ingenuity which our courts have made use of in the income tax and Debs cases. Another example occurred recently in Brooklyn. An act of the legislature forbade the trolley companies to "exact more than ten hours' work a day" from their employees. The men were forced to continue to work over 12 hours a day. The county court decided that this did not conflict with the statute because the companies did not "exact" 12 hours' work, for the employees could, if they liked, leave their employ. This decision, of course, absolutely nullified the legislative enactment. Still another example of legal prejudice is afforded by the antitrust act. This act has never been enforced against trusts, but it has been distorted into an act against strikers, and against strikers its provisions have been carried out. This piece of legislation was the work of a court of equity, save the mark!

Second.—But our constitutions, too, are a trifle outworn. As we saw in the Hyattsville case, they sometimes block the way to progress even when fairly interpreted. Our national constitution was at best a triple compromise between large states and small states, between slavery and free labor and between democrats and aristocrats. It was adopted by a population of 6,000,000 straggling along 1,000 miles of seacoast. It now governs over 80,000,000 people, and the industrial condition of the world has changed more since 1789 than it had in 2,000 years before that time. That the constitution was a masterpiece no one can deny, but are we not expecting a little too much from it under our vastly altered circumstances? Does not the dead hand rest somewhat too heavily on our institutions, and does not the earth belong to the living?

The remedy for such shortcomings, as I have pointed out, lies principally in the spread of true ideas, for the world is ruled by ideas. We must build up a correct public opinion. The blind worship of the constitution should be relegated to the limbo of ancestor worship and the fetish dance. We must insist upon a liberal construction and urge the preference of the rights of life and liberty to those of property. The courts would soon reflect a healthy public opinion on these subjects. There are bound to be great changes in the civilized world in the next century. We should not labor under disadvantages from which all other nations are free. We must not be hampered at every step by the fetters of the dead. John Burns said that the two things which struck him most in America were unconstitutionality and "Keep Off the Grass." It is high time for us to make such stigmas impossible. ERNEST H. CROSBY.

Equity utters dictates to which we have not yet listened, and men may then learn that to deprive others of their rights to the use of the earth is to commit a crime inferior only in wickedness to the crime of taking away their lives and personal liberties.—Herbert Spencer, "Social Statics."

THE OYOLONE'S FURY.

Two cyclonic storms of awful violence swept over portions of southeastern Pennsylvania last Thursday spreading ruin in their track. At least five persons were killed, and several scores were injured.

The centres of the two hurricanes were at Columbia, Lancaster County, and near Ambler, Montgomery County. At the former place a big rolling mill was demolished by the tremendous wind, and a score of men were buried in the ruins. Buildings were torn to pieces, streets were flooded and orchards laid waste all through that region.

At Jarrettown two men perished under a building that was raised to the ground. A boy was also caught in the ruins and severely injured.

All over Northern Bucks County the storm caused fearful havoc. A path several hundred yards wide was swept clean for miles, and scarcely a barn was left standing. The damage to farmers will reach many thousand dollars. At Langhorne a man was killed. Easton, Bethlehem, Reading, Hanover and other places felt the shock of the cyclone as it tore over the State with appalling swiftness.

SEVEN AT A BIRTH.

An Ohio Woman Breaks the Record in the Matter of Babies.

Trustworthy information from Fisher's Corners, on the Ottawa Lake, about 30 miles from Toledo, Ohio, reports that Mrs. Charles Comstock of that place gave birth to seven children, one of which died when but a day old, while the others are living and healthy. The children are all well formed, although quite small and are doing nicely. The mother is also getting along as well as could be expected. There were four girls and three boys, one of the former dying. The place is besieged with curious people, but few have been admitted, as the children are so young, and every effort is being made to raise all six of them.

A Literary Sensation.

On Thursday, May 28th "The Philadelphia Press" will begin the publication of a new prize story entitled "Under Three Flags." It is vouched for as one of the most attractive serials to come to light during recent years, and it is predicted that its appearance will be one of the literary sensations of the year. Interest is added by the offer of "The Press" to distribute \$1,000 in prizes to women who will guess the mystery which will be disclosed in the final chapters. Everybody will want to read the story, and all should do so, but only women may guess.

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a runaway train

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