

EDITORIAL

## LEAD, KINDLY LIGHT!

By DANIEL DE LEON

**T**HE recent decision of the Supreme Court of the United States, declaring unconstitutional the 10th clause of the Erdmann law, whereby railroad companies are forbidden to discharge from employment members of unions “because of membership,” has again given occasion to Justice McKenna to render a pregnant dissenting opinion.

As must be remembered, it was Justice McKenna, whose dissenting opinion from the majority decision upholding the kidnapping of Moyer, Haywood and Pettibone, punctured that decision, and let all the wind out of it. The brilliant point then made by Justice McKenna was that kidnapping is a crime by itself, and, when committed by Government, is not cleansed, but rendered all the more hideous. Justice McKenna’s argument in that instance affected only a principle in criminal jurisprudence. Although not as smooth and easy reading as that first dissenting opinion, Justice McKenna’s reasoning in this, his second, dissenting opinion is of vastly broader scope. It is cast in a mold that is sensitive of the principles which the oncoming Social Revolution is pushing to the fore. The dissenting opinion will be found elsewhere in full in this issue.<sup>1</sup> Its substance is:

The principle upon which the decision of the majority of the Court is grounded is that a labor organization has no logical connection with interstate commerce. If the principle were correct the decision would be just. But the principle is wrong. The principle could be maintained only by wrenching that 10th clause from its context. Considering that clause in connection with the other clauses of the Act, there is no ground for the principle to stand on. All the other clauses recognize the railroad union as an element in the interstate commerce. So recognizing the Union, it is

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<sup>1</sup> [To be appended.—R.B.]

entitled to the same restrictions in its favor as are the railroad companies—because “the liberty guaranteed by the Fifth Amendment [the liberty of contract] is not a liberty free from all the restraints and limitations,” and “THIS MUST BE SO OR GOVERNMENT COULD NOT BE BENEFICIALLY EXERCISED IN MANY CASES.”

The difference between the majority of the Court and Justice McKenna may be expressed in these words:—The majority still breathe the pure and simple breath of capitalist society: the capitalist alone is contemplated in favorable legislation: “freedom of contract” is a privilege; as such it can apply only in the interest of the capitalist; whatever law, or clause in a law, interferes with this view is harmful to capital, therefore, unconstitutional. As against this position, stands the dissenting opinion of Justice McKenna. It is rendered obedient to the fact that economic-social evolution has differentiated a certain social power, not originally perceived, and which has slowly been crystallizing in labor organizations; these organizations have acquired a logical connection with interstate commerce and, therefore, are entitled to legal recognition.

The historic place or poise of Justice McKenna is an intermediary one between the Social Revolution, or Socialism, on the one side, and reactionary Capitalism, on the other. Reactionary Capitalism denies all legal status to Labor; Socialism denies all legal status to Capital. Justice McKenna occupies a position that marks the transition point—he still recognizes the legal status of Capital, but he is not blind to a fact that social evolution has raised—the crystallized power of Labor; hence he recognizes the legal status of Labor also.

Whether Justice McKenna will progress onward we know not. One thing is certain, a light has struck the retina of the mind’s eye of the learned jurist. Justice McKenna has seen the dawn of the coming day.

Transcribed and edited by Robert Bills for the official Web site of the Socialist Labor Party of America.

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