

**Jury Trial in Contempt Proceedings — Anti-Injunction  
Legislation.**

**SPEECH**

OF

**HON. DICK T. MORGAN,**  
OF OKLAHOMA,  
IN THE HOUSE OF REPRESENTATIVES,

*Tuesday, July 9, 1912.*

The House having under consideration the bill H. R. 22591 to amend an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911—

Mr. MORGAN said:

Mr. SPEAKER: The bill under consideration proposes to amend the act approved March 3, 1911, entitled "An act to codify, revise, and amend the laws relating to the judiciary." The act referred to is amended by inserting after section 268 five new sections. The propositions in controversy rise largely out of the proposed new sections 268a, 268b, and 268d. That we may have this matter before us clearly, I quote from the bill as follows.

Section 268a provides as follows:

Sec. 268a. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States by doing any act or thing therein or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States or at common law, shall be proceeded against for his said contempt as hereinafter provided.

Section 268b in part provides as follows:

In all cases within the purview of this act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

Section 268d in full provides:

Sec. 268d. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of or on behalf of the United States, but the same and all other cases of contempt not specifically embraced within section 268a of this act may be punished in conformity to the usages at law and in equity now prevailing.

These provisions indicate the changes which this bill proposes to make in the procedure in our Federal courts in certain contempt cases. The provisions of the bill apply only to proceedings in contempt when the act complained of be of such a char-

acter as to constitute a criminal offense under a statute of the United States or at common law, and in no case shall the provisions of the act apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to cases brought or prosecuted in the name of or on behalf of the United States.

QUESTIONS INVOLVED.

There seems to be two main questions involved in the provisions of this bill.

First. Are the provisions of the bill constitutional?

Second. Is the proposed legislation wise and proper?

I have not examined the authorities carefully with a view to determining the power of Congress to enact the proposed legislation. I have listened to the discussion of the question here to-day. I have concluded from this discussion that the provisions of this bill are constitutional and that the Congress, under the Constitution, may enact this legislation. The able and distinguished gentleman from Illinois [Mr. STERLING] has delivered a most able address in which he stoutly contends that the proposed legislation is not within the power of Congress. The gentleman reasons with great force and clearness, and presents his views in a way that shows that he has given great study and research to the question, and we all recognize that he is honest and conscientious in his conclusions. I can not, however, agree with him that the legislation proposed in this act is unconstitutional, and I believe that if this bill shall become a law the courts will hold that Congress has not exceeded its power.

Believing that Congress has the constitutional power to enact the provisions of this bill, the next question to be considered is the character of the legislation. Is it wise? Is it proper? Will it contribute to the well-being of society? Will it strengthen the fabric of our Government? Will the results flowing from this legislation prove helpful to the people of this country? Or, on the other hand, is this dangerous legislation? Will it prove harmful? Will it weaken popular government? Will it tend to degrade our courts and bring them into disrepute among the people? Will such legislation encourage disorder, violence, and crime?

I have given some thought to these and similar questions. I have great respect for both our Federal and State courts. I believe as a rule our judges are honest, sincere, patriotic public officials. Our courts rank with the best in the world and are worthy the highest respect and confidence. The great respect which our people generally have for our courts is not because of the great power and authority which the law confers upon the courts or the judges. The people respect our judges and have confidence in our courts because as a rule the judges and our courts are entitled to respect and confidence.

After all, public sentiment is the highest law of the land. Our courts can not endure with a continued hostile and adverse public sentiment. Unless supported by public sentiment our courts must go down. Because in the end public sentiment will change precedents, overrule decisions, repeal laws, and amend constitutions.

Our Constitution carefully guards personal liberty and guarantees the right of trial by jury when one's life or liberty is involved. To confer upon judges in indirect contempt cases the

power to punish by long imprisonments—by depriving a man of his liberty—would seem to be out of harmony with the provisions of the Constitution, which guarantees jury trial in criminal cases. Of course, we can not have courts unless the judges can preserve order, maintain the dignity of the court, and enforce their decrees. But the provisions of this bill do not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice. The object of this bill is not to destroy or weaken our courts, but to throw around our citizens an additional safeguard for the protection of liberty. This bill does not permit violations of the orders of our courts; it does not excuse such violations, but simply provides that in certain cases a person charged with contempt can not be punished until a jury has passed upon the facts.

I see no danger in such legislation, and I shall vote for the bill. I do not believe such legislation will encourage violence, disorder, or crime. It may be said that this proposed legislation comes before this House in response to the demands of organized labor. This should not prevent its passage. Organized labor is certainly entitled to be heard. It is labor that produces all our wealth. The welfare of our wage earners is the welfare of the Republic. Whatever contributes to the well-being of the men who do the work of the Nation adds to the strength and greatness of the Nation.

Labor organizations are not perfect, and the men who compose such organizations are human beings like the rest of us, and, of course, do not profess perfection. But labor unions have much to their credit for the good which they have accomplished. With organized capital now supreme in the land, labor unions are essential. Such organizations have done much to shorten the hours of labor, increase wages, improve conditions under which labor is performed, and to educate public sentiment to understand the rights of labor. We hear much of the conflict between capital and labor. In a sense there is such a conflict. But in the broadest sense there is no conflict between capital and labor. Employer and employees are interested in the prosperity and welfare of each other. I am for industrial peace. But if occasional conflicts come, let us not despair. I believe the great body of American workmen are patriotic American citizens, firmly attached to our free institutions, and devoted to the principles of free government. I trust it may always be so. I believe we may contribute to this end by shaping our national legislation so as to recognize any reasonable demand of labor and make those who create the wealth of the Nation feel that their rights and interests are fully recognized and that they reap a reward commensurate with the labor performed.

#### REGULATION OF INJUNCTIONS.

We have, during this session of Congress, passed a bill which may be regarded as a companion of the measure now under consideration. I refer to H. R. 23635. It relates to the issuing of injunctions by the Federal courts. One of the important provisions of this bill is as follows:

And no such restraining order or injunction shall prohibit any person or persons from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at or near a house or place where any person resides or works, or carries on business, or happens to be for the purpose of peacefully obtain-

ing or communicating information, or of peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute; or from recommending, advising, or persuading others by peaceful means so to do; or from paying or giving to or withholding from any person engaged in such dispute any strike benefits or other moneys or things of value; or from peaceably assembling at any place in a lawful manner and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto.

I voted for the above law, as contained in the bill passed by this House May 14, 1912. In my judgment we should see that such laws are passed that will prevent judges from abusing the power of issuing injunctions and abusing the power to punish for contempt. It has been asserted that judges seldom abuse this power. I believe this is true. But we should, if possible, enact such laws as will prevent any abuse of this power. Such laws, I believe, will tend to increase respect for our courts and judges. Whenever power is lodged in a public official, we should throw around him wise restrictions to prevent, if possible, any abuse or misuse of this power. This, as I understand, is the very object of this proposed legislation relating to contempt and injunction proceedings. And so looking at this proposed legislation, I give the same my support and my vote.

We have in this country about 35,000,000 persons over 10 years of age engaged in gainful occupations. Eleven million of these are on the farm; 7,000,000 are engaged in domestic and personal service, including common laborers; 7,000,000 are engaged in trade and transportation; and 9,000,000 are engaged in manufacturing and mechanical pursuits. It is this army of toilers that gives our country its wealth, its prosperity, its prestige abroad, and its real strength at home. In all our legislation we should keep in view the physical, intellectual, social, and moral uplift of this grand army of workers. Their advancement, their welfare, their happiness should at all times be paramount. Organized labor in numbers, it is true, constitutes but a small per cent of the total number of people engaged in gainful occupations. But all our wage earners reap advantages, benefits, and blessings from battles fought and won by organized labor. My hope is that the great body of our laboring men will continue as they are now—law-abiding, liberty-loving, loyal-hearted, patriotic American citizens. And so long as I shall be intrusted with legislative power in our National Legislative Assembly I shall vote for all measures which I believe will contribute to the welfare of labor, for I believe this is the best way to add strength to our Nation and insure the prosperity and happiness of all our 90,000,000 of people.

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