

# ROOSEVELT RENEWS ATTACK ON BALDWIN

## Declares His Labor Decision Revolutionary, Making for So- cialism or Something Worse.

### UNLIKE HIS OWN PLATFORM

#### Colonel Declares He Is Not Making a General Criticism of the Judiciary in This Controversy.

A third letter, written by Col. Roosevelt in reply to communications from Judge Simeon E. Baldwin, Democratic candidate for Governor of Connecticut, charging the Colonel with misrepresentation of Judge Baldwin's attitude toward labor, was given out in New York last night. It reads:

New York, Nov. 2, 1910.  
Judge Simeon E. Baldwin, New Haven,  
Conn.:

Dear Sir—I have received your letter of Oct. 31. As I told you in my first letter, the sentence of mine to which you refer was not correctly reported, consisting of two sentences which have been put into one. The first sentence, namely, "The Democratic Party of Connecticut has nominated for Governor a man who, while Judge, occupied the most retrogressive possible position on this question of workmen's compensation," is substantially correct.

The next sentence is not given as I said it, nor was it said as part of the first sentence; indeed, as you first quoted it, it was nearer right, to the extent of having in it the word "grind," which was part of the phrase I had used, "by grinding need," a phrase which is totally absent from the sentence you quote. But the sentence is wholly incomplete and inaccurate. The sentence as I actually said it opened with the use of the word "progressives," or "progressive," as an antithesis to "retrogressive," and contained a statement of our emphatic dissent from the position which I described in somewhat the language quoted but not in the language quoted.

But my criticisms of you are set forth clearly in my second letter. In your answer to my letter you entirely miss the point of the criticisms. I am not interested in your opinion as a law writer, I am interested in your opinion as a Judge. My criticism of you as a reactionary was based, not upon what you may have said as a law writer, but upon what you did as a Judge.

#### Citations of Decisions Scored.

Your long citations from decisions in courts of Connecticut are entirely irrelevant and beside the point. I know, as every layman knows, that it is not a function of a Judge to make new laws. When there is no statute enacted by the law making bodies of the people, the courts are no doubt bound to follow precedent. The question between us does not involve any such principle.

In the Hoxie case you had before you a definite statute enacted by the Congress of the United States, declaring the responsibility of railroads to their employes for negligence. Section 5 of that act provided:

That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this act, shall to that extent be void.

In that act Congress declared that railway employes should have certain new legal rights of compensation for injuries occasioned by the negligence of the railroad itself. In placing this clause which I have quoted in the act Congress was no doubt influenced by the well-known fact that in England an Employers' Liability act enacted many years ago was made a dead letter by employers insisting that their employes should sign contracts agreeing to waive the benefits of the statute and go without the legal rights which the statute proposed to give them. Congress doubtless intended that the beneficial value of this Federal Employers' Liability act should not be destroyed by any such process.

In the case decided by you which I have criticised, Hoxie vs. E. R. Road, you declared that this clause was unconstitutional as being "in violation of the Fifth Amendment of the Constitution of the United States as tending to deprive the parties to such a contract of liberty and property without due process of law." You say specifically as to railway employes: "It denies them, one and all, that liberty of contract which the Constitution of the United States secures to every person within its jurisdiction."

#### Reactionary and Revolutionary.

Your declaration speaks for itself; in substance it amounts to stating that the employes' right to give up their rights under the law is a thing to be protected, and not their right to receive those benefits; that the right to contract to get killed is "property" of which they cannot be deprived; that the right to get killed comes under the head of "life, liberty, and property" which the Fifth Amendment to the United States Constitution says cannot be taken away without due process of law. Congress aimed at giving the railroad employe a substance. You construed the act as giving him a shadow by solemnly declaring that to give him the substance is to take away his property in the shadow.

I criticised your decision because it is to me an incredible perversion of the Constitution of the United States. I criticised it because it is not only reactionary but revolutionary. I criticised it because I am against Socialism, and this decision, and every decision like it, makes for Socialism or something worse. Every strained construction of the Constitution which declares that the Nation is powerless to remedy industrial conditions which cry for law gives aid to those enemies of our American system of government who wish to furnish in its place some new, vague, and foolish substitute.

The result which you attempted to accomplish in this decision would produce,

I am told, a strange anomaly. The United States Supreme Court has held that public policy will not permit a railroad company to make contracts with shippers of freight, that the railroad company shall not be responsible for its own negligence in transporting that freight. You say that the railroad cannot be forbidden to contract with its employes that it shall not be responsible for maiming or killing them by negligence.

I protest that there is no public policy which makes freight more important than human lives and I criticised your decision, because you say that the Constitution will not permit protection of the lives of railway employes to the same extent to which, without a statute, freight is in the United States protected now. My criticism is not as some of your supporters endeavor to have the people believe, a criticism of the judiciary in general. It is simply and solely a criticism of you for having given an extraordinary and unprecedented construction to the Fifth Amendment of the Constitution of the United States, so as to pervert its purpose and by so doing to nullify and destroy an essential part of a most important Federal statute.

#### Platform and Decision Clash.

The platform on which you are seeking election for Governor in Connecticut promises an Employers' Liability act. How can there be an Employers' Liability act in Connecticut which will be of value to the employe if he can be compelled to contract to waive the benefits of that act through his necessities? Your answer to this need not be made to me. It is an explanation to which the working people of Connecticut are entitled. By your decision as Judge you have declared the powerlessness of the State to enact an effective law on a subject which requires effective law. I regard your decision as reactionary in a matter of vital concern to all laboring men. I do not think it possible for you to explain how, as Governor, you would obviate the effect of your decision as judge.

You say you are running upon a platform favoring compensation legislation. The objections made by you in the Hoxie case would obviously nullify, as to a very large number of working people, any such compensation legislation. If your opinion in the Hoxie case is good law no compensation law for those who need it most is possible, because there would still remain the freedom of contract of the employer to establish the terms and conditions by private bargaining as a constitutional right which you say cannot be invaded by legislation, a freedom which would enable him to contract with employes constrained by their necessities to accept his terms and give up the benefit of the statute to gain employment—a freedom which the just employer does not ask and which the unjust employer should not have. Either the Hoxie case is good law or a false hope is being held out by the platform on which you are a candidate.

#### Iowa Court Takes Contrary View.

You have further declared in this decision that the Connecticut courts have the right to refuse to recognize or enforce a Federal statute creating rights in favor of crippled railway employes. On this question I have nothing to say. I refer you, however, to the decision of the Supreme Court of Iowa, filed only a week ago, in the case of Bradbury v. Chicago, Rock Island & Pacific Railway Company. This explicitly cites the Hoxie case and explicitly disagrees with it, pointing out that even the comity which is granted by our courts generally to courts of foreign nations, has in the Hoxie case been refused to the laws of the United States in the courts of Connecticut. You would doubtless urge that you had been bound by precedent in reaching your conclusion in this regard. I am confining myself, and have confined myself, in my criticism of you to matters which involve no question of judicial precedent, but to an unprecedented and extraordinary construction by you of the Constitution of the United States.

It seems to me clear, from the language you used in the Hoxie case, that you regarded the whole compensation theory as enacted by Congress in the interests of workmen as being unjust. At any rate, I do not know what other construction can be placed upon your denying workmen the right to recover under the Federal law, denying this right, among other reasons upon the expressed ground that the Federal statute "would also compel courts established by a sovereign power, and maintained at its expense for the enforcement of what it deemed justice, to enforce what it deemed injustice."

In this opinion of yours the importance of the maintenance and permanence of rules of practice and procedure was enlarged upon. The property right of the carrier was given its due importance. But not a line appears which can be distorted into the slightest recognition of the right to life and limb of the employe into the slightest recognition of the grave perils of the men engaged in railway work; not a word appears in the whole opinion as to the grave importance of the question from the point of view of the thousands of railroad men annually killed, and hundreds of thousands annually injured in their dangerous calling. Yours truly,

THEODORE ROOSEVELT.

## INFLUENCE FOR A VOTE.

### Henry George, Jr., Gives Out a Bennet Letter to a Federal Worker.

Henry George, Jr., Democratic candidate for Congress in the Seventeenth District, gave out a letter yesterday with great glee which he stated had been written by his opponent, Congressman William S. Bennet, to an employe in the Post Office. The letter reads:

House of Representatives,  
Committee on  
Immigration and Naturalization,  
Washington, D. C., Nov. 1, 1910.

Dear Sir—I understand that you are a Post Office laborer in Jay Street, and are inclined to vote against me because the Post Office laborers have had no increase. The laborers are the one class that I have not been able to get an increase for since I have been in Congress, and the reason is that I have not been able to convince the members of the committee that their work is similar to that of the clerks, and that they ought to have the same pay. A great majority of the Congressmen come from rural districts where a six or seven hundred dollars seems to be a big pay for what they regard as ordinary labor, and I have not as yet been able to convince them that you really do clerks' work. I haven't any doubt but that we will be successful unless there is a Democratic House, in which case, of course, you stand no chance whatever for the increase. Very truly yours,

WILLIAM S. BENNET.

"Mr. Bennet's letter speaks for itself," Mr. George said. "The lawyers tell me it clearly violates the law. That does not concern me. The moral aspect of it is bad enough. It shows that Mr. Bennet to win even one vote will promise Federal legislation."