The Outlook

APRIL 18, 1923

THE GARY LIQUOR SCANDAL

THE conviction of the Mayor of Gary, Indiana, and fifty-four other city officials, citizens, and bootleggers is a good indication of what can be accomplished in upholding the law when a vigorous United States District Attorney is on the job. These men were convicted of conspiracy to violate the Prohibition Law. The trial lasted seventeen days, and the defendants were represented by some of the most eminent legal talent in the State. Two days before the trial began one of the chief witnesses for the Government was murdered, but prohibition agents had been gathering evidence for more than a year, with the result that fifty-five of sixty-two defendants were found guilty.

Besides the Mayor, the principal defendants found guilty included a city judge, an influential lawyer, the county prosecuting attorney and a former county prosecutor, the sheriff and a former sheriff, a justice of the peace, several deputy sheriffs, two police sergeants, and several policemen. They were charged with conspiring to collect weekly payments from violators of the Prohibition Law and with disposing of confiscated liquor for their own profit.

The amazing thing about the Gary rum scandal is that public officials, from the Mayor down to the policeman, all of whom had sworn to enforce the law, were among the guilty. Lawlessness is bad enough, but it is still more shocking when a judge and a mayor, a prosecuting attorney and a sheriff, participate in it. The oath which a public official takes binds him to uphold the law as he finds it, not as he thinks it should be. If he did not expect to uphold the law, he never should have sought the office.

It has been said that the American "melting-pot" has never been even thawed out in Gary; that Gary is Hoosier only as far as geography is concerned. What an example the city officials have set for the overwhelming foreign population, among which sentiment might be expected to be adverse to the enforcement of prohibition! What a lesson in "Americanism" has been set them! How can we expect the foreigner to respect the law with such examples before him? What must he think of our form of government when we cannot trust the men we elect and appoint to administer the affairs of the community? What must Gary's large foreign population, much of it not naturalized, think of America and American institutions when they see such flagrant violations of law by officials sworn to enforce the law?

The question whether prohibition is right or wrong does not even enter into the Gary situation. The Prohibition Law is on the statute-books, and we have seen what can be done by a fearless Federal District Attorney. The triumph of the law in a community where the arm of local government was paralyzed should be noted by other cities.

(C) Keystone

WILLIAM E. DEVER, MAYOR-ELECT OF CHICAGO

CHICAGO'S NEW MAYOR

WILLIAM E. DEVER, Democrat, was chosen Mayor of Chicago at the election of April 3, with a plurality of 103,748 votes over his Republican opponent, Arthur C. Lueder. William A. Cunnea, Socialist, received 40,000 votes. Cunnea is a man of forceful and popular personality who has polled a much larger vote than 40,000 as a Socialist nominee for office on previous occasions. But for the fact that Judge Dever is well liked by labor and radical elements, Cunnea might have been expected to show much greater strength than he did. The political organization headed by Mayor Thompson, which has done so much to discredit Chicago, was so badly demoralized that Thompsonism was not a direct issue in the contest between Dever and Lueder. Some of the remnants of the once-powerful Thompson-Lundin faction went with one candidate for Mayor and some with the other. Mayor Thompson himself did not vote at all.

In choosing members of the city Council, Thompsonism was a real issue in many wards. Nearly all the aldermen who had been supporters of Mayor Thompson suffered defeat. Of the 50 aldermen chosen, 31 had the indorsement of the Municipal Voters' League. The new Council is a great improvement over the former body. While not composed of men of remarkable ability, the new Council is expected to be much more responsive to public opinion than its predecessor, which took orders largely from the leaders of the Thompson-Lundin organization.

The Ku Klux Klan issue figured in some wards. One retiring alderman, John P. Garner, openly championed the cause of the Klan. His ward is strongly Republican. It contains many more Protestants than Catholics, and comparatively few Jews. Alderman Garner, who was a supporter of the Thompson administration, was defeated by Wiley W. Mills, a Democrat. The aldermanic election is non-partisan in form, but the natural party affiliations of the candidates are known, and are taken account of by many voters. Mills, who is a Protestant, took open issue with Alderman Garner on the Klan question. He was supported for alderman by the leading Protestant clergymen of his ward.

Efforts were made to inject the religious issue into the campaign for Mayor, but evidently without much effect. Printed matter attacking Dever as a Catholic was widely distributed.

Only one Chicago daily newspaper, the "Evening Post," openly supported the Republican nominee. The "Tribune" spoke well of both Dever and Lueder, but did not express editorial preference for either, despite the fact that Senator Medill McCormick, chief sponsor for Lueder, is a member of the family that owns the Chicago "Tribune." The "Daily News" commended both candidates, but gave Dever the preference on the ground of his experience as a former member of the city Council. The Hearst papers and the "Evening Journal" were strong supporters of Dever. Rather strong appeals were made by Lueder managers to vote for the Republican candidate on party grounds. While Judge Dever had the united support of the Democratic organization, his speaking campaign was conducted largely on non-partisan lines. He had the indorsement of many independent leaders. Nu-

merous speakers from Dever platforms urged the passage of a law for the non-partisan election of Mayor and expressed the hope that the present campaign for Mayor would be the last to be conducted on party lines.

WHAT WILL THE NEW ADMINISTRATION DO?

THE task confronting the new municipal administration in Chicago is a most difficult one. Mayor-elect Dever is committed to the policy of municipal ownership and operation of the traction system. The street railway franchises expire in February, 1927, a few months before the end of the term of the Mayor about to go into office. The city does not possess, under the Constitution, borrowing power sufficient for the acquisition of the lines, and amendments of the Constitution are hard to secure. Various suggestions for dealing with the situation by indirection are under consideration. If none of these suggestions is found feasible and satisfactory—and there is much doubt if any will prove actually workable—the new Mayor may be expected to take the position that operation shall be continued under temporary permits only, until such time as the Constitution may be amended to give the city the desired borrowing power. Mayor-elect Dever is committed to the policy that no important action shall be taken on the traction question without a referendum vote.

Management of the school system constituted one of the principal grounds of criticism of the Thompson administration. The Chicago Board of Education consists of eleven members, serving for five-year terms, and not subject to removal. The Board is an independent agency. The new Mayor will appoint three members of the Board soon after going into office, and two each year thereafter. It will be more than two years, therefore, before the School Board will have a majority appointed by the Mayor now coming into office after a campaign in which improvement of school administration was one of the most important issues. Inasmuch as the law requires more than a majority vote of the School Board members on many matters, it will be seen that the power of the Thompson organization over school affairs may not be completely broken even after the new Mayor shall have been in office more than two years. Thus the plan of overlapping terms of School Board members, with no power of removal, originally defended as a means of promoting non-political management, is liable to operate to prolong objectionable political control long after its repudiation by the people at the polls. The situation has led some civic leaders to urge immediate legislation to authorize the removal of School Board members. The trouble with this suggestion is that the Governor of the State, Len Small, is a part of the Thompson-Lundin organization, and he might be expected to veto such a measure if passed by the Legislature.

The talk immediately after election was that one of the first appointments to the Board of Education by Mayor Dever would be that of Charles E. Merriam, of the Department of Political Science of the University of Chicago, and a former Progressive Party leader.

THE MINIMUM WAGE LAW UNCONSTITUTIONAL

FOLLOWING within a few months the decision rendering the Child Labor Act unconstitutional, a decision was handed down last week by the United States Supreme Court which renders null and void the act of Congress establishing for the District of Columbia a method for determining legal minimum wages for women.

This decision is bound to increase the feeling widespread throughout the country that the Constitution, if it is to be interpreted in the future by the courts as it has been in the recent past, needs renovation in order to fit it for the needs of a modern industrial society.

Evidently aware of the protests that have been made against the power of the Supreme Court by a majority of one to nullify the will of Congress, the Court makes a very clear and conclusive statement as to the right of the Court to declare laws unconstitutional; for, as the Court says, the Constitution is the repository of sovereignty, while a Congressional statute is the active agency of this sovereign authority, and when the two conflict "that which is not supreme must yield to that which is," and the Court simply ascertains which is the supreme law and rejects that which is inferior.

In this case, however, as in many other cases, the Court is almost evenly divided as to what is the supreme law. The decision is rendered by a vote of five to three; but it was virtually a five-to-four decision, for, although Justice Brandeis did not vote, since as a lawyer he had argued a minimum-wage case before the Court, there is practically no doubt as to how he would have voted. The opinion was given by Mr. Justice Sutherland. The dissenting judges were Chief Justice Taft and the most recent appointee, Mr. Justice Sanford, who concurred in the Chief Justice's dissenting opinion, and Mr. Justice Holmes, who presented a dissenting opinion of his own.

The New York "Tribune" has performed a fine public service in printing all three opinions in full.

Reviewing former decisions, the majority opinion finds that laws which limit the freedom of contract between employers and employees have been sustained by the Court on certain definite grounds, such as that the laws in question dealt with a business charged with a public interest, or met an emergency, or had to do with methods of payment, or prescribed hours or conditions of labor, or protected persons under legal disability, or prevented fraud. None of these grounds does the Court find applicable to a minimum wage law. It says that this law is merely a price-fixing law confined to "adult women . . . who are legally as capable of contracting for themselves as men." It denies that there is any connection between the amount of wages received and the state of public morals. "It cannot be shown," says the Court, "that highly paid women safeguard their morals more carefully than those who are poorly paid." It goes so far as to say that "in principle there can be no difference between the case of selling labor and the case of selling goods." It finds that the statute has no regard for any requirement that the amount of service rendered shall correspond to the amount of wages paid, but considers solely the adequacy of the wage to supply the necessary cost of living in health and good morals. It argues that if the police power of the Government can be invoked to justify the fixing of a minimum wage it can be invoked to justify a maximum wage. In the case under consideration both the employer and the employee agreed on a wage below the legal minimum wage. The Court sustained the right of these two parties to make and carry out such an agreement without interference.

Apparently the reasoning in this opinion would render not only the Federal law invalid, but also any State minimum wage law which might come before the Court. Indeed, the States of New York, California, Kansas, Oregon, Wisconsin, and Washington, all having minimum wage laws of their own, filed arguments in this case in an endeavor to have the Federal law upheld.

DOES THE CONSTITUTION PREVENT JUSTICE?

IT is significant that, in finding the National Minimum Wage Law invalid, the Supreme Court cited a decision which the Chief Justice assumed had been overruled and Mr. Justice Holmes supposed "would be allowed a deserved repose." This is the decision in the famous, or, as some would say, notorious, Lochner case, which aroused