Criminal

No.

IN THE SUPREME COURT

of the

State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

CHARLOTTE ANITA WHITNEY,
Defendant and Appellant.

APPELLANT'S PETITION FOR A HEARING BY THE SUPREME COURT,

After Decision by the District Court of Appeal, State of California, First Appellate District, Division One, and Numbered Therein Criminal No. 907.

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To the Honorable Lucien Shaw, Chief Justice, and the Associate Justices of the Supreme Court of the State of California:

Your petitioner, Charlotte Anita Whitney, defendant and appellant herein, herewith makes

application for a hearing by this court of the above entitled cause after decision by the District Court of Appeal, First Division of the First Appellate District, affirming judgment of conviction in the Superior Court of the County of Alameda.

(1) The District Court of Appeal in the determination of the instant case, relies solely and alone on People v. Taylor, 62 California Decisions 546. In its opinion the court not only refers to People v. Taylor three different times in the course of a short opinion, but refers to no other case. The conclusion would be inevitable that the facts in the instant case and in the case of People v. Taylor were identical, or at least analogous.

Nothing could be further from the fact. It is respectfully submitted that not only are the facts in People v. Taylor and People v. Whitney totally dissimilar, but that the instant case presents a question of vital importance which has not been passed upon by this tribunal or even given consideration in the two cases in which this court has exhaustively considered the question of the criminal syndicalism law.

The instant case presents the following question: Does mere membership in a political party, without any showing of violence on the part of said party, without the commission of any act

of violence upon the part of the defendant, without any showing of the aiding or abetting of violence on the part of the defendant, without the showing of any knowledge on the part of the defendant of any violence or of any intention to commit violence, without the utterance on the part of the defendant of any violent sentiment, without any showing of approval on the part of the defendant of any act of violence already committed or contemplated, constitute a crime within the meaning of the criminal syndicalism law.

It will be remembered by this court that in People v. Steelik, 62 Cal. Dec. 536, the defendant was a member of the I. W. W., an organization made notorious by the fact that whether as an organization it advocated violence or not, its individual members perpetrated many outrages and crimes against property. In the case of People v. Taylor it will be remembered that the defendant while a member and an organizer of the Communist Labor Party was, at the same time, a member of the I. W. W., and that a large part of the evidence introduced at the trial tended to show, quoting from the decision of the District Court of Appeal that

> "Taylor personally enunciated a program to bring about a general strike of the workers in all industrial and all governmental offices. The army and navy and police of the country

would be paralyzed by the strike and by the failure of telephone, telegraph, railroads and food supplies. The red guard of which he was to be the organizer, was to step in and immediately take control of all state, county and city offices which were to be ruled and governed by those who were in the 'inner circle,' or those who were to be recognized as leaders of the revolution. Taylor referred to the uprising as the 'bloody revolution'; he outlined that the red guard would seize the policemen, moving all the currency and coin to one central place, there to be held by the guard; all newspapers in the locality were to be seized, except one which as a matter of revolutionary tactics should be spared as a means of spreading the propaganda of the revolution. The members of the inner circle he outlined, had selected hiding places on the Mendocino Coast and in the Sacramento Valley to utilize in cases of emergency. In outlining his further plan Taylor, it is alleged, disclaimed any hope of success of political change through the help of the ballot and advocated sabotage as a weapon of the working class against the employers and capitalists, such as pulling up rails and derailing trains, and railroad strikes, destroying machinery and factories, destroying and wrecking street cars, and traction troubles. He also advocated, it is alleged, burning haystacks in order to bring the farmers to terms, and many more such violent activities."

While it is hard to believe that any sane person, or at least any person possessed of the judgment of a child of high-school age, could in the United States, under prevailing conditions, even seriously enunciate such a doctrine, yet the vital fact in distinguishing People v. Taylor from the instant case is the very fact that the defendant in People v. Taylor is at least charged with having been a member of the I. W. W., and personally advocating industrial and political change by the use of violence.

Charlotte Anita Whitney was not an I. W. W., there is no allegation that she was an I. W. W., nor the slightest bit of evidence suggesting that she ever personally had knowledge of the acts of the I. W. W., or approved any of their acts.

In the instant case Charlotte Anita Whitney, groping for a means to help the poor entered a public meeting in a convention hall in the City of Oakland, and there joined the Communist Labor Party; secondly, she acted as a member of the credentials committee of that convention; and thirdly, her name is signed to a resolution advocating amnesty for what were termed political and class war prisoners.

This is the sum of her offending.

An analysis of the 998 pages of testimony taken at her trial does not disclose one word even purporting to show:

That she ever committed an act of violence;
That she ever aided or abetted violence;
That she ever advised violence;
That she ever uttered a violent sentiment;

That she ever knew of any act of violence offered by any organization or individual belonging to any organization;

Or even that the organization in which she admits membership ever committed any act of violence.

On the contrary, the record indicates that Charlotte Anita Whitney was opposed to all violence and held convictions against it as strongly as those held by people of the Quaker faith, whose religious scruples are respected and not made the basis for sneers and prosecution.

It is not alleged nor suggested that Charlotte Anita Whitney was ever a member of the Industrial Workers of the World or of the Bolshevists of Russia. There is not one scrap of evidence even remotely suggesting that she ever endorsed any act of violence either by these organizations or by individuals belonging to these organizations.

Yet appellant believes that no intelligent human being can review the record of her trial and not be forced to believe that a conviction was secured by inflaming the minds of the jurors with the idea that she was in some degree responsible for and sympathetic with the atrocious crimes committed either by these organizations or members thereof

It is respectfully urged that never in the history of California was there a plainer miscarriage of justice.

Never in the history of California was a defendant before a court of justice so ruthlessly deprived of vital rights guaranteed under the Constitution.

Never was there a more apparent indecent haste to appease public wrath by the offering up of a vicarious sacrifice.

The time has now arrived in the free United States of America when, even if inadvertently, you should join a political party which expresses sympathy with a political change any place on earth, you are a criminal syndicalist and liable to serve a sentence of fourteen years in the penitentiary. It seems incredible that this should be true, but the facts in the Whitney case prove conclusively that this is the exact fact.

An analysis of the prosecution's case demonstrates conclusively that when it was found

possible to prove that in any degree Charlotte Anita Whitney had ever advocated violence or taught violence, when it was found that her entire life was a denial of violence and that her personality was the antithesis of violence, when it was found impossible to prove that the Communist Labor Party, of which she was a member, had been involved in any violence, resort was had to the introduction of testimony as to acts committed by criminals belonging to the Industrial Workers of the World and acts committed by the Bolshevist regime in Russia.

Not only was Charlotte Anita Whitney not a member of the I. W. W. organization or of the Bolshevist party of Russia, but there is not one shred of testimony even remotely suggesting that she ever sympathized in any degree with any of the excesses committed by any individual belonging to any of these organizations or by these organizations as such.

In attempting to justify the deluging of the jury in the trial of Charlotte Anita Whitney with testimony as to crimes committed and advocated by the Bolshevists of Russia, thousands of miles distant, and of crimes committed by members of the I. W. W. organization two and three years prior to the trial of Charlotte Anita Whitney, it has

been argued that the court instructed the jury that defendant was not to be charged with responsibility for acts done outside of her presence.

The transcript of testimony shows that conservatively speaking, sixty per cent of the testimony taken had reference to the Bolshevists of Russia or the acts of I. W. W.'s.

To assert that this testimony did not arouse in the jury an unjust prejudice against the defendant after the jury had witnessed the admission of this testimony as pertinent, competent and relevant, and after the jury had listened to this testimony hour after hour and day after day, is to deny the obvious.

If it were simply desired to show the character of the Bolshevist regime in Russia and of the I. W. W. organization, and if it were not the determination of the prosecution to inflame the mind of the jury unjustly against Charlotte Anita Whitney, what further testimony was necessary, admitting for the sake of argument that it was relevant and competent, than the manifestoes of the Bolshevist party and the printed propaganda of the I. W. W.'s.

The record shows conclusively that the prosecution was in possession of thousands of circulars

by the introduction of any one of which it could have proved the character of Bolshevism or I. W. W.ism. Yet for days we find witnesses paraded before the jury, testifying to crimes committed in remote places without the knowledge of Charlotte Anita Whitney and without any suggestion that she had any knowledge of the crimes or that the party of which she was a member had any knowledge of the crimes testified to.

It is apparent from the record that the weakness of the proof against this defendant was such as to require conclusions not warranted by the premises on which they are based.

It is a significant fact that throughout 998 pages of testimony there is not a single word to prove or to suggest that Charlotte Anita Whitney ever directly or indirectly had any knowledge of any revolutionary movement, and particularly is the record bare of any evidence to prove that Charlotte Anita Whitney had any knowledge whatsoever of any crime committed either by the Bolshevist party of Russia or the I. W. W. It seems apparent that with the activity and zeal displayed in the prosecution of this defendant, any violent sentiment ever uttered by her which could have

been supported by any kind of evidence would have been introduced at the trial to establish that she had *knowingly* become a member of a party committed to criminal syndicalism. Yet we find not one word to establish any knowledge of violence or approval of violence upon the part of this defendant.

The only acts of Charlotte Anita Whitney concerning which there is any testimony whatever are her acts as a member of a committee on resolutions. All of these resolutions were introduced at the trial and are to be found on pages 252, 253, 254 and 255 of the transcript of testimony. These resolutions read as follows:

> "The C. L. P. of California fully recognizes the value of political action as a means of spreading communist propaganda; it insists that in proportion to the development of the economic strength of the working class, it, the working class, must also develop its political power. The C. L. P. of California proclaims and insists that the capture of political power, locally or nationally, by the revolutionary working class can be of tremendous assistance to the workers in their struggle of emancipation. Therefore, we again urge the workers who are possessed of the right of franchise to cast their votes for the party which represents their immediate and final interest—the C. L. P.—at all elections, being fully convinced of the utter

ity of obtaining any real measure of justice or freedom under officials elected by parties owned and controlled by the capitalist class.

(Signed) By the Whole Committee.
H. L. Griest, Chairman,
W. H. Eichorn,
J. G. Wieler,
D. D. Wemich,
Charlotte Anita Whitney,
Edw. R. Alverson.

"Co-Operatives & Workers Control.

"We congratulate the Workers on the stand taken by them in the movement for workers control of industries as evidenced in the movement known as the Plumb Plan for control and management of the R. R. and also the effort of the workers generally to eliminate the exploiter by the establishment of co-operative societies.

"At the same time we feel compelled to point out to all workers that the Labor Problem cannot be solved by any such scheme for only part of the working class, that the Labor Problem must be settled by all the workers for all them, and that the only solution will be found to rest in the establishment of a communist labor society which is based upon the collective ownership of all means of production of the working class.

(Signed)
K. Bauer,
W. H. Eichhorn,
D. D. Wemich,
J. G. Wieler,
H. L. Griest,
Edw. R. Alverson,
Charlotte Anita Whitney."

"*Resolved.* That we denounce the bloody course of action of the government in carrying on an undeclared war against Soviet Russia, as being in conflict not only with the fundamenetal law of the land, which requires congressional sanction for warfare upon any people—but also with every rule of decency and honesty.

"We demand the withdrawal of all support by the government from capitalist interests who are forcing imperialistic wars in any country and recommend that the unwarranted attitude and actions of the government in its relation with Russia, Mexico, Hayti and San Domingo be made a special and vigorous part of the propaganda of the C. L. P.

K. Bauer
D. D. Wemich
H. L. Griest
Edw. R. Alverson
C. A. Whitney
J. G. Wieler
W. H. Eichhorn."

"The Resolution Committee recommends that the C. L. P. of California extend, through its official channel, a sincere invitation to the Socialist Labor Party and the Communist Labor Party for the purpose of discussing, and, if possible, devising ways and means whereby unity of these organizations may be effected.

Signed by the Whole Committee
H. L. Griest, Chairman
W. H. Eichhorn
J. G. Wieler
D. D. Wemich
Charlotte Anita Whitney
Edw. B. Alverson.'

"The C. L. P. of the State of California declares itself to be uncompromisingly in favor of industrial unionism, and we recommend to each local that at all times the combined energies of the comrades be devoted in building up of industrial unions.

Signed by the Whole Committee
H. L. Griest, Chairman
W. H. Eichhorn
J. G. Wieler
D. D. Wemich
H. Bauer
Charlotte Anita Whitney
Edw. B. Alverson."

"Resolutions Committee recommends that the C. L. P. use all its strength and energy in the organization and education of new workers to utilize to the full extent their collective power to force the unconditional release of each and every one now serving a sentence as a political or class war prisoner.

H. L. Griest, Chairman
W. H. Eichhorn
Edw. B. Alverson
Charlotte Anita Whitney
D. D. Wemich
K. Bauer
J. G. Wieler."

It will be noted that the first of these resolutions expresses recognition of the value of political action and urges the workers who have the right to vote to cast their ballot for the Communist Labor Party; the second resolution endorses

what was known as the Plumb Plan for control and management of the railroads, a plan which was seriously discussed by the National Government in a time of emergency; the third resolution denounces the conduct of an undeclared war against Russia. It is a notable fact that some of the most conservative statesmen of America including the present President of the United States denounced the same enterprise, but perhaps in more intemperate language than used in this resolution; the fourth resolution discusses a conference with the Socialist Labor Party; the fifth resolution declares in favor of industrial unionism; the sixth and final resolution urges the workers to utilize to the full extent their collective power to force the release of what were termed political or class war prisoners.

It should be remembered that the trial of Charlotte Anita Whitney occurred in the month of January, 1920, almost a year and a half after the conclusion of the war, the convention of the Communist Labor Party took place in November, 1919, a year after the conclusion of the war. It is a notable fact that it was after the receipt of many petitions of this character that the President of the United States took up for consideration the question of the pardon of Eugene V. Debs,

victed of having obstructed the progress of the war, and finally granted to Debs a pardon.

Much additional data could be presented to the court in support of this petition for hearing on the vital question of whether mere membership in a party, without proof of approval of violent aims, and without clear proof of a knowledge of violent aims, constitutes a crime within the meaning of the criminal syndicalism law.

Constitutionality.

(2.) Conscious of the fact that in passing on an application for a writ of prohibition this court has rendered an opinion stating:

> "We see no merit in the claim that the act under which petitioner is being prosecuted is invalid as being in violation of the *federal* and state constitution" (our italics);

and also conscious of the fact that the only opinion of a higher tribunal in California discussing the question at length by implication upheld the constitutionality of the act by reference to the case of People v. Moilen, 167 N. W. (Minn.) 345, 348, petitioner respectfully urges that a thorough review of all of the aspects of this question will sustain the contention of unconstitutionality as to a

portion of the California Act, and will demonstrate conclusively the vital distinction between the criminal syndicalism act of the State of Minnesota and the criminal syndicalism law enacted by the State of California.

Appellant respectfully urges that the criminal syndicalism law of the State of California, as it stands, is violative of the 14th Amendment of the Constitution of the United States.

The case of the State v. Moilen cannot be taken as conclusive in relation to the California statute because of a vital difference in the language employed in the two statutes.

The Minnesota statute prohibits the advocacy of crime, etc., *"as a means of accomplishing industrial or political ends."*

The criminal syndicalism act of California punishes violence or unlawful methods of terrorism, etc.,

> *"as a means of accomplishing a change in industrial ownership or control or effecting any political change."*

In other words, the Minnesota statute provides a penalty for the commission of any act of violence or the teaching or aiding or abetting of any act of violence designed to effect any political end. It would apply with equal vigor to the person who would employ methods of terrorism or of

lence, for instance, to prevent a change in the prohibition law, and to the person who would use such methods to bring about a change in the prohibition law.

The Minnesota statute would punish the corrupt holder of a political office who would seek by methods of terrorism and violence to prevent his being ousted lawfully from office, and at the same time would punish the aspirant for political office who would resort to means of terrorism or violence to bring about the desired political end.

In other words, the Minnesota statute does not discriminate between classes of persons, but is general in its application and is in accord with the Constitution.

The Minnesota statute with equal force applies to those engaged in industrial controversies. It would punish the person who would seek by violence and terrorism to prevent a change in industrial control, as well as the person who by those methods sought to accomplish a change.

The criminal syndicalism law of California expressly refers only to those who seek by violence or methods of terrorism to accomplish a change in industrial ownership or control, or to effect a political change.

Under the California law the corrupt holder of political office might with impunity organize a group to maintain itself in office by violence or terrorism and escape any penalty under the criminal syndicalism law, while the persons desiring to oust such corrupt regime would be guilty of criminal syndicalism and liable to punishment.

The proponents of prohibition might organize to control by methods of terrorism elections to the legislature and not be guilty of criminal syndicalism, while the opponents of prohibition at the same election using the same methods would be.

The opponents of city and county consolidation in the City of Oakland and County of Alameda, could without regard to the criminal syndicalism law organize by violence to defeat the measure on this subject shortly to be submitted to the voters of that locality. The proponents of city and county consolidation however would be liable to fourteen years' imprisonment for the same offense.

The present owners of industries in California might practice violence to prevent the application of new laws providing for control of industries by the Railroad Commission of the State of California and not be guilty of criminal syndicalism.

Illustrations might be multiplied indefinitely to accentuate the discriminatory character of the law.

No doctrine has been more explicitly or frequently promulgated by the courts of the United States than the doctrine which holds that classifications in legislation to avoid violating the equality clause of the Constitution must be reasonable and not arbitrary.

It seems impossible to conceive a more arbitrary classification than that which permits one person or group to prevent a change while making it criminal for the opposing person or group to accomplish the change.

> 12 C. J., 1133:
>
> "Statutes passed in the interest of the public health, safety or morals, are void as class legislation wherever they are made to apply arbitrarily only to certain persons or classes of persons, or to make an unreasonable discrimination between persons or classes." Citing cases.
>
> 12 C. J., 1141:
>
> "But on the other hand a penal statute which makes arbitrary distinctions between different persons or classes of persons, either by making certain acts criminal offenses when committed by some persons but not when committed by others * * * has been declared unconstitutional as class legislation." Citing cases.

12 C. J., 1175:

"A statute or ordinance is void as a denial of the equal protection of the laws which makes a particular act a crime when committed by a person of one race but not when committed by a person of another race."

12 C. J., 1186:

"A legislation is void as contravening the equal protection guaranty which makes an act a crime when committed by one person but not so when committed by another in a like situation" (Citing cases), "or which makes the question as to whether a certain act is criminal or not depend on an arbitrary or unreasonable distinction between persons or classes of persons committing it" (citing cases), "within these rules statutes or ordinances have been sustained which have made it a criminal offense * * * to incite to the unlawful destruction of property" (Citing cases).

12 C. J., 1187:

"A statute is void as a denial of the equal protection of the laws which prescribes different punishments or different degrees of punishment for the same acts committed under the same circumstances by persons in a like situation" (Citing cases).

Re Ah Fong, Fed. Cases 102 (3 Sawy. 144):

"The equal protection of the laws under the 14th Amendment implies not only equal accessibility to the courts for the prevention

or the redress of wrongs and the enforcement of rights, but equal exemption with others of the same class of all charges and burdens of every kind."

Ho Ah Kow v. Noonan, Fed. Cases 6546 (5 Sawy. 552):

"The equality of protection assured by the 14th Amendment implies that no charges or burdens shall be laid upon one person which are not equally borne by others, and that in the administration of federal justice one person shall suffer for his offenses no greater or different punishment than another."

In re Tiburcie Perrot (C. C.), 1 Federal 481; 1 Ky. L. R. 136:

"Discriminating legislation by a state against any class of persons or against persons of any particular race or nation in whatever form it may be expressed, deprives such class of persons, or persons of such particular race or nation, of the equal protection of the laws and is prohibited by the 14th Amendment to the Constitution of the United States."

State v. Williams, 32 S. C. 123; 10 S. E. 876;

"General Statutes 2084, which makes the violation of a contract between land owner and a laborer indictable and fixes the limit of punishment in the case of the landowner, but imposes no limitation in the case of the laborer, is unconstitutional, as making a discrimination in the punishment which may be imposed."

Peonage Cases, 123 Fed. 671:

"Act of Alabama, Mar. 1, 1901, makes it a penal offense for any person who has contracted in writing to labor for another for any given time * * * and who shall afterwards without the consent of the other party and without sufficient excuse, to be adjudged by the court to 'leave such other party * * * and take employment of a similar nature from other persons without giving him notice of the prior contract.'

"Another statute subjects the new employer to penalties if he employs such person with knowledge of the prior contract. Held, such statute is unconstitutional as class legislation, subjecting laborers to penalties for breach of contract which are not imposed on any other class of citizens. Statute also denies to class of citizens affected the equal protection of the laws."

Re Langford, 57 Fed. 570:

"The act involved required knowledge on the part of the person charged that intoxicating liquor was intended for sale; subdivision 2 made it a criminal offense for any servant of a special class of common carriers to remove from a car any intoxicating liquor whatever, without any qualification as to knowledge that it was intoxicating liquor and without attaching any liability to the person receiving the liquor from the carrier. Held, subdivision 2 discriminated in singling out one class from the whole community for punishment. The South Carolina constitution provided that 'No person shall be liable to any other punishment for any offense, or be

subjected in law to any other restraints of disqualifications in regard to any personal rights, than such as are laid on others under like circumstances.' ''

Horwich v. Walker Gordon Laboratory Co., 68 N. E. 938:

"Act prohibiting sale and use of cans, boxes, bottles, etc., bearing the registered mark of the owner without his consent is in contravention of the Constitution, Art. IV, par. 22, prohibiting special legislation, as it gives the owners of the property of the class named rights not enjoyed by owners of other classes of personal property.

"The act also provided that the possession of such articles by junk dealers was prima facie evidence of unlawful possession. Held, unconstitutional, as it authorized conviction of such dealers on evidence that would not warrant the conviction of other persons.''

The analogy here is that the joining of a society advocating crime to bring about a political change is a violation of the criminal syndicalism law, while the joining of a similar society for the purpose of preventing a political change is not a violation of the law.

Re Opinions of Justices, 207 Mass. 601; 94 N. E. 558; 34 L. R. A. (N. S.) 604:

"Rendering proprietor of a Chinese restaurant criminally liable for permitting women

under the age of twenty-one years to enter it or be served with food and drink there, deprives him of his liberty and property without due process of law and deprives him of the equal protection of the laws. Police power does not extend to exclusion of young women from restaurants kept by Chinese, since such a regulation has no direct relation to the evil to be remedied."

The above is from the syllabus. The following is the last paragraph of the opinion:

"The fact that a man is white or black or yellow is not a just and constitutional ground for making certain conduct a crime in him when it is treated as presumably an innocent act in a person of a different color."

American Sugar Refining Co. v. McFarland, 229 Fed. 284:

"Act of Louisiana, par. 10, of 1915, regulating the business of refining sugar, provides that any person engaged in the business of refining sugar within the state, who shall systematically pay in Louisiana a less price for sugar than he pays in any other state, shall be prima facie presumed to be a party to a monopoly or combination in restraint of trade or commerce, and upon conviction thereof subject to a fine of $500 a day for the period during which he is adjudged to have done so, and that the business of refining sugar within the meaning of that act is thereby defined to be that of any concern that buys or refines raw or other sugar exclusively, or that refines

raw or other sugar taken on toll, or that buys or refines more raw or other sugar than the aggregate of the sugar produced by it from the cane grown and purchased by it. Held, that the discrimination between the sugar refiners to which it applies and buyers of sugar not engaged in refining or refiners of sugar not engaged in refining in Louisiana, or not buying or refining more sugar than that produced from cane grown and purchased by them, or not buying sugar in any other state, is such a denial of the equal protection of the laws to the refiner to which it applies as to render the statute invalid and unenforceable, as it makes the fact of one's ownership of property in Louisiana the test of criminality, *and makes an arbitrary selection of the parties who shall be subjected to its penal provisions,* without regard to any difference between their delinquency and that of others."

The following is taken from the opinion:

"Unless the legislature may arbitrarily select one corporation or one class of corporations, *one individual or one class of individuals,* and visit a penalty upon them which is not imposed upon others *guilty of a like delinquency,* this statute cannot be sustained. * * * Arbitrary selection can never be justified by calling it classification. The equal protection demanded by the 14th Amendment forbids this." Citing Gulf of Colorado and Santa Fe R. R. v. Ellis, 165 U. S. 150, 159; 17 Supreme Ct. 255, 258; 41 L. E. 666.

Re Mallon, 16 Ida. 737; 22 L. R. A. (N. S.) 1123:

"Sec 6452 Revised Codes, in fixing the punishment of a person who escapes from a states prison at the same term for which he is serving at the time of the escape denies equal protection of the law to persons under like circumstances, and, in providing that the escape of a state prisoner is made a crime and exempting federal prisoners and others who may be confined in the penitentiary for temporary purposes, is special and discriminatory legislation and violates the 14th Amendment to the Constitution of the United States and the Constitution of Idaho."

Miller v. Sincere et al., 112 N. E. 664:

"While the legislature has a wide discretion in determining what shall be considered a crime and the classification of crimes, discriminations of criminal statutes applying to certain persons or classes must be based on valid, and not upon mere arbitrary classification in favor of certain individuals or corporations."

Commonwealth v. International Harvester Co. of America, 115 S. W. 755:

"A statute which, when construed according to the canons of statutory construction, *confers a right on one class of citizens to do an act made a criminal offense* when done by one other class, conflicts with the 14th Amendment of the Federal Constitution."

State v. Latham, 98 Atl. (Me.) 578:

"If legislative regulations differ as to localities, classes and conditions, the classifications must be reasonable, and based upon a real and not arbitrary difference in conditions."

"Revised Statutes, Chapt. 136, par. 12, requiring milk dealers to pay for purchases semi-monthly, and providing for punishment by fine on default in payment, is unconstitutional as violating Constitutional Amendment No. 14, as to class legislation, and is not justifiable under the police power as being for the protection of public health."

The above is from the syllabus.

The following is from the opinion:

"Diversity in legislation to meet diversities in conditions is permissible. But if legislative regulations for different localities, classes and conditions differ, in order to be valid, these differentiations or classifications must be reasonable and based upon real differences in the situation, conditions or tendencies of things. Arbitrary classification of such matters is forbidden by the Constitution. If there be no real difference between the localities or business or occupation or property, the state cannot make one in order to favor some person over others. Citing a large number of cases.

"This statute does not apply to all classes of debtors, but to one class. It does not apply to all debts incurred by purchase of products, but to one class of debts. * * * *It*

jects a class of debtors to liability of criminal prosecution to which other classes of debtors are not subject.''

Re Van Horn, 70 Atl. 986, from the opinion:

'' 'Equal protection of the laws' must certainly mean equal security or burden, under the laws, to everyone similarly situated. A statute to escape condemnation as infringing the rights guaranteed by this amendment (14, United States Constitution) must bear alike upon all individuals and classes and districts that are similarly situated, in a similar manner, and with uniformity. Otherwise, there would be unjust discrimination, which this constitutional mandate prohibits. The purposes of the constitutional amendment must have been to prevent that which was arbitrary and capricious and to require uniformity and equality under like conditions. The so-called police power of the legislature which enables it to make regulations and restrictions to protect the health, morals, safety or welfare of the general public; and its determination will rarely, if ever, be interfered with by the courts. But this does not justify a legislative enactment which discriminates when there is no basis for discrimination. *Wherever an enactment has attempted to make that a crime in one place which by all the laws of reason must be a crime elsewhere within the same jurisdiction,* such attempted distinction is found by the courts to be illusory and the act is held unconstitutional.''

State v. Divine, 98 N. E. 778.

Birmingham Water Works Co. v. State, 48 So. 658:

"*The sum of these provisions is that no burden can be imposed on one class of persons, natural or artificial, which is not in like conditions imposed on all other classes.*" Citing cases.

Sterret Packing Co. v. Portland, 74 Ore. 260; 154 Pac. 410:

"An ordinance providing for the inspection of meats and slaughter houses located without the city as a condition precedent to the sale of products within the city, but exempting slaughter houses and packing plants subject to federal inspection laws, is invalid in so far as it prescribes higher inspection regulations than those fixed by federal rules."

State v. LeBaron (Wyo.), 162 Pac. 265:

"Act limiting hours of labor for females is unconstitutional so far as applying to restaurants as class legislation under the constitution of the United States, amendment No. 14, because applying to all hotels and restaurants except 'those operated by railroad companies,' the distinction being arbitrary and unreasonable."

American Digest, decennial edition, Vol. 4, Constitutional Law, p. 1752;

State v. Santee, 82 N. W. 445; 111 Iowa 1; 53 L. R. A. 763; 82 Am. St. Rep. 489.

Sams v. St. Louis & M. R. R. Co., 174 Mo. 53; 73 S. W. 686; 61 L. R. A. 475:

"Where there are two concerns engaged in precisely the same business and both conducting it in precisely the same manner, *a statute which would undertake to impose a liability on the one and not on the other* could not be sustained in the face of either our state or federal Constitution."

Park v. Detroit Free Press Co., 40 N. W. 731; 72 Mich. 560; 1 L. R. A. 599; 16 Am. St. Rep. 544:

"*It is not competent for the legislature to give one class of citizens legal exemption from liability for wrongs not granted to others;* and it is not competent to authorize any person, natural or artificial, to do wrong to others without answering fully for the wrong."

Kane v. Erie R. Co., 133 F. 681; 67 C. C. A. 653; 68 L. R. A. 788:

"A valid classification for legislative purposes must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any just basis. It must be grounded upon a reason of a public nature, and the act must affect all who are within the reason for its enactment." Judgment (C. C.) 128 F. 474, reversed.

Statute Vague.

Again the statute is open to constitutional objection on the ground that its terms are vague and not susceptible of definition.

The state argued that because the Communist Labor Party of Oakland endorsed the platform of the National Communist Labor Party, and the National Communist Labor Party endorsed Bolshevism, it was therefore permissible to introduce in evidence unauthenticated manifestoes of the Bolshevist Party of Russia to show the character of the Communist Labor Party of Oakland (page 49).

This being true, then it would be the duty of the District Attorney of Alameda County immediately to cause the arrest and prosecution as a criminal syndicalist of every person who joined the Friends of Irish Freedom. It would be proper to introduce in evidence the resolutions of this organization endorsing the struggle of the Irish people for liberty. It would then be proper to introduce in evidence the manifestoes of De Valera and the Irish Republican Government, forbidding Irishmen to pay taxes to England, and to combat English military forces with violence. Thus the Friends of Irish Freedom in Oakland would be proved to have endorsed violence in the accomplishing of political change and would be criminal syndicalists.

But this petitioner will freely predict to this honorable court that it will never be called upon to sustain or reverse the conviction of a Friend of Irish Freedom as a criminal syndicalist. The reasons for our confident prediction need not be expatiated upon. Everyone knows that if this absurd provision of the criminal syndicalism law were enforced or attempted to be enforced against those sympathizing with the struggles of Ireland against butchery and tyranny, the entire law would be blotted out of the statutes at a special session of the legislature if the law-making body did not happen to be convened in regular session.

Another anomalous situation might arise in connection with our criminal syndicalism law, as follows:

The accredited representatives of the Soviet Government of Russia have just concluded a conference at Genoa at which they met on equal terms with the accredited representatives of the Empire of Great Britain, the Republic of France, the Kingdom of Italy and all other recognized European governments, as well as with the accredited representatives of the Empire of Japan.

It is true that so-called formal recognition of the Soviet Government of Russia has not yet been accorded. It is likewise true, however, that these

accredited representatives of Russia have entered into engagements with the Governments of other nations, and have been even dignified by invitations to dine with the eminently sane King of Italy.

What a perplexing situation it would prove to be under our criminal syndicalism law if revolt should break out in Russia against the regime of Lenine and Trotsky.

Suppose that this revolutionary movement should organize an army to carry on the bloody struggle which would be necessary to overthrow the autocratic Bolshevist regime, backed up by its hordes of disciplined red troops.

By the same process of reasoning that the Bolshevistic manifestoes were read into evidence at the trial of Charlotte Anita Whitney, any political party in America endorsing the efforts to throw off the tyranny of Lenine and Trotsky could be proscribed under the criminal syndicalism law.

Any person joining such a party and giving voice to the hope that such a force might overthrow by violence the present Government of Russia would be guilty of criminal syndicalism.

CONCLUSION.

The political features of the original syndicalism law of the State of California today, it is respectfully urged, are not only unconstitutional, but repugnant to every American ideal of freedom of thought and freedom of speech.

It is respectfully submitted that a hearing by this court of the case of the People v. Whitney should be granted.

Dated, San Francisco,

June 3, 1922.

Respectfully submitted,

JOHN FRANCIS NEYLAN,
NATHAN C. COGHLAN,
Attorneys for Appellant
and Petitioner.

(Appendix Follows.)

APPENDIX.

APPENDIX.

In the District Court of Appeal
State of California
First Appellate District

DIVISION ONE.

Criminal No. 907.

THE PEOPLE OF THE STATA OF CALIFORNIA,
Plaintiff and Respondent,

vs.

CHARLOTTE A. WHITNEY,
Defendant and Appellant.

OPINION.

This appeal is from a judgment of conviction of the defendant for the alleged violation of the provisions of the Criminal Syndicalism Act. The information filed by the district attorney against the defendant consisted of five separate counts based upon the several subdivisions of said act. The jury found the defendant guilty as to the first count in the information, but disagreed as to the other counts therein, and dismissals as to these were subsequently filed. The charging part

of the first count in said information upon which the conviction of the defendant was had is in the language of the statute and reads as follows:

"The said Charlotte A. Whitney prior to the time of filing this information, and on or about the 28th day of November, A. D. nineteen hundred and nineteen, at the said County of Alameda, State of California, did then and there unlawfully, wilfully, wrongfully, deliberately and feloniously organize and assist in organizing, and was, is, and knowingly became a member of an organization, society, group and assemblage of persons organized and assembled to advocate, teach, aid and abet criminal syndicalism."

The first contention of the appellant herein is that said first count in said indictment, of which the foregoing excerpt is the charging part, was insufficient to state a public offense, the alleged particular insufficiency therein being its omission to specifically designate the name of the organization, society, group or assemblage of persons which she is charged with having organized and assisted in organizing and which were organized and assembled to teach, aid and abet criminal syndicalism. Since the original submission of this cause the Supreme Court has decided the case of *People v. Taylor,* 62 Cal. Dec. 546, covering the

precise point which the appellant urges upon this contention. The two cases are identical as to the form of the charge and as to the procedure with relation to the trial thereon in the trial court. In each case the defendant was fully advised upon the *voir dire* examination of the jurors and in the opening statement of the district attorney that the organization which the defendant was charged with having organized and assisted in organizing in violation of the terms of the Criminal Syndicalism Act was the Communist Labor Party of Oakland, a local branch of the Communist Party of California. This being so, we are bound, in conformity with the decision in *People v. Taylor, supra,* to hold that the appellant's first contention is void of merit.

The next contention which the appellant urges upon this appeal is that the evidence is insufficient to justify her conviction upon said count in the information. The record is voluminous and no useful purpose would be subserved by a detailed review of the evidence which it contains. Upon the main question, however, as to the part which the defendant took in organizing and assisting to organize the Communist Labor Party, there is no dispute. In the brief of the appellant upon this appeal it is stated to be an "admitted fact that

the defendant became a member of the so-called Communist Labor Party, attended a party convention Nov. 9th, 1919, and was one of the committee on resolutions which reported the platform hereinabove set forth.'' In addition to the foregoing admission the evidence abundantly shows that the defendant not only took a leading and active part in the organization of the Oakland branch of the Communist Labor Party of California, but also in the subsequent meetings and acts of said organization. Notwithstanding this admission and these proofs, the appellant insisted upon the trial of the cause and now insists that said organization was not of such character and purposes as to bring it within the class of organizations forbidden and condemned by the terms of the Criminal Syndicalism Act. It was upon this branch of the case that the larger part of the evidence adduced on behalf of the prosecution upon the trial of this cause was presented. It is the appellant's contention that the admission of a very large portion of such evidence designed to show the pernicious activities of other organizations with which the Communist Labor Party of California was affiliated, or regarding which, or the membership of which, it from time to time by resolution or otherwise expressed its approval and sympathy, was highly prejudicial

to the defendant's case, particularly in view of the fact that as is claimed her knowledge of and participation in these baneful activities was not sufficiently shown. As to the propriety of the admission of such evidence as tending to show the character and purposes of the Communist Labor Party of California there can be no further doubt, in view of the very full discussion of this subject in the case of *People v. Taylor, supra,* and of the determination of the Supreme Court therein As to the knowledge which the defendant had and of her participation in the aims, expressions and activities of the Communist Labor Party of California there can also be no doubt, in view of the admitted intelligence of the defendant and of her participation in the drafting of the resolutions and formulation of the constitution of the organization itself. That this defendant did not realize that she was giving herself over to forms and expressions of disloyalty, and was, to say the least of it, lending her presence and the influence of her character and position as a woman of refinement and culture to an organization whose purposes and sympathies savored of treason, is not only past belief but is a matter with which this court can have no concern, since it is one of the conclusive presumptions of our law that a guilty intent is

presumed from the deliberate commission of an unlawful act. (Code Civ. Proc., sec. 1962.)

As to the appellant's only remaining contention with relation to the alleged misconduct of the district attorney upon the examination of a juror, we have examined the record and do not find that the episode complained of was of such prejudicial character or consequence as to justify a reversal of the case.

Judgment affirmed.

RICHARDS, J.

We concur:

TYLER, P. J.
KERRIGAN, J.

Filed April 25, 1922,

J. B. Martin, Clerk.