

"Unclean Hands" in the Sandino Stamp Case

By MANUEL GOMEZ

A decision in the "Sandino Stamp" case has at last been handed down. This case, in which the All-America Anti-Imperialist League sought to restrain the postal authorities from interfering with its stamps reading, "Protest Against Marine Rule in Nicaragua," involved questions of fundamental importance in the development of American Imperialism. So concerned was the government in this case that personages of such official dignity as Postmaster-General New and Secretary of State Kellogg felt called upon to participate in it. Of course the decision is against the Anti-Imperialist League. The wording of the decision and the circumstances surrounding it teach a lesson of such obvious significance that even the most naive believer in American institutions cannot fail to be impressed by it.

"Unclean Hands"

No one seriously insisted that the Sandino Stamps violated any law. The government's defense against the All-America Anti-Imperialist League was that no writ could be granted because the League had not come into the courts with "clean hands." Why? Because our Sandino stickers said something about marine rule in Nicaragua, whereas Secretary of State Kellogg had entered an ingenious affidavit stating that there was no marine rule in Nicaragua at all and that everything was quiet and gentlemanly there. Federal Judge Thomas D. Thacher was much impressed by this contention of "unclean hands."

In setting forth his decision the worthy jurist delivered himself of the following:

"It is not enough to say that the stamps are not within the statutory prohibition upon which the defendants relied in excluding them from the mails — a question which is not decided. At the threshold plaintiff is met with the defense of unclean hands. This court will not aid the perpetration of falsehoods. One of the stamps is designed pictorially to characterize the acts of the armed forces of the United States in Nicaragua as ruthless, oppressive and in violation of international law. Both

carry the false implication that the United States, through its armed forces, is ruling Nicaragua, whereas the truth appears from the affidavit of the Secretary of State. The rule which confines the doctrine of unclean hands to misconduct connected with the subject matter does not preclude consideration of the plaintiff's use of these stamps in connection with a campaign of falsehood and vilification against the American forces in Nicaragua, which is frankly designed to encourage desertion of United States Marines to the forces of Sandino, with whom the American forces are in armed conflict. An analogous situation is often dealt with in the trademark cases where courts of equity refuse to enjoin infringement of a lawfully registered trademark which is shown to have been used upon goods sold under false representations. In such cases the Court looks beyond the character of the mark to its unconscionable use. (*Manhattan Medicine Co. v. Wood*, 108 U. S. 218.) And so in this case, looking to the use which has been and is intended to be made of these stamps, it is clear that the plaintiff is seeking the aid of the Court in the pursuit of its own iniquity. It has no more right to such assistance than the Highwayman of Houslow Heath. (*McMullen v. Hoffman*, 174 U. S. 639, 654.)

"Plaintiff has no standing in a court of equity, and the motion is therefore denied."

"No Marine Rule" Pretense.

Stripped of all its ferocious epithets against us, this decision of Judge Thacher's says two things. First, that Mr. Kellogg's affidavit is more real than the marines, gunboats and bombing planes now terrorizing Nicaragua and that the Courts will maintain the pretense that there is no marine rule in Nicaragua. Second, that even if you disagree with Messrs. Kellogg, Coolidge, & Co., about this you may not say so. It does not demand that you refrain from seeing the facts of marine rule. No doubt that will come later. Because the All-America Anti-Imperialist League was so indiscreet as to publicly characterize the situation in Nicaragua as one of marine rule, it is declared to have "come into court with unclean hands." And no one with unclean hands can expect to have any rights

in the exclusive, lily-pure circles of the federal courts.

Free speech is all right, presumably, so long as you agree with the powers that be. No unfamiliar dictum in this land of the government-strike-breaker! Long ago we were made to understand that we could not rely upon the constitutional guarantee of free speech, to encourage overthrow of the established government, to agitate in strikes, etc., etc. Now we are told that we may not even express an opinion different from that of the secretary of state.

Courts Defend Imperialism.

The significance of Judge Thacher's decision is that it shows what a web of constituted authority surrounds and defends the most arbitrary acts of government. We try to create protest against the sending of marines to Nicaragua by President Coolidge, and against marine rule there. The Post Office Department, ostensibly a mere technical arm of the government for distribution of the mails, immediately steps in. We go to the courts for a writ against the postal authorities. The courts turn to the secretary of state, who enters an affidavit to the effect that there is no such thing as marine rule in Nicaragua. That is final. And the court turns savagely upon us with the statement that we have "unclean hands" and that we have no rights "in equity" anywhere until we stop saying that there is marine rule in Nicaragua.

It is a vicious circle. There is no way out. Our lawyer tells us an appeal to a higher court would be useless, for no judge will call into question the affidavit of the secretary of state.

Thus we are shown how absurd it is to attempt to fight against American imperialism as the private misdeemeanor of some individual official sinner — the president, the secretary of state, or someone else. Imperialism cannot be fought without fighting the whole imperialist government. The government functions as a unit or it does not function at all. President Coolidge sends marines to Nicaragua, the military commanders carry out his orders, the state department, the courts, all other branches of the government combine to break up any attempt to interfere with the enterprise. There is more than an official esprit

d'corps behind this, a response to what is in the last analysis the pressure of class interest and a pretty thoroughly unified ideology, to say nothing of actual direction from Wall Street.

There are some liberal gentlemen in this country who blame the whole invasion of Nicaragua on Coolidge, as if it were some private affair he was carrying on behind the back of congress. But is this true? Can congress pretend that it is innocent in the matter? Only to an ignoramus, or to some fool who is so involved in legalism and legal technicalities that he cannot cut through superficialities to the reality.

Record of Congress.

Here is the record of congress in the Nicaragua affair. The house of representatives. Absolutely nothing. The senate. The senate foreign relations committee, headed by the pseudo-liberal political sleight-of-hand performer, William E. Borah, rejected the only resolution submitted to it which called for the immediate withdrawal of marines from Nicaragua. The senate as a whole defeated the Norris-Blaine proposal against maintaining the marines in Nicaragua after the Nicaraguan elections. This was as late as April 25, 1928. Way back in January the senate adjourned abruptly for three days by special arrangement between the republican and democratic leaders in order to prevent discussion of any resolutions criticizing the government's policy in Nicaragua.

The explanation for so extraordinary a maneuver was that the discussion would "embarrass" President Coolidge at the Pan-American Conference at Havana. The explanation itself is an admission.

(To Be Continued.)

Fascists Jail Workers

PARIS, June 3.—Scores of Italian workers, who dared to attempt May Day celebrations in defiance of the fascist decrees, were arrested and thrown into jails in a number of cities, reports which are beginning to slip thru the fascist censorship state. In spite of the fascist prohibition, May Day feeling ran high in all the factories of the industrial centers it is stated.