President vs. Supreme Court—An Ancient Feud

By ELMO SCOTT WATSON

FROM the nation-wide furore over President Roosevelt's plan for judicial reform, including the so-called "packing" of the Supreme court, one might assume that all this were something new in our history. But the fact is that the issue of President vs. Supreme court is an ancient feud which began during the earliest days of the republic and has flamed up at one time or another during the last century and a quarter.

There is a curious analogy between the first of these instances and the latest. The first was back in 1800 when Thomas Jefferson was elected President as the candidate of the Republican party (the ancestor of the present Democratic party) and was preparing to give the country the first "New Deal" administration after eight years of rule by the Federalists.

In those days the Supreme court consisted of a chief justice and five associate justices, provided for under the judiciary act of 1789 which also prescribed the

JOHN MARSHALL

duties and jurisdiction of the tribunal. It also provided for three circuit courts to be held twice a year, each composed of two justices of the Supreme court sitting with one district court judge, and for 13 federal district courts. When members of the Supreme court protested against these circuit riding duties, the house of representatives ordered an investigation of the situation.

Edmund Randolph, Washington's attorney-general, conducted it and reported against the circuit riding duty, so in 1793 congress provided that only one justice need attend each circuit, thus making six justices available for circuit riding duty. Although this improved the situation somewhat it still worked a hardship on the justices. In 1799 President John Adams again brought the matter before congress. The result was the second judiciary act, passed on February 13, 1801 which eliminated entirely circuit riding by members of the Supreme court, created 16 new circuit judges for the six circuits and expanded the power of the federal courts to their full constitutional limit. It also provided that after the next death of a member of the Supreme court, the membership of that body should not be more than five.

The Republicans Protest.

Immediately the Republicans raised a terrific uproar. They saw in the bill an attempt by the Federalists, who had lost the Presidency and congress in the election of 1800, to entrench themselves firmly within the judiciary, especially in the provision for limiting the membership of the Supreme court to five. Sixty-nine-year-old Justice William Cushing was in poor health and not expected to live. If he didn't, Jefferson, under the provisions of this new act, would not be able to appoint his successor, thus keeping the membership of the court solidly Federalist.

During the next 13 days, Adams sent to the senate nominations for the new judgeships. They were chosen almost entirely from among the Federalists and many of them for purely political reasons. By March 2 the senate had confirmed the last name of these "Midnight Judges," as the Republicans called them because many of their commissions were filled out by Adams on the last day of his term in office.

Two days later Jefferson was sworn into office by his fellow-Virginian but political enemy, John Marshall, who had been Adams' secretary of state and whom the President had appointed Chief Justice of the Supreme court late in January.

One of the bitter issues of the campaign had been the Alien and Sedition laws, passed during the Adams administration to restrain the vicious attacks of Republican editors on the President and his followers. These laws were now made an issue in the fight on the Supreme court. The Republicans declared that the court should have declared the Sedition act unconstitutional as a violation of free speech. Jefferson first proposed to declare it null and void in a message to congress. Finally, however, he just decided not to enforce it against offenders arrested before the expiration of the act on March 3, 1801 and to pardon prisoners then in jail for violating it.

But his followers were not content with this example of the Chief Executive taking upon himself the function of the Supreme court. They had been enraged by the stump speeches delivered by Federalist judges when instructing juries and they were especially bitter against Justice Samuel Chase of the Supreme court who had been especially severe in denouncing Republican principles from the bench. "The modern doctrines . . . that all men in a state of society are entitled to enjoy equal liberties and equal rights" he had said, "will . . . certainly and rapidly destroy all security to personal liberty"—this from a man who, as a delegate to the Continental Congress from Maryland, had signed the Declaration of Independence!

A Vote to Impeach.

The house of representatives voted his impeachment and John Quincy Adams said that it "unquestionably intended to pave the way for another prosecution which would have swept the judicial bench clean at a stroke." "Now we have caught the whale, let us have an eye to the shoal" said Jefferson, indicating that Adams' change was a valid one. But in the senate, where the impeachment trial was held, the Federalists were strong enough with their nine senators out of the total membership of 34 to

SAMUEL CHASE

prevent the necessary two-thirds vote for Chase's removal.

Although defeated in their attempt to oust Chase, the Republicans moved at once to repeal the odious "Midnight Judges bill" of March 13, 1801 and thus get rid of the new district judges appointed by Adams. Of course, the Federalist senators raved against this "assault upon the judiciary." They declared that judges were entitled to a life tenure and that the repeal of the law would wreck the Constitution. But the Republican majority nevertheless repealed the law on March 8, 1802, thus guaranteeing six judges on the Supreme court bench. Then, ironically enough, the Supreme court, composed almost entirely of Federalist judges, upheld the constitutionality of the repeal act which had the effect of restoring the much disliked circuit riding system. Incidentally, Justice Cushing did not die, as had been expected. He continued to serve until 1810, so Jefferson did not have an opportunity then to appoint a justice.

His opportunity did not come until 1807. In that year the demand for another circuit in the rapidly-growing new West led to the establishment of one comprising Kentucky, Tennessee and Ohio and the addition of a seventh associate justice on the Supreme court bench. Then Jefferson had an opportunity to appoint three justices, two for vacancies and one for the newly-created associate justiceship. But he soon found himself balked by his own appointees. One of them, Justice William Johnson, rebuked him for his embargo acts and the others joined with Chief Justice Marshall in strengthening the federal government in opposition to Jeffersonian ideals.

A cartoon in Frank Leslie's Weekly printed at the time of Grant's alleged "packing" of the Supreme court.

For it was during this period that John Marshall, with his interpretations of the Constitution, increased the authority of the judiciary and elevated the Supreme court to the prestige which it has enjoyed ever since. In the celebrated Marbury vs. Madison case in 1803 he laid down for the first time in the name of the entire court the doctrine that the judges have the power to declare an act of congress null and void when, in their opinion, it violates the Constitution.

Jefferson Views With Alarm.

This doctrine caused consternation among Jefferson and his supporters. Exclaimed the President: "If that idea is sound, then indeed is our Constitution a complete felo de se (legally a suicide). For, intending to establish three departments, co-ordinate and independent, that they might check and balance one another, it has given, according to this opinion, to one of them alone the right to prescribe rules for the government of the others, and to that one too, which is unelected by and independent of the nation . . . The Constitution, on this hypothesis, is a mere thing of wax in the hands of the judiciary which they may twist and shape in any form they please . . . A judiciary independent of a king or executive alone is a good thing; but independent of the will of the nation is a solecism, at least in a republican government." But Marshall's idea prevailed and in this first feud between the President and the Supreme court, the latter was completely victorious.

In 1837 two more justices were added to the Supreme court. Soon after Lincoln became President there were three vacancies in the Supreme court—two resulting from death and a third from the resignation of a Southern sympathizer. At first the new President did not seem to be in a hurry to fill the vacancies. But with cases challenging the North's blockade of Southern ports coming up, it seemed advisable to do so. Then on March 3, 1863 congress added Oregon to California to form the tenth circuit and provide an additional justice for the Supreme court.

Three days later Lincoln appointed Stephen J. Field to the new post and on that day the court upheld the legality of the federal government's blockade. It is not clear whether there was any connection between the doubt over what the court's decision would be in this case and the appointment of the tenth justice. But as it turned out, Field's vote wasn't needed. For the court, by a five to four vote, upheld the government.

Then in 1864 Chief Justice Roger Brooke Taney died and Lincoln named Salmon P. Chase, his secretary of treasury, as Taney's successor. This appointment had an interesting aftermath.

In 1866 the number of justices was reduced to eight. In April, 1869, the house passed a bill providing for a ninth. It had originally included in this bill a provision similar to that proposed by President Roosevelt for the appointment of additional justices for incumbents over seventy years of age. This was inspired in part by the fact that Justice Grier, then seventy-six years old, was in a feeble condition, mentally as well as physically. In the fall of 1869 the other justices of the court sent to Grier a suggestion that he should retire.

The senate, however, refused to concur in the house proposal for appointment of additional judges and as a compromise it was provided that any federal judge who wished to retire after reaching the age of seventy years and serving 10 years on the federal bench could do so with pay.

This bill would have permitted President Grant to make only one appointment to the Supreme court — since the membership had not fallen below eight since the passage of the 1866 act. When it became effective in December, 1869, the Supreme court was engaged in deliberating on the legal tender cases. The first conference of the court on the case resulted in a four to four decision. Grier suddenly shifted his position, after an inconsistency was pointed out to him, and the court ruled five to three adversely on the legal tender acts.

Rejecting His Own "Baby".

One of the justices who voted against the act was Chief Justice Chase. As secretary of the treasury in Lincoln's cabinet he had inaugurated the policy of issuing paper money and now as Chief Justice he held that his own "financial baby" was illegal!

On December 15, 1869 Grier submitted his resignation to take effect on February 1. Meanwhile President Grant nominated Ebenezer Hoar, his attorney general, to one of the Supreme court vacancies. But he was rejected by the senate—before the legal tender decision became known. Grant also named Edwin M. Stanton, his secretary of war, to Justice Grier's place but Stanton died four days after the nomination was sent to the senate.

On February 7, 1870, as the Supreme court was announcing its adverse decision in the legal tender cases, Grant sent to the senate the names of William Strong of Pennsylvania and Joseph P. Bradley of New York for the two vacancies on the court. It was this coincidence, plus the subsequent events which gave rise to charges that Grant had "packed" the court to get a reversal of the legal-tender decision. Four days after the confirmation of Strong and Bradley, Attorney General Hoar moved for argument of two other legal-tender cases and the earlier decision finally was reversed by a five-to-four vote on May 1, 1871, Strong and Bradley voting with the previous minority.

Although Grant has been charged with deliberately "packing" the court, historians generally absolve him from that charge. They point out that Grant had no advance knowledge of the nature of the decision, and that, since virtually every state court (except Kentucky) and every prominent Republican lawyer held the view that the legal-tender act was constitutional it would have been impossible for the President to find any state judge or any lawyer of his own party who differed from Strong and Bradley in the view which they later expressed on the Supreme bench.

SALMON P. CHASE

© Western Newspaper Union.

Keeping Up With Science By Science Service

© Science Service.—WNU Service.

Spodumene Now Made Available for Many Uses in Industry

Method for Reduction Devised by Scientists

New York.—Few people probably ever heard of the little-known, little-used lithium mineral called spodumene, but through a process which United States bureau of mines experts described here the mineral may soon help cool your home, improve the dishes from which you eat, improve the production of lithia water you may drink, help start your motor car and make a special extra tough glass.

At the annual meeting of the American Institute of Mining and Metallurgical Engineers, Oliver C. Ralston and Foster Fraas of the bureau's scientific staff told of the simple method by which spodumene can be separated from other minerals with which it is associated in nature. Lack of use of the mineral has, in the past, been due to the absence of such a separating process.

Easily Reduced in Lime Kiln.

Heating the mineral in a lime kiln, it has been found, reduces the spodumene to a chalky white mass which can be crumbled in the fingers while the remaining minerals in the ore remain strong. Even farmers and miners with home-made kilns can use the method with considerable success.

The fine dust resulting from this treatment is about 80 to 90 per cent pure, and from many localities this product will be of acceptable purity. It is much better adapted to use in making lithium chloride than the original hard, dense spodumene. It is also ready to be used in a glass batch, unless nature happened to put magnetic iron minerals in the ore, in which case a preliminary removal of iron minerals would be needed.

The pottery makers have desired to use spodumene, but it has been unacceptable because of the fact that at the temperature of a lime kiln it tended to expand and tear pottery to pieces. The beta spodumene formed by the heating and now to be sifted out of the heated ore has already been expanded and does not have this disadvantage. Therefore potters are urged to forget ordinary spodumene and to try beta Spodumene.

Temple Carved in Solid Rock Is Found in Mexico

MEXICO CITY. — Buildings chopped from a single piece of solid mountain form the strangest ancient ruins ever found in Mexico.

They cover an entire summit overlooking the present town of Malinalco, whose name means Place of Twisted Grass, and which is in the state of Mexico, westward from Mexico City.

One structure completely excavated now—the usual temple - topped pyramid—has broad stairs on one side, the steps and wide stone balustrades likewise part of a single piece. Only here and there, where the rock would not reach some far corner of the projected building, did the ancient mason have to fill in nature's lack with artificially cut stone block.

Door Is a Snake's Mouth.

A number of features make this building unique. One walks into the temple on top through an uninviting door formed by the yawning mouth of a giant stone snake. The temple itself is round, a shape rare in Mexico and one generally associated with the Wind God. A low stone bench follows the wall around inside. The roof, probably of perishable stuff like wood, is gone.

For trimming, this one - piece structure has mainly tigers, snakes and eagles. A carved stone tiger sits on a pedestal by the side of the stairs, his head missing. On either side of the snake-mouth door are carved eagle and tiger-knights, such as represented the two old Mexican Indian military orders. The one is on a huehuetl, or wooden war drum; the other, on a snake's head. In the middle of the round room inside are eagle-head carvings.

Further excavations are now being made at this novel site of Malinalco. These are under the direction of Jose Garcia Payon, Mexican archeologist, who is finding various other buildings like this one. Some of the stairways still have traces of ancient paintings.

Source of Prophecy Lies in Careful Study of Nature

Example Is Found in Chemical Reactions

VARIED, indeed, are the ways in which man's appetite for prophecy manifests itself. The gypsy fortune teller, the spiritualistic seance, the scientific laboratory, all are motivated in part by man's desire to lift that persistent veil which obscures the future.

Gradually man has come to realize that the only reliable source of prophecy lies in the disinterested study of nature herself. Laboriously collecting facts, he formulates laws.

As to Chemical Reactions.

One of the more difficult realms of scientific prophecy is that of chemical reactions. A chemist knows that if certain chemicals can be made to react a needed substance will be created. But will the chemicals react? Usually no one knows until someone tries it.

Now the chemicals have a quality which is analogous to un-happiness in the romantic illustration. The chemist calls it "free energy" and knows that if a reaction between two chemicals will lessen their free energy ("thermodynamic unhappiness") then and only then will the reaction occur.

So, in order to make a prophecy concerning the likelihood of a chemical reaction, a chemist has to calculate the free energy of the components before and after the reaction. If it turns out that the free energy is greater in the combined state it means that the chemicals are happier single, and can never be induced to unite.

Calculating Free Energy.

The calculation of the free energy of a substance is sometimes no easy task. Often involved is the "third law of thermodynamics," a law whose validity is still subject to discussion. Recently, however, two scientists at the University of California, Drs. C. C. Stephenson and W. F. Giauque, have published results which prove that for certain substances the third law is accurately valid.

In order to know how much free energy a substance has, another abstract quality called "entropy" must be known first. The third law states that, at the absolute zero of temperature, any crystalline solid has zero entropy. Knowing this, the chemist can calculate how much entropy the substance accumulates as its temperature rises to the value he is concerned with.

Odd Statistics About Widowed and Divorced

New York.—Widowed and divorced men are more likely, on marrying again, to marry spinsters than widowed or divorced women are to marry bachelors.

These observations, which do not necessarily imply personal preferences, are based on a study of marriage data collected in New York state exclusive of New York City for the years 1932, 1933, and 1934. Analysis of the marriage figures appears in the statistical bulletin of the Metropolitan Life Insurance company.

Divorced persons, more often than widows or widowers, take for second consorts persons not previously married.

Divorced men who do not take spinsters for second wives are more apt to marry divorcees than widows. Divorced women, on the contrary, if they do not marry bachelors are more apt to choose a widower than a divorced man.

Those who go in for many marriages are distinctly less likely to marry a single person than are those who have been married only once before.

Causes of Plant Cancer Are Sought in Bacillus

New York.—A phosphorus-containing material, relatives of which are found in the human brain and liver, has been isolated by Drs. Erwin Chargaff and Michael Levine of the College of Physicians and Surgeons at Columbia university and Montefiore hospital from the body of a bacillus that causes tumors in plants.

In plants there is a well-known disease, the crown-gall, which bears a slight resemblance to tumors in animals. It is produced by the bacillus tumefaciens.

Using the chemical methods developed by Dr. R. J. Anderson of Yale university, who recently purified an acid from tubercle bacilli which produces symptoms of tuberculosis itself when injected into an animal, they are engaged in analyzing the crown-gall germ. Their first results show that it contains a phosphatide which stimulates rapid cell multiplication in plants.

The Girl Who Was Plain

By ETHEL HEWEY
© McClure Newspaper Syndicate.
WNU Service.

NORMAN HARDY opened the door to B. N.'s office, stuck his head in, and remarked: "I saw that girl."

B. N. looked up over his spectacles. "How is she? Do you think she is all right?"

"No." Norman was extremely indifferent. "No, she's a dumb-bell. I didn't hire her. She's as homely as a rail fence."

"I don't care what she looks like, if she can do the work," B. N. mumbled.

Norman closed the door and went upstairs to his office, where his own girls were anxiously awaiting his return with the verdict.

For Bessie—their beloved Bessie—had just married and gone away to live, and her place had not yet been filled. It had come to the point, however, where they must have a girl for Bessie's chair.

Norman had interviewed a dozen or more applicants who came in answer to his "ad" in a morning paper. All of these applicants had been sent away.

Then came a letter from Julia, neatly penned, carefully worded, brief, concise.

Norman had taken it to B. N. immediately and B. N. suggested that Norman call on Julia on his way back from lunch. "There's your girl, I guess," he had prophesied. "That letter sounds like business."

But one look at Julia had convinced Norman that she was not the girl.

Back in his office, all eyes were focused on him. Lenora's questioning eyes followed him till he felt compelled to answer.

"Absolutely nothing doing," he told her in an undertone, but Jessie's straining ears had caught the words.

"Didn't you hire her? What's the matter? What does she look like?" she asked, all in one breath.

"She is the ugliest creature I ever saw," Norman said. "Her face is a mess, and her clothes don't hang together; she's fat and sloppy, and—oh, well, I didn't hire her, anyway."

"I'm glad you didn't," Leonora said, sympathetically. "We'd all hate the sight of her, I'm sure. We don't want anybody in here, who isn't good-looking, do we, girls?"

Meantime, B. N., who, as office manager, claimed the privilege of hiring or firing as he saw fit or felt the urge, took it upon himself to call upon Julia Foster.

Julia had said in her letter that she was a graduate comptometer operator, and that was just what the cost department needed to keep up their extensive records which required so much computation.

He found Julia. He hired her. What did it matter if Norman didn't like to look at her? Perhaps he'd put more time on his work if he didn't have so many good-looking girls around him.

For Norman was young, and Norman was fond of good-looking girls. He couldn't, or, at least, he didn't, conceal the fact.

So Monday morning Julia was there. The girls of the whole office force each took one look and disappeared, to gather, as if by some silent call, in the dressing room, where they discussed Julia in excited voices. She was all that Norman said, and more.

Julia did look dumb! There's no question about it.

Norman was a little overcome when he was informed that she was coming, but by the time she arrived he had recovered his aplomb and had arranged for her to have desk room at a long table in the nearly empty room at the head of the stairs.

Julia made no comment at this, but began her work quietly and efficiently. At the comptometer, she was a clipper. Neither Norman nor the girls was willing to admit her efficiency, and all with one accord piled the work on to her. All computations of over two figures were given her to do, and the poor girl pounded that machine almost unceasingly from morning till night.

At night, her shoulders sagged and her eyelids drooped. She was unmistakably tired. But she was plain, homely, born to work. That's all she could do, so why shouldn't she do all she could of that? Not one of the girls would have confessed to jealousy, yet any one of them would have given half her kingdom to possess the ability that Julia had.

Day after day, for nearly three weeks, they continued to persecute her. Not once during this time did she utter a word of complaint. No matter what they brought her she did it and said nothing.

One day, however, Lenora's sense of justice came to the surface. She informed Norman that Julia wasn't so bad looking when one got used to her.

"She is really not so bad, you know. She seems pleasant, in spite of her plainness."

"And you know as well as I do," she added, "that she is doing all the hard work of this department. It would be more fair of us to give her a chance at something else."

"You win," sighed Norman. "It isn't fair to Julia, I know, and I am getting used to her plainness. She has brains, anyway."

The next morning Julia occupied Bessie's chair.