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GOVERNMENT ACCORDING TO THE CONSTITUTION.

From Mr. Choate's Bar Association speech. Over and above the duties that we owe to our clients there are two things to which we as lawyers are absolutely bound, no matter whether it brings down upon us the condemnation of the people, the press and the President.

The other is to see to it that there is no confusion or mutual invasion of the three governmental departments—executive, legislative and judicial.

Impaired Republican Victory.

"I would greatly deprecate a contest," says Mr. TAFT, "which might imperil Republican victory in New York in November." This discretion arrives late. Mr. TAFT's patron, working the knife up and down in the ribs of the other fellow, may be pleased to ask: "Is it well with thee, my brother?"

Between Odellism and Rooseveltism New York is inclined to be a Democratic State. Can the Republican party of New York be united? Can any candidate, however strong and irrefragable, get the votes of that large Republican and independent element that is disgusted with Rooseveltism, and asks only for a Democratic candidate who represents constitutional and sane Democracy?

The Legality of the Boycott.

The injunction recently granted by Justice GOLD in the case of the Buck's Stove and Range Company vs. the American Federation of Labor will doubtless be fought with vigor. Whether the method adopted by the plaintiff in this case is the wisest course in such matters is perhaps open to question.

A case against the boycott was argued before the Supreme Court a few weeks ago. It dates back to 1902, when as availed by the bill the defendants, members of the United Hatters of America, a branch of the American Federation of Labor, "individually and collectively and as members of said combinations and associations, and with other persons whose names are unknown to the plaintiffs associated with them to force all manufacturers of fur hats to unionize their factories, unlawfully and in violation of the provisions" of the so-called Sherman act, or anti-trust act, of 1890.

The Sherman act. This declares that any person who shall be injured in his business or property by reason of anything forbidden in the act may sue therefor and recover threefold the damages sustained. The question is not whether Mr. LOEWIE and his partners sustained damages as a result of the boycott instituted by organized labor. The injury is admitted by the defendants, who appear to be somewhat pleased by the fact. The question is whether the injury was the result of "anything forbidden or declared to be unlawful by this [the anti-trust] act."

The New State Prison Site.

The Empire State Society, Sons of the American Revolution, has protested in an address to the public against the selection as a site for the new State prison of land on the west side of the Hudson which includes the ground on which stood Forts Montgomery and Clinton of imperishable Revolutionary memory. Reviewing the military operations in which the Continental troops distinguished themselves by a heroic defense of the forts against greatly superior numbers, the society says: "We urge that the press and the public should not be misled by the blood of our Revolutionary heroes, but for all time it shall be preserved as a hallowed shrine."

and reasonable, a conclusion so sweeping is open to grave doubt. It is an exceedingly far reaching proposition. As availed by counsel for the defendants, the Sherman act becomes in such a case "a policy of insurance in favor of a manufacturer engaged in a trade dispute." The point might even be carried further by holding that it would also serve as insurance in cases where two or more merchants or manufacturers or farmers agreed upon a price rate by which others, refusing their assent and agreement, were injured. It would cover many operations which are common in the business world as well as boycotts by labor. The issue under the Sherman act seems to turn upon the question whether the injury or even the destruction of an individual business as a consequence of a trade or labor conspiracy constitutes in all cases a restraint of trade within the meaning of that law.

The Coming Session of Parliament.

There are many indications that the session of the British Parliament which will open on January 27 will be an exciting one. The Liberal Government will endeavor to fulfill some of its promises, notably those made to the Labor party, the Irish Nationalists and the Nonconformist section of its own followers, while the Unionist Opposition, encouraged by its recent victory in the Mid-Devon division, hitherto a Liberal stronghold, will vigorously arraign the Government for tolerating agrarian crime in Ireland. The growing restlessness of India, aggravated as it has been by the treatment of Hindus in the Transvaal, is also certain to give rise to a stirring discussion. There is likewise reason to believe that soon after the session begins the Premier, Sir HENRY CAMPBELL-BANNERMAN, will have to be relieved from much of his Parliamentary work and will therefore delegate to another the leadership of his party in the House of Commons.

As regards the Labor party, which has formally adopted a socialistic programme, the Ministers will find themselves in a difficult predicament. If they try to rivet the friendship of the Laborites by large additional concessions they will inevitably alienate the Moderate Liberals, whose cooperation may enable the Unionists to carry all the agricultural constituencies and most of the metropolitan districts at the next general election. If, on the other hand, the Government renounces the alliance with the Laborites, to which was largely due its overwhelming majority in the last general appeal to the electors, it will run the risk of losing most of the manufacturing towns. As a result of the English Nonconformists for a new education law. If the demand be rejected the Ministers will lose the support of their Nonconformist adherents in Parliament and in the country, while if they grant it they will exacerbate many of their Anglican followers. So, too, with regard to Ireland they may well be perplexed, for if they enforce the crimes act, as all the Unionists and some Moderate Liberals desire, they will estrange the Irish Nationalists and lose the Irish votes in English boroughs.

There will be other subjects of debate which will deeply interest the British nation, as, for example, the programmes of naval expansion and army reform. It is now certain that the German Empire will begin annually for some years to come four battleships of the Dreadnought type, the bill to that effect which was previously sanctioned by the Bundesrath having passed a second reading in the Reichstag. It seems to be settled that the reply of the British Admiralty will be a bill providing for the construction yearly of two Dreadnoughts for Germany's one, or, in other words, eight in every twelve months. The urgent need, moreover, of reorganizing, enlarging and training Britain's military force has been driven home by the proofs of widespread disaffection among her Indian subjects and by the well founded fear that it may infect many of the native soldiers in the Anglo-Saxon army. As things are now the British War Office would find it extremely difficult to send more than a single army corps to Bombay. It is true that England probably might obtain assistance from Japan, but the cure would be worse than the disease, for it would teach the population of India to transfer respect from its European rulers to an Asiatic Power.

As regards the leadership of the House of Commons the Premier is likely to experience much difficulty in deciding between the conflicting claims of Mr. HERBERT ASQUITH, the Chancellor of the Exchequer; Mr. JOHN MORLEY, the Secretary of State for India, and Sir EDWARD GREY, Secretary for Foreign Affairs. The difficulty might be evaded if it were practically to delegate equal authority to each of the three, thus putting the leadership in commission, so to speak; but the plan would not work in the House of Commons any more than in our House of Representatives. There can be no discipline and concerted action unless the rank and file of a political party in a legislature take their cue from a single commander. We still incline to the opinion that Sir EDWARD GREY is most likely to be selected for the post.

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The site for the new prison, which Westchester county will now get rid of after years of agitation, is to be, as announced by the State commission on December 4, 1907, a tract of land 300 acres in area, partly in the historic town of Stony Point, Rockland county, and partly in the town of Highland, Orange county. It has a frontage of 2,600 feet on the Hudson River and takes in Highland Lake, which lies back from the river, and the entire watershed of the lake. Upon the land chosen trap rock is to be found, and the site is particularly defensible because the law of 1895 providing for the removal of the State prison from Ossining to some point along the Hudson and south of Poughkeepsie requires that trap rock shall be available on the land selected in order that the convicts may quarry it for State roads.

five relief is always possible when conditions are unsatisfactory. Much may be said in favor of legislative interference for the protection of citizens from intolerable local conditions. Who is to say when a situation becomes unbearable and should be redressed by act of Legislature, and when it is the duty of the lawmakers of the State to remain inactive, leaving the people of any town to suffer from their errors of judgment?

The Astonishing Presumption of Mr. Choate.

The diners of the New York State Bar Association whisper to one another with white lips. Every second they expect to hear the hidden thunder in the stores of heaven rock the hotel and see the avenging lightning smite that bold blasphemer the Hon. JOSEPH HODGINS CHOATE: "I have heard and read a lot about eminent lawyers who are supposed to have been sitting up burning the midnight electricity inventing devices whereby their clients may resort to corrupt ways and still remain inside the revised statutes. I don't believe it. If there are any such lawyers I don't know who they are. But I judge from what I have read that the President of the United States knows who they are, and if he does I think he will see to it that they are removed from office. And if the President doesn't know their names I demand that he shall not say any such things again."

I don't believe it! So Mr. CHOATE throws a brick at the very Temple of Truth and denies the one official and sacrosanct Voice of Truth. Mr. CHOATE has flourished in impunity for many years. His punishment is coming now, and with no halting foot. Wants the names, does he? Well, he has asked the man that knows how to call them.

Pawtucket, in whose neighborhood Rhode Island is understood to be situated, is the site of the Hon. EDWARD LELAND STROUD, perhaps the most original and select poet on the New England circuit. His recent composition "Hail to the Chief" enriches his favorite organ, the Providence Journal. Mr. STROUD celebrates worthily the reelection of the Hon. GEORGE FRANKLIN WRENTHAM as a Senator in Congress. It would be difficult to find in Indiana a dozen lines in meter of substance and richer in local unexpected and lovely rhymes:

"His calmness and general attitude. His merry fortitude. He gives the lie to them who say: 'We might just as well have one Senator today. As he really has his party split. But gradually, bit by bit. They drew to their old leader once more. Like a magnet attracted to his door.'"

The Apotheosis of Civil Service Reform.

Occasionally some hunker grows at civil service reform, the hope of all the good. The association of Indiana Republican editors has recently uttered its spleen thus:

"While we earnestly believe that merit should win and every laborer should be worthy of his hire, we are opposed to and heartily condemn the civil service law which makes lifetime jobs of positions under its control and is producing a countless onerous class whose future is even now a matter of great concern to the Government. We stand for the red, red blood of the United States and feel that anything that hinders its free coursing in the nation's arteries is detrimental to the public service and places a premium upon the political mollycoddle."

Fortunately the President is a graduate of the United States Civil Service Commission and loathes the spoils. He can be depended upon to lay down the law to these selfish and reactionary Hoosiers and to lead their reluctant feet up the white cliffs of reform. This language from Indiana is a vicious "punch" at the well beloved, the sacred head of civil service reform. She will be defended, we cannot doubt, by her good knight. He will blow on his horn a louder blast than ROLAND's and smite the Paynim Hoosiers in the midriff. The culminating glory, the apotheosis of civil service reform, is visible to the dimmest eye. Not merely in the generality of the smaller offices to which successful examination admits. No, the clear light of civil service reform glows through all the ranks of the placemen, the great as well as the petty. It burns in the Custom House. It irradiates the Post Office. Its steady brightness illumines every department and grade of the public service, whether technically subject to the civil service rules or not. No appointment is made for other reasons than the public advantage. No Federal officeholder is not attending to his proper official duties. No Federal officeholder is encouraged or allowed to interfere with or take part in politics, to pack primaries and other nominating conventions, to influence or force the choice of delegates to the Republican national convention.

Governor Hughes on Home Rule.

Governor HUGHES is not the first to dream of a system of government in which every community shall have, under wide and broad general statutes, all the powers necessary for the management of its affairs, and shall be left to work out its own salvation, with the responsibility for the kind of government it gets resting directly on its own citizens.

Confidence in the ultimate good results of such a system of municipal government is based on the theory that in every community the honest and worthy citizens outnumber the corrupt, and if driven by the necessity of self-preservation, would unite to choose for office capable, efficient and trustworthy men, and to uphold them in their efforts for good administration. Obviously, national party lines could not figure in the local politics of such communities. It would be necessary to separate municipal from State and national elections, as in Massachusetts and some other of the States. Attractive as the scheme is, in theory, it is very unlikely to be put in practice. Governor HUGHES recognizes the improbability of a complete overthrow of the present system, under which legisla-

"THE MARSHALL METHOD." Interpretation and Application of an "Expanding" Constitution.

TO THE EDITOR OF THE SUN:—Sir: The publication in THE SUN on December 31 of my letter under the heading "The Constitution as It Is" has brought me several letters of comment. A very distinguished educator wrote:

"It is entirely impossible that the framers of the Constitution could have foreseen all the 'governmental exigencies' which exist to-day, and therefore could not provide against many of them. Since 1890 there have been many such new exigencies."

These sentences gave the grounds of his dissent from what I had expressed, that the successors of Marshall, whenever capable of using the Marshall method of interpretation, would be able to explain the provisions of the written Constitution as to find in them ample power to meet new and unforeseen conditions, or "governmental exigencies." What was the "Marshall method" and the Marshall quality?

The quality of Marshall's mind was pre-eminently imaginative and creativeness in the field of statesmanship and of jurisprudence. By no means a great "lawyer" in the sense of the law, he was infatigably with the fundamental principles upon which all states or written law of the heirs of English liberty must rest.

So when duty came to him to "interpret" or construe a provision of the Constitution in relation to some actual exigency or case his intuitions summoned to him the great unwritten fundamentals since Runnymede, the principles of the Magna Carta, and to all the related law and facts of the case, he then created a judgment worthy of a just touch with a higher spirit of statesmanship than the Marshall method of finding out that in the cases of his day the Constitution really was adequate to the governmental exigencies of that time.

That the duty came to him to "interpret" in terms of the Constitution he found his provisions adequate to justify the Louisiana purchase, the United States Bank, the overruling of an act of Congress, &c. He was bitterly accused of "straining" and "twisting" and "destroying" the Constitution. To Jefferson and many of his school of "strict construction" he was an object of detestation.

His great duties, a certain construction of a law will assert that it was twisted or strained from its true meaning. The doctrine of "implied powers" was equal to the necessities arising in the times of Marshall. In our day, in the hands of his successors, who shall be worthy to wear his mantle and able to exercise his qualities and method there should be no difficulty in interpreting the national Constitution as having ever power sufficient to meet every exigency affecting the collective people under its way, and without any unworthy or unreasonable strain or twist.

It was following in the lines of Marshall that later many "interpretations" have been made and applied, in truth, "expanding" the Constitution as understood in 1870 and in Marshall's days, and bringing within its scope bridges, roads, telegraph lines, irrigation and numerous "internal improvements" and public utilities then utterly unforeseen.

The best law, constitutional or statute, framed in general terms which must be "interpreted and applied" by the proper authority to each concrete case as it shall arise. The power to interpret is an inevitable function of the Supreme Court. Its interpretation will be accepted, unless unhappily it should outrage the conscience of public thought; then it would be utterly ignored and disregarded, and the Congress and the Executive would perform their duties as if no such unexecuted or unprovided ruling had been made. The objection that if the power of interpretation were conceded there would be a danger from strain or twist is based merely upon the fallacious fear that because such power could be it would be abused.

Of course, conceivably it might. But the danger of abuse is not the question against the existence of a power, for its right use would be the general result. The more power or strength the better. If we abdicate those qualities for fear of abusing them, then indeed we would be weaklings and surrender the virility that makes men and nations great. In the game of life no fear of accidental strain or twist confines us to "downy beds of ease." May we be kept from worshipping as the god of this political idolatry any infallible, inflexible fetish, whether it be the Constitution, the Supreme Court, the Congress or the Executive? They are but men or the products of men, and for all their "deities" are as we were men of the past for the burdens which rested upon them. Suppose some grave national exigency should arise under which we were called upon to "interpret" no specific provision was made, what must we do? Amend, "make a new constitution and new Constitution" or "construe," like Marshall or, as incompetents, lie down, and submit to the word "no."

Common sense, manliness, certainty and wisdom of result all counsel for the method of "sound construction," coupled with the most fundamental of all legal principles, Salus populi suprema lex esto, the general welfare of the people is above all other laws. JOSEPH COLBERTSON CLAYTON. NEW YORK, JANUARY 25.

Use of the Red Cross.

TO THE EDITOR OF THE SUN:—Sir: To enlighten "Citizen" and answer his inquiry whether the Red Cross society has an exclusive right to the use of the red cross sign, I would direct his attention to the following: The National Red Cross Act to incorporate the American National Red Cross, approved January 5, 1905, which reads: "No shall be lawful for any person or corporation, other than the Red Cross of America, to lawfully use such sign or any insignia colored in imitation thereof for the purposes of trade or for advertising, or for any other purpose whatsoever. If any person violates the provision of this section he shall be guilty of a misdemeanor and shall be liable to a fine of not less than \$1 nor more than \$500, or imprisonment for not more than one year, or both, for each and every offence. The fine so collected shall be paid to the American National Red Cross."

The Police Department has no right to grant to a physician or any other person the right to affix the red cross sign to a vehicle of any description, since the exclusive right to that mark is by the above act vested solely in the society; and as for the continued use of the sign or insignia colored in imitation thereof by manufacturers, barbers, and other persons, the society is only authorized to sue for an injunction, and that they may be enjoined against such use by and as an advertisement in the National Red Cross.

There exists a high degree of humane reasoning in "Citizen's" aspect of this matter, but law is law, and all alike are amenable to it. W. P. H. NEW YORK, JANUARY 25.

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ONNIFICENCE RETIRED.

TO THE EDITOR OF THE SUN:—Sir: The incident mentioned in your issue of January 25, in which a man named Onnificence retired from a position of public office, is a case which is worthy of notice. It is a case which is worthy of notice.

As president of Harvard College there might to some be a certain fitness in the succession, but the executive office would have to be moved to the stadium and the yard would be given over more than ever to the students and those undergraduates who occasionally remembered that a recitation was "on."

As to the recent suggestion that Mr. Roosevelt be made Mayor of Greater New York, it is a suggestion which is worthy of notice. The life of the metropolis is too confining for such strenuous activity, and herculean initiative needs a broader field for operation. As a life member of the Senate or House of Representatives he could be the national referee in the occasional fistic encounters which occur in these bodies. There would be danger, however, of the Queensberry rules becoming obsolete, and the referee would be called upon for revival of the old trial by wager of battle.

No! The job must be something national, comprehensive and adequate. Why not, Mr. Roosevelt, "President Emeritus," to go about from State to State, at a part of his present salary, of course, advising with the Governors and giving kindly counsel and admonitions on all topics of public interest? He could be the national referee in law and domestic economy, that the divergent opinions of our citizens might be unified and the "common people" kept up to the mark? When not upon his travels approving of the various reports of the sociologists in the Smithsonian grounds? P. G. P. CAMBRIDGE, MASS., JANUARY 25.

The Vanishing Pine Tree.

The timber situation as shown by the statistics published by the United States Forestry Department is alarming, and unless steps are taken at once to protect the forests our timber east of the Mississippi River, both north and south, will be practically ruined. In the year 1900 the national forest—twenty years hence," said a lumberman yesterday.

"Our white pine has almost entirely disappeared, and which is left is being used for packing cases. Spruce timber is practically controlled by manufacturers of paper, and long leaf and short leaf yellow pine are being cut off so rapidly that the supply is in sight and we have nothing to take its place. Black walnut is a thing of the past, and white oak and poplar are already becoming difficult to find, because of the enormous demand for cabinet work, automobile bodies, &c."

"The demand for packing cases has been supplied by what is known as short leaf pine during the last ten years, as very little white pine is now available for such purposes. The cause of its scarcity and the consequent increase in price. In the year 1900 the box makers used about 10 per cent. of short leaf pine and 90 per cent. of white pine. At the present time these figures are reversed, and as a matter of fact less than 10 per cent. of white pine is used, and the packing cases now almost entirely made of short leaf pine. This wood in our States east of the Mississippi grows almost exclusively in Virginia and North and South Carolina, and statistics show only 20,000,000,000 feet of this timber left—the consumption is appalling, more than 1,000,000,000 feet cut each year. The percentage of which goes into packing cases or cheap roofing and temporary construction work in one form or another; the remaining 40 per cent. goes into flooring, ceiling, partition and other interior work."

"This is the cheapest wood ever made into lumber. A full carload of lumber suitable for packing cases or construction work sells at the present time in New York City for an average of \$250. This same class of grade wood in white pine brings just double this figure. Owners of white pine state that three years hence no white pine will be available for this purpose, and statistics show that in two or three years hence there will be no short leaf. This is a serious condition, as we shall have no material east of the Mississippi suitable for packing cases after the white pine is gone. Short leaf pine is so common that lumber for this purpose will have to come from the Pacific Coast. This short leaf timber is now selling in the tree at from \$2 to \$4 a stump a thousand feet. It is completely ignored by lumbermen. The only thing which will save this short leaf timber will easily bring \$10 to \$12 a thousand feet in the stump. If it is not used in the tree it is very unfortunate that we cannot have Government control in some form to prevent or control the waste in cutting."

"Aye" and "Ay." TO THE EDITOR OF THE SUN:—Sir: I have been following with a good deal of interest the discussion that has been going on in THE SUN regarding the pronunciation of the Scotch word "aye." It has been born and brought up in a Lowland Scotch town I may claim to some knowledge of the word. My father has made it a habit to use the word in good literature. In his note on the subject printed in to-day's SUN Mr. Vrethly has confused two words of different meaning. The adjective "aye" is one word, and the adverb "aye" is another. I thought it was the question of the correct Scotch pronunciation by Mr. Damrosch of the adverb which prompted off into a discussion of the pronunciation of the adjective. The adverb "aye" as used by the natives of Forfar and other Lowland districts of Scotland is pronounced in English "always," as the words of the ballad, "Aye Wakin' O' sing by Mr. Damrosch will show. The authorship of the ballad is unknown, but it is believed to have been written by some of the Scotch songs that I have seen. The pronunciation of the adverb "aye" is difficult to render phonetically; it approaches nearest perhaps to the sound of "i" in the word "eye." Some of your readers may care to see the words of the song I appended them. T. J. K. BUCKLETON, JANUARY 25.

"SEX EQUALITY."

TO THE EDITOR OF THE SUN:—Sir: The review of Dr. Denmore's book, "Sex Equality," which appeared in THE SUN of January 15 raises the question whether we can strictly speak of such a thing as sex equality. Writers who concern themselves with the presentation of women's rights arguments assume that through social progress their own woman has been kept during past ages in a position which rendered her inferior. In support of their contention they quote various philosophers of recognized standing, and assume that through social progress their own woman has been kept during past ages in a position which rendered her inferior. In support of their contention they quote various philosophers of recognized standing, and assume that through social progress their own woman has been kept during past ages in a position which rendered her inferior.

The problem of the relation of sex to social organization is at bottom a naturalistic one and has not until recently been approached from a scientific standpoint. It is not enough to show that the average man is stronger, more intelligent, more energetic, more capable of woman in order to establish the superiority of man over woman. Similar points of difference exist between different individuals of the same sex, but are not of themselves proof of either superiority or inferiority. A friend of the author's puns in his narrative, sensitive and retiring, while his near neighbor, a teamster, is strong, aggressive and persistent in the call of duty, or inferiority. The author, each is good in his own position; the difference between the two is not a matter of sex, but of individuality of kind. The same can be said with equal truth of the differences between man and woman.

It matters not to us how women came to differ from men of olden times, what is of moment to us is the question of the social distinctions as do exist are advantageous to the race. The scientific sexologist effect that all differences between men and women have resulted from natural selection, and that only because such differences were advantageous to society could they be developed. The conditions prevailing in the primitive state of man leads to the conclusion that the sociological difference in the position of man and woman is a result of natural selection, and that the labor between male and female is a result of natural selection. The demand of an advanced state of social organization. Hence the attempt to root out the differences between the sexes is a violation of the conditions of the true social status of woman is whether this is an advantage to the race or not. If it is, the differences between men and women are more than made up for in the demand of an advanced state of social organization. Hence the attempt to root out the differences between the sexes is a violation of the conditions of the true social status of woman is whether this is an advantage to the race or not. If it is, the differences between men and women are more than made up for in the demand of an advanced state of social organization. Hence the attempt to root out the differences between the sexes is a violation of the conditions of the true social status of woman is whether this is an advantage to the race or not. If it is, the differences between men and women are more than made up for in the demand of an advanced state of social organization. Hence the attempt to root out the differences between the sexes is a violation of the conditions of the true social status of woman is whether this is an advantage to the race or not. 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