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L. M. Carr, Henry Bronson, Hubert Carr

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COURTS AND CONSTITUTIONS.

Our good friend, Editor Murphy of the Telegraph-Herald, still clings to the assertion that those who oppose the recall of judges are afraid to trust the people.

When viewed from only one side there may be considerable to warrant the position taken by Mr. Murphy, but the proposed plan has several sides. It has a constitutional side, a judicial side and most important of all a side relating solely to the protection of the rights of minorities.

Those who oppose the recall of judges cannot fairly be accused of want of faith in the people. No one believes that the people can directly perform all the functions of government. Civilized men do not believe that a mere majority can be safely trusted to deal with many of the important questions pertaining to "life, liberty and the pursuit of happiness." Every time a constitution is adopted, the people record a lack of confidence in themselves to freely legislate upon all questions. They recognize the necessity for certain checks or restraints upon majorities; for the construction of shields to protect themselves and their property from the effects of those sudden and strong passions to which men are exposed.

Herbert Spencer in his celebrated work on Social Statistics says: "Of the many political superstitions, none is so widely diffused as the notion that majorities are omnipotent." And why does Spencer call that notion a superstition? Simply because civilized and enlightened men all over the world believe in constitutional forms of government, and every constitutional government is based upon the theory that mere majorities are not omnipotent.

Every constitution represents the negative power of the state. And the majority of the people, acting through their law-making and executive officers, represent the positive power of the state or government. These two powers combined, the one acting, the other restraining or limiting, make constitutional governments.

Within the limits of their constitutional rights the wishes of the majority should prevail; and, whenever a law making representative of the people fails to act in accordance with the wishes of the majority, he deprives the majority of a constitutional right and should be subject to recall. And the same is true of executive officers, such as governors and sheriffs, when they fail to enforce the laws enacted by the majority. But when it comes to applying the recall to judges, that is an entirely different question.

Under our constitutions the courts are required to establish the boundary lines between the desires of the majority on the one side and the constitutional rights of the minority on the other side, between the positive and negative powers of the state. A law which would give one of these contending forces the power to deprive a judge of his office, whenever his decisions were unsatisfactory, would be out of line with judicial thought and the desire for fair play, which is one of our most commendable national characteristics.

Arguing against the unlimited power of our supreme court Mr. Murphy cites the procedure under the English constitution. He says:

"Moreover, no court was given, nor permitted to arrogate to itself power to nullify for unconstitutionality or other cause the acts of parliament. Parliament was and is supreme in government. In this country the Supreme Court and not Congress, is supreme."

What Mr. Murphy says about the English constitution is quite true, but there is a good reason for the difference. In Great Britain the House of Lords has two functions, the legislative and the judicial. In legislative matters it acts in concert with our Senate acts with the House of Representatives; but in its judicial capacity the House of Lords is the court of last resort, the highest court in the kingdom. Of course no inferior court would attempt to nullify for any reason a statute approved by the highest judicial tribunal in the land. And right here it may not be a digression to say, that many of the best legal minds in this country incline to the belief that congress should be the sole judge of the constitutionality of the laws which it enacts.

This change would quite likely have been made years ago were it

not for the fact that our supreme court has, as a rule, kept in step with the desires of congress and the chief executive. In this connection Mr. Murphy asks:

"Will Major Carr instance an indictment which may be drawn against the people to compare with that which may be drawn against the Supreme Court for its decision in the Dred Scott, in the Dartmouth College case, in the income tax case, in the insular possessions case, in the Tobacco and Oil trust cases? Having agreed that one, or more than one, if not all, of these decisions was a wrong against human rights to the profit of property 'rights,' a perversion of constitutional intent and contemptuous of public opinion, will Major Carr persist in appearing as counsel for the courts as against the people?"

The opinion in the Dartmouth College case was delivered by Chief Justice Marshall, admittedly one of the greatest lawyers of the century in which he lived. As we recall the case it had no application to public or quasi public corporations. It simply placed contracts of a private nature, entered into between the public and a private individual, on the same basis as contracts entered into between two private parties. The case was decided upon its own peculiar state of facts, and so far as we know it has never been used as a precedent to prevent the public from regulating public service corporations.

The Dred Scott case was submitted to the Court before the election of James Buchanan as president. It involved a question of far reaching political importance, and the court carried the case along until after the presidential election, then ordered a re-argument and finally decided the case according to the expressed wishes and desires of President Buchanan and a majority of the members of the recently elected congress.

Little can be said in defense of the income tax decision. The court first decided by a five to four vote in favor of the law, and then nullified it by a change in the opinion of a single judge. That was at a time when the influence of swollen fortunes and predatory wealth was at flood tide in this country. The tax was opposed by many of the leaders of the republican party, and by some of the leading men of the democratic party, notably Senator David B. Hill of New York. A popular election at that time would probably have resulted in as even a division of the voters as the division in the membership of the supreme court. Even at this late day the people, acting through their state legislatures, have not as yet been able to secure the constitutional approval of an income tax resolution.

It is true that the recent Tobacco and Oil Trust cases are the subject of present day criticisms, but it is equally true that the ultimate decrees of the court in those cases accord with the wishes of practically everyone. The court condemned to death these giant offenders. What greater sentence could have been imposed? No one, except the defendants, has any reason to find fault with what the court actually did. The criticisms are, or at least should be, directed against the somewhat wabbling statements to be found in the opinions of the Chief Justice who announced the decisions of the court. If these wabbling statements do not lead to an incorrect decision in some future case, the general public has no occasion to find fault. And the fact that some of the reasoning of the Chief Justice is being questioned may be productive of much good. The constitution guarantees to every American citizen "freedom of speech or of the press." And the free exercise of these rights does more to sway the course of future events in our country than any other force. Our court of last resort has never acted arrogantly, and if any part of the opinions of the Chief Justice in these recent cases is out of line with human rights, the protests of the public will help to straighten it up and prevent it from improperly influencing future adjudications.

In the Insular Possessions case, the same as in the Legal Tender decisions, the voice of the masses was heeded. We believe that these milestones in our history were established in accordance with the wishes of a large majority of the people.

Friend Murphy's alignment of the Supreme Court on one side and the people on the other, we regard as a figment of his imagination rather than a reality. May an angry heaven never afflict this country with such an alignment.

We think that we are indulging in no exaggeration when we say, that no body of men, large or small, in this or any other country, ever possessed the confidence of the people of an entire nation to as high a degree as that enjoyed by the Supreme Court of the United States. One reference we think should be sufficient to confirm the truth of what we say.

The Federal Judicial Code provides:

"Sec. 235. The trial of issues of fact in the Supreme Court, in all actions at law against citizens of the United States, shall be by jury."

That section has been the law of the land for more than one hundred years, in fact ever since the organization of the court, AND YET NO JURY HAS EVER BEEN IM-PANELLED IN THE SUPREME COURT WITHIN THE MEMORY OF ANY LIVING MAN, AND ONLY ONE OR TWO IN THE WHOLE HISTORY OF THE COURT. Practically every litigant entitled to a jury in that court has waived his right. Such a court with such a record needs no counsel to engage in its defense.

Taken as a whole, the judicial department of our country comes home in its effects to every man's fire side and can be safely trusted to do so. It stands as the protector of his property, his reputation, his life, his all. And the best interests of every home require that our judges be as far removed as possible from every influence, except that of their God and their conscience.

INDEPENDENCE PAPER TAKES ISSUE WITH PRESS.

Defends Candidacy of R. E. Leach and Recommends Him Highly as a Man.

The Independence Bulletin-Journal of last week contained the following article which appeared in the Press in reference to the candidacy of R. E. Leach against Congressman Chas. E. Pickard.

"The Manchester Press in referring to the candidacy for congress of R. E. Leach of this city seems to have been misinformed to some extent as to the facts. In the statement made in his behalf in this paper it was said: 'He is opposed to the so-called reciprocity bill and urges its repeal at the earliest possible moment. He believes in the Iowa idea and the republican platform of 1908.' If this position is 'inconsistent,' he has the consolation of sharing it with Senators LaFollette and Cummins and a majority of the republican members of the senate and of the house.

"It is not 'a cheerful platitude' to say that all people should obey the law; one to the great evil of the day is that the attempt to force them to do so by means of fines seems to be futile.

"As for the Union veterans we can say that Mr. Leach is above making 'a cheap bid' or any bid for any vote. The truth is that he has always shown a great interest in their welfare, and for years has refused any compensation for his services in making out their pension papers or in preparing affidavits or otherwise assisting them to get pensions. He takes pride in being able to state that he has been an active supporter of Senator Cummins, who shares with Senator LaFollette the leadership of the senate.

"The statement that he is 'an unsuccessful lawyer' has no foundation. His practice here began in 1894. After the death of J. S. Woodward, of the firm of Woodward & Cook, he formed a partnership with J. E. Cook under the firm name of Cook & Leach, a firm that for ten years stood second to none in this city in success and volume of practice. Upon the admission of Roy A. Cook to the bar he formed with his father the firm of Cook & Cook, and Mr. Leach united with R. J. O'Brien, the firm being Leach & O'Brien. They were together four years, and during this time Mr. O'Brien was county attorney.

"The firm had a large business and Mr. Leach handed to John Canfield of this city a check for the largest amount ever received net for himself by any man in the state of Iowa for personal injuries. A great deal of money has been invested by the people of this county in accordance with his advice, and no person who followed it has ever lost one cent of principal or interest. He is an able lawyer and an unusually careful one, and no question has ever arisen as to the meaning or construction of any will, contract, or other paper drawn by him. The court records of this county show the volume of business entrusted to him during the fifteen years of his practice here.

"He has never 'posed' as one of the progressive leaders of this county but while some others confined their activities to introducing speakers and going to conventions he has had teams at his own expense and brought voters to the polls to vote for progressive principles. He has acted as secretary of our county committee.

"Mr. Leach has never sought or received a nomination for mayor of this city, and therefore the statement that he 'was defeated at an election' for that office is an entire mistake. He was appointed by the council to fill a vacancy caused by the death of C. F. Herrick, and accepted solely for the purpose of securing pure well water instead of river water for the waterworks of his city. During his administration there was put in a system of wells adequate for all fire purposes and for ordinary service at the same time, so that the city has since had pure water. Having accomplished this, he very gladly agreed with R. G. Swan to support him for the nomination next made, and the action of the caucus was unanimous and in accordance with Mr. Leach's wishes, and he seconded Mr. Swan's nomination, and supported

him in all his campaigns.

"While he has not been an officeholder or perpetual candidate for office, he not only was an excellent mayor, but has often performed great public service for the community in which he has spent his life, without the hope or expectation of reward. He has often satisfactorily represented this county in district and state and judicial conventions.

"Buchanan county will speak for itself at the proper time as to whether or not it will support Mr. Leach for congress."

SPECIAL WASHINGTON CORRESPONDENCE.

By Clyde H. Tavenner.

Every man, woman and child in the United States who eats eggs will be interested in "Notice of Judgment No. 1102." This notice is one of several issued by the United States department of agriculture. The notice is as follows:

"At the November term of court, 1910, the United States Attorney for the Eastern district of Missouri, acting upon a report by the Secretary of Agriculture, filed information in the District court of St. Louis against the St. Louis Crystals Egg Co., alleging shipment from the state of Missouri to the state of Minnesota of a quantity of food product called, 'Crystal Eggs.' Analysis of this product showed that it contained 1.75 per cent of boric acid, a poisonous, deleterious ingredient which rendered the product injurious to health.

"On June 5, 1911, the defendant company pleaded guilty, and was fined \$5 (five dollars) and costs."

Having learned that such staggering punishment as this was meted out to this company for the slight offense of poisoning food, those who partake of an occasional egg will be further interested in "Notice of Judgment No. 1103," which tells of an awful blow the Federal courts are endeavoring to bring down upon the consumer, delivered to a New York firm which transgressed the law in the handling, inoffensive particular of mixing arsenic in the product they sold as food. Here is Notice No. 1103:

"At the January term of court, 1911 the District Attorney for the Southern district of New York filed information against Wood & Selick, charging shipments, in violation of the pure food law, of certain articles of food called 'Light Shade Egg Color.' Analysis of this product at the Pure Food Bureau of the Department of Agriculture, showed them to contain arsenic.

"The defendant corporation pleaded guilty, and was fined \$25 (twenty-five dollars) which fine was paid on May 1, 1911."

"Notice of Judgment No. 1100" again refers to the St. Louis company, the information this time being that the defendant company, in the manufacture of its product, had mixed and packed with it dirt and eggshells, so as to injuriously affect its quality, so that the product consisted in part of a filthy, decomposed, and putrid animal substance."

"Much as the court had been shocked before, when this concern admitted the use of boric acid, its indignation was doubled this time, and the punishment meted out to the offending company was truly staggering. Here is what happened:

"On June 5, 1911, the defendant pleaded guilty and was fined \$10 (ten dollars) and costs."

And in the meantime President Taft is out in the West campaigning against the recall of judges.

IOWA AGRICULTURAL EXPERIMENT STATION NEWS BULLETIN.

Hundreds of soil samples from the different soil areas in Iowa are being gathered by the Iowa Agricultural Experiment station as part of a practical way to increase their grain yields and maintain the fertility of their land. Trained men are visiting all corners of the state, collecting soil samples to a depth of forty inches and sending them to the laboratory of Iowa State college for analysis. It will be determined just how much plant food each type of soil actually contains and what sort of crop rotation must be practiced and what manures and fertilizers use to get the largest possible crops. This information is to be furnished to the Iowa farmer as fully and freely as the station finances will permit.

Iowa has not been as aggressive in this matter of soil investigation as other states, notably Illinois. Illinois gives its experiment station something like \$100,000 a year for soil study and field experimentation; Iowa gives its station less than one-third that of that sum. Illinois maintains 35 field experiment stations. Iowa has made provision for none. Field experimentation is necessary to get the best practical information on soil conservation.

Illinois' aggressive work in soil investigation for sixteen years is producing results. Illinois' present average corn yield is more than 6 bushels per acre greater than it was during a 25 year average ending 1890. In Iowa the present yield is less than the average for about the same period. "Iowa needs to do something about this matter of soil study," says Prof. W. H. Stevenson of the soils department of Iowa State college.

Iowa farmers are arousing to the need of soil study. Letters come to the station every day asking for help. They are answered as thoroughly as possible, but not with such definite information as would be available if

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NOTICE OF APPOINTMENT OF EXECUTOR.
State of Iowa, Delaware County, ss. Notice is hereby given that the undersigned has been duly appointed and qualified as Executor of the Estate of Edward Rolfe, Sr. of Delaware County, deceased. All persons indebted to said Estate are requested to make immediate payment, and those having claims against the same will present them, properly authenticated, to the undersigned for allowance. Dated Oct. 10th 1911, S. B. Edward Rolfe, Jr.

Iowa would provide means for thorough soil surveys and field experimentation.

The Magnetic Pole.
The north magnetic pole has been actually located at 70 degrees and 5 minutes north latitude and 96 degrees 46 minutes longitude. The south magnetic pole has not yet been located, but it is believed to be about 73 degrees south latitude and 150 east longitude. It is known, however that the two magnetic poles do not lie at the extremities of a diameter of the earth.

NOTICE OF PROBATE OF WILL.
STATE OF IOWA, Delaware County, ss. TO ALL WHOM IT MAY CONCERN: You are hereby notified that the last will of Francis Buschlin deceased, has been filed, opened and read, and adjudged the 4th day of Dec. A. D. 1911 filed as the same and the Court House in Manchester the place for hearing and proving the same. R. D. GRAHAM, Clerk District Court

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