



STATES' POWER IS UPHELD BY SUPREME COURT

Only Congress May Object to Initiative and Referendum Measures, Its Decision

Ten States Affected and Legislative Propaganda in Others Cleared by Doubt

Case Brought by P. S. T. & T. Co. Settles Validity of Bonds Valued at Millions

WASHINGTON, Feb. 19.—Only congress and not the supreme court of the United States may object to the initiative and referendum method of legislation in the states, so the supreme court decided today.

The tribunal held that the question of whether a state still maintained a republican form of government guaranteed by the federal constitution after imposed by the initiative and referendum was a problem for congress and not a judicial one for the courts.

The decision was based on the claim of the Pacific States Telephone and Telegraph company that a tax upon it, imposed by the initiative and referendum method in Oregon, was unconstitutional. The initiative and referendum provisions in Missouri, California, Arkansas, Colorado, South Dakota, Utah, Montana, Maine and Arizona hung in the balance. An adverse decision would have affected the proposed legislation of that character in many other states.

Decision Is Unanimous

Chief Justice White announced the decision of the court. None of the justices dissented. The court also gave a similar decision in reference to an ordinance in Portland, Ore., for the construction of a bridge.

The chief justice said that "a singular misapprehension" had existed on both sides of the case, but that the "mistake and confusion" were dispelled by the decision of Chief Justice Taft years ago, in which he disposed of the Dorr's rebellion question. That was the case of Luther vs. Borden, he said, and decided that the enforcement of the guarantee of a republican form of government to the states belonged to the political department of the government, and came up, for instance, on the admission of senators and members of the house to their respective bodies.

The chief justice called attention to Chief Justice Fuller's decision following Luther vs. Borden in the controversy over the Kentucky government in the case of Taylor vs. Beckham.

Justice White's Opinion

Referring to the doctrine as laid down in these two cases, Chief Justice White said:

"It is indeed a singular misconception of the nature and character of our constitutional system of government to suggest that the settled distinction which the doctrine just stated points out between judicial authority over justiciable controversies and legislative power as to purely political questions tends to destroy the duty of the judiciary in proper cases to enforce the constitution. The suggestion results from failing to distinguish between things which are widely different, that is, the legislative duty to determine the political questions involved in deciding whether a state government, republican in form, exists, and the judicial power and ever present duty whenever it becomes necessary in a controversy properly submitted to enforce and uphold the applicable provisions of the constitution as to each and every exercise of governmental power.

GRAVE DIFFERENCE POINTED

"How better can the broad lines which distinguish these two subjects be pointed out than by considering the character of the defense in this very case? The defendant company does not contend here that it could not have been required to pay a license tax. "It does not assert that it was denied an opportunity to be heard as to the amount for which it was taxed, or that there was anything inhering in the tax or involved intrinsically in the law which violated any of its constitutional rights. If such questions had been raised they would have been justiciable and therefore would have required the calling into operation of judicial power.

"Instead, however, of doing any of these things, the attack on the statute here made is of a wholly different character. Its essential political nature is at once made manifest by understanding that the assault which the contention here advanced makes is not on the tax as a tax, but on the state as a state. It is addressed to the framework and political character of the government by which the statute levying the tax was passed.

"It is the government, the political entity, which (reducing the case to its essence), is called to the bar of this court, not for the purpose of testing judicially some exercise of power, as usual on the ground that its exertion

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Mahlon Pitney Is Named as Justice Of Supreme Court



N. J. JURIST WILL SUCCEED HARLAN

Taft's Appointee Heads Bench of His Home State; Once Member of Congress

WASHINGTON, Feb. 19.—President Taft today sent to the senate the nomination of Chancellor Mahlon Pitney of New Jersey to be associate justice of the United States supreme court.

In executive session, the senate, without discussion, referred Pitney's nomination to the committee on judiciary, which probably will make a report next Monday.

The president also nominated Julius M. Mayer of New York city to be judge of the U. S. district court for southern New York and Ferdinand A. Geiger of Casville, Wis., to be district judge eastern district of Wisconsin.

Chancellor Pitney, besides being recognized as an able jurist, is popular in New Jersey. Before going on the state supreme bench he was active in politics and represented the old fourth New Jersey district in congress.

The district was nominally democratic, but he carried it twice in succession in 1894 and 1896. Pitney became a supreme court justice in 1901 and in 1905 was appointed by Governor Fort to be chancellor of the state.

Pitney was frequently mentioned for the republican nomination for governor in 1907.

Labor Leader Protests

DES MOINES, Ia., Feb. 19.—A. L. Urick, president Iowa Federation of Labor, today protested to Senator Cummins and Kenyon at Washington against the appointment of Chancellor Mahlon Pitney to succeed the late Justice Harlan on the supreme bench.

EASTERN OPERA STARS COMING HERE IN 1913

Leahy Gets Philadelphia-Chicago Company to Open Tivoli PHILADELPHIA, Feb. 19.—Andreas Dippel, general manager of the Philadelphia-Chicago Opera company, announced today that he has signed an agreement with W. H. Leahy to take the entire organization to the Pacific coast in the spring of 1913. Leahy expects to have the new Tivoli opera house in San Francisco ready by January, 1913, and it is contemplated to open the theater March 11 with a gala performance by the Philadelphia-Chicago Opera company.

SACRAMENTO SUE FOR \$30,000 BY A WIDOW

Mrs. Luther Wants Balm for Husband's Death

[Special Dispatch to The Call] SACRAMENTO, Feb. 19.—The city of Sacramento was made the defendant in a \$30,000 damage suit brought by Mrs. Bertha Luther as balm for the death of her husband, E. Luther, in a collision of drays in a downtown alley last August. Luther was struck by a wagon tongue and killed. Mrs. Luther contends that the city was negligent in permitting the alley to be obstructed.

HEARST YIELDS PRESIDENCY TO SPEAKER CLARK

Missourian Says Californian Has Been So Good to Him Won't Contest Field

Gallantry, However, Evokes the Same Spirit of Reciprocity and Clans Are Rallied

W. R. Hearst has decided not to accept the presidency this year. He has formally declined to permit the California democracy to instruct its delegation to vote for his nomination in the Baltimore convention. He has refused to permit Champ Clark to withdraw from the consideration of the democrats of California.

These noteworthy political facts were uncovered for public edification yesterday through the medium of M. F. Tarpey, director general and chief "get-together" man of what has been called "the Hearst campaign in California."

The unveiling was done in no slipshod manner. Indeed, the ceremonials involved preliminaries covering a period of more than 48 hours. First there was a telegram of several hundred words from Champ Clark to Tarpey. In that telegram the speaker of the house told Tarpey that he could not give his consent to the prosecution of a Clark primary campaign in California. His reasons were set forth at length. They were various only as to form of their expression. The fact of the matter was, Clark wired, that Hearst had been so good to him that he was utterly opposed to contesting with him for the honor of a California endorsement, which, as a matter of right, should go to Hearst.

Tarpey Is Elated

In the absence of searching inquiry, it would appear that Tarpey was so elated over the far away response to the "Come in; we've got to get together" invitation that he conveyed the glad tidings to Hearst, who, in the absence of evidence to the contrary, was in entire ignorance of the extraordinary regard in which he was held by Clark.

Refusing to be outdone in gallantry by Clark, Hearst hastened to indite a telegram to Tarpey. It excelled the Clark telegram, both in length and the quality of compliment returned. Among other things, Hearst informed Tarpey that "most certainly and positively" he could not "for one moment consider" Clark's retiring from California in favor of himself. Moreover, said Hearst, Clark's politeness had more than ever determined him to support Clark and to urge every friend of Hearst in California to support Clark.

In a case presenting conflict of that kind, Tarpey could be expected to be governed by the wishes of Hearst rather than the mandates of Clark. Wherefore Tarpey issued a statement yesterday, in which he declared that the Clark people should cheer up, since they were assured of the active assistance of Hearst and his friends.

Hearst and Bell United

All of which means that the full Marathon distance is only a sprint for Hearst when he finds it necessary to make a trip around a political woodpile. Which is to say that telegrams and interviews are the Hearst way of confirming the public belief that Hearst and Theodore A. Bell have "got together" for the 1912 presidential campaign in California.

Prior to the recent meeting of the democratic state central committee it was understood that Hearst, through Tarpey and other California representatives, had demanded that Bell support a resolution that would put the California democracy behind Hearst as a candidate for the presidential nomination. When that meeting was adjourned and Tarpey had thrown his proxies against Bell's no preference column proposition and voted them with the Wilson contingent, it was permitted to be understood that Hearst had been avenged by humiliating Bell.

The next day Bell and his immediate followers on the state central committee forgot about the no preference scheme and launched the Champ Clark league. Almost immediately thereafter Bell departed for the east. He is expected to return tomorrow. Undoubtedly he will be delighted, even if he is surprised, to learn that he is to have the co-operation of Hearst and Hearst's friends.

Surface Indications

On the fact of it, this state of facts would seem to indicate that there would be only two democratic delegate tickets in the California field and that the scrap would be a straight London prizefight affair between Phelan and Bell on behalf of Wilson and Clark, respectively.

But things are not always what they seem. The McNab democrats, or some of them, are not especially elated over what seems to be a solution to the advantage of Bell. They are not for Wilson and they have given over hope of a Harmon fight in California. They may use their objection to Bell as an excuse for a refusal to climb upon the Clark band wagon and the presentation of 24 prominent citizens as no-

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LAW SANCTIONS DUMMIES' USE IN LAND DEALS

Decision Favors Corporations in Acquisition of Public Land Through Others

Agreement to Purchase May Even Be Made With Entry-men, Says Judge Gilbert

Wide latitude in the use of "dummies" in acquiring public lands is permitted by law, according to a decision by Judge W. B. Gilbert in the United States circuit court of appeals yesterday in the case of the government against the Barber Lumber company and others for alleged conspiracy to defraud the government of large tracts of land in Idaho.

Basing his opinion upon previous decisions, Judge Gilbert set forth his interpretation of the law as to the acquisition of government land through agents or "dummies."

Gist of Opinion

After reference to various precedents Judge Gilbert held as follows:

The decision of the present case is ruled by the legal principles announced in the Budd case and in the Clark case. Those decisions are authority for the proposition that a person or corporation desiring to acquire title to a large body of timber lands of the United States under the timber and stone act may express that desire to another, and may enter into an agreement with him to buy the lands upon his obtaining title thereto; and may loan him the money with which to acquire title, and may inspect and select the lands, and that such person or corporation is not bound to inquire into the method by which the other party to the contract acquires title, and is not chargeable with knowledge of any fraud upon the land laws that he may resort to, and that in taking titles based upon the issuance of final receiver's receipts to the entrymen without actual knowledge of such fraud or of facts sufficient to put one upon inquiry, such person or corporation is an innocent purchaser of the lands.

Prominent Men Involved

It was in connection with the filing of applications of 210 entrymen on Boise basin, Crooked river and Six-four lands in Idaho in 1901 and 1902 that the government instituted proceedings against the Barber Lumber company, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer and Horace S. Rand, in which it was charged they had conspired to defraud the government by devising a plan with former Governor Frank Steunberger of Idaho, John I. Wells and others to gain unlawfully large quantities of public lands by the use of dummy entrymen.

By reason of the prominence of the persons involved and the great amount of land involved, the case excited great interest. After a prolonged hearing in the present suit, in which the government is the appellant and the Barber Lumber company the appellee, the circuit court decided in favor of the defendant corporation, the bill being dismissed upon the ground that there was not sufficient evidence to connect the defendants with the alleged conspiracy.

In affirming the decision of the lower court the United States circuit court of appeals places a new interpretation on points of vital interest in connection with the acquisition of public lands.

Lower Court Reversed

The United States circuit court of appeals yesterday reversed the lower court for error in nonsuiting Christina Sandridge in an action for damages against the Atchison, Topeka and Santa Fe Railway company because her husband was killed in Arizona in 1909 by the derailment of a boxcar in a freight train of which he was conductor.

The lower court was sustained in the case of the American Bonding company of Maryland against County Treasurer R. O. Welts, County Commissioners Nick Bessner, George A. Henson and W. J. Henry and Patrick Halloran, R. M. Moody and James Dunlap, in which the bonding company sought unsuccessfully to recover damages against the county officials after it had been called upon to cover the peculations of former Auditor Fred Blumberg in Skagit county, Washington.

CHRONICLE CLUB WILL GIVE DANCE TONIGHT

Novel Features Arranged for Third Annual Affair

Novel features will characterize the third annual dance of the Chronicle club, to be given tonight in Puckett's assembly hall, 1268 Sutter street. There are 20 numbers on the program, which will begin at 9 o'clock.

The club is composed of men from all the departments of the Chronicle and has a membership of 150. Louis Bangs is president, Mark Wayman vice president and George Borneman secretary and treasurer.

George A. Fisher will be floor director for the dance, assisted by Walter Nelson, Louis Bangs, James A. Ritchie and Jesse Moore. The hall will be elaborately decorated for the occasion. Music will be furnished by the Ehrmann orchestra.

WOES INTOLERABLE Suit Is "Picturesque"



Mrs. J. M. Etienne, who has begun proceedings for divorce.

Specific Instances of Brutalities Set Forth in Complaint

If the dispositions of the cyclops of old were anything like that which is ascribed by Mrs. Mary M. Etienne to her husband, Joseph M. Etienne, proprietor of the Cyclops Iron works, it is small wonder that they were unpopular in their social circles. Mrs. Etienne filed a suit for divorce yesterday which was picturesque in its description of her husband's characteristics. The general ground for the action is cruelty, and the specific instances of brutality cited by the wife are allegations of beatings and of a choking episode, under the torture of which she almost lost consciousness.

Money is to figure in the case. The attorney for Mrs. Etienne appeared before Judge Graham yesterday afternoon and obtained a restraining order to prevent Etienne from withdrawing from various banks sums of money until after the divorce suit and the important question of alimony are settled.

The Etienness have lived at 1900 Fell street, and Etienne's foundry is located at 222 Main street. The couple have two children, one 8 years old and

the other 5, and Mrs. Etienne asks that they be given into her custody. The court has set the hearing of the case for next Friday morning and has directed all parties to appear in court at that time.

Mrs. Etienne's story as told in the divorce complaint left little to the imagination. For 10 full typewritten pages it narrates the alleged cruelties practiced by the iron foundry man, who is reputed to have carried into the domestic circle much of the iron and the roughness of his craft.

Harsh and improper language is declared by the wife to have flowed from the mouth of her husband with unquenchable fury.

An attempt was made to keep the record in the case secret, but the attorney had to appear in open court with his papers to fully accomplish his purpose and the record showed the narrative of the Etienne domestic struggle.

Alimony in a considerable amount, costs and counsel fees, are demanded by Mrs. Etienne of her husband, who is reputed to be well to do.

STAY IN JUDGE'S ORDER IS ASKED

A petition for a writ of supersedeas to stay Superior Judge Coffey from entering his order of distribution in the matter of the estate of the late Claus Spreckels was filed in the state supreme court yesterday afternoon by C. A. Spreckels and Rudolph Spreckels, trustees of the estate of Anna C. Spreckels, deceased widow of the California millionaire.

The court set no time for a return on the petition. The issuance of the writ will be vigorously opposed by the attorneys for John D. Spreckels and A. B. Spreckels, the other sons.

Judge Coffey's order, which was first petitioned for by C. A. Spreckels and Rudolph Spreckels to distribute the estate in accordance with the trust clause of the will, which held the property in trust under certain testamentary conditions.

Subsequently the trust clause was abrogated by the court in sustaining the demurrer of John D. and A. B. Spreckels. Judge Coffey then stated that he would shortly distribute the estate to the heirs as they stand before the law.

C. A. Spreckels and Rudolph Spreckels have appealed from the decision to the supreme court and the writ of supersedeas applied for yesterday to stay the action of the probate court pending the appeal.

"If a supersedeas is issued in this case," said Attorney W. I. Brobeck for John D. Spreckels and A. B. Spreckels yesterday, "it will be the first time in the history of the court that such a writ was ever issued in a case of this kind and under these circumstances."

"We believe that Judge Coffey has full jurisdiction to enter the order for the distribution of the estate, and we shall oppose the petition for the writ. Originally the petitioners desired a distribution of the estate, but now they have reversed themselves on that stand and they desire to have Judge Coffey's ruling reversed."

The petition filed yesterday alleges that if the probate court is not restrained from entering its decision the petitioners will be deprived of whatever benefits would come to them from an appeal.

TWO LOCAL LABOR CHIEFS SURRENDER

Eugene A. Clancy and Olaf Tveitmo, two local labor leaders, accused by the United States government with the McNamara brothers and others in connection with the alleged nationwide dynamite conspiracy, surrendered at the office of United States Marshal C. T. Elliott yesterday morning and promptly obtained their release by giving bonds.

The warrants for Clancy and Tveitmo arrived from Indianapolis last Friday. Bert Schlesinger, attorney for the defendants, arranged with the marshal for the surrender of the two men on their return from Los Angeles, where they had been summoned as witnesses before the grand jury.

Accompanying Clancy and Tveitmo to the marshal's office were former Mayor P. H. McCarthy, Mrs. O. A. Tveitmo, Jafet Lindeberg, a wealthy Alaskan miner, and Attorneys Cleve Dam, George Appell and Samuel C. Wright of counsel for defendants.

Clancy and Tveitmo went at once before United States Commissioner Francis Krull to arrange for bail. Assistant United States District Attorney Ben McKinley represented the government. Clancy's bail was fixed at \$10,000 and Tveitmo's at \$5,000. Lindeberg and Mrs. Tveitmo qualified as sureties on both bonds.

An examination of the sureties to determine their qualifications disclosed some interesting facts. Mrs. Tveitmo said she had one tract of land in San Bernardino county worth \$4,000 or \$5,000, and another of 640 acres, which had been deeded to her by her husband about a month ago.

Tveitmo said he had secured his patent to the land in January, and held it to be worth \$64,000. Mrs. Tveitmo further said she had a piece of property in Santa Cruz which she valued at \$5,000.

Lindeberg informed the commissioner that he had one piece of property in Seattle valued at \$1,000,000 and that he had other property there and in Alaska and elsewhere of great value.

Commissioner Krull fixed 9:30 a. m. March 11 as the time for the examination of the two defendants.

HAYES RAPS ENEMIES OF TAFT

Californian Bolts Fellow Insurgents and Praises President in House Speech

EXECRATES CAMPAIGN OF POLITICAL ABUSE

Recognizes That President Has Been "Courageous and Honest in Purpose"

JOHNSON TURNS FROM LA FOLLETTE TO TEDDY

[Special Dispatch to The Call] WASHINGTON, Feb. 19.—Representative Hayes of California, who has been one of the most radical of the insurgent republicans, today bolted his associates and delivered a tribute to President Taft on the floor of the house, saying:

"I wish to say that I have nothing but execration and condemnation, indeed, I have no words to express my contempt for the political methods pursued by some against the present occupant of the White House. They do not hesitate to use misrepresentation, exaggeration, even falsehood, to bring odium upon the head of the nation.

"I am sorry that I have not always been able to agree with the policies of President Taft. Indeed, in many cases I have been obliged actively to oppose the things that he has had at heart; but I recognize, as I believe every fair man must, that never have we had a president more patriotic, more courageous, more honest in purpose than the present chief executive.

"Mud-slinging, vituperation and personal politics are certainly to be condemned in every local election or campaign and if locally these things are disgusting and should be frowned upon by every lover of decency, they are not to be commended when they strive to rise to the dignity of national politics."

Political sentiment on the Pacific coast is changing as rapidly as in the east, according to E. H. Tryon, president of the Union League club of San Francisco, who called upon President Taft this morning. Tryon says that the sentiment for the president in the far west is increasing by leaps and bounds. He is on his way to Palm Beach and also will visit the Panama canal.

"Not only in California, but farther north in Oregon and Washington there has been in the last few weeks a strong tendency to turn to President Taft," said Tryon. "California is very much for him. The tariff is becoming an issue of very great importance. The people of the state are protectionists and when they have looked into the tariff situation they have become convinced that President Taft represents the protective principle and that he is the man whom they want nominated and elected.

"I was toastmaster at a banquet in San Francisco just a few nights ago," continued Tryon. "When a telegram from the president was read every man rose to his feet, and there were hundreds present and cheered the president's greeting to the echo. There is no question but that the president will have the state of California with him in the convention. We want no other man."

"Show Me" Men at Peace

JOPLIN, Mo., Feb. 13.—The democratic state convention, which meets here tomorrow to select delegates to the convention at Baltimore, will send eight delegates at large to the national gathering if plans proposed by party leaders and generally agreed on by most of the delegates here tonight are adopted. Each man will have half a vote in the Baltimore gathering.

The proposed makeup of the delegation is:

United States Senators Stone and

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