

# NEWBERRY IS VICTOR IN SUPREME COURT

## Corrupt Election Conviction Is Set Aside.

### ACT IS HELD ILLEGAL

#### Right of Congress to Supervise All Elections Is Challenged; Lower Court Error Alleged.

(Continued From First Page.)

direct election amendment had not affected section 4, article 1, of the constitution, which, the majority opinion said, while it gave congress the power to regulate the manner of holding elections, did not confer on it authority to control party primaries or conventions.

Domestic affairs of the states would be interfered with if congress, under existing laws, was held to have control over the primaries, the opinion stated. It was pointed out also that inasmuch as states "may suppress whatever evils may be incident to primary or convention," and each house of congress has the power to judge elections, qualifications and returns of its own members, and inasmuch as congress has authority to regulate the time, places and manner of holding elections, "the national government is not without power to protect itself against corruption, fraud and other maligned influences."

**White Favors Reversal.**

Chief Justice White, in his dissenting opinion, said he favored reversal of judgment, obtained in the lower courts against Senator Newberry and 14 others, without prejudice to a new trial, "because of the grave misapprehension and gross misapplication of the statute on which the conviction and sentence were based."

The chief justice predicted that legislation would be enacted to give congress power over primaries, otherwise, he said, "government cannot live." The proposition that the power of states solely to control primaries is not affected by the right of congress to regulate elections was referred to as "suicidal" by the chief justice, who declared that instances in which the primary has become the controlling feature of elections "the election is still-born and the vote without power or weight."

**Dissenting Opinion Given.**

"The influence of who is nominated for elective office," his opinion said, "upon the result of the election to fill that office is so known of all men that the proposition may be left to destroy itself by its own statement."

The dissenting opinion of Justice Brandeis and Clark, said it was "tragic if that provision of the constitution which has proved the sure defense of every outpost of national power should fall the very foundation of the citadel."

Justice Pitney declared as untenable the contention that congress could not have power over primaries.

Commenting on the importance of exercising vigilance over the conduct of primaries, Justice Pitney said "wider influence exerted upon the primaries inevitably have their effect upon the ultimate election—are employed for no other reason."

**Lower Court Held in Error.**

Justice McReynolds said the lower court had overruled "a duly interposed demurrer which challenged the constitutionality of section 8 and by so doing we think fell into error."

"Manifestly," the majority opinion said, "this section applies not only to final elections for choosing senators, but also to primaries and conventions of political parties. Michigan and many other states undertake to control these primaries by statute. And the ultimate question for solution here is whether congress may fix a minimum which a candidate may spend or advise or cause to be contributed and spent by others to secure his nomination."

**Argument Held Unsupported.**

"We find no support in reason or authority for the argument that because the offices were created by the constitution, congress has some indefinite, undefined power over elections for senators and representatives not derived from section four."

Continuing, the majority opinion said:

"The 17th amendment, which directs that senators be chosen by the people, neither pronounced nor requires a new meaning of 'election,' and the word now has the same general significance as it did when the constitution came into existence—final choice of an officer by the duly qualified electors. Primaries were then but merely methods by which party adherents served on candidates. General provisions touching elections in constitutions or statutes are not necessarily applicable to primaries if the two things are radically different."

**Misconstruction Is Alleged.**

"The case is here by direct appeal because of the contention that primaries of that character are not subject to the regulating power of congress," Chief Justice White said, "and as an incident there is involved the contention that even if the act of

congress was constitutional, it had been prejudicially misconstrued.

"Sustaining the first of these two contentions, and therefore deciding the act unconstitutional, the court reverses and finally disposes of this case."

"Although I am unable to concur in the conclusion as to the want of power of congress, and in the judgment of reversal as rendered, I am nevertheless of the opinion that there should be a judgment of reversal without prejudice to a new trial because of the grave misapprehension and gross misapplication of the statute on which the conviction and sentence was based."

**Proposition Held Suicidal.**

"It is said that, as the power which is challenged here is the right of a state to provide for and regulate a primary for nominating senators free from the control of congress, and not the election of such senators, therefore as the nominating primary is one thing and the election another, the power of the state as to the primary is not governed by the right of congress to regulate the 'times and manner' of electing senators."

"But the proposition is a suicidal one, since it retains in the state the only power it could possibly have as delegated by the (constitutional) clause in question and refuses to give effect to the regulating control which the clause confers on congress as to that primary election."

**Infringement Alleged.**

Associate Justice Pitney, who submitted the opinion, and by Justices Brandeis and Clark, dissented from the majority as to the "constitutional infringement" of the states.

"It would be tragic," he declared, "if that provision of the constitution which has proved the sure defense of every outpost of national power should fail to safeguard the very foundation of the citadel."

"If I am wrong and the power to regulate primary elections could be deemed to have been reserved to the states, the result would be to leave the general government destitute of the means to its own preservation without governmental aid from the states. This would render the government of the United States less than supreme in the exercise of its appropriate powers."

The contention that congress could not have given power over primaries, since they were unknown when the constitution was adopted, was dismissed by Mr. Pitney as untenable.

"I am unable to see," he declared, "how in right reason it can be held that one of the houses of congress may exclude an elected member for securing by bribery his nomination in the primary if the regulation by law of his conduct at the primary is beyond the constitutional power of congress."

"Moreover, the power of each house, even if rightfully applied to primaries, since they were unknown when the constitution was adopted, is not to check upon bribery, corruption and other irregularities in the primary elections. It can impose no such check upon the primary, and when affirmatively exercised it leaves the constituency for the time without proper representation."

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### MULATTO BABE IN CASE

(Continued From First Page.)

seriously. When he identified the picture of Mrs. Stokes and the baby he said, with a short laugh:

"Mrs. Johnson said that was the picture of Mrs. Stokes. The baby is a colored baby. Mrs. Stokes is the mother of that baby."

Mr. Sandler was certain Mrs. Stokes did not promise to retain him in the divorce action, although he knew this was contemplated. He assured the court he paid little attention to the heap of photographs offered him, but filed them away as a matter of routine and later returned them.

Trial of the negro was delayed at the request of Mrs. Stokes' counsel, Mr. Sandler said. He was informed Mrs. Stokes desired to finish her divorce suit first. In any case, the questions were not read until today, although they seemed to enrage Mrs. Stokes, they did not embarrass her. An untried indictment still hangs over the negro, a reason given by Mr. Sandler for his reluctance.

**Visit to Mrs. Stokes Denied.**

Practically concluding his case, the defense began today's session by summoning out of his past country the "sail, dark young man," Elliot Brown, a chum of Victor Miller, Mrs. Stokes' stepbrother. Mr. Brown is not noticeably tall, not noticeably dark, although his hair is black.

He refuted testimony that he entered Mrs. Stokes' room in the West Seventy-eighth street home. He had frequently visited his chum, he testified, but had known Mrs. Stokes only casually.

With his appearance all of the named living co-respondents have entered their denials of the tales of infidelity. Mr. Roosevelt is dead. Testimony against him included a charge, embodied in the questionnaire, that he painted a nude of Mrs. Stokes smoking a cigarette. Mrs. Stokes denied this.

If no delays are caused by Mr. Stokes' illness the trial will be completed shortly before adjournment.

The ordeal of the weeks of litigation showed up plainly in the lines of Mrs. Stokes' face today. Throughout the day she seemed nervous and ill at ease, although she made frequent attempts to smile.

S. & H. Green stamps for cash. Helman's Cures, coal and wood, Main 253, 340-21—Adv.

# EARLY DISARMAMENT MOVE HELD CERTAIN

## Congress in Earnest, Asserts Mark Sullivan.

### MR. MONDELL CONFIDENT

#### Lawmakers Refrain From Pressing Legislation Out of Consideration for President Harding.

BY MARK SULLIVAN. (Copyright by the New York Evening Post, Inc. Published by Arrangement.)

WASHINGTON, D. C., May 2.—(Special.)—The most unmistakable manifestation of a vital and widespread sentiment that has appeared in the present congress is the determination to move toward international disarmament.

It is not too much to say that nothing except consideration for President Harding and the fear of embarrassing him prevented the house from taking wide-spread action in the direction of disarmament by our own and other nations.

In attempting to get the naval appropriation bill through, the republican leader of the house, Mr. Mondell, was compelled in substance to appeal to the house to pass the bill for the present and in effect, gave the house his promise that within the reasonably near future President Harding would take the necessary steps leading to disarmament which congress demands.

Mr. Mondell's language was whole-hearted, he said:

"We all know there is a general sentiment in the country in favor of a reduction of armament. There is a general—may say practically unanimous—sentiment in this house favorable to consideration by an international conference of the questions relating to and looking toward the reduction of the burdens of war and armaments."

**Time Is Believed Ripe.**

"I am hopeful that in the near future—I trust, during this session of congress—those who are directly charged with responsibility in the matter of our foreign relations will find that the time is ripe and opportune for the successful accomplishment of the purposes of those who desire a lightening of military burdens. This should be done, and I have no doubt that it will be done, when the conditions of our foreign relationship are such that we can do it without misunderstanding of our motives and with the greatest assurance of a successful outcome."

It was only Leader Mondell's assurance that kept his own party in line in support of the naval appropriation bill. One of those republicans who came nearest to breaking away from party reservations put in pointed words exactly the reason why congress passed the naval appropriation bill. He said:

"Republican Leader Mondell yesterday made a frank, candid statement to the house and to the country that President Harding is in sympathy with the programme of disarmament of nations and that he will try to initiate that programme at an early date, possibly during the present session, after world conditions have become more nearly normal. The statement is reassuring for no member of congress, irrespective of politics, will willingly vote to embarrass the president on a vital question in world affairs, nor can any man fail to recognize the tremendous problems which must be solved by him alone."

**Two Motives Operating.**

The clear fact is that in the lower house of congress, as distinguished from the senate, there are two motives stronger than any others. The first motive is one of helpfulness toward President Harding. They realize the difficulties of his problems, they sympathize with the sincerity of his spirit in trying to solve those problems and they are unwilling to embarrass him.

The next strongest motive in the minds of the members of the lower house is the clear and trenchant determination to bring about disarmament among the nations. Because of the first motive and because of that alone they have for the moment put the second motive in abeyance. They have passed navy and army appropriations bills, but in doing so they regard President Harding as having given them a promissory note to being about disarmament among the nations in the near future and nothing can be more certain about the temper of congress than that in due course it will insist upon the payment of that note.

### HUMOR ENLIVEN HEARING

#### DINING CAR EMPLOYEES PROTEST WAGE REDUCTIONS.

General Manager's Canned Tongue, Ox Tail Diet Appreciated, But Pay Held at Minimum.

CHICAGO, May 2.—A Hatless day of statistical objections to wage reductions sought by nearly 100 railroads before the railroad labor board was brought to a climax today with a humorous broadside from dining car employees on the New York, New Haven & Hartford. R. B. Lomas, a waiter, pleaded that wages were already at the irreducible minimum and protested against further reductions.

"I can appreciate what the position of the general manager must be, metaphorically speaking, subsisting on a diet of canned tongue and ox tail soup to make ends meet," he said, "paying out a dollar and a dime for every dollar the treasurer can hold out for him. We should like to help him. But it is our conviction that the present pay of cooks and waiters is at the irreducible minimum. To go below this minimum would, I believe, destroy that morale without which public health would not be safeguarded."

"My weekly pay is \$15.01," he continued. He deplored the low wages paid chefs and cooks, who, he said, received as low as \$5 a month.

### BANK CALL ISSUED

SALEM, Or., May 2.—(Special.)—Frank Brockwell, state superintendent of banks, today issued a call for reports as to the condition of all state banks in Oregon at the close of business on April 28. This call was based on the federal order demanding similar reports with relation to national banks operating in Oregon.

### CANADIAN STRIKES FEW

#### Masons and Printers Are Out, But No Trouble Experienced.

WINNIPEG, Man., May 2.—May day found labor conditions in western Canada fairly well settled, with the exception of a strike of stone masons affecting 75 men here, who want an increase of 25 per cent in wages. No trouble was experienced here.

In Moosejaw, Saskatchewan, building tradesmen have asked for the retention of last year's schedules, while the Building Trades association offers a cut ranging from 10 to 15 per cent. Saskatoon, Regina and Calgary reported normal conditions. Vancouver reported a strike of 79 job printers, who demand a 44-hour week.

### Read The Oregonian Classified Ads

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## No "sameness" here.

We specialize on VARIETY with best materials and service for breakfast, lunch and dinner "when you want it."

### At Popular Prices

# Imperial Hotel

## Phil Metcalfe, Manager

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### Read The Oregonian Classified Ads

**THE LOS ANGELES PHILHARMONIC ORCHESTRA**  
WALTER HENRY ROTHWELL, CONDUCTOR

**CITY AUDITORIUM TONIGHT, 8:15**

The Supreme Musical Organization of the West—75 of the World's Greatest Musicians

SEAT SALE SHERMAN & CLAY'S  
Prices: \$2, \$1.50, \$1, 75c. NO WAR TAX

Northwestern Bookings Direction of Elwyn Concert Bureau.

# "Striking" Coins

The light from the furnace fire flickers on the intent faces of the slaves. It catches the gleam of the soldier's spear as he paces to and fro. Creak-k! Creakk! Says the clumsy old wooden machine as the silver comes forth in a shining strand. Snip-p! Snipp! Go the shears as the slave cuts the metal into shorter lengths and tosses them into the fire. Then he takes a piece of silver from the furnace with a long pair of pincers and lays it upon the nearby anvil. This anvil contains the die making the obverse of the coin. With never failing skill, a small hammer containing the reverse of the coin is applied and the whole struck a mighty blow with a heavy sledge. The coin is "struck!" Thus slowly and laboriously was money coined in the time of the great Persian king, Darius. Today coins are minted in huge electrically driven machines at the rate of several thousand an hour—under pressure of 175 tons! The history of all banking or finance shows a similar astonishing progress. It has been our pride to keep step with modern growth and expansion of banking service. If you are not fully familiar with the completeness of our facilities, ask for our booklet "The First National Bank West of the Rockies."

**THE FIRST NATIONAL BANK OF PORTLAND OREGON**

THE FIRST NATIONAL BANK WEST OF THE ROCKY MOUNTAINS

The **CHENEY**  
The Master Instrument  
With the Violin Resonator and Orchestral Chambers

**Sheraton Period \$150.00**

In five minutes you can hear that beautiful quality of Cheney tone which cannot be described in hours.

**At Popular Prices**

**Imperial Hotel**  
Phil Metcalfe, Manager

**The Cheney Grows Sweeter With Age**

Just as a rare old Stradivarius violin grows sweeter with passing years, so does The Cheney add to its tone quality with time. It is a most remarkable feature—a characteristic which has made The Cheney especially appreciated.

**Features found in no other phonograph**

The famous "violin resonator" and "orchestral chambers" which give The Cheney this invaluable quality are exclusive features, found in no other phonograph.

Six other features which make this Cheney all you could wish in a Phonograph—and more

1. Artistic cabinets which add charm to the home.
2. Twelve distinct volumes of tone.
3. Perfect tone control, avoiding "blast" on high, loud notes.
4. Practically eliminates needle scratch.
5. Automatic stop on all models.
6. Plays all records.

This beautiful Sheraton period model is an artistic addition to the home furnishings, a constantly increasing source of satisfaction. You can select it in Biltmore mahogany, fumed or golden oak, all at the same price. It is equipped with steel and jewel needles, two reproducers for playing all records, automatic stop, and five shelves for record albums. You can buy this beautiful Cheney on convenient terms.

Cheney Regular Models, \$125 to \$385

CHENEY TALKING MACHINE COMPANY  
Chicago and New York.

**G. F. JOHNSON PIANO CO.**  
147-149 Sixth St., Portland, Oregon  
CHENEY PHONOGRAPH COMPANY  
Distributors, 212 Selling Bldg., Portland, Oregon.

**WHITEMAN WORRIED NO LITTLE, HE SAYS**

Seattle Man, in Bad Shape for Many Years, Declares He's Entirely Over His Troubles.

"I don't believe I ever felt better in my life than I do right now and it is thanks to nothing else than that fixed me up in such fine shape," said Wm. H. Whiteman of 115 Fourth Avenue North, Seattle, recently. Mr. Whiteman has been in the employ of the city since 1907 and is now connected with the health department.

"For a good many years I had been bothered with rheumatism and at times it nearly knocked me out. My legs would ache and pain me so I could hardly stand on my feet and my arms and shoulders hurt terribly sometimes and my back was weak and lame and, in fact, I ached all over.

"My stomach got out of order and my appetite went back on me. Nothing seemed to set well with me and at times I became so nauseated I couldn't keep down a thing I ate. I had headaches a lot and got so nervous I was afraid to drive an automobile. I slept poorly, fell off in weight and my condition worried me not a little.

"Well, sir, if anybody had told me that I would get me up like I am I wouldn't have believed a word of it, but it's a fact, five bottles have put me back in a good health as I ever enjoyed. I haven't a pain anywhere about me, eat whatever I please and sleep fine. In fact, I'm in tip-top shape and every time I get the chance now I slip in a good word for Tanlac."

Tanlac is sold in Portland by the Owl Drug Co. and all leading druggists.—Adv.

Evils of Constipation. Perhaps the most serious of the diseases caused by constipation is appendicitis. If you would avoid this dangerous disease keep your bowels regular. For this purpose Chamberlain's Tablets are excellent, easy to take and mild and gentle in effect.—Adv.

**THE C. GEE WONG CHINESE MEDICINE CO.**  
C. GEE WONG has made a life study of the curative properties of various herbs and has compounded therefrom his wonderful "Wai-Know" medicine, all of which are perfectly harmless, as no poisonous drugs or narcotics of any kind are used in their make up. For stomach, lung, kidney, liver, rheumatism, neuralgia, catarrh, bladder blood, nervousness, gall stones and all disorders of men, women and children. Knows Root and Herb Remedies. Good results will surely and quickly follow. Call or write for information.

**THE C. GEE WONG CHINESE MEDICINE CO.**  
162 1/2 First St., Portland, Oregon.

**INGROWN TOE NAIL**  
TURNS OUT ITSELF

A noted authority says that a few drops of "Outgro" upon the skin surrounding the ingrowing nail, reduces inflammation and pain and so tends the tender, sensitive skin underneath the toe nail that it can penetrate the flesh, and the nail turns naturally outward almost over night. "Outgro" is a harmless antiseptic manufactured for chemists. However, anyone can buy from the drug store a tiny bottle containing directions.—Adv.