

# PARTISANS ON SUPREME BENCH

### Alleged Hostility of Bryan and Roosevelt No New Thing—Jefferson and Abe Lincoln Created New Parties to Fight Court.

By FREDERIC J. HASKIN.  
(Copyright, 1908, by Frederic J. Haskin.)  
Washington, Nov. 23.—President-elect Taft will probably have the opportunity to appoint three or more justices of the supreme court of the United States. In the recent campaign many supporters of Mr. Taft urged in his behalf that he would be more careful in his selection of supreme court justices than would his opponent. As Mr. Taft is the first man who ever came to the presidency with a record of distinguished service on the federal bench, and as he has had ambitions for the supreme court himself, it is to be expected that his attitude toward the courts will be markedly different from that of many of his predecessors in the discussion of the question. It is interesting to review the relations of the supreme court to partisan politics in the history of the country.

In the campaign of 1856 Bryan was severely denounced by every Republican orator because of his criticism of the federal courts, a criticism set forth in the Democratic platform. Within the last few years Roosevelt has been severely criticized because of his disingenuous comments upon decisions of various federal judges. In each instance, that of Bryan and that of Roosevelt, the tone of the criticisms was that the majesty of the federal courts had been attacked for the first time and that the crime was little less than treason.

As a matter of fact, both the Democratic and Republican parties were born of bitter attacks upon the supreme court; there has not been a time in the history of the country when politics and the courts were absolutely divorced; and the courts are more free from political influence now than ever before.

John Jay, the first chief justice of the supreme court, was no active in politics that he went to England as a special envoy and remained abroad on that mission for a year without resigning from the court. He then negotiated the objectionable treaty which enabled Thomas Jefferson to unite the various anti-federalist elements into an organized party. This was the Democratic party, born in the Democratic platform. When Thomas Jefferson came into power on March 4, 1801, Chief Justice John Marshall of the supreme court was in the work of making out commissions for federal judges appointed under the bill passed by the outgoing Federalists designed to pack the courts for political reasons. The bill was repealed, but the supreme court could not be touched. Jefferson attacked the court by means of impeachment and in every possible manner, but John Marshall sat there for 34 years, handing down the decisions which caused Jefferson the despair of Jeffersonians ever since.

Lincoln Defied Supreme Court.  
When Abraham Lincoln repudiated the Dred Scott decision of the supreme court in a speech delivered in 1857, he touched upon the very thing that was to make the new-born Republican party great, and which would give him immortal fame. The Dred Scott decision was denounced all over the north. The supreme court was denounced as the puppet show of the slavery. When Lincoln came to be president one of the first things he did was to ignore a mandate of the supreme court.

The Democratic party was born in violent opposition to the supreme court and ruled practically all of the time for the ensuing 60 years. Then the Republican party was born in denunciation of the supreme court and it has ruled practically all of the time for the past 50 years.

Congress Can Pack the Court.  
Furthermore, congress exercises a limited power over the supreme court in that it can increase or decrease the number of members of the court, although it could not legislate a justice off the bench. This power has been exercised for the express purpose of political effect. In 1862 congress originally composed of a chief justice and five associate justices, the court now has eight associate justices, at one time it had nine, making 10 in all.

Thanksgiving day will be on Thursday.  
We've fattened our stock with a special new lot of winter-weight garments.  
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The court was increased by the Democrats in the Andrew Jackson regime for political purposes. In reconstruction days it was decreased in order that Andrew Johnson might not be permitted to fill three vacancies which had occurred. The party favoring the extreme reconstruction program was much afraid of the supreme court as it stood, and it could not permit Johnson to add to it men of his way of thinking.

Now Hayes Becomes President.  
The last time the supreme court showed a positively partisan political division was in 1877, when the electoral commission was created to decide the contest between Rutherford B. Hayes and Samuel J. Tilden for the presidency. Congress provided for a commission of the members of each house and for five members of the supreme court. The 19 congressional commissioners were equally divided between Republicans and Democrats. Two Republican and two Democratic supreme court justices were selected and they were to choose the fifth judge.

It had been the original plan to select Justice David Davis of Illinois, an independent, but he resigned from the court when elected to the senate by the Illinois legislature. Then Justice Bradley was chosen. He was a Republican. On every vital question that came before that commission, the vote was eight to seven—the eight Republicans, including Bradley voting for the Republican contention and the seven Democrats supporting their partisan claims. So the contest was decided and Hayes was made president.

Nine Chief Justices.  
There have been nine chief justices of the supreme court of the United States, although most lists give but eight. The first was John Jay, who served six years. During that time, he was envoy to England. He was succeeded by John Rutledge of South Carolina, who had formerly served as associate justice. The senate refused to confirm him and he held on to the office of chief justice. Then William Cushing of Massachusetts, an associate justice, was nominated, confirmed and commissioned as chief justice. He resigned after one week, not having held a session of the court. His name is usually omitted from the list of chief justices. Then came Oliver Ellsworth of Connecticut. He served four years and was part of the mission abroad as a minister to France. He was succeeded by the great John Marshall of Virginia, who served for 34 years and five months, the longest term of any chief justice. He was succeeded by Justice Stephen J. Field of California, who served 34 years and eight months. Then came Roger B. Taney of Maryland; Salmon P. Chase and Morrison R. Waite, both from Ohio, and the present chief justice, Melville W. Fuller of Illinois.

The youngest man ever appointed to the supreme bench was the famous Justice Swayne, who was but 32 years old when commissioned by President Madison. The oldest appointee was Ward Hunt of New York, who was 62. Of the chief justices, six came from north of Mason and Dixon's line and three from the south. Of the 52 associate justices, 22 have been from the north and 30 from the south.

At present there are three Democrats and six Republicans on the bench, seven from the north and two from the south. Justice Harlan of Kentucky, appointed in 1877, is the senior member of the court. Chief Justice Fuller comes next in length of service, having been appointed in 1888.

Taft Possibilities.  
It is believed that President-elect Taft will consider the name of Judge Horace H. Lurton of Tennessee for appointment to the supreme court. Judge Lurton is a Democrat, but is a very close friend of Taft, they having served together on the federal circuit bench. If Taft should appoint Judge Lurton, it would be the second time since the organization of political parties that a president placed a man of the opposition party on the supreme bench. The only other instance was when Benjamin Harrison appointed Howell E. Jackson as an associate justice. Like Judge Lurton, Jackson was a Democrat and a Tennesseean. As Lurton and Taft served together on the bench, so Jackson and Harrison served together in the senate, where they had become intimate friends.

While the force of politics is applied to the supreme court from the outside, while congress can regulate the number of its members, and while the president supplies vacancies, it is true that the supreme court itself has become less and less political through the years. From 1789 when it was created, until 1801, when Marshall came to the bench, the court was not very important. It had decided that it could bring an unwilling state before the court to answer as defendant to the suit of an individual, a citizen or subject of another state, but this power was taken away from it by the Eleventh amendment to the constitution.

Decisions That Changed History.  
John Marshall dominated the court for over 30 years. His decisions shaped the future of the country and gave elasticity to the written constitution by originating the doctrine of the grant of power to the federal government by implication. The case of McCulloch against Maryland was epoch-making, and has had more to do with the history of the United States than any other single event since the repeal of the tariff and sedition laws. The third era in the history of the court was when it became responsible to the intense democracy of the Jackson era, with Roger B. Taney at its head. From that time until the civil war the court was strict in constraining the written constitution. During the Lincoln, Johnson and Grant administrations the court was frequently changing, but finally it gave tacit approval to the congressional reconstruction program by greatly liberalizing its opinions. Since that time the general trend has been backward toward a stricter construction, a notable exception to the rule being the Philippine tariff case.

Taking the whole sweep of the history of the country, the record of this unique court, the most powerful on earth, in one of which Americans are proud. Politics has affected it, as politics affects everything, but there has never been the slightest suspicion of dishonesty on the part of any member of the supreme court and the record of that bench is spotless. There is no doubt that it will remain so and every American will join in the prayer which concludes the chief justice's annual report: "Oyez! Oyez! Oyez! All persons having business before the honorable supreme court of the United States of America are admonished to draw near and give their attention, for the court is now sitting! God save the United States and this honorable court!"

JOIN FORCES IN RAILROAD FIGHT  
(Special Dispatch to The Journal.)  
Aberdeen, Wash., Nov. 23.—Hoquiam's Commercial club has joined with the chamber of commerce of Aberdeen to take up the fight against the Northern Pacific Railway company on its proposition to exclude the two towns from testing freight rates. A committee of prominent men of Hoquiam has been selected to attend the meeting of the chamber of commerce of this city Tuesday night and take definite action as to the plan of campaign to be followed. A meeting of lumbermen of Aberdeen and Hoquiam was held in this city yesterday, and while it is not recognized particularly as a lumbermen's fight, owing to the fact that lumber has been eliminated from the new schedule it was the conclusion that indirectly it affected the lumber interests, for the reason that if it succeeded in putting in new machinery, for instance, the schedule will affect this line of freight. The point was also made at the meeting that the tax on other manufacturers and dealers other than lumbermen, the Northern Pacific is discriminating and is violating one of the chief features of the interstate commerce law.

Million Dollar Federal Building.  
(Special Dispatch to The Journal.)  
Providence, R. I., Nov. 23.—The magnificent federal building recently completed in this city was opened for public inspection today, with ceremonies under the auspices of the Rhode Island Business Men's association. The building cost \$1,000,000 and is one of the finest of its kind in the country. It will consist of a federal office, the customs office, the United States courts and other federal offices.

# TO CONSERVE NEW ENGLAND

### Resource Conference Meets at Boston—Shellfish on the Menu Today.

(Special Dispatch to The Journal.)  
Boston, Nov. 23.—The New England conference of resources, consisting of the governors of the New England states, the lieutenant-governors and attorneys-general, the presidents of the senates and speakers of the houses of representatives of each state, as well as members of congress and eight lay delegates-at-large appointed by the governors of their respective states, was called to order by Governor Guild of Massachusetts at the Tremont theatre today. The object of the conference, which was called together by Governor Guild, and which will remain in session two days, is the consideration and discussion of the various resources of the New England states and of the best means to preserve and develop them.

The opening session was devoted to the consideration of tree planting. Clifford Pinchot, chief of the forestry service of the United States department of agriculture, spoke on the future of forest trees in New England. Professor John Craig, head of the department of horticulture at Cornell university, and secretary of the American Pomological society, discussed the subject of orchards in New England and the great opportunity for fruit culture in the New England states.

The morning session tomorrow which will be opened with prayer by Archbishop O'Connell, will take up the subject of the preservation and cultivation of shellfish, now rapidly vanishing from the New England states. Professor Francis Howard Herrick, head of the department of biology of the Western Reserve university, Cleveland, Ohio, will read a paper on lobster culture. Dr. George Wilton Field, chairman of the Massachusetts fish and game commission, will speak on the growth and preservation of oysters, clams, quahaugs and scallops.

The third session, which will be held tomorrow afternoon, will be devoted to the consideration of highways and their use. Harold Parker, chairman of the Massachusetts highway commission; James A. MacDonald, highway commissioner of Connecticut, and ex-Governor Nahum J. Bacheelder of New Hampshire, master of the national game, will read papers touching the subject.

# MONEY THAT WAS SPENT ON BRYAN

### National Committee Reports \$620,644.77 Collected and \$619,410.06 Expended.

(United Press Leased Wire.)  
Chicago, Nov. 23.—The national Democratic committee last night made public a detailed statement of receipts and expenditures of funds in the presidential campaign of 1908, which is, in its statistical parts, as follows:  
Total amount of money received by the Democratic national committee for the year 1908: \$620,644.77  
Total amount disbursed: \$619,410.06  
Balance on hand: 1,234.71  
Distribution of disbursements by vouchers shown by departments of the Democratic national committee, 1908:  
Auditor's office: \$ 888.50  
Secretary's office: 4,198.60  
Treasurer's office: 5,053.21  
Commercial travelers: 153.00  
Club organization bureau: 5,020.70  
Labor bureau: 37,491.35  
Advisory committee: 3,620.95  
Organization of states: 129,053.62  
Purchasing agent: 1,115.60  
Finance committee: 26,886.54  
Congressional committee: 3,425.00  
Publicity bureau: 88,599.43  
Six-treasurer's accounts:  
Iowa bank: 4,010.85  
Sergeant-at-arms: 4,010.85  
Documents: 142,537.25  
Chairman and vice-chairman: 6,430.00  
Reproduction bureau: 5,115.60  
Speakers' bureau: 3,168.95  
General fund: 38,111.80  
Rent of headquarters: 12,748.72  
Telephone material: 13,201.30  
Telephones: 2,199.30  
Express charges: 13,061.17  
Postage: 37,452.54  
Total: \$619,410.06

# "Man Is As Old As His Stomach"

This Persian Epigram Is the Real Gauge of a Man's Life.  
The Persians were a very sagacious people, noted among other things for their deep thinking on life and the things which make up life. The above epigram shows the wisdom of their thought.

When a man's stomach is able to furnish the energy which it cannot give as fast or rarer than the natural decay man requires, then such a man lives his fullest and his best.

When through wrong living or disease a man's stomach begins to tax the other organs and takes from the blood strength which it cannot give back in nourishment taken from food, then begins the death of man and he decays fast. The stomach is strong, splendidly strong, and can receive and untold amount of abuse and neglect, but when it dies, man dies.

Stuart's Dyspepsia Tablets contain the most perfect digestive qualities the most powerful, and at the same time the most palatable. They will mix with the poisonous juices of a sick stomach and digest food in spite of this handicap. They will stop gas making and bad breath. They tone up the nerves of the stomach and the canal, including those of the stomach. A single ingredient contains strength enough to digest 3,000 times its weight in mixed food. They have stood the test of time and today are more sought after than all their imitations combined. They are used and endorsed by 40,000 physicians. Every druggist sells them, price 50c. If costs nothing to demonstrate their value. Send us your name and address and we will send you a trial package by mail free. Address: F. A. Stuart Co., 150 Stuart bldg., Marshall, Mich.

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## \$15 to \$45

# BEN SELLING LEADING CLOTHIER

# PRINCE REFUSES ENTERTAINMENT

### Nephew of Late Chinese Emperor and Envoy Yi in San Francisco.

(United Press Leased Wire.)  
San Francisco, Nov. 23.—Prince Tsai Fu, nephew of the late Emperor Kwang Hsu, who is accompanying Envoy Tang Shao Yi to Washington, today paid honor and worship to the image of the emperor and the dowager empress at the temple of the Six Companies. The ceremony was simple and quiet. The prince was accompanied by Envoy Tang and the local consul-general, Hsu Ping Chen, and attended by only a few of his retainers. Visits to the shrine will be made at intervals during the stay of the distinguished Chinese. The Chinese merchants of the city have prepared a petition to be presented to the emperor for presentation in turn to the imperial government, asking that a portion of the Boxer indemnity which has been remitted by the United States be used in San Francisco for the education of Chinese youths in American schools and colleges. The government recently decided to devote the entire amount of the remitted indemnity to the founding of scholarships for Chinese. Already the petition of the Chinese of Hawaii is in the hands of Tang. The local merchant organizations have endeavored repeatedly to have the visit accepted as a banquet in their honor, but so far all attempts have been failures. Prince Tsai has announced that he will not permit any celebration to intrude upon his season of mourning.

# BRAKES FAIL; SMASH; MOTORMAN KILLED

(United Press Leased Wire.)  
Cleveland, Ohio, Nov. 23.—As the result of a rear end collision between an Akron suburban electric car and a city car today, one man is dying and six others are probably fatally injured. Motorman Steinmetz of the city car, which was struck by the suburban car, received the brunt of the collision, as he was standing at his post in front when the other car descended the hill and crashed into him. When Steinmetz refused to work while it was climbing a hill, and when it began to slide back, the brakes failed to hold. The helpless car flew down the hill until it backed into the city car, which it struck with such force that it was completely demolished. When Steinmetz was rescued from underneath the wreckage he was dying.

# LATHAN LANDED IN SAN FRANCISCO JAIL

(United Press Leased Wire.)  
San Francisco, Nov. 23.—Alexander S. Lathan, the long missing witness sought by the prosecution in connection with the trolley graft charges, is in the county jail. He was captured recently at Portland and arrived in this city yesterday. Lathan was employed as chauffeur by Abe Ruef at the time of the alleged bribery by the United Railroads to secure the passage of an overhead trolley



"A Man may kiss A pretty Miss

'neath mistletoe and holly." If you don't believe it, read the Christmas love stories by Mary Wilkins, Josephine Daskam Bacon, and Grace S. Richmond, in the Christmas WOMAN'S HOME COMPANION—the most beautiful woman's magazine ever printed. There are ten stories of love, mystery and holiday merrymaking. One of them, "Three Thousand Dollars," is the story of a beautiful girl and a magic safe, by the greatest of all mystery-weavers, the author of "The Leavenworth Case" and "The Millionaire Baby," ANNA KATHARINE GREEN

# WOMAN'S HOME COMPANION

And there are Christmas love stories, Christmas songs, Christmas gifts, Christmas entertainments, page after page of old-fashioned Christmas cheer—all in the December  
At All News-stands  
franchise by the board of supervisors. He is likely to prove an important witness in the present trial of Ruef on one of the indictments charging him with bribing a supervisor in connection with the trolley matter. Lathan was brought from Portland after an attempt had been made to vent his extradition on a charge of accepting a bribe to remain without the jurisdiction of the superior court of California.