HISTORY OF THE SUPREME COURT.

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Courts of England.

Interpret Laws of Parliament.

All Parliamentry Laws held to be valid.

Colonial Courts.

Jurisdiction.

Constitutional Cases.

Courts of the Confederation.

Laws not in accord with the State Constitution invalid.

Courts of United States.

Articles creating Courts.

Supreme Court.

Jurisdiction.

Constitutional Decisions.

Political Decisions.

Decisions on Questions not before the Court.

Party Control in Courts.

Chief Justices.

Judicial Department no coordinate with the other Departments.

Congress controls the number of Judges.

Congress may create or abolish Lower Courts.

Congress may define the Jurisdiction of Lower Courts.

In writing a history of the Supreme Court of the United States, a few words concerning the courts of England, after which our system was modeled, may not be out of place.

In England, the jurisdiction and powers of the courts are not so great as here, and it is a source of complexity to the English statesman why our Supreme Court does not control the legislative department.

England has no written constitution. What is termed her constitution, is but a code of laws which are constantly changed from year to year, as new laws arre passed and old ones are taken away. Parliament is supreme. It makes all laws, and can unmake them at any time. If an English court finds a law of Parliament conflicting with a decided case, the act will be observed as it is supposed to be the last expression of Parliament on that subject. If the court misinterprests an act, or decides it differently from what Parliament intended, the decision will stand until Parliament again meets and reenacts the law. Their courts do not have to decide between two conflicting statutes. They simply look up the date of their enactments, and that of the later date will be the one observed. What is the decision of the court one year, may not be the next, for the court follows the acts of Parliament and Parliament m ay, at any time, pass a law which conflicts with, and repeals the one, on which the court has based its decision. Such, in brief, is the plan which the English courts follow.

When the English colonies began the settlement of America, charters were granted and governors appointed over them. The people

were allowed certain rights in the government by the King, or by the charters, and these laws and charters were, in a way, constitutions. The colonies were allowed legislatures, and elected from their number men to fill them; but the powers that granted these constitutions could take them away as they pleased. Constitutions had been granted by powers of Europe before; but they lasted only so long as the giving power desired, and such would have been the case here had England been victorious over the colonies in the Revolutionary War.

In England , there were only the laws of Parliament and the great body of common laws to be observed, while in the colonies, there were in addition to these charters and laws of England, the laws of their legislatures which must be in accord, not conflicting with any of the laws given them by England. If the legislature did make a law not in accordance with the English acts, they would be decided invalid by the colonial courts, or if carried to England, by the Privy Council.

When the thirteen colonies asserted their independence, in 1776, they all replaced their charters with new constitutions, except Connecticut and Rhode Island. When they were under England, the charter was supreme, and granted the legislature the power to act on subjects not forbidden it by higher law. So when the colonies adopted their constitutions, they followed the same example, and made the constitution the supreme power, and gave the legislative department power to make laws, in so far as they were not forbidden by the constitution. If they exceeded their authority, and a case came before the colonial courts, it would declare them illegal and void, as did the Privy Council when they were subjects of England.

The rights of the Courts to pass upon the validity of legis-

legislation had been asserted in at least five states before the adoption of the constitution. The first case was that of Holmes Vs Walton, in New Jersey, in 1780, in which Chief Justice Brearly of the Supreme Court held that the Judiciary had the right to decide on the constitutionality of laws. The other four cases: viz., Commonwealth vs Canton in Virginia, in 1782; Rutgers vs Waddington, in New York, in 1784; Trevett vs Weeden in Rhode Island, in 1786 and Bayard vs Singleton in North Carolina, in 1787, presented and upheld a similar point of view.

In the case of Trevett vs Weeden, the statute of the Legislature was held to be void on the ground that it made a penalty collectable on summary conviction, without a trial by jury: the Colonial Charter which was then still in force, as the Constitution of the State having secured the right to trial by jury in all cases. This decision led to the court being summoned before the legislative assembly to give reasons for such a decision, and it is noticeable that when their terms expired, they were not reappointed.

The people were used to the English system of courts, which always held the acts of Parliament legal; as there was no constitution or higher authority to be violated. It was hard for them to accustom themselves to a different order of things, and to understand that the rules adopted by them for the guidance and restriction of their representatives should stand above the laws made by that body. The courts were conservative and honest; but many of the people were skeptical, and thot the courts were trying to usurp power and make themselves supreme.

This question was a momentous one when it came to adopting a new constitution for the United States. The people were divided. The experiences of the Confederation taught many that there must be a stronger central government, with power to make and enforce treaties, regulate commerce and international affairs, and with force to carry into execution its decrees. Others could see in this only a beginning of a return to a despotic monarchy from which they had just escaped. The states were jealous. Our wisest statesmen made the best treaties with the foreign nations that they could obtain; but no treaty could be made which would effect all the states alike, and the states instead of bowing to the general good, would refuse to act in accord with the treaty, and there was no power to compel them. The treaty made with England, in 1783, that Congress should recommend to the states the payment of the money due the British merchants, before the Revolution, was duly carried out by congress; but five of the states had already passed acts repudiating such debts, and two of them passed laws after the treaty was made for the partial or complete confiscation of them.

It was seen that a stronger national government must be formed. The Confederation had failed. A conventiin was, after much difficulty, secured, and a new federal constitution was draughted on the same line as those of the states. Two reasons may be assigned for this. First, because there was no general authority exercising supreme power, to make one for them; and, second, because any other method was foreign to the idea on which the Revolution had been fought.

The principle was not new. There was nothing in the new constitution but what had been tried and found to work in some of the states, except the mode of electing the President, and this was in

force in Maryland, which provided a simialr method for the election of her State senators. This clause was really the only experiment, and this one of all others has worked the least in the way the framers expected.

The Article establishing and defining the jurisdiction of the Court is as follows;-

ARTICLE III.

Section 1.

The Judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The Judges both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

Section 2.

The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls: to all cases of admiralty and maritime Jurisdiction: to controversies to which the United States shall be a party: to controversies between two or more states: between a state and citizens of another state: between citizens of different states: between citizens of the same State claiming lands under grant of different States, and between a state and a citizen thereof, and foreign States, citizens, or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court

shall have original jurisdiction. In all other cases before mentioned the Supreme Court shall have appellate Jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

The trial of all crimes, except in case of impeachment, shall be by jury and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state the trial shall be at such place or places as the congress may by law have directed."

The vote adopting the constitution passed the State conventions by dangerously narrow majorities, and it has been said, that had the question come before the people, it would have been rejected.

One of the main objections to its adoption twas that the powers of the Judiciary were far too extensive. It had been made to extend to cases in law and equity between a state and citizens of another State, and citizens thereof and foreign States, citizens and subjects. This question was much argued at the time, and came to be generally assumed that, while these provisions would admit of a states suing a party, it would not admit of a suit being brought against it. Such men as Hamilton and John Marshall argued that the clause ought not to be construed that a citizen could sue a state; but that it should be interprested according to the general doctrine, that no sovereign body could be sued, without its own consent.

Nine states finally ratified the Constitution, and on July 2, 1788, the President of Congress informed that body that the vote of a sufficient number of States had been obtained; and a committee was appointed to report an act to put the said Constitution into operation.

But Congress was slow in getting the governmental machinery in motion, and it w as not until September 24, 1789, that the Judiciary Bill was adopted. It created district, circuit, and Supreme Courts, the latter to consist of a chief Justice and five Associates.

The appointment of the first Chief Justice for the Supreme Court was perhaps, the most important appointment that it has ever been the lot of a president to make; and Washington, in appointing Mr. Jay to fill this high position, showed good judgment and decision. Jay was a strong advocate of a centralized Federal Government. He had worked for independence, had draughted the Constitution of New York: was in continental service: elected President of Congress: sent as minister to Spain; and held a series of other public positions of honor and trust, all of which tended to fit him for the office to which he was now appointed. The people of the country were not in strict accord with the Constitution. In many of the states the enemies outnumbered the friends. By the middle of Washington's administration, the county was divided into two strong political parties; one believing in a strong central government, the other wanting to reserve the power to the States; and it w as in guarding the Constitution thru this conflict of opinion that Chief Justice Jay did his greatest work.

The first session of the court was held in New York, in February, 1790; but there was no business transacted during the term, save the appointment of cryer and clerk, the adopting of a seal and providing for the admitting of councellors and attorneys at the bar. They then adjourned till the following August, and the judges went out to attend the Circuit Courts. At the August meeting, there was still no business, except the admitting of more attorneys and councellors, and

providing seals for the circuit courts. They again adjourned till February 1702, during which time the government had been moved to Philadelphia, the court following. This time they found more to engage their attention, there being several cases of smuggling, and other crimes against the federal laws. The most important case that came up during the term of Chief Justice Jay was that of Chisholm vs Georgia. It was a case of a citizen of one State suing another state. Altho it had been pretty generally understood at the time of the adoption of the Constitution that a State could not be sued, without its own consent. Yet the court was not to be swayed in its most important duty. They found that by the Constitution a state could be sued. Looking deeper into the question, the Court saw that if it recognized State sovereignty to such an extent, the same trouble that made the Confederation so weak would soon appear again. So the court ruled that a State could be sued. This raised a storm of protests. Nearly all the states had large debts, the payment of which could be exacted if this decision of the court stood. Three days after the decision of the court had been given, the eleventh amendment was proposed, and was later ratified by the States. The Supreme Court later reversed itself on a similar case; but the federal government had been upheld, and the idea of State soverignty had received a blow.

Chief Justice Jay resigned in 1795, and Justice Rutledge was appointed Chief Justice, serving one term; but the Senate refused to confirm the appointment. Mr. Ellsworth was then appointed, and held th the position of Chief Justice until 1800, when he resigned; and in 1801, John Marshall was appointed to the place, which position he held until

his death in 1835.

Like Chief Justice Jay, he was a man who had held many important public positions. He served for five years in the Revolution as Lieutenant and Captain. In 1782 he was elected to the legislature; in 1783, he was chosen a member of the executive council: was again elected to the legislature in 1784, where he served till 1795; and it was during this time that he became convinced that a strong central government was needed. He overcame his opponents by sheer intellectual force. His arguments are clear and logical. He seemed to take in a whole subject at a glance. During the period that he acted as Chief Justice, there were 1215 cases decided. In 519 of these, he delivered the opinion of the Court. There were 94 cases in which no decision was given; and 15 decided, but the name of the Judge not given. The remainder of the decisions were written by his fifteen Associates, who served at different times during his Chief Justicey. Of the total number of cases decided, sixty one were constitutional decisions; and of this number, Marshall wrote the decision of 36, one being a dissenting opinion.

Following are some of his most important constitutional decisions: McCullough vs Maryland, Osburn vs Bank of the United States and Westin vs Charleston, in which the general principle was established that the States have no power by taxation or in any manner to entail the measures of the United States in the execution of its powers. In Gibbons vs Ogden in 1824, Brown vs Maryland, in 1827 and Nelson vs Blackbud Creek Co., 1829, the court laid down the law in regard to the regulation of commerce.

On the death of Marshall, Mr. Roger B. Taney was appointed

Chief Justice. Up to this time the Supreme Justices had all been men who were in favor of a strong central government. Taney was a State Rights man. During his Chief Justiceship, from 1836 to 1864, there was no farther advance toward centralization. His decicions, however, followed the previous course laid out by the Court; and, while many were criticised at the time, yet closer investigation, and the workings of the government under his rulings, have since convinced most of his opponents that he was right. The closing years of Chief Justice Taney's term were not the brightest. In a su preme and final effort to settle the slavery question, the Court in the Dred Scott case descended to the low plane of politics, and decided questions which were not rightfully before it. They decided that a slave taken temporarily to a free State and to a territory in which Congress had forbidden slavery, and afterwards returning to a slave state and resuming residence there, was not a citizen capable of suing in the Federal Courts, if, by the law of the slave State, he was still a slave. This was the point which actually called for decision; but the Court went farther, and delivered a variety of dicta on various other points, touching the legal status of negroes and the constitutional view of Slavery. The Court was controlled by the democratic party. The decision, being so near a political argument, brought down a rain of criticism from lawyers and statesmen, which for a time left the Supreme Court as a thing to be scorned. By deciding the Missouri Compromise unconstitutional, they took away the power of Congress whereby a compromise might have been effected, and hastened the Civil War.

On the death of Chief Justice Taney, 1864, Mr. Chase was appointed to the position. He was Secretary of the Treasury under

Lincoln, and was largely instrumental in the passage of the Legal Tender Acts; and he was appointed to the Chief Justiceship because it was thot he would be a power in the settlement of the legal tender controversies which it was seen must follow the war; but in this respect he disappointed the powers that appointed him; for he decided the laws he had helped to frame unconstitutional. But by two other decisions, since that time, the court has reversed its former decision, and fixed the law in regard to legal tender notes.

Chief Justice Chase served only nine years. Upon his death, in 1873, Mr. Waite was appointed Chief Justice. He had never held a political office and his appointment rested chiefly on his ability as a lawyer. He served until his death, in 1888. His decisions are known as honest, forcible and just.

Mr. Fuller was then appointed Chief Justice, which position he still occupies.

The Courts are one of the three main divisions of the Federal Government, and are the branch which the people were afraid would usurp power and become supreme. Yet it has more nearly kept within its sphere of action than any other department of the government. Only twice during its history has the court ventured to give an opinion on federal questions, over which it did not have proper Jurisdiction, and in neither of these cases have its mandates been observed. Mr. Jefferson treated with no respect the doctrines of ~~Chief~~ ChiefJustice Marshall that it was the duty of the Secretary to deliver a judicial commission issued by his predecessor. Neither did President Lincoln give any attention to the decision of the court, that Congress had no authority to prohibit slavery in the territories. Judge Custer said:

"I do not hold any opinion of this court, or any court, binding when expressed on a question not legitimately before it."

The Judges of the Supreme Court are, in nearly all cases, extreme partisans. They are appointed by the head of a political party; yet there are comparatively few cases in which they let politics show in their decisions. They are given their office for life in case of good behavior and it is seldom that a political decision is given, as there is no higher honors to be gained, but a reputation and good name to be lost, by such decisions.

In only one case has the Supreme court descended to the low level of partisan politics, and while the opinion given might have been the honest convictions of the judges, yet it served to shake the faith of the people in their implicit confidence in the Supreme Court. The case was the Dred Scott decision.

In the presidential electoral commission count of Mr. Hayes and Mr. Tilden, it was agreed, as a compromise, that a committee of the House and Senate, together with five Judges of the Supreme Court, should sit as a committee to decide the count of the contested election; and in this the Judges decided on political lines as readily as did the partisans of Congress. A function scarcely judicial, and certainly not contemplated by the constitution was then, for the first time, thrown upon the Judiciary; and in discharging it, they acted exactly like non-Judicial persons.

The Supreme Court was dominated by the spirit of the Federalist party from the formation of the government till 1835; by the Democratic party from 1835 till 1864, and by the Republican party from 1864 till the present time.

It has always been the policy of the Supreme Court to refuse to take up political questions. It holds that: "In measures exclusively of a political legislative or executive character, it is plain that the supreme authority as to these questions belongs to the legislative and executive departments. They cannot be reexamined elsewhere."

It was the intention of the framers of the Constitution to make the judicial department coordinate with the other departments in every way, yet this is not strictly done. They neglected to say, because, p erhaps they did not know, of how many judges the Supreme Court should consist. This fact has been taken advantage of by congress in two notable cases. The first was during the civil war in 1863, when Congress,knowing that the majority of the Court was Democratic, and might thus give decisions favoring the South, passed a law increasing the number of judges from eight to nine. President Lincoln then appointed a judge from the Republican party, thus changing the political complexion of the Court.

Later decisions, however, proved that this precaution was unnecessary. The second case was a few years after, when congress passed a statute that no other judges should be appointed until the number had been reduced to six. This was done to keep President Johnson, with whom congress was not in harmony, from making any appointments.

A second way in which Congress can control the decisions of the Court is to create a new system of Courts, making them the courts of final resort in a certain class of cases. The President could then appoint judges to these courts who held or would give opinions as Congress desired.

Congress may also do as it did in one case in the exercise of its power to assign judicial authority to particular courts. It took away the right of appeal to the Supreme Court in a certain class of cases with the avowed object of preventing the Court from deciding a Constitutional question, which the cases were expected to present.

Another way that Congress might change the court, and one that was used in President Jefferson's time is to abolish the lower Courts, recreate them and appoint new judges.

Cases may also arise in which the courts would be powerless to enforce its decision without executive aid, and the President might refuse to give it, as did President Andrew Jackson.

However, little of this usurption of power, or neglect of duty is very likely to occur. The people are behind the executive officers of the government. It will be only in extreme cases where the will of the people is that the court should be held in check, that any of these methods will eve be carried into exedution. During the Civil War, when all the Southern states had seceded, and all the Northern states, with one accord, were lending every energy to uphold the government, they thot as did Congress, that all branches of government should be made secure. The nation lives only by the will of the people and things contrary to this cannot long survive. Our Supreme Court has excelled even the expectations of its founders. Its Judges have been men whose ability was the best to be secured. In the main, they have laid aside all political parties, and have given decisions that were important and suited to the growing, expanding nation which it so ably represents; and under its careful guidance the country has grown to be one of the foremost among the powers that exist to-day.