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CONSTITUTIONAL LAW IN 1909–1910

The Constitutional Decisions of the Supreme Court of the United States in the October Term, 1909[1]

EUGENE WAMBAUGH

Harvard University Law School

It is indeed a substantial grist that the Supreme Court of the United States at the last term of court has ground for students of political science. The first opinion was delivered on November 1, 1909, and the last on May 31, 1910, and the court decided no less than sixty-five constitutional cases. Notice that with caution it is merely said that the court decided no less than that number; for it is often somewhat a matter of opinion whether a case should be classed as constitutional, and it may well be that there are readers who will find that the court exceeded sixty-five. And how were those sixty-five divided? Many turned on more constitutional points than one, and thus an enumeration of the cases bearing on the several clauses of the Constitution will reveal a total exceeding sixty-five. The enumeration, subject to amendment in accordance with each student's views, gives the following results: The Fourteenth Amendment, twenty-

[1] The Review will publish annually in the November issue, a review of constitutional decisions of United States courts during the preceding year. In the other issues of the Review similar articles will summarize the year's progress in international law and diplomacy, foreign constitutional law, and labor law.

four cases; the Commerce Clause, twenty-one; the Obligation of Contracts Clause, eight; whether cases arise "under the laws of the United States," eight; Full Faith and Credit Clause, five; and sixteen other clauses, from one to four cases each, aggregating twenty-seven.

Through these dull figures some important facts shine distinctly. The Fourteenth Amendment and the Commerce Clause clearly took a vast part of the court's energy, and each of these provisions has to do with the curtailment of functions which *prima facie* belong to the several states. In other words, the chief feature of this term, as of every recent term, has been a more or less successful attempt of litigants to overthrow state statutes as denials of due process and equal protection or as interferences with interstate commerce.

For purposes of reference it will be convenient for students of political science to have the recent cases arranged under the several clauses to which they pertain. Such an arrangement will now be presented with a brief indication of the pertinent doctrine of each case.

Art. I, sect. 1 ("All legislative Powers"):

Monongahela Bridge v. United States, 216 U. S. 177: Congress may delegate to the Secretary of War power to determine the existence of conditions rendering obstructions in navigable waters unreasonable. And as to this case see under Art. I, sect. 8, cl. 3; Art. III, sect. 1; and Amendment V.

Art. I, sect. 8, cl. 1 ("To lay and collect Taxes"):

North Dakota v. Hanson, 215 U. S. 515; The federal taxing power must not be clogged; and hence a state cannot compel holders of a federal license—at least when not actually conducting business under such license—to file and publish a copy.

Art. I, sect 8, cl. 3 ("To regulate Commerce"):

El Paso and Northeastern v. Gutierrez, 215 U. S. 87: Congressional power in territories does not depend on this clause; and hence the Employers' Liability Act of 1906 is valid there.

And as to this case see under Art. III, sect. 2, cl. 1; Art. IV, sect. 3, cl. 2, and Art. VI, cl. 2.

Interstate Commerce v. Illinois Central, 215 U. S. 452: Through the Interstate Commerce Commission there may be regulation of use of a carrier's cars meant for carriage of fuel for the carrier itself. Interstate Commerce v. Chicago and Alton, 215 U. S. 479: same point. And as to both cases see also under Art. III, sect. 1, and under Amendment V.

Baltimore and Ohio v. United States, 215 U. S. 481: In regulating distribution of coal cars, the Interstate Commerce Commission may take into account the shipper's own cars and also the carrier's cars intended for carriage of the carrier's own fuel.

Macon Grocery v. Atlantic Coast Line, 215 U. S. 501: Suit to restrain unlawful interstate freight rates comes under the Commerce Clause. And see under Art. III, sect. 2, cl. 1.

Western Union v. Kansas, 216 U. S. 1: A foreign corporation admitted to a state and engaged in interstate commerce may not be burdened in that state as to interstate business as a condition for doing local business. As to this case see also under Amendment XIV, sect. 1. Pullman v. Kansas, 216 U. S. 56 (as to which case see also under Amendment XIV, sect. 1), Ludwig v. Western Union, 216 U. S. 146 (as to which case see also under Amendment XI), and Herndon v. C., R. I. and P., 218 U. S. 135 (as to which case see also below, under this same clause, and also under Art. III, sect. 2, cl. 1) under Amendment XI, and under Amendment XIV, sect. 1): same point.

Atlantic Coast Line v. Mazursky, 216 U. S. 122: In absence of federal legislation, a state may require an interstate carrier to settle within a certain time claims for damage to freight while in its possession within the state.

Monongahela Bridge v. United States, 216 U. S. 177: see under Art. I, sect. 1, Art. III, sect. 1, and Amendment V.

Missouri v. Kansas, 216 U. S. 262: Although a railway is engaged in interstate commerce, a state may regulate reasonably the part of the railway within its own boundaries, and, for example, may require passenger service between a point within

the state and the state line. As to this case, see also under Art. I, sect. 10, cl. 1, and Amendment XIV, sect. 1.

Interstate Commerce v. Northern Pacific, 216 U. S. 538: If Congress gives to the Interstate Commerce Commission power to establish a new joint rate when no reasonable and satisfactoy through route exists, a court may inquire into the existence of such a route, and, in case there be such a one, will restrain the commission from establishing a new one, even though public convenience would be promoted by two routes.

International Textbook v. Pigg, 217 U. S. 91: The transmission of instruction by correspondence is commerce; and a foreign corporation wishing to engage in interstate commerce cannot be required by a state to obtain a license as a condition precedent. This seems to be the most important decision of the year. There was no argument made in favor of the state statute. There were two dissents. As to a state's liability to refuse entrance to a foreign corporation, if desirous of engaging in interstate commerce, the case follows Crutcher v. Kentucky, 141 U. S. 47 (1891). The doctrine as to this point has been doubted. See Cooke on Commerce Clause, §65.

St. Louis Southwestern v. Arkansas, 217 U. S. 136: A state may not require a railway with interstate lines to distribute its freight cars in such a way as to burden its interstate business.

Davis v. C., C., C. and St. L., 217 U. S. 157: A state court may obtain jurisdiction over a foreign corporation by attaching its cars, even though they are engaged in interstate commerce; and this is true notwithstanding the Interstate Commerce Act's provisions for through routes and for continuity of transportation.

Standard Oil v. Tennessee, 217 U. S. 413: A state may punish a foreign corporation engaged in interstate commerce for inducing a merchant in the state to revoke orders for goods to be shipped from another state by a competitor of the corporation. As to this case see also under Amendment XIV, sect. 1.

Southern Railway v. King, 217 U. S. 524: A state may require a railway to slacken the speed of trains at a crossing, even though the trains be engaged in interstate business, unless it be alleged

and shown clearly that to slacken speed at the crossing in question would burden interstate commerce unreasonably.

Chiles v. Chesapeake and Ohio, 218 U. S. 71: In the absence of federal statute, a railway may require colored and white passengers on interstate trains to occupy separate but equivalent compartments. It should be noticed that the regulation was by the railway, and not by the state.

Dozier v. Alabama, 218 U. S. 124: A state may not impose a tax on persons not having a permanent place of business in the state, as a license fee for soliciting orders for picture frames or for selling them; and this rule is applicable where the principal transaction does not include the sale of a frame, but simply adds to the sale of a picture an option to take the frame also at a certain price, the frame coming from outside the state and being delivered within the state.

Herndon v. C., R. I. and P., 218 U. S. 135: A state may not require a railway to stop interstate trains at junction points already provided with adequate service. As to this case see also above under this same clause and also under Art. III, sect. 2, cl. 1, Amendment XI, and Amendment XIV, sect. 1.

Art. I, sect. 1, cl. 4 ("An uniform Rule of Naturalization"):

Helmgren v. United States, 217 U. S. 509: Congress may authorize state courts to admit aliens to citizenship, and may cause perjury in such proceedings to be punishable in federal courts.

Art. I, sect. 8, cl. 14 ("Regulation of the Land and Naval Forces"):

Franklin v. United States, 216 U. S. 559: Congress may provide that crimes committed in places ceded by states shall be punished in the federal courts in such manner as is provided in the laws of such states in force at the passage of such federal statute.

Art. I, sect. 10, cl. 1 ("Impairing the Obligation of Contracts"):

Louisiana v. Mayor of New Orleans, 215 U. S. 170: Notwithstanding a state statute, a municipality retains such power and duty to levy taxes as existed when an indebtedness accrued; and mandamus is a remedy to compel a city council to levy a tax.

Henley v. Myers, 215 U. S. 373: The state creating a corporation may require afterwards that statements of transfers of stock must be filed with the secretary of the state.

Minneapolis v. Minneapolis Street Railway, 215 U. S. 417: A street railway's fifty year franchise from city and state to charge five cent fare cannot be modified by ordinance.

Great Northern v. Minnesota, 216 U. S. 206: An exemption from taxation is not inferred from doubtful language; and an exemption in defiance of a state constitution will not be enforced.

Chicago Great Western v. Minnesota, 216 U. S. 234: In the absence of clear language, a railway's legislative exemption from taxation is personal and cannot be transferred to a purchaser of its franchises.

Missouri Pacific v. Kansas, 216 U. S. 262: If a state reserves power to alter a railway charter, such alteration may be effected indirectly by conferring powers on a railway commission. As to this case, see also under Art. I, sect. 8, cl. 3, and Amendment XIV, sect. 1.

Wright v. Georgia Railroad, 216 U. S. 420: If a charter exempts a railway from taxation on its stock, this means exemption of its property, and among other things of its franchise; and if another railway is chartered to exercise all the powers and privileges conferred on the first, the property of the second railway enjoys no exemption, even after the two companies have been consolidated.

Citizens National v. Kentucky, 217 U. S. 443: Earlier decisions have settled that the Kentucky law as to taxing national bank shares does not impair a supposed contract in the Kentucky bank act. As to this case see also under Amendment XIV, sect. 1.

Art. II, sect. 1, cl. 1 ("The executive Power"):

Ballinger v. United States, 216 U. S. 240: Mandamus lies against the Secretary of the Interior in case he refuses to perform a purely ministerial duty. And see under Art. III, sect. 2, cl. 1.

Central Trust v. Central Trust, 216 U. S. 251: Findings of fact by executive officers are conclusive in the absence of palpable error.

Art. III, sect. 1 ("The judicial Power"):

Interstate Commerce v. Illinois Central, 215 U. S. 452: Judicial power does not extend to regulating administrative functions of the Interstate Commerce Commission by overthrowing orders on the ground of their being inexpedient. Interstate Commerce v. Chicago and Alton, 215 U. S. 479: same point. And for both cases see also under Art. I, sect. 8, cl. 3, and Amendment V.

Monongahela Bridge v. United States, 216 U. S. 177: see under Art. I, sect. 1, Art. I, sect. 8, cl. 3, and Amendment V.

Art. III, sect. 2, cl. 1 ("Cases . . . under . . . the Laws of the United States"):

El Paso and Northeastern v. Gutierrez, 215 U. S. 87: Territorial statutes come within this provision. And as to this case see under Art. I, sect. 8, cl. 3; Art. IV, sect. 3, cl. 2, and Art. VI, cl. 2.

Kenney v. Craven, 215 U. S. 125: No federal question is involved when a state court holds that a purchaser from a trustee in bankruptcy is charged with notice of a pending suit brought in a state court by the trustee.

Macon Grocery v. Atlantic Coast Line, 215 U. S. 501: see under Art. I, sect. 8, cl. 3.

Cincinnati, New Orleans and Texas Pacific v. Slade, 216 U. S. 78: Appellate jurisdiction over a state court requires that a federal question be raised there and passed upon there.

Ballinger v. United States, 216 U. S. 240: see under Art. II, sect. 1, cl. 1.

Los Angeles Farming v. Los Angeles, 217 U. S. 217: The Act of March 3, 1851, confirming as against the United States the titles to land in California derived under Spanish or Mexican law, does not create titles; and hence claims based on Spanish or Mexican law are not claims under a statute of the United States.

Herndon v. C., R. I. and P., 218 U. S. 135: The right to resort to the federal courts may not be denied to a foreign corporation by a state which has already licensed that corporation to do business. Roach v. A., T. and S. F., 218 U. S. 159: same point.

And as to the former case, see also in two places under Art. I, sect. 8, cl. 3, and also under Amendment XI.

Art. III, sect. 2, cl. 2 ("Appellate Jurisdiction"):

Baltimore and Ohio v. Interstate Commerce, 215 U. S. 216: Appellate jurisdiction requires the case to be determined by the inferior court, and does not permit certification of the whole case before judgment. Southern Pacific v. Interstate Commerce, 215 U. S. 226: same point.

Art. IV, sect. 1 ("Full Faith and Credit"):

Fall v. Eastin, 215 U. S. 1: A decree need not be recognized as passing title to property that is outside the jurisdiction.

Everett v. Everett, 215 U. S. 203: If the fact in issue in a suit for separate maintenance be existence of marriage, a decree against the petitioner requires courts of other states to recognize that no marriage existed.

Olmsted v. Olmsted, 216 U. S. 386: A state statute legitimatizing children cannot affect rights already vested as to lands in another state.

Sistare v. Sistare, 218 U. S. 1: Judgments for future alimony, unless subject to discretionary modification, are protected by this clause.

Louisville and Nashville v. Melton, 218 U. S. 36: A settled construction of a state statute, if relied on as a basis for the Full Faith and Credit Clause, must be clearly brought to the attention of the state court which is asked to enforce that construction; and the normal method is by pleading and proof. As to this case, see also under Amendment XIV, sect. 1.

Art. IV, sect. 3, cl. 2 ("The Territory . . . belonging to the United States"):

El Paso and Northeastern v. Gutierrez, 215 U. S. 87: Congressional power over the territories does not depend on the commerce clause; and an act of Congress supersedes a territorial statute. And as to this case see under Art. I, sect. 8, cl. 3, Art. III, sect. 2, cl. 1, and Art. VI, cl. 2.

Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof"):

El Paso and Northeastern v. Gutierrez, 215 U. S. 87: The constitutional part of a severable statute must be applied. And as to this case see also under Art. I, sect. 8, cl. 3, Art. III, sect. 2, cl. 1, and Art. IV, sect. 3, cl. 2.

Art. VI, cl. 2 ("And all Treaties"):

Sanchez v. United States, 216 U. S. 167: A treaty is superseded by a later act of Congress inconsistent with it. And as to this case see under Amendment V, two provisions.

Amendment V ("Twice put in jeopardy"):

Brantley v. Georgia, 217 U. S. 284: This provision does not prevent a state court from trying for murder a person who, after being indicted for murder and merely convicted of manslaughter, has sought and obtained a new trial.

Amendment V ("Life, liberty, or property"):

Interstate Commerce v. Illinois Central, 215 U. S. 452; and Interstate Commerce v. Chicago and Alton, 215 U. S. 479; see under Art. I, sect. 8, cl. 3, and Art. III, sect. 1.

Sanchez v. United States, 216 U. S. 167: This provision does not prevent the abolition in Porto Rico of a perpetual and salable office which under Spanish law had been treated as property. And as to this case see also under Art. VI, cl. 2, and under Amendment V in the next paragraph.

Amendment V ("Private property be taken"):

Sanchez v. United States, 216 U. S. 167: See under preceding provision of Amendment V, and as to this case see also under Art. VI, cl. 2.

Monongahela Bridge v. United States, 216 U. S. 177: Even though Congress by silence has not prevented the erecting of obstructions in navigable waters, Congress later may require the removal of such obstructions without compensation. As to this case see also under Art. I, sect. 1, Art. I, sect. 8, cl. 3, and Art. III, sect. 1.

United States v. Welch, 217 U. S. 333: The United States must pay for an easement which it destroys in making a public improvement; and the value of this easement cannot be ascertained without reference to the dominant estate.

Amendment VIII (*"Cruel and unusual punishments"*):

Weems v. United States, 217 U. S. 349: In the Philippine Bill of Rights, the prohibition of cruel and unusual punishments means the same as in this provision; and there is cruel and unusual punishment, when, in accordance with the Penal Code carried over from the time of Spanish domination, the making of false entries leads to a sentence of fine, imprisonment in chains and at hard and painful labor for fifteen years, permanent disqualification for office and suffrage, and perpetual subjection to surveillance. This case contains the earliest extended discussion of cruel and unusual punishments.

Amendment XI (*"Suit . . . against one of the United States"*):

Ludwig v. Western Union, 216 U. S. 146: Notwithstanding this provision, an injunction may be obtained against a state official to prevent enforcement of a statute invalid under the Constitution of the United States. Herndon v. C., R. I. and P., 218 U. S. 135: same point. As to these cases, see also under Art. I, sect. 8, cl. 3; and as to the latter of them see also under Art. III, sect. 2, cl. 1, and Amendment XIV, sect. 1.

Amendment XIV, sect. 1 (*"Deprive . . . of life, liberty, or property, without due process of law; nor deny . . . the equal protection of the laws"*):

Western Union v. Kansas, 216 U. S. 1, see under Art. I, sect. 8, cl. 3. Pullman v. Kansas, 216 U. S. 56: same point; and see same place.

King v. West Virginia, 216 U. S. 92: By earlier decisions it has been settled that a state may cause forfeiture of land for failure in five successive years to list it for taxation; and if by state procedure a decree can be re-opened, such a re-opening is

not a deprivation of right without due process. See below, Fogg v. Crozer, 217 U. S. 455.

Missouri Pacific v. Kansas, 216 U. S. 262: A railway is not deprived of property by being regulated reasonably, nor by being compelled to perform its duty, even though loss results. As to this case, see also under Art. I, sect. 8, cl. 3, and Art. I, sect. 10, cl. 1.

Laurel Hill v. San Francisco, 216 U. S. 358: An ordinance dictated by considerations of public health will be upheld when public opinion is divided as to the dangerousness of the prohibited use of property.

Southern Railway v. Greene, 216 U. S. 400: A corporation is a person; and a foreign corporation which has been permitted to enter a state cannot thereafter, for the privilege of continuing interstate business, be taxed more heavily than similar domestic corporations. Louisville and Nashville v. Gaston, 216 U. S. 418: same point.

Board of Assessors v. New York Life, 216 U. S. 517: A life insurance company cannot be taxed on its advance payments of policy reserves; and in the absence of clear language a state will not be understood as attempting to tax a bank deposit which is created with the purpose of being immediately withdrawn from the state.

Williams v. Arkansas, 217 U. S. 79: A state may prohibit the soliciting of business on trains by representatives of hotels, baths, and medical practitioners.

Southwestern Oil v. Texas, 217 U. S. 114: A state may impose an occupation tax on wholesale dealers in certain articles, without imposing a similar tax on other wholesale dealers; and even a provision of unreasonably severe penalties will not cause the whole statute to be overthrown, in case the state does not ask the penalties, or in case this provision is severable.

Boston Chamber of Commerce v. Boston, 217 U. S. 189: When land subject to an easement is taken by eminent domain, due process of law does not require that the various parties in interest, including owners of easements, should have damages assured just as if the whole property, including easements, belonged to one owner.

Missouri v. Nebraska, 217 U. S. 196: A state cannot compel a railway to furnish switches at its own expense on request of every elevator.

Standard Oil v. Tennessee, 217 U. S. 413: A state may punish a corporation by ouster and through equity procedure, while a natural person would be punishable for the same offense by fine and imprisonment and through common law procedure. As to this case see also under Art. I, sect. 8, cl. 3.

Grenada Lumber v. Mississippi, 217 U. S. 433: A state may prevent combinations in restraint of trade, and hence may dissolve an association of retail dealers who agree not to purchase from such wholesale dealers as sell directly to consumers.

Citizens National v. Kentucky, 217 U. S. 443: If a statute requires stockholders, and in their default the corporation, to list shares for taxation, a later statute may require the corporation to pay in behalf of its stockholders a penalty for past failures so to do, this being simply a new remedy. As to this case, see also under Art. I, sect. 10, cl. 1.

Fogg v. Crozer, 217 U. S. 455: A state may cause forfeiture of lands for five years' non-payment of taxes. See above King v. West Virginia, 216 U. S. 92.

Kidd v. Musselman, 217 U. S. 461: A state may enact that sales by retail or wholesale merchants of their whole stock, or of part of their stock otherwise than in the ordinary course of business, shall be voidable as against creditors unless prior notice be given to them and an inventory be made.

Brown-Forman v. Kentucky, 217 U. S. 563: A state may exact an occupation tax of so much a gallon on domestic rectifiers of distilled spirits, though not similarly burdening distillers; for the classification is not arbitrary, there being a distinction between rectifiers and distillers, and there being no possibility of exacting an occupation tax from rectifiers outside the state.

Louisville and Nashville v. Melton, 218 U. S. 36: A state may abolish the fellow-servant rule as to railways, and may include carpenters among the railway servants as to whom the rule is abolished; for the classification is not arbitrary. As to this case see also under Amendment IV, sect. 1.

Shevlin-Carpenter v. Minnesota, 218 U. S. 57: A state may punish with double damages, fine, and imprisonment the involuntary cutting of timber on state lands; and *quaere* whether the Fourteenth Amendment prohibits double jeopardy.

Herndon v. C., R. I. and P., 218 U. S. 135: A state which has licensed a foreign corporation may not thereafter enact that a resort to federal courts shall cause the license to be forfeited. As to this case see also in two places under Art. I, sect. 8, cl. 3, and also under Art. III, sect. 2, cl. 1, and Amendment XI. Roach v. A., T. and S. F., 218 U. S. 159 (as to which case, see also under Art. III, sect. 2, cl. 1): same point.

Franklin v. South Carolina, 218 U. S. 161: In the absence of proof that negroes are ineligible for the grand jury or are actually excluded from it on account of race, a negro cannot complain that the grand jury indicting him contained no negro; and jury commissioners may properly have power to select jurors of good moral character, whom they deem qualified to serve as jurors, competent negroes being eligible; and refusal to grant a continuance is not, except in some extreme case, denial of due process; and a person on trial for murder is not entitled to a peremptory instruction for acquittal in case he has shown that the person killed was attempting to serve on him a warrant issued under an unconstitutional statute.

Watts v. Maryland, 218 U. S. 173: If a statute provides, as construed by the state court, that a person practicing medicine without registration shall be convicted whether a notice of the necessity of registration has been sent to him or not, a person convicted without having been furnished with such a notice is not deprived of due process; and a medical registration law may properly except persons practicing before a certain date and persons practicing gratuitoously and persons practicing in hospitals, as such exceptions are not unreasonable.

From the preceding memoranda it will be easy for the reader to select the cases bearing on any topic in which he is peculiarly interested.

For example, on taxation—following the order in which the

cases occur in the foregoing arrangement—we have: North Dakota v. Hanson, 215 U. S. 515; Western Union v. Kansas, 216 U. S. 1; Pullman v. Kansas, 216 U. S. 56; Ludwig v. Western Union, 216 U. S. 146; Herndon v. C., R. I. and P., 218 U. S. 135; International Textbook v. Pigg, 217 U. S. 91; Dozier v. Alabama, 218 U. S. 124; Louisiana v. Mayor of New Orleans, 215 U. S. 170; Chicago Great Western v. Minnesota, 216 U. S. 234; Wright v. Georgia Railroad, 216 U. S. 420; Citizens National v. Kentucky, 217 U. S. 443; King v. West Virginia, 216 U. S. 92; Southern Pacific v. Greene, 216 U. S. 400; Louisville and Nashville v. Gaston, 216 U. S. 418; Board of Assessors v. New York Life, 216 U. S. 517; Southwestern Oil v. Texas, 217 U. S. 114; Fay v. Crozer, 217 U. S. 455; Brown-Forman v. Kentucky, 217 U. S. 563—a total of eighteen cases, indicating how large is the power of federal courts—especially under the Fourteenth Amendment, the Commerce Clause, and the Obligation of Contracts Clause, as to state taxation.

Again, on police power we have: North Dakota v. Hanson, 215 U. S. 515; Laurel Hill v. San Francisco, 216 U. S. 358; Williams v. Arkansas, 217 U. S. 79; Kidd v. Musselman, 217 U. S. 461; Brown-Forman v. Kentucky, 217 U. S. 63; Louisville and Nashville v. Melton, 218 U. S. 36; Shevlin-Carpenter v. Minnesota, 218 U. S. 57; and Watson v. Maryland, 218 U. S. 173—a total of eight cases, seven of them being under the Fourteenth Amendment.

Although, as has been indicated, the constitutional cases in the 1909 term were in the aggregate a rather large number, it cannot be said that they were very noteworthy in importance. The court was depleted by sickness and death, and consequently it was deemed advisable to postpone the decision of several cases which are of deep interest to the public and which may establish doctrines of great consequence to students of political science. The most important decision was, it would seem, that in International Textbook v. Pigg, under the Commerce Clause. If the doctrine followed in that case be not limited, a state will have practically no power to deny admission to a corporation desiring to engage in interstate commerce, and not even the power

to insist that this foreign corporation shall submit to the same regulations as are applied to domestic corporations engaged in the same business. The practical result, it seems, must be either (1) national legislation placing foreign interstate commerce corporations under the control, to some extent, of the several states—in short, legislation resembling the Wilson Act as to original packages—or (2) national licensing of corporations organized in this country or abroad for the purpose of engaging in interstate or foreign commerce, or (3) national incorporation.

THE UNION OF SOUTH AFRICA

STEPHEN LEACOCK

McGill University

On May 31, 1910, the Union of South Africa became an accomplished fact. The four provinces of Cape Colony, Natal, the Orange Free State (which bears again its old time name) and the Transvaal are henceforth joined, one might almost say amalgamated, under a single government. They will bear to the central government of the British empire the same relation as the other self-governing colonies—Canada, Newfoundland, Australia and New Zealand. The Empire will thus assume the appearance of a central nucleus with four outlying parts corresponding to geographical and racial divisions, and forming in all a ground plan that seems to invite a renewal of the efforts of the Imperial Federationist. To the scientific student of government the Union of South Africa is chiefly of interest for the sharp contrast it offers to the federal structure of the American, Canadian and other systems of similar historical ground. It represents a reversion from the idea of State rights, and balanced indestructible powers and an attempt at organic union by which the constituent parts are to be more and more merged in the consolidated political unit which they combine to form.

But the Union and its making are of great interest also for the general student of politics and history, concerned rather with the development of a nationality than with the niceties of constitutional law. From this point of view the Union comes as the close of a century of strife, as the aftermath of a great war, and indicates the consummation, for the first time in history, of what appears as a solid basis of harmony between the two races in South Africa. In one shape or other union has always been the goal of South African aspiration. It was 'Union' which the