

New York courts sustained the constitutionality of the act, and the Supreme Court by a vote of five to four has also sustained its constitutionality.

In considering a decision of the Supreme Court it must always be borne in mind that the Court's function and general practice is to determine, not whether a law is wise and beneficial, but whether it is Constitutional. This case is rather a striking illustration of this principle. We have read the sustaining opinion delivered by Mr. Justice Holmes, and the dissenting opinion delivered by Mr. Justice McKenna. We do not find anything in Mr. Justice Holmes's opinion that indicates that the majority of the Court think the law is a very wise one. We certainly do not think it is a very wise one, and doubt if it will accomplish the purpose which it was framed to accomplish. On the other hand, we cannot see that permitting a tenant to retain his house or apartment without immediate dispossession by the landlord until the courts have adjudicated the matter is confiscating property without due process of law. In that respect the law seems to us to be Constitutional. It is, to be sure, another extension of the police power of the State, but in that respect the decision of the Supreme Court is not radical, for the whole tendency of the Court during the last twenty-five years has been steadily to maintain and develop the doctrine of police power. The doctrine of the police power of the State has now been firmly established in American social and governmental life.

It is true, as Mr. Justice McKenna intimates, that under this doctrine government in the United States has become something very much more than the mere protection of life and property. In his dissenting opinion he asks: "What is going to happen if Government can fix rent in an emergency on the ground that public welfare demands it? . . . If such exercise of government be legal, what exercise of government is illegal?" The answer is that the Legislature is to determine, in the first place, what exercise of government is legal or illegal, and the Supreme Court is to determine whether the judgment of the Legislature is obnoxious to the Constitution of the United States. The wisdom, expediency, or social effect of a law may be very bad indeed, but if it does not violate a principle of the Constitution the Legislature, and not the courts, are to determine its enactment.

Some people have said that this decision of the Supreme Court shows that it is composed of five radicals and four conservatives. It is always unfortunate, we think, in an important decision of the Supreme Court that the Court should so evenly divide as it has in this

case, but, after all, it is desirable that the Court should have both radical members and conservative members, that it should exercise both a centrifugal and centripetal force. The history of the Supreme Court does not indicate that it ever has exercised or ever is likely to exercise a dangerously radical influence upon American life. We see nothing in this decision to indicate that the Supreme Court has ceased to be what it has been since the days of John Marshall, both the foundation stone and the binding capstone—if that is not a mixed metaphor—of our Government.

In these rent cases the rights of property and the welfare of the individual were involved in a rather picturesque and striking way. It is perhaps a good time to recall the doctrine which Theodore Roosevelt laid down in his address at the Sorbonne, in Paris, in 1910:

My position as regards the moneyed interests can be put in a few words. In every civilized society property rights must be carefully safeguarded; ordinarily, and in the great majority of cases, human rights and property rights are fundamentally and in the long run identical; but when it clearly appears that there is a real conflict between them, human rights must have the upper hand, for property belongs to man and not man to property.

A NEW BILL OF AMERICAN RIGHTS

FROM a pin-prick on the map of the Pacific Ocean the little island of Yap seems somehow to Americans to have suddenly spread over the world, so vital, in the defense of our rights, is the international question involved.

A brief review of the facts will make clear the emphatic assertion of American rights contained in the recent note from Secretary Hughes: When in the spring of 1919 the Paris Peace Conference and a little later the Supreme Council awarded to Japan the island of Yap, in the Pacific, formerly a German possession, it was despite notice from this country through President Wilson and Secretary Lansing that the question as to Yap should be reserved with a view to a possible future agreement which might make of Yap an international cable station. But it was not until November, 1920, that Secretary Colby told Japan that Yap should not be included in the assignment of German islands to Japan because of the Wilson reservation just mentioned. Japan promptly declined to accept this view and declared that the mandate of the Peace Conference and the Supreme Council did in fact include Yap in the territory committed to Japan.

To this note from Japan Secretary Colby replied, pointing out that the

award did not assign "all," but "certain" German possessions north of the equator, to Japan, and that we held that this left the matter open to negotiation in view of our repeated objections. The next diplomatic move was Japan's reply, dated February 26, 1921. This included the following statement:

If a decision in favor of the exclusion of the island of Yap . . . had really been made . . . at the meeting of May 7, in which Japan was not represented, it could not but have been regarded as an act of entire bad faith. It is therefore inconceivable to the Imperial Government that such a decision could have been reached at a meeting at which no Japanese delegation was present. . . .

The Governments of Great Britain and France, being of the same opinion as the Japanese Government on the matter, made statements to that effect in their replies to the American note in November last. . . . The question seems to be one which should be freely settled by the nation which has charge of the place, namely, Japan.

Meanwhile another statement from Secretary Colby, called out by the approval of the Council of the League of the action of the Supreme Council, declared in substance that, though not a member of the League, the United States as a participant in the late war could not consider any of the Associated Powers "debarred from discussion of any of its consequences or from participation in any of the rights and privileges secured under the mandates."

This position was amplified and emphasized by the clear and forceful statement issued early in April by Secretary of State Hughes, and addressed, not only to Japan, but to Great Britain, France, and Italy. The outstanding and important point made by Secretary Hughes was the assertion of our right to be considered in the assignment of any territory to any one of the five principal Allied and Associated Powers. The United States was an important factor in the winning of the war. Apart from this, our international rights are what they always have been and are not in any degree made less by action of other Powers taken without our assent. And, as the United States did not sign the Treaty of Versailles, we are not bound by any of its provisions.

Secretary Hughes, assuming that President Wilson's statement as to the reservations regarding Yap is correct, elaborated the position indicated above in a convincing manner. Thus, he said:

In particular, as no treaty has ever been concluded with the United States relating to the island of Yap, and as no one has ever been authorized to cede the rights or interest of the United States in the island, this Government must insist that it has not lost its right or interest as it existed prior to any action by the Supreme

Council or the League of Nations and cannot recognize the allocation of the island or the validity of the mandate to Japan.

Americans will welcome the definiteness of our position as laid down by Mr. Hughes and approve the refreshing vigor of his language. Both atone in some degree for the "more than a year and a half" which, as the Japanese Government acidly points out, was allowed "to pass by before electing to question the decision."

A situation of considerable international tension has naturally developed. But it is relieved by the statement from the French Government that it also is prepared to accept the principle of our unsundered rights. It even volunteers to be our champion at the Supreme Council's forthcoming meeting.

Although Secretary Hughes's note relates to the tiny island of Yap, its application is world-wide, for he not only notifies Japan that the United States will maintain its position regarding Yap both as to fact and principle, but he also notifies the Powers of a new American Bill of Rights—a declaration that, League or no League, the United States has international rights and will maintain them.

RIGHT AND WRONG

"THERE is a type of person," said the Young-Old Philosopher, "who grows rather wearisome to me. I mean the man or woman who, ever on guard, cannot be induced to speak of a book or a play as downright poor. Such a person in any open discussion always leaves a loophole. As if it were a shame to condemn a thing that one feels in his heart should be condemned.

"Invariably you will find people like that quite as niggardly of just praise. Here too they will leave an opening for themselves; be eternally cautious. Theirs is a middle course. They always 'play safe.' Too anæmic to cast out the stupid in art, they are equally too bloodless to go into raptures over anything that has obviously caught some of the divine fire.

"Now there are many things produced in all the arts that need, and should receive, hearty condemnation. Why not give it? One can add to any criticism, to save himself from the accusation of being oracular, the statement that this is but his own personal opinion, which may not be worth while. And such a reservation, far from detracting from the force of a statement, rather backs it up more powerfully. It proves one thing, at any rate: that you do not consider yourself 'infallible,' in the charming word of Barrie's Policeman. Conversely, our anæmic friends in vent-

ing their spleen on something too awful to have been produced could make an equally strong assertion to the effect that they too were but expressing a private opinion. But no; they hedge and hem and haw. They are exactly the type of people who were neutral during the World War; and, fearful of hurting any one's feelings, failed to gain the respect of any of us who had honest convictions.

"I have noticed that if one starts out to offend nobody, he ends by pleasing nobody. The indefinite article, we must all admit, has hardly the force of the definite; and if one fears to take a stand, but prefers to run with both the hares and the hounds, the straddling becomes a hopeless business and both factions desert one—even when we are not anxious to drop them.

"In other words, it is not good policy to 'play safe' continually. One must stand or fall on one's own firm beliefs; and it was no more possible to be neutral in the late war, where grave issues were at stake, than it is to be neutral as between Christ and Judas Iscariot. Or so it seems to me. In every historical episode there comes a moment when one wavers no longer if he be of the right stuff, and certain events blast all one's previous conceptions of right and wrong. There comes an instant of betrayal. Whatever Judas, or Germany, may have been in the years preceding their base acts, they were of a different mold in one astounding and revealing second. A forger may be a worthy man up to the moment when he puts another's name on a check. Through that act he becomes something else. In the twinkling of an eye his whole conception of morality changes; and our judgment of him should likewise change. If one says, 'But how do you know the difference between right and wrong?' I always answer, 'By the same intuition that tells me the difference between my own good acts and my own evil acts.' Despite the sophists, there are degrees of good and evil which we can measure and appraise; and no man, left alone with his conscience, can tell me that he does not know this. Life would be unbearable unless we could discriminate between two opposing forces. Fortunately, we can, and do. And that is why the world grows better, despite a slight setback now and again. The command is Forward, on the whole; and, though Judas had his little hour, no doubt, when he was happy with his ill-gotten thirty pieces of silver, don't forget that he went out and hanged himself afterwards. The evil do *not* triumph long. And we need hardly punish them; for they put the rope around their own necks in the end and finish the painful business without our lifting a finger."

MARY STUART¹

NOT every play which is given a stage production deserves a studied criticism. Pleasant comedies, the average light opera, the generality of detective plays, serve their purpose if they amuse and entertain. It is therefore a compliment rather than the reverse if a critic is interested enough in a drama to want to take it apart and see why the wheels go round or why they fail to revolve with the expected speed. Emphatically deserving of such interest is John Drinkwater's "Mary Stuart," a play which deals with the relationships of that much-debated lady with Darnley, Riccio, and Bothwell.

"Mary Stuart" is a one-act play, with a prologue and a suggestion of an epilogue. It opens in a house in Edinburgh of the twentieth century. There are two characters on the stage as the curtain ascends—Andrew Boyd, a man of seventy, and a young man who has come upon a great unhappiness. The evil which the young man fears is the loss of his wife's love, for she has confessed to him that she cares for another man. In this confession he can see nothing but the destruction of all that is worth while in his life. He has no ears for the argument of his friend, who offers him in consolation a theory which is to him unthinkable. His friend points his theory with the story of Mary Stuart, and says: "Such women can sometimes love so well that no man's nature can contain all that they have to give. There are men like that, too. And it is not a light love. The light lover has many and rapidly shifting aims, but never two loyalties at once. But these others may love once, or twice, or often, but changelessly. They do not love unworthily—it is lamentable when they love unworthy men."

Neither the arguments of Boyd nor the story of Queen Mary moves young Hunter from his despair. He cries out, "What does a dead queen know about me? . . . Mary Stuart can tell me nothing, I say." And as he utters the words Mary herself appears in the window answering his cry with a quiet "Boy, I can tell you everything." The light fades. The figures vanish, and when the darkness disappears, instead of a room in the Edinburgh of the twentieth century, there is Mary Stuart in her chamber in Holyrood Castle, waking from a dream of a youth in a far generation who has shared in the sorrow which has burdened her life.

With such a mystic introduction, the spectator is prepared to find in this new portrait of Mary a picture of a woman who can love more than one man greatly; but Mr. Drinkwater, strangely

¹Mary Stuart: A Play. By John Drinkwater. Houghton Mifflin Company.