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# The Supreme Court and Disputes Between States

Charles Warren

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*of*  
THE COLLEGE OF WILLIAM AND MARY  
IN VIRGINIA

# The Supreme Court and Disputes Between States

*An Address Delivered by*

CHARLES WARREN

*at*

The College of William and Mary  
in Virginia



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TWELFTH LECTURE UNDER THE  
JAMES GOULD CUTLER TRUST

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THE SUPREME COURT AND DISPUTES  
BETWEEN STATES

By CHARLES WARREN

**The Supreme Court and Disputes  
Between States**

*An Address delivered by*

**CHARLES WARREN**

**On Charter Day, February 8, 1940**

*at*

**The College of William and Mary  
in Virginia**

Confident that the present students of this college are no less distinguished than their predecessors for race, talents, erudition, and character, I have the honor to address you closely bound up with liberty and state, individual and of the states—the Supreme Court of the United States. I wish to portray to you one of its little known, though vitally important, functions, and the part which it has played in our National life as an arbiter of disputes between the states of our Union. As the present is distinctly an era of international affairs, I hope that you will consider the bearing which the history of this phase of the Court has upon the possible future of a World Court in international disputes.

While it was at this college that the first American professorship of law came into existence, nevertheless, I realize that I am not speaking merely to students of law; hence, I shall hope to give to you all some idea of this phase of the

# THE SUPREME COURT AND DISPUTES BETWEEN STATES

✽  
By CHARLES WARREN  
✽

*President Bryan, Members of the Faculty, Ladies and Gentlemen:*

One hundred and forty years ago, the *Aurora*, a newspaper published in Philadelphia, wrote on June 30, 1800: "It must give pleasure to our readers to be informed that the students at William and Mary College at Virginia . . . constantly exhibit specimens of taste and talent, of erudition and patriotism, in publications in the cause of liberty and state which outnumber those of any other College and far exceed in merit."

Confident that the present students of this college are no less distinguished than their predecessors for taste, talents, erudition, and patriotism, in the cause of liberty and state, I have taken for my subject an American institution closely bound up with liberty—liberty of the individual and of the states—the Supreme Court of the United States. I wish to portray to you one of its little known, though vitally important, functions, and the part which it has played in our National life as an arbiter in disputes between the states of our Union. As the present is distinctly an era of international affairs, I hope that you will consider the bearing which the history of this phase of the Court has upon the possible future of a World Court in international disputes.

While it was at this college that the first American professorship of law came into existence, nevertheless, I realize that I am not speaking merely to students of law; hence, I shall hope to give to you all some idea of this phase of the

Court, in not too dry or technical language; for the Supreme Court is an American institution in which all citizens, and not merely those who may be called upon to study it, should have a keen interest.

There is an appropriateness in this subject at this time; for exactly one hundred and fifty years ago last Friday, on February 2, 1790, the Supreme Court appointed by President Washington, convened for the first time with a quorum (at its session on February 1, only three Judges were present). It met at one o'clock in the afternoon in a building known as the "Exchange," located across the foot of Broad Street at its junction with Water Street in New York City, and six blocks away from the Federal Hall at the corner of Broad and Wall Streets where Washington had been inaugurated and where the Congress was then sitting. In the second story of a hall, sixty feet long, in which the state legislature met in the mornings, there assembled on that day, Chief Justice John Jay of New York, and Justices William Cushing of Massachusetts, James Wilson of Pennsylvania, and, appropriately, John Blair of Virginia, a graduate of William and Mary College; there also was Edmund Randolph of Virginia, a graduate of William and Mary, and the first United States Attorney General. Writing to Randolph, Washington had said: "Impressed with a conviction that the true administration of justice is the firmest pillar of good government, I have considered the first arrangement of the judicial department as essential to the happiness of our country and the stability of its political system." This statement was true then and has been true ever since; for it would be impossible to say by what other means than by this Court the Bill of Rights could be enforced for the protection of the citizen, or the relations between the nation and the states could be kept in balance for the preservation of the rights of each.

During the past few years, you have all heard much discussion, as well as diatribe, about decisions of the Court on

the subject of minimum wages, child labor, coal mining, labor, and other social and economic topics, under that part of the Constitution known as the Due Process Clause. You have equally heard much about interstate commerce and powers exercised by the Court under what is known as the Commerce Clause of the Constitution. From the recent millions of words and thousands of pages devoted to argument, statement, and misstatement on these subjects, you would very probably assume that the only decisions of the Court of importance in our national life and history were those which had restricted the nation and the states in dealing with labor and business and social relations. There is, however, a great lack of proportion in dwelling on this phase of the Court's functioning; for it is only within the last thirty years that Congress has exercised its powers under the Commerce Clause on any subject other than railroads, liquor, and monopolies (with regard to which the Court has always upheld the Congress); and it is only within the last forty years that the Court has dealt to any great extent under the Due Process Clause with state or national powers in economic and social fields. On the other hand, the really important decisions of the Court which influenced the development of the United States in its first one hundred years have been made in upholding the general sovereign authority of the nation and in guarding the contract rights and civil liberties of the citizens against either states or the nation, and in performing one more function—that to which I wish, this morning, to call your attention, for it is little known and little discussed. This function is the exercise of power to settle with finality serious disputes which have arisen or may arise between the states of the Union regarding their boundaries, their territory, their waters, their sanitation and protection, and their contract rights. You may be unaware of the existence of such state disputes, and it will probably surprise you, as well as most Americans, to know that in the past one hun-

dred years of our country's history there have been at least 77 reported suits brought by one state against another in the Supreme Court, requiring at least 124 reported decisions by the Court; and that at one time or another, every single state of the Union (with the exception of Maine) has been either a complainant or a defendant in such a suit in the Court—all except nine having been complainants and all except eleven defendants. In addition, there have been sixteen suits by the United States against a state; and there have been two suits by a foreign nation against a state.<sup>1</sup>

Now, how did the Court get the power to require sovereign states to appear before it and to settle their quarrels? It all came from a very simple provision in the Judiciary Article of the Constitution, giving to the Court jurisdiction over "controversies between two or more states," and requiring that such suits should be begun originally in the Supreme Court and not in any lower court.

Why was this gravely important function vested in the Court? Like most of the other provisions in our Federal Constitution, it was not evolved as a part of a logical plan or theory of government. It arose out of hard, previous experience of men in the colonies and in the states prior to 1787. It was the product of actual necessitous conditions; and as Sir Henry Maine said, fifty years ago in his *Popular Government*, it "was the fruit of signal sagacity and pre-science applied to these necessities."

We are in the habit of regarding the American Colonies prior to the Revolution as having more or less common conditions, united in interests, and opposed only to Great Britain. The fact is that the colonies varied very greatly, both in racial composition, in economic and social habits and conditions, in religious views, and in some colonies even in difference of language. Each colony was more or less of a land-

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<sup>1</sup> *Cuba v. North Carolina* (1917), 242 U. S. 665; *Monaco v. Mississippi*, (1934), 292 U. S. 313; see also *Ex parte Republic of Portugal* (1922), 264 U. S. 575.



grabber from other colonies; for their English charters and patents frequently overlapped in territory and displayed little knowledge of American geography. Hence, boundary disputes were frequent.<sup>2</sup> Differences as to commerce and matters other than boundaries also aroused much bitterness of feeling between the Middle Colonies and New York on the one side and New England on the other, and between New England and the South. When a declaration of independence was being discussed, in April, 1776, Carter Braxton of Virginia wrote that: "The Middle Colonies dread their being swallowed up," between the claims of Virginia "and of those from the East," and that he was convinced that before they declared their independence "all disputes must be healed and harmony prevail" by the appointment of a superintending power; and that if independence "was to be now asserted, the Continent would be torn in pieces by intestine wars and convulsions." Benjamin Franklin, as early as 1775, had suggested that a representative Congress should have power "of settling all disputes and differences between colony and colony about limits or any other cause if such should arise."

The American Colonies were familiar with the power possessed by the King's Privy Council in England to settle boundary controversies arising under charters granted by the King. Such disputes were heard in England by one of the Council's political or executive committees, termed the Lord Commissioners of Trade and Plantations, or by Commissioners in America specially appointed from the residents of colonies adjacent to the disputants. Upon petition filed, the tribunal proceeded in a semi-judicial manner to summon the opposing party; and if it failed to appear, the case could be heard *ex-parte* and decision rendered. Three decisions in

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<sup>2</sup> *The Colonial Period of American History* (1936), by Charles M. Andrews, II, 53: "Men living along the border claimed by both colonies, were wholly at a loss to know in whose jurisdiction their lands lay and to whom they should pay their taxes. Quarrels ensued, reprisals occurred and individuals were arrested and jailed and the whole region was in an uproar."

such boundary cases had been made by the Privy Council and were widely known in the colonies prior to the year 1776—that of Rhode Island against Connecticut in 1727; that of Rhode Island against Massachusetts in 1746; and that of New Hampshire against Massachusetts in 1741. It was natural, therefore, that within eight days after the colonies declared their independence as sovereign states, John Dickinson, on July 12, 1776, in the Continental Congress should draft a plan for a procedure to be set up by the new states to settle their quarrels, similar to that before the King in Council; and his proposal resulted in a provision of the Articles of Confederation in 1781, authorizing the Congress, as “the last resort on appeal” for “all disputes and differences . . . between two or more states concerning boundary, jurisdiction, or any other cause whatever,” to constitute a court for each case as it arose and to appoint “commissioners or judges” with power to proceed to final judgment, even if a defendant state refused to appear (Article IX).<sup>3</sup> Though such a provision resembled an arbitration more than a court, since new judges were appointed for each case and there was no permanent body, nevertheless, this was the first time in history in which a judicial tribunal came into existence with a com-

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<sup>3</sup> If parties could not agree on the judges, the following singular mode of selection was provided: Congress should name 39 persons (3 from each State) from which list, each party should strike one alternatively until the number reached 13, and from that number 7 to 9 were drawn by lot who should be the judges, with power to five to act. John Franklin Jameson, in his “The Predecessor of the Supreme Court,” in *Essays on the Constitutional History of the United States in the Formative Period, 1775-1789* (1889), says as to this method of choice of judges: “It seems obvious that we have here a reproduction of the machinery provided by Mr. Grenville’s famous Act of 1770 for the trial of disputed elections to the House of Commons. Up to that time, disputed elections had for nearly a century been passed upon by the whole House. The natural result of such a procedure was a scandalous disregard of justice, those contestants who belonged to the majority party being uniformly admitted, their competitors as uniformly rejected. To remedy this abuse, Mr. Grenville’s Act provided that 49 members should be chosen by ballot, and that from this list, the petitioner and the sitting member should strike out names alternatively until the number was reduced to 13—a process which later became known, in the slang of the House, as ‘knocking out the brains of the

pulsory jurisdiction over independent, sovereign states. And Robert R. Livingston, then Secretary of Foreign Affairs for the United States, wrote to Lafayette, January 10, 1783, as to the one case then recently decided by such a tribunal:

The great cause between Connecticut and Pennsylvania has been decided in favor of the latter. It is a singular event. There are few instances of independent states submitting their cause to a court of justice. The day will come, when all disputes in the great republic of Europe will be tried in the same way, and America will be quoted to exemplify the wisdom of the measure.

This was a remarkable prophecy, and one which was partially fulfilled when, 139 years later, the Permanent Court of International Justice met for the first time at The Hague in 1922.

For various reasons, only three courts were ever appointed under the Articles of the Confederation—one in a dispute between Massachusetts and New York (June 9, 1785), another in a dispute between South Carolina and Georgia (September 13, 1786)—these two being finally settled by compacts. The third involved a dispute between Connecticut and Pennsylvania, in which settlers from Connecticut claimed title under its charter to lands in Luzerne, Northumberland, and Northampton Counties in Pennsylvania. For many years, there had been a semi-warfare in that territory with attendant bloodshed, and the warfare would probably have been even more prolonged and serious if the settlers had known that the land in controversy was, many years later, to become the richest coal mining region of the country, including within its limits, the present cities of Easton, Scranton, Wilkesbarre, Wyoming, and Towanda.

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committee.' . . . These 13 with an additional member nominated by each contestant constituted the authoritative tribunal. The act, celebrated at the time, was, of course, perfectly well known to lawyers in America, six years after its passage. It seems plain that, with the natural substitution of 39 for 49, we have, in this peculiar process established shortly before in England, the model on which Congress framed its scheme for constituting temporarily a judiciary body when one was required for land disputes."

It was, in fact, an American Sarre Basin. The court appointed in this case found in favor of Pennsylvania in 1782; but owing to the absence of any power in the court or in Congress to enforce its decree, hostilities were soon renewed and the situation continued troublesome and dangerous. James Madison deplored the lack in the Congress of "power of carrying into effect the judgment of their own courts."<sup>4</sup> Richard D. Spaight wrote to Governor Martin of North Carolina, October 16, 1784: "The disputes between Pennsylvania and Connecticut for the Wyoming lands, and New York and Vermonters, with the support and promises which the New England States have given the latter, have sown the seeds of dissension which I think will not end without a civil war."<sup>5</sup>

When the Federal Convention met in 1787 for the framing of the Constitution, serious interstate disputes over lands, boundaries, and river rights were pending, involving at least ten states, as well as Vermont which had declared its independence. It is little realized now to what a high degree the states of this country then regarded themselves as sovereign and independent, except so far as they might have surrendered certain rights of sovereignty to the United States under the Articles of Confederation. For instance, Connecticut, in its statute adopting a declaration of rights and privi-

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<sup>4</sup> This lack of power of enforcement was referred to in the Federal Convention five years later, by James Madison (*Yates Notes*, June 19, 1787), who said: "Has not Congress been obliged to pass a conciliatory Act in support of a decision of this Federal court between Connecticut and Pennsylvania, instead of having the power of carrying into effect the judgment of their own court?" In his *Notes of Debates*, June 19, 1787, Madison reports his own speech as follows: "Have we not seen the public land dealt out to Connecticut to bribe her acquiescence in the decree constitutionally awarded against her claim on the territory of Pennsylvania, for no other possible motive can account for the policy of Congress in that measure?"

<sup>5</sup> *Letters of the Members of the Continental Congress*, VII. Richard Henry Lee, President of Congress, sending to John Rutledge, January 24, 1785, his appointment as judge in the Massachusetts-New York case, wrote: "The future concord and happiness of the United States depends eminently upon the wise and early settlement of such disputes."

leges, termed itself a "republic" which "shall forever be and remain a free, sovereign, and independent State." Massachusetts in its Constitution of 1780 (which is still in force) declared itself "a free, sovereign, and independent body politic or state by the name of the Commonwealth of Massachusetts." Pennsylvania, Virginia and other states used similar language. In the midst of the dispute between New York and Vermont in which armed forces were being used, John Hancock as Governor of Massachusetts, in 1784, issued a proclamation of neutrality calling upon her citizens to refrain from aiding either party, and using language in part practically the same as that used by President Washington in his neutrality proclamation in the war between France and England and by President Roosevelt in the present war. Experience, therefore, had shown to the members of the Federal Convention that there was a grave need for a more satisfactory method of adjusting these boundary and other interstate disputes, and that for their adjudication a permanent court with power to enforce its decrees was necessary. And it was out of such necessity that the convention finally decided to give to the new Supreme Court, which it was constituting, jurisdiction "in controversies between two or more states."<sup>6</sup>

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<sup>6</sup> The course of action of the Federal Convention of 1787 was as follows: Following the Virginia Plan, which Edmund Randolph originally submitted, the framers at first provided (on July 18) that the jurisdiction of the National Judiciary should extend to "cases arising under the laws passed by the General Legislature and to such other questions as involve the National peace and harmony"—but it had been the intention of the Convention (as Madison later wrote) that this general language should later be made more specific by precise enumeration. In a draft submitted to the Committee on Detail, Randolph specified that: "The jurisdiction of the Supreme Tribunal shall extend . . . to such other cases as the National Legislature may assign as involving the National peace and harmony . . . in disputes between different States." When the Committee reported on August 6, 1787, they provided that the jurisdiction of the Court should extend specifically "to controversies between two or more States (except such as shall regard territory or jurisdiction)." Boundary and jurisdictional disputes between States, the Committee left to the Senate to decide through the appointment of a Special Court for each case, picked by the Senate in the same way as the similar tribunal picked by

The fundamental reason for this jurisdiction was that there are only three ways of settling a dispute—by force, by treaty or agreement, and by judicial decision. Now the Constitution, by express provision forbade the States of the Union to wage war or to make treaties or alliances, or to make compacts without the consent of Congress. Some method of settlement of disputes had to be provided, and the only method left was settlement by a court.

This being the basis of the Court's jurisdiction, it naturally follows that it has the power to determine any class of dispute (other than a purely political one); and as an illustration of how really international is its power, when Missouri in 1906 sued Illinois (200 U. S. 496) for seriously damaging the flow of the Mississippi River by sewage, Judge Holmes in his opinion pointed out that such a nuisance caused by a European nation bordering on the Danube as against a nation lower down on that river, might easily under some circumstances amount to a *casus belli*. In this country, he said, "if such a nuisance were created by a state upon the Missis-

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the Congress under the Confederation. When the Senate Article came on for debate on August 24, 1787, John Rutledge said that "this provision for deciding controversies between the States was necessary under the Confederation, but will be rendered unnecessary by the National Judiciary now to be established." Dr. Samuel W. Johnson and Roger Sherman of Connecticut, James Milson of Pennsylvania, and Jonathan Dayton of New Jersey concurred with him in moving to strike it out. Hugh Williamson of North Carolina thought it might be "a good provision in cases where the Judiciary were interested or too closely connected with the parties." Nathaniel Gorham of Massachusetts said: "The Judges might be connected with the States being parties." He was inclined to think the mode proposed in the clause would be more satisfactory than to refer such cases to the judiciary. The motion to strike out, however, prevailed, and the Court was left with the power over "controversies between two or more States" as now provided in Article III, Section 2, without any limitation or specification as to nature of the controversies, whether as to boundaries, jurisdiction, or other cause. And it is interesting to note that a prominent member of the Convention, Abraham Baldwin of Georgia, a Yale graduate, told President Stiles of Yale, only three months after the Federal Convention, that the delegates "had been unanimous in the expediency and necessity of a Supreme Judiciary Tribunal of universal jurisdiction in controversies of a legal nature between States. . . ." This was one of the very few subjects of importance on which unanimity prevailed.

issippi, the nuisance would be resolved by the more peaceful means of a suit in this Court."<sup>7</sup> As Chief Justice Taft said in 1921, when North Dakota sued Minnesota (256 U. S. 220) for flooding its farms by an improper drainage system, the jurisdiction of the Court "was conferred by the Constitution as a substitute for the diplomatic settlement of controversies between sovereigns and a possible resort to force."

For the first sixty years of our history, the only state disputes presented to the Court related to state boundaries, and even of this type of suit there were only three brought between 1789 and 1849—one by the State of New York against Connecticut as early as 1799, and the next two—*New Jersey v. New York* and *Rhode Island v. Massachusetts*—did not occur until the 1830's. The New Jersey case was settled by a compact after Chief Justice Marshall announced that the Court would proceed with the case *ex-parte*, in the event that New York refused to answer summons and file answer. The Rhode Island case was bitterly fought at every stage of the litigation for fourteen years, from 1832 to 1846. The importance of the question involved cannot be over-estimated, namely, whether a boundary dispute was a political matter and which a Court could not decide, or whether it was a legal matter and subject to the Court's power under the Constitution. The facts involved were also of grave import to the respective states, since a strip of land on the southern boundary of Massachusetts of about 150 square miles, and the political and taxable status of about 5,000 inhabitants would be affected by the decision. The question was settled forever and the power of the Court was upheld.

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<sup>7</sup> Judge Shiras said in 1901 in this suit of Missouri against Illinois (180 U. S. 208): "If Missouri were an independent and sovereign state, all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered to the general government, it was to be expected that upon the latter would be devolved the duty of providing a remedy."

in a superb opinion by Judge Baldwin concurred in by all the justices except Chief Justice Taney.<sup>8</sup>

Since that decision in 1838 up to June, 1939, there have been at least twenty-nine cases involving state boundaries. And lest you may think that such cases are of minor importance, let me call your attention to the fact that in at least four of these boundary cases, the jurisdiction of the Court was invoked only after armed forces had been called into play by the conflicting states and after bloodshed had occurred. As an instance of the seriousness of a boundary dispute, let me cite the case involving the northern boundary of Missouri and the southern boundary of Iowa in 1849, which involved sovereignty over a valuable strip of territory of about 2,000 square miles—a tract about two-thirds the size of Alsace.<sup>9</sup> This controversy had been pending for twelve years; Missouri at one time had called out 1,500 troops and Iowa 1,100; to defend their respective alleged rights. The conflict of claims was the more serious, by reason of the fact that if Missouri prevailed, these 2,000 square miles would become additional slave territory; if Iowa won, they would be free. The Court finally decided in favor of Iowa. Thus, just at a time when the dire question of slavery was threatening the stability of the Union in every political direction, a decision of the Court settled its fate for 2,000 square miles of American territory. No wonder that Lewis Cass, Senator from Michigan rose in the Senate, in 1855, and said: “It is a great moral spectacle to see the decree of the judges of our Supreme Court on the most vital questions obeyed in such a country as this. They determine questions of boundaries between independent states, proud

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<sup>8</sup> *New York v. Connecticut* (1799), 4 Dallas 1, 3, 6; *New Jersey v. New York* (1830), 3 Peters 461, (1831) 5 Peters 284; *Rhode Island v. Massachusetts* (1833), 7 Peters 651, (1837) 11 Peters 226, (1838) 12 Peters 657, 755, (1839) 13 Peters 23, (1840) 14 Peters 210, (1841) 15 Peters 233, (1846) 4 Howard 591.

<sup>9</sup> *Missouri v. Iowa* (1849), 7 Howard 660; (1850) 10 Howard 1; (1896) 160 U. S. 688; (1897) 165 U. S. 118.



of their character and position, and tenacious of their rights, but who yet submit. They have stopped armed men in our country. Iowa and Missouri had almost got to arms about their boundary line, but they were stopped by the intervention of the Court. In Europe, armies run lines and they run them with bayonets and cannon. They are marked with ruin and devastation. In our country, they are run by an order of the Court. They are run by an unarmed surveyor with his chain and his compass, and the monuments of devastation but peaceable ones."

In the case of *United States v. Texas*, decided in 1896, the ownership of Greer County in the then Indian Territory, involving 1,500,576 acres of 2,360 square miles, just the size of Delaware and twice that of Rhode Island and Connecticut plus half of Massachusetts, was claimed by Texas as against the United States. Texas settlers had intruded on the Government public lands. Men had been killed. The House Judiciary Committee in 1882 had reported: "It is manifest that some means should be taken to settle this dispute as soon as possible. . . . Conflicts are arising between the United States authorities and persons claiming to exercise rights on the disputed tract . . .; bloodshed and even death has resulted from this conflict." President Arthur in 1884 and President Cleveland in 1887, by proclamation, had warned that "the aid and assistance of the military forces of the United States will be invoked to remove all such intruders." In 1890, Congress directed that suit be brought against Texas; and in 1896, this serious and long standing controversy was settled by the Supreme Court in a decision which fixed the boundary in favor of the United States and thus transferred Greer County (now most valuable land) from Texas to Oklahoma.<sup>10</sup>

In 1906, another boundary case was decided which had involved bloodshed and had been brought by Louisiana

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<sup>10</sup> *United States v. Texas* (1892), 143 U. S. 621; (1896) 162 U. S. 1.

against Mississippi (202 U. S. 1), to save to the former State very valuable oyster fisheries. The controversy had been pending for ten years; each State had appointed armed patrols, and by statutes and by force had sought to exclude fishermen of the other State. Finally, as was stated in the decision "in view of the danger of an armed conflict," the oyster commissions of the two States adopted a joint resolution establishing a neutral territory, pending a decision of the Supreme Court. The situation was precisely that of an economic conflict in mutually claimed territory, which, if occurring between nations of Europe or elsewhere, would be very probable cause of war. The Court held that the boundary line claimed by Louisiana was correct and had been too long in the past acquiesced in to be now revised.

In 1921, a contest between Oklahoma and Texas and the United States was decided, fixing their boundary involving immensely valuable oil rights. In this case, settlers from the two states had located on the same lands in and adjacent to the bed of the Red River, and the seriousness of the situation is shown by the statement of Justice Van Devanter in his decision that "possession of parts of the bed was being taken and held by intimidation and force; that in suits for injunction, the courts of both states were assuming jurisdiction over the same areas; that armed conflicts between rival aspirants for the oil and gas had been but narrowly averted and still were imminent; that the militia of Texas had been called to support the orders of its courts, and an effort was being made to have the militia called for a like purpose." On initiation of the suit, the Court appointed Frederic A. Delano as a receiver of the territory involved, viz., 43 miles of river bed, or about 200 square miles in ten counties of Oklahoma and eleven counties of Texas. The receiver, on taking possession ejected all settlers and appointed a force of 12 picked men to protect life and property; he was the ruler, for five years, of a tract of land larger than the

State of Rhode Island; and the value of the subject matter involved in the case may be judged from the fact that in his final report to the Court, the Receiver accounted for over \$14,000,000 worth of oil developed by him in operating the properties from 1920 to 1925.<sup>11</sup>

Apart from averting force and bloodshed, boundary cases have often involved lands and questions of very great importance to the states. Thus, in the *Florida-Georgia* case in 1855, the ownership of 1,200,000 acres of land was at stake; in the *Virginia-West Virginia* case in 1871, two whole counties (Jefferson and Berkeley); in the *Iowa-Illinois* case in 1893, the valuable right to tax the numerous bridges across the Mississippi River from Keokuk to Dubuque; in the *Virginia-Tennessee* case in 1893, a strip of territory 118 miles in length by five in width; in the *Washington-Oregon* case, in 1908, valuable salmon fisheries; in the *New Mexico-Colorado* case in 1925, a long strip of Colorado's southern boundary, including a town, two villages and five post offices; in the *New Jersey-Delaware* case, in 1934, vary valuable oyster fisheries in Delaware Bay and River. In the *New Mexico-Texas* case in 1927, in which I acted as Special Master appointed by the Court, in deciding the boundary between the two States north of El Paso, the Court was obliged to decide where the boundary between the Republic of Mexico and the United States lay in the year 1850.<sup>12</sup>

During the past thirty-six years, however, as the economic relations between the states have become more complicated, with the advance of modern life, cases presenting facts and law of great difficulty and of even more vital importance to the states have been brought before the Court.

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<sup>11</sup> *Oklahoma v. Texas* (1921), 256 U. S. 70; (1922) 258 U. S. 606; (1923) 260 U. S. 606.

<sup>12</sup> *Florida v. Georgia* (1850), 11 Howard 293; (1855) 17 Howard 478; *Virginia v. West Virginia* (1871), 11 Wallace 39, 67; *Iowa v. Illinois* (1893), 147 U. S. 1; *Washington v. Oregon* (1908), 211 U. S. 127; *Virginia v. Tennessee* (1893), 148 U. S. 509; *New Mexico v. Colorado* (1925), 267 U. S. 30, 582; *New Mexico v. Texas* (1927), 275 U. S. 279; *New Jersey v. Delaware* (1934), 291 U. S. 381.

In 1900, a novel and very grave source of dispute was presented in a suit by Louisiana against Texas (176 U. S. 1). The latter state by statute had given to her officials wide powers to enforce very drastic quarantine regulations and to detain vessels, persons, and property coming into Texas. In 1899, a health officer of Texas took advantage of a single case of yellow fever in New Orleans to lay an embargo on all commerce between that city and the State of Texas, and this embargo was enforced by armed guards posted at the frontier. Louisiana alleged that the yellow fever was a mere pretext, that the real motive was to divert commerce from New Orleans to the port of Galveston in Texas, and that this was shown by the fact that no embargo was maintained against commerce coming to Galveston from the seriously infected ports of Mexico. Accordingly, Louisiana sought an injunction against Texas and its officials. The vital issue was raised as to the extent to which a sovereign state may manipulate its own domestic laws for the purpose, or with the necessary result, of inflicting a direct injury on another state. The Court found that the action of the Texas health officer had not been the act of the state, and so dismissed the suit; but the language of Justice Brown (who filed a concurring opinion) is particularly significant as showing that the source of the dispute which thus came before the Court for adjudication was precisely such as, if arising between foreign nations, might occasion a war, and that if the facts had been sufficient, the Court might well have had jurisdiction; said Justice Brown:

In view of the solicitude which, from time immemorial, states have manifested for the interest of their own citizens; of the fact that wars are frequently waged by states in vindication of individual rights of which the last war with England, the opium war of 1840 between Great Britain and China, and the war which is now being carried on in South Africa between Great Britain and the Transvaal Republic, are all notable examples. . . . It would seem a strange anomaly if a state of this Union, which is prohibited by the Constitution from levying war upon another state, could not invoke

the authority of this Court by suit, to raise an embargo which had been established by another state against its citizens and their property.

A year later, in 1901, the Court had before it another serious source of state controversy when Missouri filed against Illinois a bill in equity seeking to enjoin the latter state from diverting the sewage of Chicago from Lake Michigan into the Illinois River and eventually so polluting the waters of the Mississippi as to endanger through typhoid germs the health of the citizens of Missouri. There was thus presented the grave question as to how far one state could institute a public nuisance, to the detriment of another. The right of the Court to take jurisdiction over any such question was vigorously assailed by Illinois; but the Court sustained its power to act, and held that if the health and comfort of the inhabitants of a state are so threatened, the state itself is a proper party to represent them.<sup>13</sup> The Court, however, recognized that a decision on the question might determine the future use of the rivers in this country; and it refused to make a final disposition of the case until after fullest evidence had been taken. As Justice Holmes said:

It is a question of first magnitude whether the destiny of the great rivers is to be the sewers of the cities along their banks or to be protected against everything which threatens their purity. To decide the matter at one blow by an irrevocable fiat would be at least premature.

While the Court finally found the evidence to be insufficient and dismissed the case, its decision gave assurance that it would defend the right of a state against a nuisance created by another state. Two later cases have arisen presenting the fact of such a nuisance—one by New York against New Jersey to enjoin the Passaic Valley Sewage Commission from polluting the waters of the New York Upper Bay to the “grave injury to the health, property, and commercial wel-

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<sup>13</sup> *Missouri v. Illinois* (1901), 180 U. S. 208; (1906) 200 U. S. 496, 598.

fare of the State of New York.” (256 U. S. 296.) The Court, after thirteen years of hearings and argument finally held in 1921, that: “Considering all of this evidence . . . we must conclude that the complainants have failed to show by the convincing evidence which the law requires that the sewerage . . . would so corrupt the water of the Bay as to create a public nuisance . . . or that it would seriously add to the pollution of it.” Recognizing, however, the importance of the ruling which it was making to the great population interested, it stated that it would dismiss the bill without prejudice to the right of New York to renew its application, if conditions should change in the future.

In *New Jersey v. New York*, in 1931, the dumping of garbage by the defendant to the injury and pollution of the plaintiff's waters and beaches was enjoined by the Court in a decree ordering New York City to construct incinerators for its garbage, and in case of failure to construct them within a fixed time to pay to New Jersey the sum of \$5,000 a day in damages.<sup>14</sup>

Of recent years, the cases most vital to the prosperity of the states, and of greatest effect upon their future economic and historical development, have been those dealing with the rights to water. Men on the eastern seaboard do not fully realize the part that water plays in the arid regions of the southwest, and of the northwest, where water means life and property to millions of people. Without it, a state may stand still or wither away; its agriculture may decline, its inhabitants remove, its prosperity vanish. No more determined and vigorous conflicts have arisen since slavery days than those maintained in the assertion by states of their claims to the waters of interstate rivers, especially for irrigation purposes. And no decisions of more far-reaching or historical importance have been made by the Court than those establishing the respective rights of states on such rivers.

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<sup>14</sup> *New Jersey v. New York* (1931), 283 U. S. 473; (1933) 290 U. S. 237.

The first great case arose in 1901 (finally decided in 1907), when Kansas attempted to enjoin Colorado from diverting the waters of the Arkansas River to irrigate very valuable lands in Colorado, to the injury of Kansas farms for 310 miles, theretofore irrigated, and of Kansas cattle grazers dependent on the waters of the river.<sup>15</sup> The Court laid down the principle that the dispute must be adjusted "upon the basis of equality of rights between states, so as to secure as far as possible to Colorado the benefits of irrigation without depriving Kansas of the like beneficial effects of a flowing stream." It held that upon the facts proved the result of appropriation of water by Colorado had been the reclamation of large areas in Colorado, transforming thousands of acres into fertile fields and rendering possible their occupation and cultivation when otherwise they would have continued barren and unoccupied; that while the influence of such diversion had been of perceptible injury to portions of the Arkansas Valley in Kansas, yet to the great body of the valley it had worked little, if any, detriment. The bill was dismissed, without prejudice, however, to the right of Kansas to institute new proceedings "whenever it shall appear that through a material increase in the depletion of the waters of the Arkansas River by Colorado, its corporations or citizens, the substantial interests of Kansas are being injured to the extent of destroying the equitable apportionment of benefits between the two states resulting from the flow of the river."<sup>16</sup> The principle of equitable division of river water was thus established, in a case where one state recognized the local law of prior appropriation, and the other state the old common law of riparian rights.

In 1922, a case was decided (after eleven years of hearings), in which the local law recognized in both states was

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<sup>15</sup> A case of lesser importance was decided as early as 1876 between South Carolina and Georgia when the latter State was enjoined from obstructing navigation and the progress of interstate commerce in the Swanee River. *South Carolina v. Georgia* (1876), 93 U. S. 4.

<sup>16</sup> *Kansas v. Colorado* (1902), 185 U. S. 125; (1907) 206 U. S. 46.

that of prior appropriation. Wyoming sought to enjoin Colorado from diverting from the Laramie River a vast quantity of water which would deprive Wyoming farms of waters theretofore appropriated and used for irrigation. The Court decided that it would be equitable to determine the rights of the states as between themselves by the same doctrine of law which each state applied to individuals within the state. It held, therefore, that Wyoming, having made prior appropriations of one river, was entitled to prior rights in the waters; and it fixed the precise quantity of water which Colorado should be allowed to take.<sup>17</sup>

In 1931, Connecticut sought to enjoin Massachusetts from diverting for the water supply of the eastern part of the state, certain rivers tributary to the Connecticut River which otherwise would have flowed down into Connecticut. It alleged injury to its fisheries and to its bottom lands and enhanced pollution of its river. The Court found for Massachusetts on the facts, but permitted Connecticut to renew her suit whenever it should appear that her substantial interests "are being injured through a material increase of the amount of waters diverted." (282 U. S. 660.) In 1931, also the doctrine of equitable division of the waters of the Delaware River and its tributaries was enforced in a notable case in which New Jersey sought to enjoin New York from diverting waters into the Hudson River watershed for New York, diminishing the flow of the Delaware River in New Jersey, and injuring its shad fisheries and increasing harmfully its saline contents. An opinion by Justice Holmes stated the problem strikingly: "A river is more than an amenity, it is a treasure. It offers necessity of life that must be rationed among those who have power over it. New York has the physical power to cut off all the water within its jurisdiction. But clearly the exercise of such a power to the destruction of the interest of lower states could not be

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<sup>17</sup> *Wyoming v. Colorado* (1922), 259 U. S. 419, 496; see also *Wyoming v. Colorado* (1932), 286 U. S. 494; (1936) 298 U. S. 573.



tolerated. And, on the other hand, equally little could New Jersey be permitted to require New York to give up its power altogether in order that the river might come down to it undiminished. Both states have real and substantial interests in the river that must be reconciled as best they may be." The Court reduced New York's diversion from 600,000,000 gallons daily to 400,000,000, thus cutting New York's water supply from a river located within its territory by one-third, with a future further reduction whenever the stage of the Delaware fell below a certain point (283 U. S. 336).

Between 1831 and 1936, the State of Arizona sought, in three suits brought against the six states parties to the Boulder Dam Compact, to have its rights to the waters of the Colorado River adjudicated. In 1937, the States of Texas and New Mexico sought to adjust by suit a heated contest over irrigation rights involving the water of the Rio Grande River for a distance of four hundred miles.<sup>18</sup> In this case, I served as Special Master appointed by the Court and heard testimony as to water rights dating back to the 16th and 17th Centuries, as well as to the effects of modern dams upon the amount and chemical content of the river water and alleged damages. On my recommendation, the States, together with the State of Colorado, settled the case by an inter-state compact.

Another phase of these vital rights to water arose in the great case brought by Wisconsin and five other states against Illinois in which six other states intervened as defendants. This was a suit to restrain Chicago from diverting into its sewage drainage canal excessive amounts of water, lowering the level of the Great Lakes by six inches and more, causing great loss of ship tonnage and damage to navigation and

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<sup>18</sup> *Arizona v. California et al* (1931), 283 U. S. 423; *Arizona v. California et al* (1934), 292 U. S. 341; *Arizona v. California* (1936), 298 U. S. 558; *Nebraska v. Wyoming* (1935), 295 U. S. 40; *Texas v. New Mexico* (1939), 308 U. S. —; (1937) 300 U. S. 645, 302 U. S. 658; (1936) 297 U. S. 698, 298 U. S. 644; (1935) 296 U. S. 547.

riparian landowners. Charles E. Hughes, before he was Chief Justice, sat as Special Master; and the Court in 1930 entered a decree enjoining diversion in excess of specified amounts. To the objections raised by the City as to the cost entailed of a new method of sewage disposal, the Court said that as for years the defendants had been committing a wrong, "they must find a way out at their peril. We have only to consider what is possible if the State of Illinois devotes all its powers to dealing with an exigency, to the magnitude of which it seems not yet to have fully awakened. It can base no defenses upon difficulties that it has itself created." And now, note the extreme scope of the Court's power and jurisdiction; for, to an objection raised that the decree could not be complied with under the existing state constitution, the Court said: "If its constitution stands in the way of prompt action, it must amend or yield to an authority that is paramount to the state." In other words, the power of the Court to determine controversies between states under the Federal Constitution could not be impeded by a state constitution.<sup>19</sup> Still another phase of water problems was presented in a suit by North Dakota in 1923, seeking to enjoin Minnesota from flooding the former's farms by artificially caused drainage into an interstate river. (263 U. S. 365.)

In 1923, a situation which bade fair to produce disaster in many parts of Ohio and Pennsylvania was averted by a decision in suits brought by those states against West Virginia, involving not the flow of water but the flow of natural gas. For a long time, industries and homes in Ohio and Pennsylvania had been supplied in interstate commerce by gas coming from West Virginia. A statute of the latter state proposed to restrict the sale of gas to the needs of its own inhabitants. The case presented, as the Court said, "a direct issue between the two states as to whether one may

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<sup>19</sup> *Wisconsin v. Illinois* (1929), 278 U. S. 367; (1930) 281 U. S. 170, 179.

withdraw a natural product, a common subject of commercial dealings, from an established current of commerce moving into the territory of the other." The Court enjoined the operation of the statute; for, it said, "if one state had such a power, every state had it, and embargo might be retaliated by embargo, and all commerce might be halted at state lines." The importance of the decision to the welfare of our states cannot be over-emphasized. (262 U. S. 500.)

Other types of state controversies have been involved in suits which I will not take the time to narrate.<sup>20</sup>

Finally, the extent of the Court's power is seen in the great case of *Virginia v. West Virginia*, in which after many decisions over a period of twelve years, the Court determined that West Virginia must comply with its state constitution, and pay its proportion of the debt of its parent state to the amount of over twelve million dollars. This case, said the Court (220 U. S. 36) was "no ordinary commercial suit but . . . a quasi-international difference, referred to the Court in reliance upon the honor and constitutional obligations of the states concerned rather than upon ordinary remedies."<sup>21</sup>

I have thus tried to give you some idea of the magnitude of the questions presented in this phase of the Supreme Court's jurisdictional power, and of the vital part which its decisions have played in the history and development of the history of our states.

The Court's achievement in this direction has been due to the broad vision of the men who have sat on the bench. To settle such questions of far-reaching import requires large-minded men of long, mature, and varied experience. The spirit in which the Court has always approached these inter-

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<sup>20</sup> For example, see *New Hampshire v. Louisiana* (1883), 108 U. S. 76; *South Dakota v. North Carolina* (1903), 192 U. S. 286; *Massachusetts v. New York* (1926), 271 U. S. 65; *Alabama v. Arizona* (1934), 291 U. S. 286.

<sup>21</sup> *Virginia v. West Virginia* (1907), 206 U. S. 290; (1908) 209 U. S. 514; (1911) 220 U. S. 1; (1911) 222 U. S. 17; (1913) 231 U. S. 89; (1914) 234 U. S. 117; (1915) 238 U. S. 202; (1916) 231 U. S. 531; (1918) 246 U. S. 565.

state cases has been finely stated by Justice Holmes in *Virginia v. West Virginia*, in 1911 (220 U. S. 1, 25) as follows: "This case is one that calls for forbearance upon both sides. Great states have a temper superior to that of private litigants, and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union, and mutual consideration to bring it to an end." And Chief Justice White said in the same case in 1914 (234 U. S. 117): "In acting in this case from first to last, the fact that the suit was not an ordinary one concerning a difference between individuals, but was a controversy between states involving grave questions of public law determinable by this Court under the exceptional grant of power conferred upon it by the Constitution, has been the guide by which every step and every conclusion hitherto expressed has been controlled. And we are of the opinion that this guiding principle should not now be lost sight of, to the end that when the case comes ultimately to be finally and irrevocably disposed of, as come ultimately it must in the absence of agreement between the parties, there may be no room for the slightest inference that the more restricted rules applicable to individuals have been applied to a great public controversy, or that any thing but the largest justice after the amplest opportunity to be heard has in any degree entered into the disposition of the case."

One important phase of all these suits is to be particularly noted, namely, that in many cases, the mere pendency of the suit in the Court for long periods of time has tended to allay interstate feelings and to bring about amicable settlement. Lapse of time is a great mollifier—that "old common arbitrator, Time," as Shakespeare termed it. A chance to cool off is the frequent solution of many differences arising from irritation, anger, and unreason. Time, moreover, gives opportunity to establish the facts involved, and to make clear the real cause of the disagreement as distinguished from the ostensible factors in the suit. Time absorbed in the

preparation and trial often develops the fact that parties are not so far apart as at the beginning they supposed. The Court has thoroughly realized this emollient influence; and, while not countenancing unnecessary delays, it has regarded suits between states as demanding grave circumspection in the taking of successive steps both by counsel in trial and argument and by the Court itself in its rulings.<sup>22</sup>

In 1861, John Stuart Mill, in his *Considerations of Representative Government*, said: "The Supreme Court . . . dispenses international law, and is the first great example of what is now one of the most prominent wants of civilized society, a real International Tribunal." It took sixty-one years for the world to attempt to supply that want by the organization of the World Court. It may be admitted that the hopes of its founders are not yet fulfilled and that it is not yet certain that a world judicial tribunal can settle controversies between distinct sovereign nations. And yet, those who thus far lack confidence, may well study the gradual but increasing success of the Supreme Court of the United States in dealing with controversial subjects of an international character.

It has been urged against the possibility of the World Court that there is no established and accepted body of law for it to apply, and that we must wait until the nations agree upon such a body of law. This contention was vigorously urged by the late Senator Borah in the Senate in 1926. "In order to have a real Court," said he, "we must have a code of law which that Court is to construe. . . . You cannot set up

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<sup>22</sup> It may be noted that the *Missouri-Kentucky* case, decided in 1871, had been pending 12 years; the *Missouri-Illinois* case, in 1906, for six years; the *Kansas-Colorado* case in 1907, for six years; the *Virginia-West Virginia* case, finally decided in 1918, had been pending 12 years; the *Maryland-West Virginia* case in 1910, for 19 years; the *Oklahoma-Texas* case, finally decided in 1926, for five years; the *New York-New Jersey* case in 1921, for 13 years; the *Wyoming-Colorado* case in 1922, for 11 years; the *Pennsylvania-West Virginia* case, argued three times and finally decided in 1923, had been pending four years; the *Wisconsin-Illinois* case in 1932, for six years.

a Court of justice and expect it to operate effectively unless it is founded upon the solid foundation of a code of international law accepted by the different nations of the earth as a guide for the determination of the principles which govern its international relationships." But precisely the same argument was used, and unsuccessfully, one hundred years earlier (in 1832) by the Attorney General of Massachusetts in the suit brought against that state by Rhode Island. Massachusetts, he contended, could not be called upon to submit its controversies to judicial decision until a law or code suitable to the decision of her case should be made. "The merits of any case depend on the conformity of a party's conduct to a previously prescribed rule of law; but if there is no such rule, there can be no test of such merits and no decision of them. . . . The Court having no law to expound cannot settle a judicial controversy depending, as all such controversies do, on the question whether the conduct complained of has, in the case presented, conformed to or departed from the obligations which are imposed by law." To this argument, however, the counsel for Rhode Island replied that the Supreme Court, like any competent court, in the absence of any statutory provision would govern itself "by the principles of justice, equity, and good conscience," and this reply was upheld by the Court. "The submission by the Sovereigns, or States," it said, "to a Court of law or equity of a controversy between them, without prescribing any rule of decision, gives power to decide *according to the appropriate law of the case.*"<sup>23</sup>

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<sup>23</sup> See also *United States Supreme Court—The Prototype of a World Court*, by William H. Taft, before World Court Congress at Cleveland, Ohio, May 12, 1915, *Judicial Settlement of International Disputes*, No. 21 (May, 1915): "Most controversies between states are not covered by the Federal Constitution. That instrument does not for instance fix the boundary line between two states. It does not fix the correlative rights of two states in the water of a non-navigable stream. . . . It does not regulate the use which the state upstream may make of the water, either by diverting it for irrigation or by using it as a carrier of noxious sewage. Nor has Congress any power under the Constitution to lay down principles by

It is interesting to note that thus far, in the one hundred and fifty-one years of our Government, the Supreme Court has never met with any form of controversy, or any condition productive of conflict between the states of the Union, for which the Court has been unable to discover a formula for its solution by resort to some principle of law, international or otherwise, appropriate to afford just treatment to states entitled to an equality of right. If no actual precedent has existed, the Court has always found it possible to settle the case by equitable consideration of the needs and relations of human societies, and by logical extension of general principles of justice derived from established international, common, or civil law.

It is frequently said that the experience of the Supreme Court has no bearing upon the possibility of the success of a World Court—that the questions which arise between nations are so different from those arising between the states of our Union, that they are not susceptible of adjudication by a Court. Hence, scepticism and pessimism are prevalent as to judicial settlement of disputes between nations. Men point to the lack of substantial results in the fifteen years of the existence of the World Court. One must bear in mind, however, that world changes come about slowly. It takes time to mould or alter the sentiments and attitudes of the great groups of individuals termed nations. It takes time to persuade them that a surrender of certain powers of independent sovereignty may be wise or necessary to preserve their peace. It took many years to persuade the American states that a limited relinquishment of some of their rights and powers of state sovereignty was necessary to preserve the peace and union of the United States. Even after the adoption of the Constitution, the states did not at first trust

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Federal law to govern such case. The Legislature of neither state can pass laws to regulate the right of the other state. In other words, there is nothing but international law to govern. There is no domestic law to govern this class of cases any more than there would be if a similar controversy were to arise between Canada and the United States.”

the Supreme Court to decide their disputes. It took over fifty years to get them to accept its decisions on boundary questions; it was over eighty years before any other question of importance was submitted for its decision. Gradually, however, the Court obtained the confidence of the states; and now its competency to decide any non-political question is fully recognized. So it may be with a Court deciding between nations. As has been well said by a distinguished Englishman in recent years: "If the (World) Court by its practice justifies itself before the common judgment of civilized mankind, it is certain that the cases submitted to its decision will gradually increase in number and variety. . . . It can hardly be hoped that the Court will render perfect decisions in all cases, or that every decree will meet with a ready acceptance by the unsuccessful party. But every decision that is acknowledged to be just, and every instance of ready compliance, will help to make smooth the way toward the establishment of the ideal, which is nothing less than the rule of justice in international affairs. The immediate problem for the present day is to make a start in the right direction."

In these days of dismal and terrible international relations, it is doubtless hard to believe in the possibility of any method of settlement of disputes between nations other than by war. Many men of today say: "A World Court is futile; it cannot preserve peace; it is and always will be a political body; it will not last."

When we hear these pessimistic predictions, we should all recall that, one hundred years ago, great and wise men were saying that the Supreme Court was a failure and that the United States Constitution could not last. Thus, John Quincy Adams deliberately wrote in his *Diary* in 1832 that he gave the United States and the Constitution only twenty more years of life; and Chief Justice Marshall wrote: "I yield slowly and reluctantly to the conviction that the Con-



stitution cannot last"; and Joseph Story, Justice of the Supreme Court, said: "Everything is sinking into despotism under the disguise of a democratic government. The Supreme Court is sinking."

Well, in spite of these prophets of disaster, the Supreme Court has continued to exist for one hundred years—"the keystone of our National fabric," as Washington termed it in 1789—constantly and more fully exercising its functions for the settlement of interstate disputes and with increasing success. Need we despair over the possibility of a World Court achieving a similar success?

Men say that a World Court is an impractical dream. Well, statesmen one hundred years ago in the days of rigid state-rights views, would have said that it was a wild, a fantastic, dream, if it had been suggested to them that in later years the Supreme Court would take judicial action depriving a sovereign state of 2,400 square miles of its territory, or would deprive a sovereign state of 200 square miles of its oil resources, or would limit a sovereign state in diverting the waters of one of its own rivers, or would cut down by one-third the use by another sovereign state of its river waters, or would require another sovereign state to establish at great expense a new sewerage disposal system, or would deprive a sovereign state of the right to control its natural gas, or would force a sovereign state to pay many millions of dollars on account of a debt to another state. All these things would, in 1832, have been regarded as a wild dream. But the dream came true.

In answer to those who tell you that the advocates of a World Court are impractical dreamers, I commend to you the words of William Allen White: "The ashheap of the ages is covered with old tin cans of failures who once glistened as practical men. There they rest on history's dump, crushed, broken, and forgotten, with all their works. The names that stand out in the world are the names of men of

faith, the men of ideals, the men who snapped their fingers at the warnings of practical men, and went forward, following their visions into that far more exceeding weight of glory which comes to the man who gives his heart's cherished treasures to mankind."