# THE CENTURY MAGAZINE.

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## THE SUPREME COURT OF THE UNITED STATES.

THE Supreme Court is the balance-wheel of government in the United States. It does its work so quietly, and its operations touch the lives and business affairs of so few citizens, that much less is known about it than about any other portion of the Federal machinery. Rarely do its proceedings attract public attention; yet it may be truly said to be the conservative force in our political system, holding all the parts together and keeping each in harmony with the plan of the whole. We are apt to think ours a simple system; it is in reality a complicated one, for we have both a divided and a concentrated sovereignty, and the functions of authority are distributed between the state and the nation, and among different departments of each, in such a way that innumerable conflicts would occur to strain and perhaps finally destroy the framework of popular government, were it not for the regulating power of the supreme judicial tribunal. On several occasions in the history of the Great Republic, the power of the Supreme Court has been more than regulative, and has assumed a formative character. In its early stages especially, the form itself of the central government was largely shaped by the decisions which came from the Supreme Bench, interpreting the Constitution, then an elastic compact, not hardened by time and use, and one of untried and doubtful force as a bond to hold the States together and create from them a homogeneous nation.

The visitor in Washington is likely to be more favorably impressed with the Supreme Court than with any other feature of government he sees. The House is a turbulent town-meeting held on a velvet carpet. The Senate, which used to be sedate and courteous, is fast falling into the bad manners of the lower branch of Congress. Speeches are rarely listened to, and there is a general appearance of lounging inattention, varied only by letter-writing or conversation, carried on under the very nose of the senator who is on the floor, seeking to influence the judgment of his associates. The White House is a business office, with a few showy rooms for formal receptions, and the President is approached like the head of any important business concern, with little more ceremony than is observed in a bank or a railroad office. The Supreme Court seems, by its quiet and stately dignity, to typify more fitly the power of a government which holds the lives and fortunes of fifty millions of people in its keeping.

Midway in the rather dingy and ill-lighted passage that leads from the great rotunda of the Capitol to the Senate wing sits a colored man holding a cord attached to the handle of a closed door. If you pause, as if desirous of entering, he pulls the cord; the door opens and you are in a narrow vestibule. Another door swings inward silently, and another colored man politely motions you to a seat on the crimson cushions of a big sofa. A high screen in front of the door hides the room from you when you first enter, but once on the sofa you find that you are in the Supreme Court chamber. Suppose it to be a few moments before noon. The long row of big, easy-chairs, on a high platform back of a desk of equal length, are still vacant, for the court meets at twelve. You have time to study the room. Its form is that of a semi-circle, with a half-dome for the ceiling, pierced by sky-windows, through which a mild light falls on crimson curtains and upholstery, and on the pleasant gray tint of the walls. A small gallery over the judges' seats is supported by pillars of the peculiar mottled gray and black stone called Potomac marble, and pilasters of the same stone relieve the circling sweep of the wall. Behind the pillars and under the gal-

lery there are heavily curtained windows, and a screened passage leading to the retiring-room of the judges on one hand, and to the marshal's office on the other. Upon the wall are busts of the six Chief-Justices who preceded the present incumbent,—Jay, Rutledge, Ellsworth, Marshall, Taney, and Chase. The greater part of the floor-space is railed off for the members of the bar. Outside of this are the sofas for spectators—the only really comfortable seats for public use to be found in the Capitol. The gallery is never used now. Only once, since the Senate left the room to go to its new chamber in the north wing of the building, has it been tenanted. That was during the sessions of the Electoral Commission which disposed of the Presidency during the memorable winter of 1877. Then the reporters for the press were squeezed day after day into its narrow limits.

When twelve o'clock comes, there are perhaps a dozen lawyers sitting at the tables within the bar, and a score of spectators waiting on the crimson plush sofas for the court to open. A rustle of silk is heard from the open door leading to the retiring-rooms.

DETAIL OF IONIC CAPITAL IN THE SUPREME COURT CHAMBER.

At the other side of the chamber sits a young man at a desk, who has been listening for a few minutes for that sound. He rises, and announces in a clear voice: "The Honorable the Chief-Justice and Associate-Justices of the Supreme Court of the United States," whereupon lawyers and spectators all get up on their feet. The rustling sound approaches, and there enters a procession of nine dignified old men, clad in black silk gowns that reach almost to their feet, with wide sleeves and ample skirts. At the head walks the Chief-Justice, and the others follow in the order of their length of service in the court. They stand a moment in front of their chairs, and all bow at once to the bar. The lawyers return the salute; then the judges sit down, the Associates being careful, however, not to occupy their chairs before the Chief-Justice is settled in his. Now the young man, who is the crier, exclaims, in a monotonous fashion:

"Oyez! oyez! oyez! All persons having business before the Honorable Supreme Court of the United States are admonished to draw near and give their attention, for the court is now sitting. God save the United States and this honorable court!"

Business begins promptly and is dispatched rapidly. First, motions are heard, then the docket is taken up. The Chief-Justice calls the case in order in a quiet tone, and a lawyer is on the floor making an argument, while you are still expecting that there will be some further formality attending the opening of so august a tribunal.

The proceedings are impressive only from their simplicity. Usually the arguments of counsel are delivered in low, conversational tones. Often the judges interrupt to ask questions. In patent cases, models of machinery are frequently used to illustrate an argument, and are handed up to the judges for examination, or a blackboard is used for diagrams. Were it not for the gray hair and black gowns of the judges, you might almost imagine at times that the gentleman at the blackboard, with crayon in hand, was a college professor lecturing to a class. Or you may happen in when a lawyer in charge of a case is leaning over the long desk in front of the judges, holding a conversation with one of them on some intricate point in a mechanical device, and you would hardly think that the court was in session and that the conversation was the plea in a patent case involving perhaps a million of dollars.

The bench has long been only a tradition in all our courts. Each justice of the Supreme Court has a chair to suit his own notions of what constitutes a comfortable seat. Some of the chairs have high backs to rest the head, some have low backs; some have horse-hair cushions, some velvet, some no cushions at all. Chief-Justice Waite sits in the middle of the row. At his right is the Senior Associate-Justice, Samuel F. Miller, of Iowa; at his left the next in rank, Stephen J. Field, of California. Then right and left, alternately, are Justices Joseph P. Bradley, of New Jersey, John M. Harlan, of Kentucky, William B. Woods, of Georgia, Stanley Matthews, of Ohio, Horace Gray, of Massachusetts, and Samuel F. Blatchford, of New York. Justices

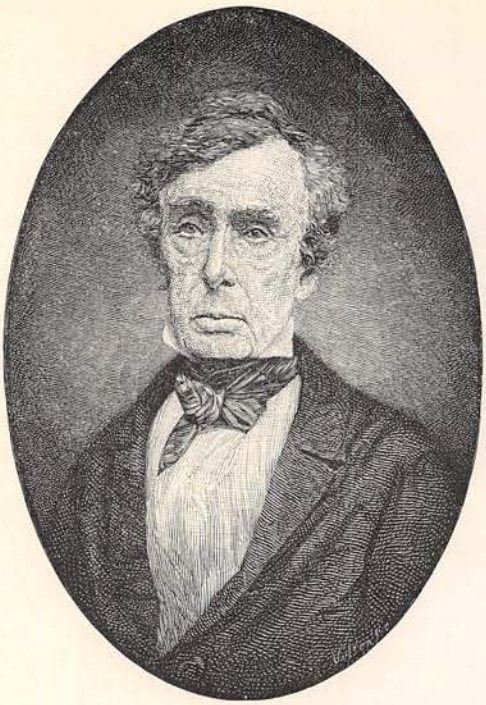

JOHN JAY. (AFTER THE BUST BY JOHN FRAZEE.)

Miller and Field were appointed by President Lincoln,—the former in 1862, and the latter in 1863. Bradley was appointed by President Grant in 1870, and the Chief-Justice by the same President in 1874. Harlan, Woods and Matthews were appointed by President Hayes; but Matthews's nomination was not acted on by the Senate until Hayes's term expired, and he was renominated by President Garfield, and thus represents two administrations. Gray and Blatchford are the nominees of President Arthur.

There is a tradition that the justices wore red gowns in the early days of the court. One of the present justices, who is an authority on the history of the court, says that it is a mistake arising from the fact that the first Chief-Justice, John Jay, in the portrait that hangs in the consultation-room, wears a robe with broad scarlet facings, and collar and sleeves of the same color. This gown was borrowed by Jay of Chancellor Livingston, and when the court determined upon a costume, it was a plain black silk gown just like that now worn. In the higher tribunals of the States, scarlet gowns were worn in many instances as late as the second decade of the present century. The first Judges of the Supreme Court did not adopt any peculiar fashion of wig as a mark of their office. The English judicial wig was in vogue in the State courts; but the short wig, or the plain pig-tail, appears to have been the head-gear worn by Jay and his associates. At all events, when Cushing, who was one of the members of the original court, arrived in New York, and put on the big wig he had worn on the Massachusetts bench to go to the first meeting, he was followed up Broadway by a mob of boys, who pointed at his extraordinary attire, but otherwise showed him no disrespect. To avoid being so unpleasantly conspicuous, he hastened to a shop and bought a peruke of the then current fashion.

Every Saturday, during a term of the court, the justices meet in the consultation room to decide cases. The room is a cheerful, old-fashioned apartment, with windows on two sides, looking toward the Senate and the city. The carpet dates back to 1860, but it looks as fresh and whole as if it had enjoyed the care of an economical housewife in the little-used parlor of some New England country-house. The chairs are of rose-wood and hair-cloth, and of an indescribable fashion,—a cross between an ancient ottoman and the curule chair of a Roman senator. On the walls hang portraits of Marshall, Jay, and Taney. The arguments of the justices, when they assemble by themselves in this room, are often more thorough and able than those heard from the lawyers in the court. All the cases must be examined by all the justices; but when a decision is reached, the Chief-Justice designates the justice who is to write the opinion. Opinions are read and approved in the consultation room before they are delivered in open court. If there is disagreement, the dissenting judges arrange among themselves as to the preparation of their opinion. It is voluntary on their part, and not the business of the court.

The business of the Supreme Court is divided into two general classes,—cases in which it has original jurisdiction, and cases which come to it by appeal from the lower courts. If a citizen of the United States wants to sue a foreign minister or consul for debt, he cannot have recourse to any State tribunal, but must go directly to the Supreme Court. The secretaries and attachés of foreign ministers, and even their servants, are included in the immunity from ordinary processes of law, the house of the minister being, theoretically, foreign territory, and its inmates under the protection of the flag of the foreign country represented by the legation. To invade this sacred domain nothing suffices but the process of the highest court



ROGER B. TANEY. (FROM A PHOTOGRAPH BY BRADY.)

of the land. If, therefore, the pastry-cook of the Peruvian Minister should fail to pay a grocer's bill, the only way to collect it by legal constraint would be by invoking the power of the Supreme Court. In like manner, a minister or consul can go to the same tribunal to prosecute a suit against any citizen, the constitutional provision on the subject working both ways. It is to the credit of foreign representatives residing in this country that it has rarely been invoked. Another class of cases in which the court has original jurisdiction embraces suits of one State against another State, or of a State against a citizen of another State. Where a State is called upon to respond to the complaint of another State, a subpœna is served upon the governor and attorney-general of the responding State, by the marshal of the court, and the attorney-general appears and makes answer. What would be done if in such a suit a decision for damages were rendered, and the State beaten in the litigation should refuse to pay, is an undetermined question touching the theories of State rights and sovereignty. Could the marshal levy upon a state house or other tangible property of the defendant and sell it at auction? No case has arisen in which the power of the court to recover a money judgment against a State has been tested.

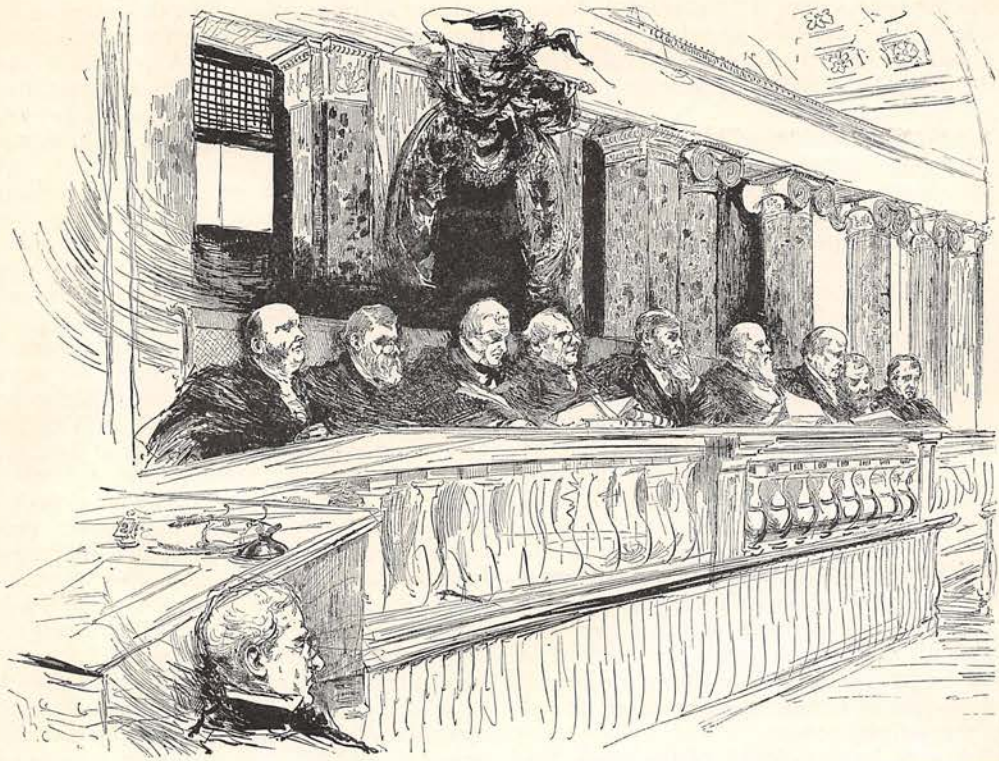
A State may sue a citizen or citizens of another State; but a citizen cannot sue a State—an injustice growing out of the old English common law maxim that the king can do no wrong. Thus, Georgia may sue a citizen of New York before the Supreme Court for breach of contract or debt, but the citizen cannot sue Georgia to recover the money she owes him on a repudiated bond. Under the constitution as first adopted, a State was responsible for her debts. One of the earliest decisions of the Supreme Court, which may still be read in fair round hand in the first record book of the court, established this principle. The case was Chisholm, executor, against Georgia; and John Jay, the first Chief-Justice, decided that a State could be sued the same as a corporation. This was considered the most ultra form of Federalist doctrine, and the States' rights people made such an ado about it that Congress hastened to adopt a constitutional amendment providing that "The judicial power of the United States shall not extend to suits against a State by a citizen of another State or a foreign State." That was in 1793. Ever since a State can be as dishonest toward individuals as she pleases, while holding them to strict accountability in their dealings with her. The question of State accountability is shortly to come up in a new form. Certain citizens of New Hampshire, holding repudiated bonds of Louisiana, have transferred them to their own State, and New Hampshire has brought suit upon them before

the Supreme Court. If the court holds the transfer to be valid and gives judgment against Louisiana, then the way will be open for all the defrauded creditors of defaulting States to get their money.

Still another class of business where the court has original jurisdiction is habeas corpus cases, affecting persons in jail by the operation of United States laws. Applications for habeas corpus writs may be made directly to any justice of the Supreme Court, but generally a Circuit judge is first applied to. If he remands the prisoner, then the case can be taken before the Supreme Court, and a writ of certiorari brings up the record of the proceedings in the inferior tribunal. A fourth and last class of original business is applications for what are called writs of prohibition. If an inferior court is believed to be going beyond its powers and jurisdiction, the Supreme Court may be applied to for a writ ordering it to stop proceedings. It is a curious fact, and one showing how carefully courts in this country keep within their proper sphere of action, that no such writ has ever been granted. There have been a few applications, but in no case was there shown to be sufficient ground for the interference of the supreme judicial power.

A very large majority of the cases tried before the Supreme Court come under its appellate powers. Cases decided by State courts of last resort, which involve what are called federal questions, that is, questions arising under United States statutes or treaties, may be taken to the Supreme Court on writs of error. The method is to file a petition alleging that a federal question is involved in the case. If the highest State tribunal refuses to grant the writ, any justice of the Supreme Court has the power to do so. It is said that the Virginia courts never assent to the transfer of cases to the Supreme Court on any showing whatever—holding the State judiciary to be equal to the Federal judiciary, and not subject to review. The interference of the Supreme Court is therefore necessary in all cases where writs of error are demanded in that commonwealth. When a writ of error is issued, it is signed by one of the justices and sent to the clerk of the State court, who makes up a full transcript of the record of proceedings in that court and all inferior tribunals through which the case has gone, including pleadings, testimony, and such evidence as is necessary, and sends them to the Clerk of the Supreme Court. A citation is served upon the "defendant in error," who is, of course, the party that won the suit in the State courts; the "plaintiff in error" must file a bond to indemnify the defendant for any damage he may suffer by the delay caused by the appeal, in case it is shown that there is no federal question involved. A member of the Supreme Court bar appears for the appellant, and the case is then docketed to await its turn. Writ of error cases also come up from the Circuit courts of the United States.

Much the largest class of cases decided by the Supreme Court come up from the lower Federal tribunals. Any one can appeal his case from a Circuit court to the tribunal of last resort, provided the sum involved exceeds five thousand dollars. This right of appeal is absolute, and does not depend upon consent of the Supreme Court, as in writs of error to State courts. It extends also to the Federal District Courts of West Virginia and Mississippi, which, by special statute, have Circuit court powers; and a statute applicable only to California permits special land cases to skip the Circuit Court and come directly to Washington from the District Court of that State. An application for an appeal is made to the judge of the lower court, and a single paper signed by him is all the formality required. The counsel for the appellant has the record made out and sent to Washington, and the case goes at once upon the docket. Thus, the only limit to the power of the litigants in the Federal courts to carry their disputes up to the highest tribunal in the country is a money limit. It costs very little to get a case tried, except for counsel fees. All the Supreme Court expenses amount to only about twenty dollars for each side, besides the cost of the record, which is taxed at the rate of twenty cents per hundred words. Justice, as administered by the Supreme Court, is cheaper than in many inferior tribunals, and is made expensive only by the bills of the lawyers, who often, no doubt, make clients believe that to present a case to that august bench of judges is so serious, exacting, and solemn an affair, that their services can be compensated for only by a large fee. The fact is that, in most cases, the point at issue is so narrowed down by the time it comes up before the court, that a few minutes' direct common-sense talk in explanation of a brief is all that a wise lawyer attempts in making an argument, and all that the court will listen to patiently. The court is a bad place for a pretentious display of legal learning, or a flourish of oratory. The most successful advocates who practice at its bar are those whose style is most condensed and lucid, and who never travel away from the essential matter in controversy. They no doubt remember the anecdote of Chief-Justice Marshall—an anecdote, by the way, which has been tacked on to many eminent judges, but which Marshall's



THE SUPREME COURT

biographers claim as belonging to him. A pompous and tedious advocate was rehearsing well-known and undisputed rules of law, when the Chief-Justice interrupted him, and said, "Mr. C., I think this is unnecessary. There are some things which a court, constituted as this is, may be presumed to know."

Not always, even in recent times, however, have the lawyers confined their speeches to the clarified common sense and direct logic which judges like to hear. Now and then the court is forced to listen to flights of rhetoric which bring half-amused and half-impatient looks to the faces of the justices. Here, for example, is a specimen of florid eloquence with which, not many years ago, a lawyer opened his brief in an important writ of error case. The brief is still shown as a curiosity in the office of the clerk of the court:

"May it please the Court: When the 'bonnie blue flag' went down before the 'star-spangled banner,' and that glorious emblem of 'the Union, the Constitution and the Enforcement of the Laws,' again waved in triumph

'From Maine's dark pines and crags of snow
To where magnolian breezes blow,'

it was fondly hoped that civil strife and contention were at an end, and that peace, quiet, and repose had returned to bless the land.

"But these were

'Hopes which but allured to fly;'

they were, indeed, but

'Joys that vanished whilst we sipp'd.'

GRAY.

WOODS.

BRADLEY.

MILLER.

WAITE (CHIEF-JUSTICE).

THE PRESENT JUSTICES

IN SESSION.

"For scarcely had the roar of artillery ceased and the smoke of battle cleared off, and scarcely had the ink become dry on the parchments of pardon which fell from the executive hand,

'Thick as autumnal leaves that strew the brooks
In Vallombrosa,'

before some

'Of the last few, who, vainly brave,'

and who would theoretically, merely,

'Die for the cause they could not save,'

rushed into the courts, renewed the contest in another form, and we are here to-day on a writ of error to the Supreme Court of Louisiana, to reverse a victory obtained in this new mode of hostility and attack upon the power and authority of the United States, and the rights of one which are firmly based upon the same."

We have already glanced at the marble busts of former chief-justices which look down from the walls of the Supreme Court room. One of them, Rutledge, held the office only during a recess of Congress, and was never confirmed by the Senate; so his term was limited to a single session of the court. There was a seventh, William Cushing, of Massachusetts, who was promoted from an associate-justiceship to be chief-justice, and was duly confirmed, but resigned before holding a term of the court. It may fairly be asked whether Cushing is not as much entitled to a place among the chief-justices as Rutledge, whose title to the office was never completed.

FIELD.

HARLAN.

MATTHEWS.

BLATCHFORD.

SEAL.

OF THE SUPREME COURT.

The first of the chief-justices was John Jay, of New York, who came to the bench when the court was first organized, after a remarkable career in the politics, legislation, and diplomacy of the revolutionary period. He was only forty-four when Washington placed him at the head of the Federal judiciary. The first congress under the constitution met in the spring of 1789, the House getting a quorum April 1st and the Senate April 6th, and the President coming up to New York on the 23d, in a barge rowed by thirteen pilots in white jackets. Congress was very slow in passing the necessary measures to set the new government in operation, and it was not until September 24th that the judiciary bill was adopted. It created District and Circuit courts, and a Supreme Court to consist of a chief-justice and five associate-justices. Washington had previously offered Jay a choice of offices under the Government, and Jay selected the chief-justiceship as most in accordance with his tastes. He was nominated September 26th, 1789, and his associates were: William Cushing, of Massachusetts, James Wilson, of Pennsylvania, John Blair, of Virginia, Robert A. Harrison, of Maryland, and James Iredell, of North Carolina. The court did not meet until February, 1790, when three of the justices assembled in New York, only to find that there was no business for them to transact.

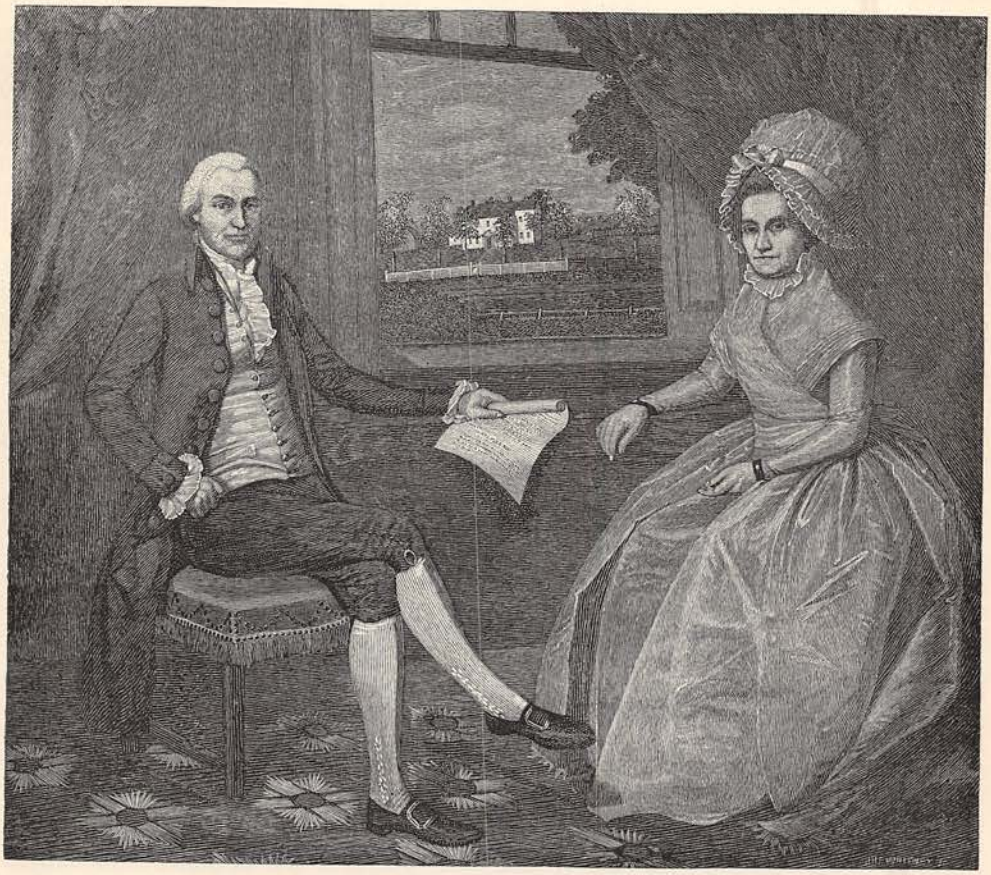
At the next sitting, the following day, Justice Blair was present, and the letters-patent, as official commissions were then called, appointing the members of the court, were "openly read and published in court." No other business was done, save to appoint Richard Wenman crier. On the third it was ordered "that John Tucker, Esq., of Boston, be the clerk of this court, that he reside and keep his office at the seat of the National Government, and that he do not practice either as an attorney or a counsellor in this court while he shall continue to be clerk of the same." A seal was adopted, consisting of the "arms of the United States, engraven on a circular piece of steel of the size of a dollar, with these words on the margin, 'Seal of the Supreme Court of the United States.'"

There was a court now, with officers and a seal, but there was no bar. On the fifth of February, the minutes show that Elias Boudinot, of New Jersey, Thomas Hartley, of Pennsylvania, and Richard Harrison, of New York, Esquires, were severally sworn as by law required, and admitted counsellors of the court, and a rule was made that "it shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the Supreme Courts of the State to which they respectively belong, and that their private and professional character shall appear to be fair." Thus the beginning of a bar was made, and afterward the lawyers came in fast enough. Three days later eleven were admitted, among them Fisher Ames and Robert Morris. The English distinction between counsellors and attorneys was observed, and the two classes are carefully separated upon the records of the court.

On the third of March the court was reinforced by the arrival of James Iredell, so that there were four associate-justices sitting with Chief-Justice Jay. The fifth associate, John Rutledge, of South Carolina, did not attend this or any subsequent sessions of the court until he took his seat as Chief-Justice after the resignation of Jay.

The court was now fully equipped with a bench, a numerous bar, and a set of rules, but there were no cases to try. On the tenth of February it adjourned until the second of August. The justices went off to attend the Circuit Courts. When they re-assembled there was still no business beyond the admission of more counsellors and attorneys, and providing seals for the Circuit Courts; so another adjournment was had until the seventh of February, 1791. The Government, meanwhile, had left New York and gone to Philadelphia, and the court followed it. Still there was nothing to do beyond directing special terms of the Circuit Court to be held in New York and Philadelphia, to try persons accused of smuggling and other crimes against the federal laws. The first case that came before the Supreme Court is entered on the minutes as "Nicholas and Jacob Vanstaphorst *vs.* State of Maryland," and the first arguments of counsel which the court heard were on the question of the validity of a writ of error from the Circuit Court for the Rhode Island district. William Bradford, Attorney-General of Pennsylvania, made the argument for the plaintiff, and David L. Barnes for the defendant. The first opinions read were in the case of the State of Georgia *vs.* Brailsford *et al.*, and it is interesting to note that there was a division among the judges at the very threshold of their new duties. The case came up on a bill in equity, filed by Edward Telfair, Governor of Georgia, against Samuel Brailsford and three others, and it involved the sum of £7058 9*s.* 5*d.*, which one James Spalding owed the defendants. Spalding was a tory, and his estate had been confiscated by the State. Brailsford was a British subject. In some way, Spalding had saved a portion of his property from the clutches of

the authorities, and long after the war closed his British creditors sued him and recovered judgment in the Circuit Court. His property had been sold by the marshal to satisfy the judgment, when the State stepped in and



OLIVER ELLSWORTH AND WIFE. (AFTER THE PAINTING BY R. EARLE, 1792.)

demanded the money. The injunction asked was to prevent the marshal from paying over the money to the creditors before the question of the right of Georgia to it could be judicially decided. Chief-Justice Jay, and Justices Iredell, Blair, and Wilson, read opinions in favor of granting the injunction, and Justices Johnson and Cushing in opposition.

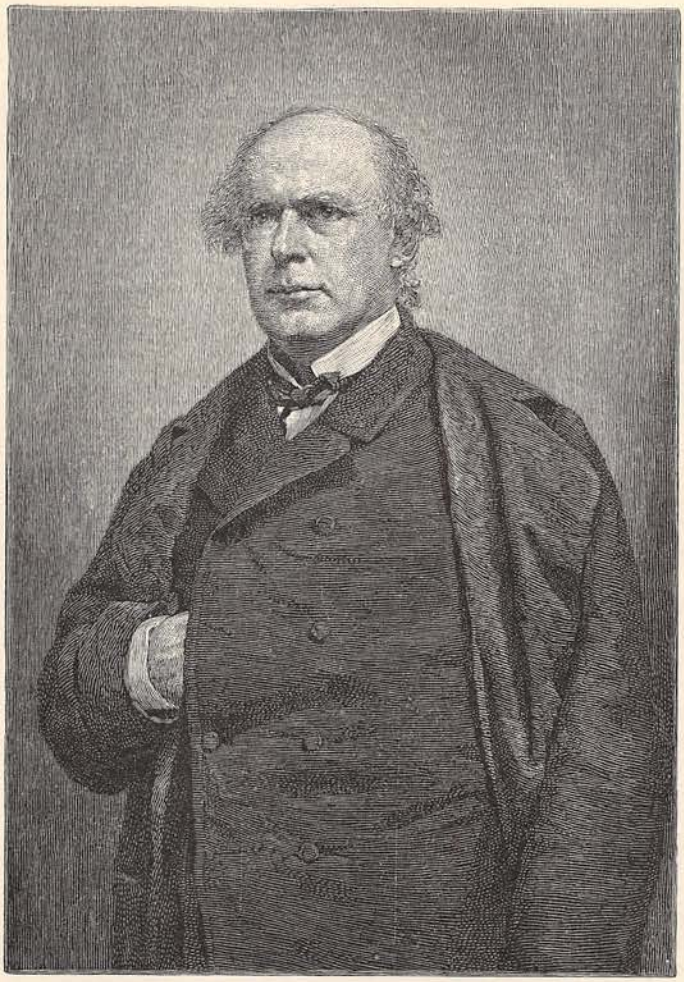
It is noticeable that nearly all the early cases are suits against States by citizens of other States, which were all disposed of by the Eleventh Amendment to the Constitution, adopted in 1798, after Chief-Justice Jay's decision in the suit of Chisholm against Georgia, holding such cases to come within the jurisdiction of the courts, had stirred up Congress to protect the theory of State sovereignty and immunity from having their acts questioned by individuals. For several years subsequently the court found very little business to transact. In 1801, when John Marshall was appointed Chief-Justice, the number of cases awaiting adjudication was only ten, and during the five following years the average was only twenty-four a year. In the period between 1826 and 1830, the aggregated number of cases was two hundred and eighty-nine, or an average of fifty-eight a year. When Taney succeeded Marshall as Chief-Justice in 1836, the number on the docket was only thirty-seven. During the next twenty years the increase was gradual. From 1850 to 1855 the average was seventy-one a year, and the court was able to dispose of its docket by working three months. Of late the increase has been very rapid. From 1875 to 1880 the average number of new cases per year was three hundred and ninety-one, and over one thousand cases are now on the docket awaiting a hearing.

There are probably few lawyers, even, if asked whether a jury trial could be held in the Supreme Court, who would answer in the

affirmative. Yet there were once juries empaneled in that tribunal and cases tried before them, and there is nothing in the statutes now operative to prevent such trials in cases where the court has original jurisdiction, and in which questions of fact are involved. For example, in a case of a foreign minister suing a citizen for debt, either party would have the right to demand a jury. In the early history of the court, juries were regularly empaneled, just as in inferior tribunals, to be ready for duty if their services were needed. The first mention of a jury in the oldest volume of minutes is under date of February 4, 1794. The court then sat in the City Hall, in Philadelphia, and the case tried was that of the State of Georgia against Samuel Brailsford. I have not been able to find the record of the last jury trial, and the information cannot be had from any of the present judges or the traditions of the court. Probably it was before the chief-justiceship of Marshall. The custom is supposed to have fallen into disuse soon after suits of individuals against States were barred by the XIth Amendment. No lawyer would now desire to submit a question of fact to a jury when he could have the verdict of a bench of nine eminent judges, unless, indeed, he hoped to gain his case by throwing dust in the eyes of justice,—a proceeding which it would be hazardous to attempt in the Supreme Court.

Chief-Justice Jay sat upon the supreme bench until 1794, when he went to England, to negotiate the treaty which is known in history by his name, and which made a great disturbance in the politics of the time. On his return in 1795 he resigned, to accept the governorship of New York, to which he had been elected during his absence. Ardent Federalist as he was, the governorship of a great State seemed to him a more exalted office than the Chief-justiceship of the United States. The Federal Government was new and untried, and its powers were hardly recognized or understood. He had been overruled by Congress in his attempt in the Chisholm case to destroy, in its incipiency, the theory of State's rights, by treating the States as mere corporations, which could be brought to book before the Federal judiciary, and he threw off the judicial robe gladly to take the helm of his own State, which he had served conspicuously and well during the stormy epoch of the war. He died in 1829, after several years of tranquil retirement upon his estate in Westchester County. A friend, observing the substantial nature of his buildings, and knowing his religious views, once remarked that Governor Jay, in all his conduct, seemed to have reference to perpetuity in this world and eternity in the next. Jay was a little less than six feet high. He had a colorless complexion, blue eyes, an aquiline nose, and wore his hair over his forehead and tied behind in a cue. He was gentle and unassuming in his manners, and had a vigorous, exact, logical mind. An Episcopalian in religion, he was an active churchman and a great Bible student. When on his estate, he rose with the sun, rode on horseback a great deal, was punctual and methodical in his habits, and never omitted to conduct family worship morning and evening. His face, as shown in the bust in the court-room, is one of strength rather than genius. The features have a classical regularity, and the head might well be taken for that of a Roman consul.

The second Chief-Justice was John Rutledge, of South Carolina, a typical Southern statesman, haughty, generous, impetuous, brave, and not always discreet. He, like Jay, had played a leading role in the Revolution. He had been a member of the first Continental Congress, then President of South Carolina from 1776 to 1778, Governor from 1778 to 1782, then a year in the first congress under the constitution. From Congress he went back to his State, served in its legislature, sat on the bench of the Equity Court, and was elected Chief-Justice of the Court of Common Pleas in 1791. Washington appointed him one of the Associate-Justices of the Supreme Court upon its first organization,—a position he seems not to have valued much, for he hesitated some time before resigning his place in the State judiciary, and did not attend the sessions of the Supreme Court in New York or its first meetings in Philadelphia. When Washington named him for Jay's place, in 1795, the friends of the Administration were surprised and offended. The struggles between the Federalists and the anti-Federalists—the strong-government men and the weak-government men—had already begun. Rutledge, although a personal friend of Washington, had identified himself with the anti-Federalist party. There was strong feeling at the time over the Jay treaty, in which the new republic sought the friendship of England and cut the ties of French sympathy. Rutledge belonged with Jefferson to the French party. The Federalists sharply criticised his appointment. Rutledge himself hastened to justify their assertions that Washington had made a serious mistake in selecting him for the chief-justiceship. He was in Charleston when the news of his appointment arrived. Almost at the same time came the details of Jay's treaty with England. Rutledge made a vigorous speech at a public meeting, denouncing the treaty, reckless of the fact that he was no longer a South Carolina poli-



SALMON P. CHASE. (FROM A PHOTOGRAPH BY BENDANN.)

tician, but the head of the Federal judiciary. It is said of Rutledge, by one of his biographers, that he exhibited every degree of courage, from that of a grenadier to that of a statesman. His speech on the Jay treaty was unquestionably courageous, but it showed only the grenadier type of courage, which cares nothing for consequences. It preceded him to the national capital, and added fresh fuel to the anger of the Administration party. "A driveler and a fool has been appointed to be Chief-Justice," exclaimed a member of Washington's cabinet. "Is faction to be courted at so great a sacrifice of consistency?" asked a Federalist senator. Congress was not in session when Rutledge reached Philadelphia, and he took his seat in the Chief-Justice's chair without waiting to be confirmed by the Senate. When Congress met, in December, the harsh feelings against him had subsided a great deal, and his friends had had time to urge in his behalf his brilliant services to the cause of American liberty during the Revolution; but a disease from which he had long suffered had begun to affect his mental faculties, and it was evident that he would soon become unfitted to hold a judicial office. So he was rejected by the Senate. He returned to South Carolina with the bitter feeling that the nation he had done so much to create had put a stigma upon him. He died in 1800, a mental wreck. One of the biographical sketches of him contains a hint about the "follies of the wise and the frailties common to mankind," from which we may infer that bad habits had much to do with the premature decadence of Rutledge's powers. He was only sixty-one when he died,—an age at which most public men are in the full maturity of their faculties.

The bust of Rutledge in the Supreme Court chamber is that of a singularly handsome

THE LATE D. W. MIDDLETON, CLERK OF THE SUPREME COURT. (FROM A PHOTOGRAPH BY SPINNER.)

man, with symmetrical features, large, eloquent eyes, a delicate, pleasure-loving mouth, and a rounded, rather woman-like forehead. The nose alone shows evidence of force of character. The type of face is rather French than English.

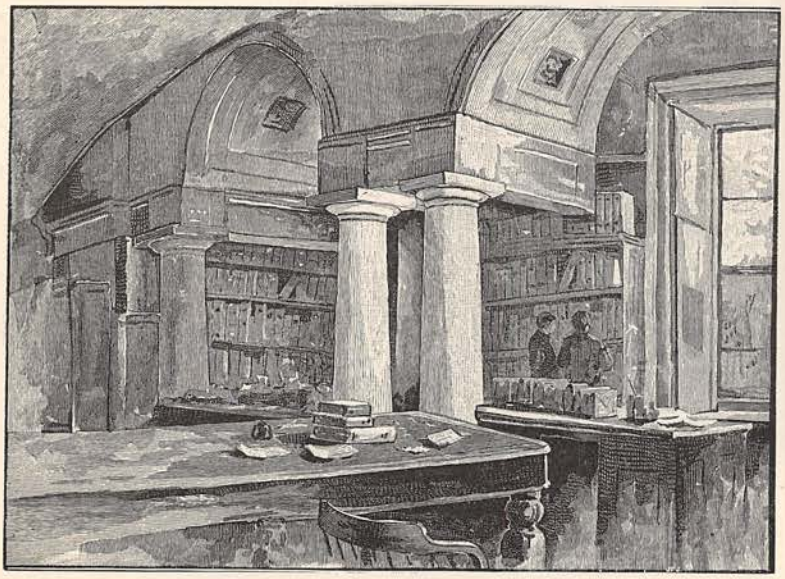
Upon the refusal of the Senate to confirm Rutledge as chief-justice, President Washington sent in the name of William Cushing, of Massachusetts, an associate-justice of the court. Cushing was one of the most eminent jurists in the country, and came of a family of lawyers. He was born in Scituate, Massachusetts, in 1732, and shortly after his admission to the bar was made judge of probate. He may be said to have inherited his next promotion from his father, who was a judge of the Superior Court in the colony, for, upon the father's death, the son was at once appointed to the vacancy. In 1775 he became Chief-Justice of Massachusetts, an office he held for fourteen years, when he was selected by Washington as one of the Associate-Justices of the Federal Supreme Court on its organization. He attended the first meeting in New York, and his name is rarely absent from the records of the subsequent sessions in New York and Philadelphia. The notification of his promotion to the chief-justiceship came to him in a singular way. The day the appointment was signed, Washington gave a dinner-party, and Cushing was one of the invited guests. Arriving rather late, he found the President and the other guests already at table. The place of honor at Washington's right hand was vacant. When Cushing entered, Washington said in a clear, emphatic tone: "The Chief-Justice of the United States will please take a seat at my right hand." Cushing, who had not expected the promotion, was deeply affected by the announcement and the congratulations which followed. The Senate promptly confirmed him by a unanimous vote. He held his commission only a week, and then resigned, in spite of the efforts of Washington to dissuade him. He had presided over the court during Jay's absence in Europe, but, as he never sat as chief-justice, his name is often omitted from the list of those who have held the office. He remained upon the bench as associate-justice until his death in 1810.

Cushing was of good stature, erect, graceful, and dignified. He had a fair complexion, brilliant blue eyes, and an aquiline nose. He adhered to the Revolutionary style of dress after it had generally been abandoned, wearing a cocked hat, knee-breeches, silk stockings, and low shoes with big buckles, to the day of his death. He was a good conversationalist, social, cheerful, kind, very tender of private character, greatly beloved by his family and friends, and had the rare and admirable trait of always looking on the best side of human nature.

Washington's third choice for Jay's vacant chair fell upon Oliver Ellsworth, then a senator from Connecticut, and one of the foremost statesmen of the time. Born in Windham, Connecticut, in 1745, Ellsworth was educated by his father for the ministry. He studied at Yale, and later at Princeton, and then read theology with Dr. Smalley, a clergyman of considerable reputation in New England. All this study only developed in the young man a distaste for the ministry, and, in spite of the remonstrances of his father, he left the great doctor of divinity and began to fit himself for the bar. As soon as he was admitted to practice, and before he had earned a single fee, he took to himself a wife. Possessed of an indomitable will, and of a gift of vigorous, practical oratory, he had not long to wait for success in either politics or law. We see him soon in the Connecticut Assembly as an ardent patriot, then in the Continental Congress, then back in his own State as a judge of her Supreme Court. He was a member of the convention that framed the Federal Constitution, and on the organization of the new government was chosen one of the Connecticut senators, leaving the Senate for the Chief-Justice's chair in 1796. Very little business came before the court when Ellsworth was upon the bench. The questions which afterward tested the strength and endurance of the federal system had not ripened. It may be said, however, that though an ardent State's rights man while in the Senate, like most of the Connecticut politicians of that day, he took an enlarged view of the powers of the

General Government while he sat upon the supreme bench, and his opinions were in line with the patriotic sentiment of nationality which had begun to combat the narrow and selfish provincialism that characterized the utterances of many of the public men of the time. In 1799, President Adams, on the rec-

John Marshall, of Virginia, who succeeded Ellsworth, is rightly called the great Chief-Justice. It was he who established the power of the Supreme Court as we recognize it at the present day. It was he who, more than any other man of his time, carried forward the work of the constitution in welding the



A CORNER IN THE LAW LIBRARY.

ommendation of a Senate committee, sent a commission to France to negotiate a treaty. Oliver Ellsworth, Patrick Henry, and William Vans Murray were the commissioners. Upon his return in 1801, the Chief-Justice resigned his seat upon the bench and retired to his farm in Windsor, Connecticut. He consented to serve for a short time as a member of the Governor's Council, but declined the chief-justiceship of the State in 1807. In November of that year he died. Trumbull's portrait of Ellsworth is regarded as an accurate likeness. His features were singularly rugged and strong. So angular do they appear in the marble bust in the Supreme Court room, that one might almost suppose the sculptor had only rough-hewn the face, and had failed to round off the square forehead and the projecting nose and chin. Ellsworth was not accounted a man of genius. It was said of him that he did not descend to his subject from above, but rose to it by regular gradations of logic. His habits of thought were slow and laborious. He read few books, had little sense of the beautiful, and not much creative power. Nature, says his biographer, formed him for the discharge of active duties rather than for contemplative studies.

loose league of States into a compact, powerful nationality. It was he who smothered, for nearly half a century, the dangerous doctrine of State sovereignty, which, a quarter of a century after his death, convulsed the country with civil war. Marshall was born in Fauquier County, Virginia, in 1755, and grew up on a farm. In his youth he studied Latin with a Scotch clergyman, and read law. When the Revolution broke out he enlisted in a militia company, and soon afterward was commissioned lieutenant in the Eleventh Virginia Infantry. The young soldier fought bravely at the battles of Germantown, Brandywine, and Monmouth, and took part in the storming of Stony Point. When the war ended, he went back to his law-studies, was soon admitted to the bar, and began to practice in the local courts. Tall, gaunt, awkward, and ill-dressed, he made a striking figure among the fine gentlemen of the Virginia towns; but his talents were conspicuous, and he rose rapidly in his profession by his remarkable power of seizing the attention, extracting at once the kernel of a question, and producing conviction in the minds of his hearers. When he first appeared in Richmond to argue a case, he sauntered about the

JOHN G. NICOLAY, MARSHAL OF THE SUPREME COURT. (FROM A PHOTOGRAPH BY BRADY.)

streets in a plain linen roundabout, looking like a slouchy country bumpkin; but once in court, he astonished the judge and the bar by his wonderful powers of analysis. William Wirt said he had an almost supernatural faculty of developing a subject by a single glance of his mind, and detecting the very point upon which every controversy depends. He comprehended the whole ground at once, and wasted no time on unessential features. "All his eloquence," said Wirt, "consisted in the earnestness of his manner, the close connection of his thought, and the easy gradations by which he opens his lights upon the attentive minds of his hearers."

Entering public life, Marshall became a member of the Virginia Legislature and of the convention which framed the State Constitution. He was sent to France as a special envoy in 1797, and returned in 1798, and was elected to Congress the next year. He delivered a eulogy on Washington which attracted universal attention. In 1800 he became Secretary of State in the Cabinet of John Adams, and in 1801 was appointed chief-justice. We are indebted to his biographer, Judge Story, who sat upon the Supreme Bench with him for twenty-four years, for more than one striking description of his person and character. "His body," wrote Story, "seemed as ill as his mind was well compacted; he was not only without proportion, but of members singularly knit, that dangled from each other and looked half dislocated. Habitually he dressed very carelessly in the garb, but I would not dare to say in the mode, of the last century. You would have thought he had on the old clothes of a former generation, not made for him by even some superannuated tailor of that period, but gotten from the wardrobe of some antiquated slop-shop of second-hand raiment. Shapeless as he was, he would probably have defied all fitting by whatever skill of the shears; judge, then, how the vestments of an age when apparently coats and breeches were cut for nobody in particular, and waistcoats were almost dressing-gowns, sat upon upon him." In another description Story says Marshall's hair was black, his eyes small and twinkling, his forehead rather low, but his features generally harmonious; and speaks of an occasional embarrassment in his speech, form a hesitancy and drawling; of a laugh "too hearty for an intriguer," and of his good temper and unwearied patience on the bench and in the study. Harriet Martineau made the following effective little pen-sketch of a scene in the Supreme Court room when Marshall was delivering an opinion — the time 1835, when the great Chief-Justice was fourscore years of age, and within a few months of his death:

"At some moments the court presents a singular spectacle. I have watched the assemblage while the Chief-Justice was delivering a judgment, the three justices on either hand gazing at him more like learners than associates; Webster, standing firm as a rock, his large, deep-set eyes wide awake, his lips compressed, and his whole countenance in that intent stillness which instantly fills the eye of a stranger; Clay leaning against the desk in an attitude whose grace contrasts strangely with the slovenly make of his dress, his snuff-box for the moment unopened in his hand, his small gray eye and placid half-smile conveying an expression of pleasure which redeems his face from its usual unaccountable commonness; the Attorney-General (Benjamin F. Butler, of New York), his fingers playing among his papers, his quick, black eye and tremulous lips fixed, his small face, pale with thought, contrasting remarkably with the other two. These men, absorbed in what they are listening to, thinking neither of themselves nor of each other, while they are watched by the group of idlers and listeners around them,— the newspaper corps, the dark Cherokee chiefs, the stragglers from the West, the gay ladies in their waving plumes, and the members of either house that have stepped in to listen,— all these have I seen at one moment constitute one silent assembly, while the mild voice of the aged Chief-Justice sounded through the court."

If the reader wants to realize this scene, let him go down into the basement of the Capitol, to the low-vaulted room now occupied by the Law Library, imagine the book-cases removed, and the judges sitting just under the curious colored bas-relief on the wall, and fill in the picture by the aid of Miss Marti-

neau's description. There are two portraits of Marshall in the consultation room of the court,—one by Peale, which is charming as a work of art, but has so little vraisemblance that it might pass for almost anybody as well as the great jurist; the other is a rude affair, copied from a picture in the possession of Marshall's descendants, which is said to be a fair likeness, though an undeniable daub.

It is impossible, in the limits of this article, to give even a sketch of Marshall's work upon the bench. For the benefit of readers who are not lawyers, something may be said, however, about a few of his most important constitutional decisions sustaining the powers of the Federal Government and vindicating the authority of the Federal Judiciary over both State tribunals and State legislatures. The best-known of these decisions is probably that given in the Dartmouth College case, which broadly asserted the authority of the Supreme Court to annul State laws repugnant to the Constitution of the United States. The Legislature of New Hampshire had passed an act which invaded and practically annulled the charter of the college. The State courts affirmed the validity of the law, but the Supreme Court set it aside as a violation of the provision in the constitution prohibiting legislation impairing the validity of contracts. In the argument of the case Daniel Webster was one of the counsel for the college, and William Wirt for the State.

Another important case bearing upon the authority of the court was that of Marbury against Madison. Marbury had been appointed by President Adams a justice of the peace for the District of Columbia. The commission had been signed, but not delivered, when Jefferson succeeded Adams, and Madison, the new Secretary of State, refused to hand it over. Marbury sued for a writ to compel Madison to give it to him. The court held that it had no original jurisdiction in the case, and refused the writ; but Marshall gave an opinion that the District Court could issue the writ, and that the case could come up on an appeal. The principle established was that the court had jurisdiction over the executive branch of the Government to compel it to perform ministerial functions in accordance with law. This principle was affirmed later in Jackson's time, when the court issued a writ of mandamus to Amos Kendall, Postmaster-General, to compel him to pay a mail contractor.

Perhaps the most important of Marshall's political decisions was that in the case of McCulloch against Maryland, involving, as it did, a vital question relative to the powers of the State and General governments. In reality, the suit was a dispute between Maryland and the United States. Each denied the constitutionality of a law of the other. A branch of the United States Bank had been established in Baltimore, and the Legislature of Maryland passed a law taxing it. The bank maintained that the law was repugnant to the constitutional powers of the General Government. The State attacked the constitutionality of the Bank Charter Act. Chief-Justice Marshall held that the question was one of absolute supremacy between the powers of Maryland and those of the General Government. If the States, he said, may tax one instrument employed by the Government in execution of its powers, they may tax any and every other instrument,—the mails, the mint, patent rights, and judicial processes,—to an excess which would defeat all the ends of the General Government. The American people, he declared, did not design to make their government dependent upon the States.

In the case of Cohen against the State of Virginia, Marshall decided that a writ of error would lie from the Supreme Court of Virginia to the Supreme Court of the United States, and that it was no valid objection to the jurisdiction of the latter tribunal that one of the parties was a sovereign State and the other a citizen of that State. Jefferson, speaking for the anti-Federalists, denounced this doctrine as extra-judicial, and in defiance of the Eleventh Amendment of the Constitution. The Chief-Justice amplified it in the case of Martin against Hunter's Lessees, deciding that the appellate jurisdiction of the Supreme Court extends to a final judgment of the highest court of a State, where the validity of a State law is drawn in question as being against the Constitution, treaties, or laws of the United States. These decisions have defined the jurisdiction and governed the action of the Supreme Court ever since.

Marshall died at his country-seat, in Fauquier County, Virginia, in 1835, during a recess of the court. Andrew Jackson was then President. He appointed to the vacant chief-justiceship his Attorney-General, Roger B. Taney, an able lawyer and an active Maryland politician of the then newly organized Democratic party. Taney was born in Calvert County, Maryland, in 1777, and after studying in Dickinson College and reading law in Annapolis, came to the bar in 1799. He served in both branches of the Maryland Legislature, was Attorney-General of the State, and in 1831 entered Jackson's Cabinet. Two years later the President, to whom Taney had rendered important political services, wanted to give him the Treasury portfolio,

but the Senate refused to confirm him. In January, 1835, Jackson nominated him as an associate-justice of the Supreme Court, but the Senate, still adverse, indefinitely postponed the nomination. Better fortune attended his appointment to the chief-justiceship, on the death of Marshall, in the same year; though strongly opposed by Clay and Webster, he was confirmed by a majority of fourteen votes. Taney sat for twenty-eight years in the chief-justice's chair. He was a jurist of remarkable ability, and would perhaps rank next to Marshall in the pages of history, as the second among the great intellects that have adorned the Supreme Bench, had he not by a single decision permanently obscured and for a season totally eclipsed the well-won fame of a life-time. Men whose memories of public events do not go back so far as 1857 can scarcely realize the depth of indignant feeling aroused in the Northern States by the Dred Scott decision, with which Taney's name will, unfortunately for his reputation, be chiefly and almost exclusively identified. Dred Scott was a negro belonging to an army officer, who had taken him into a Free State. This act entitled the slave to his liberty, and when he was afterward taken back to Missouri, he sued for his freedom. The case was carried up to the Supreme Court, and Taney, speaking for the majority of its members decided that persons of African blood were never spoken of or thought of except as property when the Constitution was formed, and were not referred to by the Declaration of Independence, which says that all men are created free and equal, and entitled to life, liberty, and the pursuit of happiness. Such persons, Taney declared, had no status as citizens, and could not sue in any court; and he asserted as a historical fact that, at and prior to the Declaration of Independence, negroes were regarded as "so far inferior that they had no rights a white man was bound to respect." This decision shocked the humanity of the civilized world. It marks in history the culmination of the slave power in America. After it was delivered the growth of the Anti-Slavery party, already well advanced, was rapid. Three years later the resistance of the North to the insolent encroachments of the "accursed institution" led the South to seal its doom by open rebellion. Taney was a slaveholder, but was one of the kindest and most generous of masters. His cruel decision proceeded from no hardness of heart, but was purely the result of his political bias and the honest outcome of his logical processes of reasoning. Grant the legal and historical premises upon which he bases it, and the conclusions he draws are inevitable.

There was no sadder figure to be seen in Washington during the years of the war than that of the aged Chief-Justice. His form was bent by the weight of years, and his thin, nervous, and deeply furrowed face, shaded by long, gray locks, and lighted up by large, melancholy eyes that looked wearily out from under shaggy brows, gave him a weird, wizard-like expression. He had outlived his epoch, and was shunned and hated by the men of the new time of storm and struggle for the principles of freedom and nationality. He did his duty faithfully to the last, however, in all the hard routine work of the court. Death came to his relief in 1864. The harsh judgment formed of him has been largely modified by time, and his character as an upright and able judge, a pure-minded man, and a devoted father and friend, begins to be recognized. He died poor, and one of his daughters now supports herself by the work of a Government office in Washington. For several years after his death, Taney's bust was excluded from its place among the chief-justices on the wall of the court-room. It stood in a sort of limbo, in a niche in one of the passages near the Senate chamber, and Charles Sumner watched every appropriation bill to prevent an item being included to authorize its purchase. When Sumner died, there was no further opposition to paying for it and giving it its proper place.

Salmon P. Chase, the recent Chief-Justice, will live in history, not so much as a jurist, but as one of the small band of eminent statesmen and philanthropists who took the agitation against human slavery into the field of practical politics and there guided it forward to its complete triumph in universal liberty and equal suffrage and citizenship. Born in Cornish, New Hampshire, in 1808, he went to Ohio as a boy, gained an education by hard work and self-denial, and rose from a position of poverty and manual labor by the force of intellect and character. He was admitted to the bar of the District of Columbia in 1829, and entered the mingled career of law and politics which most ambitious lawyers followed at that time. The law was soon laid aside for the duties of public life, but not until he had distinguished himself by his arguments in important cases. He served in the United States Senate from 1849 to 1855, and was Governor of Ohio from 1855 to 1857. Belonging first to the Democratic party, he was the leader of its anti-slavery element until the rise of the Republican party, of which he was one of the original organizers and most conspicuous chiefs. A leading candidate for the Presidential nomination in 1860, he was invited by his successful competitor, Mr.

Lincoln, into the first Republican Cabinet in 1861, and left the Senate, to which he had just been chosen for the term of six years. As Secretary of the Treasury he performed the stupendous task of supplying the Government with money to carry on the war. To him were largely due the financial measures which brought the means of support to the armies of the Union, and made the suppression of the rebellion possible. The bond and legal tender acts, and the National Bank system, were in great part his creations. On the death of Taney, President Lincoln appointed Mr. Chase Chief-Justice. Like his two predecessors, he had never sat upon the bench of any court when he put on the black robes of the highest judicial station in the country, and, unlike them, he had acquired no special eminence at the bar. Indeed, he had practiced very little since his younger days. He possessed, however, invaluable qualifications for his new position in his thorough knowledge of our system of government, in its principles and in all its operations; in a strong, well-balanced and philosophic mind, and in a calm, judicial temper. His service upon the Supreme Bench, cut short by his untimely death in 1873, at the age of sixty-five, was a fitting conclusion to a life spent in dealing with the larger affairs of state. His opinions were clear and vigorous, and bore the stamp of a strong, original mind. Such of them as touched political questions were in line with the principles of equal rights and supreme national authority which the war firmly established. The Dred Scott decision was set aside in a way which, though indirect, was effective and peculiarly appropriate. In pursuance of an understanding between the Chief-Justice and Senator Sumner, the latter appeared in court, on February 1, 1865, accompanied by a colored man, and said: "May it please the Court, I present John S. Rock, a member of the bar of the State of Massachusetts, and move that he be admitted as a counsellor of this court." The Chief-Justice bowed, and said: "Let him come forward and take the oath." Mr. Rock was then sworn, in the usual form, at the clerk's desk. Mr. Chase was tall in stature, and of large and muscular form. His eyes were blue, his complexion was fair, his forehead was broad and high, his features were regular, his expression was singularly winning, and his manners were agreeable and graceful. There have been few better types of the highest range of American statesmanship.

Chief-Justice Chase was succeeded by Morrison R. Waite, of Ohio, who was appointed by President Grant in 1874. Mr. Waite was born in Lyme, Connecticut, in 1816, was graduated at Yale College in 1837, and soon after went to Ohio. He gained a prominent position at the bar of that State, was one of the Government counsel at the arbitration of the Alabama claims at Geneva, and was occupying the chair of the Constitutional Convention of Ohio when informed of his appointment as chief-justice. It is not within the scope of this article to speak of his work on the bench, or of that of any of the justices now living. An exception must be made, however, in order to complete the record of the main political decisions of the court. What are known as the Louisiana Slaughter-house cases were decided during the chief-justiceship of Mr. Chase, and against his judgment, the opinion of the majority of the court being delivered by Justice Miller. This decision exercised a powerful political influence in checking the tendency to consolidate power in the Federal Government and to deprive the States of their right to regulate their local affairs. It put a stop to the idea which had inspired much of the recent action of the dominant party, that the amendments to the constitution adopted after the war were intended to be a total reconstruction of the Constitution on the principle that the federal power was omnipotent on every subject it chose to act upon, and restored the just and harmonious equilibrium of the dual system of State and national authority. A great deal of feeling was aroused in Congress by this decision, but it has since been generally acquiesced in; and if the court, which was then nearly equally divided upon the question, were to pass upon it now, it would probably be unanimous. Another important decision of the same period should also be mentioned. The court in 1870 had held the legal tender act to be unconstitutional so far as it applied to contracts made before its passage. Two new justices, Mr. Bradley and Mr. Strong, were appointed in pursuance of an act of Congress, restoring the former numerical strength of the bench. The case was re-argued, and the previous decision reversed by their votes. Lawyers still differ as to the correctness of this last decision.

In 1877 the court was called upon to furnish five of its members to a unique mixed commission created to settle a disputed title to the Presidency. This body, called the Electoral Commission, was composed, besides the five justices, of five senators and five representatives. It sat in the Supreme Court room, heard arguments on the question of accepting or rejecting the electoral votes of States about which the two houses of Congree had disagreed, and reached decisions by a majority vote of its members. The members of the court who belonged to it were

Justices Clifford, Field, Bradley, Miller, and Strong. Justice Clifford presided. In all test-votes the decision was so close that the vote of one justice, Mr. Bradley, was decisive. The practical result of the commission was that the vote of Justice Bradley made Rutherford B. Hayes President of the United States, and rejected the claim of Samuel J. Tilden. One of the members of the commission was the late President Garfield, then a Representative, whose seat was just beyond that now occupied by Justice Blatchford.

The organization of the Supreme Court has more than once been changed. Originally consisting of a chief-justice and five associate-justices, as we have seen, it was enlarged in 1807 by the addition of a sixth associate. The States of Ohio, Kentucky, and Tennessee had come into the Union, and were made into a new circuit, represented on the bench by Thomas Todd, of Tennessee. In 1837 two more justices were added by law, the new appointees being John Catron, of Tennessee, and John McKinley, of Alabama. In 1863 a ninth associate justice was added, to give the Pacific coast a representative. This was thought to be good political policy at a time when the Union was in the throes of rebellion; and besides, the court needed the assistance of a judge who was familiar with the peculiar land system of California, inherited from the Mexican and Spanish *régimes*. Stephen J. Field, of California, was the appointee. When Justice Catron died, in 1865, Congress was in the midst of its long, serious struggle with President Johnson, a struggle which ended in the practical subversion of the Constitution by depriving the President of important functions of executive power, and reducing him in real authority below the level of his cabinet ministers. To prevent the appointment to the Supreme Bench of Democrats in sympathy with Johnson's Southern policy, a law was passed over the President's veto, forbidding the filling of the existing vacancy, or of any future vacancy, until the number of associate-justices should be reduced to six. The death of Justice Wayne in 1867 reduced the number to seven. In 1869 a new law increased the number to eight, and President Grant appointed Justices Strong and Bradley.

In all there have been seven chief-justices and forty-three associate justices—a small number for a period now almost spanning a century. John Marshall and Joseph Story each served thirty-four years. James M. Wayne and John McLean each served thirty-two. The next longest term was that of Bushrod Washington, a nephew of George Washington and the heir of Mount Vernon, who sat for thirty-one years. William Johnson was thirty years on the bench. Roger B. Taney twenty-eight, John Catron twenty-eight, and Samuel Nelson twenty-seven. There have been but seven clerks of the court, and the first two resigned after brief service. Practically the court has had but three clerks before the present incumbent. Of these three, lawyers will kindly remember the amiable character and never-failing courtesy of Mr. D. W. Middleton, who died in 1880, after having been connected with the office fifty-five years, and at its head for seventeen. In announcing his death, the Chief-Justice said:

> "His handwriting first appears on the records of the court under date of the 7th of February, A. D. 1825. From that date until his death he was, without interruption, actively engaged in the business of the office to which his successor has just been appointed, and even a whisper of complaint against him in any particular has never reached our ears. Three chief-justices of the court and eighteen associate-justices have died since his service began. He was a most accomplished officer, courteous in manner, dignified in deportment, faithful in every duty, and never unmindful of the confidential relations he had with the court."

The present clerk is James H. McKenney. Formerly, the Marshal of the District of Columbia acted as executive officer of the court, but in Chief-Justice Chase's time the marshalship was made a distinct office. It has had but two occupants: Richard C. Parsons, of Ohio, and John G. Nicolay, of Illinois. An excellent civil service system prevails among the minor employees, some of whom are the sons and grandsons of former clerks and messengers. The strife for office, which is one of the great evils of public life in this country, has never invaded the precincts of the Supreme Court.

Formerly the service of an occupant of the Supreme Bench was terminated only by death or resignation; but in 1869 a law was passed permitting any justice to retire, with full pay, when seventy years of age, provided he has served ten years. Three retired justices, Swayne, Strong, and Hunt, are now living.

The federal judiciary system divides the country into sixty districts. There are fifty-three district judges, a few having more than one district to look after. The districts are consolidated into nine circuits, for each of which there is a circuit judge. In each circuit a Supreme Court justice is also assigned, whose duty it is to attend the sittings of the Circuit court as often as once in two years. Before 1869 there were no circuit judges, and the circuit duty of the members of the Supreme Court was much more onerous. Probably they will be relieved of it altogether before long, for their duties upon the Supreme Bench have become so onerous that numerous measures have been recently urged in Congress for their re-

lief, and for the advantage of litigants, whose cases are usually delayed two or three years by reason of the great length of the docket.

One of the plans recently presented in Congress for the relief of the court, provides for an increase in its membership, and the division of the tribunal into branches, each branch to be charged with the hearing of a certain class of cases, as, for instance, patent cases, admiralty cases, and so forth, and the full bench to consider only a limited range of cases of great importance. Some doubt has been expressed as to the constitutionality of this plan, on the ground that a part of the court could not be held to be the Supreme Court within the meaning of the Constitution.

Another plan is to interpose between the Circuit courts and the Supreme courts a new tribunal, to serve as a sort of dam to stay the flood of business pressing forward to the Supreme Bench. This new tribunal, it is proposed, shall have power of final decision to such an extent as to relieve the Supreme Court of a large share of the business now coming before it.

Still a third plan is to establish a high limit of the amount involved in cases that can be brought to the Supreme Court on appeal. This latter plan appears to be the one most favored by the members of the court. They do not, as far as can be learned, approve of the division of the court into a number of subordinate tribunals, nor do they appear to think it wise to limit the class of controversies in which litigants have the right to demand a decision from the tribunal of last resort.

*E. V. Smalley.*

## INVITA MINERVA.

THE muses ring my bell and run away.
I spy you, rogues, behind the evergreen.
You, wanton Thalia, romper in the hay;
And you, Terpsichore, long-leggéd quean.
When I was young you used to come and stay,
But, now that I grow older, 'tis well seen
What tricks ye put upon me. Well-a-day!
How many a summer evening have ye been
Sitting about my door-step, fain to sing
And tell old tales, while through the fragrant dark
Burned the large planets, throbbed the brooding sound
Of crickets and the tree-toads' ceaseless ring;
And in the meads the fire-fly lit his spark
Where from my threshold sank the vale profound.

*Henry A. Beers.*

## THE CHRISTIAN LEAGUE OF CONNECTICUT.

BY WASHINGTON GLADDEN.

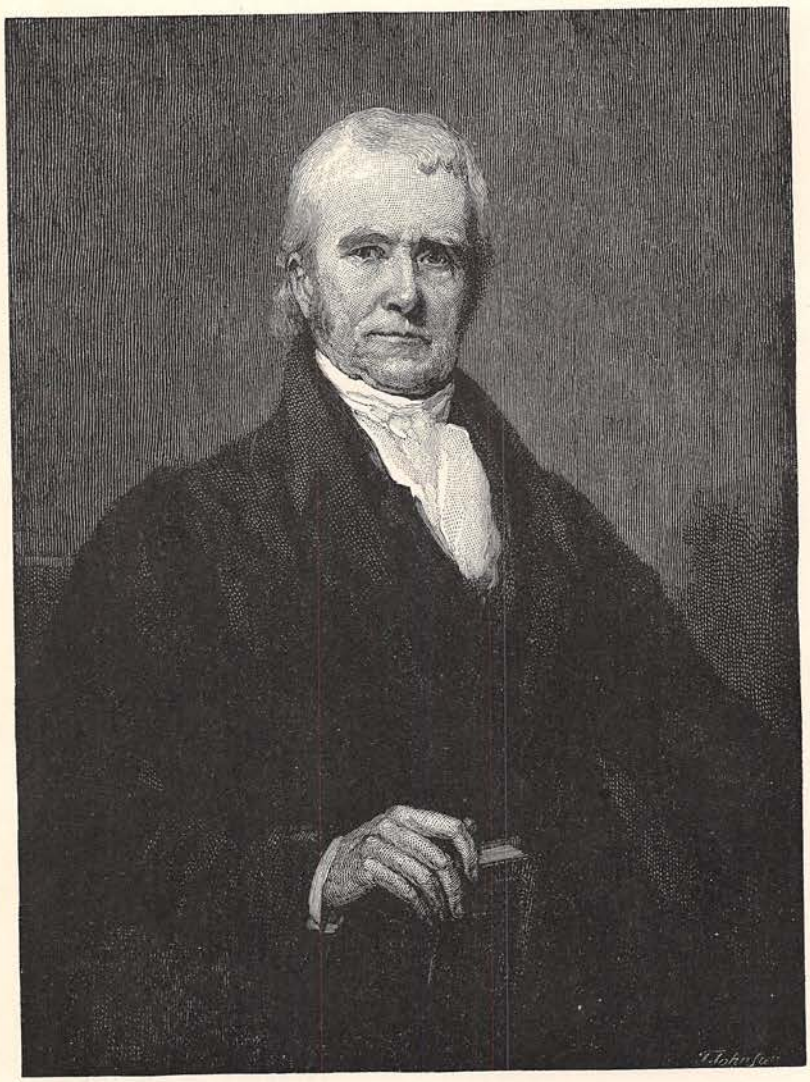
V.

BEFORE the end of the summer vacation, the brass-works at New Albion were in operation, and a large colony of mechanics had occupied the tenement-houses of the "Patch" above the mill. For the use of this new community the town had provided a school-house; a neat hall above the company's store gave room for religious services. The mill was a mile and a half from the nearest church, and something must be done to supply the religious wants of the new community. The question arose at the September meeting of the Christian League Club.

"What is to be done for the brass-workers?" asked Mr. Strong.

"I believe," answered Mr. Thorpe, blushing a little, "that our people have already taken steps toward organizing a church in that neighborhood."

"Indeed!" exclaimed Dr. Sampson. "The Baptists have also consulted me about services there, but I declined to express any



J. Marshall