

- The U.S. Supreme Court is the model of the Philippine Supreme Court and its decisions guide the latter.

THE SUPREME COURT RULES THAT —

Year by year new problems of economic organization and business relationships, new ideas of social welfare, new clashes between wealth and government reach the U.S. Supreme Court. The membership of a body with such great power over the development of American society is, therefore, most important; the appointment of a new justice is an outstanding event. On Jan. 11, 1932, Oliver Wendell Holmes, for twenty-nine years a justice of the United States Supreme Court and recognized as the foremost living judge in the English-speaking world, retired from the court. Two months later his place was taken by Benjamin N. Cardozo, chief judge of New York State and long considered the ablest American judge outside the Supreme Court.

Decisions which divide the court are naturally the most interesting, but they form

only a small part of its work. During the 1931-32 session, in the cases which were of sufficient importance to receive full judicial opinions, the court divided in 26, but was unanimous in 129.

Of the unanimous decisions two settled long-standing doubts concerning the relations between the President and Congress. *United States v. George Otis Smith* construes the Senate rule on reconsideration of its confirmation of a Presidential appointment and holds the Senate cannot withdraw its confirmation after the President has been notified thereof and has issued a commission to the appointee. The Senate cannot change its mind even though the appointee's initial policies arouse regret that he was confirmed. It is interesting that the opinion was written by Justice Brandeis, who hardly shares Mr. Smith's views on water-power problems. *Edwards v. Uni-*

ted States held that the President can approve an act of Congress after Congress adjourns, thereby relieving him from the annoying necessity of remaining at the Capitol to sign last-minute legislation before the close of a session. The bill becomes law if he signs it within ten days; if he does not there is a pocket veto.

Another controversy related to the structure of government. The re-apportionment of the national House of Representatives after the 1930 census changed the number of Representatives from many States and required new Congressional districts. By the Constitution, "the Legislature" of each State is to redistrict it. In Minnesota, Missouri and New York the two houses of legislators assumed that they were "the Legislature" and dispensed with the Governor's approval of redistricting. The Supreme Court took the opposite view. Chief Justice Hughes says the meaning of "the Legislature" in the Constitution varies according to the particular action contemplated. Mere consent to Congressional acts like the ratifi-

cation of a constitutional amendment needs only the two houses, but redistricting resembles lawmaking and is, therefore, subject to the Governor's veto. This invalidation of the New York redistricting bill leaves the old districts unchanged, with two added Representatives to be elected at large. But in Minnesota and Missouri, where the representation is decreased, all the Congressmen had to be elected at large on Nov. 8.

Blackmer, head of an oil company involved in the Teapot Dome scandals, left for France to avoid testifying. Consequently, Senator Walsh of Montana obtained a statute making an American citizen residing abroad guilty of contempt if he disregarded a court order to become a witness, expenses paid. His American property can be seized to pay the fine. Blackmer's attack on the constitutionality of this law has failed. Chief Justice Hughes holds the duty to testify in his country's courts remains one of the obligations of a citizen wherever he lives.

The exemption from State income taxes on copyright

royalties, which authors have enjoyed for several years, was abruptly ended by Fox Film Corporation v. Doyal. Chief Justice Hughes declared that neither copyrights nor patents were instrumentalities of the Federal Government untaxable by the States. By overruling a 1928 5-to-4 decision exempting patent royalties from State taxes, the entire court has now adopted the view expressed by Justice Holmes's dissenting opinion in the 1928 case. Dissenting opinions thus sometimes forecast the law of the future.

Regulation of billboard advertising is considerably strengthened by Packer Corporation v. Utah. This held valid a Utah statute forbidding tobacco advertising on billboards, placards and in street cars. Justice Brandeis quoted approvingly the distinction drawn by Judge Folland of Utah between billboards and advertisements in newspapers and magazines, which the statute permitted:

Billboards, street-car signs and placards, and such, are in a class themselves.*** Advertisements of this sort are constantly before the eyes of observers on the streets

and in the street cars, to be seen without the exercise of choice or volition on their part. Other forms of advertising are ordinary seen as a matter of choice on the part of the observer.*** In the case of newspapers and magazines, there must be some seeking by the one who is to see and read the advertisement. The radio can be turned off, but not so the billboard or street-car placard.

The most discussed case of last session, New State Ice Company v. Liebmann, held invalid an Oklahoma statute declaring the manufacture, sale and distribution of ice to be a public business which should be carried on without a license, and provided that a license could be refused to a new ice dealer in a community where existing business afforded adequate services. Justice Sutherland for the majority said that the ice business was not a public utility but was essentially private, and could not be singled out from other enterprises for this drastic regulation which was designed to protect consumers by preventing impurity or extortion. This statute does not prevent

monopoly, but tends to foster it, and no question of conservation of natural resources was involved. The States could not push experimental legislation to the length of depriving citizens of the privilege of engaging in ordinary trades. The Chief Justice, Justices Van Devanter, McReynolds, Butler and Roberts concurred. Justices Brandeis and Stone dissented. Justice Cardozo did not participate.

The dissenting opinion of Justice Brandeis dealt much less with legal precedents than with conditions in the ice business. He showed that duplication of plants and delivery service is wasteful and ultimately burdensome to consumers. The business

needs protection from destructive competition. In concluding he said: "The people of the United States are now confronted with an emergency more serious than war. Misery is widespread, in a time, not of scarcity, but of overabundance." Many persons think that a main cause of this disaster is unbridled competition and insist there must be some form of economic control. The only way to prove if this view be sound is to permit experiments to be tried. In the exercise of its power to prevent experiments, the court must be on its guard lest prejudices be erected into legal principles. — *By Zechariah Chafee Jr., abstracted from Current History, '33.*