The American Supreme Court as an International Tribunal

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PREFACE

WHATEVER form the League of Nations may ultimately take it must contain some provisions for the settlement by judicial means of justiciable disputes between members of the League. For about a century and a quarter the Supreme Court of the United States has been entrusted under the Federal Constitution with the decision of such controversies between the States of the American Union. Since it has worked under peculiar conditions and within a very restricted area the student will see that inferences drawn from its history can only be applied with considerable qualification to any Court of the Nations that may hereafter be set up. Nevertheless this is the only permanent court, as distinguished from occasional arbitration commissions, which has hitherto attempted in any degree to discharge the functions of a true international tribunal, and it is therefore clearly desirable that the nature of its work should be as widely as possible studied at the present time.

This essay aims at giving in a small compass a reasoned summary of all the inter-State cases hitherto decided in the Supreme Court. As I am not writing primarily for lawyers or other technical students I have so far as possible avoided all technicalities. Questions of procedure, for example, are almost entirely ignored, and I have also passed lightly over many matters which, although important in themselves, are of interest mainly to students of American constitutional law. The Supreme Court has been keenly conscious of its functions as an international tribunal, and it is this aspect of its work which I wish to emphasize. I have no desire to

write propaganda either for or against the League of Nations, and it is possible that different minds may draw different conclusions from a study of the history of the Supreme Court. To my mind the experiment appears within its own limits as a great success, but I have no wish to slur over the difficulties which the Court has encountered or to minimize the differences between the conditions of a North American Union and those of a League embracing most of the civilized nations of the world.

In a work of this kind it would be merely pedantic to cite numerous authorities. For the convenience of lawyers I have given references to the decisions in the original Supreme Court reports, which are to be found in most of the principal law libraries. Dr. James Brown Scott has collected all the inter-State cases into two volumes published in New York by the Oxford University Press under the title of *Judicial Settlement of Controversies between States of the American Union,* and in a third volume has made a valuable analysis of these cases in chronological order. This exhaustive work has been the principal source-book for my essay, as it must be for any other student who wishes to study the history of the Supreme Court as an international tribunal.

To Dr. Scott personally I am indebted for valuable advice and encouragement in the preparation of this little book, the substance of which was delivered in the form of lectures at Oxford in the summer term of 1919. A word of the warmest gratitude is also due to many generous hosts in Washington, New York, and the Southern States, whose kindness to a wandering British officer in 1918 did more than any books could have done to quicken my interest in American institutions.

H. A. S.

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