THE RELATION OF THE COURTS TO THE PEOPLE

In a brief article giving my personal views on the much discussed question of the proper relation between the Courts and the people, it seems important to keep in mind the fundamental principles upon which our Government was founded, viz: the three co-ordinate branches—the legislative, the judicial, and the executive—each being invested with separate powers and each having imposed upon it separate duties by the Constitution which is declared to be and must be accepted as the supreme law of the land. In every Government there must be the law-giver, the judge and the executive; and until recently the wisdom of our system in separating them and providing that the powers vested in one should not be exercised by either of the others and that one should not interfere with or control the action of either of the others, except in so far as that authority is granted by the instrument itself, has not been seriously questioned. In all times and under all forms of Government it has been found necessary to have some tribunal having authority to hear, try and determine the ever increasing controversies which ever have arisen and always must arise between men. Under our form of Government that power has been vested in the Courts. By the Federal Constitution certain powers are granted to, and certain restrictions placed upon the legislative department; but the determination of the question as to whether or not a particular act is within the grant or comes within those things which are prohibited must of necessity be committed to some other department if, as contemplated by the Constitution, there shall be any check upon the legislative branch. The people of the respective States have likewise by the adoption of their Constitutions, placed certain limits upon the powers of their representatives, such, for instance, that no law shall be passed impairing the obligation of contracts, or local or special laws in particular cases; and by the same instrument have invested the Courts with the judicial power of the State. Experience has demonstrated the necessity of these checks and balances and the wisdom of their adoption as the best means yet devised to promote the peace and happiness of the citizens. The Constitution being the supreme law of the land is the standard by which the powers of the several departments of the Government

must be measured. It is above and over all, and the perpetuity of our present form of Government must in a large measure depend upon its observance. It is the expressed will of the people by which they are to be governed until changed in the manner designated in the instrument itself; otherwise it is not the law and is without force and its guaranties of no effect. The constitutionality of acts passed by the legislative department is frequently called in question, and especially in the Courts of the States. It is not to be wondered at that such should be the case when we consider the fact that the legislators very properly come from all walks and occupations in life, and a large majority of them are unfamiliar with the vast body of the law or even with the statutes of their own State (and that is no reflection upon their ability, because their duties and business have been along other lines), but their judgment should not be final when a citizen contends that his constitutional rights have been invaded. The Courts in such cases, as in all other legal controversies, stand between the contending parties as impartial arbiters, guarding the weak against the strong and endeavoring to the best of their ability to do justice and to maintain the rights of all parties. To argue that Courts do not err—that is, that their judgment differs from that of those of equal ability and opportunity of knowing and judging—would be absurd; but "all men err" and as has been often and wisely said, "all litigation should have an end." Criticism of the acts of others and especially of official acts or of the management of governmental departments is always easy; but to present a more expeditious and just method is not so easy. Those who feel dissatisfied with present forms and methods would do well to formulate and present a more complete and practical plan for the settlement of the controversies which are now under our system submitted to the Courts for determination than has yet been done. The recall of decisions if adopted will not, in my opinion, prove satisfactory or tend to promote justice. As well might the recall of verdicts of juries be advocated and provision be made that judgment on the verdict be stayed until ratified or rejected by a vote of the people. The advocates of radical changes in our judicial system are also usually the advocates of changes in the method of enacting our laws by means of the initiative and referendum. To illustrate the probable effect of such a measure, there was submitted to the people of this State (Wyoming) at the last election a proposed amendment to the

Constitution providing for those measures; but it failed, not because the majority voted against it, but because it did not receive the constitutional number of votes, viz: a majority of the electors of the State. It met with such indifference at the hands of the people at large that very many neglected to vote on the question; and I venture the assertion without fear of successful contradiction that not to exceed one in five of those voting either for or against it had even read it, much less had given it serious consideration. If I am not mistaken in the last statement, how much better consideration could be reasonably expected on a proposition to recall a judicial decision. Judgment rendered in any case without full knowledge of the facts and a consideration of the law applicable thereto is, to say the least, hasty and ill advised, and will tend to promote uncertainty, confusion and injustice. It is claimed by some that the Courts are not progressive and that their methods are antiquated. But it must be remembered that each State has its code of procedure, both civil and criminal, by which the Courts are bound. With the making of those codes or with their wisdom, or efficiency the Courts have nothing to do. In later years considerable progress has been made in that respect and there is still room for improvement. Until that happy time shall come when disputes and contentions between men shall cease and crime shall no longer exist, the authority of some tribunal to judge of the right of the matters between the contending parties must continue to be an important part of government, and our present system with an impartial jury to determine the facts and a disinterested Court to declare and apply the law is the most just and equitable that has yet been devised.

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Chief Justice of Wyoming.