John Marshall Harlan—a Just Judge

The Philadelphia North American, a republican newspaper, prints the following remarkable and timely editorial:

Half a century ago, "in the wild year of the change of things," a young man's soul was tested by fire. The man of less than thirty had no such easy problem as confronted Americans of his age in the northern states. John Marshall Harlan was a Kentuckian—a scion of a pioneer family in the border state that in politics as in war always had been "the dark and bloody ground" that the Indians christened long before Boone blazed "the wilderness trail."

A hundred influences coaxed Harlan toward espousal of the cause of secession, the very motives that appeal most strongly to a young man. Union sentiment was confined almost exclusively to the "poor whites," the illiterate mountaineers. With rare exception men of the Harlan caste were ardent advocates of the southern cause.

To go with the north meant more than money loss and the probable renunciation of all hope for a professional career. It meant social ostracism, forfeiture of close friendships and the bearing of the stigma —"renegade."

But John Marshall Harlan never hesitated. One influence dominated his action then as it has ruled every later thought and deed in his long life. He had no hatred for the slaveholders. Love for his natal state was deep-rooted in his nature. But he was a union man. And his love for his country, for the past and future of the nation of the great experiment of freedom and human rights, was deeper and stronger than any personal or political tie.

As the years passed and this scholar and jurist ripened in broad knowlegde of history and all world movements, that early devotion to the principles of individual liberty and right of equal opportunity upon which this republic is founded, and only by perpetuation of which it can survive, became more and more the intellectual passion of Harlan—justice and patriot.

This was the man who would have been Judas to his sacred civic creed and inconsistent coward for the first time in his life had he not last Monday afternoon become the chief actor in the most dramatic and unprecedented scene ever staged in the supreme court of the United States.

For nearly a quarter of a century Justice Harlan has been the chief stalwart opponent in the nation's tribunal of last resort of monopolistic wealth which unremittingly has fought for governmental recognition of what forces of special privilege term euphemistically "reasonable" monopoly.

Steadfastly he has stood for the truth that the fundamental function of this government has ever been and must be the safeguarding of the citizens' industrial and political liberty and all human rights endangered by any form of privilege or tyranny.

In the fullness of wisdom he knows that any government which permits any individual or group to monopolize in any degree, the necessities of all the people establishes a principle and practice that, if unchecked, inevitably must lead that nation into beggary and bondage and later into bloody revolution.

Yet it was the fate of this great lover of the republic to sit on Monday and hear the court, whose honor and dignity he reverences, deliver a decision that, behind the mask of declaration of the criminality of a single corporation, nullified the American people's only statutory defense against monopolies; usurped the functions of congress and the executive; read arbitrarily into the plain, clear language of a law sustained repeatedly and explicitly by this very court darkening, cheating, elusive words foreign to the intent of the framers of the law and throughout twenty years rejected as amendments by the only constitutional lawmaking body of the nation.

Small wonder that when the voice of the chief justice ceased its eulogy of judicial legislation and "the light of reason"—the bonfire of the Sherman law around which every criminal of cunning in the land dances in jubilation—every muscle in Harlan's massive frame grew tense, his kindly face hardened into sternness and his voice trembled with the depth of a just man's righteous wrath as, without written preparation or a single note in hand, he uttered the most stinging, irrefutable censure of an action by the supreme court ever heard in that chamber:

"If the act ought to read as contended for by defendants, congress is the body to amend it, and not this court, by a process of judicial legislation wholly unjustifiable

"The public policy of the government is to be found in its statutes, and when they have not directly spoken, then in the decisions of the courts and the constant practice of the government officials; but when the lawmaking power speaks upon a particular subject over which it has constitutional power to legislate, the public policy in such case is what the statute enacts. * * *

"Practically the decision today—I do not mean the judgment, but parts of the opinion—is to the effect, practically, that the courts may, by mere judicial construction, amend the constitution of the United States or an act of congress. That, it strikes me, is mischievous; and that is the part of the opinion that I especially object to. * * *

"In the now not a very short life that I have passed in this capital and the public service of the country, the most alarming tendency of this day in my judgment, so far as the safety and integrity of our institutions are concerned, is the tendency to judicial legislation, so that, when men having vast interests are concerned, and they cannot get the law-making power of the country which controls it to pass the legislation they desire, the next thing they do is to raise the question in some case, to get the court to so construe the constitution or the statutes as to mean what they want it to mean. That has not been our practice. * * *

"The court, in the opinion in this case, says that this act of congress means and embraces only unreasonable restraint of trade in flat contradiction to what this court has said fifteen years ago that congress did not intend. * * *

"Within the last hour an opinion has been handed down for this court today, in which, in a case arising under the safety appliance act, it was said that such and such was the safety appliance act, such and such was its meaning; that this court has so declared it in a case decided four or five years ago. Now, we said, in reply to that:

" 'If the court erred in the former case, it is open for the parties to apply for such an amendment of the