this same James Wilson, with that loyalty to the public interest, that devotion to duty which characterized him and many others of his type, lost his life while traveling in the southern circuit where he was assisting Judge Iredell in the work of Judge Iredell's circuit.

We should not forget that when this James Wilson stated that he knew the state of Georgia to be republican in form the constitution of Georgia contained an "initiative" provision in a form as pure as the initiative may be found in any of the states today. Indeed, Mr. President, the constitution of that state provided as follows:

"Art. 63. No alteration shall be made in this constitution without petition from a majority of the counties, and the petitions from each county to be signed by a majority of the voters in each county within the state, at which time the assembly shall order a convention to be assembled for that purpose, specifying the alterations to be made according to the petitions preferred to the assembly by the majority of counties as aforesaid."

Mr. President, there is only one forum which has the authority to determine whether or not there exists in those states which have the initiative and referendum a republican form of government. That forum is not the supreme court of the United States nor any other court, and this has been settled by a line of decisions so convincing that it would seem idle to discuss the question. In every case, so far as I am informed, the federal authorities, including the supreme court of the United States, have treated this question as a political one.

In the case of Luther v. Borden (7 How., 1), where the question was raised on the so-called charter government, or so-called Dorr rebellion, it was contended that there did not exist in Rhode Island a republican form of government, and the court said:

"The fourth section of the fourth article of the constitution of the United States shall guarantee to every state in the union a republican form of government, and shall protect each of them against invasion, and, on the application of the legislature or of the executive (when the legislature can not be convened), against domestic violence.

"Under this article of the constitution it rests with congress to decide what government is the established one in a state. For as the United States guarantee to each state a republican government, congress must necessarily decide what government is established in the state before it can determine whether it is republican or not. And when the senators and representatives of a state are admitted into the councils of the union the authority of the government under which they are appointed as well as its republican character is recognized by the proper constitutional authority. And its decision is binding on every other department of the government and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue, and as no senators or representatives were elected under the authority of the government of which Mr. Dorr was the head, congress was not called upon to decide the controversy. Yet the right to decide is placed there and not in the courts. (See p. 42.)"

In the case of Texas v. White (7 Wall. U. S., 700-730) and the case of Taylor v. Beckham (178 U. S., 548) the question in both cases as to whether any government set up in a state was republican was held to be a political rather than a judicial question.

In the case of Minor v. Happersett (21 Wall., 162), at pages 175 and 176, the court, considering the question of a republican form of government, said:

"The guaranty is of a republican form of government. No particular government is designated as republican, neither is the exact form to be guarantied, in any manner especially designated. Here, as in the other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended.

"The guaranty necessarily implies a duty on the part of the states themselves to provide such a government. All the states had government when the constitution was adopted. In all the people participated to some extent, through their representatives elected in the manner specially provided. These governments the constitution did not change. They were accepted precisely as they were, and it is therefore to be presumed that they were such as it was the duty of the states to provide. Thus we have unmistakable evidence of what was republican in form within the meaning of that term as employed in the constitution."

A part of the "unmistakable" evidence which the court had before it when that decision was rendered must have been judicial notice of the initiative provision in the constitution of the state of Georgia adopted in 1777.

The latest expression of the supreme court of the United States upon this question is the famous case commonly known as the Oregon case, wherein the plaintiff in error contended that the "initiative" was in contravention of a republican form of government. (Pacific States Telephone & Telegraph Co. v. Oregon, reported in 223 U. S. Rept., p. 118 et seq.) Mr. Chief Justice White, delivering the opinion of the court, said:

"We premise by saying that while the controversy which this record presents is of much importance it is not novel. It is important, since it calls upon us to decide whether it is the duty of courts or the province of congress to determine when a state has ceased to be republican in form and to enforce the guaranty of the constitution on that subject. It is not novel, as that question has long since been determined by this court conformably to the practice of the government from the beginning to be political in character and therefore not cognizable by the judicial power, but solely committed by the constitution to the judgment of congress.

"As the issues presented, in their very essence, are and have long since by this court been definitely determined to be political and governmental and embraced within the scope of the powers conferred upon congress and not therefore within the reach of judicial power, it follows that the case presented is not within our jurisdiction, and the writ of error must therefore be, and it is, dismissed for want of jurisdiction."

Of course all candid and well-informed persons will admit that the federal constitutional convention of 1787 provided for national representative government, but it does not follow that the delegates in their debates committed themselves to the idea that there is only one kind of republican form of government. Senators and representatives from various states which have adopted the system of direct legislation designated as the "'initiative and referendum" have been admitted into the congress of the United States and occupy seats in the senate and house of representatives. Thus the only forum known to our constitution, laws, and institutions possessing power and jurisdiction to pass upon the question as to whether or not the initiative and referendum constitute a republican form of government has determined that question in the affirmative, for surely congress would not admit representatives or senators into the councils of the nation from political subdivisions not republican in form.

Mr. President, I ask permission at this point to insert in the Record as part of my remarks an excerpt from the able brief of Hon. George Fred Williams, counsel for the states of California, Arkansas, Colorado, South Dakota, and Nebraska, and of counsel for the state of Oregon, which brief Mr. Williams filed in the supreme court of the United States in the case of the Pacific States Telephone & Telegraph Co., against Oregon, reported in Two hundred and twenty-third United States Reports, pages 118 et seq.

The President pro tempore. Without objection, leave is granted.

The excerpt is as follows:

"THE DEMAND FOR THE SYSTEM"

"IMPERFECT POLITICAL CONDITIONS"

"It is apparent that our country is in a condition of reaction against the control of privilege as powerful as that of France in 1792, or England in 1838, or Switzerland in 1848.

"In France the republic was created, in England parliamentary government became a reality, and in Switzerland the Union of States was perfected; here we are perfecting our democracy. The present movement constitutes the most momentous political revolution in our history, conducted without bloodshed and even without acrimonious political contests. It is a movement economic in its nature and, accordingly, steady and irresistible. Its objects are political and it moves on like a tidal wave, which legislatures and courts can not halt.

"The causes of this movement are apparent. Political organizations have not been responsive to the popular will. The effort to obtain good government by the selection of "good men" has failed. Legislators have become the people's masters in the exercise of unlimited power. Party platforms are not regarded as pledges. The people are unable to trust their servants. A power has developed which dominates politicians, parties, and public servants. Evidences of repeating, bribery, corruption, and perversion of delegates, representatives, and officials in cities and states have persisted, and even the judiciary has at times been found subject to influences hostile to the people's interests. The average citizen has abandoned efforts to regulate party machinery and to participate in party caucuses.

"The new political movement aims to clear the avenues between the people and their institutions.

"The perversion of party caucuses has been met by the plan of direct nomination of candidates at the polls. Even the direct nomination of delegates to presidential conventions is being accepted; repeated scandals and notorious corruption of legislatures in the election of United States senators have caused two-thirds of the states to devise methods of circumventing the constitutional method of election by the legislatures, and it is probable that in the immediate future the national constitution will be amended to secure direct election of senators by the people.

"The numerous laws of states for the prevention of corrupt practices and the limitation of campaign expenditures have been supplemented by national legislation, which is probably but the beginning of drastic enactments to maintain the purity of elections.

FAILURES OF THE LEGISLATIVE SYSTEM

"The founders of the republic dreaded the power of the executive. Patrick Henry inveighed against it. Jefferson insisted with impassioned force that the republic would fall through the usurpation of power by the judicial department.

"Prophecy takes a hard test by the light of experience. All fear of the executive has ceased after more than a century of trial. For the first time the judiciary has become the subject of apprehension in the last few years.

"But it is the legislative department that has proved the weakest of the departments of state. The people are strengthening this branch of democratic government by applying more democracy.

"The sovereignty is being placed in practice where it exists in theory, with the people; the instrument is direct legislation.

"In adopting this system there have been no interferences with the regular operations of the customary legislative machinery. Representative government remains, but its products are no longer beyond popular reach. Vicious and corrupted acts can no longer be fastened upon the people against the will of the majority.

"Experience has proven that it is not safe to trust delegates with unlimited power to make laws, and the question presented in this case is whether there remains in the people the power to apply controlling influences to them.

"The history of this year's legislation furnishes a long list of broken pledges.

"The governors of Colorado, New York, and New Hampshire have publicly denounced the legislatures of their states for failure to redeem the direct promises of party platforms.

"Governor Shafroth, of Colorado, declared that in the longest legislative session in 30 years not a pledge has been redeemed.

"In Maine a direct primary act was refused by the legislature, and at the polls, under the 'initiative' amendment of the constitution, the measure was adopted by a vote of 55,840 yeas to 17,751 nays.

"In 1902, under a law permitting an expression of public opinion at the polls, the people of Illinois favored by a vote of 428,000 to 87,000 a constitutional amendment providing the initiative and referendum. The legislatures for eight years took no action. In 1910 the people again made the demand by vote of 447,908 yeas to 128,398 nays. All the political platforms indorsed it. The legislature this year has refused to pass the measure.

"Even in England faith in parliamentary government has been shaken. Mr. Lecky says:

"'A growing distrust and contempt for representative bodies has been one of the most characteristic features of the closing years of the nineteenth century.' (Democracy v. Liberty, I, pp. 142-143.)

"Mr. Dicey remarks: 'Faith in parliaments has undergone an eclipse.' (13 Harvard Law Rev., 73-74.)

"Governor Woodrow Wilson has described the political situation as follows:

"'Many of the old formulas of our business and of our politics have been outgrown. We still revere 'representative government,' but we are forced to admit that the governments we actually have have been deprived of their representative character. They do not represent us.

(Continued on Page 10.)