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## Edward Douglass White—Statesman and Jurist.

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EDWARD DOUGLAS WHITE  
STATESMAN AND JURIST

A DISSERTATION  
SUBMITTED IN  
PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE  
DEGREE OF DOCTOR OF PHILOSOPHY  
AT  
LOUISIANA STATE UNIVERSITY  
AND  
AGRICULTURAL AND MECHANICAL COLLEGE  
BATON ROUGE

BY  
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To my sister

Miss Louise Ramke

Whose steadfast devotion and intelligent assistance  
made possible the completion of this study.

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## ABSTRACT

The ancestry of Chief Justice Edward Douglas White was largely of Irish extraction, his great-grandfather having migrated to Pennsylvania during the second quarter of the eighteenth century. James White, the first native American member of the family, was born in Philadelphia in 1749, but removed to North Carolina in early manhood, there participating in political affairs as a member of the state legislature and as a delegate to the Confederation Congress. After the organization of the territory of Tennessee, he settled in that region and was elected to the territorial legislature. In 1794 he became the first territorial delegate to Congress, serving in that capacity until the admission of Tennessee as a state in 1796. He moved to the Spanish colony of Louisiana in 1798, attempted unsuccessfully to found a settlement near Pearl River, and resided for a while on Pascagoula Bay. He moved to St. Martinville in the territory of Orleans about 1806, where he served as parish judge until his death in 1809.

Edward Douglas White, James White's elder son, was born in Nashville in 1795 and accompanied his father in his later migrations. Young White attended the University of Tennessee from 1811 to 1815. He practiced law in Donaldsonville and Thibodeaux until 1825, when he was appointed presiding judge of the New Orleans city court. Relinquishing this position in 1828, he was elected to the lower branch

of Congress on the National-Republican ticket. He served in that body until June, 1834, when he resigned because of his candidacy for the governorship of Louisiana. The following month he defeated J. B. Dawson in the race for the gubernatorial office. As governor, he presided over the destinies of the state with dignity and statesmanship from 1835 to 1839. Having been re-elected to Congress, White resumed his seat in that body in December, 1839, where he served until 1843. After being defeated for re-election in this year, he retired to his sugar plantation in Lafourche Parish, where he resided until his death in 1847.

Governor White's youngest child, Edward Douglas, Junior, was born on his father's plantation, November 3, 1845. In 1851 Mrs. White, who had in the meantime married Ringgold Brousseau, moved to New Orleans, and young White attended the parochial schools of that city. He was later sent to St. Mary's College at Emmettsburg, Maryland, and he was in attendance at Georgetown College in the District of Columbia when the Civil War began. He returned to Louisiana upon the opening of hostilities, joined the Confederate Army, participated in the campaigns of southern Louisiana, was captured at Port Hudson, paroled, and later allowed to return home. After the close of the war he studied law in the office of Edward Bermudez in New Orleans and was admitted to the bar in 1868.

In 1874 White entered politics and was elected to the Louisiana Senate. He was recognized as the leader of the Democratic minority in this body from 1875 to 1877. After the Conservatives secured control of the state government in 1877 with F. T. Nicholls as governor, White assumed the leadership of the administration forces in the Senate and aided materially in the work of retrenchment and reform. In 1879 he was appointed to the Louisiana Supreme Court where his unusual learning and ability as a judge astonished the older members of the bar. His judicial tenure was terminated in 1880 by the reorganization of the court under the requirements of the new state constitution. The next few years were devoted exclusively to the practice of law.

In 1887 White again entered politics, vigorously and successfully supporting the gubernatorial candidacy of F. T. Nicholls. The following year, after a prolonged struggle within the Democratic caucus of the legislature, he was elected to the United States Senate for the term beginning in 1891. Before assuming his Senatorial duties, he joined the fight against the proposed recharter of the Louisiana Lottery Company and was credited with having contributed most to the defeat of the recharter amendment. While in the Senate, he distinguished himself in the debates on the Anti-Options and Quarantine bills. He also led in the fight .



for the repeal of the Sherman Silver Purchase act, and he was successful in securing a restoration of duties on sugar imports in the Wilson-Gorman Tariff act. After two of President Cleveland's nominations to fill a vacancy on the Supreme Court had been blocked by the Senate, White's name was submitted to that body and his appointment was immediately confirmed. He assumed his seat on the Federal Supreme Bench on March 12, 1894. The following November he was married to Mrs. Leita Montgomery Kent.

In 1898 White was offered a place on the commission to negotiate a treaty terminating the Spanish-American War, but he declined the appointment. The death of Chief Justice Fuller in the summer of 1910 gave rise to much speculation as to whom President Taft would select to fill the vacancy, Justice Hughes being regarded as the one most likely to be appointed. There was considerable surprise, therefore, when the President nominated White for the position on December 12, 1910. His nomination was confirmed by the Senate without delay and the appointment was approved by the great bulk of the American people. As Chief Justice, White effected various procedural reforms--particularly through a revision of the rules of equity procedure--which expedited considerably the work of the court. The greatly increased efficiency of the tribunal was one of the notable achievements of his career. Indeed, he ranked higher as presiding officer than he did as a justice of the court. His

influence secured greater unanimity of views in the rendition of opinions during the early years of his Chief Justiceship, thus inspiring greater popular confidence in the Supreme Court and respect for its rulings; while sharp differences which arose among the justices during the closing years of his life might have blazed forth into open hostility under a chief of less character and leadership.

White was not a states' rights man but rather a staunch nationalist. His strong nationalism is particularly apparent in the views which he expressed in the Pollock, Knowlton, McGray and other leading cases, as well as in his theory of incorporation as applied to acquired territory. White did not become a specialist in any particular type of cases, but his opinions rendered in controversies arising under the commerce clause may be said to constitute the nearest approach to a specialized field. Although he was the greatest civil law jurist who ever sat upon the Federal Supreme Bench, White seldom cited civil law precedents. While he lacked the breadth of social view characteristic of such outstanding liberals as Justice Holmes, White was only mildly conservative, usually adopting a middle-of-the-road course.

White died on May 19, 1921, following an operation which was not thought to be serious. Although there had been persistent rumors of his contemplated retirement, the end came as he probably wished--that is, while he was still actively engaged in the performance of his judicial labors.

## PREFACE

That phase of the present study which is treated in the first five chapters was originally developed as a master's thesis. The entire field has been reworked, however, and the earlier study has been considerably revised and expanded, so that the present treatment is by no means mere repetition.

The writer has been somewhat handicapped in the preparation of this work by the lack of materials which would render possible a better portrayal of the more personal side of White's character. The private papers of the Chief Justice are not extant, the greater portion of them having been destroyed by White himself, while the remainder was destroyed by his widow in compliance with the wishes of her husband. Other private papers which may prove to be of considerable value are not yet accessible. There is a great wealth of material in the form of special articles published in legal magazines, which deal with particular court decisions; but most of these articles are of very limited value since they present a purely legalistic viewpoint.

There is some difference of opinion as to the proper spelling of "Douglass" in the Chief Justice's name. In so far as the writer has been able to discover, White never signed his name in full, but always indicated "Douglas" by the initial letter. Those who were in the best position to know have insisted that "Douglas" should be spelled with a single "s." Their contention is undoubtedly correct, since

the elder White, for whom the younger son was named, employed this mode of spelling in his signature.

A tradition persists in Louisiana to the effect that White was of French descent and that the family name was originally LeBlanc. That this tradition is entirely without foundation is demonstrated in the first two chapters of the present study. It is probable that White's Roman Catholic faith and his thorough familiarity with the French language caused the story to appear plausible and account in part for its persistence.

The writer wishes to express his sincere thanks to Professor W. H. Stephenson for his constructive criticism, guidance, and encouragement while directing the preparation of this work; and he also wishes to thank Professor A. L. Powell and Robert J. Harris for their criticism and suggestions in regard to the treatment of White's work as a member of the Supreme Court.

CHAPTER I  
FAMILY BEGINNINGS IN AMERICA

DR. JAMES WHITE

The White family, whose direct line became extinct upon the death of the late Chief Justice, Edward Douglas White, was originally of Irish stock, and its history is demonstrative of the Hibernian's innate aptitude for politics and capacity for public affairs. There were three native American generations of this family, each of which produced one member who participated in public affairs, both local and national. The earliest ancestor of whom there is any evidence was the great-grandfather of the Chief Justice, concerning whom very little seems to be known, not even his full name being disclosed by the records. He was an only child, born in Ireland, who emigrated to Pennsylvania many years prior to the outbreak of the Revolution. He resided in Philadelphia, was one of the founders of the first Catholic Church of that city, died there, and was buried in St. Mary's Catholic Cemetery.<sup>1</sup> This early progenitor was survived by an only son, James White, who was a native Pennsylvanian, having been born in Philadelphia, June 16, 1749.<sup>2</sup> Young James attended the Jesuit college, originally located at St. Omer in France, a school established primarily for English

1 Hugh J. Fegan, "Edward Douglass White, Jurist and Statesman," in Georgetown Law Journal, XIV (1925), 3.

2 A. V. Goodpasture, "Dr. James White, Pioneer, Politician, Lawyer," in Tennessee Historical Magazine, I (1915), 283.

Catholics which seems to have been patronized by the scions of many of the prominent Catholic families of the British colonies, among whom were the Taney and Carrolls. About 1760, however, the Jesuits came under the suspicion of the French government; and, indications being that the order was on the point of expulsion from France, the college was moved to Bruges, Belgium, in 1762, where it remained for a number of years.<sup>3</sup> It is probable, therefore, that young White attended the college during its sojourn in Belgium. After leaving the school White returned to America, where he studied medicine and law at the University of Pennsylvania,<sup>4</sup> and he seems to have been a practitioner of both these professions.<sup>5</sup>

Exactly when he removed to North Carolina is not certain, but he settled there early enough to be elected to the lower house of the legislature as one of the representatives from Currituck County in 1784.<sup>6</sup> He was re-elected to the legislature the following year.<sup>7</sup> The matters which came before the general assembly during this period were not such as would reveal the attitude of members on outstanding public questions of the day. It is significant, however, that in the May session of the legislature for 1784 White voted against the bill ceding North Carolina's western lands to the United States. He was also one of the members who signed a resolution

3 Carl Brent Swisher, Roger B. Taney (New York, 1935), 8.

4 Knoxville Sunday Journal, July 7, 1929; Goodpasture, "Dr. James White," in loc. cit., 283. and Stephen B. Weeks (eds), The Colonial and State Records of North Carolina, 30 vols. (Raleigh, etc., 1886-1917), XIX, 512, 551, 571; XX, 138. Cited hereafter as State Records of North Carolina.

6 Ibid., XIX, 489, 717.

7 Ibid., XVII, 264.

citing a list of reasons why the cession of the western lands should not be made until the public sentiment of the state on this question could be ascertained.<sup>8</sup> The fact that White voted affirmatively on a bill providing for the emission of one hundred thousand pounds of paper currency by the state of North Carolina<sup>9</sup> is probably indicative of his attitude as to what the public policy should be with reference to monetary matters. It should be remembered that at this time a number of states were resorting to the practice of issuing paper money in an attempt to relieve the financial stringency then prevalent, a practice greatly in favor with the frontier population which was preponderantly of the debtor class.

On December 12, 1785, White was elected by a majority vote of both houses of the legislature as a delegate to Congress for the ensuing year.<sup>10</sup> He was, however, rather slow in assuming his official duties as a delegate, a fact which elicited a letter of remonstrance from Governor Richard Caswell. The Governor remarked that the state of North Carolina was wholly unrepresented in Congress and stated further that it was the intention of the legislature that three of the state's six delegates should be in attendance during the first six months and the remaining three during the last six months of the year for which they were elected,

<sup>8</sup> Ibid., XIX, 804, 717.

<sup>9</sup> Ibid., XVII, 406.

<sup>10</sup> Ibid., XX, 50.

it being left to the delegates as to how they should divide their time. When such an arrangement had not been agreed upon, it was customary for those delegates whose names were first in nomination to "go forward" immediately. The Governor threatened action by the state council should this delinquency in public duty continue. He observed that at recent sessions of Congress only seven states had been represented, and since the presence of representatives from nine was required for the transaction of most matters, the body was practically impotent to perform its duties.<sup>11</sup> This observation is instructive in that it illustrates the lack of interest of many of the delegates in the activities of the ineffective Confederation Congress. White explained the delay in his arrival in New York, where Congress then held its sessions, by stating that it had been necessary for him to go to Philadelphia first in order that he might make provision for his subsistence while in New York.<sup>12</sup> It is apparent from this statement that White still retained some business or financial interests in Philadelphia. The new delegate further assured Governor Caswell that nothing could compel him to forsake his post of duty except the inability to procure subsistence, and he requested an order from the Governor for the remainder of his year's salary, payable in New York, a request with which the Governor was unable to comply.<sup>13</sup>

11 Ibid., XVIII, 659.

12 Ibid., 648-649.

13 Ibid., 469, 677.



White finally presented his credentials and took his seat in the Confederation Congress on May 2, 1786.<sup>14</sup> He was, however, in continuous attendance until his appointment as Superintendent of Indian Affairs for the Southern District, comprising the states of North Carolina, South Carolina, and Georgia.<sup>15</sup> There were very few matters of importance considered by Congress during this period of his attendance. Perhaps the most important subject upon which this body deliberated was the question of the ratification of a treaty of amity and commerce between the United States and Prussia; and in this instance White voted in the affirmative.<sup>16</sup>

On October 10, 1786, four days after his election to the Superintendency of Indian Affairs, White was ordered by resolutions of Congress to repair to his district immediately and to adopt measures for the pacification of the Indians, who, it seems, had evinced a hostile disposition toward the settlers along the frontier.<sup>17</sup> He had been nominated for this position by Arthur St. Clair. It was provided that an oath taken before a judge of any state supreme court would be sufficient for his assumption of office.<sup>18</sup> Indian affairs at this time constituted a problem of great delicacy, requiring of an agent, courage, tact, and diplomacy.<sup>19</sup> One

14 Ibid., 601; W. C. Ford and J. C. Fitzpatrick (eds.), Journals of the Continental Congress, 1774-1789, 34 vols. (Washington, 1904-1937), XXX, 228, 229.

15 State Records of North Carolina, XVIII, 756.

16 Journals of the Continental Congress, XXX, 285.

17 State Records of North Carolina, XVIII, 760.

18 Journals of the Continental Congress, XXXI, 747.

19 Goodpasture, "Dr. James White," in loc. cit., 284.

writer considers the selection of White for the office a peculiar choice, since his competitor for the position, Joseph Martin, was a man of wide experience in dealings with the savages, having been Indian agent for the state of Virginia, and having had the backing of Patrick Henry.<sup>20</sup> White was accorded a vote of thanks by the legislature of North Carolina at its November session in 1786; and on November 17 he was again elected as a delegate to Congress for the ensuing year, which he devoted largely to his duties as Superintendent of Indian Affairs.<sup>21</sup> On December 17 of this year he was again elected as a delegate to the Confederation Congress.<sup>22</sup>

In August, 1786, White had a conversation with the Spanish minister, Don Diego Cardoqui, in which he was reported to have told the representative of Spain that the Western people were intensely interested in the navigation of the Mississippi River and that they greatly resented John Jay's proposal to abandon all rights to the use of this stream for a period of twenty-five years. He suggested that the frontiersmen would probably secede from the Union and put themselves under the protection of Spain in return for the free use of the river.<sup>23</sup> It is claimed that there is no

<sup>20</sup> T. P. Abernethy, From Frontier to Plantation in Tennessee: A Study in Frontier Democracy (Chapel Hill, 1932), 93-94.

<sup>21</sup> State Records of North Carolina, XVIII, 105, 337.

<sup>22</sup> Ibid., XI, 244.

<sup>23</sup> A. P. Whitaker, The Spanish-American Frontier: 1743-1795 (Boston and New York), 80.

evidence that White, at that time, had ever visited the section for which he was speaking, and that this interview was inspired by William Blount.<sup>24</sup> Gardoqui maintained a keen interest in the Western situation, and late in 1787 he renewed his conversations with White on the subject.<sup>25</sup>

White's duties as Superintendent of Indian Affairs had brought him into close contact and sympathetic relations with the people of the Southwest, among whom he had decided to make his home. The two most pressing problems confronting the frontier settlements at this time were the Indian depredations and the navigation of the Mississippi River. He clearly saw the advantages to be obtained in the solution of these problems through an alliance with Spain. His interviews with Gardoqui had undoubtedly convinced him of the improbability of securing relief through negotiations between the United States and the Spanish government; while, on the other hand, he was aware of the fact that Spain could, by a mere gesture, stay the depredations and remove the impediments to the navigation of the Mississippi. All that was required of the Westerners was that they should put themselves under the protection of Spain. Accordingly about May 1, 1788, he resigned his office as Superintendent of Indian Affairs and entered the service of

<sup>24</sup> Abernethy, From Frontier to Plantation in Tennessee, 93.

<sup>25</sup> Whitaker, The Spanish-American Frontier, 86.

Spain, agreeing to incite the people of Franklin to terminate their connection with the United States and ally themselves with the Spanish Government.<sup>26</sup> In regard to White's course of action, A. V. Goodpasture says: "At this distance his conduct may appear disloyal and unpatriotic, but it did not seem so to the people of Franklin and Cumberland in 1788. They saw distinctly the causes of their suffering, and felt intensely the failure of their government to remedy them."<sup>27</sup>

Gardoqui urged upon White the necessity of setting out for Franklin immediately. News had just been received of John Sevier's defeat by Colonel John Tipton of North Carolina, and it was felt that this repulse would render the turbulent frontiersman more favorably inclined to the plan of a Spanish alliance. According to White's own statement he found, upon his arrival in Franklin, that conditions were more favorable than had been anticipated. Sevier, together with Blount and other North Carolinians, had been interested for some time in a speculative land project in the Muscle Shoals region. These speculators had decided that the successful maturation of their scheme could best be secured by a separation of the Western region from the state of North Carolina and an alliance with Spain.<sup>28</sup> Concerning this

<sup>26</sup> Goodpasture, "Dr. James White," in loc. cit., 284-285.

<sup>27</sup> Ibid.

<sup>28</sup> Whitaker, The Spanish-American Frontier, 109; Goodpasture, "Dr. James White," in loc. cit., 286.

secret mission White reported that he had been given letters by Cardoqui to the leading men of the district together with instructions that should they be desirous of putting themselves under the protection of Spain, they should be guaranteed civil and political government in the form most suitable to them on the following conditions: first, that it should be absolutely necessary, not only for the holding of any office but also for the ownership of land, that an oath of allegiance be taken to his Catholic Majesty, the purport of which should be to defend his government and faithful vassals against all enemies whoever they might be; and second, that the inhabitants of the district should renounce all submission or allegiance to any other power. White stated that the people of both the Franklin and Cumberland districts had eagerly accepted these conditions.<sup>29</sup> After these preliminaries, White returned to New York and reported to Cardoqui that the affair was progressing favorably; that the principal inhabitants of the district were anxious for separation, ready to swear allegiance to Spain, and willing to defend the province of Louisiana from attack from any quarter, reserving only the privilege of governing themselves as they saw fit.<sup>30</sup> White

29 Charles Cayarre, History of Louisiana, 4 vols. (New Orleans, 1903), III, 258-259; Archibald Henderson, "The Spanish Conspiracy in Tennessee," in Tennessee Historical Magazine, III (1917), 231-232.

30 Cayarre, History of Louisiana, III, 261; Goodpasture, "Dr. James White," in loc. cit., 287.

was then sent by Cardoqui to New Orleans, by way of Havana, to continue his negotiations with Don Esteven Miro, governor of Louisiana. White was eager to secure an extension of the limits of the new state of Franklin down the Tennessee River to include the Muscle Shoals region, and he sought to obtain from the Spanish authorities the right of the colonists of this new state to the free navigation of both the Alabama and Mississippi rivers.<sup>31</sup>

Shortly after his arrival in New Orleans White notified Miro that, since he was in the service of Spain, he thought his expenses should be paid out of the royal treasury, and requested a grant of about \$400 in order to facilitate his dealing more "decently and commodiously" with those whom he was expected to influence. The sum was immediately granted.<sup>32</sup> While White was still in New Orleans, Governor Miro received communications from James Robertson and Daniel Smith informing him that the separatist movement in the West was very strong and promising that definite action would soon be taken. In reply to White's application for assistance from the Spanish authorities, the Governor gave him a paper promising favors in the form of reduced duties on products sent down the river. The general impost level was to be reduced to 15 per cent, with special concessions in cases of men of importance to be

31 Whitaker, The Spanish-American Frontier, 110.

32 Gayarre, History of Louisiana, III, 259.

named by White. Miro refused to furnish assistance to the Westerners in attaining their independence; but promised that in the event of the attainment of their separation they should be accorded all the privileges granted to natives of the Spanish colonies. He sought to induce the frontiersmen to settle within the limits of Spanish territory, a policy entirely at variance with the plans of the Western land speculators. Verbally he urged an energetic movement on the part of the Westerners for the acquisition of their independence.<sup>33</sup> No assurance was given, however, as to what type of aid would be offered by Spain to assist the people of Franklin in their efforts at separation, and no definite commitment was made in regard to their treatment by that country after the acquisition of independence. Seeing that no aid could be obtained from the Spanish government, Sevier and his associates abandoned their plans for separation.<sup>34</sup> Upon the failure to reach an agreement with Spain White returned to the Franklin district and became very influential in counteracting the separatist tendency in this region.<sup>35</sup>

The second act of cession passed by the legislature of North Carolina in December, 1789, formed a serious obstacle to the fruition of the plans of the Western leaders. Instead of securing an act of separation and independence, they now found themselves thrown bodily into the arms of the Federal government. The deed of cession was accepted by the United

<sup>33</sup> Ibid., 263-264; Goodpasture, "Dr. James White," in loc. cit., 287-288.

<sup>34</sup> Whitaker, The Spanish-American Frontier, III.

States on April 2, 1790; and the "Territory Southwest of the River Ohio" was organized on May 26 of the same year. "Despite the unequivocal offer of the calculating and desperate Sevier," comments Archibald Henderson, "to 'deliver' Franklin to Spain, and the ingenious efforts of Robertson and his associates to place the Cumberland region under the domination of Spain, the Spanish court by its temporizing policy of evasion and indecision definitely relinquished the ready opportunities thereby afforded, of utilizing the powerful separatist tendencies of Tennessee for the purpose of adding this empire upon the Western waters to the Spanish domain in America."<sup>36</sup>

After his return from New Orleans in 1789, White was once more elected to the lower house of the North Carolina legislature; this time as a representative from Hawkins County.<sup>37</sup> He seems to have played a rather important part in the planning and directing of legislation, judging from the number of committees upon which he was appointed to serve.<sup>38</sup> He was likewise elected a delegate from the same county to the state convention which met on the third Monday in November to determine whether North Carolina would accept the new Constitution of the United States.<sup>39</sup> White voted against the amendments which were proposed, and voted for the ratification of the Constitution which carried by a majority

<sup>36</sup> Henderson, "The Spanish Conspiracy in Tennessee," in loc. cit., 243.

<sup>37</sup> State Records of North Carolina, XXI, 194.

<sup>38</sup> Ibid., XIX, 581, 605.

<sup>39</sup> Ibid., XXII, 37.



of 195 to 77 votes.<sup>40</sup>

Upon the organization of the Tennessee district as the Territory Southwest of the River Ohio White removed to that region and cast his lot with the future fortunes of the embryonic state whose destiny he had so recently sought to direct into different channels through his negotiations with Cardoqui and Miro for its transformation into a Spanish dependency. Blount was appointed governor of the territory on June 8, 1790, and during the following autumn he was engaged in the organization of county governments. On December 15, 1790, Governor Blount was at Nashville, assisting in the establishment of the government of Davidson County, and on the same day he issued to White a license to White to practice law in the new territory.<sup>41</sup>

When the population of the territory became sufficiently numerous to entitle it to a legislature, White was elected as a representative from Davidson County in October, 1793.<sup>42</sup> The legislature met on February 24, 1794, and two days later White was one of the two members appointed by the house to wait upon the Governor and submit to him an act of the House of Representatives nominating the ten persons who were to act

<sup>40</sup> Ibid., 47, 48.

<sup>41</sup> John Spencer Bassett (ed.), Correspondence of Andrew Jackson, 7 vols. (Washington, 1926-1935), I, 10; Clarence Edwin Carter (ed.), The Territory South of the River Ohio, 1790-1796 (The Territorial Papers of the United States) (Washington, 1934--), IV (1936), 441.

<sup>42</sup> Carter (ed.), Territory South of the River Ohio, 329.

as members of the Governor's council.<sup>43</sup> The seriousness of the Indian situation and the atrocities committed by the savages upon the white inhabitants of the Mero district induced the territorial assembly to draw up a petition praying for relief at the hands of the Federal government. White was prevailed upon to proceed at once to Philadelphia with the petition, together with an account of the depredations written by Robertson, in order that they might be presented to Congress as soon as possible. Governor Blount, in a letter to Robertson, assured the latter that White was always ready to serve his country, and that his great abilities, his skill in the presentation of a subject, and his personal acquaintance with many of the most influential members of Congress would do much to insure the success of his mission.<sup>44</sup> White was expected to arrive in Philadelphia before the adjournment of Congress, and the Governor, after assuring the inhabitants of the Mero district that they were in no immediate danger from attacks by the Indians, expressed the hope that the mission would succeed in securing from Congress authorization for an offensive operation against the savages in case they evinced any further hostility.<sup>45</sup> The memorial of the territorial House of Representatives was finally presented to President Washington who transmitted it to the secretary of

<sup>43</sup> Ibid.

<sup>44</sup> Ibid., 331.

<sup>45</sup> Ibid., 334, 341.

war, Henry Knox, with the recommendation that it be given careful consideration in determining what should be done for the people of the Tennessee district in the light of all the circumstances.<sup>46</sup> The Secretary of War had already received a letter from White relative to the Indian situation. In regard to the application for aid he pointed out to the President that Governor Blount was empowered to call out the militia of the territory to carry on operations against the Indians and to maintain the troops at the expense of the national government; but he said that the people of the Mero district requested more: they desired the protection of a permanent military establishment, which he thought would be difficult of accomplishment until the troops under General Anthony Wayne had successfully concluded the operation in which they were engaged.<sup>47</sup> Thus, while the situation of the people of the Mero district was admitted to be serious, it was not deemed feasible to give them the protection of regular army troops. While on this relief mission in Philadelphia, White urged upon the Secretary of State the advisability of the prompt issuance of commissions to the members of the legislative council of the territory. He pointed out that traveling, particularly in the Mero district, was attended with considerable danger and delay, and that a lack of dispatch in the issuance of commissions might result in the failure of

<sup>46</sup> Ibid., 336.

<sup>47</sup> Ibid., 336.

the complete organization of the territorial government when the general assembly should convene in the following August.<sup>48</sup>

Having fulfilled his mission to Philadelphia, White returned to Tennessee in time to participate in the deliberations of the general assembly which convened in August, 1794. To him is due the honor of being the first to foster a legislative act for the promotion of an institution of learning in the territory. He introduced a bill providing for the establishment of a school in Greene County, to be known as Greeneville College. On September 3 he was elected a delegate to Congress from the territory by a majority vote on joint ballot of both houses of the legislature;<sup>49</sup> and he accordingly resigned his seat as a representative from Davidson County.<sup>50</sup>

The presentation by White of his credentials as a territorial delegate to the lower House of Congress evoked quite a discussion in that body. This was the first instance of territorial representation in the national legislature. On November 11, 1794, White's credentials were presented to the House by the Speaker and a special committee was appointed to consider the matter contained therein and report its opinion to the House.<sup>51</sup> On November 17 the committee reported that the right of such representation was authorized by the

48 Ibid., 342.

49 Goodpasture, "Dr. James White," in loc. cit., 289-290.

50 Carter (ed.), Territory South of the River Ohio, 467.

51 Annals of Congress, 3 Cong., 2 Sess., 873.

ordinance providing for the government of the territory northwest of the Ohio River. This ordinance stipulated that when the free male population should attain the number of five thousand the people should be entitled to elect a general assembly. The legislature should have the power to elect a delegate to represent the territory in Congress, who should be entitled to a seat and should have the right of debating but not of voting. The ordinance had been confirmed by act of Congress in 1789, and by the deed of cession of 1790 the privileges of representation contained therein had been extended to the territory south of the Ohio River.<sup>52</sup>

The report of the select committee recommending the admission of White was considered by the House in committee of the whole, where several objections were raised. One member could find no justification in the Constitution for the admission to membership of a person of White's status; he contended that to admit him would be setting a bad precedent, since the representative of a foreign power could be admitted with equal propriety. Another member pointed out that the House could admit any person it might see fit for the purpose of debate. It might admit the Secretary of State. Still another, Elias Boudinot, thought that the delegate ought to be sent to the House whose members were elected by legislatures--that is, the Senate--since he had been elected by a legislature. William Vans Murray thought that the matter should have been referred to a joint

52 Ibid., 888 ff.

committee of both houses, since the delegate might be entitled to a seat in both branches of the legislature. Abraham Baldwin said that he "could see nothing in the new Constitution that made an exclusion of the delegate from the Southwest of the Ohio. This privilege had been solemnly promised those people, upon three different occasions. When they belonged to the State of North Carolina, they sent a representative (Sevier), to Congress; and they separated into a new State, under the promise of this privilege."<sup>53</sup> The committee of the whole accepted the report of the select committee and the House then adopted this report. James Madison pointed out that White was not a member of Congress and need not take an oath unless he agreed to do so voluntarily. An objection was raised to this view, but Madison's contention was upheld.<sup>54</sup> A select committee was then appointed to draft a bill providing for White's compensation and granting him the franking privilege.<sup>55</sup> Such a bill was presented and passed without opposition.<sup>56</sup> Although White had been granted the right of speaking or debating on any measure which might be pending before the House, there is no record of his ever having availed himself of this privilege. This does not mean, however, that he was not attentive to the needs of his constituents, for there were abundant opportunities of

53 Ibid., 884-888.

54 Ibid., 890.

55 Ibid., 891.

56 Ibid., 914.

making his views known in consultations with individual members and before committees; and it seems that he took full advantage of these opportunities for "trying the question privately."<sup>57</sup> After all, perhaps these methods were more effective in securing the desired ends.

From the meager evidence available in relation to White's services as delegate, it appears that he acted largely as agent for the territorial government rather than as the representative of his constituents. He sought unsuccessfully to obtain reimbursement from the Federal Treasury for the expenses incurred by Sevier in the prosecution of a punitive expedition against the Creek Indians, the Federal Government taking the position that the operation had been offensive. He transmitted an urgent request by Governor Blount that Congress adopt more stringent methods in dealing with the Creeks, and was "mortified" to hear a high official intimate that the Governor's ardor was dictated by personal interest rather than a patriotic desire to maintain a peaceful civil government in the region. He requested the opinion of the general assembly as well as that of the Governor with respect to the proper boundary line between the territory and the state of Virginia, and requested their reaction to the proposal to designate "Walker's line" as the boundary.<sup>58</sup> Blount also instructed White to seek an extension of the

<sup>57</sup> Carter (ed.), Territory South of the River Ohio, 385-386.

<sup>58</sup> Ibid.

boundaries of the territory to make them conform more nearly to natural boundaries, and urged him to petition the President to take steps to secure the cession of certain Cherokee lands situated within the limits of the territory, citing the action of the Federal government in regard to similar lands within the territorial limits of the state of Georgia as a precedent.<sup>59</sup>

On going to Congress White had presented a memorial requesting that the inhabitants south of the French Broad be included within the territory, and citing instances where persons in this region had suffered from Indian depredations. He was promised by a member of Congress late in 1794 that a bill would be introduced providing for the erection of the Southwest Territory into a state, including the extensions of boundaries requested in the memorial; but, after polling the members on this question, the territorial delegate was convinced that such a measure would not be passed. He thereupon advised the Governor of the territory that the taking of a census be ordered for the purpose of ascertaining whether the population had attained the number of sixty thousand free persons--the minimum stipulated in the deed of cession required for the attainment of statehood. Should there be the requisite number, he suggested that a state constitution be drafted for submission to Congress. It was found that the population exceeded the required minimum, and a call was issued for the election of delegates to a constitutional

59 Ibid., 411-414.



convention. An interesting circumstance in connection with the organization of the state of Tennessee was the provision that in case Congress should refuse to admit the new state into the Union, it should then exist as an independent commonwealth. The contention was that Congress had no option in the matter of recognizing statehood, since, according to the stipulations of the deed of cession, this status was attained automatically upon the free population reaching the number of sixty thousand.<sup>60</sup> Tennessee was admitted into the Union as a state on June 1, 1796, and White's term as territorial delegate automatically expired.<sup>61</sup> He was mentioned, with Blount and others, in August, 1796, as a likely choice to fill one of the vacancies in the office of United States Senator from the new state of Tennessee;<sup>62</sup> but he failed of election to the position.

In 1798 White migrated to the city of New Orleans in the Spanish colony of Louisiana.<sup>63</sup> In the following year, 1799, he secured permission from the Spanish government to settle an unusually large number of families on the west bank of the Pearl River and its branch, the Bogue Chitto.

<sup>60</sup> Goodpasture, "Dr. James White," in loc. cit., 290-291.

<sup>61</sup> Knoxville Sunday Journal, July 7, 1929.

<sup>62</sup> Bassett (ed.), Correspondence of Andrew Jackson, I, 23.

<sup>63</sup> Knoxville Sunday Journal, July 7, 1929; Biographical Directory of the American Congress, 1774-1927 (Washington, 1928), 1689.

This settlement was called White's Bluff, and was said to have been located near the mouth of Holden's Creek. Toward the close of 1799, however, Indians descended upon the newly established community, committing acts of violence and compelling the settlers to fly for their lives. This untoward event seems to have destroyed White's colonizing ambition, for he abandoned the claim after this one year of cultivation;<sup>64</sup> and shortly thereafter removed to Pascagoula Bay within the limits of the present state of Mississippi, but which was then a part of the Spanish colony of Florida. He located a claim of approximately 640 acres on the west side of the bay at a place subsequently known as White's Point, where he constructed a house and resided until about the year 1804. He then migrated to the Attakapas district, in what is now southwestern Louisiana, where he spent the remaining years of his life.<sup>65</sup>

White apparently settled in St. Martinville shortly after the organization of the Territory of Orleans in 1804; and in some short biographical sketches of him it has been stated that he was appointed judge of the Attakapas District in that year,<sup>66</sup> a statement which is not borne out by record evidence. As late as April 16, 1804, Henry Hopkins was

<sup>64</sup> American State Papers, 38 vols. (Washington, 1832-1861), III, 449; Abstracts, Early Claims, June 5, 1820, Cabinet 3, Greensburg, Department of Archives, Louisiana State Land Office, Baton Rouge, Louisiana.

<sup>65</sup> Edward D. White to Silas Dinsmore, February 10, 1832, Cabinet No. 116 (Letters, 1819-1823), Department of Archives, Louisiana State Land Office, Baton Rouge, Louisiana.

<sup>66</sup> Knoxville Sunday Journal, July 7, 1929; Goodpasture, "Dr. James White," in loc. cit., 291.

commandant of the Attakapas Post,<sup>67</sup> the Spanish office apparently not yet having been abolished. In September, 1805, Edward C. Nicholls was acting as judge of Attakapas County, and he continued to hold this position after White was made parish judge.<sup>68</sup> The earliest reference to White as a judge, which the present writer was able to discover, was a notation on October 18, 1806, to the effect that White was judge of the Parish of St. Martin of the Attakapas.<sup>69</sup> On May 4, 1807, his name appears as judge of the Parish of St. Martin in the Attakapas.<sup>70</sup> In 1808 Governor W. C. C. Claiborne, in a letter to David Becket, referred to White as judge of Attakapas Parish.<sup>71</sup> It will be apparent from the foregoing that White was variously designated; but it is clear that his position was always that of parish judge.

In 1808, White was one of the sixteen parish judges to whom Governor Claiborne ordered that copies of the new Civil Code be sent. He was to receive eight copies for distribution in his parish.<sup>72</sup> The Governor wrote White, warning him that there would be considerable opposition

67 St. Martin Parish Original Acts (Courthouse, St. Martinville, La.), XXII (1804-1805), No. 173.

68 Ibid., Nos. 103, 105; XXIII (1807-1807), No. 100.

69 Ibid., XXIII, No. 43.

70 Ibid., No. 6.

71 Dunbar Rowland (ed.), Official Letter Books of W. C. C. Claiborne, 1801-1816, 6 vols. (Jackson, Miss., 1917), IV, 221.

72 Ibid.

to the introduction of the new Civil Code. He pointed out that the Americans were accustomed to the systems of laws in force in the various states from which they had migrated and would be averse to alterations, while the "ancient Louisianians" were greatly attached to their old legal customs and would require tactful handling. He therefore urged that innovations be introduced cautiously in order to eliminate as much friction as possible. The following paragraph of the Governor's letter throws light on the delicacy and difficulty of White's official position:

"I fear you will continue to experience difficulty, in the faithful discharge of your official duties; The aversion of the ancient Louisianians to our Courts of Justice and particularly their dislike of Lawyers, the mutual Jealousy between the French and American population, together with the great dislike of the latter to the principles of the Civil Law, (which will for the present be your guide) cannot fail to render your situation unpleasant; But I must pray you to persevere in your honest endeavours to render the Government acceptable to the people and to administer the Laws 'with Justice and in Mercy'." <sup>73</sup>

White's official duties evidently included those of tax-collector as well as the administration of justice, for the Governor reminded him that although he was not required

73 Ibid., 226.

to settle with the territorial treasury for the taxes of the current year--1808--until the following March 31, it would greatly relieve the financial stress if such taxes could be paid, either in whole or in part, into the treasury prior to that date, particularly since the legislature would meet in January, 1809, when great demands would be made upon the territorial treasury.<sup>74</sup> In addition to the collection of taxes, the parish judge was also apparently charged with the organization of the militia for his parish. Governor Claiborne urged White to exert himself to raise the quota for his district and further urged him personally to command and lead a company of fifty volunteers, provided his age and the state of his health would permit such active service.<sup>75</sup>

During the early 1790's, White married Alice Wilcox, a member of an old and prominent Philadelphia family.<sup>76</sup> There was but one issue of this marriage, a son, Edward Douglas White, who was born at Nashville in March, 1795.<sup>77</sup> After the death of his first wife, White was remarried in 1806 to Lavina Murphy of St. Martinville.<sup>78</sup> There was also a single issue from this second marriage, a son, who was named for his father.<sup>79</sup> White did not long survive the birth of his

<sup>74</sup> Ibid., 227.

<sup>75</sup> Ibid., 276-277.

<sup>76</sup> Goodpasture, "Dr. James White," in loc. cit., 283.

<sup>77</sup> Alee Fortier, Louisiana, 2 vols. (Atlanta, 1909), II, 639; Biographical Directory of the American Congress, 1689; Knoxville Sunday Journal, July 7, 1929.

<sup>78</sup> St. Martinville, Louisiana Catholic Church Book of Marriages, No. 173.

<sup>79</sup> St. Martin Parish Index to Successions (1807--), No. 53.

second son, for he died on December 10, 1809, and was buried in St. Martinville in the Catholic cemetery.<sup>80</sup> No mention was made in White's succession of his elder son. The widow, and mother of the younger son, James White, Jr., together with two other persons, were named executors; and the widow was also named as tutrix for her young son. The executors were charged with the administration of a trust fund of \$6,000 for James White, Jr.<sup>81</sup>

White was in his sixty-first year when his death occurred. He had held public office during the greater part of the last twenty-five years of his life, and had rendered valuable services to one state and two territories. Although his negotiations with the Spanish authorities may not have been treasonable, it was dangerously near that border line. When, however, it became apparent that Spanish aid and protection could only be secured on untenable conditions, White used his influence with the Westerners to counteract the movement for a Spanish alliance; and during his term as territorial delegate from Tennessee he rendered wise counsel and valuable service in assisting the first regularly organized territory of the United States through the transitional stage of tutelage and into that of full-fledged statehood. Again, during the closing years of his life, he materially aided Governor Claiborne in adjusting

80 St. Martinville, Louisiana, Catholic Church Book of Funerals (1787-1830), No. 603.

81 St. Martin Parish Index to Successions, (1807--), No. 53.

a new governmental regime so as to cause it to function with a minimum amount of friction among a people with an ancient and proud, though different, civilization. His Roman Catholic religion and knowledge of the French language rendered him peculiarly suited for this task of conciliation and adaptation.

## CHAPTER II

### EDWARD DOUGLAS WHITE, I, MEMBER OF CONGRESS AND GOVERNOR OF LOUISIANA

The fate of the younger son of James White is undeterminable. He probably died during childhood or early manhood, for no references to him have been found, even in connection with his elder brother. Edward Douglas, however, became an important character in Louisiana politics during the second quarter of the nineteenth century, although his career has been somewhat obscured by the more outstanding achievements of his illustrious son. As noted above, he was born in Nashville in March, 1795. He was therefore three years of age when his father migrated to Louisiana; and fourteen when his father died in 1809. The writer has been able to discover very little material bearing on the early years of Edward White. His name appears as a witness on numerous bills of sale, mortgage redemptions, and other legal papers found among the court records of St. Martin Parish for the years 1808-1810.<sup>1</sup> The boy apparently spent a considerable amount of time about the courthouse where his father presided as parish judge. He seems to have experienced the usual life of a normal boy reared in a rural environment, and was particularly fond of riding

<sup>1</sup> St. Martin Parish Original Acts, XXIV (1808-1809), Nos. 95, 97, 99, 170.



and other outdoor activities requiring physical exertion.<sup>2</sup>

W. H. Sparks, writing some years after White's death, in speaking of this early period of his life, said that, "he struggled on in the midst of a people whose very language was alien to his own, and managed to acquire a limited education."<sup>3</sup> This statement, however, is probably not entirely correct; for James White, the father, was thoroughly familiar with the French language, and the son probably received early training in the dominant languages of the section in which he lived, for in early manhood he spoke both French and Spanish with great fluency.<sup>4</sup> Neither does his education seem to have been very limited, for in 1811, upon his own suggestion, young Edward, who was then sixteen years of age, was sent to Tennessee where he attended the University of Nashville,<sup>5</sup> and he was graduated from this institution in 1815.<sup>6</sup> After leaving college, it is said that he studied law in the office of Alexander Porter,<sup>7</sup> although definite information on this point is lacking. He began the practice of his profession at Donaldsonville, Louisiana, where he was still residing in 1822.<sup>8</sup> His rise

2 Edward D. White to Silas Dinsmore, February 10, 1822, Cabinet No. 116 (Letters, 1819-1823), Department of Archives, Louisiana State Land Office.

3 W. H. Sparks, The Memoirs of Fifty Years (Philadelphia, 1870), 459.

4 New Orleans Louisiana Advertiser, April 22, June 6, 1834.

5 Edward D. White to Silas Dinsmore, February 10, 1822, Cabinet No. 116 (Letters, 1819-1823), Louisiana State Land Office.

6 Biographical Directory of the American Congress, 1689.

7 Portier, Louisiana, II, 639.

8 Edward D. White to Silas Dinsmore, February 10, 1822, Cabinet No. 116 (Letters, 1819-1823), Louisiana State Land Office.

to distinction was rapid; and in 1825 he was considered worthy of a judgeship in the city of New Orleans. In February, 1825, the legislature passed a law abolishing the justice of the peace courts in New Orleans and creating a single city court which should consist of five judges, the offices to be filled by gubernatorial appointment. White was immediately appointed presiding judge, with four associates.<sup>9</sup> Shortly thereafter the police jury of the parish of Orleans ordered the several judges to hold special sessions at designated locations throughout the city, White's assignment being at the government house in the hall of the Senate in which place were also held the regular sessions of the court.<sup>10</sup> He retained this judicial position for three years, resigning early in 1828 to retire to his sugar plantation in Lafourche Parish.<sup>11</sup>

White's supporters were profuse in their commendations of his judicial services. "As presiding judge of the city court," it was said, "he obtained the entire confidence of the Bar and of the public; so much so, that suits were generally instituted before him, in preference to either of the other courts. He was remarkable for his assiduity, his patience in investigation, and his decision; and that his judgments were generally correct, may be inferred, from

9 New Orleans Courier, February 21, 1825.

10 Ibid., February 28, 1825.

11 Fortier, Louisiana, II, 639.

the few appeals taken from his décisions."<sup>12</sup> "The bench may well have been proud of so able a jurist;" said a Baton Rouge paper, "and when the sacred ermine of justice fell upon other shoulders, it fell upon none more pure, thoroughly imbued with the spirit of judicial research, and none more animated with an ardent desire of bringing to his aid the learned lore of former ages."<sup>13</sup>

His retirement was of brief duration, however, for on April 19, 1828, a notice was published announcing E. D. White's candidacy for a seat in Congress to represent the first Congressional district.<sup>14</sup> White was an Administration candidate--that is, he represented the faction which supported the candidacy of John Quincy Adams who was seeking re-election to the presidency of the United States.<sup>15</sup> He was opposed by Edward Livingston, the incumbent, and a staunch supporter of Andrew Jackson. The election which took place in July resulted in a victory for White, Livingston being defeated by a majority of 600 votes.<sup>16</sup>

White does not seem to have participated very actively in legislation during his first term in Congress. He did sponsor, however, a bill amendatory to an act providing for the regulation of the practice of Federal courts in the

12 New Orleans Louisiana Advertiser, January 30, 1834.

13 Baton Rouge Gazette, June 14, 1834.

14 New Orleans Courier, April 19, 1828.

15 New Orleans Bee, June 18, 1828.

16 Sparks, The Memoirs of Fifty Years, 459; Pennsylvanian, quoted in New Orleans Bee, August 6, 1834.

district of Louisiana.<sup>17</sup> He voted in opposition to the Indian bill, a measure providing for the removal of approximately 70,000 Indians from their homes and their settlement in the region west of the Mississippi River. The act was passed, however, by a vote of 102 to 98. It was an Administration measure and the vote was almost entirely along party lines. White's opposition was natural, since he was opposed to Jackson's Administration. The law was condemned, however, by some of the Democratic-Republican papers of Louisiana as harsh and unjust, and as consummating an act of treachery on the part of the executive.<sup>18</sup>

White was a candidate for re-election in 1830<sup>19</sup> without opposition, the Democratic-Republicans evidently deeming it useless to nominate an opponent. A comparison of the vote received by White with the total vote cast in his district will demonstrate his popularity with his constituents. In the parish of Orleans White received 997 votes, while the combined vote of the four gubernatorial candidates was 1241.<sup>20</sup> In Plaquemines Parish he received a unanimous vote, while in Jefferson Parish he received eighty-nine out of a total of ninety votes cast, and in St. Bernard Parish where the returns showed a total vote of 157, White<sup>21</sup> received 147 votes.

17 New Orleans Bee, June 7, 1830.

18 Ibid., June 19, 1830.

19 Ibid., June 25, 1830; New Orleans Courier, June 30, 1830.

20 Ibid., July 9, 1830.

21 Ibid., July 8, 1830.

The questions which confronted Congress during White's second term were more productive of public discussion than were those of his preceding term. He was always attentive to the interests of his immediate constituents, especially in matters concerning the commercial prosperity of the city of New Orleans. On his motion a resolution was adopted in January, 1832, ordering the committee on Internal Improvements to investigate the advisability of removing the bar at the mouth of the Mississippi River and of deepening the channel of that river.<sup>22</sup>

The most controversial questions confronting Congress during this second term were the tariff bill of 1832, the question of the recharter of the United States Bank, and the Compromise Tariff bill of 1833. On the first of these measures White voted in the negative, although the bill passed the House by an overwhelming majority, the vote being 132 to 65.<sup>23</sup> The Louisiana delegation in Congress was equally divided on this question, both the Senators favoring the passage of the measure, while White and the other Representative voted in opposition to the act.<sup>24</sup> The position of the two Representatives was that the measure, which provided for a reduction in the sugar duty of one-half cent per pound, would be injurious to the planting interests

<sup>22</sup> New Orleans Bee, January 24, 1832.

<sup>23</sup> New Orleans Louisiana Advertiser, July 13, 1832.

<sup>24</sup> New Orleans Bee, July 24, 1832.

and adverse to the general prosperity of the state. The Bee, however, contended that the planters had no fears on this score. They admitted, it said, that the contemplated reduction might prostrate a few establishments, those which were the mere creatures of legislative action and which had been artificially nurtured by the unusually high sugar duty; but, it was contended, the proposed reduction would not work any permanent injury to the well-established planting interests.<sup>25</sup>

White was a staunch supporter of the United States Bank and consequently voted for its recharter in 1832.<sup>26</sup> He never lost an opportunity during the remainder of his political career of advocating strenuously the continuance of such a financial institution. Although the Louisiana Advertiser vigorously supported White's gubernatorial candidacy, it bitterly attacked the passage of this measure, declaring that never before had an act been so arbitrarily forced through Congress. "Congress has resigned," concluded this paper, "for fifteen years, to the Bank directors and stockholders, the power of regulating the currency which, the friends of the measure assert, was confided to the representatives of the people by the Constitution. They claim the power, it seems, merely to divest themselves of it."<sup>27</sup>

25 Ibid., July 14, 1832.

26 New Orleans Louisiana Advertiser, July 18, 1832.

27 Ibid.

In the election of 1832, although White was still unopposed, his vote in New Orleans was not nearly so large<sup>28</sup> as in 1830, being only 318 as compared with 997 in the previous election; but in Jefferson Parish he received 136 out of a total of 137 votes cast for state officials.<sup>29</sup> While it might be argued from the New Orleans vote that there was a waning enthusiasm for White on the part of the most powerful group of his constituents, other factors were present which served to explain this diminution. Although both elections were uncontested so far as White's candidacy was concerned, the absence of gubernatorial candidates in 1832 might be cited as a cause for the diminished vote.

Shortly after his return from Washington in the late summer of 1832 White addressed a gathering in New Orleans at a luncheon held in his honor. He reviewed the various acts of the recent Congress and held that the policy of the Federal government toward the state of Louisiana had been, on the whole, beneficent, although he considered the trifling reduction in the sugar duty to be unjust and impolitic; and it was on this ground that he had voted against the measure on final passage. "In other words," commented the Bee, "it was 'unjust and impolitic' that Louisiana should, with her sister states, make the slightest concession to the murmurings and complaints of an entire section of the Union.

<sup>28</sup> Ibid., July 5, 1832.

<sup>29</sup> Ibid.

It was 'unjust and impolitic' to relieve the people of \$13,000,000 of unnecessary taxation."<sup>30</sup> In the next session of Congress White voted for the Compromise Tariff which also provided for a reduction of the sugar duty. It is interesting to note that on the question of the passage of the second tariff act the relative positions of the Congressman and the Bee were exactly reversed. Concerning the first tariff measure the Bee maintained that "The planters of Louisiana would never have censured our delegates in Congress had they voluntarily made such an offer upon the shrine of patriotism, to restore harmony among the alienated members of the Confederacy."<sup>31</sup> The same paper severely condemned White for having voted in favor of the Compromise Tariff. He had shamefully compromised the interests of his constituents and subjected to ruinous competition an industry upon which the future welfare of the state depended. "She had embarked largely in the business of sugar making, depending on the faith of the government as a guarantee for the sacrifices she had made."<sup>32</sup> White justified his reversal of position on the ground that the attendant circumstances were unusual and that it was necessary to submerge selfish interests to avert a national crisis.<sup>33</sup> White's position was undoubtedly the more tenable of the two, for the two

30 New Orleans Bee, September 8, 1832.

31 Ibid.

32 Ibid., January 29, 1834.

33 Ibid., February 3, 1835.



situations that of 1833 certainly presented more cogent reasons for sinking private considerations in the interest of national peace and harmony.

Although White served but one session of his third term in Congress, this period seems to have been the most active of his Congressional career. He successfully sponsored several measures providing for improvements, particularly in regard to port facilities, in and about the city of New Orleans.<sup>34</sup> His interest in scientific investigations is illustrated by the case of the inventor, Benjamin Phillips, who had devised an improved type of steam engine. White described the invention, which, he said, was designed to lessen the likelihood of explosions, and succeeded in persuading Congress to grant an appropriation for conducting experiments under the supervision of the Secretary of the Navy in order to test its practicability.<sup>35</sup>

He was interested in securing for Louisiana allotments of public lands equal to those given other western states, particularly Alabama, and introduced a resolution requesting the Committee on Public Lands to determine the expediency and justice of granting such lands to Louisiana for internal improvements.<sup>36</sup> The niggardliness of the Federal government in its public land policy toward Louisiana as compared with its policy in regard to other new states with respect to

<sup>34</sup> Cong. Globe, 23 Cong., 1 Sess., 116, 302.

<sup>35</sup> Ibid., 310, 416; Philadelphia National Gazette, April 19, 1834.

<sup>36</sup> Cong. Globe, 23 Cong., 1 Sess., 50.

the public domain furnished a theme for repeated complaints by Louisiana statesmen until an adjustment was finally made during the decade prior to the outbreak of the Civil War.

White persevered in his efforts for a modification of the Federal land policy toward Louisiana, and his political opponents admitted that it was through his activity that the Federal land offices were reopened in that state.<sup>37</sup> During his last session in Congress prior to his accession to the gubernatorial chair, White secured the passage of a number of bills providing for the adjustment of land titles of Louisiana citizens whose claims were derived from old Spanish grants. He also successfully fostered a measure with reference to pre-emption rights in the southeastern district of Louisiana.<sup>38</sup> Near the close of the session 1833-34 he secured the settlement of land claims of citizens of the Florida parishes.<sup>39</sup>

On May 17, 1834, White offered an amendment to add \$20,000 to the appropriation of \$30,000 for the improvement of the navigation of Red River. He made a very effective speech in defense of this amendment, stating very succinctly his reasons for the increase. "The improvement contemplated by the bill," he said, "is the removal of the great raft of Red River. As to the importance of this work, I will not

<sup>37</sup> Register of Debates in Congress, 23 Cong., 1 Sess., 3841; Baton Rouge Gazette, May 31, 1834.

<sup>38</sup> New Orleans Bee, October 10, 1832.

<sup>39</sup> Baton Rouge Gazette, March 29, 1834; New Orleans Louisiana Advertiser, March 19, 1834.

enlarge at this time of day, considering as I do, that matter as ascertained and determined by the fact of the Government having heretofore undertaken it, and voted sums of money for its execution. If, however, I were to speak on that subject, I could say, without fear as to the precision of the remark, that, in point of interest and value, in all general, national respects, the enterprise is secondary to none of similar nature which the United States ever have had, or probably ever will have, occasion to lend their countenance and support." After detailing the commercial and military reasons for the undertaking, he concluded with an urgent appeal that the requisite sum be voted.<sup>40</sup> The appropriation was finally increased to \$100,000 and the measure was adopted.<sup>41</sup>

On April 28 White availed himself of an opportunity of stating his views on the question of a National Bank in the presentation of "memorials from citizens of Louisiana representing the existence of much embarrassment and distress in that State, and disapproving of the course of the Administration in relation to the United States Bank."<sup>42</sup> After discussing the general distress which obtained in New Orleans, he proceeded to paint a glowing picture of conditions as they existed when, as he said, "the inauspicious blow fell." The failure to recharter the United States Bank

<sup>40</sup> Register of Debates in Congress, 23 Cong., 1 Sess., 4143; New Orleans Louisiana Advertiser, June 9, 1834.

<sup>41</sup> Cong. Globe, 23 Cong., 1 Sess., 349.

<sup>42</sup> Ibid., 351; Philadelphia National Gazette, May 1, 1834.

and the withdrawal of the government's funds from this depository were followed by acute financial distress. The petitioners, he said, desired the removal of the offending cause which would be a cessation of hostilities against the National Bank. They importuned Congress to create a new bank or preferably to recharter the old one which they felt was capable of meeting all exigencies which might arise.

During the course of his address White was reminded of the rule permitting merely a statement of the substance of the memorial. He thereupon moved for a suspension of the rule which was granted by more than a two-thirds majority. He concluded by saying: "Indeed, it is extremely difficult to conceive how the Government can get along at all without the aid of a national bank to carry on its financial operations--scarcely a greater puzzle to tell how to distribute justice without the help of courts of justice. It is as much the province of Government to regulate conduct--command what is right, prohibit what is wrong in one as well as in the other."<sup>43</sup>

In July, 1832, The Tribune and the Emporium announced their support of White as a candidate for governor, although a formal announcement of his candidacy was not published until somewhat later.<sup>44</sup> The election was not to be held until the summer of 1834. This announcement, therefore,

<sup>43</sup> Baton Rouge Gazette, June 28, 1834.

<sup>44</sup> New Orleans Bee, July 7, 12, 1832.

would seem rather premature, but White's chief opponent for gubernatorial honors, General John B. Dawson, had been an active candidate since the spring of 1831, before Governor A. B. Roman "was scarcely warm in his seat."<sup>45</sup>

The Emporium erroneously claimed Creole birth for White as just ground for political preferment. This statement was quickly challenged by the Bee, the leading opposition publication and the one which proved to be most vituperative in a bitterly fought campaign. "Mr. White," commented this paper, "is a highly respectable man--an honest one, which is the highest tribute that can be paid to any mortal,--but his career in Congress has not given evidence of any very 'brilliant' or rare endowments."<sup>46</sup> The Bee took exception to the denomination of White as "the people's candidate," pointing out that he was supported by only two papers, the Tribune and the Emporium; while Judge Dawson had the endorsement of the Attakapas Gazette at St. Martinville, the Frontier Reporter at Natchitoches, the Phoenix at St. Francisville, and by one, if not both, of the Clinton papers.<sup>47</sup> White's candidacy, however, was soon endorsed by a number of other papers, among which were the Louisiana Advertiser, the Mercantile Advertiser, and the Thibodeauxville Intelligencer. The supporters of Dawson, who was the nominee of the Jacksonian faction,

<sup>45</sup> Baton Rouge Gazette, June 7, 1834.

<sup>46</sup> New Orleans Bee, July 7, 1832.

<sup>47</sup> Ibid., July 10, 1832.



maintained that the Clay-Adams group had had difficulty in determining upon a suitable candidate, and had finally nominated White because of his great popularity in South Louisiana. This popularity, it was claimed, was waning and the diminution in the number of votes cast for White's election to Congress in 1832 as compared with the number cast for his election in 1830 was cited as evidence of the correctness of this opinion.<sup>48</sup>

The Opelousas Gazette endorsed White's candidacy in a very eulogistic article, declaring that few persons possessed in so eminent a degree the peculiar and high qualifications required of the chief magistrate of an independent state. "To independence, firmness and decision of character, Mr. White unites sound judgment, impartiality, and talents of a high order." Allusion was made to his plain, bland, and affable manners; qualities which would make him acceptable as the republican governor of a republican state. "His political principles," it concluded, "are sound, and embrace the leading policy and measures which Louisiana has sanctioned, both in the administration of the State and Federal Governments. Our State administration cannot be committed to safer hands, nor do we believe, to one, who is more justly the people's favorite."<sup>49</sup>

<sup>48</sup> Ibid., July 28, 1832.

<sup>49</sup> Opelousas Gazette, quoted in Eaton Rouge Gazette, September 1, 1832.

Early in the campaign an attempt was made to disaffect a large portion of General Dawson's following in the Felicianas by reviving an old feud between the general and Judge Thomas Wither Chinn. The endeavor at alienation, however, proved abortive.<sup>50</sup> It does not appear that White had any part in the scheme, for none of the opposition papers made any effort to implicate him in the unsavory affair. During the fall of 1832 the Jackson supporters charged that the Clay men were utilizing White's popularity in an attempt to attract votes to Henry Clay by assuring the electorate that a vote for Clay would be a vote for White.<sup>51</sup>

Political discussions subsided somewhat as the year 1832 drew to a close, although in November a movement was initiated to bring out Denis Prieur, Mayor of New Orleans, as a third candidate. The Bee saw in this an attempt on the part of the opponents of Dawson to split the general's following, Prieur also being a Jackson supporter, and thus to insure the election of White.<sup>52</sup> There was also a rumor that White contemplated withdrawing from the gubernatorial race;<sup>53</sup> but this report seems to have been entirely without basis. As a matter of fact, White had done very little campaigning since his nomination. He returned to Washington

<sup>50</sup> St. Francisville Phoenix, quoted in New Orleans Bee, September 15, 1832.

<sup>51</sup> New Orleans Bee, October 11, 1832.

<sup>52</sup> Ibid., November 27, 1832.

<sup>53</sup> Ibid., December 1, 1832.

in December to resume his seat in the lower House of Congress.

Upon the adjournment of Congress in March, 1833, White returned to New Orleans by way of Cincinnati;<sup>54</sup> and shortly thereafter began a tour of the state for the purpose of promoting his candidacy. While on this tour he met with an accident which was at first thought to be fatal. The steamboat, Lioness, aboard which he was traveling, was totally wrecked by an explosion which occurred on the Red River about six o'clock in the morning of May 19 at a point some forty miles above the town of Alexandria. The explosion was caused by the ignition of a gun-powder magazine by a fire in the hold of the vessel, the original source of which was never determined. Many of the passengers and crew were lost, and most of those who escaped with their lives were rescued, while struggling in the current of the river, by the local inhabitants who had hurried to the scene of the disaster.<sup>55</sup> For a time all hope of White's recovery was despaired of, and reports of his death were printed in some of the newspapers.<sup>56</sup> Although his recovery was not rapid, it was steady, and he was able to complete his tour of the remote parts of the state before returning to Washington for the reconvening of Congress in December.

In spite of the vigorous prosecution of his campaign, there were persistent rumors during the late summer and

<sup>54</sup> Ibid., April 4, 1833.

<sup>55</sup> Ibid., May 27, 1833.

<sup>56</sup> Ibid., May 29, 1833; Lafourche Advertiser, quoted in Baton Rouge Gazette, August 3, 1833.



autumn of 1833 that White would withdraw his candidacy in favor of Denis Prieur who had been brought out as a third candidate.<sup>57</sup> These reports, however, were forcefully repelled by White's supporters.<sup>58</sup>

During the summer of 1833 the Dawson press began to hurl the charge, iterated with tiresome repetition until the very close of the campaign, that White had betrayed his people and ruined the most flourishing industry of the state by voting for the Compromise Tariff, which provided for a gradual reduction of the sugar duty. The Bee characterized him as a political gamester, a traitor, one who was willing to sacrifice the interests of his constituents to pacify a small group which was ready to disrupt the Union for selfish purposes. He was, it asserted, more knave than fool, although this same paper later in the campaign emphatically denied ever having made such a statement.<sup>59</sup>

J. B. Dawson's principles, it was claimed, were identical with those of Andrew Jackson, and had he been in Congress he would not have voted for the Compromise Tariff.<sup>60</sup> Such assertions were a bit inconsistent, since the Compromise Tariff, as the Louisiana Advertiser pointed out, had the endorsement of the President. If all those who favored the bill were criminals, what portion of the guilt, asked this

<sup>57</sup> New Orleans Bee, October 11, 1833.

<sup>58</sup> Thibodeauxville Intelligencer, quoted in New Orleans Bee, October 28, 1833.

<sup>59</sup> New Orleans Bee, July 26, 1832; New Orleans Louisiana Advertiser, April 24, 1834.

<sup>60</sup> New Orleans Bee, August 5, 1833.

paper, should be assigned to President Jackson who had recommended and approved the measure?<sup>61</sup>

The campaign became more heated as the year 1834 was ushered in, with the election but six months in the future, and we find the Bee reverting to its charges against White for his vote in favor of the tariff. He was accused of being recreant to the interests of his constituents and of having united with political gamblers in offering up Louisiana as a sacrifice to propitiate the nullifiers. It was charged that his supporters abstained from commenting on this public act, the one most in need of explanation, and preferred to dwell upon deeds less culpable in character. An explanation of this point was demanded.<sup>62</sup>

In defense of White's position the Louisiana Advertiser said: "we have frequently, and we think triumphantly, defended Mr. White's vote on the tariff question. He on that occasion acted in concert with the friends of the protective system, and to save the whole, gave up a part. The resolution of the duty on sugar, in common with other protected articles, was a compromise that saved the principle which more than anything else, the friends of the American system contended for. George Augustus Waggaman who, as much as any man, was deeply interested in the sugar interests voted with Mr. Clay as Mr. White voted because he believed it to be for the interests of Louisiana.

<sup>61</sup> New Orleans Louisiana Advertiser, January 1, 1834.

<sup>62</sup> New Orleans Bee, January 29, 1834.

"We do not think it necessary," the article continued, "to be constantly repeating the same thing in favor of Mr. White or in answer to his detractors; who, besides, urge nothing against him worthy the notice of men of sense. It is not necessary to his success that his praises should be daily chanted."<sup>63</sup>

In spite of the explanations of White's position on the tariff question, the Dawson supporters continued to the day of the election to stigmatize him as a betrayer of the people's confidence. The Bee asserted that the effect of White's "ruinous vote" on the sugar duty was nowhere felt more keenly than in his own immediate neighborhood; and it stated further that he had taken proper precautions as to his own future economic welfare by converting his sugar establishment into a cotton plantation.<sup>64</sup>

As the campaign progressed each group accused the candidate of the opposing faction of being under the domination of another person. Dawson, it was charged, was controlled by Martin Gordon, a custom-house official, and subject to the domination of the "custom-house coterie"; and, if elected, it was asserted, he would be a mere viceroy under the control of Andrew Jackson.<sup>65</sup> Dawson was also accused of being a nullifier.<sup>66</sup> On the other hand, White

<sup>63</sup> New Orleans Louisiana Advertiser, April 19, 1834.

<sup>64</sup> New Orleans Bee, April 22, June 17, July 7, 1834.

<sup>65</sup> Ibid., December 27, 1833; February 14, 1834; New Orleans Louisiana Advertiser, January 29, March 8, April 23, 1834.

<sup>66</sup> Ibid., April 23, 1834.

was denounced as being under the domination of Alexander Porter and a small political clan somewhere about the Bayou Lafourche, who, it was charged, anticipated ruling through the election of White,<sup>67</sup> who was a pliant tool in the hands of Porter.<sup>68</sup> White was supported by Porter,<sup>69</sup> a natural procedure, since they were affiliated with the same political group; but there is no evidence that the Senator attempted any dictation of White's policies.

Both sides sought to attract the Creole vote, especially after Prieur's withdrawal from the contest. The White supporters made much of the fact that Dawson was unable to speak the French language; while White was conversant with all the languages spoken by the heterogeneous population of the state.<sup>70</sup> The Dawson supporters asserted that White had a hearty contempt for the Creoles, whom, they declared, he referred to as "creowls."<sup>71</sup> The fact that Henry Johnson was selected as a nominee by the White faction to succeed their gubernatorial candidate in Congress was seized upon by the Dawson group as evidence that the Creoles had nothing to expect from White's election but proscription in office.<sup>72</sup> It was also charged that the White supporters were seeking to secure the Irish vote by

67 New Orleans Bee, December 27, 1833.

68 Ibid., June 5, 1834.

69 A. Porter to J. B. Harrison, February 18, 1834, in Burton Harrison Collection, Library of Congress.

70 New Orleans Louisiana Advertiser, April 22, 1834.

71 New Orleans Bee, May 15, 1834.

72 Ibid., April 9, 1834.

pressing the claim that one of their fellow-countrymen, Alexander Porter, favored White's candidacy.<sup>73</sup> White's advocacy of a National Bank was urged against him as the representative of a moneyed and aristocratic class.<sup>74</sup>

To the charge that White, while in Congress, had done nothing for the city of New Orleans or for the state his supporters replied by citing acts which he had sponsored for ameliorating the commercial stringency in the city and the numerous land title adjustments in the country.<sup>75</sup> Stress was laid on the fact that White remained at his post in Washington attending to the duties of his office, while Dawson, neglecting his duties as judge, was riding about the state soliciting votes.<sup>76</sup> White was importuned to return to Louisiana and participate personally in the campaign, but he declined on the ground that his presence was needed in Washington since a number of measures affecting the interests of his state were pending in Congress and would probably be brought up for action before the adjournment of that body.<sup>77</sup> White resigned his Congressional seat just prior to the gubernatorial election.<sup>78</sup>

The election for governor took place on July 7, 8, and 9.<sup>79</sup> The result was a decisive victory for White as

73 Ibid., June 7, 1834.

74. Ibid., July 7, 1834; New Orleans Courier, May 15, 1834.

75 New Orleans Louisiana Advertiser, April 30, 1834.

76 Thibodeauxville Intelligencer, quoted in Baton Rouge Gazette, June 7, 1834; New Orleans Louisiana Advertiser, June 3, 1834.

77 Baton Rouge Gazette, June 28, 1834.

78 Philadelphia National Gazette, July 12, 1834; New Orleans Louisiana Advertiser, June 25, 1834.

79 New Orleans Bee, July 8, 1834.

demonstrated by the official returns announced by the Louisiana Senate and House of Representatives. The former declared White to have received 6,423 votes and Dawson 4,913; while the official returns of the latter gave White 6,973 votes and Dawson 4,149.<sup>80</sup> After the election the Bee complainingly remarked that "The Louisiana [Advertiser] boasts that the late election in this city was a great Whig triumph. How can that paper, in the teeth of repeated declarations, that party politics were not at issue in the contest, have the effrontery to do this? We would ask if Mr. C. M. Conrad, at a meeting of the 'friends of Mr. White,' did not reprobate and denounce any connection between local and general politics, and did not declare himself for one, as being friendly to the general administration and as indisposed to take any part against it. We have understood that he did, and challenge denial as to the fact, which is conclusive proof that if the Whigs have gained a triumph, it has been a surreptitious one, in which many of our friends have been unwittingly induced to take part."<sup>81</sup> It was true that resolutions were adopted at one of the White meetings endorsing the candidacy of persons who were pledged to no party;<sup>82</sup> but it was frequently stated in the press of both factions that White

80 Ibid., January 10, 1835.

81 Ibid., July 14, 1834.

82 Ibid., June 28, 1834.

was opposed to Jackson's administration and that he was supported by the Clay-Adams faction. In reply to the charge of the Bee the Louisiana Advertiser remarked that "Mr. Conrad is one man, and we are not at all concerned about his opinions and declarations. He has a constitutional right to vote for Mr. White, and to assign his reasons for doing so. But Mr. Conrad in the declaration above attributed to him, no more represented the Whig Party, than the editor of the Bee now represents the Jackson party, in denying that General Dawson, who was nominated for the Governorship by a Jackson caucus, was a Jackson candidate. The truth is, and everybody knows it, that the election was a contest of opposite principles--and that its result is a proof of the disapprobation of the people of this State of the measures and doctrines of the administration of the General Government."<sup>83</sup>

The election was an unprecedented victory for the Whigs, White being elected by a greater majority than had ever been given a gubernatorial candidate in the history of the state.<sup>84</sup> There was a Whig majority in the legislature, and two of the three Representatives elected to Congress were Whigs.<sup>85</sup> The campaign had been a heated one, with great excitement on both sides; and it was said

83 New Orleans Louisiana Advertiser, July 16, 1834.

84 Philadelphia National Gazette, April 20, 1835.

85 Ibid., August 2, 1834.

that bets were offered as though the contest were a cock fight, a horse race, or that still more popular sport, a New Orleans duel. White was conceded an advantage in that he had never been defeated before the people. An unfriendly paper admitted that "no other man could have been found in Louisiana who would carry such an influence with him. His popularity is unbounded, and his personal worth is undisputed."<sup>86</sup> The Courier, a Jackson organ, lamented that the defeat of the Jackson candidates had been total and complete, but admitted that the Whigs had not crowed much over their victory. This forbearance, it thought, was due to sympathy for their humiliating situation.<sup>87</sup>

When the legislature convened in January, 1835, it canvassed the returns and proceeded to ballot on the two candidates receiving the highest number of votes, as provided for in the constitution.<sup>88</sup> This election by the legislature was, however, a mere legal formality, since it had become the custom to elect that candidate whom the majority had favored in the popular election. This was shown by the fact that the Senate and House in joint session gave White fifty-eight votes with three blanks.<sup>89</sup> As a matter of fact, Dawson declined to contest the election in the legislature, declaring that since he had been the

<sup>86</sup> Pennsylvanian, quoted in New Orleans Bee, August 6, 1834.

<sup>87</sup> New Orleans Courier, quoted in Philadelphia National Gazette, August 2, 1834.

<sup>88</sup> Francis N. Thorpe (comp.), American Charters, Constitutions and Organic Laws, 1492-1908, 7 vols. (Washington, 1909), III, 1384.

<sup>89</sup> New Orleans Bee, January 10, 1835.



minority candidate in the popular choice, such a contest would be inconsistent with the principle of majority rule to which he had always adhered.<sup>90</sup>

The inauguration took place on February 2. In his inaugural address the new Governor stated his intention of continuing the policies of the outgoing administration. During the course of his speech he explained his vote on the Compromise Tariff measure of 1833, declaring that the period to which he alluded was one of "peculiar moment"--indeed, it was generally considered a crisis in our National affairs and the measure proposed by Henry Clay was the quickest and surest means of relieving it. The clause in the bill affecting the agricultural interests of Louisiana was both unjust and injurious; but it was a component part of the bill and had to stand or fall with it. After mutual consultation, the Louisiana delegation in Congress had unanimously come to the conclusion that it would be better to support the measure with the injurious clause included rather than endanger the prospect of an amicable settlement. He believed, he said, that the agricultural interests of the state could never develop upon a sound basis so long as their very existence depended upon a precarious vote in Congress.

Governor White pointed out the necessity of adjusting the claims resulting from the grants of land to the Baron

90 Ibid.

de Bastrop and the Marquis de Maison Rouge and the failure of Congress to enact a measure referring these claims to the ordinary courts of law. As long as these titles remained unadjusted, they offered an impediment to the proper development of this portion of the state; and he suggested that the legislature adopt resolutions expressive of the general assembly's views in the matter, which, coupled with the claims of private individuals, would perhaps be effective in producing Congressional action. The Governor pointed out that most of the lands set aside from the public domain by the Federal government to be used for purposes of education in Louisiana had never been located because of the failure to complete the survey of the vacant lands. He proposed the appointment of an agent to locate suitable tracts, and suggested that his compensation be a percentage of the sums derived from the sales of such lands, thus insuring the selection of the best available tracts.

After discussing the improvements in drainage, sanitation, and general living conditions in the city of New Orleans and the possibilities for the future development of this port, Governor White concluded as follows: "In short, Fellow Citizens,--to maintain the supremacy of the laws; to insure a faithful performance by public functionaries of their official duty; to secure to all, as far as may depend on my exertions, the full and free enjoyment

of their rights; those I concede to be among the first objects of the mandates which I have received from the people; and in the prosecution of which, I count with assurance on the efficient support and cooperation of the General Assembly."<sup>91</sup>

The Louisiana Advertiser thought that the inaugural ceremonies were very impressive, and predicted a beneficent government for the state under the administration of Governor White. The new Governor, it said, would adequately protect the principles of the constitution and would promote the policy of internal improvements. His retirement at the conclusion of his term would be accompanied by the regrets and gratitude of the people of Louisiana.<sup>92</sup>

The legislature had been in session approximately one month when White was inaugurated; and, as a consequence, many of the important measures passed by this body came up for executive consideration after his installation. One of the most important acts adopted by the general assembly was a revenue measure providing for the raising of funds for the maintenance of charitable institutions and schools in New Orleans. The first part of the act levied a tax on all steamboat and ship passengers arriving at the port of New Orleans from beyond the limits of the state, the imposition being assessed against the owners of the vessels. The

<sup>91</sup> Ibid., February 3, 1835; Baton Rouge Gazette, February 14, 1835.

<sup>92</sup> New Orleans Louisiana Advertiser, February 4, 1835.

second part of the measure provided for the imposition of an occupational tax upon the proprietors of grog shops, taverns, billiard tables, coffee houses, and upon Negro traders. The third portion of the bill levied an annual tax of \$1,000 on all agents in New Orleans representing foreign insurance companies; and also revised the law of succession so that all persons in foreign countries inheriting real estate in Louisiana should pay a tax of 10 per cent.<sup>9</sup>

On April 2 the Governor vetoed that portion of the proposed measure levying a tax on passengers, both on constitutional grounds and on the score of policy. He said that the Federal Constitution guaranteed to the citizens of each state the immunities and privileges of citizens of the several states. This guaranty, he contended, was violated by the act. He further pointed out that the Federal government had sole authority to regulate interstate and foreign commerce, and that this measure was, in effect, an attempt at such regulation, since the term "commerce" as used in the Constitution comprehended intercourse and navigation. The act, he thought, was scarcely less objectionable on the score of policy, since it was from persons arriving in New Orleans for purposes of commerce that the city largely derived its growing wealth and prosperity. To impose a burden on such persons would be to hamper the city's future development. Then, too, he argued that such discrimination against citizens

of other states might lead to retaliatory acts on the part of other commonwealths.<sup>94</sup> The legislature then reconsidered the objectionable provisions and sustained the Governor's veto.<sup>95</sup> Even the Governor's political enemies were compelled to approve the course of action adopted by him in vetoing portions of the revenue measure.<sup>96</sup>

The legislature, acting upon a suggestion of White in his inaugural address, adopted a joint resolution requesting the Governor to apply to the Secretary of the Treasury for the location of the two townships for educational purposes. Should the Governor be authorized by the Secretary to determine the location of the land, he was empowered to appoint one, or two persons, as he might deem proper, for that purpose. The compensation of the agent or agents should be either 2½ per cent of the receipts from the sales of such lands or a fixed sum, to be determined by the legislature.<sup>97</sup> The resolution, of course, received the endorsement of the Governor. White also approved resolutions of the legislature requesting the Louisiana delegation in Congress to obtain from the Federal government funds to construct levees along the Mississippi River enclosing public lands, and to build a highway across the Federal lands in Flaquemines Parish.<sup>98</sup>

94 New Orleans Bee, April 6, 1835.

95 Ibid., April 3, 1835.

96 Ibid., April 4, 1835.

97 Ibid., May 15, 1835.

98 Ibid., April 13, 21, 1835.

Resolutions instructing the Board of Internal Improvements to investigate the upper course of Bayou Teche with a view to rendering it navigable, and to report its findings to the next legislature were also endorsed by the Governor.<sup>99</sup> He also approved a measure reorganizing the state militia.<sup>100</sup> An act authorizing the state treasurer to subscribe 500 shares on the part of the state to the capital stock of the Barataria and Lafourche Canal Company likewise met with the Governor's approval.<sup>101</sup> White signed a number of bills chartering banks, incorporating insurance companies and religious organizations, and numerous other acts of a purely local character.<sup>102</sup>

Governor White soon encountered adverse criticism, especially among his political followers, because of his policy with reference to appointments. The Louisiana Advertiser, the publication which had been most outstanding in its support of his candidacy for governor, declared that it had no objections to the appointment of Creoles to public positions, who, by virtue of their birth, had a natural as well as legal right to hold office; their attachment to the country and its republican institutions, it asserted, was undoubted. It confessed, however, that this view did not extend to the foreign French who neither knew nor cared

99 Ibid., March 28, 1835.

100 Ibid., April 13, 1835.

101 Ibid., May 11, 1835.

102 Ibid., March 27, 28, 31, 1835; April 2, 3, 4, 6, 7, 8, 11, 15, 16, 17, 20, 21, 29, 1835.

particularly for American institutions. Among this group were included those naturalized citizens who, it was admitted, were legally entitled to official positions, but whose search for political preferment was immodest. This publication concluded that "it is unfair, unjust, and highly imprudent in the appointing power, to confer office upon them, except with extreme reserve and caution, and after they have been tried, and their sentiments in relation to our institutions, and their devotion to this country over all others is well ascertained."<sup>103</sup> The same paper in a later issue disclaimed any prejudices against naturalized citizens as such, holding as absurd the contention that one's fitness for public trust should be dependent upon his place of nativity. Its objections were confined to the appointment of persons whose education and training under despotic and monarchical forms of government rendered them incapable of appreciating American institutions. Many of these persons, it was asserted, were unable to read or speak the language in which the Constitution was written, and yet they had been appointed to administer laws of the government provided for by this Constitution. The Advertiser objected to the appointment of such men to public offices--those who were foreigners by birth, education, language, manners, feelings, and opinions.<sup>104</sup>

103 New Orleans Louisiana Advertiser, March 23, 1835.

104 Ibid., March 31, 1835.

So strong was the excitement among the dissatisfied elements because of the Governor's conduct in the matter of appointments that a public meeting was called for April 4 to consider the subject.<sup>105</sup> Resolutions of censure were introduced in the lower branch of the legislature, but were rejected by a vote of eighteen to twelve.<sup>106</sup> The Bee condemned the resolutions as an attempt on the part of the House of Representatives to arrogate to itself authority to which it was not constitutionally entitled. It was pointed out that the appointments had all been confirmed by the Senate, and had they been unwise this body could have rejected them.<sup>107</sup> As a matter of fact, a check on White's appointments prior to April 6 showed that during the first two months of his incumbency the Governor had appointed ninety persons to office, and of these not more than eight or ten were naturalized citizens.<sup>108</sup> Considering the relatively large number of foreign-born persons in the population of the state at this time, the proportion of appointments allotted to that element was probably not excessive. The Bee, which had been most bitter in its denunciation of White prior to his election, now became his warmest defender. That paper declared, "The public welfare shall ever be our

105 Philadelphia National Gazette, April 20, 1835.

106 New Orleans Louisiana Advertiser, quoted in Philadelphia National Gazette, April 20, 1835.

107 New Orleans Bee, April 3, 1835.

108 Ibid., April 6, 1835.



guide; and although Governor White has not been elected by the party with whom we are more immediately connected, such parts of his executive career as merit approbation will cheerfully be vindicated." He was now, it continued, to act for the whole people, and needy or importunate persons of native birth should not be given preference over those better qualified on the ground that the latter happened to be born in another land.<sup>109</sup> The furor gradually subsided but did not entirely die out, for during the late summer there were violent mob demonstrations in opposition to naturalized citizens holding official positions of preferment. The Louisiana Legion was called out to preserve peace and order in New Orleans; while the merchants and business men of the city instituted a boycott against the Louisiana Advertiser for its publication of what they considered to be incendiary editorials, calculated to arouse hostile sentiments against certain classes of the population and to promote mob violence.<sup>110</sup> Federal troops were stationed in New Orleans and held in readiness should the executive authorities deem it necessary to call upon them to aid in the maintenance of order.<sup>111</sup>

Enlistments in the Texan army, then engaged in the prosecution of a war against the Mexican government, became

109 Ibid., April 4, 1835.

110 Philadelphia National Gazette, September 22, 1835.

111 New Orleans Bee, quoted in Philadelphia National Gazette, September 24, 1835.

so numerous among the inhabitants of Louisiana, and recruiting activities became so conspicuous in New Orleans that Governor White deemed it expedient to take official cognizance of the situation. Accordingly, on November 13, 1835, he issued a proclamation against enlistments. After reminding the citizens of Louisiana that the Mexican government was at peace with the United States, he cited a Federal law, passed by Congress in 1818, prohibiting the enlistment, within the territorial limits or jurisdiction of the United States, of an American citizen in the army of a foreign power for the purpose of taking up arms against a nation with which our government was on friendly terms, violations of the act being punishable by fine or imprisonment. He then called upon the magistrates and all good citizens of the state to aid in upholding the law.<sup>112</sup> The proclamation, however, seems to have been ineffective in preventing enlistments, for there were frequent notices in the newspapers of expeditions leaving New Orleans destined for Texas or Mexico. It was stated near the close of the year that the Texas revolution was being financed largely with New Orleans capital and that fresh recruits were being drawn chiefly from that city, more than 600 persons having left the port to join the revolution.<sup>113</sup>

<sup>112</sup> New Orleans Bee, November 23, 1835.

<sup>113</sup> Ibid., December 19, 1835.

Governor White's annual message was transmitted to the legislature on January 4, 1836. The Governor observed that probably not since the time when Louisiana's shores were beset by an invading horde had circumstances confronted the people's representatives more exacting of prudence and wisdom than those attendant upon the present session. He said that in the full career of peace and prosperity a feverish excitement had pervaded the people, and a disposition had manifested itself to substitute tumult and violence for the orderly processes of the law. This was probably an allusion to the instances of mob activity which had occurred in New Orleans during the preceding summer. Governor White next referred to the outbreak of hostilities between the people of Texas and the Mexican government. He said that the proximity of Louisiana to the scene of action aroused unusual interest on the part of the inhabitants of that state. He had therefore deemed it his duty to issue a proclamation reminding the people of the prohibitive enactments of the National government relative to the maintenance of strict neutrality. He also referred to the strained relations then existing between France and the United States and endorsed the course adopted by President Andrew Jackson, holding that satisfactory explanations had been made to France.

A considerable portion of Governor White's message was devoted to a discussion of the activities of the abolition

societies in some of the Northern states. He condemned their publications--a collection of which he transmitted to the legislature--as incendiary and calculated to stir up strife and bloodshed in the midst of a peaceful, happy, and well regulated society. He could make no specific recommendations to the legislature in the matter of enactments, but suggested a revision of existing statutes on this subject. The question being agitated, he said, was a domestic one and each state had the sole power of dealing with it as it saw best. He thought that it was the function of the Federal government to regulate the activities of these zealots. He therefore approved the President's recommendation to Congress for the enactment of legislation to prevent the use of the United States mails as a means of disseminating the literature of these societies. He believed that the abolitionists constituted a very small minority of the population in the Northern states, but that they compensated for their deficiency in numerical strength by the aggressiveness of their tactics. He hoped that the law-abiding majorities in the states of the North would curb the activities of these minority groups, either by means of legislative sanctions or through the pressure of public opinion.

The Governor was pleased to report that progress had been made in the construction of the New Orleans and Nashville Railroad, and that a canal had been completed permitting boats of moderate draft to enter the basin from the

lake. He commended the advancement shown by the new medical school which had been established by the preceding legislature, saying that particular attention was being given to diseases peculiar to the South.

After registering a strong protest against the injustice of the Federal government's public land policy in regard to Louisiana, the Governor detailed the steps he had taken, under a resolution of the preceding legislative session, to secure entries in accordance with the terms of the Congressional act of 1827 granting two townships to Louisiana for educational purposes. He procured the requisite authority from the Secretary of the Treasury to locate the lands and on April 25 selected several tracts from the public domain along Red River. These selections were forwarded to Washington where they were promptly entered in the land office. Thereupon the Governor proceeded to locate tracts in the region north of Red River, and on July 3 again forwarded to Washington notices of the location of the lands selected. This time his selections were denied entry by the commissioner of the land office because the region in which they were located had not yet been offered for sale and was, therefore, not open to entry except for pre-emptionists under an act of 1834. In other words, the Governor said, the state was not entitled to select its allotted lands until speculators had had an opportunity of buying up all

the land which had any value. He contended that the circumstances connected with the two cases were identical; and if an entry were illegal in the one instance, it was also invalid in the other. He asserted that no one possessed of ordinary understanding could doubt the propriety and legality of the entries, and he now submitted the case to the legislature for its consideration. He suggested that the state's representatives in Congress be requested to seek the passage of a new law permitting the state to make its entries according to the ordinary procedure.<sup>114</sup>

The Bee attributed the difficulties encountered by Governor White in securing the location of the allotted lands to the dilatory methods of his predecessors, who, it asserted, had in more than one instance been false to the trust reposed in them by the people of the state. The same paper took exception to the Governor's contention that the equality of the states guaranteed by the Constitution implied the right to ownership of all vacant lands within the limits of the states. This equality, it was contended, merely embraced similar political rights and state sovereignty, and did not extend to any type of property.<sup>115</sup>

During its 1836 session the legislature was called upon to choose a United States Senator to fill the vacancy occasioned by the resignation of Charles Gayarre. Its choice

114 Ibid., January 5, 1836.

115 Ibid., January 6, 1836.

fell upon a Democrat, Robert Carter Nicholas. All the candidates for the position were said to have been affiliated with the Democratic party.<sup>116</sup> The selection is interesting in view of the fact that the legislature, whose members had been chosen at the time of White's election to the governorship, contained a Whig majority. It was said, however, that had former Governor A. B. Roman, a Whig, consented to have his name placed in nomination as a candidate for the position, he would assuredly have been elected.<sup>117</sup>

Economic conditions throughout the state appear to have been very favorable during the second year of White's term as governor. Marked progress was made in the improvements in and about New Orleans which added to the prosperity and general well-being of that city.<sup>118</sup> As the year advanced, the absence of yellow fever, the recurrent outbreaks of which were a serious deterrent to the state's development, was commented upon, and the health of the people generally was pronounced unusually good. Real estate values in New Orleans had increased appreciably and that city was flourishing; while the prospects for the sugar and cotton crops were excellent.<sup>119</sup> The banking capital of Louisiana at this time was estimated to be about sixty millions with a paid-in capital of approximately forty-two millions. This

<sup>116</sup> New Orleans Bee, quoted in Philadelphia National Gazette, January 28, 1836.

<sup>117</sup> Philadelphia National Gazette, January 16, 1836.

<sup>118</sup> Ibid., January 19, 1836.

<sup>119</sup> Ibid., August 11, 1836.

amount was not then considered excessive since the annual trade of New Orleans was some seventy millions of dollars.<sup>120</sup>

The Texan revolution continued to furnish excitement for the people of Louisiana during the year 1836. General Edmund P. Gaines, in command of Federal troops stationed on the western border of the state, was given orders to maintain strict neutrality and to prevent the passage of armed immigrants into Texas.<sup>121</sup> There was concern lest the Mexicans cross the Louisiana border in their pursuit of defeated Texans who were seeking protection within the limits of the state.<sup>122</sup> General Gaines, in a communication to his superior at Washington, expressed fear concerning the outbreak of hostilities along the border, and issued a circular letter to the governors of Louisiana and Mississippi enjoining upon them the maintenance of strict neutrality. But his views were not shared by Governor White who entertained no apprehensions relative to the border situation.<sup>123</sup> A movement of General Gaines into Texas during the summer created some excitement because of uncertainty as to the motive involved; but it later developed that the expedition was merely a punitive measure taken in conjunction with Texan troops against certain tribes of hostile Indians.<sup>124</sup> Late in July Governor White, in conformity

120 Ibid., November 26, 1836.

121 Ibid., April 30, 1836.

122 Ibid., May 10, 1836.

123 Ibid., May 12, 1836.

124 Ibid., August 2, 1836.



with a requisition from the General, issued a proclamation for ten companies of mounted volunteers to reinforce the troops on the border.<sup>125</sup>

Governor White's message to the legislature, upon the convocation of that body in January, 1837, was replete with optimistic observations. The people, he said, had participated amply in the bounties of nature; and, with the exception of a few instances in which attempts were made to substitute reckless passion for the regular processes of law, there had been no striking revulsions, either physical or moral, to disturb the order of society. This last remark was an allusion to certain mob activities which had occurred during the preceding summer.<sup>126</sup> The Governor believed that the public institutions were, on the whole, adequately performing the functions for which they were created. The case of the Board of Public Works, however, was referred to the legislature for its careful consideration. The expenses of this body constituted a serious drain upon the treasury; and while admitting that the board had rendered many valuable services, the Governor seemed to doubt that these services were commensurate with the cost involved. He therefore suggested the appointment of a controller with complete powers of supervision over all expenditures of the board.

125 Ibid., July 30, 1836.

126 Ibid., September 22, 1836.

The Governor remarked upon the progress made in the construction of the New Orleans and Nashville Railroad. Although the state had furnished no financial assistance in this undertaking, he endorsed a policy of state aid by citing examples in which other states had fostered similar projects and noting the material benefits derived from such improvements.

Governor White then stated that the general government, in accordance with an act of Congress, had offered to deposit certain funds in the state treasury. He considered this a wise move on the part of the Federal government and urged acceptance of the funds by the legislature. He observed that while the deposit of this money with the state treasurer was merely in the nature of a loan, in his opinion it would be a long time before a contingency would arise which would necessitate its recall. In the meantime, he suggested that the legislature invest these funds in works of improvement throughout the state; for he believed it to be the intention of the central government that they should be used and not be permitted to remain idle in the state treasuries.

Governor White submitted to the legislature resolutions of several state assemblies condemning abolitionist activities and asserting the authority of each state to regulate its own local institutions. The unanimity of opinion in regard to

this question was gratifying, but the resolutions did not constitute the effective measures for which it had been hoped. The Governor therefore recommended a careful revision of the existing statutes on the subject with a view to giving them all requisite efficiency, and concluded with this significant passage: "Beyond the measures of legal precaution, for the present, whatever alternatives the progress of events may offer, will form a proper subject of reflection, when the necessity for the consideration shall present itself. In the meantime, we should not deceive ourselves as to the possibility of a crisis. The agitators, emboldened by impunity, boast of increasing consequence and numbers. It at least behoves those most immediately concerned in the issue, to be prepared for any emergency, leaving the authors of consequences to account as they may to their country, for its violated constitution, and to humanity for the wounds inflicted upon it by their guilty licentiousness."<sup>127</sup>

The choice of a United States Senator again developed upon the legislature. Alexander Mouton, a Democrat, was chosen to succeed the retiring Whig Senator, Alexander Porter. Mouton's most formidable opponent was another Democrat, John Slidell. Governor Roman was nominated as a candidate in spite of assurances given by one of his personal friends that he would positively decline the office should he be elected.<sup>128</sup>

<sup>127</sup> New Orleans Bee, January 4, 1837.

<sup>128</sup> Philadelphia National Gazette, January 24, 1837.

The prosperity depicted by Governor White in his communication to the legislature was soon supplanted by financial panic and depression. By the close of March the financial stringency in New Orleans was beginning to become acute. Three financial establishments had gone by the board, one for seven millions of dollars. It was reported to have been the largest failure in the United States.<sup>129</sup> Merchants in other parts of the country were warned to be especially cautious in accepting notes on Louisiana and Mississippi banks. Southern notes in general were at a discount of from 5 to 25 per cent, with the majority ranging between 10 and 20 per cent.<sup>130</sup> In commenting on the general situation in mid-April the New Orleans True American said: "Things are in a moody stillness. The disease is working its way into the vitals of the body politic with an awful rapidity. Its progress is silent, but certain. Nothing under heaven can avert the calamity from breaking up the fountains of credit in toto." The same paper declared that the levees appeared deserted, and that the quiet of midsummer had replaced the activity of April.<sup>131</sup> As is usually the case during periods of unsettled conditions, numerous panaceas were advocated; and dissertations on credit, commerce, and banking were frequently heard on street corners.<sup>132</sup> By the middle of July,

<sup>129</sup> Little Rock Arkansas State Gazette, March 28, 1837.

<sup>130</sup> Cincinnati Whig, quoted in Philadelphia National Gazette, May 2, 1837.

<sup>131</sup> New Orleans True American, quoted in Philadelphia National Gazette, May 2, 1837.

<sup>132</sup> New Orleans Commercial Herald, quoted in Little Rock Arkansas State Gazette, May 16, 1837.

however, the financial stringency had slackened considerably, and several of the New Orleans banks had partially resumed specie payments, while resumption on the part of other financial institutions of that city was expected at an early date.<sup>133</sup>

Governor White called the legislature into special session on December 11, 1837. Speculation had been rife for some time prior to the convening of the general assembly as to what action would be taken by the people's representatives in regard to the banks.<sup>134</sup> The Governor's communication dealt almost entirely with the monetary situation. The country, he said, had experienced a sudden change from a high state of prosperity to one of unprecedented embarrassment, with confidence and credit seriously impaired and with agricultural commodity prices and property in general greatly depreciated. Worst of all, he said, the community had been subjected to the most afflictive curse, that of a currency wholly unregulated and unsound. He conceived it his duty to present this state of affairs to the general assembly with the hope that remedial measures might be devised for the mitigation of the prevailing evils.

The Governor said that during the preceding summer he had been importuned to summon a special session of the general assembly for the purpose of enacting appropriate legislation. He had been deterred, however, by the conviction

<sup>133</sup> New Orleans Louisiana Advertiser, quoted in Philadelphia National Gazette, July 25, 1837.

<sup>134</sup> New Orleans Daily Picayune, November 9, 1837.

that the remedial power did not lie within state jurisdiction, the currency question being, above all others, national in its scope. The President had called Congress into extraordinary session, but, that body having adjourned without adopting a single remedial act, it now devolved upon the state authorities to devise measures compatible with their limited jurisdiction. In the consideration of remedial legislation attention naturally centered on the condition of the banking institutions of the state. The aggregate capital of these corporations being very large and their power of issuing notes being derived from state authority, the subject of banks and bank issues naturally identified itself with the question of the circulation medium.

The almost universal and simultaneous suspension of specie payments on the part of the banks caused their bills, no longer convertible into precious metal, to depreciate rapidly; and, in accordance with the operation of Gresham's law, the precious metals soon disappeared from circulation, becoming mere commodities to be purchased and sold in the market. The Governor urged that if it were in the power of the legislature to redress the wrongs under which the body politic was suffering, then the legislators were called upon by every motive which the sense of duty or the love of country could supply to adopt measures which would bring about this happy consummation. Their jurisdiction, he said, was

generally supposed to reside in the supreme control of a state over bodies which derived their very existence from the exercise of its creative will.

He pointed out that the charters of most of the banks contained expressed provisions for their forfeiture upon failure to redeem their notes in gold or silver within a stated period; and he thought that the same conditions of forfeiture might be applied to those institutions whose charters did not contain this expressed provision, since they were bodies created by law and the privileges extended to them in their charters of incorporation should lapse upon their failure to fulfil their obligations. He advocated a strict scrutiny and thorough examination of the condition of the banks as a basis for any legislation on the subject. Should the condition and past conduct of the banks prove commendable, measures for their relief might be enacted, but this should not be done without the insertion of clauses for the proper guaranty of the public interests.

Governor White advocated greater publicity in banking operations, holding that occult measures in matters of public concern were not in accordance with public sentiment. He said that if the financial situation were affected by banking operations, then greater publicity would increase public confidence, prevent violent fluctuations in the circulating medium, and would thereby more adequately serve the interests

of all. He urged the resumption of specie payments as the great end toward which all other steps should conduce, but he doubted that the independent action of the several states would be sufficiently harmonious to effect the desired end. He believed that the only solution lay in the hearty co-operation of the capitalists with the National government, operating through a central bank, but he expressed doubts as to the effectiveness of such co-operation, so serious had the situation become. To compel the local banks to resume specie payments while the institutions of other states remained on a paper basis would be an act of folly which would simply drain specie from the state and so weaken the banks that they would be forced to suspend again. Governor White concluded by expressing confidence in the ability of the legislature to devise measures for ameliorating the situation.<sup>135</sup>

The legislature, acting upon Governor White's recommendations concerning the banks, appointed committees to investigate the condition of these institutions.<sup>136</sup> The session was largely taken up with the consideration of proposed bank legislation. The work of drafting appropriate measures progressed rather slowly, however; and it was claimed that the inactivity of the legislature was a deterrent to the advancement of commerce, because of the disinclination on the

<sup>135</sup> New Orleans Bee, December 12, 1837.

<sup>136</sup> New Orleans Commercial Bulletin, January 22, 1838; New Orleans Daily Picayune, January 26, 1838.



part of the mercantile classes to act until the uncertainty as to future regulatory measures had been dispelled.<sup>137</sup> The bank bill originated in the Senate and was finally passed by that branch of the legislature near the close of January. Its provisions were characterized as unusually harsh by opponents of the measure and calculated to exercise a sinister influence on the commercial interests. A substitute measure, the provisions of which were more liberal toward the banks, had already been introduced in the House and it was expected that a compromise would eventually be reached between the two branches of the legislature.<sup>138</sup>

It became apparent with the progress of events that the main features of the Senate bill were likely to be incorporated into the final draft of the bank measure, and the commercial interests began to place reliance upon the exercise of the executive veto to prevent the act from becoming effective.<sup>139</sup> The two branches of the legislature eventually agreed upon a compromise measure; and, after having been bandied back and forth between the Senate and the House,<sup>140</sup> the act was finally ready for the Governor's approval or rejection on February 18.<sup>141</sup>

The bank bill as finally enacted provided for the creation of a Board of Currency, consisting of three members

137 New Orleans Commercial Bulletin, January 23, 1838;  
New Orleans Daily Picayune, January 28, 1838.

138 New Orleans Commercial Bulletin, January 29, 1838.

139 Ibid., February 3, 1838.

140 New Orleans Daily Picayune, February 18, 1838.

141 New Orleans Commercial Bulletin, February 10, 15, 17, 20, 1838.

who should be citizens of the United States and should have resided within the state for a period of five years prior to their appointment and who could not be the director of any bank or the business partner of a director. The Board was empowered to examine the books of the various banks and report upon their condition. The banks were authorized to emit post notes payable on or before March 1, 1840, the amount of such emission being proportioned to the capital stock paid in. The exact proportion was fixed in the case of each bank and ranged from 20 to 50 per cent. All holders of notes or post notes of any bank should, after the protest of a single note by such bank or banks, be entitled to interest at the rate of 10 per cent until the notes were paid. It was required that two fifths of all the loans or discounts made by the banks should be let to citizens of the country, and the banks were forbidden to sue a person outside of his parish. Twelve directors were required for each bank, and the state was authorized to appoint half the number of directors in all property banks and the bank of Louisiana. In all other banks the state should appoint one fourth the number, except in those banks in which the city of New Orleans appointed directors, in such cases the right of appointment being reserved to the city.<sup>142</sup>

Governor White's position was described as peculiarly difficult. He was beset by advocates for, as well as

<sup>142</sup> Ibid., February 20, 1838.

opponents of, the measure. A petition was circulated in New Orleans and presented to the Governor, praying that he withhold his approval of the bill.<sup>143</sup> It was estimated that four fifths of the business men of the city opposed the adoption of the proposed law.<sup>144</sup> "When the welfare of a whole community is at stake," commented the Commercial Bulletin, "our present Governor is not a man, who will decide hastily, or prematurely, or without bringing to bear upon the subject, all the lights of experience and knowledge. That it is viewed with fear and suspicion by many of the most intelligent and influential in our city, is apparent from the number and character of the signatures appended to the memorials, praying for its rejection by the Governor. The mercantile class especially manifests their disapprobation of its provisions, and no doubt the operation of the bill will prove extremely hostile to their interests. Its tendency is to restrict and cripple the banks, and to a very great and serious extent to affect the transactions of commerce."<sup>145</sup>

Governor White vetoed the bank bill on March 2, 1838.<sup>146</sup> He had hoped, he said in his veto message, that the united counsels of the legislature would produce a measure acceptable to him. He admitted that certain sections of the bill

<sup>143</sup> New Orleans Daily Picayune, February 22, 1838.

<sup>144</sup> New Orleans Defender, quoted in New Orleans Commercial Bulletin, February 15, 1838.

<sup>145</sup> New Orleans Commercial Bulletin, February 24, 1838.

<sup>146</sup> New Orleans Daily Picayune, March 3, 1838.

were not only free from objections but calculated, could they be carried into effect, to promote the public interests. Portions of the measure he deemed to be of questionable efficacy but should not have considered it his duty to oppose the measure because of his doubts as to their wisdom. There were certain features of the act, however, which he conceived to be a violation of fundamental rights. He objected to the measure as being unjust and hostile to the true interests of the people of Louisiana and violative of both the state and Federal constitutions.

The state, he said, pledged its faith to the banks in their charters of incorporation and it was now proposed to modify these charters and abridge the rights secured in them. This he conceived to be a radical revolution, aimed at the very foundation of the agreements. He objected to the innovation in the qualifications required of directors--namely, that they be citizens of the state for a period of five years prior to their election. He condemned as unjust the clause declaring that no person might vote for directors on any stock pledged as collateral security. The effect of this provision would be to leave much of the stock unrepresented. The section requiring that two fifths of the bank capital be let to citizens in the country without a city endorsement the Governor declared to be subversive of the rights of the stockholders. This injustice was accentuated by the requirement that the distribution be effectuated

prior to the close of the following September. He said that this agrarian measure could only be carried into effect by producing confusion and distress among those possessing ownership in the banks. He condemned the clause requiring that suits for the collection of loans be brought in the domicile of the debtor as working an undue hardship upon the banking institutions.

The Governor contended that the proposed measure was a violation of both the state and National constitutional provisions prohibiting the impairment of contracts. Moneyed corporations, he said, were in the nature of contracts, and the immunity of such contracts had been embodied in the fundamental code of the state. He held that the assumption that the banks had forfeited their charters when they suspended specie payments was wholly outside the sphere of the legislative and executive departments. The question of forfeiture could only be settled by judicial decision, the case being similar to any other involving property rights. He pointed out that some of the banks had not suspended specie payments, while the charters of others did not contain the forfeiture clause, simply providing that in the event of suspension interest should be paid. He scorned the contention that the provisions of the measure were optional with the banks, since any institution refusing to accept its terms was to be disfranchised and public officials were forbidden to recognize the validity of its notes as currency.

The Governor declared that the proposed measure was repugnant to the Federal Constitution which prohibited the states from making anything but gold or silver coin legal tender, since the bill authorized banks accepting its provisions to issue post notes payable in 1840, and further authorized the acceptance of these notes as cash in payment of debts.

The sole grievance against the banks, the Governor continued, was that they had suspended specie payments. No one, he believed, could doubt the public policy and utility of suspension, the only regret being that the measure had not been resorted to at an earlier date. The step had been made necessary by the general derangement of the financial system which, he believed, was an outgrowth of the withdrawal of that great fiscal agency, the United States Bank. He said that the legislative investigation into the condition of the banks had shown them to be fundamentally sound.<sup>147</sup>

The Bee characterized the Governor's message as coarse and filled with invective against the members of the legislature;<sup>148</sup> while the Commercial Bulletin considered it a strong, sensible document, and praised the chief executive for having refused his assent to such an odious measure.<sup>149</sup>

The Commercial Bulletin, the Louisiana Advertiser, and the Defender had strenuously opposed the passage of the bank

<sup>147</sup> New Orleans Commercial Bulletin, March 5, 1838.

<sup>148</sup> New Orleans Bee, March 5, 1838.

<sup>149</sup> New Orleans Commercial Bulletin, March 3, 1838.

Bill, with the Picayune remaining disdainfully aloof, but occasionally raising its voice in opposition; while, on the other hand, the Bee and the Courier strongly advocated the adoption of the measure.<sup>150</sup>

Governor White in his veto message erroneously stated that a citizen after one year's residence in the state was eligible for election to the legislature or to the governorship. Upon having his attention called to the inaccurate statement, he asked that his message be returned in order that a clerical error might be rectified. The Senate refused to comply with the request, and he thereupon sent a special message containing the correction, which was promptly laid upon the table.<sup>151</sup> The Bee ridiculed the statement that the error contained in the veto message had been made by a clerk, asserting that the document had been written in the Governor's own hand, and declared that the lack of knowledge thus evinced by the executive with the fundamental law under which he governed the state constituted proper grounds for impeachment.<sup>152</sup>

According to the Picayune, the opposition to White's veto of the bank measure was confined to the "Locofoco"

<sup>150</sup> New Orleans Louisiana Advertiser, quoted in New Orleans Commercial Bulletin, January 22, 1838; New Orleans Bee, March 5, 1838; New Orleans Commercial Bulletin, March 2, 1838; New Orleans Defender quoted in New Orleans Commercial Bulletin, February 15, 1838; New Orleans Daily Picayune, February 15, March 8, 1838.

<sup>151</sup> New Orleans Bee, March 3, 1838.

<sup>152</sup> Ibid., March 5, 1838.

element.<sup>153</sup> Each side used resolutions, adopted in mass meetings, as a means of expressing its disapproval or approbation of the Governor's course of action.<sup>154</sup>

White was charged with having undergone a change of opinion in regard to the banks since the beginning of the legislative session. It was pointed out that in his annual communication to the legislature upon its convocation he had asserted the inherent right of the state to adopt such measures as might be necessary to insure financial stability, while in his veto message he dwelt on the inviolability of bank charters.<sup>155</sup> There was, indeed, a change in the tenor of the Governor's remarks on this subject. The explanation of this change of opinion is found, however, in White's assertion that the legislative investigation, recommended by him, into the condition of the banks had demonstrated the fundamental soundness of these institutions. The bank measure was repassed by the Senate by the requisite constitutional majority;<sup>156</sup> but the Governor's veto was sustained by the House where the vote stood eighteen for and twenty-one against the measure.<sup>157</sup> Hostile criticism of the Governor's course of action was continued for some time and he was denounced by his political opponents as a simpleton and a demagogue.<sup>158</sup>

153 New Orleans Daily Picayune, March 4, 1838.

154 Ibid., March 9, 1838; New Orleans Bee, March 7, 1838.

155 Ibid.

156 New Orleans Daily Picayune, March 7, 1838.

157 Ibid., March 9, 1838.

158 New Orleans Bee, quoted in Little Rock Arkansas State Gazette, April 25, 1838.



Serious opposition was silenced, however, by the rapid recovery of the banks. The resumption of specie payments on the part of several institutions in the spring of 1838 and the contemplated resumption on the part of others revived the spirit of optimism.<sup>159</sup> There were press comments as late as 1842, however, condemning White's action in vetoing the bank measure.<sup>160</sup>

Governor White was elected to the lower house of Congress in July, 1838, defeating his opponent for the office by a majority of 919 votes.<sup>161</sup> He had been nominated by what his political opponents termed the "bank group" while the bank bill was awaiting his approval or rejection; and it was intimated that this nomination had influenced his action in regard to the measure.<sup>162</sup> The remainder of White's gubernatorial term was not marked by any event of striking importance.

The Governor was unusually brief in his message to the legislature on January 7, 1839. He first commented on the improved conditions in the realm of finance and business. His remarks were confined to statements of a retrospective nature as he preferred to leave recommendations for future policies to his successor who would shortly take office. He said that his term of office had been a period of unusual

<sup>159</sup> Little Rock Arkansas State Gazette, May 23, July 18, 1838.

<sup>160</sup> New Orleans Courier, March 11, 1842.

<sup>161</sup> Philadelphia National Gazette, July 23, 1840.

<sup>162</sup> New Orleans See, March 7, 1838.

ment and agitation and that he had been confronted with many problems difficult of solution. That he may have erred, he doubted not, but his aim had always been the achievement of the greatest good for the greatest number.<sup>163</sup>

The Bee, which had recently raised the banner of the this party,<sup>164</sup> declared that the Governor's message, like all of his other public documents, was marked by sound and sagacious views, couched in lucid, perspicuous and forceful language. "Unlike many of the chief magistrates of the states, Governor White's messages are invariably distinguished by their brevity. He does not deal in broad and inapplicable generalities, and prolix dissertations upon national affairs, but confines himself to topics of immediate and paramount interest to the people of the state over which he presides. He has likewise the happy talent of condensing all that is valuable without impairing its effects by too much concentration. Hence his messages are perhaps more generally read than those of almost any governor in the union."<sup>165</sup>

Governor White retired from office on February 4, 1839, and was succeeded by A. B. Roman, who had been his immediate predecessor.<sup>166</sup> White resumed his seat in Congress in December, 1839.<sup>167</sup> Organization of the body was delayed approximately two weeks, due to a heated controversy which developed

<sup>163</sup> Ibid., January 8, 1839.

<sup>164</sup> Philadelphia National Gazette, January 26, 1839.

<sup>165</sup> New Orleans Bee, January 8, 1839.

<sup>166</sup> Portier, Louisiana, II, 639ff.; New Orleans Daily Picayune, February 3, 1839.

<sup>167</sup> Biographical Directory of the American Congress, 1689.

concerning the seating of four members of the New Jersey delegation. The membership of the House was about equally divided between Whigs and Democrats and therefore party control of its organization might depend upon which set of delegates was admitted to seats on the floor. White consistently voted for the seating of the Whig contestants, who at least had the better legal claim to membership. The Democratic delegates were finally admitted.<sup>168</sup> White supported Robert M. T. Hunter for Speaker. Although Hunter's political affiliation was somewhat in doubt, his election was generally conceded to be a Whig victory.<sup>169</sup> White voted in opposition to the passage of the Sub-Treasury act in July, 1840,<sup>170</sup> and voted in favor of its repeal during the special session of the following summer.<sup>171</sup>

White was re-elected to Congress in July, 1840, receiving more than twice the number of votes polled by his opponent.<sup>172</sup> Early in the special session of the following spring he was appointed to serve on a joint committee to consider by what token of respect the country might express its sense of loss in the death of President William Henry Harrison.<sup>173</sup> He was also appointed to a select committee to which was referred that portion of President John Tyler's message concerning the

168 Philadelphia National Gazette, December 14, 17, 24, 1839.

169 Ibid., December 19, 21, 1839.

170 Ibid., July 4, 1840.

171 Ibid., August 12, 1841.

172 Ibid., July 23, 1840; Baton Rouge Gazette, November 7, 1840.

173 Philadelphia National Gazette, June 5, 1841.

removal of the mortal remains of the late President.<sup>174</sup> White voted in favor of both the measures, introduced at this session, providing for the creation of a Fiscal Corporation to assume the functions formerly performed by the United States Bank.<sup>175</sup> Neither measure became operative, however, due to the interposition of the executive veto.

There is no important legislation connected with White's name during his later Congressional career. He was, as always, solicitous of the interests of his state and particularly of those of his immediate section.<sup>176</sup> He made his last Congressional speech in the closing hours of the Twenty-seventh Congress. It was a reply to charges of disloyalty on the part of the people of Louisiana during the "late war" made by some of the members in the course of the debates on the pending bill for the remission of General Jackson's fine which had been imposed by the Louisiana legislature in 1815.<sup>177</sup>

White was nominated by the Whigs for re-election to Congress in 1842,<sup>178</sup> his Democratic opponent in the contest being Miles Taylor.<sup>179</sup> White did not return to the state to campaign in behalf of his candidacy, but remained at his post in Congress which did not adjourn until some time after the election had

<sup>174</sup> Ibid., June 26, 1841.

<sup>175</sup> Ibid., August 10, 26, 1841.

<sup>176</sup> Cong. Globe, 27 Cong., 1 Sess., 98, 2 sess., 650 ff.; Philadelphia National Gazette, July 13, 1841; New Orleans Courier, June 27, August 8, 1842.

<sup>177</sup> Cong. Globe, 27 Cong., 3 Sess., 384.

<sup>178</sup> Baton Rouge Gazette, May 21, 1842; New Orleans Bee, July 1, 1842.

<sup>179</sup> New Orleans Courier, June 23, 1842.

been held. His administration as governor was attacked in conjunction with that of Henry Johnson, who was seeking another gubernatorial term on the Whig ticket, as having been extravagant and wasteful.<sup>180</sup> Early returns from the election indicated a Whig victory;<sup>181</sup> but as more complete returns were obtained it became evident that the Democratic ticket, headed by Alexander Houton for governor, had been swept into office.<sup>182</sup>

In spite of the general Democratic victory, however, White defeated his opponent, Taylor, for the office of Representative from the first Congressional district.<sup>183</sup> Congress having passed a reapportionment act on June 25, 1842, increasing Louisiana's representation in the National House from three to four members,<sup>184</sup> a bill was introduced at the next session of the legislature in January, 1843, redistricting the state conformably to the increase in its representation.<sup>185</sup> Both Democrats and Whigs accused their political opponents of attempting to gerrymander; but the allotment seems to have been fairly equitable, two of the districts being considered doubtful, while the remaining two were conceded to be Whig and Democrat respectively.<sup>186</sup>

The redistricting act provided that another Congressional election should be held in the following July, in accordance

<sup>180</sup> Opelousas Inquirer, quoted in New Orleans Courier, June 29, 1842.

<sup>181</sup> New Orleans Bee, July 5, 1842.

<sup>182</sup> New Orleans Courier, July 9, 15, 1842.

<sup>183</sup> Baton Rouge Gazette, July 9, 1842.

<sup>184</sup> New Orleans Bee, April 17, 1843.

<sup>185</sup> Ibid., January 26, 1843.

<sup>186</sup> Ibid., January 26, February 1, March 28, April 6, 7, 1843.

with state laws.<sup>187</sup> On May 29 announcement was made of White's candidacy as the Whig nominee for election from the second district<sup>188</sup> which included that portion of Orleans Parish on the right bank of the Mississippi River, the parishes of Jefferson, St. Charles, St. James, St. John, Ascension, Assumption, Terrebonne, and Lafourche Interior.<sup>189</sup> This district comprised the heart of the sugar-growing region, and was considered the Whig stronghold.<sup>190</sup> The election was held on July 3, 4, and 5; and the early returns indicated a victory for White.<sup>191</sup> The complete returns, however, showed that the Democratic candidate, Alcee Labranche, had been elected, although by the slender majority of seventy-three votes.<sup>192</sup> A general apathy seemed to prevail among the Whigs, and the exceedingly light vote in the predominantly Whig areas was said to account for White's slender majorities in these sections.<sup>193</sup> It was argued that had the second municipality and the parishes of St. James and Lafourche cast their usual vote, White would have been elected by a comfortable majority.<sup>194</sup> Pending the final determination of the result of the contest, the leading Whig organ complained that if the election had been lost, it was due to the inertness of White who had been content to remain quietly at home while his opponent had

187 Ibid., April 17, 1843.

188 Ibid., May 29, 1843.

189 Ibid., April 6, 1843.

190 Ibid., July 1, 1843.

191 Ibid., July 4, 1843.

192 Ibid., July 9, 1843.

193 Ibid., July 8, 1843.

194 Ibid., July 9, 1843.

thoroughly canvassed the district and had made personal contact with practically every voter. White's inactivity, it was suggested, was probably due not so much to overconfidence as it was to his disinclination to continue longer in public office.<sup>195</sup> Sparks attributed White's defeat in this election to a treacherous conspiracy;<sup>196</sup> but a perusal of the newspapers of the period affords no evidence in support of this contention. In commenting on the fact that Louisiana would be represented in the next Congress by a wholly Democratic delegation, the leading Whig organ said that the Whigs had nobody but themselves to blame for their overwhelming defeat.<sup>197</sup>

After his retirement from Congress White returned to his sugar plantation in Lafourche Parish.<sup>198</sup> The severe winters spent in Washington had weakened his constitution and his health began to fail perceptibly. His final illness was attributed in part to the impairment of his physical powers resulting from the accident aboard the Lioness. The end came on April 18, 1847, when he succumbed to a bronchial infection.<sup>199</sup> His body was taken by steamboat from New Orleans to Thibodeaux where interment was made.<sup>200</sup> The legislature, which was in session when his death occurred, passed joint resolutions expressing sorrow at the news of his death and appreciation of the public services rendered by him to the

195 Ibid., July 6, 1843.

196 Sparks, The Memories of Fifty Years, 459.

197 New Orleans Bee, July 9, 1843.

198 Sparks, The Memories of Fifty Years, 459.

199 New Orleans Daily Picayune, April 20, 1847.

200 Ibid.

state; and as a mark of respect, it was resolved that each member should wear a badge of mourning for thirty days, and that all should accompany the funeral procession from the late Governor's place of residence to the point of embarkation.<sup>201</sup>

White's numerous eccentricities were freely admitted by his friends;<sup>202</sup> but even his most bitter political opponents never attempted to impeach the integrity of his private character. His admirers frequently remarked upon his bland affability, and he was described as a man of plain, simple manners who probably never wore a sword or a ruffle.<sup>203</sup> His honesty and benevolence were freely admitted by his political foes during the most heated campaign of his public career.<sup>204</sup> White's political opponents accounted for his great popularity by the assertion that his character was of such a negative type that it was incapable of arousing enmity.<sup>205</sup> A story is related as being illustrative of White's true character. While in Congress, prior to his election as governor, he presented a claim, on behalf of one of his constituents, to the Secretary of the Treasury. After continued delay, in spite of repeated inquiries, White notified the Secretary that should the claim not be adjusted by a given date, he would present

201 Ibid.; Louisiana House Journal, 1846-1847, 79.

202 Baton Rouge Gazette, April 24, 1847; A. Porter to J. B. Harrison, March 8, 1835, in Burton Harrison Collection.

203 New Orleans Louisiana Advertiser, April 21, 1834.

204 Covington Chronicle, quoted in New Orleans Bee, April 30, 1834.

205 New Orleans Bee, June 6, 1834.



his case to the President. On expiration of the time limit without action being taken on the matter, White repaired to the Executive office, seated himself without removing his hat, and demanded an audience with the President. When General Jackson appeared, White bluntly informed the President that his servant had neglected the performance of a duty toward one of his constituents and requested an immediate settlement of the matter. The claim was then adjusted without further delay.<sup>206</sup>

In speaking of those ennobling attributes possessed by White which had enabled him to defeat in the race for popularity the powerful genius of a Livingston and the brilliant intellect of a Dawson, an admirer concluded: "May his example not be lost upon those who now or may hereafter be called to wield the destinies of the State; but may they ever revere the memory, cherish the example, and emulate the high and noble qualities as a citizen, as a husband, as a father, and as a public servant, of Edward D. White."<sup>207</sup>

206 Baton Rouge Gazette, April 24, 1847.

207 Ibid.

CHAPTER III  
YOUTH AND POLITICAL BEGINNINGS OF  
EDWARD DOUGLAS WHITE II

Governor E. D. White was survived by a widow and four children. While a member of Congress, prior to his accession to the gubernatorial office, White had married Catherine Sidney Lee Ringgold. Mrs. White was the daughter of Tench Ringgold,<sup>1</sup> who for many years had been marshal of the District of Columbia and who was a descendant of the Carters of Virginia. She was also a descendant of the Lees of the same state,<sup>2</sup> and a distant relative of General Robert E. Lee. The youngest of the children, a son, had been given the name of his father. Young Edward was born on November 3, 1845, on his father's plantation which was located in Lafourche Parish about six miles north of the town of Thibodeaux.<sup>3</sup> This family estate, which was generally known as the Edward D. White Plantation, comprised about 1820 superficial arpents (approximately 1517 acres) at the time of the father's death.<sup>4</sup> The

1 New York Times, May 19, 1921.

2 Burton J. Hendrick, The Lees of Virginia, Biography of a Family (Boston, 1935), 399.

3 Lewis C. Cassidy, Formative Years in the Career of Chief Justice White (Philadelphia, 1927), 12, 3; Henry P. Dart, "Address," in Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of E. D. White, December 17, 1921 (Washington, 1922), 90, 103.

4 Lafourche Parish Conveyance Records (Courthouse, Thibodeaux, Louisiana), L (1919), No. 3126, p. 121.

elder White had apparently settled in Lafourche Parish as early as 1822;<sup>5</sup> and it may be that he had resided there for some time prior to that date. The White Plantation had been acquired in great part in piece-meal fashion. Purchases were made of small holdings, usually consisting of long, narrow strips about two arpents in width, which fronted on Bayou Lafourche, and extending back forty acres from the water-front. Six such purchases were made during the year 1829.<sup>6</sup> Although the strips were not always contiguous, White was able eventually to buy out the holders of intermediate tracts and thus to consolidate his holdings. Although the plantation was of moderate size, and there were a number of slaves,<sup>7</sup> the family was left in somewhat straitened circumstances. There was a mortgage on a portion of the land which was taken up by Mrs. White--who had been made executrix--during the year following her husband's death.<sup>8</sup> By certain proceedings in the act of succession the mother acquired the interest of her children in the property. The children were all minors at the time, but her title was later confirmed after they had become of age by an act of September 2, 1878.<sup>9</sup>

Shortly after the death of her husband the mother removed with her children to New Orleans where she later married

5 Lafourche Parish Conveyance Records, A (1822-1823), 253.

6 Ibid., F (1828-1830), 30; G (1829-1830), 13, 161, 303, 304.

7 Ibid., M (1835-1837), 157-158.

8 Ibid., Z (1847-1848), 133-134.

9 Lafourche Parish Conveyance Record, L, No. 3126, pp. 121-124.

Ringgold Brousseau.<sup>10</sup> Here young "Ned" White, as he was called, and his brother, James, were enrolled in the Jesuit school of the Immaculate Conception in the year 1851. Young Edward was placed under the care of Father Duffo. His progress seems to have been rapid, although no records of his marks are now extant. He appears to have enjoyed a greater degree of intimacy with his instructors than did his fellow-students.<sup>11</sup>

In the fall of the year 1856 the two brothers were sent to Mount St. Mary's College which is located in Emmetsburg, Maryland. The Reverend Robert Fulton, then an instructor at the college, recalled years later the younger brother's extreme grief at the thought of being separated from his mother. The child clung frantically to the carriage in which the mother was leaving, and had to be carried up to his room by the priest who coddled the homesick boy until his nostalgia had subsided.<sup>12</sup> In the spring of 1856 the name of Edward Douglas White was one of the four mentioned as having attained the grade "accesserunt" in English Grammar and History. After attending one more session at Mount St. Mary's College, he entered Georgetown College in Washington, D. C., in the fall of 1858. He was in attendance there when his studies were abruptly terminated by the outbreak of the Civil War.<sup>13</sup> In the spring of 1861 one of the buildings of the college was converted into a barrack for Union troops, causing the temporary suspension

10 Cassidy, Formative Years, 4.

11 Ibid., 4, 5.

12 New Orleans Times-Democrat, November 6, 1894.

13 Cassidy, Formative Years, 6, 8, 9.

of scholastic activities. White thereupon left for his home in Louisiana.<sup>14</sup> It was said that on his arrival in his native state friends sought to secure for him a commission in the Confederate Army.<sup>15</sup> There was, however, a superabundance of military officers among the Confederate leaders, particularly in White's home section. At any rate, his extreme youth would hardly have justified a commission without previous experience. On October 7, 1861, White was enrolled at Berwick Bay as a private in the first field battery of the Louisiana artillery.<sup>16</sup> The name of E. D. White appears in the Confederate records for November 20, 1861, as captain of Company C of the Irish Regiment of Louisiana.<sup>17</sup> This would seem, however, to have been a rather rapid promotion. It is said that White was detailed to duty with Major-General Richard Taylor in 1862.<sup>18</sup> The latter had been placed in charge of the troops in western Louisiana on August 20 of that year, with apparent instructions to attempt the recapture of New Orleans.<sup>19</sup> In September General Godfrey Weitzel was sent out in charge of a brigade with orders from General

<sup>14</sup> Ibid., 11; Dart, "Address," in loc. cit., 90.

<sup>15</sup> New York Times, May 19, 1921.

<sup>16</sup> Andrew B. Booth (comp.), Records of Louisiana Confederate Soldiers and Louisiana Confederate Commands, 3 vols., (New Orleans, 1920), III, Bk.2, p. 1059.

<sup>17</sup> Ibid.

<sup>18</sup> New York Times, May 19, 1921.

<sup>19</sup> Richard B. Irwin, "Military Operations in Louisiana in 1862," in Robert U. Johnson and C. C. Buel (eds.), Battles and Leaders of the Civil War, 4 vols. (New York, 1884-1888), III, 584.

B. F. Butler to dislodge Taylor and occupy the Lafourche district, the occupation of this fertile region being important to the retention of New Orleans in Federal control. Weitzel met Brigadier-General Alfred Mouton who was charged with the defense of the Lafourche area, and there was brisk fighting in and about the town of Thibodeaux. The Confederates yielded grudgingly; but were finally compelled to withdraw to the Teche district where they joined Taylor.<sup>20</sup> White was said to have participated in this engagement and to have narrowly escaped capture, being forced to take refuge under a pile of hay in a shell-shattered barn.<sup>21</sup> This episode ended his active service in the field, for shortly thereafter he accepted the post of aid de camp to General W. N. R. Beall, and accompanied that officer to Port Hudson where 18,000 Confederate troops were consolidated under General Frank Gardner. Shortly after his arrival at Port Hudson White became ill, and was forced to lie idle during the siege of that stronghold by the Federal troops under General N. P. Banks. Upon the surrender of Port Hudson on July 9, 1863, White was sent to a prison camp in Mississippi where he soon became convalescent.<sup>22</sup> He was later apparently transferred to New Orleans, then paroled and granted permission to return home. Years afterward at an alumni luncheon at Princeton

<sup>20</sup> Ibid.

<sup>21</sup> New York Times, May 19, 1921.

<sup>22</sup> Ibid.

University, White related how this permission had been granted through the kindness of an officer of the regular Union Army who had known some of his relatives before 1861.<sup>23</sup>

White remained at his home near Thibodeaux until the close of the war. His plans to organize a cavalry regiment which would enable him to play a part in the struggle in which there would be less of the negative were frustrated by the surrender of General Lee and the ensuing collapse of the Confederacy.<sup>24</sup> In 1865 he went to New Orleans and began the study of law in the office of Edward Bermudez who was then already a distinguished civil lawyer. White devoted himself assiduously to his studies, specializing in the Civil Code. After a three-year period of apprenticeship he was admitted to the bar and received his license to practice in Louisiana.<sup>25</sup>

His daily routine followed the usual course of most of the young lawyers of his acquaintance, but he was distinguished from the others by the close application with which he pursued his studies.<sup>26</sup> He became a thorough student of the Civil Code of Louisiana. In fact, it is said he once told a friend that he was accustomed to read the Civil Code and the Code of Napoleon at least once every year. He studied these in their Roman origin and likewise became thoroughly versed in the

<sup>23</sup> Princeton Alumni Weekly, May 15, 1912.

<sup>24</sup> New York Times, May 19, 1921.

<sup>25</sup> Henry P. Dart, "Remarks," in Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of E. D. White, 16.

<sup>26</sup> Ibid.; H. P. Dart, "Edward Douglas White," in Louisiana Historical Quarterly, V (1922), 145 ff.

Siete Partidas of Alfonso the Wise of Castille. His knowledge of the Latin, French, and Spanish languages enabled him to familiarize himself thoroughly with the various modifications of the Roman Law.<sup>27</sup>

White continued to work in the law office of Bermudez after his admission to the bar.<sup>28</sup> His first case that attracted attention was a suit brought by the police jury of Jefferson Parish to recover a sum of about \$17,000 from one of the riparian landowners of that parish for the construction of a levee along the Mississippi River on his property. This case had been tried in the district court and had resulted in a decision favorable to the landowner. The police jury, however, appealed the case and it came before the Supreme Court in January, 1870.<sup>29</sup> Bermudez is said to have offered the case to White, remarking that the prospects for success were apparently slight, but suggesting that it might serve to gain him recognition. White agreed to represent the defendant.<sup>30</sup>

The situation was, in brief, this: prior to the outbreak of the Civil War it had been the immemorial custom for proprietors owning lands which fronted on rivers or bayous to defray the expenses incidental to the work of constructing and repairing levees on their property. During the war, however, this custom was permitted to lapse owing to the abnormal conditions

<sup>27</sup> Dart, "Remarks," in loc. cit., 16; New York Times, April 8, 1926.

<sup>28</sup> Dart, "Remarks," in loc. cit., 17.

<sup>29</sup> Police Jury of Jefferson Parish v. Tardos, 22 La. Ann. 58 (1870).

<sup>30</sup> Dart, "Remarks," in loc. cit., 17.



brought about by the conflict. At the close of the war it was obvious that the dilapidated condition of the levees together with the changed relations of capital and labor would render a return to the pre-war policy ruinous to the riparian landowners. Governor J. Madison Wells accordingly created, by proclamation, a Board of Levee Commissioners which should take over the work of constructing new levees and repairing the old ones. The Governor's action was ratified by the legislature when it met in 1866; and it provided for the issuance of bonds and authorized the expenditure of public funds to continue the work of reconstruction. No provision was made, however, for the perpetuation of the personnel of the board. The terms of office of the original members expired automatically with the close of the legislative session, and no new appointments were made or authorized. After the establishment of military government in 1867, General Philip Henry Sheridan ordered the riparian landowners to construct and repair their levees, and to keep an account of the expenses thus incurred, so that they might be reimbursed from the public funds.<sup>31</sup>

Counsel for the plaintiff held that the failure of the legislature in 1866 to provide for the continuation of the board had signified a reversion to the old policy; while White, on the other hand, as counsel for the defense, contended that these proceedings had established a new rule

<sup>31</sup> Police Jury of Jefferson Parish v. Tardos, 22 La. Ann. 58 (1870).

involving a public duty in place of the old private duty. The Supreme Court upheld White's contention, and affirmed the decision of the district court. The successful handling of this case served to establish White's reputation as a lawyer.<sup>32</sup>

The pursuit of a public career had by this time become traditional in the White family. In view of his social and political heritage it was inevitable that a man of young White's abilities and personality should have been drawn into the vortex of the political storm which marked the closing years of the reconstruction era in Louisiana. As had been the case with his father and grandfather, he turned from the practice of law to an active participation in political affairs.

It was in 1874 that Edward D. White made his entry into Louisiana politics, enlisting on the side of the Conservatives. This year is memorable in Louisiana history because of the desperate effort made by that element to wrest from the Radicals control of the state government to which the latter had been tenaciously clinging since the reorganization of the state government with Henry Clay Warmoth as governor in 1868. The prospect of the November election, at which both members to the state legislature and members to the lower House of Congress were to be chosen, being fraudulently turned into a Radical victory aroused the

32 Ibid.

indignation of the Conservatives to feverish pitch. Attempts to intercept shipments of arms and arrests of many respectable Conservatives for carrying such weapons as shotguns led directly to the uprising of September 14.<sup>33</sup> It is said that White participated in the pitched battle between the White Leaguers and the Metropolitan Police as a private in the ranks of the former.<sup>34</sup> The battle resulted in a complete victory for the Conservative forces and was followed by the installation of a Conservative government. The Radical governor, William Pitt Kellogg, had, however, sent a desperate plea to President U. S. Grant for Federal intervention. The President responded with his proclamation of September 15, ordering the Conservatives to disband within five days or they would be deemed guilty of levying war against the government of the United States.<sup>35</sup> Governor John B. McEnery yielded to the threat of force and surrendered the statehouse to General William H. Emory on the evening of September 17 and William P. Kellogg, who had been temporarily ousted from the gubernatorial chair, resumed his office in the statehouse on the nineteenth.<sup>36</sup>

The conclusion of the September episode left the Conservatives powerless but not hopeless. They determined to get control of the lower branch of the state legislature.

<sup>33</sup> Ella Lonn, Reconstruction in Louisiana after 1868 (New York, 1918), 268.

<sup>34</sup> New Orleans Times-Picayune, May 20, 1921.

<sup>35</sup> Lonn, Reconstruction in Louisiana, 274.

<sup>36</sup> Ibid., 275.

It was useless to hope for a majority in the Senate, since only one half of the membership of this body was elected every two years.<sup>37</sup> White was put forward by the Conservatives as a candidate for election to the Senate from the second Senatorial district.<sup>38</sup> This district was one of several into which the parish of Orleans was divided. The election took place on November 2. White was elected, receiving 1073 votes to 326 for Jules Lanabere, the Radical candidate.<sup>39</sup> Out of the eighteen vacancies in the Senate eight were filled by Conservative candidates.<sup>40</sup>

With regard to the House the situation was quite different. The New Orleans Republican, the Radical organ, claimed a working Republican majority; while the Daily Picayune, a Conservative paper, gave the total Conservative membership as sixty-eight with a total Radical membership of forty.<sup>41</sup> By the time the legislature met on January 4, 1875, however, the returning board had so manipulated the returns that the official list gave fifty-two Radical members, fifty Conservative members, and five contested seats.<sup>42</sup> After an unsuccessful attempt on the part of the Conservatives to capture the Speakership and organize the House, they

<sup>37</sup> Thorpe (comp.), American Charters, Constitutions and Organic Laws, III, 1384.

<sup>38</sup> New Orleans Republican, November 3, 1874.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid., November 4, 1874.

<sup>41</sup> Ibid.; New Orleans Daily Picayune, November 5, 1874.

<sup>42</sup> Ibid., January 5, 1875; Lonn, Reconstruction, in Louisiana 292 ff.

withdrew to a building on St. Louis Street where they held daily caucuses.<sup>43</sup>

The eight newly elected Conservative Senators co-operated with the Conservative members of the House by absenting themselves from the sessions of the Senate.<sup>44</sup> They continued to follow this course of action until the Conservative members of the House agreed to arbitrate the question of membership which resulted in the Wheeler Compromise, whereby the Conservatives were awarded a majority of eight.<sup>45</sup> On March 2, the day before the regular session closed, the eight Senators created some surprise by their appearance in the Senate chamber. They were sworn in by Lieutenant-Governor Caesar C. Antoine, after which J. B. Eustis offered a protest to the effect that the existing government was not legal, and had not been created by the suffrages of the people; and that William P. Kellogg was not and had never been the de jure governor of the state. This protest was signed by all eight of the Conservative members. It created some discussion on the part of the Republican Senators, but the Senate finally voted to have it spread on the minutes.<sup>46</sup>

In commenting on the action of the eight Senators the Daily Picayune expressed the general consensus of Conservative opinion. It declared their action to be a logical sequence

<sup>43</sup> Lonn, Reconstruction in Louisiana, 298.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., 370.

<sup>46</sup> New Orleans Daily Picayune, March 3, 1875; New Orleans Republican, March 3, 1875.

of the events and developments of the previous week. The Conservative Senators had absented themselves from the sessions of the Senate for the purpose of lending countenance to the course pursued by the Conservatives in the lower House. As long as the latter maintained their original independent position, it was the duty of the Senators to give their moral support by continuing to remain aloof. The decision of the Conservatives in the lower House to arbitrate the question of membership made a continuance of this policy of aloofness useless and unnecessary. The Picayune concluded its remarks by expressing the hope that the presence of the Conservative Senators would tend to lessen the extravagant and improvident legislation which had always characterized the closing hours of the sessions of Republican legislatures in Louisiana.<sup>47</sup>

On March 3 White was appointed to the Committee on Agriculture, Commerce, and Manufactures, but he did not enter upon his duties as an active member because the Senate adjourned sine die on the day of his appointment.<sup>48</sup> On March 29, however, Governor Kellogg issued a call for a special session of the legislature to meet from April 14 to the 24. This session was called for the purpose of considering six specified objects: (1) a joint resolution with relation to the political difficulties hitherto existing in the state; (2) revenues of the state and the modes of collecting and

<sup>47</sup> New Orleans Daily Picayune, March 3, 1875.

<sup>48</sup> New Orleans Republican, March 5, 1875.

disturbing them; (3) an amendment to the funding law with respect to the number of members composing the funding board and with respect to the prevention of funding illegal obligations of the state; (4) to consider the revenues, financial condition, and the government of the city of New Orleans; (5) relief of the port of New Orleans from excessive fees, port charges, etc.; (6) to consider the incorporation of the Board of Trade of New Orleans.<sup>49</sup> Half of these propositions dealt specifically with the city of New Orleans. Since White was a member from New Orleans, the greater portion of his bills had to do with matters of local interest to that city. Out of the twelve bills introduced by him during the course of this special session six dealt almost exclusively with the parish of Orleans. The first bill which he introduced had to do with the publication of the ordinances and proceedings of the corporation of the city of New Orleans.<sup>50</sup>

He introduced three bills providing for reductions of city taxes. The first of these measures dealt with retrenchment in the field of education. It provided for the limitation of the amount which New Orleans should pay for the support of the public schools; provided for the reduction of expenses in this field; and authorized a reduction in the school tax.<sup>51</sup> This bill, however, was reported unfavorably

<sup>49</sup> Ibid., March 30, 1875.

<sup>50</sup> Ibid., April 18, 1875.

<sup>51</sup> Ibid.

by the Committee on Education.<sup>52</sup> The second retrenchment measure provided for the reduction of taxes levied by the city of New Orleans for metropolitan police purposes; limited the expenditure of the funds thus derived; and authorized the Metropolitan Police Board to make reductions in apportionment, salaries, and expenses.<sup>53</sup> This measure was reported favorably by the Committee on Metropolitan Police, was passed by the Senate, concurred in by the House,<sup>54</sup> and was finally enacted into law.<sup>55</sup> The third measure of retrenchment provided for the regulation of the park tax in New Orleans and the reduction of the general fund tax.<sup>56</sup> It seems, however, to have died in the committee stage, for it was never reported back from the Committee on Parks and Public Buildings.

White also introduced a bill looking toward the reorganization and reform of the New Orleans police court system. It provided for the organization of two police courts in the city, defining the jurisdiction and prescribing the mode of appointing officers thereof, and describing penalties for the nonpayment of fines into the city treasury. This bill further provided for the transfer of all records from the then existing municipal police courts to the courts thus established, and for the repeal of all former laws establishing municipal police courts.<sup>57</sup> The Judiciary Committee, however,

52 Ibid., April 25, 1875.

53 Ibid., April 18, 1875.

54 Ibid., April 25, 1875.

55 Louisiana Acts, 1876, p. 10.

56 New Orleans Republican, April 18, 1875.

57 Ibid.



to which it was referred, failed to take any action upon it. Another measure which White proposed dealt with the problem of drainage in the parishes of Orleans and Jefferson. It provided for the making of contracts in connection with the work of drainage, for the management of the drainage tax, and for the payment of bonds issued and debts incurred in the course of such work.<sup>58</sup> This bill, however, suffered a similar fate to that providing for the establishment of police courts.

During the first two years of his Senatorial career in the Louisiana legislature White and the other Conservative Senators were so greatly outnumbered that it was well-nigh impossible to accomplish anything in the way of reform. Even after the adjustment made under the Wheeler Compromise the Radicals had a three-fourths majority in the Senate--numbering twenty-seven to the Conservative nine.<sup>59</sup>

The second year of White's career in the state Senate proved to be the last year of Radical and Negro domination in Louisiana. As we have already noted, the Conservatives had acquired control of the lower branch of the legislature in 1875. It still remained for them to capture control of the Senate and of the executive department. Negroes made up one third of the membership of the Senate as well as of the House of Representatives.<sup>60</sup> When the legislature convened

<sup>58</sup> Ibid., April 21, 1875.

<sup>59</sup> Lonn, Reconstruction in Louisiana, 370ff.

<sup>60</sup> New Orleans Republican, February 9, 1876.

for its regular session of 1876, White was appointed to places on eight of the standing committees. The first and most important of these was the Committee on Judiciary; then there were the Committees on Finance, Claims, Banks and Banking, Charitable Institutions, Health and Quarantine, Libraries, and Retrenchment and Reform.<sup>61</sup>

Out of the twelve measures which White introduced during this session, six were passed by the Senate, while a seventh was reported favorably by substitute and finally passed. One of the bills which became a law was an act authorizing the employment of shorthand reporters for the taking of testimony in all appealable civil causes tried in the courts of the parish of Orleans and authorizing the use of such shorthand reporters in other district courts throughout the state.<sup>62</sup>

Two of the measures which White succeeded in having enacted into law were amendments to portions of the code of practice and the revised civil code of Louisiana.<sup>63</sup> Two other tangible results of his legislative labors were the passage of an act giving intervenors the right to bond property attached, sequestered or provisionally seized, and a statute providing means for testing the validity of the outstanding debt of New Orleans.<sup>64</sup>

61 Louisiana Senate Journal, 1876, pp. 39, 40.

62 Ibid., 189; Louisiana Acts, 1876, pp. 149-150.

63 Louisiana Senate Journal, 1876, pp. 64, 65, 189, 293; Louisiana Acts, 1876, pp. 49-50.

64 Louisiana Senate Journal, 1876, pp. 125, 261, 271; Louisiana Acts, 1876, pp. 54-58, 92.

Probably the most hotly contested measure which came before the legislature during its session of 1876 was the new election law proposed by the Conservative House. This bill provided for the abolition of the returning board and invested the Secretary of State with the power of consolidating the votes. When the measure came before the Radical Senate, it was proposed, by a substitute bill, to create a new returning board of five members--three of whom were to be appointed by the Governor and two by the House.<sup>65</sup> This proposal brought forth a storm of protest from the Democratic side of the chamber. On February 4 the New Orleans Republican reported a speech made by White in explanation of his vote against the measure in which he was quoted as saying that he concurred in the opinion expressed by Senator Frederick N. Ogden that if the bill were passed "trouble and bloodshed would follow"; and all this, he said, would rest upon the shoulders of the Republicans. He expressed himself as being opposed to concentrating so much power in the hands of creatures of the Senate or creatures of anybody else. He was further quoted in the Republican as saying, "I think that the most direful consequences will result if it is passed. For if this bill becomes a law the result, I believe, will be the destruction of the lives of ten thousand colored people."<sup>66</sup>

<sup>65</sup> Loon, Reconstruction in Louisiana, 391, 392.

<sup>66</sup> New Orleans Republican, February 4, 1876.

The following day in a letter to the editor of the Republican which he requested to be printed White denied having said that ten thousand Negroes would be killed if the election were passed.<sup>67</sup> He also made a formal denial in the Senate. He stated that what he did say was that, as a Conservative, he was in favor of securing to every man the right to vote, and that the proposed law would spread abroad the impression that no fair election would be possible; that the result would be determined by a coterie who were the creatures of the Senate; and that "good order would be sacrificed, bloodshed ensue, and the last vestige of republican government be destroyed."<sup>68</sup>

The Republican, commenting on White's denial, expressed satisfaction on learning that he had made no statement as to the number of colored people the Democratic party proposed killing. Scepticism as to the truth of the denial was evident in the remarks of the editor. He was glad, he said, to learn that reporters, auditors, and all were mistaken as to what White had really said.<sup>69</sup>

The objectionable substitute bill was passed by the Senate, but was rejected by the lower House. No compromise measure could be agreed upon by the conference committee which had been appointed for that purpose; and the legislative

67 Ibid., February 5, 1876.

68 Ibid.; New Orleans Daily Picayune, February 5, 1876.

69 New Orleans Republican, February 5, 1876.

session closed without any reform being effected in the election laws.<sup>70</sup>

One of the most exciting incidents connected with the session of 1876 was an attempt on the part of the Democratic House to impeach Governor William P. Kellogg for high crimes and misdemeanors. At six o'clock on the evening of February 27 a committee from the House appeared before the Senate and in due form impeached Kellogg, and asked that the Senate take orders for his appearance before that body. The committee then withdrew. A resolution was next adopted resolving the Senate into a court of impeachment. After counsel for Kellogg had appeared and asked that impeachment proceedings begin immediately, Senator M. H. Twitchell offered a resolution to the effect that the House be notified that the Senate had organized a court; that Kellogg had appeared by counsel; and that the House would be given until seven o'clock to present charges. White offered an amendment that "12 o'clock Wednesday" be inserted in the space "7 o'clock this evening." The amendment was voted down. This would, of course, give the House no time to prepare the charges. Conservative Senators tried dilatory tactics to prevent a vote being taken upon the resolution. It was finally voted on, however, and adopted. The secretary reported that he had waited upon the House and found it adjourned. White thereupon

<sup>70</sup> Lonn, Reconstruction in Louisiana, 391-392.

moved that the Senate adjourn until the next Wednesday at twelve o'clock, but this motion was lost. The Senate then recessed for thirty minutes. When the sitting was resumed, the House managers appeared and informed the Senate that the House had not expected the court to call for a hearing of charges on such short notice and had adjourned until the following Wednesday.<sup>71</sup> The managers were refused recognition by the Senate--their credentials being declared informal, although the appointments had been properly made by Speaker E. D. Estillette. Lewis A. Wiltz protested on the part of the managers that their credentials were in proper form, but he was promptly checked by the Chief Justice and forcibly required to resume his seat.<sup>72</sup> A resolution was then adopted acquitting Kellogg, in spite of protests from the Conservatives that the charges had not yet been heard.<sup>73</sup> The House retorted by passing a resolution declaring that since the Senate had passed judgment before hearing the charges, it was disqualified from sitting as a court of impeachment; and that in the premises the House was powerless to punish this flagrant outrage and could only refer the whole matter to the people.<sup>74</sup>

In the closing hours of the special session Lieutenant-Governor Antoine expressed his thanks for the uniform courtesy shown him as presiding officer by the members of the Senate

71 New Orleans Daily Picayune, February 28, 1876.

72 New Orleans Times, March 7, 1876.

73 New Orleans Daily Picayune, February 28, 1876.

74 New Orleans Times, March 7, 1876.

and especially by the Democratic members. In closing his remarks he called upon "Senator White as the champion of the Democracy upon this floor to respond." White excused himself by saying that his voice was hoarse that night, and even if it were not, he doubted whether he could respond in a proper manner. He disclaimed being the champion of the Democracy in the Senate and said that he did not deem himself fitted for such a position. He continued by saying that the Senate had done many things of which he disapproved, but that it had also done some good things. He thought that the Senate, composed as it was, of two diverse factions, had been able to function fairly well; and he concluded by expressing the hope that at the next session the two factions would be able to work together with still less friction.<sup>75</sup>

The election of 1876 resulted in a victory for the Conservatives, but as in 1872 and 1874 the Radicals sought by means of the returning board to convert it into a victory for themselves. There were again rival legislatures in New Orleans. This time the Conservative Senators organized separately as a Senate. In the absence of Antoine, Wiltz was elected temporary president. There were eleven new Senators and nine old members whose terms did not expire until 1879--White having been elected in 1874 was one of the latter.<sup>76</sup> The number of bills which White introduced during

<sup>75</sup> New Orleans Republican, March 3, 1876.

<sup>76</sup> Lonn, Reconstruction in Louisiana, 476 ff.

this session was relatively small, being only six, plus a joint resolution. It was a troublous time, however, when there was considerable doubt as to whether Francis T. Nicholls, the Conservative candidate and the one really elected, or the Radical S. B. Packard would be recognized by the Federal government. It was not until the Federal troops had been withdrawn after the beginning of President Hayes' administration that the Conservative government with Nicholls as governor was finally recognized as the legal government of the state. White was said to have been one of Governor Nicholls' chief advisers during this period of uncertainty, and their subsequent close relations seem to prove this claim.<sup>77</sup>

The first measure introduced by White during this session sought to reform the police system of the city of New Orleans; but it failed of passage, having never been reported back from the Committee on Metropolitan Police to which it was referred.<sup>78</sup> He was successful, however, in securing the passage of a measure amending and repealing portions of the revised civil code.<sup>79</sup> He introduced a bill providing for the prevention of extortion in office; and another amending and repealing parts of the code of practice; but both these measures were doomed to failure.<sup>80</sup>

The legislature of 1878 met in the midst of profound peace and calm as contrasted with the turbulence and uncertainty

<sup>77</sup> New Orleans Times-Democrat, August 27, 1887.

<sup>78</sup> Louisiana Senate Journal, 1877, p. 10.

<sup>79</sup> Ibid., 36; Louisiana Acts, 1877, p. 59.

<sup>80</sup> Louisiana Senate Journal, 1877, pp. 36, 163.



associated with the session of the previous year.<sup>81</sup> Judging from the number of bills introduced, this was the most fruitful year of White's legislative career in the Louisiana Senate. A total of thirty measures was proposed by him during the regular session, thirteen of which he was successful in having enacted into law. Several of these were private bills, and evoked little or no discussion.

The first important measure which White introduced was a bill "to provide for citation of appeals in certain cases."<sup>82</sup> It was later changed to a measure providing for the amendment and re-enactment of article 582 of the code of practice.<sup>83</sup> White proposed another bill to amend a portion of the code of practice, but this second measure was reported unfavorably from the Committee on Judiciary and was indefinitely postponed.<sup>84</sup> White sponsored successfully an act further regulating the trial of appeals in the Supreme Court of Louisiana.<sup>85</sup>

During the session of 1878 White labored unsuccessfully to remedy the chaotic financial condition into which the state had been plunged by the extravagance and corruption of the two reconstruction administrations. He introduced a measure providing for the application of the surplus of the general fund to the retirement of the outstanding debt of the state. The proposed measure also authorized the board of liquidation to

81 New Orleans Daily Democrat, March 26, 1878.

82 Louisiana Senate Journal, 1878, p. 20.

83 Ibid., 32.

84 Ibid., 76.

85 Ibid., 51; Louisiana Acts, 1878, p. 45.

contract with the fiscal agent for an interest not to exceed 5 per cent, which was not to be included as a part of the debt but to be a claim against the surplus of the general fund. The bill was referred to the Committee on Finance from which it was never reported back.<sup>86</sup> He also introduced a bill providing for the examination and classification of the floating debt, and forbidding any further payment by the treasurer on the debt until the examination had been made and the general assembly had acted thereon. The measure further provided that the warrants of constitutional officers should be receivable for general fund taxes and licenses for the year in which they were issued.<sup>87</sup> This proposal was favorably reported by the Committee on Finance, but apparently failed of final passage.<sup>88</sup>

White again proposed an act during the session of 1878 for the prevention of extortion in office, but like his former bill it failed of passage.<sup>89</sup> He did succeed, however, in securing the passage of an act providing for the prevention and punishment of bribery and corruption in all legislative, executive, judicial, and ministerial offices.<sup>90</sup> This was a very salutary measure, especially at a time when the state was just emerging from a period unsurpassed in its history for the prevalence of corruption and bribery of every

<sup>86</sup> Louisiana Senate Journal, 1878, p. 27.

<sup>87</sup> Ibid., 40, 108, 109.

<sup>88</sup> Ibid., 191.

<sup>89</sup> Ibid., 50, 57.

<sup>90</sup> Ibid., 45, 52, 192, 235; Louisiana Acts, 1878, pp. 97-99.

**Subscription.** A somewhat similar measure of White's which is worthy of note was an act to prevent the unlawful detention, removal, destruction or mutilation of public records, documents or books by any officer of the state; and to prevent the non-delivery of such records and documents by an outgoing to an incoming officer.<sup>91</sup> He proposed a joint resolution which was adopted, requesting Senator J. B. Eustis (Kellogg had not yet been admitted by the United States Senate to membership in that body), and the Representatives in Congress to secure the return to the state of certain bonds then in the United States Treasury and belonging to the Free School Fund of the state.<sup>92</sup>

During the regular session of 1878 White proposed a measure providing for the construction of levees throughout the alluvial portion of the state. The bill, however, was never reported by the Committee on Levees and Public Lands to which it was referred.<sup>93</sup> His efforts in this direction were resumed, however, at the special session that met on March 8, at which time he introduced a measure creating a Board of State Engineers and defining their duties and powers. The bill also provided for the levy of a one-mill tax which was to be used for levee and public improvement services. The measure further provided for the division of the state into levee districts, for the appointment of Boards of Levee

<sup>91</sup> Louisiana Senate Journal, 1878, pp. 44, 56, 110, 141; Louisiana Acts, 1878, pp. 47-48.

<sup>92</sup> Louisiana Senate Journal, 1878, pp. 109, 119.

<sup>93</sup> Ibid., 62.

Commissioners, and prescribed the duties and powers thereof. After some slight amendment this bill was passed.<sup>94</sup> On the opening day of the special session White introduced another bill which created a special levee district in the parish of Catahoula, defined the limits thereof, created a Board of Levee Commissioners therefor, prescribed their duties and powers, and authorized a special tax for levee purposes. The measure was passed by the Senate without amendment;<sup>95</sup> but apparently failed of final enactment, since it does not appear among the public statutes of the state.

Other important legislation during the extra session for which White was responsible was an act providing for the regulation of the government of the city of New Orleans<sup>96</sup> and also a bill amending the election law. The latter provided for the division of New Orleans into wards and precincts, which division was to take place by ordinance on or before the first Monday in May. The precincts should be composed of contiguous squares containing as nearly as possible 500 voters, and should have but one polling place. Notice of the location of the polling place had to be published in three daily newspapers successively for three days before the election.<sup>97</sup>

In the closing hours of the special session a resolution was introduced approbating the work of retrenchment and reform accomplished by the legislature since the installation

<sup>94</sup> Ibid., 3, 10, 11; Louisiana Acts, 1878, pp. 218-222.

<sup>95</sup> Louisiana Senate Journal, 1878, pp. 4, 12.

<sup>96</sup> Ibid., 4, 32.

<sup>97</sup> Ibid., 12, 64.

of the Conservative administration.<sup>98</sup> While the resolution was pending, White delivered an elaborate speech in which he reviewed in some detail the items of retrenchment and reform accomplished by legislative action. He believed, he said, that some coherent statement of the achievements should be made. He disavowed in the outset any claim to personal commendation other than that which might result from an honest effort to do his duty.

He expressed gratification at the favorable contrast which conditions then existing in the state presented to those prevailing prior to the last general election. He reviewed the successive attempts made by the people to restore their government to a constitutional basis, only to find their victory frustrated and the fruits thereof turned to ashes by laws created as instrumentalities for stifling their will. The struggle was renewed in 1876, he continued, with a vigor and determination which was indicative of the serious consequences that would follow further frustration. He then described the difficulties which confronted the Conservatives when they attempted to assume office, and pictured the anxieties and vicissitudes with which those weeks of doubt and uncertainty were fraught. He commended the wise counsel of Governor Nicholls who acted promptly when action was required and refrained from acting when inaction was best. He said, however, that it was not his purpose to refer to the turbulence

<sup>98</sup> New Orleans Daily Democrat, March 26, 1878.

of the past but to render an account of the stewardship with which the government resulting from a restoration to local self-rule was entrusted. In so doing he desired to disclaim any intention of wounding the feelings of any member, but included those who, although acting with the minority, had aided in accomplishing the good which had been attained.

The government, he said, on coming into power, was confronted with a deplorable situation. Everything was in disorder and confusion; everything needed reform, but reform was difficult because of constitutional and other restrictions. Nevertheless the work was promptly undertaken in all the departments of the government. White then undertook to demonstrate the results by a comparison of figures. He compared expenditures in the various departments for the years 1867, before the Republican or Radical regime, 1875, when that regime was nearing its close, and during Governor Nicholls' administration. He showed that during the last period there had been a saving of \$2,185,475. Whatever might be said of the shortcomings of the legislators, he said, one thing was certain and that was that their purpose was true. No accusations of fraud or corruption could be charged against them.

"It is," he concluded, "a source of profound congratulation that, after years of war, years of worse than war, the representatives of the people of the State should have assembled, it may be with many crude opinions, it may be without

uniformity of view, but not, sir, without a common purpose of lending their best efforts to the redemption of that commonwealth, to the happiness and prosperity of whose people they were devoted. Emerging from tribulation, that commonwealth, sir, is now reaching forward to a happy future--a future to which, as humble instruments, we have contributed, if in no other way, at least by aiding in placing her destiny in her own hands."<sup>99</sup>

The Democrat, which had continually denounced the legislature for its "pittling legislation" during the session of 1876, pronounced White's speech "able and ingenuous." While admitting that his statements were all correct, the Democrat asserted that nearly every dollar of this saving of more than two millions had been accomplished during the session of 1877. It maintained that when the legislature met in 1878 there was nothing more which could be done in the way of retrenchment until the cumbersome system of government which had been inherited from the Radicals was swept away and replaced by a constitutional system. The legislature, therefore, after convening, should have issued a call for a constitutional convention and then adjourned, instead of continuing in session attempting to effect reforms when all the reforms possible under the "unconstitutional system" had been accomplished the previous year.<sup>100</sup>

<sup>99</sup> Ibid.

<sup>100</sup> Ibid., April 10, 1878.

In spite of the condemnations of the Democrat, large retrenchments in the expenditures of the state, of the city of New Orleans, and of the parishes were effected by the legislature of 1878.<sup>101</sup> White's speech in defense of the administration and of the general assembly was widely copied by the country newspapers and served to furnish the Democratic party with considerable political thunder in the election of that year. White was not a candidate for re-election to the Senate in 1878, contenting himself with one term in that body.

In 1879 White was rewarded for his services to the Democratic party by his appointment to an associate justiceship on the Louisiana Supreme Court to fill the vacancy occasioned by the death of Justice W. B. Egan. His nomination was sent to the Senate by Governor Nicholls on January 9.<sup>102</sup> The following day it was unanimously confirmed, thirty Senators voting.<sup>103</sup> The new Justice assumed his seat on the bench of the Supreme Court on January 13, and his first opinion, in the case of Charpoux v. Bellocq, was rendered in February.<sup>104</sup>

The case, remarked a prominent Louisiana jurist, involved a commonplace question, but one for whose determination previous decisions of the court furnished no precedent, and yet it had to be decided according to the principles of the Civil Code.<sup>105</sup> The facts were briefly these: Odile Derbes, widow

101 Alcee Fortier, History of Louisiana, 4 vols. (New York 1904), IV, 196.

102 New Orleans Daily Democrat, February 9, 1879.

103 Ibid.

104 Charpoux v. Bellocq, 31 La. Ann. 164 (1879).

105 Dart, "Address," in loc. cit., 93.



of J. B. Bellocq, had sold, in 1860, a certain piece of property in St. Tammany Parish, which she held in indivision for herself and her minor heirs, to C. C. Bellocq. In 1866 Bellocq sold the land to Charpoux, the latter agreeing to perfect the title, and retaining two notes pending such perfection. In 1867 Charpoux sold the land to one Valette. On March 25, 1872, Charpoux and Valette brought suit to have the sale annulled, to require Bellocq to refund the price paid for the land, and to secure a judgment for improvements made by them on the property. They maintained that Bellocq knew of the defective title to the land and that there was, in addition, a mortgage on the property. The defendant answered that the defect in title should have been cured by Charpoux in accordance with the terms of sale; and further that the sale to her by Derbes had just been ratified by a family meeting participated in by all the original heirs. Furthermore, the plaintiffs had never been disturbed in their possession of the property. The trial court declared the sale to be a nullity, and Bellocq appealed.<sup>106</sup>

The case, said White, involved two main contentions: first, that the ratification was insufficient; and second, that even if it were sufficient, the sale was null because the vendor was without title at the time of the sale, and that the subsequent ratification after the initiation of the

106. Charpoux *v.* Bellocq, 31 La. Ann. 164-165 (1879).

present suit was inoperative. Both these contentions he considered to be without merit.

"The ratification is good," said White; "as to the major heirs, it certainly validated the title; as to the minor heir, it had the same effect. We deem it useless to enter into a discussion as to the nature of the nullity of the sale of a minor's property by private sale..... This was not, however, a sale of minor's property; it was a sale of community property. The court and family meeting would have had the power to adjudicate by original act and the ratification did nothing more." The court and family meeting could do by ratification that which they were legally entitled to do by original act. This conclusion was supported by abundant precedents and by the textual provisions of the Code.<sup>107</sup>

The ratification being binding, the question whether the plaintiff could be heard to complain of a nullity which had been completely cured. Granting, said White, that a vendee might be heard to contend for the nullity of the sale, even when not threatened with eviction; and granting that when the sale was so radical that the vendor was without title, the vendee could reject a later ratification, even to the extent of rejecting a judicial demand, he did not think the present case came within the prohibition of Civil Code 2452. The new Justice then quoted French authorities in the original in support of his conclusions.

<sup>107</sup> Ibid., 167.

The sale in this instance, said White, was not a nullity, for it did not purport to transfer title, but purported rather to procure title, or to cure defects in the title in the future. Pending the eradication of such defects, \$1,000 of the purchase price was withheld. There was an obligation in the contract to procure the valid title, an obligation which could be enforced, or the contract might be rescinded. The agreement provided for action, and the inaction in the present case did not constitute a necessary breach. The time element here involved was within the discretion of the court. Surely, after there had been an offer to cure the defect in the title, there was no basis for attempting to abrogate the contract. The judgment of the lower court, which had been in favor of the plaintiffs, was now reversed.<sup>108</sup>

In referring to White's initial judicial utterance an admiring fellow-lawyer said: "That opinion demonstrated at once that there was no element of that science which had not been penetrated by the mind of the new judge, who supported his conclusions by citations and arguments drawn from the history and the text; from the writers and the jurisprudence of France. It is curious to note in this first opinion a method and form which we may find in nearly every opinion written by that hand in our records and in those of the Supreme Court of the United States."<sup>109</sup>

<sup>108</sup> *Ibid.*, 167-169.

<sup>109</sup> Dart, "Address," in loc. cit., 93.

An important case which was decided in March, 1879, was that of the Louisiana Levee Company v. the State of Louisiana.<sup>110</sup> This suit was brought under the provisions of section 4 of act No. 119 of the special legislative session of 1877 authorizing suits to recover claims against the state. The present case involved three claims: the first was for repairs made upon the levees during the years 1870-1873; the second for work performed during the year 1877, payable out of the taxes collectable for 1878. The aggregate of these claims amounted to slightly more than \$1,708,300. The state set up several defenses, among which were the contentions that there was no claim against the state, or if there was a claim, it was not against the general fund but against those funds derived from the Levee Company taxes; and that unless the claims could be paid from the tax fund specially authorized for levee purposes, they were not recoverable.<sup>111</sup>

White raised three questions to be answered in the course of his opinion: "First--What amount, if any, is due the plaintiff? Whether it is a debt against the State, or simply a debt against the fund created by the taxes hitherto levied or to be hereafter collected from those already levied in support of the Levee Company.

"Second--If any sum be due, is it a debt due by the State or simply a claim against the taxes as collected under the Levee Company acts?

<sup>110</sup> Louisiana Levee Company v. the State of Louisiana, 31 La. Ann. 250 (1879).

<sup>111</sup> Ibid., 250-251.

"Third--If only a claim against the taxes as collected, ought the plaintiff's suit under the terms of the act of 1877 authorizing it, to be dismissed?"<sup>112</sup>

In considering the first question White said that the auditors appointed had determined that there was a balance due for the period down to 1877 of about \$1,704,000, which amount was admitted to be correct. Obviously this amount was a balance due the Levee Company, but was it a claim against the state or against the taxes collected for levee purposes under the Levee Company acts?

The state legislation in regard to the Levee Company was then reviewed prefatory to answering the second question. A commission had been set up to devise a levee system, and the Levee Company was authorized to perform the work of levee construction. The cost of construction was first fixed at sixty cents per cubic yard, but later reduced to fifty cents. From this construction cost per yard and an estimate of the total number of yards of levee to be constructed, the entire cost was computed. This burden was apportioned among the parishes, not more than 10 per cent being collectable each year, with a provision that the collections might be distributed over a period of twenty-one years. A two-mill tax was later substituted for this system of apportionment, which was increased to four, and subsequently reduced to three mills. Upon collection these taxes were placed in the state treasury,

112 Ibid., 251.

there allocated to a special fund to be later paid out to the president and treasurer of the Levee Company. The reduction of the levy from a four- to a three-mill tax was accompanied by a corresponding reduction in the liability of the Levee Company. Under these circumstances, White thought that the company could not assert a claim against the state, since it was paid specially collected taxes whose proceeds were not turned in to the general fund, but were separately deposited to be disbursed for particular purposes. They were not paid out as ordinary funds, upon warrant by the proper officer, but were turned over directly to the company which might sell or mortgage the anticipated revenue to be derived from the special taxes.

Two previous adjudications of the Louisiana Supreme Court were reviewed in which that tribunal had held that the contract with the Levee Company did not constitute a part of the state debt. These earlier suits had been begun at the instance of the company, which had sought to establish that the contracts were not included in the state's indebtedness. At that time the public debt of the state was limited to \$25,000,000, and had the contracts with the company been held to have been a portion of this indebtedness, they would have been invalid since they had been entered into after the constitutional limit had been attained. It was further contended by the Levee Company that the United

States Supreme Court had placed a construction upon the levee acts contrary to that now being adopted by the state court.<sup>113</sup> White answered this argument with an assertion of the state tribunal's full authority over subjects wholly within its jurisdiction. Conceding the construction thus contended for to be correct, he said that the decision of the Federal court need not command the state court's attention. The levee acts had been twice construed by the Louisiana Supreme Court--in both instances contrary to the construction now contended for--and these decisions were alone controlling in the present case since the decisions of a state court of last resort were conclusive as to matters of a purely local character.<sup>114</sup> There was, then, no claim against the state, but merely against the taxes deposited in the special fund. This case aptly illustrates White's practice of declining to lean too heavily on precedents. There are but five citations to previous decisions in an opinion of more than four thousand words.

White rendered a number of notable opinions in the important field of taxation during his brief judicial term on the Louisiana Supreme Court. One of the earliest of these opinions was delivered in the case of New Orleans v. St. Anna's Asylum.<sup>115</sup> This controversy involved a charitable

113 Board v. McComb, 2 Otto 531 (1875).

114 Louisiana Levee Co. v. The State of Louisiana, 31 La. Ann. 251-259 (1879).

115 New Orleans v. St. Anna's Asylum, 31 La. Ann. 292 (1879).

institution's liability for taxes on property which it owned but which was not used for charitable purposes. In order to decide this question it was necessary to determine whether there had been an impairment of contract rights embodied in the institution's charter of incorporation. In 1876 the St. Anna's Asylum, which had been chartered in 1853, resisted the collection of taxes on certain of its property. The argument advanced was that although the property itself was not used for charitable purposes, the revenues derived therefrom were devoted to such purposes; consequently the attempted taxation violated the constitutional provision exempting from all taxation the property of charitable institutions. It was further contended that the levy impaired rights guaranteed in the asylum's charter of incorporation.

In regard to the first contention White said that the constitutional exemption applied only to property directly used for charitable purposes. The use to which the property in question was devoted being admittedly noncharitable--namely, the operation of a cotton compress--, the application of the revenues derived therefrom to charities constituted merely an indirect use of the property itself for charitable purposes. Such property did not come within the constitutional exemption. This principle was well established in the jurisprudence of the state. The property thus being excluded from exemption under the general rule, White next considered the contention that it constituted an exemption



because of charter provisions. The charter of the St. Anna's Asylum stipulated that the corporation should be entitled to all the privileges granted the Orphan Boys Asylum in New Orleans. That institution had been created by an act of 1836 providing that all its property, real or personal, should be exempt from taxation. That act, however, had been subject to the constitutional provision subjecting all exemptions to legislative repeal. There was, then, no irrevocable grant of exemption, unless a contract to that effect could be deduced from the charter of 1853. This charter, however, had been granted under a general article stipulating that corporations might be dissolved whenever the legislature deemed such action advisable in the public interest, provided that where private funds had been invested on the faith of the public act compensation should be made. "This article," said White, "existed in the Code of 1808, and indicates an anticipation by the wise and enlightened men by whom our Code was compiled, not only of the doctrine of contract subsequently enunciated by the Supreme Court of the United States, but also a keen appreciation of the dangers to society resulting from paralyzing the power of subsequent legislatures to legislate for the public convenience or well being."<sup>116</sup>

The general law in existence at the time of the granting of the charter here involved reserved the right to repeal, and this right necessarily included the less right to

modify. It was urged, however, that the special act of incorporation repealed the general law. There was, said White, nothing in the special act to warrant this construction; and it was a well-settled principle that special acts could not repeal general laws by mere implication.

"By a provision then in the defendant's charter," concluded White, "the right to repeal the same, was necessarily the right to modify, for the greater included the less, was by necessary legal implication reserved, and the exercise of this reserved power by the convention of 1868 divested no vested right and impaired the obligation of no contract."<sup>117</sup>

The case of Wintz v. Girardez et al.,<sup>118</sup> involved the constitutionality of a tax on goods sold at auction. In the beginning of his opinion White pointed out that when a court was called upon to determine the validity of a law providing for the imposition of taxes it was apparently placed in the dilemma of violating one of two principles: first, that whenever a law was attacked on the ground of its constitutionality, resort should be had in its construction to every reasonable means to render it conformable to the constitution; and second, that when a revenue act required construction, it should be construed in favor of the taxpayer. After reviewing the objections to the validity

<sup>117</sup> Ibid., 296-297.

<sup>118</sup> Wintz v. Girardez et al., 31 La. Ann. 383 (1879).

of the law here in question, White said that they sought to restrict the sovereign right of the people to levy and collect taxes by the implication of a constitutional limitation. The taxation of property was limited by the constitutional amendment of 1874 to 12½ mills. White's contention, however, was that the present tax was not levied upon the goods themselves but upon a particular type of sales--that is, sales conducted through the agency of auctioneers. In answer to the argument that the tax was an excise and that excises were odious, it was pointed out that the court could not invalidate a law on the score of its odious character. The framers of the Federal Constitution had considered excises legitimate and had made provision for their imposition. Nor had the fathers of the state government considered them odious, the present law having been in force for seventy years. Its validity was accordingly sustained.<sup>119</sup>

Another important case involving the question of taxation in which White delivered the opinion of the court was that of Louisiana Cotton Manufacturing Company v. City of New Orleans.<sup>120</sup> There was involved in this case the validity of a legislative act of 1875 providing that all cotton and woolen factories, mills, or establishments for the manufacture of such goods, then in operation or which should be put in operation within five years after the passage of the

<sup>119</sup> Ibid., 384-386.

<sup>120</sup> Louisiana Cotton Manufacturing Company v. City of New Orleans, 31 La. Ann. 442 (1879).

law, should be exempt from all taxes on the invested capital or the real or personal property used in such establishments on payment of a commutation fee of \$100 to the state and \$100 to the parish or city in which the manufacturing plant was located. So long as the terms of this act were complied with no other taxes could be levied during a period of twenty years.<sup>121</sup> The city of New Orleans had sought to impose an additional tax, and it was to enjoin the collection of such a levy that this suit was initiated.

If this act were constitutional, said White, any departure from its terms would constitute an impairment of contract rights. The determinative question at issue, then, was its conformity to the constitution. Article 118 of the state constitution provided that all property used for church, school, and charitable purposes should be exempt from taxation. This provision enumerated exceptions to the general legislative power to tax, and all subjects not enumerated were excluded from the exemption provided for therein. White then quoted Cooley and other authorities to the effect that all limitations on the legislative power to tax, should be strictly construed. Since the property here involved was not used for church, school, or charitable purposes, it was obviously excluded from the terms of the provision. This being the case, then, did the act here in question violate the provision of the constitution requiring that all property

<sup>121</sup> Louisiana Acts, 1875, p. 107.

taxed should be taxed in accordance with its value? Obviously, said White, the annual payment of a mere \$100 to the state and a similar amount to the city or parish was not taxation according to value, and hence was an apparent violation of the advalorem principle prescribed by the constitution. It was urged, however, that since the court had sustained a law exempting from taxation household furniture to the value of \$500, it should not declare this act invalid. In answer to this argument White pointed out that the constitution did not require that all and every kind of property must be taxed, but it did require that when property was taxed the taxation should be according to value.

It was further contended, however, that the law here in question was not an exemption, but that it provided for a commutation. Text writers, said White, were somewhat vague in their definitions of this word. One definition stated that a commutation was a payment for the privilege of exemption. This, he thought, was equivalent to an exemption and would obviously render the law violative of the constitution. Another definition declared a commutation to be the payment of a specific sum. This interpretation made the present levy a specific tax and hence contrary to the requirement that taxation be according to value. The adoption of either definition of the term, therefore, would render the law violative of one or the other of the constitutional

provisions. The act was accordingly held to be invalid.<sup>122</sup>

White's unwillingness to sanction any departure from the principle that a property owner was at liberty to divest himself of any of his rights in such property by contract, the obligations of which he was bound to fulfill, is illustrated by his opinion in the case of Allen, Nugent, & Company v. Carruth.<sup>123</sup> In the present controversy he construed the provisions of a statute originally, although their meaning had been fixed by construction in a previous adjudication. He justified this action on the ground that the earlier decision had been rendered by a divided court. In 1865 a homestead exemption law had been passed, excluding from seizure and execution 160 acres of land together with certain buildings, appurtenances, and specified numbers of designated animals, provided the value thereof did not exceed \$2000. The provisions of the act were to be applicable only if the owner resided on the property and had a wife, children, or parents dependent upon him. Such exemption was not to extend to sales for nonpayment of taxes.<sup>124</sup>

In the present instance Carruth had mortgaged his property, expressly waiving his right of homestead exemption. In the earlier case of Hardin v. Wolf the court had held that the exemption was obligatory and could not be waived.

<sup>122</sup> Louisiana Cotton Manufacturing Co. v. City of New Orleans, 31 La. Ann. 442-447 (1879).

<sup>123</sup> Allen, Nugent, & Co. v. Carruth, 32 La. Ann. 444 (1880).

<sup>124</sup> Louisiana Acts, 1865, p. 52.

It was now asked to reverse that ruling. After a eulogistic tribute to the learning and scholarship of Justice Egan who had delivered the opinion of the majority of the court in the Hardin case, White proceeded to examine the question as an original one and to construe the act accordingly. He thought that the decisions of the courts of other states should be recognized as persuasively applicable only where the laws which they construed were sufficiently similar to the one under consideration to give those decisions the force of precedents. He was unable to discover any such similarity in the present instance. He then distinguished between a general waiver--where the mortgagor waived the right of exemption to any property which he then held or which he might hold in the future--and a specific waiver, where the right of exemption was renounced to a specified piece of property. The present case involved a specific waiver. "The statute," said White, "certainly contains no limitation on the power of the owner of the homestead to alienate or encumber it as he please, and if in his hands it is subject to all the elements of perfect ownership, usus, fructus, and abusus, we cannot deprive the owner of any of the rights flowing from such demand, one of which is the right of alienation, which embraced a fortiori the right to renounce any claim to the thing alienated or encumbered. We think that the declaration that the owner who has the statutory power of alienation cannot, in encumbering his property, waive quoad the property

encumbered his right to claim a homestead, would be on our part judicial legislation by which we would deprive the owner of his right of perfect ownership, and write in the statute by interpretation a restriction on the power of alienation."<sup>125</sup>

White did not think that a mortgagor might specifically waive his right to claim a homestead exemption in order to procure a mortgage on his property, and then later revoke the very rights renounced in order to frustrate the mortgage. The very condition which made possible the procuring of credit with the mortgage as security was the waiving of the right which he later claimed to enjoy. "The foundation of public policy," he said, "is the principle of common honesty."<sup>126</sup> In answer to the argument that the head of the family was prevented from waiving the right of homestead exemption in order to protect his family in its heritage, White pointed out that there was no prohibition against complete alienation by sale, and he thought it illogical and contradictory to hold that while the greater right of complete alienation was permitted by the statute, yet the less right of conditional alienation through the instrumentality of a mortgage was denied. The statute, then did not purport to forbid the waiver of exemption.<sup>127</sup>

<sup>125</sup> Allen, Nugent, & Co. v. Carruth, 32 La. Ann. 445 (1880).

<sup>126</sup> Ibid., 446.

<sup>127</sup> Ibid., 446-447.



In thus overruling the decision in the Hardin case, White's position was perhaps more logical from a purely legalistic viewpoint; but the view expressed by Justice De Blanc in dissent seems more keenly appreciative of the actual conditions, to remedy which the law was probably enacted. "The homestead," said De Blanc, "is not granted to the debtor. Howsoever destitute he may be, he--if alone--is not entitled to and cannot claim it. It is granted to his family, to those dependent on him for support, and he cannot--at his will and pleasure--waive and nullify a right conceded to them. ...

"In the opinion read by Mr. Justice Egan, a majority of this court held--not that a debtor could not sell the property which constitutes the homestead--for, when he does, it is almost invariably for its full value and in the interest of his family; but that, according to the imperative terms of the law, such property is exempt from seizure and sale under execution."<sup>128</sup>

There were but six criminal cases in which White was called upon to deliver opinions during his tenure as Justice on the Louisiana Supreme Court. In the case of State v. St. Geme<sup>129</sup> he had to deal with the difficult question of antecedent threats as provocation in manslaughter. In reversing the lower court's judgment and ordering a new trial

<sup>128</sup> Ibid., 447-448.

<sup>129</sup> State v. St. Geme, 31 La. Ann. 302 (1879).

he held that the inferior tribunal had committed error in refusing to give proper instructions which had been requested on the ground that they were illegal and then giving substantially the same instructions in its charge to the jury, since such procedure merely served to confuse the jurors.<sup>130</sup>

The cases of State v. King and State v. Finn dealt mainly with the question as to whether the lower court had erred in refusing to grant a continuance.<sup>131</sup> The granting of a continuance, said White, was a matter wholly within the discretion of the trial court and therefore not a proper subject for review by the Supreme Court. An interesting criminal case was that of State v. Denison.<sup>132</sup> Denison had been arraigned for murder in Jefferson Parish. The proceedings resulted in a mistrial and there was a change of venue. He was then found guilty of manslaughter. In reviewing the case the appellate court found that he had been improperly arraigned, and ordered a new trial. He was again charged with murder, but objected on the ground that having been formerly acquitted of this accusation he could not constitutionally be again arraigned. The objection was overruled, and the trial again resulted in a verdict of manslaughter. Denison then appealed to the Supreme Court. White held that the objection was well taken. He pointed out that had Denison

<sup>130</sup> Ibid., 302-304.

<sup>131</sup> State v. King, 31 La. Ann. 179 (1879); State v. Finn, 31 La. Ann. 408 (1879).

<sup>132</sup> State v. Denison, 31 La. Ann. 847 (1879).

been acquitted of all guilt, he could not have again been arraigned on a charge of murder. The fact that in acquitting of this charge the jury had found him guilty of a less offense did not alter the circumstances. He had been acquitted so far as the charge of murder was concerned. It was true that the second trial had resulted in another verdict of manslaughter, but the error was just as great as though the proceedings had resulted in a verdict of murder. The court therefore directed a new trial on the charge of manslaughter.<sup>133</sup> In *State ex re. Keufner v. Mayor of Morgan City*<sup>134</sup> White held that the proposed state constitution of 1879 would not become effective as the fundamental law until ratified by the voters at the polls and officially promulgated.

White delivered numerous other opinions of the court during these fifteen crowded months of judicial tenure, many of them of vital moment to the parties concerned, but involving no determination of fundamental questions. In one case he held that an order of executory process constituted a final judgment whose rendition precluded a removal of the case from a state to a Federal court.<sup>135</sup> Another case required a determination of the rights of married women to contract debts.<sup>136</sup> There were two cases involving commercial

<sup>133</sup> *Ibid.*, 847-849.

<sup>134</sup> *State ex rel. Keufner v. Mayor of Morgan City*, 32 La. Ann. 81 (1880).

<sup>135</sup> *Meaux v. Pittman*, 32 La. Ann. 405-406, (1880).

<sup>136</sup> *Hollingsworth v. Spanier*, 32 La. Ann. 203-207 (1880).

law in which White delivered the opinion of the court. They demonstrate his thorough grasp of this branch of legal science and his familiarity with authorities and precedents in that field.<sup>137</sup> Fifteen of White's opinions dealt with liens, leases, or mortgages, two with the validity of tax sales, and two required an application of the Federal Bankruptcy act. There were also fifteen opinions dealing with successions and the administration of the property of the minors. One of these, Milttenberger v. Weems Heirs,<sup>138</sup> is particularly illustrative of his judicial style. A total of seventy-six opinions of the court was delivered by White during this brief judicial incumbency. In addition, he delivered two dissenting opinions. In the first of these, the Interdiction of Scott Watson,<sup>139</sup> he objected to the action of the court in reversing the judgment of a lower tribunal interdicting an insane youth. White, with whom concurred Spenser, pointed out that the interdiction was intended to protect the mentally deranged person. The evidence amply demonstrated the insanity of young Watson, a fact not denied by his mother and sister. The youth was the possessor of considerable wealth in his own right, and the present judgment of the court left this fortune unprotected from dissipation by unscrupulous relatives whose selfish interests would be opposed to any efforts to

<sup>137</sup> Thielman v. Gueble & Nippert et al., 32 La. Ann. 260-264 (1880); Harvey v. Nelson, Lanphier & Co. and Short, 31 La. Ann. 434-436 (1879).

<sup>138</sup> Milttenberger v. Weems Heirs, 31 La. Ann. 259-262 (1879).

<sup>139</sup> Interdiction of Scott Watson, 31 La. Ann. 757; dissent, 761-764 (1879).

effect his recovery.<sup>140</sup> In Citizens' Savings Bank v. Hart et al. White dissented from the court's construction of the law of agency. Limitations, he said, had been read by the court into a full and complete grant of power of attorney by a consideration of evidence outside the instrument itself.<sup>141</sup>

The work of the court was greatly in arrears when the Nicholls bench took up the docket, and the labors of the new judges were reaching their peak when White was made a member of the court. He assumed his full share of the burden, as will appear from a consideration of the number of opinions delivered by him during his fifteen months of judicial service. Indeed, his work on the Louisiana Supreme bench was among the proudest achievements of his life. In 1914 he is said to have remarked that the total number of cases decided by that court in 1879-1880 would probably show the heaviest work ever accomplished by a court of last resort in the United States, composed of only five judges.<sup>142</sup> White's tenure, however, terminated abruptly as did that of the other judges upon the inauguration of the constitution of 1879 which provided for a reorganization of the Supreme Court, whose members should assume their official duties on the first Monday of April, 1880.<sup>143</sup> It was said and currently believed

<sup>140</sup> Ibid., 761-764.

<sup>141</sup> Citizens' Savings Bank v. Hart et al., 32 La. Ann. 22; dissent, 26-27 (1880).

<sup>142</sup> Dart, "Address," in loc. cit., 93.

<sup>143</sup> Thorpe (comp.), American Charters, Constitutions, and Organic Laws, III, 1514-1516.

then and later, asserts one writer, that the Louisiana State Lottery Company was the concealed protagonist of the constitution of 1879;<sup>144</sup> while it is the opinion of another writer that the constitutional convention was fostered by the opponents of the Lottery.<sup>145</sup> However this may be, it is beyond question that the company, although shorn of certain of its privileges by the new constitution, was more definitely confirmed in those remaining to it by having them embodied in the organic law rather than dependent on a mere legislative grant.

The Lottery Company had been chartered by an act of the legislature which became a law without the Governor's signature on August 11, 1868. By this charter the company was granted a monopoly of the lottery business within the state for a period of twenty-five years, beginning January 1, 1869, and was required to pay an annual license fee of \$40,000.<sup>146</sup> In 1879 the legislature enacted a bill revoking this charter, and the measure was signed by Governor Nicholls on March 27. By the terms of this act its provisions became effective on March 31, 1879.<sup>147</sup> To avoid this death blow to its legal existence, the Lottery Company resorted to the courts. Application was made in the Federal Circuit Court for an order

<sup>144</sup> Dart, "Address," in loc. cit., 93.

<sup>145</sup> Berthold C. Alves, "The History of the Louisiana State Lottery Company" (Master's Thesis, Louisiana State University, 1929), 59.

<sup>146</sup> Louisiana Acts, 1868, pp. 24-26.

<sup>147</sup> Ibid., 1880, pp. 5-7.

enjoining the enforcement of the revocatory act. A temporary restraining order was issued, which became permanent with the later granting of an injunction.<sup>148</sup> Although victorious in the lower Federal court, the Lottery Company apprehended defeat on appeal to the Supreme Court because of that tribunal's recent decision in a similar case.<sup>149</sup> Apparently the adoption of a new constitution guaranteeing a continuance of its charter offered the company the safest means of escape from complete legal annihilation. The new constitution made certain concessions to the opponents of the Lottery; the chartering of other lottery companies was authorized upon payment of an annual license fee of \$40,000; all lotteries were to cease after January 1, 1895; and the existing company was deprived of its monopolistic privilege. The Lottery Company's charter, however, was recognized as a binding contract for the full term of twenty-five years, provided the company renounced the privilege of monopoly within a specified time.<sup>150</sup> Thus, although its privileges were somewhat curtailed, the company's charter was placed beyond the threat of legislative repeal. The Nicholls government which had antagonized the Lottery Company by the passage of the repeal act was removed from power through the constitutional provision for the election of a new governor, lieutenant-governor, and legislature, who

<sup>148</sup> *Louisiana State Lottery Co. v. Fitzpatrick*, 3 Woods 222 (1879).

<sup>149</sup> *Mississippi v. Stone*, 101 U. S. 814 (1880).

<sup>150</sup> Thorpe (comp.), The Federal and State Constitutions, III, 1499.

should assume office in January, 1880, thus shortening Nicholls' term of office by more than a year.<sup>151</sup> Likewise, by the provision reorganizing the Supreme Court, the judges who had sustained the government's policy<sup>152</sup> were removed from power and replaced by a new court.

On April 3, 1880, Chief Justice Manning and Associate Justices White, Marr, De Blane, and Spenser retired and were succeeded by a new set of judges with White's former tutor, Edward Bermudez, as chief justice.<sup>153</sup> White's occupancy of a place on the Louisiana Supreme Bench, it has been said, was of too brief duration to have permitted the making by him of any special mark on the jurisprudence of the state; while his lack of years was an impediment to immediate judicial distinction.<sup>154</sup> It was said, however, that "his opinions displayed a maturity of judgment, a fullness of learning, and a familiarity with precedents which greatly astonished the older members of the bar."<sup>155</sup> Some of these early opinions demonstrate a clarity of statement and reasoning unsurpassed by White in any of his judicial utterances from the Federal Supreme Bench; while many of his later views in regard to taxation are foreshadowed in his opinions dealing with that important subject during his membership on the state tribunal.

151 Ibid., 1515-1516.

152 State v. Judge, 32 La. Ann. 721 (1880).

153 New Orleans Daily Democrat, April 4, 1880.

154 American Law Review, XXVIII (1894), 273-274.

155 New Orleans Times-Democrat, March 25, 1889.



CHAPTER IV  
SENATOR-ELECT WHITE

For several years following his retirement from public life White devoted himself exclusively to the practice of his profession. Immediately upon doffing his judicial robes he formed a law partnership with his erstwhile colleague on the bench, W. B. Spenser; and within a month after the re-organization of the Supreme Court under the new constitution, the firm of Spenser & White acted as counsel in a case coming before that tribunal for decision.<sup>1</sup> The firm name appears five times in the reports of the Louisiana Supreme Court for the year 1880. There was complete success in two instances, partial success in a third in which there was a consolidation of several causes, while the two remaining cases resulted in adverse decisions for the clients of the firm.<sup>2</sup> During the eleven years--1880-1891--that he was out of public office White's name appears in the reports of the Louisiana Supreme Court as counsel in a total of ninety-one cases. In thirty-three of these he acted individually, while in the remaining fifty-eight he participated as a member of various firms. His name first appears individually as counsel in May, 1881.<sup>3</sup>

1 Dan. A. Wilson v. P. S. Wiltz, 32 La. Ann. 688 (1880).

2 Ibid.; Lucas E. Moore v. City of New Orleans et al., 32 La. Ann. 726 (1880); State ex rel. Atty. Gen. v. J. P. Rares-hide et al. and L. E. Clarke, 32 La. Ann. 934 (1880); State v. I. W. Patton et al., 32 La. Ann. 1200 (1880); Succession of Jno. A. Turnell, 32 La. Ann. 1218 (1880).

3 The State of Louisiana ex rel. C. E. Girardey v. The Southern Bank, 33 La. Ann. 957 (1881).

The firm of Spenser & White was apparently dissolved after May, 1882.<sup>4</sup> For more than three years thereafter White practised alone, appearing as counsel in twenty-six cases decided by the State Supreme Court during that period. Toward the close of 1885 he entered into a partnership with Eugene D. Saunders under the name of White & Saunders,<sup>5</sup> which was expanded late in 1891 into the firm of White, Parlange & Saunders by the admission of Charles Parlange.<sup>6</sup> Of the thirty-three cases in which White participated individually, seventeen were won and the remaining sixteen resulted in unfavorable decisions. Of the fifty-eight cases handled by the various firms of which White was a member during these years, thirty-three were won, twenty-two were lost, and three resulted indecisively.

In argument White's style was said to have been virile, quick, and forceful. He used an English the qualities of which were enriched by his knowledge of the Latin, French, and Spanish languages. He wasted little time in arriving at the kernel of a problem and usually left the controversy stripped to its bones. His customary policy was to summarize the case briefly, and then state his conclusions which fortified themselves as he proceeded. "Indeed, it was said of him as an antagonist, that he could only be beaten by destroying his premises, for there was no room for debate if this were not

<sup>4</sup> H. & C. Newman v. Joseph Krain, 34 La. Ann. 910 (1882). This was the last case in which the firm name appears.

<sup>5</sup> Butchers' Union Slaughter-House and Live Stock Landing Company v. Crescent City Live Stock Landing and Slaughter-House Company, 37 La. Ann. 874 (1885).

<sup>6</sup> H. & C. Newman v. James E. Irwin, 43 La. Ann. 1114 (1891).

done."<sup>7</sup> Prior to his election to the United States Senate White had acquired the general reputation of being the most brilliant lawyer of the New Orleans bar;<sup>8</sup> while, by fellow-Louisianians, he was considered as having few equals and no superiors in debate, and as being one of the foremost lawyers of the entire South.<sup>9</sup> His law practice was a large and lucrative one; and "the law firm of White and Saunders was well known in the highest courts of the land."<sup>10</sup>

A notable achievement to which White contributed during this period of his life was his participation in the establishment and early administration of Tulane University. He was one of seventeen administrators to whom Paul Tulane turned over, in 1882, a considerable amount of property to be devoted to the promotion of higher learning within the state of Louisiana. At the suggestion of an official of the University of Louisiana the administrators, by a very narrow margin, voted to confer the endowment upon that institution; but Tulane demurred to this plan and the action was rescinded. The administrators were now confronted with the problem of determining a worthwhile purpose to which the fund could be devoted. White and several others then came forward with a proposal that the state turn over to the administrators its accumulated investments in the University of Louisiana. The

<sup>7</sup> Dart, "Address," in loc. cit., 93.

<sup>8</sup> Boston Herald, May 31, 1888, quoted in New Orleans Daily Picayune, June 7, 1888.

<sup>9</sup> New Orleans Daily Picayune, June 1, 1888.

<sup>10</sup> New Orleans Times-Democrat, February 20, 1894.

fruition of this plan required a constitutional amendment. The amendment was proposed by legislative act in 1884, and was finally ratified by the voters in 1888. White remained a member of the board of trustees of Tulane University until his appointment as associate justice of the Federal Supreme Court in 1894, when he severed his connection with the institution.<sup>11</sup>

White was mentioned by one of the New Orleans papers as a suitable choice to fill the vacancy on the United States Supreme Court occasioned by the death of Associate Justice William B. Woods in 1887. It was admitted that the choice should not be made on a political basis, but it was argued that there were so many eminently qualified Democrats that President Cleveland could not do otherwise than fill the position with a member of that party. The choice, then, should be a Democrat, but, in addition, it should be a Democrat from the South, since there was not a member of the court from any state south of Kentucky. Moreover, the circuit to which the new appointee would be assigned was the Fifth, comprising the states of Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas; and of these States Louisiana's claims to a place on the bench were superior. Her bar had been for many years particularly outstanding. But, in addition to the claims of the peculiar qualifications of the members of the Louisiana bar and the fact that no

<sup>11</sup> Richard Henry Jesse, "Chief Justice White," in American Law Review, XLV (1911), 322-323.

chief justice or associate justice had ever been appointed to the Supreme Court from Louisiana, there was a more cogent reason--namely, the fact that the law and practice of that state were different from those of other states whose jurists were consequently unfamiliar with the peculiar system of Louisiana. There was needed, then, one justice on the Federal Supreme Bench who was familiar with the civil law which formed the basis of Louisiana's jurisprudence, not alone because of cases which might come up from that state involving controversies between its citizens; but since contracts were governed by the local law, there were cases involving controversies between citizens of Louisiana and citizens of other states which would have to be construed according to the principles of the civil law. There should be at least one member of the court who was familiar with this system. T. J. Semmes, nestor of the Louisiana bar, Charles E. Fenner, a member of the State Supreme Court, and particularly E. D. White, were mentioned as the representatives of the state's bar best qualified for the position.

In regard to White, it was pointed out that he was a man in the prime of life, who had justified the confidence of Governor Nicholls in appointing him to a place on the state Supreme Court at an unusually early age. "No citizen of this community," concluded the eulogy, "is more respected, and no one is more deserving of respect for the probity of

his life and for his zealous devotion to the highest interests of the public."<sup>12</sup> In spite of the claims of White and other members of the Louisiana bar, the appointment went to a citizen of a sister state, L. Q. C. Lamar of Mississippi.

White again deviated in 1887 from a strict adherence to the legal profession, engaging in a strenuous political campaign in support of the candidacy of Francis T. Nicholls who was an aspirant for the Democratic gubernatorial nomination in opposition to Samuel D. McEnery, a candidate for re-election. He was made treasurer of the Nicholls campaign committee during the preconvention contest. After the nomination of candidates by the state convention, he was elected to membership on the Democratic State Central Committee, and was subsequently appointed chairman of the finance committee.<sup>13</sup>

The Nicholls faction formally opened its campaign with a meeting at Zacharie on August 25, 1887--Governor Nicholls and White being the chief speakers.<sup>14</sup> In his speech on this occasion White charged Governor McEnery with seeking a third term. For the most part, however, he dwelt upon the occurrence connected with the inauguration of Governor Nicholls' administration in 1877, and particularly with the developments culminating in the capture of the Supreme Court building. The Times-Democrat, the McEnery organ, charged that White's version of the manner in which Democratic control of the Supreme

<sup>12</sup> New Orleans Daily Picayune, May 18, 1887.

<sup>13</sup> New Orleans Times-Democrat, July 27, 1890.

<sup>14</sup> Ibid., August 26, 1887.

Court building had been acquired differed from the version given by Governor Nicholls in his speech at the same meeting.<sup>15</sup> Nicholls said that one of his first acts as governor had been to appoint and have confirmed by the legislature the judges of the Supreme Court, in order that Democratic control of the three departments of the government might be complete. Realizing that possession of the Supreme Court building and of the records was essential if a repetition of the events of 1872 was to be prevented, Nicholls said that he had ordered General Frederick N. Ogden, in command of the White League, to march upon the building on January 9 and capture it. White's version of the affair differed from Nicholls' in this: from Nicholls' account it appears that he acted entirely upon his own responsibility without consulting any one; while White said that on January 8 Nicholls had come before the Democratic legislature and asked for advice concerning the course of action to be pursued. The members of the caucus were unable to agree, however, upon the most advisable line of action, and passed a resolution referring the whole matter back to Nicholls.<sup>16</sup> The difference in the two accounts probably arose from an omission on the part of Nicholls to mention reference of the matter to the legislature.

The Times-Democrat published a third version of this incident purporting to be from a "City member" of the

<sup>15</sup> Ibid., August 27, 1887.

<sup>16</sup> Ibid.

legislature in 1877.<sup>17</sup> According to this account Nicholls asked counsel of the legislature and the latter recommended that the court building be taken by force at once. The Times-Democrat seemed to be very solicitous that the "true facts of history" be established; and wished to know whether all the credit should accrue to the Governor as the accounts of White and Nicholls would indicate, or whether the Democratic caucus should share in the honor.<sup>18</sup> White published a statement denying the accuracy of the version given by the city member and asserted that the account given by him at Zacharie was correct. He substantiated this claim with a letter from a Mr. Cressy who had served as secretary of the caucus in 1877.<sup>19</sup> White's version was evidently correct, for the Times-Democrat failed to make any further mention of the matter, and its ardor for the determination of "The true facts of history" suddenly abated.

On September 16 the Nicholls supporters held a meeting at Clinton in which White participated as one of the speakers.<sup>20</sup> He said that the reasons for supporting Nicholls' candidacy had been fully set forth at the opening meeting at Zacharie, and that these arguments had met with no response on the part of the McEnery men with the exception of an attempt to refute the charge that McEnery was seeking a third term. The Times-Democrat had said that McEnery had

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., August 28, 1887.

<sup>20</sup> Ibid., September 17, 1887.



been elected governor but once. He had been elected lieutenant-governor in 1880 on the ticket with Wiltz as governor, and had succeeded to the gubernatorial chair upon the death of Wiltz in October, 1881.<sup>21</sup> White contended that whether McNery had been elected governor once or twice did not matter. The point was that he had held office for a certain number of years, and had made a number of appointments during the period when he was serving out the term of Wiltz. Such a long continuance of any man in office, he maintained, would be contrary to the spirit of the constitution. The election law had removed the power from the people and placed it in the hands of the governor. The fact that this power existed and not the question as to whether or not it had been abused had to be considered. Long continuance in office, he asserted, with such extensive powers at one's disposal would poison the political mind. White spoke on the subject of grand juries, holding that they were essential to safeguard the liberties of the people, and attacking McNery for having recommended to the legislature that they be abolished as they had outlived their usefulness. He attacked McNery for having defeated the new election law passed by the legislature, so that the power of appointing election officers and police juries remained in the hands of the central authorities. White then enumerated the requirements necessary for a competent chief executive, all of which, he contended, were possessed

21 Ibid., August 26, 1887.

by General Nicholls. He referred to the General's empty ~~hands~~ and said that failure to elect him would be a stain upon the state. He urged Nicholls' election that it might serve as an example for future generations to follow.<sup>22</sup>

The campaign grew more heated as it progressed, and White was usually one of the principal speakers at important Nicholls meetings. At a Mansfield rally on October 10 White delivered an address treating principally the third-term question and reviewing the struggle for Democratic supremacy. In reply to the Times-Democrat's assertion that McEnery's first term as governor was merely Wiltz's administration, he stated that McEnery had made three hundred appointments while Wiltz lived and one thousand after his death.<sup>23</sup> On October 15 he addressed a Nicholls gathering in Shreveport. This speech included the arguments advanced in his addresses at Zacharie and Clinton. White's popularity as a public speaker is attested by the fact that on this as well as numerous other occasions large numbers of the audience remained only long enough to hear what he had to say, quitting the gathering as soon as he had concluded his remarks.<sup>24</sup> He continued to tour the state in behalf of Nicholls' candidacy, addressing gatherings at Rayville on November 12, at Delhi on November 13, and at Pike's Hall in East Baton Rouge Parish on December 22.<sup>25</sup>

<sup>22</sup> Ibid., September 17, 1887.

<sup>23</sup> Ibid., October 11, 1887.

<sup>24</sup> Ibid., October 16, 1887.

<sup>25</sup> Ibid., November 19, 14, December 23, 1887.

McNery's supporters sought to discredit Nicholls' candidacy by attempting to connect the Nicholls or "Reform" party with the New Orleans ring. They declared that Nicholls' failure to make any statement as to his position with reference to the city administration was evidence that he could not afford to antagonize this administration, which, they asserted, was controlled by a clique or ring.<sup>26</sup> The Times-Democrat denounced a Nicholls rally in New Orleans on December 29, at which White was one of the speakers, as being farcical and evasive because no mention was made of the city's government.<sup>27</sup>

The election of delegates to the Democratic State convention which was to nominate the party's candidates for governor and lieutenant-governor demonstrated that Nicholls was undoubtedly the popular choice. Although he had been favored by a majority of the people, Nicholls' nomination was not definitely assured. There was a rumor to the effect that the McNery men, not daring to press the claims of their candidate who had been so decisively rejected by the voters, would attempt to override the popular will by bringing forward a third candidate, urging his nomination in the interest of party harmony, the implication being that failure of the convention to agree upon the compromise candidate would intensify internal factionalism with probable party disruption as the ultimate result. The successful engineering of this

<sup>26</sup> Ibid., December 18, 1887.

<sup>27</sup> Ibid., December 30, 1887.

...was seriously hampered, however, by the fact that the votes from uncontested delegations--exactly one half the total membership of the convention--were pledged to Nicholls; while the grounds for protest in the case of several contested delegations were so frivolous as to render extremely improbable the rejection of the Nicholls delegates.<sup>28</sup> At any rate, the plan for stampeding the convention failed of realization.

The Democratic convention met at Baton Rouge on January 9, 1888.<sup>29</sup> After the preliminaries of organization and seating of delegates had been disposed of, it proceeded to nominate a candidate for governor. General Nicholls was nominated on January 13, receiving 289-5/12 votes to 168-7/12 blanks. The nomination was then made unanimous.<sup>30</sup> Nicholls carried the state at the general election on April 17 by a majority of more than 80,000.<sup>31</sup> The official count gave the Democratic nominee 137,257 votes; while the Republican candidate, Henry Clay Warmoth, received 51,471 votes.<sup>32</sup>

White's active support of Nicholls' candidacy in the gubernatorial contest led directly to his election to the United States Senate. This election, however, was not accomplished without a struggle. It came after a warm contest

New Orleans Daily Picayune, January 7, 1888.

New Orleans Times-Democrat, January 10, 1888.

Ibid., January 11, 1888.

Baton Rouge Daily Capitolian Advocate, April 20, 1888.

Ibid., May 19, 1888.

of nearly two weeks' duration in the Democratic caucus. The total membership in both houses of the legislature at this time numbered 130 members, 12 of whom were Republicans.<sup>33</sup> As this Republican minority was sufficient to wield the balance of power in case of a close contest, the Democratic members decided to meet in joint caucus to ballot for a candidate.

The joint Democratic caucus held its first meeting on May 17, and the names of four candidates were placed in order for nomination. They were White, Congressman Newton C. Blanchard, Benjamin F. Jonas, and Senator James B. Eustis.<sup>34</sup> White and Blanchard had supported Nicholls in the recent gubernatorial contest; while Jonas and Eustis had advocated the candidacy of McEnery. The election was for the purpose of determining the choice of a junior United States Senator--a position then filled by J. B. Eustis. Since the post would not become vacant until 1891 and the legislature would meet again in 1890, there was some opposition to an election in 1888.<sup>35</sup> Eustis, however, was not in favor of a postponement;<sup>36</sup> and as White had the support of Governor Nicholls with the influence which the patronage of a new administration could wield, it was entirely to his advantage that the election should proceed at once.

<sup>33</sup> New Orleans Times-Democrat, May 31, 1888.

<sup>34</sup> Ibid., May 18, 1888.

<sup>35</sup> Ibid., May 29, 1888.

<sup>36</sup> Ibid., May 30, 1888.

On the first ballot, taken in the Democratic caucus, White received 37 votes, Jonas 36, Eustis 34, and Blanchard 13. On the second ballot the votes of White and Jonas remained the same, but two of Eustis' votes went to Blanchard.<sup>37</sup> The following day, May 18, the caucus again convened, and, after taking one ballot, adjourned until the next Tuesday.<sup>38</sup> This ballot revealed White's strength about stationary at 37 votes, Jonas receiving 35 votes, Eustis 13, and Blanchard 15.<sup>39</sup> Most of the members of the legislature left the capital for their homes for the week-end. White contemplated returning to his home in New Orleans, but after consulting his manager decided to remain in Baton Rouge, Jonas and Eustis, White's two strongest opponents, also remained at the capital.<sup>40</sup> The Times-Democrat in an editorial on May 19 presaged the defeat of White, declaring that it believed the supporters of the other three candidates would remain firm and consolidate their strength against the "White line." The supporters of Eustis, it asserted, preferred Jonas to White.<sup>41</sup> The Picayune, however, predicted that White would be nominated when the deadlock was finally broken.<sup>42</sup> In opposition to the assertion of the Times-Democrat, the Picayune contended that White was the second choice of a considerable number of both the Eustis and Jonas supporters.<sup>43</sup>

<sup>37</sup> Ibid., May 18, 1888; New Orleans Daily Picayune, May 19, 1888.

<sup>38</sup> New Orleans Times-Democrat, May 19, 1888.

<sup>39</sup> New Orleans Daily Picayune, May 19, 1888.

<sup>40</sup> New Orleans Times-Democrat, May 19, 1888.

<sup>41</sup> Ibid.

<sup>42</sup> New Orleans Daily Picayune, May 20, 1888.

<sup>43</sup> Ibid., May 24, 1888.

These men, it said, had promised White their votes as soon as they could be released from their pledged. The Picayune claimed that White had been late in determining to enter the contest, and that, as a consequence, a number of legislators who would have given him their votes had already pledged themselves to one of the two other principal candidates. They were obligated to continue this support as long as their candidates had a chance of success.<sup>44</sup> Subsequent developments demonstrated the substantial correctness of these assertions. It was apparent from the alignment of votes in the first three ballots that the pre-election factionalism had not been carried over into the Senatorial contest. The Nicholls group had elected a majority of the legislators;<sup>45</sup> but the combined strength of Eustis and Jonas, who had supported McEnery for the gubernatorial nomination, was greater than that of White and Blanchard, who had supported Nicholls' candidacy.

The Times-Democrat declared that the Young Men's Democratic Association--a society organized avowedly to secure honest and efficient government for the city of New Orleans--was opposed to White and that the Y. M. D. A legislators who voted for him in the caucus were recreant to the principles upon which they had been elected.<sup>46</sup> On May 20 this paper

<sup>44</sup> Ibid.

<sup>45</sup> Ibid., May 19, 1888.

<sup>46</sup> New Orleans Times-Democrat, May 19, 1888.

declared that White's support had been weakened by the telegrams which had been sent to some of the city members.<sup>47</sup> The Picayune, however, contended that these letters of protest of some of the Y. M. D. A. ward leaders had served to strengthen White's support among the country members of the legislature, while they had failed to swerve the New Orleans legislators elected by that organization from their determination to support White's candidacy.<sup>48</sup>

"The commands," commented the Picayune, "of a few of the ward leaders of the Young Men's Democratic Association have had an effect entirely opposite to that which was intended, and they have tended much rather to increase Judge White's strength than to diminish it.

"To the honor of the gentlemen to whom these behests have been addressed be it said that they remain faithful to the course of action dictated by their consciences and their sense of their duties as representatives of the people, whose best interests they were chosen to serve."<sup>49</sup>

The Times-Democrat of May 19 denied that Governor Nicholls favored White's candidacy, and called upon the Governor to make his position clear; since, it asserted, much of White's support was drawn from members who believed that he could command the state patronage.<sup>50</sup> The following day the same paper declared that the letter of Governor Nicholls to White, published

47 Ibid., May 20, 1888.

48 New Orleans Daily Picayune, May 19, 1888.

49 Ibid., May 20, 1888.

50 New Orleans Times-Democrat, May 19, 1888.



in the Picayune, had seemed to weaken rather than strengthen that candidate's cause.<sup>51</sup> In the letter thus referred to, Nicholls characterized the dispatches of certain Y. M. D. A. members to their legislators as utterly unjust and without justification. White's activities as chairman of the Democratic State Central Committee had met with his complete approval. The Governor further denied that any proposition had been made to him to use the patronage at his disposal to secure the election of White; and consequently the reports of his indignation and withdrawal of personal support from White were wholly without basis in fact.<sup>52</sup>

The opposition press mentioned Samuel D. McEnery as a possible dark-horse candidate in case the deadlock persisted.<sup>53</sup> The Picayune, however, was optimistic as to White's ultimate success, contending that "while the three ballots thus far taken in the contest for the junior senatorship demonstrate the existence of a deadlock, there is no apprehension that it will be prolonged, and it is now certain that when the break comes the nomination of Judge Edward D. White of Orleans will be made in short order."<sup>54</sup> When the caucus convened again on the twenty-second, it was seen that White's strength had not been affected, except for the defection of one city member who had left the White ranks and voted for

51 Ibid., May 20, 1888.

52 New Orleans Daily Picayune, May 19, 1888.

53 Ibid., May 20, 1888.

54 Ibid.

Eustis. The balloting on this day showed that Eustis had taken Jonas' place as second on the list.<sup>55</sup>

On May 23 the name of Blanchard was withdrawn and the twelve votes which he had been receiving all went over to White, increasing his vote to 49.<sup>56</sup> The Times-Democrat declared that some believed this to be the last move of the White forces; while others thought that the boom thus given to his cause would win over votes from the Eustis and Jonas lines.<sup>57</sup>

There was a general deadlock in the caucus for several days following the withdrawal of Blanchard. White's early assumption and retention of a position of leadership in the struggle for the nomination made him a particular target of attack by those favoring any one of the other candidates. As has already been noted, an attempt was made to bring pressure to bear on those legislators elected by the Y. M. D. A. who were supporting White;<sup>58</sup> but that organization had been formed for the purpose of securing reforms in the municipal government of New Orleans without any avowed objects of state-wide concern, and it soon became apparent that its membership was pretty well divided in support of the three leading candidates. There had never been any official indorsement of, or opposition to, any particular aspirant on the part of the organization.<sup>59</sup> The fact that White had formerly acted as

<sup>55</sup> New Orleans Times-Democrat, May 23, 1888.

<sup>56</sup> Ibid., May 24, 1888.

<sup>57</sup> Ibid.

<sup>58</sup> New Orleans Daily Picayune, May 19, 1888.

<sup>59</sup> Ibid., May 20, 21, 27, 28, 1888.

counsel for Registrar of Voters I. W. Patton was revived in an attempt to show that he had acted in that instance in opposition to the Y. M. D. A. and in the interest of the "city ring." His supporters pointed out that the mandamus proceedings had been instituted by Republicans to compel the Registrar to appoint at least one Republican commissioner at each polling place. In overruling the Registrar the court had simply ordered the appointment of the Republican commissioners. White, in acting as counsel, had merely sought to defend the official conduct of an officer appointed by Governor McNary.<sup>60</sup> An effort was made to weaken White's candidacy by circulating the charge that he was an attorney for the Standard Oil Trust, coupled with the insinuation that he had been "bought" by that notorious business organization. In answering this charge White's law partner, Eugene D. Saunders, denied that either member of the firm had ever been engaged as counsel for the Standard Oil Trust. He admitted that on one or two occasions the firm had been employed to represent the Standard Oil Company in cases of purely local concern; this was merely a matter of legal business which could in no way reflect upon the integrity of White's character. He and White had never been employed by the Trust; nor had they ever been the general attorneys or legal advisers of the Standard Oil Company.<sup>61</sup>

<sup>60</sup> Ibid., May 22, 1888.

<sup>61</sup> Ibid., May 25, 1888.

In commenting on these efforts to weaken White and their failure to affect his strength the Picayune said: "We have never known a public man who had more completely escaped the contaminating and demoralizing influence of politics. His enemies have ransacked his record without being able to find a single act or circumstance that can be considered dis-creditable either in his private life or in his professional career. No man stands higher in those respects in this city or in this State. His commanding trait, however, is his enlightened and ever zealous public spirit."<sup>62</sup>

Fifteen ballots had been taken when the caucus reconvened on the night of May 24. Before the balloting could be resumed, a motion was made for an adjournment until the night of the twenty-eighth, which was carried. The action was favored, it was said, by the Eustis and Jonas forces, who sought thereby to gain additional time in which to complete their plans for a consolidation of their strength. The Picayune saw in this proceeding an indication that White's strength was increasing while that of Eustis was remaining stationary if not declining: for, it was argued, if the Eustis vote had been rising, it would have been to the interest of his candidacy to continue the balloting in order to attract additional votes; whereas, if White's strength were increasing, it would have been to the interest of the Eustis and Jonas men to seek an adjournment in order to avoid further defections from their

62 Ibid.

ranks. There was confidence among the White supporters that the deadlock would be broken shortly after the caucus reconvened on the twenty-eighth.<sup>63</sup> It was said that the vote on adjournment stood 63 to 54. The Picayune assumed that all who voted against adjournment were White supporters. Although this was still a minority, it indicated that White's strength had risen to a point where it lacked only six votes of the requisite number for nomination.<sup>64</sup> Jonas, it was said, was no longer a serious contender. His strength had fallen from thirty-six votes on the second ballot to twenty-nine on the fifteenth, with no prospect that it would ever again rise to its former level. It was then merely a question of time until his support would be diverted to the other candidates.<sup>65</sup> When the caucus reconvened on May 28, the vote stood White fifty, Eustis thirty-seven, and Jonas twenty-eight, four members being absent. The Eustis men then in a "last desperate effort" moved that the caucus adjourn sine die, which would have postponed the election until the next legislative session in 1890. The motion, however, was lost by a vote of seventy-two to forty-three. The Picayune concluded that the twenty-two Jonas men who must have voted against adjournment favored the election of White.<sup>66</sup>

Jonas' name was withdrawn on the night of May 29. The Times-Democrat declared that the announcement "fell upon

63 Ibid.

64 Ibid., May 26, 1888.

65 Ibid., May 25, 1888.

66 Ibid., May 29, 1888.

the ears of the caucus like a thunderbolt because it was unexpected." Blanchard was again nominated after the withdrawal of Jonas' name. The ballot which followed resulted in seventy votes for White, forty-three for Eustis, and five for Blanchard. The nomination was then made unanimous.<sup>67</sup> The Picayune, however, said that the "glorious result achieved" by the supporters of White was by no means unexpected, and that the corridors of the statehouse were crowded with citizens in anticipation of the announcement of his nomination. It had been well known from the beginning, continued this paper, that White was the second choice of a majority of the supporters of both Jonas and Blanchard, a fact which proved his great popularity in all sections and among all classes of the people of the state. Although the contest had been protracted, it had been gallantly waged and graciously yielded. The action of the caucus in making the nomination unanimous was regarded as an indication of returning harmony within the party and a subsidence of that bitter factionalism which had of recent years prevailed in the Democratic ranks.<sup>68</sup>

Immediately after the nomination had been made unanimous a committee of five was appointed to wait upon Judge White and inform him of the decision of the caucus. The committee soon returned with the nominee and amid great

<sup>67</sup> New Orleans Times-Democrat, May 30, 1888.

<sup>68</sup> New Orleans Daily Picayune, May 30, 1888.

sheers White was escorted to the rostrum, where he delivered his speech of acceptance. He expressed a deep sense of gratitude toward the gentlemen who had stood by him so faithfully during the contest and also thanked all the members of the caucus for making the nomination unanimous. There was, he said, no "invidious distinction" in his selection as a candidate, but merely an expression of a preference. He said that the other gentlemen whose names had been before the caucus were just as worthy if not more worthy of the nomination. He spoke of the responsibility thus imposed upon him as a representative of his commonwealth, and expressed the hope that when his term of office had expired it would be found that he had done some good for the people of his state.<sup>69</sup>

The following day, May 30, the legislature met in joint session to ballot for a United States Senator. This was, of course, a mere formality, since the Democrats had already decided on their choice of a candidate. White was nominated by the Democrats; while former Governor Warmoth was put forward by the Republicans. A ballot was taken which resulted in a total of 119 votes for White who received 85 from House members and 34 from Senators; while the total vote for Warmoth was 11, 9 of which came from House members and 2 from Senators, 1 of the 3 Republican Senators having voted for the Democratic candidate.<sup>70</sup> A committee consisting of two Senators

<sup>69</sup> New Orleans Times-Democrat, May 30, 1888; New Orleans Daily Picayune, May 30, 1888.

<sup>70</sup> New Orleans Daily Picayune, May 31, 1888.

and three members from the House was appointed to notify White of his election. The newly elected Senator soon appeared and was escorted to the Speaker's stand from which he addressed the assembly. He said that his remarks should have been prepared with great care and deliberation in order that they might be worthy of the occasion, but the short time which had elapsed since he had been informed of his nomination had allowed him very little leisure. He had consequently been able merely to collect a few scattering thoughts. The long period of time, he said, which would elapse before he would be called to perform the duties of the position which he had been selected to fill rendered a discussion of questions of policy then confronting the nation inadvisable; since, in all probability, when the time came for him to assume his duties as Senator the questions which were then real and living would have been "crystallized by the wise action of the Democratic party and removed from the realm of discussion into the region of things settled and concluded." He felt called upon, however, to make some profession of faith; and he declared his political faith to be a strict adherence, irrevocable and changeless, to the fundamental principles of the Democratic party. These principles he believed to be essential to both honest and constitutional government in state and national affairs. Looking back, he continued, over the history of Louisiana, it was the Democratic party which had led the state out of the bondage of Radicalism and restored



it to local self-government; and it was the adherence to this party which enabled him to stand before the legislature as an elected representative of the state. In national affairs he said the Democratic party had always been found, from the foundation of the Federal system, adhering tenaciously to the principles of local self-government throughout many trials and vicissitudes. He believed that this party's principles and methods of constitutional construction afforded the only compass by which the destinies of the nation could be worked out in order that the blessings contemplated by its founders might be realized. The Democratic party, he asserted, and its principles of constitutional construction bore the same relation to our political system that the law of gravitation bore to the material universe. He declared the Democratic party to be a party of the people, and hence essential to a free government. He referred to the dangers arising from the aggregation of wealth in a few hands and said that these dangers could be averted only by a strict adherence to the principles of the Democratic party. He spoke of the honor and responsibility devolving upon a Senator as the representative of the collective body of the state. In conclusion he reviewed the history of the state of Louisiana and pictured its glorious future, dedicating himself to the service of his state in the accomplishment of her glorious destiny.<sup>71</sup>

71 Ibid.; New Orleans Daily Picayune, May 31, 1868.

The news of White's election was received with general satisfaction throughout the state, even among those who had been supporters of Jonas and Eustis; and it was conceded that in point of eloquence and oratory the state would be better represented in the Senate in the person of White than it had been since the days of Judah P. Benjamin.<sup>72</sup> Indeed, the new Senator's eloquence had become proverbial in Louisiana. His invariable accuracy and logical acuteness, coupled with the fact that he never entered a controversial discussion without careful preparation and never underrated the strength of an opponent, rendered him formidable in debate; and his friends predicted that these qualities would enable him to assume an important role in Senatorial deliberations.<sup>73</sup> A Boston paper considered White's election as a distinct gain to the Democratic side of the Senate. It said that Eustis--whom White would succeed--, although rated a gentleman of considerable ability, had failed to make his mark in the Senate, and had made himself conspicuous principally by his bitter criticism of President Cleveland.<sup>74</sup>

More than three years would have to elapse before White would assume the official duties of the office to which he had been elected at an earlier age than had any of his predecessors who had represented Louisiana in the United States Senate.<sup>75</sup> There would, accordingly, have been ample time for him to have served one term in the lower branch of Congress

<sup>72</sup> New Orleans Daily Picayune, June 1, 1888.

<sup>73</sup> Ibid., May 30, 1888.

<sup>74</sup> Boston Herald, May 31, 1888, quoted in New Orleans Daily Picayune, June 7, 1888.

<sup>75</sup> New Orleans Times-Democrat, March 25, 1889.

before taking his Senatorial seat; and he was repeatedly mentioned in the summer of 1888 as a candidate for nomination and election to the national House of Representatives from the First Congressional District. The rumors of his candidacy persisted in press reports of political developments, in spite of his efforts at suppression through private solicitation. White thereupon issued a public statement on August 15 emphatically denying that he had ever entertained any desire for the office and declaring that he would not accept the nomination were it possible that it should be tendered to him.<sup>76</sup> This declaration effectively checked the movement for his nomination, and he vigorously supported, in the ensuing election, the candidacy of Theodore S. Wilkinson, who was nominated by the Democratic party.<sup>77</sup>

White was one of the speakers at a political rally held in New Orleans on October 25, 1888, in support of the candidacy of Wilkinson and that of the Democratic nominees for president and vice president. His speech on this occasion is of particular interest because of certain expressions declaratory of his views on the tariff issue. After a few scathing remarks concerning the unpleasant recollections of Republican domination in Louisiana, White turned to a consideration of that party's advocacy of the protective tariff system. He said that the Democratic party had always been

<sup>76</sup> New Orleans Daily Picayune, August 16, 1888.

<sup>77</sup> Ibid., October 26, 1888.

appeared on the side of the many against the few and against the monopolists. Protection meant an increase in the price of goods; and he compared its isolating effect on the country's international trade to that of a Chinese wall. In refutation of the argument that protection resulted in higher wages for the working classes, he cited the case of China where the protective principle was carried out to its logical conclusion; there the wages of the laboring man averaged thirty cents per month. Absolute free trade which meant the abolition of custom houses did not exist anywhere; nor had the Democratic party ever advocated such an extreme policy. That party favored a moderate system of revenue sufficient to meet the expenses of government. The exorbitant tariff rates had been initiated to meet the exigencies created by the Civil War; but, although the war had been over for many years, the rates had not been appreciably reduced. Protection, he said, meant the accumulation of millions of dollars in the hands of the few to the detriment of the many. The people were suffering under the burden of excessive taxation. White disavowed any belief in the efficacy of free trade; but he did advocate a moderate revenue system. Such a system the Democratic party was seeking to inaugurate by effecting reductions in the Republican war tariff. Nearly all the strikes in this country, he said, had occurred among workmen employed in protected industries. Statistics demonstrated, he asserted, that wages were higher in unprotected industries

than they were in industries sheltered by the high tariff wall. White declared that the Republican party was not a friend of the sugar industry. He concluded his remarks by predicting that the retention of Cleveland in the presidency and the election of a Democratic Congress would be followed by an era of unprecedented prosperity.<sup>78</sup>

Shortly after the formation of the Anti-Lottery League early in 1890, White went actively to work in conjunction with many other prominent citizens of the state to prevent a re-charter of the Louisiana State Lottery Company. Soon after it was learned that John A. Morris, president of the company, would apply to the legislature at its next session for a re-charter granting the company a continuance of its privileges for twenty-five more years, the opponents of an extension of what they considered to be an evil formed an organization known as the Anti-Lottery League for the purpose of preventing any further concessions to the old company or to any new one.

On April 21, 1890, White was elected to membership in the Anti-Lottery League, and his powers of oratory soon brought him to the front as one of the outstanding proponents of the anti-lottery movement.<sup>79</sup> On May 18 the Times-Democrat carried an article warmly praising White for his patriotism and self-abnegation in attempting to prevent the

<sup>78</sup> Ibid.

<sup>79</sup> New Orleans Times-Democrat, April 22, 1890.

submission of the judiciary and lottery questions to the people and thereby precipitate a constitutional convention. Such a convention, it pointed out, might snatch from him the Senatorship within his grasp, since a clause in the state constitution required that the legislature elected just prior to the expiration of the Senatorial term should elect a new Senator. A constitutional convention would probably necessitate the election of a new legislature before the beginning of White's term as Senator.<sup>80</sup> This article was evidently a sarcastic intimation that the Senator-elect was unaware of the probable consequences of his activities upon his future political aspirations, the implication being that the anti-lottery agitation was seeking to thwart a reference of the controversy to the voters for determination, which would ultimately provoke a popular demand for a complete revision of the organic law. Such an eventuality would necessitate new elections and a re-enactment of the Senatorial struggle of 1888.

Later in the same issue of this newspaper appeared a scathing criticism of White's Grunewald speech, his first public utterance on the antilottery question, which had been delivered on the preceding night. This address caused quite a sensation in lottery circles, and articles denying the accuracy of certain of his statements or denouncing his deductions appeared frequently in the city press which

<sup>80</sup> Ibid., May 18, 1890.

unanimously favored the lottery or revenue amendment. He declared in this speech that he would take up the lottery question in all its phases and endeavor to meet each assertion put forward by its advocates. He stigmatized the lottery as a legalized form of gambling which affected every class of society. To legalize this vice for another twenty-five year period would create an atmosphere vitiating to the generation yet unborn as well as to the one just then growing up to manhood. He paid his respects to the legislature of 1868 whose venal members had chartered the lottery company at a time "when crime of all kind was rampant and bribery was the order of the day." If the lottery were an ordinary business, he demanded, why was some one knocking at the door of the legislature for permission to operate this business? He conceded that refusal to grant a recharter to the lottery company would not prevent the sale of tickets in the state, but asserted that the state would be enriched by fines collected for the violation of its criminal statutes. He made an unfavorable comparison of savings bank deposits in Louisiana with such deposits in other states. With regard to the levee situation, he said that the state's funds for this purpose were sufficient to close all the gaps caused by the crevasses of 1890, and he predicted that the surest method of defeating the attempts made by the Louisiana delegation in Congress to secure Federal aid for the upkeep of the levees along the Mississippi would be to prolong the

life of the lottery company and accept money from it for levee purposes. He said that the state Insane Asylum was amply supplied with funds; and as to the public school system, he maintained that with a little self-sacrifice and self-abnegation Louisiana would soon have as good schools as any other state. In conclusion he predicted the ultimate failure of the lottery company's attempt to secure a renewal of its charter.<sup>81</sup>

The Times-Democrat declared that White's deduction concerning the levee situation was based on two fallacies. He had stated, it said, that if the state in 1884 could, out of its own revenues, rebuild twenty-six miles of levees, could it not in 1890, with superior revenues for levee purposes, rebuild six miles? The Times-Democrat denied that the state had rebuilt the twenty-six miles solely out of its own revenues, asserting that most of the money had been furnished by the railways and by the River Commission, while contributions had been added by people living along the coast of Mississippi. The portion paid by the state, it said, was not paid out of the current revenue as White had implied but was part of a sum paid to the state by the "Watkins Syndicate" for certain marsh lands in the southern portion of Louisiana. This paper further asserted that the six-mile gap to be filled in meant more than rebuilding the old dikes, for it had been demonstrated that the old levees could not withstand the tor-

<sup>81</sup> New Orleans Daily States, May 18, 1890; New Orleans Times-Democrat, May 18, 1890.



recurrent floods which annually broke through them and that they would have to be replaced by higher and broader levees. The whole levee system, it had been estimated by engineers, would have to be strengthened at a cost of from four to six millions of dollars.<sup>82</sup> White was probably too optimistic in his view of the levee situation. The Times-Democrat also accused White of being responsible for the frustration of the attempts to secure a Federal grant for levee purposes. It asserted that his speech had led Northern members of Congress to believe that the extent of the distress had been exaggerated, and that many who had formerly been favorable to the appropriation had changed their opinions after a personal of the Senator-elect's speech.<sup>83</sup>

White's conclusions in regard to the savings bank deposits in Louisiana were also attacked by the press. It was pointed out that his comparison of figures for 1878-79 and 1890 was "particularly disingenuous," since they were correct for only a portion of 1878-79. The failure of several savings banks in the latter part of 1879 had destroyed public confidence in these institutions and had led people to seek other forms of investment. If, it was contended, White had compared amounts on deposit during the second half of 1879 with those for 1890, the comparison would have shown a very decided increase for the year 1890 instead of the decrease

<sup>82</sup> New Orleans Times-Democrat, May 19, 22, 1890.

<sup>83</sup> Ibid., May 26, 1890.

which his figures demonstrated. The unfavorable comparison between Louisiana and New England in the matter of savings bank deposits was typical of a condition prevailing throughout the entire South and could not be attributed solely to the fact that a lottery company existed in Louisiana.<sup>84</sup>

In the midst of the lottery controversy the Times-Democrat published an article attacking the integrity of White's character, and accusing him of having stooped to corrupt and dishonest methods to procure his election to the Senate.<sup>85</sup> No specific charges were made, however. Four days later an article appeared charging that the Nicholls campaign committee had received donations from representatives of the lottery company to aid in securing the gubernatorial nomination for Francis T. Nicholls during the campaign of 1887. It was further charged that White had received \$10,000 from "the head and front of the lottery company" which was spent by him in procuring the Senatorial nomination. Such a large sum, it was stated, could hardly have been consumed in purchasing stationery, and it was implied that White had used bribery and corruption to secure his nomination by the Democratic caucus.<sup>86</sup>

These charges created considerable excitement for a time and elicited comments from both lottery and antilottery circles. They were effectively quashed, however, by a full

<sup>84</sup> Ibid., May 20, 21, 1890.

<sup>85</sup> Ibid., July 18, 1890.

<sup>86</sup> Ibid., July 22, 1890.

and comprehensive statement published in the Times-Democrat of July 27, and which was signed by Governor Nicholls and all the members of the campaign committee. This statement declared that in the very inception of the Nicholls campaign the question arose as to what stand should be taken on the subject of lotteries. A majority of the members of the committee were unalterably opposed to such gambling devices. In preparing the campaign address the committee considered the advisability of touching upon the lottery question; but, as several close friends of Morris had stated that he desired merely to be unmolested in his existing rights and that his intention was to retire from the lottery business upon the expiration of his charter, the committee decided that since the lottery company had only a few more years to run and since its charter was embedded in the constitution and would require a constitutional convention to effect any alterations it was deemed expedient not to drag the question into politics, provided no renewal of the charter was requested. Late in the campaign, after primaries had been held throughout the greater portion of the state, two checks for \$5000 each were presented to the committee by Morris through two of his friends. In accepting the donations it was explicitly understood that no obligation to extend the charter of the lottery company or to grant it additional privileges was thus incurred.<sup>87</sup>

In answer to the charge that he had bought his election to the United States Senate with money given him by the head

<sup>87</sup> Ibid., July 27, 1890.

lottery company," White emphatically denied having received any funds whatsoever to aid in procuring the Sen-  
atorship. He said that as treasurer of the Nicholls cam-  
paign committee he had received many donations, all of which  
were disbursed by him for campaign purposes. After the Demo-  
cratic convention had nominated candidates for governor and  
other state offices, he was made a member of the Democratic  
State Central Committee and subsequently became chairman of  
the Finance committee. As chairman, he said, many contribu-  
tions from various sources had passed through his hands,  
every dollar of which was spent for legitimate campaign ex-  
penses. After the state election, the remainder of the fund  
had been expended in prosecuting the national Democratic cam-  
paign which occurred later in the same year. The books showed,  
he said, that the committee was indebted to him over and above  
every dollar received from any source whatever. Could he  
have stooped to bribery and corruption to secure the nomina-  
tion at the hands of the Democratic caucus, he said that his  
own financial resources and those of his family were suffic-  
iently ample to render outside aid unnecessary. He had re-  
peatedly declared, he continued, during the course of the  
struggle in the caucus for a nomination that if one dollar  
were used by any one in his behalf to corrupt a single vote,  
he would immediately retire from the contest. His total  
expenses, he asserted, in Baton Rouge during the varying  
struggle before the caucus amounted to one thousand dollars.

Approximately one-half of this amount represented the cost of a banquet given the entire membership of the caucus after his nomination, the remainder being used for hotel bills, telegrams, etc.<sup>88</sup>

No further aspersions were cast upon the integrity of White's character by the press, but its opposition to the antilottery movement did not relax in any degree. White continued to address audiences in behalf of the Anti-Lottery League; and he was characterized by the press as the "chief pillar" and the "cornerstone" of the organization.<sup>89</sup> He was a delegate to the antilottery convention which met in Baton Rouge on August 7. Shortly after the assembly convened, White was loudly called for and was escorted to the rostrum amid great applause. In his address before the convention he urged that the question be considered calmly and dispassionately. He declared that an extension of the lottery company's franchise would ruin the state.<sup>90</sup> Before adjourning, the convention passed resolutions to the effect that whereas the honesty of purpose and integrity of character of Governor Francis T. Nicholls and Senator-elect Edward D. White had been attacked by the lottery company through its subsidized press, and whereas these attacks were inspired by malice, hate, and anger, the convention expressed its

<sup>88</sup> Ibid.

<sup>89</sup> Ibid., July 18, 1890.

<sup>90</sup> Ibid., August 8, 1890.

attendance in the stainless honor and unblemished character of these two noble sons of a grateful state.<sup>91</sup>

White participated in the mandamus case which came before the Supreme Court on February 17, 1891, as counsel for the state.<sup>92</sup> The revenue amendment which had been introduced by Representative S. O. Shattuck in June, 1890,<sup>93</sup> and which included a provision extending the lottery company's franchise for another twenty-five-year period, had been vetoed by Governor Nicholls. The amendment was again passed by the legislature. The Secretary of State, however, refused to promulgate the amendment and submit it to the people for ratification on the ground that it had not been passed in accordance with the provision of the constitution stipulating the manner of proposing amendments to be voted on by the people. John A. Morris, head of the lottery company, had thereupon brought a mandamus suit against the Secretary of State in the 17th district court at Baton Rouge to force the promulgation of the proposed amendment. The district court decided in favor of the state, whereupon Morris appealed to the Supreme Court.<sup>94</sup>

In the argument of the case before the Supreme Court both sides were well represented by a brilliant array of legal

<sup>91</sup> Ibid.

<sup>92</sup> Ibid., February 18, 1891; State ex rel Morris v. Mason, Secretary of State, 43 La. Ann. 590 (1891).

<sup>93</sup> Louisiana House Journal, 1890, p. 199.

<sup>94</sup> New Orleans Times-Democrat, February 18, 1891.

For the state there were, in addition to Attorney-General Walter H. Rogers, J. N. Luce, Donelson Caffery, W. D. White, and others.<sup>95</sup> T. J. Semmes and F. P. Poche acted as counsel for the relator.<sup>96</sup> The Attorney-General opened the argument for the state, taking up the clause of the constitution which dealt with the keeping of the legislative journals. He held that it was the duty of the Secretary of State to prepare and publish the official journals. He charged that forty-eight pages of the original journal had been removed by subofficers and replaced by other pages. He then produced the original daily journal as the authentic one, and claimed that the amendment had not been read in full and entered upon the original journal as required in the constitution.<sup>97</sup> Donelson Caffery next took up the argument for the state. Luce should have followed Caffery, but he yielded his time to White, giving notice that his argument on the question of the veto power would be presented in written form rather than orally.<sup>98</sup>

White closed the case for the Secretary of State, being allowed twenty-five minutes in which to present his argument. Briefly summarized, the main points raised were as follows:

"1. Where the Constitution prescribes a particular mode to be followed by the Legislature in formulating and submitting proposals of amendment, the Legislature is, by

<sup>95</sup> *State ex rel. Morris v. Mason*, Secretary of State, 43 La. Ann. 590 (1891).

<sup>97</sup> *New Orleans Times-Democrat*, February 19, 1891.

<sup>98</sup> *New Orleans New Delta*, February 19, 1891.

application, restricted to the mode prescribed, although other modes are not expressly prohibited, and is absolutely without authority to propose amendments in any other mode.

"2. Where in such cases the Legislature disregards the requirements of the constitutionally prescribed mode, its action being in excess or violation of the limited authority conferred upon it in this matter, is null, and no more than an unconstitutional law would, does it bind, either the Secretary of State to promulgate, or any private citizen to obey or regard it.

"3. What is known as the lottery amendment of 1890 was not constitutionally formulated and adopted by the Legislature and cannot be constitutionally submitted to the people, inasmuch as, although, it contains more than one amendment to be voted on at the same time, yet these amendments were and are submitted as one, and are to be voted on as one and not separately, as is required by Article 256 of the Constitution."<sup>99</sup>

White said that the question which he wished to discuss was purely a legal one free from all extraneous matter. If the amendment were legally adopted, it should be submitted for ratification or rejection by the voters regardless of the evil which its opponents maintained would follow its ratification; on the other hand, he argued, if the amendment

<sup>99</sup> State ex rel. Morris v. Mason, Secretary of State, 43 La. Ann. 600-601 (1891).



~~was not~~ legally adopted, it should not be submitted even though all the benefits claimed for it by its advocates would ~~result from its ratification~~. In the outset, he said, he desired to establish two axiomatic propositions. The first of these was that without constitutional authority so to do the legislature was powerless to submit amendments to the constitution. The second was that since the power to submit an amendment must flow from an express grant in the constitution, any violation of the terms of the constitutional grant rendered the amendment null and void. He then cited article 22 of the constitution which, after giving the power to amend and providing how it should be exercised, provided that when more than one amendment was to be submitted, each amendment should be so submitted as to enable the voter to vote on each one separately.

The proposition, he maintained, was that the amendment before the court was more than one amendment, submitted as one, without giving the voters an opportunity to vote separately thereon. He then traced the genesis of this restriction requiring the submission of separate amendments and said that it was intended to prevent log-rolling.

The amendment, he said, licensed a lottery and provided for the raising of revenue therefrom. It then proceeded to appropriate this revenue to six different objects, five of which were for State purposes and one for a local municipal

purpose. He asserted that the raising of revenue and appropriation of the same were two different objects--a fact which had been recognized since the time of Magna Charta, and of which cognizance was taken in drafting the Constitution of the United States, wherein a provision is found requiring that revenue bills shall originate in the lower House of Congress. The diverse objects, he contended, for which appropriations were made--namely: levees, schools, charities, general fund, pensions, and drainage of the city of New Orleans--merely accentuated the evil of log-rolling which the constitutional restriction was intended to prevent.

White called attention to the fact that one of the appropriations was for the drainage of the city of New Orleans. He would like to know, he said, how there could be oneness in a measure which appropriated funds for five state purposes and one purely municipal purpose. The constitution recognized a difference, for while it sanctioned appropriations for State purposes, it prohibited the appropriation of State funds to any public or private corporation. The constitutional provision that each bill must have a single object was governed by the same principle as the one-amendment clause, and hence the one-object clause was applicable to constitutional amendments.

In closing his argument he said that it had been charged that the opponents of the amendment were seeking to prevent an expression of the popular will. He maintained, however,

that the free right of election was denied by the very nature of the amendment, since the voter would have to vote for that which he disapproved in order to vote for that which he approved. This, he said, was the supreme test and by this test the amendment should not be submitted.<sup>100</sup>

The decision of the Supreme Court in regard to the revenue amendment case was rendered on April 27.<sup>101</sup> It reversed the ruling of the lower court, holding the amendment to be constitutional and making the mandamus upon the Secretary of State to promulgate the amendment peremptory.<sup>102</sup> The decision was rendered by a divided court, three of the five members upholding the constitutionality of the amendment and two dissenting from that view. Justice Lynn B. Watkins delivered the opinion of the court, extending over some fifty-five pages in the Louisiana Reports.<sup>103</sup> Justice Samuel D. McEnery concurred in the judgment of reversal in an opinion covering about thirteen pages;<sup>104</sup> while Chief Justice Edward Bermudez required but three pages for a statement of his concurring views.<sup>105</sup> The dissenting opinions of Justices Charles E. Foucher and Joseph A. Breaux were fifteen and five pages respectively.<sup>106</sup> Supporters of the amendment were jubilant over the outcome of the controversy.<sup>107</sup>

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

<sup>102</sup> State ex rel. Morris v. Mason, Secretary of State, 43 La. Ann. 664 (1891).

<sup>103</sup> Ibid., 610-664.

<sup>104</sup> Ibid., 664-677.

<sup>105</sup> Ibid., 677-680.

<sup>106</sup> Ibid., 680-699.

<sup>107</sup> New Orleans Times-Democrat, April 28, 1891.

White was a member of the Louisiana delegation which appeared before the River Commission in New York on July 15, 1891, to request a Federal grant of more than three millions of dollars for levee construction and repairs along the Mississippi River.<sup>108</sup>

The junior Senator's appearance in what the press was pleased to term a "supplian guise" furnished an opportunity for renewed attacks by the lotteryites upon the speech made by him on May 17 of the preceding year.<sup>109</sup>

He was falsely accused of having shifted his position on the levee question and of being inconsistent in his statements.<sup>110</sup>

His efforts in behalf of the antilottery movement continued unabated, however, in spite of denunciations hurled at him by the city press which, with the exception of the New Delta that had been established under the auspices of the League, was solidly for the revenue amendment.

On November 6 White delivered the closing address at an antilottery meeting held in New Orleans. When he arose to speak he was greeted by a stirring ovation, many of the audience having remained solely to hear his address. He referred to the persistent continuation of the Democratic party in American politics and attributed the phenomenal longevity of this party's existence to the principles which it represented. He urged the election of antilottery delegates to the Democratic State convention which was soon to

108 Ibid., July 16, 1891.

109 Ibid., July 20, 1891.

110 Ibid., July 27, 1891.

that in Baton Rouge in order that the lottery question might be settled within the party and not be carried over into the national election, when the situation would be complicated by the presence of the Negro vote.<sup>111</sup>

In spite of his strenuous opposition to the lottery, however, White declined to yield to the clamorous appeals of his fellow-citizens that he introduce a bill in Congress for the suppression of the lottery business through the exercise of the power of Federal taxation. He said that great as was the evil against which the common fight was being waged, there was yet a greater one--namely, the disruption and destruction of the principles of our Federal system which would result from the passage by Congress of an illegal and unconstitutional act.<sup>112</sup> Although White was called to Washington to assume his Senatorial duties prior to the conclusion of the war against the lottery, he maintained a lively interest in the progress of that struggle and regretted his inability to continue his active participation; but promised to return and assume his full share of the burden of the fight at the first opportunity.<sup>113</sup>

When the Democratic state convention met in December, 1891, it was apparent that the McEnery faction, which favored the revenue amendment, controlled the organization machinery

<sup>111</sup> New Orleans New Delta, November 7, 1891.

<sup>112</sup> Cong. Record, 52 Cong., 1 Sess., 6519.

<sup>113</sup> Edward D. White to Stephen D. Ellis, January 29, 1892, in Ellis Collection, Department of Archives, Louisiana State University.

and would attempt to dominate the assembly. That group <sup>194</sup>  
and would attempt to dominate the assembly. That group  
claimed a majority both of members of the state central  
committee and of the delegates to the convention.<sup>114</sup> The  
antilottery group held a caucus on the night of December 15,  
and the following day bolted the convention, organizing sep-  
arately.<sup>115</sup> A combination, however, was immediately effected  
with the Farmers' Alliance faction, the leader of that group;  
Thomas S. Adams, receiving the gubernatorial nomination on  
December 17. But Adams declined to head the ticket and both  
parties to the combination then nominated Murphy James  
Foster, one of the antilottery delegates, for governor with  
Charles Parlange for lieutenant-governor. The McEnery men  
contended that the antilotteryites had perpetrated a swindle  
upon the Alliance group, claiming that Adams had been given  
the nomination with the specific understanding that he would  
not accept it.<sup>116</sup> The regular Democratic convention nominated  
Samuel D. McEnery and Robert C. Wickliffe for governor and  
lieutenant-governor respectively and adopted a platform advo-  
cating the submission of the revenue amendment to a white pri-  
mary prior to the general election, if such a procedure were  
feasible, and deprecating the action of the bolters as dis-  
ruptive of party solidarity.<sup>117</sup> Thus there were two sets of  
candidates in the field, each of which claimed to represent

114 New Orleans Times-Democrat, December 14, 1891.

115 Ibid., December 16, 17, 1891.

116 Ibid., December 18, 1891.

117 Ibid., December 21, 1891.

the Democratic party. After conferences between representatives of the two factions, an adjustment was arrived at on February 20, 1892, whereby it was agreed that both the Foster and McEnery tickets should be submitted to the Democratic voters at a special white primary election, to be held on March 22, and which should be conducted under the auspices of a joint committee composed of four members elected from the Foster faction and three from the McEnery group.<sup>118</sup> The special primary was accordingly held on the designated date, but, as subsequent events proved, it failed to settle the controversy. The McEnery supporters claimed a stunning victory for their ticket with a majority of at least 9,000 votes, but this figure was quickly reduced to an estimated majority of 3,000 as more complete returns became available.<sup>119</sup> The official returns, as promulgated by the joint committee, declared the nominees of the Foster faction to have been endorsed by the Democratic voters, although by very slender majorities. The three McEnery members of the committee refused to sign the majority report and withdrew from further participation in the committee's activities, issuing a protest challenging the accuracy of the tabulations of the majority members.<sup>120</sup> The leaders of the defeated faction declined to acquiesce in what they declared to be a palpable fraud and determined to enter their ticket in the general

118 Ibid., February 21, 1892.

119 Ibid., March 23, 24, 1892.

120 Ibid., April 6, 1892.

121 which was held on April 19 and which resulted in a decisive victory for the Foster faction. Again there were charges of fraud and corruption, but the McEnery men requested peaceful submission, lest violent opposition should lead to Federal intervention which would probably be attended by annexation to African domination.<sup>122</sup>

The revenue amendment which had been sponsored by the McEnery faction was also overwhelmingly defeated by the voters in the same general election, and the lottery question which had so violently agitated the state for two years was thus eliminated from politics, and from that time forward ceased to be a living issue. As to White's part in bringing about this result the New Delta said that from the beginning of the war on the lottery he was the mainstay of the movement, his time, talents, and purse being always at the service of the cause. His advice in council was indispensable; while on the stump his thunderous denunciations and the "lightning of his logic" made him an object of admiration to his friends and of fear to his enemies. "To him," concluded the New Delta, "more than to any other one man in the state is due the credit of the defeat of the lottery."<sup>123</sup>

<sup>121</sup> Ibid., April 7, 8, 11, 1892.

<sup>122</sup> Ibid., April 20, 22, 1892.

<sup>123</sup> New Orleans New Delta, May 12, 1892.



## CHAPTER V

### SENATORIAL CAREER

The Senatorial term of Edward S. White began on March 4, 1891, but as there was no special session of Congress in this year he did not assume the duties of his office until the following December. New arrivals in the Senate usually receive scant consideration at the hands of the more experienced members and are not expected to take a prominent part in the more important debates. In accordance with this recognized rule the early months of White's service were devoted chiefly to securing the passage of bills of noncontroversial nature. The measure introduced by him removing the charge of desertion against John L. Arns is an example of this type of legislation.<sup>1</sup> During the first session of his term in the Senate White was appointed to the Committee on Claims and was usually selected to report on bills which had been referred to this committee.<sup>2</sup> During the same session he was appointed to the Committee on Epidemic Diseases from which he resigned in December, 1892; but he was re-appointed in that session later to the same committee.<sup>3</sup> During the second session of the Fifty-second Congress he was likewise appointed to membership on the select Committee on Indian Depredations.<sup>4</sup> On March 31, 1892, White was one of the two

1 Cong. Record, 52 Cong., 1 Sess., 2038.

2 Ibid., 2387; Senate Reports, 52 Cong., 1 Sess., No. 428.

3 Cong. Record, 52 Cong., 2 Sess., 297, 358.

4 Ibid., 1722.

Senators appointed as members on the board of visitors to attend the annual examination of the cadets at the United States Naval Academy at Annapolis, Maryland.<sup>5</sup> The following year he was one of the two Senators appointed to a similar board of visitors to attend the annual examination of the cadets at West Point Military Academy.<sup>6</sup>

On March 21, 1892, White spoke against a bill to give relief to settlers on public lands. The purpose of the measure was to refund a portion of the payment made by original settlers for the purchase of public lands. These lands had been sold at a price higher than that usually charged because it was expected that a railway would be built through the region and the value of the land would thus be greatly enhanced. This railway project had failed to materialize. White argued that no guarantee had been made by the government that a railroad would be built and that the settlers had taken the ordinary risks attached to such a venture. He further contended that many of the original settlers had sold their holdings at a greatly enhanced price and had, after all, realized a considerable profit. The bill, however, was passed by the Senate;<sup>7</sup> White, being paired, was unable to vote on final passage.<sup>8</sup> The measure was then sent to the House, where it was referred

5 Ibid., 1 Sess., 2751.

6 Ibid., 2 Sess., 1264.

7 Ibid., 1 Sess., 2259, 2260, 2262, 2264.

8 Ibid., 2309.

the Committee on Claims,<sup>9</sup> and there apparently expired. White returned to Louisiana in May, 1892, to aid General Randall Lee Gibson in the conduct of his campaign for re-election to the United States Senate. Congressman Newton C. Blanchard, Benjamin F. Jonas, and Donelson Caffery were also candidates for Senatorial honors. It was said that Caffery had the backing of the Foster administration but that White's espousal of Gibson's cause would lessen this support.<sup>10</sup> Since Gibson's term of office would not expire until March 4, 1895, however, the legislature, after the expenditure of considerable time in unsuccessful efforts to break the deadlock on the Senatorial question, determined to postpone the election until its next session in 1894.<sup>11</sup> Senator Gibson did not long survive this inconclusive contest for re-election, for he died the following December. White was one of the five members appointed by the Senate to a joint committee which attended the funeral of Louisiana's senior Senator.<sup>12</sup> In his speech before the Senate on March 1, 1893, in memory of Senator Gibson, White incidentally showed how close had been the relations between himself and his late colleague. He related the history of Gibson's life, touching upon his ancestry, and described his career as a soldier of the Confederacy and his subsequent

10 ibid., 2494.  
 11 New Orleans Times-Picayune, May 12, 1892.  
 12 ibid., May 8, 1892.  
 13 ibid., 52 Cong., 2 Sess., 208.  
 17

retreated into the legal profession when the ravages of war had destroyed his prospects for a successful career as a politician. He had, continued White, attained a position of eminence as a civil lawyer when he forsook the legal profession for that of politics. In conclusion White spoke feelingly of Gibson's failing health during the last years of his life and of his steadfast religious devotion.<sup>13</sup>

One of the most important incidents connected with White's Senatorial career was his speech on the Hatch bill, as it was more commonly called, the Anti-options bill. It was this speech which caused White to take rank with "the best constitutional lawyers of the Senate,"<sup>14</sup> and which made his name, hitherto comparatively unknown, familiar to every household in the land.<sup>15</sup> The Anti-options bill was introduced by Colonel William H. Hatch in the House of Representatives and, after being passed by this body, was sent up to the Senate for consideration. Senator William D. Washburn of Minnesota sponsored the bill on the floor of the upper house. When the bill came to the Senate a large majority of the members were friendly toward it, and its passage seemed assured.<sup>16</sup> White's first speech against the measure was made on July 21, 1892.<sup>17</sup> When he arose to speak the Senate chamber was nearly empty. But ere long spectators

<sup>13</sup> *Ibid.*, 2341, 23.

<sup>14</sup> *New Orleans Times-Democrat*, July 22, 1892.

<sup>15</sup> *Ibid.*, February 21, 1894.

<sup>16</sup> *Ibid.*, February 1, 1893.

<sup>17</sup> *Senate Record*, 43 Cong., 2 Sess., 6515.

had crowded into the galleries and Senators filed back to their seats; and contemporary accounts state that not once during the course of the address were newspapers or personal correspondence resorted to in order to relieve the tedium usually incident to Senatorial speeches.<sup>18</sup>

The Hatch bill was intended to prevent dealings in "options" and "futures" with respect to certain specified articles. The first two sections defined the terms and contained provisions permitting farmers and planters to contract for future delivery in so far as such contracts were made for articles connected with the production of crops. There was also a clause exempting the government of the United States and state, municipal, or county governments from the provision of the act. Section 3 specified the articles to which the provisions of the act were to apply. Among these were raw cotton, lard, bacon, hops, barley, wheat, and other grains. Section 4 of the act imposed a fee of \$1,000 upon any person, group or copartnership dealing in "options" and "futures." It also required the payment of a tax of five cents per pound on those articles specified in section 3 which were commonly sold according to weight, and levied a tax of twenty cents per bushel on the grains listed. Sections 5 through 10 provided for the enforcement of the foregoing provisions and imposed penalties for their violation. Section 11 stipulated that certificates issued prior to the enactment

18 New Orleans Times-Democrat, July 22, 1892.

of this statute would not exempt the holder thereof from prosecution under the terms of this act; while section 12 provided that licenses might be issued to holders of these certificates on payment of a \$2.00 fee. Section 13 provided that the internal revenue collector, whenever he suspected a violation of the terms of the statute, might demand the investigation of the business of a corporation or person and order an examination of the books of the suspected firm.<sup>19</sup>

White first attacked the bill on the ground of its un-<sup>o</sup>constitutionality. The type of contract which section 2 of the act prohibited was a type which had been recognized as valid in the Supreme Court of the United States as well as in the courts of last resort of nearly every state in the Union. The right to make contracts for future delivery had been crystallized into a body of jurisprudence and the validity of such contracts was recognized equally with those for present delivery, provided only that either of the parties to the contract had an honest intention to deliver. This right was as sacred and as well protected by state law as a man's right to hold his home. The proposed act, he said, was a bill licensing the Federal government to step over the state boundaries and destroy any contract made by citizens of the state within the state which the Federal government might choose to destroy. He thought that if the theory propounded in this bill were true, every vestige of state autonomy would be destroyed and all semblance of federalism in

19 Cong. Record, 52 Cong., 1 Sess., 6514 ff.

the American plan of government would be swept away, leaving the central government the most unlimited and arbitrary government in the world. He challenged any Senator to point out where in the Constitution could be found authority for such an extensive grant of power to the Federal government.

He next attacked the assertion that the bill would be upheld as constitutional because it could be claimed that the measure was an exercise of the taxing power. He argued that from the very nature of its terms no tax could result from the passage of the bill. It was proposed, he said, to strike out the twelfth section of the bill--the only section whose provisions could possibly lead to the collection of taxes and thus give a semblance of constitutionality to the measure. The proposal to state on the face of the bill that it was an exercise of the taxing power for the purpose of raising revenue when it was patent that no revenue could result from its passage was breathing a "living lie" into the measure to insure its being declared constitutional. He said that the Supreme Court could go beyond the statement of the purpose of the bill as declared on its face and examine the terms of the statute. White then cited the Topeka case<sup>20</sup> which came before the Supreme Court of the United States and which was wiped off the statute books, not that the motive or purpose was questioned, but because the object

<sup>20</sup> Citizens Saving Loan Association v. Topeka, 20 Wall. 655 (1874).

of the bill was declared to be one thing and the very terms of the bill stated another; and this other was outside the authority of legislation.

White charged that Senator Washburn had made of his argument an appeal to the Republican side of the house by asserting that many of the tariff bills were on their faces taxing bills and that their stated purpose was for raising revenue, but that many schedules were intended to be prohibitive and the duties had been so high that they had checked entirely the importation of foreign goods. Even when the rates were not absolutely prohibitory their primary purpose was not the raising of revenue but the protection of internal industries. White held that the purpose of Washburn's argument was this: that this measure, the Hatch bill, which acted internally upon the people of the states and upon contracts made under the protection of state laws, must be recognized as valid by all good Republicans if they did not wish to repudiate the Republican party's policy of protection. White declared this argument to be based on a fallacy since it overlooked the clear distinction between the nature of the power lodged in the Federal government for the purpose of imposts and the nature of the power lodged in this government for levying internal taxes. No power, he continued, was reserved to the states in the matter of imposts, the Federal government being given full jurisdiction in this field. Imposts had to do with matters beyond our border. He



said that in levying prohibitory imposts the Federal government did not violate the Constitution, because the constitutional grant to the Central government in this matter was full and complete.

He contended that where power to destroy existed the use of a wrong instrumentality to accomplish the destruction was an abuse of power because the power to destroy was vested. But, he continued, where the power did not exist, the abuse of an instrumentality to accomplish the destruction of that which there was no power to destroy was not alone an abuse of the instrumentality but an usurpation of power itself. The usurpation by Congress of power not vested by the Constitution in that body was unconstitutional. It followed from this that if the usurpation was clear on the face of the act and if the act itself showed such illegal assumption of authority, then the power existed in the Supreme Court of the United States to prevent the unlawful seizure of sovereign authority.

White then referred to certain remarks which had been cast at the Democratic side of the house to the effect that the members of this party were more ready at that time to uphold the Constitution than they had been some years before. He said that the Civil War had been caused by two divergent interpretations of the Constitution, but that both sides believed they were right in their construction of that document.

He paid a glowing tribute to the heroism of the Southern people and to their devoted adherence to their constitutional principles.

White referred to Veazie Bank v. Fenno<sup>21</sup> which the supporters of the bill had cited to show that the measure was constitutional. The courts had held in this case that the Federal government was justified in levying a 10 per cent tax upon state banks because, under the Constitution, it had the power to regulate the currency, and it might use its taxing power to accomplish the purpose. It did not matter that it used the power granted under one provision to effect an end the accomplishment of which was authorized under another provision. White also attacked the bill on the ground that it defined "options" and "futures" in general terms and then applied the act to certain specific articles. He said that it was a principle handed down from Magna Charta that when an act was general in its terms, it should be general in its application. Sections 1 and 2 of the bill were general while section 3 was specific.<sup>22</sup>

White had just completed the first part of his argument, that dealing with the constitutional aspects of the proposed measure, when it was suggested that the Senate adjourn until the next day. By unanimous consent it was agreed that immediately upon reconvening the Louisiana Senator would be

<sup>21</sup> Veazie Bank v. Fenno, 3 Wall. 533 (1869).

<sup>22</sup> Cong. Record, 52 Cong., 1 Sess., 6515 ff.; New Orleans Times-Democrat, July 22, 1892.

given the floor in order that he might complete the second phase of his argument.<sup>23</sup> His speech on the following day dealt with the public policy of the measure and its practical concern with commercial interests, wholly irrespective of the validity of the legal objections previously considered. His auditors on this occasion were as numerous and as attentive as they had been on the preceding day. In the beginning White laid down as a fundamental principle of his argument the proposition that commercial exchanges were a benefit rather than a danger and a menace to farmers. He continued by asserting that there was no consistency in the bill. It did not deal exclusively with agricultural products, for many of these were left out; nor did it deal exclusively with food products, since only a few of these were mentioned, while cotton, which was not an article of food, was included. The bill, he said, was avowedly aimed at the boards of trade, but it failed to hamper in the least degree those largest exchanges in the country, such as the New York Stock Exchange and other stock exchanges which dealt in such large amounts. He took up the essential features of the bill and considered them in the light of public policy and general expediency. He argued that even were there no constitutional trammels the measure should not be adopted because it would deal a deadly blow to commerce. Formerly commercial enterprises could be engaged in only by men of large fortune

23 Cong. Record, 52 Cong., 1 Sess., 6520.

who had the means at hand to pay for the transactions. The effect of modern commercial methods, he argued, had been to curtail the profits of the millionaire and to enable men of small means to engage in commercial activities.

In the course of his speech White made a comparison of statistical data for the decades 1851-61 and 1881-91, by which he demonstrated that the average price of cotton was highest in those years when the ratio of future sales to the total amount of sales was greatest. The fluctuation, month by month, in the price of cotton was greater during the period when the future system was not in operation. He showed by statistics that the shipping margins between the price of cotton in Liverpool and New York, after making allowances for differences in shipping rates and in time required for shipment, were greater during the period before dealings in "futures" were begun than since that time. This difference was realized by the American producer in the form of additional profits. The claim put forward by the advocates of the bill that the measure permitted planters to deal in "futures" he asserted to be illusory, since the planter would have to possess a large quantity of a single grade of cotton because the spinner would not buy assortments but confined himself to one grade. The small planter, White maintained, would not be able to sell for future delivery. Since all the countries of Europe had cotton exchanges, the attempt to destroy them on the part of the United States

would simply react to the advantage of the European buyer at the expense of the American producer. In conclusion he said that he did not propose to enrich the European spinners by voting for the passage of the bill.<sup>24</sup>

White's address was very favorably received by the press and it gained for him instant recognition of his ability by Congress and the country at large. Such was his comprehensive grasp of the subject, with such clearness and ability did he marshal the array of facts and figures which he used in support of his argument, such was the cogency of his reasoning, and in such felicitous language were his ideas expressed that men who had listened to the best speeches in the Senate during the preceding quarter of a century did not hesitate to assert that the sustained address of the Louisianan equaled any delivered within the Senate chamber during that period.<sup>25</sup> Even the veteran Republican leader, John Sherman of Ohio, sat through the entire performance on both days.<sup>26</sup> The striking impression created by the forcefulness of White's arguments was not soon forgotten; and when in 1913 a proposal to tax cotton futures was before the Senate, his speech of 1892 was recalled and portions of that memorable address were widely printed in the press of the day. His statements on that occasion concerning the repugnancy of the proposed tax to the Constitution and his

<sup>24</sup> Ibid., 6560 ff.; New Orleans Times-Democrat, July 23, 1892.

<sup>25</sup> New Orleans Times-Democrat, February 20, 1894.

<sup>26</sup> Ibid., July 23, 1892.

prediction as to the probable ruling of the Supreme Court, should it be called upon to determine the validity of such a measure, were considered particularly pertinent since White was now Chief Justice of that tribunal, and the views expressed by him as Senator would probably be written into the opinion of the court should the proposed tax be enacted into law and be brought before that tribunal for decision. It was declared that after a lapse of twenty-one years Senator White's speech was still well worth re-reading, since it was the clearest and most comprehensive statement of the theory and history of the practice of dealing in futures.<sup>27</sup> That this speech was of continuing value is shown by the fact that portions of it were printed as circular No. 159 of the office of Secretary of Agriculture of the United States in 1922.<sup>28</sup>

The efforts on the part of the advocates of the Anti-options bill to secure final action on the measure by the Senate met with determined opposition from White and other minority Senators; and the proposed statute had to lie over until Congress reconvened in the following December. Obstructionist tactics were again resorted to by the minority in order to delay final action. On January 4, 1893, White offered an amendment to include flour among the specified

<sup>27</sup> New York Evening Post, quoted in New Orleans Times-Democrat, July 16, 1913; New Orleans Times-Democrat, August 5, 1913.

<sup>28</sup> Fegan, "Edward Douglass White," in loc. cit., XIV, 18.

articles, and the amendment was adopted.<sup>29</sup> On the same day he proposed to strike out the provision of section 2 of the bill which discriminated against boards of trade. The proposal was not acted upon immediately, due to the lack of a quorum, but it was finally rejected.<sup>30</sup> The primary purpose of these amendments was to increase the differences between the measure as adopted by the House and as it would be finally passed by the Senate, thus rendering more difficult agreement between the two branches upon the type of legislation to be enacted.

On January 30 White delivered another address of three hours' duration against the passage of the bill in which he answered arguments advanced by Senator James Z. George of Mississippi in several speeches made in favor of the measure. White attacked an amendment proposed by George which declared that under the clause in the Constitution delegating to Congress the power to regulate interstate commerce Congress had the right to legislate against "options" and "futures" which were an impediment to this commerce. White admitted that Congress had full power to regulate interstate commerce and that it might, in order to effect this regulation, enact legislation with regard to matters bearing directly upon interstate trade; but, he maintained, to declare an instrument an impediment to interstate commerce simply because of

<sup>29</sup> Cong. Record, 52 Cong. 2 Sess., 930 ff.

<sup>30</sup> Ibid.; New Orleans Times-Democrat, January 5, 1893.

its reflex or resulting action upon this commerce would be to throw down every constitutional barrier. To place such a construction upon the powers of Congress would be to make this body more omnipotent than the Parliament of Great Britain. He said that under this interpretation the acreage of cotton might be reduced by governmental action because it offered an impediment to interstate trade.

He asserted that dealing in "options" and "futures" did not even indirectly impede interstate commerce and produced statistical data which showed that the marketing of cotton had taken place more rapidly after the inauguration of the future system than during the "ante-futures" period. In answer to George's assertion that "future" buying depressed the price of cotton White showed, by a comparison of figures, that never since the adoption of the future system had the price of cotton fallen to such low points as those which had been reached prior to the adoption of the system. He explained that George's statement that purchases for future delivery were always made at a lower price than purchases for spot cotton was due in part to the fact that in the case of future sales the seller might deliver on any date within a specified limit of thirty days, while in the case of spot cotton the seller was obligated to deliver upon demand of the buyer. The Times-Democrat, commenting editorially on the speech, said that White "made clear the theory and



practice of the system, and in short covered the whole ground, leaving Mr. George nothing to stand upon but certain documents and petitions, which he afterward sent up to be printed in the record to bolster up his argument."<sup>32</sup>

The Anti-options bill finally passed the Senate on January 31 with several amendments and was sent back to the House the following day.<sup>33</sup> So effectively, however, had the opponents of the measure carried out their program of delay that it was almost a certainty the bill would not come up for consideration in the lower branch of Congress. On March 1 Colonel Hatch sought to obtain a suspension of the rules in the House in order that the bill might be brought out of its regular place in the calendar and acted on immediately; but his motion failed to receive the two-thirds vote necessary for such suspension. The passage of the measure was thereby effectively blocked.<sup>34</sup>

Another proposed piece of legislation worthy of note with which White's name is connected was the Quarantine bill which came before the Senate in January, 1893. The prevalence in 1892 of cholera in several foreign nations and the fear of its introduction by immigrants into the United States, where it might develop into epidemic proportions, led directly to proposals in Congress for the adoption of measures by that body calculated to prevent the introduction and spread of

<sup>32</sup> New Orleans Times-Democrat, January 31, 1893.

<sup>33</sup> Ibid., February 1, 2, 1893.

<sup>34</sup> Ibid., March 2, 1893; Cong. Record, 52 Cong., 2 Sess., 2351.

this and other contagious or infectious diseases. Two measures were introduced in the Senate providing for different methods of dealing with the apprehended cholera epidemic. One proposition proposed a total suspension of immigration for one year; while the other authorized the granting of additional quarantine powers to the Executive Department.<sup>35</sup> The first proposal for coping with the situation was abandoned in favor of the second. The Quarantine bill provided in part that whenever it should be demonstrated to the satisfaction of the President that by reason of the existence of cholera or yellow fever or other infectious or contagious diseases in a foreign country there was serious danger of the introduction of the same into the United States, and notwithstanding the quarantine defense this danger would be so increased by the introduction of persons or property from such country, that a suspension of the right to introduce the same was demanded in the interest of the public health, the President should have power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he should designate, and for such period of time as he might deem necessary.<sup>36</sup> Additional duties were also imposed upon the Secretary of the Treasury and the Marine Hospital Service.<sup>37</sup>

<sup>35</sup> Cong. Record, 52 Cong., 2 Sess., 305.

<sup>36</sup> Ibid., 471.

<sup>37</sup> Ibid., 473.

White was opposed to the passage of this measure. He said that the whole bill was improperly phrased; that it vaguely hinted at powers which were not openly delegated; that the exact points where state authority ended and Federal authority began were not defined in the bill. He sought to delay final action on the bill in order to allow time for delegations sent by the Board of Health in New Orleans and by the Quarantine Board to arrive in Washington, since these delegations wished to present evidence as to why the bill should not be passed.<sup>38</sup> When the passage of the act seemed inevitable White offered an amendment to the effect that the provisions of the measure expire on the last day of January, 1895.<sup>39</sup> The following day, January 10, he delivered a speech in favor of this amendment. He said that shortly after the organization of the government of the United States under the present Constitution, Congress had decided that quarantine regulation was a matter which should be managed by state authorities. John Adams had favored local quarantine regulations. The Supreme Court, with John Marshall as Chief Justice, had decided that quarantine regulation was a matter which should be left within state authority. He asked was there a single instance in the history of the American government where the Federal authority had been granted control over matters previously controlled by state authority in which the Federal government did not assume a position of

<sup>38</sup> Ibid., 392 ff.

<sup>39</sup> Ibid., 400 ff.

dominance. He contended that his amendment would do no harm if the bill were a good one, since it merely provided that the provisions of the act should cease after two years. If the measure proved to be a good one, then Congress could re-enact it. His amendment took away nothing from the provisions of the measure. If he were right in his opinion of the bill, then his amendment would prevent a bad piece of legislation from becoming permanent.<sup>40</sup> The amendment was voted on and rejected by a vote of thirty-three to thirteen.<sup>41</sup> The Quarantine bill was passed by the Senate on January 10,<sup>42</sup> and two days later came up in the House where it was laid temporarily on the Speaker's table.<sup>43</sup> An attempt was later made in the lower branch of Congress to substitute the Senate measure for a House Quarantine bill, but the motion was lost and the measure was referred to a committee,<sup>44</sup> which failed to report it back before the final adjournment of Congress.

White played an effective role in preventing a reduction in the appropriation for the lower Mississippi River in 1893. After that measure had been passed by the House and came up for action in the Senate, the Appropriation Committee suggested that all rivers and harbors items be scaled down 25 per cent. White went before the committee on February

40 Ibid., 430 ff.

41 Ibid., 468.

42 Ibid., 473.

43 Ibid., 508.

44 Ibid., 717.

15 and spoke for an hour, earnestly arguing for the retention of the House figures in the Mississippi appropriation item. He contended that the Mississippi and Missouri River projects stood on a different footing from those for other river and harbor improvements. A curtailment of the appropriations for these projects could not be effected without seriously hampering the work then in progress. So convincing were White's arguments that the committee agreed to restore the appropriation for the Mississippi River to the original amount of \$2,665,000 authorized by the House.<sup>45</sup> This restoration was accepted by the Senate the following day. White received effective co-operation from his Senatorial colleague in this effort. The Louisiana Senators won their point in this instance "by diplomacy and shrewd management of their case," without having to resort to an open fight on the floor of the Senate against the Appropriations Committee.<sup>46</sup>

White favored the bill providing for the use of safety appliances on railroads; and aided materially in determining the final textual content of the measure. While the bill was pending in the Senate, Senator George offered an amendment providing that employers, subject to the act, should be liable for injuries suffered by their employees. William A. Peffer of Kansas offered an amendment to this amendment

<sup>45</sup> New Orleans Times-Democrat, February 16, 1893.

<sup>46</sup> Ibid., February 17, 1893.

providing that any employee of any such common carrier who might be injured by the use of any locomotive, car, or train contrary to the provisions of the act should be deemed guilty of contributory negligence, although continuing in the service of such carrier after the habitual unlawful use of such locomotive, car, or train had been brought to his knowledge. In regard to this amendment White pointed out that the doctrine of contributory negligence had no relation to an employee's continuance in the service of his employer. A continuance in the service under the circumstances here set forth involved a different doctrine--namely, that of assumption of the risks. Therefore, in his opinion, the use of the term "contributory negligence" in the present instance conveyed no legal significance whatever, since that doctrine held that a man, by his own act having contributed to the condition of things which brought about the accident, could not recover from his employer because of his contribution to the production of the accident.<sup>47</sup> White then proposed that the amendment be altered to read as follows: "That any employe of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provisions of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employ of such carrier after the habitual unlawful use of such locomotive, car, or train had been brought to his

<sup>47</sup> Cong. Record, 52 Cong., 2 Sess., 1480.

notice."<sup>48</sup> The amendment as thus altered was accepted. White opposed an amendment to the Safety Appliance act proposed by Senator George providing that employers subject to the provisions of the measure should be liable for all injuries suffered by their employees, whether or not such injuries resulted from a nonuse of the appliances required by the statute. He thought that such a radical alteration in the relations of master and servant would endanger both the passage and the validity of the bill. He suggested that the proposition be embodied in a separate bill if its enactment were desired, but urged that the constitutionality of a very efficacious piece of legislation be not endangered by the inclusion of a provision of such doubtful validity.<sup>49</sup>

White also favored an amendment to the Post Office Appropriation bill adopted by the House of Representatives which did not limit the discretion of the Postmaster-General as to the expenditure of the funds appropriated, but provided limitations upon the routes on which the funds could be expended. He said this was a wise proviso, because in the South, the section affected by this part of the bill, the entire region was fed by one central railway; and this limitation would prevent dispersion of funds upon feeder lines.<sup>50</sup> He also opposed the negotiation of a treaty with the Hawaiian Islands looking toward their annexation.<sup>51</sup>

<sup>48</sup> Ibid., 1481.

<sup>49</sup> Ibid., 1483.

<sup>50</sup> Ibid., 2325 ff.

<sup>51</sup> New Orleans Times-Democrat, January 31, 1893.

Through the death of Senator Gibson in December, 1892, White was shifted from the rank of junior to that of senior Senator from Louisiana. The subsequent inauguration of a Democratic President in the person of Grover Cleveland on March 4, 1893, rendered this position one of additional eminence and power. White was appointed to membership on the Democratic caucus committee which met after the close of the Fifty-second Congress to determine the distribution of appointments on the important Senatorial committees.<sup>52</sup> He was appointed to serve on six committees. They were: the Committee to Audit and Control the Contingent Expenses of the Senate, of which he was made chairman; Committee on Commerce; Committee on Interstate Commerce; Committee on Epidemic Diseases; Committee on Pacific Railroads; and Committee on Indian Depredations.<sup>53</sup>

The question of patronage resulting from the accession to power of the Democratic party presented tedious problems to White and to the other members of the Louisiana delegation in Congress. White's recommendation that A. W. Crandell be appointed to the position of postmaster for the city of New Orleans created considerable discontent among the supporters of Governor Foster's administration. Crandell had been chairman of the McEnery State Committee during the contest for the Democratic nomination for Governor between Murphy J. Foster and Samuel D. McEnery in 1891-92. That he should

<sup>52</sup> Ibid., March 9, 1893.

<sup>53</sup> Ibid., March 15, 1893; Cong. Record, 53 Cong., 1 Sess., 19.



be recommended by White for the position in preference to the Foster man, Frank A. Daniels, seemed treasonable to the members of the Foster faction, and especially to those who were aspirants for a share in the division of Federal patronage. White had determined to base his recommendations upon personal merit and to attempt as much as possible to eradicate the bitter factionalism which had developed within the Democratic party in Louisiana by a policy of conciliation. A policy based on such a high plane, however, could hardly be appreciated by seekers after political plums among members of the faction which had supported White's candidacy for the Senatorship in 1888.<sup>54</sup> It was conjectured that discontent among the Foster followers with the course of action adopted by their senior Senator was the cause of White's hurried trip to New Orleans late in March, 1893.<sup>55</sup> He could not be swerved from his determined course, however, and returned to Washington where he remained for the greater part of the next three months, holding frequent consultations with the other members of the Louisiana delegation on the matter of appointments.<sup>56</sup> By the end of June the delegation had completed its slate with reference to Federal appointments which Louisiana should receive.<sup>57</sup>

Early in July White returned to New Orleans and, according to

- <sup>54</sup> New Orleans Times-Democrat, March 26, 1893.  
<sup>55</sup> Ibid., March 24, 1893.  
<sup>56</sup> Ibid., March 26, June 15, 16, 27, 28, 1893.  
<sup>57</sup> Ibid., June 20, 1893.  
<sup>58</sup> Ibid., March 20, June 15, 16, 27, 28, 1893.  
<sup>59</sup> Ibid., June 20, 1893.

during his short stay in that city. He expressed himself on certain matters of general and local interest in an interview with a correspondent of the Times-Democrat. He found cause for felicitation in the manner in which the delegation had worked together in conferences concerning appointments, and expressed satisfaction with the choices determined upon. He said that this cooperation showed that the bitter factionalism which had existed in the state was subsiding. He ascribed the financial stringency then existing largely to the fact that the purchases of silver under the provisions of the Sherman act had disturbed the monetary standard. With regard to Federal aid for the overflowed area he said there was abundant precedent for the granting of such assistance. He commended Governor Foster's course with respect to this problem and said he intended to do all in his power to secure a Federal grant.<sup>58</sup>

White strongly favored the measure repealing the Sherman Silver Purchase act which was passed by the special session of Congress called by President Cleveland in the summer of 1893. As late as February, 1892, however, he was classified as being one of the nine Democratic Senators whose position on the silver question was considered doubtful,<sup>59</sup> and he was so listed in March, 1893, by the New York World.<sup>60</sup> At this time he declined to make any statement as to what

58 Ibid., July 6, 1893.

59 Ibid., February 18, 1892.

60 Ibid., March 7, 1893.

His position would be on the public questions which might confront the new Congress.<sup>61</sup> His position on the silver question had already been made clear, however, for he was one of the few Southern Senators who had voted for a measure repealing the Sherman Silver Purchase act, which had failed of passage.<sup>62</sup> Before the convocation of the special session of Congress in 1893 he announced that he would vote for the repeal of the Sherman act.<sup>63</sup> On August 29, during the course of an address made by Senator John B. Gordon of Georgia in favor of repeal, White made the statement that the mere passage by the House on the preceding day of a bill repealing the Sherman act had raised the price of cotton fourteen points in the markets of the world.<sup>64</sup> Four weeks later he was asked by Senator Henry M. Teller of Colorado to explain the decline in the price of cotton which had later taken place. White adroitly replied that when he made the statement he did not have reference to the subsequent decline which had not yet occurred. Teller then asked him to explain the low price to which cotton had fallen following the demonetization of silver in 1873. White replied that it was admitted that the lowest price ever reached by cotton was attained since the passage of the Sherman act in 1890.<sup>65</sup>

On September 22, 1893, White succinctly stated his views on the cause of the panic of that year. He said it had been

61 Ibid.

62 Ibid., July 6, 1893.

63 Ibid.

64 Cong. Record, 53 Cong., 1 Sess., 1014.

65 New Orleans Times-Democrat, September 28, 1893.

asserted that from 90 to 95 per cent of the business transactions of the country were made on a credit basis, while only 5 per cent were transacted on a currency basis. The contraction, he said, which took place was not in the currency which represented only the 5 per cent of transactions, but in the 95 per cent made on a credit basis. Fear, he continued, had destroyed the credit of the country and the destruction of this credit had developed the panic. People had hoarded away their money because the nation's credit was nonexistent. On being asked what had destroyed the credit of the country, White replied that the passage of the Bland-Allison act and the large number of votes subsequently given for the free coinage of silver had shaken the confidence of the people in the country's credit. Provisions began to be inserted in contracts stipulating that payment should be made in the gold standard. This practice had become so prevalent, he asserted, that certain Senators had suggested that a Federal statute be enacted prohibiting the insertion of the gold clause in contracts, thus preventing people from contracting for what they desired. Other countries of the world, believing that the United States was being precipitated toward a silver basis, began to withdraw their credit. The withdrawal of credit led to fear and fear led to the hoarding of money, thus causing the panic.<sup>66</sup>

66 Ibid., September 23, 1893.

On October 17 White stated the position of the repealers with reference to a compromise on the silver question. In the beginning of his remarks he said that the sentiment of his state was divided on the question, but he believed that those favoring repeal were in the majority. He therefore felt it his duty to continue his stand for unconditional repeal. There was such a divergence of views among the opponents of repeal as to what the compromise should be that he doubted whether they would ever reach an agreement. He therefore deemed it the wisest policy for the repealers to continue the struggle. A compromise measure, he said, would probably meet with the same opposition encountered by the pending bill, thus eliminating any likelihood of dispatch in that direction. Should the administration favor a conservative compromise, the friends of repeal would willingly acquiesce, but he thought that it was extremely improbable that the President would countenance any measure which did not provide for complete repeal. In the meantime the fight should go on.<sup>67</sup> The Senate had reached an impasse and found itself in the paralyzing throes of a deadlock. At one time it held a continuous session for forty-seven hours, the opponents of repeal speaking against time "with the lungs of bellowing bulls."<sup>68</sup> The obstructionist tactics finally failed, however, and the bill repealing the Sherman act was passed

<sup>67</sup> Ibid., October 18, 1893.

<sup>68</sup> American Law Review, XXVIII (1894), 276.

by the Senate on October 30 by a majority of eleven votes.<sup>69</sup>

It was said that the press, which was unstinted in its unfavorable criticism of the Senate for its conduct during the special session of 1893, could find not a word to say against Louisiana's two Senators, who, on the contrary, had won universal praise and admiration for their oratory and legislative ability. Numerous Northern papers carried articles on White and Caffery extremely eulogistic in character. White, being older in point of Senatorial service, was more widely known and more frequently mentioned.<sup>70</sup>

One of the last services which White rendered his state during his Senatorial career was the determined fight which he carried on for a restoration of the sugar duty. The McKinley Tariff bill of 1890, passed by a Republican Congress, had removed sugar from the list of dutiable articles. Concession was made to the Louisiana sugar planting interests, however, by the substitution of a bounty of one cent per pound on all raw sugar grown in the United States, which bounty was to be paid out of the Federal treasury. This arrangement did not satisfy Gibson and Eustis who were then representing Louisiana in the Senate, but they accepted it in preference to an absolute lack of protection.<sup>71</sup> When White was asked on the floor of the Senate in 1894 whether

<sup>69</sup> New Orleans Times-Democrat, October 31, 1893.

<sup>70</sup> Ibid., October 26, 1893.

<sup>71</sup> Cong. Record, 53 Cong., 2 Sess., 1773.

he considered the payment of this bounty as an extravagant and unwise expenditure of public funds, he replied that he considered the replacement of the tariff by a bounty as an extravagant and unwise expenditure of public funds. He said that to him the two questions were inseparable and that the bounty could not be considered except in connection with the tariff.<sup>72</sup>

The Louisiana Senators were frequently approached by newspaper correspondents early in 1894, while the bill providing for a revision of the tariff was pending in the House, and sought to learn what their course would be should the Senate fail to remove sugar from the free list. They refused, however, to make any commitments. White merely stated that he would express his views and outline his actions when the bill came before the Senate for consideration.<sup>73</sup>

The Wilson bill which was passed by the House of Representatives early in 1894 placed sugar on the free list and failed to make any provision for the payment of a bounty. Had this provision of the bill remained unaltered the planters would have been left wholly unprotected. While the tariff measure was being considered by the Senate Finance Committee, White and Caffery put forth their greatest efforts to have sugar placed among the dutiable articles. They did not merely want a duty, but they desired an adequate duty.

<sup>72</sup> Ibid., *ibid.*  
<sup>73</sup> *New Orleans Times-Democrat*, February 4, 1894.

and By February 9 the Democratic Senators on the Finance Committee had agreed to place a tariff of one cent per pound on all sugars--three-fourths of a cent on raw sugar and one-fourth on refined. White and Caffery, however, refused to accept this rate and held out for one cent and a half on all sugars, declaring that they would vote against the measure unless their figures were accepted.<sup>74</sup> On February 11 the subcommittee which had under consideration the sugar schedule proposed a rate of one cent and a quarter, but this offer was declined by the Louisiana Senators who continued to demand a cent and a half.<sup>75</sup> White and Caffery received a considerable amount of unfavorable criticism from some of the Democratic members of the House. The Washington Post, however, probably most fittingly stated the situation as it appeared to the Louisiana Senators. This paper declared editorially that if the Wilson bill had been a complete and honest fulfilment of the Democratic party's platform pledges of 1892 there might have been some justice in condemning the course of the Louisianians; but, it stated, there would be no point in these men sacrificing the interests of their state when such a sacrifice would not have resulted in the vindication of any cardinal party principle. Even were White and Caffery inclined to sacrifice their state on the altar of principle, it continued, the Wilson bill did not present

<sup>74</sup> Ibid., February 10, 1894.

<sup>75</sup> Ibid., February 12, 1894.

<sup>76</sup> Ibid., February 13, 1894.

<sup>77</sup> Ibid., February 14, 1894.

<sup>78</sup> Ibid., February 15, 1894.

<sup>79</sup> Ibid., March 5, 1894.



such an issue. It was not a tariff for revenue only, and differed from the McKinley bill solely in being less intelligent.<sup>76</sup>

The appointment of White as an associate justice of the Supreme Court, coming as it did in the midst of the sugar controversy, created some uneasiness in Louisiana as to what the outcome of that struggle might be with White removed from the field of action.<sup>77</sup> So influential was his position in the Senate and so thorough was his knowledge of the facts connected with the sugar question that it would have been impossible for a newcomer adequately to replace him.<sup>78</sup> It was due to this situation that White delayed for some time after the confirmation of his appointment to submit his resignation, and remained in the Senate where he kept up an energetic fight in behalf of the sugar interests of his state.<sup>79</sup> So effectively had White and Caffery labored, however, and so close was the vote in the Senate on the tariff issue, that the bill which was finally passed by the Senate contained the desired rates on sugar.

That he should be tendered a position as associate justice of the Supreme Court of the United States by President Cleveland was probably a thought which was as far removed from White's mind as it was from the minds of most of his contemporaries. The vacancy which was filled by his appointment had been caused by the death of Samuel Blatchford in

<sup>76</sup> *Ibid.*, February 15, 1894.  
<sup>77</sup> *Ibid.*, February 21, 1894.  
<sup>78</sup> *Ibid.*, February 20, 1894.  
<sup>79</sup> *Ibid.*, March 6, 1894.

September, 1893, President Cleveland had appointed William B. Hornblower of New York as Blatchford's successor during the special session of Congress, but action by the Senate had been delayed until the close of the session through the successful intrigues of Senator David B. Hill of New York whose personal animos toward the President's selection made him desirous of defeating Hornblower's confirmation.<sup>80</sup> The name of Hornblower was again sent in when the Senate convened in December, but a vote was not taken on the nomination until January 15, 1894, when Hornblower was rejected by a majority of six.<sup>81</sup> The circuit comprising the states of Connecticut, New York, and Vermont was entitled to representation on the bench of the Supreme Court in accordance with the practice which had been adhered to during the preceding century, and it was partly for this reason that Cleveland again selected the name of a member of the New York bar to send to the Senate. The nomination of Wheeler H. Peckham fared no better at the hands of the Senate, however, and he was also rejected through the efforts of Senator Hill.<sup>82</sup> It was well known that both Hornblower and Peckham were obnoxious to Hill because they had been members of a committee appointed by the New York bar to investigate allegations of fraud in regard to a judge of the New York

<sup>80</sup> Robert McElroy, Grover Cleveland, The Man and the Statesman, 2 vols. (New York, 1923), II, 130.

<sup>81</sup> New Orleans Times-Democrat, January 16, 1894.

<sup>82</sup> Ibid., February 20, 1894.

(K. 131. 371.)

about of appeals, whom Hill, then governor, had temporarily appointed to the position and was seeking to foist upon the people as the nominee of the Democratic party for election to the same judgeship. After a full and fair hearing, the committee had condemned the judge, and their action had been indorsed by the voters who had defeated his election by an overwhelming majority.<sup>83</sup> The practice of Senatorial courtesy required that the wishes of a Senator with regard to the appointment of persons from his state be respected by the Senate; and it was largely the observance of this "courtesy" which brought about the rejection of the two New York nominees.

After another New Yorker and personal friend of the President, Frederick Coudert, had declined to accept the tender of nomination for appointment to the vacant associate justiceship, Cleveland decided to go far afield from New York for his next selection.<sup>84</sup> On February 18 he invited Senator Caffery to come to the White House. When the Senator arrived the President informed him of his intention to appoint his colleague, Senator White, to the vacancy on the Supreme Court, and asked what the junior Louisiana Senator thought of the proposal. Caffery immediately replied that it would be an excellent choice. During the course of the interview White, who had also been invited, arrived; and

<sup>83</sup> American Law Review, XXVIII (1894), 274-276.  
<sup>84</sup> Allan Nevins, Grover Cleveland, A Study in Courage, (New York, 1933), 571.

when informed of the President's purpose was taken entirely by surprise.<sup>85</sup> He was a member of the Gorman-Brice alliance which had been seeking to restore the duties on iron ore, raw sugar, coal, and other commodities in opposition to the President's wishes.<sup>86</sup> Although Cleveland considered sugar a legitimate and logical article of revenue taxation under the Democratic platform of 1892 and in accordance with the principles and purposes of that party, he entertained a feeling of animosity toward certain methods and manipulations of the trusts which accompanied some of the stages of the tariff legislation.<sup>87</sup> White and Caffery had been forced to co-operate with groups hostile to the President in order to secure adequate rates on sugar.

After some hesitancy, White accepted the tendered nomination. The following morning, however, the two Senators again called on the President; and this time White withdrew his acceptance in view of the sugar question pending in the Senate and its bearing upon the interests of his state. After some consultation, however, he was prevailed upon to accept, and the papers were immediately made out and sent to the Senate. On receiving the nomination the Senate, at the suggestion of Senator Caffery, immediately went into executive session. After complimentary speeches had been

<sup>85</sup> New Orleans Times-Democrat, February 20, 1894.

<sup>86</sup> McElroy, Grover Cleveland, II, 134.

<sup>87</sup> Grover Cleveland to William L. Wilson, July 14, 1894, in Nevens (ed.), Letters of Grover Cleveland, 1850-1908 (Boston, 1933), 356.

made in favor of the nomination, the Senate, without referring the matter to a committee, at once confirmed the appointment by a unanimous vote.<sup>88</sup>

As soon as the news of the confirmation got abroad White was the recipient of numerous telegrams and personal calls. Chief Justice Melville W. Fuller was first to call upon the new appointee with whom he remained closeted for some time.<sup>89</sup> The news of White's appointment and confirmation was received with great rejoicing by his friends in Louisiana; but there were expressions of regret mingled with those of joy from prominent leaders in business and professional circles at the untimely removal of such an able representative from active service in behalf of the interests of his state when the outcome of the sugar controversy was still doubtful.<sup>90</sup> Nevins characterized as a clear surrender Cleveland's selection of White who, he says, was appointed amid widespread disappointment.<sup>91</sup> A reliable contemporary account states, however, that the news of the appointment was well received by the country at large, and that it was felt that the new appointee was an excellent choice.<sup>92</sup> It was true that Hill had seconded the motion to confirm the nomination in a speech in which he declared that White was offensive to no one and had never offended a regular Democratic

88 New Orleans Times-Democrat, February 26, 1874.

89 Ibid.

90 Ibid.

91 Nevins, Grover Cleveland, 571.

92 American Law Review, XXVIII (1894), 273.

organization--referring to the action of Hornblower and Peckham in condemning the dishonest nominee for the New York judgeship.<sup>93</sup> Under the rule of senatorial courtesy, however, Hill could hardly have done otherwise than acquiesce in the confirmation. In so doing he availed himself of the opportunity thereby afforded of condemning the President's previous selections. White had been, on the whole, one of the strongest and most trustworthy supporters of Cleveland's policies among the Senators, and the view was expressed that the President had sacrificed the advantage of a strong friend in the Senate in removing the Louisianian from that body to the Supreme bench.<sup>94</sup>

As above stated White did not immediately resign his seat in the Senate after his appointment to the Supreme Court and did not relax his efforts in behalf of the sugar duty. Those of his constituents interested in sugar constantly sent him telegrams urging him to remain in the Senate until the sugar section of the tariff measure had been voted on, or at least as long as he could consistently do so.<sup>95</sup> On the other hand, his delayed resignation gave rise to rumors that a political fencing bout was going on between the senior Senator and Governor Foster; and that White was attempting to dictate to the Governor the choice of his successor.<sup>96</sup> At length on

93 Ibid., 277.

94 Ibid., 274.

95 New Orleans Times-Democrat, March 6, 1894.

96 Ibid.

March 8 White forwarded his resignation to Governor Foster by telegram, and Congressman Newton C. Blanchard was immediately appointed to succeed him.<sup>97</sup>

White was formally installed as a justice of the Supreme Court on March 12, 1894. Many of his former associates in the Senate as well as many members of the lower House and numerous friends and relatives were present in the courtroom on that day to witness the ceremony. The oath required of all officers and employees of the government was first administered to the new justice by Chief Justice Fuller in the antechamber. Promptly at twelve o'clock the justices filed into the courtroom and after the formality of opening the court had been dispensed with it was announced that Associate Justice White was present and ready to take the oath of office. The clerk then read the President's commission appointing Edward Douglas White to a seat on the Supreme Court, after which White arose and read the oath of office and was duly sworn in.<sup>98</sup>

At the time of assuming office White was the youngest member of the court, being less than forty-nine years of age. He was a man of considerable means, his personal fortune being estimated at about one hundred and fifty thousand dollars. In addition to owning a considerable amount of real estate in New Orleans, he was a joint proprietor with his

<sup>97</sup> Ibid., March 8, 1894.

<sup>98</sup> Ibid., March 13, 1894.

brothers and sisters of the Brousseau plantation--the old Edward D. White estate--about six miles north of Thibodeaux. He was at this time unmarried and when residing in New Orleans lived with his sister and brother at the White mansion which was located on Esplanade Avenue. He had always been interested in the sugar planting industry, and was president of the Lafourche Sugar Refining Company, which was then one of the largest sugar companies in the state.<sup>99</sup>

In personal appearance White was tall, being more than six feet in height, and well proportioned, with a ruddy complexion and crisp, curling auburn hair and blue eyes; while his suave and urbane manners gave added attraction to his handsome physique. He possessed a philosophic temperament and a keenly analytical mind.<sup>100</sup> His genial disposition and his kindness of heart were almost proverbial.<sup>101</sup> He was a devout member of the Roman Catholic Church, and it was said that he was a generous though unostentatious contributor to charities.<sup>102</sup> It has been said that few men ever possessed "the eloquent powers of speech" with which White thrilled many of his audiences;<sup>103</sup> while, in the Senate, he was noted for his "untheatrical but incisive style in debate."<sup>104</sup> His public utterances were also characterized by a lucidity of

<sup>99</sup> Ibid., February 20, 1894.

<sup>100</sup> Ibid., March 25, 1889.

<sup>101</sup> Hernando D. Honey, "Chief Justice White," in Independent, LXX (1911), 455 ff.

<sup>102</sup> New Orleans Times-Democrat, February 20, 1894.

<sup>103</sup> Wickersham, "Address," in loc. cit., 5.

<sup>104</sup> Francis Ellington Leupp, National Miniatures (New York, 1918), 70 ff.



statement which was enhanced by his clear enunciation, qualities which were most commonly associated with his pronouncements from the Supreme bench.<sup>105</sup>

Years after his appointment to membership on the Supreme Court it was asserted that White was sent to the Senate in 1891 as a stickler for business rights.<sup>106</sup> The numerous objections raised by his opponents in the heated Senatorial contest of 1888 failed to include this accusation, however, and the subsequent assertion seems not to be well founded. In his speech of acceptance before the Louisiana legislature the new Senator had warned against the dangers to be apprehended from the aggregation of wealth in the hands of the few. White's Senatorial career was of too brief duration to afford an adequate expression of his views along lines of broad statesmanship. Although he opposed the Anti-options and Quarantine bills partly on the ground that they authorized an unwarranted extension of Federal power over subjects properly within the sphere of state control, White was by no means a states' rights advocate of the old school. He was, on the contrary, nationalistic in his views and favored an expansion of Federal functions when this could be accomplished without violating his conception of the nature of the powers delegated to the central government by the Constitution, as shown by his advocacy of the Safety Appliance measure.

<sup>105</sup> Tattler, "Chief Justice White," in The Nation, CIV (1917) 529.

<sup>106</sup> Ibid.

CHAPTER VI  
NONJUDICIAL ASPECTS OF WHITE'S CAREER AS AN  
ASSOCIATE JUSTICE

The appointment of White to the Supreme Court was the first instance in which a Louisianian had ever been elevated to membership on that august tribunal. This circumstance furnished additional cause for felicitation on the part of the citizens of his native state. In answering a congratulatory letter of one of his fellow-Louisianians, the following remarks of the new justice are significant as demonstrative of his deep appreciation of home and friends: "I pray that the strength may be given me to worthily discharge the responsible duties of the great office to which I have been so unexpectedly called, and thus in some measure merit all the kindness which my friends have shown me."<sup>1</sup>

The work of the court for the current term was well under way when White assumed his judicial duties, and as a consequence he was called upon to deliver but ten opinions prior to adjournment for the summer months, none of which involved questions of great importance. His first opinion, in the case of Seeberger v. Castro, was delivered on April 16.<sup>2</sup> The court was here called upon to construe the provision of the Tariff Act of 1883 relative to the imposition

<sup>1</sup> Edward D. White to Stephen D. Ellis, March 8, 1894, in Ellis Collection.

<sup>2</sup> Seeberger v. Castro, 153 U. S. 32 (1894); New Orleans Times-Democrat, April 17, 1894.

of duties on manufactured tobacco.<sup>3</sup> The imports in question were of scrap tobacco, composed in part of clippings from cigars and in part of waste resulting from the process of stemming. White held that the tobacco was not manufactured within the meaning of that term as used in the tariff act, and hence was not dutiable under the schedule imposing rates on manufactured tobacco, but was subject to the duties assessable on the unmanufactured commodity.<sup>4</sup> This opinion is significant solely because of the early exhibition therein contained of that antithetical or paradoxical method of statement which continued to be so marked a characteristic of White's literary style.<sup>5</sup> Thus he said: "... we could not hold the scraps or waste to be a manufactured article, unless we said that that which is neither manufactured nor partially manufactured was yet a manufactured article."<sup>6</sup> The case of Spalding v. Castro was very similar to the Seeberger case, and was similarly decided, White again speaking for the court.<sup>7</sup> He was selected to deliver the opinion in the case of Groves et al. v. Sontell et al. probably because that controversy required an application of Louisiana law, having been brought in a Federal court solely on the ground of diverse citizenship.<sup>8</sup>

3 United States Statutes at Large, XLII, 502-503.

4 Seeberger v. Castro, 153 U. S. 32-38 (1894).

5 John E. Davis, "Howard Douglas White," in American Bar Association Journal, VII (1921), 377.

6 Seeberger v. Castro, 153 U. S. 32, 38 (1894).

7 Spalding v. Castro, 153 U. S. 38 (1894).

8 Groves et al. v. Sontell et al., 153 U. S. 465 (1894).

The court declined to hear further arguments after April 27, and announced that it would recess on April 30 in order to allow time for the writing of opinions in cases already argued before final adjournment.<sup>9</sup> It convened on Saturday, May 26, to hand down its last decisions for the term. Sessions were not usually held on the last day of the week, but the general practice was deviated from in this instance in order to accommodate several justices who were in a hurry to leave Washington.<sup>10</sup> An unusual record was established by the court in the amount of work performed during this term, final disposition having been made of 500 cases since the preceding October. This was at least fifty more than the usual number. The congestion of the docket was such, however, that more than 700 cases remained to be disposed of in one way or another. This condition furnished conclusive argument for limiting the types of cases in which appeals could be taken to the Supreme Court.<sup>11</sup>

After the adjournment of the court White returned to New Orleans, where an elaborate banquet was held in his honor at the Hotel Royal on the night of June 25. He was accorded the opportunity, commented a New Orleans paper, of measuring the esteem in which he was held by the people of his native state. The gathering of notables was described as probably the most brilliant assemblage in the history of New Orleans.

<sup>9</sup> New Orleans Times-Democrat, April 17, 1894.

<sup>10</sup> Ibid., May 27, 1894.

<sup>11</sup> Ibid., May 30, 1894.

"It was not a perfunctory or commercial gathering," continued this paper, "as so many public banquets are, but an assemblage prompted by an impulse to pay homage to one of Louisiana's distinguished sons and his achievements." There were 225 guests in attendance, including Judge Charles Parlange of the Federal circuit court--White's former law partner--, the justices of the state Supreme Court, other state and Federal officials, and a considerable number of eminent professional men. The dinner which lasted some four and a half hours was largely taken up with speech-making. When White arose to speak he was greeted with prolonged cheers. He bowed acknowledgement and then stood gazing intently at the ceiling until quiet had been restored. At the beginning of his address he placed his right hand on a champagne bottle, as though it were some law book, and continued to maintain this pose during the whole of his discourse except when, at intervals, he lent impressiveness to his remarks by the mannerism of shaking both hands before him at arms' length, following the practice of speakers in the French Chamber of Deputies.<sup>12</sup>

After a reference to the deep emotion aroused in him by the inspiring assemblage and the kind words of the other speakers, White said: "Nothing is so apt to make a man think that he is forgotten as the cares of great public duty and it is gratifying to him to find when he visits his home that he

<sup>12</sup> Ibid., June 26, 1894.

has the thoughts and support of all he cares for. This is proved by the occasion, one which is of an import far beyond individual friendships and speaks of the impression of a commonwealth regarding the elevation of one of its leaders to the highest tribunal in the land, perhaps in the world. And it involves not only personal feelings but an evidence of the confidence of the people in the Supreme Court. This is auspicious. When our forefathers built this government they made the greatest departure from the established order of things that the world had ever seen--not in the establishment of free institutions, nor in legislative bodies to voice the sentiment of the people, but in the creating of a tribunal passing, or having to pass, on more than simple rights of man, a tribunal having vested in it all the powers of all the other departments of the government. That was the great departure that attracted and still draws the attention and the applause of the world.

"When we look over the past," he continued, "with its conflicts and controversies we can well ask how did this government reconcile all conflicting interests except by the gradual holding of the national good in the reservation of liberty. Nowhere else on the face of the earth can one find a body with the power of the United States Supreme Court, except it be backed by the glare of the sun and the rattle of musketry and the roar of cannon. Back of the Supreme Court is the people with their sense of obedience to the law. Not

only has this body preserved the autonomy of the nation in the past, but as we look into the future we can see that the continuance of the government depends also upon the continuance of its elementary principles.

White then spoke of the recent assassination of the President of France, his face growing livid and his voice becoming almost inaudible, such was the intensity of his emotion. He deprecated the tendency to substitute the bomb for the orderly processes of democratic government. Then, in compliance with the suggestion of James McDonnell, chairman of the meeting, that White toast himself, he made several personal references, dwelling on his close connection with New Orleans in the past and his great love of that city where all that was good in him had been nurtured, and where he expected, at the close of his life, to lay down his bones in silence. He then closed as follows: "In conclusion let me say one word more. In the high place to which I have been called I shall always look to this people as a light of goodness, and I trust that a merciful Providence will give me inspiration to fill that position with the credit due the people from whom I was chosen. And now let me toast myself, by toasting that of which I am but one, of which I am a component part, the people of the State of Louisiana."<sup>13</sup>

An important event in White's private life was his marriage in November, 1894, to Mrs. Neita Montgomerie Kent, widow

of Linden Kent. The bride had been born in Westchester County, New York, but had subsequently removed to New Orleans, where she resided with her sister, the wife of Senator Gibson.<sup>14</sup> It was said that White had been a suitor for the heart and hand of the young lady during her stay in that city.<sup>15</sup> She had, however, married Kent, a Washington lawyer, and had resided in the nation's capital during the past fifteen years.<sup>16</sup> There had been premature rumors during the preceding summer to the effect that the marriage had already been consummated. In spite of the fact that denials of the accuracy of these reports were widely published in the newspapers, congratulatory letters and telegrams and letters continued to pour in, causing the couple no little embarrassment and annoyance.<sup>17</sup> The marriage took place quietly on the morning of November 5, 1894, in the presence of a small group of relatives and friends, at the Jesuit church of St. Francis Xavier in New York, White's former instructor, the Reverend Father Fulton, performing the ceremony. Although the marriage was not unexpected, no public announcement had been made of the approaching event, and all preparations had been carried out in secrecy. It was said that White was reluctant to appear before the public in the role of a lover because of the dignity attached to his official position. The Justice had

14 Ibid., November 6, 1894.

15 Ibid., November 4, 1894.

16 Ibid., November 6, 1894.

17 Ibid., November 4, 1894.



just celebrated his forty-ninth birthday at the time of his marriage, while his bride was thirty-five years of age.<sup>18</sup>

Mrs. White was a beautiful woman whose attractiveness was enhanced by a cultured and charming personality.<sup>19</sup> The marriage proved to be a very happy and successful one. It was said that there could have been nothing more admirable than White's domestic relations.<sup>20</sup> After their marriage, the Justice and his wife were never interested in social functions to any great extent. This was not due to any failure of society to appreciate their social qualities, but rather to the fact that the Whites were home-loving folks. They seldom went out except to literary entertainments.<sup>21</sup>

To a man of White's temperament and character with his great love of domestic life it must have been a slight disappointment that his marriage proved to be childless. Many stories were related illustrative of his great fondness for children. On one occasion during his regular perambulations about Washington, White encountered a little girl gazing intently at the White House, the interior of which, he learned, she had never seen. After ladening the child "with a deadly stock of candy," he took her by the hand and accompanied her on a tour of inspection through the mansion.<sup>22</sup>

18 Ibid., November 6, 1894.

19 Ibid., November 11, 1894.

20 Honey, "Chief Justice White," in loc. cit., 456.

21 New York Times, May 19, 1921.

22 Ibid., December 11, 1921.

It was one of the Justice's favorite amusements to play "drop the handkerchief" with a group of girls, seven and eight years of age, who lived in the Sheridan circle neighborhood, which was near the White home on Rhode Island Avenue. It must have been quite a spectacle to observe the large man "vainly striving to turn his great bulk around" to find the handkerchief, while the children shrieked with laughter in which he heartily joined.<sup>23</sup>

Early in 1896 a report was circulated that White would be a candidate for election to the Senate to succeed Blanchard who had replaced him in that body upon his appointment to the Supreme Court. When the matter came to White's attention, he requested a publication in the New Orleans press of a positive denial that he would permit his name to be drawn into a contest for political preferment. It was suggested by a New Orleans paper that the rumors had been set afloat by those who feared the possibility of White's candidacy.<sup>24</sup> In spite of his great prestige and popularity in his native state with the people at large, it is somewhat doubtful whether White could have staged a successful return to active participation in politics in 1896. His patronage policy in 1893 had alienated some of the powerful politicians within the dominant faction which was still in control of the state government at this time. They had informed him that he would be "henceforth and forever" on the

23 Ibid., May 20, 1921

24 New Orleans Times-Democrat, February 23, 1896.

political black list should he persist in the course of action which he had adopted; and they had vowed that his official head would "drop into the basket" should he seek re-election at the expiration of his term.<sup>25</sup>

White's name ceased to be mentioned in connection with political affairs after 1896; and the remaining twenty-five years of his life were--as the two preceding years had been--devoted exclusively to the performance of the arduous, though unostentatious, duties of a Supreme Court justice. There was but one instance in which he figured prominently in public discussions in a nonjudicial capacity; this was in regard to the appointment in 1898 of commissioners to negotiate a treaty with Spain for the conclusion of the Spanish-American War. By the middle of August this shortlived international conflict had ended, except for the drafting of definitive terms of peace. White's name was first mentioned as a probable selection for membership on the peace commission on August 21, 1898. It was pointed out that President William McKinley was desirous that one of the commissioners should be a Democrat of national importance, and that Justice White possessed the requisite qualifications. It was understood that Richard Olney of Massachusetts had been under consideration, but had definitely declined the appointment.<sup>26</sup> A few days later White was still considered a likely choice, although it was

<sup>25</sup> Ibid., March 26, 1893.

<sup>26</sup> Ibid., August 21, 1898.

thought that the President would probably not appoint a justice of the Supreme Court since that tribunal was so far in arrears with its work. It was suggested that Charles Denby of Indiana, formerly Ambassador to China and an authority on conditions in the Far East, might be selected as the Democratic member.<sup>27</sup> On August 26 it was reported on reliable authority that in addition to the three definite appointments--William B. Frye of Maine, William R. Day of Ohio, and Cushman K. Davis of Minnesota--the remaining two members of the peace commission would be Whitelaw Reid of New York and Justice White. It was said that aside from his recognized capacity to serve as a commissioner White was selected because of his knowledge of the French and Spanish languages.<sup>28</sup> Official announcement of White's appointment was made the following day. It was said that he had at first begged to be excused; but on being personally urged by the President to accept, he had announced his willingness to serve on the commission. His knowledge of the Spanish language and of Spanish laws would enable him to render valuable service in that capacity. His views on the Philippine question were not definitely known, but it was stated by his friends that he favored retaining all territory over which the American flag floated. Of the remaining four commissioners, Frye, Davis, and Reid favored the retention of all the

27 Ibid., August 24, 1898.

28 Ibid., August 26, 1898.

Philippines, while Day was inclined to a relinquishment of most of the islands.<sup>29</sup> A few days later doubts were expressed as to whether White would accept the appointment tendered him. It was said that the President was making efforts to learn the Justice's intentions. As preparations were being made to set sail on September 17, very little time remained for making adjustments due to changes in the personnel of the commission.<sup>30</sup> On August 30 White and Day made a hurried trip to Cleveland for a conference with McKinley who was vacationing in Ohio. No definite conclusion as to whether White would serve on the commission was reached at this time, but the hope was expressed that the Justice would see his way clear to an acceptance.<sup>31</sup> On September 8 official announcement was made that White had withdrawn his acceptance of a place on the peace commission. This action, it was stated, had been taken by the Justice because of a realization that he would be unable to accomplish as much as his political and religious friends desired, in the face of the growing sentiment in the United States in favor of the retention of the Philippines, or at least the establishment of an independent government there under an American protectorate.<sup>32</sup> This statement was in conflict with the earlier report that White favored a retention of all territory held by the United States as a result of the war; but

29 Ibid., August 27, 1898.

30 Ibid., August 30, 1898.

31 Ibid., August 31, 1898.

32 Ibid., September 9, 1898.

it was probably more nearly in conformity with his actual views, for it harmonized with his policy while in the Senate of supporting President Cleveland in his opposition to all schemes of expansion. Senator George Gray of Delaware was appointed to membership on the commission as White's successor the day following the latter's withdrawal of his acceptance.<sup>33</sup>

The distance of Louisiana from the scene of White's labors rendered difficult the maintenance of a close association with his native state and its people after his assumption of judicial service on the Federal Supreme bench. He returned to New Orleans shortly after the adjournment of the court in 1895 for a visit of several days, but soon left to join his wife and sister, Susan, who were spending the summer months at Monmouth Park, New Jersey.<sup>34</sup> The following winter he and Mrs. White returned to New Orleans for a more extended visit.<sup>35</sup> There was a hurried trip to his native state in June, 1896, before the Whites sailed for Europe where the summer months were spent in a tour of that continent.<sup>36</sup> Thereafter visits to Louisiana became less frequent, and localities having a climate less tropical than that of the deep South were selected in which to spend the summer months. The Justice and his wife went to Camden,

<sup>33</sup> Ibid., September 10, 1898.

<sup>34</sup> Ibid., June 16, 23, 30, 1895.

<sup>35</sup> Ibid., December 22, 1895.

<sup>36</sup> Ibid., June 7, October 4, 1896.

Maine, for their vacation in 1897.<sup>37</sup> The following year Cooperstown, New York, was selected as a summering place,<sup>38</sup> while in 1899 the Whites appear to have remained in Washington during the vacation months.<sup>39</sup> A report toward the close of this year that White was seriously ill proved to be exaggerated. He was suffering from an attack of grippe, with rheumatic symptoms, but there was nothing alarming or critical in his condition.<sup>40</sup> The incident is noteworthy solely because of the infrequency of such notices in connection with White. Except for a slight injury caused by a fall on the ice in January, 1904, which necessitated his absenting himself from sessions of the court for a few days,<sup>41</sup> there were no instances of indisposition sufficiently grave to warrant notice in the press until the closing years of his life.

The Whites spent the summers of 1900 and 1901 in Saratoga, New York.<sup>42</sup> The Justice returned to New Orleans for a more extended visit than usual in the early autumn of 1902, and went out to his plantation for a visit of several days.<sup>43</sup> Thereafter, however, his vacations were regularly spent at his summer cottage on Narragansett Bay in Rhode Island, for

37 Ibid., June 20, September 5, 1897.

38 Ibid., August 21, 1898.

39 Ibid., June 25, September 24, 1899.

40 Ibid., November 27, 1899.

41 Ibid., January 29, 1904.

42 Ibid., September 2, 1900; September 29, 1901.

43 Ibid., October 12, 1902.

he seemed to be particularly fond of the summer climate of New England.<sup>44</sup> It was his custom during sojourns at his cottage to attire himself in work clothes and perform the manual labor necessary for the maintenance of a well-kept yard. A passerby, unfamiliar with this practice of the Justice and observing the bulky figure engaged in pushing a lawn mower, remarked that it seemed as though Judge White would employ a slimmer man to do such work.<sup>45</sup>

Although White returned less and less frequently to his home city with the passage of time, he retained until the end of his life a deep and abiding love for the place where the years of his youth and the prime of his manhood were spent. "Everything that I most cherish in life," he wrote to a friend, "is involved in the beautiful traditions and memories of the old city, for although I was born in Lafourche, I came to the dear old city to live when I was a little child in the year of '51." He said that much of his pleasure was drawn from memories of the romantic days of old New Orleans. He thought that he would never again experience the pleasure which he had formerly derived from watching racquet games in that city; and he missed the apple cider which was always in evidence at such gatherings.<sup>46</sup>

The tenacity with which he clung to the family estate

<sup>44</sup> *Ibid.*, September as illustrative of White's great aversion to the city, (1911), 386-387

<sup>45</sup> *New York Times*, p. 6, 1903, August 22, 1905; *Green Bag*.

<sup>46</sup> *New Orleans Times*, 7.

<sup>45</sup> *New York Times*, May 22, 1921.

<sup>46</sup> *New Orleans Times-Picayune*, May 20, 1921.



to the severance of old ties. Upon the death of his step-father in 1878, he, his brother James, and his half-brother Andre Ringgold Brousseau, assumed the management of the plantation. This venture drained his professional earnings and imposed a heavy burden of worry upon him; but then it was the goal of every Louisiana lawyer to be either a cotton or sugar planter, and White was no exception to this rule. He continued the practice of long-range planting after his removal to Washington.<sup>47</sup> He acquired the interest of his half-brother on June 8, 1896.<sup>48</sup> He was made the sole testamentary heir of his sister Susan, and acquired her interest in the property upon her death in 1911.<sup>49</sup> In the same manner he acquired the interest of his brother James upon the latter's death in 1917.<sup>50</sup> Upon the demise of Eliza, the remaining sister, who died intestate, the remainder of the property, not already held by White, devolved jointly upon him and the five children of his half-brother,<sup>51</sup> who had died in 1902.<sup>52</sup> White was finally prevailed upon near the close of his life to dispose of the old family home, and the succession of Catherine Sidney White Brousseau, his mother, was opened February 17, 1919.<sup>53</sup> Two days later he purchased

<sup>47</sup> Dart, "Address," in loc.cit., 95-97.

<sup>48</sup> Lafourche Parish Conveyance Records, L (1919), No. 3126, p. 123.

<sup>49</sup> Ibid.; New Orleans Times-Democrat, August 2, 1911.

<sup>50</sup> Lafourche Parish Conveyance Records, L (1919), No. 3126, p. 123; New York Times, November 20, 1917.

<sup>51</sup> Lafourche Parish Conveyance Records, L (1919), No. 3126, p. 123.

<sup>52</sup> New Orleans Times-Democrat, March 30, 1902.

<sup>53</sup> Lafourche Parish Conveyance Records, L (1919), No. 3106, p. 110.

the Lafourche Sugar Refining Company, Limited, in which he had had an interest, for \$40,000.<sup>54</sup> On the same day the plantation, together with the refinery, was sold to Ernest M. Loeb of New Orleans for \$120,000. Loeb paid \$20,000 in cash, the remainder of the purchase price being secured in mortgage notes for varying periods of time, but all of them became due within three years. It was specified in the mortgage that the refinery could not be sold without permission from White, and then only upon payment of \$50,000, to be applied on the notes falling due last. Interest was charged at the rate of 6 per cent.<sup>55</sup>

The passing years wrought changes in the Supreme Court's personnel with a consequent increase in White's seniority rank, while his original position of junior member was assumed successively by the various new appointees. The death of Howell E. Jackson of Tennessee in the summer of 1895 produced the first vacancy subsequent to White's appointment. Jackson had been in poor health for some time, and his participation in the rehearing of the famous income tax case during the preceding spring had sapped the last remaining vestiges of his waning vitality. John C. Carlisle and William L. Wilson were mentioned as possible successors since they were residents of the same circuit from which Jackson had been chosen.<sup>56</sup> Hornblower, whose rejection by the Senate had been one of the steps leading to White's appointment, was also suggested as

<sup>54</sup> *Ibid.*, No. 3125, pp. 120-121.

<sup>55</sup> *Ibid.*, No. 3126, pp. 121-124.

<sup>56</sup> *New Orleans Times-Democrat*, August 9, 1895.

a likely choice. It was understood that Hill, who had effectively blocked Hornblower's confirmation in 1894, had declared that he would offer no opposition in the event the New Yorker were nominated.<sup>57</sup> President Cleveland, however, selected Rufus W. Peckham, brother of Wheeler H. Peckham who had suffered a fate similar to that of Hornblower at the hands of the Senate.<sup>58</sup> The nomination was confirmed without delay,<sup>59</sup> and the new Justice assumed his official duties in January, 1896.<sup>60</sup>

Toward the close of the same year there were rumors that Justice Stephen J. Field contemplated retiring in the immediate future, and that Carlisle was being considered as his successor. Field's strong antipathy to Cleveland, however, rendered improbable his retirement prior to the expiration of that President's term of office, for it was known that he did not wish to give Cleveland an opportunity to appoint his successor.<sup>61</sup> It had long been Field's ambition to outstrip Marshall in longevity of service as a member of the Federal Supreme Court, a goal which was attained in the summer of 1897. His attendance at sessions of the court had become irregular, and it was very seldom that he was called upon to render an opinion.<sup>62</sup> He announced his retirement when the court convened in October, his resignation, effective

57 Ibid., September 16, 1895.

58 Ibid., December 4, 1895.

59 Ibid., December 10, 1895.

60 Ibid., January 7, 1896.

61 Ibid., November 13, 1896.

62 Ibid., October 14, 1897.

December 1, having been submitted to President McKinley the preceding April. Field, a Californian, was the last of the Lincoln appointees, having been nominated on March 10, 1863. His selection had been primarily due to the advisability of giving representation to the far West on the Supreme bench. At the time of his retirement his judicial service on the Supreme Court was longer than that of any other justice in the history of that tribunal.<sup>63</sup> Attorney-General Joseph McKenna, another citizen of California, was selected as Field's successor. Objections were raised to his appointment by certain judges and members of the bar in Oregon on the ground that he was temperamentally unfitted for judicial service.<sup>64</sup> The nomination was confirmed, however, and the new Justice assumed his official duties on January 26, 1898.<sup>65</sup>

There was a report that Justice Horace Gray would resign upon reaching the age of seventy years in 1898, when he would be eligible for a pension under the retirement act.<sup>66</sup> The expected vacancy did not materialize, however, and Gray continued to participate in the deliberations of the court until disabled by a stroke of apoplexy in 1902.<sup>67</sup> Upon failure to recover from a second stroke which had resulted in the paralysis of a hand and leg, the Justice reluctantly submitted his resignation.<sup>68</sup> Gray was a native of Massachusetts who had been appointed to membership on the Supreme Court by President

63 Ibid., October 15, 1897.

64 Ibid., December 5, 1897.

65 Ibid., January 27, 1898.

66 Ibid., December 3, 1897.

67 Ibid., February 25, 1902.

68 Ibid., August 12, 1902.

Chester A. Arthur in 1881.<sup>69</sup> He was succeeded by Oliver Wendell Holmes who was also a native of Massachusetts and who had already made a brilliant record first as associate justice and then as chief justice of the supreme tribunal of that state.<sup>70</sup>

A further alteration in the membership of the court was expected through the contemplated resignation of Justice George Shiras of Pennsylvania, who had been quoted as desirous of retiring as soon as he reached the age of seventy; and it was thought that Philander C. Knox of Pittsburg would be designated as his successor.<sup>71</sup> Speculations as to the probability of Knox's selection were later supplanted by rumors that the appointment would be tendered to William Howard Taft of Ohio.<sup>72</sup> The selection, however, finally devolved upon another Ohioan, William Rufus Day, who had figured prominently during McKinley's administration as Assistant Secretary of State, as head of the State Department, and as chairman of the commission which had negotiated the treaty of peace with Spain, ending the Spanish-American War. He had finally been appointed by McKinley to a Federal circuit judgeship.<sup>73</sup>

The next vacancy on the court occurred in 1906 when announcement was made of the resignation of Justice Henry

69 Ibid., January 29, 1901.

70 Ibid., August 12, 1902.

71 Ibid., August 19, 20, 1902.

72 Ibid., January 6, 1903.

73 Elbert F. Baldwin, "The Supreme Court Justices," in Outlook, XCVII (1911), 157.

Billings Brown at the closing session in May of that year.<sup>74</sup> Brown, who had been born in Massachusetts, had moved to Michigan where he had served as a member of the state judiciary until his appointment by President Benjamin Harrison to membership on the Supreme Court in 1890.<sup>75</sup> William Henry Moody of Massachusetts, who had been Attorney-General in the cabinet of Theodore Roosevelt since 1904 and who had served as Secretary of the Navy prior to his installation as head of the Department of Justice, was appointed as Brown's successor.<sup>76</sup>

There were no further vacancies until the death of Justice Peckham in October, 1909.<sup>77</sup> Speculation immediately became rife as to whom President Taft would appoint as his successor. It was said that no one but Democrats would be considered, since there were now only two Democratic members of the court, Fuller and White. A justice's party affiliation, however, was relatively immaterial, the important point being whether he were liberal or conservative in his views.<sup>78</sup> In spite of rumors to the contrary, Taft determined upon Judge Horace H. Lurton of Tennessee as Peckham's successor. Lurton's appointment was bitterly opposed by labor which accused him of continually attempting to break up its organizations, and also by many lawyers who claimed that he often

<sup>74</sup> New Orleans Times-Democrat, May 29, 1906.

<sup>75</sup> Ibid., January 29, 1901.

<sup>76</sup> Ibid., October 26, November 8, December 18, 1906.

<sup>77</sup> Ibid., October 25, 1909.

<sup>78</sup> Ibid., October 26, 1909.

took cases under advisement and then delayed rendering decisions for so long a time that the practice amounted to a denial of justice. Lurton had been appointed to a Federal judgeship by Cleveland in 1893, and Taft, while serving as a Federal circuit judge, had become acquainted with the Tennessean and learned to appreciate his abilities. There was little opposition in the Senate to Lurton's appointment. In fact, his advanced age, which was one of the objections to his selection, served to lessen any possible opposition.<sup>79</sup>

After the death of Associate Justice David J. Brewer on March 28, 1910,<sup>80</sup> White was outranked by only two members of the court, Fuller and Harlan, in point of longevity of service on the Supreme bench. Brewer, a nephew of Justice Field, had been born of missionary parents in Smyrna, Asia Minor, but had returned to the United States and was serving as a Federal circuit judge in Kansas when he was appointed to membership on the Supreme Court by President Harrison in 1889.<sup>81</sup> Charles E. Hughes, who had made a brilliant record as a lawyer and as the reform Governor of New York, was appointed as Brewer's successor.<sup>82</sup>

The death of Chief Justice Fuller on July 4, 1910,<sup>83</sup> afforded President Taft the unusual opportunity of nominating the presiding member of the United States Supreme Court. There were rumors as early as 1902 that Fuller would retire

79 Ibid., November 4, December 14, 1909.

80 Ibid., March 29, 1910.

81 Ibid., January 29, 1901.

82 Ibid., April 26, 1910.

83 Ibid., July 5, 1910.

on attaining the age of seventy years,<sup>84</sup> and the following year his withdrawal from active judicial service was considered to be almost a certainty. So strong was the conviction on this point, according to press reports, that Taft had already been slated to fill the expected vacancy. It was thought that the recent passage by Congress of an act providing for increased salaries for Federal judges and permitting their retirement on full pay after ten years of judicial service or upon attaining the age of seventy years would induce elderly judges to retire since they would henceforth be assured of a continued income.<sup>85</sup> Most of the expected vacancies failed to materialize, however, and it became more and more apparent with the passage of time that Federal Judges, and particularly Supreme Court justices, were averse to a relinquishment of official duties. There was a recurrence of rumors in 1906 to the effect that Fuller contemplated retiring; and that Taft, who was then Secretary of War and who was known to have a hankering for the chief justiceship, would be named to succeed him. The Chief Justice, who was one of the most partisan members of the court, soon dispelled all doubts as to his future plans. He made it clear that he had no intention of quitting official life so long as Roosevelt retained the presidency. He was also considerably irritated by the speculation as to whether he

<sup>84</sup> Ibid., August 20, 1902.

<sup>85</sup> Ibid., April 6, 1903.