thought we have bridged in a few short years!

Nor will Lloyd George and the Liberal Party rest where they have begun. A spirit is urging them on greater than they can discern, greater than they can conceive. It sprang from the seed sown by a little man with the spirit of a Viking and the heart of an archangel who passed with a thought like a flaming sword through Britain. It is the spirit of Henry George alive in the brains and hearts of men, and half articulate at last in the deliberations of the Commons.

J. D. M.

THE POWERS OF THE SUPREME COURT.

In the March-April number of the SINGLE TAX REVIEW, our tireless friend, Edward Quincy Norton, expresses the opinion that the United States Supreme Court has no power to declare on constitutional grounds that an act of Congress is void.

He says: "When the constitution of the United States was framed in the convention of 1787, it was proposed that the judges should pass upon the constitutionality of the acts of Congress. The proposition was defeated then and several times afterwards, when proposed. The opinion was universal among men of that day, that the judges ought not to have the authority to declare an act of the Congress void."

He also quotes a Chicago writer as saying: "The subsequent action of the Supreme Court in assuming the power to declare acts of Congress unconstitutional is without a line in the constitution to authorize it."

I most devoutly hope all this is true, for surely the judicial establishment should not be given an absolute veto on the acts of the legislature body. One would think that complete separation of the two bodies would be the better plan. Besides, if custody of the constitution were given to the Congress, that body could hardly disfigure it more than has the court. Was it not Justice Harlan who recently informed the other judges that they had abolished the eleventh amendment? However, Harlan may be an anarchist, or an undesirable citizen, or something.

When it was proposed that the judges lend their aid in the making of laws, the proposal was defeated by the convention. But when Mr. Norton says that it "was defeated several times," I hardly understand how he can follow that statement as he does, with the assertion that "The opinion was universal among men of that day, that the judges ought not to have the authority to declare an act of the Congress unconstitutional."

Besides the proposals to bring the judges to the aid of Congress in making laws, the question of the judges having power to protect themselves on constitutional grounds from any aggression by Congress was considered. Some delegates held that they could—some to the contrary. The matter did not come to a vote.

But, aside from all of this indirection, we have the definite words offered in the convention whereby the jurisdiction of the "federal courts" was fixed. Just what those words mean may be a matter of opinion.

The first proposal, I believe, occurs at page 733 of "Madison's Papers." It is as follows: That the United States Court "consist of one or more supreme tribunals, and of inferior tribunals."

At page 743, we are told that Pinckney submitted a draft giving the legislature (congress) power to "establish such courts of law, equity and admiralty, as shall be necessary," one such court to be a supreme court, whose "jurisdiction shall extend to all cases arising under the laws of the United States." In impeachment cases the Supreme Court was to have original jurisdiction.

At page 860, Mr. Gorham proposed that "jurisdiction shall extend to all cases which respect the collection of the national revenues, impeachment of any national officers and questions which involve the national peace and harmony."

At page 891, Hamilton proposed: "The supreme judicial authority to be vested in judges." The "Supreme Court to have original jurisdiction in all causes of capture, and appellate in all causes in which the revenues of the general government or

citizens of foreign nations are concerned."

It is fairly evident that Hamilton did not rely on the judiciary for his hoped-for aristocracy. It is also plain that notions regarding a proper judicial establishment were delightfully chaotic.

All proposals—those relating to the judiciary with the rest—were discussed, altered, amended, etc., and referred to the "Committee on Detail." The matter relating to the judiciary so referred being as follows (page 1,224)): "That the jurisdiction of the National Judiciary shall extend to all cases arising under laws passed by the General Legislature; and to such other questions as involve the national peace and harmony."

At page 1,238 the Committee on Detail reported as follows: "The jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States,"—and to admiralty and maritime matters,—the Supreme Court to have original jurisdiction where ambassadors were concerned.

Reference thus far has been to the jurisdiction of the federal court. This is the second section of the third article. As presented at that time the first section read as follows: "The judicial power of the United States shall be vested in one Supreme court, and in such inferior courts as congress may from time to time ordain and establish."

At page 1,435, Dr. Johnson (of Connecticut) suggested that the judicial power ought to extend to equity as well as to law, and moved to insert the words "both in law and equity" after the words "United States" in first line of first section.

Mr. Read objected to "vesting these powers in the same court" (down to 1874 in England equity courts were presided over by one set of judges, and law courts by another). The reason for Mr. Read's objection is well enough understood by men who know the history of the equity court, and a continuation of the performances of the last fifteen years will teach others.

Dr. Johnson's motion prevailed, Maryland and Delaware (2 States) voted in the negative, while New Hampshire, Connecticut, Pennsylvania, Virginia, South Carolina and Georgia (6 States) voted in the affirmative.

It will be noticed that Pinckney left all courts to Congress, while Dr. Johnson's motion put both law and equity into the hands of the federal court, without Congress having anything to say about it.

At page 1,438 Dr. Johnson moved to insert the words, "this constitution and the," before the word "laws" (in second section —page 1,238 above), so that it would read as follows:

"The jurisdiction of the Supreme Court shall extend to all cases arising under *this constitution and the* laws passed by the Legislature of the United States," etc.

I would ask what change in the meaning of that sentence was effected by the insertion of the words, "this constitution and the"? Without those words it is undoubtedly true that the federal court has no power to overrule Congress.

Madison immediately objected, saying he "doubted if it was not going too far to extend the jurisdiction of the court generally to cases arising under the constitution, and whether it ought not to be limited to causes of a judicial nature. The right of expounding the constitution in cases not of this nature ought not to be given that department."

The motion prevailed, and Madison makes comment (not to the convention but possibly of it, through it reads as if he were talking to himself: "it being generally supposed that the jurisdiction given was constructively limited to cases of a judicial nature."

At page 1,439, Madison and G. Morris moved to begin the sentence with the words: "The judicial power" in place of the word "The jurisdiction of the Supreme Court." This carried whatever meaning is in the words "this constitution and the" to inferior courts as well as to the Supreme Court —and it looks as though Madison made a very bad slip. Very likely it was not a slip on the part of Morris—he was different.

This motion prevailed, and the matter went back to the Committee on Detail. That committee transferred the "equity" clause from the first to the second section, leaving the two sections essentially as they

now appear, any changes being merely in the interest of good literary form.

The second section now reads: "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States," etc.

It can hardly be denied that the convention tended steadily to augment the powers of the court. Johnson added equity to the proper legal powers of the Supreme Court. Then he secured the insertion of the words, "this constitution." Then Madison extended whatever was objectionable in the powers of the Supreme Court to the whole federal court, and the Committee on Detail massed it all in one section, and made it read beautifully—in a literary sense.

The fact is that the constitution of the United States was and is a compromise between the democratic and aristocratic theories of government, in which the aristocrats have rather the best of the bargain. Neither democrat nor aristocrat was satisfied, and the compromise was possible only because of fear of invasion by foreign power. As its history fully demonstrates the real importance of the constitution lies in the interpretation or construction that may be given to it. And there's the rub, for democrats have lacked the wit or the courage (maybe both) to bend it to freedom's gain, while neither stupidity nor cowardice has brought hesitancy to the victorious career of their adversaries—"What's the constitution among friends?"

JOHN Z. WHITE.

THE FIRST STEP.

Those who, years ago, perceived that the settlement of the land question must precede the solution of the vexing problems created by advancing civilization, find it difficult to become reconciled to the apparent apathy and indifference of intelligent people. The connection of cause and effect between land monopoly and enslaving poverty, with all of its dire consequences, is so obvious to us that we are dazed and mystified, and many have become disheartened and have suspended effort, because of its delayed recognition by sensible people. Whatever the underlying cause of this slow development, we must accept it as a fact and change the direction of our activities accordingly. Perchance, the fault lies more in our own misdirected efforts than in the minds and dispositions of the unconverted.

Henry George, conscious of the ultimate revolutionary outcome of his proposal and reflecting upon the stubborn persistence of error and crooked thinking shown in history through the slow and reluctant acquiescence in radical social change, always admitted that he was unable to forsee how or when the Single Tax would be embodied in state or national policy. Plainly, his disciples have been over-sanguine and they must now frankly acknowledge that the ground has not yet been sufficiently cleared to permit the building of even the foundations of the temple of justice.

It now appears to me that the immediate, pressing need is the democratizing of government through direct legislation by means of the Initiative, Referendum and Recall. Reformers of every shade ought to combine on that proposition, for it is for the manifest advantage of each cause however divergent it may be from others. Its accomplishment would place every proposed reform at the starting post with even chances in the race. The outlook for this innovation is certainly promising, and it is reasonable to believe that before many years it may be generally introduced.

While we should neglect no opportunity to push our propaganda we ought to concentrate upon this indispensable preliminary and welcome every alliance for that purpose. There are evidences of a revival of Single Tax activity in the near future. The attempt to secure contributions to the fund for "the promotion of land value taxation" to equal in amount the splendid offer of Mr. Joseph Fels will stimulate our workers to renewed exertions in spreading our propaganda. It should at the same time be utilized to agitate for direct legislation.

Single Taxers rarely find it difficult to secure an understanding of our aim by honest, thinking men, and few objections to its moral and logical soundness are encountered. All that is needed is opportunity and this opportunity aggressive work