can Taft, and this is how he quoted him: "Our judges are as honest as other men, and not more so. They have with others the same passions for party, for power, and the privilege of their corps. Their maxim is, 'boni judicis est ampliare jurisdictionem,' and their power is the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control." Shall we, then, be advised regarding courts and judges by Jefferson the fundamental democrat and Lincoln the fundamental republican, who regarded courts as part of the convenient machinery of social organization, or by Taft the aristocrat, who regards them as a sort of bench of bishops with civil and criminal jurisdiction?

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Challenge and Counterchallenge—Taft and Bryan.

Early in his campaign tour for a second nomination Mr. Taft fell into the temptation to challenge William J. Bryan personally to name an example of restraint of trade which ought to be condemned and would not be condemned under the Supreme Court's interpretation of the anti-trust law. Mr. Bryan answered him promptly and conclusively as long ago as the 25th of September in a press interview from Knoxville, and on the 29th in the Commoner; but with supreme indifference to the amenities of fair discussion, Mr. Taft professed in a later campaign speech (at Pocatello, Idaho, on the 6th of October) that Mr. Bryan had made no response to his challenge. It will be surprising if he ventures a repetition of those tactics after the Commoner's second reply, which has in part been published broadcast. Not only does Mr. Bryan again respond courteously and candidly to Mr. Taft's challenge, but he makes a counter challenge which Mr. Taft may find it safer to ignore than to experiment with.

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In his first answer to Mr. Taft's challenge, Mr. Bryan replied that "any and all trusts, contracts or restraints of trade, according to the whim and pleasure of the trust sympathizer occupying at the time a seat on the Federal bench" would "be absolved under the Supreme Court decision"; and he followed this generalization with citations which make it prudent, even if unfair, for Mr. Taft to profess to have had no reply at all. Mr. Bryan also asked questions—impudent no doubt in Mr. Taft's estimation, but certainly not impertinent. Why did Chief Justice White reiterate and emphasize in the recent trust case his dissenting opinion in a case that went against him years ago? Why did President Taft appoint Supreme Court justices who could be depended upon to reverse that earlier view of the court and turn *Justice* White's dissenting opinion of that time into *Chief Justice* White's controlling opinion now? Why did Chief Justice White write in the later case an opinion so exhaustive on a point not necessary for deciding the particular issues before the Court? Why did Justice Harlan think it necessary to write a strong protest against the opinion of the Chief Justice, although he joined in the decision? These are among the questions Mr. Bryan asked in his first reply to Mr. Taft's challenge. His citations included one from Mr. Taft himself which must have made that candidate for renomination squirm a bit. It is quoted from his message to Congress of January 7, 1910, and exhibits Mr. Taft as in terms opposing the injection by Congress of the word "reasonable" into the anti-trust law. Mr. Taft said that this would "put into the hands of the courts a power impossible to exercise on any consistent principle which will insure the uniformity of decision essential to just judgment." Yet Mr. Taft now approves the injection by the Supreme Court into that law of that very word and with identically that effect.

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Bryan's second answer, Taft having ignored his first, cuts deeper still. It appears in the Commoner of October 6th, in response to a repetition by Mr. Taft of his original challenge, which he coupled with some of his choicest denunciations of criticisms of the Supreme Court, evidently alluding to Bryan, as "glib." Mr. Bryan here reminds Mr. Taft that the latter "knows that Mr. Bryan has only reiterated the criticisms contained in the dissenting opinion of Justice Harlan and in the report of the Senate judiciary committee filed by Senator Nelson three years ago," wherein Justice Harlan and Senator Nelson pointed out that the amendment now written into the anti-trust law practically nullifies the criminal clause. Upon the heels of his reminder, Mr. Bryan asks: "Does the President believe a criminal conviction possible" under the statute as the Supreme Court now interprets it? "If so, why does he hesitate to prosecute the officials of the Standard Oil and Tobacco companies?" These are questions which Mr. Taft must answer if he wishes his altered views of the anti-trust law to be regarded as a genuine conversion. But thereupon comes a crucial question from Mr. Bryan, provoked by Mr. Taft's renewed challenge of a

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ready amply met, a question which it
ss well for Mr. Taft to ignore—with
y to be sure, but with adamantine
. "Speaking of challenges," says Mr.
's one for the President;" and there-
ft's merciless inquisitor "challenges
public the written and verbal *recom-*
pon which he appointed Justice
position of Chief Justice over Jus-
and the *recommendations,* written
n which he appointed the Justices
placed on the Supreme bench. Did
hey stood on the trust question, or
ccidental that all of his appointees
side of the question?" Significant
as this question is, Mr. Taft could
ify public interest in it by a frank

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)-GULF DEEP WATER-WAY. II.

Public, beginning at page 1019,
he story of the movement for a
om the Great Lakes to the Gulf
ng our story down to the con-
ois of a fight for and against a

w of the sixth convention of The
Deep Waterway Association—
essions at the Auditorium The-
the 12th of October, and sits
d 14th—we purpose explaining
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Concentrates in Illinois.

lly and politically, the fight
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inois at about the time of the
ay convention, held at New
This concentration, probably
ctional war between Senator
r Deneen within the Repub-
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State. The Federal element
ington to a 14-foot channel;
he $20,000,000 fund author-
ople of Illinois on Constitu-
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anal (part of the deep wa-
ockport to Utica. Any map
will sufficiently assist the
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Immediately after the people of Illinois had authorized the $20,000,000 expenditure noted above, the so-called "Schmitt bill" was introduced in the Illinois legislature for the purpose of making the authorization effective. This bill had been prepared at Governor Deneen's request by Governor Deneen's Internal Improvement Commission. It was introduced at the regular session in 1909. After some amendment in Senate committee, it passed the Senate but was defeated in the House; and at a special session of the same legislature it was again passed by the Senate and again defeated in the House.

"With minor changes," as Governor Deneen explains in a legislative message of April 25, 1911, and, as he adds, "with the addition of Section 18 covering the question of Federal control," the same measure was introduced by Senator Johnson at the regular session of 1911. The Johnson bill also having failed of passage when the regular session of 1911 adjourned, Governor Deneen called a special session for June 14, 1911, at which this bill was again introduced. It passed the Senate, with minor amendments approved by Governor Deneen, but was defeated in the House because, although it received 75 votes to 52 in opposition, it needed a two-thirds vote. Being again passed by the Senate with minor amendments by 33 to 7 on the 28th of June, it was referred to committee in the House, and on the 29th a motion to take it out of committee was defeated by 62 yeas to 46 nays, a two-thirds vote being necessary. Without further action the legislature took a recess on the 30th of June until October 2, 1911, and on the 3d of October until the 24th.*

Prior to calling the special session now at recess, Governor Deneen had come into relations with the Federal Government. A Board of Engineers having been appointed by the Secretary of War in September, 1910, to consider the waterway project from Lockport to the confluence of the Illinois and the Mississippi rivers, Governor Deneen submitted his then pending "Schmitt bill" to that body with a request that it recommend co-operation on the basis of that bill by the Federal Government with the State of Illinois. The Engineers' understanding of Governor Deneen's proposal is thus stated in their report of January 23, 1911:†

> Briefly, the project presented by the State of Illinois contemplates the development of water power at four sites between Lockport and Utica, and

*See The Public, current volume, pages 564, 583, 612, 636 and 1055.

†The report in full appears at page 32 of the pamphlet copy of Governor Deneen's "Message to the Forty-Seventh General Assembly, Special Session, June 14, 1911." The extract is from page 36.

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