

Washington, D.C., May 19, 1892.

Dear Mr. Chief Justice Fuller: -

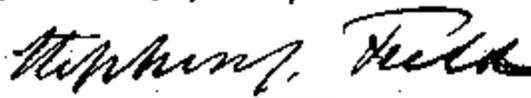
Your letter of yesterday's date, respecting the syllabus to the decision in O'Neil v. Vermont, is received. If my note to the Reporter surprises and pains you, I regret it but cannot help it. The syllabus is incorrect, and the statement that no point on the commerce clause of the Constitution was called to the attention of the Supreme Court of Vermont is not correct, and no repetition of it will make it so. The report of the case in the Vermont Reports contains a synopsis of the briefs of counsel before that court and shows that the point was expressly taken. The extracts of the opinion of the court given in my dissenting opinion show conclusively that the commercial question was before that court and must have been considered by it or wilfully disregarded. I do not propose to argue the matter with the Justices; nor do I intend to enter into a controversy about it. The record of the case shows the fact to be as I have stated. But whilst I shall at all times be courteous to every one I shall not refrain from speaking in clear and unmistakeable language of what I deem gross wrong and injustice whenever they are seen. The decision in O'Neil v. Vermont and the opinion of the court are, in my judgment, destined to an unenviable notoriety, greater than

has followed any <sup>previous</sup> decision of the Supreme Court. The American people are not going to sit quietly and see one of their countrymen condemned to a life of imprisonment at hard labor for engaging in acts of interstate commerce, although the commodities transported were spirituous liquors. Nor will they ever sanction the monstrous doctrine that under an ~~action~~ <sup>accusation</sup> for a single offense a man may be tried for an infinite number of offenses and sentenced to an imprisonment of ~~indefinite~~ <sup>indefinite</sup> duration.

The decision and opinion are now attracting the wide attention of judges and members of the profession of the country. If my associates, who concurred in that decision and opinion, could read some of the letters I have received on the subject from distinguished judges, lawyers and legal writers, they would find that I am not alone in my views but that they are held by some of the ablest intellects of the country. I should have shown some of these letters to my associates had I not feared that they would consider that I intended to be rude to them; so I have refrained. I have selected one of the most moderate in expressions of all of them, from the distinguished writer on criminal law, Joel P. Bishop, Esq., and send a copy of it for your perusal.

I am

Very respectfully yours,



To the Honorable,

The Chief Justice of the United States.

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