It thus appears the initiative and refer-

# LAW HELD INVALID

Initiative and Referendum Is of No Effect.

## MULTNOMAH JUDGES SO DECIDE

Finding Is Far-Reaching and, if Sus tained by the Supreme Court, Will Restore All Lawmaking Powers to Legislative Assembly.

(Continued from First Page.)

the Constitution means that while amend ments are pending no further amend-ments to the same clause or subject shall

The court gives "two sufficient answers" The court gives "two sufficient answers" to the first argument. In the first place, it holds that "the provisions of the existing Constitution are the law of the land. The people as electors have no power as such to violate any of the provisions of the law themselves have visions of the law they themselves have enacted. Until the Constitution has been amended according to its terms there is no change in the instrument."

In the second place, maintains the court, "the authorities are practically unani-mous in holding that where it appears the Constitution has not been obeyed in the respect wherein it provides the Constitution may be amended, it is the duty of the courts so to declare and to hold the amendment invalid."

The second argument used to support

the initiative and referendum-namely that the amendment has been adopted in accordance with Constitutional require-"rejected by the court as un-

### The Emergency Clause.

The Emergency Clause.

The court doubts the "practical value" of the reservation of power to the people in the clause relating to "peace, health or safety." "A law may be necessary for the preservation of the public peace, health or safety," says the opinion, "and yet the Legislature may fall to declare the emergency," or "An emergency may be declared in the body of a law, not necessary for the preservation of the public peace, health or safety." Furthermore, bills which affect the practical operations bills which affect the practical operations of the state government might be held up by petition for referendum for over a year intil the people could vote on them, since a special election could be ordered only by an extra session of the Legislature.

by an extra session of the Legislature.

Many persons have declared that the
initiative and referendum was not operative without supplemental legislation,
and that it did not become effective until
May 22, when legislation of that kind
enacted at the last legislative session
went into effect. But the court takes the
court that the amendment contains within itself a sufficient means for its enforcein itself a sufficient means for its enforcement, and that while legislation on the subject may be convenient, it is and was cessary to the full enforment and exercise of the rights reserved by the amendment. The court believes the Secretary of State, by consulting the amend-ment, the act of 1961 submittting the same to the people and the general election laws, could fairly and without difficulty submit any bill to the electors of the

## Charter Not Invalid.

Plaintiffs argued that the charter itself was invalid, because it violated the 14th amendment to the Constitution of the United States and also various provisions of the constitution of Oregon. The court failed to agree with them on any of these contentions. These arguments of plaint-iffs were four in number:
"First-That the entire charter is un-

constitutional and void, because it does not limit the power of the Council in con-

nd-That section 400 of the charter an attempt to deprive persons of their property without due process of law. "Third, that section 401 is unconstitu-tional, because on the appeal therein pro-vided for to the Circuit Court from the findings of the Council, upon the objec-tion of any property-owner to a reassess ment, the jurisdiction of the Circuit Court is limited to a determination of the amount of special benefits equitably to be assessed against the property of such per-

Fourth-That section 401 of the charter violates article 9, section 1, of the Oregon constitution, which provides for an equal rate of assessment and taxation."

## QUESTIONS BEFORE THE COURT. Attorney Details the Objections to

the Initiative and Referendum.
"While the decision is nominally against
me;" said Mr. Duniway last night, "it is in fact a victory on my side. The court decided that it was inconsistent and li-legal to assume the initiative and referendum is a part of the constitution, and at the same time to attempt to put the charter into effect on its approval by the governor by an absurd declaration of "I do not think the initiative and ref-

erendum is wise constitutional legisla-tion; yet I was constrained to uphold it before the court in order to test its va-

"I shall at once appeal to the Supreme Court. The questions that will go before that tribunal are: First, whether or not the initiative and referendum is constitutionally adopted; second, can the Legis-lature at pleasure render it inoperative by tacking on an emergency clause to an act which is not necessary to the immediate preservation of the public health, peace or safety.

"Aside from the initiative and referendum, the constitutionality of the charter is questioned because that instrument does not limit the power of the City Council in contracting debts. The Supreme Court will pass upon this issue and also upon the constitutionality of the assessment sections of the new char-

"If the Supreme Court should uphold the Circuit Court my next step will be to test the legality of the East Burnside street reassessment. My contention for my clients will be that the improvement was not made according to contract, and that, therefore, the city cannot as-seps the property owners for the benefit of the defaulting contractors. This question the Circuit Court passed over in this case, holding that it was premature until the Council had actually made the reas-

This proceeding was merely to enjoin a proposed reassessment and to test the constitutionality of the initiative and referendum and the charter. When the final reassessment shall be made the particular issue on East Burnside will be

"I share the opinion of many prominent lawyers that the initiative and ref-erndum is fraught with danger. The longer it remains undisturbed the harder it will be to dislodge it. But no matter what any body's opinion is, it is important to bring this great question to is-sue and to get it settled quickly."

## TEXT OF THE DECISION.

Why the Initiative and Referendum Amendment Is Unconstitutional. The following is the text of the decision cletting to the initiative and referendum

nstitutional amendment: The charter of Portland, approved January 23, 1808, in section 457 contains recitals that the bridges in the city are old and dangerous; that there is immediate necessity for construction of new bridges to provide for the safety of the people; that the charter of 1898 does not provide means for the prompt construction of new bridges, and the charter of 1998 does; that

there is otherwise a necessity for the immediate adoption of the charter of 1995 to insure the health, peace and safety of the people of Portland. It is provided the act shall take effect and be in force from and after its approval by the Governor.

The complaint contains allegations to the effect that the rectais in section 47 are untrue and the facts are not as stated therein. It was insisted on the argument the demurrer admits the allegations of the complaint, and it appearing by the pleadings the recitais are in fact untrue, the act did not take effect or become a law until 90 days after the final adjournment of the Legislative Assembly. The foundation of this claim is the amendment of section 1, article 4, of the constitution, ratified by the electors at the general election held June 2, 1900, and commonly called the initiative and referendum amendment.

amendment.

Tedder the terms of this amendment the redder may be ordered as therein provided. "except as to laws pecessary for the immediate preservation of the public peace, health or safety."

The question is now presented whether in any given case in determining if a law falls within the exception the courts shall be bound by recitals of fact inserted by the Legislature or ascertain the character of the law by an inspection of its provisions. A marked distinction may be drawn between the exception contained in the initiative and referended as a section of the law of the session at which the same shell have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

This section undertakes to fix the time at which all acts passed by the Legislature shall take effect. Prior to the adoption of the last amendment to the constitution any act on any subject and without limitation as to its character or provisions in case anyemergency is declared by the Legislature, takes effect upon approximation of the last amendment to the constitution any act on any subject and without limitation as to its character or provisions in case anyemergency is declared by the Legislature, takes effect upon approximation of the constitution any act on any subject and without limitation as to its character or provisions in case anyemergency is declared by the Legislature, takes effect upon approximation of the proper shall take effect and become the law when it is approved by a majority of the votes and the property invoked the referendum may be ordered on petitions filed with the Secretary of State not more than 90 days after the final adjournment of the Legislative Assembly. Also that any measure referred to the people shall take effect and become the law when it is approved by a majority of the votes cast thereon, and not otherwise. When the referendum is properly invoked, the action and the case of the contained exactly and the action of the legislative assembly. In the or

where."
Briggs vs. McBride, 17 Or. 647.
McWhirter vs. Brainard, 5 Or. 428.
The initiative and referendum amend-The initiative and referendum amendment by its scope and purpose undertakes to limit the power of the Legislative Assembly by providing that after it has exercised all its authority a given measure may, if obnoxious to the people, be defeated and never reach the state of being a valid enactment. The reservation of this power implies to some extent at least distrust of the Legislative Assembly. At any rate the elaborate provisions designed to afford the electors an opportunity of approving or rejecting measures adopted by the Legislative Assembly would prove of little practical value were the construction adopted that the Legislative Assembly possesses the absolute power to decide in what cases the referendum power may be exercised by the people. Again, a law may be necessary for the preservation of the public peace, health or safety and yet the Legislature fail to deciare an emergency. An emergency may be deciared in the body of a law not necessary for the preservation of the public peace, health or safety. In the first of these cases it is unreasonable to assume because an emergency was not deciared yet the bill might because of such failure be made the subject of the referendum power, or in the second instance that because an emergency was declared the bill does not upon proper proceedings become subject to the exercise of the reserved powers of the people. ment by its scope and purpose undertakes

Mo. 482.

The initiative and referendum amendment does provide a plan and method by means of which the right may be enjoyed. It is expressly provided what laws shall govern the Secretary of State in the discharge of the duties imposed upon him by the amendment until legislation shall be especially provided therefor. The court believes the Secretary of State by consulting the amendment, the act of 1901, submitting the same to the people and the general election laws, could fairly and without difficulty submit any bill to the electors of the state. It seems to the court that the amendment contains within itself a sufficient means for its enforcement, and that while legislation on the subject may be convenient, it is and was unnecessary to the full enjoyment and exercise of the rights reserved by the amendment.

Coursel for defendant, however, contend

amendment.

Counsel for defendant, however, contend that even if the amendment be held self-executing, the charter of 1995 must be held valid, because the initiative and referendum amendment itself is invalid, not having been adopted in accordance with the terms of the constitution of Oregon regulating amendments to that Instrument.

Article 17 prescribes the only method by thich in the absence of a constitutional opportunition the constitution may be ended.

he last clause of section 2 is as folis: "And while an amendment or
endments which shall have been agreed
by one Legislative Assembly shall
awaiting the action of a Legislative
sembly or of the electors, no additional
endment or amendments shall be proed.

## POINTS OF THE DECISION.

The Circuit Court of Multnomah, In joint session, decided yesterday the initiative and referendum is "invalid and no part of the present con-

The court sustained the new Portland

Suit was brought by property-owners city from reassessing their property to have defaulted in their contracts for

improving the street.

Plaintiffs maintained that the new charter, under which the reassessmen had been enjoined in April, was not in effect. Their argument was that the charter was not a law for the linmediate preservation of the public peace. health or safety, and, therefore, could not go into effect until the 90-day period has elapsed under the initiative

The city argued that the charter was a law enacted for immediate safety of citizens, and that by an emergency clause it became operative on as approved by the Governor; also that the charter was valid because the initiative and referendum was in

Court held that the initiative and referendum could not affect the charter, because it was "no part of the present constitution."

Plaintiffs submitted that the charter violated the 14th amendment to the Pederal Constitution, besides various provisions of the constitution of Oregon, but court decided against them. The injunction against the reassess ment was dissolved, but will be renewed by appeal of plaintiff to the

There was no session of the Legislative Assembly in 1897.

In 1896 the Legislative Assembly passed an act, approved February 18, 1896, authorizing the submission of the Legislative Assembly in 1896, but no act of submission was adopted. Laws 1896, pages 611-13-18 and 14.

There was no session of the Legislative Assembly in 1897.

In 1896 the Legislative Assembly passed an act, approved February 18, 1896, authorizing the submission of the four amendments to the legal voters at the June election, 1990. Laws 1899, pages 147, 144 and 145.

election, 1999, Laws 1839, pages 142, 144 and 145.

The initiative and referendum amend-ment was proposed in the Legislatice As-sembly in 1899, adopted by the House Jan-uary 27, 1899, and concurred in by the Sen-ate February 2, 1899, Laws 1839, pages 1729-39.

betreger vs. McGirde, 170 c. 65.

McGWhirter vs. Brahmri, 5 Gr. 65.

McWhirter vs. Brahmri, 5 Gr. 65.

McMontons to the people of the Legislative Assembly in 1896, adopted by the House January and the almorate provisions designed and valid enactment. The reservation of distrast of the Legislative Assembly, At any rate the almorate provisions designed approving or rejecting measures adopted by the Legislative Assembly would prove atroution adopted that the Legislative Assembly the Legislative Assembly would prove atroution adopted that the Legislative Assembly proved are a the second power may be exercised by the people-legislative Assembly to reservation of the public peace, health or safety and yet the Legislature at the constitution was adopted. Laws per the constitution of the public peace, health or safety and yet the Legislature at the constitution was adopted. Laws per the constitution was adopted. Laws per the best of the people per the constitution was adopted. Laws per the best of the people of the people

tional amendment is a political or legislative question, and not a judicial one.

There are two sufficient answers to this contention:

First—The provisions of the existing constitution are the law of the land and were adopted by the people as electors as the paramount authority for the government of the state, its officers and people. The people as electors have no power as such to violate any of the provisions of the law they have self-chasted. Until the constitution has been amended according to its terms there is no change in the instrument. It is the duty of the courts and of the people to disregard any alleged amendment which has been proposed or adopted contrary to the provisions regulating constitutional amendments.

Second—The authorities are practically unanimous in holding that where it appears the fundamental law—i. e., the constitution—has not been obeyed in the respects wherein it provides the constitution may be amended, it is the duty of the courts to so declare and to hold the amendment invalid.

Kochier & Lange vs. Hill. 59 Iowa, 543.

State vs. Powell, 77 Miss. 543.

Collier Governor vs. Frierson, 22 Ala, 108.

Trustees etc. vs. McIver, 12 N. C. 80.

Westinghausen vs. People, 44 Mich. 226.

The State vs. Swift. 8 Indiana, 508.

Livermoore vs. Wade, 102 Calif. 113.

The State vs. Tuffy, 19 Nevada, 331.

It follows that the infitiative and referendum amendment was received and acted upon by the Legislative Assembly in 1858 contrary to the express and mandatory provisions of the constitution, and the result is that it must be and is held to be invalid and no part of the present constitution, and the result is that it must be and is held to be invalid and no part of the present constitution, and the result is that it must be and is held to be invalid and no part of the present constitution, and the result is that it must be and is held to be invalid and no part of the present constitution, and the result is that it must be and is held to be invalid and no part of the present constitution. The cha SUPREME COURT HAS WORK AHEAD

Three Weeks Will Elapse Before Case Can Be Passed On, Case Can Be Passed On.

SALEM, Or., July 2.—(Special.)—The news that the Circuit Court of Multnomah County has declared the initiative and referendum amendment null and void did not come entirely as a surprise to attorneys in Salem. Opinions have been divided as to the legality of the manner in which the amendment was adopted, and even those who hold that the submission of the amendment was in accordance with law admit that there is room for

If it shail be determined that while a proposed constitutional amendment is awaiting actior of a Legislative Assembly or of the electors no other amendment can be proposed, considered or acted upon in any way, and that any action taken while a proposed amendment is pending is void, public opinion will find a way to secure prompt action.

It is contended that because the initiative and referendum amendment was sub-

It is contended that because the initiative and referendum amendment was submitted to the electors of the state and ratified by a large majority, all defects, if any, in the preliminary proceedings are cured and the courts are precluded from inquiring into the validity and regularity of the adoption of the amendment. Stated in another form, the proposition is that the legality or illegality of a constitutional amendment is a political or legislative question, and not a judicial one.

There are two sufficient answers to this contention:

ure. If in 1895 the Legislative Assembly had rejected the four amendments, then after that action it would have been competent to propose the equal suffrage amendment. The condition then would have been the same as those which existed in 1893, after the Assembly of 1891 had failed to adopt the amendment proposed in 1893 or to propose an amendment itself. If, no other amendments pending, the Legislative Assembly in 1899 had rejected the equal suffrage amendment, after that action the way would have been clear to propose the initiative and referendum amendment. This, however, was not the case in 1899. The four amendments were pending, and under the constitutional prohibition against proposing another at such a time it follows the equal suffrage amendment was not legally proposed in 1896.

Any action taken upon the equal suffrage amendment, either by the Legislative Assembly or the people, would not affect the validity of the action taken upon the initiative and referendum amendment. The facts concerning the equal suffrage amendment cannot be omitted without leaving incomplete any statement of recent attempts to amend the constitution.

It thus appears the initiative and referargument on the other side. On the other hand, those who believe that in the submission of the amendment the provisions of the constitution were violated have been compelled to concede that a strong argument can be made in support of the validity of the initiative and referendum clause. This situation has left a feeling of uncertainty, and it has been a feeling of uncertainty, and it has been

If this case should be appealed to the upreme Court, as it is presumed it will e, the question can be decided with but little delay. By agreement of the attor-neys the usual time for filing each brief may be waived, and thus the case prepared for trial in about two weeks. In answer to an inquiry today, Clerk J. J. Murphy said that there is now only one case on the docket that has not yet been set for trial. Cases already set will occupy the attention of the court for two or three weeks. Unless other cases come in ahead of it, the case which raises the initiative and referendum question could in regular order be reached in about three weeks. While the news which reached Salem

did not state the grounds upon which the initiative and referendum amendment was declared void, it is presumed that the court held that it was not adopted in accordance with article 17, section 2, of constitution, which provides:

"If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately, and while an amendment or amendments which shall have been agreed upon by one leg-islative assembly shall be awaiting the action of a legislative assembly or of the

It thus appears the initiative and referendum amendment was proposed and agreed to by the Legislative Assembly in 1889, before that body passed the act submitting the four amendments proposed in 1883 and agreed to in 1885 to a vote of the people. In fact, the four amendments were awaiting the action of a Legislative Assembly when the initiative and referendum amendment, was proposed, and the people did not vote on the four amendments until some 15 months afterwards.

To avoid the effect of the clause of section 2 article 17, already quoted, which forbids the proposal of an amendment under such circumstances, the suggestion has been made that the words "no additional amendment or amendments" should be held to refer to amendment or amendments.

Section 1, article 17, requires that an amendment or amendments must be entered in the form agreed to, and the next Legislative Assembly must agree to the amendment or amendments in the form presented. The possibility of change or amendment in or to an amendment already agreed to by one Legislative Assembly by another is not contemplated and the suggestion must be rejected as untenable.

The action of the Legislative Assembly action of a legislative assembly or of the electors, no additional amendment or amendments shall be proposed."

This is the section as it was adopted and as it reads in the copy sent to Washington and approved by Congress when the state was admitted to the Union. The copy retained here in the office of the Secretary of State omits the words "at the same time they shall be submitted."

The agreement The first of the paragraph. The and the suggestion must be rejected as untenable.

The action of the Legislative Assembly upon the four amendments in the sessions of 1836 and 1836 was in all respects regular and in strict conformity with the constitutional method provided for the adoption of amendments.

Did the failure of the Legislative Assembly of 1835 to pass an act to submit these amendments to a vote of the electors oust the Legislative Assembly of jurisdiction over the proposed amendments? near the first of the paragraph. section has always been published er-roneously in the Oregon compilations of statutes, but if the language were ma-terial to the decision of a case the word-ing used in the copy sent to Washington

would doubtless govern.

There is great difference of opinion among attorneys regarding the meaning of the last provision of the section fol-lowing the word "and." Some promi-If the failure to enact the necessary law

to constitutional amendment of measurements of the same to be published without delay at least four consecutive weeks amendment of the same to be published without delay at least four consecutive weeks amendment or amendment and the same to the election, "and if in the Legislative Assembly to supply the second the same to be published without delay at least four consecutive weeks amendment or amendment or amendment or amendment or amendment or amendment and be leaded to be and of the two houses, and the same to be published without delay at least four consecutive weeks in the duty of the Legislative Assembly to submit such amendments shall be the duty of the Legislative Assembly to submit such amendment or amendment is to the electors of the state and cause the same to be published without delay at least four consecutive weeks in the the same to be published without delay at least four consecutive weeks in the the same such amendment or amendment is to the electors of the state and cruse the same to be published without delay at least four consecutive weeks in the contitution." If the convention had fished to the published without delay at least four consecutive weeks in the duty of the Legislative Assembly to submit such amendment or amendment is to the electors of the state and cruse the same to be published without delay at least four consecutive weeks in the duty of the Legislative Assembly to submit such amendment or amendment with the same such amendment or amendment with the same to be published without delay at least four consecutive weeks in the duty of the legislative Assembly in 180 the duty of the legislative Assembly and the proposed amendment to the duty of the legislative Assembly in 180 the dut

and not mandatory.

Commonwealth vs. Griest, 196 Pa. St. 416.

State vs. Grey, 21 Nevada 278.

It was within the power of the Legislative Assembly in 1838 to submit the four amendments, and these were therefore legally pending when the initiative and referendum amendment was proposed. ical school and wife to some man. The realization that a great mission was hers came her way, as realizations will, and she tore up her diploma and after a sea-son of fasting and prayer came out of her legally pending when the initiative and referendum amendment was proposed. If it be objected that such a construction will permit Legislative Assemblies to neglect duty and unreasonably delay the submission of proposed, amendments, it may be answered that the like objections are equally applicable to, any consideration of proposed amendments to the Legislature. There is, however, a very practical limitation of time that will constantly operate to produce prompt and regular action by Legislative Assemblies in submitting to the electors of the state proposed amendments to the constitution. If it shall be determined that while a proposed constitutional amendment is sanctuary, which in this instance was San

Francisco, and undertook the task of turn-ing the world over. Dr. Smith-Wood is not a philosopher for she trimmed her logic to Grant Allen's "The Woman Who Did," and discussed that erotic effusion seriously nor a scholar, for she misquoted Tolstol, nor a teacher, for she did not attempt to prove her premises. She is not a typical notoriety-seeker, and seems sincere. In the darkness she clutched upon the one economic truth that the woman behind the capitalist is to blame, but the rest of her message might be whispered with small harm and no profit at a country quilting.

She will speak again on Monday evening in G. A. R. Hall at the hour of early candle-lighting, and those who yearn to hear her may be assuaged.

## POTTER SAILS THE FOURTH.

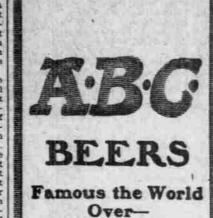
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The fact that the Fourth of July falls on Saturday and that the T. J. Potter leaves at 1:00 that afternoon for North Beach insures a big passenger list for this popular river boat. Many Portland people have arranged to make the trip down the fiver that day and to spend Sunday at the favorite North Coast resort. For particu-lars about the Potter and sailing dates, in-quire at the O. R. & N. City Ticket Agent, Third and Washington streets.

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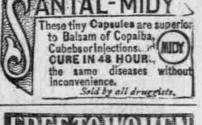
which, by strengthening the nerves, restores health and appetite and brings sweet sleep. "For six years I suffered almost constantly from a complication of troubles which culminated in complete nervous prostration. I had no appetite, I could not sleep, I suffered from indigestion and nervousness. As is so often the ease in nervous prostration I frequently had weak, fainting spells. Doctors did not help me. They said my blood was very poor, and I know my face was always very pale. The very first bottle of Dr. Miles' Nervine I took gave me noticeable relief and I felt stronger than I had in years. My neighbors in Puyallup, Wash., where I then lived will testify to this. I also used some of Dr. Miles' Restorative Tonic and Anti-Pain Pills. I believe the Dr. Miles Remedies saved my life."—MRS. J. C. BENEDICT, Tucker, Utah.

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## CURIOSITY.

Leads to Investigation and Truth. What shall we do to be saved? was the What shall we do to be saved? was the title of one of Robert Ingersoll's lectures. People of faith and people of no faith flocked to hear it. Thousands are asking, "What shall I do to get rid of dandruff?" The answer is. "Kill the germ that causes dandruff, falling hair and finally baldness; and the only thing that will do it is Newbro's Herpicide. That is the very batest discovery of the labor. is the very latest discovery of the labor-atory, and it is the only preparation that claims to, or that will, kill the pestifer-ous dandruff germ. It also is a delight-ful hair-dressing, free from oil or grease or sticky substances. Try it and be con-vinced of its actual merit. Sold by leading druggists. Send 10c in stamps for sample to The Herpicide Co., Detroit,





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