YERS GIVE VIEWS

. Hence Malarky is in- in lung-power and vocifer-

Again Nails Webster.

Webster had handed him g and now it was offered by Webster as a supplemental

were served with a copy of weeks ago," said Webster. s served with a paper," said

s a brief" said Webster. ill now answer it" said

ring to the warning clause ential part of the petition, alarky bore down hard on eme court itself. He said court give this clause its ning, **GIVE IT THE MEAN- AT ANY SCHOOL BOY GIVE IT**, and you will give t to the whole and which lature intended to give it." nded that these ten lines tty nearly the most vital **NOT THE SOUL OF THE MEASURE.**

Roasts the Petitions.

kind of people circulate itions?" asked Malarky. e paid agents, **THEY ARE HIRELINGS WHO ARE MUCH PER CAPITA** for signatures. There are ple who circulate these people who had a preju- st some law, people who ilfish interest rather than a purpose at the basis of ."

time Malarky had been o hours the whole court **TTY WELL TIRED OUT.** ton was visiting with Ex- aldo and his wife who g the spectators. Some of tators were dozing off ers. **FORD STILL READ.** d to have made up his Malarky was going to ch time anyway and there ay to avoid it. Fenton back among the lawyers a new book. The speaker the provision of the law t optional to use the sub- not the letter of the law. aid it need not be sub- followed. Here Malarky ry fine point between the the substance of the law. rm as to form is not **BUT THE FORM AS TO CE IS MANDATORY."** a clincher in his opinion, not altogether news to d justices.

usion Mr. Malarky said question involved was the legislature had any regulate the proceedure Direct Legislation clause stitution.

as not, let this court say en **LET THE PEOPLE OLD THING IN THE A PETITION IN ANY AT ANY OLD TIME NT TO."** That was the peroration.

pears for Grange.

neca Smith stated that ed by courtesy of the nsel, to represent the ge Executive committee. was alarmed lest any of utional privileges of the infringed. The constitu- to vote had to be exer- **T THE DIRECT LEGIS- MENDMENT WAS SELF- E.** The right of petition and fundamental. It definition and the judge hat no tin-horn Jim-Crow **COULD LIMIT OR TAKE E RIGHT OF THE PEO- PETITION FOR THE DUM.** If 5,000 legal d a petition asking that w be submitted to them, ignature was questioned, be defeated by a phras- asking something more nstitution itself demand- petitioners had com- all that the constiution them. These words of no meaning as part of and were of no effect **IT HAS NO BEARING PETITION**, and hence it extraneous matter. t a petitionary word in warning clause. There legislature cannot do. make a thing part of a petition that is not in itself a petition of prayer by its very nature. As it was not essentially mandatory, **IT WAS ONLY DIRECTORY AND ADVISORY.** Judge Smith held the closest attention of the court, and several times Justice Moores presiding interrupted him in a friendly manner. All the lawyers quit reading books and briefs and listened to every word of his brief argument.

Makes a Ten Strike.

Judge Smith made a hard hit when he showed that the form of the petition was clearly outlined in the constitution, without legislative direction and then when the petition was filed, it said as to the secretary of state, **"HE AND ALL OTHER OFFICERS,"** shall proceed to act in the premises as the legislature prescribes. The legislature could not change the meaning of words and the people were fully protected in the clear language of the constitution.

CONSTITUTIONAL RIGHTS COULD NOT BE REGULATED BY THE LEGISLATURE, except in case of a great public necessity under the police power of the state.

"Suppose it is a case where the constitution is not self-regulating," asked Justice Moore.

"Then there must be legislative exposition," said Judge Smith, "but not otherwise."

Mr. Logan Argues.

He admitted Mr. Malarky had gone over the ground pretty well. He went over it again to some extent. The reason of the legislature in putting in that warning clause was plain. In the purliens of the north end voters **WOULD SIGN ANY PETITION FOR A GLASS OF BEER.** Even the average hard working citizen might make mistakes with good honest intentions, and sign a petition illegally in the absence of a warning clause. A crowd of irresponsible people might sign up like a mob and compel any measure to be submitted. He spoke only sixteen minutes, or one minute longer than Judge Smith.

Webster Fires His Wad.

He offered some new authorities and the court gave each side five days to file a few hundred more cases. He apologized for appearing for a paltry five thousand petitioners who were denominated **THE RAG-TAG AND BOBTAIL, AND THE RAKINGS AND SCRAPINGS OF THE PURLIEUS** of the north end of Portland. The court had been informed that the gentlemen of the other side appeared for 95 per cent of the citizens of Oregon. Who had empowered them to hold that brief for that vast unnumbered majority? They had paraded their views with a cock-sureness that challenged his admiration. **THE PEOPLE OF OREGON WERE ABSOLUTELY SUPREME OVER EVERY CO-ORDINATE BRANCH OF THE GOVERNMENT.** Formerly the legislature had all power, but there came a time in the history of the state when this was changed, when the people took into their own hands the power, not only of making laws but of demanding the right to pass on the laws the legislature did enact. For years there had been growing a **PROFOUND DISTRUST AND LACK OF CONFIDENCE IN THE LEGISLATURE** after long years of experience and growing dissatisfaction. Was it not natural that the constitution should make the direct legislation clause self-operative.

Not Named Wrong.

Judge Webster proved the orator of the occasion and Judge Lovell of Pendleton must look to his laurels. The very opposite of Malarky, who dwells at length on details, Webster hits the high places and strikes at fundamental principles. He held the ear, the eye, the mind of the court, bar and spectattors. At all times he was earnest, eloquent and very graceful in his delivery. He hit the bullseye several times and once made the bell ring loudly, when he said: "The direct legislation amendment to the **OREGON CONSTITUTIO IS ABSOLUTELY SELF-ACTING BECAUSE SUFFICIENT,** and as absolutely prohibits legislation that hedges it about and restricts and controls its operation. No such legislation is permissable in connection with any such constitutional right."

The power of the legislature to interfere with the effective operation of the Referendum, which was intended to be a practical check upon reckless legislation, must stop somewhere or the very purpose of this amendment was defeated. The power to interfere did not extend to the initiative step, the petition up to the time of filing it with the secretary of state. **THAT WAS THE ORDER OF THE SOVEREIGN PEOPLE FOR A VOTE TO BE TAKEN.**

The legislature was prohibited from undertaking to enact details if the provisions of the constitution itself were set forth with sufficiently definite detail to give the people the Referendum. Judge Webster said the people could not be restricted as to whether they should have thirty names, or a hundred names, or a thousand, or one name on a sheet of paper. If the legislature was not trying to cripple the constitutional right of the people, why did the legislature pass this law requiring a warning clause with an emergency clause? **THE PEOPLE WERE THUS DEFEATED AND DEFRAUDED FROM EXERCISING THE REFERENDUM RIGHT,** when laws were passed that took away this constitutional right itself.

Forms Were Empty.

NO SUBSTANTIAL LEGISLATION COULD BE ENACTED IN THE FORM OF A POEM. No part of a poem could create law. Judge Webster said so far as the petitioners were concerned, each was an original, individual petitioner as a sovereign voter, exercising a privilege which they had a right to prefer and a check they could not abandon.

Shall the right of the people to have a vote on any bill be defeated by a mere form, a form that is in its nature merely directory. The opposition had relied upon technicalities while the petitioners must rely upon principle. There was a great principle involved and that principle was back of the humblest signer of these petitions.

The University Case.

Argument was opened by Mr. Pogue in the mandamus proceedings against the University of Oregon appropriation. He went over the grounds heretofore covered by himself and others. He held the attention of the court very closely. His main point was that aws affecting political rights of the people must be construed liberally and if the law in this case was construed liberally it must be construed as only directory and not mandatory. It was admitted that the petition was signed by the requisite number of legal voters, hence it must be allowed to stand and go upon the ballot.

Mr. Pogue referred to a passage in italics from Mr. Malarky's brief: "It is dangerous for the courts to be wiser than the law." He said it was dangerous for the legislature to try to be wiser than the constitution.

Thursday Morning.

Mr. Pogue expained further when the court resumed its session at 9 a. m., his position that all laws must be deemed constitutional unless plainly shown to be otherwise.

Attorney General Crawford again hammered the invalidity if the warning clause. It was "ultra vires" and he called it other hard names. The legislature itself could not order the referendum on a bill, without petition, but **THE PETITION OF FIVE PER CENT OF THE VOTERS WAS IN ITSELF AN ORDER TO PLACE THE BILL SOUGHT TO BE REFERRED TO A VOTE ON THE BALLOT** and no official or court could gainsay then, this right to demand and exercise this constitutional privilege. The warning clause was a gratuitous furbelow or grimcrack of no significance.

Insufficient Handle.

In the university case General Crawford thought the petition was defective because they had got the wrong handle, or no handle to the lard-bucket, when the law said a sample of the whole bucket, handle, pail, lard and all, had to go before the voter to enable him to see whether he wanted it or not.

The bill itself that was to be referred, lock, stock and barrel, must be sumbitted to the voter, **NOT THE SUBSTANCE THEREOF.** The terms law, bill, act, measure, statute, enactment, were synonymous. The voter had a right under the law to have the full title and text of the measure before him, hide, horns, hair, tail and all. Mr. Crawford said the rest of his points were in his brief, which was not very complete, as he realized that abler counsel than himself were engaged in the matter, **A SHOCKING ADMISSION OF MODESTY** that Senator Dan Malarky would never have become guilty of.

Mr. Bingham Speaks.

As long as he had showed his colors, and it was plain whom he represented, Mr. Ford again, consented that Mr. Bingham participate in the debate. He reviewed the technical contentions of the university people, as they have been heretofore stated. He did not profess to have anything new.

After chewing the matter over and digesting it in about five hundred different ways of wording it, the attorney general and a big block of legal talent seemed to consider the warning clause a kind of **HARMLESS EMANATION AF THE INCURABLE WARD,** while Dan Malarkey and his learned colleagues like Judge Lord and Geo. Bingham seemed to regard it as the highest form of U'Renic legislative wisdom.

When the case had been threshed over well into the second day there was no one left on the battlefield but one lawyer who had not spoken, and The Capital Journal reporter and Mr. Bingham, who was still speaking, the lawyers who had been long-winded, proved the court to be patient and long-suffering. Mr. Ford was the last speaker for the petitions.

Mr. Bingham made a final tenstrike, when he said if the bills referred to the people did not contain a full and correct title of the bill, how could anyone tell what had been passed upon by the people, after they had voted and adopted a law and it was filed with the secretary of state as an enacted law?

A Steady Fire.

During the discussion of the Madden hall for cheaper gas Congressman Legane told the following story of a cook he had once brought from home with him. She was a splendid servant, but she didn't know anything about gas to cook with, so he went to the kitchen with her, to explain about the range. So that she could see how it was operated, he lit each of the many burners. While still explaining, a message called him from the kitchen, and he left her, saying, "I guess you will find that it will work all right now, Martha." He didn't see the cook again for four or five days, then upon entering the kitchen he said: "Well, Martha, how's that range doing?"

To his utter consternation she replied: "'Deed, sir, that's the best stove I ever did see. That fire you kindled for me four days ago is still a-burning, and it an't even lowered once."—July Lippincott's.