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NO BASIS FOR RULE

Board of Education Cannot Compel Vaccination.

JUDICIARY COMMITTEE SO HOLDS

Test Case Arose When Mrs. Mary Hinderman Refused to Have Her Child Submit to the Operation.

Oregon parents who oppose having their children vaccinated can take considerable comfort from the decision of the judiciary committee of the Portland Board of Education, in what is known as the Lucie Hinderman case. The decision practically admits that the board has no power to compel vaccination; nor can it exclude children who refuse to be vaccinated.

Several weeks ago Mrs. Mary Hinderman, whose daughter was attending the Clinton Kelly School, wrote to the board, stating that she would not allow her child to be vaccinated, as none of her children had ever been given a drop of medicine in their lives, and she proposed to continue her trust in the Lord for both spiritual and temporal guidance. She would therefore refuse to have her child vaccinated, notwithstanding the fact that Lucie had been notified by her teacher that she must submit to the operation or quit school. This was the first flat refusal the board encountered since the rule was made, although scores of parents had sought to elude the vaccination rule on the plea of the child's delicate health. In such cases a certificate of a physician showing the child to be too delicate to stand the operation and subsequent possible illness was insisted upon. In the Hinderman case, however, the board met a point blank refusal, and so the matter was referred to the judiciary committee. Following is the full text of the committee's decision on the subject:

Honorable Board of School Directors, School District No. 1: The undersigned, your committee to whom is referred the application of Mary Hinderman to have her child Lucie, who is attending the Clinton Kelly School, excused from the observance of rule 164, requiring vaccination before attending the public school, respectfully report that at the time of the adoption of this rule by the board there was no state law imposing any such obligation upon parents or children before attending the public schools.

Nor was there any law of the state covering the subject prior to the enactment of what is known as the Daly bill by the last Legislature.

Mrs. Hinderman bases her objection to the vaccination of her child upon religious ground, being religiously opposed to the administration of medicines in any form, and to the use of any of the modifying or preventive remedies, believing, as she asserts, that the Lord is the exclusive healer and keeper of herself and children. It is, therefore, a matter of conscience with her, and for that reason, and because it concerns the public health as well as well as of the schools, merits, as it receives, our very careful consideration. Whether she is right or wrong in this inclination is not necessary for us to consider. Nor is it necessary for us to determine whether vaccination is a preventive agency. "That it is so," as was said in the opinion of the Supreme Court of the State of Illinois, in a well-considered case, "seems to be the consensus of opinion of a very learned and honorable profession, borne out by the history of its use for a century, and we can only so regard it; but when compulsorily applied it must, like all other civil regulations, be applied in conformity to law. (47 N. E., 81.)

"The law of the state provides for the education of all children residing therein, between the ages of 6 and 21 years, in the public schools, and it is made obligatory upon parents to see that their children attend, and it is made the duty of certain school officers to see that the law is enforced. No prerequisite is prescribed for children attending the public schools except a residence in a school district, and those are provided with the necessary books."

The act of the last Legislature contains this provision:

"Sec. 12. Any board of directors may, on account of the prevalence of any contagious disease, or to prevent the spread of such contagious disease, prohibit the attendance of any teacher or scholar upon any school under their control, and may specify the time during which such teacher or scholar shall remain away from such school, and may prohibit the attendance of any unvaccinated child who has not had the smallpox, upon the schools under their control, and shall also have power to decide how far revaccination shall be required, if a case or cases of smallpox have occurred in the city or district."

By this section it is thought full authority is given to directors when any contagious disease prevails in the district, and to prevent it spreading, to prohibit the attendance of any teacher or scholar so long as they deem proper upon any school under their control, and may prohibit the attendance of any unvaccinated child who has not had the smallpox, and if a case of smallpox occurs in the city may determine the necessity for revaccination.

The power of the directors is limited, however, to a particular teacher or scholar; to a time when the contagious disease against which they would protect the schools is prevalent; that is general or extensively existing, or if a case or cases of smallpox have occurred, to determine the necessity for revaccination.

If this is a correct construction of the law, it would seem to be necessary for the board to act as the occasion arises, and only upon occasion, and that no general rule could be adopted which would require a prerequisite to the right to attend school that the children should be first vaccinated. If, instead of there being no law upon the subject at the time of the adoption of rule 164, by this board, the law had been ample to authorize this action, section 12 of the present law, above quoted, being in conflict with it, would prevent its enforcement.

We are more confident that the construction we have placed upon this statute is the correct one, because of the ruling of the Supreme Court of Wisconsin, in the case of the State ex rel. Adams, Burge et al., 70 N. W., 347.

In that case, under a law of the state, the State Board of Health was vested with a "general supervision throughout the state of the interests of the health and life of citizens, and from time to time to make general or local rules and regulations for the preservation or improvement of the public health, not inconsistent with law or those prescribed by local authorities pursuant to law," and to more effectually protect the public health it was authorized to establish such systems of inspection as in its judgment might be necessary to ascertain the presence of Asiatic cholera or other dangerous contagious diseases, and to put the same in force, and from time to time make, alter, modify or revoke rules and regulations for guarding against the introduction of contagious diseases into the state. An appropriation was made by law, which under enumerated restrictions might be used to prevent the introduction of Asiatic cholera, smallpox or other dangerous contagious diseases or their suppression or control of such diseases, etc.

Under these statutes, all of which have not been quoted, the State Board of Health made a rule which provided that "no child shall be allowed to be enrolled as a pupil in any public, private or parochial school without first presenting to the principal or teacher of the school in which he appears for enrollment or attendance the certificate of a reputable physician that he has been successfully vaccinated, or in lieu of such certificate one from a reputable physician that such child has been vaccinated at least twice within a period of three months next preceding the date of such application; such latter certificate, however, shall be void after the expiration of one year from its date."

"No parent or guardian of any child shall allow or permit such child to attend any public, private or parochial school in this state, and no principal or teacher of any such school shall allow a child to be enrolled as a pupil, or attend such school as such, without the evidence of vaccination herein required; and it is hereby made the duty of the proper school authorities to enforce the foregoing rule."

The relator's three children were excluded from the schools by the school board for noncompliance with these rules. When the rules were adopted, and when the proceeding was begun, there was no epidemic of smallpox in or near the city, or approaching it, and the Board of Directors had no belief or apprehension that it was prevalent. None of the relator's children had been exposed to it or to varioloid, and there was no immediate necessity for the rule requiring scholars to be vaccinated, and yet say the court, "by an arbitrary rule or by a single stroke of the pen, every child of school age throughout the state that has not been vaccinated was excluded from the common schools and forbidden to be enrolled as a pupil or attend school without a certificate of successful vaccination.

"There must be, at least, circumstances apparently rendering such a rule or regulation necessary for the preservation of the public health."

The rules were held to be unreasonable and void, and, though the law had authorized the board to make the rule, it would have made no difference, for the reason the power to make the regulation could not be delegated by the Legislature. Rule 164, made by this board, provides that every child must have been successfully vaccinated before being received into the schools.

This rule would exclude every child in the district who had not been successfully vaccinated, even excluding those upon whom the effort had been made and failed, and those who had had the smallpox, whether there was an epidemic of smallpox in the community or not, or any apparent local necessity for the guarding against diseases.

In the respect mentioned the powers of the board are purely of an administrative character, and in no case legislative. It may only ascertain when there is a prevalence of contagious disease within the district, and what persons are subject, under the law, to be excluded from the schools on account of it; but it may not prescribe the rule which would exclude them.

For these reasons we are constrained to hold this rule void, as unreasonable, and not authorized by any statute in force at the time it was adopted, or by any that has since been enacted. This child should be excluded from complying therewith. Respectfully submitted,

R. WILLIAMS,
J. V. BEACH,
Judiciary Committee.

Big Lumber-Carrier.

The schooner barge being built at the Johnston shipyard for the Nehalem Lumber Company will be a big lumber-carrier. It is 150 feet long. In the center the bottom will be flat, but at the ends it will be schooner-shaped. Work is in progress on the hull.

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Ask your Grocer today to show you a package of GRAIN-O, the new food drink that takes the place of coffee. The children may drink it without injury as well as the adult. All who try it, like it. GRAIN-O has that rich seal brown of Mocha or Java, but it is made from pure grains, and the most delicate stomach receives it without distress. ¼ the price of coffee. 15c and 25c per package. Sold by all grocers.

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MUCH GOLD IN ALASKA.

All the Miner Has to Do Is to Find and Develop It.

J. Gordon Temple, who has been representing the Chicago Record-Herald as special correspondent in the Nome and Seward Peninsula districts of Alaska, arrived in Portland Tuesday. Mr. Temple considers the Seward Peninsula as being one of the richest districts in Alaska, although it has not yet been developed.

Mr. Temple was one of the party that left Nome in a small open boat for a trip up the coast into the Kougrock district. The party ran into a storm on the trip, and was reported as having been lost. When they returned to Nome they found their friends mourning for them.

Mr. Temple is interested in mining in Alaska and thinks the Kougrock district will prove to be a rich country if properly developed. He says that around Nome the miners have discovered that the benches are paying better than the creeks. The same thing is thought to be true of the other districts. Two nuggets were taken out of the benches on Anvil Creek, one bringing $1700 and the other $1500. These are among the largest nuggets that have been found in Alaska. The benches around Anvil, Dexter and Glacier creeks have all turned out to be immensely rich. In the Kougrock district, rich discoveries have been made on the Garfield, Boulder, Nevo, Windy, Coarse Gold and other creeks.

Charles D. Lane, the mining millionaire, took out 2100 pounds (about $500,000) of gold from his claims on Ophir Creek, in the Council district. This was after all expenses had been paid. He went down 30 feet, which shows how much can be done by development. Next year Mr. Lane intends to build a railroad into Ophir Creek.

Mr. Temple expects to spend the Winter on the Coast and to return to the Northern mining districts in the Spring.

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TO SELL MULTNOMAH HALL

Evening Star Grange Will Erect New Meeting Building.

On January 22 the old Multnomah Hall, standing on the Section road about three miles from the city, will be sold by the Evening Star Grange, which has been using it as a meeting place. This building is a landmark in that part of the county. It was built 15 years ago by a joint stock company formed of farmers and others to provide a public hall. The stock was widely distributed. It has been collected, as far as possible, by members of the grange until they practically own nearly all of it. Still there are some shares in the names of men who have left the country, or died, who cannot be reached. The hall will be sold and the proceeds distributed to the owners of the stock. It is not known what disposition will be made of the structure.

Many memories cluster around the hall. Funerals of pioneers and all kinds of public meetings have been held in it. The Evening Star Grange has met in it for a number of years, but now that organization contemplates the erection of a two-story building a short distance west of Multnomah Hall, on the Section road. The site has already been secured. A. F. Miller, master of the grange, says that he is confident that the building will be put up in the early part of the coming year.

What Happened to Mark?

Philadelphia North American.

Either Mark Twain or the proofreader of Harper's Magazine is responsible for one of the queerest things ever seen in print. Mark, in serious mood, describes a scene in California, and in the word picture occurs this sentence:

Far in the empty sky a solitary oesophagus slept upon motionless wing.

The only creature that seems to sleep upon motionless wing in the California sky is the condor, but while that bird is liberally endowed with swallowing facilities, there is no warrant in ornithology or vernacular for calling him an "oesophagus." Perhaps Mark wrote, or meant to write, "easvogel," one of the vulture's names.

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MEIER & FRANK COMPANY

UNION MAN ON THE BOARD

G. Y. HARRY URGED AS MEMBER OF LEWIS AND CLARK COMMITTEE.

Pressmen and Metalworkers Each Subscribe $100—Commissioner Dosch Is Heard From.

G. Y. Harry, of the Amalgamated Sheet Metalworkers, has been recommended as the union labor representative on the board of directors of the Lewis and Clark Fair. His recommendation first came from his own union. It was indorsed by the Building Trades Council, and then by the Federated Trades Council, so he stands as the union labor candidate. There is, of course, no demand for his election, or for the election of any union labor representative on the board, but it comes merely as a recommendation to the stockholders. It is deemed proper that the union labor representative should come from the building trades, which will come into closer contact with the Lewis and Clark enterprise than any other division of union labor.

Three new subscriptions to the Lewis and Clark fund were reported yesterday. The Pressmen's Union voted $100, and the local union of the Amalgamated Sheet Metalworkers subscribed another $100. Commissioner H. E. Dosch paused in the rush of business at the Charleston Exposition to send in a subscription for $100, expressing regret at the same time that he could not add another cipher to the sum. This, in consideration of the fact that he owns but four lots in Portland and is giving 15 months of his time, practically without compensation, and putting hundreds of dollars out of his own pocket with it, is the best he can do. Writing to Secretary Reed, he makes the following suggestion:

You know I have been on many a committee during my 37 years' residence in Portland, soliciting funds for every conceivable purpose, and I found that nearly all, if not all, comes from the bankers, merchants and men easily within reach, while property-owners generally hold back and don't give anything. They let the burden fall on the few, while in reality these very owners of houses and lots derive the most benefit. This is especially true at this time, and they know it, but I fear too many will stand back and say, "It will go, anyway; why should I subscribe?"

I believe it would be a good idea for a committee to take the taxroll and send a postal-card invitation to each owner of a lot, and if no response comes, follow it up with a personal call, even if some one would have to be paid to do it. I would put everybody on record, and then publish both subscribers and non-subscribers. There are times when heroic measures have to be taken, and this is such time, but I hope and feel that the patriotic spirit which has taken hold of Portland will leave the non-subscribers a blank sheet.

"DRUNKS" ON THE INCREASE

Annual Police Reports Show Growing Number of Arrests.

The police officials finished their yearly reports yesterday of the number of arrests made in the year 1901, and it would appear that the number of "drunks" arrested is on the increase. Out of a total of 3645 arrests made by the police for last year, 1345 were for drunkenness. In 1899 there were 1006 drunks; in 1898, 1262; in 1896, 778; and in 1895, 970. Early in January, 1901, there were fewer arrests for drunkenness, possibly owing to New Year resolutions going into effect. February had 50, but the list kept on growing and last May 103 drunks were arrested. October had 215.

Curiously enough in general arrests there were more prisoners caught during October, 1901, than in any other month last year. October headed the list with 499, December 385, January 373 and November 360. So far as burglaries are concerned, 90 of these were reported and 24 burglars were arrested. In the robber line, including highwaymen, 14 arrests were made, but a great many hold-ups occurred where no arrests took place, as in many cases the perpetrators were hobos who took the first freight train out of town and went to other cities. Forty-eight women were arrested for robbing men in Whitechapel. Up to December 1, 517 cases of larceny were reported, and arrests were made in 224 of these cases.

As for hobos, up to December 1, 106 Weary Willies were arrested, charged with being on the streets after midnight, but probably the list of hobos' arrests could be increased, as a large number of them must be in the crowd charged with drunkenness.

Male prisoners for 1901 numbered 3193, and about 150 boys and girls were arrested for various misdemeanors.

A new use for X-rays may be found before long, but X-rays are not needed to determine that the O. R. & N. Co.'s Spokane Flyer, leaving Portland daily at 6:15 P. M., is the quickest train to Eastern Washington and Coeur d'Alene points. Ticket office, Third and Washington.

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