COURT FINDS THE PETITION VALID

Omission "Warning Clause" Not Fatal to Referendum on Varsity Fund.

SUPREME COURT DECISION

Form of Drawing Up Petition Not Mandatory, and School Gets None of the Special Fund Until the Voters Approve Measure.

UNIVERSITY OF OREGON CASE.

The Legislature of 1907 passed an act appropriating $125,000 per annum for the University of Oregon.

On May 23, 1907, Eugene Palmer and Cyrus H. Walker presented to the Secretary of State petitions demanding that this act be referred to a vote of the people.

The Secretary of State refused to file the petition because the "warning clause" had been omitted and because it did not contain a full and correct copy of the title of the act.

Mandamus proceedings were brought and Judge Galloway held that the petition was fatally defective and need not be filed.

The Supreme Court, in an opinion by Justice Eakin, has reversed this, holding that the requirements had been substantially complied with.

The University of Oregon appropriation bill therefore will not go into effect until it has been approved by an affirmative vote of the people.

SALEM, Or., Sept. 3.—(Special.)—In an opinion by Justice Robert Eakin, the Supreme Court today reversed Judge Galloway in the University of Oregon referendum case, holding that the referendum petition is valid and that the university appropriation must be submitted to a vote of the people at the next general election. Chief Justice Bean, who is a member of the Board of Regents of the University of Oregon, did not sit in the hearing of the case and knew nothing of the contents of the opinion until he read it after it was handed down from the bench.

Two questions were involved in this case—whether a petition is fatally defective if it omits the "warning clause," which, in the form prescribed by statute, is to be placed at the head of the petition, warning persons against signing illegally, and whether a petition for the referendum must contain a full copy of the title as well as the text of the measure.

The opinion holds that the form prescribed by statute is not mandatory, but only directory, and that the omission of the warning clause is not fatal. Also that in referendum petitions only a copy of the measure, and not the title, is required.

Text of Court's Decision.

The full text of the decision of the Supreme Court in the University of Oregon case follows:

On the 23d day of May, 1907, the plaintiffs and others presented to the Secretary of State for filing a petition directing a reference to the people under the referendum provision of the constitution, a measure passed by the Legislative Assembly in February, 1907, known as House Bill No. 37, to increase the annual appropriation for the support of the University of Oregon. Defendant refused to receive or file the said petition, and the plaintiffs bring this proceeding by mandamus to compel defendant to file said petition. Defendant answered to the writ of mandamus denying the allegations of the same and alleging affirmatively that said petition is not in the form prescribed by section 1 of the act of the Legislative Assembly of 1907 (laws 1907, 399), providing for carrying out the initiative and referendum, in that it did not contain the warning clause provided for in said act; and further, that it does not contain a full and correct copy of the title and text of the measure sought to be referred. A reply was filed to the answer and the cause tried in the court below upon the pleadings alone, and only two questions raised by the answer are suggested upon this appeal.

The objection made by defendant that the petition does not contain the warning clause provided by the statute has been fully considered in the case of Stevens vs Benson, just decided, and the decision in that case disposes of the objection here adversely to defendant. The only other question for consideration is, whether the petition for the referendum must be attached to a full and correct copy of the title and text of the measure to be referred, or whether a full and correct copy of the text of the measure is sufficient.

Did Contain Copy of Bill.

The constitutional provision and the form of petition provided by the statute, upon which the proceeding is based, are set out in full in Stevens vs. Benson, supra. Section 2 of the act to provide for carrying into effect the initiative and referendum (laws 1907, 399), so far as it relates to the question here discussed, is: "Every such sheet for petitioners' signatures shall be attached to a full and correct copy of the title and text of the measure so proposed by the initiative petition; but such petition may be filed with the Secretary of State in numbered sections for convenience in handling, and referendum petitions shall be attached to a full and correct copy of the measure on which the referendum is demanded and may be filed in numbered sections in like manner. Not more than 20 signatures on one sheet shall be counted," etc. The petition in this case did contain a full and correct copy of the text of the act, but erroneously gave the title of the act as: "A Bill for an Act to Increase the Annual Appropriation for the Support and Maintenance of the University of Oregon," when the real title of the act as passed is: "An Act to Amend Section 3529 of Bellinger and Cotton's Annotated Codes and Statutes of Oregon, by Increasing the Annual Appropriation for the Support and Maintenance of the University of Oregon." And this discrepancy in setting out the title of the act is the ground assigned for the insufficiency of the petition. The purpose of the title to a bill or measure before the Legislature is, as stated in Clemmensen vs. Peterson, 35 Or. 48, "to prohibit the Legislature from combining in one act subjects wholly incongruous, diverse in their nature, and having no perceptible or necessary connection with each other, and to obviate the practice of inserting in an act clauses involving matter of which the title is not calculated or adequate to give or convey any intimation. Thus, it was designed by the framers of the constitution that in every case the proposed measure should stand upon its own merits, and that the Legislature should be fairly satisned of its purpose by an inspection of the title, when required to pass upon it, so as not to be surprised or misled by the subject which the title purported to express." Neither the reason nor the necessity for such a title to a bill before the Legislature exists with reference to the referendum proceeding. The purpose of the petition for referendum is to identify a particular enactment of the Legislative Assembly which the petitioners desire to have referred to the people, a question of identity, not of legislation. There is a distinction in that regard between the referendum and the initiative, in which latter, legislation is initiated and the whole matter must be formulated just as it is to be submitted to the people, while in the referendum it is only a question of the approval or disapproval by the people of what the Legislature has already enacted as a law. Section 1, of Article IV of the constitution recognizes this distinction by providing that the initiative petition shall "include the full text of the measure," while as to the referendum no reference is made as to the manner in which the measure shall be mentioned in the petition. Section 2 of the legislative act of 1907 (laws 1907, 400), recognizes the same distinction providing that the initiative petition "shall be attached to a full and correct copy of the title and text of the measure," etc., and "a referendum petition shall be attached to a full and correct copy of the measure," etc.

And when we consider the purpose of the petition, namely to bring to the attention of the Secretary of State a particular act for reference to the people, a petition that will identify such act and shall be sufficiently plain, that neither the signers of the petition, nor the Secretary of State, may be mistaken as to what is meant, will accomplish all that the constitution contemplates, and the "full text of the measure" fills this requirement. Considering this fact in connection with the constitutional requirement as to the contents of the initiative petition, as compared with those of referendum petition, helps to explain the difference in such requirements as prescribed by the statute. There can be no doubt that the term "measure" as used here means an act as it comes from the hands of the Legislature at the close of the session complete, so far as it is concerned. It is the enactment with which we have to do and we do not think that the term measure in this connection necessarily includes the title of the act, but if the term is broad enough to do so, it is immaterial. The title is not an element to be submitted to the voter or even considered by him. The measure is to be placed upon the ballot only by a ballot title in the nature of a statement of the purpose of the measure, and the Legislature could have no purpose in requiring that the title of the act should be contained in the petition, other than as a matter of identity, which they evidently considered complete without it. In the form of petition prescribed by the statute, provision is made for inserting the title of the act, but in that particular the form is only suggestive. It contemplates placing the act in the body of the petition, at least when less than the whole act is attacked, but clearly the Legislature did not so intend. The initiative petition is not so arranged, and the statute does not contemplate it but provides that the "referendum petitions shall be attached to a full and correct copy," etc. Evidently the petition must be on every sheet on which signatures are placed, but the act will be on a separate sheet, as clearly appears further on in said section 2, so that the mention of the title of the act in the form for the petition can only be taken as suggestive and is of but very little aid in interpreting the text of this statute.

It must be conceded that the Legislature intended to make a distinction between the manner of setting out the act in initiative petitions and in referendum petitions. As in relation to the former it declares that the petition shall contain a copy of the title and text of the measure, and as to the referendum petition, being a part of the same sentence, it shall contain a copy of the measure, and we deem it a compliance with the requirement of the statute to attach the referendum petition to a full and correct copy of the text of the measure. And the judgment of the lower court will be reversed and the cause remanded with directions to said court to make peremptory the mandate of the alternative writ.

Mr. Chief Justice Bean did not take part at the hearing of this case, being a regent of the University of Oregon, the real party interested herein.

WILL CRAMP THE UNIVERSITY

Needed Improvements Must Wait Until After Next June Election.

UNIVERSITY OF OREGON, Eugene, Or., Sept. 3.—(Special.)—As a result of the referendum and today's decision by the Supreme Court, the University will have to content itself with its regular annual appropriation of $47,500 until the Eaton bill is submitted to the people next June. Although the institution needs additional funds immediately to equip itself for the work that it is being called upon to do for the people of the state, there is no prospect that anything more than the standing appropriation will be available. The University has, however, an annual income of about $10,000 per year from the interest on the Villard fund, the University land fund and from tuition fees. This amount, together with the standing appropriation, will just about pay the salaries for the coming year, but will leave nothing for improvements.

The completion of the new library building and the dormitory for women will relieve the congested condition of the campus, to a certain extent, but there is every reason to believe that all classrooms, laboratories and dormitories will be overcrowded during the coming year. From present indications, the enrollment will be larger than ever before, and greater demands will be made upon the teaching force. The referendum will not have the effect of curtailing any of the courses of study, as President Campbell and the members of his faculty will keep the curriculum up to the highest standard of efficiency.

The decision of the Supreme Court is taken with good grace by the University people who welcome a popular vote upon the appropriation bill. Owing to the circumstances under which the referendum started, friends of the University would have been pleased to see it given a death blow by the courts, as there was apparently no sincerity behind the movement. It is said that the movement was started by certain individuals who hope to gain political prominence by their part in the alleged reform. Many of the signatures, it is said, were obtained by misrepresentation and fraud, and numerous false and malignant statements were made concerning the University and the members of its faculty.

A committee from the alumni will assume charge of the campaign for the passage of the bill next June. This committee consists of C. N. McArthur, H. D. Angell, L. R. Alderman, Dr. Homer I. Keeney and Allen H. Eaton. The personnel of the committee assures a vigorous fight in favor of the bill and there is little doubt about its final passage. From advices that have been received from all parts of the state, it is quite evident that the referendum does not find favor with the general public.

RIFLE BANK'S SAFE

Mysterious Robbery of the Bank of Auburn.

VAULT LOOTED OF $5000

Building Entered With Pass Keys, Combination on Money Box Worked and All the Cash Removed.

SEATTLE, Wash., Sept. 3.—(Special.)—The Bank of Auburn is the victim of a $5200 robbery so mysterious that its officials do not dare to hint at suspicion. The bank is a co-partnership, at the head of which is State Senator I. B. Knickerbocker, but whose active director is H. H. Howard who acts as cashier. Oscar Christopher is the other partner.

Some time between Saturday night and this morning robbers entered the bank with pass keys, opened and rifled the safe, and departed after taking $5200, the only cash on hand. Either someone who had the combination or an expert safeblower able to solve a combination committed the robbery, for no violence was shown. A sign over the safe showing membership in the Washington State Bankers' Protective Association had no terrors for the robber.

Insofar as the bank is concerned it was able, by sending to Seattle for funds, to re-open as usual, and the Auburn public, once given the information that $5000 burglar insurance protects the bank, created no excitement.

Harry O. Boyd, a son of an old Auburn family, who has been with the bank for eight months as cashier, closed up Saturday night, but it is believed he failed to set the timelock. On Monday, Senator Knickerbocker took a deposit of $100 from a farmer and placed it between the outer and inner doors of the vault. He did not have the combination of the inner vault, and could not put the money inside. The fact that this money was undisturbed indicates the robbery occurred earlier than yesterday afternoon.

Assistant Cashier Boyd, the man who closed the vaults was the man who discovered the loss this morning. The man had very valuable papers which were not disturbed.

Auburn is in the center of a rich district of small farmers, and the bank carries heavy deposits, though most of its cash is held in Seattle banks. It was about to be incorporated this Fall. The three partners can bear their loss easily.

PETITIONS ARE ALL VALID

SUPREME COURT DECISIONS ON REFERENDUM CASES.

Three Legislative Measures Must Have Approval of Voters to Become Laws.

MUST GO TO VOTE OF PEOPLE.

All referendum petitions offered for filing last May are held to be valid, and the measures attacked must be submitted to a vote of the people next June.

These measures are:

The University of Oregon bill appropriating $125,000 annually.

The compulsory pass bill.

The act giving the Sheriff of Multnomah County custody and control of persons confined in the County Jail.

The cases were all tried in the Circuit Court before Judge Galloway, of Marion County, and it was there held that all petitions were fatally defective.

Appeal was taken to the Supreme Court and all cases are reversed, the opinion of the court being written by Justice Eakin.

SALEM, Or., Sept. 3.—(Special.)—In deciding the referendum cases today the Supreme Court handed down three opinions, those in the Sheriff Stevens case and the University of Oregon case containing the full discussion of the questions of law involved, while the decision in the compulsory pass bill case depends upon that in the Stevens case.

The Legislature of 1907 passed an act giving the Sheriff custody and control of county prisoners, and the Multnomah County Court caused referendum petitions to be circulated and filed attacking this measure. Upon advice of the Attorney General the Secretary of State accepted the petition, whereupon Sheriff Stevens brought an injunction suit which was decided in his favor by Judge Galloway. This is reversed in a decision by Judge Eakin. In his opinion Judge Eakin holds that the initiative and referendum amendment is self-executing, that the act of the Legislature presenting the manner of exercising the referendum power is directory and not mandatory, and that it is so expressly declared by its terms. This being true, the omission of the "warning clause" from a petition does not render it void.

The suit over the compulsory pass bill was brought by John F. Logan, who sought to enjoin the Secretary of State from filing the petition demanding the referendum upon that measure. He won in the court below but lost on appeal, and the compulsory pass bill remains ineffective until voted upon by the people.

The case of Robert Hildebrand, respondent, vs. United Artisans, appellant, from Douglas County, L. T. Harris, judge, was affirmed in an opinion by Judge King.

Petitions for rehearing were denied in the case of Hendershott vs. Sagsvold; Gordon vs. Wright; Hawley vs. Sumpter; Valley Railway Company; Keen vs. Keen; Myer vs. Roberts, and Sears vs. Dunbar.

Granted State Certificates.

SALEM, Or., Sept. 3.—(Special.)—The State Board of Education today granted state papers as follows:

Laura E. Miller, Westport, Wash., state certificate on Pennsylvania papers; Harriett Hess, Goble, Or., state permit on Pennsylvania papers; Aubrey G. Smith, Joseph, Or., state permit on Missouri papers; Gertrude Brehaut, 743 Kearney street, Portland, Or., state permit on Canada papers; Maude W. Cooke, Oregon City, Or., state certificate; Alice Markart, Parkplace, Or., state certificate; Lillian Vredt, Antelope, state certificate; Myrtle Shonkwiler, Portland, Or., state life diploma, graduate of O. A. C.

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RIVAL ROAD STEALS MEN

VALDEZ COMPANY GETS GUGGENHEIM'S LABORERS.

Steamer Jeanie Does the Trick and Now She Is Liable to Heavy Marine Fine.

SEATTLE, Wash., Sept. 3.—(Special.)—The bitter feud between the Alaska Home Railroad, a Valdez, Alaska, corporation, and the Guggenheim Road, building into the Copper River district from Katalla, took a new turn today. The Valdez corporation, which has not even purchased its rails yet, sent the steamer Jeanie over to Katalla and claims to have stolen 300 men employed by the Guggenheims. The Guggenheims claim but 150 were enticed away.

In any event, the Jeanie is only authorized to carry 56 passengers, and the fact that she exceeded her passenger limit has been brought to the attention of the customs service. If the fine to which she is liable is assessed against the Jeanie she will be taxed more than half her worth.

Another blow aimed at the Valdez independent railroad scheme is an understanding just perfected with Esorre & Company, the operators of the Winter stage line between Valdez and Fairbanks, whereby they will make Abercromble Rapids their terminus and avoid the 80-mile climb over the coast range of the Chugack Mountains. If the Guggenheims are able to operate trains to the Rapids by December 31, when the stage service begins this Winter, the schedule will be effective after that date.

This action will divert the Winter travel away from Valdez and create a new Winter route to Fairbanks by way of Katalla. Such action would be the most serious blow the Guggenheims could give Valdez.

New Instructors at Oregon.

EUGENE, Or., Sept. 3.—(Special.)—President Campbell announces the selection of two new instructors in the University of Oregon for the following year. Miss Julia Burgess, of California, will take the place of Miss Bigelow as assistant in rhetoric and American literature. Miss Burgess took her A. B. degree at Wellesley and her A. M. at Radcliffe College.

Dr. Robert Carleton Clark, who took the degree of A. B. at the University of Texas and his Ph. D. at the University of Wisconsin, will take Professor Schafer's place during the latter's leave of absence in Europe for one year.

Miss Annina McCrary, of Boston, has been selected for the head of the department of piano and theory. Miss McCrary was an instructor in the New England Conservatory of Music.

Will Manage All Ladd Farms.

FOREST GROVE, Or., Sept. 3.—(Special.)—W. H. McEldowney, of this place, has been appointed general manager of all the Ladd & Reed farms located in Polk, Yamhill and Washington counties in Oregon and Clark County, Wash., comprising several thousand acres of the best farming lands in the two states. Mr. McEldowney began work for the company 19 years ago, managing the Reedville farm, and after eight years there was promoted to the Broadmead farm in Yamhill and Polk counties. This is one of the finest farms in the Northwest, consisting of nearly 3000 acres under cultivation. Mr. McEldowney has always been a very successful manager and is one of the most practical farmers in the state. He will retain his residence here for the present while looking after the various properties in his care.

Major Hawthorne Returns.

VANCOUVER, Wash., Sept. 3.—(Special.)—Major Hawthorne, Department Artillery Officer, Department of the Columbia, has returned to his post at Vancouver Barracks after spending his ten days' leave of absence at San Diego, Cal.

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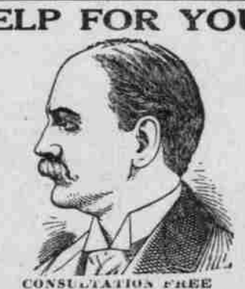

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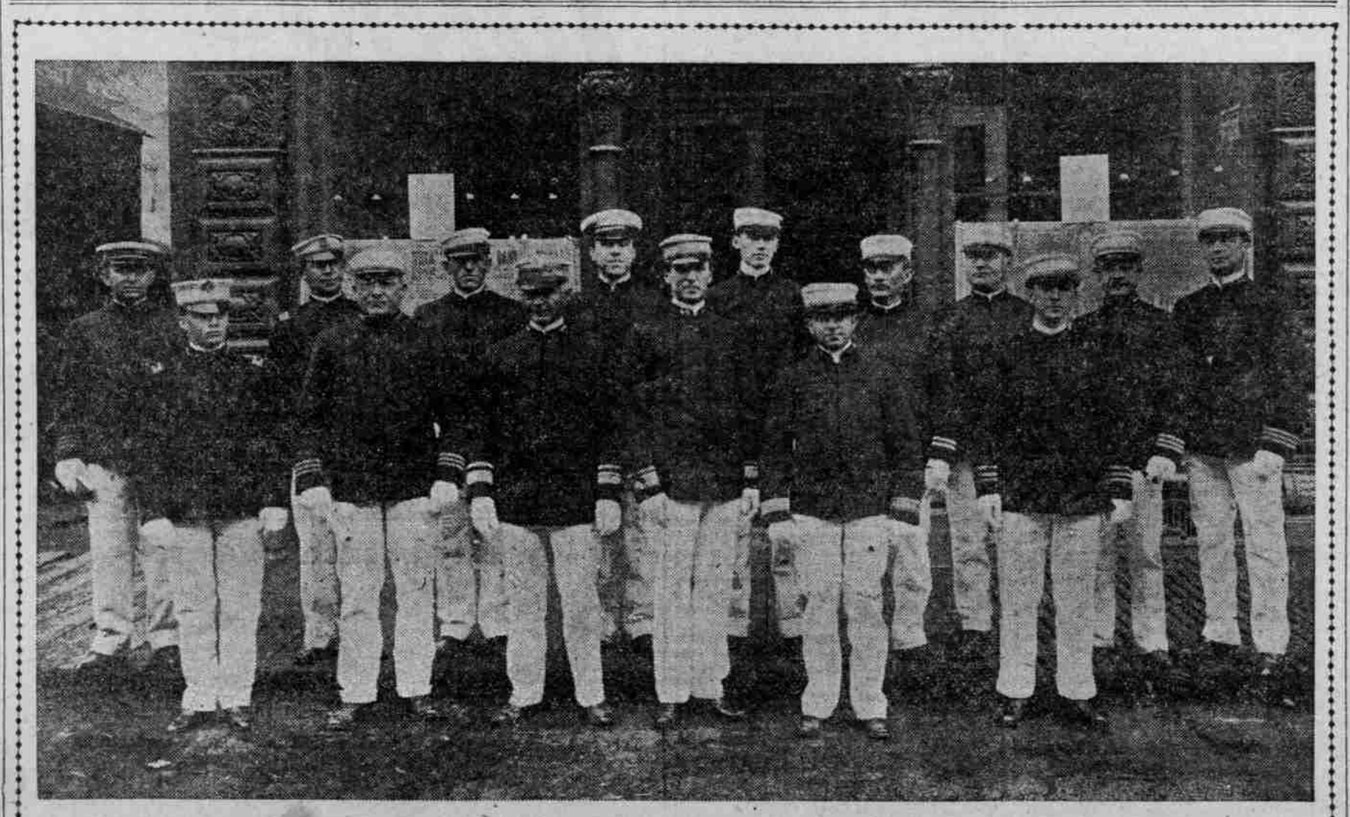

ADMIRAL CALLENDER AND HIS STAFF AT THE ASTORIA REGATTA. —Photo by Woodfield, Astoria.