

AMENDMENTS TO CHARTER INVALID

Decision in Test Case Is Announced.

EFFECTS ARE FAR-REACHING

All Measures Voted at June Election Get Body Blow.

JUDGE CLELAND'S RULING

Holds That Council Exceeded Authority in Submitting Measures to Electors—People Only Empowered to Initiate Change.

VOTE ON BOND ISSUES.	
Following is the vote at the city election of June 3 on the measures that are affected by the forthcoming decision of Circuit Judge Cleland:	
Issue of \$3,000,000 water bonds and assessing property for water mains—	
Yes..... 7,247 No..... 7,116	Majority for, 131.
Issue of \$1,000,000 park and boulevard bonds—	
Yes..... 8,142 No..... 6,143	Majority for, 2,000.
Issue of \$200,000 of dock bonds—	
Yes..... 9,414 No..... 4,547	Majority for, 4,867.
Issue of \$100,000 of Madison-street bridge bonds—	
Yes..... 11,872 No..... 2,958	Majority for, 8,914.
Issue of \$275,000 general bonds for fireboat and water mains—	
Yes..... 8,953 No..... 4,958	Majority for, 3,995.
Improvement of streets by districts—	
Yes..... 9,219 No..... 3,902	Majority for, 5,317.
Remonstrance of four-fifths to defeat street improvements—	
Yes..... 4,670 No..... 4,670	Majority for, 0.
Regulating sale of delinquent property by City Treasurer—	
Yes..... 3,343 No..... 3,343	Majority for, 0.
Creating office of Sergeant of Police—	
Yes..... 9,828 No..... 3,667	Majority for, 6,161.
Annexing additional territory in sections 20 and 30, T. W. P. in R. 2, E. W. M.—	
Yes..... 7,903 No..... 4,020	Majority for, 3,883.

That the amendments to the Portland city charter, voted at the municipal election of June 3, last, authorizing improvement bond issues aggregating \$5,225,000, were illegally enacted and are void, is the tenor of the decision that will be made by Judge Cleland in the case of the State Circuit Court for Multnomah County. The finding affects not only the bond issues, but also the following charter amendments: Providing for the improvement of streets by districts; remonstrance of four-fifths of the property-owners to defeat street improvements; regulation of delinquent property sales; creation of the office of sergeant of police; annexation of additional territory to the city, and the assessment of abutting property for the laying of water mains.

Decision Is Far-Reaching.

This far-reaching decision, one of the most important ever rendered in a local court, is in the case filed by Francis I. McKenna to test the legality of the bond issues and other charter amendments. The complaint was filed only against the amendment authorizing the issue of \$3,000,000 of water bonds and the assessment of property for mains. This was a friendly suit brought on the advice of Seneca Smith, and the purpose was to test the legality of all charter amendments adopted at the June election, but lawyers agree that the ruling will apply to all the measures with the same force as to the water bond provision, and if the State Supreme Court sustains Judge Cleland, all the improvements contemplated and legislation voted must await the favorable action of the electors at the next regular election, or at an election specially called.

No Formal Decision as Yet.

The decision of Judge Cleland has not yet been handed down, and will not be until January 7, when the regular term of the Circuit Court opens. The announcement of the ruling, however, is official. At the request of City Attorney Kavanaugh and Seneca Smith, representing both sides in the case, the court has made its position known. This action was necessary in order that important municipal business might proceed in accordance with the ruling on the amendments.

The invalidity of the water bond amendment, and consequently of all others, as interpreted by Judge Cleland, is due to the irregular manner in which the measures were presented for a vote of the people. These amendments were all placed on the ballot by resolution passed by the Council. In his decision Judge Cleland will hold that the Council had no authority for the action. Such legislation, to be legal, he will rule, must be inaugurated by petitions signed by legal voters of the municipalities.

The improvement bond issues voted in June and which will be held invalid are as follows: Issue of \$3,000,000 water bonds

issue of \$1,000,000 park and boulevard bonds, issue of \$200,000 dock bonds, issue of \$275,000 general bonds for fireboat and water mains.

The effect of the Circuit Court's decision will be to delay all action under the charter amendments. No bonds have yet been issued, and whenever possible the city authorities have declined to act under the provisions of the amendments. In several instances, however, this has been unavoidable, but the action taken will not now be binding, and until the question of legality has been finally settled by the State Supreme Court the city authorities and legislative bodies must proceed as if the amendments had never been passed.

Case to Be Appealed.

Without doubt the case will be carried to the Supreme Court in the hope that the city may ultimately win and the will of the electors be carried out. City Attorney Kavanaugh announces that as soon as possible after the decision of Judge Cleland has been handed down he will prepare an appeal to the Supreme Court. He will also request that, in view of its extreme importance, the appellate body expedite the appeal by a special hearing. No question of constitutionality is involved, and the case cannot, therefore, be carried before the State Supreme Court. The immediate reason for requesting Judge Cleland to make known his decision at this time was to give the Water Board a definite basis on which to estimate its expenditures for the coming year. The water bond amendment provided also for assessing the cost of mains to abutting property. If this provision had become effective, a large item in the expense of the water system would have been met by direct assessment and the present water rates consequently could have been materially reduced at the first of the year.

No Lower Water Rates.

In view of the present ruling there will probably be no reduction of water rates, at least until 1908, as the schedule must be adopted by the Board and approved by the Council before January 1. Another important effect of the decision will be to delay the purchase of new parks and laying out of many fine boulevards. Using a special appropriation of \$300,000, the Council recently employed J. C. Olmsted, an Eastern landscape architect to map out an elaborate park system for Portland. His report has been submitted and it was hoped to proceed soon to acquire a portion of the land needed for these parks. It is now evident that there will be no money available for many months to carry out these plans.

After the June election, so much doubt was expressed as to the legality of the charter amendments that it was decided to make a thorough test of them in the courts. Seneca Smith headed the movement to bring the matter to trial and prepared the complaints for filing. At first it was proposed to make a test case of the bridge bond amendment, but the water bond measure was finally selected, as it was believed that all of the objections that could be raised to any of the amendments were to be argued against it.

Two Leading Contentions.

There were two leading contentions in the case against the city. The first was that the Council had no authority to initiate legislation. It was contended in the complaint that the electors had no authority to pass on the amendment, "unless the same should be submitted to them upon an initiative petition as provided in the constitution of the state of Oregon" by the various amendments, applying to the case. It is upon this point that Judge Cleland has based his finding. It was also represented that the amendments were invalid because the charter explicitly provides a manner in which the cost of public improvements shall be met, and that this method was not followed. Judge Cleland says that this contention was not sustained, and that he also did not take into consideration the further contention that the June election was not advertised in the manner provided by the charter.

The case of the city was fought by City Attorney Kavanaugh and Deputy City Attorney Grant.

Mr. Kavanaugh's Views.

"There is no doubt that the decision of Judge Cleland will apply in effect to all charter amendments passed at the June election," said Mr. Kavanaugh last night. "With the sole exception of the amendment granting a franchise to the Economy Gas Company, which amendment was initiated by direct petition. All other amendments were placed on the ballot by resolution of the Council and the Court holds that in this the Council acted without authority. "Every law is regarded as valid until it is declared otherwise. Therefore we have proceeded on the ground that the amendments were regular. However, we have avoided acting under them when- ever possible. We shall appeal to the State Supreme Court and until action is taken by that body, the amendments must be regarded as unquestionably invalid."

Mr. Grant Also Talks.

"This case is of unusual importance," declared Mr. Grant, "because we have been exploring entirely new territory. There are no decisions applying to initiative legislation of this character, besides the one that has been made in Oregon. We have contended that the Legislature, in giving municipalities sole power to amend their own charters, provided that the measures could be initiated in any orderly manner if only they were brought to a fair vote of the people. The vote at the last election shows that there was much interest taken in the amendments. If the Appellate Court agrees that the amendments were illegally instituted, the quickest way to re-enact them is to call a special election. The charter provides that this must be done by ordinance, and that such election shall not be held within less than 30 days after the ordinance is passed. Besides this, it would require an even longer time to circulate petitions for each amendment would have to be supported by the signatures of at least 10 per cent of the voters before it could be placed on the ballot. The expense of such an election would be several thousand dollars.

There is the possibility, too, that some of the amendments might fail to pass if they were again brought before the people. The most important of all the

EXPLOSION KILLS 200 MORE MINERS

Third in One District in Nineteen Days.

RAISES TOTAL DEATHS TO 550

Darr Mine, Near Connellsville, Scene of Disaster.

TERRIFIC SHOCK IS FELT

Between 200 and 250 Men Entombed and Hope of Life Slight—Foreigners Escape by Going to Church.

JACOBS CREEK, Pa., Dec. 19.—An explosion of gas in the Darr mine of the Pittsburgh Coal Company, located here, today entombed between 200 and 250 miners, and there is scarcely a ray of hope that a single one of them will be taken from the mine alive. Partially wrecked buildings in the vicinity of the mine and the condition of the few bodies found early in the rescue work indicate an explosion of such terrific force that it seems impossible that any one could have survived it. All of the 13 bodies taken up to this time are terribly mutilated, and three of them are headless.

This is the third mine disaster since the first of the month in the veins of bituminous coal underlying Western Pennsylvania and West Virginia, for the No. 1 mine near Fayette City and the two mines at Monongah, W. Va. In which the earlier explosions happened, are in the same belt as the local workings. Today's catastrophe swells the number of victims of deadly mine gas for the 19 days to between 350 and 600.

Escape by Going to Church.

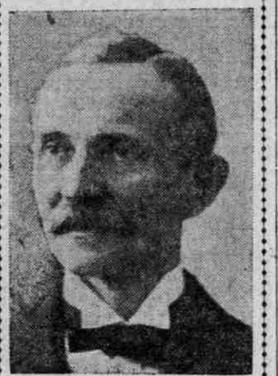
That today's disaster does not equal or even surpass in loss of life and attendant horrors the one in West Virginia is due to the devotion to church duties of a considerable number of the miners. In observance of the church festival many of the 400 or more men regularly employed at the mine did not go to work this morning. Those who escaped through this reason are members of the Greek Catholic Church and they suspended work to celebrate St. Nicholas' day.

As was the case at Monongah, the explosion followed a brief shut-down, the Darr mine having been closed Tuesday and Wednesday. It was just 11:30 o'clock when the tenth trip of loaded cars had been brought out to the tipple that there came an awful rumbling sound, followed immediately by a loud report and a concussion that shook nearby buildings and was felt within a radius of several miles. At the same time there came out of the

mouth of the mine an immense cloud of dense smoke and dust that floated across the Youghiogheny River.

Fears of Fire Not Realized.

Intuitively every one in the vicinity knew what had happened and all started for the one place—the mouth of the mine. The river separates the mine and the homes of many of the miners, so that only some of those who started for the scene were able to reach it, there being scant facilities for crossing the stream. To those who could not cross the water, the smoke and dust pouring from the mine's mouth told a story of seething flames back in the workings, and from this source came reports that were persistent until late in the day that the mine was burning. The ventilating fans were kept in operation almost without interruption, however, the powerplant having withstood the force of the



Representative David A. De Armond, of Missouri, who had a first flight with Representative Williams in the House of Representatives.

explosion, and up to this time the rescuers have found no fire at any place in the mine.

Only One Escapes Alive.

As far as known only one man went to work this morning escaped. Joseph Mapleton, a pumper, emerged from one of the side entrances shortly after the explosion. He had left the part of the mine where most of the men were working and was on the way to the engine-room for oil.

"I was in entry No. 21," said he, "when I heard an awful rumbling. I started toward the entry, but the next instant I was blinded and for a little time I did not know anything. Then I got to the side entry and worked my way out."

Rescuers Seek Survivors.

William Kelvington, superintendent of the mine, was not in the mine when the explosion occurred and he quickly organized a rescue party, starting a force of 35 men with reliefs at short intervals in the main entry and a similar force at a side entry. It is hoped to reach the greater part of the victims through the latter. So far little trouble has been encountered on account of gas or lack of air by the rescuers. While the officials and the rescuers have only the faintest hope that any of the men may be living, all work is being carried on upon the theory that some may have

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MAY WITHDRAW HARDEN CHARGES

Editor Asked to Sign Retraction.

NO LONGER ACCLAIMED HERO

Received in Silence by Small Crowd.

HEALTH IS MUCH BROKEN

Berlin Court Decides on Question Raised of Jurisdiction—Writer Explains Eulenberg's References to the Kaiser.

BERLIN, Dec. 19.—Maximilian Harden, who two months ago was the favorite of the people, who was cheered and congratulated by crowds of admirers, as he came and went to the Courthouse, was today received in silence by the few hundred persons who had collected outside the main entrance of the criminal court to witness the departure of the principals in the present hearing of the Harden-Von Moltke case. Harden is accused by the state of having offended society by his writings in Die Zukunft, the magazine of which he is editor.

Harden's own attitude also has changed. Instead of the passionate and denunciatory appeal to the people of two months ago, he was today cautious and evasive and took care to keep closely behind every available legal barrier.

Explains Reference to Kaiser.

The name of Emperor William was mentioned only once or twice in the hearing today, and then in Harden's explanations to the presiding judge of his allusions in the dialogue at night between the person called "The Hopper," and the person called "The Sweet One." "I merely intended," said Harden, "to bring out the fact of Eulenberg's too great influence; that it was his habit to refer to the Emperor as 'darling.' This was a most deplorable situation."

The day was spent in a legal controversy over the jurisdiction of the court and the examination of Harden. Neither Prince Eulenberg nor any of the notable witnesses were present.

Harden Broken in Health.

Herr Harden was haggard and worn and his face paled and flushed alternately when he appeared before the Criminal Court today and took his place in the dock to answer the accusation brought in the name of the state that he had offended not only against General

Count Kuno von Moltke, but against the interests of society in writing in Die Zukunft of von Moltke, Prince Philipp Eulenberg, General Count Wilhelm von Hohenau and others in the manner in which he did.

The president invited him to leave the prisoner's bench and take a more comfortable chair next to the attorneys. The bailiff spread out Harden's fur coat on the chair in order to make him as comfortable as possible. The prisoner was shaken from time to time with fits of coughing, which he tried in vain to suppress. Dr. Marx, Harden's physician, said when Harden got up this morning that he absolutely disapproved of his appearing in court and disavowed all responsibility for the effect on his health.

Harden listened languidly to the arguments of the lawyers concerning the jurisdiction of the court. These lasted for two hours. The judges then announced that they were competent to try the case. Count von Moltke's attorneys reserved the right to ask that the public be excluded during the taking of testimony relating to the shameful

Read Political Articles.

The indictment against Harden was then read, covering his political articles in Die Zukunft for a period of several months. Questioned about these by the court, Harden replied he had written them in the interests of his country. He had no intention of libeling Von Moltke. He considered the influence of Prince Eulenberg to be harmful and he sought to remove it.

He said he had no desire to call witnesses to prove that Von Moltke was abnormal. "I have a definite conviction," the prisoner said, "I have said nothing libelous. If the court assumes that the articles are defamatory I am here to bear any penalty."

There will be 33 witnesses, exclusive of a medical expert for the defense.

In addition, evidence will be given for Editor Harden by Baron von Berger, manager of the Hamburg City Theater, who sought by negotiation and diplomacy to break up the scandalous "round table" previous to Harden's newspaper attacks. Dr. Claparde, the State Minister in the Berlin court, and his wife, who were in the Von Moltke circle, are believed to be in a position to testify regarding Count von Moltke's shortcomings.

Mother-in-Law Takes Part.

Georitz, Prince zu Eulenberg's major domo at Lieben, will testify, and so will Frau von Hayden, the mother of Frau von Elbe, who was divorced from Von Moltke. She is the bitter enemy of her daughter's first husband.

Other witnesses for the defense will be Lawyer Lich, an attorney in the divorce proceeding; a pastor named Jungnickel, a mysterious witness whom Harden has just secured; another hitherto unknown witness named Kietler, from Munich; Dr. Corda, from New Badenburg, who will tell about Frau von Elbe's health at the time of the divorce; Lieutenant von Kruse, Frau von Elbe's son; a Sister of Mercy named Lange, who attended Frau von Elbe, and Herr Lonnemann.

The witnesses for the defense will include three Berlin police commissioners who are supposed to know all the mysteries of darkest Berlin, especially its grossest impurities.

The public prosecutor has summoned, in addition to Count von Moltke, who will give his evidence, his cousin, Colonel von Moltke, who was the Count's emissary to Editor Harden regarding the proposed duel and other matters in controversy between them. Frau von Elbe

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DEALS BLOW AT GRAIN GAMBLING

Kansas Would Forbid Dealing in Futures.

CAN GET COMMITTEE REPORT

Same Measure Would Stop Dealing in Cotton.

BARRED FROM TELEGRAPH

Also Denied Use of Mails—Scott of Kansas May Force Through Measure Which Would Crush Out Boards of Trade.

WASHINGTON, Dec. 19.—(Special.)—Charles Frederick Scott, Representative from the Second Kansas District, celebrated his appointment to the chairmanship of the House committee on agriculture this afternoon by introducing a bill to prevent dealing in grain futures. The bill goes to his committee for consideration. The chairman proposes that the committee shall get busy with it just as soon as the agricultural appropriation bill is out of the way.

This is the measure the Boards of Trade throughout the country have been fearing. There already is before the committee on agriculture the Burleson anti-option bill, which relates to gambling in cotton. The same bill relating to cotton has been introduced by Senator Culberson, of Texas, in the upper branch of Congress. There is more than a fair prospect of action at the House end of the Capitol with respect to both the grain and cotton bills.

Same Bill Offered for Cotton.

Mr. Scott's bill had for its prototype the Burleson measure. It is the self-same bill, in fact, with the word "grain" substituted for the word "cotton." It proposes to reach and break up dealing in futures by prohibiting telegraph and telephone companies to transmit messages relating to contracts for future delivery, when it is not intended that the article contracted for shall be actually delivered or received. The mails are refused to publications containing accounts or records of transactions on exchanges whose methods are deemed objectionable under the provisions of the bill.

Put Exchange Out of Business.

The object of the Burleson bill, according to the admission of its author, is to but the New York Cotton Exchange out of business. Mr. Scott would do the same thing with respect to the boards of trade throughout the country which serve as the mediums for speculating in wheat and grain as the Cotton Exchange serves as a medium for speculation in the great staple of the South.

It has been designed to amend the Burleson measure so as to embrace grain as well as cotton. In the last Congress the committee was ready to report out a similar bill amended in this way, but desisted at the solicitation of friends of the measure, who saw no chance for a vote in the House in the closing days of the last session. This bill promises to be one of the very important pieces of legislation to command the attention of the present Congress.

Man Behind the Bill.

Mr. Scott is serving his fourth term in Congress. He never has come into the limelight to any extent heretofore, but as chairman of the committee on agriculture at a time when that committee will attract more than ordinary attention, especially as he is the champion of the anti-option movement, he is liable to be much in the public eye. He was born on a Kansas farm in 1860, was educated in the common schools and state university and after several months of fortune-seeking in the Western territories and Colorado, returned to his native county and purchased a newspaper at Iola, the Register, which he has since conducted. He has been president of the Kansas State Editorial Association and of the Kansas League of Republican Clubs and represented his district on the Presidential electoral ticket in 1904. Before coming to Congress he served four years in the Kansas Senate.

HOPE TO RESCUE MINERS

Entombed Men May Be Released by Christmas.

ELT, Nev., Dec. 19.—The three miners entombed in the Alpha mine will, unless further trouble is experienced, probably be released by Christmas day, according to Foreman Gallagher, in charge of the rescue work. The 500-foot level was reached last night by the rescue party at work on the cave-in, and now that danger of a further cave-in has been averted, work is being pushed with all possible speed. The men have been imprisoned since December 4.

LATEST FROM THE FLEET

At Noon Yesterday, All Is Well Off Florida Coast—Ships Were Off.

ON BOARD U. S. S. MINNESOTA, Dec. 19.—At noon today the battleship fleet is due east of Jupiter Inlet, Fla. The speed today was increased to 11 knots an hour. The ships are still in double column formation. The weather is perfect. All hands are dressed in white.

THE FOOL AND THE PISTOL AGAIN.

