

# REFERENDUM CASE NOW UP TO COURT

### Attorney-General Holds Act of State Secretary in Filing Final.

## SUIT TIME LIMIT FIXED

### Brief in University of Oregon Action to Be Submitted to Judge Galloway by December 18—Objections Held Purely Technical.

SALEM, Or., Dec. 12.—(Special.)—Holding that the action of the Secretary of State in filing the petitions final; that objections to such filing must be made within 10 days and that any suit which is brought must be brought within 10 days and that no provision is made in the law for a writ of review of the action of the Secretary of State in filing petitions, Attorney-General Crawford today filed his brief in the University of Oregon referendum case to be submitted to Judge Galloway, containing points of law in the case as seen by the defense.

The brief also states that in the case at bar no suit was brought for three months after the action of the Secretary in filing and that the objections were by the plaintiff, outside of fraud, are of a purely technical nature. The brief declares that such objections are expressly prohibited from being raised by the statute itself.

The brief as prepared for submission to Judge Galloway before December 18, is as follows:

**Cases Are Equity Actions.**

These two cases are suits in equity to enjoin defendants from placing upon the ballot a couple of petitions demanding that certain appropriations made by the legislature for the State University, to be referred to the people at the state at large for approval or rejection at the next regular general election. The suits allege a conspiracy existing among the circulators and petition names, those signatures forged and petition names, those signatures of the State Secretary of State in demanding the referendum upon the said appropriations. Said petitions were filed in the office of the Secretary of State, May 19th, 1911, and the commission was made on August 17, 1911.

The whole number of names on the petition demanding the referendum on House Bill No. 210 total 232. The evidence shows that certain circulators of petitions did conspire together, write fictitious names in each other's papers, to wit: Harry Goldman, Robert Goldman, Charles Felt, Harry Kline, Joseph Carls, and W. H. Reynolds. That said circulators secured altogether names of which some 60 per cent were forged or fictitious.

There is no evidence whatever that any circulators other than those above mentioned were in any conspiracy to secure or file these petitions or forged names, hence the said 1933 names must be considered without any conspiracy against them. It is unnecessary for the purpose of this trial to tabulate each name out of the number which plaintiff attempted to show were fictitious or fraudulent, or in any way a mistake, but the whole number is less than 200, leaving at least names against which there is no evidence to show they are not genuine.

Names against which plaintiff's objection cannot be urged, and which should be deleted from his computation, 1105, leaving 232 signatures on sheets which did not contain the printed form at the top of each sheet.

**No Fraud Shown.**

No fraud is shown against any of these signatures, but plaintiff asks that they be stricken from the petition for the reason that the form of petition is not printed at the top of each sheet, the others being attached thereto.

There are some technical objections to a few more signatures, but they are immaterial for the reason that if the 232 signatures be counted, all the rest against which objections are urged, if all stricken out, would still leave the petition both sufficient, and if said 232 signatures be not counted, but be stricken out, the petition would not remain to sustain the referendum.

Plaintiff does not intend the framers of the act, nor of the people in voting the act, to leave it open until a few days before it should go to the ballot, for any person to bring a suit to enjoin the act being placed upon the ballot, whether it is a suit in mandamus to compel filing, or a suit to enjoin the Secretary of State from filing, must be taken within ten days, and ten days is the time fixed for bringing the suit after the Secretary of State has acted on the petition. The filing of the time is not in the nature of a statute of limitations, but the right is one conferred by statute upon the plaintiff, and it cannot be exercised at once. It is jurisdictional the same as the time for appeal from the decision of the court. If the appeal is not taken, and filed in the time provided by statute, then the court never acquires jurisdiction of the case.

**Views Are Summarized.**

Some other minor objections have been raised to a few signatures, but as we view the case the remaining striking out the signatures on sheets upon which the petition is not printed, controls the case at bar, and our views upon the propositions are briefly summarized as follows:

1. That the action of the Secretary of State in filing the petition is final.
2. That no provision is made by the statute for any review of the action of the Secretary of State in filing the petition, but only for review of his action in case he refuses to file.
3. That if any such suit is brought, it must be brought within ten days after the action of the Secretary in filing, or refusing to file.
4. That in the case at bar no suit was brought for about three months after the action of the Secretary.
5. That the objections urged by the plaintiff, outside of fraud, are wholly of a technical nature, not essential to the petition, and are expressly prohibited from being raised by the statute itself.

**Circulators Not Officials.**

The circulators of the petitions are in no sense public officers, as that term is defined by the courts. They are neither elected nor appointed by any authority authorized to elect or appoint public officers. Their service is voluntary and in the purchase of the law without compensation, and their acts in circulating petitions cannot be placed on the same plane as judges of election appointed in pursuance of law holding an election provided by law. This case is purely a matter of law, and no discussion. However, we suggest that the filing of the referendum petition is not final as to the law, or as to the one affecting to present the act to the source of all sovereign power, but that it is subject to review and rejection at the next election, and it is their vote which finally decides the matter. The plaintiff has wholly failed to show that the petition is so permeated with fraud that segregation is warranted, and his arguments along that line are not applicable to the facts. Neither is his proposition sound that, if one or two signatures of a petition of the circulator are shown to be a mistake, the whole petition should be stricken out.

His proof is only negative in character, and then each case is shown to be a mistake as shown by the evidence, made mistakes as to the work of the circulators, and mistakes are of such a nature that one might be justified in saying that the petition is legally sufficient, and should be placed upon the ballot.

## GREENE STILL FIGHTING

### Tacoma Man Determined Not to Go Back to Stand Trial.

ALBANY, Or., Dec. 12.—(Special.)—The most strenuously contested habeas corpus case brought in this county in many years is now being waged here for the liberation of Pearl H. Greene,

who is being held in the County Jail on a warrant issued in Tacoma, Wash., charging him with failure to support his 3-year-old child, Faith Elaine Greene. George A. Ashby, a constable of Tacoma, is here waiting to take the prisoner to the Washington city but cannot do so until the determination of the habeas corpus proceedings.

Greene was arrested by Sheriff Smith last Wednesday and habeas corpus proceedings were instituted that night. By agreement the hearing was delayed until the arrival of Constable Ashby, who secured extradition papers from Acting Governor Olcott last Saturday, granting of these papers, the old habeas corpus proceedings were withdrawn and a new petition filed and new writ issued yesterday.

On February 21 last, Greene's wife, Ida F. Greene, secured a divorce from him in the Superior Court of Pierce County, Washington. She was given the custody of their only child and was awarded \$50 a month alimony. Because of Greene's alleged failure to pay this amount, his wife swore out

## OREGON PIONEER OF 1822 DIES AT HOME NEAR SILVERTON.



WILLIAM M. CLINE, SILVERTON, Or., Dec. 12.—(Special.)—William M. Cline, a pioneer near here Monday, and the body near this Monday, and the body was laid to rest in the Silvertown Cemetery yesterday. Mr. Cline was born in Bond County, Illinois, September 10, 1822. In the Spring of 1852 he started to Oregon and landed here in just 62 days from the time of leaving Council Bluffs, Iowa. He located upon a farm near this city, which place he made his home until the end came. For several years he taught school in and near Silvertown. In 1854 Mr. Cline was united in marriage to Miss Orinda Fuller, who came to Oregon with her parents in 1852. To this union were born ten children, seven of whom are still living: Mrs. M. E. Bozorth, Seattle; George T. Cline, Port Bluff, Cal.; William Cline, Jr., Portland; Alfred T. Cline, Mrs. Jennie Van Trump, Mrs. Lulu Weisner and Mrs. Anna Hynes, all of Marion County.

a warrant in a Justice court at Tacoma for his arrest on a charge of neglecting to provide support for his child.

## ASTORIA BLOCKS PLAN

### COMMISSION FORM OF GOVERNMENT NOT TO LIKING.

### Proposed New City Charter Defeated at Special Election by Majority of Close to Three to One.

ASTORIA, Or., Dec. 12.—(Special.)—The proposed new city charter providing for a commission form of government was defeated at the special election here today by a majority of nearly three to one. The vote cast was about 40 per cent of the number registered and the result was as follows:

For the charter, 178; against, 531; total vote, 709.

While the vote was small it was fully as large as was anticipated for the reason that little apparent interest has been taken in the campaign by the public in general. The defeat of the charter was, however, expected at all the present city officers were working against it, while only a few persons were openly advocating its adoption.

The defeat of this charter does not mean that those who were fighting it are against a commission form of government, so much as it does their opposition to this particular document, which many assert was too drastic. It provided for only three commissioners, one of whom was to be Mayor and the powers given them were considered by many as too extensive and arbitrary for any three men to possess.

This charter was prepared by a committee appointed by the Mayor in pursuance to a charter amendment adopted at the election in December of last year. Some of the Councilmen who were the most active in the fight against the charter that was defeated today, assert that the Council will instruct the Mayor to appoint a new committee to prepare another charter, providing for a commission form of government, but eliminating some of the features to which objection was raised, to be submitted to a vote of the people at the next regular election in December of next year.

## JOHNS WOULD BE SENATOR

### Baker Republican to Announce Candidacy to Succeed Bourne.

BAKER, Or., Dec. 12.—(Special.)—C. A. Johns, who ran for the nomination for Governor on the Republican ticket in 1908, is expected to announce within a short time his candidacy for United States Senator from Oregon to succeed Senator Bourne.

## Reclamation Lodge, Pythians, Wins.

PENDLETON, Or., Dec. 12.—(Special.)—Reclamation Lodge, of Pendleton, has the best Knights of Pythias degree team in Umatilla County. This was the decision at Monday night's contest before the district convention. After the competitive drill a demonstration of second-rank work was given by a select team from the different lodges in the county. The convention closed with a banquet.

**Irrigation Firm Public Service Body.**

OLYMPIA, Wash., Dec. 12.—(Special.)—All power and irrigation companies in Washington are required by law to file schedules of their charges with the public service commission if they are engaged in performing a public service, says Attorney-General Vaughan Tamm, in an opinion holding that the Hanford Irrigation Company, of Hanford, is a public service company. The



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Actual Shipments to Customers—

## \$13,671,186.19

Shipments December 10, 1910 to December 10, 1911	\$13,671,186.19
Shipments December 10, 1909 to December 10, 1910	\$12,368,511.95
Gain in Shipments for 1911	\$1,302,674.24

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