

WASHINGTON'S DRY LAW IS HELD VALID

Injunction Asked by Liquor Firm Not in Power of Court, Is Ruling.

VOTE OF PEOPLE IS CITED

Judicial Inquiry Into Question Is Declared Precluded by Judge of Thurston County Superior Court—Appeal Announced.

OLYMPIA, Wash., July 27.—(Special.)—Judge D. F. Wright, of the Thurston County Superior Court, today handed down a memorandum decision upholding the validity of the Washington prohibition law. This decision was given in the M. and E. Gottstein case, originally brought to enjoin Governor Lister from issuing a proclamation declaring the prohibition law, initiative measure No. 3, carried by vote of the people at the last election. Judge Wright's predecessor, Judge C. E. Claypool, held that the proclamation must be so framed as to preserve rights of all litigants.

In his decision today, however, Judge Wright holds that the judicial inquiry into the question of the constitutionality of the law is precluded by the fact that the measure was passed by the Legislature, and that the issuance of the proclamation is an action equivalent to the affirmative of the initiative measure, and that the judicial inquiry into a legislative act, precluding judicial inquiry as to alleged irregularities occurring during adoption.

Court Is Held Powerless. After declaring that he considers the measure in the same light as though it had been passed by the Legislature, Judge Wright says:

"In my opinion, the relief prayed for is not within the power of the courts to grant, regardless of whether or not the constitutionality and statutory steps relative to submitting the measure were complied with and also regardless of whether the said provisions are mandatory or directory, especially so now that the election is over and the people have actually expressed themselves on the measure. By this I mean that the question here presented is not one for judicial inquiry."

Saying that, inasmuch as the Supreme Court has laid down the rule that an act will not be declared void unless its invalidity is so apparent as to leave no doubt on the subject, Judge Wright concludes:

"This court is not so convinced, and therefore holds the measure to be valid and constitutional."

Appeal to Be Taken.

Appeal will be taken from the decision as soon as a formal order is filed, and it is practically certain that the case will appear at the head of the calendar for the Fall term of the Supreme Court, which begins October 11.

Ex-State Senator Preston, author of the Washington compensation act; George Donworth, ex-Federal District Judge, and Dudley G. Wooten, Texas ex-Representative are counsel for the liquor men in the Gottstein case. Attorney-General Tanner and John H. Powell, the latter representing the Anti-Saloon League, defended the suit.

MOUNTAIN CLIMB DELAYED

Hood River People Heed Warning of Weather Forecaster.

HOOD RIVER, Or., July 27.—(Special.)—Having received a message from District Forecaster Beale, who predicts that squally weather will prevail around Mount Hood through the middle of the week, the party of local people who were going to climb Hood on Thursday postponed their trip one week.

The party will leave here on the evening of August 4. At Parkdale, the upper valley terminus of the Mount Hood line, rigs and automobiles will meet the hikers and take them to the National forest, from which point they will walk to Cloud Cap Inn. The ascent will be made from the inn on the following morning.

NEW TRIAL DENIED CASE

False Audit Held Law Violation Even Without Fraud Intent.

NORTH YAKIMA, Wash., July 27.—(Special.)—N. H. Case, superintendent of county road district No. 1, who on June 8 was convicted by a Superior Court jury of false audit of a road payroll of his district, today had denied a new trial. The jury found that Case had no intention to defraud the county, and recommended extreme leniency.

The motion for a new trial was based largely on the contention that this special finding was in effect an acquittal. The court held a person knowingly making a false audit, thought without fraudulent intent, violates the law.

CORNGROWING IS SUCCESS

Hood River Will Now Have Grinding Mill Established.

HOOD RIVER, Or., July 27.—(Special.)—Within the next few weeks Hood River people will be able to enjoy corn pone and hoe cake made from home-grown grain. J. R. Phillips, a mill owner on Phelps Creek, has purchased some millstones, and will establish a water mill and grind cornmeal.

Since the O. W. R. & N. Company began the distribution of free seed corn, and since "Billy" Sunday and his half brother, L. C. Helzer, demonstrated on the Odell ranch that corn could be grown here profitably, hundreds of acres of maize have been planted annually.

SENATOR BURKETT HEARD

Speech at Colville Chautauqua One of Principal Events.

COLVILLE, Wash., July 27.—(Special.)—Senator Burkett, of Lincoln, Neb., was the principal speaker yesterday at the Stevens County Chautauqua, which closed today. "The New Woman and the Young Man" was an inspirational lecture to young men and women of today.

In closing his address the Senator paid a glowing tribute to America as the mecca of all nations. This he illustrated with a story of a day at Ellis Island, New York, from his experience of last year. He discussed "Government Ownership of Railroads" today.

Hardman Has \$12,000 Fire.

HEPPNER, Or., July 27.—(Special.)—Several buildings were destroyed in a \$12,000 fire which swept through Hard-

man, Morrow County, last night. The blaze started in a blacksmith shop and leaped across the street to other buildings, including Dr. Grant's drug store, Emery's grocery store and the residence of J. H. Wyland.

TACOMA PLANT TO GROW

Smelter Capacity Will Be Doubled and Employees' Pay Increased.

TACOMA, Wash., July 27.—Announcement of plans for construction at the Tacoma smelter running into several million dollars, which will about double the smelting capacity of the plant and more than double the refining capacity, with the erection of

RESIDENT OF PORTLAND 25 YEARS DIES AT 78.



Mrs. Thora Tonseth, who had been a resident of Portland for 25 years, died at the home of her son, Cornelius Tonseth, 1325 East Stark street, yesterday at 1 A. M. at the age of 78 years.

Mrs. Tonseth was born in Trondhjem, Norway, and is survived by seven children and 13 grandchildren.

Funeral services will be held today at 2:30 P. M. at the Norwegian Lutheran Church, Fourteenth and Davis streets, with interment in Lone Fir Cemetery.

four large steel buildings, large ore bunkers, an immense refinery and nine additional furnaces, was made today by officials of the Tacoma Smelting & Refining Company, a Guggenheim concern.

At the same time, smelter officials announced an increased scale of wages to the 450 employees at present in the plant, which will add \$50,000 a year to the city's payroll.

Auditor's Trial Halted.

ASTORIA, Or., July 27.—(Special.)—The trial of J. L. Berry, Auditor and Police Judge of Seaside, on an indictment charging him with malfeasance in office, came to a sudden end in the Circuit Court this morning, when the indictment was referred back to the grand jury.

The state asked that this action be done, as the indictment was faulty in that it charges the defendant with refusing to attend meetings of the Council when the charter does not require it but says he shall keep accurate minutes of the actions of the Council.

JITNEY LAW INVALID, RULES HIGH COURT

Reversing Decision of Lower Bench Is Based Only on Technicality.

COUNCIL'S POWER DEFINED

City Has Alternative of Showing That Ordinance Was Passed Before Approval at Election. Overstepping Authority Held.

SALEM, Or., July 27.—(Special.)—Portland's jitney bus ordinance received its quietus in the Supreme Court today. Justice McBride writing the opinion, unless the city can show that it was passed by the City Council before being approved by the people. The decision against the measure is purely technical, the court declaring that the city has a legal right to enact a similar ordinance.

Recalling that the Council passed the ordinance April 2, that A. A. Thielke, George R. Barker and W. J. Christenson, plaintiffs in the suit, filed a petition for a referendum vote on the measure May 2, and that the City Council, to force the ordinance to a vote, passed an emergency ordinance repealing the other one May 12, the opinion says:

Power Exceeded Is Ruling.

"From the allegations of the complaint it appears that the original ordinance passed by the Council was repealed, and that the same ordinance, after being repealed, and therefore dead for any purpose, was submitted to the people by the Council as an initiative measure. For the purpose of the demurrer said allegations must be taken as true."

"Conceding that the Council had a right to repeal the ordinance after it had been referred, and that it had the right to pass another ordinance identical in terms with the one repealed and to submit it to a vote at the election next ensuing, we are of opinion that it went beyond its powers in submitting to a vote of the electorate an ordinance not passed by it."

The opinion reverses the decision of Circuit Judge Gantenbein, sustaining the demurrer of H. R. Albee, Mayor and defendant, and the case is remanded with directions to the Circuit Court to permit an answer to be filed within a reasonable time.

Basis for Opinion Is Given.

"Article 4 of the Constitution," continues the opinion, "as amended in 1902, provides that the people reserve unto themselves the power to propose laws and amendments to the constitution and to enact or reject the same at the polls independently of the Legislature. It prescribes the procedure by which these powers may be exercised, but nowhere does it grant to the Legislature as power to initiate laws, except Constitutional amendments, and submit such laws to the vote of the people without itself first enacting them into the form of laws."

"Constitutional amendments of section 1, article 4, adopted in 1906, extend this right to municipalities in the following language: 'The initiative and

referendum powers reserved to the people by the constitution are hereby further reserved to the legal voters of every municipality and district, as to all local, special and municipal legislation of every character, in or for their respective municipalities or districts.'"

CITY IS FAVORED, IS VIEW

Decision Interpreted as Defining Future Power of Council.

Portland's jitney ordinance is dead, but another one may supplant it within a short time. The effect of the Supreme Court decision yesterday nullifies the measure passed by a good majority at the June 7 election.

The Supreme Court said that the city must show that the Council legally passed the ordinance. The City Council cannot show this for the last action of the Council with respect to the jitney ordinance was to repeal it. That was on May 12.

And yet city officials consider that the decision of the Supreme Court really is favorable to the city. It establishes the constitutionality of an ordinance regulating jitneys. It puts it within the power of the City Council to pass another such ordinance and have it go into effect immediately, provided they attach an emergency clause. Such a measure, with this clause attached, would be safe from attack by referendum petition.

It is doubtful if the suit ever will receive another hearing, although it has been remanded for a new trial before Circuit Judge Gantenbein. The opinion, unless the city can show that it was passed by the City Council before being approved by the people. The decision against the measure is purely technical, the court declaring that the city has a legal right to enact a similar ordinance.

Recalling that the Council passed the ordinance April 2, that A. A. Thielke, George R. Barker and W. J. Christenson, plaintiffs in the suit, filed a petition for a referendum vote on the measure May 2, and that the City Council, to force the ordinance to a vote, passed an emergency ordinance repealing the other one May 12, the opinion says:

Officials Favor New Ordinance.

So the Council repealed the jitney ordinance on May 12. Then the Mayor called a special election, and the Council to submit ordinance to the people to be voted upon, was amended. The amendment, which had an emergency clause attached, permitted measures to be submitted by the Council 15 days before an election, instead of 30 days as before. Armed with the amended McNary ordinance, the Council then submitted a new jitney regulating ordinance to the voters.

The ordinance was passed by a good margin at the June 7 election. The A. A. Thielke, George R. Barker and W. J. Christenson, jitney men, filed suit to break the ordinance.

City officials yesterday expressed themselves favorable to the plan of passing another jitney regulating ordinance immediately.

"I favor the re-enactment by the City Council of the ordinance the people voted on," said Mayor Albee. "I think that the passage of the ordinance by the people indicates what was wanted and what is the duty of their representatives in the matter."

"I will not make a definite statement until I have a chance to look into the matter," said Commissioner Daly. "We probably will refer the proposition to the City Council with a view to the adoption of a jitney ordinance within a few days. First we must get a copy of the decision and look into it thoroughly."

Commissioner Bigelow expressed the belief that all the members of the City Council would favor the adoption of a jitney ordinance.

"The idea of the decision," said City Attorney La Roche, "is that the initiative powers are lodged with the people rather than the City Council. It does not do away with the power of

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the Council to pass such an ordinance, however, which means that tomorrow the Council may pass and put into effect a new jitney ordinance with an emergency clause."

Mr. La Roche says that the Supreme Court's decision invalidates a section of the so-called McNary ordinance, permitting the Council, by resolution, to refer measures to the people to be voted upon. The McNary ordinance, however, still is valid with reference to charter amendments. The Supreme Court itself held it valid a year ago.

Even the attorneys for the jitney men did not fully expect a reversal of Judge Gantenbein, it was indicated yesterday. They already had laid their plans to appeal to the Supreme Court of the United States and had prepared briefs and necessary papers for the purpose.

EVANGELIST TO VISIT FAIR

"Billy" Sunday Will Preach at San Francisco Near Exposition.

HOOD RIVER, Or., July 27.—(Special.)—"Billy" Sunday and Mrs. Sunday will leave their Odell ranch tomorrow

AWARDED MEDAL OF HONOR AT PANAMA-PACIFIC EXPOSITION

"No merece tener amigos el que se expone á perderlos"

("He has no right to friends who risks them.")

Stop, my friend, if you have no knife I will lend you mine.

I ask in the cause of good smoking that you do not bite off the end of that **bueno Van Dyck Cigar**.

The Cuban workman spent much care upon that head. He fashioned it too carefully that you should bite it. Do you not know that you risk the security of the wrapper and the even draught when you begin your smoke in so rude a fashion?

It is better that you cut the end away—better still if you cut a **small notch** in the head. Then the wrapper can hardly loosen, and you invite your cigar to draw smoothly from end to end.

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