WASHINGTON DRY LAW HELD SOUND

Supreme Court Is Unanimous in Decision, Longest Ever Filed at Olympia.

LAW IN ENTIRETY STANDS

Effect of Court's Decision Is to Establish for All Time Validity of Direct Legislation Amendment.

(Continued From First Page.)

part of the constitution so as to furnish any authority for the adoption of initiative measure No. 3 by vote of the people.

"Second—That if the seventh amendment to the constitution be a valid part thereof, initiative measure No. 2 was not legally submitted to and adopted by the people so as to become an existing law, aside from the constitutionality of its provisions.

"Third—That initiative measure No. 3 is unconstitutional and void, especially in that it violates the equal privileges and immunities and equal protection of the guarantees of the state and Federal constitutions, and also in that it interferes with interstate commerce."

Contentions Are Cited.

One of the first contentions raised by the liquor men was that the initiative and referendum amendment was void because of the joinder of the two subjects, preventing those favoring the referendum but opposed to initiative, or vice versa, from distinguishing between them. Answering this the court states:

"The logic of counsel's contentions would seem to lead to such a minute subdivision of matters liable to become the subject of constitutional amendment as practically to define out of existence the power of the people to amend the constitution. The amendment is but one section of the constitution, it deals with one subject, and looks to the accomplishment of one purpose."

The principal attack upon the amendment, however, was based upon alleged faulty publication, it being stipulated that in some counties publishers of newspapers printed the text of the proposed amendment as soon as copy was received, thereby completing the three-months' publication some weeks before the election, and failing to follow the constitutional provision that such publication must be in the three months "next preceding" the election.

Difficult Problem Presented.

In this connection the opinion states:

This branch of the case, to our minds, presents the most difficult problem in the entire controversy, the importance of the correct solution of which cannot be overestimated. Viewed as a fundamental principle of orderly constitutional government, nothing seems more important than that the mandates of the constitution touching the procedure to be followed in bringing about changes therein by amendment should be followed by those to whom such mandates are directed. It may seem equally important that the courts should declare void and of no effect any attempted amendment to the constitution which is not attended by those things prescribed by the constitution itself as prerequisite to the bringing about of its amendment. This, it is now beyond question, the courts have power to do; more, it is their solemn duty to do, when the want of constitutional prerequisites is of a substantial nature and such that the courts can judicially know that there has been such want of constitutional prerequisites.

Important as these things are, and plain as the power and duty of the courts may be in such cases, it is of no less consequence that the courts must never declare void and of no effect a constitutional amendment when all of the facts which are within the realm of the judicial knowledge touching its submission and adoption by the people point to its lawful submission and adoption, whatever other facts may exist to the contrary.

To look to facts beyond "the realm of judicial knowledge, which, generally speaking, is limited to facts evidenced by public records and facts of general notoriety," in determining the lawful existence of a constitutional amendment, "would leave the lawful existence of this and every other amendment to our constitution an open question, to be tried out as a question of fact as many times as there might be different cases drawing its existence into question, even a generation later," the court states, adding: "Surely the existence of our written law does not rest upon such a precarious support."

Stipulations of No Force.

"It seems to follow as a matter of course, that stipulations or admissions of counsel as to what the facts are, can be of no controlling force whatever, though possibly the court may look to such stipulations or admissions to refresh its memory as calling its attention to facts within the realm of judicial knowledge, as it would look to an almanac to be reminded of the day of the month or to an historical work to be reminded of the date of some prominent historical event, or to official records of public acts."

Neither the constitution nor statutes make any provision for an official record of prescribed publication, the court states, adding that the officially recorded facts in connection with the seventh amendment are that the Legislature of 1911 submitted such an amendment as evidenced by entries in its journals; that at the election of 1912 there were cast 110,110 votes in its favor and 42,505 against, as evidenced by the canvass of the Secretary of State and that the Governor issued the required proclamation declaring the amendment adopted.

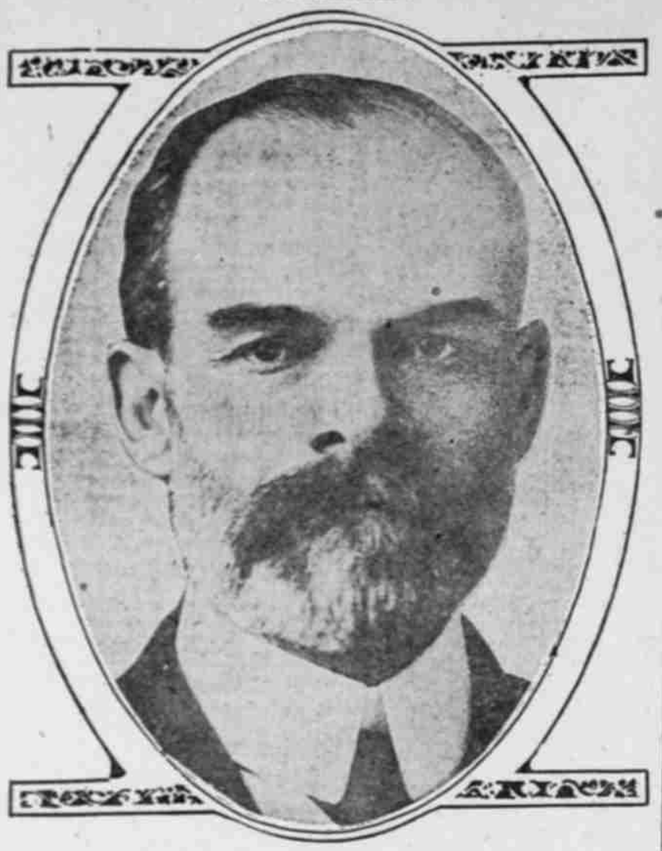
"There may be other officially recorded facts we would notice if necessary," the opinion continues, "but no officially recorded fact, that is, no fact required by constitution or statute to be recorded, and no fact of such notoriety as to bring it within the realm of judicial notice answers the question of whether the publication of the proposed amendment prior to the election at which it was voted upon, was or was not made as the constitution prescribes."

Court Summarizes Case.

Concluding its discussion of this phase of the case, which takes up more than one-half the opinion, the court summarizes: "We are of the opinion that since all the facts within our judicial knowledge point unerringly to the regular submission and adoption of the seventh amendment to the constitution, we must now conclusively presume that all required steps incidental to the submission and adoption of that amendment, which are beyond our judicial knowledge, have been done as prescribed by the constitution and that it is now a valid part of our organic law."

Much the same line of reasoning is followed in disposing of the second main contention, that the initiative act itself failed on account of faulty publicity, it being stipulated that voters failed to receive the pamphlet of initiative and referendum measures 50 days before the election, as required by the constitutional amendment. The issuance of the pamphlet in 1914 actually was held up because cases involving

WASHINGTON SUPREME COURT MEMBER WHO WROTE PROHIBITION DECISION.



MR. JUSTICE EMMETT PARKER.

seven of the proposed measures were in the Supreme Court at the time.

Neither the constitution nor statutes make any provision for a record of the sufficiency of publication, the court finds, the official record merely showing the initiation of the prohibition measure, its adoption by a vote of 189,-849 to 171,298, the canvass of election returns and the issuance of the Governor's proclamation.

Arizona Case Recalled.

In Arizona it was decided that the issuance of the Governor's proclamation alone precluded the court from examination into alleged irregularities, the court says, but indicates that it does not adopt this doctrine, but will look to all facts established by official record, and to these alone, concluding its discussion of this phase by stating:

"We are of the opinion that due publication of initiative measure No. 3, prior to the election of 1914, at which it was voted upon must now be conclusively presumed to have been made as the constitution and statute require, and that it has not failed of lawful adoption because of want of such publicity."

Another contention in connection with its submission was that the prohibition bill failed to receive one-third of the total votes cast at the election, the prohibition opponents arguing that to obtain the total number of votes cast at the election, the number of votes cast upon all initiative and referendum measures should be added together. The court classes this contention as an absurdity, taking judicial notice that 241,643 electors voted in 1914 and that 241,048 voted on the prohibition question.

Third Set of Objections Viewed.

Next the court goes into the third set of objections raised against the act, those going into its own alleged intrinsic defects. The initiative and referendum amendment itself provides that a measure enacted under it becomes effective, if adopted, 30 days after the election. Initiative measure No. 3 carried the provision that it should not go into operation until January 1, 1916, but the conflict on account of the "saving clause" does not, in any event, affect the validity of the rest of the act, the court says, and the controversy is not as to the time when its provisions will become enforceable. The court indicates, however, that it would draw distinction between the measure "becoming a law" 30 days after the election, which it regards as incontrovertible, and the date of its terms "becoming enforceable."

The constitutional objection that the prohibition act is discriminatory, in that "it permits registered druggists and pharmacists to sell intoxicating liquors for mechanical and medicinal purposes under certain conditions, while such privilege is withheld from others," is next considered.

"This question is not new to the courts," the opinion states, and proceeds to quote from other jurisdictions, finally ruling that this is not a discrimination between persons, which would make the act void, but a mere classification of businesses, basing its ruling to this effect largely upon the recent decision upholding the new fish code, in which it was held immaterial that license fees for gill netters as a class had been increased out of proportion to others in the fishing industry.

Final Question Taken Up.

The final question considered is that of alleged interference with interstate commerce. The court states:

It may well be doubted that appellants are in position to make this challenge to the law because of sufficient allegations in their complaints. They are, in any event, in no position to make such contention in this form of action insofar as shipment into the state for their personal use is concerned. This question we leave wholly undecided as not being properly before us. We may assume for argument's sake that insofar as shipment of liquors into the state for sale and disposition as a part of their business is concerned the allegations of the complaint are sufficient to entitle appellants to raise this question. It seems to us, however, that the question of the validity of this law insofar as it is claimed to interfere with interstate commerce is concerned is answered fully adverse to the contentions of counsel for appellants by the express terms of the so-called Webb-Kenyon act of Congress of March 1, 1913.

The title of this measure is: "An act divesting intoxicating liquors of their interstate character in certain cases."

"Nothing," the court says, after quoting at length from this act, "could seem plainer than that, by the terms of this act of Congress, the dealing in and shipment of intoxicating liquors are no longer exempt in any degree from state regulation by the fact that such liquor may be an article of interstate commerce. We conclude that initiative measure No. 3 does not unlawfully interfere with interstate commerce."

Other Questions Presented.

In conclusion, the majority opinion states:

Some other constitutional questions are presented by counsel for appellants; but we think they are not such as appellants may raise in this form of action. These questions do not involve property rights of such nature as to entitle appellants to relief by injunction against the enforcement of the provisions of initiative measure No. 3. Whatever our views might be on these questions would not render the provisions of the law we have discussed unconstitutional. In view of the provisions of section 28 (the saving clause) above quoted.

We are of the opinion that initiative measure No. 3 is an existing law of the state, and that insofar as its provisions are here drawn in question, their enforcement will not violate any of the rights guaranteed to appellants by either the state or Federal constitutions. The judgment of the Superior Court, refusing to enjoin the state and county officers from enforcing the law, is affirmed.

Judge Chadwick's characteristic separate opinion, about 1200 words in length, takes exception to the reasoning of the majority that stipulated facts cannot be considered if they do not form a part of the official record, stating in part: "The decision of the court seems to be well-founded in all respects excepting only the holding that the court cannot consider the admission that initiative measure No. 3 was not published for the time required by law and cannot take judicial notice of the fact."

Judge Chadwick Gives Reason.

The Secretary of State, it is stipulated, Judge Chadwick adds, did not give sufficient notice, adding: "I had hitherto understood that courts would consider as a part of the record, stipulated facts. It is held that we will not do so in this case.

"I had also thought the law to be that we could judicially notice any fact that went to a question of observance or non-observance of a provision of the Constitution, mandatory in character, by an officer high in station and whose act affected the whole public, and when the fact was known to all men."

Judge Chadwick states the publicity provision in the seventh amendment was inserted by its proposers because they knew the strength of the initiative and referendum "depended, not merely upon the participation of the people, but upon intelligent participation," and caused insertion of the mandatory requirement as to publicity.

"Omission Common Knowledge."

The omission of requisite publicity, in the late mailing of the election pamphlets, Judge Chadwick continues, is a matter of common knowledge, adding, "I think there is no instance in the books where, under like circumstances, a court has refused judicially to know what they know as men. If a court cannot accept stipulated facts or judicially recognize a breach of a duty made mandatory by the constitution I can imagine no case where it would be justified in resorting to judicial knowledge.

"We have laid down a rule that will be as readily seized upon to sustain an evil law as to uphold a good one. The rule must work both ways. If we could know as judges what we know as men we would undoubtedly follow an unbroken line of decisions and hold that measure No. 3 was not legally adopted.

"I have urged these things. They are fundamental principles and might be sustained by the writings of men learned in the law from Aristotle to the present day, but they have not commended themselves to my associates.

"Seven of my associates find no violation of the constitution in the adoption of the questioned law, or rather they hold that the court is powerless to notice and correct the admitted omission to observe its terms, and I feel that I can do no better than to say that I yielded my judgment to that of the majority as I would follow a questioned decision under the doctrine of stare decisis, and concur in the result not because it is the law, as I had understood it, but because it has been so declared by a competent tribunal."

Governor Lister Present.

Governor Lister was in the Supreme Court rooms when the decision was given out at 11 o'clock this morning. Afterwards he said:

"By a substantial majority the voters of the state enacted initiative measure No. 3 into law at the last general election. By its decision, handed down today, the Supreme Court has declared it is constitutional. The law becomes operative on January 1.

"Public opinion will have much to do with its enforcement. If the will of the majority, as expressed at the polls and the decision of the court be accepted by the people of the state, there will be little difficulty in connection with its enforcement. If, on the other hand, there be persons inclined to its violation, every public official ought promptly to do his part in seeing that law violators are brought to justice and in this ought to have the support

(Concluded on Page 16, Column 2.)

SALIENT FEATURES IN CONNECTION WITH WASHINGTON SUPREME COURT'S DECISION ON DRY-LAW AMENDMENT.

Validity of initiative prohibition measure adopted by the voters at the election of November, 1914, prohibiting sale of liquor in Washington after January 1, 1916, upheld unanimously.

Opinion affirms decision of Judge D. F. Wright, of the Thurston County Superior Court, in which he held that the law was valid in every respect.

The decision covers 58 typewritten pages, probably the longest ever handed down.

Every saloon and every brewery in the state will have to go out of business on January 1, although individuals may import for their own use not to exceed two quarts of liquor other than beer or not more than 12 quarts of beer every 20 days for private consumption in private homes.

The court first disposes of the contention that the initiative and referendum amendment to the constitution adopted in 1912 was invalid by upholding it on every point of attack.

The court holds the law was duly submitted and enacted according to law.

The contention of the brewers that a sufficient number of votes had not been cast is disposed of in short order.

In regard to the "discriminatory" points raised by the opponents of the law, which allows physicians and others to dispose of liquor, the court says the question is not a new one, but adds that the present law does not in any way violate the guarantee of constitutional rights.

Contention that initiative and referendum should have been submitted as separate propositions found groundless. Other alleged defects not to be considered in present action on injunction proceedings, but saving clause is upheld, providing that if any portion of the act subsequently is found invalid, this will not affect other sections.

The contention that the law violates the rules of interstate commerce is handled by the court in saying that while there is a question of the right to raise the point, it is governed by the Webb-Kenyon Federal act.

The term "intoxicating liquor" is strictly construed in the act, so as to cover medicines containing liquor. It is made unlawful to manufacture, sell, barter, exchange, give away, furnish or otherwise to dispose of intoxicating liquor, or even to keep it, except in small amount, but a private person may give liquor to guests in his own house.

Druggists may fill prescriptions for liquor, but each prescription must be canceled and recorded when filled, and not refilled.

Permits may be obtained from County Auditors for importation of liquor. The utmost publicity is required to obtain the permit, and in shipping liquor the outside dealer must affix the permit conspicuously on the package, which also must be labeled, in large letters: "This package contains intoxicating liquor."

Any citizen of the state may swear to a complaint before a Justice of the Peace against a violator of the act. This last provision, lawyers say, will make the law enforceable.

The suit was begun in 1914 by M. and K. Gottstein, liquor dealers, of Seattle, to enjoin Governor Lister from issuing his proclamation and Attorney-General Tanner and the Prosecuting Attorney of Thurston County from enforcing the act. Judge Wright held for the state and the liquor men appealed.