SUPREME COURT

Attorney-General Quotes Law and Shakespeare in Assailing Act of Legislature.

JUDICIAL POWERS SEIZED

Crawford Says Constitution Bars Appointment of More Than Three Judges-Official Cites Coo-

Authority.

SALEM. Or., Dec. 4 .- (Special.))-Attorney-General Crawford, in his reply brief in the case of the State of Oregon against Sam Cochran, in which he con-tends that there is no authority of law for more than three is no authority of law for more than three justices of the Su-preme Court, not only brings to bear a mass of legal authorities but finds a pass-age in Shakespeare that is apropos. In "The Merchant of Venice," in the trial of Bassanio before Portia, disguised as a judge of the court, with Shylock as the prosecuting witness. "standing on his bond," and the merchant offering to substitute for the pound of flesh demanded by the Jew, three times the sum in cash named in the bond, Portia declares;

named in the bond. Portia declares:
It must not be; there is no power in Venice is an alter a decree established;
Twill be recorded for a precedent.
And many an error by the same example Will rush into the state; it cannot be.
The Attorney-General, referring to the argument of amicl curiae that the business of the court requires the services of more than three justices, admits the contention but shows the danger of remedying this state of affairs by the above quotation from the Bard of Avon.

No Precedent Found.

"Also," declares the brief, the learned counsel might have saved the labor ex-pended in their effort to impress upon the court the proposition that state con-stitutions are not a grant, but are in-hibitions of power, and that the Legislature of a state can exercise its legislative power upon any subject, if not in-hibited from so doing by the constitu-tion. That doctrine is fundamental and has never, to our knowledge, been con-troverted. The question under considera-tion is whether said chapter 50 of the laws of 1900 contravenes the provisions of Section 10 of Article VII of the Oregon

Constitution Amendment Needed.

"It cannot be maintained that an express inhibition against creating more courts and investing them with judicial powers is found in Section 1 of Chapter 50, yet in the whole life of the state, no one has ever claimed that the judicial system could be changed, without an amendment of the constitution, and in all acts creating Commissions, like the Railroad Commission, the Board of Control of Water Rights, and other boards and com-missions, which are given authority to decide matters in the first instance, an appeal to the courts is provided for any one not satisfied with the decision of the said board or commission, and if the right to invoke the jurisdiction of the courts is denied the power vested or attempted to be so vested, in such board or commission has universally been held uncon-stitutional."

Judiciary Construes Law.

In support of this contention the reply brief quotes the Encyclopedia of Law, Knickerbocker vs. People, 102 III. 218, and Capitol Lumbering Company vs. Hall. 9 Oregon 92-101. The brief continues: "Yet the inhibition in said section 1, that judiclai power can be vested in no other courts, is implied from the language

Copious citations are made from the words and opinions of Judge Cooley, known as "the beacon light of American juris-prudence." From Cooley's Const. Lim. (7th ed.) pp. 131, 132, the following is

The legislative power, we understand to be the authority under the constitu-tion, to make laws, and to alter and reposi them. The difference between the departments undoubtedly is that the Legislature makes, the execu-tive executes, and the judiciary construes

Judicial Question, This

The above is quoted in refutation of the claim that the number of justices is a political and not a judicial question, contended by Judge Martin L. Pipes in his brief submitted as amicus curiae.

Judge Cooley also quotes from Newland vs. Marsh (19th Ill., 383), as follows:

"The legislative power extends only to

the making of laws, and in its exercisit is limited and restrained by the paramount authority of the Federal and state

Commenting on this quotation, the At-

torney-General says:
"In the case at bar, the Legislature made chapter 50 of the laws of 1909, and It most assuredly cannot be the final judge of whether, in the exercise of its law-making power in so doing, it con-travenes the state or Federal Constitu-

"To declare what the law is or has been is a judicial power; to declare what the law shall be is legislative."

Conflict Is Fatal.

"However, in so doing the Legislature must not conflict with either the Federal or state constitutions, and if it does, the

legislative declaration must fail."

Attention is called to the fact that the Supreme Court of Kansas, in the case of state ex rel. vs. Francis, Treasurer, took jurisdiction of the question as to whether the House of Representatives of that state consisted of more members than it was entitled to, and declared an act passed by the Legislature, enacted with the aid of four members who, the court

held, were not entitled to sit therein, to be unconstitutional and void. After quoting the section of the con stitution fixing the number of Circuit and Supreme Court Justices, the brief states: The fact of fixing the number as to Supreme Justices and not doing so as to Circuit Judges, shows that the power was reserved as to increasing the numher of Supreme Judges but left to legislative discretion or the power of the con-stitution the necessary number of Circuit

Court Reorganization Effected.

Justice Lord in the case of Newson et al. vs. Greenwood, 10th Oregon, which says decisively that there was a complete re-organization of the courts of the state "when the white population reached 20c. and that "although invested with same supreme judicial power, it is

judicial system. The old system could not exist when the new was brought into

Decision Still Stands.

Attention is called to the fact that this decision has never been overruled "nor the force of its reasoning doubted. prior to said act of the Legislature un-der discussion. . . If the power now exists to create additional Justices of the Supreme Court it must have existed in 1878, and no lawyer or layman has been discovered until recently who had the presumption to even intimate that such was the case."

Cooley on Constitutional Limitations is quoted: "Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the Legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction. Possible or even probable meanings, when one or even probable meanings, when one is plainly declared in the instrument itself, the courts are not at liberty to search for elsewhere."

Voters' Interpretation Guides.

The Attorney-General declares that 'the people who voted for the constitu-tion had no idea that the words 'one of which classes shall consist of three Justices of the Supreme Court' meant three or more Justices of the Supreme Amici curiae, in their briefs in the

ochran case, cite Article VI of amend-

SALOON CASES UP

Twenty-three Proprietors Are Arrested at The Dalles.

STERN REFORM DEMANDED

Council and Municipal League Hold Spirited Session, and Mayor Orders Marshal to Enforce

the Law.

THE DALLES, Or., Dec. 4 .- (Special.) -Warrants have been served on 23 sa loon men of The Dalles, accused of sell-ing liquor to minors. The men were arraigned before City Recorder Davis Cochran case, cite Article VI of amend-ment to the Federal constitution, provid-guilty. The cases will be tried sep-

PRAIRIE CITY COUPLE SURPRISE FRIENDS WITH THANKS-GIVING WEDDING.



MR. AND MRS. JACOB PAULUS, THE BRIDE, WAS FORMERLY MISS HESTER LAURANCE.

PRAIRIE CITY, Or., Dec. 4.—(Special.) — A Thanksgiving wedding has just become known to the people of Prairie City. Jacob Paulus and Miss Hester Elizabeth Laurance surprised their many friends when they were quietly married at the home of the bride's brother, Steve Laurance, Deputy County Clerk in Canyon City, ... ednesday, Novem-

Mr. and Mrs. Paulus are among Grant County's most popular young people. Mr. Paulus is a prominent stockman of Grant County, and the bride is the daughter of Mr. and Mrs. E. P. Laurance. Mr. Laurance is an extensive landowner and prominent in political circles. Mr. and Mrs. Paulus will make their home in Prairie City.

ing that persons accused of crime shall enjoy the right of speedy trial, and other authorities to the same effect. In reply to this the brief of the Attorney-General and his associates report that "the Supreme Court does not try persons accused of crime, but is an appellate tribunal, and can only examine the record to determine whether the person accused has had a fair and impartial trial in the court below, and whether the trial has Frank. Al Nelson, Charles Friedly, Frank, Kidd, Owen Matthews, and een so conducted as to deprive him of any constitutional right. The right of appeal is not a right guaranteed un-der the constitution, nor does it exist at common law. When a person accused of crime has had a fair and impartial trial before a jury in Circuit Court, all constitutional guarantees have been ful-filled, regardless of the congested or noncongested condition of the Supreme Court

statutory privilege. After the main part of the reply brief was set in type, Judge Martin L. Pipes, as a friend of the court, submitted a short brief in which he set up the claim, or rather draws the inference, that the question raised by the Attorney-General is a political one for the reason that if all five of the members of the court, as now constituted, should insist upon passing upon the merits of the motion of the Attorney-General, and they should disagree and two mandates should be sent down to the trial court, the lower court would be puzzled as to which to

The reply brief asserts that no such thing could possibly occur, that the two additional Justices would hardly wish to sit in judgment on their own eligibility "precedent, if not propriety, forbidding" and that there has never been any claim that three members of the court, as at present constituted, are not legally entitled to sit and act as such Justices.

NEW DIVORCE RULE MADE

Responsibility for Care of Children Is Without Limit.

SALEM, Or., Dec. 4.—(Special.)—Rul-ing that there is no statute of limitations in a divorce suit as far as re-sponsibility of children is concerned, and announcing that the equity court in this district will establish a precedent by demanding that all divorce complaints take cognizance of issue of the marriage, Judge William Galloway in the Circuit Court today offered some points of interest. The divorce in question is that of L.

Q. Bowers vs. Elizabeth Bowers, set-tled by Judge R. P. Boise over ten years ago. At the time the case we settled no mention was made of the support of two children, issue of the marriage. In a recent complaint it is marriage. asked by the defendant's counsel that support be given the minor children until such time as they reach majority, and that settlement be made on the same basis for the years intervening since the settlement of the suit, during which time no provision was made for the support of the issue. Judge for the support of the issue. Judge Galloway stated that the divorce case, as far as final settlement of the decree itself is concerned, is closed and past, but as to responsibility for the care of the children there can be no limitation

The case has been taken under advisement.

A SIMPLE REMEDY.

the same supreme judicial power, it is not the same Supreme Court which existed prior to the act of the Legislature.

The power given by the constitution to the Legislature to constitute a Supreme Court, to be composed of three members, whose tenure of office was to be derived from the voters of the state, when exercised, put an end to the former.

Frank Kidd, Owen Matthews and Charlie Allen. A complaint was filed against one other, but it was discovered a mistake had been made, owing to the similarity of the names of two

Proposed Reforms Drastic.

While the city officials were moving against the saloon men, the committee five, representing the Municipal docket. The right of appeal is only a League, was almost simultaneously framing an ordinance recommending drastic changes in the city charter, regulating the sale of liquor.

The ordinance was presented and read at last night's meeting of the City Council. After it had been thoroughly discussed by members of the audience which crowded the Council chambers to the doors, and the Council, the ordinance was tabled. The measure was considered too drastic by tile city fathers. The principal recommendations were: cense from \$400 to \$1000 per annum; 10 cense from \$400 to \$1000 per annum; 10 o'clock P. M. as the hour for closing; abolition of rear entrances and rear rooms; the final reduction of the number of saloons to a maximum of 12; the Council to be given the power to revoke licenses upon the conviction of any proprietor of violating any law; no renewal of license where conviction has been secured. Council's has been secured; Council's action to be final; each saloon to be furnished with glass fronts, and the bar so arranged that every patron would be in plain view of passersby.

Wingate Raps ex-Mayor.

Ex-Mayor J. L. Kelley, president of e committee of five, representing the Municipal League, was the principal speaker in favor of the proposed ordinance. Mayor Wingate asked his predecessor if it would not have been just as well had he (Kelley) championed such an ordinance during his term of office instead of leaving his term of office, instead of leaving it for a later

Mayor Wingate insisted the people platform was defeated by a vote of

A committee of four Councilmen and partment of Agriculture.

The delegation contended that teamned or ordinance governing the sale of sters from the mountain timber discounted to the content of the con A committee of four Councilmen and the Mayor were authorized to draw up an ordinance governing the sale of liquor and licensing saloons in this city. The committee is composed of Mayor E. M. Wingate, Councilmen Grant Mays, L. A. Schanno, J. F. Mc-Inerny and G. C. Blakeley, A report will be made at an adjourned meeting. will be made at an adjourned meeting Friday night, December 10.

Mayor Wingate informed Chief o. Police Harper that he would be held strictly accountable for any negligence in enforcing the laws. The Chief asked for an additional officer during the time the saloon cases are being

Council voted last night to stand by its promises that saloon men accused of violating the law would be prosecuted.

SCHOOLS GET MORE MONEY

Ashland Taxpayers Increase Fund by Special Taxation.

ASHLAND, Or., Dec. 4 - (Special.)-Taxpayers of Ashland at a special school meeting today voted to raise over \$20,000

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by special tax for the support of the free public schools of the city for the ensuing that the Government road may be placed back in good condition. stimated receipts from the state and ounty fund and includes a provision for the installation of departments of manual training and domestic science in the schools for the coming year.

The total taxable property of the district is nearly \$3,000,600. One additional grade and one more high school teacher are provided for in the estimates for next

BONDS SOLD, ROAD BUILDS Completion of Nez Perce & Idaho by

March Likely.

LEWISTON, Idaho, Dec. 4 .- (Special.) Bonds to the amount of \$125,000 were floated in Chicago Thursday to provide funds for the completion of the Nez Perce & Idaho Rallroad, extending from Nez Perce to Vollmer, 12 miles. The construction of this road was

begun is months ago by Z. A. Johnson, of Nez Perce. He completed the grad-ing, the bridges and the first mile of track last Summer, expending approxi-mately \$100,000 of his own funds, but because of delays in securing material and financial disappointments, he was unable to complete the line in time to claim a \$50,000 bonus offered by the farmers of the country to be

rved.
The rails will be ordered at once. and it is expected the road will be in operation March 1. During the past Summer three large warehouses have been erected along the right of way, and more than 500,000 bushels of grain are now in storage awaiting transportation. The road will pene-trate the heart of the Nez Perce prai-rie country, and will connect with the Camas Prairie Railway Company at

FAMOUS ROAD IS SPOILED

Expensive Highway Almost Ruine by Excessive Traffic.

SALEM, Or., Dec. 4.—(Special.)—The fact that road districts near corporate limits have roads that are used extensively by people in outlying districts, while those same outlying districts have roads which are never used by the people who reside in the close vicinity of corporate limits, is the bone of contention which called a large deledld not want such drastic measures, of contention which called a large delegating that a reform candidate who gation to the city folay to appear besought the office of Mayor on just such fore the County Court in behalf of the Government road, which was constructed here a few years ago by the De-

tricts, carrying heavy loads of wood, had materially injured the experimental road of the Government north of Salem, and that repairs are now necessary

The County Court is in a quandary as to how to settle the difficulty, but has offered the district a rock-crusher

bscesses

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