

SUPREME COURT TO JUDGE ON FACTS

Lower Court Judge Cannot Set Aside Verdict Rendered by a Jury.

ANALYZE NEW AMENDMENT

Judge Martin L. Pipes' Interpretation Is That Rule for Civil Cases Will Likewise Be Applied to Criminal Cases.

That the Supreme Court has power to fix judgment of an action of law upon the facts and the evidence, regardless of what the lower court may do; that the judge in the lower court cannot set aside a verdict of a jury, no matter how unreasonable, that omitting the lower courts from the constitution is not material; that the rule for civil cases will apply equally with those that are criminal; that the Supreme Court cannot re-examine a fact found by a jury, and that the Legislature has power to change jurisdiction and the courts, are among the points elucidated in an interview with M. L. Pipes, of Portland.

Judge Pipes deals with the issues which involve the adoption of the judicial amendment to the constitution of Oregon at the recent election and clearly points out that if the law is not satisfactory it can be changed by the Legislature. He says that the "People's Legislature," which label he puts on the initiative and referendum. Judge Pipes' statement follows:

Criticism Not Intended.

"My purpose the other night at the Bar Association was not to criticize the new judicial amendment, but to arrive at the true construction of it, applying the rules of construction applicable not only to constitutions and laws, but all other written instruments."

"Without entering into the detail of the argument there made, I can tell you in a few words the conclusion I have reached on that subject. Some able lawyers disagree with my conclusion, but have not, to my mind, shaken it."

"I think the plain intent and purpose of the amendment in respect of the function of the Supreme Court, in actions at law, is to empower the Supreme Court to try actions at law on appeal, upon the evidence and record in the case, and from the evidence and record to determine what the correct judgment should be on the law and facts and so enter it as a judgment of the Supreme Court without sending the case back to be tried again in the lower court. That is the change in the old law effected by the amendment, if I am right."

Power Lacking Under Old Law.

Under the old law the Supreme Court had no power to pass on the facts in an action at law. Its power extended only to reversing or affirming the case upon consideration of errors of law claimed to have been committed by the judge of lower court. The supposed evil to be corrected by the new amendment was the prolongation of trials caused by the necessity of trying the case again in the lower court, and the possibility of another appeal. I think that evil is intended to be remedied by allowing the court, with the evidence before it, to try the case on appeal, regarding the supposed erroneous rulings of the lower court. This is made clearer by the provision in the new amendment to the effect that if the court is of the opinion from a consideration of the evidence and record that the judgment of the lower court should be changed and that it is not a question of law, the court is to enter its judgment in the same manner and with like effect as a suit in equity.

In suits in equity the Supreme Court has always had the same power upon the pleadings and evidence and entered a decree in that court which is a decree of the Supreme Court, enforced, however, according to its directions in the Circuit Court. There are no new trials in equity cases except that some times when the lower court has not fully tried the case it is sent back for that purpose. Ordinarily an equity case is finally completed in the Supreme Court. I think the new amendment is to apply the same practice in actions at law.

Criminal Cases Affected.

Although not expressly stated, it is implied in the amendment that the new rule is to be applied in criminal as well as civil actions. It is provided that nothing in the amendment shall be construed to authorize the Supreme Court to find a defendant guilty of any offense the punishment of which is greater than that of which the accused is convicted. I think from considerations not necessary now to argue that this means that the Supreme Court in a criminal case may reverse a judgment of conviction and if the evidence before it justifies may find the defendant guilty of a lesser degree of the offense of which the accused was charged. It does not authorize the Supreme Court to find a defendant guilty of a different offense from that charged.

Another radical change is effected by the amendment which provides that there shall not be a re-examination of the facts after the trial by any court of the state if the court can affirmatively say that there is any evidence to support the verdict. I think that the word court in that clause means the trial and not the Supreme Court. The Supreme Court never did have authority heretofore to re-examine questions of fact passed on by a jury, and this clause must be supposed to refer to the courts that have heretofore exercised that power, that is to say, to the Circuit Court.

But the clause changes the power of the Circuit Court in an important particular. Heretofore trial judges had the power and the duty to set aside a verdict of a jury if the verdict was so strongly against the weight of evidence as to admit of no reasonable doubt. Under the new amendment the judge of the lower court cannot set aside a verdict, however unreasonable, if there is any evidence at all to support it. But as we have seen above, the Supreme Court is vested with the power to re-examine the questions of fact found by the jury and if, in the opinion of the court, the judgment is wrong, it can correct it.

Judgment Includes Verdict.

While the word judgment is used in this amendment instead of verdict in the foregoing provisions, it must be supposed to include the verdict, for it is the verdict that is affected by the evidence primarily and not the judgment. The judgment is only a conclusion of law from the facts determined by the verdict, and it has been held and

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HALF OF NUMBER FAIL

PHYSICAL DEFECTS BAR MANY WOULD-BE POLICEMEN.

Firemen Find Mental Examination Comparatively Easy—Daring Leap Sometimes Bothers.

Approximately only 50 per cent of the men who take the physical examination conducted by the civil service commission for applicants for the positions of patrolmen and firemen are without defects that prevent their entering the city service. It is believed that if many men were not restrained from taking the examination by reason of physical defects, known to them beforehand, the percentage of failures would be even much greater.

But few of the would-be firemen fail to get their names on the available list of the civil service commission if they pass the medical examination satisfactorily, for the mental examination is not severe. This is not the case, however, with men who strive to enter the police service of the city.

The records at the City Hall show that out of every four men who apply to be listed as policemen, only one passes both the medical and physical examinations. About 50 per cent fail to pass the physical examinations, and only about half of those who are found to be physically capable of taking up the work are able to pass the mental examination.

At the last examination for firemen, completed Saturday, an example is found in regard to the way the applicants are weeded out during the examinations. For this examination there were 49 applicants. Out of that number only 51 appeared for the examination. When the physical examination was completed, there were but 28 remaining who were permitted to complete the tests. One of these dropped out of his own accord, and the 27 who entered the written examination were accepted as eligibles.

The athletic tests the candidates for the position of firemen were forced to take include the following: Climbing an inclined ladder, running 80 yards, if done in 13 seconds, 20 credits are given, if done in 14 seconds, 10 credits are awarded, and if the applicant requires more than 15 seconds, he gets but 5 credits; climbing an aerial ladder 70 feet, and jumping into a net from a second-story window. The two last mentioned feats are intended to test the applicant's courage, and it is not infrequent that a man refuses to attempt one or both of them.

WORKING FAITH IS TOPIC

Founder of Holy Cross Order to Give Noonday "Talks to Men."

Father J. J. O. S. Huntington, founder of the Order of the Holy Cross, has been secured for a series of 10 "Talks to Men" in the convention hall of the Commercial Club from Monday until Friday this week, and in the basement of the Railway Exchange building, on Stark street, the week after.

These addresses will begin at 12:10 P. M. and end at 12:35. They are designed to afford business men whose interest in Father Huntington has been aroused an opportunity of hearing him. The general topic will be "Wanted, a Working Faith."

Father Huntington came here three weeks ago with Father Rodgers Anderson to hold parochial missions in Portland. The mission at St. Stephen's pro-cathedral has already ended, and the mission at St. Mark's Church begins this morning.

Father Huntington delivered a short address last week in the Y. M. C. A., which aroused interest among business men of all denominations.

Teal to Be Repaired.

When Ice starts in the Middle Columbia, the latter part of this month, the steamer J. N. Teal is to be hauled out and repairs made to her hull, while a new shaft is to be installed and her engines overhauled. The steamer Twin Cities is to be hauled out at Celilo shortly and given an overhauling, so that the fleet will be in condition for next season's business. The steamer Island Empire was expected to enter the Snake River yesterday on her first Fall trip to Lewiston, which she will reach tomorrow.



By making large purchases we are able to offer for the Holiday Season a few specials for children's use that are within the reach of any purse. Our other lines are also complete and prices are marked down to the lowest notch.



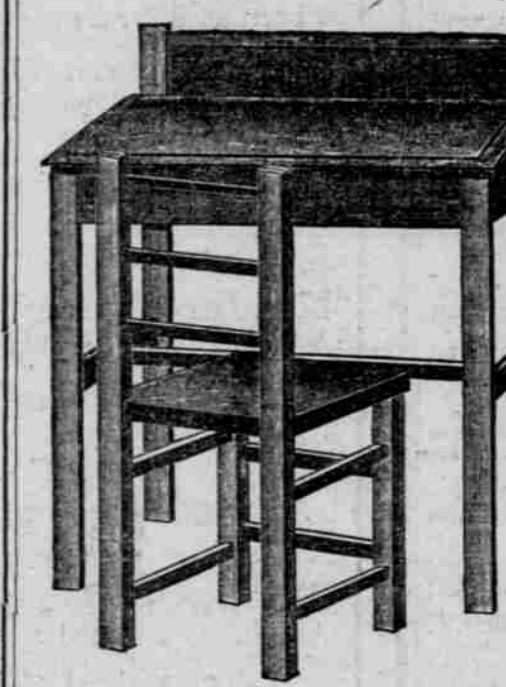
\$1.25 Brass Finished Doll Bed \$1.25 Value for 69c

Only two hundred of them, to make two hundred little ones happy at a trifling expense. Read the description. Complete Doll Bed, with mattress, pillows and canopy of flowered cretonne; size 18 inches long, 11 inches wide and 15 inches high. Constructed of unbreakable brass-finished steel rods, exactly like illustration. Can be folded perfectly flat... 69c



\$2.75 Child's Morris Rocker \$1.25

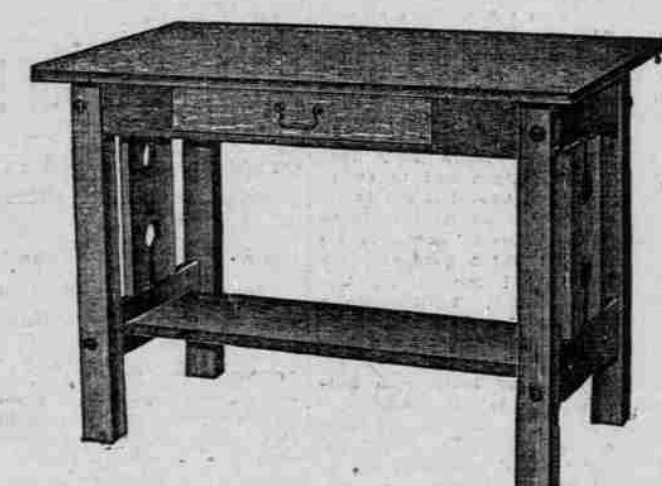
Made of solid oak, golden or mission finish. Rockers can be taken off, making a chair just as shown in picture. Only a few of these at \$1.25



\$5 Desk and Chair for \$2.95

For children, but not so small as the price would suggest. Notice the size. Desk is 28 inches high, top is 22x17, and can be raised, showing compartment for books underneath. Desk and chair are both solid oak and are very useful to children of 3 to 7 years old.

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he was struck over the head with the butt of a revolver until his face was bruised and bleeding from seven wounds. Later he was arrested but acquitted in Police Court on an assault charge.

Saloon Men Are Losers.
OLYMPIA, Wash., Dec. 2.—Saloonmen whose places have been closed as a result of the recent local option election are not entitled to rebates on the money paid for state licenses, according to a ruling made by the Attorney-General's office today. The Attorney-General holds that the licenses may be transferred to other persons and to other units, but that no money can be paid out of the treasury unless authorized by the Legislature.

The only hope left the saloonmen is the passage of special relief bills by the next Legislature.

Stamp Sales Again Lead.
For the second time in three months and the second time since the Klondike rush began, Portland leads Seattle in the total of postal receipts for one month. In November Portland sold postage stamps to the amount of \$34,913.47, and Seattle \$30,636.99. Seattle made an increase of 4.06 per cent for the month as compared with the same month last year, and Portland's gain is 26.41 per cent on the same basis.

Portland's Postoffice sold a larger amount of stamps than Seattle in September, but in October Seattle again took the lead, which was again surrendered in November.

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