WHOLE INITIATIVE DEPENDS ON CASE

Pacific States Telephone & Telegraph Company Attacks Its Constitutionality.

LICENSE TAX IS

United States Supreme Court Likely to Hear Final Argument Next - Defendants Argue Act Undermines Republic.

Constitutionality of the initiative amendment to the Oregon constitution and the legality of all popular legislation enacted thereunder are involved in the suit of the State of Oregon against the Pacific States Telephone & Telegraph Company, which will soon be decided by the United States Supreme Court. Briefs have been prepared by opposing parties to the suit and final argument probably will be reached next month when the case will be submitted to the highest court in the land for the decident.

mitted to the highest court in the land for final decision.

The ault was brought against the telephone company by the state for the recovery of \$10.450.85 alleged to be due as a license tax on the gross earnings of the corporation under the provisions of an initiative law authorizing such a tax. The state won its case in the trial court and again in the Oregon Supreme Court. In resisting the suit. counsel for the telephone company assailed the constitutionality of the initiative amendment to the state constitution, adopted by the people June stitution, adopted by the people June 2, 1962. The succeeding session of the Legislature February 24, 1962, passed an enabling act, and June 14, 1966, the people adopted under the initiative a law imposing a tax on the gross earn-ings of the defendant telephone com-

In their brief for the telephone com-pany. Pillebury, Madison & Sutro. of San Francisco, and Carey & Kerr, of this city, base their appeal on the gen-eral allegation that initiative legisla-tion is unconstitutional since it violates

eral allegation that initiative legislation is unconstitutional since it violates
the state constitution and contravenes
the Federal Constitution, which
"guarantees to every state a republican form of government."

"Direct legislation may be in secord
with the wishes of the vast majority of
one or several of the states," sets forth
the brief, "but that will not suffice to
make it lawful. If it has no place in
the organization of our Government,
if its enforcement is a violation of the
Constitution of the United States, the
courts must so declare, however great
or small its popularity.

"Finally, it may be observed that the
supremacy of the Federal Constitution
is invaded equally whether the act
be one that is hostile to the rights of
persons claiming the protection of the
laws or Constitution of the United
States, or hostile to the organization or
maintenance of the Federal Government. It is the contention here that
initiative legislation is invalid on both
grounds."

it, such as a representative local ture, an executive and a judiciary. Such legislation also denies to a resident of a state, where it obtains the equal protection of the laws and due process of law, as guaranteed by the

16th amendment.
The constitution of Oregon, article
III. section I (ante), provides for three
separate departments of government. legislative executive and judicial—and declares that no person charged with official duties under one shall exercise any of the functions of another 'except as in this constitution expressly pro-vided. Under the initiative amend-ment to that constitution, a Governor or a judge of the Supreme Court—any executive or judicial officer of the state es a legislator if he votes for g law, as he can do under that amendment, and so exercises the legislative function. He might also propose laws. This illustrates how the three departnts of government may thus become

Attorneys See Danger.

The extent to which initiative legis-lation, as it is now practiced in Orelation, as it is now practiced in Ore-gon, subverts the principles of our Government is also illustrated by the practical elimination now taking place in that state, of the difference between statute law and constitutional provi-sions. Thus at the election of 1918, II constitutional amendments were sub-mitted to the voters. It becomes ap-parent that one of the fundamental principles of our Government, namely, that a constitution—in the nature of a principles of our Government, namely, that a constitution—in the nature of a bill of rights under which the people restrict themselves as to individual privileges for the benefit of the mass—is a security for the stability of sovernment, is likely to be overturned; for the constitution of Oregon, under the initiative plan, may be changed as readily and frequently as the statutes and by minorities of all the voters, because it is optional with the author of cause it is optional with the author of any initiative measure to determine

dent of such a state may rest upon the assurance of the equal protection of the laws."

Direct Legislation Attacked. initiative is in contravention of a republican form of government and subversive of the principles upon which the republic was founded. For that reason it is contended that direct legislation is repugnant to that form of government with which alone Congress could admit a state to the Union and which the state is bound to maintain. In support of the contention that initiative legislation is invalid because government by the people directly is inconsistent with "our form of government," the brief says:

"It has been shown that the vital slement in a republican form of government, as that phrase is used in American political science, is representation, Legislation by the people directly is the very opposite; the negative of this principle. It can therefore, have no place in our form of government. Indeed, it has been repeatedly said to be contrary to and subversive of the structure of our republic."

Counsel further contends that the Federal Constitution presupposes in each state the maintenance of a republican form of government and the existence of State Legislatures, that is, representative assemblies having the power to make the laws; that in each state the powers of government will be divided into three departments; a Legislature, an executive and a judiciary. Of these three departments, it is alleged the Legislature is destroyed by the initiative.

Unconstitutionality is Alleged. The concluding argument of counsel for the telephone company is that the provision in the Oregon constitution a

FROMPTS MERGER

Coast Plants Close Because of High Operating Expense, Says Promoter.

EASTERN MARKET, SOUGHT

Opening of Panama Canal Regarded as Factor in Lowering Rates. Settlement of Timber Lands Urged by Lumbermen.

More convinced than ever that the future of the lumber industry of Oregon and Washington depends upon some plan of co-operation among the mills, Henry J. Pierce, of Spokane, said last night that from a personal investigation of conditions existing on the Pacific Coast, he has found that the mills generally are operating at a loss. More convinced than ever that the

Within the past few weeks Mr. for direct legislation violates the pro-

NEW "COLOR COMICS" FOR THE SUNDAY OREGONIAN

Five whole pages of color-supplement people and their exhilarating pranks will appear bereafter in The Sunday Oregonian.

Next Sunday you will be introduced to three new pages of supplement characters—the very best and liveliest in the whole field.

Foremost in the list of new arrivals is Slim Jim, the whimsical and agile circus acrobat, who has got a band of sleuths on his trail-and they almost catch him every week. Only his miraculous skill as an

Hairbreadth Harry is a man of marvelous adventure in many lands-but he always gets off with his life-by a mere hair s-breadth. Then there's the barnyard bully-the chicken that's always getting into trouble. He's the funniest fowl on earth.

Sambo, who needs no introduction, will continue with his funny noises and queer adventures.

The Widow Wise will continue her career of romantic susceptibility-and exquisite clothes. Mr. Twee Deedle is making his final appearance today.

Pretty little Anna Belle and her clothes will be a delightful children's feature. Anna Belle will appear in full colors as a "cut-out" doll and will afford wholesome amusement for the little ones. With Anna Belle will appear a clever toy "cut-out" each week.

in the enforcement is a violation of the Constitution of the United States, the courts must so declare, however great or small its popularity. The property of the Principles of the United States and the one that is hostile to the rights of persons claiming the protection of the laws or Constitution of the United States and be one that is hostile to the rights of persons claiming the protection of the laws or Constitution of the United States are held the Pederal Government. It is the contention here that initiative legislation is invalid on both grounds.

It is contended by the defendant adopted by the people is void because "the Oregon constitution of the people is repay and to the Federal Constitution of the States of the Constitution of the States and the Pederal Constitution of the Pederal Constitution of the Constitution of the States of the Constitution of the Constit

DRIVER BLAMED FOR DEATH

Contractors Allege E. A. Cook Beat Mule Until It Died.

Beating a mule to death is charged Beating a mule to death is character against E. A. Cook, a teamster employed by Glebisch & Joplin, grading contractors, on a complaint sworn to by F. Joplin, a member of the firm. The employers are indignant at what they term an unexampled case of cruelty. Cook is charged with having overworked, tortured, tormented and

Cook is charged and worked, fortured, tormented and beaten the animal until it died.

The mule was one of a valuable team bought by the contractors in Missouri for a high price. The beating was uncalled for, they assert.

Mrs. H. M. Lillis at Rest.

held from the St. Lawrence Catholic seaboard would be 25 cents on 100 pounds, or an average of about \$7 per 1000 feet, we could then add to this preceded the remains from the hearse to the church and the children of St. Lawrence Academy sang Mrs. Lillis is survived by an great and Miss Dagmar lines and Chicago. This example gives an idea of the possibilities of the Panama Canal as a factor in reducing rates on Pacific Coast lumber to the Eastern seaboard and interior points as well.

Fleet May Be Outgrowth.

"A campany such as we prove

Jennings Lodge Woman Dies.

and by minorities of all the votors, because it is optional with the author of any initiative measure to determine whether it shall be presented as an amendment to the constitution or a statutory enactment; the only practical difference being that the Legislature may repeal an objectionable statute, but a bad constitutional amendment remains operative in any event until the next seneral election when, through the initiative, it may be ahrogated by a majority of those voting upon that question.

This takes us back to the fundamental proposition that under our system of government, there can be but one source of legislature chosen and acting as contemplated by the Federal Constitution. With two sources of legislation in a state—in this case wholly unlike in character and operation—there can be no equal rights, no equal twenterlion, no equal laws; and no resistant of the many beautiful floral offerners. Mrs. George Edwin Morse,

We wish to thank the many friends for their kindness and sympathy in our recent sad bereavement in the loss of our beloved daughter and sister, Emma; also for the many beautiful floral offer-ings. MRS E GOETZ AND FAMILY.

"A company such as we propose to organize could conduct the Eastern business on an extensive scale. The establishment of large distributing yards require too much capital for any individual company to undertake.

"In connection with these yards the proposed company would own and operate its own fleet of vessels, taking lumber East and bringing such cargoes as ate its own fleet of vessels, taking lumber East and bringing such cargoes as it could secure westward. In this commection, I wish to lend my hearty support to the resolution introduced by J. N. Teal, counsel for the West Coast Lumber Manufacturers' Association, asking Congress to pass a bill which would relieve American vessels engaged in domestic trade between any sections of the United States from the payment of canal tolls. England, through her dominion of the Suez Canal, provides for an indirect remission of tolls to English vessels traversing the canal.

"Eight other countries, I understand, have assumed the same attitude towards their shipping in order to stimulate commerce. We, as a great commercial Nation, should do everything within our power to help develop the

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price gonditions, accounting for the fact that the majority of the mills are selling their product at cost or below

Many Mills Closed. "The reason why the Coast cities are all relatively quiet is due almost entirely to the fact that the steady stream of gold which formerly flowed back to these states in the shape of profits has practically ceased.
"In the City of Everett, Wash, there

"In the City of Everett, Wash, there are only three lumber mills of the seven plants there that are operating at present. The same condition is prevalent in the lumber producing sections of both states. If the company I am laboring to bring into existence in formed, we shall at once try to reach out for new and broader markets. Distributing yards would be established in Boston. New York, Philadelphia and Baltimore. From these centers interior rail shipments could be made into the most densely-populated sections of the United States. United States.

"Assuming that the water rate on lumber from this Coast to the Atlantic seaboard would be 25 cents on 100

BUILT FOR OREGON

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OUR GUARANTEE Means anything that proves defective fixed free of charge, and any shoe that cannot be fixed, a new pair FREE OF CHARGE

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THE GOODYEAR SHOE CO

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American merchant marine, and I be lieve that the movement inaugurated in San Francisco should be heartly supported by every commercial body in this country.'

Future Settlement Seen.

Mr. Pierce referred to the movement that has been started for the develop-ment of the logged-off lands in Oregon and Washington, declaring that these lands are the most fertile cheap holdings left for settlement.

"It would be one of the policies of

the proposed company to carry forward as a part of its work the clearing and aettling of the cut-over lands as rapidly as the timber is removed," continued Mr. Pierce. "The plow should follow the ax. By pushing an aggressive campaign along this line we would not only build up thrifty communities but also produce practically all the food supplies the industry requires to feed the army of workmen engaged in the manufacture of lumber. Instead of importing trainloads of hogs from Nethe proposed company to carry forward porting trainloads of hogs from Ne-braska and eggs and poultry from Iowa, we would encourage settlers to till and cultivate these lands and keep

the money at home which is now paid out in great sums to other states. "It would be my idea that the new company should clear these lands and sell them at very low prices, thus af-fording the settler an opportunity at once to commence earning a livelihood besides furnishing a steady and stant supply of honest and sturdy labor to equip the mills and camps, as well as to aid in supplying the markets of the Coast cities."

LYMAN TO ARRIVE TODAY

Prisoner Expected to Fight Removal to San Francisco.

Dr. Grant Lyman will be brought to Portland this morning by United States Marshal Scott and hustled away to Kelly Butte for safe-keeping until arrangements for his return to San Francisco for trial are completed in the Federal Court. Deputy Marshal Beatty remained in Klamath Falls in the hopes of capturing Thornet, the nurse, who broke jall and escaped with several prisoners on the night he and Dr. Lyman were brought there from Lakeview, Posses have thought they had Thornet Dr. Grant Lyman will be brought to

man were brought there from Lakeview, Posses have thought they had Thornet located a number of times.

Dr. Lyman will probably be brought before the Federal Court Monday and the necessary papers for his removal to California will be requested. Lyman is well supplied with money and it is believed he will make a fight against returning to California.

Dre Foster to Give Five Lectures.

Dr. W. T. Foster, president of Reed College, announces that he will give a series of five lectures, beginning tomorrow morning, on "Five Great Philosophies of Life." The lectures will be given every morning at \$345 o'clock in the quarters of Reed College at Eleventh and Jefferson streets. The subjects of the lectures are as follows: Menday, "The Epicurean Pursuit of Pleasure, Tuesday, "The Stoic Law of Portitude;" Wednesday, "The Platonic Subordination of Lower to Higher."
Thursday, "The Aristotelian Sense of Proportion;" Friday, "The Christian Principle of Love."

For selling adulterated cream, the

POULTRY CONTEST HIGH

PORTLAND JUNIOR CLUB PLANS THREE-MONTH TEST.

Records to Be Kept Showing Eggs Laid and Method of Keeping Fowls-Entries Close Oct. 20.

To stimulate interest among boys in the raising of poultry, arrangements
have been made by the Portland Junior
Poultry Club for a contest to be inaugit is determined that it will be one of grated November I and continue until February 29. In that time records will be kept by the contestants showing the eggs produced and methods of feeding and housing. Each contestant will be required to write an essay of from 400 to 5000 words describing his methods

in handling his chickens, The contest is open to boys between the ages of 12 and 18. Applications for membership must be entered before October 20. Prizes of medals and are to be awarded for points. These points comprise such factors as number of eggs laid, feeding, housing and yarding. The contest is under the di-rection of G. C. Hatt. The judging will be conducted by Professor James Dryden of the Oregon Agricultural Col-

The judging of essays will be under the auspices of the educational department of the Young Men's Christian Association. Applications for the privilege of participating in the contest should be made to the Boys' Department of the Y. M. G. A., either in person or by letter. While the contest is in progress those entered will be required to read the special series of lessons on poultry husbandry which has been prepared by Professor Dryden.

At the conclusion of the contest a second contest will be held in the Y. M. C. A. auditorium dealing with the preparation of poultry for market. Contestants will kill and prepare a fowl under rules to be prepared by the committee in charge. The judging of essays will be under

mittee in charge.

The rules of the contest follow:
All contestants must take e care of their fowls during the care of their fowls during the time of the contest, except noon feeding, and all reports, essays, accounts, etc. must be their own unaided wors. At the close of the contest, each contestant will furnish a written certificate from parent or guardian that he has observed the rules of the contest.

Contestants will be marked for their work according to the following scale: Record keeping, 15 points; regularity, 5 points; neatness, 5 points; eass., 15 points; home study course, 3 points; condition of flock, 15 points; housing and yarding, 30 points.

All records should be kept in a flot book, which will be handed in at the close of the contest and not later than the evening of March 7, 1912.

Each contestant shall have not less than five birds in the contest. The

Each contestant shall have not less than five birds in the contest. The records will be kept on the pen of females as entered. A bird once removed from the pen shall not be replaced therein. Contest birds shall be marked by sealed leg bands.

Any fowls laying a commercial egg may be entered in the contest.

manager of the Eigin Cream Company was arraigned in Justice Court yesterday. The company was found guilty and a fine of \$25 was imposed. A warraint is out for the Hazlewood Cream Company on a charge of selling misbranded butter.

Rummage sale conducted by the ladles of the Hassalo-Street Congregational Church, Monday and Tuesday of next week, on Union avenue, near Sacramente street. Contributions will be called for. Phone East 2479.

count 50 points. Each boy to furnish his own bird, and picking frame, same to remain his property.

PRESS CLUB SHOW LOOMS Committees Are Named to Prepare

for Big Annual Frolic. Preparations by the Portland Press Club for the annual public entertain-ment have been begun. President Vincent having appointed various committees to look after the many details of

the Portland theaters, probably the Hellig, where the club last Winter morning and mangled so hadly that he

then; it now has experience. The mem-bers have novel ideas for "stunts" and expect starts of surprise and pleasure when the curtain goes up on the 1911 As last season, the club will issue souvenir programme in connection with the entertainment, but it is proposed to have a book very different from the first one. The committee which will supervise the text of the book will meet at the Press Club tomorrow afternoon. Lute Pease is "editor" of the commit-

THREE CITIES WILL UNITE Portland, Scattle and Tacoma Agre

on Canal Tolls Policy. A conference was held at the ber of Commerce building between members of the Portland Chamber and W. A. Mears, of the Seattle Chamber of Commerce, and J. W. McCune, of the Tacoma Commercial Club, to determine if the stand of the three large North-

western cities regarding free tall for American vessels passing through the

Panama Canal, was the same.

Humphreys' Seventy-Seven

Breaks up Grip and

It is the first few doses of "Seventy-seven," taken early, that count in breaking up a Cold quickly-

Firemen say that the first few minutes of a fire often decide the fate of a building.

It is the same with a Cold-Never be without "Seventy-seven" in the house.

Carry it in your pocket. Keep "Seventy-seven" handy while the bad weather lasts; it is your best protector against Coughs, Colds and Sore Throat. All dealers sell "Seventy-seven." 25c, or mailed.

Humphreys' Homeo, Medicine Co., Cor. William and Aun Streets, New York.

over the ground and agreed on a united method of campaign in the movement which is being inaugurated by the cities of the West. At the conference also were Joseph N. Teal, counsel for the transportation committee of the Chamber, and W. S. Smallwood, manager of the same committee.

H. M. Haller, president of the Portland Chamber, returned from San Francisco yesterday, where he attended the meeting of the representatives of the commercial bodies of the Western cities for the purpose of furthering the movement.

Unidentified Man Killed.

While sleeping, it is thought, under an empty wheat car at Columbia Dock No. 2, an unidentified man, apparently the a laborer, was run over yesterday died on the way to a hospital. The It is the aim of the Press Club to make this season's show surpass in every way the one given last December. The club was a novice at entertainment than it now have the product of the club was a novice at entertainment than it now have the control of the club was a novice at entertainment than it now have the control of the club was a novice at entertainment than it now have the control of the club was a novice at entertainment than it now have the control of the club was a novice at entertainment than it now have the control of the control of the club was a novice at entertainment than it now have the control of feet when they discovered the body The stranger had been caught between a protruding tie and the brake mechanism. The body was turned over to the Coroner, who has found nothing to

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