O'DAY GIVES HIS VERSION OF NEW JURY TRIAL LAW

Supreme Court Cannot Change Verdict but Can Pass on Law Applied to Reach This Verdict.

Judge Thomas O'Day has submitted his brief to the supreme court in the three-fourths jury case, which has been brought up to settle most points in the constitutional amendment covering the reorganization of the judicial system of the state. Judge O'Day's brief was submitted and he argued before the supreme court at the invitation of the judges. Other attorneys have been asked to do the same, and some have complied.

The effort to straighten out the real meaning of the phraseology of the amendment has simmered down to three points: First, whether cases pending when the act became operative were affected by it; second, the question of just what power has been delegated to the supreme court; and third, whether the right of trial by jury shall remain inviolate. In his brief, which is in reality an answer to questions submitted to members of the Oregon bar by the supreme court, he deals principally with the extent of the additional power given the supreme court.

Judge O'Day has answered in detail the third question sent out by the supreme court, which reads: "If in actions at law, involving value in controversy more than $20, no fact tried by a jury shall be otherwise reexamined in any court of this state, except where there is a total absence of testimony to support the verdict, what consideration shall the supreme court give to the testimony, among other matters submitted upon an appeal, in affirming the judgment appealed from without regard to errors occurring at the trial on the one hand, or on the other in determining what different final judgment shall be entered on appeal?"

Judge O'Day declares that the amendment, as it was passed at the last election, amends Article VII of the constitution, which creates and defines the judicial department. He argues that the right of trial by jury can not possibly be affected by the amendment, as it is provided for in the bill of rights. His argument is that the reading of the amendment shows that it was framed to permit the supreme court to overturn jury verdicts only when the testimony showed absolutely no evidence to sustain the decision.

Judge O'Day contends that if a trial court rejects important testimony or misdirects the jury, there can be no trial in fact under the amendment. He affirms that members of the bar have worried over the phrase, "no fact tried by the jury shall be reexamined," and gives this answer:

Case of No-Trial in Fact.

"These words have been a part of the constitution of the United States for more than a century and have received judicial construction for that time and therefore should have a judicial meaning. In a case named the court is not examining the facts passed upon by a jury. It is examining the fact that the court did not allow the jury to have the facts or at least the material facts or, if the facts were allowed to go to the jury, the court misdirected the jury as to the rules of law governing their deliberation. For instance, if the court should admit a promissory note in evidence and then should tell the jury as a matter of law that the words 'for value received, etc.' did not import a consideration, and that in the absence of proof of consideration the verdict should be for the defendant, the court would have no hesitancy in saying that there was prejudicial error and would order a new trial.

Discussing the questions brought up in the third article, the Portland lawyer has written:

"In the late proceedings of the National Bar association it was recommended that in law cases the question of fact be determined by jury; that the questions of law be reserved for the court to apply same in accordance with the mature conclusions of the court as to what rule of law should be applied to the facts so declared by the verdict of the jury. The verdict of the jury under this arrangement stands in any controversy as a final determination of the facts. Under this amendment the evident intention is that in all actions at law where the amount in controversy exceeds $20 the right of trial by jury is preserved, not only preserved but final. For years after the adoption of the constitution of the United States the courts applied what is known as the "Scintilla Doctrine" to the verdict of juries. This was also the doctrine of the state courts. Fifty years ago a lawyer's library did not necessarily have to consist of eight or ten freight cars of books in order that he be able thoroughly to investigate a proposition of law. The facts in the case were not before the court on appeal, except in so far as it was necessary to explain the point of law raised by the exception.

"But under the modernization of the law the courts have adopted the doctrine that in the trial of all questions at law in jury cases there is a preliminary question for the judge to determine which is whether the case should go to a jury or whether the court should grant a nonsuit. This examination of the facts i. e. this trial of the issues of fact by the judge is denominated 'a preliminary question of law.' In the opinion of the writer this has led to an interminable tangle so that no lawyer can say in advance what the law is. He may know the rules of law, he may be well versed in the rules of evidence, he may have all the facts, and then he is unable to advise his client what the law is as to a particular case because under this system the whole matter must be put up to a trial judge and he must determine the facts. One judge will arrive at one conclusion and another judge on the same facts will reach an entirely different one.

"The case is then appealed and this court is asked to pass upon this 'preliminary question of law' and frequently—very frequently—reaches a conclusion contrary to the trial court and the case is necessarily reversed. The facts in each case are discussed and law books without limit are the result. No rule of law, except 'the law of the case' is necessarily settled because in a similar case it will be contended the facts are different and the court is called upon to review them and fix the law in that case. In the cases I have instanced I assume the underlying principles of law are the same in each. If the facts—preliminary and otherwise—were left to the jury (except the single question as to whether there was any evidence at all) the second case mentioned would not be appealed.

"In the early history of this question, the courts as I have stated, applied the Scintilla Doctrine. If there were any evidence to support the verdict the court would not inquire into it, and what is attempted to be done by this amendment is merely to apply the Scintilla Doctrine and make it a part of the constitution so that the trial of a question of fact by a jury means something. It takes out of a case this continual appeal to this court upon a question of fact because if lawyers in advance know that the courts will not go into the question of fact or examine the facts for the purpose of saying whether or not the verdict is correct, the only thing left to litigate is the law questions involved.

Proper Termination of a Case.

"If the trial judge makes no error in the admission or rejection of material evidence and if after the evidence is submitted to the jury he gives the jury a fair and impartial direction of the law applicable to the facts in the case, the verdict of the jury ought to end the controversy. Litigation ought to end at some time and the world be allowed to move on. It may be said, however, that if it be true that the court may not reexamine any question of fact passed upon by a jury, what object and purpose is there in putting in the following provision in this amendment:

"'Until otherwise provided by law, upon appeal of any case to the supreme court, either party may have attached to the bill of exceptions the whole testimony, the instructions of the court to the jury, and any other material to the decision of the appeal. If the supreme court shall be of opinion, after consideration of all the matter thus submitted, that the judgment of the court appealed from was such as should have been rendered in the case, such judgment shall be affirmed, notwithstanding any error committed during the trial; or if, in any respect, the judgment appealed from should be changed, and the supreme court shall be of opinion that it can determine what judgment should have been entered in the court below, it shall direct such judgment to be entered in the same manner and with like effect as decrees are now entered in equity cases on appeal to the supreme court.'

It Makes Jury Verdict Final.

"My answer to this question is that there were two objects sought to be attained by this amendment and that in all law actions the verdict of a jury shall be final because under this amendment it does not say that it shall be final as to the trial court only; the language is that 'no fact tried by a jury shall be otherwise reexamined in any court of this state.' This is not a statement that the trial court shall not reexamine a verdict of a jury, but it is a statement that no court, supreme or otherwise, shall do so. If the provision following this means, that this court shall examine the facts and render such judgment as it sees fit, these words that the facts found by a jury shall not be reexamined by any court are of no avail. They are meaningless. It was therefore, intended to change this state of affairs and make the verdict of the jury final.

Reversals on Minor Errors.

"On the other hand, there has grown up the system of law of reversing cases upon what are called purely technical questions. While I admit that it is difficult for a court to say in advance what are substantial and what are not substantial errors, yet it is perfectly apparent that cases are reversed upon perfectly apparent trivial errors that could not, in any manner, have affected the question one way or the other. Now it is intended that the courts should not reverse cases upon these errors that are not substantial. It is true that the court may and will meet with many difficulties when it comes to apply this rule, but difficulties continually confront a court which have to be solved. Such is the rule rather than the exception.

"My construction of this constitutional provision is, first, the verdict of a jury is final without power or right of this court to disturb it.

"Second, eliminating the question of fact, the question of law to be applied to the verdict is left to this court largely in the same sense as the recommendation of the National Bar association or at least the recommendation of the committee that had it in charge. If there has been no substantial error the verdict should stand. If on the contrary, there has been substantial error, and the court may determine from the record—the entire record, if you please—that a contrary result than that reached should have been had in the court below, notwithstanding the verdict of the jury, and accepting the verdict of the jury as final upon the facts, then a judgment should be rendered the other way. I could instance cases where this rule might be applied but it seems to me that any judge or lawyer may have noted many instances where this rule will be applicable and salutary."

UPPER BERTHS TO BE ABOUT ONE FIFTH LESS

February 1, Pullman sleeping car rates will be reduced, but to what extent cannot yet be told exactly. It is understood, however, that the reduction on upper berths will amount to about 20 per cent of the cost of a lower berth or that the charge for an upper will be 80 per cent of that for a lower. F. D. Chamberlain, district superintendent of the Pullman company in this city, expects daily to receive the new price schedule from headquarters. Some reductions will be made on lower berths for long distances, he believes. The reduction on an upper from Portland to Chicago, for instance, will be about $2, according to the information now at hand.

PUPILS ARE TAUGHT HOW TO CUT BEEF

Students of the Portland Trade school yesterday afternoon were given a demonstration of the cutting of meat at a market at First and Alder streets. Miss Ruth Hess demonstrated to a class of 20 pupils the manner of cutting meat from the carcass of beef. Tenderloins, briskets, sirloins, rumps, short ribs, chuck steaks, rounds and ribs were cut from the hanging beefs and the proper cuts were shown by Miss Hess. The actual work of cutting was done by J. Emtee, an employe of the market.

NEWS NOTES FROM BUSY ST. JOHNS

Question of Grading Dawson Street Revived; Peterson Heads First National.

So many street improvements have already been inaugurated and so many have passed the initial stage of obtaining civic sanction within the last few months that the question of grading Dawson street, which came in for considerable discussion some months ago, has escaped the notice of the many residents who but a short time ago loudly proclaimed the urgency of its improvement. Although the property owners along this thoroughfare are the most vitally interested in the proposition, inasmuch as they are the ones who must pay for it, yet it does not seem fair and reasonable, it is argued, that the rest of the community should be made to suffer because a minority of the property owners concerned are unwilling to make any concession or to depart one whit from the stand they have taken.

The chief stumbling block to a unanimous petition seems to be in regard to the width of the finished street, and so strong has been the opposition that the original promoters have allowed the petition to fall through rather than stir up any ill feeling among their neighboring property owners. The net result is that this thoroughfare, one of the main arteries of the city, remains unimproved and residents of other sections of the city, while pointing out with pride their own graded streets and cemented walks, must endure the discomfort of journeying over this street as well as the comments of visitors owing to the petty jealousies of a small number who have put their own whims and fancies before the general good of the community.

Peterson Is President.

The First National bank has announced some changes in the personnel of its organization. Sylvester Peterson has been elected president. C. B. Russell has been chosen as assistant to F. P. Dunker, who retains the office of cashier. The report of the condition of the bank shows a gratifying increase in the amount of business transacted and that the affairs of the bank are conducted on sound and conservative principles.

Sympathy Is Felt.

Genuine sympathy is being expressed at the serious illness of Miss Georgia Bilyeu, who is suffering from a severe attack of pneumonia. Practical proof of this feeling is being shown by the proprietors of the Electric theatre, who gave a special matinee this afternoon, donating the entire proceeds to the stricken girl. Miss Bilyeu possesses exceptional talent as a vocalist and many residents of the city have been entertained by her mellow voice and skillful rendering.

Isaac Suiter's Death.

It was with considerable surprise and deep regret that many people of St. Johns heard of the death of Isaac Suiter who passed away on Thursday night. A carpenter by trade he had of late earned a somewhat precarious living owing to failing health but few people who knew him thought the end was so near. Born in Cary, Maine, in 1865, he came to St. Johns five years ago. He leaves behind a family of four sons and three daughters, of whom all but the eldest boy lived with him in St. Johns. He belonged to the Independent Order of Oddfellos for many years but retired from this organization a little over two years ago. The funeral services were held today in the Baptist church, being conducted by Rev. Conrad Owen. The body was laid to rest in Columbia cemetery.

The Pythian Sisters.

The Pythian Sisters gathered Thursday night at the home of Mrs. Dr. Vincent for a card party. This meeting was one of a series which the Pythian sisters are arranging in order to raise funds to defray the cost of entertaining the convention which this organization intends to hold in St. Johns in the spring. It is expected that 300 or 400 delegates will visit the city for the convention, and although the Knights of Pythias have gallantly offered to financially aid their sisters, the latter are determined to show their independence by raising the greater part of the necessary funds by their own efforts.

Local Owls Pleased.

A letter has been received by the secretary of St. Johns nest, 1152, of the Order of Owls, from John W. Talbot, supreme president of the order, which has afforded considerable satisfaction to the local nest. The president therein grants a special dispensation to the local nest permitting it to receive and initiate without extra fee any members of the former Portland nest, No. 1279, which was suspended last summer for disloyalty to the supreme constitution of the order. Applications have already been received from five members of the Portland lodge for reinstatement, and it is expected that quite a large percentage of the Portland members will seek admission to the St. Johns nest, which already boasts of more than 70 full-grown birds.

To Build Residence.

Andrew Clark has completed the purchase of two lots at the corner of Hayes and Maple streets and intends to erect a handsome residence on this property in the early spring.

City Surprises Him.

S. L. Natters paid a visit to the city yesterday after an absence of four years, and was much struck with the improved condition of the city and the general indications of progress and prosperity.

From 18,000 to 20,000 fatal and from 700,000 to 800,000 non-fatal industrial accidents, according to a careful statistician, occur in the United States every year.

We Want Your

Dental Work

Our claim is based upon the sound principle of giving one hundred cents worth of the best work procurable for every dollar received

Scientific Bridge Work
Plates That Fit Perfectly
Gold or Enamel Fillings
Gold or Porcelain Crowns

Perfect Work Guaranteed

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22k Gold or Porcelain Crown for	$5.00	Silver Fillings, each and up	50¢
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Phones A and Main 2119. Fifteen Years in Portland.

Attend the Oregon Cat Club's First Annual Show Tonight
See Our Big Advertisements in Sunday's Newspapers

The Girls' Aviation Story Contest. $100 in Cash and Merchandise Prizes.

THE MEIER & FRANK STORE

Second Annual Boys' Aviation Contest. Hundreds of Dollars in Prizes.

Great 6th Annual Pure Food Fair Monday!

THE event all Portland is waiting for—The Meier & Frank Store's Great Sixth Annual Pure Food Fair—begins on the stroke of 10 o'clock Monday morning with an exhibit of Pure Food Products such as never before seen in the entire Northwest.

Over 75 exhibitors, including meritorious concerns from every part of the United States, and a program has been arranged for Monday which no one will want to miss.

Watch the Sunday papers for complete details.

10 a. m.—Opening of booths.

11 a. m.—Releasing of 25 balloons bearing merchandise orders.

12 noon—Releasing of more balloons.

2 p. m.—Grand concert by Rosebrook's Heilig Theatre Orchestra.

Open Until 9:30

AS usual on Saturday evenings, the Big Store remains open tonight until 9:30 o'clock, and between the hours of 7 and 9:30 we have planned several splendid specials, details of which you'll find in the small spaces to the right and left.

The Great Annual Clearances are also in full force tonight in every department. Many items have sold down to small lots and prices lowered accordingly. Be here tonight.

FROM 7 to 9:30 TONIGHT
Men's Fancy Vests Half Price
THE season's best styles, patterns and materials; suitable for business or dress wear. Special, ½ PRICE.

FROM 7 to 9:30 TONIGHT
5c Toilet Soap Dozen for 39c
FINE floating Bath or Toilet Soap, large cakes. Absolutely pure. 5c grade at, dozen..... 39c

FROM 7 to 9:30 TONIGHT
20 Pounds of Sugar for $1.00
BRUBERRY Sugar, never sold at less than 17 lbs. for $1.00; not over 20 pounds to a customer. 20 lbs. for $1.00

FROM 7 to 9:30 TONIGHT
To 50c Hosiery 3 Pairs for 50c
FOR MEN, women and children—fine quality; on sale in Bargain Square. Per pair, 19¢; 3 pair for 50c

FROM 7 to 9:30 TONIGHT
Men's Fine 50c Kerchiefs at 19c
IMPORTED pure linen Kerchiefs, fine quality, full size, hemstitched border. Each 19c

FROM 7 to 9:30 TONIGHT
Women's Neckwear, 50c to 75c Kind 17c
LACE COLLARS, Jabots, Rabats and Silk Novelty Collars included. Special, 3 for 50c; each, 17c

FROM 7 to 9:30 TONIGHT
Best 35c Gas Toasters at 19c
CONE shaped Gas Toasters; toast four pieces of bread at once. Regular 35c stock at..... 19c

FROM 7 to 9:30 TONIGHT
Men's $4 Dress Shoes at $2.37
BEST grade patent leather Shoes for dress wear, button or lace styles. Pair, only $2.37

Bulletin No. 21

If the laws are bad, there can be no prosperity; capital will not invest where the laws are so framed as to imperil investments; and labor cannot find employment where business and property are not safe under the law. Instead of peace and contentment, there will be hunger and misery, where the laws are uncertain and unfair.

Oregon has been enjoying a most prosperous era. It has had the good fortune to attract capital in vast sums to aid its development. Whether this shall continue is for the people to decide. For, under the present system of law-making there is great danger that the tendency toward enactment of foolish and ill-considered laws, proposed by visionaries and irresponsible agitators, will effectually drive capital out of the state by making its investment here unprofitable.

The interests of labor and capital are identical in this matter, and there is no surer way to restore the soup-kitchen and the receiver than to make it unprofitable to carry on business in the state.

Stability has been secured in the states of the Union by written constitutions, which, under the old method, yield slowly to change by amendment. The proud record of growth and development in our country is due in no small degree to the sense of security under the constitution that has made it possible to go forward with great commercial enterprises guaranteed and safeguarded against confiscation. But now in Oregon our constitution may be amended by a minority of the voters at any election, and, indeed, has been repeatedly so amended since the new system has been in use. These changes are vital and radically alter the fundamental law, so that security becomes danger, and confidence yields to fear.

Who prepares these amendments to the constitution and laws? Does any one know what they are until they have been actually filed and made ready to be printed upon the ballot? Is there any public meeting at which the measures are carefully considered, dispassionately discussed and anxiously scrutinized word by word and sentence by sentence, and their need determined?

No, the voter is not consulted beforehand. Interested and oftentimes irresponsible men turn out these radical proposals in final form and the voter is expected to accept or reject the whole complex and confusing pronouncement, and to vote yes or no upon it, without opportunity for amendment. Nay, most voters must vote upon it without familiarity with its contents, being guided by the title alone, as it appears on the ballot.

The very title is often misleading, and many a man votes for or against a principle which he fancies is expressed by the title without knowing that he is voting directly contrary to his convictions. At the last election the voters cast their votes upon 32 different measures printed by short title upon the election ballot. Many of these measures were proposed amendments to the constitution.

If Oregon is to maintain its dignity and prosperity it must take steps to secure more deliberation in its popular exercise of the law-making power. Unless the citizens awake to the dangers of wholesale and hasty legislation, and curtail and limit the laws thus voted upon, it takes no prophet to foretell the inevitable disaster that is at hand.

Earnest men, patriotic men, must come forward quickly and take counsel how to remedy the evil that menaces the state. A few men, some of them impractical visionaries, some egotistical and all-wise bone heads, some scheming demagogues, are turning out laws like a Hindu grinds out prayers with his prayer wheel. They must be shorn of this power before it is too late, for it is easier to ruin the prosperity of the state than to force capital to invest where the laws are unstable and unjust.

Portland Railway, Light & Power Co.