FAVORITE MAKES HIT AT ORPHEUM

Valerie Bergere Meets Flattering Reception in Dramatic Piece; Other Numbers.

As Valerie Bergere has become known in the west she has attained the same popularity she enjoys in the east so that her reappearance at the Orpheum yesterday was marked with a flattering reception. Miss Bergere may always be counted upon to give an elaborately mounted production with intense dramatic moments. "Judgment," her present vehicle, is no exception. It deals with the inaccuracy of circumstantial evidence, and allows Miss Bergere ample opportunity for splendid emotional work which held the audience in rapt attention. Contrary to her usual custom, she has no comedy touches in the part. A dignified and skillful portrayal of the judge is given by Herbert Warren, and the rest of the cast is highly efficient.

Big favorites were Krans and White with rousing big voices, who put over songs and burlesque acting in a delightfully spontaneous way.

Donovan and McDonald made a hit with their Irish studies in "My Good Friend." Jokes galore, songs and a hat stunt make up the act with an unusual feature, that went big, the dancing of McDonald to Donovan's a capello accompaniment.

Cole De Losse offers a slack wire act with unusual and startling features. He works as much on his hands as his feet.

Gardner and Revere present a "True Variety Act," that grows better as it progresses. It is made up of a little of everything and goes big.

Richardson's posing dogs show themselves to be "distinctly unique." The little fellows appear in a series of difficult and beautiful poses, and were heartily approved of.

Bert Jordan has some ideas of eccentric dancing that won applause. He throws in song and a little hat juggling for good measure.

Motion pictures of current events conclude the bill.

QUESTION SETTLED BY ACQUIESCENCE OF BOTH HOUSES

(Continued from Page One.)

under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal."

After this quotation, Judge King added the following comment:

"We have an illustration of the principles announced in Luther against Borden, in the admission of Oklahoma as a state. Before its statehood was recognized, Oklahoma had adopted as a part of its constitution the initiative and referendum law making system, patterned after the Oregon plan, regardless of which its senators and representatives were admitted into the councils of the union,' and 'the authority of the government under which they were appointed, as well as its republican character, is recognized by the proper constitutional authority,' thus determining that state, with its comparatively new legislatoive system, to be republican in form. This recent historical precedent should in itself be adequate to set at rest the temporarily mooted question in hand."

Beans' Two Decisions.

Judge Robert S. Bean of the United States district court, for years a member of the Oregon supreme bench, wrote two epoch making decisions upholding the initiative and referendum during his service on the state bench. It was he who wrote the opinion in the case of Kadderly against the city of Portland, the pioneer case, and he also wrote the opinion in favor of the state in the Pacific States Telephone case, the one carried to the United States supreme court.

Judge Bean this morning expressed his satisfaction with the decision of the high court, guaranteeing the security of Oregon legislation enacted under popular legislation since 1902.

"The decision, as I understand it," he said, "settles the matter so far as action in the courts is concerned. Deciding the question to be political, it is not for the courts, but for congress and the various states of the union to decide. Each state may take up the matter for itself.

"Aside from the admission of new states that have adopted the initiative and referendum system, I suppose the question would be raised as a political one by a refusal on the part of congress to seat senators and representatives from states where that system is in force. Of course, congress will take no action of that sort.

All Doubt Removed.

"It is a momentous decision, adding greatly to the security of legislation in this state. It removes all the doubt under which so much legislation in this state has rested, and is just as effective as though the court had taken jurisdiction. Had the court reversed the decision of the Oregon supreme court, there would have been immense confusion, to say nothing of the political consequences."

In the pioneer case of Kadderly the decision of Judge Bean was concurred in by Judges Moore and Wolverton, the last named, like Judge Bean, having since been advanced to the United States court. In the Pacific States Telephone case Judge Bean's decision was concurred in by Judges Moore, Eakin, Slater and King, the court having by that time been increased to five members. In the first case Judge Bean treated at some length the claim that direct legislation contravenes the constitutional guarantee of a republican form of government to the states.

Reviews Decision.

Will R. King, when a member of the supreme court, wrote the opnion in the Broadway bridge case, before referred to. Today he reviewed the supreme court decision as follows:

"The decision handed down yesterday by the United States supreme court in the two cases there on appeal fully determines and settles the question. It required the two cases consisting of what is known as the telephone case and the Kiernan bridge case to settle the entire controversy. The point raised generally in the telephone case, but more specifically in the Kiernan bridge case.

"In the Kiernan bridge case the additional point as to whether the people pursuant to a constitutional amendment could delegate to municipalities powers not subject to abridgment, change, alteration or recall by special acts of the legisaltive assembly, was presented, which point was not directly involved in any of the previous cases passed upon by the Oregon supreme court. In the telephone case the court upheld the initiative and referendum on the merits without passing upon the point as to whether the court had jurisdiction thereof.

"In the Kiernan bridge case it was first held that it was a political and not a judicial question, which was also followed by a decision upon the merits upholding the system. While the United States supreme court only passed upon the question as to whether it was a political or a judicial question, and dismissed both cases for want of jurisdiction, it is in effect an affirmance of the conclusions reached by the Oregon supreme court in both cases, and the decision is far reaching and finally settles the controversy in favor of our system. True, it mentions that it is a question for congress to determine, but it must be remembered that congress has already determined the constitutionality of this system by the admission into the Union of territories adopting it, as well as by the recognition of representatives in congress from this state who were elected under the system in force here.

Will Have Beneficial Effect.

"This decision will have a highly beneficial effect in the sale of Oregon bonds and securities, giving entire security on questions that have been raised affecting the Oregon system of direct legislation."

C. E. S. Wood, one of the attorneys who filed a brief in support of the state's case, terms the case a "bit of legal lumber" and of no significance. He said.

"The decision in the telephone case is without any significance. It simply reaffirms—as every lawyer with capacity to reason above his prejudices knew it must, Luther vs. Borden—which rests on the unassailable ground that the political questions of a state are for the state itself to determine and is reviewable at all only in the halls of congress, not in the courts. One guaranty of Republican form of government to the states of the constitution was intended to protect the weak individual states against forcible usurpation and establishment of monarchial or tyrannical absolutism—no more. The case brought by the telephone company always seemed to me a bit of legal lumber—and is without any new significance whatever in our constitutional evolution."

Says Decision Revolutionary.

Directly opposite is the view of Ralph R. Duniway, who carried the case through to the supreme court. He says the decision is revolutionary. When interviewed today he said:

"Being a lawyer, I know how to bow to the decisions of our courts of last resort. However, it is my belief that the decision has made a mighty change in our form of government. It has enlarged the legislative department and dwarfed the judicial and executive departments. We no longer have three coordinate departments of government. The legislative department is now the whole show. The supreme court of the United States has decided that it can not protect the citizen from the forms of state government.

"In this country a man needs philosophy and humor to sustain him when he reads and compares the decisions of our courts. Let me illustrate this by considering chronologically the decisions on the initiative and referendum.

"In 1903 the circuit court of the state of Oregon in joint session, four judges presiding, solemnly decided that the initiative and referendum amendments to the Oregon constitution were not legally adopted, but if they were legally adopted the legislature could not nullify the referendum provision by an untrue emergency clause, and that the question was a judicial one and not political.

Question Not Political.

"The case was taken to the supreme court of Oregon, and in December, 1903, the supreme court of Oregon decided that the initiative and referendum amendments were legally adopted, that the legislature could nullify the referendum provision of the constitution by an untrue emergency clause, and that the question was a judicial one and not political. Therefore the supreme court of Oregon affirmed the judgment of the circuit court of Oregon, though adjudging its reasoning and decision to be wrong. From that day to this the courts of Oregon have held that the question was judicial and not political, and that the initiative and referendum amendments were not in violation of the federal constitution. The chief justice of Oregon allowed a writ of error to the supreme court of the United States because the question was judicial and not political.

"In the supreme court of the United States the original question as to whether it was judicial or political was raised, and now the United States supreme court affirms the judgment of the supreme court of Oregon because it is and has been wrong in deciding all these years that the question was judicial instead of a political one, and the supreme court of the United States decides that the question is political and not judicial, and the courts have no jurisdiction and have had no jurisdiction to decide this question all these years."

"Remarkable Foresight."

Striking comment was given by John F. Logan, who has followed the struggle over direct legislation with particular interest.

"The decision of the United States supreme court marks the destruction of the last bulwark of the vested interests," said Mr. Logan. "The interests have always tried to make out everything that they opposed was unconstitutional and opposed to the republican form of government. They have always insisted that the law be read to the letter and not according to spirit.

"My interpretation of the constitutional provision guaranteeing the state a republican form of government is that in exchange for the rights of making treaties, coining money and carrying out other governmental duties which belong to a sovereign state the constitution guarantees that the state shall be kept inviolate from invasion and conquest at the hands of any government or party which seeks to overthrow government for and by the people.

"The government under the Oregon system appeals to me as being very much one for and by the people. When the states were first provided for by the constitution it was also provided that the people make laws through their representatives in legislatures of two houses. Laws are made to fit conditions and changing conditions necessarily demand that laws be interpreted to fit them and not the conditions at the time they were made. Legislatures have been found to be easily influenced and the people have taken their inalienable right to themselves.

"The supreme court has shown remarkable foresight and wisdom in its decision, for this movement is bound to be one of the most far-reaching of the age. The decision, I believe, will be the 'mother lode' from which all others of a similar nature will take their precedent. The movement has received an impetus which will undoubtedly cause it to spread in a short time to all of the states.

"That the supreme court has left the decision with congress is a victory in itself, for so many of the members of congress are already from states where the 'Oregon system' is in power and so many others see it coming and will bow to the inevitable that there is little to fear from congress."

Slashes Ear to Escape Army.

(United Press Leased Wire.)

Berlin, Feb. 20.—Emperor William has commuted the sentence passed by the high military court upon Infantryman Hoppe of a Bremen regiment, who cut the upper half of one ear off in order to be ineligible for further military duty because his wife and his grandmother, whose sole support he was, were in want. He was sentenced to one year's imprisonment.

CONGRESS ALONE HAS POWER OVER OREGON SYSTEM

(Continued from Page One.)

in these two cases, Chief Justice White said:

"It is indeed a singular misconception of the nature and character of our constitutional system of government to suggest that the settled distinction which the doctrine just stated points out between judicial authority over justiciable controversies and legislative power as to purely political questions tends to destroy the duty of the judiciary in proper cases to enforce the constitution.

Question Held Legislative.

"The suggestion results from failing to distinguish between things which are wisely different; that is, the legislative duty to determine the political questions involved in deciding whether a state government, republican in form, exists, and the judicial power and ever present duty whenever it becomes necessary in a controversy properly submitted to enforce and uphold the applicable provisions of the constitution as to each and every exercise of governmental power.

"How better can the broad lines which distinguish these two subjects be pointed out than by considering the character of the defense in this very case? The defendant company does not contend here that it could not have been required to pay a license tax.

No Rights Violated.

"It does not assert that it was denied an opportunity to be heard as to the amount for which it was taxed, or that there was anything inhering in the tax or involved intrinsically in the law which violated any of its constitutional rights. If such questions had been raised they would have been justiciable and, therefore, would have required the calling into operation of judicial power.

"Instead, however, of doing any of these things, the attack on the statute here made is of a wholly different character. Its essential political nature is at once made manifest by understanding that the assault which the contention here advanced makes, is not on the tax as a tax, but on the state as a state. It is addressed to the frame work and political character of the government by which the statute levying the tax was passed.

"It is the government, the political entity which (reducing the case to its essence) is called to the bar of this court, not for the purpose of testing judicially some exercise of power, assailed on the ground that its exertion has injuriously affected the rights of an individual because of the repugnancy to some constitutional limitation, but to demand of the government that it establish its rights to exist as a state."

Would Require Bills of Health.

(United Press Leased Wire.)

London, Feb. 20.—A vigorous crusade against marriage of the physically unfit is being carried on by the Eugenics Education society. Its purpose is ultimately to secure legislation requiring all intending brides and bridegrooms to present certificates of health before receiving license to marry.

Nebraska City, Neb., has adopted the commission plan.

TALKING CONGRESSMEN DON'T AMOUNT TO MUCH

New York, Feb. 20.—Speechmaking congressmen do not count for much, in the opinion of Vice President James S. Sherman, who was formerly himself a member of the house. Discussing how laws are made, the vice president, in the March issue of the Woman's Home Companion, pays his respects to orators as follows:

"Debate as a rule has little effect on the fate of a measure. It is largely the froth of legislation—the substance is the work performed by the committees, which have had the bill in charge."

After telling of the multitude of bills and resolutions annually introduced, the vice president says:

"Congress is physically unable to give even perfunctory attention to all of the bills introduced. Each bill can receive only eight minutes' consideration and the bills on general subjects are entitled to a reasonable amount of consideration before being passed. Thus, it is perfectly obvious that many bills cannot be considered individually."