

SUPREME COURT DECIDES DESCHUTES COUNTY VALID

Upholds Decision of Judge Duffy, in Opinion Handed Down at Salem Today

BULK OF EVIDENCE WITH DEFENDANT

Suit Brought Because of Error Discovered in Returns from Fife Precinct—Governor's Proclamation Established "Prima Facie Case for Defendants, and Sustains Proof."

(Special to The Bulletin.)
SALEM, May 21.—The county of Deschutes is a valid county and the decision formerly given by Judge Duffy so holding is affirmed by the supreme court of Oregon in an opinion handed down today. Justice Burnett wrote the opinion.

While the court holds that the burden of proof is upon the defendants in quo warranto proceedings of this nature, "in the absence of any other evidence on the subject an executive proclamation judicially known to us and declaring the creation of a new county makes a prima facie case for the defendants and sustains the burden of proof imposed upon them," says the court.

Such a proclamation "is analogous to a certificate of election, fair upon its face and emanating from proper authority."

The court states that of course the defendant took chances in relying upon such papers, for in quo warranto proceedings the inquiry may be extended behind the returns, "even to the ballots themselves in the search for the true result of the election."

Valid Beyond Controversy.

"This certificate of proclamation of the governor," the court continues, "is only controlling in the event of the absence of anything to controvert it, but being unopposed by any other showing it places the validity of the establishment of Deschutes county beyond controversy. The county being regularly created, the power of the governor to appoint the county judge and commissioners and their right to those offices follows as a matter of course. It is unnecessary to consider the validity of the act of February 1, 1917, or the effect of the decree in McKay vs. Brown."

Proceedings Brought by Stadig.

Quo warranto proceedings were brought by Gus W. Stadig, as relator in the name of the State of Oregon, under section 365, Lord's Oregon Laws, questioning the validity of the organization of Deschutes county and attempting to dissolve the same and also to oust the county judge and county commissioners.

The question of the formation of Deschutes county out of a portion of Crook county was submitted to the voters of Crook county and of what is now Deschutes county at the general election, held in November, 1916. In drawing the boundary lines for the formation of the new county some of the voting precincts were split, one of which was Fife precinct. The election was duly held and the returns made to the county clerk of Crook county in the ordinary and regular manner, but an error was discovered in the returns of Fife precinct, which was sufficient to defeat the formation of the new county, if allowed to stand, and which, if correct, were more than sufficient in number to create Deschutes county. The error of this election board in this precinct was admitted by all and in order to prevent an erroneous return from being certified to the secretary of state and to prevent the defeat of the formation of the new county by the erroneous return, an injunction suit was instituted against the clerk of Crook county, enjoining him from certifying to the secretary of state the returns as certified to him by the county canvassing board until the returns in Fife precinct should be corrected. The defendant demurred to the complaint, which was overruled on December 12, 1916, and the court entered an order correcting the error in the returns from Fife precinct. The defendant failed in that action to plead further after the overruling of that demurrer and

failed to appeal to the supreme court from the order correcting the returns or overruling the demurrer.

Had Required Votes.

Immediately after the entry of that order the clerk certified the corrected returns to the secretary of state, showing that the proposition of the formation of Deschutes county had the required percentage of votes for the creation of such county under the law. Immediately after receiving the returns the secretary of state canvassed the same, and the governor issued his proclamation declaring Deschutes county established, and appointed the county court and the district attorney, who all qualified for the respective offices, and the county court thereafter appointed the remaining officers for the new county of Deschutes.

Shortly after the qualifying of the county court for Deschutes county, this action was begun by Gus E. Stadig, as relator, directed against Deschutes county and against W. D. Barnes, A. L. Mackintosh and L. E. Smith, judge and commissioners of the new county, and directly questioning the validity of the formation of the county and the right of the defendants to hold their offices.

Files to Dismiss Action.

Gus Stadig, prior to the filing of either the answer or reply in the case, filed a motion to dismiss the action and requested permission to withdraw from the case. The court allowed him to withdraw and he made no further appearance.

The lower court—T. E. J. Duffy, judge—entered judgment dismissing this action, holding that the judgment and decree in the former action and the legislative act of 1917 ratifying and confirming the creation of Deschutes county, estopped the plaintiff from questioning the validity of Deschutes county.

AIRMAN BATTLES --LEG BROKEN

DESCENDS INTO NO MAN'S LAND WHEN MACHINE IS DISABLED AND MAKES WAY TO ALLIED LINES.

By William Philip Simms
(United Press Staff Correspondent.)
WITH THE BRITISH ARMIES, May 21.—An American captain, an aviator from Philadelphia, fought the Germans over the Ypres lines with his leg broken, until his engine was disabled. Descending in no man's land, he crawled into a shell hole, away from the fire of the German batteries, which succeeded in scoring a direct hit on his machine, smashing it. Surrounded by bursting shrapnel, the captain dragged himself from crater to crater, until he succeeded in reaching the allied lines near the junction of the Belgian and British armies, where he received aid and was taken to a base hospital, where there is every chance for his recovery.

GRAND CHAPTER MEETS AT SALEM

SALEM, May 21.—The seventh annual convention of the Oregon grand chapter, P. E. O., opened here today with Mrs. Jessie W. Kirk, Springfield, presiding. New officers will be elected Thursday.

CREW OF A GERMAN SUBMARINE IN UNITED STATES PRISON CAMP



The captured officers and crew of the German submarine U-58 are shown here just inside the first barbed-wire gate at Fort McPherson, where they will be held in the war prison camp. They were made captives when our jacks rescued them from the sea after the destroyer Fanning sank the submarine. The officers in the group guarded by the marines are Capt. Gustav Auberger, Lieut. Otto van Ritgen, Lieut. Frederick Mueller and Warrant Officer Henry Ropke.

PLACED IN JAIL FOR PROTECTION

TWO MEN FROM BROOKS-SCANLON CAMP BROUGHT TO BEND BY SHERIFF ROBERTS—REFUSE RED CROSS.

Saved from an icy bath in the waters of the log boom at the hands of irate employes of the Brooks-Scanlon logging camp by the timely arrival of Sheriff Roberts, L. N. Brant and Richard Baird are in the county jail in this city this morning awaiting a hearing before United States Commissioner Ellis.

Both Baird and Brant have been working at the camp. Yesterday when the Red Cross drive was on members of the committee solicited the men for a donation and they both refused. Brant giving no distinct reason other than that he did not want to, while Baird declared it to be against his religious conviction. The word was passed among the boys at the camp, and it then became known that both men had refused to give to any war cause and were not members of the Loyal Legion.

Feeling at the camp ran high, and when the sheriff was called both of the accused men were in danger of bodily harm at the hands of their fellow workmen, and were brought to this city more for protection than anything.

In the county jail this morning Baird, a conscientious objector, stated that he would be willing to donate provided the knew that the money was not to be used to aid in killing his fellow men, and all arguments put forth would not convince him that the Red Cross was an organization of mercy. Brant, on the other hand, was surly, declaring that he had said yesterday that he would not contribute a cent and never would. "I have myself to look out for," he told Sheriff Roberts, "and it don't matter to me what the United States does or what Germany does." After this declaration he lapsed into silence and refused to talk further.

MARCH'S NAME GOES BEFORE THE SENATE

(By United Press to The Bend Bulletin.)
WASHINGTON, May 21.—The President has sent to the Senate the nomination of Major General March to become a general.

TOTAL OF VESSELS LOST, 305,100 TONS

(By United Press to The Bend Bulletin.)
LONDON, May 21.—The admiralty has announced that allied ships lost during the month of April, other than American, totaled 305,100 tons.

AMERICAN TANKER IS LOST AT SEA

(By United Press to The Bend Bulletin.)
WASHINGTON, May 21.—The American tanker William Rockefeller has been lost at sea, the navy department has announced.

AMERICAN FIELD ARMY IS FORMED

TWO ARMY CORPS OF THREE DIVISIONS.

Expected That American Troops in France Will Approximate Those of British on Firing Line by August 1st.

(By United Press to The Bend Bulletin.)
WASHINGTON, May 21.—America's first field army of practically 200,000 has been formed in France. This army consists of two army corps of three divisions each, with Colonel Bjornstad as chief of staff.

Startling revelations of the strides made by the army Franceward has been disclosed. The American army in France will equal the number of British facing the Germans in two or three months, and it is not improbable that the American forces will not approximate Haig's troops by the first of August. This statement was made by those in authority in Washington.

The brigading of American troops with those of the British continues, and it is presumed that the national army men are the ones being brigaded. The field army is made up of seasoned troops who have been in France for a long period.

SEVENTEEN MEN ON DRAFT LIST

TWELVE LISTED FROM BEND AND FIVE FROM OUTSIDE POINTS TO REPORT AT FORT McDOWELL.

Twelve men from Bend in class 1 are on the draft list just completed by the local war board to report at Ft. McDowell, California, between May 29 and June 2. Three are from other points in the county and one from Alaska and one from Missouri. The latter two men were listed in this county, but have changed their places of residence since the draft of June 5, last year.

CONGRESS VOTES TO ABOLISH LIQUOR

Protest Against Increasing Food Production Until Manufacture of Alcohol is Stopped.

(By United Press to The Bend Bulletin.)
WASHINGTON, May 21.—The House by a vote of 69 to 58 recorded itself as favoring the stopping of the use of grain in the manufacture of alcoholic beverages. The question came up as an amendment to the emergency food bill presented by Congressman Randall of California prohibiting the expenditure of \$5,000,000 for increase in food production until the President has issued a proclamation stopping the use of grains in making liquors.

HOFF LEADS RYAN FOR TREASURER

(By United Press to The Bend Bulletin.)
PORTLAND, May 21.—Hoff is leading Ryan by one hundred votes for state treasurer, according to official returns from 23 counties. Others are incomplete. Johns has nearly 2,000 lead over his opponents for supreme court justice.

BEND OVER TOP IN SECOND DRIVE

QUOTA FOR THE CITY RAISED IN ONE DAY.

Total Amount Turned in Has Already Reached \$4,676.55, with Several Sources Yet to Be Heard From.

- Through a regrettable error, it was stated yesterday that subscriptions to the Red Cross war fund amounting to \$1,100 had been made by employes of The Shevlin-Hixon Company, when in fact it was employes of the Brooks-Scanlon Lumber Co. who had made the subscriptions.
- The total subscriptions reported by Brooks-Scanlon Lumber company for receipts up to or nearly double the quota set for the company.
- Saw Mill \$236.00
- Box Factory 326.90
- Yard 402.20
- Woods 367.00
- Miscellaneous 150.50

Bend went over the top in contributing her quota of \$5,250 for the second war drive of the Red Cross before nightfall last night, according to reports from headquarters this morning. Chairmen of different committees who had the drive in charge in the city handed in a total of \$3,163.95 in cash and pledges to District Treasurer J. C. Rhodes, while the amount raised at the Brooks-Scanlon Lumber company mill, box factory, yards and camp amounted to \$1,512.60, bringing the total reported to date to \$4,576.55. This leaves but \$573.45 to be raised and does not include the employes of The Shevlin-Hixon Company.

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HUGE LAKE IS FORMING.

PRINEVILLE, May 20.—The lake that is being formed by the construction of the Ochoco dam is filling rapidly since the rains of the past few days, and has already practically reached the outlet. When the conduit is reached the water will be 32 feet deep at its greatest depth.

FIRE DESTROYS AIRCRAFT PLANT

SAN FRANCISCO FACTORY FIRED BY UNKNOWN ORIGIN—TOTAL LOSS WILL EQUAL MORE THAN MILLION DOLLARS.

SAN FRANCISCO, May 21.—Fire of unknown origin has destroyed an airplane factory in the heart of the city. Ninety minutes later the flames had spread and were threatening to devastate several wooden blocks near Market street. The fire started in the Emanuel cabinet works, where Robert Fowler has been manufacturing aeroplanes under contract from the government. Anonymous letters have been received by Fowler, it is claimed, in which threats were made to destroy the factory by bombing.

Linen used in building the aeroplanes, worth several hundred thousand dollars, was destroyed, fire starting in several places simultaneously, preventing the workmen and firemen from removing the contents of the buildings. Two complete aeroplanes were in the factory and are a total loss.

Although the fire was under control at 9 o'clock, 14 flats had been destroyed, which, together with the factory, will total a loss of more than one million dollars.

FORTY-ONE CASUALTIES.

(By United Press to The Bend Bulletin.)
WASHINGTON, May 21.—Pershing has announced 41 casualties—three killed in action, one dead of wounds, 18 wounded severely and eight slightly.