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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 366, 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, stopped the plaintiff from questioning the validity of Deschutes county.

GILSON PLEDGES ROBERTS SUPPORT

Candidate for Nomination for Sheriff Writes Commendatory Letter to Opponent.

E. D. Gilson, candidate for the nomination for county sheriff on the Republican ticket against the present incumbent, S. E. Roberts, has written Mr. Roberts a letter of congratulation upon his victory, and pledging himself to his support. The letter follows:

"Dear Mr. Roberts: I desire to congratulate you upon your nomination for sheriff, and the splendid vote recorded to your credit. My unqualified support and service is tendered to you, and if there is anything I can do to assist in your election I am ready to be commanded. "In the long campaign ahead there are some matters needing early attention which will no doubt be looked after by the chairman and county central committee.

"By this letter you are to be placed under no obligations whatever to me, as in writing this I am only doing what I would expect of you, and as I believe you would be man enough to do, in case the situation was reversed.

"Sincerely yours,
"E. D. GILSON."

SEVENTEEN MEN ON DRAFT LIST

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

(From Tuesday's Daily.)

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.

The names of those on the list follow:

Vincenzo Borgogni, Bend; Iver Hendrickson, Bend; Wm. R. Van Fleet, Bend; Ernst B. Fuller, Bend; Oscar J. Johnson, Bend; Alvin I. Christianson, Bend; John A. Wibler, Bend; Gus N. Nystrom, Bend; Magnus Elmen, Bend; Mose Vian, Bend; Ingerwold A. Johnson, Bend; Charles N. Kotsman, Bend; Fredrick E. Flitty, Livegood, Montana; Edward George Gutfleisch, Brothers; William Spencer, Millican; William E. Forman, Wapanilla, Oregon; Earl D. Roark, Booneville, Mo.

ARMENIAN RELIEF TALK BY HANER

(From Monday's Daily.)

J. H. Haner, chairman of the Armenian relief drive for Deschutes county, delivered an address at the Presbyterian church last night on this subject. Mr. Haner is well versed in the Armenian relief work, and the uses to which the money is being put, and his talk was interesting in the extreme.

GOOD GOVERNMENT LEAGUE MEETS

A committee for the purpose of formulating plans for an equitable taxation was appointed at a meeting of the Good Government league held at the Presbyterian church last night. There were about 30 members of the representative farm organizations and the labor unions of the county in attendance. A committee was also appointed to draft by-laws and constitution for the organization.

DEMONSTRATION HELD IN COUNTY

IRRIGATION METHODS TO BE TAKEN UP BY COUNTY AGENT WARD AND OREGON AGRICULTURAL COLLEGE OFFICIALS.

REDMOND, May 22.—Prof. W. L. Powers of Oregon Agricultural College conferred with Fred Wallace and County Agricultural Agent R. A. Ward of Redmond this week and planned the irrigation demonstrations which it was decided at the irrigation school to start in Crook and Deschutes counties. The plots selected for the work are near main traveled roads so that the results may be viewed by farmers' demonstration tours which the agent hopes to conduct later in the season. Demonstrations with the use of various fertilizers are also planned and will be carried through to conclusion. A capable man in the person of John Tuck has been secured to give his entire time to taking charge of and conducting these irrigation experiments. This work is an outgrowth of our irrigation school and will be of unquestionable value to the water users of Central Oregon. Much credit is due to Fred Wallace of Tumalo for untiring operation in bringing this demonstration work about. The county court and the various irrigation companies also deserve commendation for the financial support which they have lent this project.

QUESTION OVER COMMISSIONER

CONFUSION IN VOTE FOR LONG TERM.

Varco and Overturf Both Have a Greater Number of Votes Than Bailey and Miller—May Call for Recount.

(From Monday's Daily.)

Who are the nominees for county commissioner? The primary election is over, all the state contests are settled, and most of the county candidates are known, but the question as to the county commissionerships is still unanswered.

On the face of the returns H. J. Overturf and E. E. Varco are the successful candidates, having the highest number of votes cast, C. H. Miller being third and Meredith Bailey fourth, but because of the manner in which the four names appeared on the ballots friends of the last two are asserting that Overturf and Varco are not necessarily winners simply because they received the greatest number of votes.

Although only two commissioners were to be nominated, the ballot arrangement made it appear that the voter should vote for three names, either Miller or Bailey and Overturf and Varco. As a result, it is claimed, the last two were bound to lead since everyone would vote for them and the vote for the others would be split.

The reason for the ballot arrangement was the way in which the four candidates filed their nomination papers, already described in The Bulletin. Miller and Bailey announced themselves as candidates for the four-year term, Overturf for the two-year term and Varco made no statement as to terms. The names were so placed on the ballot and now the question remains—who was nominated for what?

If the canvassing board issues certificates of nomination to those receiving the highest number of votes, Overturf and Varco will be the candidates. On the other hand, if it issues a certificate to Miller as having the most votes for the four-year term and a certificate to Overturf as having the most votes for the two-year term, Varco is left out.

It is understood that all the election boards counted the votes cast for three commissioner candidates, although only two were to be nominated, when, strictly speaking, such ballots should have been thrown out so far as the commissionerships were concerned, and only those counted where two were voted for. Under these circumstances a recount of the ballots may be demanded and the three-vote ballots thrown out. Then the question would remain as to who would be declared nominated on the two-vote count.

BEND HERDS ARE AMONG THE HIGHEST

Report of Cow Testing Association for March Shows Honor to Two Bend Men.

Dairy cows belonging to Bert Torkelson and Julius Peterson, both of Bend, are listed among the four highest grade herds in the March report of the First Central Oregon Cow Testing association.

Two hundred and twenty cows were tested during the month. The average number of pounds of milk per cow was 556.9 and the average pounds of butter fat was 26.9, with average cost of \$9.11.

The four highest grade herds were:

G. N. Rader of Redmond. His five Jerseys averaged 742 pounds of milk and 37.8 pounds of butter fat. S. L. Reynolds of Prineville. Five Jerseys averaged 551.4 pounds of milk and 37.7 pounds of fat.

Bert Torkelson of Bend. Five Jerseys produced 569.2 pounds of milk and 34.1 pounds of fat.

Julius Pederson of Bend. Five Jerseys produced 544.7 pounds of milk and 34.1 pounds of fat.

Mrs. F. C. Collin of Redmond had the honor grade cow for the month. Buttercup, a grade Jersey, three years old, produced 1,191 pounds of milk and 57.8 pounds of fat.

WINTER SPENT IN CASCADES

FORMER BEND PEOPLE FOUND BY HUNTER.

Oakridge Trapper, Repairing Forest Telephone Line, Gets Message From Snow Imprisoned and Starving Party.

(From Wednesday's Daily.)

Found by a trapper in the heart of the Cascade mountains, where they had spent the winter writing books and poetry for pastime, is the story of two families of former Bend residents printed in the Oregonian of yesterday. The families were Mr. and Mrs. C. H. McKean and Mr. and Mrs. Karl Ladewig, residents of this city for some time, and who have relatives living in the county. They left here for the Cascades early last fall, taking in provisions from this point, as stated in the article, which follows:

"A telephone message made possible by repairs of a forest telephone line by a bear hunter on his spring trapping expedition brought the first news that a party of four persons, two men and two women, had spent the winter near the summit of the Cascade mountains in the wildest and most desolate part of the state of Oregon. The message stated that the party's food supplies had been exhausted and asked that someone be sent to their relief with provisions.

"The members of the party were: Mr. and Mrs. C. H. McKean and Mr. and Mrs. Karl Ladewig of Los Angeles, Cal.

"The trapper who repaired the telephone line and carried food to the party was J. B. Hills of Oakridge. He had met the Californians going into the mountains last fall, taking in provisions from Bend, and advised them that no one had ever before attempted to spend the winter in that region and said he did not believe it possible. He had forgotten them until Mr. McKean, by chance, succeeded in reaching him when he was trying to call another party.

Repaired Line Saves Lives.

"The repairing of the telephone line came as an act of providence to the Californians. Several days before Ladewig had fallen down a hill. He was knocked unconscious for a time and his back was injured. He walked for days with a high fever and collapsed soon after assistance reached the party. He is now in Brock's cabin, 15 miles above Oakridge. The other members of the party were nearing the point of exhaustion, and their food supply had been exhausted for two days.

"They had been delayed in making the trip down the river because they had lost their way. The McKean and the Willamette rivers are about three miles apart in that region. They started for the Willamette and came out onto the McKenzie, making their mistake by turning down the wrong gorge.

Light Snow Fortunate.

"The Californians made their camp last fall by building a cabin near the headwaters of the McKenzie river, three miles north of Pack Saddle mountain. It is stated that snow from 40 to 50 feet deep is possible at that point during a severe winter. The winter this year was light and the greatest amount of snow standing on the ground at one time was 30 feet, according to Mr. McKean, who with Mrs. McKean arrived in Eugene today.

"Men have had such experiences in the Cascades, but it is said to be the first time two women have ever wintered so near the summit. The women in the party were dressed in khaki coat and trousers. They walked a total of 840 miles in the mountains, covering much territory in which there were no trails and over and up and down mountain slides where they made their way by pulling themselves up or letting themselves down by catching hold of the branches of trees. The party secured a meat supply during the winter by killing marten, porcupine, squirrels and camp robbers.

"From December 1 to April 27, the members of the party had seen no one from the outside world. During that time Mr. Ladewig wrote two volumes of poetry and Mr. McKean a book."

OREGON FAVORS MAN ON THE JOB

NO CHANGE IN VOTING THIS FALL.

Withycombe Sure to Be Returned—Landslide for the Governor Viewed with Awe by Pierce.

(Special to The Bulletin.)

SALEM, May 22.—Everything is over, along with the shouting, and it is with pleasure that the files of The Bulletin can be looked back at with a sort of "I told you so" air, for it is there—in black and white.

With a little pardonable presumption it may be said that The Bulletin predicted a race between Withycombe and Olcott, and the result was Withycombe first and Olcott second. The big surprise came in the Withycombe landslide, as that upset everyone's dope, even the dope of the deepest dyed Withycombe booster. It was also forecasted that Simpson would be third and Moser fourth, with no effort made to determine whether Harley or Anderson would win.

Had Dope on McNary.

The Bulletin felt quite easy all along that McNary would defeat the money spending Stanfield campaign, with his record in Congress and the help of the silent vote. That was the prognostication, and the result has been vividly told. That also was a surprise from the standpoint of the landslide, but it has ever been the habit of Oregon voters to repudiate the flash of the roll and the madness of much money along about election time, and they came to the bat with a ready repudiation in this case.

It was also foretold that the treasurer race would be between Ryan and Hoff, and so it was, with the further forecast that Adams would probably nose out Cusick, leaving Cusick in fourth place. He landed in fourth place all right, but if it was by a nose Adams has a particularly long nose.

Landslides Not Expected.

Frank confession will be made that no such landslides as were piled up were expected, but that was an error in the dope of all of the politicians. The forecasts on election were not made from the standpoint of personal judgment, but based on reports garnered here, there and everywhere, and the fact that the forecasts fitted in pretty well with the results as far as the final places were concerned, indicates that there might be something in the dope after all.

Republicans Triumphant.

But enough of this tooting of one's own horn. It is all over now and predictions are as freely being made at long range that the Republican ticket will be overwhelmingly triumphant all along down the line in November. The Withycombe landslide hit Walter Pierce a stiff solar plexus. Walter spent considerable time before the primaries traveling about the state. He didn't do it to boost Walter, but merely to drop the word along the line that Withycombe was sure and certain to be the Republican nominee. He did that because he felt he could beat Withycombe, possibly, but could not beat Olcott with Olcott's Democratic following.

Hard Sledding for Walter.

The landslide has given Walter reason to pause. It indicates a general sentiment to keep the man on the job on the job and it looks like hard sledding for Walter to arouse the sentiment of Republican voters to anything like a pitch where they will switch to the Democratic column in the general election.

With the defeated Republican candidates lined up behind Governor Withycombe the harmony club has been organized and is in full swing, and that will be another feature militating against the Democrats.

Oswald West, Democratic nominee for United States senator, has proposed that he and McNary dispose with a campaign altogether and use the time and money that would otherwise be wasted on a campaign in aiding the country's cause. It is barely possible that a further seasonable

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