

# The Daily Capital Journal

SALEM, OREGON, TUESDAY, DECEMBER 21, 1909.

VOL. XIX.

NO. 292.

## WINDUP OF THE GREAT BALLOT BATTLE

### M'BRIDE DECIDES LAW IS VALID

Can Increase the Supreme Court Judges From Three to Five If They Wish.

The supreme court of the state today rendered a decision in which it sustains the constitutionality of chapter 50 of the laws of 1909, which act provided for the increase of the justices of the supreme court from three to five, and also provided for the immediate appointment of the two additional justices by the governor. The act was passed at the last session of the legislature, and immediately after it became law the governor appointed as associate justices to Justices Moore, Eakin and McBride, Justices King and Slater, and they took their oaths of office on February 12, 1909, and entered upon their duties.

The constitutionality of the act providing for the increase of the court, and the appointment of the additional justices was attacked in the case of the State of Oregon vs. Sam Cochran, who was convicted of violating the local option law in Multnomah county, and by reason of the fact that the seats of the two justices were involved, the case has been watched with interest by the lay as well as the legal fraternity, and the decision eagerly awaited. When the case of Cochran came before the supreme court on appeal the opinion reversing the decision on the trial tribunal was prepared by Justice Slater and Justice McBride. Justice Eakin rendered a dissenting opinion, which was concurred in by Justice Moore.

After this decision Attorney-General Crawford and one of the deputy district attorneys of Multnomah county, on behalf of the plaintiff, by a motion called for the issuance of a writ of mandate affirming the judgment of the trial court in the case, thereby raising the constitutionality of the act increasing the supreme court.

The contention by the attorney-general was that the lawfully constituted court consisted of Justices Moore, Justice Eakin and Justice McBride, and that therefore, in the decision of the case of Cochran, on appeal, Justice Moore and Justice Eakin constituted a majority of the court and that their dissenting opinion should be treated as the majority opinion; that the act providing for the appointment of Justices King and Slater was invalid, and submitted much authority in behalf of their contention.

The opinion sustaining the constitutionality of the act is written by Justice McBride and very voluminous. After a careful consideration and weighing of the authorities submitted on the question, Justice McBride sustains the act, and in the course of his decision uses the following language: "We hold that the law-making department may increase the number constituting the supreme court; that the supreme courts are necessarily separate and distinct in their powers and duties, and the duties are clearly pointed out. The number may be increased to seven at least, but whether it may be increased in excess of that number we express no opinion."

Justice Eakin and Justice Moore concur in the opinion. **Other Decisions.** Besides rendering a decision in the case of the State of Oregon against Sam Cochran, the supreme court also rendered a decision in the case of Henry Oilschlager, deceased, and Theo. M. Barr, administrator, against J. M. Widmer, et al. This was an appeal taken from the court of Judge Galloway, and his decision is affirmed. The case was a contest over the distribution of the estate of Oilschlager, estimated at \$21,000, the legality of the marriage of Oilschlager to Miss Mary Sabella Hamker being attacked by collateral kindred. The decision holds that the evidence is not sufficient to show that the marriage was invalid.

In the case of the state against D. H. Williams, who was dismissed for failure to file within the proper time the papers pertaining to the appeal with the clerk of the court. In the case of the State against Ira Brinkly, who was convicted of car-

### SEVERAL THOUSAND NEW SUBSCRIBERS WERE ADDED TO THE JOURNAL LIST

Greatest and Most Successful Contest Ever Held in the Willamette Valley--Whirlwind of Interest at Close--Final Standing of All Candidates Appears in Today's Paper --Official Announcement of Winners of the Many Prizes Together With Complete Figures Showing the Number of Votes Which Decided the Contest

### MILLIONS OF VOTES ARE CAST IN AGGREGATE

Mammoth Vote Cast Means an Enormous Gain in Circulation of Inestimable Value to Advertisers--The Battle of Ballots Is Now a Matter of History--Contest Conducted Under the Personal Supervision of C. B. Hollister of the North Eastern Circulation Co. of Davenport, Iowa.

the stealing, the petition for a rehearing was denied. In the case of Wm. C. Smith and Minnie Medora Towley against F. Smith, et al., the motion to affirm a judgment in the lower court was granted. The decision of Judge Galloway in the case of the Portland Railway, Light & Power Company against the Railroad Commission was affirmed, and his decision in another case, where the same parties were involved, was also affirmed. In both cases the company had been directed by the commission to not charge or collect fares in excess of certain rates, and from this order the company appealed. The one case affects the fare between Portland, Milwaukee Heights, Courtney, Oak Grove, Center and Risley, where the company charged 15 cents, but must not charge more than 10 cents, and the other pertains to Lents and Intermediate points, where the commission held that a fare of not more than five cents should be charged.

### THE OREGON TRUNK LINE

[OFFICIAL PRESS RELEASED WIRE.] Klamath Falls, Ore., Dec. 21.—Maps filed in the Lakeview land office by James J. Hill's new railway, the Oregon Trunk Line, have given rise to the belief that Hill and "Lumber King" Weyerhaeuser have joined forces.

The maps show that a right-of-way has been secured from The Dalles down the Deschutes valley and Deschutes canyon. The right-of-way extends to a point 30 miles south of Crescent lake, thence passing up the east fork of the Deschutes. The maps indicate a right-of-way to a point 65 miles due north of this city. Weyerhaeuser owns more than 200,000 acres of valuable timber land in the region through which the right-of-way extends, and maintains a narrow gauge line from Klamath Falls into the timber belt. The fact that the right-of-way follows so close by the Weyerhaeuser lands has furnished grounds for the rumor of a combination between their owner and Hill.

**Telegraphic Flashes.** Owing to the extreme inclemency of the weather, all work on the extension of the Sumpter Valley railway, from Austin to Prairie City, has been discontinued.

A La Canyada valley woman killed a duck with six good-sized gold nuggets in its gizzard. Everybody in the valley is now trying to find out where the duck got the gold.

Congress has decided to investigate the so-called Ballinger-Pinchot controversy.

San Francisco has a drug store bandit who is creating all kinds of excitement, who held up three drug stores and walked into the Burriss Hamman baths and shot down and killed Wm. Schneider, the cashier, without provocation.

A San Francisco Jap began suit against himself today, because his code of honor demanded it.

We, the undersigned, judges in the Capital Journal Up-to-Date Voting Contest, after fully canvassing the votes, find the following young ladies to be the winners of the various prizes, in the three districts:

Capital Prize.	
The winner of the capital prize, Ford touring car, is Miss Lilly Stege. Total number of votes.....	6,537,385
District No. 1.	
Winner of the Eilers piano, Bertha Klinger. Total number of votes.....	4,052,400
Winner of the \$100 diamond ring, Helen Winslow. Total number of votes.....	2,513,730
Winner of the gold watch, Miss Martha Wolz. Total number of votes.....	1,972,120
Winner of the scholarship, Miss Adeline Flake. Total number of votes.....	1,836,180
District No. 2.	
Winner of the \$425 Eilers piano, Miss Alta Hobson. Total number of votes.....	6,150,600
Winner of the \$100 diamond ring, Nora Mann. Total number of votes.....	2,819,900
Winner of the gold watch, Josephine Neal. Total number of votes.....	1,343,790
Winner of the scholarship, Maud Cramer. Total number of votes.....	1,182,700
District No. 3.	
Winner of the \$425 Eilers piano, Cleo White. Total number of votes.....	3,706,000
Winner of the \$100 diamond ring, Agnes Stenson. Total number of votes.....	1,024,500
Winner of the gold watch, Miss Eliza Ayer. Total number of votes.....	980,810
Winner of the scholarship, Jessie Pugh. Total number of votes.....	899,260
Winners of the brass bed and Princess dressing table, the special prizes:	
The brass bed.....	Miss Alta Hobson, Stayton
The Princess dressing table.....	Miss Cleo White, McMinnville

(Continued on page three.)

### EVERYBODY SEEMED SATISFIED

A good-natured crowd assembled at Ye Liberty theater Monday afternoon at 1:30 to witness counting the votes in The Capital Journal contest. The candidates from the three districts were present in large numbers with their friends. The theater was very comfortable and on the stage were the five judges under the direction of Mr. C. B. Hollister, contest manager. Promptly on time the sealed ballot box was opened, and the ballots assorted by districts and then assembled by candidates. When that was completed and all the terms of the contest were

agreed upon the count began. The two counting machines were operated with lightning speed by Dave Eyre, of the U. S. National Bank, and E. J. Lally, of the Portland Railway, Light & Power Company. In less than two hours the totals were footed up, each machine strip of added votes sealed in a big envelope with the candidate's name on the outside, and put back into the big tin box.

**Happy Speeches Made.** When the big, good-natured audience became aware that the vote was ready to announce, a thrill ran over the crowd. C. L. Starr, expert accountant of the state tax board, stepped forward and made a few complimentary remarks about the enterprise of The Capital Journal in offering \$3000 worth of valuable prizes to stimulate circulation for a Salem paper. His remarks were well taken, and put the crowd in the best of good humor. He introduced Judge P. H. D'Arcy, who complimented all the candidates and their friends on the splendid spirit they put into the contest, and expressed his sincere regrets that there were not prizes for all the contestants. He

then announced the results as published elsewhere. His remarks were greeted with applause, as were Mr. Starr's, and, as each prize winner was announced, a new burst of applause rang out in the little theater. Jos. H. Albert, the fifth judge, was the happiest and most beaming man in the quintet, and enjoyed the whole final canvass to the utmost, and when Joseph gets enthusiastic there is a good time for everybody. The little children and the dog on the front seats cheered and barked with the rest. The judges did the best job ever put up in the line of many contests pulled off by Mr. and Mrs. Hollister, and received the thanks of all present.

**The Machine Presented.** When Miss Stege was through receiving congratulations for winning the capital prize, and they were many and hearty, Col. Hofer stepped up to her, and informed her that she was the owner of the Ford five-passenger car that has been up in the balloting contest for six weeks. He informed her that Mr. Priehs, of the Salem Auto Garage, would escort her and her party home, and, as it was too late to take out the state license in the name of the owner, as required by law, that could be done Tuesday morning. The merry party rode off happy over their splendid prize. Miss Stege has borne herself throughout the whole contest with splendid spirit and fortitude under the long strain of sharp competition and all kinds of bad weather. The total vote scored by each candidate appears in this paper. The Capital Journal desires to thank the loyal friends and supporters of each candidate for their hard work in making this contest a great success from every standpoint.

**This Paper Circulates.** In spite of unfavorable mail facilities, all organized to circulate Portland papers, The Capital Journal today has a state-wide circulation. The Daily Journal and the Weekly Journal go to enough people to enable anyone to succeed in business if intelligently used as an advertising medium.

Advertisers are requested to come in and look over our lists of subscribers before placing their money on advertising space.

The trial of Col. Hofer for alleged violation of the state law regarding taking out a state license has been postponed in Justice Webster's court until the counsel for both sides can fix a date. His contention is that the machine was suspended in a voting contest, and no one was the owner until the ballots could be counted, and a state license issued to the owner.

**Farm Property Changes Hands.** Some valuable property was transferred recently, according to the records on the books of the county recorder. Michael Bogner sold to John Pikan 150 acres of land situated a few miles northeast of Woodburn, upon the Southern Pacific railroad, for the sum of \$15,500. Salem realty men, who are familiar with the Woodburn property just transferred, are of the opinion that the buyer, Mr. Pikan, made a first-class investment, as property in that vicinity is becoming more valuable every year.

**Has Fine Delivery.** Housewives get prompt service at Ragan's Court street grocery.

### REPORT A COMPLETE THROW DOWN

Members of Committee From Missouri—You've "Got to Show Them."

[REMI GIBBY'S SURETY CALLING] Copenhagen, Dec. 21.—The committee which has been investigating the data of Dr. Frederick A. Cook today officially reported to the consistory of the University of Copenhagen that Dr. Cook's records and observations are wholly insufficient to warrant a verdict that he discovered the north pole.

The consistory of the university adopted the report of the committee, thereby flatly rejecting Dr. Cook's claims, and throwing out his records and observations.

Cook's data, according to the report, is no more convincing than was the newspaper accounts. Dr. Cook's private secretary is bitterly disappointed at the verdict, and is making an effort to induce the consistory to withhold its final judgment until Dr. Cook's full data arrived.

The consistory refused to pay any attention to Lonsdale's appeals from the findings today, and stated that they were final as far as the consistory is concerned. The discrediting of Dr. Cook was a severe blow to the Danish scientists, who had stood firmly by him and given him support under the charges made by Commander Peary.

It is believed if the data and records had provided grounds upon which the scientists could have established a reasonable basis for claiming that the Brooklyn explorer really reached the pole, this claim would have been made and upheld as long as tenable.

A member of the committee today said: "It took the committee but a few minutes to see that Dr. Cook's observations and so-called records were worthless." "The so-called note books on which Dr. Cook relied in a great measure for vindication had only accounts of his observations, rather than the observations themselves. These note books were thrown aside without a moment's consideration. I cannot understand how a man of Cook's reputed scientific attainments could have attempted to bolster up his claims with such flimsy evidence."

**Thinks Danes Were Fair.** Brooklyn, N. Y., Dec. 21.—"Well, I'm glad the Danes have found the rottenness in Denmark, anyway." Thus Herbert L. Bridgman, secretary of the Peary Arctic Club, commented on the action of the Copenhagen scientists in rejecting the Cook claims to the discovery of the pole. Bridgman declared that the former friendliness of the Danes for Dr. Cook precluded all possibility of their being unfair in their decision.

**I Told You So.** Washington, Dec. 21.—When shown today's dispatch from Copenhagen, Commander Robert E. Peary said:

"Three months ago, from Labrador, I sounded explicitly and deliberately a worded warning to the world, based upon complete, accurate information regarding the claims of Dr. Cook. In doing so I accepted the responsibility devolving on me and fulfilled my duty to the world and myself."

### COOS COUNTY ORATORICAL CONTEST

Myrtle Point, Ore., Dec. 18.—A high school oratorical contest was held at Coquille, Ore., last Friday evening to compete for the possession of the hundred-dollar loving cup given to the schools of Coos county by Mr. Frey, of North Bend. Coquille high school was represented by Miss Iva Howey and Gretchen Sherwood; North Bend by Ethel Metzlevan, Pear Watkins; Myrtle Point by May Hall.

The cup is competed for on the third Friday in each December. The winning school keeps the cup until the following contest, and on winning three successive victories become the permanent owners.

This is the second victory for Coquille, Miss Sherwood being the successful speaker Friday evening.