# GOV. WILSON AS FOE OF BOSSISM

## Utterly Routed Smith In Fight Over U. S. Senatorship.

## SMASHED ONE MAN POWER.

**New Jersey Executive's Determination Yielded Victory and Was Conspicuous Evidence of His Purpose to Show No Quarter When His Conviction of Right Met Opposition.**

Hon. Woodrow Wilson, governor of New Jersey, has come very sharply into the political limelight in the last few months by reason of his fearless and effective advocacy of the rights of the people to govern themselves without interference from the great corporations and vested interests. Governor Wilson is a native of Virginia, having been born at Staunton Dec. 28, 1856. He is the son of a Presbyterian minister of Scotch Irish descent. As a boy he lived in the south and at the age of nineteen entered Princeton university, from which he was graduated in 1879. He took a course in law at the University of Virginia and was admitted to the bar. He practiced law in Atlanta for two

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GOVERNOR WOODROW WILSON OF NEW JERSEY.

years and then took a postgraduate course in political economy, history and jurisprudence at Johns Hopkins university, Baltimore. His writings on political subjects while at Johns Hopkins attracted much attention, and he was offered the professorial chair at Bryn Mawr, Pennsylvania, the famous college for women, where he remained for three years. From Bryn Mawr he went to Wesleyan university, at Middletown, Conn., as professor of history and political economy, and in 1890 he joined the faculty of Princeton university as professor of political economy and jurisprudence. The title of this chair was later changed to professor of jurisprudence and politics. In 1902 Professor Wilson was chosen president of Princeton university and occupied that position for eight years. His incumbency of the office was a continual fight against special privileges and an effort to make the university more democratic than it had been in the past. In 1910 President Wilson was nominated as the candidate of the Democrats of New Jersey for governor and was elected by a plurality of nearly 50,000 after a speaking campaign that was remarkable in rousing the people of the state from one end to the other and swinging to his support thousands of Republicans who were dissatisfied with the present conduct and management of the Republican party.

Governor Wilson has more than fulfilled his pledges. He promised the people of New Jersey that he would be their representative at the state capitol and would guard the interests of the whole people to the best of his ability. Among the specific promises which he made were that he would do all in his power to secure the enactment of the public utilities bill for the control of railroads and other public service corporations; a revised primary law that would give the people absolute control of the nominations for all officers, including delegates to presidential conventions, and take the selection of candidates out of the hands of the bosses; a corrupt practices law that would make bribery and the use of money of corporations in elections difficult, if not impossible; a law providing for the commission government of cities by the votes of the citizens and including the features of the initiative and referendum and the recall; an employers' liability law which would protect the interests of the workers automatically without making it necessary for them to go to court to obtain their rights in case of injury while at work and several reform laws of great local importance in his own state.

Although the legislature of New Jersey was Democratic on joint ballot, the senate was Republican, and at first it seemed to every one that Governor Wilson had undertaken a hopeless task of endeavoring to force these reforms through an unwilling legislature. People declared that he would find practical politics something entirely different from the academic theories which were supposed to be his political stock in trade, but they reckoned without their man. They did not realize that all of Governor Wilson's life had been a training for active participation in politics and that his studies and research into political history and political methods had given him a wider knowledge of the power of the people under agressive leadership than any of the bosses of either party possessed. His whole political theory is based upon the right of the people to rule and their power to rule when their efforts are properly concentrated, and he demonstrated that his theory was correct when one after another his proposed reforms were forced through the legislature by the power of public opinion.

Even before Governor Wilson took his seat in the executive chamber he had won a victory over the bosses in his own party, which had inspired the people with renewed confidence and terrorized the professional politicians who were inclined to oppose his reforms. The election of a United States senator from New Jersey was the first important work for the new legislature to undertake. James Smith, Jr., long known as the big boss of the Democratic party in the state, had decided that he wanted this particular plum for himself, and he announced himself as a candidate, but at the primaries held early in 1910 James A. Martine, a clean and popular citizen, had been a candidate for the senatorial nomination and had received the indorsement of the people at the polls. Smith's name had not been presented at the primaries. This did not make any difference to Smith, who thought that his power as boss was sufficient to override the will of the people. Governor-Elect Wilson declared that Smith should not be senator, that he had no claim upon the office and that Martine had the strongest claim of all, that of popular indorsement. The fight between the old boss and the new leader was short, sharp and decisive. Backed by public opinion, the new governor won, and Martine was elected senator on the first ballot.

With these triumphs to his credit it is small wonder that the people of the United States are coming to look upon Woodrow Wilson as one of the greatest political leaders who have been developed in recent years. A progressive of the progressives, it does not worry Governor Wilson any to be called a radical. In fact, he calls himself a radical. "I am radical," said Governor Wilson recently, "and the first element of my radicalism is: Let's get at the root of the whole thing and resume popular government. We mean to have the kind of government we thought we had. I am ready to draw the initiative and referendum at any time. I believe in it. I have not the slightest fear of its disturbing our theory of representative government. I don't worry about theories anyhow; it's facts that worry me. The fact is we in New Jersey have not got anything but the theory, while in states where they have tried it the initiative and referendum has given them back representative government. It works, you know, without being called on to work at all. Where legislative representatives know that if they fail really to represent, the people have the power to take the legislation back into their own hands, those representatives have an effective motive to represent. The initiative and referendum is like a gun behind the door—for use in case of emergency, but a mighty good persuader nevertheless."

It is perhaps unnecessary to add to this explanation of Governor Wilson's attitude toward public affairs that

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MRS. WOODROW WILSON.

he is against special privilege of every kind and that he is particularly against the high protective tariff system and what he terms the outrageous Paine-Aldrich tariff law, and perhaps it is unnecessary to add that these are no new convictions on Governor Wilson's part, but are the fruit of a lifetime of study and observation of political affairs, of a life spent in training for active public service for which the opportunity has just come to him.

In his home life the governor is supremely happy. His tastes are quiet, and his charming wife and three bright and attractive daughters are the center of all of his recreations and amusements. Rather fond of the open air, he is not a sportsman in any sense of the term, although he occasionally finds opportunity to play golf, which he does very badly, with some of his most intimate friends. When it was announced in April that Governor Wilson was to visit the Pacific coast during May he was fairly deluged with telegrams from every part of the west, inviting him to speak on enough occasions to have kept him busy for three months doing nothing else.



# OREGON SUPREME COURT DECISIONS

**Full Text Published by Courtesy of F. A. Turner, Reporter of the Supreme Court.**

### Kirkpatrick v. The City of Dallas, et al, Polk County.

E. C. Kirkpatrick, respondent, v. The City of Dallas, Polk County, Oregon, and T. A. Odom as Marshal of said City of Dallas, Oregon, appellants. Appeal from the circuit court for Polk county. The Hon. William Galloway, judge. Argued and submitted April 20, 1911. John H. McNary and (C. L. McNary on brief) for respondent. Walter L. Tooze, Jr. and Oscar Hayter, for appellants. McBride, J. Affirmed.

This is a suit to restrain the City of Dallas and T. A. Odom, city marshal, from levying upon and selling plaintiff's real property for the collection of an alleged delinquent assessment.

Plaintiff alleges that he is the owner and in possession of certain real property in the City of Dallas; that the city claims a lien thereon by reason of the construction of sewers along and across the streets, with branches and laterals extending therefrom; that the city has no claims against the premises by virtue of the construction of the sewers for the reason (1) that the property does not abut upon the streets or parts of streets where any of such sewers, branches or laterals are laid as provided by ordinance No. 112, passed by the common council of the City of Dallas, July 27 1908, and approved by the mayor on the same date; (2) that such property has not been directly or indirectly benefited by or through the construction of the sewers, branches or laterals, as provided by Sec. 84 of the city charter; (3) that the city did not give a notice of its intention to construct the sewer and assess the cost thereof upon the property directly or indirectly benefited thereby, as required by Sec. 63 of the city charter; that the city has issued a warrant and placed it in the hands of the defendant Odom, the city marshal, directing him to levy upon such property and sell the same on June 19, 1909, in order to satisfy the amount of money which the city has attempted to assess against the property for the construction of the sewer; that, unless restrained the marshal will sell such property under the warrant, to the great and irreparable injury to plaintiff's title.

To this complaint there was a demurrer upon the following grounds: (1) that the court has no jurisdiction of the subject of the suit; (2) that there is a defect of parties defendant; (3) that the complaint does not state facts sufficient to constitute a cause of suit; (4) that plaintiff has a plain, speedy and adequate remedy at law. The demurrer was overruled and defendants, choosing to rely thereon, declined to answer, whereupon the court rendered a decree in favor of plaintiff from which defendants appeal.

McBride J.: We are of the opinion that the complaint stated a cause of suit and that the interposition of a court of equity was properly invoked.

Section 63 of the charter of the City of Dallas (Spec. Laws 1901, 84) provides that no street improvement shall be undertaken or made without first giving notice thereof by publication for two weeks or by personal notice upon the owners of all property within the limits of the proposed improvement; and Sec. 84 makes the above mentioned provision applicable to sewer improvements. The complaint alleges that no notice was given as required by Sec. 63 of the charter, but this we take to be a statement of a conclusion of law not presenting any issuable fact. It is merely a statement of the pleader's opinion that the section in qustion had not been complied with. Had the allegation stated positively that no notice whatever had been given, it would have been sufficient; but this it does not do and in its present condition is entirely consistent with the supposition that some sort of notice was given which in the pleader's judgment failed to comply with the requirement of the law: State ex rel v. County Court of Malheur County, 54 Or. 255; 107 Pac. 907.

We will now consider the right of the city under its charter and ordinances to levy an assessment against plaintiff's property. Sec. 84 of the charter of Dallas reads as follows: "The council shall have the power and is authorized to lay down all necessary sewers and drains and ditches, and cause the cost of the same to be paid out of the general fund of the city, or to be apportioned and assessed on all the property directly or indirectly benefited by such sewer, drain or ditch. When the council shall direct the same to be assessed upon property directly or indirectly benefited such expense and cost shall be apportioned, assessed, and collected as in section 63 and 81 inclusive, of this act, provided in the case of street improvement. Provided, the council shall not necessarily be limited to the property immediately adjacent thereto or abutting thereon in such apportionment and assessment."

Sections 1 and 4 of ordinance No. 112, which is the ordinance authorizing the improvement in question, read as follows: "Sewers, with branches or laterals extending from such sewers to the property line of each lot, tract or parcel of ground adjacent to and abutting upon the streets or parts of streets where such sewers are to be laid, as hereinafter specified, shall be constructed and laid on each of the following described streets and parts of streets in the city of Dallas Oregon, to-wit:" (Description of streets follows). Sec. 4. "The sewer improvement provided for in this ordinance shall be completed within 15 days from the date of the aproval of this ordinance and the cost of such sewers shall be assessed to the property abutting upon the streets or parts of streets where the same are laid and benefited thereby."

The power of the city to assess property adjacent to the proposed but benefited thereby is ample under Sec. 84 of its charter, but the exercise of that power is optional with the council, and we do not think the language employed in Sec. 4 of the ordinance above mentioned indicates clearly an intention to exercise it in this instance. The language used, "the cost of such sewer shall be assessed to the property abutting upon the streets or parts of streets where the same are laid and benefited thereby," if given its usual and ordinary meaning, indicates an intention that only abutting property shall be assessed, and that only when it is benefited by the improvement. Statutes imposing burdens upon the property by way of lien or assessment should not be enlarged by construction.

It is contended that the remedy in this case should be by review and not by resort to equity. Both remedies have been employed in this state but the complaint here presents several issuable facts. For instance, the location of the property would not necessarily appear upon the record of the proceedings of the council, besides we think the general trend of authority in this state is that equity will interfere to prevent the sale of property upon a void assessment or for an illegal tax although the right to do this seems to be doubted by Thayer, C. J., in Sperry v. Albina, 17 Or. 481. This court has so frequently exercised the jurisdiction to enjoin such sales that it may be said to be the settled practice in this jurisdiction so to do. Such a sale must necessarily cloud the title of the owner even if the proceedings antecedent to it are entirely void. In the case at bar, for instance, suppose that the city marshal should be permitted to sell the plaintiff's property on this void assessment. The next step naturally would be the issuance to the purchaser of a deed regular upon its face and apparently conveying title; the next step would be the recording of this deed. A person seeking to purchase the property from plaintiff would naturally search the records and find this deed, making an apparent breach in plaintiff's title. Should he seek advice of plaintiff's attorneys he would be told that it was valid and that plaintiff had nothing to convey. If able counsel differ in court upon the question of the validity of these proceedings, it is fair to presume that they would differ to a like degree outside of court and the intending purchaser would avoid the chance of buying a lawsuit by refusing to purchase. It is idle to say that such an instrument would not be a cloud upon the title as a matter of law, when every attorney knows that it would be a cloud as a matter of fact.

Commenting upon decisions which hold that instruments of this character do not constitute a cloud upon the title, Mr. Pomeroy says: "While this doctrine may be settled by the weight of authority I must express the opinion that it often operates to produce a denial of justice. It leads to the strange scene, almost daily in the courts, of defendants urging that the instruments under which they claim are void, and therefore that they ought to be permitted to stand unmolested and of judges deciding that the court cannot interfere because the deed or other instrument is void: while from a business point of view, every intelligent person knows that the instrument is a serious injury to the plaintiff's title, greatly depreciating its market value; and the judge himself, who repeats the rule, would neither buy the property while thus affected, nor loan a dollar upon its security. This doctrine is, in truth, based upon mere verbal logic, rather than upon considerations of justice and expediency." III. Pomeroy's Eq. Jr. 437.

It is suggested that the complaint in this case does not allege that the sale would constitute a cloud upon plaintiff's title, and while this is true to the extent that the exact words "cloud upon title" are not employed, yet the facts that must necessarily result in a cloud are stated, followed by the allegation that such sale would be "to the great and irreparable injury to plaintiff's title." Upon general demurer we think this allegation is sufficient.

The decree of the circuit court is affirmed.