

Children Cry for Fletcher's

CASTORIA

The Kind You Have Always Bought, and which has been in use for over 30 years, has borne the signature of *Chas. H. Fletcher* and has been made under his personal supervision since its infancy. Allow no one to deceive you in this. All Counterfeits, Imitations and "Just-as-good" are but Experiments that trifle with and endanger the health of Infants and Children—Experience against Experiment.

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Bears the Signature of

Chas. H. Fletcher

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INJUNCTION MADE PERMANENT.

(Continued from Page 1)

the petition. But if it is not a valid petition, it cannot have that power against the measure, and the latter becomes a law.

It is the purpose of this suit to test this matter. It is alleged in the complaint, and it is not denied by the answer, that the plaintiff, at and for a long time prior to the commencement of this suit was a resident, inhabitant and taxpayer of the city of Eugene, Lane county, Oregon, and was and is a legal voter therein, and as such he claims that he has a right to prosecute this suit. But it is claimed by counsel for the defendant that plaintiff has not the capacity to bring this suit, and that this court does not have jurisdiction of the subject matter of this suit. Neither of these contentions has the slightest support in authority. The whole matter is settled by the provisions of section 3474 L. O. L., which are: "If the secretary of state shall refuse to accept and file any petition for the initiative or referendum any citizen may apply within ten days after such refusal to the circuit court for a writ of mandamus to compel him to do so." On a showing that any petition filed is legally insufficient, the court may enjoin the secretary of state and all other officers from certifying or printing on the official ballot for the ensuing election, the ballot title, and number of such measure.

The power to hear and determine the legal sufficiency of a petition already filed, is expressly conferred on the court by statute. The only matter not expressly stated is the right of plaintiff, as a citizen, to bring the suit. But by the preceding sentence of the statute, the power is expressly conferred upon any citizen to bring an action to mandamus the secretary to secure the filing of the rejected petition, and as a citizen has the same, if not more interest in the validity of the petition already filed as he has in one that has been refused the privilege of being filed, and as no other particular person is designated in the statute as a proper party plaintiff to enjoin the secretary, we must conclude that it was the legislative intent that any citizen might bring such a suit, as well as to bring an action at law to mandamus the secretary.

The complaint alleges that the petition as filed, contains a total of 13,615 names, which number is admitted by the answer to be the correct number; but it is also alleged in the complaint that a certain part of this petition, consisting of 63 sections, the respective numbers of which are therein stated, and containing 5195 signatures, are void, for the reason that none of the separate sheets thereof, containing the names, have anything printed or written thereon to denote the purpose or object that the persons whose names are written thereon may have had in view when signing their names thereto; that is, that there is no form of petition on any of said sheets, as required by sections 3471 and 3472, L. O. L., and is in violation thereof.

The facts, so alleged, are denied by the answer, but the petition, which is in evidence, confirms the allegation of the complaint. The legal proposition asserted by plaintiff in connection with the fact is controverted by the defendant. The provisions of the law, applicable to the facts shown have been interpreted by the supreme court of this state in the case of Palmer vs. Benson, 50 Or., page 281 of the opinion. This was an action brought against the secretary of state to compel him to file a referendum petition, which he had declined to receive and file, because of a defective form. The form of the petition in that case was the question before the court. After discussing other features of the petition, the court said at page 281 of the opinion: "Evidently the petition must be on every sheet on which signatures are placed, but the act will be on a separate sheet, etc." The reason for this requirement is obvious and substantial, and cannot with any degree of fairness, be denounced as a mere technicality of the law, but in fact it is a most essential and salutary provision, as the facts of this case will demonstrate. Without some such requirement, there would be no certainty of the intent or purpose which the several persons had when signing their names and certainly it could not be said that it bore any evidence that they intended to subscribe to statements inscribed on a separate paper, although bound together in the same package. It is easy to attach papers having only signatures on them to another paper, declaring a purpose different from that intended by the signers. The verity of a petition compounded in such a manner would depend upon the parole testimony of many different persons, and this manner of establishing the petition the law does not contemplate. Every sheet must be a petition within and of itself and be a petition within and of itself and contain the printed form of the petition upon its face, and the affidavit required endorsed thereon. The parts of the petition to which this objection is made bear evidence upon the face thereof that the respective tablets in to which these several sheets have

been bound, have been separated from the other sheets or documents to which at some time they had been attached before being filed, for the secretary of state has testified they are now in the same condition in which they were when filed.

Although he is expressly authorized by statute to detach sheets containing signatures from the sheets containing a copy of the measure, and bind the former under one cover, attached to one or more copies of the measure, but this, if done, must be done in the presence of the governor of the state and of the person offering the petition for filing, and he must return to the person filing the petition the detached sheets containing a copy of the measure; yet he testifies he did not do this. He was not required to do so, but if he attempted to change their form, he must do it so that the evidence thereof be indisputable. Still we find these petitions all so rearranged as to be in the form contemplated by the statute, that they may have, only after they have been filed, and not before that time, or while being circulated. Who so arranged or rearranged them, and was it lawfully done. This depends upon the testimony of those who are chiefly responsible for its circulation, and particularly Mr. J. H. Parkison. We have already stated that the statute does not contemplate that the verity of this petition, as to the material statutory requirements thereof, should depend upon the parole testimony of any one, but requires that it bear upon its face the evidence thereof at the time of being circulated and at the time of being tendered for filing. Much less then could we entertain the oral testimony in explanation of the present condition of the petition as to its present form when it is surrounded with such a mass of fraud, charged and confessed in this case, and by one who at least is indirectly, if not directly, responsible therefor. This part of the petition, having no form of petition upon the sheets, and containing over five thousand signatures, is therefore void.

It is also charged in the complaint that the whole petition is void because each sheet thereof is not attached to a full and complete copy of the measure. The petition, as filed and not already considered and disposed of, is made up into tablets of ten separate sheets containing on each a form of the petition and signatures verified in most instances by an affidavit, made by the circulator, on the back of each sheet. These ten sheets are bound under a cover with a single copy of the measure at the back under the cover. The wording of the statute, when carefully examined, seems to require a copy of the measure attached to each and every sheet, and a petition made up and circulated as this one seems to have been, does not meet the requirements of the law. Our supreme court has not, so far, construed the law so as to cover this point, and in view of the grave charges of fraud made in the complaint and particularly at least admitted upon the trial, it is perhaps better that the final disposition of this case be made upon the background, which we will now proceed to discuss.

It is charged in the complaint that some 25 different persons who circulated different parts of this petition, as the agents of H. J. Parkison, conspired and confederated together to corruptly make a spurious and false petition by the writing of fictitious names and addresses therein, and by forging the names of legal voters of the state; and that in pursuance thereof the said conspirators did write in, to said petition large numbers of spurious names and forged the names of many legal voters of the state therein; and by reason thereof all of the names in that part of the petition, verified by these several circulators, are spurious and void, and their affidavits false. The part of the petition thus challenged, includes about ten thousand names out of a total of thirteen thousand six hundred and fifteen. Quite a proportion of these alleged fraudulent names go to make that part of the petition which is void as to its form. These charges of fraud and conspiracy made in the complaint are denied by the answer, and the plaintiff has the burden of proof as to that issue.

As the taking of the testimony on this issue progressed at the trial, plaintiff made such a forcible and conclusive case of the alleged fraud to such a degree that defendant, by his counsel, voluntarily admitted in open court that names to the number of at least 3722 on this petition were and are fraudulent and void. This admission includes the following specific parts of the petition:

"Sections 4, 42, 53 and 54 verified by Jos. Gorham; sections 5, 6, 20, 43, 48, 52 and 63 verified by Harry Goldsman; sections 97 verified by Robert Goldsman; sections 14, 27, 47 and 55 verified by Charles Falk; sections 39, 41 and 66, verified by Fred Koch; sections 45 and 58 verified by Harry Color, and sections 79 verified by W. H. Reynolds."

It thus appears that of the total number of names admitted to be void 3995 are on that part of the petition which is not challenged because of the form of the petition, while 550 are on the defective part of the petition,

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