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SALEM ELECTION UPHELD AND TOWN STAYS DRY

SUPREME COURT AGAINST WETS IN EVERY CASE

Hillsboro Decision Covers Poin ts Raised in All Others and Opinion Is Written on it---Judge Eakin Writes Opinion and All Others, Except Burnett, Concur---Election Is Upheld on Every Point---Registration Law of 1913 Denounced as Trap Aimed to Defeat Local Option Election---All Questions as to Registration, D ate of Election and Other Matters Decided Against Wets.

The Oregon supreme court this morning decided seven local option cases in favor of the drys and settled the fact that elections cannot be set aside because some technical objection has been raised. It decided that faults arising out of the Gill 1913 registration act, confusion as to the time when such elections should be held and other alleged reasons should not avail in having "the will of the people" set aside. The opinion of the court was written in the case appealed from Hillsboro, and in deciding the Salem, Stayton and other cases, the court merely referred to the Hillsboro opinion. Judge Burnett wrote a dissenting opinion and stood alone, the other six judges favoring the dry side of the issue.

In his opinion Justice Eakin declared that the 1913 registration law was operated as a trap that "would defeat a local option election, and as a fraud on the voters of Oregon."

Petition Valid.

The supreme court held that the petition for the local option at Hillsboro was valid because it had been circulated under the then existing laws. The election was held Novembr 4, and the decision of the supreme court holding the Gill registration act invalid was not filed until November 25. The court held that the election and vote thereunder should not be held void and a community disfranchised by reason of a defective law that would affect the right of the petitioners to sign a petition. Further the court holds that an election could not be disturbed by a preliminary proceeding that does not go into the qualification of signers.

General Election.

The attack on the election because it was not held on the day of a general election also failed. The court held that the home rule amendment operates as before, except that now a municipality, or any precinct therein, is a subdivision of the county.

The election is held sufficient in every respect and the same ruling applies to the two Salem cases, the Stayton case, Springfield and all other towns in which there have been liquor contests.

The Salem cases are all based on the following, which states the facts and conclusions in all.

W. V. Wiley, plaintiff and appellant vs. D. B. Reasoner, county judge, et al.

This is a suit to obtain a decree declaring the local option election held in the city of Hillsboro on November 4, 1913, illegal and void, and to vacate the order of the county court, made November 17, 1913, declaring prohibition in said city. The plaintiff was a liquor dealers therein. The said city of Hillsboro, together with contiguous territory without the city, for county purposes is composed of two precincts; for city purposes, it constitutes but one voting ward. On October 1, 1913, petitions containing a large number of signatures were filed with the county clerk and presented to the county court, praying for a local option election in the city of Hillsboro on November 4, 1913. On the — day of October, 1913, based on said petitions, the county court ordered that an election be held in said the three years' residence requirement, city on said date to determine whether the sale of intoxicating liquors should be prohibited therein, and directed that the notice of election be given. Said election was held on said date, and resulted in 23 majority votes for prohibition. On the 17th day of November, 1913 the county court, pursuant to the canvass of the votes of said election within said city, entered an order declaring the vote to be in favor of prohibition and prohibiting the sale of intoxicating liquors therein. Upon the trial of this suit the court denied the application of the plaintiff, and decreed that the order of prohibition was valid. The plaintiff appeals.

Five Contentions.

Eakin, J. The following contentions are made by plaintiff: (1) That the signers on petitions for a local option election were not registered voters; (2) that the order of the county court calling the election was invalid: (3) proper notices of the election were not given; (4) that the election was not held upon the day appointed by law; and (5) that the votes of 506 persons who were not registered were cast and received. The petition before the county court asking that an election be held to determine whether the sale of intoxicating liquors in the municipality of Hillsboro shall be prohibited alleges that the petitioners are legal voters of the municipality of Hillsboro. His place of residence within Hillsboro is given opposite the signature of each petitioner. The clerk certifies that 143 of the petitioners were registered voters, which were more than than the number required. Of course, the clerk's certificate was made from the registration law of that year, which this court thereafter, on November 25, 1913, held to be unconstitutional; but the election was held on November 4th prior to the decision, and it was too late for the plaintiff to question the qualifications of the petitioners after the election had taken place, at least without proof that the petitioners were not legal voters within the city. The registration law was held void only because the taking effect of it was made to depend on the approval of the supreme court. The registration taken thereunder actually disclosed that those registered were legal voters when certified by the clerk; and the election and vote taken thereat should not be held void and a community disfranchised by reason of a defect in the law that would affect the right of the petitioners to sign the petition. In the designation of who may petition for a local option election in section 4920, L. O. L., namely, "registered voters," the word "registered" may be considered as surplusage under the circumstances found here. Had the petitioners been registered only under the 1899 registration law, the petitions would not have been received or acted on by the county court; and if it was not sufficient that they were registered under the 1913 law, then section 4920 contains an impossible requirement as to registration when there was no means of compliance available to the petitioners, and the petitions, if signed by voters qualified as to such under the requirements of the constitution, constituted a substantial compliance with the statute. The court will not hold the petitions insufficient for that defect without proof that the signers were not legal voters, the duty to establish which devolved upon the plaintiff. The purpose of the petitions and the order of the court are only a method by which the electors may secure the submission of the local option question to the voters; and the election having been called and the vote taken, the result should not be disturbed by reason of an irregularity in a preliminary proceeding that does not go to the qualifications of the signers. It may be jurisdictional that the petitioners be registered, but that can only be true in case there is a recognized registration, or an opportunity to register. It must be borne in mind that at the time of the signing of the petitions asking for the election, at the time the clerk certified that the petitioners were registered voters, and when the court made the order, as well as when the election was held thereunder, the registration law of 1913 was recognized as being in force, and that the registration law of 1899 had been repealed. And to now hold that only voters registered under the 1899 law could petition for the election would be to hold that it was not possible for the voters to petition for a local option election during the year 1913, and also to hold that the state election held on that day was void, which was conducted under that registration law. In other words the 1913 registration law operated as a trap that would defeat a local option election and as a fraud upon the electors of Oregon, namely, that those registered under the 1913 law could not petition because it was void, and those registered under the 1899 law could not petition because, as the law then stood, it had been repealed. But the rights of the voter cannot be so trifled with. So far as the petitions were concerned they were actually registered under the void law, the only registration that could have been recognized when the court ordered the election; and we will not hold the order calling the election void without proof that the petitioners were not legal voters.

Voters Qualified.

Again, it is contended that because 506 of the votes cast at the election were registered under the 1913 registration law, they were not qualified voters; that they did not, when presenting their votes, take the affidavit blank A of section 3449, L. O. L., and, therefore, that their votes were illegal, and the election should be held void. The county court acted on the registration law of 1913 as a valid law, as did the county clerk, the election officers, and the voters. It was not questioned that those parties who registered thereunder were legal voters under the constitution. The registration law was not enacted to add to or take from those qualifications, but only to place a safeguard around the elective franchise; and, although the law was declared unconstitutional because the taking effect thereof was made to depend on the approval of an authority other than the legislature or the vote of the people, yet until so held void it operated as such protection to the election of November 4th. The observance of it by the voter was such evidence of his right to vote as would justify the acts of the county court and the election boards. The voter by his faith in the validity of the law performed every act that would have been required of him under the registration law of 1899, as amended. The county court, the voters, and the election boards acted with the understanding that the registration law of 1899 and amendments had been repealed, and the election should not be held void so long as those voting were legally qualified under the constitution. It was urged at the argument that every voter who is not registered is to be considered challenged and must swear in his vote upon blank A. If it were now assumed that there was no registration, the affidavit of the voter taken in the attempted registration under the registration law of 1913, containing the facts required by blank A, was before the election boards, and the voters may be deemed to have thereby complied with that requirement, and is no objection to the legality of the election. A duplicate of the registration card was in the possession of the election (section 4 of the act)' and the precinct registers were sent to the several precincts, to-

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EMBARGO RAISED ON ARMS AND AMMUNITION BY PRESIDENT WILSON

Americans in Capital of Mexico Notified of Step to Be Taken at Once.

AMERICANS ARE FLEEING

Foreigners Losing No Time in Getting Out of City of Mexico on Receiving Important News.

[UNITED PRESS LEASED WIRE.]

Mexico City, Feb. 3.—American Charge d'Affaires O'Shaughnessy today received from Secretary of State Bryan instructions to notify Americans and other foreigners in the Mexican capital of President Wilson's determination to lift the embargo against the importation by the rebels of arms and ammunition from the United States.

Many Americans prepared immediately to leave, and it was believed by tonight every train for Vera Cruz would be crowded with fleeing foreigners.

DIGGS IS UNABLE TO GET OUT OF JAIL BUT IS HOPEFUL

[UNITED PRESS LEASED WIRE.]

San Francisco, Feb. 3.—Maury I. Diggs and Walter Gilligan, charged with an offense against Ida Pearring, aged 17, were still in the city prison today. Friends on the outside were making every effort to find sureties for them to the amount of $10,000 each, but evidently it was not as easy as Diggs, who had expected to be released on bail yesterday afternoon, had expected.

The young man kept up his spirits, however, declaring he would be out late today. "And Gilligan, probably will be released with me," he added "A blanket denial of the accusation goes for me."

BREWERY CAN OPERATE IN SALEM BUT SALOONS ARE WIPED OUT

According to County Attorney Ringo, the decisions rendered by the supreme court will have no effect insofar as the manufacturing of beer in Salem is concerned. He states that the Salem Brewery Association can proceed with its work legally, but that it cannot sell, barter or trade its products in Salem.

Following the decision the local retail dealers gave up all hope of having their respective businesses opened up again this year. Most of the buildings formerly occupied by saloons were already advertised for rent or remodeled for some other class of business. Billiard tables, soft drinks and other mild refreshments are being supplied to the old patrons in some, and, with the exception of two or three, all of the stocks of liquors have been shipped away from the city.

The Weather

The Dickey Bird says: Oregon, fair tonight, warmer east portion: Wednesday probably fair west, snow east portion, wind mosly northerly.

HOUSE VOTES DOWN AN AMENDMENT AIMED AT JAPANESE LABORERS

Hayes Amendment Is Defeated by an Overwhelming Majority of Solons.

RAKER SUBSTITUTE FAILS

Amendment Aimed at All Asiatic Laborers Except Few Districts Set Forth Also Defeated.

[UNITED PRESS LEASED WIRE.]

Washington, Feb. 3.—Placing patriotism above partisanship, the house of representatives, by a vote of 203 to 54, refused this afternoon to make any declaration on an Asiatic exclusion policy aimed principally at Japan.

This stand was taken on the Hayes amendment to the Burnett-Dillingham immigration bill, and it went down to overwhelming defeat, despite the fact that most of its teeth had been drawn in a modification introduced by Representative Lenroot, and adopted by the house late yesterday. All party lines were eliminated in the vote on the Hayes amendment.

True to his promise, Representative Raker introduced his anti-Japanese amendment as a substitute for the Hayes amendment. It was snowed under by a vote of 182 to 6.

House leaders now believe that the Burnett bill will be rushed through to an early vote. A vote on the literacy test provision was expected this afternoon.

Aimed at Asiatics

The Raker substitute for the Hayes amendment provided for the exclusion of "all Asiatic laborers" except those who came from a district east of a line bounded by the Red, Mediterranean and Aegean seas, the Caucasus mountains, the Caspian sea and the Ural mountains except Asiatic Turkey

Representative Hardy, of Texas, asserted this plan would exclude only Asiatic laborers admitting Malays and Africans.

Bryan Has Faith in Treaty.

"Secretary of State Bryan believes all these matters will be settled by tive Burnett. "If not my committee tive Burnett. "If not my committtee will report out a bill which will meet them properly Hayes is trying to make cheap capital against Raker and the Democratic party."

Hayes denied this. Representative Gardner Republican of Masaschusetts, said the language already in the bill was opposed by the state department and foreign countries to which it had been submitted. Hayes declared that everyone desired the exclusion of Asiatics Representative Harrison, of Mississippi feared the amendments would create distress and anger a friendly nation

War in Headlines

"A Japanese war," said Representative Moore, of Pennsylvania, "is being principally fought now in the headlines of California newspapers. Bryan is opposed to the Raker bill. He does not want to declare war with Japan at the instance of California newspapers. The amendments would embarrass President Wilson's adusinistration, and it is certain they would be resented by Japan."

Representative Mann denied that the Republicans were playing politics.

"We should reject these amendments" he said. "The thing of dealing with a foreign nation is a delicate task. If the state department cannot eradicate difficulties by negotiations then it will be time for congress to act.

Good Time to Keep Cool.

"I am not prepared to invite war with Japan or any other country. Now is the time to keep cool."

Mann praised Hayes, adding

"Hayes ought to protect California even against herself."

"If these amendments will embarrass President Wilson we should reject them," said Representative Langley. "But I am getting weary of side-stepping the Japanese question. We should have no fear of war with Japan. For one thing Japan is bankrupt."

JUSTICE BURNETT DOES NOT AGREE WITH HIS ASSOCIATES IN CASE

Holds Insufficiency of Petition Calling for Local Option Election in Hillsboro Is Fatal---Because Petition Is Invalid Election Following It Is Invalid--Quotes at Length Laws Which He Believe Supports His Contention---Opinion in Full.

In dissenting from the opinion of his associates of the supreme court in the liquor cases today, Justice Burnett declared that the Hillsboro election was invalid for the reason that the petition was not sufficient and that an election resulting from a petition which does not meet the legal requirements cannot be upheld. He considered the case at some length. His opinion follows:

Dissenting Opinion by Burnett Justice.

It is conceded in this case that the petition for the local option election in question here was signed in controlling numbers by persons who were registered as voters only under the so-called registration law of 1913, which this court declared unconstitutional and void in City of Portland vs Coffey,—Or.,—,—Pac.—, decided November 1913. In other words, if the question of whether the signers of the petition were "registered voters" within the meaning of the local option law is to be determined by any other statute than the enactment of 1913, then there were not enough signers to give the county court jurisdiction to order a local option election.

It is hornbook law "that courts of limited jurisdiction and courts of general jurisdiction, when exercising a special limited power conferred by statute, must show affirmatively that jurisdiction has been acquired." This rule was declared in Johns vs. Marion county, 4 Or. 46, and has been reiterated in a long line of decisions since. This language there used is peculiarly applicable to this case: "Under the statute, the court has no power over the subject until a petition of the prescribed character * * * is presented, and it is necessary that the record should show affirmatively that jurisdiction has been thus acquired, or the proceeding cannot be sustained." State vs. Officer, 4 Or. 180; State vs. Myers, 20 Or. 442; Bitting vs. Douglas County, 24 Or. 409, 33 Pac. 981; Cameran vs. Wasco County, 27 Or. 318, 41 Pac. 160; Grady vs. Dundon, 30 Or. 333, 47 Pac. 915; Sime vs. Spencer, 30 Or. 340, 47 Pac. 919; Mulkey vs. Day, 49 Or. 312, 89 Pac. 957; Dean vs. Washington Nav. Co., 59 Or. 91, 115 Pac. 284. More especially is this true when proceedings under the statute, as in this instance, may be commenced and carried as far as making the order for the election without any previous notice or giving any opportunity to contest the validity of the petition.

Depends Upon Petition.

By the provisions of the local option law the authority of the county court to submit to the electors the question of prohibition of the sale of intoxicating liquors is made to depend upon filing with the county clerk "a petition therefor signed by not less than ten per cent of the registered voters" in the territory involved. Such an instrument so signed is therefore a jurisdictional necessity with which the county court cannot lawfully order an election. It is a restriction which the people themselves have imposed upon that tribunal, for the local option law was enacted in the initiative process. So far as signing the petition is concerned it is not an exercise of the electoral franchise, and the constitutional right to vote is not involved. It is taught in Roesch vs Henry, 54 Or. 230, 103 Pac. 4349, that, as signing such a petition is not an exercise of the electoral franchise, it is not in derogation of the constitution to require all such petitioners to be registered voters. There the opinion cites the section of the statute requiring a petition of ten per cent of the registered voters and the other section directing the county clerk to compare the signatures on the petition with their signatures on the registration books of the election then pending, or if none is pending, then with the signatures on the registration books and blanks on file in his office for the preceding general election. The court, speaking by Mr. Chief Justice Moore, then says:

"Construing these clauses in pari materia, it is manifest that not qualified elector or legal voter is a competent petitioner for a local option election unless his signature appears on the registrative books of the election then pending; or, if no election be pending, then his signature must appear on the registration books and blanks of the preceding general election. The privilege of signing a petition to initiate a local ion election is not a right of franchise in which all electors enumerated in the organic law (section 2, article II Const.) can participate."

Must Be Registered.

No voter has an inalienable constitutional right to sign a local option petition, for that privilege is conferred by a mere statute which may be amended or abrogated at any time by the legislative power. The people themselves having declared that signers of such petitions must be "registered voters," it is not for the courts, the creatures of the people, to say that the word "registered" may be eliminated from the statute to suit the occasion or under the circumstances.

Where then are we to turn for a definition of the term "registered voters? Manifestly not to the registration law of 1913, for this court in the case of City Portland vs. Coffey, supra, has solemnly decided that law to be unconstitutional not only as to its affirmative provisions but also as to its repealing clauses. Six judges of the court, sitting in banc, have declared witout a dissenting opinion that in enacting that statute of registration the legislative assembly violated the fundamental law of the state ordained by the people themselves. It that statute is void as thus determined, no lawful procedure can be founded on its provisions. If it is unconstitutional at all, it is unconstitutional for all persons and for all purposes. It is void for both saloon keepers and prohibitionists, for both alike are protected or restrained by the constitution. If the 1913 registration law is powerless to affect a city election in Portland, as decided in the Coffey case, it cannot affect a local option petition in Hillsboro, nor make its signers "registered voters."

We cannot properly speculate what the county court would have done if a petition had been presented to it signed only by voters registered under the former statute. If that were a question before the court we ought not to presume that tribunal to be ignorant of the law, but rather that it wold be as loyal to the constitution as we are.

Neither is it within our province to disturb the settled principles of the law about jurisdiction in an effort to ally the disappointment possibly experienced by some of the electorate over the error of the legislature in passing an unconstitutional enactment. The situation thus arising can be remedied rightly only by legislative action which lies beyond our authority.

The validity of the state election in November, 1913, is not here involved, for it was held under a general law authorizing it, and this court upheld that statute by unanimous decision of the case of Equi vs. Olcott, — Or. —, 133 Pac. 775. The right to vote is another question to be determined ac-

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