face of the court. The opinion so rendered is now upon the files of this court, in this case, and is referred to as showing the action of the court. An order was thereupon entered in pursuance of the opinion as follows:

"In this case it is ordered that the clerk of this court issue a written notice to each of the persons, Rudolph Alff, J. F. Millspaugh, L. U. Colbath and T. C. Bailey, requiring them to appear before this court on January 30th, 1889, at 10 o'clock a. m., to show cause why they should not be punished for their contempt; and in case they fail to appear the clerk will issue writs of attachment for their arrest, and to bring them forthwith before this court."

In accordance with that judgment the order herein directed was issued, and the parties, on the 20th day of January, came into court and filed their sworn answer, in which they set out much matter that is wholly irrelevant to the judgment they were called upon to answer; but among other things they say:

"Your petitioners further represent that they have acted in the best of faith throughout this whole proceeding; that they have tried to the best of their ability to do their duty, and consciously have made no attempt to trifle with the court; that they believed the statements made by them to the court to be true; that they did not think nor believe, nor had they the slighest conception that those statements are scurrilous, insolent or contemptuous in any particular; that nothing was farther from their minds than the making of any insinuation or charge against the court, or of stating anything that would be considered contemptuous by the court. "It then prayed that they might be discharged from such contempt proceeding.

Upon the request of the defendants that they might be heard in their behalf before the court, opportunity has been given to them, and their case has been ably, earnestly and respectfully submitted before this court by two able counsel. It will be seen, however, that although the argument of counsel has taken a wide range, the direct question before the court is the proper construction of the paper filed before this court, which is fully set out in the opinion heretofore referred to. The good faith of the defendants is asserted by their counsel with much energy and confidence. Still, however, notwithstanding their good faith, they are responsible for the language used by them in any proceeding which they may bring into this court, and it is not for them nor their counsel to construe or to say what effect the language will have. This direct question came before the Supreme Court of California, in the case of McCormack vs. Sheridan, in the 20th volume of the Pacific Reporter, at page 24. In that case the court shows that "a petition for rehearing stated that how or why the honorable commissioner should have so effectually and substantially ignored and disregarded the uncontradicted testimony we do not know. It seems that neither the transcript nor our briefs could have fallen under the commissioner's observation. There is not a scintilla of evidence to the contrary, and yet the honorable court assures and in very emphatic language says 'a more disingenuous and misleading statement of the evidence could not be made. It is substantially untrue and unwarrantable. The decision seems to us to be a travesty of the evidence!' This is the exact language which the Supreme Court of California, in that opinion found to have been contained in the brief and petition presented by the attorney to the court in that case for a rehearing, upon which it was held by the court that the counsel drafting the petition was guilty of contempt, committed in the face of the court, notwithstanding a disavowal of disrespectful intentions. The court distinctly say: "These disclaimers by the respondent we accept as true, so far as it is possible to do so without giving a strained construction to the language used by him in his petition for rehearing. It may be that he acted in good faith and without any design, wish, or expectation of committing any contempt, and we accept the explanation in palliation of the offense; but the language we have quoted from this petition for rehearing is too plain and direct in the imputation of negligence and bad faith to authorize us to take this avowal of the defendant as sufficient to purge him of contempt. As was said in the matter of Woolley, 11 Bush, 109: "We recognize to the utmost reasonable limit of its application, the rule that a supposed contempt, consisting in mere words, which are apparently intended to be scandalous and offensive, but which are at all susceptible of a different construction, may be explained or construed by the speaker or writer of them upon his sworn disavowal of intention to commit a contempt, and proceedings against him will at once be discontinued. But this rule does not control where the matter spoken or written is of itself necessarily offensive and insulting. In such case the disavowal of an intention to commit a contempt may tend to excuse but it cannot and will not justify the act. (People vs Freer, 1 Caines, 485.) The intention to be offensive may be disavowed, and the particular language used to make the charges or imputations may be withdrawn, but the effect on the paper or publication, the ideas conveyed or charges and imputations made, may remain." Notwithstanding in that case a disclaimer by the attorney who filed that paper, of the strongest character, the court proceeded to adjudge him guilty of contempt, and assessed a fine upon him of $250 as a judgment for his contumacy.

In this case the court has adjudged that these parties are guilty of contempt by reason of the fact that the language of the paper brought into court by them and read to the court was of itself a contemptuous proceeding. It was one that this court could not pass by and maintain its dignity and standing as a court before the community. It has been truly said that the dignity of the court is its life, its vitality, and that the court, in the right of self-defense, is bound to protect itself from the assaults of persons who do not preserve that respect that the laws of the country require they should. Nor, as supposed by counsel at the bar, is the right of this court to punish for contempt confined to the case mentioned in the statutes of the Territory; but it is a right which has at all times existed in courts of common law, both in England and America. It is a common law right; it is a right which the court, independent of any statute on the subject, must exercise, or it would be powerless to defend itself against the assaults of the malicious. These remarks are made not so much to be applied to the defendants in this case, as to assert the doctrine, once for all, that courts established by the government have the right, and will exercise the right, to protect themselves in the orderly and proper administration of the laws which they are called upon to administer in the exercise of their jurisdiction. (Territory vs. Murray, 15 Pac. Rep. 145.)

As before stated, the judgment of this court, as found in its opinion of a former day, is entirely satisfactory, and a further examination of the authorities has tended to strengthen the court in the opinion there rendered. We are relieved, however, of the unpleasant duty of administering any severe punishment to these defendants, for the reason that their counsel have not only made for them an open, frank and manly disclaimer, but they have now, upon the hearing, come into court and asked that they be allowed to withdraw the paper containing the language which was found to be offensive, and by this to express their good faith when they say that they did not intend any contempt by the paper.

We are glad to say that this proceeding has ended in a manner much more agreeable to the court than if we had been compelled, as we should have been had the case taken a different turn, to assess upon these defendants a severe penalty in vindication of the law. Their disclaimer and motion for withdrawal of the paper is accepted by the court, as before said, as made by them in good faith, and they are allowed to withdraw from the records in this cause the paper which they have read to the court, and on account of which they were adjudged to be in contempt. We feel, however, that under all the circumstances it is but right and proper that they should pay the costs of this proceeding in contempt against them, and a decree will be entered directing that they pay such costs, and that execution issue therefor. The said defendants will in like manner pay all the costs incurred in the course of their petition, up to the time of their withdrawal.

We concur:

SANDFORD, C. J.
HENDERSON, J.

BOREMAN, Justice, dissents.