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JUDICIAL JURISDICTION.

The judicial salaries case, dismissed by Judge Marshall in the Federal court, is the subject of an editorial in a morning paper which sets forth some very peculiar legal doctrine. The facts in the case have been stated and the reason for its dismissal explained in these columns, and the whole matter is clear and definite. The court decided that it had no jurisdiction. That settled it so far as the Federal court was concerned, and, as we believe, should end the dispute entirely.

But our contemporary is not satisfied with this final. It throws out some insinuations which reflect unjustly on the judges interested in the outcome, and also on the counsel in the case, and further it offers advice which experienced lawyers will meet with a very broad smile. Here is a paragraph or two from the editorial referred to:

"Instead of allowing the matter to go before the court they permitted their paid attorneys to interpose a technical objection that prevented Judge Marshall from taking jurisdiction. It looks as if the judges were afraid to have an impartial court say whether or not they are entitled to this extra money. There is yet a way, however, for them to clear themselves of this justifiable imputation.

"Let them get together and agree on a statement of facts. This should be easy. Then let them submit the case on an agreed statement and bind themselves to abide by the decision of Judge Marshall, if he can be persuaded to accept the responsibility. District and supreme court judges are not always, but they should be always men of the highest standards of honor and integrity. They should be willing to resign their positions rather than accept a single cent that is questionable. They all know the dollars they are drawing now from the state in excess of the salaries for which they agreed to serve are questionable dollars.

"Will they be brave enough to set aside technicalities and ask Judge Marshall to pass on the case?"

Does not our contemporary understand that agreements among litigants, or their attorneys or both, do not confer jurisdiction upon a court? If the Federal judge takes up a case of any kind he will not sit as a court of arbitration but of law. And he cannot assume authority other than that conferred upon him by law. It would not matter how many agreements as to facts were made by the parties litigant; they would not increase his judicial powers a jot, nor justify him in overstepping his legitimate jurisdiction one hair's breadth.

The judicial powers of United States courts are defined in the national constitution. It does not require the learning of a lawyer to understand them. He who reads may comprehend. If our contemporary can find in the enumeration any such authority as that which it wants Judge Marshall to exercise, we will be pleased to publish it and acknowledge our mistake.

But the meaning of "jurisdiction" and the question of its exercise in Federal courts have been definitely settled, as will be seen from the following citations, to which we invite careful attention. As to the meaning of the term, see 17 Am. and Eng. Ency. of Law:

"Jurisdiction is authority to hear and determine a cause," p. 1041.

"Jurisdiction of the subject matter is given only by law and cannot be conferred by consent," p. 1069.

This definition is fortified in an accompanying note citing cases from England, Supreme Court of the United States, and most of the States in the Federal Union. The annexed is from Bailey on Jurisdiction, Sec. 49:

"It is a general rule that consent cannot confer upon a court jurisdiction of the subject matter. The authority of the court in judicial proceedings is conferred by law. The cases are so numerous and the doctrine so universal that nothing can be gained by special reference to many individual cases."

The Supreme Court of the United States has passed on this question, in a manner that precludes its further discussion among lawyers who are posted. In the case of *Lorenzo Snow vs. United States*, the question of jurisdiction was considered and the ruling of the court, as follows, will be found in 118, U. S. 247, 254.

"The question of the jurisdiction of

this court over these writs of error presents itself at the threshold. It was not suggested by the counsel for the United States at the argument, nor referred to by the counsel for the plaintiff in error, for the reason, as the court has been advised by both parties since the argument, that a decision on the merits was desired, and for the further reason, that this court at the present time, in *Cannon vs. United States*, 116 U. S. 55, took cognizance of a writ of error in a like case. But the question has presented itself to the court, and, since the argument, we have been furnished with a brief, on the part of the plaintiff in error, in support of the jurisdiction.

"After reviewing the statutes and numerous cases bearing upon the subject, the court further says:

"We conclude, therefore, that we have jurisdiction of these writs of error, and that they must be dismissed for that reason."

In a previous similar case the same court had passed upon its merits because the question of jurisdiction had not been raised on either side. So the court made the accompanying further explanation and ruling in its opinion already cited:

"It is urged, however, that this court took jurisdiction of the writ of error in *Cannon vs. United States*, 116 U. S. 55, and affirmed the judgment on a conviction under the same section 3 of the act of 1852. The question of jurisdiction was not considered in fact in that case, nor alluded to in the decision, nor presented to the court by the counsel for the United States, nor referred to by either party at the argument or in the briefs. Probably both parties desired a decision on the merits. THE QUESTION WAS OVERLOOKED BY ALL THE MEMBERS OF THE COURT. But, as the case was decided at the present term, and the want of jurisdiction in it is clear, we have decided to vacate our judgment, and recall the mandate and dismiss the writ of error for want of jurisdiction, in order that the reported decision may not appear to be a precedent for the exercise of jurisdiction by this court in a case of the kind."

Thus it will be seen that the question of jurisdiction is most important in judicial proceedings, and having acted on a matter in which it afterwards discovered it had no jurisdiction, the Supreme Court of the United States vacated its own judgment, delivered without considering its lack of jurisdiction, so that it might not be cited as a precedent.

From the foregoing it is perfectly clear that the question of the jurisdiction of the Federal court here, in the salaries case, was properly raised by counsel for the defense, and that they would not have performed their duty to their clients, or to the court, if they had not interposed it. To find fault with the state officials who were attacked, and with the attorneys who defended them, because they raised, at the proper time, the pivotal question of the power of the court to adjudicate the matter in dispute, is very unjust and shows a lack of legal understanding that is pitiful.

The Federal court cannot entertain a question of law over which it has no jurisdiction. Judge Marshall's standing as a lawyer and a jurist is not doubted by anyone who is familiar with Utah affairs, of bar and bench, and it is folly to talk of his acting upon such agreements as those suggested by our faultfinding contemporary.

DECLINE OF SOCIALISM.

One feature of the recent elections was the loss of strength by the Socialists in Massachusetts. According to Boston papers, in the last legislature they controlled three seats, and they claimed that this year they would add to the number. Instead of gaining, however, they lost two seats, and will be represented in the legislature of 1904 by only a single member. It is suggested that one reason for loss of strength is, that there was no coal strike and no lack of fuel; for it is argued, that the industrial conflicts that take place, influence many citizens in the direction of Socialism. They think that if under the prevailing industrial conditions, labor troubles cannot be settled without making the general public suffer, it is better to have a change in those conditions. They argue, it is supposed, that if coal mine owners and miners cannot supply the people with coal, it would be better for the state to confiscate the property, and do the mining. And thus Socialism grows. There is much reason in this argument. As long as everything in the industrial machinery works satisfactorily, there can be no general demand for a change, but if the industrial engines are out of order, it is but natural for the people to turn to the political centers in order to find out, if something is not wrong there.

SUNDAY FOR THANKSGIVING.

The President is being urged to change the date of Thanksgiving day from the last Thursday in November to the last Monday of that month, and to include the preceding Sunday, in order to give the nation a chance to have religious observances, and also to indulge in games and pastimes. The original idea of a Thanksgiving day was religious. It was meant to be a day of thanksgiving for blessings received. In later years it has lost its significance and become a day of sports, instead of devotion. The setting apart of a Sunday for the purpose mentioned would be a great improvement, and when the reform finally is made people will wonder why it was not thought of before.

HONEST INDIANS.

A contributor to the New York Tribune, who claims to have had 20 years experience among Canadian Indians, gives them an excellent recommendation for honesty: "In all my woods life," he says, "I have never known but one Indian liar." As an illustration of their honesty, he mentions the fact that a cache, or provision station, is left unattended with perfect safety, for on the entirety of its stock may depend the life of many a man. He who leaves provisions must find them on his return, for he may reach them starving, and the length of his out journey may depend on his certainty of relief at this point on his journey. So men passing touch not his board, for some day they may be in the same case, and a precedent is a bad thing.

"One comes unexpectedly upon a birch hanging from a tree limb," says

the old trader, "or a whole bunch of snowshoes depending beneath the fangs of a spruce, or a tangle of steel traps thrust into the crevice of a tree root, or a supply of pork and flour swathed like an Egyptian mummy lying in state on a high pier. These things we have passed by reverently as symbols of a people's trust in its kind. The same sort of honesty holds in regard to smaller things. I have never hesitated to leave in my camp firearms, fishing rods, utensils valuable from a woods point of view, even a watch or money. Not only have I never lost anything in that manner, but once an Indian lad followed me some miles after the morning's start to restore to me half a dozen trout flies I had accidentally left behind."

One is almost involuntarily led to ask, whether civilization has improved man in this respect. Certain it is, that no vices are more common among civilized people than lying and its kindred, dishonesty. Children are trained to lying, in the home, when they hear parents slander visitors whom they the same day entertain with apparent cordiality. And in thousand little ways they are trained to deceit, right at home. Let parents pause and think, and they will have to admit the truth of this. They are trained to lying and dishonesty in the places of business, where they hear fibs told and see deceit practiced. And the result is apparent. It is a wonder there are not more liars and thieves than there really are. The man of nature has not yet felt the need of deceit. It is in contact with civilization, when everyone attempts to get the best of him, that his own gifts for deceit rapidly develop. There is much room for improvement in this line, and until all lies, even the "white" ones, are banished to the place where they belong, can the earth become a place fit for the Millennium.

Indian summer has folded its wickiup and stolen away.

The best thing Colombia can do is to hold a rummage sale.

And now France has said to the new republic: Bon jour et bon voyage.

Coal and Colon are more interesting to the public now than anything else.

The President has Marked Senator Hanna to conduct his campaign next year.

To be or not to be? Legislation to carry out the reciprocity treaty with Cuba.

What is an isthmus? A narrow neck of land separating Panama from Colombia.

In the matter of the Mayor-elect's appointments, many call but few are chosen.

Government experts say that men eat too much. But all men are not fed on government paper.

The more that is learned of the coup on the isthmus the more inclined one is to exclaim: This is so sudden!

One feels much less like searching for the North Pole this kind of weather than in the "good old summer time."

If the coal supply runs short the people will heap coals of fire upon the striking miners who will be the cause.

It must distress the soul of steel (for steel has a soul, says Mr. Carnegie) to see Steel making new low records each day.

"When is a man too old to get married?" asks the Boston Herald. Why not address a special inquiry to Senators Platt and Stewart?

Mrs. Bob Burdette says that the "smart set" is nothing but an exercise on real society. Naturally, the smart set being such toadies.

Some day, and not in the very dim future, San Domingo will have to be looked after. That government is becoming a perpetual nuisance.

A celebrated geologist has declared that the earth will last 100,000,000 years longer. Now hurry up and finish your business before the end comes.

M. Buneau-Villars says he has a right to address a letter to Senator Morgan. Of course he has. This is a free country where a cat may look at a king.

Senator Morgan continues to see trouble ahead. This is too bad, for he is a dear, charming old man, and this affliction to one of his years must be very annoying.

Philippine chambers of commerce are petitioning for the abolishment of the Dingy tariff. What a discontented lot those Filipinos are! They don't know a blessing even when it isn't in disguise.

Colombia has decided not to go to war with the United States because of its recognition of the republic of Panama, and will content herself with protesting. The news will make Uncle Sam feel much easier.

The opinion of Colonel Jeltz of the Negro Ledger, published at Topeka, is that "the only place on earth where the negro has any show is in heaven." And even there there may be "Jim Crow" golden chariots.

Army officers in Washington are reported as having fallen into the habit of carrying "swagger sticks" after the British manner. "Swagger sticks" and a soft word go a long way in the City of Magnificent Distances.

Montana is to be congratulated upon the near resumption of her mills and mines. Nor is she to be less congratulated upon the orderly, lawabiding and mainly course pursued by her miners and mill men during their enforced idleness. It was a splendid example to

the laboring men throughout the land. The whole country rejoices that Montana labor troubles are nearly over.

VIEWING THE BATTLE FIELD.

Chicago Record-Herald.

Generally speaking the state elections were not of great significance, but there was a reassertion of Democratic strength in Maryland which Mr. Gorman will make the most of, while Johnson's burial in Ohio was so complete as to suggest that Democrats, as well as Republicans, cheerfully assisted at the obsequies. Evidently Johnson is far too radical for any party at the present time, and possibly the return from New York, Ohio and Nebraska, may presage a return of the old conservative Democracy to the command of the party organization. This certainly seems to be the thought of its representatives.

Milwaukee Wisconsin.

From the standpoint of national politics the storm center in yesterday's tempest was Ohio. In 1896 Ohio's plurality for McKinley and Roosevelt was 69,035. Two years ago its plurality for the Republican state ticket was 61,567. Yesterday its Republican plurality was upward of 100,000.

New York Mail and Express.

Democrats may well ponder over the interpretation they are to make of their victory in Maryland. Gorman is exalted as a party leader. He has created for local purposes the race issue. He is openly committed to the disfranchisement of the negro. He is an aspirant for the Democratic presidential nomination.

Springfield Republican.

All pre-election indications have gone for nothing in the Greater New York result. It is not so much the reversion to Tammany which was unexpected as the great force of the collapse from democracy under the impelling power of 70,000 majority. Nobody confidently anticipated any such outcome as this, and the great force of the collapse against the influences making for good and honest municipal government in the country will be the more keenly felt. It is discouraging, but it must not and will not be disheartening.

Portland Oregonian.

The election in New York city will attract world-wide attention. Its result is certain to produce a feeling of depression among right-minded men everywhere and to establish more firmly the base cynicism of the unbeliever and the vicious. Confidence in human nature is something fainter today than on Monday, and every skeptical critic of the efficacy of popular government will point to McCall's election as an exhibit in the incapacity of the masses to achieve and their unwillingness to select the best when within reach.

Boston Herald.

One of the instructive experiences of Tuesday's election in this state was the sudden and to its leaders, unexpected distinction of the Socialist party. We have not yet at hand the total vote cast for its gubernatorial candidate, but it can be safely asserted that it fell far below the total of last year, and perhaps approximated nearer to the vote thrown for Mr. Wrenn in 1901. This decline in voting strength was something that disinterested political judges predicted long before the dawn of election day.

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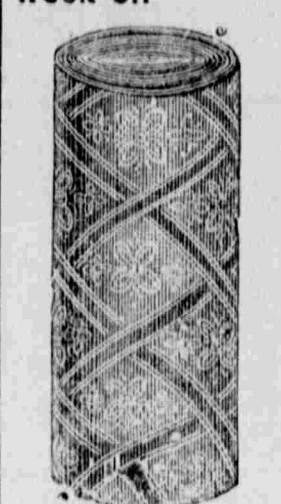
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