

ment would not shield the party charged from subsequent arrest and prosecution for the same offense. No good purpose could be served. It would be a fruitless work. A justice of the peace cannot be given unlimited power. Nothing is presumed in favor of his jurisdiction. It must be shown affirmatively.

It is no satisfaction to a citizen, when arrested and forced upon his trial before a court upon a criminal charge, to be told that, although the proceedings are wholly illegal and void, he will have to submit to it, because when it is all through with he can take an appeal to the district court, and there have the proceedings dismissed. If an injury would be then done him, why not dismiss at once, and save him from being harassed and criminally dealt with upon unauthorized prosecutions? It would seem to be the duty of an appellate court to check such proceedings at the earliest possible moment.

If a party desired a trial *de novo*, and that can be had in the appellate court, an appeal might be deemed an adequate remedy, but where there cannot be a trial *de novo*, a trial on the merits in the appellate court, an appeal would be vain and fruitless. It would settle nothing concerning the subject matter of the action.—Golding vs. Jennings, 1 Utah, 135; Dillon's Munic. Corp., sec. 744 n. (2.)

The law does not limit a party to a process that will be fruitless, when there is one that may prove available.—Paul vs. Armstrong, 1 Nev., 95-6.

The remedy, in the ordinary course of law, must not only be specific, adequate and legal, but it must be one competent to afford relief upon the very subject matter of the petition.—Fremont vs. Crippin, 10 Cal., 211. Babcock vs. Goodrich, 47 Cal., 508. North Bloomfield G. M. Co. vs. Keyser, 58 Cal., 315.

An appeal in the case at bar would not be either a speedy or an adequate remedy. When all the proceedings should be gone through with, in the justice's court and in the district court, on appeal, the petitioner would be left just where he stands when he makes this application for the writ of prohibition. It would not relieve him from the stain of the charge, and yet would afford him no relief by a lawful investigation. The charge made against the petitioner is one that can be investigated by a grand jury, and if he be deemed guilty, he should be indicted and punished. But whether guilty or innocent, the law guarantees to him a legal investigation and trial, and these cannot be had in a court or before an officer acting wholly without authority of law.

A party charged with an indictable criminal offense is, by the Constitution, guaranteed also, a trial by jury. A pretended jury of six men is not a jury as known at common law, nor as contemplated by the Constitution and laws of the United States. Such a jury is composed of 12 men—2 Blake's Com., 352. Work vs. State, 2 Ohio Statute, 296. Winchener vs. People, 13 New York, 378. State vs. Everett, 14 Minnesota, 439. Vaughan vs. Scade, 30 Missouri, 600. Bows vs. State, 5 Speed, 360.

The prevailing doctrine now is that, although there be no jury in the inferior court, yet if by appeal a party may have a trial by jury, the constitutional guaranty of trial by jury is not violated.—Dillon's Municipal Corporations, 371. (Sedgwick's Construction, etc., 371, (notes) and cases cited.)

Where, however, a justice acts wholly without his jurisdiction, and there be no provision for a jury trial in his court, nor in the appellate court, the objection that there is no jury trial in the justice's court, is not satisfied by the appeal. In the present case, no jury is authorized in the justice's court and none can be had in the District Court, as the case would have to be dismissed in the appellate court, without trial. No jury would be authorized in the District Court, for the reason that no trial could be had there, upon the merits. The justice having no jurisdiction to try the case, the District Court could acquire none by the appeal, as we have already seen.

Upon the whole case, therefore, we conclude that the justice was acting, and proceeding to further act, wholly without his jurisdiction, and that the petitioner had no plain, speedy and adequate remedy in the ordinary course of law, and is, therefore, entitled to his writ of prohibition.

As the points we have considered are decisive of the case, it is unnecessary for us to examine the other questions raised by the petition.

The peremptory writ of prohibition is by the court allowed, with costs.

POWERS, A. J., concurs.

ZANE, C. J., dissents.

SUPREME COURT, TERRITORY OF UTAH.

THE PEOPLE,

on the petition of Wm. H. Yearlan,

vs.

Adam SPEIRS, Justice of the Peace.

POWERS, J., concurring.

Accusations of criminal conduct are tried at the common law by jury; and wherever this right is guaranteed by the Constitution without qualification or restriction, it must be understood as retained in all these cases which were triable by jury at the common law, and with all the common law incidents to a jury trial, so far, at least, as they can be regarded as tending to the protection of the accused. A petit jury is a body of twelve men who are sworn to try the facts of a case as they are presented in the evidence placed before them. Any less than this num-

ber of twelve would not be a common law jury, and not such a jury as the Constitution guarantees to accused parties.

In the case at bar I think that the accused was entitled to a common law jury. That is, a jury of twelve men, and I agree with Judge Blatchford, (Dana's Case, 7 Benedicts, Rep.) that to require a defendant to be convicted by a judge, or by six men, in order to have a trial in another court upon appeal, is too much a mockery to be regarded as in any just sense a compliance with the Constitutional guaranty. I do not think that the objection to the proceedings of the Justice's Court is removed by the fact that a man can appeal his case, and secure a jury trial in the court above. It does not seem to me to be good reason or good law, to compel a man accused of crime to submit to the proceedings of an unauthorized tribunal, saying to him in the meanwhile, although you are being tried unlawfully, if you do not like the result you can have a trial before a higher court. I agree with counsel for the petitioner, that "It is not an answer to say that a justice has jurisdiction without the means to enforce it, by reason of not being supplied with a jury. A court cannot be said to have a jurisdiction which it cannot constitutionally exercise." Jurisdiction is the power to hear, try and determine. A justice has no inherent power to summon a jury. He cannot summon one unless the statute authorizes the act. The statute directing a justice to summon a jury of six is a denial of his power to impanel any other number. It is in fact the exclusion of any jury, because six men are not a jury in a case where a common law jury is required.

The writ of prohibition in the present case, is asked to prevent an illegal trial of the case, to prevent the injury resulting therefrom. An appeal, after the injury sought to be prevented is committed is no remedy. For these reasons and others stated in the opinion of the court I concur.

BY TELEGRAPH

PER WESTERN UNION TELEGRAPH LINE

AMERICAN.

NEW YORK, 20.—A Washington special says: Rev. Leonard, rector of St. John's Episcopal Church here, has been summoned to New York to see ex-President Arthur.

WASHINGTON, 20.—The new Chinese Minister was formally presented to the President to-day by the Secretary of State. He was attired in full court costume and accompanied by three of his suite and an interpreter.

The Treasury Department has decided that Chinese seamen do not fall within the prohibitory provisions of the Chinese restriction act, and therefore may be allowed to land temporarily in the ordinary pursuit of their calling for the purpose of shipping on their return voyage as soon as possible.

ST. LOUIS, 20.—The executive committee of the Knights of Labor have held no formal meeting as yet to consider the proposition of the citizens' committee looking to a settlement of the Southwest strike. All the members of the executive committee are not in the city and no action can be taken until they can bring together a quorum. The Committee-men when asked this morning what the prospects for early settlement were, replied they would consider the letter of the citizen's committee but did not think the propositions contained in it would effect a settlement of the strike, because it takes no cognizance of their grievances.

MILWAUKEE, 20.—Every planing mill of importance in the city shut down to-day. The men recently organized an assembly of Knights of Labor with a membership of about 500, and their demand for eight hours work at the present ten hour wages, was rejected by the proprietors. A strike was ordered, and to-day every mill is shut down, and will stay so until the men will accept what the proprietors claim to be more reasonable terms. In addition to the Knights of Labor, several hundred other workmen at the mills are thrown out of work by the shut down.

SACRAMENTO, 20.—Emigrants who arrived here this morning tell of a distressing suicide which was committed on the train near Wadsworth night before last. Among the passengers were a man named Currier, from Wisconsin, his wife and two children. It had been noted that Currier had been acting strangely for several days. On the night spoken of he retired to an upper berth of the car, his wife and children occupying the lower bunk. During the night Mrs. Currier was awakened by something dripping upon her face. She put up her hand, and was horrified to discover that she was covered with blood, which had run down from the upper bunk. Investigation proved that Currier had pulled the bedclothing up around his head, had then put a pistol to his right temple and blown out his brains. The woman, so suddenly left a widow and among strangers, had scarcely a dollar, and a collection was taken up for her benefit on the train. The body of Currier was buried at Reno. One of the children left is aged three years; the other three months.

WASHINGTON, 20.—The Senate committee of commerce to-day voted to make a favorable report on the new Atlantic and Pacific ship railway bill,

as a substitute for the original ship bill. Eads and such others as may be associated with him are created by the corporate title of the Atlantic and Pacific Ship Railway Company, with power to issue capital stock and bonds not to exceed in the aggregate \$500,000,000. The United States obligates itself to pay the company for the period of five years after the ship railway shall have been completed and tested, any sums of money required to make two-thirds of the revenues of the said company amount annually to the sum of \$3,500,000, provided the total liability of the government shall in no case exceed the sum of \$7,500,000. The obligation of the United States shall not attach until the railway shall have transported, in the presence of the board of engineers appointed by the President of the United States, a loaded vessel weighing with her load not less than six thousand tons, at an average speed of not less than six miles per hour, and place her in the harbor at the other side of the Isthmus without injury to the vessel at the end of one year thereafter. The road is to be in condition to transport vessels weighing, with their cargoes, not exceeding seven thousand tons, and the guaranty of the United States shall continue as long as the railway is kept in such repair as to admit the transportation of vessels not exceeding the weight named.

CHICAGO, 20.—Freight handlers on one division of the Northwestern Railway struck at noon to-day for eight hours and ten hours pay.

NEW YORK, 20.—The second performance of Othello, with Salvini and Booth in the principal roles at the Academy of Music last night, was anything but a great presentation, owing to the unfortunate condition of the American actor. From the very first, Booth appeared to be in very poor form; his reading of the lines was uneven, and there were instances when he lost the thread of his lines. As the play continued, his walk was ungraceful and positively unsteady. It was not, however, until the third act in the great scene with Othello that the growing apprehension of the audience was completely confirmed. After Othello, (Salvini) had thrown Iago to the ground in his bursts of wrath, he assisted Booth to his feet again without disturbing the apparently natural course of action. As Booth regained his feet, Salvini let go his balance, staggered backward and squatted down in front of the footlight rail. A few of the audience nearest the stage jumped forward as it seemed the actor was about to fall into the orchestra. He soon recovered his self-possession wonderfully and continued throughout the act. His conduct called forth some hissing, but the audience, pained as it no doubt was, seemed to extend their sympathy by encouraging him as usual. His entrances and exits from this point were timid and made with a perceptibly hesitant step. His great scene where Rodrigo is killed was played with great force and he was warmly called before the curtain. He seemed to have recovered again, but in the last act he weakened and his closing scene was extremely weak, and with his hands tied behind his back his condition was too painfully apparent to even ordinary observers.

FOREIGN.

LONDON, 20.—Gladstone has written the following letter to the Chronicle:

"It is not my custom to comment on the statements made by hostile newspapers, but having a sincere respect for the Chronicle I would call attention to the allegation made by it in a leader that I have heretofore taught that home rule in Ireland would be the source of imperial danger. I will not challenge the proof of the assertion which was doubtless made in good faith, but it is entirely an error. I have always asked for an explanation of the meaning of home rule, in order to make clear the question whether or not it would be a source of danger. We have now learned the demand of Ireland from five-sixths of her chosen representatives. Such Home Rule, in the language of my address of September last, is the source, not of danger, but of strength. The danger, if any, lies in refusing it."

It is stated that some of the officers now stationed in Ireland have applied to the War Office for transfer to India lest they be called upon to serve against the people of Ulster.

The eastern manoeuvres of the volunteers at Dover and at Portsmouth were very successful, the weather being brilliant and the exercises at both places being witnessed by crowds of people.

The Pall Mall Gazette advocates the formation of a supreme and permanent court for the settlement of fisheries disputes between Canada and the United States. The court, it says, should consist of five members—two of whom should be Englishmen—two Americans, and the fifth should be selected by the four and be either an Englishman or an American.

The Italian scientific expedition under Count Perris, the members of which were recently massacred by the Emir of Heran in Asiatic Turkey, consisted of eleven persons, all Europeans.

A party of pleasure seekers, while rowing on the Thames yesterday, were thrown into the water by the upsetting of their boat. Six of them were drowned.

Advices to the Standard say the British outpost at Suakim was surprised and 15 Indian soldiers captured by the enemy.

Paris, 25.—It is officially announced here that Greece, yielding to the advice of France to refrain from war, will at once disarm.

The claims of Greece, in the contention for which she was prepared to wage war against Turkey, now that she has consented to disarm, will be submitted to arbitration.

Greece's reply to the Powers is regarded as unsatisfactory. A conference of foreign ministers is being held at the Italian embassy for the purpose of drawing up and signing an ultimatum holding Greece answerable for the consequences unless she defers without reserve to the wishes of Europe. The ultimatum will be presented to the Greek government forthwith.

Vienna, 26.—The Official Gazette says that the excitement in Galicia is caused by the unscrupulous agitators who are working upon the superstitions of the peasantry that the world will come to an end in 1888. Two hundred arrests have been made in Galicia in connection with the present troubles.

A dispatch from Liska, in Galicia, reports that the town is on fire, and three-fourths of it has already been destroyed.

BERLIN, 27.—Emperor William has sent the Pope a costly gold cross mounted with jewels as a souvenir of German gratitude for the friendly offices rendered by His Holiness in arbitrating the dispute between Germany and Spain over the respective claims to the Caroline Islands.

LONDON, 27.—News from Greece is conflicting. One despatch states that France did all in her power to secure a favorable settlement for Greece by individual mediation, but failed. It is also stated that France did not sign the ultimatum in which other powers joined ordering Greece to disarm. She has not yet signed it, and that if she eventually does sign, that fact will be communicated to Greece in a separate note. Greece, it is averred, is arranging to seek from the powers certain concessions in return for disarming.

Other dispatches say: Greece disarmed before receiving the ultimatum which ordered the disarming to take place within eight days, and that when Premier Delianis received the ultimatum he declared it was then objectless, as orders for disarming had already been given.

A Vienna dispatch says, it is understood that France intends to propose a conference for the purpose of making concessions to Greece. A telegram from Athens states that the combined fleet of the Powers will probably return to the Piræus to-day to embark foreign ministers.

LONDON, 27.—Italy desired the ultimatum to order Greece to disarm within forty-eight hours, but this was rejected by the other powers as too peremptory.

LONDON, 28.—The Greek minister had a long interview to-day with Roseberry, Minister of Foreign Affairs; the Greek difficulty has become the absorbing topic at the foreign office. The submission of the Greek prime minister to the ultimatum of the Powers is expected to be received any hour. The temper of the population at Athens is causing alarm. It is understood the show of resistance by the Greek government has been prolonged with a view to appeasing national pride.

PARIS, 28.—Dispatches from Athens state that Greece will not disarm unless the ultimatum sent by the Powers is withdrawn. It is also said that King George threatens he will abdicate unless the ultimatum is withdrawn.

VIENNA, 28.—News of wholesale conflagrations comes from several parts of Austria. The town of Friedland in Moravia has been almost totally destroyed by fire, during the progress of which 19 persons were killed. The towns of Dobrowlaney, Bojanec and Chirow have been completely destroyed, and the town of Sanak has been greatly damaged. At Chirow a man was caught in the act of setting fire to a building.

PARIS, 28.—Abbe Casanova, a Corsican archaeologist, has discovered archives which show that Christopher Columbus was born in the town of Calvi, in Corsica, and emigrated to Genoa. President Grevy having examined the evidence and being satisfied of its authenticity has authorized Calvi to celebrate by an official holiday the four hundredth anniversary of the discovery of America. The inhabitants of Calvi will hold a fête on May 23d, when a commemorative inscription will be placed on the house in which Columbus was born.

Thousands of business men are surprised because they suddenly break down; a catastrophe that would not happen to them were the blood kept pure and the kidneys in perfect working order by Warner's safe cure.

Batteries Attached to His Legs.

COLUMBUS, O., Nov. 4th, 1885.—Six years ago I was confined to the house. Doctor visited me three times a day, and often at night. Whole system uprooted. Pain in back in kidneys. Slept every night with galvanic batteries attached to legs. Medicine had not the slightest effect. Spent thousands of dollars. Was in this terrible condition two years. Took fifty bottles of Warner's safe cure and Warner's safe pills, gained 44 pounds and felt like a new man.—W. H. RHODES.

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NOTICE TO CREDITORS.

In the Probate Court of Tooele County, Utah Territory.

In the matter of the Estate of Elizabeth Meredith, deceased.

NOTICE IS HEREBY GIVEN BY THE undersigned Executor of the last will and testament of Elizabeth Meredith, deceased, to the creditors of, and all persons having claims against the said deceased, to exhibit them with the necessary vouchers, within four months after the first publication of this notice, to the said Executor, at his residence in Center, Tooele County, Utah Territory.

JOSEPH WHITE,
Executor of the last will and testament of Elizabeth Meredith, deceased.

Dated Tooele City, March 27th, 1886.

ADVERTISING NEWSPAPER

NOTICE OF SALE OF REAL ESTATE.

NOTICE IS HEREBY GIVEN, THAT in pursuance of an Order of the Probate Court of the County of Salt Lake, Territory of Utah, on the 7th day of April, 1886, in the matter of the Estate of Thomas W. Winter, deceased, the undersigned, Administrators of the Estate of said deceased, will sell at private sale, to the highest bidder for cash, lawful money of the U. S., and subject to confirmation by said Probate Court, on or after Saturday, the 15th day of May, A. D. 1886, all the right, title, interest and estate of the said Thomas W. Winter at the time of his death, and all the right, title and interest that the said estate had by operation of law or otherwise acquired other than or in addition to that of the said Thomas W. Winter at the time of his death, in and to all that certain lot, piece or parcel of land lying and being in the said Salt Lake County, Territory of Utah, and being bounded and described as follows, to wit:

All that part of Lot 4, in Block 11, Plat "A," Salt Lake City Survey, commencing at the Northwest corner of said lot, and running thence East twenty rods, thence South twenty rods, thence West twenty rods, thence North two rods, to the place of beginning, containing forty square rods of ground.

Bids or offers in writing to be left at the residence of Thomas Winter, corner Fifth South and Second West, Salt Lake City.

Terms and conditions of Sale—Cash, subject to the confirmation of sale by said Probate Court.

Deed at expense of purchaser.

THOMAS WINTER,
T. J. WINTER,
Administrators of the Estate of T. W. Winter, deceased.

Dated April 23rd, 1886.