Wasatch Mining Company, plaintiffs and respondents, vs. Wm. Jennings, Jos. A. Jennings and Isaac Jennings, defendants and appellants; Third District. This case was heard by Judge Boreman, and the findings of the referee approved of. These findings gave the plaintiffs judgment against the Jennings for over $33,000, although it was shown that they had expended $15,000 above that amount and the sum allowed them for expenses for the 5% development of the mining property in dispute. To day the action of the District Court was reversed, and the case returned with instructions that the defendants have credit for the full amount expended by them. Chief Justice Zane delivered the opinion, Associate Justice Henderson concurring, Associate Justice Boreman dissenting. On motion of Mr. McBride a stay of 30 days was allowed on a motion for rehearing.

On motion of District Attorney Peters, the accounts of U. S. Commissioner Jacob Johnson, for $216.20, were allowed.

The resignation of Wm. McKay as U. S. Commissioner was accepted.

The court then adjourned to Saturday, Oct. 1, at 2 p. m.

THE EXPLOSION.

Further Details of the Killing of J. M. Alexander.

The Park City *Call* gives the following particulars of the fatal accident at H. S. Alexander's Mill, in Lake Creek Cañon, on Friday of last week: The explosion took place at 3:45 p. m. Everything was apparently running all right, and in as good and safe a condition as usual, Jas. M. Alexander was attending to the engine and Charles, his older brother, was running the saw. There were two other persons in the mill, William Priestly and George Alexander, a boy about 12 years old. When the explosion took place Charles Alexander was thrown from his place by the saw, back against the end of the mill, a distance of 22 feet. George Alexander was thrown out of the mill building into a bunch of willows a distance of about 100 feet. Wm. Priestly, who was standing by the fly wheel of the engine, within two feet of the boiler, was merely knocked down by the concussion, and the boiler, machinery and all passed over him. He would have escaped entirely unhurt had not the building caught him in falling and injured his legs somewhat. Charles and George were injured slightly. Roe, as James M. was called, was missing and could not be found. A search was immediately instituted and after hunting around about an hour and a half his body was found at the foot of a tree about 125 yards east of the mill. There was no clothing left on the body except his collar, belt and a piece of his drawers on one leg. The remains were immediately brought to Heber. Dr. Glanville made an examination of the body and found that both legs were broken, the right wrist badly crushed, the skull was badly crushed in several places, while the left side of the face was terribly mangled, the lower jaw being broken and the frontal bone mashed down over the eye, which was entirely gone. Besides being so badly mangled, the entire body was horribly scalded. A coroner's inquest was held on the remains Saturday, before Justice John Duncan, and the verdict returned by the jury was to the effect that according to the evidence adduced he came to his death from the accidental explosion of a steam boiler, and that the cause of the explosion could not be traced to criminal negligence on the part of any one. The mill and fixtures were utterly destroyed and scattered up and down the cañon for the distance of a quarter of a mile. To look at the ruins one at once begins to wonder how it was possible that three human beings escaped from them alive. The funeral services were held at the residence of H. S. Alexander Saturday afternoon. The procession consisted of about thirty carriages and wagons. The hearse was drawn by four black horses. The remains were consigned to their final resting place about four o'clock and the sorrowing friends returned to their homes. James Monroe Alexander was born at Mill Creek, Salt Lake County, August 8, 1863. He spent the greater portion of his life in Heber, and was honored and respected by all who knew him. He was unmarried.

JUSTICES' JURISDICTION.

It Extends to Six Months' Imprisonment and $300 Fine.

CHIEF JUSTICE ZANE DELIVERS A SENSIBLE OPINION ON THE SUBJECT.

POWERS AND BOREMAN'S BAD LAW SWEPT TO THE FOUR WINDS.

To-day a decision was rendered by the Territorial Supreme Court which raised quite a "breeze" in certain quarters. Its chief importance is, however, to the Justices of the Peace throughout the Territory. It will be remembered that nearly two years ago, when an attempt was made on the part of the local officers to enforce the laws against immorality, those who were being prosecuted rushed to the Federal Courts for protection. The notorious Yearian case was brought before the Territorial Supreme Court, where Associate Justice J. S. Boreman and O. W. Powers stopped all proceedings by holding that the law authorizing justices of the peace to hear cases where the punishment was six months' imprisonment and $300 fine, was void. Chief Justice Zane dissented from that ruling. The case was again presented when there was a change in the *personnel* of the court, under the circumstances and with the result stated in the following

DECISION:

In the Supreme Court of Utah Territory June Term, 1887.

The People of the Territory of Utah,
Appellant,
vs.
William Douglass,
Respondent.

Opinion by Zane, C. J.

This prosecution was instituted before a justice of the peace of Ogden Precinct, in Weber County. The complainant charged the defendant with the crime of battery. The defendant demurred to the complaint for the reason that a justice of the peace had no jurisdiction to try a person charged with the

OFFENSE OF BATTERY.

The demurrer was overruled, the defendant was tried, found guilty and sentenced to pay a fine of twenty-five dollars; in default of such payment, to be imprisoned at the rate of one day to each dollar of the fine. From that judgment the defendant appealed to the First District Court, wherein the demurrer to the complaint was sustained and judgment rendered accordingly. This appeal is from the latter judgment.

The question presented for our consideration and decision is, Have justices of the peace in this Territory authority to try a person accused of the crime of battery? That offense may be punished in this Territory by a fine in any sum not exceeding three hundred dollars or by imprisonment for any time not exceeding six months, or by both. The statutes of the Territory declare that justices of the peace shall have jurisdiction of petit larceny, of assault and battery not charged to have been committed upon a public officer in the discharge of his duty, of breaches of the peace committing a wilful injury to property, and

ALL MISDEMEANORS

punishable by a fine less than three hundred dollars or imprisonment in the county jail or city prison not exceeding six months, or by both such fine and imprisonment. Jurisdiction is given in express terms to justices of the peace to try battery cases. But the defendant denies the power of the Territorial Legislature to confer such jurisdiction on justices' courts.

The authority to pass such a law, if possessed by the Territorial Legislature, is given by the following provisions of the Organic Act and in the acts amendatory thereof. Section four of the Organic Act provides that "The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and justices of the peace, shall be limited by law. *Provided*, that justices of the peace shall not have jurisdiction of any matter in controversy where the title or boundaries of land may be in dispute or when the debt or sum claimed shall exceed one hundred dollars."—Compiled laws of Utah, 1876, p. 31.

Section three of a subsequent act of Congress extends the civil jurisdiction of these courts to all cases in which the debt or sum claimed shall be less than three hundred dollars and gives the right of appeal from all judgments of these courts (Ibid p. 54). The foregoing provisions limit the jurisdiction of justices of the peace to cases in which the debt or sum claimed is less than three hundred dollars, and exclude cases involving the title or boundary of land. These

LIMITATIONS DO NOT APPLY

to criminal cases.

Section 1855, Revised Statutes of the United States, 1878, declares that the jurisdiction of justices of the peace as well as the jurisdiction of other courts referred to "shall be as limited by law." This is equivalent to a declaration that justices of the peace shall have jurisdiction to try all causes of action that might arise within the limits fixed by law—it extends their authority to such limits. By the above provision Congress imposed the duty upon the law-making power of passing laws limiting the jurisdiction of justices of the peace. And inasmuch as Congress has not enacted such laws, the intention must have been to impose the duty on the law-making body for which it made provision in section six of the Organic Act, in the following terms: "That the legislative power of said Territory shall extend to

ALL RIGHTFUL SUBJECTS

of legislation, consistent with the Constitution of the United States and the provisions of this act, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the Legislative Assembly and Governor shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect." The territorial act in question has not been disapproved by Congress.

The language of the section quoted is: "the legislative power of said Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act." The territorial enactment in question appears

TO BE CONSISTENT

with the Constitution and the laws of Congress The jurisdiction of justices' courts to try cases is a rightful subject of legislation because it is always conferred by legislation. "At common law a justice of the peace had no power to try any offenses whatever He was no more than an examining magistrate, to inquire into offenses with a view to holding parties for trial on indictment elsewhere, if sufficient cause was shown to commit the accused. But the power of trying and convicting petty offenders is entirely statutory, and must be conducted as the law prescribes." Sarah Way's case, 41 Mich. 300. To the same effect is the case of Martin vs. Fales, 36 American Decisions, 693.

The jurisdiction of justices of the peace has been extended latterly both in England and in the United States In the various States of this country the jurisdiction, both civil and criminal, differs, and has been changed as to its extent in some of the States. Increasing intelligence has expanded the capacities of men, and advancing enterprise has

WIDENED THE FIELD

of their duties, and accordingly the respective States have extended the labors of their magistrates in obedience to the conceived demands of the public good. There is no uniform limit to their jurisdiction common to the States. In a number of the States and Territories the jurisdiction of justices of the place at the present time extends to six months' imprisonment and a fine ranging from one hundred to five hundred dollars. In California, the limitation is not to exceed six months' imprisonment, or a fine of five hundred dollars, or both. In Nevada, justices may imprison for six months or impose a fine of five hundred dollars, or both. In other States and in the Territories the jurisdiction of justices' courts varies.

In construing the provisions of the Organic Act under consideration,

THE SUPREME COURT

of the United States said: "When Congress has proceeded to organize a government for any of the Territories, it has merely instituted a general system of courts therefor, and has committed to the Territorial Assembly full power, subject to specified or implied conditions, of supplying all details of legislation necessary to put the system into operation, even to the defining of the jurisdiction of the several courts. As a general thing, subject to the general scheme of local government chalked out by the Organic Act, and such special provisions as are contained therein, local legislatures have been entrusted with the enactment of the entire system of municipal law, subject also, however, to the right of Congress to revise, alter and revoke at its discretion. The powers thus exercised by the Territorial legislatures are nearly as extensive as those exercised by any State legislature." Hornbuckle vs. Toombs, 18 Wall, 648.

Again, in the case of Westray vs. United States (Id. 322), referring to the same legislative power, the same court said: "The power given to the legislature is extremely broad." To the same effect are the cases of Chamosero vs. Potts, 2 Montana, 242; Bray vs. United States, 1 New Mexico, 1; Territory vs. Valdez, (Id. 548), and Clinton et al., vs. Englebrecht, 13 Wallace, 434.

Counsel for the defendant relies on Ferris vs. Higley, 20 Wallace, 375. In that case an act of the legislature of the Territory of Utah conferring general jurisdiction

ON PROBATE COURTS

was held to be inconsistent with the organic law of the Territory. It was held not to be the intention of Congress by the Organic Act to convert the probate court into a court in which all causes, whether civil or criminal, whether of common law or chancery cognizance, whether involving life, liberty or property, should be tried and determined. The court held, however, that the power to define the jurisdiction of the Territorial courts might be included within the meaning of the phrase "rightful subject of legislation," and that the Territorial act in question in that case was not inconsistent with the Constitution of the United States, but that it was inconsistent with the Organic Act itself. In considering that act, the court pointed out the provisions with which the Territorial act was inconsistent. Among them were the following: The act declared that the Supreme and districts courts respectively should possess chancery as well as common law jurisdiction, while the probate courts were left with such powers as

THEIR TITLE INDICATES;

that their name described their functions; that they were such as had been united under the name and had been exercised by those courts in England and in this country. They were such as it had been necessary for them to use in the settlement of the estates of deceased persons, the estates of infants and persons of unsound mind, and in adjudications as to dower and the appointment of guardians and conservators. The Organic Act provided that the judges of district courts should be appointed by the President by and with the advice and consent of the Senate, while the election or appointment of probate judges was left to be provided for by the Territorial Legislature. The court said: "Looking then to the purpose of the Organic Act to establish a general system of government and its obvious purpose to say what courts shall exist in the Territory and how the judicial power shall be distributed among them, and especially to the fact that all ordinary and necessary jurisdiction is provided for in the supreme and district courts and that of justices of the peace, and that the jurisdiction of the probate court is left to rest in the general nature and character of such courts as they are recognized in our system of jurisprudence, is it not

A FAIR INFERENCE

that it was not intended that that court should be made one of general jurisdiction?" And finally the court said: "The fact that the judges of these latter courts are appointed by the federal power and paid by that power—that other officers of these courts are appointed and paid in like manner—strongly repels the idea that Congress in conferring on these courts all powers of courts of general jurisdiction, both civil and criminal, intended to leave to the Territorial Legislature the power to practically evade or obstruct the exercise of those powers by conferring precisely the same jurisdiction of courts created and appointed by the Territory."

It is clear that the case cited is not analogous to the one in hand. No such inconsistencies exist between the act in hand and the organic law, as was pointed out between the act held to be invalid in the case cited and the organic law. It is conceded that justices of the peace in this country have

USUALLY HAD JURISDICTION

of assaults and batteries and other misdemeanors of like grade, but counsel urge that the maximum punishments for these offenses are fixed so high in this Territory that justices' courts ought not to be entrusted with their infliction.

The answer to this is that before the enactment in question justices of the peace had jurisdiction of the same class of offenses in states and territories in which the punishment inflicted was as great as in this Territory. And the history of such jurisdiction shows that it has no common and abiding limits. The mention of the office of justice of the peace in the Organic Act indicated jurisdiction of the offense of battery and other like misdemeanors. In many of the states, however, the term did not indicate the power to inflict punishment to the same extent as authorized by the act under consideration; while in others it indicated power to impose

EVEN GREATER PUNISHMENT.

To hold that the prosecution of assaults, batteries, breaches of the peace, and other misdemeanors of like character must be commenced by indictment in the district courts, would cause great inconvenience, hardship and delay in many cases, because that court holds but four terms during the year and because the offenses are often committed at a distance from the place of sitting. In such cases the defendant and all the witnesses would be compelled to travel a greater distance and at considerable expense. The hardship, delay, inconvenience and expense would be greatly lessened by a trial near the place where the offense was committed. The

PUBLIC GOOD DEMANDS

that such petty offenses shall be tried before a magistrate in the neighborhood of the place of their committal, if at that place such an officer with the requisite qualifications can be found. The public welfare demands as little delay and hardship in the prosecution of persons charged with crime as is consistent with a faithful enforcement of the law.

We are disposed to hold that the territorial act in question conferring jurisdiction on justices of the peace to try persons accused of the crime of battery and other misdemeanors of the same grade, is valid. We have been referred to the case of Yearian vs. Speirs, 10 Pacific Reporter, 609. That case was decided under the impression that no precedent existed for conferring such extended jurisdiction on justices of the peace. After hearing further argument upon the question involved and upon more mature deliberation, we are of the opinion that that case, so far as it conflicts with this, should be overruled.

The judgment of the court below sustaining the demurrer to the complaint is reversed, and the case is remanded for further proceedings in that court.

Henderson, A. J., concurs.
Boreman, A. J., dissents.

Judge Henderson delivered a separate opinion, which is as follows:

Sitting in the District Court I sustained the demurrer in this case on the authority of Yearian vs. Speirs, 10 Pac. Rep. 609, decided by this court, which is directly in point. I have carefully examined the learned and able opinion of my brother Boreman in that case, and while I agree with him that in conferring upon the Territorial Legislature the power to fix the jurisdiction of justices of the peace, they meant only to confer the right to give such jurisdiction as the title "justice of the peace" implied, having reference to the judicial history and customs of the country; but within this limit all questions of public policy and propriety is for the legislature. I do not think the act under consideration exceeds this limit, as is shown by the authorities referred to in the opinion of the Chief Justice. I therefore concur in the opinion of the Chief Justice that the judgment of the District Court should be reversed.

THE STATE CONSTITUTION.

Official Announcement of the Vote For and Against it.

We, the undersigned, having been appointed to canvass the returns of the votes cast at the general election of the Territory of Utah, held on the first day of August, A. D. 1887, for the ratification or rejection of the Constitution of the State of Utah, adopted by the Constitutional Convention at Salt Lake City, on the seventh day of July, A. D. 1887, do hereby certify that the following is a full, true and correct abstract of said votes, as appears by the returns from the several precincts, received by Heber M. Wells, secretary of said convention, to-wit:

COUNTIES.	YES.	NO.
Beaver	273	21
Box Elder	471	31
Cache	1,000	12
Davis	501	9
Emery	2-5	53
Garfield	156	14
Iron	235	10
Juab	394	10
Kane	137	1
Millard	345	24
Morgan	156	14
Piute	210	51
Rich	141	4
Salt Lake	2,729	26
San Juan	8	—
Sanpete	1,057	47
Sevier	444	12
Summit	303	15
Tooele	340	39
Uintah	119	28
Utah	1,865	65
Wasatch	301	7
Washington	453	1
Weber	1,182	8
Grand Total	13,199	503

Witness our hands at Salt Lake City, Territory of Utah, this first day of September, A. D. 1887.

JOHN T. CAINE, President,
Constitutional Convention.
HEBER M. WELLS, Secretary.
ELIAS A. SMITH,
Probate Judge, Salt Lake County.