SACRAMENTO DAILY RECORD-UNION.

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DAILY RECORD SERIES—VOL. XVI—NO. 2479.

SACRAMENTO, FRIDAY MORNING, MAY 28, 1880.

DAILY RECORD-UNION SERIES, VOLUME 11—NUMBER 84.

THE DAILY RECORD-UNION.

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WANTED—BY A GENTLEMAN AND WIFE, a large, well-furnished room; southern exposure, with use of piano. Not to exceed $10 per month. Neighborhood, Seventh and I streets, preferred. Address "PERMANENT," this office. m26-3t*

WANTED—SITUATION BY MAN AND WIFE, just from the East. The man is a first-class Gardener and Coachman; the woman is a first-class Cook and General House Servant. Would work on a ranch. Address "X.," this office. m25-1w*

WANTED—SITUATION BY A WOMAN, WHO is a good Cook and Laundress; city or country. Please call at the City Hotel. m24-1w*

WANTED,

A PAIR OF HORSES—DRIVING Team, of not less than 1,050 pounds, matched. Apply to N. L. DREW & CO., Lumber Dealers, corner Second and M streets. m27-1p1w

EMPLOYMENT OFFICE.

WANTED—ALL KINDS HELP, MALE AND Female. Particular attention paid to Furnishing Hotels, Private Families and Farmers with Help, Free of Charge to employers. HOUSTON & CO., one door south of Fourth and K streets, Sacramento city. m17-1ptf

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Advertisements of five lines in this department are inserted for 25 cents for one time; three times for 50 cents or 75 cents per week.

NATHAN BUILDING, CORNER SEVENTH and I streets—Pleasant furnished front rooms, single or en suite. m15-tf

DRUG STORE FOR SALE—THE BEST OPENing in the State, located in one of the northern counties. Special inducements offered to a good Physician. Reason for selling, parties wish to go East. For further information apply to DANIEL WOODS, Union Hotel, Sacramento. m11-1m

FOR SALE — SUNNYSIDE RESIDENCE. I have concluded to sell my residence, located in the pleasant town of Placerville, El Dorado county, known as the "Bee place." Thirty-five acres of land; Orchard of the choicest fruit; House of two stories and eight rooms, with brick cellar; splendid well of water; Wind-mill; in fact, every convenience for a country home. House supplied with hot and cold water. Also good Barn. All will be sold at a bargain. For particulars address m1-1m* C. B. BROWN, Placerville.

HOTEL FOR SALE.

THE WELL KNOWN HELVETIA HOUSE (formerly Korn's), Fifth street, between J and K, Sacramento, is offered for sale at a bargain, on account of the proprietor going East. For full particulars inquire on the premises, or address X. LUSSI, Proprietor. m26-1p1m

FARMS AND VINEYARDS FOR SALE

MOST OF THE PROPERTY OF THE ABOVE kinds in market here will be found on sale with CARL STROBEL, 321 J street, Sacramento. His place is the headquarters in this branch of business. Be sure to see him first and last. m13-1ptf

FOR SALE,

THE WELL-KNOWN "OREGON CITY MILLS." The mill has lately been thoroughly overhauled, and put in first-class condition for years to come. It has six run of burs, the latest improved machinery, and ample water-power; and has a reputation second to none in the State of Oregon, having been awarded at the Centennial Exhibition a medal and diploma for Flour made from winter wheat. For further particulars, apply to J. D. MILLER, Oregon City; or to J. L. BARNARD, Portland. m10-1m

DENTISTRY.

W. WOOD.

DENTIST (LATE WITH H. H. PIERSON), successor to T. B. Reid, No. 317 J street, between Third and Fourth. Artificial Teeth inserted on all bases. Improved Liquid Nitrous Oxide Gas, for the Painless Extraction of Teeth. [m24-tf]

DRS. BREWER & SOUTHWORTH.

DENTISTS, SOUTHWEST CORNER OF Seventh and J streets, in Bryte's new building, up stairs. Teeth extracted without pain by the use of Improved Liquid Nitrous Oxide Gas. [m16-1p1m]

H. H. PIERSON,

DENTIST, 415 J STREET, BETWEEN Fourth and Fifth, Sacramento. Artificial Teeth inserted on Gold, Vulcanite and al. bases Nitrous Oxide or Laughing Gas administered for the painless extraction of Teeth. m14-1m

WATCHES, CLOCKS, JEWELRY

J. B. KLUNE,
(Late with Wachhorst, and successor to Floberg,)

WATCHMAKER AND JEWELER, No. 60 J street, between Second and Third. Dealer in Watches, Clocks, Silverware, Jewelry, etc. Repairing in all its branches a specialty, under MR. FLOBERG. [m8-1p1m]

J. HYMAN, JR.,

WATCHMAKER AND JEWELER, NO. 136 J street, between Fifth and Sixth. Just received, a very fine lot of Watches and Jewelry, which will be sold at a very low price. Watches and Jewelry carefully repaired. [m7-1p1m]

WILLIAM B. MILLER
(Late with Floberg),

NO. 190 J STREET, NEAR SEVENTH, Watchmaker and Jeweler. Importer and Dealer in Watches, Silverware, Jewelry, etc. Repairing a specialty, under Robert Marsh. All country orders promptly attended to. [ap29-1ptf]

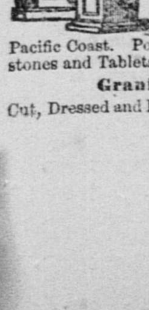
MISCELLANEOUS.

NOTICE.

TO COUNTRY MERCHANTS and RETAILERS.

ON RECEIPT OF $8 I WILL SEND TO ANY address an assorted case of my specialties, consisting of 3 bottles DR. RENZ'S Herb Bitters, 3 bottles Blackberry Brandy, 3 bottles Rye and Rock, and 3 bottles fine old Bourbon Whisky (the last named trade-mark "Bonanza"), all justly celebrated goods, and recommended for medicinal and family use. J. RENZ, Wholesale Liquor Dealer, No. 219 Commercial street, three doors below Front, San Francisco. my1-1p3m

G. GRIFFITH'S
PENRYN
GRANITE WORKS
PENRYN, CAL.



THE BEST VARIETY AND Largest Quarries on the Pacific Coast. Polished Granite Monuments, Tombstones and Tablets made to order.

Granite Building Stone
Cut, Dressed and Polished to order. jy11-1p6m

MECHANICS' STORE.

HATS! HATS!

HATS.

PICNIC "HATS," PICNIC.
PICNIC "HATS," PICNIC.

HATS "STYLISH" HATS.
HATS "STYLISH" HATS.

MEN'S "HATS!"
MEN'S "HATS!"
YOUTHS' "HATS!"
YOUTHS' "HATS!"
Boys' "Hats!" Boys' "Hats!"

CHILDREN'S "HATS," CHILDREN'S

SOFT HATS! STIFF HATS!
HIGH CROWNS! LOW CROWNS!
NARROW BRIMS! WIDE BRIMS!

Hats! Hats for the Million! Hats!

—AT THE—

MECHANICS' STORE,
WEINSTOCK & LUBIN, PROPRIETORS.

Hats! Hats! Hats!
Hats! Hats!
Hats!

HATS! HATS! HATS!
HATS! HATS!
HATS!

MECHANICS' STORE, WEINSTOCK & LUBIN, PROPRIETORS.

MEN'S "HATS!"
YOUTHS' "HATS!"
BOYS' "HATS!"
CHILDREN'S "HATS!"

MECHANICS' STORE!

SACRAMENTO .... CAL.

Weinstock & Lubin - - Proprietors.

ONE PRICE, STRICTLY.

KEARNEY FREE.

FULL TEXT OF THE OPINION OF THE SUPREME COURT.

Five Justices Decide that Kearney Has Been Unlawfully Held, and Two Dissent.

At about 6 o'clock last evening the Supreme Court filed its opinion in the habeas corpus case of Denis Kearney, confined in the House of Correction, San Francisco, under a sentence pronounced by the Police Court of San Francisco. Prior to the filing of the opinion the Justices of the Supreme Court had declined to give even a hint as to when the decision could be expected, and no one knew from them what the character of it would be. Below is given the full text of the opinion of the Court.

[The opinion discusses many points, declares against the doctrine of any Judge or jury by ordinance being allowed to say what they deem language calculated to create a breach of the public peace, and that such doctrine infringes constitutional right and the liberty of speech. It holds that while the reasonableness of the ordinance is in doubt, its want of harmony with general State laws is also a serious question. It holds that the Police Court of San Francisco is an inferior Court, and that all jurisdictional facts must appear in its records affirmatively. It was the intent of the ordinance, even if all other objections to it be waived, that the words which constitute the offense shall be uttered, not only of another, but in his presence. In this case it is not averred that the words were uttered in the presence of the person denounced. Hence no crime was committed and the prisoner must be discharged. The opinion in the original was liberally italicized to give emphasis to its many points. The sub-heads given below are not in the opinion, but are ours. The opinion is from the pen of Justice McKinstry. All his associates concur except Chief Justice Morrison and Justice Myrick, who dissent.]

Ex parte Dennis Kearney on habeas corpus—(In bank. Filed May 27, 1880)—The Police Court of the city and county of San Francisco is an "inferior Court" of limited jurisdiction, whose powers are conferred and whose duties and mode of procedure are prescribed by statute, and to which the rule applies that the evidence of its proceedings must affirmatively show jurisdiction of the person of a defendant and over the subject-matter. The remark to the contrary in ex parte Murray (43 Cal) is dictum. The only question there was whether the judgment should have shown on its face the particular offense of which the petitioner had been found guilty. There is frequently a difficulty in ascertaining whether a particular Court is or is not "inferior" within the meaning of that term as used in the books. In England probably all Courts, except the King's at Westminster, the King's Bench, Court of Bankruptcy, Exchequer and Chancery, are treated as inferior Courts. (Cowen and Hill's Notes, Phillips' Ev., 4th American Ed., Vol. 21, p. 105.)

It is clear that Courts invested with a general common law jurisdiction in law or equity are, when exercising their general jurisdiction, superior Courts within the meaning of the rule which accords every presumption in favor of the validity of their judgments. In the United States, however, it has frequently been held that a Court may be limited and subordinate in its jurisdiction and yet not be an inferior Court "in the sense that it ought to certify everything precisely." (1 Saund, 74.) And this will explain some of the cases cited by counsel. In several of those cases it was in effect determined that a Court holding jurisdiction of all criminal cases should be protected, though it adjudge a matter to be criminal which is not so, and proceed to punish it. (Ex parte Tobias Watkins, 3 Peters, 193; 5 Cranch, 173.) The Circuit Court of the United States for the District of Columbia having been determined to be a superior Court with jurisdiction over all crimes, the application of the rule was not difficult, and accordingly it was held, in ex parte Watkins, that the judgment of that Court "was evidence of its own legality, requiring no inspection of the indictment on which it was founded"—and the Supreme Court refused to look at the indictment.

SUPERIOR AND INFERIOR COURTS.

We do not forget that the only difference ordinarily recognized between superior and inferior Courts is that there is a presumption in favor of the validity of the judgments of the former, none in favor of those of the latter, and that a superior Court may be shown not to have had power to render a particular judgment by reference to its record. We only say that in ex parte Watkins the Supreme Court of the United States refused to look at the indictment, because the Circuit Court was to be treated as a superior Court, with jurisdiction of all crimes.

In other cases it has been held broadly by the Supreme Court of the United States that the District as well as the Circuit Courts of the United States are not inferior Courts (Hurd on Habeas Corpus, 365). It is apparent that decisions with reference to the conclusive presumptions arising from the judgments of those Courts can have no influence upon the question whether the Police Court shall be conclusively presumed to have jurisdiction to render every judgment which it may render, unless the latter, like the former, is a "superior" Court. In ex parte Murray (43 Cal.) it was said: "The judgment is one thing—the brief statement (in the minutes) of the offense of which the prisoner has been convicted is a different thing. The former—the *ideo consideratum est*—need contain no recital; it is here simply 'that the said Patrick Murray pay a fine of forty dollars,' etc. Every recital in a judgment therefore, as to the offense, is surplusage, and if the claim of counsel is well founded, the judgment of the Police Court that a defendant be imprisoned determines the power of the Police Court to imprison him. If, however, the Police Court is an inferior Court (whatever the rule as to superior Courts), everything should appear in its proceedings necessary to give it jurisdiction and to justify its judgment. (Kemp's Lessee vs. Kennedy, 5 Cranch).

IS THERE A TEST?

There is no certain test by which to determine in all cases to which class (superior or inferior) any given Court belongs (Hurd on Habeas Corpus, 364). It is not remarkable, therefore, that there has been some diversity in the application of the rule, as to presumptions, to particular Courts. In New York the "Surrogate Court" is held to be "inferior," but in Pennsylvania, Maryland and Alabama the "Orphan's Court," and in Arkansas the "Probate Court," are held to be "superior." In New York the general sessions of the Peace in the several counties are held to be "inferior," while in Pennsylvania, Vermont and Connecticut, a Justice's Court is under the rule said to be "superior." The question seems to have resolved itself into one of public policy, and whether the particular Court of limited jurisdiction ought to have extended to its judgments the sanctity of the presumptions arising from the adjudications of tribunals of general common law jurisdiction. That the underlying and controlling principle upon which the question must be decided is simply a consideration of correct public policy is indicated by the language employed by the Supreme Court of Vermont in Wright vs. Hazen (24 Vt). That Court there says: "We are aware that the decisions in New York and probably in some other States, have required the Justice to know the facts limiting his jurisdiction at his peril But no such rule has ever been applied to the Courts of general jurisdiction either in Westminster Hall or in this country; and the jurisdiction of Justices of the Peace has become so important and extensive that we incline to believe sound policy requires of us to extend the same rule of construction in favor of their jurisdiction which is done in favor of Courts of general jurisdiction." (Hurd on Habeas Corpus, 366.)

THE CALIFORNIA RULE.

This Court has never extended the rule as to presumptions in favor of the judgments of Courts of general jurisdiction to Courts of Justices of the Peace in California. On the contrary such Courts, in this State, have uniformly been treated as "inferior" Courts, in favor of whose jurisdiction nothing could be assumed (12 Cal., 283; 23 Id., 401; 33 Id., 318; 34 Id., 321). And prior to the adoption of the amendments of 1862 to the Constitution of 1849, and the Act of April 20, 1863, the Probate Courts in California were always considered as of inferior and limited jurisdiction, to whose "records, orders, judgments and decrees" were accorded none of the legal presumptions given to those of Districts Courts in the exercise of their more general jurisdiction. (Pryor vs. Downey, 50 Cal., 388.) So far, then, as analogous decisions of this Court have gone it would seem that the Police Court should be treated as an inferior Court. It would be strange if, while holding the judgments of Justices of the Peace in criminal cases not to carry with them the presumptions accorded the judgments of Superior Courts, we should determine that those of the Police Court exercising a jurisdiction, in so far as legislative enactments are concerned, substantially the same, are to be treated as if rendered by a Court of general jurisdiction. There are reasons peculiarly applicable to municipal Courts which would render it proper that they should be held to be inferior Courts. The primary design of municipal Courts, so far as they act under city by-laws, is to prevent disorder in matters of local convenience, to regulate public and quasi public easements, etc. As was said by Campbell, J., in Jackson vs. People, 9th Mich.: "The Constitution, in apportioning the judicial power, as well as in affirming the immunity of life, liberty and property, has always been understood to guarantee to each citizen the right to have his title to property, and other legal privileges, determined by the general tribunals of the State." There the judgment of the Recorder's Court on a complaint for violating a city ordinance was revised on certiorari. And it has been repeatedly held that this may be done even where by statute it is declared that the proceedings of a municipal tribunal "shall be final and conclusive," or "without appeal." (Dillon on Munic. Cor., 368).

WHEN HABEAS CORPUS MAY BE RESORTED TO.

It is not necessary to say that habeas corpus may be resorted to whenever certiorari may be, but the jurisdiction employed by the superior Courts by means of certiorari strongly indicates the jealousy entertained of possible excess of authority on the part of municipal tribunals administering by laws or "prudential regulations" not extending beyond the limits of the municipality. The Constitution does not require the Legislature to provide for an appeal from the judgments of the Police Court to the Superior Court, and it would seem that every consideration of sound policy requires of us to treat the former Court as an inferior tribunal, the record of whose proceedings shall affirmatively establish its power to pronounce a particular judgment.

The Charter of San Francisco (Consolidation Act, Stat 1861, p. 552) provides:

"Section 74. The Board of Supervisors shall have further power by order or regulation. * * * Eleventh—To determine the fines, forfeitures and penalties that shall be incurred for the breach of the regulations established by said Board of Supervisors, and also for a violation of the provisions of this Act when no penalty is affixed thereto or provided by law. But no penalty to be imposed shall exceed the amount or value of $1,000 or six months' imprisonment, or both." * * (Chap. 5)

"The Board of Supervisors of the City and County of San Francisco shall have power by regulation or order * * Third—To prohibit and suppress or exclude from certain limits all houses of ill-fame, * * to prohibit and suppress or exclude from certain limits or to regulate all occupations * * exhibitions and *practices* which are against good morals, contrary to public order and decency, or dangerous to the public safety." (Stat. 1863, Sec. 1, Sub. 3, p. 540.)

The Board of Supervisors passed order No. 697 as amended by order No. 1196. Chapter 3, Sec. 1, of said order provides:

"Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and be punished by a fine of not exceeding $1,000, or imprisonment not to exceed six months, or by both such fine and imprisonment."

And Section 28 of said Chapter III. provides: * * "No person shall * * 2. Utter in the hearing of two or more persons any bawdy, lewd, obscene or profane language, words or epithets."

"3. Address to another, or utter in the presence of another, any words, language or expression having a tendency to create a breach of the peace."

WHAT MAY NOT BE INQUIRED INTO ON HABEAS CORPUS.

We shall assume for the purposes of this decision—without admitting the law so to be—First: That we ought not to inquire on habeas corpus, with a view to petitioner's discharge, whether the sections of the charter above cited authorized the Board of Supervisors to adopt the Orders 697 and 1196. Second: That we ought not to inquire, except for a limited purpose, whether the ordinance is "reasonable" and one which a municipal government may enforce. Third: That we cannot inquire on habeas corpus whether the Orders 697 and 1196 were properly published prior to their passage, inasmuch as they are verified by the signatures of the Mayor and Clerk of the Board.

It is not to be presumed that a Court of general jurisdiction—or one which the law treats as such—has in any case proceeded to adjudge upon matters over which it had no authority. On the other hand, no such intendment is made in favor of the judgment of a Court of limited jurisdiction—an "inferior Court"—but the recitals contained in the minutes of the proceedings must be sufficient to show that the case was one "which the law permitted the Court to take cognizance of, and that the parties were subjected to its jurisdiction by proper process." (Cases cited in Note 1, p. 407, Cooley's Const. Lim.) If indeed the proceedings show that an inferior Court has found the existence of a fact on which the right to proceed depends, and, by the constitution of the Court, the existence or non-existence of the fact is a matter placed within the jurisdiction of the Court for determination, the adjudication of the inferior Court that the facts exist is conclusive. As stated by Mr. Justice Cooley—after he has laid down the proposition that in case of a Court of special and limited authority it is permitted to show a want of jurisdiction even in opposition to the recitals contained in the record: "This we conceive to be the general rule, though there are apparent exceptions of those cases where the jurisdiction may be said to depend upon the existence of a certain state of facts which must be passed upon by the Courts themselves, and in respect to which the decision of the Court, once rendered, if there was any evidence whatever on which to base it, must be held final and conclusive in all collateral inquiries, notwithstanding it may have erred in its conclusions." (Con. Lim., 407.)

WHAT THE COURT ASSUMES.

We have assumed that the existence of the ordinances which, as claimed, gave the Police Court the appropriate jurisdiction, and the publication thereof—supposing the publication to be inquirable into by any Court—were matters to be ascertained by the Police Court, and that, on habeas corpus, we ought not to go behind the finding of the Police Court with respect to such matters. We also assume that the orders or ordinances referred to were proven. We are not called on, therefore, to re-examine the evidence with respect to any fact passed upon by the Police Court.

The records of that Court show that two complaints were made against the petitioner. The first charged him with having uttered, in the hearing of others, bawdy, obscene and profane language. That charge was dismissed.

As we have seen, nothing is to be presumed, in the first instance, in favor of the judgment of the Police Court. If the record does not show upon its face the facts necessary to give the Court jurisdiction, they will be presumed not to have existed; but this presumption (except in California as to such jurisdictional matters as the law requires to be reduced to writing) may be rebutted and the jurisdictional facts established by extrinsic evidence. (Hurd on Habeas Corpus, 367.) We have assumed that the fact of the existence of the ordinances which, as was supposed, gave the Police Court jurisdiction, must be presumed to have been established to the satisfaction of that Court—and for the purposes of this case the presumption will be held to be conclusive. But the Police Court could not give itself jurisdiction by its construction of an ordinance, when the very question is whether the inferior tribunal was given power by the ordinance to try petitioner on the charge on which he was actually tried. It devolved, therefore, upon those whose function it was to sustain the jurisdiction to produce the ordinances which were proved in the Police Court, in order that it could be ascertained whether they made the act for which petitioner was tried a crime for the punishment of which the inferior Court had power to impose the judgment which was rendered. We take judicial notice that the act charged in the complaint constitutes no crime under the general laws of the State. If the judgment of the Police Court is supposed to derive its validity from a city ordinance we may assume an ordinance to have been proven, and it would be enough to show perhaps that it was admitted as proven by the Police Court. But whether the ordinance gave the Police Court power to punish petitioner for the offense charged in the complaint, is a question of law which we cannot avoid the responsibility of determining. Can it be doubted that if on proof of an ordinance prohibiting certain unlawful assemblies the Police Court should proceed to try a defendant charged with doing some act not prohibited and to render a judgment imposing the penalty prescribed for taking part in such unlawful assemblies, the judgment would be void? The complaint would charge no crime known to the law of the land; and the same must apply whether the law conferring jurisdiction on the inferior tribunal is to be looked for in the statutes of the State, or in orders of the Board of Supervisors of San Francisco.

THE CHARGE AGAINST KEARNEY.

Inasmuch as no presumptions are to be indulged in favor of the judgments of inferior Courts, and as this Court will take judicial notice that the facts set forth in the complaint constitute no crime under the general laws of the State, the record of the proceedings in the Police Court should manifest that the petitioner was there prosecuted for an alleged violation of some city ordinance. Either the complaint sufficiently refers to, and so makes part of itself, Orders 697 and 1196, or it does not. If it does not, there is nothing in the proceedings of the Police Court which show that the petitioner was tried for any offense of which that Court has jurisdiction. We shall assume, however (as against petitioner), that Orders 697 and 1196 sufficiently appear from the record, and further, because alleged in the complaint in the Police Court, that they are now properly before us.

As we have seen already the charge of uttering obscene and profane language was dismissed, it only remains to inquire whether the other complaint charged the crime created by the third subdivision of Section 28 of Chapter III. of Order 1196; since if it did not charge that crime it is plain it charged none within the jurisdiction of the Police Court.

The subdivision declares that no person shall "address to another or utter in the presence of another any words, language or expressions having a tendency to create a breach of the peace." We shall not inquire, in this place, how it accords with constitutional law or the policy of our general legislation to place the power in the hands of a Judge or jury to decide that "any words"—to others, perhaps, apparently innocent—which they may think objectionable have a tendency to create a breach of the peace. That the language charged in the particular instance now before us was not only indecorous, but in the highest degree indecent, cannot affect the question. The next conviction may be for the use of words less offensive, and the attempted definition of the crime sought to be created by the ordinance is so uncertain as would leave it to the varied judgments or tastes of successive juries to find defendants guilty or not guilty of a crime for the use of exactly the same language. It may be that the Legislature might declare slander to be a crime, or might authorize a municipal board so to declare. If this were done, however, it can hardly be doubted that the constitutional provisions in respect to libel would apply. The question whether the words spoken were slanderous would be a question for the jury, and the defendant would be allowed to prove, if he could, that the words spoken were true, and that they were spoken for justifiable ends. The provision of the ordinance on which (as is claimed) petitioner was convicted, does not require that words shall be slanderous, and does not permit the defendant to prove either the truth or justifiable intent. Libel is distinguished from slander in that it is supposed to be more deliberate. The "freedom of the press" is surrounded by many constitutional safeguards. Can the Legislature—*a fortiori*—a City Council, sweep all these aside by the simple process of calling libel by another name? The Legislature cannot deprive the publisher of a newspaper of his right to prove the truth of a statement alleged to be libelous, and that it was published for justifiable ends. Will it be contended that the printer may be deprived of this great constitutional right by providing that he shall be punished not for libel, but for the publication of words having a tendency to produce a breach of the peace?

LIBERTY OF SPEECH.

The foregoing will suggest some of the evil consequences which might ensue were we to give the construction contended for by counsel to the third subdivision of Section 28 of the Chapter, and hold that it covers the case of one who may have used words having a tendency to excite the wrath—in case he should ever hear of them—of a person of whom the words were spoken, although such person may not have been present when the words were spoken, nor may ever have heard them recited. We cannot too often repeat that the alleged circumstances of this particular case should not be appealed to as requiring of the Courts to attribute a forced meaning to the ordinance. It may be admitted, for the purposes of this argument, that the language alleged to have been employed by the petitioner conveyed a vile and perfectly unwarrantable assault upon the character of an honorable man. But it is only when an offense particularly aggravating against morals or justice has been committed that a temptation arises to distort the law, to expand the meaning of words beyond their plain purport, to give to a penal statute an effect (not intended by those who framed it nor required by its language), that we may bring within its scope, and subject to condign punishment, those whom we believe deserve the severest penalties. At such times, if ever, we forget that the worst as well as the best of men is entitled to the protection of the Constitution, and that a strained interpretation of the law which deprives a bad man of his right to personal liberty to-day, may, to-morrow, deprive a good man of his equally sacred—in the eyes of some of us perhaps more sacred—rights to property.

THE ORDINANCE ANALYZED.

To constitute the offense the words must either be addressed to (or spoken in the presence of) the person whom they have a tendency to incite to a breach of the peace, or, on the other hand, they are punishable if spoken anywhere, or addressed to any third person. Even if the language of the ordinance were ambiguous, we would be compelled to reject an interpretation which would sustain the latter view. To hold that the conversation of intimate friends may be reported, or the privacy of the domestic circle invaded, to secure evidence of declarations which, if subsequently communicated to the person to whom they relate, may, in the opinion of a jury in the Police Court, "have a tendency" to induce him to commit a breach of the peace, would recognize and encourage a system of espionage abhorrent to American ideas, and productive of more evil than the practice condemned. Such evidence necessarily would be of the dubious character of which Mr. Greenleaf speaks in his treatise on Evidence. All that he says of oral admissions is applicable to the repetition of what one may "utter to or in the presence of another; especially in the absence of the person spoken of. With respect to all verbal admissions, it may be observed that they ought to be received with great caution. The evidence, consisting as it does in the mere repetition of oral statements, is subject to much imperfection and mistake, the party himself either * * * not having clearly expressed his own meaning, or the witness having misunderstood him. It frequently happens, also, that the witness, by unintentionally altering a few of the expressions really used, gives an effect to the statement completely at variance with what the party actually did say." (1 Greenleaf's Ev., Sec. 200.)

Such an interpretation of the orders would revive a kind of judicial investigation for which there have been no precedents in this country, and none in England since the reign of Edward the Fourth, when a citizen of London was hanged who had said he would make his son an heir of the "crown," the sign of the house in which he lived, and a gentleman, whose favorite buck the King had killed in hunting, was decapitated because he had wished it, horns and all, in his belly that counseled the King to it (1 Hale's P. C., 115.) To say that a prosecution, such as has been mentioned, may be maintained by virtue of an ordinance the sole authority to pass which is found in the city charter, above cited, by which the Supervisors are empowered to "regulate all occupations, * * exhibitions and practices which are against good morals, contrary to public order, or dangerous to the public safety," is to declare a doctrine which, if not subversive of constitutional principles, is apparently violative of established rules relating to municipal legislation.

MUNICIPAL BY-LAWS.

Municipal by-laws must harmonize with the general laws of the State, with the municipal charter, and with the principles of the common law. (14 Barb. 478; 4 Hill 209.) They must also be reasonable, and whenever they appear not to be, the Courts will, as matter of law, declare them void. (2 Kyd on Corp. 107.) We have no space to amplify the suggestion, but there is at least grave doubt whether an ordinance which provides a punishment of six months imprisonment and one thousand dollars fine as the penalty for incautious words spoken of an absent person at the breakfast table (which may arbitrarily be considered by a jury as having a tendency to create a breach of the peace), would be "reasonable." or held to be authorized under a general grant of power to the Supervisors to prohibit or regulate practices "against good morals, or contrary to public order, or dangerous to the public peace." That such an ordinance would not accord with our governing policy is further evidenced, perhaps, by the circumstance that no like prohibitory legislation has ever been attempted in this or other States.

We have assumed for the purpose of this decision (although the contrary course, the precise objection not being made, has been repeatedly pursued by this Court, as also in the United States Courts—notably in Parrott's and other recent cases), that the invalidity of the Order 197 and 1196 ought not to be determined in this proceeding, and made the ground for petitioner's discharge. We have assumed—for the purposes of this decision only—that here on habeas corpus the Police Court will be presumed to have adjudged the order valid, and that its judgment in that regard is to be treated as final. But in ascertaining the meaning of the portion of the Order 1196, on which the judgment against the petitioner is based, we may very properly consider the circumstance that if the language, supposing it be ambiguous, be construed in one way it does not necessarily conflict with the municipal charter or with the common or statutory law, while if it be construed in another manner, it is either clearly repugnant to all these, or leaves the judicial mind with grave doubts that it contravenes State legislation, or impinges upon the due enjoyment of constitutional and legal rights. It is the ordinance properly construed which the Police Court has adjudged to be valid.

THE DECISION.

We have so far considered subdivision 3 of Section 28 as if its language would admit of two interpretations. But we are unable to discover any ambiguity in it. It declares: No person shall "address to another, or utter in the presence of another, any words * * having a tendency to create a breach of the peace." If the second clause of the sentence had been omitted and the subdivision had read "address to another any words * * having a tendency," etc., could anybody have doubted what it was intended to prohibit? There could have been no hesitation in declaring that the words must be such as have a tendency to produce a breach of the peace on the part of the person to whom they are addressed. There is nothing in the language "or utter in the presence of another" which can enlarge the scope of the intended prohibition. "No person shall address to or utter in the presence of another person words having a tendency to induce such other person to commit a breach of the peace." Is not this a simple paraphrase of the language of the ordinance? Either this truly represents the meaning, or, as we have seen, the subdivision prohibits the utterance of words which can be construed as having a certain tendency—in private, to the smallest audience, and in the absence of the only person who would have reason to be offended by them—a construction which might be supposed grievously to interfere with the inalienable privileges of certain coteries. It is certain that the ordinance does not require that more than two persons should be present when the words are spoken. If it had been intended to punish the denunciation of absent individuals at public assemblages, it would seem that language would have been employed somewhat like that of the Act of January 19, 1878 (which was repealed at the next session of the Legislature)—"Any person who in the presence of twenty-five or more persons shall utter any language with intent to incite * * to any acts of violence," etc. Certainly, if the purpose had been to prevent appeals to a riotous mob such as were calculated not only to incite those present to violence, but also to lead to breaches of the peace on the part of an absent person denounced, it would not have been difficult to find apt and fitting words to express that purpose. For actual riotous conduct the remedy is the strong arm of the Government efficiently wielded, as we have no doubt it will be if the occasion arises, by the executive power. But the purpose of the third subdivision of Section 28 of Order 1196 is less comprehensive and seems very apparent. The law has always given weight to the provocation which leads to an assault; insulting words and conduct in the presence of the assailant may sometimes reduce the degree of his crime, and may always be considered in mitigation of punishment.

The portion of the ordinance so often referred to provides a penalty for him who shall provoke an assault upon himself "by addressing to another person, or uttering in the presence of another person, words * * having a tendency to create a breach of the peace."

THE POLICE COURT JUDGMENT.

The judgment of the Police Court, separate from the extraneous recitals which constitute no part of it, is simply: "It is ordered and adjudged that * * (Denis) Kearney pay a fine of one thousand dollars and be imprisoned in the House of Correction of the city and county for six months." Does the record of the proceedings of the Police Court show that the Court had jurisdiction to render this judgment? The case is unembarrassed by another question, since no oral evidence was offered to establish that he was in fact tried and convicted for the commission of any act other than that charged in the complaint, nor is there any entry in the minutes of the proceedings in any degree looking toward a prosecution for the commission of any other act. The complaint charges that at a certain date, in San Francisco, the petitioner "did willfully and unlawfully utter and address to others, to wit: to a large number of persons then and there assembled, to wit, one hundred and more persons whose names are unknown to deponent, certain profane words and language, which words and language then and there had a tendency to create a breach of the peace." Then follows a recital of the words alleged to have been spoken. There is no averment that the words were "addressed to or uttered in the presence of" the person of whom they were spoken. But that the words are addressed to or uttered in the presence of the person with respect to whom they are spoken constitutes, as we have seen, the very gist of the offense created by the third subdivision of Section 28 of Chapter III. of the city charter. Unless we adopt the construction of the language of subdivision three which we have already rejected, however reponsible the alleged action of petitioner, he did not commit the particular crime there defined—though he uttered the words in the presence of any number of persons other than him of whom he spoke. This is not the case of a complaint inartificially drawn which intimates the existence of the facts necessary to the constitution of the offense, or even of an attempted statement, insufficient but indicating a purpose to declare on the essential facts.

NO CAUSE OF ACTION.

It is a total failure to allege any cause of action, and, however objectionable the conduct imputed to the petitioner, he is no more in the eye of the law charged by the complaint with any crime than if the paper had ascribed to him the most innocent of deeds. If Denis Kearney was legally convicted under the ordinance by reason of his denunciation of a person in his absence, then each one of those who have employed similar (though sometimes less profane) language in respect to Denis Kearney, he not being present, may be imprisoned and fined by the Police Court.

It would seem that criminal actions in the Police Court must be commenced by complaint in writing (Penal Code, 1426), and that Court is required to keep a docket in which must be entered each action and the proceedings therein. (Penal Code, 1428.) As to the jurisdictional facts which the law directs to be set forth on the records of that Court they must be apparent on the face of the proceedings, or its judgment is void. (Jolly vs. Foltz, 34 Cal., 321.) If, however, it should even be admitted that it might be established by proof aliunde that the petitioner was tried and convicted of an offense of which the inferior Court had jurisdiction, no evidence of any kind to establish that fact has been produced.

Inasmuch as it affirmatively appears from the record of the proceedings that the petitioner was tried and sentenced to be punished for the commission of an act which is and under the existing laws can be no crime, the judgment of the Police Court is absolutely void. The petitioner must therefore be discharged from custody.

It is so ordered. McKINSTRY, J.

We concur:
McKEE, J.
SHARPSTEIN, J.
ROSS, J.

CONCURRING OPINION.

I concur in the reasoning and the result reached in the opinion signed by my brethren, McKinstry and others. In doing so I desire to add that I do not wish to be considered as concluded by anything contained in that opinion as to a judgment or sentence of any Court of criminal jurisdiction known to the Constitution and laws of this State. I am strongly inclined to the opinion that the same result must be reached upon a so-called judgment of any of the Superior Courts, when there is nothing in the shape of law to maintain the judgment. It must be remembered that we have no criminal common law. All our public offenses or crimes are statutory. Unless a statute exists making an act a crime or a public offense (see Penal Code, Section 6), no one can be adjudged to suffer punishment for the commission of it, however heinous it may be when tested according to the ordinary criterion of public duty or private obligation. To hold that any Court of criminal jurisdiction can adjudge an act not a public offense by statute deserving of punishment and sentence, and commit to prison or fine for the commission of such an act, which in such a condition of the law is innocent, and that the person so sentenced could not be relieved from it on habeas corpus, would be, it seems to me, to hold that the Court is invested not only with judicial but with legislative power—that the Court can make the law, create the offense and adjudge a prisoner guilty of having committed it. The Court in such a case would have no jurisdiction; as was said by the learned Judge who wrote the opinion in Corryell's case (22d Cal., p. 181): "The Court derives its jurisdiction from the law, and its jurisdiction extends to such matters as the law declares to be criminal, and none other, and when it undertakes to imprison for an offense to which no criminality is attached, it is beyond its jurisdiction." Such cases, it is evident, must be of rare occurrence. They are the offspring of peculiar circumstances which happen infrequently. When they do occur and are presented for adjudication, should not the Court be as ready in such emergencies to relieve on habeas corpus as to enforce the legal punishment in the case of guilt? (See People vs. Liscomb, 60 N. Y., 569, 570.) I fail to see that any serious consequences can flow from such an use of the writ of habeas corpus, unless an injury can result from the enlargement of an innocent person, whom some Court has, by grievous mistake and illegal sentence, adjudged to suffer confinement in prison.

However, the question is not before us for decision, and these few observations are intended to preclude a conclusion which might possibly be drawn from the opinion of the Court, and to state the point without deciding it. THORNTON, J.

I find myself unable to concur in the conclusions reached by my associates. MYRICK, J.
I dissent. MORRISON, C. J.

COAST DISPATCHES.

SPECIAL TO THE RECORD-UNION.

CALIFORNIA.

Death of Paul Morrill.

SAN FRANCISCO, May 27th.—Paul Morrill, Surveyor of the Port of San Francisco, died at his residence in this city this morning.

The Kalloch Impeachment—Dismissal of the Whole Case.

SAN FRANCISCO, May 27th.—Judge Carey has substantiated the demurrer made by Highton and Baggett that there is not sufficient cause of action. The Court dismissed the whole case. Judge Latimer read a dissenting opinion, taking the acceptance by the Mayor of free passes as a ground for forfeiture of office.

State Vinicultural Association.

SAN FRANCISCO, May 27th.—The State Vinicultural Commission has elected the following officers: President, Arpad Haraszthy; Vice-President, Charles A. Wetmore; Treasurer, Charles Krug; Secretary, Dr. John J. Bleasdale. The salary of the Secretary was fixed at $100 per month. Lots were drawn for long and short terms of office, resulting as follows: Commissioners for two years—Messrs. Haraszthy, Blowers, Shorb and Krug; for four years—Messrs. West, Wetmore, Rose, De Turk and Blanchard.

Carson and Colorado Railroad.

SAN FRANCISCO, May 27th.—The Carson and Colorado Railroad Company have begun the work of construction of the first 150 miles between Carson and Candelaria, Columbus mining district, Nevada. D. O. Mills, Nicholas Luning, William Sharon, and other large capitalists of California and Nevada, are the principal stockholders.

A Lifetime in State Prison.

NEVADA CITY, May 27th.—Peter Dalton (the Mountain Spirit) has been sentenced to serve in the State Prison twenty years for robbing Horton, and fourteen years for attempting to rob Pierce, making thirty-four years in all. Considering the fact that he has already served twenty-three years and nine months for other offenses, and that he has been in jail in Nevada county seven months, he will have a pretty long record should he live to serve out his time.

Murder in the First Degree.

LAKEPORT, May 27th.—John Mazingo, who killed Peter Poague on October 3, 1876, at Rice valley, in this county, has been on trial for the last three days. After being out all night the jury this morning brought in a verdict of murder in the first degree, recommending the sentence to be imprisonment for life. Mazingo shot Poague during a dispute over land. He escaped and went to Oregon, where he remained until last winter, when he was captured and brought back here.

The Broken Levees of Union Island.

STOCKTON, May 27th.—The report in from Union Island this morning is, that Williams & Bixler have lost from 11,000 to 12,000 acres by the flood. Other parts of the island are protected by a cross levee, but the water is within six inches of the top of the same.

The Proposed Narrow-Gauge Road from Stockton to Bodie.

STOCKTON, May 27th.—A number of influential citizens assembled to-night in the office of the Farmers' Union, for the purpose of considering the project for the construction of a narrow-gauge road from Stockton to Bodie. After the subject had been discussed a committee was empowered to receive subscriptions for making a survey as to the most desirable route. Several of those present put their names down for $200 to raise a fund of from $6,000 to $10,000 to make the survey.

The State Prison Murder—Proceedings at San Rafael.

SAN RAFAEL, May 27th.—The trial of Gibson, alias Scotty, the convict, for the murder of Smith, a brother convict, is progressing slowly. The prosecution has rested, and the defense has opened with a statement by Murphy (a convict), the tendency of which is to show justifiable homicide. Seven witnesses have been examined by the defense, all of whom contradict the material points brought out by the prosecution. One witness testified that just previous to the killing Smith had asked him (witness) for a knife with which to kill Gibson. When asked why he did not report this fact to the authorities, he made some trifling excuse. Judge Freelon instructed the Sheriff to have all the witnesses from the prison in Court at 10 A. M. to-morrow, if it required his whole force.

Death of a Shasta Pioneer.

SHASTA, May 27th.—Charles Buell, one of our oldest and most respected citizens, died here last night. The deceased was one of the oldest settlers in Shasta county.

Dry Northers in Napa Valley.

NAPA, May 27th.—A hot north wind has been blowing for the past three days. Grasses and grains are being hurried forward to maturity. Haying has commenced in some portions of the county, and barley is ripening. Wheat is not so far advanced as to be injured by the drying weather, which is the hottest of the season. Fruit has not suffered.

NEVADA.

Passengers Passing Carlin for California.

CARLIN, May 27th.—The following passengers passed Carlin to-day, to arrive in Sacramento to-morrow: Henry D. Sherrerd, J. J. Southgate, San Francisco; C. Bernard, San Jose; Mrs. L. W. Boyer, San Francisco; J. P. Merrill, Milwaukee, Wis.; Miss Lander, J. Steinberger and family, San Francisco; Mrs. Egenton and family, Victoria, B. C.; Mrs. L. B. Taylor and daughter, Janesville, O.; Wm. Tooth, New York; E. J. Brush, Janesville, O.; W. N. Tripp, San Francisco; Miss Cresswell, Miss Thomas, Mrs. Thomas and Miss Marshal, England; Miss M. Straus, Brussels, Belgium; T. S. Wilson, Vickerville, Cal.; Mrs. Goldsmith and daughter, San Francisco; 119 immigrants, including 96 males, to arrive in Sacramento May 29th.

A Case of Total Depravity.

GOLD HILL, May 27th.—C. T. Pohl, a native of California, 25 years of age, and who has lived since boyhood in Gold Hill, is now under arrest for rape committed on Birdie Ogg, aged seven years, the daughter of Sine Ogg. The outrage was perpetrated last Saturday, but the little girl was induced by threats to keep the matter quiet. Yesterday she was in such pain as to preclude the possibility of further concealment. Pohl is in the County Jail. If he had been found last night he would have been lynched by the indignant people.

[SECOND DISPATCH.]

VIRGINIA, May 27th.—Charles T. Pohl has been held in $5,000 bail to answer for the outrage committed on Birdie Ogg. At the examination this afternoon his admissions of the crime were offered; also medical evidence that the girl had been diseased by him.

Dashed to Pieces in a Mine.

EUREKA, May 27th.—J. D. Driscoll, a miner, fell down the shaft of the Bay State mine last night, and was instantly killed. He fell 85 feet, striking on his head and breaking his neck. He was a native of Ireland and was unmarried. He has two cousins living on the Comstock. Deceased was a sterling man, and greatly respected by all who knew him. He had lived at Mineral Hill and other points in Eastern Nevada. His remains have been brought in, and will be buried to-morrow.

Democratic State Convention—Nominations.

WINNEMUCCA, May 27th.—The Democratic State Convention was called to order at 2 P. M. to-day, by the Secretary of the State Central Committee. Judge A. M. Hillhouse, of Eureka, was elected temporary President, J. A. Mahanny, of Storey, temporary Secretary, and W. F. Dyer, of Lander, and G. W. Huffaker, of Washoe, Vice-Presidents. Committees on Credentials, Permanent Organization, Order of Business, and Platform and Resolutions, were appointed, and a recess was taken until 3:30. The Committee on Credentials reported 94 delegates entitled to seats. The Committee on Permanent Organization reported the temporary officers as the permanent officers, and the report was adopted.

After the adoption of the usual Bourbon resolutions, nominations were declared in order, and Geo. W. Cassidy, of Eureka, was nominated for Governor by acclamation.

Judge C. H. Belknap of Storey county was placed in nomination for Supreme Judge, and was nominated by acclamation.

For delegates to the Cincinnati Convention, E. B. Stonehill and Matt. Canavan of Storey, J. C. Hagerman of Washoe, A. C. Ellis of Ormsby, R. Sadler of Eureka, and George T. Gorman of Lincoln were nominated by acclamation. Tilden is the first choice of three of the delegates, Thurman of two and Field of one.

For Presidential Electors, J. H. Dennis, W. E. F. Deal and J. C. McTarnahan were nominated by acclamation.

James Gregory, Peter Cavanaugh, Jr., J. C. Kaneen, George Storey, T. Hilp and Jos. R. Ryan were elected alternates to the Cincinnati Convention.

OREGON.

Items from Portland.

PORTLAND, May 27th.—A wonderful degree of activity is manifested in railroad matters. The Oregon Railway and Navigation Company now has five surveying parties in the field in different portions of Eastern Oregon and Washington, locating the various proposed lines of road. The company has determined to construct a road from Portland to The Dalles, and with that purpose in view will commence active operations at once. Two parties will make a final location for the route from Portland to The Dalles. Preliminary lines were run early this spring. In order to facilitate the work one party will start at The Dalles and come west, while the other will start here and work east. It is expected that the rock work on the Wallula and Celilo division will be done by August 15th, and after that date all available workmen will be put at the rock work on the Portland division. Much of this work is of such a difficult character that much labor must be performed this year in order to have the road completed to Portland in time to move next year's crop. There will be three tunnels—two between the Dalles and the Cascades, and one between here and the Cascades—each 900 feet long.

The Democratic County Convention for Multnomah was held here this afternoon. The following nominations were made: State Senators, E. J. Jeffrey and J. S. Keller; Representatives, Fred. P. Strong, William Galton, B. L. Henness, C. E. Sitten, Fred. V. Holman, Albert Smith and F. Opitz; Sheriff, B. L. Norden; County Clerk, B. G. Whitehouse.

The State Grange of Oregon, now in session at Salem have elected the following officers: Master, R. P. Boise; Overseer, D. S. K. Buick; Lecturer, A. P. Shipley; Steward, W. M. Hilleary; Assistant Steward, J. W. Kinkland; Chaplain, W. H. Gray; Treasurer, David Smith; Secretary, N. W. Randall; Gatekeeper, Thomas Smith; Ceres, Mrs. J. M. Train; Pomona, Mrs. E. B. Heath.

A large barn belonging to Perry Watson, living six miles south of Salem, was totally destroyed by fire yesterday evening. Loss, $3,000; fully insured.

Extensive preparations are being made by members of the Grand Army of the Republic to celebrate Memorial Day on Saturday, the 29th instant. Members will form in procession and march to Lone Fir Cemetery and decorate the graves of the departed. In the evening an address will be delivered at the Newmarket Theater by Major Sherman. Decoration Day will also be duly observed at Vancouver. General O. O. Howard will deliver the address there.

A shooting affair occurred last evening in East Portland between two men named Cormack and Manning. The men had a quarrel, when Cormack drew a pistol and fired two shots at Manning. The first shot missed him, but the second took effect in his shoulder, inflicting a very painful wound. Cormack has surrendered himself to the authorities. Both men have families, are neighbors, and have been heretofore on friendly terms.

Dr. J. A. Chapman, who was nominated by the Republican County Convention as one of the Representatives to the Legislature, has declined to serve. The County Central Committee has nominated P. Kelly to fill the vacancy.

WASHINGTON TERRITORY.

Remanded to Jail—Thrown from a Horse and Killed—Territorial Prospects.

WALLA WALLA, May 27th.—Thomas and wife, the Webster murderers of Broomfield and wife, were brought before Judge O. P. Lacy this morning and were remanded to jail to await the action of the Grand Jury.

Frank Morgan, a boy 10 years of age, was thrown from his horse last evening, and, after lingering until 10 o'clock, died. He was not found for a long time after the accident.

The recent visits of different railroad representatives encourage our citizens immensely. Great improvements are going on. The right of way for the roads will be freely given. In fact, the country is on the upward track.

COMMERCIAL.

San Francisco Produce Market.

SAN FRANCISCO, May 27th—1 P. M.

FLOUR—We quote the various brands as follows: Best City Extras, $5 75; Bakers' Extra, $5 50@5 65; Superfine, $3 50@4; interior Extra, $5@5 50; interior Superfine, $3 50@4; Oregon Extra, $4 50@5; choice do, $5@5 25; Oregon Superfine, $3 50@4; Walla Walla Extra, $4 90@5 12½ ℔ bbl.

WHEAT—Want of activity is still the dominant feature. The requirements for shipping are almost nominal, as cargoes for vessels loading have been mainly secured. For new business, exporters keep within the limits of $1 45@1 50 ℔ ctl. Purchases on milling account are anything but extensive, still they help to keep a glimmer of life in the market. Sales of 2,500 ctls good milling, $1 56¼; 250 do fair do, $1 45 ℔ ctl. We quote No. 1 at $1 55@1 60; No. 2, $1 47½@1 52½ ℔ ctl.

BARLEY—Buyers to-day were scarce. The offerings on 'Change were free, and holders seemed disposed to sell, but no transactions were recorded. The outlook continues favorable for purchasers. A sale was made early in the week, but not reported, of 3,500 sks bright coast feed at 70c ℔ ctl. Brewing is quotable at 77½@87½c; feed, 65@70c; Chevalier, $1 25@1 35 for choice bay, and 95c@$1 15 for coast.

OATS—Were neglected to-day, and for the first time this week no sales were reported. We quote: Humboldt, $1 40@1 60; Coast, $1@1 25; Oregon and Washington Territory, $1 20@1 50; Surprise, $1 55@1 67½ ℔ ctl.

HAY—Cargo lots on the wharf range from $6 to $13 ℔ ton.

BUTTER—The inquiry for two days has been less urgent, in consequence of warm weather. Good to choice is quotable at 17@20c ℔ lb, with an advance for fancy; inferior to ordinary, 16@17, inside rate for mixed lots from country buyers. New Keg is quotable at 18@21c ℔ lb. For shipment the cost of packing has to be added.

CHEESE—We quote California at 8@9c for inferior, and 10@11c for good to choice; Eastern creamery, 22½c ℔ lb.

EGGS—Further arrivals of Eastern, and better contributions from local sources, have caused a weakening in prices. Sales of choice California were made early this morning at 23½ ℔ dozen, though the general range seems to be 22½@24c. Eastern are selling at 21c ℔ dozen.

WOOL—Nothing has occurred to-day to disturb the monotony that has prevailed for some time. There continues to be inquiry for strictly choice free, and small sales are made at top prices. News from Boston is to the effect that all grades are quiet, and that but little of California new crop has so far been placed for manufacturing purposes. We quote: 18@20c for burry, 21@22½c for slightly burry, and 23@25c for free southern and San Joaquin; choice northern is quotable at 27@30c, and Eastern Oregon at 23@26c ℔ lb.

Eastern and Foreign Markets.

NEW YORK, May 27th.

BREADSTUFFS—Flour is dull; Wheat is unsettled; latter at $1 25@1 30.

HIDES—Fair demand and prices steady.

QUICKSILVER—Better demand. Sales at 41½@42c, and 43c asked.

CHICAGO, May 27th.

WHEAT—$1 00⅞ for July.
BACON—$6 30 for short rib sides.
PORK—$10 22½ for July.
LARD—$6 62½ for July.

LIVERPOOL, May 27th.

WHEAT—Good to choice California, 9s 11d to 10s 5d. The markets are quiet and steady, and the weather is fine.

A clock always runs better when it gets its second wind.