ORIGINAL DEFECTIVE

SACRAMENTO DAILY RECORD-UNION.

DAILY UNION SERIES—VOL. LVIV.—NO. 10,033. }
DAILY RECORD SERIES—VOL. XXVII.—NO. 5049. }

SACRAMENTO, FRIDAY MORNING, JUNE 8, 1883.

{ DAILY RECORD UNION SERIES.
{ VOLUME XVII—NUMBER 92.

THE INVESTIGATION.

THE GOVERNOR DECIDES THAT HE HAS JURISDICTION.

Closing Argument of Counsel—The Decision—Additional Specifications Filed—Adjourned until Tuesday.

The full text of the reply of Colonel Flournoy to the argument of Mr. Sears on the plea to the jurisdiction and the demurrer to the charges against the State Prison Directors, before the Executive Commission, is as follows:

ARGUMENT OF HON. GEORGE T. FLOURNOY.

Mr. Flournoy—My argument in regard to the Magna Charta had no reference to that at all. I am much obliged to counsel for referring to the Texas case. I argued that myself. I am glad he has called my attention to it. Here is what the Court said, and it is good law:

"In our opinion, however, the sounder conclusion is, that where there is a grant of power in the Constitution to a department of Government, as to a constitutional or statutory officer, or tribunal, without defining the manner and form on or by which it is to be exercised and carried into effect, the Legislature may legitimately prescribe reasonable rules by which this may be done. And though such power may not be taken away by the Legislature, and should it fail or refuse to legislate so as to provide for the efficient use and exercise of the power, the department, officer, or tribunal to whom it is delegated might possibly act in accordance with its own discretion, yet when the Legislature has made reasonable and appropriate provisions for its proper exercise, it should and will be exercised in conformity with such provisions."

Now their position is that the Act of 1880 has taken away the power from this Court. The Legislature had no power to take it away. It is the correct doctrine, as stated in the decision. This is exactly our position in this case. Not that it can take away the power that the Constitution confers upon the Executive; not that the Executive of the State can abandon his constitutional duties, because no Court can, by agreement of counsel, or by Act of the Legislature, or in any other way, take the jurisdiction which the Constitution confers upon the Executive. They talk about going before Judge McFarland, or somebody else, to try this case. I have too much respect for the Superior Courts of this State to imagine that any one of them would entertain for a moment any such proposition. I know very well if they did entertain it, they would go beyond their constitutional powers. We can't give them any such power. Not only that, but you cannot take that power from the Governor of this State. It cannot be done by agreement, it cannot be done by statute, it can't be done at all. I don't know how to answer the argument in any other way. It is a simple proposition. There is no doubt about the meaning of Article X. of the Constitution. The power of removal is placed in the Governor plainly and distinctly. Can the Legislature confer that power upon the Superior Courts? Why, the absurdity of the proposition that a Court is to deliberately sit and hear testimony upon a matter upon which it cannot enter a decree. Is it possible that a lawyer can boldly contend that after the Constitution of this State says the Governor shall have the power to do this thing, that the Legislature can by agreement or stipulation intrust it to the hands of the Superior Court, or any other tribunal. Even if the Executive is willing, can a lawyer say that the Executive can abandon his oath of office to support the Constitution of the State, for fear of the responsibility or anything of that sort? The thing is infinitely absurd. The Governor shall have the power to hear these charges, not the Courts. Who can change this? The people have said this. It is new—I said it was new, but it is here. It is new, but it is a part of the Constitution which the Governor is sworn to support, and your Honor is sworn to support. It is there, and we can't avoid it. It says the Governor shall have the power to remove either of the Directors. When? After an opportunity to be heard. Where? Who hears it? I said yesterday—and it is not denied—that the power to determine involves the power to hear, and the power to hear necessarily carries with it the power to decree and make a judgment, and not even my distinguished friend will undertake to answer that proposition, because it cannot be answered. The Governor solely and alone having the power to act, must find the facts upon which he acts.

They say the fourteenth amendment to the Constitution of the United States says nobody shall be deprived of the equal protection of the law. I don't appreciate the force of that argument. I am perfectly familiar with the sections quoted from Cooley. He says due process of law is an opportunity to be heard. It certainly would not be due process of law to violate the Constitution and take these people away from before the Governor and carry them before a Superior Court of this State, who could not entertain it, whether agreed or not agreed. What do you want me to do? would be the response of the Superior Judge. Counsel say, we want you to hear the evidence in this case. With a jury, perhaps. What are they to do? They are to say whether these people are incompetent or not, or have neglected their duty, or been guilty of misconduct. Where do I get the authority to do it? says the Judge. The Constitution says the Governor shall handle this branch of the business. Suppose the Judge does it, what is the result? The jury brings in a verdict that they are guilty of this or that specification. What am I to do? says the Judge. Am I a commissioner to take testimony? Is that the province of this Court? Am I appointed by law, or am I as commissioner to take testimony? If I am, where do I get my authority? To whom do I report, and when I report, who respects that report, and who is called upon to respect it? There is nothing in the matter worth talking about.

The closing argument was made by Hon. A. L. Hart on behalf of the Directors.

ARGUMENT OF HON. A. L. HART.

Mr. Hart—May it please you Excellency and your Honor: The discussion of this constitutional provision has consumed so much time, that I shall be as brief as possible in the presentation of three propositions, either of which I think defeats the power of the Governor to hear and determine this matter. And in objecting to the exercise of this power by the Governor, it is not with a view of shirking the responsibilities that might follow that which is alleged to be misconduct in office, but it is only an attempted assertion of a right which we believe to be fundamental, and founded upon the original Magna Charta adopted when the framers of this Constitution adopted a republican form of government.

For the purposes of this argument I shall undertake to prove by reference to fundamental principles that it was not the intention of the framers of the Constitution to confer this power upon the Executive. And in construing an instrument of this nature we are justifiable in going back to first principles, to the context and the subject-matter of the legislation. The claim of the other side is what? It is a proposition which I think, addressed to a Constitutional Convention, whose duty it was to frame a fundamental law in any of the American States, would be taken to be monstrous, because in opposition to all the views of all the statesmen and jurists who have ever spoken upon the nature of the American Government and of the government of the several States. The proposition is, first, that the Governor of this State, as the Executive, has the power to lay charges against officials who have been appointed by him, and cite the parties to appear, thus becoming an actor in the proceeding itself—to sit in judgment upon his antagonist whom he has charged with an act that is wrong, and upon rendering the judgment, to execute it himself. It is claimed by counsel on the other side that it is competent for the State to confer upon a single individual all of the powers of the Government excepting the legislative power; and, indeed, judging from the rules that have been adopted in this case, and the argument made by my learned friend who last occupied the floor, it is also competent to confer the legislative power as well as the executive and judicial powers upon a single individual. And it may not be out of place for me to say here that all of the learning, and traditions, and doctrines of the party to which my learned friend belongs, are in opposition to the idea that there may be organized within the American Government, or within the government of any of the States, a power so far-reaching; a power in a single individual which will enable him to legislate upon the rights of individuals, to file his complaint, to cite them to appear, to sit in judgment and pass upon the law and the facts, and to execute that judgment when it has been rendered. And in the construction, as I said before, of this provision of the Constitution, we may look to that fundamental principle of government asserted in all the States where there is a republican form of government, in which there is a distribution of powers, so essential to individual rights under a republican form of government. I say we may look to those fundamental principles in the Government of the United State, engrafted into the Federal Constitution itself, to ascertain whether or not the ambiguous language of Article X. may be construed to confer all these powers upon the Executive.

In speaking upon this subject, I desire to say that this limitation which is contained in the Federal Constitution, which is a principle in the government of the States of the Union, that there shall be guaranteed to the several States a republican form of goverment, applies as well to each individual case as it does to the entire machinery of government; so if there be any limitation upon the powers of the State, that limitation must be held to go throughout all the ramifications of the law. The provision of this State Constitution is that the Governor shall have the power to remove either of the Directors for misconduct, incompetency or neglect of duty, after an opportunity to be heard upon written charges. Now I say, first, if this were before a Court, that Court would never construe this Constitution in such a manner as to place upon the framers of the Constitution and the people an intent, in this instance, to violate the fundamental principles of government; to give, in other words, to the Executive the power to hear and determine, to pass judgment, to become actor in the case, to file charges, to execute judgment after it had been rendered by himself; I say they never would construe it to do that, because it would be in opposition to those fundamental principles which I have just named to your Honors. Where a provision of the Constitution contains language ambiguous in its nature; where it contains language which in itself cannot be construed to be a positive and direct conferring of the power, Courts and officers authorized to construe the Constitution will always construe it in such manner as to make it conform to settled principles and settled rules of procedure. The provision of this Constitution is such as that I undertake to say that if the Legislature of this State in its wisdom had provided that when the Governor desired to do so he might file written charges before a Court of competent jurisdiction; that the charges should be heard, and if found to be true, the Governor should then remove the party from office; that it could not be said that the law would be in conflict with any direct and plain provision of the Constitution, for the reason that while this provision, in terms too direct, too plain, too unmistakable to be susceptible of more than one construction, confers upon the Governor the power to remove, it does not say that that removal shall be after a hearing before the Governor. And in the construction of this provision of the Constitution, when we ask ourselves where was it that it was intended by the framers of the Constitution that parties should be heard, should have an opportunity to be heard, we look to the other provisions of the Constitutions at once, and we ask ourselves, upon whom, by this Constitution, was judicial power conferred? And hence we refer to that part of the Constitution conferring judicial power upon separate departments of the Government, and conclude that it was the intention of the framers of the Constitution to give the party an opportunity to be heard before a Court of Justice, a Court that has jurisdiction to determine such matters, a tribunal possessing the powers that must be exercised before the judgment of the Governor can be exercised in the removal of an officer. I say then that this provision of the Constitution is susceptible of two constructions; but if susceptible of a single construction, then that it violates the Constitution of the United States, which guarantees to every State a republican form of government.

Judge Wallace—Let me interrupt you, to make a remark. In many cases the power exists to remove without investigation. In cases where investigation is provided, does that take away any of the authority?

Mr. Hart—I answer that by saying that in those cases the officer is appointed during the will of the Executive. The Executive says to him: "I am through with your services, and I remove you from office." Your Honor will remember that according to the common law an office was an incorporeal hereditament. It is not at this time an incorporeal hereditament. It possesses the same essential qualities of property that it possessed at the common law, except that it cannot be inherited. It was a thing that was the subject then of an action at law. It is a thing which to-day is the subject of an action at law. It is property because it possesses a value, and possesses all the nature of an incorporeal hereditament, except that it cannot be inherited. An office which is to be held at the will of the Executive is limited to the will of the Executive, is limited by the will of the Executive, and the term expires upon the command of the Executive. The term goes out when his will directs that it shall do so. But where, by the Constitution, a man is the possessor of an office, in possession of an office, which by the Constitution has a term affixed, he has a right of property in that office for the term, unless by the words of the Constitution or the laws creating the office he forfeits his property, or his right to the possession of it. In this instance these officers are entitled to this office for the term fixed by the Constitution. But no Governor is given the power to forfeit this right to the office in such a proceeding as this. And your Honors will notice that the Constitution in this respect is mandatory, that the Governor *shall* remove. That he shall remove for misconduct upon the determination of a judicial officer, upon the determination of the law and the fact. Now I say that if there is in this instance, which there must be, according to their theory, a combination in the Executive of the right to judicially determine the fact of misconduct in office, and let the forfeiture of the office follow by the Executive act of removal, that it is a concentration in the hands of the Executive of the powers essentially belonging to two co-ordinate departments of the State Government.

Cooley, in his work on Constitutional Limitations, says: "The power of the people to amend or revise their Constitutions is limited by the Constitution of the United States in the following particulars: It must not abolish the republican form of government, since such an Act would be revolutionary in its character, and would call for and demand intervention on the part of the Government of the United States."

In determining what are the essential qualities for the preservation of a republican form of government, he says: "The usual checks and balances of republican government, in which consists its chief excellence, will be retained. The most important of these are the separate departments for the exercise of legislative, executive and judicial power; and these are to be kept as distinct and separate as possible, except in so far as the action of one is made to constitute a restraint upon the action of the others, to keep them in proper bounds, and to prevent hasty and improvident action. Upon legislative action there is, first, the check of the Executive, who will generally be clothed with a qualified veto power, and who may refuse to execute laws deemed unconstitutional; and second, the check of the judiciary, who may annul unconstitutional laws, and punish those concerned in enforcing them. Upon judicial action there is the legislative check, which consists in the power to prescribe rules for the Courts, and perhaps restrict their authority; and the executive check of refusing aid in enforcing any judgments which are believed to be in excess of jurisdiction. Upon executive action the Legislature has a power of restraint, corresponding to that which it exercises upon judicial action; and the judiciary may punish executive agents for any act in excess of executive authority. And the Legislative department has an important restraint upon both the executive and the judiciary, in the power of impeachment for illegal or oppressive action, or for any failure to perform official duty," etc.

Thus it will be seen that the framers of the Constitution of the United States recognized the necessity, at the time of the organization of the American Government, for the formation of a government in which all power could not be placed in a single individual; recognized the necessity for a distribution of the powers among the several departments, and they formed a government possessing these powers distributed in this manner, and denied to the several States the right to interfere in any manner with that theory of government under which the fathers of the Republic sought the formation of the American Union. And it has been with the greatest jealousy ever since the formation of this country that its statesmen, jurists and legislators have watched the attempts of one department to encroach upon the powers of another. Your Honor will remember that in the judicial history of the United States during the time of Madison, in the celebrated case of Marbury against Madison, it was distinctly affirmed by the Supreme Court of the United States that with the essential and proper powers of the Executive the judiciary had no right to interfere, and that within the essential and proper powers of the other departments the Executive had no power to interfere. So that they had formed the government with three co-ordinate departments, dividing the powers of the Federal and State Governments between the different heads in such manner that there shall be no oppression, so as that no man, whether he stands at the head of the executive, or the judicial, or the legislative department, has power to make rules for the trial of men, sit in judgment upon their cases, and execute those judgments after they have been rendered. It is in opposition to the fundamental principles of the government under which we live.

Take Webster on this subject. Cooley, in his speech on the "Independence of the Judiciary," has forcibly set forth the necessity of leaving with the Courts the power to enforce constitutional restrictions. "It cannot be denied," says he, "that one great object of written constitutions is to keep the departments of government as distinct as possible." And it is equally true that there is no department on which it is more necessary to impose restraints than upon the Legislative. The tendency of things is almost always to augment the power of that department in its relations to the judiciary. The judiciary is composed of few persons, and those not such as mix habitually in the pursuits and objects which most engage public men. They are not, or never should be, political men. They have often unpleasant duties to perform, and their conduct is often liable to be canvassed and censured when their reasons for it are not known and cannot be understood. The Legislature holds the public purse. It fixes the compensation of all other departments; it applies as well as raises all revenue. It is a numerous body, and necessarily carries along with it a great force of public opinion. Its members are public men, in constant contact with one another, and with their constituents. It would seem to be plain enough that, without constitutional provisions which should be fixed and certain, such a department, in case of excitement, would be able to encroach on the judiciary."

This is one of the strong reasons why the judicial power should never be exercised by the head of a political department. In saying this I desire to be understood as meaning no reflections—certainly not upon the present incumbent. And your Honor, who has presided over a judicial department so many years, whose hair has grown gray while presiding over one of the most important Courts in this State, will recognize the fact that to exercise judicial powers requires a trained judicial mind; a man must live in a judicial atmosphere; he must be far removed from political influences and political restraints; and it is for this reason we say the head, or any portion, of the Executive Department, being political in its nature, and calling for the exercise of essentially political powers, should never have the judicial power also conferred upon it. I believe I may say here, with confidence, that if at this time it should be determined that an Executive officer, the head of the Executive department, has the power to hear and determine, to try, condemn, and execute the mandates of the law upon an individual, it would be the first instance in the judicial or political history of this country in which such a power has been asserted and maintained. The very theory upon which our Government was builded requires of our great men, requires of the Governors of the States, and of the men who preside over the judicial departments, that they with jealousy shall guard the distribution of powers, as made by the Constitution; that they shall keep political influences far outside of the judicial sanctum; that they shall base the rights of men upon legal principles, upon law and fact. That they shall safely guard the hands of the judiciary, appointed by the Executive or elected by the people on account of their peculiar fitness for the determination of the rights of men as between each other. I say, therefore, that one of the essential elements of a republican form of government is the distribution of these powers to the several heads of the several departments of government; and when it is conceded that any of the powers of one can be taken by the people of the State and given into the hands of another, the whole argument is conceded, for one by one the powers of this Government may be taken and transferred until all are centralized in the hands of a single individual. If we may take the judicial power to determine the rights of my clients in this case and give it to the Executive, why not give him further judicial powers. It cannot be denied that the very nature of the proceedings here is the exercise of judicial powers; is the undertaking to determine facts and to pass the judgment of the law after that determination. In addition to this, and without pursuing this subject further, because it strikes me as being a self-evident proposition to all who have studied the political nature and history of the Government of this State, and of the United States, I desire to reassert the proposition made by my learned associate who last addressed this tribunal. It was said by him, and correctly, I think, that this clause, if it confers judicial powers upon the Governor, is in conflict with the fourteenth amendment of the United States Constitution. Your Honor's reading will tell you that there has been much learning expended upon that particular provision of the Constitution as engrafted into the fifth amendment and subsequently into the fourteenth amendment, which provides that no man shall be deprived of life, liberty or property without due process of law. I have already said enough upon the nature of an office to demonstrate to a judicial mind that an office is property. It may be sued for and recovered. The title to it is limited to the term fixed by law or the Constitution. And whether or not the taking of property from an individual by this tribunal would amount to the taking of property without due process of law, is determined by the decision of the Supreme Court of the United States beyond question. I do not concede the definition of "due process of law" as stated by the learned gentleman who represents the prosecution. Due process of law has been defined by the United States Supreme Court in the case of Murray's Lessees vs. The Hoboken Land and Improvement Company:

"'By due process of law,' as used in the Constitution, is simply meant such general legal forms and course of proceedings as were known either to the common law, or as were generally recognized in this country at the time of the adoption of the Constitution.

"The words, 'due process of law,' were undoubtedly intended to convey the same meaning as the words, 'by the law of the land,' in Magna Charta. Lord Coke, in his commentary on those words (2 Inst. 50), says they mean due process of law. The Constitution, which had been adopted by the second State before the formation of the Federal Constitution, following the language of the Great Charter more closely, generally contained the words, 'but by the judgment of his peers, or the law of the land.' The Ordinance of Congress of July 13, 1787, for the government of the territory of the United States northwest of the river Ohio, used the same words."

In order, therefore, for us to ascertain whether or not this special proceeding, this special method adopted for the determination of the rights of property, this special tribune attempted, we may say, to be created by the Constitution of California, is a compliance with the requirements of the fourteenth amendment, it is but necessary to search the books to ascertain whether or not in the United States or in England, by the common law, this method of proceeding, this manner of determining individual rights, was recognized and generally followed. It has been said by counsel on the other side that this is a proceeding new in its nature. It could not be denied that in the trial of the rights of property and all personal rights, where they were not to be determined in Courts of equity, the right of trial by jury was guaranteed by Magna Charta, and has since been guaranteed by the Courts of the United States, and of the several States. I believe that the rule was that a person should be tried by a jury of his peers according to the law of the land. This was the common law doctrine, and I challenge the learned counsel to find a single instance in the history of English jurisprudence where the executive department was authorized to call a party before him in a summary proceeding, in which the Executive himself could file a complaint before himself, charging a man with an offense, pass upon the facts and the law and execute the judgment rendered by himself. I challenge counsel to find an instance, either before or after the adoption of the fifth and fourteenth amendments, where the Executive was empowered to sit as a judicial officer, and afterwards execute his own judgment.

Due process of law involves judicial investigation. I say that when the Government of the United States adopted the fifth and fourteenth amendments they placed there a barrier over which State power could not jump. They placed in front of the State Governments, against the infringement of individual rights, a barrier which I do not believe the Executive will attempt to overstep. The rights of individual property and individual liberty are sacred under every civilized Government. They cannot be taken away in this country without due process of law. Unless this tribunal furnishes due process of law it finds itself butting against the Constitution of the United States; it finds itself contending with a superior power; it finds itself exercising powers forbidden by a higher law which this State is bound to recognize. This special proceeding is not due process of law. Due process of law, as used in the Constitution, simply means such general, legal forms and course of proceedings as were known either to the common law or as were generally recognized in this country at the time of the adoption of the Constitution. And the question then for us to determine in this tribunal, in the decision of this case, is about this: Was there at the time of the adoption of the Constitution anything which would have recognized this as a process by which the rights of individuals could be denied or taken from them? And if this be answered in the negative, by the construction universally given since the Hoboken land case up to the present time, this provision must fall—this constitutional provision must fall if in conflict. The words "due process of law" were undoubtedly intended to convey the same meaning as the words, "the law of the land" in Magna Charta. Lord Coke says they mean "due process of law." And it is a universal rule of construction by Courts that where a term or a word is used in a Constitution which, in the country where it has been used, has received a judicial construction, it is adopted into the Constitution with the construction which it had previously received. So, I say when the fourteenth amendment of the United States Constitution used the term "due process of law," it used it with the construction that had been given to it before. The Court in the case cited of Murray Lessus vs. Hoboken Land Company, says: "The article is a restraint on the legislative as well as on the executive and judicial powers of the Government, and cannot be so construed as to leave Congress free to make any 'due process of law' by its mere will. We must examine the Constitution itself to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to those settled usages and modes of proceeding existing in the common and statute laws of England before the emigration of our ancestors.'

Now you can examine the common and statute law of England and you will find nothing in that country which approaches the conferring of powers of this nature upon an executive officer. And indeed I may say to your Honors that had a man stepped into the Constitutional Convention that framed the Federal Constitution, and made a proposition to confer upon the President of the United States the power to thus determine, and act upon his own determination, he would probably have been invited to leave the hall. To have adopted such an idea would have been to have adopted the idea of a monarchy. The framers of the Constitution, in speaking of due process of law, were looking to the liberties of the people, to the property rights of the people, and they were undertaking then the establishment of just rules of procedure in Courts and tribunals established for that purpose, which should involve an opportunity to be heard in a tribunal in which the party might be heard, a place where he might demand a full hearing, where all the machinery of the law, the process for contempt for a failure of witnesses to answer, might be availed of. Why, as the best illustration to me of the fact that this is not due process of law is the set of rules adopted by this tribunal. One of the rules is that when a witness becomes contumacious and refuses to answer, the whole of his testimony shall be stricken out.

The Court—You haven't demurred to the rules.

Mr. Hart—No, sir; I simply refer to this as demonstrating the lack of power, and not for the purpose of criticising the rule, because it is the best that could be done. In Judge Wallace's Court in Napa, if a witness became contumacious and refused to answer a question, he would be consigned to a cell in the jail. By doing this Judge Wallace would be recognizing the fundamental rights of every individual charged with either a civil or criminal offense—that of being confronted by his witnesses and having full scope in the cross-examination of the witnesses. Now the very best witness that we may produce here, not being under our control, may become contumacious. This Court will strike out his testimony, and the result will be the loss of the testimony to us. A tribunal exercising such powers is not a competent Court.

I have here a case on that subject, the "Bank of Tennessee vs. Cooper, 24th American Decisions, page 524," which is clear upon this question. "Apply these principles to the case before the Court. A particular description of the debtors of the bank of the State are assumed to be in default and to have incurred liabilities to the bank. The right of action has already accrued, and the Courts of common law have clearly exclusive jurisdiction. Here the defendants would have been entitled to a trial by jury and to an appeal to the Supreme Court. In this state of the case the Legislature passed the Act under consideration, giving to this Court the jurisdiction of those particular causes only; direct the mode of trial to be according to the principles of a Court of equity (which is without jury), and declare that there should be no appeal, at the same time the law, as it regards all others, remaining unchanged.

"This law only acts upon individual cases, and is the same in principle as if the law had been passed in favor of some one merchant, enabling him, by the method therein prescribed, to take judgment against his debtors without the right of appeal. The interest which the people have in the bank is a sufficient reason why the Legislature should feel a deep solicitude to secure its funds, but is no reason why they should overstep the limits of legislative authority to effect this end. Nor is it any reason why the Court should enforce an Act, passed without sufficient deliberation, which infringes, as we believe, the Constitution. Two important privileges—the trial by jury, and the right of appeal—are by this Act taken away in these special cases, while every other member of the community, having incurred similar liabilities, enjoys them.

"The fact that the persons embraced in this Act form a class of the debtors to the bank, tends no more to give it the character of a general law than if the Act had operated on one individual debtor only, whose case might have some peculiarity, distinguishing it from that of all other debtors. Other banks, and many merchants, and many other members of the community, have contracts similar to the one set out in this bill. In order to have avoided the force of the objection to this Act, it should have operated equally on all these; and, because it has not done so, it is not the law of the land."

These opinions were rendered by the Judges, and they all held to the general doctrine that you cannot create a special tribunal for the trial of the rights of individuals. So, under the Constitution of the United States, requiring that every man shall be entitled to the equal protection of the law, and that no man shall be deprived of life, liberty, or property without due process of law, combined with common law principles, require the existence of a competent tribunal, possessed of full powers, and also require that these laws passed by the Legislature, or by the Constitution-making people, shall have an uniform operation, and shall protect the rights of all individuals alike.

One other matter I wish to refer to, and that is that this provision of the Constitution is not self-executing. The best evidence that it is not self-executing is that this tribunal has already found it necessary to legislate rules for itself. This tribunal has confessed to the opinion that there is no provision in the law providing sufficient machinery to put this provision into operation. Now, if we are to argue this case upon the theory asserted by the other side, that it is intended in this instance that the Governor shall exercise judicial powers, the Governor has no judicial powers. He cannot go back to the common law to ascertain how Executives exercised judicial powers. There are no precedents to guide him, either in England or America; whereas, sometimes when Courts exercise powers, they may go to similar Courts in similar proceedings and pursue remedies given to them by common law. Now, conceding that this is a Court, it is not a Court of general jurisdiction; it is a Court of special and limited jurisdiction, and in the exercise of its powers it must go to the law that created it. A Justice of the Peace cannot go to the rules of Chancery or the rules of common law for the purpose of finding means by which to exercise statutory power. And a Court composed by the Governor has no common law powers; but with special and limited jurisdiction he can find no precedent to justify him in the exercise of any powers which are not named in the instrument which created the tribunal. Therefore you must look to the provisions of this Constitution, not only for the power itself, but for the method of its exercise, and that method is wanting.

Cooley, in his work, speaking on this subject, says: "A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles without laying down rules by which those principles may be given the force of law. Thus, a Constitution may very clearly require county and town government; but if it fails to indicate its range, and to provide proper machinery, it is not in this particular self-executing, and legislation is essential. Rights in such a case may lie dormant until statutes shall provide for them, though in so far as any distinct provision is made which by itself is capable of enforcement, it is law, and all supplementary legislation must be in harmony with it."

The decision read by the learned counsel on the other side is certainly a correct exposition of the law, in so far as the Judge kept himself within the point then under discussion. But when the Judge undertook to say that a provision of the Constitution, which in itself did not contain the machinery to enforce it, might be put into operation by rules adopted by the tribunal upon which it attempted to confer power, he asserted a principle which finds no support anywhere. When it is required or desired that the machinery shall be provided for the enforcement of a provision in the Constitution, it is not within the power of the judicial and executive and administrative officers to legislate in order to enforce the right which the Constitution has intended shall be enforced and guaranteed. And this will be found clearly laid down by the Supreme Court of the United States, in the 96th volume, where that Court undertakes the construction of the fifteenth amendment to the Constitution of the United States. There the Court says that the fifteenth amendment is not a self-executing provision, and may lie dormant until the legislative power has been induced to act for the purpose of putting it in force.

Cooley further says in that part of his work, speaking of this subject: "But although none of the provisions of a Constitution are to be looked upon as immaterial or merely advisory, there are some which, from the nature of the case, are as incapable of compulsory enforcement as are directory provisions in general. The reason is that, while the purpose may be to establish rights or to impose duties, they do not in and of themselves constitute a sufficient rule by means of which such right may be protected or such duty enforced. In such cases, before the constitutional provision can be made effectual, supplemental legislation must be had; and the provision may be in its nature mandatory to the Legislature to enact the needful legislation, though back of it there lies no authority to enforce the command."

Now, as demonstrated that this provision of our Constitution was not understood by the constitution-makers to be self-executing, but to require legislation to enforce it, in the same article, following this provision, they adopt Section 5, which says that the Legislature shall pass such laws as may be necessary to carry into effect the provisions of this article.

Now, I ask your Honors, for one moment laying aside the fact that the legislative power is exclusively given to the Legislature, does not this very provision of the Constitution confer upon the Legislature, and not upon this tribunal, the power to enact the necessary legislation to put it into force? The Constitution first creates a power, with no machinery for its exercise; it hardly indicates where that power shall rest. It provides for the issuance of no subpenas. It gives this Court no power to punish for contempt or to produce witnesses before it. It gives this Court none of the powers that from time immemorial have been exercised by tribunals having judicial powers. It then provides that if there be any legislation necessary to put this provision into force, the Legislature shall pass it. There was no intent on the part of the framers of the Constitution that this matter should be left in doubt, but this power was given the Legislature to make it plain. Now, your Honors, upon either of these three points this attempted investigation must fall to the ground. In making this objection to the jurisdiction of this tribunal, I wish again to assure this Court or this tribunal (I don't know that I should call it a Court)—but I must reassure this tribunal, and all who may be concerned in the welfare of the officers whose rights are to be tried here, that we are not making it upon any technical ground. Why, to admit the right to exercise the powers which are attempted in this case, as applied to the general rights of individuals in this Government, would result in revolution by the people; it would result in a despotism; and when it would be sought either by the judiciary or by the executive departments of this Government to exercise all the powers which the people, in order to secure the protection and preservation of property rights and the rights of personal liberty, have given to the several departments; when it was found that, under the Constitution, even voted for by the people (and sometimes the people vote when they don't know what they are voting for on instruments of this kind); when it was found that in the exercise of the power asserted in the Constitution than an individual exercising the powers of one of the departments, sought to exercise the powers of another, it would produce revolution; the people would not stand it at all. We stand here to-day, not for the purpose of making technical objections, but we ask for the law of the land. We came here asking that the shield of the Constitution shall be placed around us, so that we may stand behind it as a protector of our rights, as it is the protector of the rights of all individuals. We ask that we may be tried according to the course of the law of the land; that we shall not be subjected to a trial; that we shall not be the means of making a precedent which in my judgment is dangerous to the Government.

These are the objections and the reasons that we urge. We make the objections in all seriousness, and we trust when it comes to a final determination of the case that your Honors will agree with us and dismiss this proceeding, and allow it to go where it belongs.

THE DECISION OF THE GOVERNOR.

On the plea to the jurisdiction and on the demurrer was read from the bench yesterday by Judge Wallace. He reviewed at some length the points made by counsel for the Directors, and denied the plea to the jurisdiction, and overruled the demurrer.

Embraced in the decision was some very severe criticisms on some remarks made by Mr. Hart during his argument before the Commission. Before adjournment yesterday Mr. Hart addressed the Commission in regard to the criticism, stating that a wrong construction had been placed on some of his remarks, and the objectionable matter was ordered stricken from the decision. The decision as modified is given in full.

The People of the State of California vs. A. H. Chapman, J. H. Neff, William F. McNutt and Geo. W. Schell, State Prison Directors.

The Attorney-General of the State of California filed with the Governor May 10, 1883, a charge against said Directors of neglect of duty and misconduct, making twenty specifications under the charge, each distinctly specifying acts of omission or commission in the opinion of the Attorney-General, of a grave and serious nature.

This proceeding was commenced under the first section of the tenth article of the Constitution of the State of California, which reads as follows:

"Section 1. There shall be a Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the tenure of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy occurring before the expiration of a term shall hold office only for the unexpired term of his predecessor. The Governor shall have power to remove either of the Directors for misconduct, incompetency or neglect of duty, after an opportunity to be heard upon written charges."

The Governor caused to be served a copy of said charges and specifications upon the defendants, with a notice to answer said charge and specifications on or before the 21st of May, 1883, and the hearing was set for the 4th of June, 1883. Within the time defendants, by their counsel, filed a plea to the jurisdiction of the Governor to hear and determine the questions involved in said charge and specifications; also filed a demurrer raising an issue of law upon the authority of the Governor to entertain consideration of the subject.

They also at the same time filed an elaborate answer intended to put in issue the allegations of said charge and specifications.

Argument has taken place on behalf of the defendants and the Attorney-General, involving the legality and propriety of the whole proceeding. This argument has been upon the demurrer and the plea to the jurisdiction. The argument has taken a very wide range, greatly beyond the questions involved on the necessity of the occasion. As the question is new, and the tribunal in the position it is supposed to occupy being unknown to the Constitution which was superseded by our present organic law, it was thought best not to restrict the argument.

We have given the questions involved in the argument all the examination and consideration that time and opportunity would allow. There are grave errors involved in the position assumed by counsel on this argument. Amongst other grounds the following and the most plausible are urged:

First—The Governor has no power or jurisdiction, being the executive, while the functions to be exercised are judicial.

Second—Being the appointing power, it is incompetent for him to create a vacancy to be filled by himself.

Third—The judicial power to try such cases is lodged in the Superior Court of the county where the offenses are supposed to have taken place, by the sixth article of our Constitution.

Fourth—The power claimed by the Attorney-General under Section 1, Article X, is defective in this—it requires legislation to carry it into effect with all the powers and incidents of a Court of justice.

Fifth—It it also claimed that a part of the Fourteenth Amendment to the Constitution of the United States, which prohibits any State passing any law to deprive any person of life, liberty, or property without due process of law, is prohibitory of this proceeding.

Sixth—And as auxiliary to the last point, that an office is property, and therefore the defendants cannot be deprived of their office without the ordinary proceedings in a Court of justice that is involved with power to try and determine other cases.

The first point referred to is answered by Article III. of our State Constitution, which reads as follows:

"Section 1. The powers of the Government of the State of California shall be divided into three separate departments—the Legislative, Executive and Judicial—and no person charged with the exercise of powers properly belonging to one of the departments shall exercise any function appertaining to either of the others, except as in this Constitution expressly directed or permitted."

A judicial function may be as properly exercised by the executive department or legislative department as any other power when it is plainly directed or permitted by a provision of the Constitution in plain and unambiguous terms.

It is admitted that this provision is not common in the Constitutions of the different States. But that fact does not deprive it of any of the power or efficiency. The Governor upon entering upon the duties of office took an oath to support the Constitution of the State of California, as much the provision in question as any other provision of the Constitution. The only question that can properly arise in regard to his duty under the first section of the 10th article grows out of a construction of the clause, claimed by the Attorney-General to contain the power and impose the duty upon the Governor. It is insisted by counsel that the provision will have to lie dormant for the reason that the Legislature has failed to provide machinery to carry it into execution.

If these reasons are correct the power attempted to be conferred cannot be exercised. If they are not good there is an obligation and duty enjoined upon the Governor to discharge the duties therein set forth. If he should shrink from a performance of them he would justly be chargeable with misconduct in office. There is a grave error in the very foundation work on the purview or magnitude of the range and purposes of the examination. Similar powers in part are constantly exercised by the Executive of the United States, and in all States of the Union. Removal from office by the Executive of the United States or of a State is not new. The change made by our Constitution is only new in containing a limitation upon Executive removals. The limitation is new. That does not prove either that it is not beneficial or reasonable.

We will refer back to the two propositions referred to under this point. First, the provision is not self-executing. It reads as follows:

"The Governor shall have power to remove either of the Directors for misconduct, incompetency or neglect of duty, after an opportunity to be heard upon written charges."

It seems that this provision is plain, unambiguous and direct. There seems to be no necessity for any legislative action, so far as the power herein conferred extends. The Legislature has not failed to enact a law based upon this very provision.

The Act to define, regulate and govern the State Prisons of California, approved April 15, 188-, contains a section upon this subject. Section 14 reads as follows: "The Governor shall have the power to remove either of the Directors for misconduct, incompetency or neglect of duty, upon proper notice to him or them, accompanied by copies of written charges, he or they having an opportunity to be heard thereon."

The magnitude of this whole inquiry does not exceed the duty enjoined upon the executive in many instances without notice or opportunity to be heard. It is an error to suppose that the Governor is engaged in the trial of a criminal case or even a civil case. The duties enjoined are partly executive and partly judicial in their nature. They are precisely similar to the functions conferred by this same Constitution upon one of the houses of the Legislature, that is the Senate, in cases of impeachment. The Senate is a legislative body, in this instance, with judicial powers, and yet no one complains of the exercise of judicial powers by the Senate, because the provision in the different Constitutions has existed since the formation of the Government itself. We have no criticisms upon the exercise of judicial powers by one branch of the Legislature. Why should this provision conferring a judicial function upon the Executive, when it is only a limitation upon power that he has exercised from time immemorial, be criticised? It really contains no new power, but is merely in this instance a limitation upon the absolute right of removal. There are several modes provided by our system for removal from office. One is by impeachment. Another is with regard to a different set of officers, by proceedings instituted and prosecuted in the Superior Court. A third is the power that is proposed to be exercised in this case, to wit: inquiry into the grounds upon which a removal is sought and truthful determination whether cause exists. If it does, the exercise of the power is proposed. If it does not, the exercise of the power will be refused.

These three modes differ in the mode and procedure to be followed. Each is expected to result the same as the others upon a like determination of the existence of cause. The fourth mode is at the pleasure of the appointing power. Reasons are not required to be given nor stated. As regards the first and second modes, they contain more elaborate machinery than the third, but there is no other difference appreciable. In each of these three modes cause must be found to exist after an inquiry and an opportunity to be heard.

It is claimed that the exercise of the power is dangerous, for the reason that we have no power to compel the attendance of witnesses nor to punish for contempt. There are two answers to that objection: First—The want of such power is not the fault of the Executive, but of the Legislature; and, second, "sufficient unto the day is the evil thereof." We will not assume that witnesses will refuse to come, no refuse to testify if they do appear.

The second point urged, that the Governor being the appointing power, it is incompetent for him to create a vacancy to be filled by himself, we think sufficiently answered in the discussion of the first point, but if any further answer to the objection is necessary, it must be directed to the Constitution itself and not to the person who happens to exercise the power of the Chief Executive. The Governor did not make the Constitution, has no power to amend it, and dare not refuse to obey it.

The third point is: "The judicial power to try such cases is lodged in the Superior Court of the county where the offenses are supposed to have taken place, by the 6th Article of our Constitution, Section 5."

There are a class of cases provided by statute triable before that Court. That jurisdiction is conferred by Section 772 of the Penal Code. The language of that section is general in its character, and might be construed to include all cases provided by the construction to be triable upon articles of impeachment before the State Senate, as well as the charges included in the specifications under consideration. But it cannot be supposed that the Legislature intended to confer power upon the Superior Court in cases already provided for in the Constitution. To attempt it would be to fail. Therefore the Legislature must have intended to confer power upon the Superior Court not otherwise provided for in the Constitution.

The fourth point is: "The power claimed by the Attorney-General under Section 1, Article X., is defective in this—it requires legislation to carry it into effect, with all the powers and incidents of a Court of justice."

We think that that objection has been sufficiently answered. If there is any particular or peculiar efficiency in the enactment of a law based upon a constitutional provision, it exists in the section heretofore referred to, to wit, the fourteenth section of the Act of April 15, 1880, defining and regulating the management of the State Prisons of California. That Act adds to the constitutional provision the necessity of giving notice. That notice has been given of the time when to plead, and the time of the hearing, and also the place where the hearing was to be had.

The fifth point is: "It is also claimed that a part of the fourteenth amendment of the Constitution of the United States, which prohibits any State passing any law to deprive any person of life, liberty or property, without due process of law, is prohibitory of this proceeding."

We have heretofore stated, and we repeat, whatever may be the result of this investigation, no person will be deprived of life, liberty or property, and we now add, with or without due process of law. The investigation involves no criminal charge that the Governor claims to have jurisdiction, with power to punish, whatever may be the result. If the charges are found true, the Constitution enjoins upon him the unpleasant duty of so declaring, which may result in the removal of the parties from office. If, on the contrary, the charges are found to be not true, it will be his duty to say so, and that will be the end of the investigation. If the charges should be found to be true, and the defendants, or either of them, should be removed from office, the power conferred, so far as the defendants are concerned, is exhausted.

The sixth point is, "and as auxiliary to the last point, that as an office is property, the defendants cannot be deprived of their office without the ordinary proceedings in a Court of justice that is invested with power to try and determine other cases."

If this objection was to a statute based upon no provision of the Constitution, it would probably be good. The uniformity of statutes in their operation upon individuals is fully recognized. But when the Constitution provides for different modes of inquiry into different official delinquencies, who has a right to call it in question? As for an office being property in the full sense of the term, we deny it. It is a trust. An official, when in office, possesses certain rights, and they go hand in hand with duties and obligations. It has always been within the power of the people, through their agents or representatives, to inquire into the manner in which their officials have discharged their duties in some mode or other. As to the mode, the people in their fundamental law have a right to determine whether it shall be by proceedings in the nature of impeachment, by proceedings instituted in a Court invested with power to try and determine, or by the mode prescribed in the first section of the tenth article of our Constitution, or by any other mode not inconsistent with the Constitution of the United States. As regards an office being property, it lacks several of the most important incidents that belong to property. Under our system, it does not descend by inheritance in case of death; it cannot be sold by involuntary contract, nor can it be taken in execution for the payment of debt. The only ingredients analogous to property are the income that only amounts to the expenses incurred in the present case. As to the honors, they depend upon the manner in which the duties are discharged. It is an agency, a trust. As long as the duties are fairly discharged no one has a right to complain. In case of misconduct, incompetency or neglect of duty, the powers should cease, the person ceasing to be a faithful agent.

Counsel has chosen in his wisdom to indirectly state that the Executive of California was responsible in one way or another for this proceeding. We therefore take this opportunity to inform counsel that the charge and specifications were prepared by the Attorney-General, without advice or consultation of any kind with the Executive Department. The charges were filed with the Governor, and in ordering this investigation the Governor merely fulfilled the duties which he accepted when he took his oath of office. The provision of the Constitution is distinct and clear. The prescribed duty of the Governor is plain. He has sworn to carry out the mandates of the Constitution to the best of his ability, and so he proposes to do to the fullest extent, notwithstanding the possibility that his action may be misconstrued and misrepresented.

The demurrer is overruled and the plea to the jurisdiction is denied.

(Signed) GEORGE STONEMAN,
Governor of the State of California.

ADDITIONAL SPECIFICATIONS.

At the conclusion of the reading of the decision Colonel Flournoy stated that the prosecution had prepared and wished to file the following additional specifications:

The People of the State of California, plaintiff, vs. A. H. Chapman, J. H. Neff, W. F. McNutt and George W. Schell, defendants.

Now come the People of the State of California, by the Attorney General, and, leave of the Court being first had, file the following additional specifications in said case, as amendment to the charge and specifications heretofore filed, to wit:

Specification 21—That said Directors included in their report for the fiscal year ending June 30, 1880, as total expenditures for said fiscal year, the sum of $168,285 46 for the months of July, August, September, October, November and December, 1879, and January and February, 1880; whereas in truth and fact there was only expended and only could have been properly charged on account of expenditures for said fiscal year the sum of $154,693 83.

Specification 22—That the total expenditures as shown by the annual report for the months of March, April, May and June of the fiscal year ending June 30, 1880, was as stated in said report, the sum of $87,152 25; whereas, in truth and fact the actual amount of money received and liabilities created was more than $100,000, making a difference of $15,000 unaccounted for.

(Signed) E. C. MARSHALL,
Attorney-General.
GEO. FLOURNOY, of Counsel.

Counsel for the Directors then asked for a continuance, to allow time to consider the additional specifications and to determine what course to pursue, and also to answer the additional specifications.

Counsel for the people contended that the additional specifications were based on the official reports of the Directors, and ought not to require much time for an investigation.

After some discussion between counsel as to what was embraced in the new specifications, it was agreed to take a recess until next Tuesday at 10 o'clock. This was so ordered by the Court.

PETITION FOR A WRIT OF PROHIBITION.

After the adjournment of the Executive Commission yesterday, an application was made to Judge McFarland of the Superior Court to issue a writ of prohibition against the Governor sitting in the case. Judge McFarland was not convinced that he had the right to issue a writ of absolute prohibition against the Executive without notice being served, and suggested to the applicants to notify the Governor of the application and give him an opportunity to appear in Court before the writ issued. Counsel did not wish to give notice and argue the matter, and asked that the application for the writ be denied, which was done by the Court.

On Monday the Supreme Court will be petitioned to issue the writ of prohibition.

CONDENSED TELEGRAMS.

Flashes of News from all Parts of the World.

Three suicides have occurred in New York the last three days.

The Postmaster-General has selected a metallic-red color for the new two-cent postage stamp.

The number of deaths reported in New York yesterday was 113, against 97 Wednesday, 90 on Tuesday, and 80 on Monday.

The depot safe at Waukefield, Neb., on the Omaha and St. Paul Railroad, was blown up Wednesday night, and robbed of about $300.

At Wilmington, Del., yesterday, the United States double-turreted monitor Amphitrite was successfully launched, amid great enthusiasm.

The schooner Charles P. Sinnickson, from New York for Charleston, is believed to have foundered at sea. The Captain, his wife and seven men probably perished.

Suleiman Daound and Mahmond Sanai, accused of setting fire to Alexandria at the time of the British bombardment, have been found guilty and sentenced to death.

Irving Duer, who has been detected in stealing from fellow-members of the Staten Island Cricket and Baseball Clubs, is the grand-nephew of Washington Irving.

At Ascot, England, yesterday, the Rons Memorial stakes were won by Chiselhurst, Limestone second, R. Jardine's four-year-old colt third. Lorillard's Sachem also ran.

The German steamer Claudius, which left New York May 19th for Stockholm, in a collision off Tynemouth was badly damaged, and was run on the beach, where she was sunk.

Among the passengers who arrived at New York yesterday by the steamer Finance, from Rio de Janeiro, was Simon Valentieri, Bishop of Paleopolis and Vicar Apostolic of Koran, China.

Indian Agent Willcox thinks prompt action should be taken with all Indians who return to the reservation, so that they should know and feel that the reservation was not a safe retreat for murderers.

The race for the St. James Palace stakes in England yesterday for three-year-olds, was won by Lord Falmouth's Galliard, Prince Saltykoff's Padlock second, J. R. Keene's Potosi third. No other starters.

Dr. Collins, of Minneapolis, visited the Navy Department Wednesday in the capacity of administrator on the estate of his brother, the late Jerome C. Collins, naturalist of the Jeannette Arctic expedition.

White Wolf, Big Bow and Sun Bear, representing the Kiowa and Comanche tribes, of Indian Territory, had a conference with the Secretary of the Interior Wednesday respecting the boundaries of their reservation.

The Treasury Department is informed of the arrival at San Francisco of a large cargo of tea consigned to merchants in Chicago, and has directed that samples be forwarded to New York for inspection before the tea is delivered.

Captain John P. Walker, of the Third Cavalry, recently Court-martialed and censured, has left Fort Apache without leave, and is wandering about New Mexico. He will be arrested and examined by a medical Board as to his sanity.

Sixteen striking coal miners, who interfered with the working of the new men at the mine near Pinckneyville, Ill., were arrested Wednesday on warrants sworn out by the owners of the mine, and fourteen were lodged in jail in default of bail.

The cook shanty of Smith & Adams, driving logs on Cedar river, Michigan, was burned Monday afternoon. The cook, William Lenahan, of Williamsport, Pa., and an Irish boy named Sullivan, only six weeks in this country, were burned to a crisp.

William B. Astor has signed contracts with Cramp & Son, ship builders of Philadelphia, for the construction of a new iron steam yacht, which is to excel in speed and magnificence anything yet set afloat, not excepting Jay Gould's famous floating palace Atlanta.

Seven hundred acres south of Omaha have been bought by C. K. Shaller for $118,000. He is understood to be acting for an English cattle growing syndicate, which proposes to erect there immense slaughter-houses and make other improvements to the amount of $750,000.

General and Mrs. Fremont have returned to New York to reside, and are living in one of the beautiful flats owned by a married daughter, on Fifty-ninth street, near Seventh avenue, overlooking Central Park. Mrs. Fremont is in excellent health, and goes about a great deal.

A cablegram from London says: The rebel chief Ghpowe has again surprised the villages of Vittam, whose King, Pah Tucker, is under the British protection, and burned and plundered many of them, taking life and property indiscriminately and burning many of the natives at the stake.

The truth of the story about the poisoning by the Invincibles in Dublin of a number of persons obnoxious to them is much contested. *Freeman's Journal*, of Dublin, denies that there is any foundation for it, while the *Central News'* correspondent at Dublin asserts the correctness of the story.

The American Medical Association in Cleveland yesterday adopted a resolution to petition the State Legislature to enact more stringent laws regarding the sale of deadly poisons. A resolution was also adopted advocating the establishment of a school for the education of nurses for the sick.

Articles of incorporation have been filed at Omaha for the Omaha and Northern Railway, to run from Omaha to the north line of Cedar county, opposite Yankton, in Dakota, a distance of 139 miles, with a branch of 80 miles running northward through Dodge and Colfax counties to Stanton, in Stanton county.

The Chicago *Farmers' Review*, condensing its weekly reports from one thousand townships in the Northwest and Southwest, finds no improvement to report in winter wheat. It is heading out short. Spring wheat shows an improvement. Oats are backward, but all right. Corn is coming very slowly, and replanting is general.

A SCIENTIFIC DISCOVERY.

A New and Most Important Theory on One of the Most Vital Questions of the Day.

If anyone had informed Queen Elizabeth in her palmiest days that she could have been seated in her palace in London and conversed with Sir Walter Raleigh in his North Carolina home, receiving a reply from him within an hour's time, she would have declared it to be a miracle. And yet, had they lived in the present day, this apparent miracle would most readily have been witnessed, and not seem at all strange or unnatural. The truth is, new principles are coming into existence, and the operation of many laws unknown in the past is becoming fully understood in the present. In no way does this fact come more forcibly to the mind than in the care and treatment of the human body. Millions of people have died in past ages from some insignificant or easily controlled cause which is thoroughly understood now and readily handled. Consumption during the entire past has been consideredd an incurable disease. And yet it is demonstrated that it has been and can be cured, even after it had a long run. Dr. Felix Oswald has just contributed a notable article on this subject to the *Popular Science Monthly*. He regards consumption as pulmonary scrofula. The impurities of the blood produce a constant irritation in the lungs, thus destroying their delicate tissues and causing death. His theory shows conclusively that consumption is a blood disease. It has its origin primarily in a deranged condition of the kidneys or liver, the only two organs of the body, aside from the lungs, that purify the blood. When the kidneys or liver are diseased they are in a sore or lacerated state which communicates poison to every ounce of blood that passes through them. This poisonous blood circulates through the system and comes to the lungs, where the poison is deposited, causing decomposition in the finely formed cells of the lungs. Any diseased part of the body has contaminating power, and yet the blood, which is the life of the system, is brought into direct contact with these poisoned organs, thus carrying contagion to all parts of the body. Bishop Jesse T. Peck, D. D., LL.D., whose death has been so recently regretted, is reported to have died of pneumonia, which medical authorities affirm indicates a diseased condition of the kidneys. It is well known, moreover, that for several years he had been the victim of severe kidney trouble, and the pneumonia which finally terminated his life was only the last result of the previous blood poisoning. The deadly matter which is left in the lungs by the impure blood clogs up and finally chokes the patient. When this is accomplished rapidly it is called pneumonia or quick consumption; when slowly, consumption; but in any event it is the result of impure blood, caused by diseased kidneys and liver.

These are facts of science, and vouched for by all the leading physicians of the day. They show the desirability—nay, the necessity—of keeping these most important organs in perfect condition, not only to insure health, but also to escape death. It has been fully shown, to the satisfaction of nearly every unprejudiced mind, that Warner's Safe Kidney and Liver Cure is the only known remedy that can cure and keep in health the great blood-purifying organs of the body. It acts directly upon these members, healing all ulcers which may have formed in them and placing them in a condition to purify and not poison the blood. This is no idle statement nor false theory. Mr. W. C. Beach, foreman of the Buffalo, N. Y., Rubber Type Foundry, was given up to die by both physicians and friends. For four years he had a terrible cough, accompanied by night sweats, chills, and all the well-known symptoms. He spent a season South and found no relief. He says: "I finally concluded to try Warner's Safe Cure, and in three months I gained twenty pounds, recovered my lost energy, and my health was fully restored." The list could be prolonged indefinitely, but enough has been said to prove to every sufferer from pulmonic trouble that there is no reason to be discouraged in the least, and that health can be restored.

PASSENGER LISTS.

OMAHA, June 7th.—Left here to-day, to arrive in Sacramento June 11th: Mrs. L. C. Alvord, Rutland, Vt.; D. S. Carpenter, wife and daughter, Honesville, Pa.; Mrs. Frank Smith, New York; D. Black, C. Brausen, C. Wooster, A. Sing, Ah Hone, San Francisco; Edwin H. Risely and wife, Utica, N. Y.; Mrs. Lombard, Philip Lombard, Metchan, N. Y.; Miss M. J. Greenwell, England; Hamilton Young, Leavenworth.

Ninety-four through emigrants left on last night's emigrant train, to arrive in Sacramento June 14th.

CARLIN, June 7th.—Passed here to-day, to arrive in Sacramento to-morrow: W. Pollard, Victoria, B. C.; Mrs. J. F. Curtis, Colorado; Miss J. E. Cameron, Denver, Col.; Mrs. McArian, Washington, D. C.; L. Sise, Boston, Mass.; Mrs. C. T. Gibson, Miss H. Henderson, Mrs. C. H. Henderson, Halifax; H. T. Blackwood, Miss L. E. Blackwood, Wm. Blackwood and wife, San Francisco; Judge S. E. Field, Mrs. Field, Washington, D. C.; H. H. Curtis, wife and son, Colorado; D. W. Gardon, Canada; C. A. Tuttle, San Francisco; Mrs. L. Myer, New York; W. Weldings, wife and child, San Francisco; W. J. Brockaw, Salt Lake; P. T. Brigstock, W. H. Brigstock, England; C. J. Bandmann, San Francisco; W. W. Belvin, Danville, Va.; P. J. Creighton, New York; Wm. Sioger, Jr., Marysville, Cal.; G. W. Manow, Canada; D. Tomey, Omaha; J. Suzte, England; L. M. Holmes, Missouri; Wm. Thomas Patton, Pueblo, Col.; Chas. Lafever, Peter Johnson, Ogden; Wm. Smiley, Deeth, Nev.; James Matherson, Illinois; S. Echever, New York; Miss Jarkeley, England; Wm. H. Smith, Elko, Nev.; 113 emigrant passengers, including 85 males, to arrive in Sacramento June 9th.

NEWHALL, June 7th.—Passed here to day, to arrive in San Francisco to-morrow: J. W. Shafford, wife and child, Portland; Metiton Villareal, F. J. Gonzales, Monterey, Mex.; Miss Benedict, San Francisco; Mrs. Tomlinson, Humboldt; J. H. Griffith and wife, Los Angeles; A. W. Jackson, Berkeley; Mrs. Wm. Brown and two children, Mrs. H. N. Hogan, San Bernardino; Mrs. E. A. Morton and child, Los Angeles; Geo. T. Knox, San Francisco; E. M. Day and wife, Los Angeles; A. Wahlstead, St. Louis; C. H. Simpkins, W. J. Broderick, San Francisco; B. F. Porter, Los Angeles; R. F. Peckham, San Jose; Jos. Brown and one prisoner, San Bernardino; Deputy Sheriff Huber and one prisoner, Los Angeles; W. J. Richards, Virginia City, Nev.; H. L. Playfair, Colorado.

SAN FRANCISCO ITEMS.

Joseph Healy, a notorious burglar, has been captured.

The Board of Education, Tuesday night, decided to extend the system of evening schools.

Frank Capparotte, an Italian, was killed Wednesday by the accidental discharge of a pistol.

The Spring Valley Water Company is assessed for its personal property this year $2,132,650.

The United States Grand Jury has ignored the bill against James Harkins, charged with smuggling.

Henry Denio, a helper at the Black Point Rolling Mill, lost his life there Wednesday by the fall of a trip-hammer.

Muldoon and Dinnie will wrestle on the 18th instant. The New Yorker also challenges Farrell for a mixed match and Harry Maynard for a glove fight.

John Corcoran was instantly killed, and John Gilconian and Andrew Kirkpatrick severely injured Wednesday night, by falling down an embankment at the Potrero.

The Superior Court has decided against the Central Pacific Railroad in a suit brought by the city and county of San Francisco to recover taxes on the steamers Thoroughfare and Transit.

A. J. Mayer, Superintendent of the Safety Nitro Powder Works, states on his honor that the explosion Wednesday at Sobrante was caused by one tub of glycerine placed in the sun last fall to test its qualities under all changes of temperature. Its explosion was expected at some time. No one was hurt, and the damage was $1 25, the value of the tub.

The dancing-jack at present occupying the gubernatorial chair of Massachusetts, like the figure of the devil in Punchinello, has succeeded in riveting upon himself and his antics the gaze of a continent of lookers-on.—[Springfield Union.

The Vatican will thank Great Britain for protecting the Catholic missionaries in the Soudan.