

JURY TRIAL WITHHELD. SUPREME COURT DECIDES.

Justice Harlan Calls Philippine Decision Amendment to Constitution.

(FROM THE TRIBUNE BUREAU.) Washington, May 31.—The United States Supreme Court today by a vote of 5 to 4 sustained the contention that Congress is the sole authority in the Philippines, and that it properly exercised its power in withholding from the people of those islands the right of trial by jury. The case decided was that of Dorr and O'Brien, editors of a Manila newspaper, who were convicted of libel after demanding a jury trial, which was denied them.

The court also held in the case of Thomas E. Kepner and Mendonza that a person tried and acquitted before the Court of the First Instance in the Philippines could not again be placed in jeopardy before the Supreme Court of the islands under the old Spanish law and the military rule of this government. The decisions in the Philippine cases are regarded as of great importance in that they determine definitely that the act of Congress of July 2, 1902, for the government of the Philippines, which denies the right of trial by jury and prohibits the prosecution of the same person twice for the same offense, shall be upheld.

Justice Harlan vigorously dissented from the opinion of the court in the Dorr and O'Brien case. In an emphatic and, at times, impassioned manner the veteran jurist declared his conviction that the Philippines were a part of the United States, and that the Constitution of the United States necessarily extended to those islands. He held that the right of trial by jury was a fundamental one that should be extended to every possession of this government, and that it could not be taken away by any mysterious power of Congress.

The decision of the court, he declared, was an amendment of the Constitution by judicial construction, and a dangerous step in a dangerous direction. The fact that the people of the Philippines were so sufficiently educated to appreciate the full benefit of the Constitution was no reason why the Supreme Court of the United States should say that all of the inhabitants of those islands, including the United States citizens resident there, should be deprived of the right of a jury trial.

In the Dorr and O'Brien case Justice Day first laid down these conclusions as being established. That the Constitution of the United States is the only source of power authorizing action by any branch of the federal government; that the government may acquire territory as a sovereign nation and make all needful rules and regulations for the government of the same; that territory may be possessed and still not incorporated in the body politic. While the territory is in this condition, or thus held, Congress has the right, subject to the restrictions of the Constitution, to make all needful rules and regulations for its government; that the Territory of the Philippines is in Article 9 of the United States expressly states in Article 9 that the civil rights and political status of the islands shall be determined and fixed by Congress.

"We think," the opinion continued, "that, so far as territory is outlying and not incorporated, Congress is not required to set up trial by jury." In this connection Justice Day observed that the President had been careful to reserve the right of trial by jury from the recommendations for legislation made. However, the opinion added, there had been granted to the Philippine the right of the accused to be heard by himself and counsel; to have a speedy and public trial; to meet his witnesses face to face, and, further, that no person should be held to answer for a criminal offense without due process of law, or be put twice in jeopardy for the same offense.

"It cannot be successfully maintained," the opinion added, "that this system does not give an adequate and efficient method to preserve the rights of the accused."

If the right of trial by jury were a fundamental right, said the opinion, it would have to be established by Congress regardless of the needs or capacity of the people to exercise that right. To state such a proposition demonstrates the impossibility of carrying it into practice without injury to the people to which it might be applied. Therefore the power to govern territory, embodying the right to acquire it, to whatever other limitations it may be subject, does not require Congress to enact for ceded territory, not made a part of the United States by Congressional action, a system of law which shall include the right of trial by jury. The Constitution does not without legislation and of its own force carry such rights."

The defendants, it was held in conclusion, properly were convicted of gross libel, and the judgment of the Supreme Court of the Philippines was affirmed.

JUSTICE HARLAN'S DISSENT. In his dissenting opinion, Justice Harlan said that where the rights of ten million people were involved he felt constrained to dissent. He did not believe that the provisions of the federal Constitution as to grand and petit juries related to mere methods of procedure and were not fundamental in their nature.

"In my opinion," he continued, "the guarantee for the protection of life, liberty and property embodied in the Constitution was for the benefit of all, of whatever race or nativity, either in the States composing the Union or in any territory, however acquired, over which and for the independence of which the United States may exercise the power conferred upon it by the Constitution.

"The Constitution declares that 'no person' (not 'no American citizen') shall be held to answer for a capital or otherwise infamous crime except on presentment or indictment of a grand jury and the unanimous verdict of a petit jury composed of twelve persons. The conclusion reached by the court is so obviously founded upon the Constitution and so obviously contrary to the judgment of this court otherwise than as an amendment to the Constitution by judicial action, when another mode of amendment is expressly provided for in that instrument."

Granting that trial by jury is sometimes inconvenient in the administration of criminal justice in the Philippines, Justice Harlan observed, "But we knew that when we acquired these islands we were to have a government maintained, were of slight moment compared with the danger of judicial amendments to the Constitution.

The court held that Congress had a right to enact this legislation, and said the first trial could not be reviewed by another court without putting the accused in jeopardy a second time. The court accordingly ordered the prisoner discharged.

The case of Mendonza, involving the same question, was similarly decided in favor of Mendonza. In the Dorr and O'Brien case the Chief Justice and Justices Brewer and Peckham united in an opinion concurring with Justice Day, but stating different grounds.

The court adjourned until next October.

UPHOLDS THE "OLEO" LAW United States Supreme Court Declares the Tax Constitutional.

Washington, May 31.—The Supreme Court of the United States, in an opinion by Justice White, today upheld the constitutionality of the Oleomargarine law. Leo W. McRay sued the United States in the Southern District of Ohio to recover \$50 paid by him as a penalty for the sale of a fifty pound package of colored oleomargarine, containing a stamp tax of three-quarters of a cent a pound, instead of 10 cents a pound. McRay's counsel argued that the tax of 10 cents a pound was prohibitive and confiscatory and an attempted federal usurpation of the police powers of the States.

The court said that the tax contemplated the finished product and not the details of manufacture. If the "oleo" was colored, it should pay the higher tax and if uncolored the lower tax. As to the amount of the tax, the court held it was settled that the court could not consider the amount of any tax fixed by Congress, that being a purely political question.

The Chief Justice and Justices Brown and Peckham dissented.

AGAIN LOSES ICE CLAIM. Case in Which Rand and Hedges Were Accused Dismissed.

(FROM THE TRIBUNE BUREAU.) Washington, May 31.—The Secretary of the Treasury has once more dismissed the claim of J. W. Parrish & Co. against the United States for \$150,000, the alleged value of ice which melted in 1902. This is the claim the merits, or demerits, of which were exposed in these dispatches of June 19, 1903, at which time H. H. Rand, Postmaster General Payne's "confidential clerk," and Charles Hedges, assistant superintendent of city free delivery, were being examined by Fourth Assistant Postmaster General Heston for alleged lobbying in connection with the passage of an act of Congress whereby the Secretary of the Treasury was instructed to audit the Parrish claim and pay to him any amount which might be found due. Parrish having virtually made his headquarters in Rand's office in the Postoffice Department.

Hedges was subsequently dismissed from the postal service for "padding his expense accounts." Rand was put on leave without pay, and finally, when it became obvious that his reinstatement would cause a scandal, was dropped from the rolls. No evidence was found that either man had assisted in lobbying through the Parrish claim, and it has since been heard before the Secretary of the Treasury.

As was told in these dispatches a year ago, when the Parrish claim was before the House of Representatives, Representative Sargent C. Payne, of New-York, said of it: "I believe it to be the most barefaced claim that has come before the House in many years. I hope for some time, and added: 'He (Parrish) has made a profit of \$100,000, and now he comes here as a pauper claiming sympathy of this House.'"

Notwithstanding the earnest opposition of Mr. Payne, the measure passed the House by a bare majority of three votes.

Parrish made a contract to furnish ice to the army. The ice cost him \$4 a ton and the transportation down the Mississippi to points from St. Louis to Nashville, inclusive. When delivered he received from \$5 to \$8 a ton. He collected from the government for the ice \$250,000. Subsequently the Court of Claims allowed \$64,000 more for potential profits. Ever since then he has been endeavoring to collect \$150,000 additional.

NO MORE FORESTRY PATRONAGE. President Decides to Put Awarding of Places Under Merit Rule.

(FROM THE TRIBUNE BUREAU.) Washington, May 31.—President Roosevelt has decided to place the forestry division of the government under merit rule. With this end in view he has taken up the subject with Secretary Hitchcock and the various Western Senators interested in the department's workings have been informed that hereafter "influence" will not "go" in obtaining places in the bureau.

ILLINOIS DEADLOCK ON. Republican Convention Meets Again — Yates Still Leads.

Springfield, Ill., May 31.—The Republican State Convention, after a session lasting an hour and a half and after taking three ballots for Governor, adjourned until to-morrow morning without having broken the deadlock. The convention, after an eleven days' recess, reconvened this afternoon. There was a manifest falling off of enthusiasm. Governor Yates was cheered as he entered the hall a few minutes before the convention was called to order, but the entry of the other candidates was unobserved.

Chairman Cannon opened the proceedings by having read the rule of the House of Representatives which, among other things, prohibits smoking "upon the floor of the House." The convention unanimously agreed to the no smoking clause.

The ballots showed Yates still in the lead and the standing of the various candidates practically unchanged. The last ballot follows: Yates, 484; Loden, 308; Treen, 281; Harlan, 110; Warner, 40; Sherman, 31; Pierce, 28.

PRESIDENT WILL NOT INTERFERE. Adherents of Governor La Follette Plead His Cause In Vain.

CALL FOR FIREPROOFING. CITY'S NEW SAFE PIERS.

D., L. and W. Likely to Build Wharves Protected from Fire.

Public comment on the advisability and necessity of protecting the waterfront with fireproof, steel and concrete piers has increased since the burning of the piers of the Delaware, Lackawanna and Western Railroad in Hoboken last Sunday. The general opinion among men who are familiar with the problem of fire fighting on the waterfront is that the first step is to reduce the possibility of fire by building fireproof piers.

Fire Chief Croker says that steel piers are the only safeguard. The North German Lloyd Company realized after the destruction by fire of its waterfront property in June, 1900, that it was imperative to rebuild its piers with steel and concrete. Gustav H. Schwab, of the North German Lloyd, said yesterday with regard to steel fireproof piers: "After the terrible disaster of four years ago we saw the necessity of rebuilding our piers with steel and concrete. We went to the expense of putting up costly piers that are as fireproof as masonry and engineers can devise. We built them primarily to protect human life. The safety of the thousands of people that we transport yearly between New York and Europe was our first consideration. The safety of the freight was a minor detail. On June 30, 1900, when the steamship 'Lorraine' was on our pier at noon there were about two thousand people on the pier. If for some reason other than the fire had been ignited at that time, I venture to say that not 10 per cent of the two thousand would have been saved. In seven minutes the fire swept over the entire pier system, and there was no chance to stop it."

The building of fireproof freight piers is one consideration and the building of fireproof passenger piers is quite another. It does not follow that the same amount of expenditure should be put forth for fireproofing freight piers as for passenger piers. We find our steel piers an advantage in an economical way. The steel and concrete withstand the effect of the elements and the necessity of repairing them is reduced to a minimum.

E. E. Loomis, vice-president of the Delaware, Lackawanna and Western, said yesterday with regard to the rebuilding of the burned piers: "It is rather early to say just what our plans are for reconstructing the piers. We intend to put up modern structures that will be fireproof, but we do not know just what we will use and what we will use. We have used and shall use the sheet steel covering on the buildings as a protection against fire. Our old piers were well equipped with the apparatus that we used when the fire was blown so rapidly over the entire pier system. It was impossible to check it. There were several hundred men on the pier with their own power plant, and other appliances were distributed over all convenient places. We have two pumps always at call, and each is equipped with powerful pumps, that throw a large volume of water. Steam is always kept up in the boats, and they are connected always with shore by telephone."

Dock Commissioner Featherston was asked what plans, if any, his department had in contemplation for the construction of fireproof piers to avoid a fire similar to that on the Delaware, Lackawanna and Western piers. Mr. Featherston said that the piers built by the city within the last seven years were practically fireproof, as they had steel sheds. A fire could be easily confined to the merchandise stored on a pier. In the construction of the eight new piers in the Chelsea extension, he said, an entirely new idea had been introduced, which would make the possibility of the destruction of piers by fire almost nothing. In two of the new Chelsea piers, at Eighteenth and Nineteenth streets, the pier piers had been covered with a flooring of wood. Spread along this wood was a layer of concrete six inches thick. On top of the concrete was placed another covering of wood or creosote wood pavement; the latter a non-inflammable material. As the sheds, including the roofs and uprights, were of steel, the danger of fire, according to the Commissioner, was reduced to a minimum. As the fire could not penetrate beneath the concrete or make headway against the steel parts of the pier, it would burn itself out in the stuff stored. Even this, he added, might be avoided with quick action by the Fire Department and the use of fireboats. The Chelsea scheme, said the Commissioner, would be carried out with the exception of other piers to be built in the locality and with all other piers planned by the city.

In Jersey City it was reported yesterday that the Lackawanna Railroad Company would build fireproof piers in the upper part of the city, protected by the flying embers and sparks falling harmlessly on the roof of the corrugated iron covered pier full of valuable merchandise.

Clearing away the debris and gathering articles of value that had escaped the flames.

MOVEMENTS OF VESSELS.—The following movements of vessels have been reported to the Navy Department: ARRIVED. May 28.—The Solace at Honolulu, the Nashville and the Lawrence at Pensacola. May 29.—The Frolic at Chefoo, the Villalote at Hankow. The Albatross at Hampton Roads, the Newport at Puerto Plata. May 30.—The Bancroft at Guantanamo, the Brooklyn, the Albatross and the Marietta at Tangier, the Albany at Honolulu. May 31.—The Mayflower at Hampton Roads, the Isla de Cuba at Portsmouth, N. H.

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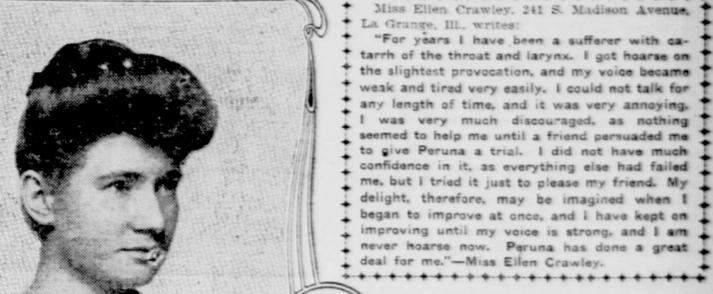
HOW TWO BEAUTIFUL WOMEN ESCAPED CATARRH BY USE OF PE-RU-NA. Catarrh Robs Women of Health and Beauty. Pe-ru-na Makes Women Healthy and Beautiful.

Thousands of Women Cured by Pe-ru-na of Annoying Catarrh.

Dr. Hartman has probably done more than any other physician toward popularizing a means of escape from the facial deformities, such as watery eyes, twisted nose, offensive breath, dry, cracked lips due to the ravaging effects of catarrh. He has made chronic catarrh a lifelong study. His remedy, popularly known as Pe-ru-na, is the most famous remedy for catarrh in existence. Probably there is not a man or woman, boy or girl, within the bounds of the United States that has not heard of Pe-ru-na. By far the largest majority have used Pe-ru-na and are cured. The multitude of people that have been cured of chronic catarrh by using Pe-ru-na can never be known.

Many a girl has regained her faded beauty, many a matron has lengthened the days of her earthly appearance by using Pe-ru-na. Pe-ru-na produces clean mucous membranes, the basis of facial symmetry and a perfect complexion. The women have not been slow to discover that a course of Pe-ru-na will do more toward restoring youthful beauty than all the devices known to science.

While it is true that Pe-ru-na cures catarrh wherever located, yet it is advisable for every one to use Pe-ru-na as a preventive and not wait until catarrh has fastened itself in some part of the system. Pe-ru-na acts quickly and beneficially on the inflamed mucous membranes lining the different organs of the body. This it will cure catarrh wherever located. If you do not receive prompt and satisfactory results from the use of Pe-ru-na, write at once to Dr. Hartman, who will give you his valuable advice gratis. Address Dr. Hartman, President of The Hartman Sanitarium, Columbus, O.



MISS LYDIA HERZIGER

Miss Lydia Herziger, Grand Recorder of American Daughters of Independence, writes from Neenah, Wis., as follows: "I have used Pe-ru-na now for four years, each spring and fall, and it keeps me perfectly well and strong. I am able to continue working and do not have to take a three months' rest, as I used to do every year. This is a great comfort to me, as I was not able to afford such a long rest. I find that it is a great preventive for colds and coughs and soon rid the system of all disease, and is an admirable medicine. I can honestly indorse it."—Miss Lydia Herziger.



MISS ELLEN CRAWLEY

Two Through Express Trains Every Day — Each Way BETWEEN MONTREAL, TORONTO and VANCOUVER, Giving Easy and Rapid Communication with The CANADIAN ROCKY MOUNTAINS, The PACIFIC COAST, THE ORIENT and AUSTRALASIA Via Canadian Pacific Railway ON AND AFTER JUNE 13, 1904. E. V. SKINNER, Asst. Traffic Manager, 458 Broadway, New York.

ARMY AND NAVY NEWS.

(FROM THE TRIBUNE BUREAU.) Washington, May 31.—EXPLANATION FROM COLONEL FITCHER.—The case of Colonel William L. Fitcher, 28th Infantry, gets more and more muddled. Some of the officers who were in Washington were anxious not to push the case, since it would lead to all sorts of complications and embarrassments. It being one of those incidents in the private life of an officer when he is virtually in the position of telling his seniors in the service to mind their own business. Fitcher has been in the last week threatened with trial by court martial for failure to marry a young woman who is a clerk in the War Department, and who is the daughter of a late chaplain in the army. Fitcher came here last winter from a tour of duty in Alaska and was presented among the woman's friends as her future husband, while he introduced her to his friends here as his bride-elect. The wedding day was named and the young woman had her marriage vows prepared. Then Colonel Fitcher disappeared mysteriously and finally turned up at his post, the Presidio of San Francisco, California, where he has since been on duty. He gave no explanation to the woman for his conduct, and her friends were greatly incensed at his silence and attitude. One of them, Colonel S. C. Mills, of the inspector general's department, filed formal charges against Fitcher, and in this way the troublesome situation came before the War Department. Fitcher, who has a brilliant record, was asked to explain the situation, and his reply was so unsatisfactory that last week the authorities here determined to have him court-martialed, although it was a rather ticklish question to bring before a military court. Still, the publicity had somewhat reflected upon the service, and it was considered that Fitcher was to be held and confined in his refusal to explain. To-day the department received a request from Fitcher asking that the details of the court be postponed until he could make a final statement which he believed would exonerate him. He said he had hoped to hear nothing more of the case officially, but now that he was confronted with a court-martial he was willing to explain fully and would rather do this than make a statement before a court-martial before the War Department, and suspend action in the case until the authorities have a chance to read the promised statement.

ORDERS ISSUED.—The following army and navy orders have been issued: ARMY. First Lieutenant WARD B. PERSHING, 4th cavalry, from Fort Leavenworth to Fort Riley, as adjutant 1st squadron, 4th cavalry. Captain J. H. FAULKNER, assistant surgeon, detailed member board of medical officers to revise manual. Colonel WALTER HOWE and Lieutenant Colonel JOHN H. MALIFF, artillery corps, to coast artillery. MAJOR SAMUEL F. ALLEN, artillery corps, to field artillery, Fort Snelling, Minn. NAVY. Lieutenant Commander J. L. GOW, detached Massachusetts; home, wait orders. Lieutenant W. S. MILLER, detached naval hospital, New-York; home. Lieutenant J. A. ABLE and T. L. JOHNSON, commissioned. Ensign E. C. KEENAN, retired, to navy yard, New-York. Midshipman A. C. PICKENS and R. B. HILLIARD, detached naval academy; home, wait orders.

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NOT ITALIANS, BUT FRENCHMEN. A protest has been made to The Tribune by a member of the Gardes Lafayette, that marched in the Memorial Day procession on Monday. He says that the picture on the front page of The Tribune on Tuesday over the caption "Italians in the Parade" was really a view of the French organization.

TRIED ARSON, THEY SAY. Man Accused—Twenty Families Imperilled. Twenty families, living in the six-story tenement house at No. 111 East One-hundred-and-nineteenth-st., were imperilled last night by what the janitor, Mrs. Ellen Travers, declares was an attempt by a former boarder to set fire to the building. He wished revenge, she says, for having recently been ejected. This man, who says he is Julius Hudell, of No. 31 East One-hundred-and-nineteenth-st., was arrested on a charge of attempted arson on complaint of Mrs. Travers, after he had been threatened by the angry tenants. He was caught after a chase. He denies the charge. Annie Travers, the ten-year-old daughter of the janitor, went down to the street door about 11 o'clock to put out the lights in the hall. When she started upstairs, she says, she saw Hudell downstairs and ran frightened to her mother on the top floor. Hudell, it is alleged, then went into the cellar, and a minute or two later, when the older daughter, Ellen, and her mother went downstairs they smelled smoke at once. Both hurried into the basement, and as they passed at the top of the stairs Hudell, they say, brushed past them. Mrs. Travers found that the man was coming from a bundle of paper underneath the stairway. The paper was blazing hotly and the wooden steps had already caught fire. She screamed and Edinger Moran, whose family lives on the second floor, came to her aid and stamped out the blaze. The fire authorities will make a thorough investigation.

ALASKA PROPERTY SOLD AT AUCTION. That of Kasaa Bay Company Bought for \$25,000, Subject to Mortgage. (BY TELEGRAPH TO THE TRIBUNE.) New-Haven, Conn., May 31.—A private dispatch received to-day from Ketchikan Bay, Alaska, announces that the property of the Kasaa Bay Company, which has fishing and mining rights in Alaska, has been sold at auction by the receiver to J. D. Carroll, of Seattle, who bid \$25,000, subject to a bonded mortgage of \$7,000. Dissensions have existed for two years among the stockholders, most of whom are New-Haven men. The capital stock of the company was \$100,000. Robert H. Ives, the former president, was recently succeeded by Joseph E. Hubbard. Mr. Ives denied to-night a report that Mr. Carroll had bid in the property as his representative.

G. W. BEAVERS TO PLEAD TO-DAY. His Counsel Deny, However, That Appearance Will Be Surrender. Counsel for George W. Beavers, indicted for bribery and conspiracy while at the head of the division of salaries and allowances in the Postoffice Department, announced yesterday that their client would probably appear in the United States Circuit Court in Brooklyn this morning to plead to the several counts of the indictments pending against him. "Mr. Beavers's appearance would by no means be in the nature of a surrender," William M. Seabury told a Tribune reporter last night. "Mr. Beavers has been living within the jurisdiction of the court for some time. The order asks his appearance the first day the Circuit Court meets, and Mr. Beavers would probably himself appear." The news that Mr. Beavers would appear caused considerable comment in this city last night. The general impression being that since his indictment he had kept severely aloof from the jurisdiction of the court.

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