

Judson L. Stoddard, excused under the exemption provision.

John L. Smith, claimed exemption as a member of the bar.

His honor remarked that persons who knew themselves exempt from sitting on juries and who wished to claim the exemption, should tell the marshal when he summoned them.

N. H. Felt, excused by the court, having conscientious scruples.

William Sloan, challenged for cause by prosecution.

Thomas Hall, sworn.

Grand jury came into court, William Nixon and Samuel Worthen absent.

The judge said that Mr. Worthen had made such statements as satisfied him that he was obliged to leave the district, therefore the court would excuse him.

The foreman of the grand jury presented one Bill of Indictment.

The grand jury, by their foreman, begged to remark, that they had suffered much inconvenience for want of witnesses pertaining to a certain case which the court have charged them to inquire into, and which they had had under consideration for several days, but for want of witnesses and certain plates and engraver's tools they could not consummate their inquiries.

The judge observed, it is not only the duty, but it is the pleasure of the court to assist the grand jury, and to compel the attendance of such witnesses as were wanted, when it became necessary to do so.

The foreman said that perhaps it might not be improper to state, as the case was one of no secrecy, that their inquiries were being directed to the well known forgery case.

The Judge replied, you have of course a right to mention it, as it is no matter of secrecy. The object of the secrecy enjoined upon the grand jury is to prevent parties escaping from justice who may not be in the custody of the proper officer. If a member of the grand jury were willing to say, to any person with whom he might converse, we are now examining the case of John Smith or William Jones, John Smith would be very apt to leave the country, and go without the jurisdiction of the court, and the grand jury is therefore expected and required to keep their business secret, but you have a right to come into court and call for any witness you want.

Mr. Bell said the grand jury would then inquire if John M. Wallace was present, they had had a case under consideration for several days, but had not been able to find a bill for want of that witness.

Gen. Wilson called for a *capias* to bring Mr. Wallace forthwith before the grand jury.

His honor remarked that he had received a letter on yesterday from Mr. Wallace in relation to this matter, and its contents were a little extraordinary. In his letter he excuses himself from non-compliance with the process of this court because he states that his friends have informed him that his life would be in jeopardy in this city. Now this is a very extraordinary thing where the law is expected to work its just process, that an excuse of this kind should be set up; the court cannot regard any such excuse; the court cannot know that any man's life is in jeopardy, except it is made evident by the testimony of witnesses on earth.

If it shall prove true that the witnesses summoned to appear before this court cannot appear in safety; if it shall turn out that the ordinary administration of justice cannot be carried on, why then the severest rigors of the law will be served and enforced on those who would assassinate men in their attempt to perform and carry out the orders of this court.

I make these remarks to show you, gentlemen of the grand jury, the state of public feeling. But you shall have all the witnesses that you want, so far as the process of this court can bring them before you. Now there is nothing left but to grant the prayer of the District Attorney; there is nothing for the court to do but to carry out the regular course of law, until it is demonstrated that its orders cannot be enforced. If witnesses are intimidated, and cannot be brought before this court, because of being under terror, I want that fact known, then I will know what to do, and I will know how to instruct you further in your duties.

The court will order a *capias* for Mr. Wallace, and see whether its witnesses are to be intimidated; it cannot take the statements of parties at all, on a question of such moment.

Gen. Wilson desired the *capias* to be made returnable forthwith.

His honor further stated that, under the warrant now issued Mr. Wallace will be in the custody of the officers of this court, and he will be protected.

Gentlemen of the grand jury, if you wish any witnesses, send in a written statement to the court and your authority shall be respected.

The grand jury then retired to their room.

Court took a recess till 3 p.m.

3 o'clock, p.m.

Chief Justice Eckles was on the bench with Judge Sinclair.

The impanelling of the jury was resumed.

Edward Mumford, challenged peremptorily by defense.

William Martin, not a resident within the meaning of the act.

S. D. Sistine not present.

William Sterrett, not present.

George Knowlton, had formed an opinion.

Christopher Merkley, sworn.

Robert Burns, sworn.

Matthias Cowley, sworn.

Calvin Foss, sworn.

David Wilkin, challenged peremptorily by the defense.

Joseph L. Heywood, sworn.

E. Thomas, sworn.

D. W. Wolf, not present.

Charles Crisman, sworn.

John Gutherle, not present.

William Olsen, not present.

E. M. Peck, not present.

Court entered a rule against all those persons summoned on the jury, who were not present, returnable to-morrow at 11 o'clock.

The judge ordered Deputy Marshal Bigler to summon talesmen till the panel was full.

M. J. Shelton, challenged for cause by defense.

Several non-residents summoned, whose names our reporter did not hear, were excused by the court.

Jacob L. Workman, challenged peremptorily by defense.

Lot Huntington was sworn, which filled up the panel.

The court discharged all those persons not in the actual panel, from further attendance on the court, and required those on the regular panel to make known their attendance daily to the clerk.

William A. Williams was sworn bailiff of the court.

Grand jury brought into court, and his honor said that he desired that they should know fully what was expressed in Mr. Wallace's letter, and he had called them in that he might read it to them, which he read as follows:

CAMP FLOYD, U. T., }
August 1, 1859. }

TO THE HON. CHAS. E. SINCLAIR,
SALT LAKE CITY, U. T.

SIR:—I have been summoned to appear before the grand jury, in your court holden on the 2d inst., and circumstances that have taken place in the course of the last month, have made a host of enemies for me in the city, and I have been informed and advised by my friends not to come to the city under any circumstances, that I would not be safe, and my wife has been told of my danger in case I did come, and I am at all times willing to obey the law and serve the law of my country; but when I am satisfied I cannot do it only at the risk of being assassinated by some unknown person, I then feel a delicacy in doing it; and hope you may excuse me for the disobedience, and if I have contempered the court, I am willing to pay the penalty that your honor may adjudge, knowing at the same time my services are not so much needed in your court as they are in my family in case they should put me out of the way, believing firmly that I would be molested by some one if I should come. If I knew my enemies I would fear nothing, but as I don't and at the same time know they do exist, I feel very unsafe in making a trip to the city under the existing circumstances.

With much respect, sir, I am your hon's servant,

(Signed.)

J. M. WALLACE.

Judge Sinclair then remarked, I want to say to you, gentlemen, that this letter presents a most extraordinary case of singular circumstances, that a man called to come before the grand jury should set up as an excuse for his non-compliance with the process of this court, that if he were to come to this city his life would be in jeopardy. I have only to say that the further process of this court is subject to your order. The request of the Attorney for the Territory will be granted, and when Mr. Wallace is arrested he will be under the authority of the United States, and by that authority he will be protected, and woe betide the man or set of men that dare to interfere with him.

Gen. Wilson opened the case to the jury, for the prosecution.

Hosea Stout, Esq., opened the case for the defense.

Drs. France and Anderson and Capt. Hooper were sworn and examined for the prosecution.

Mr. Wilson proposed to introduce certain statements said to have been made by Shep before his death as evidence.

Mr. Blair for the defense objected.

The court said that the statements of a deceased party were admissible if they were made with dying solemnity. The rule about dying declarations as evidence was very strict, and in the opinion of the court very properly so, hence he would hear the remarks of the attorneys and then decide.

Gen. Wilson argued that if the party was apprehensive of death at the time the declaration was made, it was then good evidence.

His honor remarked, If you can connect it with the *RES GESTE* then it is good, but if I understand Mr. Hooper rightly he got there after the thing was accomplished.

Frank Pope, a colored man, was next examined for the prosecution. This witness gave some very laughable and amusing answers to the questions put to him by the attorneys. Cross examined by Mr. Stout, who asked the witness if deceased did not threaten Colbourn, his client.

Gen. Wilson objected to the question.

Court ruled that it was perfectly competent for the defense to ask that question, in order to show the state of character and feeling at the time of the occurrence.

Gen. Wilson thought that the questions put by the defense were of a leading character, and in as much as Shep was not on trial the questions he conceived to be irrelevant.

The judge read the law on the admissibility of evidence, and then observed: It is for this jury to say whether this man is guilty or not, and therefore it is perfectly right to elicit anything that transpired that will lead to show the jury the previous relations of the parties.

Elias H. Perry was sworn and examined for the prosecution. Cross examined by Mr. Stout.

Gen. Wilson said that he had called for another witness, named Ben, a colored boy, but he was not now to be found, and he asked for time to find him.

Mr. Blair wished to know what the prosecution designed to prove by the witness, as the defense might probably admit it and have the trial go on.

His honor said he could not refuse to allow time for the District Attorney to get witnesses, and under the circumstances he should order the jury to be kept by themselves, and the marshal to see that they were properly provided for.

After some further conversation on the admissibility of the statements of parties as evidence when dying. Capt. Hooper was recalled, and stated that the deceased, Shep, hoped and believed that he would get well till the last.

The court said, before the dying declaration of a person could be admitted as evidence in criminal cases there must be before the court, evidence to satisfy the conscience that the party had no hope, that he was satisfied he was dying, and the written declaration must declare unequivocally that the party was dying at the time he made it.

The bailiff was sworn to take charge of the jury for the night.

Charles M. Smith, Esq., filed a petition asking for a writ of replevin to recover two negro women from Mr. T. S. Williams, which he claimed was the property of A. B. Miller.

Mr. Williams proposed to join issue and try the right of property.

[REPORTED.]

THIRD JUDICIAL DISTRICT COURT.

WEDNESDAY, August 3, 11 a.m.

Court met pursuant to adjournment.

The judge remarked that he had received a petition for a writ of habeas corpus in the case of David McKenzie, who had been arrested in this city accused of forgery and taken to Camp Floyd and was now imprisoned there, in which it was argued that if the offence had been committed at all, it was committed in this district. In answering the petitioner his honor said that it was within the knowledge of the court that the petitioner had been committed by the judge of the (second?) first Judicial District, and therefore this court could not think of interfering with him in any way whatever; and whatever proceedings may have been instituted, and whatever might have been done with the case the court of the Third Judicial District would not interfere with anything outside of its jurisdiction, nor would it permit a conflict between the different judges; the court knew that McKenzie was committed under lawful process, and whether he had committed any offence it could not know except it came before it officially. The motion, if the petition was intended as such, would be entered as overruled.

Mr. Stout observed that it was not intended as a motion.

His honor further stated that it would make the most utter and entire confusion for a judge of one district to take prisoners by writs of habeas corpus from another; it would interfere with the proper administration of justice.

The court having ordered a new venire, which had been served and returned, the clerk read over the names of the panel annexed, and also the names of those that had been previously summoned preparatory to the trial of Colbourn for the murder of the negro Shep.

Charles Kinkead was excused.

Richard James, challenged for cause by defense.

George Bartholomew, had formed an opinion.

William A. Williams, had no taxable property.

Heber P. Kimball, had no taxable property.

Stephen H. Goddard, challenged peremptorily by defense.

Thomas J. Wheeler, sworn.

Joseph Woodmansee, challenged peremptorily by defense.

John T. D. McAllister, sworn.

Wm. H. Kimball, challenged for cause by prosecution.

Burr Frost, not present.

John Nebeker, sworn.

George Stringham, not a tax payer.

J. M. Thompson, challenged peremptorily by defense.

