

[REPORTED.]
**THIRD JUDICIAL DISTRICT
 COURT.**

WEDNESDAY, August 17, 1859, 11 a.m.

Court met pursuant to adjournment.
 The case of A. B. Miller vs. Thomas S. Williams, in replevin, was called up.

Mr. Williams asked the court to call up the case of Gilbert B. Smith vs. Thomas J. and Wesley Wheeler, as the parties were ready for trial.

His honor remarked, the case of A. B. Miller vs. T. S. Williams was manifestly a chancery case.

Grand jury came into court and presented two bills of indictment.

The judge asked if they had any general report to make.

Mr. Bell replied, the grand jury wish to state that they have no business, before them at present, that they can attend to immediately.

Judge Sinclair said, It is perfectly competent for me to discharge this grand jury and call another one, or to adjourn them and then recall them, but as you have no further business before you are discharged. And I will say that in your action towards this court, you have manifested a respect and a regard for the court which it appreciates.

Mr. Ferguson, counsel for Mr. Williams, said he could not see how this case could be held both at law and in equity, and he thought it would be proper to dismiss the case; with that view of the question he moved that the case be dismissed at law, at the cost of the plaintiff.

Mr. Smith, counsel for Mr. Miller, contended that the action was a good one, Mr. Miller claimed certain property, and if there was an equitable defense let it be made; if there was a defense in law let that be made. All the court had to do under the circumstances was to consider the case one of replevin; if it was decided to be one in chancery there would then be no intervention of a jury.

Mr. Stout said he would like to know how they could try the complaint, which was a clear action at law, without a jury, and how they could try the answer, which was in chancery, by a jury.

Court directed the issue to be tried at law, as to the right of property.

Mr. Williams made a motion for a continuance on the ground that material witnesses were absent from the Territory.

Mr. Smith opposed the continuance.
 Court overruled the motion.

Mr. Blair, as attorney for the Territory, wished to notify both parties that the property had been forfeited to the Territory, and that he should institute suit for its recovery.

Court allowed Mr. Williams an hour to get his witnesses and be ready for trial.

John Wade, indicted by the grand jury for stealing a mule, was brought into court and put in the custody of the marshal.

The following gentlemen were duly impaneled and sworn to try the issue in the case of Miller vs. Williams:

Joseph Woodmansee,	William Brooks,
John M. Moody,	Charles Mogo,
William Doney,	Enoch Reese,
Thomas Clayton,	E. W. East,
Horace Clark,	W. W. McGuire,
Williams Camp,	Thomas Box.

Chas. M. Smith, Esq., opened the case to the jury for the plaintiff.

Mr. Williams presented the case for the defense.

William H. Hooper, J. C. Little and Thomas Adams were sworn and examined for the plaintiff.

Court ruled that evidence for the defense was not admissible.

Mr. Smith addressed the jury on the part of the plaintiff, and Messrs. Williams, Stout and Blair for the defense.

The court ruled that the complainant opened and closed. Mr. Smith closed the argument for the plaintiff.

The jury were instructed in their duties by the judge, after which they retired.

Jury returned a verdict for the defendant.

The court polled the jury, which showed that ten of them were for the verdict, and John M. Moody and Wm. Brooks against it.

Upon the rendition of the verdict his honor said, I set aside that verdict as against all law and the evidence adduced in the case.

Mr. Ferguson notified the court that the defense would file a bill of exceptions to the order of the court.

Mr. Ferguson asked the court to issue a new venire immediately.

His honor replied, that he would do that when he pleased.

Mr. Box, on behalf of the jury, asked to be discharged.

His honor answered curtly, I will discharge you when I please.

After some remarks from court and counsel the jury were discharged.

Court adjourned till to-morrow at 11 a.m.

THURSDAY, 11 a.m.

Court met pursuant to adjournment.

Mr. Blair asked the court to admit Thomas Colbourn to bail, but his honor refused, stating that Colbourn was indicted for a capital offence which was not a bailable case.

Mr. Ferguson proposed to give bail for Yodes, an Indian, indicted for stealing a mule.

The judge ordered the prisoner to be brought into court.

Mr. Williams asked if the court would take security for Henry E. Phelps and Henry Spiers.

His honor thought he ought to admit them to bail. I

am trying to do justice, his honor said, and I must say that in the management of that trial there was such irregularity that I felt it to be my duty to set aside the verdict. It is not for me to say from the evidence before the jury whether Phelps and Spiers are guilty of the offence with which they are charged; that is for a jury to decide, but I will now admit the parties to bail.

They can come into court this afternoon.

Mr. Blair demanded an immediate trial for his client Colbourn, agreeable to the provision of the constitution.

His honor ruled that the "speedy and impartial trial" meant that the party should have a trial during the term in which he might be arrested.

In speaking of the adjournment of the court the judge remarked, This court will not be adjourned until the first of November, whether I held it or somebody else.

Court ordered the civil docket called, which was done by the clerk.

The case of John Winn vs. N. V. Jones in assumpsit was called, and Mr. Stout filed a demurrer which was overruled by the court.

Francis E. McNeil vs. Brigham Young and others was called, whereupon his honor said, There is a sworn statement here as to the death of the prosecuting party, and that suit abates. A personal action dies with the party, and the clerk will make an entry to that effect.

Thomas S. Williams vs. Hiram Kimball, jun., on a protested draft was called, and by agreement of the parties judgment entered for the amount claimed without interest.

Bradford Leonard vs. Stephen H. Goddard, Mr. Stout who appeared for the defense and filed a demurrer which he proceeded to argue. Mr. Williams' counsel for plaintiff replied.

The judge took the papers and said he would take time to examine them.

Court took a recess till 3 p.m.

3 p.m.

Court resumed its session.

The court sustained the demurrer filed by Mr. Stout in the case of Leonard vs. Goddard, and granted leave to file a new complaint.

District Attorney Wilson appeared in court and filed the following NOLLE PROSEQUI:

WHEREAS, at a District Court in and for the First Judicial District in the Territory of Utah, held in Green River county in said Territory, of December term 1857, a bill of indictment was found by the grand jury thereof, charging Brigham Young, Heber C. Kimball, Daniel H. Wells, John Taylor, Geo. D. Grant, Lot Smith, Porter Rockwell, William A. Hickman, Albert Carrington, Joseph Taylor, William Stowell, Lewis Robinson, Joshua Terry, John Harvey, Daniel Jones, Phineas Young, William Young, Robert Burton, James Ferguson, Ephraim Hanks, with treason against the United States, which said indictment was filed in said court December 30, 1857.

And whereas, at the April term 1858, of said District Court, held in Green River county for the First Judicial District in the Territory as aforesaid, the grand jury thereof found another bill of indictment, charging Matthew Thompson, Brigham Young and Daniel H. Wells with treason against the United States, which said indictment was filed in said court, April 5, 1858.

And whereas, the said Green River county and the First Judicial District, by the act of the Legislature of Utah passed January 21, 1859, have been changed into, and now, and since the passage of said act, form a part of, and belong to the Third Judicial District in the Territory of Utah, and the said indictments above mentioned are now legally within the jurisdiction of the District Court for the Third Judicial District in the Territory of Utah.

And whereas the President of the United States by his proclamation bearing date the sixth day of April 1858, pardoned said alleged treasons mentioned in said bills of indictment.

Therefore, and now, that is to say on the eighteenth day of August A.D. 1859, at the July term of the said District Court for the Third Judicial District in the Territory of Utah, holden in Great Salt Lake City, Hon. Charles E. Sinclair, Judge, cometh Alexander Wilson, Attorney of the United States for the Territory of Utah, also for the said United States in this behalf prosecuteth, and saith that the said Alexander Wilson, Attorney as aforesaid, will not further prosecute the said Brigham Young, Heber C. Kimball, Daniel H. Wells, John Taylor, George D. Grant, Lot Smith, Porter Rockwell, William A. Hickman, Albert Carrington, Joseph Taylor, William Stowell, Lewis Robinson, Joshua Terry, John Harvey, Daniel Jones, Phineas Young, William Young, Robert Burton, James Ferguson, Ephraim Hanks, and the said Matthew Thompson, Brigham Young and Daniel H. Wells in behalf of the said United States, on the said indictments above mentioned. Therefore let all further proceedings be altogether stayed here in court against them, the said Brigham Young, Heber C. Kimball, Daniel H. Wells, John Taylor, George D. Grant, Lot Smith, Porter Rockwell, William A. Hickman, Albert Carrington, Joseph Taylor, William Stowell, Lewis Robinson, Joshua Terry, John Harvey, Daniel Jones, Phineas Young, Wm. Young, Robert Burton, James Ferguson, Ephraim Hanks; and the said Matthew Thompson, Brigham Young and Daniel H. Wells, upon the indictments aforesaid.

(Signed) ALEXANDER WILSON,
 Attorney of the United States for the
 Territory of Utah.

Henry E. Phelps and Henry Spiers were admitted to bail, William W. Phelps and Thomas S. Williams being sureties.

Court proceeded to impanel a jury to try the case of Gilbert B. Smith vs. Thomas J. and Wesley Wheeler which resulted as follows:

John Y. Green, taken.
 William Sterrett, taken.
 Elnathan Eldredge, taken.
 E. P. Duzette, taken.
 Isaac Bowman, excused by the court.
 Robert Wimmer, taken.
 John Harper, taken.
 John N. Wakely, challenged peremptorily by defense.
 Abel Gilbert, challenged peremptorily by defense.
 John Tobin, taken.
 Robert Woolcott, taken.
 George B. Wallace, taken.
 Joseph Murdock, excused by the court.
 Jacob Swarts, taken.
 William Martin, taken.
 Levi Stewart, taken.

Mr. Williams presented the case to the jury for the plaintiff, and Mr. Stout for the defendant.

Myron Brewer, William B. Wright and Thomas Clayton were sworn and examined for the prosecution.

William Doney, Leonard I. Smith and Joseph Wheeler were examined for the defense.

The jury retired about 7 o'clock, and in a short time came into court and rendered a verdict for the defendant for \$14.

Court adjourned till to-morrow at 11 a.m.

FRIDAY, 19, 11 a.m.

Court met pursuant to adjournment.

Mr. Williams filed a motion to set aside the verdict of the jury in the case of Smith vs. Wheeler brothers.

Court overruled the motion.

The calling of the civil docket was resumed, and several cases set for Monday the 12th of September.

The case of Chipman vs. Olive was called, and after examining the papers the court ruled that David Grant was a party to the suit, and ordered him to file his answer by the 12th of September.

In the case of John Robinson vs. William Hennefer, judgment was entered by default.

The prisoner Yodes, an Indian, indicted for stealing a mule was admitted to bail.

Bradford Leonard vs. Washington L. Jolly, John Gaosland and John M. Moody, in assumpsit, called and judgment entered NIL DICIT.

Jester vs. Clinton and Allred in injunction called, and the injunction made perpetual, excepting so far as concerned certain wearing apparel.

Court took a recess till 3 p.m.

3 p.m.

Court resumed its session.

The case of Magraw vs. Little was called and laid over until the 12th of Sept.

Judge Sinclair said, I will say to you, gentlemen of the bar, that I expect to meet you here on the 12th day of September to renew the functions of this Court. Something may intervene to cause me to postpone still further, as I do not know what the business before the court in the other District is, but so far as this court is at present concerned, I have to say to you that whether I shall sit here as a judge any more or not, I have endeavored to discharge my duty, and to hold up the scales of justice, knowing no distinction of parties.

Court adjourned till Monday the 12th day of September next.