

in my office Dec. 15, 1858 and endorsed "A true bill." ELEANOR MILLER, Foreman.

DAVID A. BURR, Clerk  
U. S. Dist. Court,  
3d Jud. Dist. U. Ter.

{L.S.} Copy, attest."

Mr. Ferguson wished time to prepare his preliminary pleadings. He asked the Court for a copy of the indictment and capias, and for a list of the Grand Jurors.

The Court considered it was not necessary to give a copy of the indictment, in a misdemeanor.

Mr. Wilson said the case was only a misdemeanor, and he did not consider it necessary to give a copy of the indictment. He also thought that if the gentlemen for the defence wanted to demur, they should state then what it was that they wished to demur to.

Mr. Stout replied that the party defending would demur, but that it was impossible to demur unless they could obtain a copy of the indictment, for they might wish to plead a special demur to one count of the indictment only. He contended that they had a right to enquire into the panel of the Grand Jury and see whether they were all lawful men, residents of this District.

The Judge informed Mr. Stout that the objections should be made by plea in abatement.

Mr. Stout asked for more time to prepare pleadings.

The Judge said there had been time enough since the Grand Jury found the indictment.

Mr. Stout informed the Court that Mr. Ferguson had only learned of the finding of the Grand Jury since he came into Court that morning, and that all he asked was time to make such pleas as would secure him in his rights.

The District Attorney contended that if the defence had any fault to find with the indictment they ought to file a motion to quash the array, for in civil pleadings it was not customary to allow a demurrer; where gentlemen desired to demur it must be to something on the face of the indictment, but if the defence wished to go beyond that, they must do it by motion to quash.

Mr. Stout observed that if they were not allowed to demur it was a new thing to him; he contended that they had a right to enquire into the array, but they could not plead immediately because they could not consult the requisite authorities. He did not know that the law required the Court to furnish them a copy of the indictment, but he would ask the Court to grant it, also a list of the Grand Jurors, as a matter of courtesy.

Mr. Wilson had no objection to the gentlemen having time, but he had a desire that the case be proceeded with as soon as possible.

The Court declined to make an order for a copy of the indictment and list of the Grand Jury, but informed Messrs. Ferguson and Stout that they could be obtained at the Clerk's office.

His Honor then remarked that in consideration of this case being one of peculiar interest and character he would give Mr. Ferguson till to-morrow morning, at 11 a.m. to prepare his pleadings.

Charles Woodard was released from further service on the Traverse Jury.

The Grand Jury made a presentment to the effect that an Indian named — killed a young man named Joseph Vernon, in Rush Valley, about 15 months ago.

Court adjourned till 11 a.m. of Tuesday.

TUESDAY, Dec. 21, 11 a.m.

The case of the United States against James Ferguson was called up.

Mr. Stout, on behalf of Mr. Ferguson, stated to the Court that the pleadings for the defense were not quite ready, and asked for further time. He notified the Court that it was the intention of the defense to file a motion to quash the array of Grand Jurors.

The Court would not sustain a motion, at this stage of the proceedings, to quash the array; but would hear arguments on a plea in abatement; and would indulge the defense till 3 p.m. Mr. Ferguson was then released on his parole.

Court adjourned till 3 p.m.

TUESDAY, 4 p.m.

Mr. Stout informed the Court that they had prepared a plea of abatement and a demurrer, and wished the Court to rule which should be plead first.

The Judge replied that there was positive law upon that subject, regulating pleadings in all criminal cases.

Mr. Stout remarked that such law had escaped his observation.

Mr. Ferguson presented a plea of abatement.

The Judge said that a plea of abatement was very dangerous pleading, for if judgment went against the plea of abatement, it also went upon the indictment.

Mr. Wilson raised the question as to whether the plea for abatement was in time after the indictment had been found, for in some States it was too late when the indictment was found.

The Court was of opinion that if there was any way of taking exception to a Grand Jury it was by plea of abatement, and told the District Attorney that if he wanted to argue the question he could do so.

Mr. Wilson said that he did, and should sustain the Grand Jury.

The Judge said that whatever could be taken advantage of at that stage of the proceedings was by plea of abatement.

In answer to a question by Mr. Ferguson, relative to the filing of the plea of abatement, the Judge said that it was for the Court to say

whether it would allow him to file that plea; that the question did not involve anything in the plea, but was merely the filing of the plea itself. The Court informed Mr. Ferguson that he would find the general decisions upon such questions, in "Horton's Criminal Law."

Mr. Stout expressed himself pleased that the case had taken the turn it had, for if judgment on the plea of abatement was also judgment on the indictment, then it was very dangerous pleading.

The Court re-assured Mr. Stout that that was the practice, and referred to a case which once came under his notice, where a plea of abatement was presented and ruled out by the Court, and thereupon judgment was rendered on the indictment.

Adjourned to 11 a.m. of Wednesday, Dec. 22.

### Court of Examination.

[Reporter.]

About noon on Wednesday Dec. 15, Deputy U. S. Marshals Brookie and Gilbert arrested Mr. N. L. Christensen, on a charge of having murdered Andrew Bernard, better known in this city as "Dummy."

The complaint was made by U. S. Associate Justice Cradlebaugh to U. S. Associate Justice Sinclair, who issued a writ for the arrest of Christensen.

The examination commenced in the afternoon of the 15th, U. S. District Attorney Wilson appearing for the prosecution, and Major Blair for the defence.

Mr. Clinton, Coroner, gave a statement relative to the inquest held upon the deceased, and the subsequent interment of the body.—Mr. E. K. Hanks was also examined for the prosecution, and the case was adjourned till Thursday.

THURSDAY, Dec. 16.

Judge Sinclair resumed the examination, and Deputy Marshal John Sharp, Gen. D. H. Wells, E. K. Hanks, Jeanette Bernard (mother of the deceased), John G. Lynch, (Deputy Clerk of the Probate Court), Judge Elias Smith, John Bernard, (16 years of age, brother of the deceased), and Dr. Darwin Richardson were questioned.

FRIDAY, Dec. 17, 11 a.m.

The examination of witnesses for the prosecution was resumed in Secretary Hartnett's office.

Captain Cunningham was examined respecting the funeral of deceased, the police regulations of this city, &c.

Frank D. Gilbert, U. S. Deputy Marshal, was examined relative to what transpired at the arrest of the prisoner.

The Attorney for the prosecution asked the Court to order the disinterment of the body, and the making a thorough post mortem examination.

The Attorney for the defence could not see the design of the District Attorney in making such a request, for he had acknowledged that his client slew the deceased in justifiable homicide, and thought nothing further could be elicited than what had already been given in evidence.

The Judge ruled that the body should be disinterred.

Drs. Hurt and Richardson were appointed to make the post mortem examination, and the Court adjourned till Saturday.

SATURDAY, Dec. 18.

The examination of witnesses was resumed. Col. J. C. Little, City Sexton, was examined.

Drs. G. Hurt and D. Richardson were sworn and examined.

During the day the following witnesses were also examined:—

Chauncey Bacon, Richard James, —

Stewart, Joseph Hawkins, Theodore J. Calkin and Thomas Cook.

Adjourned till Monday at 10 o'clock a.m.

MONDAY, Dec. 20.

Judge Sinclair notified the Prosecuting Attorney that he had a letter from Major Blair stating that he could not attend on account of sickness in his family, and he would therefore adjourn the case till to-morrow at 10 a.m.

TUESDAY, Dec. 21.

The following witnesses for the prosecution were sworn and examined:—

Creighton Hawkins, J. T. D. McAllister, H. S. Beatie and Capt. A. Cunningham.

Major Blair spoke in behalf of the defendant, and concluded by asking the Court to dismiss the prisoner.

The Attorney for the prosecution, in a concise manner, replied to the defence and left the case in the hands of the Judge.

After briefly referring to the evidence, the Judge committed the prisoner for trial.

Mr. Blair asked the Court to admit the prisoner to bail, which was opposed by Mr. Wilson, and the prisoner was remanded into the hands of the U. S. Marshal.

### ARMY SUPPLIES.

DEP. Q. R. MR. GENERAL'S OFFICE, Camp Floyd U.S. }  
8th Dec., 1858.

SEALED PROPOSALS are invited at this office until the 2nd day of January, 1859, for supplying the United States, at this place and at Fort Bridger, with

ONE HUNDRED AND FIFTY THOUSAND BUSHELS OF GOOD WHEAT, BARLEY, OR OATS;

In part of the whole of either; to weigh 60, 48 and 35 lbs. each per bushel respectively; and to be delivered in August, September and October next, in such quantities in these months as may be designated by the Depot Quartermaster. Payments will be made on completion of contracts, for which bonds and security will be required. Bidders will please state the price per bushel, and endorse their bids, "Proposals for Forage" and direct them to the undersigned at this place.

G. H. CROSMAN,

41-3

Dep. Q. R. Genl.

## DESERET NEWS.



ALBERT CARRINGTON.....EDITOR.

Wednesday, December 22, 1858.

The "DESERET WRITING BOOK" for sale at this office. Price 25 cents.

Advertisements, to insure insertion in the current issue, must be handed in previous to Tuesday morning.

ALMANACS for 1859 for sale at this Office.

THE COUNTING-HOUSE CALENDER for 1859, splendidly executed on quarto card-board and containing the Zodiacal Signs and Moon's Phases, for sale at this Office. Every Store, Office, Shop and Dwelling should have one.

LEGISLATIVE ASSEMBLY.—Pursuant to laws enacted during the sixth annual session of the Legislative Assembly of this Territory (begun and held in Fillmore in 1856-7, said laws being approved Dec. 15, 1826, and Jan. 14, 1857), quorums of the Council and House of Representatives met in their respective rooms in the Social Hall in G. S. L. City, at 10 a.m. on Monday the 13th inst., organized and adjourned to meet in the State House in Fillmore on Saturday, Dec. 18th, at 10 a.m.

A minority of each House of the Assembly convened in the State House in Fillmore on Monday, Dec. 13th, at 10 a.m., and adjourned from day to day, until a quorum of each branch of the Assembly was present.

On Saturday, the 18th, quorums of the Council and House of Representatives met in their respective rooms in the State House in Fillmore and organized.

Secretary Hartnett presented to the Assembly in joint session, the message of his Excellency Governor A. Cumming, which was read, the joint session dissolved and the Assembly adjourned to meet in this city, in accordance with the following Resolution:—

### "RESOLUTION"

To adjourn the Legislative Assembly of Utah Territory to Great Salt Lake City.

Whereas Fillmore City is inconveniently distant from the centre of the present population of the Territory; the greater portion of the population residing in the Northern Counties, and,

Whereas the offices and residences of the Governor and Territorial Secretary are in Great Salt Lake City; and no suitable accommodations can be procured in Fillmore City either for them or the members of the Legislative Assembly, and

Whereas for the foregoing reasons the public interest will be best subserved by an adjournment to Great Salt Lake City, and,

Whereas by such an adjournment the United States will not be subject to any increased expense, as the Legislative Assembly hereby forego all claim to other than the ordinary and regular mileage provided by law;

Therefore, Be it resolved by the Governor and Legislative Assembly of the Territory of Utah, that the Legislative Assembly adjourn to meet in the Social Hall in Great Salt Lake City on Monday the 27th day of December inst. at 10 o'clock a.m.

WIFORD WOODRUFF,

President of Council pro tem.

AARON JOHNSON,

Speaker pro tem.

APPROVED Dec. 22, 1858.

A. CUMMING."

Under the head, "Court of Examination," our readers will learn that the U. S. Associate Justice for this District has occupied much time in examining a large number of persons concerning the death and burial of a deaf and dumb young man named Andrew Bernard.

As we deem it neither just nor proper at present, lest it jeopardize the rights of any, to print a minute detail of the evidence given in the examination, it becomes necessary to state a few facts and circumstances authentically reported to us, that the public may better understand our Reporter's notes printed under the above head.

The deceased Andrew Bernard, (commonly called "Dummy") was about twenty years of age, some 5 feet 7 or 8 inches high, weighed not far from 150 pounds, and possessed great bodily strength. Unfortunately he has for years been addicted to pilfering, and more recently to another vile propensity often strong in mutes, until he had become to be considered a dangerous person to be at liberty.

It is alleged that some few weeks ago Bernard, alias "Dummy," stole some \$70 from a

teamster who was drunk, and for a time he eluded the grasp of the officers. During that time he is said to have experimented as hangman by tying a rope around a child's neck and suspending the child, who was, however, rescued by timely interference. "Dummy" then went over the Little Mountain and was absent some two weeks. Soon after his return to his mother's house in this city, he was arrested by Officers Christensen and Burt, for the robbery above mentioned, and taken to the police quarters. Upon examination before Dr. Clinton, J.P., he confessed that he robbed the man, had expended part of the money and hid \$60 over the Little Mountain. Mayor Smoot, A. Cunningham, Captain of Police, and Deputy Marshals Sharp and Golden consulted together and concluded it most advisable to send a person with "Dummy," in quest of the money he alleged to have hidden. Burt was sent for to accompany "Dummy," but, Burt being absent at the moment, Christensen went. These brief statements bring the matter to the point where it was taken up by the "Court of examination."

From all we have yet heard, it appears that during the search "Dummy" violently assaulted Christensen, cut him just above the hip with a knife and would have killed him but for the lucky position of the buckle on his belt, and was killed by Christensen acting solely in self-defence. The affair was at once reported by Christensen and rumored abroad without the least shadow of concealment; an inquest held upon the body, so far as we can learn, according to law, and the remains interred in the cemetery.

His habit of pilfering, his unusual strength when irritated, (a common occurrence on the most trivial occasions) and the slight control it was under through the small capacity of his intellect rendered "Dummy" a dangerous person; still he was, in commiseration of his unfortunate condition, suffered to roam at large, except when casually under restraint for transgressions of law, which has at length resulted in his violent death at the hands of an officer faithfully laboring to restore money robbed by "Dummy" from a stranger.

It may be that some trifling informalities, from want of experience in our recently elected Justice of the Peace, Dr. Clinton, occurred in holding and reporting the inquest. But why they, even were there any, should be the ground work of so tedious an examination, and by what authority any Court or officer sends persons, unsworn and without asking the permission of the Sexton, into a burying ground to disinter the dead are, to say the least, strange proceedings, and such as we may yet take the liberty of commenting upon at some length, when such comments cannot be wrested into prejudicing the trial now ordered in the case. We also have full notes of the evidence given in the examination, the use of which, for a like reason, is postponed for the present.

Full, fair, open, even-handed justice to all, and every means and conduct conducive thereto, we do and ever have admired and sustained as sincerely and strenuously as we despise and deprecate their opposite.

ESTRAY SHEEP.—Bishop John L. Butler informs us that there are at Spanish Fork 25 or 30 head of sheep, variously marked, which do not belong at that place. Those having lost sheep can ascertain whether they are among those at Spanish Fork by informing Bishop Butler of their respective marks; and, as some sheep have been missing from that place, it would be well for any of the brethren having stray sheep in their possession, to report them to Bishop Butler, that all may have their own.

IMPROVEMENTS.—Among the various improvements going on in our city, we notice a large and excellent blacksmith's shop erected at the rear of President Young's buildings. This is the largest forge in the Territory, and a great quantity of work can be turned out by some of our best workmen in that line.

### Latest by California Mail.

The Tehuantepec route is open, and it is expected that the trip between San Francisco and New Orleans will soon be made in 14 days.

The telegraph is in working order from Placerville to Genoa, Carson Valley.

An earthquake shook buildings, upset furniture, cracked ceilings and stopped clocks in San Francisco, Nov. 26; it also visited Stockton, Petaluma and other contiguous localities.

INDIANS AT EL PASO.—It is stated that the Camanches are doing much damage east and north of that place; the Navajoes are doing their worst in New Mexico, and the Apaches are troublesome.—[Sac. Union, Nov. 12.