

[REPORTED.]
THIRD JUDICIAL DISTRICT
COURT.

WEDNESDAY, August 10, 1899.

Court opened by the marshal.

Relative to the case of Williams vs. Hennefer, Mr. Williams said that he was unable to furnish the bill of particulars as promised, having been so unfortunate as to lose his journal and day book of that year, and therefore he asked leave to withdraw the papers to amend them, which was granted by the court.

Mr. Blair gave notice that at an early day he would file a motion for the discharge of Thomas Colbourn.

The case of Charles M. Drown vs. William A. Hickman was called, and by consent of parties tried without a jury.

Josiah Arnold was sworn and examined on the part of the plaintiff, and Wm. and Louis Hatch, Morris Mecham and Terry for the defendant.

Mr. Williams addressed the court for the plaintiff, and Mr. Miner for the defendant. The defense claimed that the note had been paid in California, and that plaintiff had neglected to destroy the note on his return to G. S. L. City. Judgment for the plaintiff.

Mr. Blair moved for a severance of trial in the case of the people vs. Henry E. Phelps and Henry Spiers, and that Spiers be tried that afternoon.

Court directed a venire to be issued for twelve qualified persons to serve as jurors, returnable at 2 1-2 p.m., to which hour the court took a recess.

2 1-2 p.m.

Court resumed its session.

The case of Bradford Leonard vs. John Bair, argued on yesterday, was called up, and judgment rendered as per prayer of the petitioner for \$743.

Mr. Blair gave notice that he would file a motion for a new trial in the case of Drown vs. Hickman; he also withdrew his motion for a severance of trial in the case of the people vs. Phelps and Spiers.

The prisoners Henry E. Phelps and Henry Spiers were arraigned for trial, charged with robbing Charles F. McCarty in Oct. last of \$165 dollars.

The court then proceeded to impanel a jury, and the result was as follows:

Royal Barney, accepted.

Archibald N. Hill, accepted.

Ami R. Jackman, had formed an opinion.

John R. Clawson, challenged peremptorily by defense.

Daniel Wood, challenged peremptorily by defense.

Lewis Robison, accepted.

John Quincy Knowlton, accepted.

Samuel Snider, accepted.

Chester Loveland, accepted.

S. D. Sirrine, challenged peremptorily by defense.

Charles M. Donelson, had formed an opinion.

Joseph Woodmansee, accepted.

Court ordered the marshal to summons talesmen to fill the panel.

Charles A. Kinkead, challenged for cause by defense.

John M. Moody, challenged peremptorily by defense.

Mr. Williams said it had been customary to adopt the common law rule in regard to the number of challenges for jurors, and he wished the court to make a ruling to the same effect.

His honor tersely replied, I rule that the statutes control the common law.

D. W. Sirrine, accepted.

Henry Woodmansee, accepted.

Luther Twitchell, accepted.

Heber P. Kimball, challenged peremptorily by defense.

Court issued an attachment for Mr. McCarty, the prosecuting witness in the case before the court, he having wilfully neglected to appear.

Marshal Dotson returned in a few minutes and brought with him Mr. Louis Simmons, who, after being sworn, stated that he had heard Mr. Williams tell McCarty to go away to some place south of where he was then standing in Main street.

On hearing the foregoing statement the judge felt and expressed himself indignant at Mr. Williams' unwarrantable proceeding. To the gentlemen accepted as jurors his honor remarked:

Gentlemen of the jury, you have not been sworn or impaneled, but the prisoners have been arraigned, and you will not be wanted till to-morrow at 10 o'clock. The marshal will take custody of the prisoners, and deliver them over to the jailer of this county to await the order of this court, and meantime the court will enter a rule against Thomas S. Williams, returnable to-morrow morning at 10 o'clock, to show cause why he should not be disbarred.

At this juncture Mr. Williams came into court, and wished to know what was before it.

His honor replied, the court has acted upon the case, and will show you the affidavit on which the rule has been entered. You will be served with a rule, and then you can answer.

After examining the affidavit, Mr. Williams denied the charge, and said he was amply able to defend himself; he then proceeded to state his case, but the judge ordered him to take his seat.

His honor said he did not prejudge the case, but he felt it to be his duty to protect the dignity of the court.

Mr. Williams asked the court to allow the old recognition to stand for the prisoners till to-morrow morning, but the court refused, the prisoners having been arraigned.

The court required the witnesses present for the prosecution to enter into recognizance for their appearance to-morrow morning.

Mr. Williams preferred to enter into new recognizance for the prisoners till to-morrow, but his honor refused to take it, stating that he intended to have them taken care of in such a way that he would know where to find them to-morrow.

Court adjourned till to-morrow at 10 a.m.

THURSDAY, 10 a.m.

Court met pursuant to adjournment.

Mr. Williams stated that he was ready to defend himself on the motion to disbar him.

Mr. Williams was sworn, after which he made the following statement: I will state to your honor that so far as my aiding or assisting in any way, shape, form or manner in the escape of the witness McCarty, it is untrue,

which I am ready to show and prove by witnesses, and I am willing to leave it to the witness himself to say whether I furnished him any means, aid or assistance, direct or indirect, to help him to go away, and I will say that I would have given a good sum out of my own pocket to have had this witness here last evening.

Messrs. McCarty, P. A. Jackman, — Durphy and — Edmundson were sworn and examined for the defense of Mr. Williams, after which his honor said, the report was made to me on yesterday, and under affidavit, that you, Mr. Williams, had told this man McCarty, in a public place, to go down yonder, or to go to the Livery stables and get a horse. Now I take it as you have said, and as your witnesses have testified, that it was a drunken spree that the parties were engaged in. You must see that under these circumstances it was very difficult to administer the law in a court of justice, and I could not do otherwise than enter a rule against you, but I am perfectly satisfied that you have exculpated yourself from the charge, therefore you are not disbarred.

Mr. McCarty, against whom an attachment was issued on yesterday, was fined the costs of the proceeding.

The Court resumed the impanelling of the traverse jury. Josiah Arnold, challenged peremptorily by defense. Charles M. Drown, accepted.

N. V. Jones, challenged peremptorily by defense.

Matthias Cowley, excused by the court.

Morrison Mecham, accepted.

The jury were sworn by fours.

The judge instructed the jury in relation to the trial of the cause before them.

Hosea Stout, Esq., conducted the prosecution, Gen. Wilson being sick and not able to attend court, and opened the case to the jury, and Mr. Williams opened for the prisoners.

Charles F. McCarty, Richard James, M. Phippin and Joseph Whitmore were sworn and testified on the part of the prosecution.

After which the court took a recess for half an hour.

2 p.m.

Court resumed its session, and proceeded to hear the testimony for the defense.

Messrs. Miner and Williams addressed the jury on behalf of the prisoners, and Mr. Stout for the prosecution. While Mr. Stout was speaking to the jury, Mr. Williams interrupted him several times, for which the court ordered him to take his seat.

The grand jury came into court and presented two bills of indictment.

The judge then charged the jury, in the case of Phelps and Spiers, instructing them in the important duties they had to perform; pointed out to them the law upon the subject and cause before them, the provision of the statute relative to a jury being agreed.

The jury retired a little after seven, and returned into court again at ten minutes past nine to get some further instruction from the judge.

The judge informed the jury that it was their special province and particular duty to decide upon the case according to the nature and strength of the testimony, and not his at all. The constitution of courts are such under our government that it is your province to deal with these matters of fact, to hear the evidence and decide what its effect is.

The jury retired, and shortly afterward sent into court to have parties dispersed that were hanging around their room.

The judge ordered the marshal to disperse all parties found around the jury room, and if they were again found attempting to invade the sanctity of the jury room to arrest them, and bring them before him.

At five minutes to eleven the jury were called into court and asked if there was any probability of them agreeing in a verdict; the foreman replied in the negative.

Mr. Pearson was sworn as bailiff to take charge of the jury for the night, and the court adjourned till to-morrow morning at 10 o'clock.

FRIDAY, 10 a.m.

Court met pursuant to adjournment.

Mr. Ferguson filed an answer in the case of Burr vs. Young and others.

Grand jury came into court and his honor thus addressed them:

Gentlemen of the grand jury, on yesterday I addressed you some remarks, and I understand that in the minds of some they were taken as a reproach; they were not so intended by me. The circumstances were extraordinary, and went to show the condition of things outside this house, and my remarks were not intended for any other purpose, for you could not possibly have instituted an inquiry into the subject that I then addressed you upon; but I did think it a proper occasion, in a public charge, given publicly, to throw the influence of this court in favor of law and order. That is exactly what I meant, and nothing more. I said that a man that you yourselves had found a bill against had been brought here, and that he had been shot down in the street; that all the rights of the law had been overridden. I did not make these remarks vindictively towards any one, but to vindicate the common forum of justice, which under our government ought to be understood.

I regret that such an impression has been made upon the minds of some of the members of the grand jury, for had they considered it they could have seen that no imputation had been thrown upon them.

I intended to give the grand jury information regarding the occurrence, but I did not intend to impute anything to them, for they have discharged their duties with great assiduity and dispatch, and have kept proper relations with the court; yet this man having been brought up here by proceedings that they had instituted, I did not think it proper to discharge them until the full course of the law had been instituted.

In circumstances like these eliciting private feeling and causing a general excitement, the surest way, in my judgment, of calming all such turbulence and of putting a stop to all such deeds is to make the law as vigorous as possible, and to let it go to its utmost pitch.

We cannot approach the discussion of these things in a court of justice, surrounded with all its sacredness, with violent passion; we must approach them with the calm deliberation of reason, and let justice be done.

Sitting here under the authority of the United States, I have to say to you that I am for law and order. I have nothing more to say to you, gentlemen of the grand jury.

Mr. Wells said, in explanation for the grand jury, we did not come into court on yesterday with the expectation of being discharged, and we think the court is laboring under some mistake.

His honor replied, the report was that you had no further business.

Mr. Wells answered, it was a mistake; the grand jury did not wish to make that report.

The grand jury retired, after which the traverse jury were called; all present. The foreman presented their verdict, in substance as follows:

We, the jury, find the prisoners, Henry E. Phelps and Henry Spiers, guilty as charged in the second count of the indictment, and we assess the term of Phelps' imprisonment at three years, and that of Spiers at two years in the penitentiary at hard labor.

The jury were polled and all answered affirmatively.

The prisoners were remanded to jail to await sentence. His honor then discharged the jury.

Mr. Blair made a motion for a new trial in the case of Drown vs. Hickman.

Mr. De Wolf asked leave to withdraw the suit of Benjamin Halliday vs. James M. Dyer, which was granted.

Court took a recess till 3 o'clock.

3 P.M.

Court resumed its session.

Messrs. Miner and Williams filed a motion for a new trial in the case of the people vs. Phelps and Spiers; asked to have the prisoners brought into court.

On the arrival of the prisoners, Mr. Miner proceeded to argue the motion for a new trial, and contended that Henry Phelps was indicted by the grand jury, but that Henry E. Phelps was the person found guilty.

Morrison Mecham and D. W. Sirrine were sworn and examined relative to the conduct of the jury. Mr. Mecham said he could only testify to having seen one person at the jury room window, and that was Mr. Miner. Several questions were asked in relation to the separation of the jury, at the end of which his honor said:

I understand the whole operation, gentlemen. It is known to me that the jury separated; they sent me a sealed verdict, and it is well known to me that the jury formed their verdict, sealed it up and sent it to me by the marshal, and they came into court this morning to formally present their finding.

Mr. Miner offered to make a statement to show why he was near the jury room window.

The judge remarked, Well sir, I intend to disbar you; no man shall practice at this court that will do such things, while I preside here. You shall have an opportunity to defend yourself at the proper time.

Mr. Stout called upon Mr. Lewis Robison, who testified that he saw Mr. Williams at the jury room window.

Mr. Williams called Mr. Ferguson to prove that a buffalo robe was brought by witness to Mr. Robison, and then asked Mr. Robison if he did not intend to tell there and wear that jury out?

The judge told the witness that he need not answer that question, and then said to Mr. Williams, Your are assailing the integrity of that jury; they have some responsibility and you cannot ask questions that will disgrace them.

Now, sir, it is very strange to make such remarks. To say that Mr. Robison intended to wear them out by hanging on, it is a very improper question to ask. God only knows what his intention was, and to say what his intention was is saying something that nobody but God knows, except he manifests it by his acts. We do not sit to try what men's intentions are, but we sit to try their acts.

I do not know anything about Mr. Robison, but I must conduct the court properly.

Mr. Williams wished to introduce Mr. John Lyon to prove that he was driving people away from the window, but the court informed him that he was not on trial.

His Honor said, I have no right to deny you a hearing by counsel, but I will take this case under advisement and give my decision in the morning. The dignity of courts must be protected, and its whole process must not be brought into mere chicanery. Law is law and it is not a mere system of tricks.

These remarks are not intended for you personally, but they are intended for this case; it is an extraordinary case, and, after having listened with care, I perceive that there is an extraordinary string of affairs in connection with this case, an attempt to put that jury in such circumstances as would ensure a good chance for a new trial. God knows it is a fact, and every body here knows it is a fact, and I, sitting here to represent the government, cannot and I will not allow such conduct.

Mr. Williams said that they relied upon the statute to grant them a new trial, and then read the statute; also to page 201 of Bonvier.

The judge cut the matter short by the following pointed remarks, Well, now, I am just as familiar with that statute as you are. I will end this matter very soon. I think there has been sufficient irregularity in this proceeding to warrant me in setting aside this verdict and direct a new trial, and I do upon your motion set aside this verdict and direct a new trial, and order these parties to jail without recognizance.

Mr. Stout observed, With my knowledge of the case, and of the whole nature of the affairs, I am perfectly satisfied that this thing has been so managed as to set aside the verdict of the jury.

His Honor further remarked, I order these prisoners to close custody, and I will work out the result of this affair. In the meantime Mr. Clerk, issue a rule against Aurelius Miner and Thomas S. Williams, returnable to-morrow morning at ten o'clock, to show cause why they should not be disbarred.

Court adjourned till to-morrow at 10 a.m.

SATURDAY, 10 a.m.

Court met pursuant to adjournment.

Mr. Smith made a motion to quash the indictment in the case of the people vs. Pike. Pike had been indicted by the grand jury for an assault with intent to kill, on one Howard Spencer. Mr. Smith contended that the offence was committed on the military reserve in Rush valley and that it was not within the jurisdiction of the court.

Mr. Stout, in replying, stated that there was not a foot of land in the Territory but what was government or public domain, and contended that the court had jurisdiction over that reserve.

The judge preferred to take time to consider the motion, as it involved questions of great moment.

In the case of John M. Wallace vs. Jeter Clinton, Mr. Miner asked that the prohibition be rendered perpetual.

His honor said that it appeared Mr. Wallace had been prosecuted before the Justice for keeping a gambling house, but that there was an unwarrantable jurisdiction; that page 29 and sec. 4 of Revised Laws of Utah limited the authority of Justices of the Peace, that a Justice could not be permitted to take up cases out of his jurisdiction and fine a man \$99 and so many cents and thus cover it up. Therefore the court entered a prohibition against Mr. Clinton proceeding further in the case.

Several members of the petit jury were fined to the amount due them for non attendance upon the court.

The rule to disbar Aurelius Miner and Thomas S. Williams was called up and the following witnesses were examined: John Bigler, Morrison Mecham, J. V. Long, G. W. Sirrine, Lewis Robison, James Ferguson, M. J. Shelton, David Candland and John Lyon.

After hearing the case his honor said, well, gentlemen, I do not intend to enter a formal order to disbar you, but I will say that you, as lawyers, have no business with the jury; and while I myself have often felt an interest in clients, and while I know the interest that attorneys feel in cases, yet there could be nothing that could justify you in taking the steps you took; your conduct was highly reprehensible, and I will say that I shall expect that you will in your future conduct show that you have been benefited by this reproof that I find it my duty to give you. You are not disbarred.

Court took a recess till 3 p.m.

3 p.m.

Court resumed its session.

The court quashed the indictment in the case of the people vs. Pike, a sergeant in the army.

Court adjourned till Monday at 10 o'clock.

MONDAY, 10 a.m.

Court met pursuant to adjournment.

Robert Scholes was admitted a citizen of the United States, on the testimony of Wilford Woodruff and Seth Rigby.

Court adjourned till to-morrow at 11 o'clock.

TUESDAY, 11 a.m.

Court met pursuant to adjournment.

Mr. Blair presented and argued his motion to discharge Thomas Colbourn.

Court overruled the motion to discharge the prisoner, Colbourn, and took time to consider the propriety of admitting him to bail.

Richard S. James, Jacob Swart and Benjamin D. Spencer, for having failed to attend regularly; were each fined the amount due them for services rendered on the petit jury.

The case of John Hartnett, agent for Farmington, Johnson & Co., of St. Louis, vs. Enoch Reese, in chancery, was called.

Messrs. Blair and Appleby appeared for Mr. Reese, and asked what the ruling of the court would be in relation to filing an answer?

His honor directed an answer to be filed immediately, and set the hearing of the case for Thursday.

Court took a recess till 3 p.m.

3 o'clock p.m.

Court resumed its session.

Respecting the adjournment of this court to give place for that of the first district, His Honor said he should adjourn for two or three weeks to give the attorneys a chance to arrange their business; then he would resume the term and, if necessary, sit till the first of November. It was not his intention to leave parties in prison; if the Territory neglected to get up the evidence for the prosecution, he should give the parties a trial. He also informed the members of the bar that Wednesday, Thursday and Friday would be occupied with civil cases and that the court would adjourn on Friday evening to allow two days to go to Nephi.

The court also instructed the marshal to see the grand jury and inform them that the court expects them to report to-morrow morning as to the probability of their business being concluded.

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

TABERNACLE.

Sunday, Aug. 14, at 10 a.m., Elder Orson Pratt preached on the government of the kingdom of God. Text: Daniel, chap. ii, verse 44; chap. vii, verse 27.

(The sermon will be published.)

In the afternoon, Elder John Taylor took up the subject of the establishment of the kingdom of God in the last days, and ushering in of the reign of righteousness. Dwelt at length on the restitution of all things spoken of by the prophets; also on the foundation of all human law.

THE GRAND JURY SYSTEM CONDEMNED.—The last grand jury of Santa Clara county, Cal., says the Sacramento Union, thus denounced the system under which they were empaneled:

"The question of the utility of the 'Grand Jury' in our system of jurisprudence has been discussed by statesmen and jurists, both in England and America, for a long time past. The attention of the people of this State was called to its uselessness by the present chief magistrate of this State in his last annual message; and from our own observation and experience of its cumbersome, uncertain and expensive workings, and its inefficiency as a means of protecting the innocent and punishing the guilty, we believe it not only useless and an evil, but a nuisance, and most respectfully and earnestly ask your honorable court to use your influence to have the constitution of this State, with regard to grand juries, so altered as to have a law passed abolishing the grand jury system entirely, and as soon as possible, and let some other more simple, certain, speedy and direct system be adopted."