THE DESERET NEWS.

TRUTH AND LIBERTY.

No. 50 Salt Lake City, Wednesday, December 30, 1885. Vol. XXXIV

ESTABLISHED 1850.

DESERET NEWS:
WEEKLY,
PUBLISHED EVERY WEDNESDAY.

One Copy, one year, with Postage, $3 50
" " six months, " 1 75
" " three moths, " 90

—o—

DESERET NEWS:
SEMI-WEEKLY,
PUBLISHED EVERY TUESDAY AND SATURDAY

One Copy, one year, with Postage, $4.00
" " six months, " 2.00
" " three months, " 1 00

—o—

EVENING NEWS:
Published every Evening, except Sunday.

One Copy, one year, with Postage, - $10 00
" " six months, " - 5 00
" " three months " - 3 00

—o—

TERMS—IN ADVANCE.

OFFICE—Corner South and East Temple Sts.

LOCAL NEWS.

FROM TUESDAY'S DAILY, DEC. 22

Scarcity of Game.—The Idaho papers complain of the unusual scarcity of game this winter, and are at a loss to know how to account for it. They say there is not one deer to be found at present where there were ten last year—in fact, not one now in ten square miles of country.

Earthquake at Circleville.—By letter from a correspondent of Circleville, Piute County, we learn that a shock of earthquake was felt at that place about 6 o'clock on the evening of the 16th inst., which caused the dishes and furniture in the houses to vibrate and rattle for a few seconds. Its course was from the southeast to the northwest.

The health of the people in Circleville is reported to be generally good and the weather pleasant for the time of year, there being no snow in the valley.

Bound Over.—Brother N. H. Grosebeck, who was arrested at Springville yesterday by deputy marshals Miles Mix, T. G. Smith, Charles Redfield and D. C. Huntington, on a warrant issued by U. S. Commissioner McKay, was brought to this city, together with Cornelia M. Sanford, Kate Houtz, Rhoda R. Groesbeck, Wm. Jesse Groesbeck, Jacob Houtz and Bridget Houtz, who were subpœnaed as witnesses, and taken before Commissioner McKay last evening, where, after consultation with his counsel, F. S. Richards, he plead guilty to the charge of cohabiting with his wives and was bound over in the sum of $1,500 to await the action of the grand jury at the February term of the First District Court. The complaint was sworn to by Marshal Ireland. The sureties are his brothers, William and John A. Groesbeck.

The Insanity Dodge.—The daring train robber, John Smith, who, a little more than two years ago, held up and went through a freight train near Richmond, Cache County, was sent to the insane asylum last week. Smith has most successfully worked the insanity dodge.

While Smith was in the Penitentiary, he made two or three attempts to run the institution. At one time he became entirely unmanageable and the officers could no nothing with him; he paid no more attention to pistols than he would to pop guns; but when the guards were supplied with police clubs, Smith cooled down. The act of holding up the train was a bold feat and demonstrated what one armed man could do with a half dozen men who were unarmed. The officers who arrested Smith will not be convinced that Smith is insane. He will probably recover as soon as he gets a good opportunity to leave the asylum.—*Ogden Herald.*

Beaver Court.—The following was received to-day per the Deseret Telegraph Company:

BEAVER, Dec. 22, 1885.

Editor Deseret News:

The Court postponed Bickley's case till next term, and then adjourned until 10 o'clock to-day.

When the jury brought in a verdict against James E. Twitchell they recommended him to the mercy of the Court, but notwithstanding this fact Judge Boreman sentenced him to six month's imprisonment in the Utah Penitentiary, and to pay a fine of $300 and costs of trial, and to stand committed until payment be made.

Bishop Culbert King who had three indictments found against him on the segregating principle, by mutual arrangement of the attorneys, pleaded guilty to one indictment and the other two were waived and stricken off the calendar. He was sentenced to six months' imprisonment in the Utah Penitentiary with $300 fine and costs, and the usual stipulations as to standing committed, etc.

Judge Boreman asked if the prisoners had anything to say, but they did not care to talk.

They will leave for the Penitentiary this morning in charge of Deputy Marshal Gleason.

A jury is now empaneled to try the case of the Territory vs. Marshal.

MOONSHEE.

Grand Jury.—The open *venire* process worked like a charm in securing a grand jury to the liking of the crusaders, judging by the alacrity with which the body was empaneled in the Third District Court this morning. Twenty names were returned by the Marshal, and the following were called.

John Hinman,	C. P. Mason,
B. B. Van Deusen,	Palmer DeLong,
Chas. Read, Foreman,	Hermann Bamberger,
Geo. Davis,	Wm. McRae,
F. O. Horn,	W. P. Rowe,
Chas. Sickler,	Geo. Husler,
H. T. Duke,	Harvey Hardy,
	Solomon Siegel.

These were sworn, and answered the statutory questions collectively. Each one was then interrogated separately as to his belief in the rightfulness of polygamy or unlawful cohabitation, and all replied in the negative. Charles Read was sworn as foreman, and the others were accepted.

The Court then charged the grand jury, instructing them to diligently inquire into and due presentment make of all public offenses committed within the Third Judicial District. They should take only legal evidence, and not receive testimony actuated through malice, hatred or ill-will; they should examine closely witnesses actuated by fear or favor, or affection for the man whose case was being investigated. The offenses to be inquired into were named in the statutes, and they should indict wherever there was a probability of guilt; they had no discretion in this; the grand jury could not compromise with crime, or let a man go because he had promised to do better; if the evidence was insufficient they should not indict. Their special attention was called to polygamy, which the Court alleged was a common crime *in this Territory, committed under the cloak of religion, notwithstanding* it was prohibited by law; in proving marriage it was not necessary to have a record, or that the evidence should be that of an eye witness; the marriage was as at common law, and could be proved by the admissions of the parties, or by certain circumstances. The offense of unlawful cohabitation was the living of a man with two or more women in the habit and repute of marriage; it was not necessary to prove sexual intercourse, or continuous living together; it was the holding out to the world of more wives than one. It made no difference that the act was committed under the guise of religion. The offense was taken cognizance of by the law when the overt act was committed and not when only the intent existed. The intent might disqualify from certain duties, but was not punishable. Other crimes were the keeping of houses of ill-fame, living therein, or resorting thereto for lewdness. These institutions tended to make brutes of mankind; there people were invited to indulge their passions for the gratification of lust. This gratification brought man to the level of the lower animals. Laws were made for the suppression of lust, and polygamy, unlawful cohabitation and frequenting the places named were for the gratification of the baser passions. If there was sufficient evidence, the keepers of houses of ill-fame, those who lived therein or resorted thereto, should be indicted. The court had heard it stated by men who had served on juries that they were sought to be influenced through improper motives, [illegible] of injuring their property or business. Jurors had better be shot down on the streets than be influenced by such infamous motives. "If any man attempts to harm you, defend yourselves. If any man assails you, if it is necessary to kill him to save your own life, shoot him down; but be careful you make no mistake. It is your duty to protect yourselves within the limits I have now stated."

At the conclusion of the Judge's charge, the grand jury retired.

B. Y. HAMPTON'S TRIAL.

HOW IRELAND PACKED THE JURY.

"NO 'MORMONS' NEED APPLY."

After the impanneling of the grand jury in the Third District Court this morning, the case of the People vs. B. Y. Hampton, charged with conspiracy with Mrs. Fields, to entice the "moral" F. O. H.'s from the paths of "virtue," was taken up. Judge Hoge interposed the following challenge to the panel of jurors:

"Said defendant hereby challenges the panel of jurors now here returned into this court for the trial of this case, before any juror herein is sworn, and for cause of challenge avers:

"That said jurors were selected, summoned and returned solely by E. A. Ireland, as United States Marshal for the Territory of Utah, pursuant to a special open *venire* issued out of and returned to this Court on the 21st day of December, A. D. 1885, and not otherwise; that at the time of selecting and summoning said jurors and each of them, and prior thereto, said E. A. Ireland was biased and prejudiced against this defendant, and had formed and expressed an unqualified opinion that the defendant was guilty of the charge which said jurors were summoned to try, and that he has intentionally omitted to summon any person as a juror who is a member of the 'Mormon' Church, for the reason that the defendant was and is known to him to be a member of said Church, and intentionally selected persons as jurors whom he believed would be more favorable to the prosecution than to the defense in this action."

Mr. Varian, for the prosecution, excepted to the challenge.

The Court promptly overruled the challenge, and Mr. Sheeks stated that if the facts alleged were admitted, the defense would take an exception and pass. If not, they wished to introduce evidence to show that the allegations were true.

Mr. Varian read from the law providing that the Court should hear and determine the question, and stated that the legal jury under the statute had been exhausted, and the proceedings were now under the common law.

The Court withdrew the overruling of the challenge, and the arguments were proceeded with.

Mr. Sheeks contended that under the common law a challenge on the ground of bias against the defendant on the part of the officer selecting the jury was good. At a former term of this court another open *venire* had been issued, and had been served by the same officer, under the same circumstances. It was a well-known fact that the overwhelming majority of those eligible for jury duty were "Mormons," and the officer in selecting non-"Mormons" had shown himself "wiser than the law." His action had no appearance of fairness, in view of the feelings well known to exist in the community. The defendant could not have a fair trial before such a jury.

Mr. Varian replied at some length, arguing that many of the reasons existing at common law, requiring impartiality, did not exist at the present time, as defendants had more liberal privileges; and unless jurors violated their oaths, the jury could be purged. Formerly the officer was required to be impartial, but now the defendant had a different means of relief. The prejudice of the officer should not be held as a ground of challenge. The Marshal might by corruption change the complexion of the jury, yet it did not afford a cause of challenge. The defendant had no right to be tried by members of the "Mormon" Church. Whether the Marshal was or was not prejudiced had nothing to do with the case. He acted under his oath of office. The charge that the Marshal selected persons whom he believed would be more favorable to the prosecution than to the defense was not a ground of general challenge.

Judge Hoge contended that the question at issue was whether the charge against the Marshal was sufficiently specific, in claiming that that officer had acted so as to deprive the defendant of his right to a trial by an impartial jury. The very authority cited by the prosecution sustained the position of the defense. If the Marshal selected men who were favorable to the prosecution, it would be manifestly unfair to try a man before such a jury. The defense did not claim the right to a trial by "Mormons," but they did claim a right to an impartial jury, and not by a non-"Mormon" jury specially selected, instead of being chosen from those eligible, irrespective of religious belief. If the jurors had all been "Mormons" the prosecution would not have accepted them under the present conditions.

The Court ruled that the challenge to the list of jurors, relying on the grounds named, *i.e.*, the bias and prejudice of E. A. Ireland, Marshal, did not specially relate to the present list of jurors, as the names had not been selected for this special case, but for the term. The intention of the law was to provide an impartial jury. The clerk of the district court and probate judge were designated to select the jurors, perhaps because it was thought the partiality of the one would weigh against that of the other. This jury had been selected by the Marshal, and the law contemplated that he should act impartially. The questions as to whether or not the jurors belonged to any church was not a question. There was one material fact stated, charging the Marshal with selecting jurors whom he believed favorable to the prosecution, and if he had done so the jury should be withdrawn. The fact that he had a belief in the guilt or innocence of the defendant cut no figure in the case. The challenge was overruled, except as to the charge that the Marshal was guilty of impartiality.

Mr. Varian denied the challenge, in that particular, for the prosecution.

Marshal Ireland was called as a witness by the defendant, relative to the ground of challenge. He testified that as U. S. Marshal he had charge of serving the open *venire*; he understood the defendant was to be tried at this term; had named some of the jurors selected; thought he acted impartially in the matter.

Mr. Sheeks asked whether the Marshal knew that all the jurors were not members of the "Mormon" Church, of which defendant was a member. This was objected to by the prosecution, and the objection was sustained.

Witness Ireland had no feelings against the defendant; talked with the witnesses in the case; had no bias therein; did not select men particularly because he thought they would convict; had summoned the jury on open *venire* at last term.

Mr. Sheeks—Did you not select men whom you knew were opposed to Mr. Hamption, politically and religiously? Objected to and objection sustained.

Marshal Ireland said he did not select men whom he thought would be favorable to the prosecution; he never asked a man what church he belonged to; his aim was to get competent men; it had entered into his mind that the men selected belonged to the anti-"Mormon" element. "I aimed not to select members of that particular faith, because I do not think they would be impartial jurors." He thought the others would be fair to both sides, according to the evidence; did not consider they would have any inclination against the defendant. "I omitted to select 'Mormons' because I thought they would not be impartial, although they are in the majority; I know none who are competent jurors in this case." This was done because the defendant belonged to that class; had formerly selected a jury for this case, and followed the same rule, for the same reason; had not talked with any of the jurors, or heard them express an opinion, that he remembered; Captain Greenman assisted to make up the list; he thought the "Mormons," as a rule, were not good jurors; did not do this because he wanted to see the defendant convicted; he had an opinion on the subject, and had talked with one or more of the witnesses.

Cross-examined by Mr. Varian.—Witness had given the matter considerable thought, that he might select men who had not expressed an opinion; had not talked with any of them subsequent to their names being placed on the list, nor did he remember any former conversation; his deputies made the service.

By Mr. Sheeks—Had in view principally this case when the selection was made; if a man was loud in talking of the case, he would leave his name off.

The challenge was submitted, and was promptly overruled by the Court.

The jury were then called, as follows:

S. C. Ewing, Chas. W. Watson, T. J. Almy, J. P. Keats, Jas. Glendenning, Geo. S. Ellis, Isaac Hazelgrove, A. C. Brixen, Fulton Haight, Chas. W. Lyman, Wm. McQueen and J. M. Darling.

Judge Hoge examined the jurors for the defense.

S. C. Ewing had heard and read of the case, and had formed an opinion; did not know whether or not it was unqualified, not understanding the term; it would take testimony to remove that opinion. Challenged by the defense.

To. Mr. Varian—Had read the newspapers; knew nothing of the facts outside of that; his opinion depended on the truth of what he had read; if sworn as a juror he would decide according to the evidence, without having been prejudiced or biased by what he had read; would put aside what he read in the papers. Challenge denied by the prosecution.

To Judge Hoge—Had formed an opinion which it would take testimony to remove, and would go into the jury box with that impression on his mind.

To the Court—Had not talked with any of the witnesses, but heard what was common rumor.

To Judge Hoge—The papers had stated what purported to be the facts, and these facts were discussed; knew of no reason why he did not believe those facts; thought the evidence was against Mr. Hampton; had no personal bias against the defendant; was biased in favor of the prosecution in this case.

To the Court—Had based his opinion on what he read and heard; he would be governed by the evidence, and his opinion would not influence his verdict.

The Court overruled the objection, and the defense took an exception.

Chas. W. Watson, of Bingham, had heard and read of what purported to be the facts; had formed an opinion which it would evidence to remove. Challenged.

To Mr. Varian—Had only gathered the facts from the newspapers; his opinion was qualified; would try the case on the evidence. Challenge denied.

To Mr. Sheeks—Believed what he read to be true, and had expressed an an opinion, without qualification.

The Court sustained the challenge, and the juror was excused.

The Court then took recess until 2 p.m.

This afternoon the work of securing a jury was continued. T. J. Almy had formed and expressed an opinion, which it would take evidence to remove. He was challenged by the defense. The challenge was denied by the prosecution, and was overruled and the juror was accepted. The defense excepted.

James P. Keats and James Glendenning had not expressed an opinion, and were passed.

George S. Ellis had expressed an opinion; was challenged and the challenge refused. The juror was accepted.

Isaac Hazelgrove had heard and read of the case; also read the grand jury report, and Mr. Varian's speech in this class of cases; had expressed an opinion; had no bias; it would take evidence to remove his opinion; read and believed the prosecuting attorney's speech in the court in these cases. Challenged; challenge denied and overruled, and the juror was accepted.

A. C. Brixen had heard and read of the case, but had not formed or expressed an opinion; had no bias or prejudice. Passed.

Fulton Haight had formed and expressed a qualified opinion; had no bias. Passed.

C. W. Lyman had formed and expressed an opinion; it would take evidence to remove his opinion; could not say whether or not he was biased; did not think he was. Passed.

Wm. McQueen had read and talked of the case, but had no opinion about it; was biased and prejudiced; did not think he would make a competent juror. Excused.

J. M. Darling had heard of the case, and had formed and expressed a qualified opinion; had read the prosecuting attorney's statement, and believed a portion of it; had no bias in the case. Passed.

James Glendenning and S. C. Ewing were peremptorily excused by the defense. This left eight jurors who were sworn.

J. L. Durgin, Samuel Paul, H. W. Lawrence and Julius Malsh were called.

J. L. Durgin had heard and read of the case, and had formed and expressed an unqualified opinion; was biased and prejudiced in the case. Challenged and excused.

Samuel Paul had formed a qualified opinion; was not biased in the case. Passed.

H. W. Lawrence had formed and expressed an opinion which it would take evidence to remove; had no prejudice against the defendant. Challenged; challenge denied and overruled, and the juror accepted.

Julius Malsh had formed and expressed an unqualified opinion. Challenged and excused.

H. W. Lawrence was premptorily excused, and Samuel Paul was sworn.

John J. Duke, C. A. Dahl and T. E. Harper were all passed and sworn, completing the panel.

Mr. Varian then began his opening address to the jury.