THIRD DISTRICT COURT.

On Thursday, the 19th, the court met pursuant to adjournment.

Joseph Holladay was arraigned on an indictment for manslaughter. Upon inquiry being made by the Court if the parties were ready for trial, Mr. Appleby filed an affidavit setting forth that the defendant could not safely go to trial in the absence of three important witnesses, viz., Messrs. Street, Chapman and Lloyd.

Mr. Ferguson asked why the subpenas issued had not been served.

Gen. Hughes replied that the witnesses were away west on business for the mail company, but he felt sure that they could be present at the next term of court.

The Grand Jury came into court and presented indictments against the following individuals to wit: Peter Klimgard, Christian Neilsen, Richard Cook, John Parsons, Abraham Taylor, Kadrup Neilsen, Jans Christiansen, Andrew Lee, Andrew M. Mason, John E. Jones, for murder; and against Peter L. McCue and some ninety others for resisting process.

The Court having ascertained that there was no further business before the Grand Jury, discharged them with the compliments of the Court for their assiduity and faithful performance of their duties.

After due consideration of the matter, the Court decided that the case of the People *vs.* Holladay should be continued, provided that security be given in the sum of $10,000, for the defendant's appearance at the next term of the Court.

Mr. Charles J. Schultz made application for leave to appear as special counsel for the defendants in the case of the People *vs.* Klemgard and others, and in the case of the People *vs.* McCue and others, as he was not a member of the bar, which the Court granted, and the usual oath in such cases was administered to him by the clerk.

His Honor asked if the defendants were ready for trial.

Mr. Schultz answered that they were not, and asked for time to prepare.

Those indicted for murder were then ordered into the custody of the Marshal.

Mr. Ferguson moved that Hon. Frank Fuller be admitted a member of the bar. The Court thereupon appointed Messrs. Ferguson, Gibbs, Hughes and Miner a committee of examination, to report on Monday in relation to the qualification of said applicant.

Court adjourned till Monday at 10 a.m.

Monday, March 23, 1863.

Record of Thursday was read and signed by the Judge.

James Bond was admitted a citizen of the United States.

The persons connected with the South Weber difficulties, indicted for murder and for resisting process, were brought into court and duly arraigned. All pleaded not guilty.

Schultz and Appleby, counsel for the defendants, filed a motion to quash the indictment, in the case of those indicted for resisting an officer.

Mr. Appleby made a long speech in support of the motion.

Mr. Miner replied in a brief, pointed and ironical speech.

His Honor Judge Kinney then made the following ruling:

An indictment has been presented against a number of individuals, some eighty or ninety of them, and to that indictment a motion is filed, entitled a motion to quash.

The first reason stated is, that the Grand Jury was not a legal Grand Jury of the District. In support of this the statute is referred to, requiring the Clerk of the County Court to append to the names of Grand Jurors selected to serve as such, their occupations and residence, and it is attempted to be shown that that statute has not been complied with. A certificate is introduced from the Clerk of the County court that does not show a strict compliance with the letter of the law.

In the first place I wish to say that that statute points directly to the officer and, as a general rule, it should be observed. And in regard to that part of the statute which refers to the selecting and summoning the Grand Jury, it is stated that that has not been complied with. There is a mode by which a remedy can be had, when such is the case, and that mode is just as necessary to be resorted to as anything else in jurisprudence. What is that mode?

I lay it down as a general rule that, if you desire to take advantage of the manner of selecting a Grand Jury, you must do it by a challenge to the array, or by plea in abatement. In the first place it should be by a challenge to the array before the indictment is found; the plea in abatement should be made after the indictment is found.

These men were all required to appear at this term of court. They had a right to examine that list of Grand Jurors when the venire was returned. The manner in which the Grand Jury were selected could then have been ascertained, and, if they desired to challenge the array, then was the time, and failing to do this at that time after the indictment is found and the party is arraigned and has pleaded to that indictment, it can then only be taken advantage of by plea in abatement. This I hold to be a general and well settled rule of law, where they have statutes similar to our own, requiring the observance of a particular formula in the selection and empannelling of Grand Jurors.

In support of that, and as this is an important question; and also that gentlemen may be enlightened upon the question I will read:

In North Carolina the doctrine exists, that after plea pleaded, objections are too late; and that when the objection goes to the manner of drawing, it should be taken by challenge to the array. Such is undoubtedly the English law, as well as that existing in most parts of the United States.—[Archibald's Criminal Law, Section 472.

This is the New York practice. So you see that the doctrine is laid down that the advantage to the Grand Jury, if any is sought, by challenge to the array, must be taken before indictment and plea.

A plea in bar or in abatement can be made after indictment, and then judgment is entered upon demurrer. But we have not here either a plea in abatement or in bar, no challenge to the array, but merely a motion to quash, and I think there is no precedent or authority that will authorize such a pleading after the indictment, arraignment and plea. You waived your right at the empannelling of the Grand Jury, and have been indicted, arraigned and pleaded, and I think there is no authority that will now authorize the Court to quash in consequence of the informality of the Grand Jury.

It is also said that talismen have been introduced on this Grand Jury.

§ 467. Where on the first day of the term of a Circuit Superior Court, a grand jury was empannelled and sworn, and proceeded in discharge of its duties, but next day, it was discovered that one of the grand jurors wanted legal qualification, upon which the court discharged him, and ordered another to be sworn in his place, it was held that this was regular, and the grand jury was duly constituted.—[Wharton's Criminal Law.

The Court went so far in that case that after the Grand Jury was empannelled and sworn and were acting in the discharge of their duties, it was then ascertained that one was not a legal Grand Juror. The Court thereupon introduced a stranger upon the box, and yet the Court ruled that that was no legal objection, although the Grand Jury had been acting in the discharge of their duties two days, one of their number not being qualified to act as such.

What was done here in this case? Previous to the empannelling one or two of those selected to serve on the Grand Jury were released because of sickness and others placed in the box in their stead, and if the law would authorize a Court to discharge one man after having been in the box two days, how much more has a Court a right to select talismen to fill the places of those who have been summoned for the purpose, but discharged for cause.

It is then said that the Territorial Marshal is not legally appointed, that the organic act of this Territory requires that he shall be nominated by the Governor, and then appointed or confirmed by the Legislative Council. Then it is stated that the Marshal now acting in this court has not been so appointed. How this is the Court knows not. It is sufficient for us to know that he is the officer of this court; and whether *de jure* or not, he is *de facto* and is recognized as such by the Court, and his acts are not void while acting as such. So far as the Court knows, he is legally appointed and properly qualified.

I recollect a case where a constable failed to give bonds, but he was recognized by the Justice and his acts acknowledged. On the case being argued the Court said it was enough for the Court to know that he was the officer *de facto*.

Whether Mr. McAllister has been qualified the Court knows not, but it presumes that he has. The Court knows that he is the *de facto* officer of this court whether *de jure* or not, but if he were not, that would not render his acts void.

The case in regard to the clerk is so trifling that it is unworthy of the attention of the Court.

I think this answer, under the authority of Wharton, which the Court recognizes and adopts, shows that it is too late, after an indictment is found, and after arraignment and pleading for gentlemen to move to quash the indictment on the ground that the Grand Jury were not legally empannelled.

The motion is overruled.

After some debate about which case should be tried first, it was decided that those indicted for resisting an officer should be first put upon trial.

The Jury being sworn on their *void dire* it appeared that Milton D. Hammond had formed an opinion; he was therefore set aside and Joseph B. Elder was taken in his place.

Mr. Miner addressed the Jury for the prosecution, followed by Mr. Appleby for the defense.

Robert T. Burton and Judson L. Stoddard were then duly sworn and examined on the part of the prosecution. Cross examined by Messrs. Miner and Ferguson.

Court then adjourned till Tuesday at 10 a.m.

Tuesday, 24th, 10 a.m.

Court met as per adjournment. The record read and signed by the Judge. During the reading of the record an attempt was made by the counsel for the defence to have the record amended, as it was contended that it did set forth the facts in the case, which, however, the Court cut short by calling the attorney to order.

Lot Smith, Robert Burton (of Kaysville), Jeter Clinton, William Jones, John Jensen, James Hales, Andrew Cunningham and John Sorenson were examined on the part of the prosecution. The prosecution then rested.

John Smith and Mark Forscutt were sworn and examined for the defense. They were cross-examined by the prosecution.

Court adjourned till to-day, at 10 o'clock a.m.

JUDGE WAITE AND HIS JUDICIAL PRESUMPTION.

We are not a little astonished at His Honor Judge Waite assuming the prerogative of holding Court in the Third District, when the Legislature had assigned him to the Second.

We confess we were prepared to witness almost anything from the disaffected Judge, but hardly ready to behold so strange a spectacle as a Judge assuming judicial authority in defiance of law.

The ninth section of the Organic Law provides as follows:

"The Territory shall be divided into three Judicial Districts, and a District court shall be held in each of said Districts by one of the Justices of the Supreme court, at such time and place as shall be prescribed by law, *and the Judges shall, after their appointments, respectively reside in the Districts which shall be assigned them.*"

This is a plain, unequivical provision and should be complied with by those whose duty it is to administer the law. Two months have elapsed since the Legislature assigned Judge Waite to the Second District, and yet, in place of submitting to and obeying the law, which His Honor has sworn to support we find him still in this city issuing writs and holding an examining Court.

Aside from the illegality of the proceeding, common courtesy, it seems to us, if His Honor had no regard for the law, should have operated to deter the Judge from assuming Judicial power in Judge Kinney's District.

It is well known that Judge K. is in this city, and that he has been ready at all times to attend promptly to any business that might be presented. His Clerk and records are here, and how Judge Waite, without either, can hold men to bail, and recognize witnesses for their appearance at a Court for the Third District, presents a strange Judicial enigma which, possibly his Honor may be able, out of his *vast store-house* of legal lore, to explain.

Nothing has ever characterized the American jurisprudence more than the courtesy which is manifested towards each other by the Judges of the same bench.

While, from the inexperience of this *new Judge*, we are inclined to palliate this manifest breach of judicial courtesy, we cannot but express the hope that age will bring wisdom, and that the Judge will not again commit so gross a breach of propriety.

WINDY AND STORMY WEATHER.

Wednesday last, the 18th, was an uncomfortable windy day, and clouds of dust and sand occasionally, considerably mixed with gravel were moving about in almost every direction, most of the day the wind prevailing from the south and west. In the evening there was some rain, followed by a snow storm not of long continuance, as the stars shone out before midnight. The next morning the hills were mantled to their base, but in the course of the day the snow line was removed by the operation of the sun on the south side of the lower elevations, to a point considerably higher up, the weather having been quite spring-like.

On Saturday the "equinoctal storm" commenced, snow and rain alternating for a time, the former predominating during the latter part of the day, and ere night-fall the ground was covered with a thin covering of congealed vapor, over and above what had melted, which was considerable, as the ground was not very cold, and the snow for a while disappeared as fast as it fell. Sunday was a cold, chilly, windy, uncomfortable day, some little snow falling in the valley and considerable on the mountains, from appearances. On Sunday night, there was a severe frost.

PREPARING FOR HIGH WATER.—The prospects for high water the coming summer are such, that parties having farms on the west side of the Jordan, north of the Tooele road are busily engaged in constructing a levee from the bridge, as far down as the Point of Willows, to keep the water from inundating their lands as it did last season. Thousands of dollars have been expended within the last four years to get the water out of the river to irrigate that valuable tract of land, but last year a large portion of it was submerged to that extent that it could not be cultivated. The levee which is now being constructed will, in the event of another flood, be of much benefit to the farming interests in that part of the county, as thereby the waters may be kept within proper bounds.

TO POSTMASTERS AND BISHOPS.

When the people have anything or any person saddled upon them that they cannot shake off or push out of the way, there is something like good sense in submitting to the necessity; but when it is otherwise, and nuisances can be removed or abated, we think them very remiss in their duties if they do not set their hands to work. This kind of philosophy suits us, and may be applied in a good many quarters besides that to which we now direct attention; but confining ourselves to the subject of bad postal arrangements, we plainly call them nuisances that should be vigorously attacked.

Complaints reach us almost daily of the confusion that reigns both north and south, and of the "uncertain" and "long delays" that are characteristic of certain routes. We shall not attack any person, though we think that we know where a large amount of blame could be saddled—we want a beneficial change more than a grumble, and want the attention of Postmasters and Bishops. We, therefore, suggest that as there is generally a great gathering at the April conference of persons from all the settlements, that all the postmasters in the Territory, or representatives appointed by them, meet in convention in this city during the conference, at a place and time hereafter to be designated, for the purpose of considering what changes in the present mail arrangements could be properly recommended to the Post Office Department, in order that mails may not be left for days and weeks sometimes at this or that post office, because of somebody's blundering over schedules.

We have linked the Bishops to the Postmasters for two reasons; firstly, because we think the former should be interested in the proper establishment of postal facilities between their's and other settlements, and that it can injure nothing for somebody to co-operate with the postmasters of the settlements, and see that this invitation is not made in vain; secondly, there are new settlements that undoubtedly should have postal facilities extended to them at an early day, and we think that the Bishops in co-operating with the Postmasters and *vice versa*, the abuses can be remedied, and new postal facilities afforded.

We have no axe to grind on this stone, and we do not think that any person need make any calculations for a haul at the Post Office Treasury; in the present struggles of the nation, we would rather retrench than augment expenses, therefore we mean purely business, and think that the government will listen to our suggestions for changes and to our petitions for new favors; at all events it is our duty to try. We will render what aid we can, and we know the Postmaster of this city will personally engage to see that the conclusions of the convention are properly presented to the Post Office Department, and to render any aid to the distant settlements in that branch of the public service.

Postmasters and Bishops, come prepared to represent the people, and let this confusion, uncertainty and delay that now characterizes our Territorial mails be at an end forever.

WAR NEWS.—There has not been much fighting done, so far as known, in any part of the country for a long time, and what the vast armies of the United States have been, or are doing, towards crushing the rebellion, few, if any, seem to know. Many reports have been put in circulation, within the last two weeks, concerning military movements and imminent battles, but most of them were subsequently contradicted. Southern reports state that an unsuccessful attack was made by the "Yankees" on Port Hudson, some ten or twelve days since, which may and may not be true. There is much mystery connected with the operations on the Mississippi and on the seaboard, as well as in Virginia, Kentucky, Tennessee and Alabama, and when it shall have been dispelled, it may be made to appear that the war has not ended and that the armies have not been altogether inactive.

THE FINE WEATHER.—Improve it by thoroughly preparing the ground and planting early peas, onions, radishes and turnip seed for early table use, lettuce, spinach, cress or peppergrass. Carrot, parsnip and beet seed should also be planted as early as the ground will permit; also spring wheat.