

THE REYNOLDS CASE—DECISION IN THE SUPREME COURT OF THE TERRITORY.

In the Supreme Court of Utah Territory, June term, 1876.
The United States, Respondent,
vs. George Reynolds, Appellant.
Appeal from the Third District Court.

Boreman, Justice, delivered the opinion of the Court:
The defendant was indicted for the crime of bigamy or polygamy, found guilty, and sentenced to imprisonment in the penitentiary and to pay a fine. He appeals to this Court.

The defendant filed his various pleas in abatement. The first plea raised the question of the proper number to constitute a grand jury, it being contended by the defendant that it should have been composed of any number from sixteen to twenty-three, and not of the number of fifteen members. This question has been heretofore, at a former term, decided by this Court in the matter of indictment of this very defendant for this very crime. It was upon the hearing of that case at that time in this court strenuously contended by the defendant that fifteen was the proper number to constitute a grand jury and in that view this Court coincided. He now comes into court, when an indictment has been found against him by a grand jury formed in accordance with that ruling, and says that such a grand jury, consisting of fifteen members, is illegal. The Court cannot have much respect for his sincerity of purpose in his pursuing a course deemed very reprehensible.

The action of the Court below upon the second plea was proper. The drawing of the grand jury was in pursuance of the order of the judge made therefor, and the Court being one of general jurisdiction, it is presumed, nothing to the contrary having been shown, that it acted correctly and in accordance with law. The proof, however, which we do not think it was necessary to make, shows affirmatively that all of the requirements of the law were strictly complied with. The law requires the judge to give public notice of the intended drawing. It was not necessary that this should have been published in a newspaper, but it was done in this case. The notice was certainly sufficient, as all that the law requires is a public notice by the judge.

It is alleged as error that the Court below sustained the challenge of the prosecution to the several jurors who appeared to be otherwise qualified, but who refused to answer a question to criminate themselves. The question asked was as follows:—"Are you living in polygamy?" The Court cautioned the jurors that they need not answer, if the answer would tend to criminate them. They declined upon that ground to answer. The inevitable conclusion is that these jurors were guilty of the crime of polygamy. This is not like asking a juror on a trial for larceny, whether he had ever stolen anything; or on a trial for murder, if he had ever committed murder. The question is not, "Did you ever commit the crime of polygamy?" but it was, "Are you now doing so?" They virtually admit that they are. Would such men make impartial jurors? Impartial jurors are such as the law requires, and men cannot be such if they are at that very moment practising the same crime as that charged upon the prisoner. A murderer will never be convicted if those engaged in committing murder are the jurors—they cannot be impartial. And it was not necessary that the disqualification of the jurors should be shown by extrinsic evidence, when they in effect admitted it themselves.

The refusal of the Court below to sustain the defendant's challenge to the juror, Charles Reade, is assigned for error. The juror said that he had formed an opinion as to the guilt or innocence of the accused, but he did not think that opinion was such as to influence his verdict. There was nothing shown either by the juror or by extrinsic testimony to give the Court any idea of the character or nature of the opinion. The Court therefore took the juror's statement as true, that the "opinion was not such as to influence his verdict." The opinion may have been from indefinite rumor and amounted to nothing above a vague supposition. It would have been very easy to have

asked the character or nature of the opinion. It not having been done, we can see no error in acceptance of the juror by the Court.

The record sufficiently shows the finding of the indictment. The endorsement shows it clearly. It would have been improper for the record book to have disclosed the name of the defendant, as he was not then under arrest. A witness, named Amelia J. Scofield, had given testimony upon the former trial of the defendant for this same crime. But when the trial of the case at bar came off, she could not be found. She was a resident at the house of the defendant, but when sought there by the officer, it was said that she was not at home. Defendant told the officer that she would not appear in this case, and he refused to tell where she was. It is true that the defendant was not required by law to aid the prosecution in supplying witnesses against himself, but in his effort to avail himself of such right he went to the extent of showing that he was favoring and aiding in her concealment, and endeavoring to thwart the efforts of the officers of the law to procure her presence as a witness. In such a case he has no right to complain if the Court allows the next best evidence to be introduced, and the proof of her former testimony to go to the jury. On the former trial she was under oath and subject to cross-examination by defendant, and then he was confronted by the witness. The main objects of producing the witness upon the stand had been attained, and no rights of his were violated by the proof on this trial of her testimony upon the former trial.

There was no error in the refusal of the Court below to strike out the testimony of Hamilton Gamble. It is not an uncommon practice for attorneys in identifying a party, to point to him and ask the witness whether that is the man referred to, especially when the witness is unfriendly to the side upon which she is called to testify.

The best alleged error assigned by the defendants, was respecting a portion of the instructions to the jury, it being claimed by the defence that the Court was wrong in telling the jury that they "should consider what are to be the consequences to the innocent victims of this delusion," &c., &c. There is nothing whatever in this language to warrant the supposition that the jury might believe that they could convict upon anything but the proofs of the facts. We are unable to comprehend in the language thus objected to anything beyond a caution to the jury to give earnest and careful consideration to the case. It is of a like nature with a caution sometimes given to a jury, to remember their oath, and such like matters. There was therefore no impropriety in the language used by the Court, but it was in all respects proper, especially when we remember that some of the jurors might have been supposed to be of opinion that this was not a great crime, the doctrine, that polygamy is right, having been shamelessly preached and proclaimed and practised in this Territory from its first settlement to the present time, in defiance of the statute of the United States against the crime, and especially too when we remember that this crime has a blighting and blasting influence upon the consciences of all whom it touches, as is every day and everywhere witnessed throughout this Territory.

Upon the whole case therefore we can perceive that no error was committed in the Court below. It is therefore ordered that the judgment of the Court below be affirmed.

Other judges concur.

CENTENNIAL CELEBRATIONS.

PROVO.

Provo, July 4th, 1876.

At dawn a national salute of 13 guns by company C, 1st artillery, Captain Lake Cook, echoed by the near mountains of the Wasatch, ushered in the day and its ceremonies.

At sunrise, a salute of one gun as a signal for hoisting of colors, music by the band, and a *feu de joie* from the Continental Guards, under command of "Gen. Stark," personated by Major W. W. Haws.

At 7 a. m. a salute of three guns; signaling the people to assemble on Court House Square.

At 8 a. m. the procession was formed by General W. B. Pace and aids, in the following order—

1. A detachment of cavalry, representing General Marion, personated by T. E. Flemming, Esq.
2. Martial Band, Captain Joseph Nuttall.
3. Continental Guards.
4. Signers of Declaration of Independence, represented by Edson Whipple, Esq., and company.
5. Thirteen original States, represented by thirteen young ladies with banners.

6. Detachment of Infantry representing portions of the Continental Army under Generals Putnam and Ethan Allen, personated by Majors Thomas and Sevelep.

7. Brass Band.

8. Mayor, City Council, Orator of the Day, Reader of the Declaration, Chaplain, Committee of Arrangements and Reporters.

9. Centennial Visitors.

10. Citizens.

11. Juvenile Guard (with tall paper hats, wooden swords, etc.), under Capt. Charles D. Miller.

The procession moved down Centre street to West Main street, thence south to Second South St., and returned to Bowery, where the procession was seated under the direction of the Marshal of the Day.

The Bowery was suitably ornamented for the occasion. Conspicuous among the decorations of the Stand was a fine portrait of Washington, below which sat the personages representing the signers of the Declaration; flowers and evergreens embowered the bright and happy faces of the young ladies representing the thirteen states; above them sat the Mayor and City Council, with many gray haired pioneers of our local history. At this moment Uncle Sam (personated by H. H. Cluff, Esq.) appeared, conducting Columbia (personated by Miss La Prele Daniels) to her seat, received by the Centennial Visitors standing in their places in front of the Stand. Resuming their seats the rich and varied apparel of the Centennial Visitors surrounding Columbia combined to make the scene a tableaux of historical interest and grandeur.

The Press, represented by reporters for the DESERET NEWS, Salt Lake Herald and Utah Co. Enquirer.

The assembly was called to order by the marshal of the day.

An anthem "My Country 'Tis of Thee," was sung by the choir, conducted by Professor James E. Daniels.

Prayer by the chaplain, Elder Moses Jones, grandson of one of Washington's life guards.

Music by the brass band, followed by the reading of the Declaration of Independence by P. M. Wentz, Esq., which was well rendered, at the close of which cheers, ringing of bells and discharge of cannon *ad libitum*.

A poem, "Revolutionary Rising," read by Wilson H. Dusenberry, Esq., at the close of which Capt. Miller's guard of juveniles, carried away by the warlike spirit it evoked, got in a double cheer.

An oration by John B. Milner, Esq., orator of the day, full of point and historical research, drew repeated applause.

Song, "The Star Spangled Banner," Professor Daniels and choir.

Uncle Sam now came to the front, and in a short preliminary speech (with interruptions from the celestial visitor from China) told of the freedom and glory of his country, and the vast domain under the sheltering wings of the American eagle, after which he proceeded to introduce the centennial visitors to Columbia, as follows:

Dr. J. J. Talmadge as Earl Derby, from England; Henry Maiben, Esq., as representative from France, drawing considerable applause in his allusions to Lafayette and the young republic; Messrs. Muhlenstein and Mezenen, representatives from Switzerland; John Wrinkler, Esq., as Count Bismarck, from Germany, well personated and applauded; Thomas Davis, Esq., as Lord Carnarvon, from Wales; Wm. Douglas, Esq., as representative from Scotland; Andrew Swand, Esq., as representative from Turkey; John Donohue, Esq., as representative from Ireland, the Green Isle, in her heart of hearts, would carry respect for the freedom America gave her children; John H. McEwan, Esq., as "Sing Wah," from China, received cordially by Columbia, not much less lost in the greeting with Uncle Sam.

Yankee Doodle by brass band.

An Original Poem by Charles Rogers, Esq.

An original historical sketch of Provo, composed and read by S. S. Jones, Esq., at the close of which the Hon. Judge Dusenberry, chairman of the committee on the celebration, thanked all concerned for their aid in contributing to the mutual amusement and happiness of the assembly on the occasion of the somewhat impromptu celebration.

Benediction by the chaplain.

In the evening, the University, Cluff's and 2nd Ward Halls were

well attended by the citizens, who closed the day's rejoicings and enjoyment in the social dance. All passed off agreeably, with nothing to mar the peace and pleasure of the day. A. J.

SPANISH FORK.

SPANISH FORK, July 4, 1876.

At daybreak the citizens were aroused from their slumbers by the sounds of 100 guns, which was in commemoration of the Centennial year of our nation's independence, and at sunrise the stars and stripes were raised and saluted by the Martial Band, after which it serenaded the Mayor and principal citizens, and awakened up the spirit of the fathers.

At nine o'clock three guns were fired to bring the people together under a comfortable bowery, beautifully decorated by the young ladies.

At 9:30 the vast assembly of old and young was called to order by the Marshal, when the "Star Spangled Banner" was sung.

After prayer and singing, the Declaration of Independence was read. An able oration, with speeches, songs, sentiments and toasts, prepared the people to enjoy a good dinner.

At 2 p. m. thirteen guns were fired in honor of the thirteen original States, and to reassemble the people.

After spending two hours under the bowery in extempore speeches, songs, sentiments and toasts, they repaired to the Public Square, where old and young participated in foot races for prizes, all going off with much spirit, peace and good feelings.

E. A. WILSON, Reporter.

By Telegraph.

CONGRESSIONAL.

SENATE.

WASHINGTON, 5.—Sherman submitted the following concurrent resolutions and said he had no doubt their passage to-day would be a matter of great pleasure to the people of the whole country—

"Whereas, it has pleased Almighty God, to guide the United States of America safely through one hundred years of national life and to crown our nation with the highest blessings of civil and religious liberty, therefore the Senate and House in Congress assembled, in the name of the people of the United States, in reverent thankfulness, recognize the Fountain and Source, the Author and Giver of all these blessings, and our dependence upon his providence; and,

"Whereas, we recognize, as our fathers did, that George Washington, first in peace, first in war, and first in the hearts of his countrymen, was one of the chiefs of the divine instruments in securing American independence and in laying broad and deep the foundation of our liberties, the constitution of the United States, therefore, as a mark of our sense of honor due to his name and to his compatriots and his associates, our revolutionary fathers, we, the Senate and the House in Congress assembled, in the name of the people of the U. S., in this beginning of the second century of the national existence, do assume the completion of the Washington monument in the city of Washington, and do direct the committees of both houses to institute the necessary provisions of law to carry this resolution into effect."

Passed by a unanimous vote.

The House called up the bill reported from the committee on foreign relations on the 27th of June to encourage and promote telegraphic communication between America and Asia. It authorizes Celso Cazar Soreno, Leland Stanford, Frank M. Pixley and others of California, Wm. B. Phillips, of New York, Dudley S. Gregory, of New Jersey, and others to lay such cable and regulate the transmission of messages, etc.

Edmunds submitted an amendment reserving the right to Congress to alter, amend, or repeal the act.

The amendment was agreed to and the bill passed.

Sargent said this cable was to be constructed by an American company and would be the only opposition to the English monopoly.

West, from the conference committee on the post office appropriation bill, called up the conference

report submitted on Monday, and in explanation of it said in regard to the compensation for transportation of mails by railroad conference committee agreed to a reduction of the rates hitherto paid to the extent of 10 per cent also to the appointment of a commission by the President to inquire into and report on the sum of such compensation at the session, the report of that commission to form the basis of compensation to railroads hereafter.

The committee had agreed to a reduction amounting to the aggregate to about \$500,000. The salary of no postmaster would exceed \$4,000, with the exception of one in New York City. As regards to third class mail the committee had agreed to transient newspapers, magazines, regular publications, designed for advertising purposes, and all other third class, except uncirculars, shall be admitted to mails at the rate of one cent for every two ounces and for the part thereof, and one cent for additional two ounces or for the part thereof. The committee continued the rate of one cent on all merchandise, except now.

The report was submitted to the approval of the common post offices and post roads, the committee being represented in conference committee by its chairman.

The report of the conference committee on the post office appropriation bill was then agreed to, out further discussion at the Senate resumed considering the Pinchback resolution.

WASHINGTON, 5.—Mild temperatures favored on the bill for relief of Elizabeth Carson; motion for adjournment.

Hamilton called up the bill to amend sections 246 and 247 of the act to revise, consolidate and amend the statute relating to the Postoffice Department. The bill to straw bidding; passed.

WASHINGTON, 6.—During the morning hour the question of Chinese emigration was discussed, and finally the final resolution, submitted by loss, was agreed to:

Resolved: That a committee of three Senators be appointed to investigate the character, to the effect of the Chinese immigration to this country, with a view to the Pacific Coast for the purpose, and send for persons, and report at the next session of Congress.

AMERICAN.

WASHINGTON, 5.—The other Cadwater, acting Secretary of the Interior, presented Mr. Schlager, a man minister, to the President, the purpose of delivering a congratulatory letter of the Emperor of Germany.

The Emperor of Germany, in presenting the letter, said that he was instructed by Majesty to deliver upon the occasion of the July 4th anniversary of the American independence, an autograph letter of congratulation upon the occasion of the centennial anniversary, and to add his personal good wishes to the U. S.

The President briefly assured him of his satisfaction in receiving this evidence of friendship on the part of His Majesty, his kind expressions for the U. S. were fully appreciated, and the letter should be properly lodged.

A translation of the letter follows—

"William, by the great Emperor of Germany, Prussia, etc., to the President of the U. S. of America."

"Great and good friend, I have been vouchsafed to you the centennial festival of the United States, upon which the great republic, which you preside over, ranks of independent nations, purposes of its foundation, wise application of the history of the nations, and with insight into the distant future, been development without ceasing to congratulate you and the people upon the occasion of the centennial anniversary, because, since the treaty of 1783, which my ancestor King Frederick the Great, now rests with God, has been continually renewed, and has been strengthened by the relations, and by an inter-