

guilty of murder of the first degree, but of a less offence, punishable by imprisonment for a term of years only.

I will next call your attention to the crime of rape. [The judge having read the law, said]—If this offence is perpetrated on a child under the age of ten years, it does not matter whether it is with or without her consent, for such a child is considered by the law as incapable of giving consent.

In considering the offence when charged to have been committed on persons of more mature years, you should look carefully into the evidence and see whether it has been committed forcibly and against her will. In determining this you must look at all the circumstances of the case to determine whether the witness testifies truly, and be sure that it was forcibly and against her will. Did she cry out for help and take steps speedily to bring the offender to justice?

The statute of the Territory also makes provision where drugs are administered to lull the victim or render her pliable in the hands of the ravisher. There is also a statute here touching the offence of abduction of females, which you will find on page 185 (Laws of Utah); to this also I will call your attention. There are a number of offences of this nature that may have been committed within our jurisdiction to be deplored. A father would not subject himself to toil to rear his little ones if misanthropes are permitted to seek the gratification of their lust and passions to their ruin. One of the highest aims to the human heart is to raise up honest and virtuous children, and the law designs to aid and protect him in his laudable efforts; and you will see, I trust, that offenders against it are brought to punishment.

There is also a class of statutes here for the preservation of public morals, which respect for compels us to notice where public morals are bad, private ones cannot long be good. To refer particularly to all your duties is out of my power at this time.

To protect persons in the enjoyment of their rights of property is little less important than their rights of person there is an old maxim, that 'industry is the mother of virtue,' and 'Idleness the mother of vice.' Men will be industrious only when they can appropriate the proceeds of their own labor to their own use. Larceny is one of the principal means resorted to by idle persons to deprive industry of its rewards. I have been surprised to hear of the frequency of this crime in this country; it is a very mischievous offence. Men labor honestly to gratify their love of property, and this is praiseworthy, but when they seek to acquire property and not care by what means or how it comes; it is pernicious; this is one of the greatest evils of a society.

The world's history shows that wealth acquired dishonestly is not only a public calamity, but is a curse to those who thus possess it. It is a blessing to be poor with honesty.

I call your attention particularly to this class of cases, and those of burglary, robbery and embezzlement of public or private property which are intimately connected with it. Man at best is a desperate rebel against the laws of right. God designed that he should get his living by the sweat of his face, but he often forgets it; violates the laws of honesty by degrees until he reaches the crime of murder; this often begins in extreme youth, and progresses from one thing to another until he is lost in crime.

It is our duty to arrest it as soon as possible, and reform the unfortunate who are thus tempted or led astray. Next in order is the crime of perjury. The statute defining it is found on page 185, 'Laws of Utah.'

In finding indictments under it you will be careful to see that the person swears willfully false in some judicial proceeding, to a matter, material to the issue or matter on trial.

There is another class of statutes in relation to malicious mischief, abuse of animals, altering brands, &c. &c., which you will see by reference to the statute.

There is another offence to which I call your particular attention. It is resisting public officers in the discharge of their duties. The law on this point is very particular.

The person of an officer in the discharge of a public duty is very sacred, and persons who forcibly resist them are deemed doubly criminals; but while the person of a public officer is thus protected, they should be held doubly responsible for the faithful performance of their duties to the public; when for example an officer is intrusted with the safe keeping and custody of prisoners, who shall voluntarily allow them to escape, he is doubly to blame, and punished accordingly. Society reposes a confidence in such men, and above all others, they should be law-abiding men.

Gentlemen of the jury, I have now done nearly all I intend to say to you on this occasion. Let me again ask you to remember the oath you have taken. I have now given you in charge all offences against the laws both of Territory and the General Government. You will also take cognizance of all such as may otherwise come to your knowledge, touching your present service.

If a grand juror shall know of the violation of the law, it is his duty under the oath he has taken to give the information to his fellow jurors and be sworn as other witnesses to testify before them.

There is another class of cases which the Attorney for the Territory will present to you for your consideration. The usual mode of doing this is to send in to you an indictment with a list of the witnesses. These witnesses you should examine when you will find the indictment or otherwise as the testimony requires.

If you find it your foreman will endorse on it—'A true bill,' and sign it; if not, he will endorse 'Ignoramus,' and sign that also.

Every citizen has a right also to complain to you, and you will be careful to examine such complaint; but you examine witnesses only for the prosecution. It is not your province to examine witnesses for the defense. If the evidence shall be such as that your minds rest satisfied of the guilt of the persons charged, you should so find; but you should also carefully guard the innocent and see that no one shall be wrongfully charged; twelve of your number must agree before you can find a bill, and then your foreman must sign the bill, whether he be one that agreed to it or not. You are to forever keep the secrets, the counsel of the prosecuting attorney, your own and fellow jurors, unless required to disclose the same in open court. The reasons for this is that innocent persons who may be accused before you may not be injured by an unnecessary disclosure or any prejudice attached to them at that account.

And again, by keeping your deliberations inviolate, guilty persons will so far be prevented from knowing it and eluding justice, and then you will protect the innocent as well as the government; and in addition there to protect yourselves from the violence of powerful men who may be accused.

You will present no one from malice, hatred or ill will, nor will you leave any unrepresented through fear, hatred or ill will; but in all your presentations you shall present the truth, thus every person in safety can stand upon a perfect equality from the President of the United States to the humblest person in community.

Gentlemen of the grand jury, you constitute a very necessary part of this court. When you have agreed upon an indictment you will make your presentation to it. No one is entitled to be present during your deliberations except he is one of your own body. Your balliff even has no right to be there except to receive your orders and instructions in relation to your wants. The attorney general has nothing to do with your deliberations, except to render you such legal assistance as you may require; it is his duty to give from to your findings.

You will meet upon your own adjournments. If an adjournment is made over one entire day, you should give notice of it to the court.

The balliff of the grand jury was then sworn to take the jury to some private and convenient place where they should consider of their presentations and indictments, that he should keep their secrets and convey messages from them to the court and from the court to them without seeking to know their contents and without unnecessary delay.

The court then said, Gentlemen of the grand jury, follow your balliff.

Court adjourned till to-morrow at 8 a.m.

TUESDAY, Aug. 23, 8 a.m.

Court met pursuant to adjournment.

Record of yesterday read by the clerk and signed by the judge.

The bodies of John Scott, J. Martin, D. Proctor and T. Greener were called for, and judgment of forfeiture ordered in the case.

A similar order in the case of B. F. Ingram.

Rule entered against Sheriff of Utah county for neglecting to produce the prisoners McDonald, Earls and others, and Mose and Looking Glass (Indians) returnable to-morrow morning.

The judge remarked that the prosecution against said prisoners had not been discharged by Judge Cradlebaugh, so it was his intention to still pursue them.

The judge then read over the various cases on docket, and said he would appoint a morning hour for motions.

Mr. J. Bigler was sworn as a witness before the grand jury.

The judge ordered the bodies of the following persons to be brought into court to save their recognizance. Mr. Lent, J. M. Wallace, J. H. Parson, S. H. Hart who not appearing, judgment of forfeiture was ordered in the case, returnable next term.

Court took recess (indefinite) to await the action of the grand jury, and to allow the clerk time to make up the records, issue licenses, and swear witnesses for examination before the grand jury.

2 p.m.

Court resumed its sitting.

Judge Reklis said, I have received a petition from the grand jury asking me to adjourn this court to a more convenient place, reasons assigned for said petition, being a scarcity of funds and want of accommodation. I have no power to adjourn this court till the business thereof is transacted; I have a duty to perform and witnesses and jurymen must perform theirs.

Mr. De Wolf was admitted to the bar as prosecuting attorney for the Territory of Utah, was sworn and received his certificate.

The judge then referred the prosecuting attorney to the two Indian prisoners, Mose and Looking Glass, who he said had not been discharged from the indictment, though from cause they had been discharged from custody. He said this was the first case on the docket. The indictment was handed over to Mr. De Wolf.

Mr. De Wolf said, he had been instructed by the attorney general to prosecute all cases, and asked for an alias capias for said Indian prisoners with cause continued.

The judge said in the case of the people vs. McDonald, Earl and others, there was a rule against the Sheriff of Utah county, to produce the prisoners, who had been committed on mittimus, and who had escaped. Also in the case of the people vs. Thos. Ivie there was a rule against the Sheriff of San Pete county, for same cause.

The case of the people vs. Scott and Martin, forfeiture of recognizance.

Mr. De Wolf said, in the case of the people vs. McKenzie, he would inform the court about the necessity of having Mr. Brewer for a witness, probably in the evening.

Mr. De Wolf inquired if he needed any particular introduction to the grand jury as a prosecuting attorney.

The judge sent for the foreman of the grand jury, who on making his appearance was requested by his honor to inform the grand jury that Mr. De Wolf had presented his authority to act as prosecuting attorney for the Territory of Utah, in this District.

Several witnesses for the grand jury was then introduced and sworn.

The judge ordered the clerk to enter a rule of alias capias and forfeiture against M. Brewer for neglecting to appear before the court as witness.

Court took a recess to further await the actions of the grand jury.

Court resumed its session.

The grand jury were brought into court by order of the judge, when his honor said:

Gentlemen of the grand jury, a paper was presented to me this afternoon in the shape of a petition, signed by 14 of your number, to which I wish to call your attention. (Judge then read grand jury's petition to adjourn the court to a more convenient place.) I wish to remark in relation to this that I possess no power to grant said petition, only under two provisions, namely, the existence of any pestilence or disease, or some special case that might demand such an adjournment to another place; your petition is very indefinite in its complaints. If I had power to grant your request, there are not sufficient reasons adduced for me to do so. As regards your complaints of 'the marshal having no funds' and 'you having to pay your board in advance.' I would say that the people should

not demand prepayment; for government never pays in advance, but when the work is done. If you have any real cause of complaint, make a proper presentation to this court, or have the question presented to government for their consideration, that your grievances may be remedied and those evils staid. As to J. A. Banton, the crier of the court, I see his name attached to said petition, so I discharge him from his duties and thus end his grievances. It is my duty to hold court, and I will endeavor to discharge that duty, and you must not petition the court to do what is your duty to do for yourselves. Gentlemen of the grand jury, you may retire.

Court adjourned till to-morrow 9 a.m.

WEDNESDAY, Aug. 24, 9 a.m.

Court met pursuant to adjournment.

Witnesses sworn to testify before the grand jury in case of people of U. S. vs. Morrison.

Records of yesterday read by the clerk and signed by the judge.

In answer to inquiry from Mr. De Wolf, judge announced that motions were now in order.

Mr. De Wolf filed a motion that Mr. D. Thomson be admitted to the bar, as an attorney, which being approved, Mr. Thompson was sworn and received his certificate.

On motion of Mr. De Wolf, Corporal Boyes and another were discharged as witnesses, in Morrison's case.

The judge remarked, that no business could excuse a witness unless it was very important.

Court ordered the attachment against R. McManners to be discharged on cause with proportion of cost.

The judge said rule issued against the marshal, in case of the people vs. McDonald and others, for escape of prisoners, had been answered and ordered to be spread on the record, said answer explained the manner of escape, etc.

Mr. De Wolf inquired of court if the sheriff of Utah county had been properly apprised of the necessity of producing said prisoners, McDonald and others, at this court.

Judge said he did not know.

Mr. De Wolf moved that a citation be issued in the case to the sheriff of Utah county.

Judge said he would give an order and ordered clerk to spread said order on the records.

Mr. O'Banton was reinstated as crier of court, having been discharged yesterday for signing a petition for adjournment of court to a more convenient place.

Judge remarked that Mr. O'Banton plead that he signed said petition without knowing its contents, but public officers should be careful to examine documents before signing them.

Case of people vs. Lysander Gee, laid over.

Their being no motions, on inquiry from the judge, Mr. De Wolf said the foreman of the grand jury would report shortly.

Judge inquired if attorneys had knowledge of the course they would pursue with witnesses in the case of the people vs. McDonald and others.

Mr. De Wolf replied that they could not conclude till the action of grand jury was received.

The grand jury was now brought into court. Roll called, all present. Foreman presented a bill against David McKenzie for counterfeiting. Jury agreeing that the court might amend the form thereof, but not the substance.

Jury retired by order.

Judge ordered clerk to issue subpoenas for witnesses for grand jury, returnable instant.

Court inquired if attorneys were ready to proceed with the arraignment of the prisoner, McKenzie, adding that he had sent for him to be brought into court.

Mr. De Wolf said that they did not wish to precipitate matters; being anxious that the prisoner might have time allowed to obtain counsel for his defense.

McKenzie was now brought into court.

The judge said, prisoner are you ready for trial?

Prisoner—My counsel has not arrived, I do not know why Mr. Stout has not fulfilled his engagement with me, but I will not wait long for him, ere I proceed with my own case.

Court left it to the prosecuting attorney to fix the day of trial, though he remarked that it was difficult to retain witnesses and to delay the court.

Mr. De Wolf said he did not wish to be precipitate nor on the other hand delay the court on account of the remissness of the prisoner's counsel, yet he was willing to defer the prosecution for two days to await the arrival of Mr. Stout, counsel for the defense, and to allow the prisoner time to prepare for his trial.

Court then ordered case to be set down for trial on Saturday next, Aug. 27, 1859. Witnesses to remain till trial under recognizance.

The judge then instructed the marshal to remand the prisoner, and to deliver to him (prisoner) a copy of the indictment.

There being no more immediate business, court took a recess to await the further action of the grand jury.

5 p.m.

Court resumed its session.

Mr. De Wolf moved for rule to discharge witnesses who had already given evidence before the grand jury on their own recognizance of \$350 for their re-appearance on Monday next, Aug. 29.

The following persons were then discharged on conditions of said motion: Mrs. Webb, Mr. Daly, W. Huntington, Davis Clark, E. R. Webb and Mrs. Value.

The judge said he was informed that some jurors had arrived under attachment, but the marshal had not yet made returns. He then instructed Mr. De Wolf that the special term for United States business occupied six days at the commencement of each general term of court, on the expiry of which Territorial business commenced, there being a proviso on priority of action.

The judge then made some remarks on law—being among all professions one of the most ancient and honorable, and endeavored, at some length, to impress the necessity of its being thoroughly understood, especially by professional men.

The judge then read his rules for attorneys, as follows:

ATTORNEYS. I. All male persons of honesty, probity and good demeanor, who may produce a license for that purpose from any judge of a superior court of record, having common law and chancery jurisdiction, will be admitted to practice as an attorney and counselor at law and solicitor in chancery, upon taking an oath to support the Constitu-

tion of the United States and to uprightly, faithfully and honestly demean himself as such an attorney and counselor at law, and solicitor in chancery, according to law and the rule of courts so long as he shall practise therein: Provided always, That the executive and judicial officers of the Territory shall not be admitted during their continuance in office, unless where they have a pecuniary interest or other personal concern.

II. No agreement made between attorneys in relation to any matter pending in court, shall be mentioned, or will be enforced by the court, unless the same shall be made in open court at the time it is to be enforced or shall be made in writing and signed by the parties thereto.

III. Attorneys may not be admitted as witnesses upon the merits of any trial, where they are employed professionally, unless the facts about which they testify shall have come to their knowledge after their engagement and cannot otherwise be sufficiently proved.

All civil actions may be prosecuted or defended by attorney.

IT SHALL BE THE DUTY OF ATTORNEYS:

1st.—To maintain the respect that is due to the court and its officers.

2d.—To counsel or maintain such actions, proceedings or defenses only, as appear to him legal and just, but this rule shall not be construed to prevent the defense of any person charged with crime.

3d.—To employ such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of fact or law.

4th.—To maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client.

5th.—To abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which he is charged; and then in case of any attorney to make a charge of the same in writing to the court and move to disbar such offending attorney.

6th.—Not to encourage either, the commencement or continuance of an action or proceeding, from any motive of passion or interest.

7th.—Never to take conditional fees, nor to reject from any consideration personal to himself, the cause of the defenceless or oppressed.

8th.—To draw up and prosecute accusations against other attorneys upon the order of the court, to suspend, remove or expel them for crime or dishonorable conduct or for a wilful disregard of their rules, or for conduct unbecoming a gentleman or for disregarding good order and professional courtesy.

9th.—To make no motion to admit or reinstate any attorney who may have been expelled by any superior court of record.

10th.—To examine all applicants for admission of practice, upon the appointment for the court, and faithfully report in writing upon the legal qualifications of every such person.

11th.—To faithfully account to their clients for all moneys and papers that shall come to their hands when thereto reasonably requested.

12th.—To prepare entries for the clerk of judgments and decrees in favor of their respective clients, when directed by the court or requested by the clerk.

13th.—Attorneys will be heard on the trial of each cause for one hour only, unless longer time is asked and given before the argument begins.

14th.—Not more than two attorneys will be heard on the same side on any trial, and where a party elects to argue his own cause, one only will be heard.

15th.—If any attorney or solicitor in chancery shall appear in any cause as the attorney or solicitor of any party, not being thereto authorized, he shall be expelled: Provided that this rule shall not be construed to prevent any attorney or solicitor from making any motion as 'amicus curia.'

16th.—All arguments and authorities read, on questions of law, shall be addressed to the court and not otherwise. And commented at some length upon said rules, referring more particularly to those touching the maintenance of confidence and secrets of clients, and against attorneys taking conditional fees, remarking that he would not hesitate for a moment to disbar any attorney who so far disgraced the dignity of his profession as to violate the confidence of his client. Though he was aware that there was a statute of this Territory that in part conflicted with this rule, which constrained a client to reveal all he knew for and against himself; this in connection with a violation of confidence on part of an attorney would be ruinous to the extreme to the party concerned.

The judge again referred to the rule against attorney taking conditional fees, said:

During my practice both on the bench and at the bar, I have ever found the practice of attorneys receiving fees according to the result of cause, to be very mischievous, and consider it a species of gambling, and also in most cases unnecessary litigation. The temple of justice should be kept as pure as possible and in the course of a new country like this, it is necessary that in their results be adopted as will become both beneficial rules should such be and usages in our practice.

Mr. De Wolf complimented His Honor on the utility of his rules for attorneys; though he remarked, in some countries to prohibit attorneys from taking conditional fees would destroy their main subsistence.

The judge observed that though litigation might benefit the community, added that there was a statute of this Territory which he would sustain, which prohibited fees of attorneys being recovered by law.

On the recommendation of the foreman of the grand jury, the recognizance of Mrs. Value as a witness was discharged.

Court adjourned till to-morrow, 9 a.m.

THURSDAY, August 25, 9 a.m.

Court met pursuant to adjournment.

Mr. Thompson moved for rule against Mr. Gamzell and another in the case of the murder of McNeil.

The judge read all the cases on the civil docket and set days for the hearing of the cases, except where neither the party nor counsel appeared; in such instances, cause to be continued.

On motion of Mr. Thompson, the case of Webb vs. Charly and others was entered on docket.

The court took a recess till 2 p.m.

2 p.m.

Court resumed its session.

The grand jury brought into court. Roll called—all present.

Judge said—Gentlemen of the grand jury, have you agreed on any presentation?

Foreman replied in the affirmative and presented a bill.

Jury then retired by order of court.

The marshal (Kirk) made returns of writs of attachment and brought in the bodies of Charles Gowin, Frank Stevens, Charles H. Smith, Mr. Wilkins and Mr. Harris to answer for non-appearance when summoned as jurors. Charles Gowin and Charles H. Smith were excused and writs of attachment ordered to be discharged in the case. Mr. Wilkins and Mr. Harris, who had not been served with process, were also discharged.

Judge considered Frank Stevens guilty of contempt for non-appearance when summoned as a juror, but as it appeared to be his first offence, he would discharge the rule by fining offender \$100 and discharged him as a juror, he not having been naturalized.

Mr. Drum and Mr. Hutchison were excused from traverse jury from cause. Thomas Davis and A. Whitelock having refused to attend as jurors, attachment ordered with bail of \$500 returnable next term.

Court then ordered Marshal to fill up the panel of traverse jurors and requested District Attorney to attend to the attachment of delinquents.

Mr. Osborn was excused for cause. The following names were then called by Marshal Kirk as traverse jurors per summons—

Gilbert K. Smith, J. W. Schofield, Norman Eldredge, Isaac P. Warren, David Webster, J. W. Webb, Geo. Bowers, Geo. McKenzie, J. C. Kelly, Geo. Cummings.

Court ordered attachments to run for delinquents. Court adjourned till to-morrow, 10 a.m.