

the reluctant witness in a rather loose and disjointed order? I feel that there would be a feeling on the part of the jurors in that case that the evidence being so reluctantly drawn from those that are brought here, being acquiesced in by the public sentiment, being, in fact, upheld to a certain extent by public sentiment, they would feel under those circumstances that they were not bound to go against public sentiment, and against common usage, you may say, and a feeling of that kind, as they would be in relation to the man that has been convicted, or been brought up to be tried upon a crime that public sentiment as well as their own, and the law is against. I think that there would be a feeling on the part of many that that would be a case for the city authorities, and not for us to interfere.

The Court—Is there any juror that would be governed to any extent by public opinion, or public sentiment, in cases of prosecution for gambling, for instance? (No response.)

Mr. Davine—Your honor, being that the question has been raised in regard to evidence and hearsay evidence, I have been waiting for some of the jurors who have a little conscientious scruple in that particular to state their position; but seeing that they have not, I would desire to say that some of the jurors, on account of some testimony that has been offered, which I might describe in the following way: A certain witness is questioned as to who owns or runs a certain establishment. He believes Mr. Jones does. "Do you know he does?" "No, I don't know he does, but he is the reputed proprietor of this establishment." Now, it has been very difficult for the jury, and in that particular their duties have been overdone, to ascertain any positive knowledge, where a witness will voluntarily testify yes or no. He will presume, or suppose, or allege, that the reputed proprietor is so and so. Now, probably on that particular line of evidence more than any other does this jury desire instruction.

The Court—You have a right to inquire as to who has charge of the building, or of the room, and as to what acts he does about the business, and as to anything he himself has said about it, and any circumstance that tends to show who it is that is conducting the game, or has the possession and control of the game, or the room. Of course a witness could not be permitted to come in and give it as his opinion that some one was proprietor without giving the circumstances. He should give the circumstances upon which he bases his opinion, and not give his opinion about it. You have a right to inquire who leases the room. You have a right to inquire into any circumstances, and from that you have a right to infer who conducts the business. And if you deem it sufficient, who, that is all that is required. You have no right to take mere opinions about it, as to who is conducting the business. You have a right to call upon any witness who has been in there, in any gambling house, as to whom he saw playing, as to whom he saw taking part in any game, and he is not privileged upon the ground that it may criminate himself, because the statute provides that that is not a ground of objection.

He cannot be indicted, however, and prosecuted, upon any evidence that he gives to the offense. Are there any other questions you wish to ask instructions on?

Mr. Odell—If the same story, Mr. Zane, is given by two or more witnesses—

The Court—(interrupting.) That is not a proper way to talk in court. You must address the court. That is a matter of contempt.

Mr. Odell—I am not familiar with it. The Court—An intelligent man on the grand jury ought to know better than to speak that way.

Mr. Odell—May I state the question? The Court—You may state the question now.

Mr. Odell—If the evidence of two or more witnesses tends to the same facts, would that be considered sufficient?

The Court—Well that would depend upon the nature of the evidence.

Mr. Odell—Well, give the same names, the same parties, the same locality, the actions the same, the evidence referring to dates close together.

The Court—Two witnesses would be sufficient to any proper fact, or one witness, as far as that is concerned, if he was not contradicted. If there was any contradiction, why then you would have a right to weigh the evidence and determine whom to believe.

(The Court then read from the compiled laws the sections referring to gambling.)

This is the law in respect to gambling, so far as I deem it necessary to read it, and I would say with respect to that offense that the grand jury should treat it the same as any other offense, and should indict upon the same degree of proof, and the party should be convicted upon the same degree of proof. If the proof is sufficient to induce a belief that the person whose conduct you are investigating is guilty, and the probabilities are that he will be convicted if the case is fairly presented and tried, why you should indict. You have no right to take into consideration the fact that there may be gambling carried on in various places. You have no right to take into consideration the fact that you have gambled, if any of you have, for money. You have no right to take into consideration the fact that the city has authority to punish for gambling. You have no right to take into consideration anything that is not proper evidence, and your only motive should be the truth. Because laws exist against gambling and the keeping of bawdy houses and other offenses, and it may be impossible to prevent gambling and keeping of bawdy houses altogether, that is no reason why you should not indict if the evidence is sufficient, nor is it any reason why you should indict if the evidence is not sufficient. There have been laws against murder, and larceny, and robbery, and various other crimes for thousands of years, and still those crimes exist. Your purpose should be to protect society from the evil effects of these crimes, by indicting where the evidence is sufficient. So with gaming or any other offense of that character; it is your duty to indict though you may think that it may not prevent gambling altogether. If because it does not stop gambling alto-

gether you should not indict, then all the criminal laws should be repealed. The object is to prevent crime, to protect society from the evil effects of gambling. These places into which men are inveigled, and induced to go, and deprived of their property under circumstances of that kind, are as bad (not quite so bad in the estimation of the public) as stealing, but in the eye of an honest man, just as bad, just as immoral, and just as wrong.

I make these remarks because I hear intimations outside that some men on this grand jury have stated outside that they would not indict under any circumstances a man for gambling, because they had gambled themselves and did not believe in indicting others. I do not know how true it is, but if there is any man of that character on this grand jury I would like to know it. Your oath is plain, and it is as follows. [Read. The court also read section 491 Compiled Laws of Utah.] So that your duty is plain. Your only motive should be to ascertain the truth according to law, and whenever you found sufficient evidence to indict a man, indict him, no matter who he is; no matter though the law may be a law that you do not believe in, indict. You have no discretion about it. A grand jury, like a court investigating facts, when the evidence is sufficient, there is no discretion. If they believe from the evidence that the fact exists, they have no discretion to say that it does not. It is true that a court and jury might say so; but in saying it they would perjure themselves.

Mr. Bradley—One other question, your honor, is this: Whether in inquiring into the owners of these houses that are rented for unlawful purposes, it is necessary for these jurors to know, where there are co-owners and there is evidence of one of those co-owners agreeing to rent that for a certain sum—whether it is necessary for this jury to know that all the co-owners have agreed with him to rent that place; whether in ascertaining who is responsible for this, and there is evidence to show that one of the co-owners, with the consent apparently, as far as the evidence goes, of the rest—whether he can be indicted without indicting all the co-owners that that evidence relates to? And another thing I would like for my own information—I don't know whether I speak for the other jurors—to know when the laws of the territory are violated, with the knowledge and consent apparently of the police force—the executive force of this city—whether with that before us, and the evidence of it, it is necessary to go to the subordinate officers of that executive force, or to the superior officers; where there are violations of law with the connivance and consent of the superior officers of the law in the city or the county, as the case may be; whom shall we reach, what can we reach?

The Court—Well, I turn to the law on the subject. (The court here read from the act of Congress of June 23, 1884; also from Compiled Laws of Utah.)

It is made the duty, you will see by this section, not only of other officers, but police officers, to inform against and diligently prosecute persons whom they have reasonable cause to believe are offenders against the provisions of