

court; that Robert B. Chisholm was one of the persons so drawn; that at the time of the drawing of such jurors, he the said Robert B. Chisholm did not reside and has not at any time since resided in said district or Territory; that he was not summoned and did not appear to serve as such grand juror; that on the 5th day of October, 1874, being the first day of said October term in 1874 of this court, Benjamin B. Neff, Lewis B. Wilson and Samuel R. Bennion, three others of the said twenty-three persons whose names were drawn as aforesaid, at the drawing for grand jurors to serve at said October term of this court in 1874, were by the said court discharged on challenge from serving as grand jurors at said term; that thereupon on the 5th day of October, 1874, said court, without there being any necessity therefor and contrary to law, ordered other names of persons to be drawn to serve as grand jurors at said term; that there in open court were drawn Wm. F. James and on the 6th day of Oct., 1874, Julius Malsch, Lafayette Granger and Ephraim McLaughlin, that on the 7th day of October, 1874, said William F. James, Julius Malsch, Lafayette Granger and Ephraim McLaughlin, together with nineteen of the persons whose names were drawn at the original drawing of grand jurors to serve as a grand jury at said October term of this court in 1874, were impanelled, sworn and charged as the grand jury of said court for said term; that the said grand jury composed and constituted as aforesaid and not otherwise found said indictment and the same was not found otherwise—that this defendant was not under arrest, nor had he given bail for his appearance in said court, to answer the criminal charge contained in said indictment, nor any other criminal charge at the time the said persons were impanelled and sworn to constitute the said grand jury. And this, the said Thomas E. Ricks is ready to verify; wherefore, he prays judgment of the said indictment, and that the same may be quashed.

"And the said Thomas E. Ricks for a further plea says that he ought not to be tried upon the said indictment, for the reason that the persons acting as a grand jury, and who, as such, found said indictment, were not a legal grand jury, because he says that William F. James who was one of the said persons impanelled and sworn as such jury, and acting as one of the jurors of said grand jury in finding said indictment, was not competent or qualified to act and serve as a grand juror; that on the 23d day of July, 1874, when the grand list of jurors was made for the Third Judicial District of Utah Territory, said William F. James did not own property and pay taxes in said Territory, nor had he before then, nor has he since then owned taxable property and paid taxes in said Territory—that this defendant was not under arrest, nor had he given bail for his appearance in said court, to answer the criminal charge contained in said indictment, nor any other criminal charge, at the time the said persons were impanelled, and sworn to constitute the said grand jury; and this the said Thomas E. Ricks is ready to verify, wherefore he prays judgment of the said indictment, and that the same may be quashed.

"And the said Thomas E. Ricks for a further plea says, that he ought not to be tried upon the said indictment for the reason that the persons, who, acting as a grand jury of this court, found the said indictment, were not a legal grand jury; that Ephraim McLaughlin, contrary to law, was drawn, summoned, empanelled and sworn as a juror of said grand jury that found said indictment; that he acted with and as a juror of said grand jury in finding said indictment; that twenty-three grand jurors were the total number of grand jurors ordered to be drawn, and accordingly drawn, to serve as and constitute the grand jury for the October term of the Third District Court of Utah Territory in 1874, appointed to be held in Salt Lake County, on the 5th day of October, 1874; that on the 5th day of October, 1874, there being only nineteen of said grand jurors so drawn as aforesaid present, one of the said twenty-three grand jurors drawn as aforesaid having failed to appear, and three others of said twenty-three grand jurors drawn as aforesaid having been excused and discharged, the court then and there ordered four additional jurors to be drawn in open court to complete the complement

of twenty-three grand jurors; that thereupon were drawn William F. James, Edward C. Chase, Franklin Merrill and Samuel D. Serrine; that said William F. James being in Court on the said 5th day of October, 1874, was then called and accepted as a grand juror; that the said Edward C. Chase, Franklin Merrill and Samuel D. Serrine were severally ordered to be summoned to appear in said Court on the 6th day of October, 1874, to serve as grand jurors, and that on the 6th day of October aforesaid the names of said Edward C. Chase, Franklin Merrill and Samuel D. Serrine were ordered by the Court to be laid aside; that it was also ordered on the 6th day of October, 1874, that other jurors be drawn, and there were then and there drawn to serve on and complete said grand jury the following names of jurors and in the following order; and the jurors so drawn were disposed of as follows, to wit: Julius Malsch, accepted by said Court as a grand juror; Jesse E. Murphy, ordered to be summoned to serve as a grand juror; S. W. Crow, his name ordered to be laid aside; Nicholas Groesbeck and John Johnson severally challenged and discharged; Daniel W. Rensch and James A. Cunningham, their names severally ordered to be laid aside; Lafayette Granger accepted by said Court as a grand juror; William McCormick, William C. Lewis, Edward Eldredge, Thomas A. Jauney, William H. Caspar and Lucas Livingston, their names severally ordered to be laid aside, and Ephraim McLaughlin accepted by said Court as a juror. That said Jesse E. Murphy so drawn and ordered to be summoned as aforesaid was summoned on the 6th day of October, pursuant to the order of said Court to appear in said Court on the 7th day of October, 1874, to serve as a grand juror; that he, the said Jesse E. Murphy, was drawn as aforesaid, to serve as said grand juror, before said Ephraim McLaughlin was drawn as aforesaid; that he the said Jesse E. Murphy was a qualified and competent juror, that is to say: On the 23rd day of July, 1874, when the grand list of jurors was made pursuant to law by the Clerk of said court, and the Probate Judge of said Salt Lake County, he, the said Jesse E. Murphy, was selected, placed and included in said list; he was then a male citizen of the United States, over twenty-one years of age; he had been for and during the six months and more next preceding, and has been ever since the making of said list at the date last aforesaid, a resident of and within the Third Judicial District of said Territory; he was then and still is able to read and write in the English language; he has not been convicted of any capital or infamous crime; at the date aforesaid he owned and still does own taxable property, and then paid and still pays taxes in said Territory, and at the time of being so listed as a juror, and when so summoned to serve, as such grand juror, he was of reputed sound mind and discretion, and was not so disabled in body as to be unable to serve as such grand juror; nor was he at any of the times aforesaid exempt or entitled to be excused from serving on juries, or on said grand jury; nor was he at any of the times aforesaid subject to be challenged, set aside or discharged for any legal cause; that this defendant avers that the attendance of said Jesse E. Murphy could be and it was obtained in a reasonable time after his name was drawn as aforesaid; that he appeared in said court on the said 6th day of October after being summoned and before said Ephraim McLaughlin was accepted as a juror as aforesaid, and also pursuant to the summons aforesaid in said court at the opening of said court on the said 7th day of October aforesaid, and before the said grand jury was empaneled or sworn; that he was ready, willing and qualified to serve as a grand juror at said time; that he was not called to serve and did not serve at such; that he was not challenged and discharged for any legal or supposed legal cause; that he was neither called nor challenged, and was not empanelled and sworn as one of said grand jury; that the said nineteen jurors originally drawn, summoned, and who appeared on the said 5th day of October in said court, were not challenged together with the said William F. James, Julius Malsch, Lafayette Granger, and said Ephraim McLaughlin and no others, were, on the said 7th day of October, 1874, after the appearance in said court, and in the presence

of Jesse E. Murphy, empanelled and sworn as the grand jury of said court; that said grand jury was so constituted and not otherwise; that they, the said grand jury, were charged by said court, and were the persons acting as such grand jury that found said indictment against this defendant, the same was not otherwise found; and that this defendant was not under arrest, nor had he given bail for his appearance in said court to answer the criminal charge contained in said indictment, nor any other criminal charge, at the time the said persons were empanelled and sworn to constitute the said grand jury. And this the said Thomas E. Ricks is ready to verify. Wherefore he prays judgment of the said indictment and that the same may be quashed.

"And the said Thomas E. Ricks for a further plea says that he ought not to answer or be tried on the said indictment for the reason Ephraim McLaughlin, Lafayette Granger and Julius Malsch were empanelled and sworn contrary to law as jurors of the grand jury that found the said indictment; that the persons above named acted as members of the grand jury in finding and presenting the said indictment; that neither of the persons above named was drawn at the time and place appointed and notices for drawing, and when was drawn the original panel of the grand jury for the October term of this court in 1874, the term at which the said indictment was found, nor was either of the above named persons drawn during said term on any necessity arising therefor.

"And the defendant avers that he was not under arrest nor had he given bail for his appearance at said term for the offence charged in said indictment or for any other offence before the said persons were impanelled and sworn as such grand jury. And this the said Thomas E. Ricks is ready to verify, wherefore he prays judgment of the said indictment and that the same may be quashed.

"And the said Thomas E. Ricks for a further plea says that he ought not to be tried on the said indictment, for the reason that the said indictment is defective for having or stating no venire in the margin descriptive of the territorial jurisdiction of this Court within and over which said jury was to inquire and act. And this the said Thomas E. Ricks is ready to verify, wherefore he prays judgment of the said indictment and that the same may be quashed.

"And the said Thomas E. Ricks in his own proper person comes into court here and having heard the said indictment read, says that the Third District Court of the Territory of Utah ought not to take cognizance of the murder in the said indictment specified; because, protesting that he is not guilty of the same, nevertheless the said Thomas E. Ricks says that the Third Judicial District of said Territory of Utah, in and for which the said court now here is held, was not ascertained by law until after the commission of the supposed murder in said indictment specified, that is to say the said Third Judicial District was not ascertained by law until the 27th day of December, 1865. And this the said Thomas E. Ricks is ready to verify, wherefore he prays judgment if the said Third District Court of said Territory now here will or ought to take cognizance of the indictment aforesaid; and that by the court here he may be dismissed and discharged, &c.

SUTHERLAND & BATES,
Att'ys for Resp't.
Z. SNOW of Counsel.
Utah Territory }
Salt Lake County. }

Thomas E. Ricks, being duly sworn, says that he has heard read the foregoing pleas and knows their contents; that said pleas are true in substance and matter of fact.

THOMAS E. RICKS.

Sworn to and subscribed before me this 12th day of Nov., 1874.

ED. B. MCKEAN,
Clerk.

Mr. Sutherland then said—"Your honor, I desire to make application on behalf of Mr. Ricks, that he be admitted to bail. It would seem from the announcement of the District Attorney that there is no immediate prospect of a trial, and bail to a reasonable amount can be furnished for his appearance at such time as it may appear that he can be tried. The charge in the

indictment, it is true, is murder. Bail is not granted as freely in murder cases as in other cases; but in my judgment the offence is not one uniformly not bailable, and I believe such an accused party to be bailable in the discretion of the Court."

MR. CAREY. "If the court please I do not think the court has any discretion in this matter at all, Section 21 of the Criminal Practice Act, page 63 of the Laws of Utah, reads as follows:

"In all cases bail may be required of witnesses, and in all but capital offences may be taken of the accused for appearance at time and place of trial," therefore I do not think it leaves the court any discretion in the matter whatever, I think the statute is fixed there."

MR. SUTHERLAND. "The statute to which reference has been made simply provides that parties, under the circumstances there stated, shall have a right to bail. We do not claim that capital cases belong to that category, and the expression in that statute simply excludes them from the list of cases in which bail may be claimed of right, capital cases are left as they would be if that statute did not exist. It has been regarded everywhere, I believe, that bail may be taken in the discretion of a court of general criminal jurisdiction in this class of cases, unless restrained by some positive statute, and provided that the discretion is reasonably exercised, if the trial can not be immediately had, and the proof of the crime is not positive, nor the presumption of guilt strong, bail is usually received. Now when we consider the date when it is alleged that this crime was committed, and the time that has since elapsed, it must be evident to the court that it is not a case that has attracted very much attention, it is not pretended that it is a murder the evidence of which was concealed. All the facts relating to this homicide were known at the time, and have been known ever since; the court must bear in mind also the statutes of limitations; when everything in relation to the case is considered it is not one in which conviction may be anticipated as certain or even probable."

MR. CAREY. "I wish you would read the statute of limitations you refer to."

MR. SUTHERLAND. "Can it be necessary that I should instruct the Prosecuting Attorney?"

MR. CAREY. "It is absolutely necessary to read that statute; I plead ignorance."

MR. SUTHERLAND. "If you press that on me I shall want to begin with my instructions at an earlier point."

MR. CAREY. "I should like to have the statute of limitations read."

MR. SUTHERLAND. "I do not suppose the Attorney to be in earnest in supposing there is a necessity."

MR. CAREY. "There is a necessity."

MR. SUTHERLAND. "I will leave him to inform himself at his leisure, as I have no doubt that, with the industrious habits for which he is famous, he will be able to find all the law applicable to the case."

MR. CAREY. "There is no doubt of that."

MR. SUTHERLAND. "The only reason that he has not already done so is no doubt the fact that his time has been so much occupied in drawing indictments."

MR. CAREY. "I should like to say one or two words before this matter is settled. In the first place I do not suppose it is necessary to go into the whole history of the murder, or to show the reasons why it has not been investigated before?"

THE COURT. "The case is not on trial now."

MR. CAREY. "No, sir, and with regard to the statute of limitations I have yet to learn that there is a statute of limitations with regard to murder or criminal matters, or in this Territory on anything [I] plead ignorance of it."

THE COURT. "The Court refuses to admit the prisoner to bail."

Mr. Sutherland asked the Court to fix a definite time for the District Attorney to respond to the pleas put in by the accused, but the Court refused to do so.

In reference to the point upon which the Prosecuting Attorney

plead such entire ignorance, namely, the existence of a statute of limitations which includes the crime of murder, we beg leave, respectfully, to refer the gentleman to Section I of Chapter CCXXXVI, page 183, volume 15, of the United States Statutes at Large, which reads as follows—

"Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That no person shall be prosecuted, tried, or punished for the capital offences set forth in the act to which this act is an addition, unless the indictment for the same is found by a grand jury within five years after such capital offence is committed."

A side note to the above section specifies the capital offences to which it is applicable, namely treason, murder, piracy and the casting away of vessels.

BY TELEGRAPH.

A Washington dispatch to the Times says that the recent attempted coup d'etat of Lt. Governor Smith of Arkansas proves not to be of recent contrivance. A pamphlet had been circulated in Washington, by Smith's friends, entitled V. V. Smith, &c., Lt. Gov'r of Arks., vs. A. H. Garland. It was printed in Chicago and contains over 100 pages. It is a letter and argument combined, and was written by Smith to the Hon. T. D. W. Yonley, attorney, asking for his legal opinion. The pamphlet covers a list of eleven propositions, relative to the Arkansas elections, the burden of which is, whether if Baxter should voluntarily surrender his office to some person claiming to be elected under the new constitution, &c., would Smith be authorized to discharge the duties of the unexpired term, and whether Baxter would have the right to resume the office of governor, if the President or some proper authority should dispose of the government established under the new constitution. A remarkable feature of this document is its date, which is Oct., twelve days before the new constitution was voted on at all. It was written in anticipation of the adoption of the new Constitution and of the election of a conservative Governor under it, in which event there could be no doubt that Baxter would surrender his office to the new Governor. The case of Smith vs. Garland was made up while Garland was yet only a candidate. Whatever the merits of the legal questions involved, there can be no doubt of the conclusion of the Clayton party that they must go outside the state to get aid or lose their control of affairs altogether. Senator Dorsey came here, bringing a learned opinion of the Hon. T. W. Yonley, and having been informed on Friday, of the readiness of Smith to issue his proclamation he the next day used the pamphlet in a way that he thought would do the most good. He got a part of it printed in one or two papers, and to-day's Morning Chronicle is full of specials from Little Rock which, if not written here might have been as well, and yet the attempt to manufacture excitement has failed. If there should be any violence it will be quickly suppressed by federal officers. It is probable that Dorsey will have to take his pamphlets and his case back to Little Rock, and turn them over to T. D. W. Yonley, to carry before the courts.

A plain marble slab has been placed on the Locust Hill, in Greenwood Cemetery, to mark, temporarily the grave of Horace Greeley; it bears the simple inscription, "Horace Greeley, born Feb'y. 3d, 1811; died Nov. 29th, 1872."

A gentleman extensively engaged in the breadstuff business, and formerly President of the Produce exchange, has suspended.

The strike of the longshoremen, began to-day. The men are gathered in groups along the docks on the East and North Rivers, but are not interfering with the laborers who have taken their places; the entire police force of the city is on duty, also that of Brooklyn and Jersey City, where the longshoremen are likewise on strike.

CINCINNATI, 16.—The amount of money in the safe stolen from the American Express Office here yesterday, is stated to be \$70,000 in stead of \$5,000, as telegraphed last night.