

[REPORTER.]

DISTRICT COURT, 2ND JUDICIAL DISTRICT.

PROVO, MONDAY, March 21, 1859,
9 a.m.

We have been furnished with the following list of the names of those composing the Grand and Traverse Juries:—

GRAND JURORS.

JOHN RIGGS,	JAMES PACE.
WM. MEEKS,	ISAAC MORLEY, junr.
RICH'D SESSIONS,	D. D. MCARTHUR,
A. G. CONOVER,	JOHN MERCER,
GEO. W. BEAN,	JESSE MCCAUSLIN,
JOHN W. TURNER,	JOHN SESSIONS,
M. C. KINSMAN,	A. P. DOWDLE,
MARTIN H. PECK,	JAMES SMITH,
LOR. JOHNSON,	WM. A. FOLLETT,
N. T. GUYMAN,	JOHN HARVEY,
WILBER J. EARL,	PHIL'R COLTON.
L. C. ZABRISKIE,	

TRAVERSE JURORS.

DUN. MCARTHUR,	ROBT T. THOMAS,
M. N. CRANDALL,	RICHARD BIRD,
WM. J. STEWART,	DENNIS DORITY,
JOHN W. CURTIS,	WM. F. BUTLER,
JAMES E. HAWS,	WM. S. SEELEY,
CYRUS SANDFORD,	WM. B. SESSIONS,
LOR. D. HATCH,	JOHN BROWN,
WILLIAM PACE,	WILLIAM HYDE,
HENRY ZUFELT,	D. B. ROSSEN.
HARVEY CLUFF,	

Court met pursuant to adjournment.

Mr. Stout wished to know what was to be done in the case of Mr. Cazier.

The judge said he would examine one witness in the case of examination that was adjourned from Saturday, and he would dispose of that case. Samuel Oscar was sworn and examined.

Grand jury brought into court; 19 present.

His honor asked if the foreman had any business to present.

The foreman replied, "We shall have our business, now under consideration, closed in a short time, I think."

His honor then proceeded to discharge the grand jury.

At the close of the discharge of the grand jury, Mr. Wilson, District Attorney, said:—

If the court please, as the administrative officer of the government here, I feel it my duty to state, in reply to your honor's suggestions in regard to the government, that the government desire that the crimes alleged to have been committed in this Territory shall be investigated thoroughly and promptly. The government has no other object, and can have no other desire, than that the laws shall be promptly, energetically, legally and faithfully carried out and administered.

Judge Cradlebaugh remarked: I wish to call the attention of the public to a letter which I received yesterday from the commanding General. He has seen cause to send an additional number of troops here [900], and he desires that I shall state to the court that they are not here to interfere with the citizens of the Territory, unless the conduct of the citizens should make it necessary that such interference should take place in self-defence. The commands sent over are not sent with any pretence to make an attack upon citizens, therefore none need entertain those views. The desire of the commanding General is to aid the court in the discharge of its duty, and to bring offenders to justice. The troops come here to be within reaching distance, for the purpose of enforcing the laws, and not for the purpose of violating it in any way.

I do this for the purpose of showing their object in coming to this vicinity.

The traverse jury were called, and a panel formed by writing the names upon slips of paper, putting them in jury box, made for the purpose, and then drawing out twelve, who were sworn to the issue on the following indictment:—

IN THE District Court of the United States in and for the Second Judicial District of the Territory of Utah, ss. of March term, in the year of our Lord one thousand eight hundred and fifty-nine.

The grand jurors of the United States of America, empanelled, charged and sworn to inquire in and for the Second Judicial District of the Territory of Utah, upon their oath present that John Cazier, late of Juab county, in the Judicial District aforesaid, yeoman, heretofore, to wit, on the third day of February in the year of our Lord one thousand eight hundred and fifty-nine with force and arms, in the Judicial District aforesaid, and within the jurisdiction of this court, and not subject to the rules and articles of war, unlawfully, knowingly and advisedly did procure and entice William McKue, he the said William McKue then and there being a soldier in the service of the United States of America, aforesaid, within the Judicial District aforesaid, to desert from his service, duty and allegiance to the said United States, he the said John Cazier at the time he so procured and enticed the said William McKue to desert as aforesaid, well knowing that the said William McKue was then and there a soldier in the service of the said United States contrary to the form of the act of Congress in such case made and provided, and against the peace and dignity of the government of the United States of America.

ALEXANDER WILSON,
Attorney of the United States for the
Territory of Utah.

I certify that the foregoing is a true copy of the original on file in my office this fourteenth day of March, A.D. 1859. L. N. SCOTT,
Clerk 2d Jud. Dist. Court.

Messrs. Stout and Blair appeared for the defence.

The District Attorney presented the case to the jury. Stated that it was an offence against the laws of the United States, made so by statutory provision of Congress. The act upon which the bill of indictment was found was passed Jan. 12, 1812, &c., &c.

Mr. Stout opened the case for the defence, and stated that as Mr. Wilson had said what he expected to prove he would say that they expected to prove the entire innocence of the prisoner. Captain McNeil was sworn and examined for the prosecution.

The prosecution proposed to introduce the testimony of the captured deserter as a witness for the prosecution.

Gen. Blair objected on the ground that he was a convict, undergoing the punishment awarded by the sentence of a court martial.

Mr. Wilson contended that as the witness he wished to introduce was not convicted in a court having civil jurisdiction his evidence was admissible.

After considerable discussion upon the point at issue, the court took a recess until 2 p.m.

2 P. M.

Court resumed its session.

Judge Cradlebaugh ruled that the testimony of the convict, who was under sentence of a court martial, was admissible before a jury in the case before the court.

Frederick Fanzen was then sworn: Gave evidence for the prosecution.—Cross examined by Messrs. Blair and Stout, when the prosecution closed their side of the case.

The council for the defence introduced Timothy B. Foote and Charles Sperry, who gave evidence for the defence of Cazier.—Cross-examined by Gen. Wilson.

The District Attorney opened the argument to the jury, followed by Hosea Stout, Esq.

The argument on the defence was closed by S. M. Blair, Esq.

A. Wilson, Esq., closed on the prosecution.

The jury retired, after being instructed in the law by his honor, and after an absence of thirty minutes, returned with a verdict of "Not guilty."

Judge Cradlebaugh returned his thanks to the traverse jury for their patient attendance upon the court; informed them that the marshal would settle with them for their services, and then observed that no other cases would be tried at that term of the court; they were therefore discharged from further attendance upon the court.

Court adjourned till to-morrow morning at 10 a.m.

Discharge of the Grand Jury.

After the adjournment of the court, the reporter sent Judge Cradlebaugh a copy of his remarks on the discharge of the grand jury, and received, next evening, the following note:—

Mr. J. V. Long has my thanks for the courtesy of allowing me to see and revise his report of my remarks on yesterday.—Very respectfully, yours, &c.,
JOHN CRADLEBAUGH.

This day makes two weeks from the time you were impanelled. At that time, the court was very particular to impress upon your minds the fact that it was desirable to expedite business as speedily as possible. The court took occasion to call your attention to the difficulties under which we had to labor. It told you of the condition of the legislation; it told you of the fact that the Legislature had not provided proper means to aid the court in bringing criminals to punishment; it told you that, aside from that, that the legislation was of such a character as to embarrass the court in the discharge of its duties; and that they had given criminal jurisdiction to courts of their own creation, which by the organic act can exercise no such jurisdiction. They had sought to throw the punishment of crimes into such tribunals.

The court also called your attention to the fact that there had been, in connection with this legislation, an attempt by persons within the Territory to bring the United States Courts into disrepute with this people. It particularly called your attention to the fact that Brigham Young, the late Executive of the Territory, at the time when he was a sworn officer of the government—sworn to see that the laws were executed—had taken occasion to denounce the courts as vile and corrupt; also that he had taken occasion to denounce all attorneys and jurors of the court, and that this was done to prevent the proper and due administration of justice in the Territory.

The court felt it to be its duty to repel such slanders; that it owed it to the position it occupied and to the members of the bar, who were looked upon as honorable men, and from its association with them, it felt it to be its duty to repel such slanders, let them come from what source they might. This was done for the purpose of showing the difficulties that you and the court labored under in bringing criminals to justice.

Aside from this, the court took the unusual course of calling your attention to particular crimes—the horrible massacre at the Mountain Meadows. It told you of the murder of young Jones and his mother, and of pulling their house down over them and making that their tomb; it told you of the murder of the Parrishes and Potter, and Forbes, almost within sight of this court house. It took occasion to call names for the purpose of calling your particular attention to those crimes; the fact that they have been committed is notorious.

The court has had occasion to issue bench warrants to arrest persons connected with the Parrish murder; has had them brought before it and examined; the testimony presents an unparalleled condition of affairs. It seems that the whole community were engaged in committing that crime. Facts go to show it. There seems to be a combined effort on the part of the community to screen the murderers from the punishment due them for the murder they have committed.

I might call your attention to the fact that when officers seek to arrest persons accused of crimes they are not able to do so; the parties are screened and secreted by the community. Scarcely had the officers arrived in sight of the town of Springville before a trumpet was sounded from the walls around the town. This, no doubt, was for the purpose of giving the alarm. The officers were there to make arrests. The officers leave the town, and in a short time a trumpet sounds again from the wall for the purpose of announcing that the danger was over. Witnesses are screened; others are intimidated by persons in that community.

An officer of this court goes to Springville, meets the Bishop of the town, asks him about a certain man, for whom he has a writ, behaving understood that the man was a scribe in his office. He (the Bishop) tells him that he has gone to Camp Floyd, while the fact is, the person the officer desires to find is at the time in sight in the street. We have here a Bishop lying to prevent the service of the process of this court, and aiding in preventing criminals being brought to punishment.

Such are the attempts made to prevent the administration of justice in the courts. Officers are prevented from making arrests, they are thwarted upon all points when they seek to arrest those persons who should be brought to punishment.

Such acts and conduct go to show that the community there do not desire to have criminals punished; it shows that the Parrishes and Potter were murdered by counsel, that it was done by authority; the testimony goes to show that the persons engaged in committing these murders are officers in that community, policemen, and that they have since been promoted for committing these heinous crimes.

At the commencement of this term of court, these persons were to be seen elbowing about the streets with the Bishops and other dignitaries, but now they are not to be found.

I say all the facts go to show that those offences were committed by officers in that town, and that there is a determination to cover up and to secrete the offenders.

You have had sufficient time to examine those cases; more than two days ago, you had all the testimony before you in the Parrish case and for some cause you refuse to do any thing.

Your duty is to find bills when there is sufficient testimony to satisfy you of the probability of the party's guilt. The Court has been patient with you; it has given you time; it has endeavored to be patient, that you might have ample opportunity to do your duty.

The court has no desire but to do its duty; to punish offenders and enforce the law—it can have no other purpose or motive.

It is the desire of this community that persons guilty of crimes shall be screened, and that high, notorious crimes shall be covered up, it will have to be done without the aid of this court.

Should my government desire such things, they must send some other person than the one who now presides in this judicial district to accomplish such purpose.

The court cares not what position persons hold, either civil or ecclesiastical, if they are guilty of crime, it will use its authority to bring the offenders to justice.

By legislation we have no jails, no means to support prisoners, no means of paying witnesses or jurors; or other officers of this court. It would seem that the whole of the legislation of this Territory was to prevent the due administration of justice.

It was these considerations that induced the court to desire you to expedite the duties devolved upon you.

The court feels that it has discharged its duty; it has furnished you every facility for discharging yours. Still, you make no report; to continue you longer in service would be wrong—the public interest would neither be promoted or benefited by it.

You are therefore discharged from further service.

The court will think of the propriety of veniating another grand jury.

For your service upon territorial business the clerk will issue you his certificates. For the time you were engaged on United States business the marshal will pay you.

If it is expected that this court is to be used by this community, as a means of protecting it against the peccadilloes of Gentiles and Indians; unless this community will punish its own murderers, such expectation will not be realized. It will be used for no such purpose.

When this people come to their reason, and manifest a disposition to punish their own high offenders, it will then be time to enforce the law also for their protection. If this court cannot bring you to a proper sense of your duty, it can at least turn the savages in custody loose upon you.

A remonstrance signed by the Grand Jury, without a dissenting voice, against Judge Cradlebaugh's unprecedented course, in peremptorily and vindictively discharging them when about consummating the business before them, was presented; but we have been unable, as yet, thro' some inadvertency, to obtain a copy.

After McDonald, Kearns and Bullock were arrested and placed in custody of the military, the Sheriff of Utah county, Wm. M. Wall, Esq., as we are informed, told Judge Cradlebaugh that he could take charge of all prisoners accused of offences against the laws of this Territory.—The Judge asked him if he had a sufficient jail. The Sheriff replied that he had, and that if his bonds were not sufficient, he could increase them to any amount that might be required. Judge

Cradlebaugh replied that he would consult Judge Sinclair on that subject.

The prisoners being continued in the custody of the soldiery and not comfortably provided for requests were made to the court and to the U. S. marshal by their attorneys and others, that they might be taken to some place where they would be more comfortable, and the answer received was that "they could not be kept in any place excepting in camp." Some blankets and food were asked for, as the prisoners were in want of both. The U. S. marshal (Dotson) replied that they could have neither, "unless they furnished themselves."

If the circumstances above occurred as related, as there is little room for doubt, they certainly place the court and its officers in no enviable position.

MEMORIAL AND PETITION

TO HIS EXCELLENCY ALFRED CUMMING,
GOVERNOR OF THE TERRITORY OF UTAH.

SIR:—Your memorialists, citizens of Utah Territory, respectfully represent that the Honorable John Cradlebaugh, Associate Justice of the Supreme Court of the Territory of Utah and ex-officio Judge of the 2nd Judicial District, commenced holding a term of court in Provo, Utah county, U. T., on the 8th day of March, A.D. 1859, by what law, as to time and place, of the United States, or of this Territory, is unknown to your memorialists, for in the statutes at large, chapter CXXIV, section 5 of "An act to amend the acts regulating the fees, costs, and other judicial expenses of the government in the States, Territories, and District of Columbia, and for other purposes," approved August 16, 1856, we find that Congress enacted "That the judges of the Supreme Court in each of the Territories, or a majority of them, shall, when assembled at their respective seats of government, fix and appoint the several times and places of holding the several courts in their respective districts, and limit the duration of the terms thereof," which is all the law upon that point that we have been made cognizant of; and, from page 119 of No. 27, vol. VIII, of the Deseret News, we learn that Chief Justice D. R. Eckels and Associate Justice C. E. Sinclair, in accordance with said law, did, in August last, meet in Fillmore city, then ruled by them to be the seat of government for this Territory, and 'fix and appoint the several times and places of holding the several courts' in the three judicial districts of this Territory, fixing and appointing the time and place for the judicial district in which Judge Cradlebaugh is now holding court, as follows:—

"2d District Court will be holden at Fillmore city on the first Monday in November, by Mr. Justice Cradlebaugh," and it is obvious that the 8th of March is not the "first Monday in November," neither is Provo on the site of Fillmore city. Judges Eckels and Sinclair also limited that "each term of District Court will be for thirty days if the business shall require it;" Congress, Statutes at Large, chap. CLXVI, approved June 14, 1858, enacted "That the judges of the Supreme Court of each Territory of the United States are hereby authorized to hold court within their respective districts, in the counties wherein, by the laws of said Territories, courts have been or may be established, for the purpose of hearing and determining all matters and causes, except those in which the United States is a party: Provided, That the expenses thereof shall be paid by the Territory, or by the counties in which said courts may be held, and the United States shall in no case be chargeable therewith," and Judge Cradlebaugh cannot be holding court under this law, for he is examining 'matters and causes' in which the United States is a party; and in sec. 2, chap. XLIII, Statutes at Large, approved July 4, 1840, we find "That the presiding judge of any circuit court may, at his discretion, appoint special sessions thereof, to be held at the places where the stated sessions thereof are holden;" but at such special sessions are prohibited from "trying any cause by a jury;" now were such discretion allowed a judge of any district court, which we have not found, it would still preclude the court in question, since it has both grand and petit juries in its employ.

Having thus briefly and plainly cited all the law within our knowledge, pertinent to the subject, we submit the question of the legality of the court now being held in Provo by Judge Cradlebaugh, to your Excellency, and further respectfully represent that, upon a requisition by Judge Cradlebaugh, a detachment of United States troops was marched from Camp Floyd and halted at the building provided for the accommodation of the court, and in which said Judge was at the time delivering his charge to the grand jury, and subsequently and still, so far as we know, encamped adjacent to and the officers quartered in said building, a proceeding altogether contrary to the spirit and letter of President Buchanan's late message to Congress, wherein he states, "I am happy to inform you that the Governor and other civil officers of Utah are now performing their appropriate functions without molestation. The authority of the Constitution and laws has been fully restored, and peace prevails throughout the Territory," directly contrary to an express understanding with the Peace Commissioners, as made public in Provo by Governor Powell, June 16, 1858, when he stated to some four thousand citizens then and there assembled, that "while he (President Buchanan) claims and will exercise the right to send the army wherever he may please, his object is not to make an encampment in any of your cities. Gen. Johnston told me that he did not wish his army to be stationed near a city," and contrary to any just, legal, or even necessary requirement, for, notwithstanding Judge Cradlebaugh, in his reply of March 12, 1859, to