

terial legislature. But the Supreme Court of the United States say, that full authority concerning this matter was given to the territorial legislature by the "Organic Act." We cannot say, therefore, that this positive authority given by the "Organic Act" is negated by implication, when the Act of Congress does not embrace the point.

Under all proper rules of construction, therefore, we are forced to the conclusion that we must resort to the Territorial statute to ascertain what is the proper number for a grand jury. That statute declares fifteen to be the proper number and does not authorize a grand jury of any other number. The grand jury which found the indictment in the case before us, having been composed of twenty-three members instead of fifteen, was not such a grand jury as the law requires, and by not being properly constituted, its action became vitiated.

There are some minor points in the case which perhaps we should notice. One of the parties appearing as grand jury stated, upon his *voir dire*, in answer to a question by the prosecution, that he had conscientious scruples against indicting persons for violation of the law of the United States of 1862 against polygamy. On that ground he was challenged for cause, the challenge sustained and the party discharged and not sworn upon the grand jury. This action of the Court, in excluding this party from the jury, is assigned as error.

A person who upon his conscience could not find indictments under a law, would not make a good juror to enforce the laws. And if all members or a majority of a grand jury had like scruples, that ancient and venerable body would not only become useless, but also an absolute hindrance to the enforcement of the law. A party having these conscientious scruples would, if sworn upon the grand jury, have to commit moral perjury. He, upon oath, admits that his conscience forbids his aiding in the enforcement of a specific law, yet as a grand juror he swears to go counter thereto, and enforce the law. Such a party would be wholly incompetent to sit upon a petit jury. And the same ground would exclude him from the grand jury. (Wharton's Am. Crim. L. sec. 469, Burr's trial, sec. 38.)

We think there was no error in the exclusion of this man from the jury.

It is claimed that the drawing and summoning of some of the grand jurors after the beginning of the term was error. So far as the drawing and summoning of jurors after the number of fifteen had been obtained, it was error, but so long as that number was not exceeded on the jury there was no error. If, from any cause, the jurors summoned prior to the term do not appear, the court is authorized, under the act referred to, to have such additional number summoned as the court may deem necessary to complete the panel. If those thus drawn do not appear, the court is not compelled to delay indefinitely, but can order the drawing of still a further number, if necessary, to complete the panel.

It is likewise asserted that one of the jurors did not pay taxes. He had taxable property, however, and was ready to pay taxes. If he was not assessed and not thus allowed to pay taxes, it was not his fault, and he cannot be excluded from the jury box for failing to pay taxes.

All of the objections respecting the constitution of the jury were raised by the appellant in pleas in abatement.

The judgment of the Court below is reversed, and the cause remanded to the Court below, with instructions to set the verdict aside and quash the indictment.

LOWE, C. J., concurs.

EMERSON, J.—The only doubt in my mind in connection with this case was in reference to the constitution of the grand jury, but upon a more critical examination of the subject, I very cheerfully concur in the result arrived at.

A son of the late celebrated English elocutionist Bellew, has made a successful appearance in London.

"Lemme die now," gasped an Ohio farmer, "I've lived to see a woman put thirty-one yards of cloth into one dress, and I'm ready to pull up stakes."

## Local and Other Matters.

FROM FRIDAY'S DAILY, JUNE 18.

**Pugilistic.**—This afternoon a couple of "urchins" disagreed, on Second South Street, and the smaller of the two, who considered the other had insulted him, doffed his coat and hat and dashed them upon the sidewalk and at it they went, rough and tumble, when a peace-making bystander collared and separated the belligerents, to the evident disappointment of a few others, who looked on as if they enjoyed that kind of thing.

**The Ohlerson Case.**—Hans N. Ohlerson appeared in the Justice's Court yesterday afternoon for preliminary examination on the charge of embezzlement, but the case was again continued till this afternoon. We understand that Ohlerson agrees to secure Bishop Jenkins, to whom the money he longed, to the full amount of the \$900, which the accused alleges he was robbed of. It is probable, from the present aspect of the case, that the Prosecuting Attorney will move for its dismissal.

**The Foundation Stone.**—It was expected that the foundation stone of the Z. C. M. I. new building would be laid, by President Young, at three o'clock this afternoon. The President and a number of others visited the building site at the time specified for that purpose, but, on examination, the ground on the level of the excavation was deemed too loose and sandy for a building of such magnitude, and it was decided to dig deeper around where the walls will be reared and lay in concrete under the rockwork. The ceremony of laying the foundation stone was consequently postponed for the present.

**Mining Case Settled.**—This morning O'Leary and about twenty others appeared before Justice Pyper, to answer to a charge of holding wrongful possession of the South Star and Titus mines, to the exclusion of the proper owners, Tarbot *et al.* It appears that the owners were indebted to the defendants for work, and they held possession of the mine to secure their pay. Mr. Hemingway, who appeared for the defendants, stated that he had discovered that they had been wrongfully advised by certain parties to make the step they had, that they were willing now to make reparation, &c., and on this showing of the case the defendants were dismissed from custody.

**The City Water Works.**—The prospect of Salt Lake City having water works in the near future is now placed beyond a reasonable doubt. The Corporation, through their committee, have consummated a contract with Dennis Long and Company, of Louisville, Kentucky, the largest pipe manufacturers in the United States, for several miles of iron piping, ranging in size from twenty inches to four inches in diameter.

It is expected that the first installment of this iron piping will reach here sometime within the next thirty days, and it is the intention, immediately on its arrival, to commence laying the mains.

The value of water works to a city like this can scarcely be overestimated. It will necessarily materially reduce the rate of fire insurance in the more thickly populated parts, which is quite a consideration. It is intended to put in hydrants at suitable distances in the business part of town, and the large fall will be sufficient to throw the water over the highest buildings.

The water works will conduce to the health of the population, as the handiness of water throughout buildings increases the facilities and inducements to stricter cleanliness.

The setting agoing of the water-works will make a little more business stir, by creating more labor, and anything that will produce such a result these dull times is surely welcome. When the mains are laid, won't there be a harvest for plumbers and fitters generally!

The citizens will hail with some satisfaction the intelligence that the Salt Lake City waterworks will soon be an accomplished fact, or, at least, that they bid fairly in that direction at present.

**Another Fatal Accident.**—Yesterday afternoon, shortly after one o'clock, Brother Joseph Sellers, resident of the 20th Ward, died from the effects of an accident, which he met with in Big Cottonwood Canyon, on Monday afternoon.

Deceased was employed at the lumber mills of Mayor Wells, and on the day the accident occurred was on his way to this city for the purpose of taking his wife up the canyon to stay for the season. He has a brother, William Sellers, who works at Armstrong's mills, and as he passed that place this brother had a presentiment that something wrong was going to happen to Joseph, and he begged the latter to stop over night with him and catch up with the team in the morning, but he chose to proceed. He was riding on a load of lumber, and the team got stuck fast in the soft snow of an old snow-slide; a few miles below Armstrong's. Brother Sellers got down to assist the teamster to extricate the animals, when one of the mules kicked him, one foot striking him over the pit of the stomach and the other in the abdomen.

The teamster sped to the nearest house for assistance, a couple of miles below, the unfortunate young man, in the meantime, having to remain on the ground alone. He was conveyed as soon as possible to the house of Mr. Maxfield, and surgical aid procured for him. On the arrival of his brother William the latter brought him home to this city, reaching here on Wednesday, when other surgical assistance was procured, but the injuries were so severe as to baffle human skill, and, after much suffering, he expired at the time already mentioned at the commencement of this article.

Brother Joseph Sellers was a native of Scotland, and emigrated from the Glasgow Conference, with other members of the same family, in 1861. He was twenty-nine years of age, and had only been married a little over four months. He was warm hearted and well disposed, being universally liked by all his acquaintances. He was reared in the Church of Jesus Christ of Latter-day Saints. The funeral services will take place to-morrow, Saturday, at 10 a.m., at the 20th Ward School-house, and we are requested to state that friends of the family are invited.

FROM SATURDAY'S DAILY, JUNE 19.

**Getting Warm Again.**—The mercury goes up and the weather grows warmer to day.

**How to Do It.**—If you want to have the pleasantest kind of Summer weather, all you have to do is to confine the top of the mercury between 60 and 70 degrees F.

**Trip to Provo.**—Yesterday, Senator Kelley, of Oregon, accompanied by President D. H. Wells, Hon. Geo. Q. Cannon, Governor Axtell and others, went to Provo and back, on the Utah Southern Railroad.

**Want'd.**—To know the whereabouts of Ruth Watts, who emigrated from the Swansea Branch four years ago. When last heard from she lived in the 18th Ward, Salt Lake City. Address—Moroni Watts, care of Mrs. Batsons, Commercial Street, Newport, Mon.—*Millennial Star*.

**The Ogden "Freeman."**—The first number of the Ogden *Freeman*, for June 18. L. R. Freeman, editor; Ada V. Freeman, local; and H. M. Bond, manager of the machine department, has come to hand. The *Freeman* has a neat and newsy appearance, and is published semi-weekly. The present number contains a page descriptive of Ogden.

**That Murder Case.**—Philip Shafer, who was under sentence of death, for the murder of Peter Van Valkenburg, will not be hanged next week. The case, being on appeal from the District Court, which refused a motion for a new trial, a decision was rendered in his favor, by the Supreme Court this morning, the points made by his attorney, John H. McCutchen, being well taken. A new indictment will have to be found and the case tried over again.

**The Supreme Court Decision.**—It will be seen, by the opinion published in another column, that the Supreme Court have unanimously set aside the verdict and quashed the indictment in the case of George Reynolds, who was convicted of polygamy in the Third District Court a number of weeks ago, and sentenced to a fine of \$300 and one year's imprisonment at hard labor. The decision was given this morning.

**Musical.**—The Handel and Haydn Musical Association, encouraged by their success with the "Oratorio

of the Messiah," are making arrangements to commence practice for another concert, when they propose regaling the lovers of the "divine art" with another celebrated composition of the same high order.

The Association lately made some changes in the organization and appointed a new executive committee.

**Term Closed.**—The Spring term of the present academical year of the University of Deseret closed yesterday, when the regular examination was held.

After the exercises had closed, the pupils presented Dr. Park and Professors Bishop and Rawlings respectively with elegantly bound volumes of the works of Byron, Burns, and Moore.

The library will be closed during the vacation. The next term will commence on Monday, August 23rd.

**Utah Western.**—A very neat and convenient ticket office has just been put up at Muirbrook's, and other arrangements are being perfected looking to the location of a station at that point. Muirbrook's is the present terminus of the road and the point of junction with the stages for Ophir and the south-west. It is an inviting place to breakfast on the way out from Salt Lake; and will now be the dining station for eastward bound passengers. The new arrangement will prove a convenience to the passenger traffic on this road.

**Accident.**—To-day, as the cortege which followed the remains of brother Joseph Sellers to their last resting place, was nearing the cemetery a light wagon belonging to Brigham Sellers went suddenly into a "chuck" hole, the jar breaking and tipping a seat. Mrs. Cameron and Mrs. Norris, of the 11th Ward, and Mrs. Culmer, of the 20th Ward, who were sitting upon it, were thrown out upon the ground. Mrs. Cameron was rather severely hurt in the back and shoulders, the other two were injured in the breast, and all three were badly shaken by the fall. They were placed in a carriage and at once conveyed to their homes.

**The Provo Excursion.**—The 13th Ward Sunday school and their friends had a very pleasant excursion to Provo yesterday and were treated in the most courteous manner, being met on their arrival by a committee of the following gentlemen: David Johns, Albert Jones and S. S. Jones, Esqrs., with the Provo brass band, who accompanied the excursionists to the basement of the meeting house, which was handsomely prepared for their reception. Those who desired to see the Woollen Factory then enjoyed the privilege, under the guidance of Supt. James Dunn, the committee having previously obtained the sanction of Bp. A. O. Smoot.

**Drugged and Robbed.**—This morning William Bean and Albert Foster, the latter a hack driver, were arrested and taken before Justice Pyper, on a charge of drugging and robbing Rudolph Schibler, yesterday. Schibler swears that he went to the Warm Springs, yesterday, in Foster's hack, in company with Bean and Foster, and on the way back the two gave him something to drink out of a bottle, which suddenly rendered him almost lifeless, and that, while he was in that condition they robbed him of what money he had on him, amounting to \$24, after which they took him to the White House. The stuff which he alleges was given to him by the accused made him very ill for some time.

Foster and Bean pleaded not guilty to the charge, and two o'clock was the time set for the commencement of the preliminary examination, the parties being in the meantime committed to jail in default of finding \$1,000 bonds.

**Bad Runaway.**—Shortly after four o'clock yesterday afternoon a team, belonging to a man named Coes, attached to a wagon in which were a young man and woman, took a notion to start on a first class runaway, up East Temple Street. The rig was brought to a sudden stop by one of the animals dashing in full force against a shade tree, directly in front of this office. The horse of one of our paper carriers happened to be tied to the same tree, and the collision caused him to tumble a back somersault, the effect of which was to burst the saddle in two, while the animal itself escaped unhurt. The poor

beast that ran against the tree lay on the ground and groaned for some time, and it was thought to be badly injured, but after a while it revived. The parties in the wagon had a narrow chance, but managed to escape without injury.

**A Poltroon Scared.**—The Beaver *Enterprise* of the 15th inst tells of a rencontre that took place in that city the day before, between a son of Mr. John D. Lee and a fellow named Royal, who seems to have earned the scorn and contempt of all decent people in that locality by his continued displays of meanness and poltroonery. This pitiable specimen of human kind was formerly employed as guard over John D. Lee, and had frequently shown his utter lack of all that was generous or magnanimous by insulting his prisoner, who, being in irons, could only manifest his resentment by words. Royal was finally removed on account of his insults to Lee, and since then he has occupied himself occasionally in vilifying the characters of various citizens of Beaver, among others that of Mrs. Rachel Lee. This coming to the ears of that lady's son, he, also knowing of the insults his father had received from the same party, placed himself on Royal's track, and as soon as he found him, laid him sprawling in the dust with a blow from his fist. The miserable cur yelled for help, but no friendly hand was near, and as soon as he regained his feet he ran as fast as possible out of the reach of the man whose parents he had assailed in such a cowardly manner.

FROM MONDAY'S DAILY, JUNE 21.

**Improving.**—Our readers will be glad to learn that the health of President George A. Smith is still improving. He was able to take a ride around in a carriage this morning, during which he called at this office.

**Commenced Tearing Down.**—The work of tearing down the buildings on the Bank of Deseret corner, preparatory to the erection of the proposed fine block of new buildings, has been commenced.

**Hot and Cold.**—Yesterday was a very hot day in the sunshine, but, as there was a decidedly sharp breeze, it was also quite cool in the shade, and almost a first rate-day to "catch cold" on.

**Fined.**—A woman of the town was before Justice Pyper to-day on the ordinary charge in such case, and was fined \$100. Being unable to pay the amount, she now reclines in jail.

**Relative of Bismarck in Town.**—Lieut. Carl Eugen Graf Von Bismarck-Bohlen, nephew of the celebrated Prussian statesman, is in town, and visited the main points of interest in this City to-day.

**Obsequies.**—The funeral services of the wife of Elder N. H. Felt were held yesterday. Elder Orson Pratt preached the funeral discourse which was replete with words of comfort to the relatives of the deceased and of instruction to all who listened to it.

**Held.**—On Saturday afternoon William Bean and Albert Foster were each held in \$1,000 bonds, to await the action of the grand jury on a charge against them of robbing Mr. Schibler. In default of finding the bail Bean was committed to jail.

**Gone to California.**—To-day Messrs. C. R. Savage and R. F. Neslen were to leave on a trip to California. Mr. Savage goes for the purpose of obtaining photographic views, and Mr. Neslen to recruit his health. They will probably be gone about two weeks.

**A Snowslide Victim.**—The body of William Slensby, killed by a snowslide last Winter, near the Empire mine, has been recovered, and was brought to the City last evening, for interment. An inquest was held over the body, by Coroner Taylor and a jury, and the remains were buried to-day, by the Masonic fraternity, of which he was a member.

**In from the Country.**—To-day the streets in the central part of the City were thronged with crowds of people from the country settlements, who had come in to see the performances of Montgomery Queen's great show, the handsome horses and finely embellished vans of which paraded the principal streets. The first performance of this huge circus and menagerie was given this afternoon.