Mr. Smith said he knew nothing of such a trial until after the considera ion of his motion.

Mr. Williams proposed to give bonds and retain the property.

Court adjourned till to-morrow at 11 a.m.

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THURSDAY, Aug. 4TH, 11 a.m.

Court met pursuant to adjournment.

The trial of Thomas Colbourn was resumed. The witness, Ben Perkins, wanted for the prosecution could not be found.

Judge Sinclair remarked that it would be improper to allow the ends of justice thus to be defeated; an attachment was therefore issued to bring the witness before the court, and to give time for its execution the court took a recess till 12 o'clock.

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12 o'clock.

Court resumed its session.

Mr. Wilson said that this was one of the most annoying circumstances that had ever come under his observation. for a witness to stay away after he had been arrested.

Mr. Blair asked the court to order the prosecution to go on.

His honor replied, I must exercise a reasonable amount of patience in order to serve the end of public justice.

While waiting for the witness, court ordered the civil dosket called and stated that he was very anxious to be doing something. The return of the attachment stated that the witness was in the custody of the marshal, but the fact was he had escaped from that officer.

Marshal Dotson returned and stated that he could not find the witness. He then stated that he had taken the witness into custody, as per order of court, and then gave him permission to go and wash himself, and being quite sick himself did not go with him but ordered the witness to follow him to court, but instead of doing so, he had gone off somewhere.

The court ordered the marshal to summon a posse and to arrest the witness, wherever found, and if any party or parties were found in collusion with the witness let the court be informed and he would bring such party or parties to justice, for the court would not be tampered with.

Court took a further recess to await the action of the posse comitatus.

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3 1-2 p.m.

Court resumed its session.

The marshal reported the inability of himself and posse to find the witness, and gave it as his opinion that some white person had run him off.

The judge said such conduct was deserving of the most unqualified condemnation of every good citizen. After very justly deprecating the conduct of some party unknown in running off the witness, his honor said that he would with reluctance again put the jury under the care of the bailiff, and by the posse comitatus and every other means exhaust the power of the court to find the witness.

Mr. Wilson entirely concurred with the opinion of the court, and suggested that after exhausting the means within the power of the court it would then be proper to offer a motion to discharge the jury, and then take up the case at any time during the present term, or at any subsequent time.

Court took a recess till 5 o'clock, and stated that it would exhaust every effort or continue them until he brought those parties connected with this affair to justice.

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5 p.m.

Court resumed its session.

The judge invited the attorneys to discuss the question as to whether or not the prisoner should be remanded into custody until the witness could be found. The court was determined to carry out the law, to punish the guilty and exculpate the innocent, and it would not permit the jury to be thwarted.

Gen. Wilson referred the court to page 574 of Wharton's Criminal Law on the subject of discharging the jury.

Every other means failing the court discharged the jury and remanded the prisoner into the custody of the jailer of G. S. L. county until called for by the court.

Court adjourned till to-morrow at 10 o'clock.

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THURSDAY EVENING.

Shortly after the adjournment of court the grand jury came in and the judge returned to the bench. The foreman presented a bill indicting Deloss Gibson for the murder of James Johnson, and with it a note which was in substance as follows:

"JURY ROOM, Aug. 4.

The grand jury would respectfully represent, that the evidence before them, goes to show that Deloss Gibson has once been put upon his trial for the offence charged in the accompanying indictment, before the Probate Court of this county and found guilty."

His honor then addressed the grand jury as follows:

The court has no hesitation in saying that the finding guilty of Deloss Gibson is just as llegal as if he had been found guilty before John Smith or William Jones, or before one of you. This court entertains the opinion that the Probate Court has no criminal jurisdiction. and that convictions found there are just as illegal as if found before a Justice of the Peace, and therefore the assumption is illegal.

Now in the case of Deloss Gibson, if the court should, in your opinion, rule illegally you have a right to ask an appeal, and if good and sufficient reasons were to be produced the decision of this court would be set aside, and hence there would be no judicial tyranny; Deloss Gibson would have a right to carry this case up, and a proper and appellate tribunal could decide against the decision of this court, and send the case back. But then there is an order in the ordinary operations of the law, and there is a regular gradation of those authorities. Surely it is not contended that the District Court has not superior jurisdiction to the Probate, and that the acts of the Probate Court are not subject to reversion; and they are subject to the parties appeal, that in my opinion shows that the Probate Court has no jurisdiction in criminal causes, that it has no jurisdiction whatever in criminal matters.

Now to talk plainly I think I know why the Probate Courts were placed in this position. Perhaps the assumed authority (I say perhaps, because my decision has not been either approved or reversed,) I think it probable that the Legislature invested these Probate Courts with this jurisdiction without a proper regard to the organic act, and I have this satisfaction, in knowing that if I am wrong in my decision against the criminal jurisdiction of Probate Courts, that I can be reversed, and that you and all that feel the necessity of having this matter tested and a proper understanding established can have it so, not by any revolutionary movement, but because there is a provision made that if the Judiciary do wrong you can reverse it; and if I do wrong I would rather have my judgment reversed than have it stand. I do not say this as a mere phrase of theory, but in perfect honesty. I have no personal feeling, no special interests to serve, I have no comprehension of any man's cause, till brought before me judicially; I have nothing to do but justice.

Now Deloss Gibson has been convicted but not sentenced. In the judgment of this court, which you are bound to obey, and that Judge Smith is bound to obey, and that everybody else is bound to obey until reversed by a proper and appellate tribunal, is that that judgment is void ab initio; that it had no jurisdiction, none whatever. Now what have you to say? Is it for you to say whether this court pronounces the law correctly or not?

No, but you are to regard its decision. This court tells you that Deloss Gibson has not been convicted, that he has not been held legally to any trial, that he had not been held legally by the Probate Court, that he is now held before this court, and that the case stands just where the law places it.

If I err, or any other judge in this Territory errs reverse it; if I do anything that is contrary to the authority of the law, or that is opposed to the guaranteed independence and authority of the community reverse it before competent authority, not by any appeal to passion nor prejudice, not by any appeal to anything that God does not justify, but by an appeal to the law where it is placed, and let it be where the law places it, subject to the remedies which you have a right to apply.

As judge of this judicial district, I decide that Deloss Gibson stands as if no proceedings had been entered against him, and if you think proper to ignore and rip up all the judicial authority of this Territory, do so, and let the responsibility rest where it should. So far as you are representatives of the community let it rest upon them, but so far as you are not, do not let the community bear the responsibility.

To every sensible man it will be evident, that to collect 22 men, and say that they are the exact representatives of the community, it is a matter of impossibility to do it, but I will exhaust every available means to carry out my intention of conforming to what the law requires. Now you 21 men may have 21 different opinions, and 300 outside of this court may have so many opinions. I do not intend to give up until I exhaust the judicial power to learn the true feeling of the people; I purpose exhausting the judicial power before I say that the laws cannot be administered here; but when I say it, it will be true, for I shall not say it until I am convinced that it is so.

I want you, gentlemen of the grand jury, to give your attention, and to exhaust the means within your power to investigate the crimes that have been committed in this Territory, however near or however remote, and thus enable this court to exercise the authority it was presumed it could exercise when it first sat here.

The court thinks that the probate court has no jurisdiction in criminal causes, and thus this court has appellate power. The court does not want to compromise its jurisdiction, by saying what it will do, but the court will say that while it sits here in the exercise of the power vested in it, that justice shall be done though the heavens fall.

It is of the highest importance that the judicial authority should be well established in this Territory; it has been the source of all your difficulties. You have had men here who have assumed irrelevant and unwarrantable authority. Peace has been declared in this Territory, and the people are presumed to be in peaceful relations with the United States.

With your matters of religion the United States have nothing to do, nor have they any disposition to interfere with them, except where they are in contravention of law, and this has to be determined by the judiciary, and that the court will charge the jury with when it feels called upon to do so. It will not infringe upon a man's conscience, but the question is how the law stands, how it is written, and what is the law as it is written, and to which this people are subject—myself as well as the rest. We are subject and liable to the legitimate charges of the judge, so far as legal; if illegal, reverse them; if not, support them.

Well, now, I design to impress upon the minds of the grand jury this unequivocal fact, that if I decide that the action of the Probate Court is illegal; if it takes John Smith and tries him for murder, and if it has no jurisdiction to try John Smith, the whole proceedings are illegal. In this case the judge of probate does not sentence, but the court actually convicts, and I pronounce the whole proceedings connected with the trial illegal.

Do you sit there in your room to decide legal questions? No, gentlemen, and I charge you specially, and especially in the case of Deloss Gibson, that all the proceedings have been illegal, informal, and that the jurisdiction claimed is contrary to the meaning of the organic act and to the intention of Congress. To bring his case up and try it in the Probate Court is no more legal than if you, no more than if Mr. Wells had taken him up and tried him; no more would his decision have been regarded in the case, in the rendition of the verdict than if tried before the Probate Court. You will therefore inquire into this case, (Mr. Bell, the foreman, said they had found an indictment, and that in their vote they were unanimous, but that a portion of the grand jury wished to have the opinion of the court on the question named in their communication,) whether or not the District Court or the Probate Court has jurisdiction, you have nothing to do; that is a matter of law, and when you attempt to override the deliberate considerations of the court, you exhibit a failure to recognize the form of government established here.

If Deloss Gibson has been presented, let that plea be brought up, and don't let passion or any excited feeling override the regulations of law, and of the national government.

I found these remarks, which I have purposely made, upon remarks made by some of the members of the grand jury, in a written communication presented with the indictment.

Gentlemen you can retire.

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FRIDAY, 5TH, 10 A.M.

Court met pursuant to adjournment.

Charles Kinkead was excused from the traverse jury, on the motion of C. M. Smith, Esq., who gave good and sufficient reasons to the court.

Mr. Lilly was also excused from further attendance on the court as a juror.

Mr. Peck gave reasons satisfactory to the court for his non-attendance upon the petit jury.

Robert Burns was likewise excused.

Mr. Williams filed his bonds to retain the possession of the negroes replevined by Mr. A. B. Miller.

Grand jury came into court and presented one bill of indictment. The foreman also presented a note asking that certain plates in the possession of the marshal be brought in for the inspection of the grand jury.

Chief Justice Eckles remarked that they were in his possession, and that he would at any time submit them to the inspection of the grand jury.

Mr. Wilson called up the case of Theodore Thorp, charged with burglary in breaking into the house of Zaccheus Cheney, of Centerville, and taking therefrom some $1800.

Mr. Miner filed a motion to quash the indictment, which was overruled by the court.

After the reading of the indictment, Therp plead GUILTY, and threw himself upon the mercy of the court, and stated that the money had been returned to the party from whom it was taken.

Judge Sinclair observed: I find by the law relating to this case, that the court before giving judgment shall inquire into the nature of the case.

Mr. Wilson called the attention of the court to sec. 8 of the Addenda, Revised Laws of Utah.

Court committed the prisoner to the custody of the marshal, to be by him delivered to the jailer of this county to await the sentence of the court.

His honor called upon Lot Smith, sheriff of Davis county to state how much of the money had been returned; whereupon Mr. Smith said that $1400 had been returned to Mr. Cheney.

On motion of Mr. Blair, the court ordered the money to be brought into court by the sheriff of Davis coonty to-morrow morning.

Court took a recess.

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3 P.M.

Court again convened.

Mr. Wilson called for the arraignment of Deloss Gipson.

The judge thought it would be better to have the whole proceedings done in one day.

Mr. Mills said, in consequence of certain witnesses being in Weber county, he would prefer having the case deferred until some day next week.

Court ordered the marshal to summon a sufficient number of good and lawful men to make up the panel of the jury.

Mr. Mills filed a plea in abatement in the case of the People vs. Gibson.

The prisoner Gibson was arraigned and the clerk read the indictment in his hearing.

Judge Sinclair read the plea in abatement to the prisoner, and then swore him in relation to his real name which the plea set forth to be Deloss Melvin Gipson.

Mr. Mills and Gen. Wilson argued the question of the plea in abatement, after which the court said it would take the plea under advisement till morning and remand the prisoner.

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

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SATURDAY 6TH, 10 a.m.

Court met pursuant to adjournment.

Mr. John M. Wallace appeared in court and was sworn to testify before the grand jury, and the attachment which had been served on him was discharged.

Mr. Lot Smith was sworn and stated to the court the circumstances connected with the arrest of Theodore Thorp; and delivered to the court, $1402.

The prisoner stated that he only stole from Mr. Cheney $1652 1-2.

His Honor then ordered Theodore Thorp to stand up, and after reasoning on the law violated by the prisoner he concluded in the following language: Accompanying the plea of guilty there were remarks made appealing to the mercy of the court. One remark made was that the person who was robbed was a friend of yours, the prisoner at the bar. That plea could not go to the mercy of the court, but the fact of previous friendship makes the crime still worse. Then that there was a sensation, or some uncontrollable influence which led you to commit this crime; the court cannot take cognizance of that. This court takes into consideration the whole circumstances of the case, and its judgment is that you be confined in the penitentiary of this Territory for 10 years at hard labor, and pay the cost of suit.

Grand jury came into court and presented two Bills of Indictment.

William Booth was admitted a citizen of the United States.

Court adjourned till Monday, at 10 a.m.

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MONDAY, 8TH, 10 a.m.

Court met pursuant to adjournment.

C. M. Smith, Esq., asked the court to appoint a day for filing the answer in the case of Jarvis vs. Woodmansee. Court appointed Friday next.

Mr. Miner filed a motion to quash the indictment in the case of the people vs. Henry E. Phelps, for Larceny.

Gen. Wilson replied, after which Mr. Miner made some other remarks. Motion overruled.

His Honor said, that in future, attorneys who wished to file motions to quash, must give one day's notice before the argument, and that that would be entered as a rule of the court.

Mr. Blair asked the court to grant his client, Henry Spiers, who was indicted in connection with Henry E. Phelps and John W. Miller, a separate trial.

Mr. Wilson objected.

The case was finally set for Wednesday.

Gen. Wilson called for the arraignment of Deloss Melvin Gipson.

Mr. Ferguson, senior counsel for defense, suggested that the arraignment of the prisoner would be more suitable at the time of trial.

The court appointed Friday next to hear the case.

His Honor was anxious to dispose of business as quickly as possible; said the first District Court would convene in two weeks at Nephi, that to provide for that he should probably adjourn his court till the middle of September or the first of October.

Court took a recess till 3 o'clock, at which time it resumed its session.

The case of Charles M. Drown vs. William A. Hickman, on promisory note, was called and, by agreement of parties, set for Wednesday.

The case of Francis E. McNeil vs. Brigham Young and others, for false imprisonment, was called.

His honor observed that in all personal actions the action abated with the death of the party.

Mr. Williams counsel for the plaintiff said that McNiel was not dead on Tuesday, the day on which the trial was to have been had, and he did not see why they should suffer all the loss, and be killed too.

So far as accidents were concerned, his honor remarked that there was a special statute, as in case of railway accidents, where the friends of the deceased could sue for damages, but in personal actions the case died with the person.

Mr. Williams asked the court to pass the case for the present that he might hunt up authorities. Past over.

The case of David H. Burr vs. Brigham Young and others, for damages was called.

Mr. Smith for the plaintiff and Messrs. Stout and Blair for the defendants, informed the court that arrangements were being made for a settlement of the case, whereupon the court ordered the answer to be filed to-morrow morning, and in case a settlement was not made, the trial was set for Friday next.

The case of Gilbert B. Smith vs. Thomas and Wesley Wheeler was next called.

The case of Seth Ward vs. Elijah P. Thomas & Co. in assumpsit was called.

Mr. Smith claimed judgment by default for the plaintiff.

The case of J. B. Harrison, vs. Williams & Jackman was laid over till to-morrow.

In the case of Bradford Leonard vs. John Bair on a promissory note. Mr. Stout asked time to get Mr. Bair from Davis County: Granted.

J. H. Johnson vs. Elijah P. Thomas in assumpsit. Defendant confessed judgment.

Thomas S. Williams vs. John Taylor: answer filed.

Mr. Stout called up the case of the estate of the late A. W. Babbitt vs. Levi Abram on a promisory note: no definite time set for hearing.

Court adjourned till to-morrow.

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TUESDAY, 11TH, 10 a.m.

Court met pursuant to adjournment.

The case of Ward vs. Thomas was called.

Mr. Smith applied for the withdrawal of the note and account in this case, as it had been settled by the parties out of court. The court by consent of the parties permitted the withdrawal of the note and account for the use of the defendant; the clerk to retain copies for the court record.

In the case of McGraw vs. Little, the court made a peremptory order for trial on Friday.

In the case of Burr vs. Young and others, two days longer was granted for filing an answer.

In the case of Leonard vs. Bair, the defendant filed an answer averring that the rate of interest charged, sixty per cent was exorbitant and unjust.

Mr. Blair argued, that money, of itself, was worth nothing, that its value was given it by law or the custom andusage of civilized communities; and its value thus being fixed, the rate of interest naturally followed as a legal consequence; that the interest claimed was usurious, and by reference to the basis of all civil law—the Mosaic code—in the absence of any statutory provision in a state or territory, a usurious interest could not be collected; and that civilized nations had ever found it necessary in their judicial polity to protect the citizens against usury; and claimed rather that equity might have its demand, while the law was magnified.

Mr. Williams, for the plaintiff, pleaded that there was a written contract entered into and signed by the defendant, which specified the rate of interest, and that no law could invalidate a private contract.

The court remarked that law and equity were blended, that the organic act had given to courts in this Territory, chancery jurisdiction, and that while the law defined, that a party must stand by his contract, and sustained that constitutional provision—that no law should be passed, impairing the obligation of contracts—still there was an equity jurisdiction invested in the court, which relieves against unconscionable bargains, that has been established by the usages of ages.

The court pointed out defects in the answer, but entertained it, on the ground that the intention of the answer was, that the court ought to control unconscionable bargains, and equity does not require that a man shall give the pound of flesh nearest his heart; and said, the court would consider the case until the morning.

In the case, administrators of Babbitt vs. Levi Abram, the court ordered the papers to be drawn up directed to the court in chancery.

In the case Williams vs. Taylor. Mr. Blair, for the defendant, pleaded for time, in consequence of the absence of an important witness, who was South.

The court would not allow cases to be postponed from time to time, on the plea of absent distant witnesses, for whom no subpena had been issued; if such pleas were entertained, the ends of justice would be defeated. Gentlemen must remember this court did not sit very often.

In the case williams vs. Hennifer, the plaintiff agreed to file a bill of particulars.

In the case Michael vs. Malin, the court ordered judgment entered by default.

Court took a recess to 3 p.m.

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3 o'clock p.m.

The court resumed its session, and instructed the clerk to call the traverse jurors, who were discharged from further attendance upon the court.

The clerk continued calling the civil docket, and several cases were disposed of, postponed, &c.

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