

FIFTIETH YEAR.

OLD UTAH COURT RECORDS.

Interesting Facts Concerning the First Judiciary—A Cause Celebre in Probate Judge Smith's Court—First Conviction for Murder.

When the pioneers entered this valley in the summer of 1847, and for a year thereafter, they were not troubled by any matters of litigation. They were engaged in the struggle for existence, and their time was fully occupied in securing themselves against Indians and in building for their families some of the best and most substantial dwellings of the old Fort square. And such was the case until the year 1850, when the period of settlement was satisfactorily adjusted by the ecclesiastical courts. But at last, of course, the administration of justice required courts of law and jurisdiction, and with the settlement of the territory and the removal of the courts, these were instituted. The first courts administered justice in the camps of California—and justice it was, no doubt, for the attention was given in Utah to the establishment of the judiciary, and the courts were organized. In 1850, the probate court of the territory was instituted. The first records. The records are still preserved intact in the files of the county clerk. And the records they are, carefully written in a hand as perfect as copper plate, and which it would be hard to believe today. Elias Smith was the first judge, and succeeded later by John E. Stoddard. The jurisdiction of the probate court was vastly different from what was in later years. At that time all causes were tried before a jury. All crimes, including

murder, civil actions, regardless of the amount involved, cases in divorce and probate matters, were tried here. The court, it might be imagined, would be behind with the calendar, when today, with all the vast machinery of the law in operation here, five justices of the peace, a police judge, commissioners, three branches of the district court and a supreme court, the judiciary is kept abreast of the innumerable actions on the docket. But Judge Smith had a comparatively easy time of it when his court was instituted. There was little to try, and perhaps that is one reason why the records contain such voluminous accounts of each action, no matter how small. All these details, however, with the names of witnesses, officers, attorneys, "travellers" and grand jurors, are interesting, and the records will be of importance to the historian. THE FIRST CASE TRIED. On the fly leaf of the first record, beautifully engrossed, appears the title "A. No. 1. Record & C. of the Probate Court of Great Salt Lake County, in the Territory of Utah." The very first case recorded in the book—and therefore the first case of record in Utah—starts out very well. It is apparently a criminal action, and there is an accessory as well as a principal. But in the language of the court, the interest is not sustained. Neither is the charge, and the other defendants are allowed to go their way. The record itself is as follows: Territory of Utah, Great Salt Lake County, Probate Court, Hon. Elias Smith, Judge. The people of the Territory of Utah vs. Wm. Morse, principal, and James Neale, accessory. April 27. An affidavit filed in the court by Wm. M. Wall and John R. Stoddard against William Morse as principal and James Neale as accessory, the fact of shooting one Joseph Watson at Provo City, Utah County, Utah Territory. Same day clerk issued a writ for the arrest of William Morse and James Neale, directed to Rodney Badger, constable of Great Salt Lake County. Same time issued subpoenas for Hugh Neale and wife, and for John Neale, directed to Rodney Badger. April 28. Writ returned endorsed: "I have served the same by arresting the persons and have them in court." Rodney Badger, Constable. Same day subpoenas were returned endorsed. Court called, prisoners in court. William M. Wall, John R. Stoddard and Hugh Neale were duly sworn and testified on the part of the people. Wm. M. Wall was duly sworn and testified on the part of the people. The court, after hearing the allegations of the parties and the testimony of the witnesses, ordered the following judgment to be entered: That there is no cause of action and that the prisoners be discharged. Immediately after this, the time of the court was taken up in trying a number of civil actions against Bridge & Vasque, involving from \$20,000 down to \$100. A DIVORCE CASE. Then comes the first divorce case, that of Ashton vs. Ashton. The parties were apparently transients, and the husband had deserted the wife and gone on to California. The decree was granted as prayed. IMPRISONMENT WITHOUT A PRISON. The first judgment entered in which imprisonment was ordered was in the case of Fred Schaller and Phil Waters. These two were charged with stealing a species of crime always abhorrent to the pioneers in any country, and not infrequently, in those days, calling for swift punishment. The prisoners in Utah, however, were given just as tempered with mercy. Both men pleaded guilty and threw themselves on the mercy of the court, relating the circumstances that had impelled them to the act. The court, however, would not accept the plea without consideration on their part, and appointed Hosea Stout to detain them. He promptly obeyed the proceeding, holding that the court was without jurisdiction, and that being overruled, asked for leniency. The court gave them a year each, but here

convened, his honor was given a surprise. Observing, says the record, that the prisoner was not present, he directed that the man be brought in. DEATH BEFORE IMPRISONMENT. Then arose Mr. Blair and informed that his client could not attend during the night he had taken poison, "which," he concluded, "will probably prove fatal." The court took a recess in order that the officer who had charge of the prisoner and the physician attending him, if any, might be called. Perhaps the court thought the prisoner might be shamming, but this was quickly disproven. The officer and physician were called and testified. It would appear that their statements strongly supported the theory that Hull would die if it is noted that Mr. Blair at once took the floor, and in view of the situation as disclosed by this testimony, vigorously objected to proceeding further at the time, for the reason that the defendant was not present as contemplated by law, and other than the issue of his illness might do away with the necessity of proceeding. Probably the tide was setting in strongly against his client, and Mr. Blair thought to do his best for him by securing delay. But the court would not have it so, and ordered the trial to proceed. The attorney then stated that the court having ruled against him on so vital a point, he would have nothing more to do with the case, unless positively ordered by the court. Which the court promptly did. Mr. Blair was informed that his services were required until the final issue of the case, and he resumed. How long the prosecution talked is not recorded. But Mr. Blair's record is given on the point. The clerk religiously sets out that the distinguished attorney commenced his argument at 10 a. m., and never stopped talking until 3 p. m. But it availed nothing. The jury found Hull guilty, fixing the penalty in a fine of \$1,000, six months imprisonment and awarding McDonald & Adams \$2,000 damages. Mr. Blair was not at the end of his resources. He afterwards moved an arrest of judgment, but was overruled. Poor Hull has not yet recovered whether he ever did or not, because the record shows that the clerk went to his room to read the verdict to the prisoner, who was unable to attend. After the verdict the court ordered the costs taxed against the prisoner, and got around the prison problem again by ordering the bail and chain for the term. It would be interesting to know what

became of Hull, the man who preferred death by his own hand and imported death by his own hand to imprisonment, but the record traces him no further. A REQUEST FROM THE BAR. The bar at that time was an exceedingly small one, and consisting of comparatively slight amount of litigation was of very slow growth. A few years later, the following petition was presented to the court: The undersigned members of the bar of Utah respectfully petition the court that this morning at 5 o'clock P. M. William France, an honorable and well known citizen of this Territory, died. He died suddenly and to the surprise of his friends. The deceased was an honest man and a philanthropist as well as a dutiful citizen. The undersigned respectfully ask that an adjournment of the court may be ordered till the 22nd instant, that a decent opportunity may be given to inter the remains of our deceased friend. James Ferguson, S. M. Blair, Hosea Stout, W. G. Mills, A. Miner. When the court adjourned, the following DISTRICT COURT RECORD. The record of the first district court commences with Oct. 8, 1851, the original entry being as follows: Court convened according to law, passed by the legislative assembly of said Territory, in the court house in Great Salt Lake City, at 10 a. m. Present, His Honor, Judge, S. M. Blair, Esq., district attorney of the U. S.; Jos. L. Heywood, Esq., marshal for said Territory, and W. L. Appleby, Esq., clerk of the Supreme and First Judicial District courts of the U. S. of said Territory. No business being presented before the court, by proclamation of the marshal, adjourned until Tuesday morning, the 7th, at 10 o'clock. For several days thereafter there appears to have been no business, and after short deliberations, the court adjourned. Afterward, the court admitted Geo. A. Smith, W. W. Phelps and Hosea Stout to practice. On October 10th the court gave an opinion of some importance. It was to the effect that the laws of the provisions of government of the territory, has relating to the judicial of the Territory and the official acts of the Legislative Assembly and of Governor Young were strictly legal, according to the organic act. FIRST GRAND JURY. The first grand jury ever called consisted of Daniel Spencer, William C. Perkins, H. G. Sherwood, E. D. Woolley, Orson Spencer, William M. Andrews, Samuel Merrill, John Nebeker, Shad

THE BATTLE OF THE BIG BATTLE

English Tell How They Overcame the Boers at Belmont.

London, Nov. 25.—Thus far the special dispatches describing the battle of Belmont bear a stereotyped character, proving that the hands of the central have been at work upon them. They are too incoherent to enable the reader to form an accurate idea of the event, and place a proper estimate upon the value of the victory. The accounts agree respecting the steady courage and pluck of the British infantry in the face of the Boer guns, while the Boer guns were actually served, the gunners standing them with degraded determination, extending themselves until the very last moment, and only becoming wild and unsteady in their aim during the final charge of the British infantry. It is said, however, that the victory was not properly followed up and that the Boer position was not completely evacuated. Subsequently the artillery was brought into action and the Boers fell back. Their action having been attained, the British returned to Estcourt. The Capetown correspondent of the Daily Telegraph, telegraphing Thursday, says: "After the battle of Belmont, Lord Methuen, addressing his troops, said: 'Comrades, I congratulate you on the complete success achieved by you this morning. The ground you have won is not yet before you presents exceptional difficulties, and we had as an enemy one who is a past master in the tactics of mounted infantry. With troops such as you, a commander can have no fear of the result.' There is no need to all this, and you are all thinking of the honor of those who died for the honor of their country and of those who are suffering, as we are thinking of our victory." The Capetown correspondent of the Daily Mail, telegraphing Thursday, says: "Nothing is known here concerning the report that United States Consul Macrum has been refused permission to leave Transvaal territory. 'I am told that Mr. Cecil Rhodes keeps a big balloon ready at Kimberley to escape if driven to that extremity.' Pretoria, Nov. 24.—Through the courtesy of the Transvaal authorities, the correspondent of the Associated Press here, in the company of Mr. P. G. Grobler, under secretary for foreign affairs, and Mr. De Soux, secretary of the war department, was enabled to visit Winston Churchill today at the model school, where he is confined with the captured officers. Beyond a slight bullet wound in the right hand, he seemed well and looked hearty, although naturally chafing under the forced idleness. In the course of the interview, Mr. Churchill said: "The Boers have treated us with much kindness. This was the case from the outset. They praised our defense of the armored train and expressed surprise that the locomotive was saved from becoming a hopeless wreck, as they expected under their artillery fire. We were then marched through a pouring rain to Colenso, proceeding the next morning to the Boer camp near Ladysmith, and then going by rail to Middelburg, finally arriving here on Nov. 12. 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