

## DISTRICT COURT.

Wednesday afternoon the formation of the petit jury in the Hawkins case was proceeded with. In answer to the order of the court and the summons of the Marshal several more of the regular panel were in attendance, the absentees, unless excused, were fined twenty-five dollars each, and an order was given for attachments to be issued in their cases.

When a jury of twelve men had been obtained, and the challenges for cause commenced, the following colloquy took place, the jurymen under examination being Mr. William Naylor, of this city, the questions being put by the Prosecuting Attorney.

Q. Mr. Naylor, are you a citizen of the United States?

A. Yes sir.

Q. Have you served as a jurymen in this or any of the District Courts of the Territory within the past two years?

A. I have not.

Q. Do you believe, Mr. Naylor, that a person who lives in polygamy—a member of the Mormon Church, can be guilty of the crime of adultery?

Mr. Miner, defendant's counsel, said:

One moment. If the Court please, a man's belief is his own property, and the defendant in this case is not on trial for polygamy, and the question is improperly put. If the gentleman insists on the question, I shall ask that it be put in writing and left on record.

Prosecuting Attorney. I do insist on the question.

Mr. Miner. Please put it in writing then.

Court to Prosecuting Attorney. Now repeat your question, and I will take it down.

Prosecuting Attorney. I will change the form of the question.

Question Remodeled: Do you believe, Mr. Naylor, that a member of the Mormon Church who is living with more than one woman, as his wives, is guilty of the crime of adultery?

Mr. Naylor. Well, I do not know that I have any belief about it. I am not a polygamist myself and have not given it any study at all.

Mr. Miner. You need not answer the question, Mr. Naylor.

Prosecuting Attorney. I will ask the Juror another question. Do you believe, Mr. N., that the doctrine of polygamy is a revelation from God to the Church of Jesus Christ of Latter-day Saints?

Mr. Naylor. Yes, Sir.

Mr. Miner. I object.

Prosecuting Attorney. And, if so, would that belief influence your verdict in a case in which the practice of polygamy was involved?

Mr. Miner. If the court please, we object to the answering of the question.

Prosecuting Attorney. Wait till we get the question down.

Mr. Miner. All right, Sir.

Prosecuting Attorney. I will continue the question:—And if so, would that belief affect your decision or verdict in the case?

Court to Prosecuting Attorney. In a case in which polygamy is involved?

Prosecuting Attorney. Yes, Sir.

Mr. Naylor. No, Sir, it would not.

Prosecuting Attorney. Do you mean to say that that would not?

Mr. Miner. I have objections to that question, before the jurymen answers further.

Court. What are the objections, Mr. Miner?

Mr. Miner. My objections, if the Court please, are these: that the case at bar involves no such questions or any such conditions as are supposed by the question. The defendant is charged with the crime of adultery and not with polygamy or bigamy or any other offense, and the question is hypothetical. It assumes the existence of facts which are not proven, which are not disclosed in the indictment and which do not appertain to the case. It does not appear that this defendant is a member of the Mormon church or entertains any faith in the doctrines of that church or any other. He is arraigned here to answer for a criminal charge, independent of all religious influences or beliefs on the part of defendant, witnesses, or the jurors who are to try him, and we object to the question because it involves suppositions, or the existence of facts which are in no wise connected with this case, and which also contravene a very important principle of the constitution.

Prosecuting Attorney. It will be remembered that this case, in the preliminary examination, was tried before your honor, or a preliminary examination was had, rather, before your honor; and in that preliminary examination it appeared that this party was living with women other than the prosecutrix in this case.

Mr. Miner. If the Court please, what appeared in the examination of this case before your honor is not evidence in this case. What evidence was given theretofore upon its own merits for the purpose, probably, for which it was designed, but has nothing to do with this case.

Prosecuting Attorney. We do not claim it as a matter of evidence, but the court has a right, having heard the preliminary examination, for the purpose of testing the qualifications of jurors, and to know that fact and look at that fact in considering their qualifications. Now, it is true, you could not make it appear on the face of the indictment whether it was one of those

cases that come within the reason of the rule which we claim disqualifies a juror; but I state such and such a fact, and the Court knows that fact by the preliminary examination which has been had before your honor.

Court. Let the question be answered.

Mr. Miner. If the Court please, note our exceptions to the ruling of the Court.

Prosecuting Attorney, to the jurymen. What was your answer to the question as to its effect on your verdict?

Mr. Naylor. I do not think but I could give a just decision.

Prosecuting Attorney. That is, notwithstanding your belief in this regard, if the evidence showed that the party was guilty, under the instructions of the Court would you have any hesitancy in returning a verdict of guilty?

Mr. Naylor. If I thought it was proper.

Prosecuting Attorney. Yes, but believing that polygamy, or living with more than one woman as his wife, is a religious duty on the part of a Mormon who enters into it, would you think it just in that case?

Mr. Miner. I object, if the Court please.

Court. That is asking for the explanation.

Prosecuting Attorney. Would not you, in a case of that kind, consider it unjust from your standpoint?

Mr. Naylor. I do not fully understand your question.

Prosecuting Attorney. Well, suppose the facts should appear that the prisoner at the bar is a member of the Mormon Church, and that he was living with these women named in the indictment in pursuance of the revelation to the Mormon Church, would you not consider it unjust to convict of adultery?

Mr. Miner. If the Court please, that is hypothetical, and I object to it.

Prosecuting Attorney. The juror has stated that he would not have any hesitancy in finding a verdict if it were just.

Now, (to the juror) would you consider it just to find a verdict in a case of that kind?

Mr. Naylor. I really do not know until I have heard something about the case.

Prosecuting Attorney. Well, don't you believe it would be wrong to punish a man who is obeying this revelation of God?

Mr. Miner. I object to that, if the Court please.

Court. I know that you object to all these questions, Mr. Miner.

Mr. Naylor. I do not know whether it would be wrong or not.

Prosecuting Attorney. What do you think about it? Don't you think it would be wrong to convict a man of that kind?

Mr. Naylor. It would depend altogether whether he abused his women.

Prosecuting Attorney. If he did not, would you think it was wrong?

Mr. Naylor. I could not say.

Prosecuting Attorney. Take a case in which he treats his women as well as man can treat women, would not you think it would be wrong to convict him for living in accordance with this revelation?

Mr. Naylor. Certainly I should.

Prosecuting Attorney. I submit, then, Sir, (addressing the Court) that that is sufficient to excuse this juror. But, (again turning to the juror) on the other hand, supposing he did not treat his second, fourth, fifth, sixth or seventh wives properly, but was abusive to them, would you consider it just to find a verdict of guilty of adultery?

Mr. Miner. I object to that.

Prosecuting Attorney. Would you consider it right to find a man guilty of adultery if he abused them, but was living with them in pursuance of revelation?

Mr. Naylor. I believe if he did not treat his wives with due respect he ought to be punished.

Prosecuting Attorney. Ought he to be punished for adultery?

Mr. Naylor. Of course it would not be adultery if a man did not treat his wives as he ought to do.

Prosecuting Attorney. But if he treats his wives properly, no matter how many he has, you do not believe he ought to be committed for adultery if he lives with them in pursuance of revelation?

Mr. Naylor. I do not believe he ought any more than Abraham or Isaac.

Prosecuting Attorney. Well, would you under these circumstances, under any state of the evidence, convict a man of that kind? Would it not influence you in your deliberations in the jury room?

Mr. Naylor. Not unless he deserved it.

Prosecuting Attorney. Well; but if he did not deserve it would it not affect your verdict?

Mr. Naylor. No, I do not think it would, as far as right goes.

Prosecuting Attorney. But you believe it is right if he treats his wives properly; could it then do other than affect your verdict if he lives with his women properly when you come to consider the question as to his guilt of adultery?

Mr. Miner. I submit, if the Court please, that the examination of the jurors in the manner that it has been conducted by the prosecution in the case, is entirely contrary to every known principle or rule of law. Every I have passed upon that, and have decided that he might ask these questions, and have noted your exception to my decision.

Prosecuting Attorney. The juror did not answer my last question, I will put it again.

Q. Now would not this belief of yours, that you have referred to, that polygamy is a divine institution revealed by God, that a man who is living with several wives and treats them well, if that should appear in the evidence, affect your deliberations in the jury room when you consider the guilt of that man with regard to the question of adultery?

Mr. Naylor. No, I don't think it would. Prosecuting Attorney. You have said you do not think a man should be punished for living with several wives if he treated them well.

Mr. Miner. If the Court please, I submit. Prosecuting Attorney. I submit, if it please your honor, that the answer of the witness disqualifies him.

Mr. Miner. Mr. Naylor, if the evidence in the case should show that any man had committed adultery, is there anything in your mind or belief, or otherwise that would interfere to prevent you from rendering a verdict of guilty, should the evidence so warrant it?

Ans. No, Sir.

Mr. Miner. I will put the same question in another form.

Q. Have you any conscientious scruples, should the evidence—

Court. Wait a moment.

Question Continued. Warrant a verdict of guilty on the charge of adultery against any person, of finding the defendant guilty under the instructions of the Court on such charge?

Ans. I have none.

Prosecuting Attorney. I submit, may it please your honor, in connection with the other answers of the witness that he is incompetent.

Court. I confess that I do not know what the juror means, his answers are contradictory. I do not know whether he fully understands the question.

Mr. Miner. I will try to make the question clear, so that the Court and juror and counsel may understand it. I will put the question again.

Court. You need not do it on my account.

Mr. Miner. I will put it on my own account, if the Court please.

Q. Have you any hesitancy, should the evidence justify, under the instructions of the Court, as to the law, in finding any person guilty of the crime of adultery?

Court. I am not in the habit of instructing juries that the evidence is sufficient; it is for them to say.

Mr. Miner. I am aware of that, if the Court please, but I am putting the question in its broadest form.

Court. Well, that is not a proper question. I leave it to the jury to determine as to the evidence, I charge them as to the law.

Mr. Miner. I am aware of that, but was putting the question in its broadest form.

Court. Well, you cannot presume, in doing so, that the Court assumes the prerogatives of the jury.

Mr. Miner. I did not intend to convey any such idea.

The question was then put as follows by defendant's counsel:

Q. Have you any hesitancy in rendering a verdict of guilty on the charge of adultery against any person, should the evidence warrant, under the instructions of the Court on the law applicable to such evidence?

A. No, Sir.

Prosecuting Attorney. You don't believe, do you, Mr. Naylor, that any person who lives with more than one woman as his wives, in pursuance of the revelation you have spoken of, can be guilty of a crime?

Mr. Naylor. Guilty of the crime of adultery?

Prosecuting Attorney. Yes, Sir.

A. No, Sir.

Prosecuting Attorney. I submit that is enough.

Mr. Naylor. I believe that he can commit adultery, but not with his wives.

Prosecuting Attorney. Now, supposing that the evidence should show that he is living with his wives, that is, such wives as the church of which you are a member recognize, would not your belief in that regard influence your verdict when you came to pass upon the question of adultery? Would you, in a case of that kind find a man guilty of adultery?

Mr. Naylor. I do not see that a man can commit adultery with his own wives.

Prosecuting Attorney. That is the point. Well, if he can not commit adultery with his own wives, no difference how many he may have at the same time, you would not find him guilty of that charge, would you? Would not that influence your verdict when you came to pass upon his guilt in that regard?

Mr. Naylor. It certainly would in reference to his own wives.

Mr. Miner. Would such a revelation have any influence in determining your judgment in a case where the woman was not his wife?

Mr. Naylor. I do not know that the revelation would have anything to do with that, because he would be guilty in that case.

Prosecuting Attorney. That is, if he were a gentile you would find him guilty; but if he were a Mormon, and were living in pursuance of this revelation, you would let him go free.

Mr. Naylor. I do not think I should. I would just as soon find a Mormon guilty of adultery, outside his own family, as a gentile.

Prosecuting Attorney. But if in his own family you would not find him guilty of adultery, no matter how many wives he had?

Mr. Naylor. No; but if a Mormon committed adultery I should go in for punishing him more than a gentile.

Mr. Miner. Now, if the Court please, on this challenge for cause, I submit the record. The record does not disclose any such statement as that the parties with whom this adultery is alleged to have been committed were, either of them, the wife or wives of this defendant; but on the contrary, alleges most emphatically that they were not his wives.

Counsel read from indictment, the first and second counts, to sustain his position, and then remarked:

Both counts of the indictment allege that they were not the wives of this defendant, so that the questions are wholly inapplicable to the case at bar.

Prosecuting Attorney. I have not any reply to make to that proposition. Of course it is evident that the counsel for the defense in this case argues from the standpoint that a Mormon may have more than one legitimate wife. I have not anything to say to that as a legal proposition.

Mr. Miner. The counsel for the defendant has made no suggestion or intimation in the case. The record does not disclose the existence of any such fact, and the counsel has not made any such intimation whatever to the Court, because we do not suppose that we are here on trial for marrying or for stealing, or for committing murder, or any other offence than that charged in the indictment; and we suppose we are under trial for that offence, according to the well-known and established rules of law, without any reference whatever to the religious belief of the defendant in this case, the witnesses, jurors or counsel.

Prosecuting Attorney. Now, on the religious phase of this examination, the gentleman referred to it as though it were an established fact that men were never interrogated as to their religious belief in matters of this kind. But it is a common occurrence for Quakers, who are opposed to capital punishment, and this is one of the tenets of their faith, to be examined as to their belief in this regard. Now the only object of this examination is to show that this juror has a belief which, in one phase of the evidence, and a phase that may arise in the case, would influence him not to convict, or not to consider a man guilty of the crime charged here who lives in the relation which he has mentioned. That is, if he lives with a dozen wives in pursuance of this revelation he speaks of he does not believe he can be guilty of adultery; and by reason of this belief he stated that he would not find a man guilty under these circumstances. Now, your honor knows from the preliminary examination in this case, that this is exactly the state of evidence that will arise in the case—that this man is a member of the Mormon church and lives with these wives—claiming them as lawful wives, in pursuance of this revelation.

Court. Although the juror's answers have been quite contradictory, very likely because he did not fully understand some of the questions, yet I understand him, upon the whole, to say, and he will correct me if I misunderstand him, that he believes in a revelation from God, under which men may rightfully have more than one woman to live and cohabit with as wives at the same time?

Mr. Naylor. Yes, Sir, I believe that.

Court. And that it would not be just and right to convict such a man of adultery for such conduct. (To the juror) Do I understand you?

Mr. Naylor. Yes, Sir.

Court. As a judicial officer I cannot take cognizance of any such alleged revelation from God. I am governed by the written law. The juror says I understand him correctly, and with that understanding I must hold that, in this case, he is not a proper juror.

Defendant's counsel gave notice of exceptions to the ruling of the Court.

## THE MORMON IMBROGLIO.

The Mormon papers published at Salt Lake of course say there is a reaction among the Gentiles in consequence of the prosecution of prominent individuals of the Mormon church. The principal reason for the feeling against the proceedings of courts is alleged to be the breaking off of negotiations for the sale of the mines in that vicinity. Capitalists decline investing money in a place where trouble is likely to come. Business is paralyzed, and the expectations of all classes are not realized. The interests of all are affected, and this leads them to find fault with the officers of the Government for undertaking a system of prosecutions that seems to be dictated more by a spirit of persecution than a desire to execute the laws of Congress with regard to polygamy. The indictments have not been made under such laws, but under a law of the Territorial Legislature, which had no such intent as the present courts of Utah give it, and it would appear that the object of indicting the leading Mormons under a law which has no application in the case is to harass and aggravate the Mormons into the commission of some overt act for which they may be summarily punished. For whatever the Mormon leaders may be guilty of they should be punished by law, like any other people; no more, no less, on account of their peculiar religious notions. The laws to which they are to be held amenable are such as were designed to reach the case the polygamous Mormons present, and not those laws which were intended to discourage prostitution in the Mormon sense of the term.—*Sacramento Union.*