# AFTER GAMBLING HOUSES.

## The Grand Jury Seek Instructions From Judge Zane.

### EVIDENCE NECESSARY TO INDICT,

### Retailers of Liquor Without a License May Lock Out.—Houses of Ill-fame, Etc.

A brief account of the grand jury's interview with Chief Justice Zane yesterday afternoon, in the Third District court, was given in that day's News. When our report closed the conference between judge and jury was still in progress. Below will be found a verbatim account of the proceedings, which will doubtless be read with great interest:

Gentlemen of the grand jury, I understand this morning from the statement of the foreman that you wished for a little information with respect to the law prescribing and defining your duties, and also with respect to the character of evidence authorized in specific cases, and the degree of proof. In order that the court may be informed as to the difficulties which you have, I will ask you a few questions. I understand that there is some difficulty in the minds of some of you at least, or doubt, as to your duty with respect to indicting for gaming. Do I understand correctly?

Foreman Devine—I will state, your honor, in regard to that, as to the nature of the evidence that will be considered material in a case, which we are supposed to have in order to indict.

The Court—That is as to gaming?

Foreman Devine—Yes, sir, that is one of the points.

The Court—Well, is there any juror that believes that a higher degree of proof should be required in the case of gambling or conducting a game, than in burglary or housebreaking, or any lawful consideration, or such crimes as that? Is there any juror that thinks that? What do you say, Mr. Hudson?

Juror Hudson—No, sir, I don't.

The Court—You are aware, I suppose, that there are ordinances of this city prohibiting gaming, and keeping bawdy houses, and selling liquor without a license, and that in some cases the parties have been indicted under those ordinances. Is there any juror that thinks that because the city has the power to punish for these offenses, you ought not to indict and have the parties punished in this court?

Mr. Annett—Because somebody is whether we have to take hearsay evidence, or whether we can, we can't give a witness except in, we can't give a witness—it would be hearsay; have we to take evidence of that kind?

The Court—You should take some but legitimate evidence.

Mr. Annett—Well, hearsay?

The Court—Simply hearsay would not be competent.

Mr. Annett—Well, that is one question.

The Court—You have a right, of course, to inquire into the circumstances and take into consideration the circumstances. Is there any man on the jury that pawns his money, or has been a gambler for money? (No response.) I assume that there are none, from the fact that you do not answer. Is there a juror that would not indict for gambling? (No response.)

Mr. Bradley—In this connection, may it please your honor, though I am not a gambler, and never have gambled,—I think one trouble would be, before the grand jury—the feeling is that if there is not evidence sufficient to justify a man as a petit jury to convict the parties on trial, there is a feeling in the grand jury that the same kind of evidence, and the same character, is required to indict as would be required to convict; and while I don't think so, I think there would be perhaps a some hesitancy on the part of some that they would be willing to indict only upon the same evidence that they would convict. I think that point should be cleared up.

The Court—Well, in the trial before a petit jury the evidence must be sufficient to convince you beyond a reasonable doubt. If the evidence before the grand jury is sufficient to induce in you a belief that the defendant, or the person whose conduct you are investigating, is guilty, and that he would probably be convicted, that is sufficient.

Mr. Bradley—I would inquire further, may it please your honor, whether in the trial, or the presentation of a case for indictment against a gambling institution—one that the evidence is clear enough, is a common institution for gambling—it not being very positively settled that certain parties are the ones who run that establishment, whether that establishment should be indicted in the name of such parties whom we might take from the rebuttal witness in a rather loose and unpointed order? I feel that there would be a feeling on the part of the jurors in that case that the evidence being so rebuttal, it would leave from those that are brought here, being acquitted by by the public sentiment, being, in fact, upheld to a certain extent by public sentiment, they would feel under those circumstances that they were not bound to go against public sentiment, and against common usage, you may say, and a feeling of that kind, as they would be in relation to the man that has been convicted, or been brought to trial, and upon a crime that public sentiment as well as their own, and the law is against. I think that there would be a feeling on the part of many jurors that would be a case for the city authorities, and not for us to interfere.

The Court—Is there any juror that would be influenced by any talk of public opinion, or public sentiment, in cases of prosecution for gambling, for instance? (No response.)

Mr. Devine—Your honor, being that the question has been raised in regard to evidence and hearsay evidence, I have been waiting for some of the jurors who have a little considerable acuple in that particular to state their position; but seeing that they have not, I would desire to say that some of the jurors, on account of some testimony that has been offered, which I might describe in the following way: A certain witness is questioned as to who owns or runs a certain establishment. He believes Mr. Jones does. Who you know he lives? (No.) Do I don't know he does, but he is the reputed proprietor of this establishment." Now, it has been very difficult for the jury, and in that particular their duties have been overdone, to ascertain any positive knowledge, where a witness will voluntarily testify yes or no. He will hesitate, or suppose, or allege, that the reputed proprietor is Smith or Jones. Now, probably on that particular line of evidence more than any other does this jury desire instruction.

The Court—You have a right to inquire as to who has charge of the building, or of the room, and as to what sort he does about the business, and as to anything he himself has said about it, and any circumstance that tends to show who it is that is conducting the game, or has the possession and control of the game, or the room. Of course a witness could not be permitted to come in and give it as his opinion that some one was proprietor without giving the circumstances. He should give the circumstances upon which he bases his opinion, and not give his opinion alone. You have a right to inquire who leases the room. You have a right to inquire into any circumstances, and from that you have a right to infer who controls the business. And if you deem it sufficient, so that it satisfies your minds, you have a right to take more opinion about it, as to who is conducting the business. You have a right to call upon any witness who has been in there, in any gambling house, as to whom he saw playing, as to whom he saw taking part in any game, and he is not privileged upon the ground that it may criminate himself, because the statute provides that no person shall be held to answer criminally for such a question. He cannot be indicted, however, and prosecuted, upon any evidence that he gives to the offense. Are there any other questions you wish to ask in relation to it?

Mr. Odell—I the same story, Mr. Zane, is given by two or more witnesses.

The Court—(interrupting.) That is not a proper way to talk in court. You must address your remarks to court. That is a matter of constancy.

Mr. Odell—I am not familiar with it.

The Court—An intelligent man on the grand jury ought to know better than to open that way.

Mr. Odell—May I state the question?

The Court—You may state the question now.

Mr. Odell—If the evidence of two or more witnesses tends to the same facts, would that be considered sufficient?

The Court—Well that would depend upon the nature of the evidence.

Mr. Odell—Well, give the same names, the same parties, the same locality, the actions the same, the evidence referring to dates close together.

The Court—Two witnesses would be sufficient to any petit jury, on one witness, as far as that is concerned, if he was not contradicted. If there was any contradiction, why then you would have a right to weigh the evidence and determine whom to believe.

(The Court then read over the portion of law the actions referring to gambling.)

This is the law in respect to gambling, as far as I deem it necessary to read it. And I would say with respect to that offense that the grand jury should treat it the same as any other offense, and should indict upon the same degree of proof, and the party should be convinced upon the same degree of proof. If the proof is sufficient to induce a belief that the person whom complaint you are investigating is guilty, and the probabilities are that he will be convicted if the case is fairly presented and tried, why you should indict. You have no right to take into consideration the fact that there may be gambling carried on in various places. You have no right to take into consideration the fact that you have gambled, if any of you have, for money. You have no right to take into consideration the fact that the city has authority to punish for gambling. You have no right to take into consideration anything that is not proper evidence, and your only motive should be the truth. Because laws exist against gambling and the keeping of bawdy houses and other offenses, and it may be impossible to prevent gambling and keeping of bawdy houses altogether, that is no reason why you should not indict if the evidence is sufficient, nor is it any reason why you should indict if the evidence is not sufficient. There have been laws against murder, and larceny, and forgery, and various other crimes for thousands of years, and still these crimes exist. Our purpose should be to protect society from the evil effects of these crimes, by indicting where the evidence is sufficient. So with gambling and other offenses of that character. It is your duty to indict though you may think that it may not prevent gambling altogether. If indeed it does not stop gambling altogether you should not indict, then all the criminal laws should be repealed. The object is to prevent crime, to protect society from the evil effects of gambling. These places into which men are enveigled, and induced to go, and deprived of their property under circumstances of that kind, are as bad (not quite so bad in the estimation of the public) as stealing, but in the eye of an honest man, just as bad, just as immoral, and just as wrong.

I make these remarks because I hear intimations outside that some men on this grand jury have scaled ribbits that they would not indict under any circumstances a man for gambling because they had gambled themselves and did not believe in inflicting others. I do not know how true it is, but if there is any man of that character on this grand jury I would like to know it, and with it I would, and it is as follows, [Read. The court also read section 40 Compiled Laws of Utah.] So that your duty is plain. Your only motive should be to ascertain the truth according to law, and whenever you found sufficient evidence to indict a man, indict him, no matter who he is or how enough you may be to be influenced by public sentiment as well as their own, and the law is against. I think that there would be a feeling on the part of many jurors that would be a case for the city authorities, and not for us to interfere.

The Court—Is there any juror that would be influenced by any talk of public opinion, or public sentiment, in cases of prosecution for gambling, for instance? (No response.)

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