

James L. Berry and E. B. Shepherd had not formed an opinion and were accepted.

Thomas McCoy was not a citizen, and was excused.

George T. Bourne had formed an opinion in the case, and was excused.

A. F. Barnes had not formed an opinion, and was accepted.

C. B. Durst was called. In examining him for statutory qualifications, Mr. Peters failed to ask him if he could take the oath.

Court—Mr. Peters, can he take the Edmunds-Tucker oath?

Mr. Peters—I think he can; he has just been married.

Mr. Durst—Can't you excuse me on that ground?

Court—Well, hardly.

Mr. Durst had formed a fixed opinion and was excused for that reason.

F. O. Horn said he was opposed to capital punishment.

Court—Suppose the law and the evidence warranted a conviction?

Mr. Horn—I would not convict.

Court—You are excused.

M. L. Cummings had no opinion in the case, and was accepted.

The prosecution peremptorily challenged M. L. Cummings.

The defense challenged B. A. M. Froiseth for actual bias.

Court—I did not know a juror had been passed when it was shown he had actual bias.

Mr. Brown—We have not shown it, but I think we can.

Mr. Froiseth said he had had some trouble with Mr. Stringham, but it was settled, and he had no feeling now.

The challenge was denied.

Mr. Froiseth was peremptorily challenged by the defense.

Mr. Barnes went out in the same way by the prosecution, Mr. Goldberg by the defense, Mr. Kennelly by the prosecution, Mr. Shepherd by the defense, Mr. Hartford by the prosecution, and Mr. Robinson, Mr. Anderson and Mr. Berry by the defense.

This left two jurors, Frank Van Horn and J. B. Cornwell, who were sworn.

In continuing the empanelling of the jury, Sam Levy was called.

He was excused for having an unqualified opinion.

At this point court took recess till this afternoon.

In the afternoon the defendant did not appear promptly, and the court instructed the attorneys to go on with the empanelling of the jury.

Mr. Hiles objected, on the ground that such a proceeding would be erroneous. The statute, he said, required that the defendant, in a trial for felony, be present at every stage of the case.

At this point the bailiff suggested that the court reporter was also absent, and that the examination of jurors could not be taken up.

The reporter came in shortly after, but it was 2 o'clock before Mr. Spencer appeared, he having understood that to be the hour instead of 1 o'clock.

James J. Farrell was called for examination as a juror. He said he had formed no opinion as to the guilt

or innocence of the defendant. He was opposed to capital punishment, but would convict if the testimony warranted it. He was accepted.

Henry Rippe had an opinion that could not be removed. He was excused.

A. H. Kelly had no opinion in the case and was passed.

Jacob E. Bamberger had an opinion; excused.

M. C. Phillips went out for the same reason.

F. M. Bishop and J. L. Perkes had formed no opinion, and were accepted.

R. Alf had an opinion; excused.

Saml. H. Auerbach was called, and was examined by the judge himself.

He was excused for having an opinion.

Robert Binnie was relieved from service for the same reason.

R. J. Walker was not a citizen.

T. A. Wickersham was excused for having a fixed opinion, as were also John Tullidge and M. H. Lipman.

Owen Hogle had no opinion, and was accepted.

J. E. Foote said his wife was a niece of the defendant. He was excused.

E. B. Welch had not resided in the Territory long enough to be qualified to act as a juror.

Eli B. Kelsey had formed no opinion in the case; passed.

William J. Lynch said he had not any fixed opinion, yet it would require evidence to remove it. He was passed.

T. W. Jennings said he had no opinion today, had an opinion a week ago, but it was owing to a misunderstanding as to the case. He was accepted.

E. H. Parsons had an opinion; excused.

Eugene Holt was accepted, not having formed an opinion.

John McDonald failed to answer to his name, and a fine of \$25 was entered against him.

The open venire that had been issued was exhausted, and another was ordered for forty names, returnable at 10 a.m. next day, to which hour the court adjourned.

In the Third District Court, on May 7, the open venire for forty names in the Spencer case was returned. The first person selected from the list was Ralph Goldberg, who was excused because he was not a taxpayer.

T. J. Mackintosh had conscientious opinions against capital punishment, but would convict if the testimony warranted it. He had an opinion that it would require evidence to remove. Excused.

Martin Harkness said he could not take the Edmunds-Tucker oath, and was excused. He is not a "Mormon."

A. Harmon, a gentleman about 6 feet 8 inches in height, was excused because he had not resided in the district the required length of time to qualify him as a juror.

John McVicker had no opinion in the case; accepted.

Judge Judd stated that Mr. H. Kelly, who had been passed for cause, had stated that he did not be-

lieve he would be an impartial juror, as he had an opinion in the merits of the case. He was excused.

S. C. Pancake said he had no opinion. He had frequently been on the jury. He was passed.

Peremptory challenges were next in order. The prosecution excused T. W. Jennings.

The defense suggested that the prosecution should either exercise or waive another challenge.

Court—Proceed, gentlemen.

Mr. Rawlins began to refer to the statute on the subject.

Court—Proceed, gentlemen.

Mr. Sheeks—You'll give us time to consider, won't you?

The defense then peremptorily excused S. C. Pancake, Eugene Holt, F. M. Bishop and J. J. Farrell.

This gave seven jurors, F. Van Horne, J. B. Cornwell, Wm. J. Lynch, Owen Hogle, Eli B. Kelsey, J. L. Perkes and John McVicker.

John F. Hardie and C. H. Henderson were called and were excused for having formed an opinion in the case.

L. Bamberger was called.

Mr. Brown objected, as Hermann Bamberger was the name of the venire.

Deputy Franks was called, and explained that he served Herman, and then changed it to Louis. Mr. Bamberger was excused.

Frank Shelton, O. H. Jennings, H. C. Reich and John Wickel had no opinion in the case, and were accepted.

W. S. Sharp was not a citizen.

George D. Decker had an opinion, but it was not so strong as to affect his judgment in the case; accepted.

The prosecution peremptorily challenged Messrs. Wickel and Decker.

The defense challenged Mr. Jennings.

The two new jurors, Messrs. Shelton and Rich, were sworn, making nine secured thus far.

Bruce Dallin had lived in the city but two months; excused.

Wm. Shaughnessy, A. A. Brim, H. S. Margetts and Hugh Anderson had an opinion in the case and were excused.

J. D. Pancake was not a taxpayer.

Charles Brinck said he had no opinion in the case, and was accepted.

T. C. Patten, John M. Young were passed on the same ground.

D. L. Bowman had not lived in the Territory long enough to qualify him to act as a juror.

Mr. Brinck was excused by the defense and Mr. Patten by the prosecution.

Mr. Young was called to subscribe to the Edmunds-Tucker oath. He remarked that he had done so about ten times.

Court—Well, I think that is enough.

Mr. Young was sworn in the case.

George Blair was excused for having an unqualified opinion.

P. W. Madsen and G. G. Hall had not formed an opinion and were passed.

Mr. Madsen was excused by the