

NO MORMONS TO TRY MORTESEN

Defense Will Bar Religionists From His Jury.

FEAR SHARP'S REVELATION

PRISONER HIMSELF WILL GO ON WITNESS STAND.

When James Sharp went upon the witness stand at the preliminary hearing of Peter Mortensen and declared that God had revealed to him the guilt of the accused, he brought about a condition as the result of which Mortensen's trial will be the most unique in the history of the state of Utah.

No Mormon can sit upon the jury that is to try Mortensen with his life at stake. Neither can any religionist of any other denomination or sect who believes in demonstrations from the Almighty—that is, if the defense elects to prevent. It is an open secret that Mortensen's counsel will take that action for obvious reasons.

Believers Will Be Excused.

Taliesman who reply in the affirmative will be excused by the defense in the broad principle of incompetency in view of the sworn statement of James Sharp, a man of good standing, of unquestioned integrity and unimpeachable sincerity.

While Sharp cannot repeat that portion of his testimony at the trial because of its incompetency, irrelevancy and immateriality, it is part of the record and will be referred to with frequency. In fact it will be an issue of the trial. Consequently a juror whose religious beliefs embrace divine visitation, demonstration or revelation will be placed in a position to be unfairly accused of a sworn witness of misrepresentation or accepting Mortensen's guilt as proven.

Added to this condition of affairs, it is claimed certain elements of the case preclude the desirability of empaneling sentimental persons as jurors. The accused is entitled to a jury of his peers, twelve men whose mental makeup is such that they may look for a cold, carefully considered verdict of which legal facts and not imagination, sentiment or religious beliefs will form the basis. Mortensen's counsel is fully aware of this.

Selection of a Jury.

Up to this moment they have left nothing undone that would help to exonerate him from the position in which he is placed regardless of who was offended thereby. As a result the defense is looked for to make every effort to secure a jury of men whose professional or business men of high intelligence and preferably without religious inclinations. It is known positively from the best possible source of information that the program that has been mapped out is:

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Justice Nielsen's Opinion.

In this connection it is pointed out that the magistrate who held the preliminary trial for that encountered difficulty in separating what he knew of the case from the evidence actually introduced. Mrs. Hoy's testimony implied that Mortensen had told him he would go away on the following day, hence the necessity of getting the \$5,800 involved on the night of the murder.

The magistrate in his written opinion advised that Mortensen did not go away a very suspicious circumstance, yet something not proven by witnesses. It is asserted. Other instances of the kind are cited.

Admission of Sharp's Testimony.

Widespread comment has been occasioned through the fact that Sharp was permitted to testify as he did on a matter of fact, Sharp did not volunteer the information. It was a responsive answer under cross-examination. Justice Nielsen, it is asserted, could hardly be expected to do otherwise. The state made no move in that direction, evidently expecting C. B. Stewart or Bernard J. Stewart, Mortensen's counsel, to make that step. They did not. The very good reason, it is said, that if the testimony was injurious, whatever harm it might do had been accomplished. By leaving it upon the record it can be referred to without cross-examination in attacking the credibility of the witness on whatever information he may advance. The possible influence of the revelation upon his mind will be used, it is said, by the defense in an effort to destroy his value as a witness for the prosecution and is regarded by them as a distinct victory.

In addition, they expect to be able to bear out the conversation between him and his wife when he left his home for the last time. The state's witnesses show that Mortensen was the last person with whom Hoy is known to have talked before he was murdered; Mortensen himself admits it.

Mrs. Mortensen Cannot Testify.

Consequently, Attorneys Stewart will make a hard fight to have that conversation, and that only, admitted as his last known words explanatory of future intentions. Mrs. Mortensen cannot testify, and the defense is little to fear because of the children of the accused because of their tender age. What other relatives may be called by the state to prove the defense does not know. As for Mrs. Henry Mortensen, if she appears for a witness, it is asserted, it will be for the defense regardless of excited statements she made at the time of Mortensen's arrest.

DR. ELLERBECK OFFENDS DIGNITY OF WILL NEBEKER AND GETS A HARD BOLT

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METEOROLOGICAL REPORT.

Yesterday's Record at the Local Office of the Weather Bureau. Maximum temperature, 47 degrees, minimum, 12 degrees; which is 18 degrees below the normal; accumulated excess of temperature since the first of the month, 55 degrees. Total precipitation from 6 P. M. to 2 P. M., traces; accumulated deficiency of precipitation since the first of the month, 45 inch.

HELP and SITUATIONS WANTED

ADVERTISEMENTS

Will Be Accepted in these columns

Free of Charge.

Branch Offices for receipt of Utah Advertisements:

SHERWOOD'S PHARMACY, Fifth South and State street. HAZEL CO., corner of West First South and Fourth West. M'COY'S PHARMACY, corner of Third South and East. FOLGER BROS., CO., 83 K street, S. B. COULAM, Eighth East and First South. A. J. DAVIS & CO., corner of Seventh South and Seventh East. WESTERN DRUG STORE, Eleventh East and Twelfth South.

DIED.

AUSTIN—In this city, Jan. 27, 1902, of cancer of the stomach, James Austin, a native of Manchester, England, aged 62 years. The funeral will be under the auspices of Rocky Mountain lodge No. 3, Knights of Pythias, of which the deceased was a member, but the time and place will be announced later.

SOCIETIES.

WASATCH lodge No. 1, A. F. and A. M. Regular meetings held at the Masonic hall the second Friday of each month. Members of sister lodges and sojourning brethren in good standing are cordially invited to attend. GEO. H. DERN, W. M. ARGENTA LODGE, No. 3, F. & A. M. Stated communications held at Masonic hall the second Tuesday of each month. Members of sister lodges and sojourning brethren in good standing are cordially invited to attend. WM. J. LYNCH, M. E. H. P. UTAH CHAPTER No. 1, R. A. M. Stated convocations held on the first Wednesday in each month at Masonic hall the second Monday of each month. Members are cordially invited to attend. WM. J. LYNCH, M. E. H. P. M. MORIAH LODGE No. 2, F. & A. M. Regular meetings held at Masonic hall the second Monday of each month. Members of sister lodges and sojourning brethren in good standing are cordially invited to attend. CHARLES FRED JENNINGS, W. M. CHRISTOPHER DIEHL, Secretary.

Eagles.

SALT LAKE AERIE No. 67, F. O. E. meets Sunday evenings at 7:30 in the hall, 123 N. Main street. Visiting Eagles are invited to attend. H. Liddington, worthy president; A. Bernstein, worthy secretary.

B. P. O. ELKS—The Benevolent and Protective Order of Elks meets each Wednesday evening at 8 o'clock, Odd Fellows building, Market street.

I. O. O. F.