

John D. Lee, Second Trial

Discussion of Utah Law

**RS**

**PS**

[*This is the only extant Rogerson Shorthand for the second trial*]

[<sup>1</sup>] **MON SEP 178/76 –**

**LEE CASE-THIS MORNING** [*space*]  
MOTION BY DEFENSE *IN ITS*  
*PROVIDENCE*—[?] SECOND  
JUDICIAL DISTRICT BEFORE  
*COMMON/K*[?] PEOPLE OF THE  
UNITED STATES TERRITORY OF  
UTAH VS. JOHN D. LEE DEFENDANT  
NOW COMES JOHN D. LEE IN HIS  
OWN PROPER PERSON<sup>701</sup> AND BY  
HIS COUNSEL AND MOVES COURT  
TO A DISCONTINUANCE IN ABOVE  
ENTITLED ACTION AND SAID  
DEFENDANT ASSIGNS FOLLOWING  
REASONS *GROUND*[?] FOR THIS  
MOTION [*space*] INDICTMENT UPON  
WHICH PROSECUTION IS BASED IN  
SAID ACTION WAS FOUND UNDER  
AND IN PURSUANCE OF AND  
BASED UPON ACT OF GOVERNOR  
AND LEGISLATURE OF THE  
TERRITORY OF UTAH<sup>702</sup> “THAT  
SAID ACT BEEN REPEALED BY AN  
ACT OF GOVERNOR AND  
LEGISLATURE” MARCH 4<sup>TH</sup> **MAR**  
6/52 1876. **2**[?] **ND** CRIME CHARGED  
IN INDICTMENT IS ALLEGED IN  
SAID INDICTMENT IN TRYING THIS  
CASE TO HAVE BEEN COMMITTED  
BY ABOVE NAMED DEFENDANT IN  
SEPTEMBER 1857 AND BY THE  
THIRD BY REASON OF LAW IN  
FORCE THIS COURT HAS NO

[[*Bk 3 36 cont.*]]703

**MONDAY SEPT 18TH 1876.**

701. The shorthand has no vowels; it could also be the Latin “*propia persona*”.

702. Document is in pencil to this point, in ink thereafter.

703. On verso of page: 148 BISHOP ON STATUTORY CRIMES SECTION 151 175-6-7 485 UTAH STATES —[?] DIGEST 706-65/66 [*space*] AMERICAN REPORTS 11 [*space*] 304 **COM./CORN**[?] **VS. BENNETT.**

**RS**

**PS**

JURISDICTION FURTHER INQUIRE INTO OR PROCEED IN THIS ACTION COUNSEL HAVE NOT HAD OPPORTUNITY EXAMINE ACQUAINT THEMSELVES WITH SAID ACT [space] PRAY SAID INDICTMENT BE QUASHED AND DISMISSED BE FURTHER DISCHARGE IN CASE [space] SIGNED JOHN D. LEE AND SWORN TO BY THE CLERK [space] **H** LET'S HAVE UNDERSTANDING REGARDING THIS AND TOLD THEM *THAT/WE*[?] WAIVE [space] IN AS MUCH AS THIS MOTION MAY BE MADE PART OF RECORD HEREAFTER I ASK FOR COPY OF IT DEFENSE AGREED GIVE COPY OF MOTION SO MIGHT GO UPON RECORDS [space] **SPICER** ASKED BE PERMITTED LOOK AT INDICTMENT IN THIS CASE, **SPICER** CALLED ATTENTION OF COURT ACT OF MARCH 6TH 18452 [space] THIS INDICTMENT BASED UPON THAT ACT. FOR THAT *PS*[?] WILL CALL ATTENTION TO YOUR HONOR'S WORDS USED IN THAT INDICTMENT [space] READ WORDING OF INDICTMENT, 16 DAY SEPTEMBER 1857. INDICTMENT FOUND UNDER TITLE SECOND SECTION 4, 5 AND SIX OF THE TERRITORIAL STATUTES OF UTAH TERRITORY BEING INDICTMENT FOR VIOLATION OF THOSE STATUTES [space]

FOSTER [space] MAY IT PLEASE YOUR HONOR I HAVE UNDERSTOOD AND I BELIEVE MY BROTHER HOWARD SENSES THAT THESE PAPERS I HOLD IN MY HANDS IS A COPY OF THE LAST LEGISLATURE'S

CALL ATTENTION *CLOSE*

**RS**

**PS**

COMPARISONS[?] OF PENAL CODE OF UTAH; PAGE 113 THIS MANUSCRIPT SECTION 399 CIVIL ACTS OF THE GOVERNOR LEGISLATURE OF THIS TERRITORY IN THIS SECTION ALL TO THE SAME ARE HEREBY REPEALED 1ST ACT ENTITLED IN RELATION CRIMES PUNISHMENTS —[?]

APPROVED MARCH 6 1852. THERE AND THEN LEGISLATURE[?] DECLARED ACCEPTED[?] IN EXPRESS/PRINCIPLES[?] WORDS OF SAID STATUTE UNDER WHICH THIS INDICTMENT WAS FOUND [space] IT BEING AN INDICTMENT LARGELY[?] IN VIOLATION OF THAT STATUTE [space] READ FROM FIRST SHEET SECTION 32<sup>D</sup> PAGE ONE. THESE CODES TOOK EFFECT 12 O’CLOCK 4TH MARCH 1876 [space] ON 4TH MARCH 1876 THIS LAW CAME INTO EFFECT AND BECAME THE LAW OF TERRITORY OF UTAH KILLED PRIOR LAWS WITH THIS LAW DECLARES TO BE REPEALED WERE NO LONGER IN FORCE AND WITH THEIR ABROGATION FELL TO GROUND AND BECAME NULL AND VOIDS[?]

ACT IN RELATION TO CRIMES AND PUNISHMENT. [space] HOWARD [space] YES SIR I BROUGHT IT HERE —[?] AND I PRK/PRG[?] WITH THEM/THAT THEY[?] <sup>[137]</sup> UNDERSTANDING OF THE COURT AT SALT LAKE FIRST[?]

READ IT FOR COURT [space]

SPICER MOTION WE HAVE TO MAKE IS AS FOLLOWS. ““ [space] UNDER THAT AUTHORITY THAT HE LAYS DOWN HERE THE WHOLE MATTER IS HERE GIVES[?] IN SECTION 185 IT IS ESTABLISHED THERE[?] [space] REASON WHY AUTHORITY GIVES IS IN/NOT[?] GOOD AUTHORITY [space].

**RS**

**PS**

<p>UNLESS THERE BE IN THIS SOME SAVING CLAUSE. SECTION READS NO PART OF IT IS RETURNED UNLESS SPECIFICALLY SO DECLARED [space] SECTION 4 NO PART/PARTICULAR[?] APPLICATION OUT[?] WITH REGARD</p> <p>ANY ACT OR OMISSION COMMENCED AFTER 12 O’CLOCK NOON OF DAY ON WHICH THIS CODE TAKES EFFECT IS CRIMINAL</p>	<p>“GENERALLY ASSUME[?] THAT THE PUNISHMENT OF OFFENSES MUST FOLLOW THE LAW FOR THE PUNISHMENT TIME[?]. [space] COURT: THIS STATUTE I HAD OCCASION TO EXAMINE IT ONCE BEFORE [space] I DON’T THINK THERE IS ANYTHING IN THE CONTENT[?] ARREST[?] THE STATUTES OF 52 WERE IN DOUBT SPICER REPLIED THERE IS NO DOUBT ABOUT THAT AND EXPLAINED EFFECT OF IT/THE[?] SPICER[?] REPLIED THOUGH ABOUT/AFTER/TO[?] SAVING CLAUSE THERE WAS GOOD LOT OF</p> <p>LAW READ OF WHICH I DID NOT THINK THERE WAS ANY NECESSITY FOR ALTHOUGH [space] YET SO FAR AS THIS CASE IS CONCERNED WE COULD TAKE IT FOR GRANTED THAT THE LAW WAS AS LAID DOWN [space] I DO NOT SAY IT IS SO I SAY WE CAN TAKE IT AS FAR AS THIS CASE IS CONCERNED THAT THIS IS THE LAW [space] OR THERE IS NO AUTHORITY UPON STATUTE WHATEVER UPON A VITAL POINT IN THE MOTION I MAY POINT TO THE MOTION THIS IN REGARD TO THE EFFECT OF THIS SAVING CLAUSE OR[?] LANGUAGE OF THIS KRPR/KRP[?]. [space] THE SIMPLE LANGUAGE OF THE STATUTE THAT NO ACT OR OMISSION OR NO ACT OR OMISSION [sic] COMMENCED PRIOR TO THIS TIME</p>
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**RS**

**PS**

<p>OR PUNISHABLE EXCEPT AS PROVIDED BY THIS CODE OR BY <i>SOME/SUM</i>[?] OF STATUTES THEN IN FORCE COUNTY CITY OR PRECINCT REGULATION AND IN FORCE WHEN THIS CODE TAKES EFFECT AND ANY ACT OR OMISSION COMMENCED PRIOR THAT TIME MAY BE INQUIRED OF PROSECUTED AND PUNISHED IN THE SAME MANNER AS IF THIS CODE HAD NOT BEEN PASSED [space]</p> <p>NO ACT</p> <p>COMMENCED AFTER 12 O’CLOCK NOON<sup>704</sup> CAN BE PUNISHED EXCEPT IN PURSUANCE OF THIS LAW “WE HOLD IT CLEAR THIS WORD COMMENCED<sup>705</sup> HAS NOT ACQUIRED A PARTICULAR MEANING IN LAW” [space]</p>	<p>MAY BE INQUIRED <i>OF</i>[?] PROSECUTED AND PUNISHED — [space] PASSED”. THIS PLAIN LANGUAGE SEEMS TO ME TO HAVE BUT ONE MEANING. NOW I DO NOT THINK THE COURT IS AUTHORIZED TO SAY THAT IT ONLY <sup>[[38]]</sup> HAD AUTHORITY TO SAY ACTS BEGUN AND THEN UNFINISHED [space] IT SAYS ANY ACT BEGUN BEFORE THAT TIME MAY BE PURSUED UNDER THE OLD LAW [space] IN OTHER WORDS IT MIGHT HAVE ALTHOUGH IN <i>MORE/GRAND</i>[?] WORDS THAN THIS THAT NO ACT WHETHER COMPLETED OR NOT COMPLETED PRIOR TO 12 O’CLOCK AND THAT IT MAY BE PURSUED IN ACCORDING TO THE OLD LAW [space]</p> <p>BUT IT IS SUFFICIENT TO SAY THAT ANY ACT COMMENCED BEFORE THAT TIME THAT MY IMPRESSION IF ACTS COMMENCED OR FINISHED ALSO —/<i>MRS/IMPARTS</i>[?] ACTS ACCORDING TO WHATEVER TIME THAT THAT LAW IS TO GO INTO</p>
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704. In left margin, in longhand: **WD, COMMENCED.**

705. Word emphasized in shorthand.

**RS**

**PS**

<p>“THIS HAS BEEN THE ABROGATION OF THAT STATUTE UNDER WHICH THIS INDICTMENT WAS FOUND [space] IT IS NOT FOR US IT IS <i>NOT</i>[?] COURT CONSIDER THE EFFECT OF THAT STATUTE WE STAND HERE AND CLAIM TODAY THAT IT IS A GENERAL JAIL DELIVERY IN UTAH EVERY OFFENSE COMMITTED PRIOR MARCH 45TH<sup>706</sup> 1876 HAS BEEN BY LEGISLATIVE ARM OF TERRITORY OF UTAH <b>WIPE</b>D OUT EVERYTHING IS CONDONED PARDONED ABROGATED AND HELD FOR NAUGHT [space] <i>EVERYTHING</i>[?] PREVIOUS TO THAT WAS LIKE JEWISH JUBILEE CONDONED AND PARDONED LEGISLATURE OF UTAH TERRITORY ASSUMED NO MYSTERY IN THIS [space]</p> <p>[2]707 BISHOP ON STATUARY CRIMES</p>	<p>EFFECT AND <i>NOT</i>[?] FINISHED [space]</p> <p>THERE IS NOTHING IN THE STATUTE TO HOLD THE PRISONER AND CONVEY THAT THE LEGISLATURE EVER INTENDED TO BRING AND A HAND TO JOHN D. LEE TO CRIMINALS THE SIMPLE PURPOSE WAS TO SAY THAT ALL CRIMES THAT TOOK PLACE PRIOR TO THAT TIME AND ALL ACTS WHICH HAD BEGUN AT THAT TIME AND WERE THEN INCOMPLETED COULD BE PURSUED ON UNDER THE OLD LAW AND THIS NEW LAW WOULD NOT APPLY TO IT [space] IT IS VERY PROPER FOR THIS LAW TO SAY [space] THAT THIS LAW WAS NOT TO BE IN A NATURE OF EX POST FACTO LAW [space]</p>
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706. “4” is written over “5” or vice versa.

707. In left margin, in longhand: **BP**.

SECTION 151; CHAPTER SEVEN  
 TREATING ON REPEAL OF  
 CRIMINAL STATUTES SECTION 151  
 BY SPECIFIC WORDS COMMON  
 WORDS **SPICER**<sup>708</sup> MOST COMMON  
 FORM OF REPEAL WHICH NEEDS  
 NO ILLUSTRATION; STATUES  
 REPEALED BY SPECIFIC WORDS  
 NEEDS NO ILLUSTRATION SECTION  
175, 6 & 7 IN HEADLINES “WRITE  
AND ARE MADE DISTINCT”  
 THROUGH AUTHORITIES DIVIDED  
 ON PENAL CODE PROCEEDING  
 “SECTION 177 REPEAL STATUTES”  
 [space] “NNS[?] LKMNT[?] TH/F[?] ON  
 4TH DAY MARCH 1876 IS NOT THE  
 SAME IN SUBSTANCE OR FORM AS  
 THAT IN EXISTENCE BEFORE THAT  
 TIME WHICH WAS REPEALED  
 [space] THAT LEGISLATURE <OF  
 THE TERRITORY OF UTAH<sup>709</sup>>  
 ESTABLISHED THIS PENAL CODE  
 CAUSING IT GO INTO EFFECT AS  
LAW OF THE TERRITORY OF UTAH  
AT THAT TIME EXPRESSLY  
 DECLARING *CERTAIN*[?]  
 TERRITORIAL LAWS UNDER WHICH  
 THIS INDICTMENT IS FOUND AS  
SEEN TO BE ABSOLUTELY  
UNQUALIFIEDLY REPEALED AND  
IN PLACE OF THAT REPEALED LAW  
 WE LEAVE THAT AS A POINT OF  
 DISPUTE THEY ESTABLISHED  
ANOTHER AND ENTIRELY  
DIFFERENT NOT IN SUBSTANCE OR  
FORM THE SAME AS THE ONE THEY  
REPEALED PROSECUTION CAN’T BE  
 CARRIED ON AFTER TWELVE  
 O’CLOCK NOON 4TH MARCH 1876  
 BECAUSE IT WAS PROSECUTION  
 UNDER AND IN PURSUANCE OF

708. In left margin, in longhand.

709. In left margin, in longhand: **ATTENTION**.



<p>INDICATED STATUTE WHICH BECAME <del>VOID</del> AND IS NOT <i>LAW</i>[?] IT IS CLAIMED THAT THIS OPEN WIDE DOORS OF THE PRISONS JAILS IN TERRITORY [space] IT IS NEVERTHELESS THE LAW AND WAS INTENDED TO BE LAW <i>BROTHER</i>[?] BISHOP SENTENCE CAN'T BE PRONOUNCED <b>LAW OF MAR 4</b><sup>710</sup> HE MUST BE DISCHARGED<sup>711</sup>. [space] MAY HAVE A DIFFERENT PUNISHMENT OR PUNISHMENT CAN TAKE PLACE UNDER ANOTHER <u>STATUTE AND DEFENDANT PUNISHED FOR HIS</u>[?] CRIME UNDER NEW LAW [space] <del>REPEAL</del><sup>712</sup> SECTION 179 "SECTION 180 REPEAL CLAUSE". REPEAL OF THIS STATUTE IS NOT PARDON TO ALL UNPUNISHED OFFENSES AGAINST THAT STATUTE [space] <i>READ HERE</i>[?] LAW SECTION 181= <b>SEE</b><sup>713</sup> [space] IF A STATUTE REPEAL EVERY ONE <i>CONTENDS/CONTAINS</i>[?] SUBSTITUTION THAT A SUIT UNDER THE OLD MAY BE FINISHED UNDER THE NEW "<i>OUR GIVEN</i>[?] REASON WHY IS, <i>IF THEY SUGGEST</i>[?] CONCLUSION IS NOT A <i>CONSIDERED</i>[?] <i>GTHR</i>—[?]. <del>SECTION 186</del> "WHAT WAS SUBJECT<sup>714</sup>" WHAT WAS SUBJECT<sup>715</sup> TO PENALTY OF DEATH WAS MADE PUNISHMENT FOR LIFE THE OLD LAW REPEALED AND THERE COULD BE NO PUNISHMENT UNDER IT; <b>LEG'AST</b> REPEALED THIS <i>DS-</i></p>	
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710. In left margin.

711. The phrase is repeated twice in the left margin.

712. In left margin.

713. In left margin.

714. In left margin.

715. In left margin.

/DESTROYED[?] IF FOR[?]  
 ANOTHER/ANY OTHER[?] CAN'T BE  
 MADE —[?] FOR THAT  
 PUNISHMENT BECAUSE THAT  
 STATUTE WAS REPEALED [space] TS  
 [space] SEC 5<sup>716</sup> NEW LAW.  
 APPROVED/PROVIDED[?] THAT  
 FOR/IF[?] —[?] IN MARCH 1876 ALL  
 ACTS AND ARE TO BE PUNISHED AS  
 PROSCRIBED IN THAT PENAL  
 CODE; THAT IS THE WORDS USED  
 IN THIS STATUTE AND THEREFORE  
 THEREFORE THEREFORE:  $\Leftarrow^* \Rightarrow$  IN AS  
 MUCH AS FORMER HAS BEEN  
 REPEALED AND ANOTHER  
 SUBSTITUTED WHO HAVE/—[?] —[?]  
 FNR/F-R[?] COULD NOT BE  
 PUNISHED  $\Leftarrow^* \Rightarrow$ . [space] US DIG<sup>717</sup>  
 1870<sup>718</sup> PAGE 667 [space]

SECTION 89. ARGUED NEW  
 STATUTE NOT **RETROACTIVE**  
 [space] LEGISLATURE WERE WIPED  
 IT AS A SPONGE UPON THE SLATE  
 WERE WIPED ALL PAST OFFENSES.  
 LEGISLATURE DID INTEND —[?]  
 JUST WHAT THAT LAW DECLARES  
 THAT LAW SHALL NOT BE  
 RETROACTIVE SAVING ONLY SUCH  
 CASES AS WERE THEN  
 COMMENCED AND UNFINISHED  
 [space] IF IT WERE NOT THERE  
 MIGHT BE ROOM FOR THE

AND SAYS HERE RETROACTIVE  
 UNLESS — SO FAR AS PUNISHMENT  
 OF CRIMES IS CONCERNED IT  
 COULD NOT BE RETROACTIVE NO  
 COURT WOULD ALLOW IT TO BE  
 RETROACTIVE IT WOULD BE IN  
 VIOLATION OF THE CONSTITUTION  
 [space] AND BE UNJUST [space]

716. In left margin.

717. In left margin.

718. “70” written over illegible digits.

**RS**

**PS**

CONSIDERATION THIS HERE A  
SAVING CLAUSE [space] AND  
IMPLIED CONSIDERATION IS  
PROVIDED WHEN THIS ACT  
COMMENCED COMMENCED AT THE  
TIME THIS ACT WENT INTO  
EFFECT[?] [space] **US DIG**<sup>719</sup> 1874  
PAGE 706, SECTION 65 & 66. [space]  
WE READ AND IT WILL BE, UPON  
WHICH THIS STATUTE WILL CLAIM  
AS ORGANIZED[?] 381 BISHOP ON  
STATUTORY CRIMES STATUTORY  
CRIMES. ALSO PROVISIONS FROM  
WHICH HE TAKES THIS LAW DON'T  
SUSTAIN HIM. WILL NOW SEE IF  
THIS STATUTE OF BISHOP SECTION  
181 WILL APPLY. [space]  
<**REENACTMENT**<sup>720</sup>>. THE ACT IN  
RELATION CRIMES PUNISHMENTS;  
WHOEVER KILLS ANY HUMAN  
BEING MALICE AFORETHOUGHT  
EITHER EXPRESSLY OR IMPLIED IS  
GUILTY OF MURDER [space] THEY  
ARE NOT SAME WORDS NOR THE  
NUMBER OF WORDS **≠SEE NO OF  
WDS≧** BUT THE VERY STATUTE  
THAT APPLIES THIS CASE AND  
BEARING UPON IT AS AFFECTS THE  
RIGHTS OF THIS DEFENDANT WILL  
BE FURTHER FOUND IN  
FOLLOWING SECTIONS [space] <**BE  
NO CLAIM**<sup>721</sup>> THESE STATUTES  
ARE THE SAME OR IN WORDS THE  
SAME —[?] **READ NEW STATUTE.**  
**IT** MUST BE AN REENACTMENT IN  
WORDS AND WE FIND THAT THESE  
ARE NOT THE SAME. LEGISLATURE  
OF THE TERRITORY OF UTAH THEY  
MUST INTENDED DELIBERATELY  
MAKE STATUTE PUT IT IN FORCE

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719. In left margin.

720. In left margin.

721. In left margin.

**RS**

**PS**

TWELVE O’CLOCK NOON MARCH 4  
1876 ABROGATED ALL  
PROSECUTIONS THEN PENDING  
CONDONED CAPITOL  
*PUNISHMENT*[?] OF CRIMES AND  
OFFENSES BEFORE THAT TIME  
COMMITTED IT WAS A GENERAL  
JAIL DELIVERY [*space*] **KENTS**  
**COM**<sup>722</sup> **SEC 1 VOL 1 PAGE 507**, IT  
CAN’T BE PUNISHED IF IT HAS  
EXPIRED UNLESS REPEALED LAW  
SPECIALLY IMPLIES OTHERWISE

THIS EVEN IF THAT PROVISION IF A  
CRIME HAD BEEN COMMITTED  
BEFORE THAT TIME THE COURTS  
WOULD NOT ALLOW IT TO BE  
PUNISHED UNDER THE ACT WHICH  
OCCURRED *AFTER*[?] THAT TIME. I  
DO NOT THINK THERE IS  
ANYTHING WHATEVER *IN/FOR THE*  
*PUNISHMENT*/—[?] AND NO NOT  
THINK THAT THE END OF JOHN D.  
LEE HAS COME <sup>[[39]]</sup> MOTION  
OVERRULED. EXCEPTION.

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722. In left margin.