

## OKLAHOMA'S FIRST COURT

By Grant Foreman.

For many years an anomalous situation existed in the Indian Territory which was productive of a degree of lawlessness probably unparalleled in the country. White people had been pouring into the country of the Five Civilized Tribes and there was no forum in which rights and remedies could be determined and enforced where they were concerned. Many years ago the United States courts in the adjoining states of Kansas, Texas and Arkansas were given jurisdiction to try certain offenses originating in the Indian Territory. However, these courts did not adequately meet the situation and for years the question of establishing a United States court in the Indian Territory had been agitated both in the Territory and in Congress.

The court at Fort Smith was the last district court to exercise a large measure of this jurisdiction. Finally, on March 1, 1889, Congress enacted legislation establishing a court of the Indian Territory. This was accomplished in the face of opposition by Fort Smith, Paris, Texas, and Wichita, Kansas, citizens who contemplated with great reluctance the loss of the business that had accrued to them by the jurisdiction their courts had exercised in the Indian Country. The seat of the new court was fixed at Muskogee, and Monday, April 1, 1889, was the day set for the inauguration of the new court.

This was one of the most eventful days in its history, said a Muskogee paper.<sup>1</sup> For days past a constant stream of strangers had been pouring into the little town. While many of them were lawyers who intended to make Muskogee their future home, not a few came only to be present at the opening of the first white man's court ever held in the Indian Territory.

From the south-bound morning train into Muskogee on that eventful Monday descended the following officials who were to inaugurate a momentous change in the country: James M. Shackelford of Indiana, Judge; Thomas B. Needles of Illinois, United

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<sup>1</sup>Muskogee Phoenix, April 4, 1889.

States marshal; Zachary T. Walrond of Kansas, prosecuting attorney; and Maj. William Nelson of Indiana, clerk of the court, all of whom proceeded first to register at McQuarie's dining room.

The air was tense with interest and the significance of the occasion. Flags were floating from the buildings along the streets and the people were greatly elated and excited. There having been no court room provided, the upstairs room over the Muskogee *Phoenix* had been hastily fitted up temporarily for that purpose. At 10:30 o'clock the officials of the court and a large number of citizens and visitors assembled in Phoenix Hall. Judge Shackleford presiding, called the meeting to order, and thereupon prayer was offered by the Rev. J. Y. Bryce, pastor of the M. E. Church South, in Muskogee. The judge thereupon directed Marshal Needles to open court. The citizens then, for the first time in Oklahoma heard the proverbial "Hear ye, Hear ye, etc." and then realized that the first session of the first U. S. Court ever held in the Territory was in progress.

The district attorney then presented to the court the appointments, bonds and other credentials of the officers of the court; the judge accepted and ordered them spread upon the records and then adjourned court to meet the next morning.

Tuesday morning at 9 o'clock Judge Shackleford convened court and announced the first business of the court would be the promulgation of the rules defining the qualifications required of the attorneys applying for admission to practice in the court. The following were the rules so ordained:

1. Every male citizen of the age of twenty-one years of good moral character and who possesses the requisite qualifications of learning and ability, may, in the manner hereinafter provided, be admitted to practice as an attorney and counselor at law in the United States Court for the Indian Territory.

2. Every applicant, except as provided in Rule Three, shall be examined by a committee of attorneys to be appointed by the Judge, which examination shall be held in open court, unless otherwise directed by the Judge, and such applicant shall, before admission, produce to the Court by sworn petition, satisfactory proof of the foregoing qualifications, and shall also take an oath

to support the constitution and laws of the United States, and faithfully to discharge the duties of the office on which he is about to enter.

3. Every attorney and counselor at law who has been admitted to practice in either the Supreme or any one of the Circuit or District Courts of the United States, or who has been admitted to practice in the Supreme Court of any state thereof, producing to this Court his certificate, or satisfactory proof of his admission to practice as last aforesaid, upon taking the requisite oath, shall be admitted to practice in this Court.

4. It shall be the duty of the Clerk of the Court to keep a Register in which he shall register and enroll every attorney or counselor at law admitted to practice in the Court, and the Clerk shall issue and deliver to each a license in due form to practice in this court, for which the Clerk may charge and collect the sum of Two Dollars.

Mr. Walrond, the district attorney, then moved for his own admission to practice in the court. The Judge allowed the motion and made the necessary order, after which the following attorneys were admitted to practice in said court upon presentation of proper certificates or other valid proofs of being attorneys in good standing: D. Stewart Elliot of Kansas, Y. N. Foster of Illinois, Napoleon B. Maxey of Illinois, Walter A. Ledbetter of Texas, E. C. Boudinot, of Arkansas, Robert L. Owen,\* of Indian Territory, J. H. Crichton, of Kansas, L. E. Jackson, of Indiana, Ridge Paschal, of Indian Territory, Sampson D. Hinds, of Kansas, Preston Lester, of Tennessee, Joseph G. Ralls, of Arkansas, W. D. Crawford, of Arkansas, G. W. Pasco, of Texas, L. S. Fears, of Texas, J. H. Akin, of Indian Territory. The court thereupon adjourned until afternoon at two o'clock, when adjournment was again taken until the next day.

On Wednesday, April 3, at nine o'clock court was again convened by Judge Shackelford and on the motion of Mr. Walrond W. C. Jackson of Fort Smith was admitted to the bar. Judge Shackelford then appointed as jury commissioners for the June

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\*Former United States Senator Owen is probably the only lawyer in that list now living.

term P. J. Byrne of Muskogee, O. P. Brewer of Canadian District in the Cherokee Nation, and D. M. Hodge of the Creek Nation. The three commissioners were then sworn and instructed as to their duties, after which the marshal conducted them to a private room where they prepared a jury list.

The court thereupon appointed W. N. Martin, A. McCoy and Charley LeFlore jury commissioners for the September term of court, and they were likewise instructed and then shown to a private room to prepare a jury list. The court then adjourned until two o'clock. At the afternoon session the jury commissioners handed in the jury lists and after being complimented by the court for the prompt discharge of their duties the court adjourned until the following day.

On Thursday Judge Shackelford opened court at the appointed hour. Motion was made for admission to the bar of the following lawyers, all of whom, on presentation of certificates and proofs were duly admitted and sworn as attorneys: James Brizzolara of Arkansas, Leroy Neal, W. N. Patterson and Thomas George, all of Kansas. The Court thereupon appointed Maj. William Nelson the Court Clerk, as United States commissioner for the Indian Territory, Benjamin Dye deputy clerk, and William W. Ansley deputy marshal. Upon the opening of the afternoon session of the court Andrew Roeburg applied for naturalization papers. Indian policemen William Foreman and G. Barnum were then sworn in as United States deputy marshals. There being no further business before the court it adjourned until the first Monday in June, 1889, pursuant to the following order:

*Whereas*, Pursuant to an Act of Congress entitled "An Act to establish a United States Court for the Indian Territory and other purposes" approved March 1, 1889, the above named Court met at Muskogee, in the Indian Territory, on the first Monday of April, 1889, in the regular April term; and

*Whereas*, There was no venire for a jury returnable to said regular term, and no rule of said court at its organization designating the return day for precepts, writs, summonses, etc., issued out of the clerk's office for said court, and the court subsequently at said term has adopted a rule governing the proceedings of the same; and

*Whereas*, The undersigned Judge of said court is fully advised of the necessity of a special session of this court for the transaction of pressing business at an early and convenient date under the provisions of the said Act.

*Now therefore*, The undersigned James M. Shackelford, Judge of the said court does on this Fifth day of April, A. D., 1889, call a special session of the United States court for the Indian Territory, to begin and be holden at Muscogee, in said Territory, at the hour of ten (10) o'clock a. m., on the first Monday of June, 1889, and it is by these presents announced that said term of said court will continue from day to day for the transaction of all business lawfully within its cognizance under the existing rules and regulations of said court until the adjournment of the said session.

Done at Muscogee, in the Indian Territory, on the Fifth day of April, A. D., 1889.

James M. Shackelford,  
Judge of said Court.

On Wednesday, April 3, at two o'clock p. m., the attorneys theretofore admitted to practice in this court met for the purpose of organizing a bar association. Judge Shackelford was called to the chair and Prosecuting Attorney Walrond was appointed secretary.

On motion of Mr. Elliot, of Kansas, the names of the following members were enrolled, viz: D. Stewart Elliott, of Kansas, Y. N. Foster, of Illinois; Napoleon B. Maxey, of Illinois; Walter A. Ledbetter, of Texas; S. E. Jackson, of Indiana; Ridge Pascal, of the Cherokee Nation, I T.; Sampson O. Hinds, of Kansas; Preston S. Lester, of Tennessee; J. G. Ralls, of Ohio; Robert L. Owen, of the Cherokee Nation, I. T.; W. D. Crawford, of Missouri; G. W. Pasco, of Texas; L. S. Fears, of the Cherokee Nation; J. H. Akin, Indian Territory.

A committee composed of Messers. Elliott, Pascal and Foster was appointed to select permanent officers for the Association. They nominated Judge J. M. Shackelford president, Z. T. Walrond vice-president, Col. R. L. Owen secretary, and N. B. Maxey treasurer, and their report was adopted.

On motion of Mr. Ledbetter of Texas the chair appointed Messrs. Ledbetter, Elliott, Pascal, Jackson and Ralls as a committee on Constitution and By-laws. The committee was directed to report at the next meeting of the Association. Remarks relating to the objects of the Bar Association were then made by Judge Shackelford, Messrs. Walrond, Elliott, Foster and Hinds. The Association then adjourned to meet again in the court room the first Monday of the next term of this Court.

A local paper introduced the new court officials to its readers in the following language:<sup>3</sup>

"Judge James B. Shackelford is a gentleman some fifty odd years of age who has been on the bench a number of times in the state courts of Indiana. He is pleasant and courteous in the extreme, and his decisions, though firm, are delivered in a good natured and friendly manner. His popularity with our people is assured.<sup>4</sup>

"The attorney, Mr. Z. T. Walrond, was a member of the last Kansas legislature, is a man who is held in the highest esteem by the people of his Kansas home and makes friends of all whom he meets. He has made an especial study of criminal law and practice, and we hazard nothing in asserting that he will perform his duties to the letter, as well as to the satisfaction of all.<sup>5</sup>

"Thomas B. Needles, the marshal, is a banker by profession and we should not be surprised if he soon wearies of the arduous duties imposed by his office. He is fat, good natured, and has about him an air at once attractive and pleasing, and which will do not a little to make the court popular.<sup>6</sup>

"The gentleman selected by Judge Shackelford as clerk of the court is Maj. William Nelson, of Evansville, Indiana. Major Nelson is a retired officer and served not many years ago in this immediate country and also in Arizona. He is abundantly equipped

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<sup>3</sup>*Ibid.*

<sup>4</sup>Judge Shackelford who captured Morgan the Raider, had a distinguished career in the Civil War, an account of which by Carolyn Thomas Foreman is to be seen in the *Chronicles of Oklahoma* XII p. 103.

<sup>5</sup>Mr. Walrond lived and practiced law in Muskogee until his death.

<sup>6</sup>Colonel Needles afterward served as a member of the Commission to the Five Civilized Tribes in Muskogee.

with the good, hard sense necessary to the successful administration of the duties which his office imposes.

“In the selection of the gentlemen who make up this court, there is a point which might prove of value to certain parties. Not one of them solicited the appointment and the first intimation they received of what was to occur was a telegraphic enquiry whether they would accept.

“For the purpose of getting acquainted with the officials of the Western District of Arkansas, as well as to confer and arrive at an understanding regarding the jurisdiction of the two tribunals, the Muskogee officers went to Fort Smith this week, and will thence proceed to their homes to place their personal affairs in shape for leaving. The clerk will, of course, remain at his post, or have a deputy there to attend to the filing of suits, and a deputy marshal will also be on hand. In this connection it might be well enough to state that several civil suits were begun before adjournment Tuesday noon.

“The jury commissioners selected were P. J. Byrne, and Perry Brewer, of Muskogee, and Capt. J. T. Standley, of Atoka; but the latter could not serve and another was named. They received instructions and entered upon their duties Wednesday morning.

The first session of this court at which the actual business of trying cases was inaugurated was held in Phoenix Hall on Monday morning, June 3, 1889, at ten o'clock. The hall was crowded with lawyers, officers, jurors, witnesses and visitors. Judge Shackelford appointed a committee composed of Hinds, Owen, Ledbetter and Wisdom to examine applicants for admission to the bar and directed them to act at once.

A jury was empaneled and the court called the first case, but as the witnesses were not present court adjourned until afternoon.

When court convened at two o'clock Judge Hinds, chairman of the committee on admission, reported favorably the names of 26 attorneys. He also stated that a number of applicants had filed who did not qualify under the rules of the court. Following this motions were presented to quash summons and dismiss attachments.

The court then called the first case, a criminal proceeding against A. Husted, charged with intimidating and assaulting settlers in Oklahoma. After the jury panel was sworn Prosecuting Attorney Walrond read the section of the law providing that United States citizens could be tried only before a jury composed of United States citizens. Thereupon it was learned that of the 36 jurors summoned all but three were Indian citizens and were therefore not competent to sit in the case on trial. Another jury was then called composed wholly of United States citizens and the trial proceeded. Court adjourned at six o'clock without having finished the trial of this case.

On the opening of court on Tuesday, June 4, after the presentation of a number of motions, a grand jury composed of 16 men was sworn and instructed by Judge Shackelford to act upon cases in which the accused had been held by the United States Commissioner and such as were presented by the prosecuting attorney.

The grand jury was composed of the following: J. A. Patterson, foreman; D. N. Robb, C. W. Turner, J. L. Thomas, Rev. Sugar George, Ned Robins, James Sandford, Wm. Harsha, O. P. Brewer, S. B. Callahan, J. C. Davison, T. F. Meagher, Wm. A. Madden, Jno. O. Cobb, R. A. Evans, and J. M. Rucker.

The court then proceeded with the trial of the United States against Husted. Congressman Silas Hare, of Sherman, Texas, who represented the defendant, challenged the jurisdiction of the court over the Oklahoma country. Reserving decision on the question, the court proceeded with the trial and the case was submitted to the jury at three o'clock in the afternoon.

On Wednesday morning, the jury having deliberated all night, brought in a verdict finding A. Husted guilty as charged and the other defendants not guilty. Four more attorneys were admitted to practice and the court then announced rules for the guidance of the bar: motions and demurrers to be disposed of before an answer could be filed; the different Indian Nations were to be treated as counties for the purpose of verification; the marshal could not be required to make returns on processes until the costs were paid.

After hearing a number of motions on the question of jurisdiction the grand jury brought in its report, finding one indict-



ment against William Barrett and Harry Clinton charged with larceny.

The next morning was occupied with the hearing of motions, only a few of which were passed upon. Default was taken in more than 50 cases and in a few, execution was ordered.

"Among the many who have been in attendance at the U. S. Court this week were noticed the following:

"Ex-Governor McCurtain, of the Choctaw Nation; Col. N. B. Ainsworth, of McAlester; Hon. Wash Grayson, of Eufaula; Captain Jackson, of Gibson; James Crabtree, of Eufaula; Congressman Hare, of Texas; Will Mellette, Esq., of Ft. Smith; Judge G. W. Stidham, of Eufaula; M. Fraree, of Vinita; James Akin, of Vinita; John Bullette, of Tahlequah; E. N. Rasmus, of Tahlequah; John Schrimsher of the Cherokee Nation; Lee Sandels, of Ft. Smith, Garner, of Stringtown; James Forrester, of Ft. Smith; W. W. Ainsley, of Oklahoma; Judge W. H. Tibbles, of Coffeyville, Kansas; Thomas B. Avers, of Coffeyville, Kansas; D. H. Dodge, of Creek Nation; Frank Boudinot; Ben T. Duval, of Ft. Smith; Wm. H. Cravens, of Ft. Smith; and Hon. Stand Gray of Illinois District.

"Deputy-marshal Tyson, of Ft. Smith; J. O'Toole and R. D. Burton, of South Canadian; E. C. Boudinot, of Ft. Smith; Ex-Governor Burney, of Chickasaw Nation; J. S. Standley, of Atoka; Ex-Treasurer Sam Brown, of Creek Nation; Sen. Joe Mingo, of Creek Nation; Chief Justice J. M. Keys, of Choteau; W. T. Whitaker, of Pryor Creek; Dorsey Fife, of Econtuchka; A. Mills, Chetopa, Kansas; R. N. Bynum, Tulsa; B. C. Burney, Woodville, I. T.; A. McCay, McAlester; Richard McLish, Ardmore; J. S. Nale, South Canadian; J. S. Wilson, Gibson Station; J. J. Baird, Tulsa; G. H. Lewis, Choteau; J. C. Pettigrew, Ft. Smith; Wm. V. Carey, Alluwe, I. T.; Connell Rogers, Fort Gibson; R. L. Palmer, Atoka; C. L. Jackson, Guthrie; C. N. Ratcliff, J. O. Hall and W. Ward, of Vinita; Chas. Starr, Cherokee Nation.

"C. O. Frye, Cherokee Nation; Zach Gardner, Pauls Valley; W. L. Payne, McAlester; Wm. McCombs, W. A. Palmer and R. J. Gentry, of Eufaula; Sam Brown, Creek Nation; Thos. Marcum, Ft. Smith; G. B. Hester, Boggy Depot; W. N. Foster, of Illinois; Mr. Rhea, of Texas; C. L. Potter, Gainesville, Texas; Frank P. Blair,

Kansas City; Hon. Ridge Paschal, Vinita; Judge Boss, Girard, Kansas; Judge LeRoy Neal, Chetopa, Kansas; Mr. Wolfenberger, Ft. Smith; Stephen Bluejacket, Bluejacket, I. T.; J. M. Perryman, Eufaula; Sam Grayson, Eufaula; Judge Humphreys, Ft. Smith; L. Guthrie, Oklahoma City; O. P. Brewer, Webbers Falls; William Johnson, Tahlequah; G. H. Lewis, Choteau; and Professor Smith, Tahlequah."

Monday, June 24, was given over to the celebration of the beginning of the new court house. A large assemblage of strangers came to Muskogee to witness the laying of the corner stone by the Grand Lodge of Masons of the Indian Territory. The *Muskogee Phoenix* of June 27 described the proceedings on that important occasion.

#### "A RED LETTER DAY

"On Monday last Muskogee once again evidenced the claim that for getting up good celebrations on short notice she bears the palm. Notwithstanding the fact that the festive occasion was but little advertised, Monday last witnessed quite an assemblage of strangers in our city, to either look on or take part in the ceremonies consequent upon the laying of the corner stone of the new U. S. Court Building by the Grand Lodge of Masons of the Indian Territory.

"Sunday afternoon the celebrated Parsons Cour de Leon Band arrived, and Monday morning trains brought in a large number of persons from both above and below, and when about nine o'clock the band began to play, Main Street in Muskogee resembled, (we imagine) on a small scale, Pennsylvania Avenue in Washington on Inauguration Day.

"The Masons assembled in their hall over the post office about 10 o'clock, and after quite a little delay the procession, headed by the band, marched to the grounds where, with appropriate ceremonies, the laying of the corner stone took place, after which the large audience present were entertained by able addresses from Robt. W. Hill, D. D., and Hon. Z. T. Walrond.

"After the ceremonies connected with the laying of the corner stone were over, barbecued meat of various kinds was served to all who wanted it in quantities to suit, and if a single individual went



Laying of Corner Stone U. S. Court Building, Muskogee, 1889



hungry on Monday last it was his own fault, as there was enough prepared to feed every individual man, woman and child in the entire assemblage.

“By the kindness of Grand Secretary J. S. Murrow, we are permitted to give the official report of the day:

“ ‘EMERGENT COMMUNICATION OF THE M. W. GRAND LODGE OF INDIAN TERRITORY.

“ ‘A special communication of the M. W. Grand Lodge of Indian Territory was held in the hall of Muskogee Lodge, Muskogee Nation, June 24, 1889, A. L. 5889, 11 o'clock A. M. A special dispensation was read from the M. W. Grand Master, John Rennie, authorizing and empowering the R. W. Deputy Grand Master Leo. E. Bennett, to assemble the M. W. Grand Lodge of the Indian Territory in special convention at Muskogee this day for the purpose of laying the corner stone of the United States Court Building.

“First, Officers. R. W. Leo E. Bennett, Deputy Grand Master, as M. W. Grand Master.

“R. W. P. J. Byrne, Past Grand Master, as Deputy Grand Master. R. W. Robt. W. Hill, Grand Senior Warden. R. W. W. N. Martin as Grand Junior Warden. R. W. G. W. Stidham, as Grand Treasurer. R. W. Joseph S. Murrow, Grand Secretary. Rev. L. S. Byrd, Grand Chaplain. R. W. Robt. W. Hill, as Grand Orator. Bro. T. F. Brewer, as Grand Lecturer. Bro. R. L. Owen, as Grand Marshal. Bro. F. B. Severs, Grand Senior Deacon. Bro. Clarence Turner, Grand Junior Deacon. Bro. J. A. Scott, Grand Senior Steward. Bro. Robert Hamilton, Grand Junior Steward. Bro. H. C. Hall and Bro. P. Porter, Stewards. Bro. Z. T. Walrond, Grand Pursuivant. Bro. H. Edmonson, Grand Tiler.

VISITING BRETHREN

“*Eufaula No. 1.* Geo. W. Stidham, P. M., Chas. Gibbons, W. M., Rev. R. C. McGee, Henry Sixkiller, Geo. Downing, S. W. Gray, H. C. Fisher, J. M. Perryman, G. W. Stidham, Jr., S. J. Brashear, P. R. Ewing. *Caddo No. 3.* Wm. Ward, W. M., W. T. Clark. *Oklahoma No. 4.* J. S. Murrow. *McAlester No. 9.* J. Y. Bryce, S. A. Jackson, M. A. Smith, D. M. Hailey, E. H. Doyle, P. G. M.,

Wm. Essex, W. M., Francis Burnett, John Simpson, Joseph Gardner, N. B. Sloan. *Alpha No. 13.* Wm. Jackson, H. C. Lowry, W. A. Barker, H. R. Gill, Joshua Ross. *Webber Falls No. 14.* Ward Turner. *Savanna No. 20.* E. Poe Harris. *South Canadian No. 22.* R. D. Burton, Harmons Burk, Wm. Millican. *Muskogee No. 28.* P. J. Byrne, W. M., J. A. Scott, S. W., W. N. Martin, J. W., R. W. Hamilton. Secy., F. B. Severs, S. D., C. W. Turner, J. D., H. H. Edmonson, Tiler. Leo. E. Bennett, D. G. M., R. W. Hill, D. S. G. M., W. A. Maddin, C. W. Moore, P. Porter, Otto Zufall, J. B. Cobb, R. L. Oliver, T. F. Meagher, O. Fuller, August Bolander, A. Roeburg, W. O. Fisk, N. B. Moore, A. W. Robb, J. H. McQuarie, R. Bailey. *Bruton, U. D., L. S. Byrd, W. M., C. W. Bruton, J. W. Whitefield, U. D., J. J. Thurman. Parsons 117, Kansas.* S. B. Newton, Frank Bever, E. A. Santer, G. W. Gabriel, J. O. McKee, C. W. Hawks, C. Rockhold, E. B. Stevens, C. W. Fletcher, D. N. Barrows.

“Also, the following brethren from other jurisdictions: Jas. Starrow Scotland, M. M. Edmiston, H. C. Hall, Z. T. Walrond, H. S. Bunting, O. K. White, S. Beecher, all of Kansas. John H. Stevens and W. Z. Linsey, of Texas; A. P. Peel, J. S. Southerland, John Williscraft, of Arkansas; C. A. Norman of Tennessee; J. H. Shock of Missouri; N. B. Maxey of Illinois.

“The M. W. Grand Lodge was opened in Ample form in the E. A. Degree. The Grand Secretary read the warrant of authority from M. W. John Rennie, Grand Master, appointing R. W. Leo E. Bennett as Grand Master for the purpose of this convention.

“Eufaula Lodge No. One was admitted and welcomed as a Lodge, and received with Grand honors.

“The M. W. Grand Lodge was opened in Ample form on the E. A. which was formed under the direction of the Grand Marshal and marched to the site of the U. S. Court building where the corner stone was laid with the usual impressive ceremonies of Masonry, after which R. W. Robert, W. Hill, D. D., the Sr. Grand Warden, and Bro. Z. T. Walrond, Past Master of Sequi Lodge No. 160, Kansas, then delivered eloquent addresses refreshing the intellectual, and these were followed by an intermission and refreshments for the physical man. The procession was then reformed and

marched back to the hall where the Grand Lodge was closed in Ample form.”

Leo. E. Bennett, as M. W. Grand M.

J. S. Murrow,  
Secretary.’ ”