

KELLY LAUNCHES SURPRISE

Waives Further Examination and is Bound Over to District Court.

TAKING OF TESTIMONY IS STOPPED

Throwed Move on Part of the Attorneys for the Defense to Shut Out Undesirable Evidence.

The attorneys for the defense in the Kelly bribery case before Judge Vinsonhaler took their innings at launching surprises at the opening of yesterday's session of court by informing Judge Vinsonhaler that their client waived further examination and would consent to being bound over to the district court.

At a preliminary hearing before a county judge there is a wider latitude allowed the prosecuting attorney in questioning witnesses. This was apparent in the proceedings Friday. There were many instances when witnesses were unable to contribute any information of their own knowledge regarding Kelly's alleged crooked transactions, but they could tell what information others had given them.

Attorneys Suddenly Get Busy.

As soon as court convened one of the three attorneys employed by Kelly arose and said that he and his associates were too busy to proceed further with the hearing. "One of my associates is engaged in an important case in another court," he explained.

"Where is Kelly going?" interrupted the county attorney; "isn't he busy somehow or going somewhere, too?"

The speaker pretended not to hear the remark and continued in his announcement that Kelly would waive examination. As soon as he had finished speaking the county attorney was on his feet with a protest.

"Your honor," he expostulated, "I think there is a valid reason why the defendant should be allowed to waive hearing at this time—a reason that operates for public benefit. The counsel on the other side had an opportunity to waive a hearing at the outset, but they neglected to do so, and now it ought to go on."

"I have been unable to induce the brewers to give me the information needed to prosecute this case. The only way I can make them talk is to bring them into this court by subpoena and put them on the witness stand. If your honor permits me to waive the hearing now I will be left hanging in the air when it comes to trial in the district court."

"Now, I have traced the money paid by the brewers to George W. Tierney. It may be that it cannot be traced in the district court, but I believe it can. If we have the opportunity to try to trace it to him and fall in this court I will move for a dismissal. It seems to me it is the better plan to let the hearing proceed and save the county the expense of a trial in the district court in the event of Kelly being not guilty."

Judge Obligated to Grant Request. Judge Vinsonhaler said he would have to allow counsel to waive the hearing if they choose to do so. "It is the duty of the county magistrate only to determine whether there is probable cause of a man's guilt," he said, "and to bind him over to the district court in case there is. If Kelly desires to be bound over without further hearing I must permit him to do so. His bail is fixed at \$1,000."

The case will likely not be heard until the next term of court, as the docket is pretty well crowded in the district court. The attorney said that the move of the defense left him in the lurch as far as securing new testimony is concerned, but it is not a conclusion that the state will fail to prove a case against Kelly on that account. "We have traced all the money paid by the saloon keepers of South Omaha to Tierney," said he. "Consequently we've got Tierney where he will have to move to save himself. If he says he didn't give the

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