

# THE DESERET NEWS.

TRUTH AND LIBERTY.

No. 30.

Salt Lake City, Wednesday, August 25, 1875.

Vol. XXIV.

ESTABLISHED 1850.

## THE DESERET NEWS, WEEKLY.

One copy, one year, with postage, \$3 65  
" six months, " " 1 85  
" three " " " 85

## THE DESERET NEWS: SEMI-WEEKLY.

One copy, one year, with postage, \$4 25  
" six months, " " 2 15  
" three " " " 1 10

## THE DESERET EVENING NEWS.

One copy, one year, with postage, \$10 50  
" six months, " " 5 25  
" three " " " 2 65

TERMS IN ADVANCE.

DAVID O. CALDER,

EDITOR AND PUBLISHER.

OUR SUBSCRIBERS in the country can at any time ascertain the date on which their subscription expires by referring to the numbers attached to their name on their paper, namely, 1-6-4 means first day, sixth month, fourth year, or 1st June, 1874. 15-12-4 means 15th December, 1874, &c.

Those names having no numbers close with the end of the volume.

Subscribers understanding this will be able to renew their subscriptions prior to the time of expiration, so that their papers may continue without interruption.

## THE LEE TRIAL.

Address of Judge J. G. Sutherland,  
of Counsel for the Defense, to  
the Jury, Second District  
Court, B. aver, U. T.,  
August, 1875.

### GENTLEMEN OF THE JURY:

Death under any circumstances is a solemn event. We can never witness it without a shade of melancholy. The nearer we are brought to it the sadder are our reflections. The duties we discharge at the bedside of the expiring, and the rites we perform at the burial, are always attended to with feelings subdued as by an awful and mysterious presence. Every harbinger of its coming, every wail which betokens that it has come, every souvenir that perpetuates its memory, check the flow of cheerful thought, dim the brightness of life's outlook, and cast a funeral gloom over our pathway. It seems to come especially near when those die to whom we are related by consanguineous ties; and often nearer when friends spiritually kindred to us go to that "bourne from whence no traveler returns."

Death always wears a grim visage. Those who have never seen it, except where disease or accident has marked its victim, when the last hours of the departed have been soothed by the ministrations of affection, have seen it in its least forbidding aspect; but even then the smile of Providence seems for the time withdrawn, and the earth is dreary and desolate. But when life has been sacrificed to the wrath or avarice of man, and the brief span of existence has been curtailed by violence, the heart grows sick with horror at the appalling spectacle.

It is no holiday affair to investigate by what diabolical human agency even one man has come to an untimely end, especially when the possible issue of such inquiry may be to require another death by way of expiation. This case involves still more—the details of a wholesale slaughter. You have been selected to hear evidence, and to decide whether John D. Lee is such a moral monster as to embroil his hands in the blood of men, women and children, in a cold-blooded massacre.

I know you cannot approach this subject except with feelings of awe, with trembling and fear; for you and I and all of us are treading upon sacred ground. We are stirring the ashes of the dead. We are searching for the blood, unworthily spilled, spilled by murderous hands, that we may lay it upon the guilty. Its touch, where you put it, will blast, wither and destroy. He whom you touch, in this holy office, will be marked for a felon's death.

In this solemn and responsible function, I feel assured, you will proceed with the caution and diffidence which ever characterize earnest and candid men, that you will form no hasty judgment, that

you will not suffer your decision to be influenced by any fanatical party zeal; in short, that you will be governed by no capricious moods, by no sentiments that are alien to your high duty. And I say to you, gentlemen, that any mistake you commit by proceeding too hastily, upon prejudice, with voluntary blindness of mind to the indications afforded by the evidence—any mistake, I say, thus arising from aught but that infirmity of judgment which sometimes prevents the best men from coming to just conclusions when they are earnestly endeavoring to do so, will expose you to the same moral condemnation as though you had taken life like an assassin, instead of through criminal negligence or perversity by a false verdict.

The patient attention you have given to the proceedings during the introduction of the evidence I accept as an earnest of your desire to learn the facts with judicial interest and fairness, as a significant sign that you will bring to the consideration of that evidence a robust and fearless judgment.

To proceed with the desired thoroughness and caution, you are not permitted to go out and make inquiries. You have been sworn and placed in confinement under charge of officers of court. You have been so sequestered that you could learn nothing on the impulse of your own interest or curiosity. You have been obliged to limit your inquiries to such facts as have been brought before you, to so much of the bloody transaction as has been submitted to you. The government has made a distinct charge against the prisoner at the bar, and it assumes to give you the necessary information.

The genius of crime is so secretive that often the government is obliged to submit cases to juries upon meagre and fragmentary testimony; then jurors are prompted by a sense of the situation to give the fullest consideration to facts so brought to light. They can infer nothing against the good faith of the prosecution from the paucity of the evidence, if every clue to new and additional light has been followed, if every source of information has been explored, and every agency utilized to lift the veil under which crime is wont to hide itself. If, under such disadvantage, enough can be seen to warrant conviction, according to the strict and humane rules that govern in respect to the measure and plenitude of proof, the jury pronounce the verdict of guilty, otherwise they acquit, lest the innocent suffer instead of the guilty.

The crime now under investigation was one of unprecedented wickedness. It will gratify the sense of retributive justice which every man, not an enemy of his kind, feels, to discover the perpetrators and hang them. They should not be permitted to live! That crime so shocks us, was committed with such circumstances of atrocity, that no punishment seems adequate. But in proportion to the turpitude of the crime charged and the severity of the punishment should be our diligence and circumspection in looking for and condemning the fiends that planned and enacted that scene of horror, who have since cursed the earth with their baneful presence for the period of eighteen years.

Have you been furnished with adequate evidence to satisfy you that you have been made acquainted with the bloody transaction? Do you think it has been so circumstantially described and detailed to you that no other person exists, who could be brought before you, and could tell you more of it? Has it been so described that you feel assured, if others do exist who can testify on the subject, that what they would say would add no new fact to what you have already learned? Unless you have been permitted to know by evidence all that can be learned from witnesses, you can not feel that assurance of the correctness of your judgment that amounts to a "moral certainty" of the defendant's guilt—you can not have that assurance which is not beset with that misgiving which, according to law, acquits, called a "reasonable doubt."

The testimony submitted to you discloses that there were at least twenty-four eye-witnesses of the tragedy: P. Klingensmith, John M. Higbee, Carl Shirts, Charles Hopkins, Wm. C. Stewart, John D. Lee, Joel White, Robert Wiley, Ira Allen, Samuel McMurdy, Thos. Cartwright, Wm. Bateman, Clark, Ezra Curtis, Samuel Pollock, Wm. Young, Harrison Pierce, Jas. Pierce, Samuel Knight, Richard Harrison, John Mangram, Slade, Swen Jacobs and James Williamson. Six are dead, four of the others are mentioned as defendants in this indictment, leaving fourteen that might testify. Dame and Haight, who are indicted, were not at the scene of the massacre. Jukes, Adair and Wilden, who are also indicted, have not been mentioned in the transaction.

Of these fourteen, who are eligible to testify, only P. Klingensmith, Joel White, Sam'l Pollock, William Young, and James Pierce have been put on the witness stand. Ten others could have been called, and have not been called. They are all within the jurisdiction of this court.

Now a remark as to the examination of those who were called to the stand. Smith and White were put under oath by the prosecution, and directed to state all they heard said and saw before going to the Meadows, all they heard said and saw at that place, on the day of the slaughter, and on all of the preceding days they were there. The prosecution also called Pollock, Young and Pierce. The directions to them were, "Tell all you saw during the same period; but don't repeat a word you may have heard anybody say." Those witnesses testified accordingly. The prosecution did not permit these latter witnesses, on cross-examination, nor when called as witnesses for the defense, to transcend those inexorable limits.

Smith and White have testified, on questions put by the prosecution, to conversations, to rumors, to acts, which they said had occurred at Cedar City, and at other places, before the slaughter, and prior to going to the Meadows. They likewise testified to conversations, rumors, and acts at the Meadows. Nor were they confined to stating conversations between those who are indicted, or between those persons that acted in concert, or that seemed to be bound together by some combination with each other, or with Lee. All conversations, no matter between whom, or where occurring; all rumors, no matter how vague or impersonal; all acts, no matter by whom done, or how irrelevant; were testified to by them. The defence interposed objections, but they were unavailing to exclude anything.

The transaction really consisted of what all the actors at the Meadows said and did while together, by way of preparation before going; of all they said and did on their way thither; and all they said and did after they arrived. After some evidence of combination for going there, the acts and declarations of individuals belonging to the party, in the absence of the others, within the same scope of time and place, relating to the common purpose and in the execution of it, would also be included in the technical *res gestæ*—would form part of this transaction which is the subject of this inquiry. Smith & White ranged over this field without the least check. No combination, however, was shown, beyond this—that the persons whose names have been mentioned were called to go to the Meadows to save the emigrants that had survived the protracted attacks of the Indians and to bury the dead. On this ostensibly humane errand men went simultaneously from Cedar City, Harmony and Washington. They carried implements suitable for interring the dead. They also carried firearms—these were always in demand; the farmer seldom went even to his fields without his trusty gun. Smith and White are the only witnesses who have given full testimony. The prosecution, it is true, called Pollock, Young and Pierce; but they were only permitted to describe the transaction

as a pantomime; they were not permitted to state what was said in connection with any act which they mentioned. They were at the Meadows; they saw all that any body saw, and heard much said that would explain those acts; but they were compelled to testify as though they had been deaf, and saw the transaction with the sense of hearing abolished.

Gentlemen of the Jury, the charge against the defendants named in this indictment is that they, by agreement, and concert of action, killed and murdered the emigrants. As before remarked, they did not all go from one place; they did not occupy one camp at the Meadows; they were not continuously together. They were there two or three days before the massacre. During that interval the emigrants were intrenched, and the Indians fired upon them. On the fatal day, no Indians were to be seen; they had in fact concealed themselves in the sage brush. They were in ambush, from which they sallied out to the final assault. On that day the emigrants came into communication with the Mormons, under a flag of truce, surrendered their arms, abandoned their property, and placed themselves under Mormon protection, to be conducted back to Cedar City. The children and wounded had been placed in wagons provided by the Mormons; these wagons had started towards Cedar, under the lead of John D. Lee; next marched out the women, lastly the men. This procession marched for nearly three quarters of a mile, the Mormons traveling abreast or nearly so of the men belonging to the emigrant party, when the massacre commenced. Lee had gone with the wagons over a rise of ground, and was out of sight of the men. That was his final departure from the field. He conducted the children in safety away.

Two important and vital questions must be determined—first, did the Mormons take part in the massacre? If so, was it previously agreed on when Lee was present?

If there was no agreement, or concert of action, each man, of course, was only responsible for his own acts. Was there anything said, done, or agreed upon, which should affect Lee with notice, when he headed the retreating emigrants, that such a butchery was to be executed when they came opposite to that masked battery of Indians?

That attack was either made by the Indians alone, or by Indians and individual Mormons that were more savage than Indians; or it was initiated by Mormons, organized and using the Indians as allies. It was a sudden attack, unlooked for alike by Mormons and emigrants, and originated in the natural ferocity and treachery of the Indians; or it was preconcerted by Mormons as individuals or as a party, acting upon a like impulse of treachery and ferocity. You must decide in your own minds how it transpired. You can not convict Lee unless you find from the evidence that there was such preconcerted plan, and that he was a party to the damnable compact.

As Lee did not participate in the slaughter, and was not present or in view of it, the hypothesis that he and the others pre-arranged the destruction, can not be adopted, unless there is evidence of it. There must be such a state of facts proved, beyond a reasonable doubt, as are not only consistent with, but such facts as prove, that supposition. The facts proved must be inconsistent with any other supposition that can reasonably be propounded. In other words, the conspiracy must be proved; and it can only be established, indirectly, by proof of such facts as exclude all probability that he had no notice that such an attack was contemplated by those who made it, whoever they were.

Gentlemen of the Jury, are you prepared to decide that question? You are informed that fourteen men were there, who are now within reach, and could give you information. Do you feel safe in deciding before you have heard what they have to say?

You cannot infer, beforehand, that any of these witnesses are guilty; such an inference would

involve a decision of the very question on which their testimony is necessary. All the eyewitnesses who have been produced have testified. A witness is always privileged to decline to testify, when to do so would, in his own opinion, have a tendency to support any criminal charge that might be brought against him; but, so far, none of these witnesses have asserted any such privilege. If the transaction, represented correctly, would not inculpate the witnesses who were then on the ground, they would not only be obliged to testify, but they would feel most willing and eager to do so for the sake of justice to the innocent no less than the guilty.

I can imagine a case in which you would be justified in judging of the transaction from the testimony of part of the witnesses, without feeling any hesitation from the absence of the others. If the witnesses, who actually testified, stated what was in itself credible; if they agreed with each other, and so represented the case that, believing it as stated did not involve the conclusion that the witnesses were destitute of all the qualities that entitle witnesses to respect and confidence, a few of the many might produce a conviction of the truth, not less strong and abiding than if the number testifying were multiplied a hundred times.

Are Smith and White such witnesses? They are not likely to be better witnesses, nor better men, than they represent themselves. Let us contemplate them for a moment as they have exhibited themselves. First, Philip Klingensmith. He informs you that in 1857 he was a bishop of the Mormon Church at Cedar, having no local superior, except Isaac C. Haight, who was president of that Stake. As bishop he was not only a spiritual teacher, but a patriarchal adviser of the people in all their temporal affairs. He states hearsay respecting opinions of other persons than Lee, expressed at Cedar, to the effect that these emigrants ought to be destroyed; that he opposed the proposition to make war on them, but only because it would be bad policy. His views prevailed for a time, but he was finally overruled, and the doom of the emigrants was pronounced. He acquiesced. He gives you to understand that he was informed before he went to the Meadows, by the ominous words of Ira Allen, spoken to him and White, on their return from Pinto, that the emigrants were to be slaughtered. His heart revolted against it, but on the summons to go, he made no opposition. He went, knowing the purpose of the journey. He made no protest against it, either before he left Cedar, on the way, or during the time the butchery was being planned and executed on the field. And when the fatal moment came, when, as he says, the emigrants were abreast of the soldiers, separated from them only by a few feet; after he had walked with them long enough to read their sad countenances, in the light of their impending fate; after he had had time to glance his eye forward, to the helpless children, and the anxious mothers, never to be re-united, and to reflect what an atrocity was about to be perpetrated; after he had had time to remember that he had raised his feeble voice against the damnable "taking off," and was now an unwilling witness and participant; when it might be expected he would shrink from such an unnatural crime if he ever had a throb of humane feeling; when, as we must suppose, there was in the spectacle before him much to excite pity for these devoted people, and heroism to save them, or, at least, humanity enough not to take any part in their destruction—in this predicament, what did Smith do? Does he confess that he was appalled by the thought of such inhumanity? Does he indicate that his phlegmatic nature was stirred by any emotion whatever? When the order to fire was given, according to his testimony, why did he not discharge his gun in the air or in the earth? It was not a moment of church surveillance; every man present, if Smith's testimony is

(Concluded on page 438)