

lives of all the emigrants, as he saved the lives of the children, by that capitulation, is a supposition in favor of innocence, which is always the supposition or presumption of law, and it continues while it can stand consistently with other facts proved. It is, therefore, a reasonable supposition in this case, because the proof does not overturn it, and it is supported by collateral facts of great evidentiary force. If that supposition is accepted, Lee must be acquitted, for I repeat it is an hypothesis which harmonizes with all the facts which the jury can find; it harmonizes with every legal deduction from those facts. It is an hypothesis that the facts proved do not exclude or rebut, and it is, moreover, the direct fact which Lee offered to prove, and, in consequence of the objection of the prosecution, was prevented from proving.

The collateral facts by which this hypothesis is supported are those on which Smith and White have been contradicted. A destruction of the emigrants, pursuant to a previous plan, necessarily presupposes some discussion between those who do the bloody deed. Some means must be provided, some mode of action agreed on. Smith has been relied on to supply this evidence. He says Lee called him aside for consultation at Hamblin's ranch, told him what was to be done; that therefore, and pursuant to the plan then announced, Lee took command of the Mormon forces to execute the plan. To that interview he is careful to say there was no other witness. Smith proceeds to say that immediately after this announcement of the object to be accomplished, and the plan of operations, Lee formed the Mormons into a hollow square at the camp; that he here, in the character of commander, addressed them, stating what they were to do to accomplish the slaughter; that they were to march to a designated point, march with the emigrants for a space, and, on the command to halt, they were to pause and fire; that, on this command being given, the course pointed out was followed. If this occurred, and the Mormons, so commanded, moved to the point designated, it is strong evidence to criminate Lee. But, fortunately for the defence, he is not supported by the other witnesses. Even White says there was no hollow square formed at the camp or elsewhere, no address by Lee to the Mormons, no commands laid upon them by anybody. Pollock and Young both say there was no forming of the Mormons into rank and file to march to the road where the emigrants were to pass, that those who went went voluntarily, and those who chose not to go remained at the camp; that those who went walked promiscuously, not in file. The presence of such Mormons as were near the emigrants when they were attacked, was accidental. The fact that they had not been called on to go there, either in file, or under officers, is convincing proof that they had no preconceived part to perform there.

You must unhesitatingly believe that if any part of the Mormons there had a fixed plan, and had determined to destroy the emigrants, by first rendering them defenceless, by a perfidious use of a flag of truce, or otherwise, they would all have been made parties to the hellish plot; one part would not have proceeded in the view, and, under the observation of the rest, who, remaining innocent, could be their subsequent accusers. It is idle to talk of men, in such an undertaking, destroying children of sufficient age to remember, and yet being unmindful of the presence of adult witnesses. It is absurd to talk of an organized force to destroy the emigrants, while it appears that they were not called together, that there was no agreement to go, nor any command to go; that all did not go to the place of slaughter; while it appears that those who went went as if prompted by interest to witness the delivery of the men, women, and children they had come to save, and that others remained by a like volition in camp content with the assurance that their mission would be a success.

This contradiction by Young, Pollock and Pierce, of Smith's statement that the Mormons were put in rank and file and marched to the place of slaughter, their contradiction of his statement that the Mormons there were such minors and serfs, that their concurrence in such a devilish plot could be taken for granted, or their participation

in its execution be commanded, without consultation to ascertain that they were willing to incur the guilt of murder on such a gigantic scale, commands itself to every man's common sense. Even without such contradiction, Smith's testimony would be set aside and pronounced preposterous by every person of ordinary intelligence.

There is no fact in the case more clearly established, not even the massacre itself, than the fact that the Mormons, who were the spectators of this butchery, went to their post of observation voluntarily, and without any previous hint that they were to witness such an appalling spectacle—than the fact that all did not go, than the fact that the Indians were supposed to have retired out of sight to remain so until the retreat had been accomplished, and the fact that the first sound of a gun was coincident with the yells and portentous presence of these devils incarnate. Is not treachery a universal trait of the Indian character? Ought it to surprise any person who is familiar with the history of our country to learn that savages have violated a truce and slain men, women and children? Has not the indictment, contained in one of the first great national State papers, again and again been proved against them—that they are merciless savages, "whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions."

Have all the melancholy traditions of massacres in every State, east and west, faded from the popular memory? Is it easier to presume that a party of white men, nurtured under the benign influences of Christianity, have acted like savages, than that an infuriated array of savages, actually on the ground, have followed their own savage instincts? The Indians had a sufficient provocation, according to their meager ethics. They had been poisoned and sought revenge. The Mormons had no motive for such cruelty.

Gentlemen of the Jury, it appears from the testimony of all the witnesses who have been sworn and were present at the Meadows, except Klingsmith, that they went there to save and not to hurt the emigrants. Bradshaw was requested to go also. He came to the rendezvous with a spade and without a gun. He had been summoned to go, like the others, on the rumor that the emigrants had been attacked and nearly all killed, for the purpose of burying the dead and saving the survivors. On his appearance to join those that were going he was asked where his gun was. He said he did not know as a gun was necessary to bury the dead. He seemed to have so little comprehension of the situation, he was sent home. He says he was called a fool, for not thinking a gun necessary, in going on such an errand. His discharge had such an effect on the old gentleman that he has backslidden and fallen away from the Mormon faith, and now testifies, with the bitterness of an apostate, but the foregoing is the extent of his testimony.

Klingsmith was opposed to shedding the blood of the emigrants. He was so penetrating that he knew the plan was murderous before he left Cedar City. And yet he would give you to understand he dare not actively oppose it, because of a vague fear that he would lose his own life. In no civilized community in the world would a bi-hop or a private citizen endanger his life by opposing such a crime. Any man must have been bold indeed who could propose the massacre of one hundred and twenty men, women and children, and do it in a public manner. To make such a proclamation a credible occurrence we must assume that it was done in a community of robbers and murderers. To say that a religious community was such is to insult the intelligence of everybody that hears. To say that any man could summon for a humane purpose a promiscuous part of a community, and then thrust them, without consulting their wishes or their scruples, into a crime that would shock the whole civilized world, is a degree of trifling that no jury ought to listen to with patience. Communities in which such a thing could be done do not exist. If some Hotspur had made the attempt at either of the towns which contributed men to go to the Meadows, the humblest citizen could have driven him at once to retreat or to emigrate. A denunciation would have sufficed—the popular heart is always tender and

humane. No man in the Mormon Church would have supported such a proposal. If, by any fiendish caprice of individual depravity, such a proposition had been made in a particular locality, a bishop's bold stand against it would have squelched the project and the projector. Such a proposition in sight of the emigrants would have been indignantly rejected, and promptly denounced by every man who went there, except P. Klingsmith and Joel White.

Why should the Mormons desire the death of these emigrants? Though they did not behave themselves, though they did much to exasperate the peaceable people of this Territory with whom they came in contact, there was no deadly feud. When they had passed Pinto they had passed beyond the Mormon settlements, and every one was ready to exclaim, *Good riddance*.

But if it can be supposed that the Mormons desired their destruction, there was no need to pursue them. The Indians had surrounded them, and could overwhelm them. Mormons desiring their destruction needed only to let them alone. They were closely besieged, their stock could be driven off, their supplies of water could be cut off. A few days would suffice to make them perish with thirst.

It is not a reasonable theory that the people of three towns would go to the Meadows to take part in the slaughter of a party whose death was already assured. No man in his senses will believe it.

Now, in conclusion, I say that on the theory which I have advanced, all the facts which the jury can find satisfactory evidence to harmonize with the presumption of the defendant's innocence. The emigrants had rashly courted such a fate from the Indians by poisoning their food and drink. There was a deadly provocation. The Indians acted upon it. They pursued the emigrants. They summoned their friends and allies to join them in their pursuit of vengeance. They were implacable in their wrath, and threatened even the Mormons for their efforts to pacify them in behalf of their enemies. The Mormons had no motive to slay them. The Mormons with one humane impulse, rushed to their aid from Cedar City, from Harmony, and from Washington. They went to the Meadows on hearing that the emigrants were attacked. A capitulation was agreed on; it was negotiated by Lee and other leaders among the Mormons in good faith, and its eventual violation was not foreseen. The Indians retired before the emigrants were made a party to it. They had apparently listened favorably to Mormon intercession. They returned when the emigrants were defenceless and exposed, and fell upon them with the fury of demons and spared neither age nor sex. This is the way Indians generally fulfil their agreements. Lee saved the children and was not even a witness of the slaughter that followed his exodus from the field. Seventeen children were saved by his courage, address, and diplomacy.

The property saved from the rapacity of the Indians might properly be husbanded for the support and nurture of these orphans. There could be no more appropriate trustee of the proceeds for this purpose than the church. The tithing fund is her charity fund. Slender as the provision, derived from this property, would be for the maintenance of so many children, the church assumed a guardianship of them, and she was properly entrusted with the means designed for seconding her benign and motherly intentions. The former owners having been massacred, it was fitting that the property should go to their use and that their kind guardians should administer it.

BY TELEGRAPH.

AMERICAN.

PHILADELPHIA, 17.—A well known wealthy married man, named John L. Kates, was before the magistrate to-day charged with a fiendish assault on Miss Pemberton. It appears that Kates seduced her when she was about 15 years old, and she claims that he has held her in a life of semi-slavery ever since. Recently she attended a picnic without his permission, and when she returned, he charged her with infidelity, knocked her down, beat her in a

brutal manner and then tore all the clothes off her person, and, after pouring burning fluids over her, set fire to her and endeavored to burn her alive; the interference of some people in the house prevented the consummation of his design. On Friday evening last he whipped her in a brutal manner, and swore that he would disfigure her so that she would never be able to go out. Great efforts have been made by interested parties to keep the details of the affair from the public. Kates was held in \$2,200 bail for his appearance in court.

ST. LOUIS, 17.—A special from Benton, Franklin County, Illinois, says that for some time past a body of men disguised in Ku Klux style have been traveling over the country, whipping peaceable citizens and compelling them to perform any act they dictated. Up to this time in Williamson and Franklin counties, the citizens have tamely submitted to these outrages. Yesterday J. B. Maddox, one of the County commissioners, received information that some of these marauders would visit his house and whip him for not obeying the orders they had given him. Maddox informed the sheriff, J. T. Mason, who summoned twenty men, who secreted themselves at Maddox' house, well armed. About two o'clock last night the Ku Klux, fourteen in number, made their appearance on horseback, disguised in white robes, high white hats, and masked, and armed with shot guns and pistols. The sheriff stepped out when they came to the house and ordered them to surrender. The leader of the band fired at the sheriff, missing him. The sheriff and posse then ordered them to halt, when the band shot and then wheeled and attempted to escape. The posse fired, and one man was mortally wounded and five others injured, but all succeeded in getting away except the man who was fatally hurt. The names of the others were revealed by the wounded man who was captured, and the sheriff and posse are after them to-day. Great excitement prevails, and the citizens are determined to rid the country of these midnight marauders. A meeting was held by citizens to-day, at which resolutions were adopted, and active measures are being taken to bring the outlaws to justice. These desperadoes are said to be some 400 strong in this county. Governor Beveridge has sent 100 stand of arms. A military company is being formed, and a bloody result may be expected.

NIAGARA FALLS, 17.—The body of Ethelbert Parsons, who was drowned at the Cave of the Winds, on the 9th, was recovered from the whirlpool to-day.

ST. JOSEPH, Mo., 17.—A frightful accident occurred about 10 a.m., on the St. Louis and St. Joseph branch of the St. L. K. C. and Northern R. R. As the train was passing over some trestle work, six miles south of Gower station, Clinton County, the structure gave way, and precipitated mail and express and two passenger cars down a distance of twenty feet. There were fifty or sixty passengers on the train, over forty of whom were injured; the only one killed was a man supposed to be E. J. Anglin, for St. Louis. Several others are likely to die from their injuries.

NEWBURG, N. Y., 17.—This afternoon Robert Gibson, assistant superintendent of the Newburg waterworks, attempted to shoot Alfred Post, a prominent resident of this city, and president of the Highland National Bank of Newburg. He fired two shots without effect, when he was arrested and locked up. Gibson's wife has left him, and he charges that Post induced her to leave.

ST. PAUL, Minn., 17.—Information has been received that at a recent conference in New York, between the chief officers of the St. Paul and Pacific R. R., and a committee of the Dutch bondholders, an agreement was arrived at by virtue of which all pending litigation is withdrawn for a year and, if the agreement is ratified by the principals in Holland, two uncompleted portions of the line will be pushed forward to completion in time to save the land grant, giving direct connection from St. Paul with the N. P. R. R. at Brainerd, and with the Canadian road now building from Fort Garry to Pembina.

CHICAGO, 17.—A dispatch from Whitehall, Mich., announces that the body of N. S. Grimwood, the *Journal* reporter, who went up with Prof. Donaldson, in a balloon

five weeks ago, has been found near that place.

READING, Pa., 17.—This afternoon the wife of Captain Philbisinger accompanied by her three children, two girls and a boy, aged respectively nine, six and three, walked up the tow path of the Union Canal, and when three miles north of the city, she threw the children into the water and then walked in herself, and all were drowned.

NEW ORLEANS, 27.—Ex-Governor John B. Weller, of California died to-day of smallpox.

SAN FRANCISCO, 17.—Thirteen of the crew of the British ship *Bremen*, 191 days from Liverpool, died on the passage of scurvy. Three died yesterday in sight of the port, and all the rest are helpless. The ship was towed inside this afternoon.

NEW YORK, 18.—Mr. Duncan, of the suspended firm of Duncan, Sherman & Co., has issued a circular to the creditors, proposing to pay 33 1/3 cents on the dollar in full settlement of the indebtedness of the firm, eight and one-third per cent. on or before November 27, 1875, five per cent. May 27, 1876, five per cent. Nov. 27, 1876, five per cent. May 27, 1877, and ten per cent. Nov. 27, 1877, with interest at seven per cent. per annum until paid, or as much sooner as the assets shall be realized and divided. The excess of assets over the percentage is also given to the creditors, but the assets are to be placed in the hands of Mr. Duncan, under the control of a committee.

Private dispatches received in this city announce the death, by assassination, of Senor Gabriel Garcia Moreno, President of the republic of Ecuador; the intelligence was brought by a special courier from the capital to the Pacific Coast, and thence by packet to Panama, and by cable to this city.

General Butler was invited to address a public meeting under the auspices of the Legal Tender Club of this city, but other engagements making it impossible for him to be present, the general writes—"I am unable to comprehend or appreciate, and much less to admire, that system of government finances which has so wrought upon the business and production of the country, that even two millions of workingmen and women, who desire productive employment, have not had it for the last two years, and by which the production which they would have added to the wealth of the country, during that time, is lost. Assuming that each one in that number, skilled and unskilled, could have averaged two dollars per day for the working days of the past year, then we have lost one billion, two hundred million, or about equal to half the national debt by their enforced idleness, to say nothing of the loss of the morals of the working men and women. How long men, in active business, and property holders and holders of those kinds of property which are open to the tax gatherer, will permit a system of financial administration to go on by which their property shall depreciate 33 per cent. in its value, while the owners of property such as notes, mortgages, and bonds which are untaxed, because not open to the tax gatherer, have their property appreciate, and escape taxation, is a problem which the good sense of the people of this country will solve the coming Presidential election."

A dispatch, to-day, from London states that the market is unsteady on account of disquieting news from Herzegovina. The theory is that the spreading of the insurrection may complicate Russia, and while American securities continue strong English consuls and home values are depressed.

BINGHAM, N. Y., 18.—A break occurred to-day on the Erie railway, three miles east of the Susquehanna depot, which will require several days to repair; it was caused by the breaking away of a mile dam some distance above the railway, the waters rushing down and tearing away about 200 feet of the embankment.

OMAHA, 18.—The Union Pacific railroad company, yesterday, began suits in the U. S. district court against nine more counties of the State, to restrain them from the collection of taxes for 1874.

CHATTANOOGA, Tenn., 18.—Th Hon. D. M. Key, of this city, has been appointed by the governor to fill the vacancy in the U. S. Senate caused by the death of Andrew Johnson.