

guilt is satisfactorily shown he is entitled to an acquittal." In other words, he cannot be convicted by the rules of law unless all the substantial and material facts that are necessary to make out the crime with which he is charged, are proven beyond any reasonable doubt, so that the first thing for you to understand is what is a reasonable doubt; and what is meant by proof beyond a reasonable doubt. It is much easier to think what it is than to express it in words. A reasonable doubt is such a one as would arise in the minds of reasonable men, on any subject, such men as you are who are selected because you are reasonable, competent men to try such a question. Proof beyond a reasonable doubt is such as will remove all such doubt and such as will produce an abiding conviction in the mind to a moral certainty that the fact exists that is claimed to exist; that the fact to be proven actually exists; such proof as produces an abiding conviction in the mind of moral certainty that the fact exists, so that you feel certain that it exists. A balance of proof is not sufficient. A balance of evidence is that which you think is most likely to have been the fact; the way your mind preponderates upon a question of fact, that makes out a balance, but that will not answer here. You must go beyond that. There must not only be a balance of proof, but there must be this measure of proof which removes all reasonable doubt—all doubt that arises in your minds, as reasonable men, and produces an abiding conviction to a moral certainty that the facts charged exist. Proof beyond a possibility of doubt is not required, because such never can be made. It is not to be shown to you that it is not possible that the respondent is innocent, to show beyond all possibility of doubt that he is guilty, but it is required of the prosecution to produce such evidence that when you look it over, as reasonable men, no doubt arises in your mind; that is, no reasonable, fair doubt as to any fact necessary to be made out to establish the crime charged upon the defendant. Counsel has stated this rule correctly in your hearing, and I re-state it so as to impress it more firmly upon your minds, as the guide by which you are to be governed throughout this whole case in your investigation of the facts in controversy.

We now turn to the crime itself, and in this case you will not be troubled by any nice distinction between the degrees of murder. The crime charged is that of murder in the first degree. If you find from the testimony that John Aiken, the person named in the indictment, was murdered at or about the time therein mentioned, and substantially as charged, then whoever committed the crime is guilty of murder in the first degree. The evidence in this case does not tend to show a murder under any other circumstances than would constitute murder in the first degree. It is that or nothing. The respondent cannot be convicted unless the prosecution has made out by this clear and full measure of proof that I mentioned to you, that the crime itself, was committed by some person substantially as is charged. This is what has been termed in the argument at the bar as the *corpus delicti*—the main offence—the principal thing. That means that no one is to be convicted until it is clearly established by clear proof that some one has committed the crime that is charged. Before the defendant can be convicted of the crime charged in the indictment, the jury must be convinced from the evidence, beyond all reasonable doubt, of each of the following facts, viz:

- 1—That the death of John Aiken.
- 2—That such death was effected unlawfully; wilfully, deliberately and premeditatedly.
- 3—That said death was caused by gunshot wounds substantially as charged in the indictment.
- 4—That the defendant, either alone or in connection with others, directly committed the said offense, or was present aiding or encouraging its commission; or if not present aided and abetted in the commission of the crime.

There is no dispute among counsel about the amount of proof necessary to establish these propositions. All agree that it should be that full measure of proof which I have mentioned, viz: The removal of all reasonable doubt. They only differ in the manner in which it should be proven—the kind of evidence by which it shall be

established. Upon the part of the defense it is insisted that the death of the party named in the indictment must be distinctly proved either by direct evidence of the fact of the killing or by an identification of the body after death, or some part of the remains as that of the deceased. I do not understand the rule to be thus strict, and I instruct you and give you as the law by which you are to be governed in this case, in relation to this branch of the subject, that while the *corpus delicti* is a part of the case which should receive your careful attention, and the defendant should not be convicted until it is in some way made clear, beyond a reasonable doubt, that a crime has been committed, yet there can be no one kind of evidence demanded in proof of this fact any more than any other. The rule is thus stated by Mr. Greenleaf in his work on evidence: "It is seldom that either the *corpus delicti*, or the identity of the prisoner can be proved by direct testimony, and therefore, the fact may lawfully be established by circumstantial evidence, provided it be satisfactory. Even in the case of homicide, though ordinarily there ought to be the testimony of persons who have seen and identified the body, yet this is not indispensably necessary in cases where the proof of death is so strong and intense as to produce the full assurance of moral certainty."

You will bear in mind that when the *corpus delicti* is attempted to be shown by circumstantial evidence, it must be so established as to positively exclude all uncertainty or doubt from your minds. Not that each particular circumstance must be of this conclusive character, but all combined must produce the same degree of certainty as positive proof.

In this connection I call your attention to, and desire you to consider, in this connection, the evidence relative to the confessions and admissions of the defendant. If you find that they were made as detailed by the witnesses on the stand, yet this standing alone would not be sufficient to warrant a conviction; there must be some proof outside of this, independent of the confession of the body of the crime, the *corpus delicti*. In the language of Chief Justice Nelson, "Full proof of the body of the crime, the *corpus delicti*, independently of the confession, is not required by any of the cases; and, in many of them, slight corroborating facts were held sufficient." As I have before said, these confessions and admissions, should you find they have been made, are to be considered with the other proof tending to establish the crime.

The true rule as deduced from the current of authorities, is said to be "That an extra-judicial confession," (that is a confession made out of court), "with extrinsic circumstantial evidence satisfying the minds of the jury beyond a reasonable doubt, that the crime has been committed, will warrant a conviction, although the dead body has not been discovered and seen, so that its existence and identity can be testified to by an eye witness." In other words, and to make it plain to you, I instruct you that confessions and admissions alleged to have been made by the defendant are to be received with great caution, and are entitled to no consideration until you are satisfied by the evidence beyond a reasonable doubt, that said John Aiken was murdered.

If you find that the fact of Aiken's murder is established beyond a reasonable doubt, by evidence independent of the defendant's confession, and that after his death the defendant voluntarily, and without any inducement, confessed himself guilty of the crime, such confession, if you find that it was made, may be considered by you as strong proof of guilt. "What circumstances will amount to proof can never be matter of general definition. The legal test is the sufficiency of the evidence to satisfy the understanding and conscience of the jury. On the one hand, absolute, metaphysical and demonstrative certainty is not essential to proof by circumstances. It is sufficient if they produce moral certainty, to the exclusion of every reasonable doubt. Even direct and positive testimony does not afford grounds of belief of a higher and superior nature." A juror ought not to condemn till reasonable doubt of guilt is excluded from his mind, that is to say, unless he be so convinced by the evidence, no matter what may be the class of the evidence, that he would venture

to act upon that conviction in matters of the highest concern and importance to his own interest. And in no case, as it seems, ought the force of circumstantial evidence, where it is adequate to conviction, to be inferior to that which is desired from the testimony of a single witness, the lowest degree of direct evidence. "The rule even in a capital case is, that should the circumstances be sufficient to convince the mind and remove every rational doubt, the jury is bound to place as much reliance on such circumstances as on direct and positive proof; for facts and circumstances cannot lie."

It is sometimes thought and sometimes stated that jurors in a verdict swear that the prisoner is guilty or not guilty. The jury swear to no such thing, they declare in rendering a verdict the result of the conviction of their minds from the evidence produced, having previously sworn to give a true verdict according to the evidence.

And now, gentlemen, with these rules to guide you, you are to take this case and give to it the best powers of your mind, and the most patient investigation, remembering that "to adopt the conclusion which is supported by the strongest evidence, is in matters of personal concern, the indication of wisdom and prudence in deciding upon the fate or interest of others, to exert the strongest and most patient efforts of the mind, for the purpose of attaining a similar conclusion, is the indispensable attribute of justice." You should not shrink from doing your duty manfully and carefully. Your duty to the respondent requires that. Your duty to the Territory requires the same thing. You should be careful to be right. You have nothing to fear except to be wrong; if you are right you need have nothing to fear or care for. You will, therefore, take this case and look it over with all the care of which you are possessed, and bring to it the best powers of the mind and the best judgment you have, with a stern desire to do your duty in regard to it. If you come to the determination that the respondent is guilty, convict him of what the evidence shows clearly he is guilty of, and if he is not guilty or if you have a reasonable doubt of his guilt acquit him.

Take the evidence and look it all over, and devote such time to it as you desire, and as much time as is necessary in order that you carefully look this whole matter over, and come to a conclusion in your own minds as to whether the defendant is guilty or not. Again I say to you, gentlemen, discharge your duty to the prisoner and to the people of the Territory, and render such a verdict upon the law and the evidence as they have been given to you in open court, as shall satisfy your consciences under your oaths in the years that are to come, and such as will enable you in that great day when we shall all stand before the bar of that tribunal from whose decrees there is no appeal, to say with truth, I discharged my full duty to myself, to the people of this Territory and to Sylvanus Collett, the prisoner at the bar.

The jury retired at 12 o'clock, and after being out seven hours, returned a verdict of "not guilty." The verdict was generally anticipated, as no other conclusion could be arrived at by an impartial jury, guided only by the law and the evidence produced at the trial. The public will endorse the verdict rendered.

## Correspondence.

Religio-Politico Pettifoggers.

BEAVER, U. T.  
Oct. 14th, 1878.

Editors Deseret News:

If it will not be intruding upon good nature to notice more of the wrongs inflicted upon the citizens of this Territory, so soon, by the officers of the present government, I will present your readers with a few further facts.

The harangue of Judge Van Zile to the jury in Provo, brings him no laurels, as it is over a quarter of a century too old to have any claim upon originality. The honorable attorney, like many others of a similar type, seems to have formed his opinions of our citizens before leaving his home in

Michigan, from newspaper reports. Had he taken the trouble that Judge Boreman did soon after his arrival in Beaver, when some band of jumping lawyers tried, as was apparent from circumstances, to put up a job on the "Mormons," he would probably come to the same conclusion the Judge did—that there was no showing of church combination.

It is reasonable to suppose that Boreman had the same view as Van Zile from the fact that it took him almost a month of daily investigation (Sundays excepted) to come to the above conclusion. "Obligations of religious organizations" being the principle point at issue, the murder case only incidental as any well informed magistrate could have examined all the evidence adduced against the defendants in a single day.

Notwithstanding the record of combination is all on the other side, juries in our Territory are becoming somewhat familiar with the custom of corrupt officials and politicians, trying to palm off their own wrong doings upon the "Mormons." Kind reader, this is the rule. There is another very striking fact that when men adopt such subterfuges they are at the zenith of their glory. They can all date their political decline from that period. He who cannot lie, hath said, "No weapon formed against Zion shall prosper." History verifies the prediction.

A volume of facts might be quoted to show the falsity of the foul insinuation of the prosecuting attorney, but the facts are so clear within the recollection of "the old citizens" that a few facts only need be stated. First, it is a fact that on the arrival of the Federal officials, in our earlier history, about their first act was to *habeas corpus* all convicts in the penitentiary and turn them loose upon the community. Their plea was that the Probate Courts, the highest in the Territory, had no jurisdiction. Did they hold them to examination or trial before themselves, they claiming exclusive jurisdiction? No, sir. It was enough that "Mormon" courts had found them guilty; that ended the chapter. They could continue their felonies, and be turned loose as often as convicted. Houses of ill-fame could not exist under "Mormon" rule; gambling halls were unknown. The sale of intoxicating drinks was kept under proper control. Females could travel the streets of any of our cities at all hours of the day or night without fear of molestation. "Mormon" courts meted out even-handed justice to all. Strangers passing through, often referred their difficulties to "Mormon" ecclesiastical courts, to save cost; and were not only satisfied with their ruling, but would often remark, "that is the most just decision I ever heard." This remark was not peculiar to the winner, but was oftener mutual than otherwise. In fact I do not recollect a case where the otherwise came in.

As to the merits of the case referred to I know nothing. I presume the jury will do justice, as Utah juries usually do. I would kindly recommend all men who make the law their study, to confine themselves to the law and not leave the impression with the community that they are only religio-politico pettifoggers.

D. T.

## Coming to Utah.

Surgeons from the National Surgical Institute will be at the Townsend House, Salt Lake City, Utah, November 4th, 5th and 6th, 1878, where they can be consulted by the afflicted. This Institute has won an unequalled reputation throughout the United States, for the treatment of deformities, such as crooked limbs, club feet, diseases of hip, knee and ankle, spinal curvature, paralysis, piles and fistula. This is a rare opportunity. Consultation free.

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EAST AND WEST. We call attention to our two stocks of FURNITURE and House Goods. Our new show room in the Trowbridge Building, opposite Salt Lake House, our old stand, next to Wells, Fargo & Co. Will sell at reduced prices this month, to avoid moving goods.

d262 BARRATT BROS.

## THE WORLD'S CHOICE.

Competent judges representing the civilized people of the world, appointed for the knowledge of particular arts or sciences, convened at Philadelphia for six months, to decide upon the comparative merits of the various inventions of mankind, awarded to the manufacturers of Benson's Capeline Poreous Plaster, the highest and only ground of medal above all foreign and American competitors, on the strength and cures of its wonderful relieving, strengthening and curative properties. Remember that this decision was made by four practical and skilled physicians.

Remember when you are suffering from any ache or pain that Benson's Capeline Plaster is the best remedy ever devised for all external difficulties. Sold everywhere. Price 25 cents.

## ASK THOSE WHO KNOW

Benson's Capeline Poreous Plaster is not the best Plaster in the world. It has a better reputation among physicians than any similar article known. Its superiority to the old style of poreous plaster is very marked.

EVERYBODY knows that so long as there is proud flesh in a sore or wound, it will not heal. The obstacle is speedily removed and the flesh reunited by HENRY'S CARBOLIC SALVE, the finest embodiment in existence of that supreme purifier, carbolic acid. Its emollient ingredients modify its pungent acid basis, so that it never cauterizes, stings or scarifies the diseased part. Sores and eruptions of all kinds are cured by it. All druggists sell it.

THE *Millennial Star* will be mailed to any address, on receipt, by the publishers, of \$2.10. Three copies will be forwarded for \$4.20, the reduction being on account of the difference in postage. Address William Budge, 42 Islington, Liverpool, England.

How Infinitely Superior is the fragrant and wholesome SOZODONT to the gritty tooth powders and chemical fluids formerly used upon teeth, but which abraded and corroded the enamel and induced decay. The SOZODONT, on the contrary, preserves, at the same time that it beautifies, the teeth.

Cough! Cough! Cough! During the Fall, Winter, and Spring months the people are more or less troubled with coughs and colds. Reader, don't neglect a slight cold, as it is the starting point for Consumption, but go immediately to your druggist and get a bottle of *Hale's Honey of Horehound and Tar*. This article is certain to do its work, permanently curing all Coughs, Colds, Influenza, Hoarseness, Difficult Breathing, and all affections of the throat, bronchial tubes and lungs, leading to consumption. A trial is all we ask. And then the article speaks for itself. Sold by all druggists at 50 cents and \$1. Great saving by buying large size. Depot, Crittenden's, 7 Sixth Avenue, New York City.

Pike's Toothache Drops cure in one minute.

They All Take It.

When the system is run down to that extent that you pass sleepless nights, are nervous and irritable, have gloomy forebodings, sour stomach, sick headache, and coated tongue, do not enroll yourself as high private, in the rear rank, under General Debility, but cheer up and try White's Prairie Flower, The Great Liver Panacea, now for sale in every city and town on the continent. No medicine ever compounded is half its equal for the cure of DYSPEPSIA and LIVER COMPLAINT. It has a specific power over the liver, and by curing the liver Dyspepsia and all other diseases arising from it, vanish as if by magic. Sample bottles are sold at the small price of 25 cents that will convince you of its merits. Large size bottles 75 cents, for sale everywhere.

For sale, wholesale and retail, by the Z. C. M. I. Drug Department and Moore Allen & Co., Salt Lake City.

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