

understanding, all that I thought was required of me as a law-abiding citizen by conveying to my wives and to their heirs and assigns, respectively, their separate homes and homesteads, and now finding that my conduct in this and other regards has not had the warrant of your Honor's endorsement, I feel that I am justified in asking the Court for the personal peace and safety of myself and my dear family, to definitely and specifically define what line of conduct will be the correct one for me to follow when I am released from the Penitentiary, where I cheerfully go for the inestimable privilege I have heretofore enjoyed in "holding out" my several wives before the public, without the least attempt to conceal the holy relations. I would also call your Honor's attention to the moonday fact that my wives and children, individually and collectively, are as dear to me as your Honor's wife and children can possibly be to you, and that they have equal claims upon me, under the holy covenant I have made, to love, cherish, honor, and tenderly care for them; all of which I have done to the best of my ability, and, as far as I know, to their entire satisfaction; also that my obligations to each and all of them are of the most sacred, binding, and, as they and I firmly believe, eternal character.

I now desire to have it clearly defined what course will be the safe and proper one for me to pursue, to keep my contracts honorably with them, and yet live within the law as interpreted by your Honor during my trial, which rulings seem to me to be very cruel and oppressive, not to say subversive of good law and morals. Having used my very best judgment all through life respecting these vital matters, and it now being deemed unsound by your Honor, as witnessed by my position before the Court to-day as a criminal, I most anxiously desire to obtain an expression from the Chief Justice of Utah, at this juncture of the court's proceedings in my case, respecting my definite and specific duties, as to what I am to do as a husband, father and good citizen, after I emerge from the Bastille; where I suppose the court will send me for having openly and affectionately "held out" and cared for my lovable wives and children, who in all the mental and physical graces and endowments, natural and acquired, are the peers of their sisters elsewhere: for I cannot persuade myself to believe that this mighty and magnanimous republic, which your honor represents in such a dignified, distinguished, and obviously impartial manner, would willingly punish its citizens who in every other respect are law-abiding and upright.

Very respectfully submitted by your humble servant,

A. MILTON MUSSER.

Court.—Is the communication which you have presented, Mr. Musser, through you friend, Mr. Stayner, the limit of your proposition? (Mr. Musser bowed in admiration.) It is proper for the Court to make a few remarks upon it. You ask what it is necessary for you to do in order to comply with the law. A general statement would be, that it is necessary for you to live with but one wife, and treat but one of those ladies as your wife. The law does not forbid your supporting your other wives—I believe you have three—it does not forbid your supporting these wives, and it would be better for you to assist if you have means; but the law won't permit you to live with them as your wives. The law permits you to bring up your children as best you can. It is a duty you owe to them. The law was not to prevent you using your means and your counsel to fit your children for the duties of life, whether they are legitimate or not, which fact no one denies; it is your duty to assist to make good citizens of them by properly training them so far as you can. The law don't forbid that; but it will permit you to live with but one woman as your wife. To live with more than one woman as your wife is a crime. Whatever your religious belief may be about it, the laws of the United States have defined it as a crime. From the tenor of your communication, I infer that you do not so consider it—that you will not consider it a crime for a man to have more than one wife, and to live and cohabit with them. And I infer that you claim that as a matter of religion. I wish here to correct an error—that is, in the judgment of the Court—into which you have fallen right there. The Church has its sphere, and the State has its. The Constitution of the United States says that Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof. The Supreme Court of the United States has given an interpretation of that passage; Congress has given an interpretation of it in this Act; the Chief Executive of the nation has given an interpretation of it; and it is this; that so long as your religion consists of belief and worship it is protected by the Constitution; but when acts, overt acts, occur, the State has the right to control. And as there seems to be so much misunderstanding on this point, I wish to impress upon you the distinction the Supreme Court of the United States has made. (The Court here read from the Supreme Court decision in the Reynolds case, relating to religious belief.) This was the statement of Thomas Jefferson, who was the strongest advocate of religious liberty that ever lived in this country. This coming from the acknowledged leader and advocate of the measure, it may be accepted as authority. Con-

gress was deprived of all power over mere opinion, but was left free to legislate over actions. Laws are made for the government of actions, and while they cannot interfere with religious belief and opinion, they may oppose polygamous practice, and unlawful cohabitation, also a practice. And this must necessarily be so, for if any man or any church has a right to lay down a rule of conduct for its followers, contrary to the law of the land, the church is made superior to the State; the State is left to control such conduct only as the church does not call religion; and if one church may lay down conduct for its followers, contrary to the State, others may, and there will be a great conflict among these different religions, as to certain classes of conduct, without any common arbiter. Hence, it is necessary in the nature of things, that the state should have power to control the actions of its citizens so far as it is necessary for the protection of life, liberty, property, and for the protection of society. I make these remarks because I infer from your communication that you do not think that the state has the power to regulate this institution of marriage, and to prohibit polygamy and unlawful cohabitation.

Mr. Musser.—Your Honor's explanations are certainly very lucid, logical and conclusive. I would like to ask you, am I allowed to choose which one of the three I am at liberty to live with?

Court.—You may live with either one, provided you live with her as your wife. Unlawful cohabitation consists in living with more than one woman as your wives.

Mr. Musser.—May I ask the Judge how intimate may my relations be with the other ladies with whom I have made covenants, all of them alike—I mean, outside of illicit relations? What must be my conduct and deportment in relation to the other two? I want to do what is right in these matters. I thought I had been living pretty circumspectly, but it does seem that the most insignificant evidence will be sufficient, and I don't want to be entrapped again. I desire to keep out of this difficulty. If the Court please to define with a little more minuteness than you have done respecting my future course, I will be exceedingly pleased and gratified. I mean no disrespect whatever to the Court in asking these questions.

Court.—I undertook to state, but probably did not state it quite plainly, that you could live with one of them as your wife.

Mr. Musser.—May I visit the others, and be on familiar and fraternal terms with them?

Court.—You may treat your other wives as friends.

Mr. Musser.—Would you suggest that I divorce them? The ladies who are married to me have made covenants with me, and I with them, and they are, as I have stated in this communication of a very sacred character. Now, if I am not permitted to be a husband to them in everything that that implies, they, in turn, may proceed against me for violation of that contract.

Court.—Any covenants that you have made with your wives, that are polygamous, or that will require you to violate the law forbidding unlawful cohabitation, are not binding. And I will state, to be a little more specific, that you cannot live in the same house with two or more of your wives, and treat them apparently to the world as your wives. That is to say, it would be almost impossible for you to live in the same house with them, and occupy the middle room, with one on either side, and an open door—I do not think that would be possible without cohabitation. Live with your wife, and let those other women live by themselves, as all others do, and if you have any means that you wish to assist them with, why, you could assist them; but you cannot associate with them and live in the same house with them as your wives.

Mr. Musser.—Can I attend these ladies to the theatre, divine service or any public celebration?

Court.—If you were living with them in the same house a portion of the time, the fact that you had taken them to the theatre would be pretty strong circumstantial evidence against you.

Mr. Musser.—It is this strong circumstantial evidence that I want to avoid appearing against me in the future, and it is for these reasons that I respectfully submit the questions. I don't clearly and definitely understand my duties in reference to these ladies, and for fear that I may be entrapped, as I have already been, and for which I expect to be fined and imprisoned, for doing what I supposed to be strictly right, I ask these questions.

Court.—There are an infinite number of examples. You must treat them as though they were not your wives.

Mr. Musser.—That I could not do. I do not wish to be defiant nor do I wish to say in a threatening or ostentatious manner, what I will do in regard to these things. My families are too dear to me to expect anything of the character that your Honor suggests. It would be impossible for me to comply with such demands. If a gentleman were to meet me on the street, and ask me to make a concession of that character, I would tell him it was a personal insult—I mean no disrespect whatever—I mean that if a gentleman on the street—I will repeat, for I see Mr. Dickson nodding, as well as taking snuff, if a gentleman were to meet me on the street, and propose that I should aban-

don my wives, I should tell him that I felt it as a personal insult. He might as well ask me what I would take in dollars and cents for one of my children, or to sell one of my wives for money. I cannot consent to anything of the kind, and I am willing to meet any consequence that the Court feels in duty bound to impose.

Court.—Well, Mr. Musser, if you cannot consent to obey and respect the laws of your country, you must take the consequences of your disobedience?

Mr. Musser.—I am willing to do so.

Court.—The punishment is not for the purpose of persecution, and not for punishment alone.

Inasmuch as you do not propose to submit to the law in the future, you will probably be involved in trouble again. I think it would be better for you and everybody else, if that venerable man who stands at the head of your Church, would just stand up, as every good citizen does, and say that he will obey the laws of the country, and that he will support the laws of the country, and teach others to do the same; he would never get into the Penitentiary. You go there because you will not submit to the laws of your country. It is not for persecution, nor any thing of that kind. The sentence in your case will be a fine of \$300, and imprisonment in the Penitentiary for the term of six months.

During the entire controversy and passing of the sentence upon Mr. Musser, his daughter, a lovely and apparently very affectionate child about five years of age, stood by her father's side.

THE WATSON CASE.

Mr. Jas. C. Watson was then called, and the Court asked him if he had anything to say, to which the defendant replied "No, sir."

The Judge, evidently realizing the fruitlessness of his lectures to the other prisoners, did not indulge in a repetition of the punishment to Mr. Watson and the audience, but simply remarked that he was desirous of giving the defendant an opportunity to make any statement he desired, and on the latter answering, "I have nothing to say," sentenced him to pay a fine of \$300 and to be imprisoned in the Penitentiary for six months.

The prisoners were taken to the Penitentiary this afternoon.

LOCAL NEWS.

FROM THURSDAY'S DAILY, MAY 7

To His Advantage.—If Mathis or Mathias Nilson, from Qwarlof, who emigrated from No. 14 Warma Billeberga, Malmo Lane (or county,) Sweden, in the spring of 1866, will correspond with B. P. Wulfenstein, St. George, Washington County, Utah, he will learn of something to his advantage.

Off for the Coast.—Brother Jesse W. Fox, of this city, who has been in rather poor health for some time past, leaves to-day on a visit to California, for a change of air. His principal object in going, though, was to benefit, if possible, the health of his daughter, Mrs. Reese, who accompanied him, and who has been an invalid for many months.

An Accident.—While Bro. Joseph Derbridge, of the 19th Ward, was engaged in cutting wood on Tuesday last, the ax which he was using caught in a clothes line hanging just above his head, causing the implement to rebound and strike him in the face, cutting his cheek open, felling him to the ground and rendering him unconscious for some time. Dr. Anderson sewed up the wound, and he is now progressing favorably towards recovery.

Well Done.—There is on exhibition at the Teapot Store a landscape painted from nature by Mr. H. A. L. Culmer. It represents the falls in Colorado Canon, and is the best, in our judgment, that has been produced by the artist. It combines strength with delicacy, bearing close inspection. One of its chief excellencies is the faithfulness to detail, and the natural yet vivid character of the effects. It is a picture possessing marked merit.

Fined.—The trial of Charles Gilmore was concluded in the Police Court yesterday afternoon. The defendant endeavored to make it appear that the prosecution was one of spite, because, as registrar, he had last year exhibited his officiousness by striking off the name of one of the witnesses in the case on suspicion of being a polygamist. The charge was clearly proven, and Gilmore was fined \$25 and costs, amounting to a total of \$39.45. He took one day in which to give notice of appeal should he decide to do so.

Another Pest.—Thus far the peach trees have been free from the ravages of the caterpillar, but a new enemy has appeared in the shape of small green lice, who destroy fruit and foliage. The web which is the home of these insects is generally in the cluster of leaves at the ends of the branches, and from this they work their way down the limbs, cutting off the leaves and buds or newly formed fruit as they go. In some of the trees examined almost every twig has been found to be infested.

Releases and Appointments.—The *Millennial Star* of the 20th ult. says:

"The following named Elders are released to return home with the company sailing May 16th: President Wm. D. Williams, of the Manchester Conference; President Nathaniel M.

Hodges and Wm. Panter, of the Bristol Conference; James Ogden and Heber B. Ockey, of the Leeds Conference; James G. Crane, of the Glasgow Conference; and James E. Jennings, of the Swiss and German Mission.

"Elder Jesse B. Martin, Jun., is released from the Liverpool and appointed to labor in the Glasgow Conference."

"Elder John D. Burt is appointed to labor in the Glasgow Conference, and Elder Charles Kelly in the Birmingham Conference."

Accidentally Stabbed.—Last Thursday evening two young men named Jim Dunlap and Daniel Mallis got into a friendly scuffle over the possession of a large pocketknife. It was dark at the time, and Dunlap succeeded in getting the knife from the other; when, not being aware that the blade was open, he sportively pretended to stab Mallis, and to his surprise, actually inflicted a wound over an inch deep in the left breast of his companion. Mallis immediately had the injury dressed, but said nothing to his friends about it until yesterday, thinking the wound would soon heal.

In this, however, he was disappointed, as the hurt began to inflame, and yesterday he found it necessary to call in a physician, who drew off a quantity of pus which had accumulated, and properly dressed the wound. He is now doing well.

Artistic.—There are on exhibition at the Art Bazar several beautiful paintings from the brush of Mr. J. T. Harwood, a young artist who resides in Lehi, which have attracted considerable attention to-day. Among the number are, one of a cluster of Utah fruit, one representing a branch of a gooseberry tree to which the ripened berries are clinging, and another which presents a strikingly natural picture of the mouth of Provo Canon. The latter is taken from a point of view within the canon, looking westward; on the left is the wagon road, along which an ox-team seems to be slowly toiling; on the right are the foaming waters of the river as they appear dashing over the rocky bed of the stream; in front are the brown and gray cliffs, dotted here and there with shrubbery, while through the opening between the mountain-tops is shown a glimpse of the distant meadows, and the peaceful waters of Utah Lake.

From the North.—Brother David R. Gill returned last evening from a trip through the northern part of the Territory, extending over about four months, in the interest of the *Juvenile Instructor*. We learn from him that he was quite successful, all things considered. Of course, money in that region, as well as here, is very scarce; but an excellent feeling prevails among the Saints, and evidences of spiritual improvement at least are very apparent. There is a splendid prospect for crops too, everywhere he has been, and appearances indicate that the coming harvest is going to be the heaviest ever reaped in this region.

While traveling through the counties of Oneida and Bingham, in Idaho, he found great trouble being caused by the efforts made to prosecute polygamists and discriminate against the Saints because of their religion, but, all things considered, the people were in good spirits and manifest a great deal of patience and cheerfulness.

Brother Gill mentions as a rather remarkable fact, in view of the efforts being made to prevent the increase of the "Mormons" by the present prosecutions, that a great many of the sisters in the northern settlements have recently given birth to twins.

The Surplus Canal.—We learn from Brother George Nebeker that the work on the surplus canal, on the west side of the Jordan, is progressing favorably, though considerable trouble has been experienced in consequence of the miry condition of the soil through which the canal is being constructed and the difficulty of draining it while the work is going on. So miry has it been that the ordinary scrapers have mostly had to be abandoned and "slush scrapers" used instead. The deeper the canal is sunk, however, the more solid the clay becomes, and the teams are now working in the deepest cuts to good advantage and without miring. About 75 teams and a still larger force of men are now engaged on the canal, and at the present rate of progress it is estimated that the work will be completed by the 20th inst.; and that will not be before it is needed to prevent damage by overflow, for the river is rising rapidly, and from present prospects our high water season will occur three weeks or a month earlier this year than usual.

The flume to convey the water of the Brighton canal across the new one is being constructed while the work of excavating is going on, and several bridges across the canal are also being built.

Brother Nebeker is of the opinion that the canal is going to answer well for the purpose for which it is designed. He thinks it possibly may wash somewhat near the river, but for the most of the distance it passes through a tough kind of clay that will stand well. This may tend to calm the fears of some who have fancied that there might be danger of the river changing its course by the natural erosion by the water of the banks of the canal when it is once opened.

It has already been demonstrated that the appropriations made by the city and county and the contributions by land owners for the construction of the canal will be inadequate to complete it, owing to the unlooked-

for difficulties which have been met in excavating; and it will be necessary for considerable more means to be raised from some source. A number of parties owning land which is likely to be benefited by the canal expressed their willingness at the time the project was being mooted to assist in the work, but without specifying to what extent and without having done anything in the matter yet. Others who ought to be equally interested the committee have failed so far to see. If those parties would now come forward and pay their proportion, or whatever they can afford to, in helping on this laudable work it will relieve the hands of the committee and insure the success of a scheme which is likely to prove a great public benefit. The work is already half done, and it would be a pity to have it checked for want of means to complete it.

THE SECOND DISTRICT COURT.

GRAND JURY IMPANELED AND CHARGED.

The following came over the wires from our special correspondent:

BEAVER, U. T., May 7, 1885.

Editor Deseret News:

The Second District Court met today at 10 a.m., Judge Boreman presiding.

Mr. Critchlow was sworn in by the clerk as Assistant Prosecuting Attorney.

Thirty grand jurors answered to their names. The Prosecuting Attorney, in a gentlemanly way, put the even numbers through the same disgusting ordeal that is in vogue before the Third District Court. The odd numbers were passed without a ripple. The jury as impaneled stands twelve odd and three even numbers.

The Judge delivered a very mild oral charge. He called attention to the United States crimes acts, of which they must take cognizance. He read the headings from the Territorial statutes in relation to crimes. He gave a thrust, exhibiting animus, stating that there is no Territorial law against adultery and seduction, hence Utah is the libertine's paradise. Subpoenas will be around immediately.

MOONSHÉE.

TERRITORIAL ITEMS.

CULLED FROM LATEST EXCHANGES.

—A man named Charles McArthur had his leg broken at the Lexington mine, near Butte, last Tuesday, by the falling of a huge piece of rock.

—An Englishman named George H. Watson, who is about 35 years old, arrived in Butte four or five days ago, and day before yesterday he was adjudged insane and placed in an asylum near that town. He had a check for \$400 on his person.

—A calf which was born with two perfect heads and necks that join at the shoulders, is on exhibition in Butte. It is truly a wonderful freak of nature and was born about two weeks ago of a cow which is the property of Mr. Olsen, of Deer Lodge, Montana.

—A large company of tramps arrived in Laramie last Tuesday, and after committing several thefts and other depredations, the citizens became enraged and drove them from the town on Wednesday, several of the unfortunates being obliged to swim the icy waters of the Big Laramie river to elude their pursuers.

—Mr. Charles H. Townsend, a prominent naturalist, and an attaché of the U. S. Fish Commission, passed through Ogden on his way to San Francisco last Wednesday evening. The gentleman is going to Alaska to make an examination of the Government seal fisheries at that place, and also to make a general report of the country.

—Several of the railroad boys who were discharged from the Utah & Northern about a week or ten days ago, have been to Omaha, and it is alleged that, on demanding an investigation, they were exonerated and are to be reinstated in their old positions. It is claimed that the trouble originated through the spiteful doings and misrepresentations of a former employe of the company.

—Louis Guioivitti, an Italian laborer, employed upon the brick yards near Butte, while on his way to work about 5 o'clock last Tuesday morning, was brutally beaten and robbed by a gang of three ruffians. As he was passing down Lower Main Street he met what he believed to be a Chinaman, but who subsequently proved to be a white man dressed like a Chinaman. When they reached a certain point, where the supposed Chinaman claimed to live, the latter invited the Italian to come in. Unsuspecting of harm, he followed the fellow. He had hardly stepped inside of the cabin, when two confederates appeared, and one stepping behind the door, struck Guioivitti on the head with a piece of rock. He repeated the blows two or three times until the victim fell senseless on the floor. He was then robbed of \$10 in money and a watch and left in the cabin. When he recovered consciousness he found himself all alone. He made his way back to the city, and was by friends taken to the office of Dr. A. Labrie, who dressed the man's wounds. He was badly bruised about the head and face, but the skull was not fractured. Guioivitti did not recognize any of his assailants, but is confident that his quondam Chinese friend was a white man.