

(Continued from first page)

true, must have been too much occupied with his own desperate thoughts to have been watching to see if every other performed an equal part in this fearful work.

If he was shocked at the thought of killing the emigrant party, when he says it was mentioned at Cedar City, when it was but a future possibility, his arm would have been paralyzed when it was a present reality, and the deluded victims were arrayed before him.

He has described a scene which suggests these inquiries. Now remember, gentlemen, what he says he did. He shot to kill one of the emigrant party. Then he did so voluntarily; on no compulsion; with no repugnance. Would not a jury be obliged to convict him of murder, an aggravated murder in the first degree, if he had been put upon trial, on a plea of not guilty, and what he has said of himself had been proved by other witnesses against him? He would have been convicted without a doubt, and everybody would say amen! He is therefore a self-confessed murderer. According to the laws of the whole civilized world, there is no good in him; he should be hanged or confined till he dies, not suffered to mix with his fellow man, not suffered to enjoy any blessing of life. Murder is such crime as implicates all other criminal intents, such perfect insensibility to all moral obligations, and such absence of all humane instincts that he is not safe to be trusted, is unworthy of any confidence. He is a numberer of the ground. The law says, Cut him down; people everywhere, uttering their abhorrence of his crime, and their sense of his malignity, with one accord, say, Remove him, let him be utterly blotted out.

What crime is John D. Lee being tried for? For aiding in the destruction of these emigrants, not with his own hands, but for consenting to the slaughter done by others, in part by this very witness. Will you feel warranted in accepting the testimony of P. Klingensmith, loaded, as he confesses he is, with crime? Can you feel any assurance that he is telling the truth? Will his statements so affect you that, without other testimony, you will entertain no reasonable doubt of their verity? Can you have any conviction, derived from his testimony, which rises to the dignity of "moral certainty?" If you can your credulity is pitiable.

Whenever there is an exposure in Smith's testimony, and he touches a subject on which anybody else has any knowledge, he is contradicted. He blunders and fabricates in respect to the disposition of the property after the slaughter, as well as in regard to the children. He did not take the children to Cedar City, as he said he did; he did go with the wagons of the emigrants, as he said he did not do. He did not have charge of the children, and he did assume control of the wagons. John Willis took the children, and Pollock went with Smith and the wagons. Other more material contradictions will presently be pointed out.

He has made his own record of crime. Having shed innocent blood by emulating the ferocious example of savages, he could not return to the duties of a Christian teacher. He resigned his office of bishop, and he has been a fugitive on the earth ever since. His hands were covered with blood, his conscience was burdened with crime, too heinous to be expiated. His perturbed spirit could not rest. In his desperation he has undertaken to drag others into his own infamy by perjury.

Now what should be said of White? This witness takes the stand fresh from a conference with Smith. He says that he was sent from Cedar to Pinto by Haight to carry a letter to Robinson directing him to endeavor to pacify the Indians, to facilitate the safe exit of the emigrants from the Territory. Smith volunteered to accompany him; they say they went together, and delivered the letter. They returned together. They concur in stating that, when going out, they met Lee, and he said just enough to express his dissent to allowing the emigrants to pass without further injury from the Indians. They are the sole witnesses. White does not remember meeting Ira Allen. He thinks he would, if the fact had occurred, and Allen had so solemnly proclaimed that the emigrants were to be killed. As the witnesses did

not hear each other's testimony, he evidently was not aware that Smith had mentioned that meeting. But it was necessary to state that journey, to show their solicitude to save the emigrants the opportunity, apart from other witnesses, to meet Lee; to put his declaration in marked contrast to their humanity. But Robinson contradicts both. They brought no such letter. His testimony warrants us in saying no such journey was made. Smith and White met neither Lee nor Allen. But they have associated themselves before the slaughter, at the slaughter, and now, in their testimony, aimed at the life of another, they try not to be divided. White is careful to say he carried no gun when summoned to the Meadows. Though this was known to the commander, he was directed to go to the massacre, to make one in the ranks, and he did so. How fortunate for his conscience! Smith had seen the Mormons at their camp, marshalled into columns, arranged in a hollow square under command of Lee, to receive directions for action on the emigrants, to fire when commanded to halt. White, not having sufficiently compared notes with Smith, contradicted Smith in regard to this occurrence, but he affirms that the Mormons were marched in file from their camp to this bloody work.

Who brought White to court? Bill Hickman subpoenaed him with an attachment, which you have heard the Court say was issued under no misapprehension. Bill Hickman had charge of him, kept him in actual custody until he had given his testimony, he refused to talk with us without Hickman's consent until the Court ordered his discharge. White has confessed to you that Hickman refused to allow him any interview with the defendant's attorneys. Here you can see the peculiar fitness of things. If White is to be brought to the point of corroborating Smith, and to be kept in the mood to do so, until his testimony is finished, who is a better keeper than Bill Hickman? The prosecution has consummate tact in adapting means to ends. White says he was not informed of the purpose of going to the Meadows, until on the march from the Mormon camp towards the emigrants. He don't know from what source the rumor came, but he heard the rumor. It was to kill them. He went with the rest, and stood by while the slaughter was being accomplished. He has not confessed himself an immediate actor in the slaughter; but he confesses he was there, aiding, countenancing, and abetting it. He is therefore by his confession an accomplice; he consented to that deed of horror which has been execrated by everybody as the foulest and most wicked murder, the most demon-like massacre of the age. He remonstrated with nobody; he did not raise his voice or his hand once to stay the wickedness which he says was there committed. He, like Smith, is indemnified, and doubtless he took some part at the Meadows, like Smith; that has preyed on him ever since, and now he too endeavors to share his guilt with the innocent.

Now, gentlemen, I pause to repeat the inquiry I propounded before, Are Smith and White such witnesses, out of fourteen, that you would be willing to convict a man of a capital offence on their testimony, without knowing what the others would say? You know the prosecution could have brought before you all the others. They have brought three of them before you. One was a boy at the time, of only fourteen years, and sick. The other two had good opportunities to know very much that it is important that you should know. They both went to the Meadows to assist the emigrants, and not to hurt them. The prosecution, in examining them, did not permit them to tell all they knew; did not permit them to depose in respect to the facts which must prove or disprove a murderous combination. They were not permitted to state what was said between the Mormons, nor between the Mormons and the Indians. They were not examined on the part of the people, as Smith and White had been. They did not take part in the slaughter, and they do not testify that the Mormons were in file or under any command, nor did they testify that any Mormon participated in the slaughter. They saw the slaughter, and their testimony tends to exon-

erate the Mormons. They contradict both Smith and White as to the marshaling of the Mormons at the camp, and as to their march in file or by command, to the place of the massacre.

Both Young and Pollock testify that the Mormons were not addressed in camp or anywhere, to their knowledge, by Lee or any other leader, and the part they were to take stated; they both deny that the Mormons were placed in file; they both deny that any order was given to march down towards the emigrants. According to their testimony the Mormons were not at the Meadows under military orders, nor governed there by any military discipline. When steps were taken to communicate with the emigrant camp in the character of friends with a flag of truce, a part of the Mormons followed at a distance, walking promiscuously, as people go to church, to use the expression of the witnesses. A part remained in camp and did not go at all. The Indians were swarming over the emigrants when they first saw the smoke and fire of the slaughter, and they saw no Mormons participate. The Indians were all warriors, armed with guns and bows and arrows; they numbered four to one of the white men, of the Mormon and emigrant party; arrows in great profusion were found next day on the ground wherever the dead bodies were taken for burial.

If any impeachment could impair, or is needed to disparage, the testimony of such witnesses as Smith and White, in order utterly to destroy it, to make more manifest that it is wholly unreliable—if any facts could suggest the importance of hearing from all the other witnesses before any proper decision could be made, these vital contradictions are enough. Why have the people refrained from calling other witnesses? It is fair to charge that they have done it for the same reason that prompted them to garble the testimony of Pollock, Young and Pierce. The prosecution alone are responsible for withholding from you the additional light these witnesses could give you. We asked these witnesses to state all that was said and done at the Meadows. Did you not in your mind second that inquiry? Did it not promise you additional aid to a correct determination? Did you not feel disappointed when the prosecution objected? Did you not infer, as we did, that the prosecution was unwilling that all the facts should be laid before you? It is as much the duty of the public prosecutor to protect an innocent man against conviction, as to be diligent and zealous in convicting the guilty.

If you, gentlemen, had been appointed a committee to investigate this massacre, "with power to send for persons and papers," would you have contented yourselves with taking such testimony as the people have here submitted to you? I know you would not. You would have regarded your labors as just fairly commenced, when you had reached the point where the people stopped. You would have taken all that Pollock, Young and Pierce could tell you of what transpired at the Meadows. You would have summoned before you Ira Allen, Sam McCurdy, Carl Shirts, Harrison Pierce, Ezra Curtis, Swen Jacobs, James Mangram, Richard Harrison and Sam Knight. You would have availed yourself of all the information they could severally impart. But the inquiry of a committee is always superficial, compared with that which is made by courts. It is for the purpose of thorough investigation, to make it possible to go to the bottom of a case, that men of the highest character are placed on the bench; that learning is cultivated at the bar; that rules, comprehensive and effectual, are provided by law for examining and compelling a full disclosure by witnesses; that the jury are selected with such inquisitorial caution, and sworn to do their duty with such solemnity; that witnesses are compelled to attend, and sworn to tell the truth and the whole truth. An investigation, however, conducted as this trial has been, does not proceed on this policy, nor can it be expected to reach the result which is always aimed at by courts, and so generally attained.

I could reasonably pause here, and ask you, gentlemen, to say by your verdict that, in the absence of so much testimony which it is apparent the people could produce, and which has been withheld, your judgments are suspended, and if obliged to decide, you acquit the

prisoner; because you infer everything against the prosecution in respect to the testimony held back; that you treat such absence of further available proof as a suppression of evidence, which, if produced, would be contradictory of Smith and White, as well as confirmatory of every unfavorable conjecture in regard to them, based on their want of moral character.

Gentlemen of the Jury, consider what must have occurred at the Meadows if Lee is guilty. I draw your attention to the subject of this inquiry to show you the transcendent importance of the facts on which Smith and White contradict each other, and are contradicted by other witnesses. I draw your attention to it, also, to expose and denounce the palpable fraud of the prosecution in closing the mouths of Pollock, Young and Pierce, in respect to what was said on the field, to the verbal acts, that are part of the transaction in question.

You have been instructed that it was not unlawful for the defendants to go to the Meadows while the emigrants were in camp there; that if they went to persuade the Indians to desist, and to bury the dead, and for no other object, such going was not only innocent but laudable and humane. You have been instructed that if the Mormon party went at the request of men of influence, ostensibly for a good purpose, and they took no part in the slaughter, and did not abet it, the act of going, and the fact of being there, is no evidence of any other intention than to accomplish the ostensible object. Unless they had notice that some other purpose was contemplated; that, in the absence of proof, the law presumes no guilty knowledge or intention.

The Indians had fired on the emigrants during the two or three days the Mormons were resting in their camp. On the day of the massacre the Indians were not seen until they came suddenly to view from concealment to commit this slaughter. They had concealed themselves near the road between where the emigrants had been corralled and Cedar City. These facts indicate, unmistakably, that some communication had been had with them, and some arrangement made. Are we not entitled to prove, and are you not eager to know, what it was? They acted as though they knew the emigrants would leave their entrenchments, as though they knew the emigrants would go towards Cedar City, and not on their journey westward. Are you not desirous to know how that information was communicated? The testimony, moreover, shows that a capitulation was agreed to, between the emigrants and Mormons, after the disappearance or withdrawal of the Indians. This was evidently a measure of safety on the part of the former, against the Indians. By the terms of that capitulation, the emigrants abandoned their property, and confided themselves unarmed and defenceless to the Mormons.

Now, is it not possible that during the two or three days when the subordinates among the Mormons were resting in camp at the Meadows, and the Indians were making war on the emigrants, Lee and other prominent persons of the Mormon party were endeavoring to persuade the Indians to desist, that they at length succeeded, and obtained the agreement from the Indians that they would refrain from all further attack on the persons of the emigrants, for a stipulated bonus from their stock and train?

The prosecution have lavished their anathemas on the Mormons for drawing the emigrants out of their intrenchment by means of a flag of truce and a capitulation. The prosecution have asked the jury to find that the Mormons and Indians by concert took part in the slaughter, that the capitulation and subsequent slaughter were pre-arranged.

The people assume the fact of such agreement and ask the jury to find it solely on the testimony of Smith and White, of acts they testify were done and the language they pretend to have heard, together with the fact of the slaughter. The people, however, have objected to the proof of what was said and done, in the negotiation with the Indians, conducted by Lee. Why? They could have no objection to what was said between them, unless that negotiation would be favorable to Lee. The people did object. In behalf of Lee we have labored to bring before you all that

was said between Lee and the Indians, and all that was said between the Mormons on the field.

It cannot be doubted that if a conspiracy was there formed, or was there being worked out, such evidence, that is, the colloquium on the field, would show it, if the witnesses told the truth. It would be the very testimony by which such a scheme would be expected to be revealed, or if such a scheme were equivocally suggested by any other facts, the testimony of what was actually said and done during the period when it is alleged to have been concerted and carried into execution, would be the direct and most satisfactory evidence to rebut the charge. Indeed it is the only evidence; to deny the prisoner the privilege of putting such facts before the jury, is to refuse him the privilege of making a defense.

Unless Lee was a party to an agreement with the persons who actually committed the slaughter, by which he was advised of it beforehand and gave his consent to it, he is not chargeable with any guilty knowledge or participation.

Lee's solicitude to put all such evidence before the jury evinces his confidence that he would be vindicated by it from all charge of complicity in the death of these emigrants.

You have been instructed that the hypothesis of the people is to be proved, and that it must be established by proof beyond a reasonable doubt. That is an hypothesis of guilt—that is the hypothesis to be proved. If the defendant may be innocent notwithstanding all the facts proved on the part of the people, and accepted by the jury as established, then the jury must acquit, for the presumption of innocence is not overturned.

There is no proof whatever that he encouraged the Indians to attack the emigrants while they were marching back towards Cedar. There is no evidence whatever, except the contradicted and impeached and worthless testimony of Smith, that Lee ever did any act, direct or indirect, evincing guilty knowledge of a purpose to kill the emigrants, or that he consented to their death.

A truce and capitulation were the proper steps to be taken for the relief of the emigrants. They could not hold out in their improvised intrenchment against a prolonged and attack. A persevering siege by the Indians would inevitably eventuate in their extermination. A joint resistance of the Indians by the emigrants and Mormons would have been equally suicidal and futile. The Indians outnumbered them four to one. And such a contest, even if it could be successful on the part of the whites, could not fail to expose all the pioneer settlements of the Territory to the same danger that then threatened these hapless emigrants. The safety of the settlements has been prudently secured by cultivating friendly relations with the savages. Being more numerous, and their mode of warfare being that of assassination, they were able at any time to overwhelm and destroy them. All Lee's acts were in the direction of safety to the emigrants; they were made only made to bear a different complexion by Smith's perjury in stating certain language which was never spoken, to the effect that his plan was to destroy them. This false testimony could only be contradicted by other verbal acts, and these he was denied the privilege of proving on the objection of the prosecution.

The attack which was made on the emigrants was a violation of the truce. It was a treacherous and dastardly disregard of that faith and humanity which none but savages have failed to observe since the most benighted ages of the past. Who violated the truce? Who took part in that butchery? Disregard Smith's and White's testimony and there would be no suspicion that the Mormons did anything of the kind. That the Indians did take part from the beginning of that slaughter, is proved beyond all question. Smith and White alone state that the whites took part, and they do not even mention the Indians, until expressly interrogated, after the main narrative had been given.

They are murderers, on their own statements, for they say on oath that they took part in that butchery. They do not say who else did, except by vague implication.

A supposition that Lee made, or contributed to the making, of a bona fide arrangement to save the