throne, declared that heresy should die. The inquisition, with its ghastliness came forth to do the will of the strong against the weak. Horses bearing a living body and yet flying in four different directions; the creaking rack, with its dread freight; the thumb-screw, still and cruel—all were there. But to-day the millions are upon the other side, for Protestantism makes laws for Catholics. And though Galileo was compelled to bow beneath the heel of the overpowering multitude, only a few centuries have elapsed, and now he alone is accounted as of more worth than the millions of his oppressors. We know to-day that in his main assertion of science, Galileo was right and his persecutors were bigots. Upon one night in August in the sixteenth century, 30,000 Huguenots were slain in Paris, by their powerful enemies. To-day the great majority of Christian people claim that the religion which the murdered believers professed was and is correct. See the persecutions of our own ancestry in England, when the Pilgrim Fathers were driven forth; and later watch the witches dragged to the stake in New England by an unjust majority. Men close their eyes in horror when these dread phases of history are recalled from the black depths of the past.

Gentlemen, I am not here to say whether my client or the multitude is right in belief. My province is to defend him upon a special charge. But since this question of obedience to popular clamor has formed so great a part of these prosecutions, let me continue it one step. Suppose a majority *is* right; that fact does not bestow upon the mass absolute, irresponsible power. The end does not always justify the means; and majorities should be very guarded that, in punishing an offending minority they do not take means which will bring them to shame. Descendants of a victorious and mainly just race have often been called upon to excuse the cowardly, cruel means by which their rights were won: although those rights might have been the just due of the victorious party.

NO RELEASE BUT DEATH.

Gentlemen, the counsel for the prosecution very emphatically declares that the practice of polygamy must cease; but he does not explain the means by which men, honestly endeavoring to obey the law, are to meet its construed requirements. From all that we have heard in this and similar cases, it does seem as if nothing but death could relieve a man who has ever lived in plural marriage from the burden which this prosecution would place upon him. To-day, when I asked the counsel for the government during his argument to tell by what means a man could possibly fulfil the law, he coolly answered in your presence that he charged money for giving advice. "Very well," was my reply, "name your fee and I will pay it whatever it may be, if you will but tell this court and jury how a man may escape from your prosecution unless he or his wives die." I received no answer. Is it possible that none could be given to so simple a question? Did Congress mean that this law should be a fatal mesh with ever-tightening, ever-multiplying threads, from which even honestly-disposed citizens could find no escape?

APPEAL FOR JUSTICE.

Gentlemen of the Jury, I do not mean to offend your sensibilities when I say to you that it is patent you are the social opponents of Lorenzo Snow—otherwise you could not be on this jury. But, remember, you are placed here upon your oath and upon your honor. You must banish every thought of personal grievance or party animosity. You must allow your truth and manhood to prevail. I am hopeful to believe that you will do this; and that you will not allow any of the myriad influences which may affect the human judgment, to coerce or betray you. Out of the numerous cohabitation cases so far presented there has been no one so favorable to any defendant as this; and no conviction has yet followed in Utah upon such meagre evidence as has been presented in this case. You cannot, fellow citizens, justly lose sight of the fact that your beliefs lead you to coincide more readily with an argument against Lorenzo Snow than you would with ideas expressed in his favor. Therefore, in this case, more than in one of ordinary character, you should throw every reasonable doubt in favor of the defendant.

You have a right, gentlemen, it is even your duty, to ask yourselves, each one of you, this question: "What verdict would I feel was just if I were placed in the defendant's position?" If you will go into the jury room and search your consciences, if you will remember that the judgment you mete unto the defendant shall be meted unto you; if you will ask yourselves: "In the hope of the hereafter, in the sight of Almighty God, my Supreme Judge, what should be my verdict?" I say, if you will ask, each one of you, that question, and express its answer in your verdict—I have no fear but that my client will walk from this court a free man.

Gentlemen—pardon me one moment—you stand in a moral position which is rarely occupied in the centuries. You are to pronounce on this national question upon the fate of this grand old man, a pioneer of Utah, whose physical effort has helped to make a mighty commonwealth in this country, and whose culture has spread refinement here. Be just, be true. Remember that you are the watchmen of the constitutional floodgates behind which my client stands in promise of security. A mighty tidal wave of public opinion sent from afar, and towering mountain high is dashing onward to the haven which you are solemnly charged to guard. If you but lift your gates it will surge through, sweeping my client from his place of refuge, and, going on in its devastating course, will overwhelm the land.

I need not tell you how implicitly we rely upon your honor, and how certainly we expect a just verdict of "not guilty."

ARGUMENTS IN THE SNOW TRIAL.

ELOQUENT PLEAS IN BEHALF OF APOSTLE LORENZO SNOW WHEN ARRAINGNED ON SECOND INDICTMENT.

We published on Saturday the arguments offered in behalf of Apostle Snow when being tried for the first time before Judge Powers. Following are those delivered on Tuesday last when the same defendant was on trial on the second indictment against him. These arguments not only afford interesting reading now, but will be referred to with no less interest by future generations whose honor for the men who made these stirring, and logical appeals will only be equalled by their detestation and contempt for the judge and jury to whom they were made in vain:

MR. KIRKPATRICK.

The defendant is indicted under the third section of the act of Congress, known as the Edmunds law, which provides that "if any male person in a Territory or other place over which the United States have exclusive jurisdiction hereafter cohabits with more than one woman" he shall be punished as therein provided It is charged that the defendant, during the year 1884, cohabited with more than one woman, and your investigations are limited to the conduct of the defendant during that year. The facts of the case as developed by the evidence lie in a narrow compass and are briefly these: The defendant has seven wives now living. He resides in Brigham City in this Territory. Upon a certain block in that city stand two houses; one known as the "old homestead," under whose ample and hospitable roof the defendant, before the passage of this law of Congress, resided with several of his wives. About twenty rods distant separated from the old homestead by a substantial fence through which there is a gateway, stands what is called the "brick house." This house is the home of the defendant where he resides with one of his wives, Minnie Snow. He moved from the old homestead to this house in May, 1882, as soon as the provisions of the Edmunds act became known in Utah. There he has ever since made his home; his business office is there; he receives his mail there; he lives, he eats, he sleeps, he dwells there, and this was the fact throughout the whole of the year 1884. At the old homestead reside three of his wives, and the remaining three reside in other parts of the town. These ladies own the property on which they reside, conveyed to them by the defendant before the passage of the act. To all of them except Minnie, with whom he has exclusively lived since May, 1882, he has been married for many years, to some of them for over forty years. To Minnie he was married in 1871. They each have a family of children. The defendant is in the 72d year of his age. All of these women are supported by the defendant. They bear his name. The evidence shows conclusively that the defendant did not, during the year 1884, nor has he since May, 1882, lived, dwelt, taken a meal, slept or made his home at any house, except the "brick house," nor with any woman except Minnie Snow. On two or three occasions only in 1884, he visited the old homestead; these visits were made specially to see one of his daughters who was dangerously ill, having sustained by an accident, a fracture of the skull; he and her mother Sarah, having at the time of the injury gone to Pleasant Valley for her and taken her home with them. The visits were made in the day time and were not to exceed a half hour each in duration. On one occasion in November, 1884, the defendant called with a carriage at the house of Harriet Snow, one of the wives, took her and his sister Eliza to the house of her son, a few miles from Brigham City; he proceeded to his farm some distance further on; returning in an hour, he took Harriet and his sister in the carriage and left them at their home in Brigham City. Throughout this trip the carriage was driven by a man named Olsen, with whom the defendant sat on the front seat, the mother and sister sitting on the back seat.

In 1884, the 70th anniversary of the defendant's birth was celebrated in Brigham City. A banquet was given in a large hall, called the Court House Hall. It was a public occasion and the people of the city and vicinity in general attended to tender their congratulations, and to testify the high regard in which they held the defendant. At that banquet, all these ladies were present.

Evidence has been admitted of the general or public repute as to the defendant's manner of living, and the relation he bore to these women during the year 1884, and it is all to the effect that it was generally understood, accepted and believed by the public that the defendant lived and dwelt at the brick house with Minnie Snow exclusively; that his home was there; that he had not during 1884, nor indeed since May, 1882, lived or made his home at any other place, or associated with any other woman as a husband associates with his wife. There is no evidence that he has held out or announced any other woman during said time as his wife. There is no evidence of sexual intercourse with any other woman. The defense could and would have proved that there had been none during said time, nor since the passage of the act, but the Court has ruled such evidence inadmissible. We have the right, therefore, to assume that except with Minnie Snow, whose youngest child is 3 months old, no such intercourse has taken place.

Prior to the passage of the Edmunds act, these women were all well known to be the wives of the defendant; since that time he has obtained no divorce from any of them in the courts; he has supported them and their families in comfort, and he has been kind and considerate in his treatment of them all. All of them are of advanced age except Minnie Snow, who is now about 35 years of age.

These facts are established by indisputable evidence; indeed, there is no conflict in the evidence as so any of them. The prosecution has placed upon the stand all of these women, and has been permitted to cross-examine them. Their testimony has been candid and straightforward without the slightest attempt at evasion or subterfuge.

The prosecution has also called the deputy United States marshal who made the arrest of the defendant upon this charge, and he has testified that the defendant was at the time concealed in a closet in the "brick house," but upon being summoned came forth and delivered himself up to the officer.

The grand jury has subdivided the alleged cohabitation of the defendant into three distinct offenses, one of which may be rightly said to embrace the year 1883, another the year 1884, and another the year 1885. Upon the indictment for the year 1885 he has been already tried and convicted; he is now on trial before you on the indictment for the year 1884, and the third indictment yet remains to be tried.

Gentlemen of the jury, you are asked by the prosecution to convict the defendant upon this evidence of the crime of unlawfully cohabiting during the year 1884 with more than one woman. I claim that neither in act nor intent is the defendant guilty of the offense charged against him. Now, in order to arrive at a just conclusion as to his guilt or innocence, you should know and consider the circumstances in which he was placed at the time. This law of Congress, enacted in March, 1882, declares that "if any male person hereafter *cohabits* with more than one woman" he shall be punished as therein prescribed. What is the meaning of this word "cohabit?" I do not speak of its present meaning, for it has recently been defined by the Supreme Court of the United States in the Cannon case. But what was the meaning of this word at the time of the passage of the act, and during the year 1884, prior to its recent definition by the Supreme Court? You will observe that Congress does not attempt to define it. It is usual for the Legislature to define more or less specifically the acts which constitute a crime, made punishable by law. Open any book of criminal statutes, and you will find that murder, arson, robbery, and the long catalogue of statutory offenses are defined with great particularity; the acts and intents which shall constitute them are laid down with precision, so that all may know beforehand the nature and character of the acts prohibited by law. But in this law of Congress we have only the general unlimited term with no attempt at a definition. Whoever "*cohabits*" shall be punished.

Was, then, this word "cohabit" so simple in signification, so readily understood, that no definition was required? Would all men at once understand it in the same sense? On the contrary, we find it to be a word full of uncertainty and ambiguity. It has one meaning in popular language, another in technical language. As the chameleon changes its hue with every object on which it rests, so this word changes its signification with every subject to which it is applied. Chief Justice Zane, delivering the opinion of our Supreme Court in the case of the United States vs. Musser, says it is a word of "flexible" signification, which is equivalent to saying that it is a word of ambiguous meaning. No one will deny that in popular use the idea of sexual intercourse is its essential element. If either one of this jury were charged with cohabiting with a woman, he would instantly understand that sexual intercourse was implied by the charge. As uttered upon the popular tongue that is the meaning. The learned Chancellor Walworth, of New York, repeatedly held that sexual intercourse was also the proper legal meaning of the word. Mr. Bishop, a distinguished law writer, differs from Chancellor Walworth, and holds that that idea is not an essential element in the definition. The Supreme Court of Utah, after a long and exhaustive discussion at the bar, and great consideration by the court, excluded from the definition of the term, as used in this act, the idea of sexual intercourse. This decision has received the high approval of the Supreme Court of the United States, but not its unanimous approval, for two distinguished members of the court, Justice Field and Justice Miller, dissent from the opinion, and Justice Miller does not hesitate to say that he knows of no instance in which, in a criminal statute, the word cohabitation has ever been used in any other sense than that of sexual intercourse.

Now, gentlemen, there is one fact which I wish to impress strongly upon your minds, and which I beg that you will hold prominently before you at every step in your investigation of this case. It is this: that the decision of the Supreme Court of Utah, and the decision of the Supreme Court of the United States, defining this word cohabit, so far as they do define it, were both rendered *after* the time mentioned in this indictment; *after* the year 1884; *after* the defendant had committed the acts here charged to be criminal. He had not the light of those decisions to guide his conduct. Those acts were committed as charged at a time when this word still floated on the waves of ambiguity and uncertainty, fluctuating with every subject to which it was applied, for the decision of the Supreme Court of Utah was rendered in June, 1885, and the decision of the Supreme Court of the United States has just been announced.

But, gentlemen, ambiguous and uncertain as this word "cohabit," then was in its ordinary applications it was peculiarly so in its application to the conduct of the defendant and his co-religionists who were living in polygamy. The courts have held that this law of Congress was enacted with direct reference to the system of polygamy as it existed in Utah. Congress was aware that polygamy was sanctioned by the religious creed of the Mormons, that it was practiced here, and this legislation was intended to suppress that practice.

For twenty years the law against polygamy, passed in 1862, had stood among the laws of Congress, but the government had taken no energetic measures to enforce that law. Two or three convictions had been had during that time. But the law had fallen practically into disuse, and was almost a dead letter upon the statute book. There were many polygamists here in 1862, who had married their wives prior to the passage of that law, and who were therefore unaffected by its provisions, for criminal laws, (however it may be with *definitions*) can never be retroactive; and after the passage of that law many persons, encouraged by the inaction and seeming acquiescense of the government, contracted polygamous marriages, and not being prosecuted or molested by the government or its officials, the statute of limitations soon ran in their favor, and so they were no longer liable to prosecution for polygamy. And during all this time, and down to the passage of this Edmunds law in March 1882 there was no law against cohabitation; no law which forbade the association of the polygamous husband with his wives. Polygamy had been winked at and tacitly acquiesced in by the government until a large class of persons having gone into it, stood now protected by the lapse of time and the bar of the statute of limitations. Numerous families of children had been born in polygamy, and there being no law prohibiting the utmost freedom of association, those families were united together by all those unspeakable sympathies and affections which bind the father to the child, the husband to the wife, the wife to the husband, the children to their parents.

Upon this condition of things, upon a people so delicately and anomalously situated there suddenly fell without warning, like the crash of doom, the law of 1882. That law peremptorily prohibited under severe penalties the cohabitation of any male person with more than one woman. What would be its effect upon the conduct and relations of the polygamists of Utah? What was the meaning of this word "cohabit" as applied to them?

It was in the first place plain enough that Congress did not intend to absolve the polygamous father from any of the duties and responsibilities which pertained to his relation as a father. For by the seventh section of the act, the children of all polygamous marriages which had been solemnized in accordance with the ceremonies of the Church of Latter-day Saints are made legitimate—thus placing them upon the same plane and clothing them with the same rights as the law bestows upon the children of the legal marriage—the same right of inheritance—the same right to call upon the father for education, for support, and for the discharge of all those duties which the father owes to the child. So far then as the polygamous father and his children are concerned, this law did not sever nor attempt to sever the relations and the associations existing between them; by legalizing those relations they were made closer and more intimate than before.

But as regards the father and the mother of those children thus made legitimate, what was the effect of this law upon the relations existing between them? It has been likened by Your Honor (addressing Judge Powers) to a decree of divorce. The comparison is felicitous and striking, but still I may be permitted to say it is inadequate. Similar things are never the same. True there is a separation in the one case as in the other, but different in kind, in character and degree.

A divorce implies alienated affection, usually bitter resentment. The love which once existed has been turned to hatred. The court may compel by its decree the payment of alimony, but it is a forced contribution, reluctantly given. How different the separation in the other case! Here there is no alienated affection; no bitter resentment. The affection which once existed glows still in undiminished warmth. For this is the mother of his children, united to him by covenants, consecrated by a common faith, and which they believed to be indissoluble in time and eternity. The love of the father for his children, and for the mother of his children, is as strong and as deep as before. This, at least, no law can prohibit, no edict can annul. It exists by virtue of a higher law. It is written by the finger of God himself upon the universal heart of humanity.

Behold, then, the difficulty, the infinite difficulty of his position. The law does not compel him to obtain a decree of divorce, nor is he compelled to make or place on record any public declaration that she is no longer his wife. Nor can he, without her consent, tear them from her arms. In sickness and in suffering, cold must be the heart that could deny to her and to them the presence and the sympathy of the father. All these things he may, nay, it is his imperative duty, to do, but nevertheless, says the statute, he must not cohabit with her, or with more than one woman.

What, then, must he do to escape the condemnation of this law? Gentlemen of the jury, what would you have done? Put yourselves in his place. I appeal to you individually and personally. Go back to the year 1884, the time laid in this indictment, and remember that the meaning of this word "cohabit," as used in the act of Congress, had not then been fixed by judicial definition. You must define it for yourself. You are to select from the multiplied meanings of this most ambiguous term one by which your conduct shall be governed. You are no lawyer, and if you ask the law its oracles are dumb, or give back dubious and dissonant responses. Bewildered, groping in the midnight darkness, what can you do? You find in ordinary language, in popular speech, and with that you are familiar, that the word cohabit has a well understood signification, and that is *sexual intercourse*. Suppose that in default of light from any other quarter, you adopt this meaning of the word, and conform your conduct to it. You thenceforth cease sexual intercourse with more than one woman. You do more. While you make occasional visits, as in sickness, or when necessity requires it, in discharge of the duties you owe to your children, while you support her and them, you thenceforth cease to live, to sleep, to eat, to dwell, to make your home, except at the one house and with the one woman; if after all that you should be convicted and punished because you had cohabited with more than one woman, what would you think of the jury which convicted you? What would you think of a jury which, taking a definition of this statute, unknown at the time, arrived at by the courts after your alleged offense was committed, should make an *expost facto* application of that definition to your past conduct, and punish you for not knowing and doing what it was impossible for you at the time to know and to do?

And what would you think of a Grand Jury which, not content with one indictment, should under such circumstances subdivide your past conduct into three offenses in order to crush you under the load of accumulated penalties and forfeitures? And yet that is this case. The defendant upon the passage of the Edmunds law ceased to cohabit with more than one woman in the only sense in which he could then understand the term. Not only did he cease sexual intercourse, but while in the discharge of the duties incumbent upon him, he visited on rare occasions the houses where his other wives and their children resided; and provided for their support, yet he thenceforth neither dwelt nor slept nor ate nor made his home at any but the one house or with any woman but Minnie Snow. The evidence only shows the two visits to his sick daughter in 1884, the ride to Little Valley, where Sarah Snow and her daughter were in the carriage with him and Olsen, and the birthday anniversary.

These women lived upon their separate property and there is no evidence that during that time he introduced or announced or held them out as his wives, or associated with but one of them as a husband associates with his wife.

And yet you are asked by the prosecution to find him guilty. Can you do it and preserve your self-respect?" Would such a verdict have any tendency to make the law respected, or would it bring disgrace upon the administration of justice?"

You may convict him because he is a Mormon; because you are prejudiced against him or his religion but you cannot convict him upon evidence, for there is no evidence to justify such a verdict.

But the attorney for the government, feeling the weakness of his cause, falls back in desperation upon the fact that at the time of Mr. Snow's arrest by the Marshal, he had attempted to conceal himself from the officers in a closet or cellar in the brick house where he resides, and it is urged that this is equivalent to a confession of guilt, and in default of anything else you are expected to convict him on this. A word as to that: Gentlemen of the jury, you have

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