

(Continued from page 249.)

Wm. Groesbeck and Willard Pixton were biased in defendant's favor, and Geo. Openshaw against him. All were excused.

C. D. Brinton believed it right under certain circumstances for a man to have more than one wife, and was excused.

M. S. Simmons, J. M. Richardson and E. R. Clute had no bias against the defendant, and were accepted and sworn.

The next names called were: 187 W. D. Palmer, 148 Jas. T. Smith, 26 H. S. Beatie, Jr., 69 A. M. Johnson, 178 John K. Lemon, 192 A. G. Nygren, 58 Geo. R. Emery.

Jas. T. Smith, John K. Lemon and A. G. Nygren had formed no opinion.

Geo. R. Emery was challenged for bias, and excused.

A. M. Johnson had read a copy of the indictment against defendant, as published. Had never heard of him, and would be impartial as a juror. Was not in sympathy with either side. Was not a member of the Church. Did not believe in polygamy; believed in the Bible; did not remember that the Bible taught polygamy. Did not believe in unlawful cohabitation, and had never lived in the practice. Had never cohabited with more than one woman when married.

Mr. Brown.—Did you ever cohabit with any woman other than your wife. Objected to, and objection sustained. H. S. Beatie excused for bias.

W. D. Palmer was not a member of the Church, and did not believe in polygamy. Had no bias against defendant. Had no special sympathy with the prosecution. Did not believe in unlawful cohabitation, and had never practiced it.

A. M. Johnson said he had no prejudice against the Mormons on account of certain charges made against him. These charges were unfounded. Could give justice, and felt no bitterness.

W. D. Palmer had never been spoken to concerning the case, and was passed by the prosecution.

Jas. T. Smith, John K. Lemon and A. G. Nygren were excused for their belief in plural marriage.

A. M. Johnson was peremptorily challenged by the defense.

W. D. Palmer was sworn.

133 Martin Mankin, 99 E. R. Kessler, and 177 C. J. Smith were called.

M. Mankin was excused for bias.

E. R. Kessler and C. J. Smith had formed no opinion, and were not members of the Church; they did not believe in, nor had they practiced polygamy or unlawful cohabitation. They were sworn.

A special venire for twenty-three jurors, was issued, returnable at 3 p.m. or as soon thereafter as practicable.

The court took recess until 3 o'clock.

JOHN AIRD PLEADS GUILTY.

HE PROMISES NOT TO "COHABIT" ANY MORE.

This morning Mr. Dickson stated in the District Court that in the indictment John Aird had been charged with polygamy, committed in June, 1882, and unlawful cohabitation since that date, but as the defendant's first wife was in Scotland, the prosecution could not sustain the first count, and asked that it be dismissed. The District Attorney further stated that Aird would plead guilty on the second count.

John Aird was then arraigned before the Court and withheld his plea of not guilty, and entered one of guilty to the charge of unlawful cohabitation. His attorney, Mr. Rawlinson, stated he was now living with but one wife.

The Court—Is it your purpose, in the future, to live within the law?

Aird—Yes, sir.

Court—You will not advise others to violate it?

A.—No, sir.

The Court asked the District Attorney if there were any palliating circumstances, and Mr. Dickson replied that Aird was now living with but one of his two plural wives, his legal wife being in Scotland. He had ceased living with both from domestic infelicity.

Mr. Sheeks stated that he had asked the defendant to cease living with any until he obtained a divorce from his wife in Scotland, but did not know whether or not he had done so.

The Court asked what means the defendant had, and Mr. Rawlinson replied that he was a poor man; he did have a home but had been compelled to mortgage it.

In view of these circumstances, the Court said it did not desire to be severe, and would assess a fine of \$300, and \$21 costs.

Mr. Aird will be committed unless the fine is paid, the time of imprisonment for a fine, however, being limited to thirty days, under the United States statutes.

FROM FRIDAY'S DAILY, MAY 1.

Wants Employment.—Joseph McLachlan would like to obtain a situation as reporter, correspondent, book-keeper, cashier, assistant architect or surveyor. His address is Logan, Cache County, Utah, where a card or letter from anyone desiring to secure his services, will find him.

A Journalistic Change.—We understand that Mr. B. F. Cummings, Jr., has resigned the position of editor and business manager of the Utah Journal, published at Logan, and that the paper is about to change hands, John P. Smith, E. A. Stratford and John E. Carlisle becoming the proprietors.

A Successful Operation.—Sister Ann Burton, of Kaysville, called at our office this morning. She is just returning to her home, having been domiciled at the Deseret Hospital for several weeks, and having undergone an operation for the removal of decayed bone from her head, which has affected the lady for many months past. The operation was performed by Dr. Anderson, assisted by Drs. Potter and Mattie P. Hughes. Sister B. looks much improved, and feels happy and thankful for her recovery from so severe an operation.

Miraculous Healing.—The *Mil-lennial Star* of the 13th inst. contains a communication from Elder William Horsley, who is laboring as a Missionary in Berkshire, England, in the course of which he says:

"Sister Jane Giles, of Hungerford, was one of the ladies I baptized on the 28th of February, 1885. She had been suffering for some years with a severe rupture; the last year she was so bad she had to wear a truss, or supporter, and having read in the works of Apostle Orson Pratt of one Mary Bolland having been healed of the same complaint at her baptism, she felt to have faith that she would also be healed, and was healed at her baptism, for it is now over one month since and she feels entirely well in regard to that complaint."

This statement is certified to as being correct in every particular, by Mrs. Giles and her husband and two other persons.

Escape of Prisoners.—Yesterday's *Ogden Herald* contains the following account of a jail delivery at that place:

"During last night seven of the vagrants confined in the cells on the second floor of the jail in this city effected their escape by working their way through the ceiling of the cell and then through the roof, letting themselves down by means of blankets knotted together. While the operations were going on, those who were not engaged in the work of making the hole through which they escaped, made an awful noise, singing and dancing, so that the janitor should not hear what they were doing. The janitor says he suspected there was something unusual going on, and looked into the Council Chamber several times, thinking they might probably try to break through the floor and escape that way, as they were in a cell immediately above. And he also watched the ventilator in the hall by the Marshal's office, supposing they might try to make their escape by that means. But these birds of the jail chose another route. Out of those who have escaped three were under-going their term of imprisonment, and four were new arrivals, who were only incarcerated last evening."

Ladies' Conference.—Sister E. B. Wells returned Monday evening from a trip to Morgan County, whither she went to attend the Relief Society Conference held in Morgan City on Saturday, and that of the Y. L. M. I. A. of the Stake held on Sunday, and is quite enthusiastic over the enjoyment which she experienced during her absence. All the branches of the Relief Society in the Stake, which are presided over by Sister Lydia Rich, were represented at the Conference, and reports of them given in excellent style. The principal business done was the election of Sister M. A. Simmons to the office of counselor in the Stake presidency in place of Sister M. J. Tomar, who had resigned to remove from the Stake.

Addresses were delivered by Sisters Jane S. Richards and E. B. Wells and President W. G. Smith, who, with his Counselors, was in attendance at the meetings.

The Stake Tabernacle was crowded to its utmost capacity on the occasion of the Young Ladies' Conference on Sunday, and the meeting was made very interesting by the spirited reports and speeches of the young ladies, the reading of the quarterly manuscript paper issued by them and edited in excellent style by Mrs. Mary Welch, and remarks by the visiting ladies. This Conference was presided over by Miss Susannah Heiner, and the reports showed the organization to be in a flourishing condition.

Sad Case of Drowning.—On the 3d of February last, a Swiss resident of the 18th Ward, by the name of Samuel Roesly, who had previously been to Arizona and established a home there, left this city with his wife and two boys for the purpose of permanently settling at St. John. A grown up daughter was left in this city at service, who intended after her parents got fairly settled in their new home to journey thither and join them. No news of the family had been received in this city by this daughter or then many friends until yesterday, when a letter arrived from the mother, conveying the sorrowful intelligence that her husband and younger son had been drowned in the Little Colorado river on the 27th of March, while on the journey. It seems that he and the boy, who was almost seven years of age, were attempting to cross the river in a skiff, when the little fellow accidentally fell into the water and the father, in attempting to rescue him, capsized the boat. Before help could reach them both had sunk, and subsequent efforts to find the bodies proved unavailing. The heart-broken widow and remaining son were helped on to St. John, where they now are. The feelings of the daughter on receiving this sad news may be imagined.

Brother Roesly emigrated to this country from Switzerland about fourteen years ago, and sent for his family two years afterwards. He was about

forty-six years of age, and an honest, industrious, consistent Latter-day Saint.

TRIAL OF A. M. MUSSER.

TAKING THE TESTIMONY.

After the opening of Court yesterday afternoon, Mr. Brown, for the defense, moved to quash the Marshal's return of the special venire, on the ground of insufficiency. The motion was overruled.

Eleven jurors were called during the session, eight of whom were excused for their belief or having bias in the case; one, George Harrison, was peremptorily challenged by the defense, and the remaining two, W. F. Raybould and Wm. A. Pitt, were passed and sworn, making ten jurors obtained for the trial.

The special venire being exhausted, another drawing was ordered. The attorneys for the defense suggested that as the even numbers were "Mormons," there would be no use for them, and the Court directed that they be laid aside. Another venire was issued for twenty-one names, returnable at 10 a. m. to-morrow.

This morning the two remaining jurors were secured—Thomas Davis and Samuel Levy.

The following are the jury:

M. S. Simmons,	E. R. Kessler,
J. M. Richardson,	C. J. Smith,
E. R. Clute,	W. F. Raybould,
Peter Clays,	Wm. A. Pitt,
T. G. M. Smith,	Thomas Davis,
W. D. Palmer,	Samuel Levy.

The Clerk read to the jury the indictment, charging A. Milton Musser with unlawful cohabitation with Belinda Pratt Musser, Mary Musser, and Annie Seegmiller McCullough Musser.

Judge Sutherland for the defense, objected to receiving testimony, because of the insufficiency of the indictment, in that it did not show that the defendant was a male person, nor was it indicated by the name.

Mr. Varian submitted that the name Milton indicated the sex of the defendant.

The Court ruled that the indictment was sufficient.

Judge Sutherland then objected to the indictment on the ground that it did not indicate that any form of marriage had been gone through.

The Court said it was not "marriage," but "holding out to the world as wives," that constituted the crime.

Mr. Dickson said the intention of the act was as defined by the Court, because of the effect on public morals. It was sufficient to charge the crime in the language of the statute. "Cohabitation," in the indictment, meant the living together of a man and a woman as husband and wife.

Judge Sutherland read from the decision of the Court, rendered in the Cannon case, in support of his objection.

The Court explained that when a man lived with two or more women as his wives, whether there had been any form of marriage between them or not, he was guilty of unlawful cohabitation, and this was the meaning of the Court. This condition must be apparent, as a man could not live with two legal wives. Cohabiting with a woman as a wife, and holding her out as such, was the offense. The law was against the example, and it made no difference whether there was a marriage or not, so long as to the people it appeared so. And it was the example, causing the public to understand that there was a marriage, whether there was a ceremony or not.

Judge Sutherland stated that he so understood the position, and objected to the indictment because it did not state there was such an appearance, as described by the Court. The Constitution required a particularity of charge in the indictment. The law was to be construed in a restricted sense—cohabitation with those admitted to be wives—and the indictment should convey that idea.

The Court ruled that the language in the indictment was sufficient.

ANNIE M. SHEETS

was called as the first witness for the prosecution. She was married; her maiden name was Musser; she was defendant's daughter; knew Mrs. Belinda P. Musser, Mrs. Mary Musser, and Mrs. Annie Seegmiller McCullough; had known the first-named 12 or 13 years; had never lived in her family, but had lived in the same house about six months.

Q.—What relation, if any, does Mrs. Belinda P. Musser hold to your father?

Objected to. Question withdrawn.

Q.—Is your father married?

A.—I believe he is.

Objected to. Sustained.

Had never heard her father speak of either of the three women as his wife.

Q.—Do you know whether Belinda P. Musser has any children?

Objected to as having a tendency to prove sexual intercourse.

Mr. Dickson claimed this testimony was necessary as one of the links of their evidence. If they could show that each of the three women had children, lived in the same house with him, and bore his name, the jury could infer that they were his wives.

Judge Sutherland stated that intercourse was not cohabitation, nor any number of interviews, unless they abode together. The birth of children was no part of the evidence.

The Court said the dwelling together could be proved in various ways, and overruled the objection.

Mrs. B. P. Musser had children; she had lived in the First Ward, at her father's house, 769 E. Seventh South Street, a year ago; she did not live there now; had ceased to live there within the last four months; had lived there a year or a year and a half before then; during that time Mary Musser lived in the house, and was living there now; knew Parley and Minnie Musser, children of Belinda Musser; she supposed her father lived in the same house; witness had occasionally taken meals and slept there; there was no other man there; she had sometimes seen her father there with Mary Musser; had not eaten with Belinda Musser; two children of Belinda Musser lived in that house; there was a small child there called Arthur; had never heard him called by any other name; she did not know what his other name was; had never seen the child with her father, or heard him speak of it; had never heard B. P. Musser speak of the child to her father; did not recollect its birth; first saw the child about a year ago; it was not a small infant then; it could walk about; had heard its mother call it by name; was never there when her father and the little child were there; there were several other children.

Mr. Varian, when objection was made to such testimony, declared they were compelled to follow this course, as the witness was hostile to the prosecution.

These children lived in her father's house, First Ward, with their mother and Belinda Musser. Witness described the house as having eight rooms on the ground floor; and four upstairs; there was no hall. Belinda Musser lived in the next part, and had five rooms, kitchen, bedroom, parlor and two bedrooms upstairs; she occupied the room down stairs; Mary Musser lived in the east part of the house, and had six rooms, kitchen, parlor, bedroom, sitting room, and two bedrooms upstairs; she occupied the room down stairs. Defendant's room was down stairs, in the front of the house; it was between Belinda's bedroom and Mary's sitting room; the older boys occupied the rooms upstairs; Mary's child Blanche was from two to three years old; she first saw it about two years ago; did not recollect its birth, nor when she first saw it; had seen her father at Mary's table, but not at Belinda's; had never heard him speak of Mary as his wife, had never heard her spoken of as his wife; he called her "Mary;" he called the other "Belinda," but had never heard him call her his wife; her father spoke of the former to her as Aunt Mary, or her stepmother; had never spoken of Belinda as such; had heard the children of Mary call defendant father, but had not heard Belinda's do so; Parley was about 11 or 12 years of age.

Q.—What name does he bear?

Objected to. Overruled.

A.—Have heard him called Parley Musser.

He was known as Parley Musser in the family; Minnie, Samuel, Don, Joseph, Gertrude and Blanche, were known by the surname of Musser; did not know Arthur's name; supposed some of the children were Mary's and some Belinda's; had last seen the child Arthur four or five weeks ago, at its mother's; last saw Mary Musser four or five weeks ago, in the same house; did not know where she was; was not present when she left; had not seen her since; knew Annie Seegmiller McCullough Musser; she lived at 747 E. Seventh South Street, the next house to the other; did not know whether it was her father's house; had been in the house; had never seen her father there, or seen him go or come; there were children there; she had seen three; their names were Eva, Fred and Moroni; Eva was about eight years, Fred six, and Moroni four or five; never saw an infant there; they were known by the family name of Musser; had not heard her father speak of Mrs. Annie Musser; there was a gate between the houses; no one else lived there; she had seen Mrs. Annie Musser in the house; the children called her mother; no man lived there.

Q.—Have you heard your father speak of those children?

Objected to, as by their age, it was shown that the children were born before the passage of the Edmunds act. The prosecution said they would show that the same woman had a younger child, one and one-half years old.

Objection overruled.

A.—Not that I remember. Witness had heard her father speak to them; the children called him father; she had never gone to the house at the instance of defendant.

Cross-examined by Judge Sutherland.—Described the house, as before; the house had three outside doors; these opened one into Mary's, one to her father's and one to Belinda's rooms; there were three staircases, one from each division; there was no communication between all the rooms on the second floor. (Witness was shown a plan of the house, which she identified as correct.) Parley was aged 11 or 12; Minnie, about 6; Samuel, 19 or 20; Don, 17; Joseph, 14; Gertrude, 8; Blanche and Arthur, between 2 and 3.

Re-direct by Mr. Varian:

Q.—State whether Belinda and Mary are known in the Musser family as married or single women?

Objected to as hearsay.

Withdrawn.

Q.—State whether or not these ladies mentioned are known in the Musser family as the wives of your father?

Objected to. Overruled.

A.—I don't know.

Q.—State whether or not they have been recognized as your father's wives?

Objected to. Overruled.

A.—Yes, they have.

The Court took recess until 2 p.m.

This afternoon, Mrs. Lizzie Lee and Mrs. Mary Rideout were examined, the only additional evidence elicited being that the youngest child of Annie Musser was about a year and a half old.

Charles Brown, ward clerk, was called; he had been the custodian of the record, but about six months ago it had disappeared.

Mr. Varian—Who took it?

Objected to.

Mr. V. (warmly)—We want that record, and if it is within the power of the process of this court, we mean to have it.

Witness did not know who took the book, or where it was, and did not remember having entered the names of defendant's family therein.

Bishop Warburton and Mr. Eakle, school teacher, were examined, but nothing new was gleaned.

The prosecution asked the court to wait a short time for their last witness.

C. V. SPENCER PLEADS GUILTY.

HE TAKES THE "PLEDGE" AND PLEADS FOR MERCY—THE COURT SUSPENDS SENTENCE.

Shortly after the opening of the District Court this morning, District Attorney Dickson informed the Judge that Mr. Claudius V. Spencer would enter a plea to the indictment found against him.

The indictment charging unlawful cohabitation having been read to the defendant the clerk asked: what is your plea to this indictment, guilty or not guilty?

Mr. Spencer—I plead guilty.

The Court—Guilty to the charge?

Mr. Spencer—Guilty to the charge, and would beg your honor's leniency. If my strength permits, in justice to myself and in justice to the community of all classes I would like to make an explanation.

The Court—You may make your explanation if you have any to make.

Mr. Spencer—When the Edmunds law was known to have become law in this Territory, I and my wives made a covenant to obey the Edmunds law to the best of our knowledge. The second wife whose name appears in this indictment, remained under my roof, and I wish here to state, for the good of our community, if Your Honor will permit, there are hundreds of what are called "Mormons" in this Territory who believe they have kept the Edmunds law if they have refrained from sexual intercourse. So careful was I, my only income being from boarding or keeping hotel, that, not to give offence to public feeling or to give an opportunity to come within the reach of the law, I paid this second wife wages as help. She has eaten every meal for three years that has been eaten in my house with my servant girls, or alone in the kitchen, and in every respect, to the best of my knowledge, we have honorably and faithfully kept this law.

The Court—Is that all you wish to say, Mr. Spencer?

Mr. Spencer—I simply wish to add that I have a good many dependent on me for support, that outside of my house and lot, on which there is a mortgage of a pretty heavy amount, I have no income, and that in pleading guilty to this charge I plead guilty to it on the construction that your Honor has rendered. I do not plead guilty to any intent or known criminal act, and it must rest in the mercy and the kindness of your Honor to say how much innocent women and innocent children shall be punished; for the punishment will fall upon them for a mistake that we have made.

The Court—Well, let me see if I understand you. Do I understand you to say that you are not living with either one of your wives now, except the last one?

Mr. Spencer—I am living with my first wife.

The Court—Well, do all your wives live in the same house with you?

Mr. Spencer—Yes. I have another wife—lest there should be some misapprehension—that has not lived with me, nor I with her, for some fourteen years; she lives some distance away.

The Court—Well, this offense of unlawful cohabitation consists in living with a woman as your wife—in holding her out to the world as your wife. It is not necessary that you should have sexual intercourse with her, or sleep in the same room with her. If you live with her, and hold her out by your conduct or by your expressions and representations, you are guilty of unlawful cohabitation. With that view, do you plead guilty to this charge?

Mr. Spencer—I will answer you in effect, Judge. I have no knowledge of ever having introduced this woman, or called her in any other way than Mrs. Spencer, that was, before the Edmunds law was passed. I may have done it.

The Court.—Her name was not Spencer before you married her?

Mr. Spencer.—No; we have been married about 24 years.

The Court.—How long since you were married to the first one?

Mr. Spencer.—I married her in 1853.

The Court.—There is no dispute but what you cohabit with your first wife. The question is, Do you propose to continue to live with both of these women, and represent both as your wives?

Mr. Spencer.—I wish to say to your Honor, that I can make conscientiously the promise, and I can do no further, than that, whatever the punishment may be, that I will live and influ-