BOREMAN'S CHARGE

To Thompson's Twelve Friends.

NOT MUCH OF IT, BUT PLENTY SUCH AS IT IS.

Varian and Williams, for the Defense,

PULL HIM BACK WHEN HE BECOMES DERAILED.

A Literary and a Legal Gem.

JUDGE BOREMAN.—I intended to write out my instructions, and I have got them partially written out and partially not. You have heard, gentlemen of the jury, all the evidence in the case, and it now becomes my duty to declare to you the law applicable to this case.

The defendant, William Thompson, Jr., is accused in the indictment of the crime of manslaughter, alleged to have been committed by him on the 16th day of December, A. D. 1886, at the town of Parowan, County of Iron, in this Judicial District and Territory of Utah, by shooting one Edward M. Dalton with a gun; and by means of the shooting inflicting a mortal wound on the body of said Dalton, of which wound said Dalton instantly died. The particulars of the charge are set out more fully in the indictment which will be placed in your hands. To this charge the defendant pleaded "not guilty."

This plea puts in issue every material allegation of the complaint and throws the burden of proof upon the prosecution to make out the case in the manner and form as charged.

The defendant is presumed to be innocent until the contrary is proved; and if you have a

REASONABLE DOUBT

from the evidence whether the defendant's guilt is satisfactorily shown, he is entitled to an acquittal.

A reasonable doubt is such a doubt as naturally arises in the mind of a reasonable man—a man of common sense.

To convict the defendant of the crime charged, the facts must not only be consistent with his guilt, but inconsistent with his innocence. The evidence must exclude every other hypothesis but that of the guilt of the defendant.

The section of the statute under which the defendant was indicted, is, I believe, section 1921. It reads as follows:

"Manslaughter is the unlawful killing of a human being without malice; it is of two kinds: First—Voluntary upon a sudden quarrel or heat of passion; Second—involuntary, in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection."

If therefore you believe from the evidence that the defendant killed the deceased unlawfully and in the heat of passion, it was

VOLUNTARY MANSLAUGHTER,

and you should so find; but if you believe from the evidence that the defendant in the commission of an unlawful act not amounting to a felony or in the commission of a lawful act, which might produce death in an unlawful manner or without due caution and circumspection, shot and killed the deceased, he is guilty of involuntary manslaughter, and you should so find.

The word "unlawful" as used in this charge and in our statutes, in regard to murder or manslaughter, means without right or without excuse and in violation of the law and against the law.

Homicide is excusable in the following cases, all of which are not necessary for me to read. I only read such as is applicable to this case:

"First—When committed by accident and misfortune in doing any lawful act by lawful means without a usual and ordinary caution, and without any unlawful intent."

If you believe from the evidence that the defendant killed the deceased at the time and place specified, that he did so by accident and misfortune in doing a lawful act by lawful means, with usual and ordinary caution and without unlawful intent, your verdict should be not guilty; otherwise, guilty.

It was lawful for the defendant to endeavor to arrest the deceased, if you believe that the defendant was an officer and had the warrant alleged.

As to homicide when committed by an officer, the language of the statute is as follows, so far as it is applicable to this case:

"HOMICIDE IS JUSTIFIABLE

when committed by public officers and those acting by their command in their aid and assistance." * * * *

"When necessarily committed in retaking felons who have been rescued or have escaped, or when necessarily committed in arresting persons charged with felony, and who are fleeing from justice, or resisting such arrest."

If, therefore, you believe from the evidence that the defendant was a public officer, and was seeking the arrest of the deceased on a charge of unlawful cohabitation, and that he killed the deceased at the time and place charged; and that the offence with which deceased was charged was punishable by imprisonment in the penitentiary, and that said killing was necessary to accomplish the arrest of the deceased, your verdict should be not guilty.

The punishment of unlawful cohabitation under the laws of this Territory could be by imprisonment in the penitentiary. A felony is a crime which is made punishable by death, or by imprisonment in the penitentiary. In contemplation of the Territorial statutes, therefore, this was a penitentiary offence.

If you believe from the evidence that the defendant was at the time specified in the indictment, a deputy United States Marshal, then I instruct you that he was a public officer; and if you further believe that the defendant was at the time specified, acting under the authority of a warrant for the arrest of the deceased on the criminal charge of unlawful cohabitation, and seeking to arrest deceased at that time, and that deceased had been informed of the intention of the officer to arrest him, and that the deceased was in the

ACT OF FLEEING

when defendant was attempting to arrest him, then the defendant was authorized to use all necessary means to effect the arrest. (Cr. Pr. Act, sec. 81.)

You are the sole judges of the credibility of the witnesses and the weight of the evidence and the facts.

I believe that is all. Is there anything else, gentlemen? (Addressing the attorneys.)

Mr. Varian—I suggest, your honor, that the jury be instructed that the burden of justification is upon the officer; I believe that is the law, that it is upon the officer, and should be so given to the jury.

Court—What is that section?

Mr. Varian—It is section 268, Laws of 1884. I think also the jury ought to be charged that the apparent necessity for the act was such that any ordinary, careful, cautious and prudent man would observe. It is not to be determined by the individual actions of the defendant in each case, and ought to not be limited in that way.

Court (to the jury)—That is correct, gentlemen, of course; it ought not to be limited in that way. It must be a necessity that is plain and apparent, that would control any ordinary individual acting under the same circumstances. And in a trial for murder or in a case of manslaughter it would be similar. The commission of the homicide being proven the mitigation or justification of the action devolves upon the defendant unless the proof upon the part of the prosecution tends to show that the crime committed was

JUSTIFIABLE OR EXCUSABLE.

In other words, leaving out that part in regard to manslaughter, it would read this way: The commission of the offense of homicide by the defendant being proven, to justify or excuse it devolves upon the defendant, unless the proof on the part of the prosecution tends to show that the defendant was justifiable and excusable.

Mr. Williams—I would ask that a further charge be made to this jury in that connection: that the burden of proof to sustain the justification be established by a preponderance of proof and that your honor define to their minds what a preponderance of proof is.

Court—Do you mean the evidence on the part of the defense?

Mr. Williams—No, on all the evidence. It is sufficient when the burden is cast upon the defendant to show justification that it is supported by preponderance of proof.

Court (to jury)—If the preponderance of evidence, gentlemen, is offered by the defense—

Mr. Williams—Or supports the justification—

Court to jury—If it supports the justification—or if it satisfy your minds—in other words if the evidence offered by the defense overbalances in your mind—overbalances the evidence upon the side of the prosecution, in favor of justification, then of course you are bound to find him justified; and as to what part of the evidence you are to weigh, that is for you to decide. You are to take all the testimony together. When we say a preponderance of testimony you are not to understand that that means more witnesses on one side than the other, but the evidence that you consider of weight to control you; if that lies in favor of the defense, in favor of the justification, over that of the other side, of course you are bound to justify the defendant and find him not guilty.

I think that is all.

Auburn, Cal., Jan. 22d, George W. Baldwin, who lived alone in a cabin, about a mile from here, committed suicide by shooting himself through the head with a shotgun.

Andrew Peterson, a native of Sweden, aged about 21 years, fell from a boat into the Sacramento river, about 8 a. m. on January 20th, at Jacobs' Landing, opposite the Twin Houses, fifteen miles from Sacramento, Cal., and was drowned. His body was recovered a few hours later, and an inquest held.

WASHINGTON.

An Eventful Week at the Capital—Not Much Left for the Despoilers to Do—An Evening to the Edmunds-Tucker Bill on the Conference Committee—The "Honor" Belongs to Gov. West, not to the Bs.

NEWS' Special Correspondence.]

WASHINGTON, Jan. 16, 1887.

This has been an eventful week for Utah; how much more of interest to your Territory may be occasioned during the remainder of the session is problematical. If the bill which the House passed with such vehement unanimity on Wednesday last shall become a law, it is liable to occasion your people but little concern as to what legislation regarding them may take place in the future. There are but two things left for your opponents—to deprive every Mormon of the right to hold property and to kill him. Both these have received countenance heretofore on three memorable occasions, and a United States Assistant Attorney-General has suggested that the latter act would be one of mercy to all adult Mormons. These are pleasant things to contemplate under a government where the

LOUD-LUNGED BOAST

is of freedom for the oppressed. The Senate has refused to concur in the measure, as amended, and a conference committee has been appointed to try and unite the opposing factions. On any other subject there might be a hope of irreconcilable differences, but where a Democratic House vies with a Republican Senate to make a measure inhumanly hideous, it is not unlikely that all differences will sink in the general desire for deprivation to the Mormon people. Senators Edmunds, Ingalls and Pugh represent the Senate, Representatives Tucker, Collins and E. B. Taylor, of Ohio, the House. I understand that Tucker's desire was that only friends of the bill should be appointed by the Speaker for the House, but the Speaker thought otherwise and gave Mr Collins, one of the judiciary committee and an earnest opponent of it, (also one of the signers of the minority report) a place on it. That committee has not yet met. But after the bill has been considered by the

CONFERENCE COMMITTEE,

and some agreement reached, as is only too probable, and after it has received, in its altered state, if altered at all, the approval of both branches of Congress, it still must be signed by the President. You see there are possibilities against its becoming a law, but I could not feel justified in saying they are probabilities.

It is now generally conceded that the passage of the bill is the work of Gov. West. He has been almost entirely in company with Speaker Carlisle all the time he has been in Washington. As before stated, it is not apparent that he has done any special log-rolling in a general direction, but it is notorious that the interest of Mr. Carlisle, the Speaker, has been growing more the longer Caleb W. West remained here; and it is equally a matter of undercurrent notoriety that the Speaker has

PRACTICALLY FORCED

to an issue a bill which, but for his great influence, would have remained buried, and which, for the credit of all concerned in its passage, had better have been consigned to eternal oblivion than given the position to which their efforts have raised it. I am astonished at the indifference of the business men of the Mormon community. There must be a sublime faith. They either dreamed the bill could never pass or have consoled themselves with the still vainer delusion that the finances of the Territory—Territorial, County and Municipal—would receive more capable and honest management under the absolute control of one man—an imported Governor—than they do now where they and the people hold some power over the men assessing and collecting their taxes and expending the same. Folly sometimes does attain a sublime pinnacle.

Since the bill has passed the House and cooler judgment prevails, many members are doing some thoroughly

UNCHRISTIANLIKE SWEARING;

and there is great reason to doubt if Mr. Tucker gets out of this success anything like the glory he anticipates. He attempted no reply to the constitutional objections raised against the bill; could not give a satisfactory reason for the change in his position now as compared with four years ago and replied to the arguments by howling against polygamy and endeavoring to make the Savior responsible for monogamy. He has been cursed for a demagogue and many members declared that he forced them into a position where they could not help themselves. One member asserted that such a speech from a man of Tucker's recognized ability and life-long position was a disgrace to the former and as to the latter it would forever remain a

BLOT UPON IT.

I may add that I desire to give honor in this case where it is due—to Gov. West wholly and solely. All the Baskins and Bennetts in the universe could never have accomplished in a lifetime what has been done, and it will be exercising a degree of cheek they will hardly be capable of for them to claim the honor. It belongs to the present Governor. I am informed he does not disclaim the credit given him and he receives with fitting modesty the congratulations of all his friends upon his signal success. Perhaps he will now reconcile his assertions in the *Herald* of your city that he was not here on political business with the admissions his blushes now make for him.

I notice that the leading papers have little or nothing to say regarding the measure, and certainly nothing of a

FAVORABLE CHARACTER.

The comments of the press are very favorable to Mr. Caine's speech on the occasion, and certainly many of the points were telling and effective. Even Baskin is understood to have declared that it was one of the best defenses of Mormonism ever delivered. But he could afford to be generous. Had it been effective enough to turn the tide against the atrocious measure, he would, in all probability, have denominated it as characteristic Mormon rubbish.

The Snow case is set for Monday next. It is not thought, however, it will be reached before Tuesday or Wednesday. Strong arguments are likely to be heard in behalf of the appellant, if one may judge from the brief in the case.

WALTON WOLD.

HEALTH HINTS, ETC.

COMPILED BY MAC.

Cut out these "Hints" and keep them.

Extracts from Dr. C. E. Page's book, "How to Feed the Baby," continued from last week:

THREE MEALS ENOUGH.

"It may be claimed that while one infant might be able to subsist, and even thrive, on two or three meals, another, and probably most infants, would starve unless fed oftener; but I am unable to find any basis for such a conclusion. In the feeding of cattle, horses, hogs, and men, it is found that the ration that suffices for one individual will suffice for any individual of the class. In this I do not consider the gormandizing capacity of individuals who can carry off, though to their hurt, double or triple rations.

"All men are rudimentally alike; and the body of each human being is made after a certain pattern, which pattern is in accordance with the general principles which apply to all individuals. The great principles upon which one man's body is built, by which it grows, by which it gains power, by which it maintains its material activities, and by which its life is kept within it, are principles that are applicable to every human body." * * * "It becomes not only a general fact, upon which, under general circumstances, one can rely, but it becomes a uniform, aye, a universal fact, that what will keep one man alive will keep another man alive."

BELLY-BANDS, ETC.

"Among the numerous causes of discomfort which prevail in the nursery, and which lead to over-feeding, we have the injurious belly-band, tight as a woman's corsets; diapers pinned too snug about the waist and drawn so tight between the legs as to be insufferable; cavernous creases between rolls of fatty tissue where, over many square inches, the excretions of the skin must be reabsorbed, and for want of ventilation, such as is enjoyed by the free surfaces, sores are produced, which in turn are kept plastered with powder of some sort until the functions of the skin are wholly destroyed; tight pinning-blankets, worn also at night, while the parents enjoy the luxury of loose, simple gowns; the 'breath of life' carefully excluded from the home, through the superstitious fear of damp air, night air, 'draughts.' All these and many other cruel and needless irritants has the baby to suffer, and when they have tortured him into worrying or crying, more food is given to tickle the palate, and yet more to drug him to sleep, and this failing, Mother Somebody's soothing syrup stupefies the brain, and gives him and his tormentors rest."

'TENDING THE BABY.

"A well-managed baby will require very little attention from the mother or nurse, but will amuse himself, and then, sitting on the floor with his playthings. If, however, he is from the beginning taught, as is most frequently the case, that he must be kept in arms a great part of the time, he would be more, or less, than human if he did not demand it. And yet the happiest and most comfortable place for him is in his crib, or carriage, or on the floor. Parents too often injure themselves and their children by teaching the latter to be exacting. It is not 'neglect' to teach even the youngest child self-reliance by a good deal of judicious letting alone.

"Infants are often kept in arms, rocked tossed, trotted, and stuffed with food, in the vain effort to quiet them, when, if they were not suffering from surfeit, simply lying down in a pure atmosphere—the habit once formed—would give them rest and peace and sleep. These injurious motions may, after a time, dizzy the little one into a semblance of sleep, from which, however, it will usually start up upon being laid down, to be again and again hushed or walked to sleep, until at last utterly exhausted, it may settle down for a long rest; but when sleep is thus induced it is unnatural and unsatisfactory.

"At this period of life habits are very easily and speedily formed, hence an unwise or indiscreet attendant can readily make a new-born babe troublesome and exacting, and can soon transform a comfortable, easily-tended baby into one requiring constant attention, to its own sorrow, as well as that of its friends. These are the children who *seem* to require constant feeding."

FEEDING BY BOTTLE.

"With regard to the various advertised foods, 'substitutes for mother's milk,' while many infants manage to subsist, and in some cases thrive on them, still, in my judgment, the best substitute will be found in cows milk, prepared as follows, and I feel safe in saying that it will invariably be taken with a relish by, and agree with, every healthy infant, if offered in proper quantity and at proper intervals:

"The approximate amount of cow's milk for each meal for an infant at the age of nine months, is about one cupfull. Very rich milk will often disagree with infants, and is less wholesome for all than pure milk containing only a medium proportion of fat. As to the best mode of preparation I adopt the language of Prof. S. P. Sharples, who has, more than any other man in New England, if not in America, made the subject of milk a special study, and has made hundreds of analyses of the fluid:

'The best way to prepare cow's milk for a young child is to allow it to stand for a few hours until a portion of the cream has raised; then carefully remove the cream. At each meal take the proper portion (say for a babe at nine or ten months, one cup; at twelve months, one and one-third; at fifteen months perhaps one and one-half; or vary the quantity at different meals, as, more in the morning, less at noon and at night, as experiment may prove best. No hard and fast rule, except as to number of meals, can be laid down for the million.) Place the vessel containing the portion in a dish of hot water for a sufficient time to warm it. Cream or very rich milk is totally unsuitable for a young child. Children will be found generally to do well on Ayrshire milk, since this is not much richer than skimmed Jersey. Above all do not add cane sugar or water to milk. The cane sugar is almost certain to sour the stomach, while water reduces the amount of flesh-forming constituents in the milk and distends the child's stomach with an unnecessary amount of fluid.'

SUNDRY TROUBLES.

"The amount designated is ample, indeed in most cases too much for an ordinary infant at nine or ten months. Always use the bottle. Drinking is not natural—the milk is swallowed too rapidly; indigestion with flatulence and colic result. Natural food, in appropriate quantities, eaten naturally ensures digestion and thrift. Increase of fat, 'stuffing up,' 'snuffles,' 'cold in the head,' throwing up, lack of appetite, restlessness at night, feverishness, thrashing about or crying in sleep, etc., indicate (1) foul air, (2) overheated rooms, (3) excessive clothing, (4) improper food, or overeating—perhaps all these causes united."

"It is safe to say that in a thousand cases of so-called colds, not ten are due, even indirectly, to exposure to cold; excess in diet being both a predisposing and exciting cause. I have invariably obtained the best results in case of children, however fed, from abstinence for six or more hours, and entire abstinence at night, where there was nose-running, stopping-up of the air-passages, difficult breathing, or any of the troubles mentioned."

GIVE THEM WATER.

"Offer a drink of water occasionally between meals—a teaspoonful or two, for the youngest—and whenever baby is fractious, see if he be not thirsty. *Never* deprive a thirsty babe of water, nor offer milk instead. If the child is disposed to drink ravenously, it indicates severe congestion of the stomach and, perhaps, of the intestines, and a need of omitting the next meal, or of making it a very light one, to avoid serious gastric trouble which might occasion the sacrifice of several meals from loss of appetite during a dangerous illness."

"Frequent small drinks of water, or perhaps of hot and cold alternately, will prove curative in cases where there is severe internal fever. A thirsty child will, if permitted, invariably drink too much at a time, and thereby increase his thirst by increasing the congestion that occasioned it. Hence the advantage of giving small draughts at frequent intervals until he has had, finally, all he wants. If this plan is adopted there need be no fear of diarrhœa in consequence of an excess of water; if any looseness of the bowels should result it will prove curative, and should not be 'checked:' it will cease when the cause of it is washed away. Pure water is the natural cure for summer complaint—'loose bowels.' The true principles of feeding, for old or young, consist in furnishing a properly-balanced diet in such quantity, and at such intervals, as shall maintain the appetite perfect, and yet prevent all indications of hunger or thirst."