

few years ago; Sarah Lavina then lived at Union; she did not live in the same house as Mr. Terry.

Mr. Varian—I have been misled in this matter by counsel.

Mr. Rawlins—I object to such an imputation—

Court—The jury will disregard such remarks.

Witness, continuing, in reply to Mr. Varian—I supposed that Lavina was Mr. Terry's wife; his parents lived in the same house.

Mr. Varian—We submit the case without argument.

Mr. Rawlins—I think, your honor, that we are entitled to an absolute instruction to acquit, owing to the failure of the prosecution to prove the first marriage.

#### LYDIA MIDDLETON TERRY

was recalled by Mr. Varian—I know Lavina Terry.

Mr. Rawlins objected to this witness testifying to the first marriage, as in the Miles' case she was held to be an incompetent witness until the first marriage was proven.

Mr. Varian said that he had produced testimony leading to that fact. If this woman is the first wife she is a competent witness.

Court—That is in prosecutions for bigamy, polygamy, and unlawful cohabitation only.

The Miles decision was referred to, and the court ruled that it was applicable to this case, as only the marriage with Lydia had been proven.

#### HIRAM SMITH,

who is one of the petit jury panel, testified—I know Lavina Terry; became acquainted with her at Union; she lived with Otis L. Terry; the supposition was that the children there were his; it was understood she was his wife; her children were known by the name of Terry; when Lavina moved away, the defendant moved also.

Mr. Varian—I ask the court to charge the jury that the first marriage has been proven by association.

Court—My impression is that the jury before they can convict, must find, beyond a reasonable doubt, that the defendant was married to Lavina; their association tends to prove the marriage; against that is the presumption of the innocence of the defendant.

Mr. Rawlins—I also ask that the jury be instructed that they must be satisfied beyond a reasonable doubt that Lavina was living at the time of the alleged offense.

Mr. Varian, having changed his mind about submitting the case without argument made a speech to the jury, in which he claimed that the guilt of the defendant had been proved.

Mr. Rawlins spoke but a few words, claiming that the first marriage, and that the first wife was living at the time of the alleged offense, were not proved.

The court charged the jury that before the defendant could be convicted the prosecution must show that the defendant was married to Lavina; that in August, 1888, she was still alive; and that he had in-

tercourse with Lydia as stated. These three points must be shown beyond a reasonable doubt. By the habit and repute of marriage with Lavina there is a presumption that they were married. Along with this is the presumption of innocence, and they must be considered together. There is a presumption that Lavina still lives; and there is also a presumption that when he lived with another woman he did so legally, and these must be considered together. If you find he was married to Lavina, you must find whether or not she still lived at the date of this offense. You must be satisfied beyond a reasonable doubt of all three propositions, or you must acquit. Nothing less will do. The burden of establishing the guilt of the defendant is on the part of the prosecution.

The jury retired at 11:40 a.m., and after waiting nearly an hour, court took recess till 2 p.m.

At 3:45 the jury had not been able to agree upon a verdict.

The grand jury came into court this afternoon, and reported having found three indictments under United States laws and six under Territorial statutes. They also reported having ignored the cases against Wm. Paddock, Henry Fisher, Wm. Rooney, A. G. Paddock, Edwin Green, Isaac Sinclair, Aurelius Fitzgerald, J. H. Smith, James Sykes, James E. Malin, Mike Moran, Sanders Sanderson and Joseph Burnett.

Wm. T. Cromar and John Meeks were admitted to be citizens of the United States.

The case of the United States vs. Bedson Eardley was taken up for trial, and the work of securing a jury proceeded with. Mr. Eardley is under indictment for alleged adultery with his plural wife. Mr. Varian prosecuted and Messrs. Rawlins and Moyle were counsel for the defense.

#### POLICE COURT.

Ivins Conk was sent up for 30 days for being a common drunkard.

Thomas Cone, George Fritchell, Henry Miller, John Jones, and Harry Lowring were given 30 days in jail for stealing a ride on the R. G. W.

Alfred Desmond and Owen Height were fined \$5. each for being drunk.

Jack Dillon was found asleep in a piano box at rear of a music store, and was sent up for five days' rest in the city jail.

John Burns, Timothy Geysian and Al. Householder were fined \$10 each for being drunk.

John Davis was sent up for 10 days for trespass.

John Dunn was lodged in jail today, to answer to a charge of drunkenness.

Proceedings before Judge Henderson Sept. 18:

People vs. Elizabeth Pugmire maintaining a public nuisance; dismissed on account of insufficiency of the indictment.

United States vs. Wm. S. Muir; adultery; dismissed on account of a former conviction of unlawful co-

habitation, covering the same period.

United States vs. Wm. Shurtliff; fornication; the defendant failed to appear, and his bonds, \$300, were ordered forfeited, with leave to set forfeiture aside if he appears during the term.

Magnus Olson was admitted to citizenship.

Warrants were issued for the arrest of the following defendants, who were ordered to appear for arraignment today, but failed to come, owing to not having received notice: Messrs. Mulkey, Glover, Bates, McKinney, Fitzgerald and Faber, prize fighting; Jos. S. Barlow, Lehi Pratt and J. B. Cummock, assault.

In the case of the People vs. S. H. B. Smith, charged with maintaining a nuisance, the jury returned a verdict of not guilty.

Ellwood N. Jenkins is to plead tomorrow to an indictment charging him with fornication.

One indictment under United States laws was reported by the grand jury yesterday. This was in the Jenkins case.

#### CITY COUNCIL.

The City Council met in regular session last evening, Mayor Armstrong presiding.

A request was received from Jno. C. Cutler asking that some definite conclusion be arrived at concerning the contemplated construction of the joint county and city court house. The matter was referred to the committee on public improvements.

A petition was received from Dallas & Hedges asking permission to use a portion of the street and sidewalk in front of the J. G. Brooks property, on the west side of Main Street, between Second and Third South streets, for the purpose of piling building material; also for the privilege of the excavating the entire width of the sidewalk. The vault to be used for the storage of coal. They stated they proposed to build a handsome and three-story stone front building, and agreed to keep in good repair during the construction of the building a strong plank walk over the excavation for the use of the public until the walk was properly vaulted with brick. Permission granted so far as it did not conflict with the city ordinance requiring that no excavation be made to within ten feet from the edge of the sidewalk.

An objection to the granting of the request of J. G. Brooks was filed by C. B. Durst and others doing business in the vicinity, they alleging that their business would be injured by the piling of material asked for. Referred to the marshal.

F. B. Platt was granted leave to pile building material for sixty days on Second East Street, between First and Second South streets.

A petition was presented by Florida Benedict, residing at No. 303 Third East Street, setting forth that a petition had been presented to the City Council last spring asking that water mains be extended between Third and Fourth South streets but