FIRST TRIAL OF LORENZO SNOW.

ABLE PLEAS OF COUNSEL FOR THE DEFENSE.

TOTAL ABSENCE OF PROOF OF GUILT.

THEORY OF THE PROSECUTION DEMOLISHED.

ARGUMENT OF JUDGE HARKNESS.

May it please the Court, Gentlemen of the Jury:

I see by the opening address of counsel that we are somewhat at variance as to what the defendant is charged with, and what the issue of this case really is. I do not dispute that the Edmunds law is valid, but the defendant stands before the court precisely as any other party charged with a criminal offense, and must be convicted by the same measure of evidence.

It is not enough to show that he is a Mormon, but it must be proven that he is guilty of the offense charged in the indictment. The entire charge is cohabitation with more than one woman. The law makes it penal to cohabit with more than one woman as wives. Now, if all that was necessary, as is insisted by the prosecution, was to show that he claimed two women as wives, what is the use of the word "cohabit?" It was admitted by the defendant in the commencement of this trial, that he claims these women as his wives, and if, as counsel for the prosecution would have you infer, this was all that the law required for conviction, further evidence was unnecessary. But I apprehend that somethiug more is required. It must be proven that the person charged in the indictment lived with more than one woman as wives. The question is: has the defendant *lived* with these women during the year 1885? There is no evidence whatever of any association with some of these women during that year.

THE EVIDENCE.

The entire evidence against the defendant is this: It appears he has seven wives living. There is no evidence that he has even seen, Adeline or Phœbe in the year 1885. It is admitted he has lived at the brick house with Minnie. This leaves four, and it must be shown that, besides living with Minnie, he has lived some part of the time with one of these four women. It is shown that he has not eaten or slept in the house of Harriet during the year 1885, and his only association with her has been to call two or three times at her house. One of these calls was to see Frank, her son, on business. Another was at a sociable at the house which he attended with other friends and neighbors, and the witness who testified to this call was there before the defendant came, and after he left, and saw him come and go. If there was a third call, which is left doubtful, it is characterized by what Mrs. Harriet says of any call he may have made; that it was in the day time and merely to inquire about the welfare of herself and family.

It is shown he called at the house of Sarah not more than twice during the year. One of these calls was to see her son Alviras, with whom he is connected in business in the Co-op., and the other was a casual call in the day time, of a few minutes' duration, and to inquire about the family. He called two or three times during the year at the house of Eleanor, in the day time, merely to inquire about the family, only stayed a few minutes, and it does not appear that he even sat down in the house during these visits.

He called at the house of Mary four or five times, and the calls were from half a minute to fifteen minutes each, and Mrs. Mary says he called the same as any other gentleman. This characterizes the calls and conforms to what the witnesses say of his calls on the other wives—that they were merely of a friendly nature and for the same purposes that any gentleman would call on his neighbor. It is positively shown that he has not eaten or slept in either of these four houses, and this is the only evidence from which you are asked to find that he has lived in 1885 with one or more of these four ladies. It clearly appears that he merely visited them at the times and on the occasions named, and lived exclusively at the brick house with Minnie.

"VISITING" AND "LIVING."

There is a vast difference in the meaning of the words "visit" and "living." A mere visit cannot be unlawful cohabitation. It makes no difference what is the object of a man who lives within the law. Whether it is a fear of the law or a moral respect for it cuts no figure in the case. The law does not contemplate that a man should turn out a woman into the street and refuse to support her. The children by such marriages up to 1883, are legitimatized by this very same law. But it is his moral duty to provide for the support of the women whom he had married previous to the passage of the law in question. The Edmunds law does not require that a man should not *visit* the several women, and the whole question hangs upon what constitutes a living with and what is a visit. The jury should consider what they would ask a man to do under similar circumstances. Whether he should not contribute toward the support of the women and their children.

And if he had been permitted to go to the houses of these women at all, could he have visited them less than he did? So far as the testimony shows, the women he visited most could only have enjoyed his company about ten minutes per month. I think that it should be admitted the defendant did not visit these women any oftener than it was his moral duty to do.

In considering the evidence of Dr. Carrington we find he was mistaken as to a certain date. Now this same witness says he saw defendant out riding with two of the ladies and also saw him at the theatre with Sarah, yet he was mistaken in one important matter, and it is reasonable to suppose he made a mistake as to the other circumstances when both of the ladies declare positively, as they do, that no such occurrences took place.

We also find that Mr. Snow was arrested and brought to the Marshal's office and it is said that he introduced some of these women as his wives to Mr. Peery. Now if a man should be placed in a house and three or four women placed there with him by force, that could not constitute cohabitation. That they were introduced as his wives may be true; but the fact of his being in the Marshal's office with them, does not make out that he was *living* with them. I do not apprehend that Mr. Peery went on the street immediately after that introduction and stated that Mr. Snow was "cohabiting" with those ladies in the Marshal's office. The defendant may have introduced the ladies to all Brigham City as his wives, but the question is, was he *living* with them as wives during the time mentioned in the indictment? One of the witnesses testified that it is generally understood that these ladies are the wives of Mr. Snow but the reputation is that he is *not living* with them. A man is not required to publicly announce that he is not violating the laws. The question is, has the defendant in fact committed the offense charged in the indictment?

ARGUMENT OF F. S. RICHARDS, ESQ.

May it please the Court Gentlemen of the Jury:

In attempting to review the facts in this case, and apply to them the law as I understand it, and as I doubt not you will receive it from the Court, I labor under considerable surprise and even some embarrassment. I am surprised that the prosecution should ask a conviction of the defendant upon the meagre evidence offered in support of the indictment; still more surprised that counsel for the government, in a somewhat lengthy opening argument, presumably made for the express purpose of giving a detailed analysis of the testimony, should have failed to quote or even mention one scintilla of evidence upon which he professes so securely to rely. You will readily recall how frequently he reiterated his unsupported request for a verdict of guilty, and yet how constantly and discretely he avoided any examination or recital of the particular proofs upon which alone his demand could justly be based. I am embarrassed that, after the able and convincing argument of my learned associate, I am required to stand here and combat such paltry evidence of the defendant's violation of law, and such strange demands for conviction as have been advanced by the prosecution. But since the counsel for the government has made such strenuous efforts to portray this case as an extraordinary one, and has taken such pains to ignite the consuming fire of prejudice, my duty to my client, and my high regard for him, compel me to earnestly address you upon the salient points of this important cause.

ELEMENTS OF THE OFFENSE.

The offense of unlawful cohabitation consists of two necessary elements, which are the living together of a man with more than one woman, and the holding out of the women to the world as his wives. Any state of facts lacking either of these essentials cannot be unlawful cohabitation.

Now gentlemen, let us proceed to analyze the admissions which have been made by defendant's counsel and the testimony adduced against him, and ascertain wherein these two requisite facts have been proven. It is true that my client came into this court with the honorable and exalted acknowledgment that the women named in the indictment had been united with him in marriage many years ago, according to the rites of the Church in which he holds a high rank; that they are still his wives; and that it is their belief that this relation will continue through this life and into the world beyond. And in recalling this acknowledgment I declare that we have nothing to retract, nothing that we wish had been left unsaid; for I stand here this day, authorized to reaffirm that Lorenzo Snow is not only the husband of these wives but that their marital relations are eternal; they are indissoluble. The eternity of their marriage covenant was recognized by them in the most sacred manner, more than a generation since; and neither the law nor conscience requires my client to renounce or abjure this sacred belief? Could he do so without forfeiting his manhood and becoming the basest of cowards?

I ask you, however, to remember that a vast difference exists between the divine belief that these wives will be his in eternity, and the illegal dwelling together and holding out in an earthly sense? The first cannot be reached by any human law; the second is a violation of a statute to which every citizen is amenable and to which my client claims to have rendered absolute obedience.

But, even if you fail to recognize this very patent distinction, still these admissions do not and cannot constitute the offense charged against Lorenzo Snow. All the courts, where this question has been tested, from this tribunal to the one of last resort in this nation, have held that something more is necessary to constitute unlawful cohabitation than the mere acknowledgment by the defendant that the women with whom the offense is charged to have been committed are his wives, and that additional requisite is an actual dwelling together of the parties. Under every decision that has been rendered in these very peculiar cases, two essential elements have been required to be proven. One is the living together of the parties; and the other is the holding out of the women as the wives of the defendant, so that the living together shall be as husband and wives. Without proof beyond a reasonable doubt of both of these two essential elements—the living together and the holding out—the prosecution is not entitled to a conviction.

WHAT ARE THE PROOFS.

Gentlemen, what is the proof, in this case, of any living together? Have you been able to reasonably and honestly deduce from the testimony that this defendant, since the first day of January, 1885, and prior to or including the first day of December, 1885, was living in the habit and repute of marriage with more than one woman? You will not forget that all the witnesses who testified on this point coincide in the statement that the defendant did not, during the entire period mentioned in the indictment, once eat or sleep under the same roof with any one of the women except Minnie, at whose residence he had made his exclusive home, not only during the year 1885, but ever since the passage of the Edmunds law.

It does not appear from the evidence that during said year defendant ever saw, or was in the presence of either Adeline or Phœbe—two of the women with whom the cohabitation is charged. He is shown to have made two or three calls at the residence of Harriet. But on at least one of these occasions he visited her house for the definite purpose of doing business with one of his sons. The defendant also visited Sarah once or twice during the period mentioned in the indictment; but one of these calls was for the purpose of consulting with another son, a young man who is employed in a mercantile establishment of which defendant is the responsible head. The calls upon Eleanor did not exceed two or possibly three; they were of the same character as those made upon the other women, of brief duration, occurring in the day time, and for no more intimate purpose than to make humane and proper inquiry after the welfare of herself and family. It has been shown that he visited the house of Mary more frequently than he called at the other residences; and yet how often was he there? Four or five times within a greater number of months, and then only to remain during a space of from one to fifteen minutes. Is this the habit and repute of marriage?

Gentlemen, such a claim is so ridiculous, that under ordinary circumstances I would not regard it as entitled to a moment's consideration. Were it not that the object of the prosecution seems to be to excite your prejudice and becloud your reason, I would consider any effort to oppose such sophistry an insult to the intelligence of this jury. I confess that I feel ashamed to stand here and seriously argue this case as if there was one iota of evidence or argument before you requiring contravention. You are asked by counsel for the Government to attach a fictitious importance to the visits made by this defendant to these ladies, but I warn you against doing so. Once more, let me say to this jury that under all the judicial interpretations of the law and under all the rulings of courts, these occasional calls, these incidental and harmless circumstances, cannot warrant the conviction of this defendant. How can this jury find a man guilty upon such testimony? How can he be deprived of home, liberty, the companionship of friends, and cast into the society of felons upon such flimsy evidence? It cannot be legally nor justly done.

OBJECT OF THE LAW.

Let me call your attention to the very evident object which Congress had in view in passing the Edmunds law. It was to suppress the actual practice of polygamy. But was this result to be accomplished by inhuman means? The prosecutor himself admits that the intention of Congress was that the law should be administered humanely; and in this I fully agree with him. And yet the strange, irreconcilable theory under which he demands a conviction in this case, would make it appear that in the passage of this statute—asserted to be for the advancement of purity and noble life—Congress had an idea so monstrous that civilization and humanity would blush at its barbarism.

What could my client in honor and decency do that he has not already done? I have said that these ladies were his wives before the passage of this law, and by it their children were declared his legitimate offspring. These women had dwelt with him in this desert region—a thousand miles from civilization—when the land was parched and cracked with desolating heat, and when toil was universal and irregality a necessity. Unto them children were born, and it became and still is the duty of the father, as well as an obligation upon the mother, to care for the health, prosperity and moral training of their children.

Since the passage of the Edmunds Act, my client has honorably supported these women and guarded the welfare of their sons and daughters. The mothers have lived in their own homes, occupying property deeded to them by the defendant in their individual names, and he has only made the rare friendly calls described by the witnesses. We must know that Congress intended that he should do nothing less than this. The National Legislature could not and did not mean that the father should be forever absent from his legitimated children, nor that he should cast their mother forth to beg or starve as if she were an impure wretch, unworthy of association with her beloved ones. I challenge a proof that anywhere in the law itself, or in any of the decisions, it is held that a man who had been in the practice of plural marriage previous to the passage of the Edmunds act, is now obliged to make renunciation and public disavowal of his wives and children. There is no such requirement, gentlemen of the jury, I stand here to declare this to you fearless of successful contradiction by counsel for the government. Nor is there any requirement that, having conformed his life to the law, he should in his daily walk say to the public that he is separated from all of his wives except one, and that he is living in strict consonance with the Edmunds law. The law merely says in effect, "From this time forth a man shall live with but one woman as his wife:" and I defy any man living to maintain that it has been proven in this case that the defendant lived with any other woman as his wife than the lady described as Minnie Jensen Snow.

ACKNOWLEDGMENT NOT COHABITATION.

Under these circumstances, so emphatically and uniformly sustained by the testimony, there is no more proof that Lorenzo Snow had lived with and held out the other women as his wives during the period named in the indictment, than there would have been if they had been living in China, and he had said: "I have one wife in Brigham City and six wives in Pekin." I reiterate that this is the exact case; for Lorenzo Snow has not lived with these women in any sense since the date of the Edmunds act, and the prosecutor, in his argument, based his claim for a conviction alone upon the defendant's acknowledgment of them. If every person who has lived in this relation in Utah was able to say what has been proven for Lorenzo Snow, there would be no more need of my friend's adroitness and ingenious eloquence in his office as a public prosecutor. The supposed strongest feature of all this weak, weak case against my client is that he has called at the house of Mary four or five times since the first day of January, 1885, remaining with her and their children, upon each occasion, not more than fifteen minutes—an average perhaps of from six to ten minutes in a month. Is that unlawful cohabitation? Heaven forbid that men's conduct should be weighed in this or any other land by such scales of judgment! Gentlemen, the proof against my client of any violation of this law is so thin that it will not cast a shadow.

LAW OF PRESUMPTION.

You are asked to give defendant's acknowledgment of marriage and his continuous claiming of these women as his wives, the effect of an incontrovertible presumption that he lived with them during the year 1885 in the practice of unlawful cohabitation. We are ready to admit that a bare presumption may be so raised, but we most emphatically deny that it is or can be a conclusive one. Such an inference may be and must be removable by actual facts, otherwise there would be no work for juries, and lawyers would render verdicts according to presumptions. Suppose, for instance, that three men are observed to enter a house together. A moment later a shot is heard, a scream, and then a man with a distorted countenance rushes out, holding a smoking pistol in his hand. The bystanders instantly surge into the building and find a man upon the floor weltering in blood. He is carried to the hospital, where the physicians say that his wound was caused by a bullet, and his companion who was seen with the pistol, is arrested on a charge of attempted murder. A presumption of guilt is naturally raised against the prisoner, yet he protests innocence, and on being taken before the wounded man, the latter says: "This is not the man who shot me, bring me the other." When the third man is found he is identified by his dying comrade as the would-be murderer; whereupon he declares, "Yes, I did shoot him, and our companion, in affright, picked up my pistol and rushed into the street, while I quietly marched away through the back door." Of course the presumption of guilt raised against the man first arrested is entirely obliterated, the facts are before the court, and the facts are paramount. So in my client's case. Whatever may have been the unfavorable inference which the prosecution raised against him because of his admission of marriage, that arbitrary and ill-founded presumption is swallowed up by positive proof. To demonstrate this you have but to take the testimony of two of the most disinterested witnesses, Judge Madsen and Mr. H. E. Bowring. Both gentlemen were so situated that they had ample opportunity for observation; and they unite with other witnesses in declaring that Mr. Snow's sole place of residence was with Minnie, and that it was the public repute that he had not lived with the other women.

The prosecution has made it another presumption of guilt that when found by the marshals this defendant was concealed as if to evade arrest. Under such circumstances as surrounded Lorenzo Snow the law writers do not justify you in attaching that weight to my client's act of hiding, which counsel would have you believe. Gentlemen, you can not justly consider as being against him, the concealment of the defendant, if you think he had any reasonable motive, aside from the absolute consciousness of guilt in his effort at evasion. What was his motive? It is apparent to all. Lorenzo Snow is an aged man with presumably but few remaining years of life; he had been proscribed as belonging to an unpopular class of people, and by rumor had been designated as one whom the prosecution was immoderately anxious to arrest and convict; and he feared—I trust, gentlemen, not prophetically—that a prejudice which ought not to exist in courts of justice, might have sway in his trial. It is absurd to declare that this effort at concealment means an uneasy conscience. Gentlemen, if flight meant guilt, and flaunting one's self in open day meant innocence, wrong-doers and virtuous men would be changing places all the world over, for the books record many instances where brazen guilt remained at the scene of its crime to throw off suspicion, while falsely accused innocence fled in astonished affright. You can not judge my client in this respect, by the rule which might govern a young, robust man, whose friends could fill the jury box, because the motive which impels one man, often finds no echo in the mind of another.

APOSTLESHIP NOT ON TRIAL.

Now we come to a claim of the prosecution which I regret having to mention. Counsel has seemed to endeavor to lead you to the idea that in this case you must be especially vigilant, severe and unyielding, because this is an important case and the defendant holds an exalted rank in the "Mormon" Church. But it is not the station, it is the individual who is on trial. It is a grand thing that the laws of this Republic extend equally over the highest and lowest of human life and every man, rich or poor, learned or ignorant, exalted or humble, has thrown around him the same legal and constitutional guards against injustice. My client stands before you to-day, no greater man in the sight of the law than John Smith, the unknown vagrant, no less a man than the dignified millionaire or the political autocrat; each is covered alike by the shield of presumed innocence which effectually protects him until he is proven guilty beyond a reasonable doubt. The laws of these United States are declared to have, not one rule of law and evidence for a favored class and another rule for an unpopular faction; but an equal, indiscriminating regulation which makes every man, in this respect, the equal of his fellow. Therefore this defendant is not upon trial in this court as Lorenzo Snow, "the scholarly apostle," but as Lorenzo Snow, the American citizen.

MAJORITIES NOT ALWAYS RIGHT.

Gentlemen, in similar cases it has been asserted and it may be reiterated by the prosecution to-day, that fifty millions of people have decreed that the practice of polygamy shall be abolished; as if this vaunted assertion should influence your judgment when you have sworn to try one certain defendant according to the law and the evidence presented in his particular case. You are not required to render a verdict in accordance with the opinion of fifty millions of people, but in exact consonance with the law given by the judge of this court and the credible testimony uttered by the witnesses who have related the facts in your hearing. I do not go so far as to say, as has been said by wiser men than I, that majorities are always wrong, but I call your attention to some startling instances in which the final judgment rendered by the future has reversed the decree of an ill-judging majority. Let us look for one moment down the long aisle of the centuries, lighted by the beacons of history, and we see beaming through the darkness the Christian contest in Pagan Rome:

To the imperial city, which ruled the world from her seven hills, had come messengers declaring: "Not your stony Jupiter is God of gods; but this man of Nazareth is the Son of Him who is Omnipotence." And the millions cried; "Nay, it shall not be so. Jove is our supreme god, and the Nazarene ye shall not worship here." Then the followers of Jesus, ever growing as their ranks were decimated, were seized by lictors to be dragged to bloody cages. And when the morrow would dawn, a Roman virgin, untainted by the vice of Christianity, would cry: "Let the sport commence;" and hungry lions, with licking, snarling hyenas at their heels, would be led forth to attack in open amphitheatre the defenseless martyrs. The life-blood of Christians dyed the mighty sands of the Coliseum, because a countless majority had so decreed; but to-day hundreds of millions of the most intelligent people on earth look back and say: "The few score of Christians were right; they were noble martyrs; and their myriad of persecutors were wrong."

Centuries later, Papal Rome, which ruled Europe from behind every