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DAVID O. CALDER,
EDITOR AND PUBLISHER.

OUR SUBSCRIBERS in the country can at any time ascertain the date on which their subscription expires by referring to the numbers attached to their name on their paper, namely, 1-6-4 means first day, sixth month, fourth year, or 1st June, 1874, 15-12-4 means 15th December, 1874, &c.

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THE LEE TRIAL.

Judge Boreman's Charge to the Jury.

BEAVER, S.—At half-past 2 o'clock this afternoon Judge Boreman commenced charging the jury in the Lee case. The court room was crowded with spectators, who manifested the most excited and intense interest. Judge Boreman said—

Gentlemen of the Jury: The introduction of testimony for the prosecution and defense being now at an end, the duty does lay upon me, in order to aid you in arriving at a correct conclusion in your verdict, to instruct you upon the law applicable to the case, and to give you such suggestions and advice as the necessities of the case seem to require. What I say upon questions of law is obligatory upon you, but what I state respecting fact is not obligatory upon you. The court is the sole judge of the law of the case, but you are the sole judges of the facts and also of the credibility of witnesses. The Mountain Meadows massacre, which this case has caused for the first time to be investigated, was a crime of appalling magnitude, planned and carried out with demon-like ferocity, unparalleled in modern days or among civilized people, and it is of widespread interest by reason of its enormity and its long concealment. There is no dispute as to the facts of the massacre at the time and place specified; it is charged, however, that this defendant was a participant and leader in this bloody work, and upon this charge he is now upon his trial before you. The prisoner at the bar, John D. Lee, is charged with this crime, with W. H. Dame, Isaac C. Haight, John M. Higbee, George Adair, Jr., Elliott Wilden, Samuel Jukes, Philip K. Smith and W. C. Stewart, but only the defendant Lee is now upon trial, and it is no concern of this jury whether any or all of the other defendants be arrested and tried or not; but it is only reasonable to suppose that the others will be arrested and tried as speedily as it is possible to be done. You have only to do with the innocence or guilt of this defendant. In order to reach the truth in regard to the prisoner's guilt or innocence, it is perhaps the most natural—the massacre itself not being disputed—to inquire, first, as to whether there was any combination of parties in planning and executing this terrible deed, and, if there was such a combination and joint action, then whether the parties, or any of them indicted with the prisoner, were in this combination; if so, then was the defendant a party to such combination? If from the evidence you find there was such a concert of action and co-operation among parties charged, or a number of them, and that the prisoner was jointly acting with them, he is guilty even though it might not appear that he, with his own hands, did any of the killing. If only these were guilty

who did the shooting and killing with their own hands, then in but few cases of this kind could the leaders be reached. The rank and file alone would suffer. It is not necessary to be shown that defendant did, with his own hands, any of the killing, but if the killing was done by those with whom he was co-operating, though his part was not to do any of the killing, he is guilty, and if it has been, in your opinion, shown by evidence that he actually did any of the killing, that fact will be taken into consideration; if, however, you find from the evidence that there was no combination or agreement to joint action, then no act of any of the other parties would be the defendant's, unless it was done by his own direction or consent. In ascertaining whether such combination existed it is not necessary that the evidence should show any express agreement—it is sufficient that the acts, cause and conduct of the parties charged showed that an understanding existed and that they were operating jointly for the accomplishment of some end, and if the evidence, in your judgment, shows others than those charged acted and co-operated with those, then the prisoner would be held responsible for their acts, as they would be for his acts in pursuance of their common purpose. The work of any was the work of all, and if the parties engaged were allotted to different parts in the accomplishment of their joint purpose, some to do one thing, some another, some to stand guard, some to drive wagons, some to kill and some to do other parts of the common work, all are guilty—they all operated to secure one end—the slaughter of a number of human beings, men, women and children. If you believe from the evidence that the prisoner was at the massacre, then the question arises, was he there for an innocent purpose, and why did he go there? And if you believe from the evidence that he participated to any extent in the accomplishment of the common object, it is for you to say from the evidence why he so participated.

It is claimed for the defendant that the Indians were very much incensed at those emigrants. If this be true, and that a great number of Indians were engaged with the whites in the massacre—and there is no doubt that very many Indians did participate—it is no defense to the whites for their participation. There is no evidence that any force was used to compel any white man to join in the murder, nor is it shown that any white man had any just cause for engaging in these murders, and the only pretended reason is that the Indians were greatly incensed at the emigrants; but that is not a valid reason for the whites engaging in the massacre, nor does the evidence show any good ground for the Indians engaging in the massacre, but as to that question you are not called upon to decide. If from the evidence you believe the Indians were co-operating and acting in concert with the whites in the accomplishment of the destruction of the emigrants, it but makes a more vivid picture of the enormity and brutality of the inhuman work.

The charge in this case is murder, but it is not only the killing of a human being that is murder. Besides the two degrees of murder, there is manslaughter and also justifiable or excusable homicide. Murder is the killing of any human being with malice aforethought, either express or implied. Malice is a revengeful act, done intentionally and without good cause or excuse. If, therefore, you believe from the evidence that the killing in this instance was wilful, deliberate and premeditated, that the killing was in pursuance of a common design or purpose, to which common purpose the defendant was a party, he is guilty of murder in the first degree, and you will so find. Malice is an essential ingredient in the killing to constitute the crime of murder, but may be implied from the acts, cause and conduct of the parties. In most cases malice is not susceptible of direct proof, but may be established by inferences, more or less strong, to be drawn from the facts and circum-

stances connected with the killing and which indicate the disposition or state of mind with which the killing was done. If, however, you could find from the evidence that the killing was done with malice aforethought, either expressed or implied, but was not wilful, deliberate and premeditated, it would be murder in the second degree; and if the killing was unlawful, but you find from the evidence that there was malice, the offense is of a higher grade than manslaughter; and if there was malice and the act was wilful, deliberate and premeditated, it cannot be murder in the second degree, but is of a higher grade still, and is murder in the first degree. Then, in that case, it is murder in the first degree or nothing. That is, if it be not murder in the first degree, it can only be justifiable homicide or excusable homicide. To be justifiable homicide, it must have first arisen from unavoidable necessity, without any wilful intention or desire, and without any inadvertence in the party killing, and therefore without blame, as, for example, the execution, according to law, of a criminal who has been lawfully sentenced to be hanged; or, second, it must have been committed for the advancement of public justice; for example, if an officer is assaulted and resisted, and should kill his assailant; there is no evidence which could be classed under either of these heads of justifiable homicide. A homicide can be excused only in two ways—first, when the act is what is called misadventure; that is, where, in doing a lawful act, the party without any intent to hurt, unfortunately kills another; second, when a party acting in self-defense kills another person. There is no evidence that these were killed while their assailants were doing a lawful act, nor is there any evidence that those who did the killing were acting in self-defense, or in defence of their families or property.

If, therefore, as I have stated, you find from the evidence that the killing was done wilfully, deliberately and premeditatedly and with malice aforethought, you will find the defendant guilty; and if you find from the evidence that it was not done wilfully, deliberately and premeditatedly and with malice aforethought, you will acquit the prisoner. The burden of proof of the defendant's guilt rests upon the prosecution, and it is for you to say whether they have made out a case or not. In reaching a conclusion as to the prisoner's guilt or innocence, it is not necessary that it should be shown that all or a great number of persons were killed, but it is sufficient if from the evidence you find that one human being was killed, provided the killing shall have been done by combination; nor is it necessary that the name or names of those killed should be shown; but if any of them were killed in manner and form as charged, it is sufficient.

Before you can find the prisoner guilty you must, from the evidence, believe beyond a reasonable doubt, that the prisoner is guilty, and taking the whole evidence together it must exclude every other hypothesis but the guilt of the prisoner. A reasonable doubt is only such a one as would arise in the minds of reasonable men, such as you are, who are selected because it is supposed and expected that you are reasonable men and compelled to try such a question. Proof beyond the possibility of a doubt is not required, because such proof never can be made. It is not necessary to show to you that it is not possible that the prisoner is innocent to show beyond all possibility of a doubt that he is guilty; but it is required that the prosecution produce such evidence that when you look it over as reasonable men, you do not doubt the prisoner's guilt; that the evidence produces in your minds an abiding conviction to a moral certainty of the guilt of the defendant. Proof beyond a reasonable doubt is something more than the preponderance of evidence; a preponderance of evidence will do to render a verdict in a civil case, but not so in a criminal case. You must be satisfied from the evidence,

beyond any fair, reasonable doubt, of the defendant's guilt; you must have an abiding conviction to a moral certainty of his guilt, or you should acquit him, but absolute certainty of guilt is not necessary—moral certainty is sufficient.

Jurors, as I have before stated, the sole judges of the credibility of witnesses, and it is for you to say upon your oaths what degree of credit is due to the testimony of each witness, and it is for you to say upon your oaths whether you deem the testimony of any witness unworthy of belief. In order the more specifically to give the law to you, I will read the instructions given; first, such instructions as are asked by the prosecution, as I have allowed.

First—To authorize the jury to find the prisoner guilty, his guilt must be proved beyond a reasonable doubt, and proof which convinces and directs the understanding and satisfies the reason and judgment of those who are bound to act conscientiously upon it is proof beyond a reasonable doubt, if it leaves in the mind an abiding conviction to a moral certainty of the truth of the charge. The other instructions we condense as follows.

Second—That mere possible doubt is not a reasonable doubt.

Third—That it is not necessary to prove Lee actually killed any one of the emigrants with his own hand, but if he was present and aided and abetted the killing, it is sufficient.

Fourth—The jury must utterly disregard the ruled out testimony.

Fifth—It is not necessary to prove that a person named John Smith was killed at the massacre in order to convict Lee, if the jury believes there was one or more of the emigrants killed by Lee, or that he aided and abetted in the killing of the emigrants whose names are unknown.

Sixth—One may be a principal in a murder without doing the deed with his own hand; it is enough if he aided and abetted the act; so, if the jury believe, beyond a reasonable doubt, that either Lee or any of the defendants acted jointly and with malice aforethought, then the jury must find a verdict of murder in the first degree. The burden of proving that the killing was wilful rests upon the prosecution, which it must show beyond a reasonable doubt. In determining these facts the jury should work to the fact of the killing in connection with the attending facts as shown by the evidence.

The instructions for the defense were given, which we condense as follows.

First—There must be a union or joint operation of the act and intention, or criminal negligence.

Second—The presumption of innocence prevails, and is to be destroyed by such an amount of evidence of guilt as is calculated to produce the opposite belief.

Third—The circumstance must exclude to a moral certainty every hypothesis but that of guilt.

Fourth—Defining at length what is a reasonable doubt.

Fifth—The establishment of a *prima facie* case merely does not take away the presumption of innocence.

Sixth—The charge of combination of the defendant with other persons to commit the crime is a question of fact to be found by the jury. If the jury believe there was no such combination, and that the defendant took no part and did not kill any person as charged, the jury must acquit.

Seventh—The proof must show the defendant is guilty of the particular crime charged.

Eighth—The defendant is not responsible for the acts of other persons done without his consent.

Ninth—Defendant is not to be affected by the declarations of others made in his absence, unless the jury believe there was an agreement or confederation and that the declarations were made to further the same.

Tenth—Lee cannot be convicted if the jury find that he did not kill one or more emigrants, or did not abet their killing, unless they believe that he committed acts to make him accessory.

Eleventh—To convict it must be

at or before the killing, consented to or advised the killing.

Twelfth—It was not unlawful for defendants to go to the Meadows while the emigrants were camped there, and further, if they went there to persuade the Indians to desist or to bury the dead and for no other object, such going was not only innocent, but laudable and humane.

Thirteenth—If the persons of influence caused the men to go to Mountain Meadows, ostensibly for a good purpose, and not for a bad purpose, the act of going there and being present and not taking any part nor aiding or abetting is not shown that Lee by acts or words, evidence against defendants or any other intention than to accomplish such ostensible purpose, unless they had notice of the real object. In the absence of such proof of notice, the law presumes no guilty knowledge or intention.

The attorneys for the people and also the defense will now address you, as is their right, aiding you to reach a correct conclusion in the case. Now, gentlemen, the duties which devolve upon you are very responsible, but you should act the part of independent jurors, disregarding any and all outside influence, looking to the evidence adduced, the law as given by the court and your own oaths as your guides. Be careful to do right. Your duty is not only to the prisoner at the bar, but also to the people and your own consciences. Your action will be looked to with great interest, far and near, and it behooves you to act candidly, carefully and conscientiously.

At the close of the judge's charge, District Attorney Carey opened the argument, briefly reviewing the testimony. Sutherland followed with a diffuse speech, mainly devoted to breaking down the testimony of Klingens Smith. The court adjourned at 5 p. m., leaving Sutherland's argument unfinished.

THE TWENTY-FOURTH IN THE COUNTRY.

Richfield, Mo., July 25, 1875.

Editor Deseret News:

For the 24th a very commodious bowery was erected with convenient stand, the whole well seated throughout.

Present on the stand was President Joseph A. Young, Hon. Albert K. Thurber, Bp. Wm. H. Seegmiller, Committee of Arrangements, members of the High Council and others.

A procession, in charge of Major Foutz, marshal of the day, was well conducted, which consisted of the authorities of the stake, Fathers and Mothers, Young Men and Maidens, Sunday and Day School children, led by Superintendent Hans P. Miller, assisted by Wm. Hudson, the efficient teacher of the day school in the U. O., headed by cavalry and band, followed up by an emigrant train, illustrative of the entrance of the pioneers in 1847 and succeeding primitive modes of travel to these valleys, producing a dramatic effect, to the very great amusement of all.

A very instructive oration was delivered by Mr. Thurber, and another of telling effect by Bishop Seegmiller, interspersed with songs, music by the band, and other kinds of entertainment; wound up with closing remarks by Hon. Joseph A. Young, appropriately rendered; all of which conspired to the comfort and happiness of the Saints in Richfield.

The children swarmed to and in the dance from 2 to 7 p. m., and from 8 p. m. to 12.15 a. m., a dance was well attended by adults.

A vote of thanks was passed the committee, and the proceedings closed with prayer.

Geo. T. Wilson, Wm. Morrison, Wm. G. Baker, Committee of Arrangements.

Wm. MORRISON, Reporter.

The Quebec Chronicle pronounces the Indian ring "the worst of all American rings." The Indian affairs of the Dominion are managed without scandal.