

The defendant requests certain instructions to you, which requests are as follows:

The court instructs you that, before the defendant can be lawfully convicted, every material allegation must be proven beyond reasonable doubt by competent and legal evidence. The law presumes the innocence of the defendant till he be proven guilty beyond reasonable doubt. The presumption of innocence attaches to him throughout the trial. It is not for the defendant to disprove, but for the prosecution to prove his guilt beyond reasonable doubt.

If from the evidence the jury conclude that all the circumstances of the case can be accounted for on any rational theory consistent with the innocence of the defendant and under the evidence, then they should acquit him.

The court instructs the jury that, unlawful cohabitation is living by a man in the semblance of marriage with more than one woman. If the prosecution have failed to prove that the defendant did, between the 1st day of January, 1889, and the day of the finding of this indictment, live with the women in the indictment mentioned, as his wives, or in the semblance of marriage, then the defendant must be acquitted.

These, gentlemen of the jury, are allowed, with the qualifications hereafter to be given, all I have read to you are allowed. But I shall hereafter give some qualifications on that charge; also I am requested by defendant to charge that the fact that the several women in the indictment mentioned have had children at a period prior to the finding of this indictment, which said children claim the defendant as their father, does not of itself prove the defendant guilty of the offence charged herein.

The word "of itself" is the word of the Court.

I give you the charge as modified by those two words.

The fact that the several women in the indictment mentioned may have had children at a period prior to the finding of this indictment, which said children claim the defendant as father, does not "of itself" prove the defendant guilty of the offence charged in the indictment.

I am also requested to charge that the defendant cannot be convicted of this or any crime upon the statements not made upon oath in court of any person or persons, even if those persons claim to be members of his own family.

The court charges you so, and also charges you in other words that the evidence must be legal evidence. What evidence you may consider, will hereafter be more fully mentioned. The court further instructs you that the jury must determine the relationship of the defendant to the women Ellen, Jane and Tana Ricks by the statements and declarations of the defendant as detailed in the evidence, but in so doing you may also consider the common understanding and repute in the neighborhood in which the defendant and these persons reside, as to the nature of the relations be-

tween the defendant and these women or either of them.

I am now reading the words of the court. The first part of the instruction which I am asked to give you, the court gives you down to the word "evidence," and it does not give you what in the instruction further follows, and without reading to you what that is, the court supplements the requested instruction and gives it to you as amended, and the modification of this instruction is as follows: "But in so doing you may consider the common understanding and repute in the neighborhood in which the defendant and these persons reside, as to the nature of the relations shown to exist between the defendant and these women or either of them."

I do not say that the common repute in the neighborhood where these parties reside and have resided, and where they still reside would alone be sufficient to convict but that such evidence is competent to be considered by you in connection with other evidence in determining the nature of the relations existing between the defendant and such persons.

In determining the relations, whether, I say, the defendant lived in the semblance of marriage or matrimony, and was so understood in the neighborhood in which he and they resided during this time, in determining this, you may consider the repute, common repute, and common understanding in the community and among the children and neighbors of the defendant. I shall hereafter speak further in consideration of this subject. That is the modification which the court gives, and the instruction as asked for.

The court charges the jury that the indictment herein charges defendant with unlawfully cohabiting with more than one woman, to-wit: That Thomas E. Ricks did unlawfully cohabit with Jane Doe and Ellen Roe, the names of the last two women being unknown, between the first day of January 1889 and the fifteenth day of October 1889; the jury must be satisfied beyond reasonable doubt of his guilt between the said dates. Proof of unlawful cohabitation prior to January first 1889, if the offense is not proved, and beyond reasonable doubt, subsequent to the said date, would not be sufficient proof of unlawful cohabitation prior to January first 1889; if the offense is not proved subsequent to January first 1889, will not warrant a conviction, so far in the request the Court charges you; but in connection with that charge the Court modifies it, and adds to it the following:

But the court further charges you that while you are not to convict for the time outside of the indictment, still if, up to the first of January last, or about that time, the defendant has lived with any two of such persons in the character and semblance and repute of marriage, or as the wives of this defendants, and that they have borne his name, that he has had children by them, and there is no evidence of a change of relations,

prior to the time named in the indictment, and the defendant will continue to support and do for them, then the former relations of the parties to the defendant will be presumed to continue.

If marital relations have been proven to you, beyond a reasonable doubt, as existing during the year 1888 and up to the beginning of 1889, between these women and the defendant, it tends to lay upon the defendant the burden of rebutting the presumption of a continuance of such relations.

It is a rule of law that a man's wife is presumed to reside with her husband. If you should be satisfied from the evidence that the defendant at the time named in the indictment, had a legal wife, you will presume, in the absence of evidence to the contrary, that she resides with the defendant, but whether the legal wife should be found by you to have resided permanently in this Territory or not, or whether she has in fact been here since the first day of January last or not, if from the evidence you shall believe, her absence from her husband has been temporary, in contemplation of law, her residence, for the purpose of this prosecution, is the residence of the husband, and if while sustaining such marital relations to the first wife, the defendant has also lived with and held out to the world the said women named in the indictment, or either of them, as his plural wife or wives, then such living with such women is prohibited by the law, and it is an offense as charged in the indictment. The court further charges you that whether you shall believe beyond reasonable doubt from the evidence, or whether you shall not so believe, that during the said indictment the defendant cohabited with his said legal wife, in this Territory, still, if the defendant did so cohabit with both the said Ellen and Jane, during the said time named in the indictment, then the charge of unlawful cohabitation is made out.

As to what is meant by cohabitation, the court charges you that it is living by persons in the character and repute of matrimony or marriage.

And here, gentlemen of the jury, I will read to you the section under which this proceeding is had: "If any male person in the Territories or any other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished," etc.—I say as to what is meant by cohabitation, or the word "cohabit," the court charges you that it is living by persons in the character and repute of marriage. If the defendant lived in the character and repute of marriage with these women or either of them, or at least with these women, and held them out to the world as his wives, that is, his first wife together with one of the others, or in the absence of so holding his first wife that he held the other two out as his wives, so as to induce the public, by his so recognizing them, to recognize them