den continued sexual intercourse. This was the only construction to be put on the law and make it legal. Copulation was the element of the case, and must be proven to make an offense. Congress did not design to punish a man for the support of his children whom they had legitimized by law. They only designed that more children should not be begotten in polygamy. The relation of husband and wife was not a husband remaining in one end of a house, and a wife in the other, exclusive of intercourse. This was the distinctive feature of the marriage relation. (A number of authorities were cited and read from on this question.)

The charge of His Honor in this Court, in the Clawson case, had been endorsed by the Supreme Court of the United States, and was the law to the country. The Supreme Court had also laid down the same rule, and declared that continuing to live in the marriage state was not an offense, although cohabitation with more than one woman was. The Supreme Court cut a line between living together and cohabitation. There was no ignorance of fact in this case, but the defendant had lived in precisely the state laid out by the highest legal tribunal in the land. Rudger Clawson was indicted on both counts, and the cohabitation was not in openly living with his second wife, for this was done in secret, but it was the intercourse. This was the direct reverse of what the prosecution now claimed to be the offense. In the remarks of the Court, in the Arnold case, the Judge had said, "Polygamy is treating more than one woman as a man's wives according to the forms of marriage, and unlawful cohabitation is treating more than one woman as a man's wives without going through those forms." The object of the question asked the witness was simply to obtain the facts that they might go to the jury.

Mr. Dickson, prosecuting attorney, said in the case cited by Mr. Brown, the word cohabit had been defined in connection with qualifying words in the statute, but in this law it stood alone. The Edmunds act had been thoroughly considered by Congress, and if they had meant to include sexual intercourse they would have so qualified the term used. In taking the decision of the U. S. Supreme Court in the case of the Utah Commission, the point decided applied only to those who had entered the polygamous relation when it was no offense under the law, so far as the marriage ceremony was concerned, and did not relate to the offense of cohabitation. The whole opinion shows that the position taken by the Court was that if a man had not entirely severed the marital relations, through death or divorce, he was still considered a polygamist or bigamist, whether he lived with his wives or not. A man would continue in the status of a bigamist if he only supported and visited, and did not dwell with a plural wife. It was a moral and legal duty for a man to look after the welfare of his children, and his plural wives, and the law did not interfere, but he could not maintain the ostensible relation of husband and wife. The parties must cease to live together: the question of sexual intercourse was no element of the offense. The connection in which the term was used determined the meaning of the word in question, and in this law it meant the living together of man and wife—matrimonial cohabitation. The legal definition of the term was dwelling with, and did not include visiting. The law presumes a continuance of cohabitation, even after voluntary separation, until judicial adjudication. The courts had given one meaning, the abiding together of man and wife without *copulo*—living together in one house, as their home. It was the duty of the court to use it in this the legal sense. Congress was dealing with the marriage question in Utah, and endeavoring to extirpate "Mormon" plural marriages. The children of these marriages alone had been legitimized. It was a matter of history that the "Mormons" did not cohabit together, in the sense as used by the other side, without a form of marriage, and it was alone this form of marriage and the practice under it, and not sexual sins, that Congress was legislating against. "They knew that those sins are not upheld in Utah, but are condemned by the Mormons and deplored by the Gentiles" they recognized the "Mormon" system of marriage as a constant menace against monogamous marriage, and thus legislated against it, and it was the prevention of its continuance that was the primal object of the law The cause and necessity of the act showed its intention and the only objects against which it should be directed; and for this it could be extended to its full purpose. The design and only purpose of the law was to root out and extirpate polygamy. The two systems of marriage could not dwell side by side. If polygamy was allowed to grow, without being placed under the ban of the law and of public opinon, it would in the end supplant the monogamic system, and was a constant threat and menace to and jeopardized the latter, and Congress so viewed it. It was this plural wife system, which was not deemed safe to dwell with the other, that the law was directed against, and not sexual sin. It was the public scandal which threatened to break down the love of the community for monogamic marriage, that was sought to be removed. It was this holding out as wives that gave the force to the evil example, and neighbors could not know that a man who was living with half a dozen wives was not having sexual intercourse, and the effect of this example would be to break down the devotion of all for the monogamic system. It was an offense against public decency, no matter whether the parties had intercourse or not, for a man to live in the same house with women whom he claimed as his wives, and the law would be impotent, if otherwise applied, to suppress the mischief it was directed against.

It was the leaders of the "Mormon" Church who were primarily responsible for the spread of the practice; they were barred from prosecution by the statute of limitation, and yet were preaching, advocating and teaching this offensive principle, and it was these the law was directed against, in their continuance of concubinage, and the intention was to compel these men to put away their wives, and if they continued to maintain and preach the doctrine they must come under the law. If it did not reach the leaders it would be almost impossible to root out the evil, Congress evidently thought it best to remove the temptation of sexual intercourse beyond the reach of these men, and to cause a breaking up of their family relationships.

This concluded the arguments on the question, and Judge Zane announced that he would render a decision at 2 p.m., to-day, to which time the court took recess.

On the reassembling of the court at 2 o'clock this afternoon, Judge Zane gave as his opinion on the question before the court, that the term cohabitation did not necessarily include sexual intercourse, but consisted in the holding of a plural wife out to the world as his wife, and it was not necessary to even live in the same house, and held that the testimony asked for was inadmissable. The objection was sustained.

The decision will be found in full in our columns to-day.

CLARA C. CANNON

was re-called, and the cross-examination continued by Judge Harkness.

Q. Was Amanda Cannon married to defendant prior to your marriage to him?

Objected to by the prosecution and objection sustained.

A number of questions of the same nature were asked, same objection and same ruling to each.

Witness excused.

GEORGE M. CANNON

called and examined by Mr. Dickson: Was son of the defendant and Sarah M. Cannon. Angus M. Cannon, Jr., was son of Amanda. Had heard his father say he was married to Amanda and Sarah M. Cannon.

Objected to by defendant. Objection overruled.

Had heard his father say he married them both at the same time.

ANGUS M. CANNON, JR.,

called and sworn. Examined by Mr. Dickson—Was the the son of defendant and Ann Amanda Cannon. Had lived at 246 w., First South Street, for the three years prior to February 1st, as had his father and mother. His mother had nine children, eight at home. Took his meals at his mother's house. His father took his meals with each wife about every third day. There were four sleeping apartments on the upper floor, two on each side of the hall. Clara C. had occupied the northeast bedroom. His father the southeast. His mother the southwest.

Cross-examined by Judge Harkness—Clara Cannon occupied the northeast room for about six years.

Q. Who occupied it with her?

Objected to by the prosecution, and objection sustained.

His father occupied the same house as Amanda and Clara. Had not been at home continuously Had been away five or six months during the three years.

Q. Do you know where your father, during that time passed his nights.

Objected to, etc.

Prosecution rested.

GEORGE M. CANNON

Recalled for cross-examination by Judge Harkness for defense—Had heard his father say he had married Amanda and Sarah at one time, prior to the passage of any act against polygamy. Was in his 24th year.—Excused.

Mrs. Clara C. Cannon, called for the defense.

Was a member of the Church of Latter-day Saints, and had been for 35 years. A. M. Cannon was a member, and Mrs. Amanda Cannon, ever since she knew them.

Was Amanda married before you were?

Objected to.

The defense wanted to show that subsequent to the passage of the Act, defendant had been separated from the witness, and that witness had occupied the same house as defendant, he being unable to provide a separate house and witness was dependent for sustenance.

Objection by the prosecution sustained.

Defense rested.

Mr. Varian announced that there would be no argument on either side, and that the case would be submitted to the jury on the Judge's charge.

The Court charged the jury that if they believed from the evidence that, beyond a reasonable doubt, defendant occupied the same house, and took his meals or a portion of them with the two women mentioned in the indictment, and that he held them out and treated them as his wives, although he had not slept in the same bed or had sexual intercourse with them, he was guilty under the indictment.

Shortly after 4 o'clock the case was given to the jury and they retired to consider their verdict.

After being out about twenty minutes, the jury returned a verdict of guilty.

The sentence will be pronounced on Saturday, May 9th.

FROM THURSDAY'S DAILY. APR. 30

Commissioned.—Alfales Young and R. S. Smith, of this city, were to-day commissioned notaries public for Salt Lake County, and J. H. Dupais, of Minersville, for Beaver County.

Dismissed.—By request of District Attorney Dickson, the case of the United States vs. John Fowler, polygamy, was dismissed, because the prosecution had found it impossible to bring in the chief witness and alleged plural wife. Mr. Fowler was indicted in 1878.

A Lunatic Running Amuck.—

RICHMOND, Cache County,
April 30, 1885.

Editor Deseret News:

Two children of M. Barnes were attacked last night by an insane man, and beaten almost to death. The lunatic is now in jail. Particulars will be sent by mail. S. H. HOBSON.

Missing.—Joseph Ray, a boy about fourteen years of age, has been missing since Sunday. His mother, who resides in this city, says that she was informed by some boys, that her son had been persuaded to accompany a man claiming to be the owner of some mines, but who appeared more like a tramp. The boy had a bootblack's outfit when he was last seen at home.

Burglars Caught. — For several days past the police officers have been on the look out for the thieves who took twelve pieces of cloth, valued at $300, from Anderson's tailor shop in Ogden. Their vigilance was rewarded last night, when Officers Smith and Thomas arrested two men who gave the names of John Rands and John Keigho, and recovered a portion of the missing goods, which has been identified by the owner. The culprits are now confined in the city jail.

Deputy Registrars.—The following deputy regristration officers were appointed by the Utah Commission yesterday. Seven more counties are still to be heard from:

GARFIELD COUNTY.

Riley G. Clark, Panguitch.
R. C. Pinney, Hillsdale.
Wm. Alvey, Escalante.
Wm. Lewman, Cannonville.
Albert Clayton, Clover Flatt.
J. K. Reed was also appointed for Orangeville, Emery County.

His Masterpiece.—Any person who wishes to see a masterly specimen of the art of portrait painting can be gratified, by a look into one of the show windows of Z. C. M. I. There is no exhibition a counterfeit presentment of the late Hon. William H. Hooper, that is apparently as near perfect as could be. In color, contour and expression it is all that could be desired, and seems so life-like that it brings up before the beholder with great vividness the genial original. Good judges pronounce it one of the best portraits they have ever seen, and that is our position precisely. The material used is pastel, or dry color, and the fine specimen of art is from the skilful hand of Brother J. W. Clawson, who presented it to Z. C. M. I. with his compliments.

Idaho Items.—We learn by communication from Malad that the District Court of Oneida County opened at that place a week ago yesterday. Every juryman called was questioned as to whether he was a "Mormon," and if the reply was in the affirmative he was excused. The court was to adjourn on the 27th, after a five days' session, the costs of which amounted to about $1,200. The Grand Jury found five indictments, but it is not yet known to the public who they are against.

Bishop George Stuart, of Malad, was recently arrested on charges of unlawful cohabitation and bigamy, and required to give security in the sum of $1,500 for his appearance, on the 11th of May, before U. S. Commissioner John Lewis.

The Swedish Paper.—We are requested to announce that a company has been formed for the publication of the Swedish Herald (*Svenska Harolden*) before mentioned, and that a committee consisting of Brothers J. C. Sandberg, E. F. Branting, Charles V. Anderson, C. A. Carlquist, S. M. Lovendahl, F. S. Fernstrom, C. G. Johnson, E. G. Peterson and C. R. Elmen, have been appointed to incorporate, in accordance with law. The capital stock is to be $5,000, divided into shares of $5 each.

The Swedish people who are interested in this matter are invited to subscribe both for stock in the Company and for copies of the paper.

Address all correspondence to "The Swedish Publishing Co., 108 w., South Temple Street.

Homicide at Soda Springs.—Many of our readers will doubtless remember Ephraim T. Williams, son of the well-known Thomas S. Williams, an early merchant and freighter of Utah, who was killed by Indians while on his way from California to this Territory many years ago. And those who have been aware of the dissolute habits into which the young man has falled during recent years will not be surprised to learn that he has come to a violent end. His home for many years past has been at Soda Springs, Idaho, and a private letter from H. Horsley of that place to Brother H. S. Eldredge, dated April 28th, gives the following account of the tragedy:

"E. T. Williams was shot and killed here this morning about 12 o'clock. He had been drinking for a day or two, and went this morning to the saloon, where he and the bar-keeper, a man by the name of Baker, got to quarreling. The bar-keeper either pushed or knocked Williams down, when the boy, Baker's son, who is only 13 years of age, went behind the bar, got a pistol and shot Williams in the right side, killing him instantly."

Incorrect.—We have learned of some instances lately of Scandinavians of our Territory making application to other than the Church agency for emigration rates, and being deceived by the assurance that their friends could travel all the way from Scandinavia to this city with the regular companies of the Saints, regardless of the agency through which the tickets for their emigration are obtained. The experience of last season is perhaps the best refutation of this statement. The emigrants whose tickets were not obtained through the Church agency had to separate from the balance of the company at New York, and were put to great trouble and inconvenience thereby.

Since the foregoing was in type we have learned from Elder L. P. Lund, who had charge of the company of immigrants that arrived yesterday, that he was put to a great deal of trouble by a few of the passengers who were not competent to travel without an interpreter and guide, having tickets secured through a private agency in this city, and who were consequently not entitled to travel over the same road.

Want it Continued.—This morning, in the District Court, Mr. Dickson asked that the case of the United States vs. R. B. Young, for polygamy and unlawful cohabitation, be continued for the term, because the alleged second wife could not be found. He said she had been seen in the city during the past six weeks, but the officers had not been able to serve a subpœna upon her.

F. S. Richards, Esq., objected to the continuance, and said the defendant was ready for trial.

Mr. Dickson offered to make affidavit to his statements, which the Court instructed him to do.

This afternoon Mr. Dickson asked that the case of the United States vs. Agnes McMurrin, for perjury, be continued because of the absence of the same witness, as in the case against R. B. Young, Emma Rawlins.

Mr. Richards objected, and demanded for his clients, a speedy trial.

Judge Bennett argued that the cause for which continuance was asked was insufficient.

Mr. Dickson said they had never secured the desired witness. There was also an important witness in Arkansas, Mr. Killey, who would be here at then ext term of court.

The Court granted the continuance.

TRIAL OF A. M. MUSSER.

THE "MORAL" JURY—BUT DON'T LOOK TOO CLOSELY.

The attendance at court this morning was not so large as on the three previous days, though the court room was fairly filled.

In the case of the United States vs. A. Milton Musser, the defendant was arraigned and entered a plea of not guilty to the charge of unlawful cohabitation.

The following jurors were called:

10 Wm. Groesbeck, 84 Geo. Openshaw, Jr., 65 T. G. M. Smith, 132 Willard Pixton, 196 A. C. Shields, 81 M. S. Simmons, 52 A. W. Carlson, 199 J. M. Richardson, 83 E. R. Clute, 136 C. D. Brinton, 93 Phil Klipple, 111 Peter Clays.

Arthur Brown, of counsel for the defense, stated the charge to the jurors, and examined them for their qualifications.

Wm. Groesbeck and Willard Pixton had heard of the case, but had formed no opinion as to the guilt or innocence of the accused.

A. C. Shields had formed an unqualified opinion.

Peter Clays, of Bingham, was a miner, and had not heard anything about the case.

Phil Klipple had heard of the case, and had read of it in the *Tribune*; did not believe all that paper said; it got off from the truth occasionally. He had formed an opinion that it would require evidence to remove.

E. R. Clute had read the statements in the paper, but their publication did not carry conviction to his mind. Had formed no opinion, and had no bias against the defendant.

M. S. Simmons had not formed an opinion relative to the defendant, nor had C. D. Brinton.

A. W. Carlson had a fixed opinion in the case, and George Openshaw, Jr., had an opinion which was not unqualified.

J. M. Richardson had heard and read of the case, and had read an article in a paper reflecting on the character of the defendant, but had not accepted it as true, nor had he rejected it. He was not in the habit of receiving revelation; had no opinion in the case.

T. G. M. Smith had not formed an opinion. He had heard and read of the case, and had also read the articles defaming Mr. Musser, but could not say he believed them, as the paper in which they were published was not infallible Had no bias. He was a shoemaker and tentmaker, at No. 13 E, Second South Street, was not a member of the Church of Latter-day Saints, and did not believe in polygamy or unlawful cohabitation. His wife's folks might; he had never asked them. They were supposed to be members of the Church. Was not in sympathy with either defense or prosecution.

Q.—Have you ever unlawfully cohabited with more than one woman?

A.—That is too personal.

Q.—How is that?

A.—That is not a proper question.

Q.—You decline to answer?

A.—I decline to answer.

Q.—On the question of personal privilege?

A.—Yes, sir.

In answer to further questions by Mr. Brown, the juror said he believed in the existence of a Supreme Power, whom he called God. He did not take all of the Bible as true; some of it he did not believe. Did not know polygamy was taught and countenanced by the Bible.

Q. Is polygamy spoken of in the Bible? The juror did not answer this question intelligibly, and Mr. Brown remarked: "I do not get you."

Juror—"No, I don't wan't you to get me."

He believed polygamy was spoken of in the Bible.

The defense challenged Mr. Smith on the ground that he was disqualified under the act for the reason that he had refused to state whether or not he had lived in unlawful cohabitation.

The assistant prosecution came to the relief of the juror, and elicited a statement that he had not lived in the *practice* of unlawful cohabitation. He meant by this that he had never practiced polygamy.

Mr. Brown.—Do you mean to say you never cohabited with more than one woman?

A.—That is not the question.

After an explanation by the Court that the question meant living in unlawful cohabitation, the juror said he had never done so.

The prosecution denied the challenge, and objected to the examination as unfair; that it was improper, this sifting and searching into a man's past life. The term "cohabit" should have the definition given it by the Court.

Mr. Brown wanted a ruling as to whether these questions were proper, as the prosecution had asked the same in effect at the late trial.

The juror stated he had had two wives successively, but had not cohabited with more than one woman at a time, and did not believe in the practice.

The Court refused the challenge.

Phil Klipple was challenged by the defense for actual bias.

Mr. Dickson put some questions to the juror and denied the challenge.

The Court asked the juror if it would require considerable evidence to remove his opinion, and on being answered in the affirmative, sustained the challenge.

J. M. Richardson, replying to Mr. Brown: Was not a member of the Church; did not believe in polygamy; had never been a polygamist, and did not believe in unlawful cohabitation.

Q. Have you ever unlawfully cohabited with more than one woman?

A.—Please define the question.

Q.—Have you ever lived in the practice of unlawful cohabitation with more than one woman?

A.—I have not.

Q.—Have you ever had intercourse with more than one woman?

Objected to by the prosecution as improper. Objection sustained by the Court.

By Mr. Brown.—Did not believe in the practice of unlawful cohabitation. Believed in God and the Bible, but not in polygamy. Knew the Bible didn't teach polygamy. The reference to it was only a record of what was done.

Q.—Do you believe Abraham had more than one wife?

The Court interposed here and said it was unnecessary to waste time in asking such questions.

E. R. Clute said he did not believe in the practice of unlawful cohabitation.

Peter Clays did not believe in the practice, and had not lived in it. He had married two wives, one after the other's death.

Question by Mr. Brown.—Have you ever lived or cohabited with any other woman than those two wives?

A.—I decline to answer.

Challenged by defense.

Mr. Dickson.—While you had a wife did you ever practice unlawful cohabitation?

A.—No, sir.

Challenge denied by the prosecution.

Mr. Brown.—While you were married, did you ever have intercourse with any other woman than your wife?

The Court, evidently noting the juror's embarassment, testily informed Mr. Brown that the question was not a proper one.

The juror had never cohabited with more than one woman at a time. He was not in sympathy with the prosecution. (On Monday, in response to a question by Mr. Dickson, this same juror testified that he was in sympathy with the prosecution of these cases, and was anxious for the enforcement of the Edmunds act.)

The challenge was refused by the court, and an exception taken.

The prosecution challenged Messrs. Shields and Carlson, and they were excused.

Mr. Dickson examined the jurors.

(*Continued on page 252.*)