

JUDGE ZANE'S DECISION.

IN WHICH HE DEFINES WHAT CONSTITUTES UNLAWFUL COHABITATION.

The defendant stands indicted for unlawful cohabitation with Amanda Cannon and Clara C. Mason, known in the indictment as Clara C. Cannon. The last named of these women was placed on the witness stand and testified that she was married some ten years ago to the defendant. The other person, Amanda Cannon, was also his wife, or claimed to be. That he was living with them both, or rather in the same house with them both; one living on one side of the hall, the other on the other side. That by one of them he had some eight or nine children, and by the other three, the last of whom is living, and more than five years old. This witness further stated that he took his meals one-third of the time in the house with her, one third of the time with the other wife, and one third of the time with some other woman, who it is not clearly stated, in the same house; and on Sundays he took a meal with each of the three. That they slept up stairs, the witness in a room in one corner of the house, the other wife in another part of the house, and the defendant in the northwest room. This was in substance the evidence. And from cross-examination counsel for defendant asked the question, to which objection was made, as to whether that state of things and that relation with her children and the orphans was continued until February last. The questions immediately relating to this matter (as read by the reporter) are:

Q. Have any of them occupied that bed room with you?

A. Yes; the two little girls and my daughter.

Q. That was the eldest daughter.

A. Yes, sir, and my little daughter. We have two beds, and we have all slept in that room.

The first question read by the reporter—which was the last question in the order of examination—was objected to, as counsel for plaintiff regarded it as intending to show that the defendant did not occupy the same bed-room or bed with witness, and as tending to show the absence of sexual intercourse; and counsel have treated the question as asked for that purpose, and I am disposed in deciding this objection to treat it as asked for that purpose, and pass on it. The counsel for the government takes the position that if matrimonial cohabitation exists it is immaterial whether sexual intercourse is practiced or not. This view of the counsel of the prosecution, as I understand it, is: That if the defendant lived in the same house with these two women a portion of the time, and held them out to the world as his wives, it is immaterial whether they occupy the same bed or not. The counsel for the defendant insists that it should appear and it is proper to show, and essentially should appear in order to make it a crime, that the defendant actually had sexual intercourse with both of these women in order to constitute unlawful cohabitation. The language of the third section of the act of Congress of March 22, 1882, which the defendant is charged with having violated, reads as follows:

"That if any male person in a Territory or other place over which the United States has exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court."

The counsel for the respective parties give to this word "cohabitation" in the connection in which it is used, different meanings, and have cited numerous authorities in support of them. Without having taken the opportunity to examine these cases referred to, further than what I learned of them from the reading, and from what I have seen of some of them before, it is evident that the cases were decided, some of them at least, and a construction was given to the word as it appeared in a different connection from that in which it appears in this connection. It appears, from the different meanings that are given to it, to be somewhat variable in its character and changed in its colors owing to the circumstances and conditions and connections in which it is found. The statutes in which it has been used differ very widely in their language. I have not, however, examined all of them, but in giving the meaning, the interpretation of this word, the analogy of the case in which the word is used and the circumstances under which it is used, with the case that the court had in hand, possibly was not always accurately termed by the court. Of course this method and meaning of analogy is one in which courts and lawyers very often fall into mistakes. By assuming that they have some general facts they assume that the parallel is complete, when in fact it is often not. While it is probable from the authorities referred to that the word when used in the statutes and in connection somewhat similar to this that the word does not necessarily imply sexual intercourse. Still I have not examined the authorities with sufficient care to express with any great degree of confidence as to where the weight is, and I am not disposed to treat the language as of such doubtful interpretation in this section. When the language is

clear, and the meaning is clear and definite, there is no room for construction. The Court must merely read it as it appears, and if the import is doubtful, it is the duty of the Court to construe in the light of the rules which have been established to aid in the construction of statutes. One rule, and it is probably always resorted to, is that the language of the particular provision to be construed should be considered in connection with the entire act in which it is found and incorporated with other acts. And another familiar rule is, and it is often resorted to, to ascertain, where it can be satisfactorily ascertained, the purposes of the law and the evil that it was intended to remedy. The first section of this Act defines polygamy and imposes a punishment much more severe than the punishment imposed upon unlawful cohabitation; and taking the whole act together it would seem from the act itself to be aimed at polygamy; or in other words, the protection of the monogamic marriage. The purpose of this law was not questionable to the National Legislature which enacted it, and it should be familiar to all legislative bodies that attempt to make laws. The language used here seems to be directed against the relationship as it is described in this section when it exists with two or more women. There is no cohabitation to it when the relationship simply exists with one. But to regulate that—the power and the duty of regulating the relationship as it exists between one man and one woman—has been given by Congress to the Territorial Legislature. The relationship here mentioned is cohabitation with more than one woman. Its purpose would seem to be from the language itself—following the analogy to some extent of the first section, which relates to polygamy—that it also must necessarily refer to the marriage relation between two or more women—it would seem that the purpose of this section itself was intended to protect the institution of marriage as it is understood in this country—the marriage of one man with one woman. If it had been aimed at simply adultery and fornication, the probabilities are that it would define adultery and fornication between two individuals as a crime, and would not have confined or limited it to two or more. The first section relates to the form of marriage—marriages according to the forms of law, according to the forms adopted which are sanctioned by law. But it is reasonable to assume that the authors of this act supposed that it might be difficult in all cases, as it unquestionably is, to prove a second or third marriage, and hence they have aimed this third section against marriages in appearance, and attempted to protect this monogamic marriage against any other kind. A man, when he is in society, of course, stands in various relations to other persons—stands in relation to this government, to society, to the various members of it, and in his own family. As he lives there he occupies various relations—the relationship may be that of master and servant, not speaking of it in a servile sense; for that relation has disappeared; and as between the woman and his family his relationships are distinct and well marked—ought to be at least. It may be the relationship of a son to a mother, or rather, better probably to say it may be—because it is not proper to put the highest relations first—for these relationships, according to the way we look at them, rise in importance. The relationship may be that, as I said before, of a man to his housekeeper or hired girl, if you please; may be that of father and daughter, or son and mother, or husband and wife. The relationship here alluded to is not only that which exists between husband and wife—this relationship of husband and wife is not like any other on earth—and the result is that it gives rise to a different class of conduct. Conduct that grows out of this relation, it seems to be different from any other—different from that which grows out of the relation of father and daughter, son and mother. Along it grow the flowers that adorn human nature, and sweeten domestic life and society. It is true, as the courts see sometimes, thorns arise, and it seems in some cases to be pretty much all thorns; but they do not belong to it. It is a peculiar relation, and its well marked conduct that belongs to it, properly, naturally is different from that of any other; and hence when a man lives with a woman as his wife, the conduct that attends that living is different from any other kind of conduct, and it does not stay in the house altogether, it gets out of doors, among the people; and they see it.

I am disposed to think, after the learned and able discussion upon both sides, that this law was intended more particularly to prohibit the marriage between two or more persons, in appearance only. The former is covered by the law with reference to polygamy, but that which is without form, but in appearance, which is shown and proved by conduct—this reaches it. Error, custom, habit, among men, among people, is propagated largely by example, and the Congress of the United States, seeing that the Church had engrafted into its religion polygamy, and that the example of men who were the leaders in the community, who were practicing polygamy, living with two or more women as their wives, as it appeared to the public, they doubtless, desired to remove that example, because the example of a number of men in any community, in high places, if it is wrong example, is dangerous; it spreads like some diseases,

and it extends out into the community. The government itself uses example of punishment to prohibit so that it attempts to use, and the intention was to use the example of punishment of this offense, to remove the example, to refute it, and to destroy its evil effects upon the community. That was doubtless the object and purpose of this section. That being so, the question is, of what does the example consist? An unlawful marriage—all that is seen of it is not seen by the public. A man does not lay upon his bed in the presence of the world, and there is a great deal in this institution of marriage, in the conduct that belongs to it, that occurs in the retreat from the gaze of the world, and nobody sees it but the man and woman themselves. It is hid from the eye of the world, and so far as its effects upon the public are concerned, it only affects society as it affects these particular individuals. But when the example is seen and observed by the public, it affects those who see it, so that the example of this unlawful cohabitation, or, if you please, of an unlawful marriage—where all of the conduct that belongs to marriage ordinarily occurs, that part of it which is seen outside—which the world sees—is the part that affects humanity, and that is the part that doubtless this was aimed at, because there is no mention in the section of adultery, unless it must be inferred from unlawful cohabitation. It is the example that this statute was doubtless intended more particularly to reach.

As has been already intimated, the great purpose of this act was to protect the institution of marriage. The consequences of this construction have been referred to by counsel, in their argument—that the consequences that would follow such a construction as the court has intimated—and should receive great weight. But the conduct at which this law is aimed, according to the construction that court, is disposed to give it, is the cohabitation with more than one woman, and the holding them out to the world as his wives. It is not necessary, in order for a man to even see that a woman has a home and supporter, that he should live in the same house with her, and that he should hold her out as his wife. And it is not necessary, to the education and support of his children, that he should live in the same house with their mother. Under the monogamic system, of course, it is so. It would be better if, under all systems, it could be done, without violation of law, that the children should not only be with the mother, but the father. This law does not attempt to interfere with that. It is not an inhuman law—it is not cruel; it permits a man to do his duty—that is to say, it won't prohibit him from raising his children, though they may be illegitimate; it is his duty to bring them up; it is a duty that he owes to them to see that they are fitted for the responsibility of life—educate them, support them; and it is a duty that he owes to society to see that they are raised properly; that so far as he is capable of, they are made good citizens, useful members of society; and this law, of course, cannot affect anything of that kind. It simply requires every man who has a wife to live with her and her alone; treat nobody else as a wife. That is the institution that has come up out of the infinite past; it has crowded out of civilization almost every other kind of marriage. But in this Territory it seems that it is connected, has been engrafted on to a religion. If it was free from religion, unconnected with it, it would not be difficult to manage it; but when people get an idea that there is an unseen Being who manifests all things, and that His will has been communicated to some Prophet, and that therefore they are obeying His will, it is a difficult thing to manage it. But nevertheless the people of the United States, through their agents, the Congress of the United States, have expressed their will that the monogamic marriage is the institution of this country, and that it is the only institution—that no other shall come in conflict with it—and they believe that it is one of the most important that exists in society. When it is undermined, removed, the social fabric that protects and shelters us all will be tumbling about our heads. They believe that that institution has taken woman by the hand, has brought her up out of ignorance, barbarism, slavery, and placed her upon the glorious plane of equality with man; and they believe that they, hand in hand, on that equal plane, will ascend to that glorious future, until it shall reach its highest summit, as they don't intend that any sect or any people shall overthrow it, in the name of religion or otherwise. And hence, according to the great principles laid down by the Supreme Court of the United States, they let religion alone, so long as it does not strike at society; but they don't treat it as religion when it breaks out into acts injurious to society; they prohibit it, and it is idle to say that this institution of polygamy is simply a question between individuals. Any practice or custom that attacks society attacks us all, because that is all of us; that which attacks any individual or any class affects society, because the protection of society depends upon the protection of its units, and so the object of this law is to protect society against this institution of polygamy, and it has forbidden the marriage, according to the form of marriage—it has forbidden the marriage in appearance; forbidden the man to hold

two or more women out to the world as his wives. Without referring to the authorities which have been cited so extensively, I am of the opinion that it is not necessary, to show an offense against this law, to show sexual intercourse. It is sufficient to show that a man lives with more than one woman, cohabits with her and holds her out to the world as his wife. That being so, that he did not have sexual intercourse with her, occupy the same bed with either of them, is no defense and is immaterial, so far as the jury is concerned. It might be of importance in fixing the punishment; it might be an important matter of fact for the court to take into consideration.

The objection to the question for the purpose for which it is offered, as I understand, is sustained.

A VOICE FROM GEORGIA.

DIRT TOWN, Ga., April 17th, 1885.

Editor Deseret News:

After a hard day's work, distributing guano, the cotton fertilizer of the South, I have decided to write a short letter for your valuable paper, that the Elders with whom I formed a pleasant acquaintance—52 in number, all of whom I believe have spent at least a short time in my family—may learn that I am still in Georgia, with a fond hope, however, of being numbered among the Saints in Zion, and with a full determination to gather at my earliest opportunity. I feel that the time has arrived for the Latter-day Saints who can possibly lend a helping hand, small or great, to take hold and help to bear the labor of the day. Many people would like to be jubilant over the situation of affairs in Utah now, but seem to fear that the child will not be found, and when the King returns it will be to find their children all slain, and no one to protect them from the righteousness of Heaven's immutable law.

In reading the minutes of the Annual Conference held at Logan, I could not help feeling a little patriotic, especially while reading the epistle of the First Presidency. To think that the best men on earth—the philanthropists, indeed, seeking to introduce God-given principles, to elevate the human family to bring them nearer to God, to raise up a righteous seed unto His holy name, to bring about a race through which it would be pleasant to come to earth—are hunted, persecuted and outraged, is humiliating in the extreme. Still I feel to rejoice with the Saints, and to tell them that notwithstanding I am in Georgia, the same spirit pervades my bosom, encouraging me to obey God rather than man, for certainly the Saints have the only remedy to remove the corrosion and purify the fountain of life, and preserve inviolate the marital relation, so much abused in the so-called civilized world.

It is strange that men claiming ministerial authority, followers of Jesus of Nazareth and reverential to Holy writ, will set their faces against heaven's law, and sanction or advocate the slaying of the Abel-like children, when such efforts have so often proved futile, and against the ancient examples of which they so loudly decry; and were it not that Satan has a multitude who fear the end, I say it would be stranger.

Our section is puzzled over the wondrous manifestations of some of our young ladies who lift ponderous weights, etc., by the touch of one who is in our settlement now, making preparations to exhibit her powers. Doubtless many will pay their quarter to see the sight. Witches, spiritualists, fortune tellers, etc., have crowded houses; but let a man come in the name of the Lord and there is a rustling throughout the valley and a scramble not to see him.

Praying for the welfare of Zion, I am,
Your brother,
JOHN J. BARBOUR.

SEMI-ANNUAL CONFERENCE

OF THE SAINTS LIVING ON THE SANDWICH ISLANDS.

LAIE, Oahu, April 10, 1885.

Editor Deseret News:

On the morning of the 5th the Saints in their various organizations formed in procession, and, headed by the original band, marched to the Mission House, where the Utah Elders joined the well defined line of march which terminated at the meeting house. A few minutes were spent in seating the multitude, and at 10 o'clock, President Enoch Farr announced the opening services, accompanied by the Laie choir and prayer by Elder Geo. Cluff. After confirming some new members and administering the sacrament, Elders Alred, Wilcox, V. R. Miller, Harris, Taylor and Merrill addressed the Saints.

The afternoon meeting was given to the hearing of reports from the Elders in charge of the various islands for the past season.

At the evening meeting, commencing at 6:30, Elder Hyde and some of the native Elders spoke on general Gospel duties.

On Monday morning the time was devoted to reading statistical and financial reports of the Mission. The total number of souls in the Church here was shown to be 3,428—an apparent decrease of 168 during the last term; but owing to the migratory condition of the Saints, it is impossible to keep a correct record. Notwithstanding

ing the report shows a decrease, yet we are increasing in numbers, and it is to be hoped we are improving also. The number of baptisms for the past term was 79; number of children blessed, 59; excommunicated, 18; number of deaths, 46; thus making an increase for the term of 74.

At a conference of the Y. M. M. I. A., on the 3rd, the reports showed the existence of 10 associations, with an average attendance of 178. Also at a conference of the Relief Societies on the 4th, 13 Societies were reported, with 300 members. The total receipts of the same for the past term were \$71.84; disbursements, \$255.70; amount in treasury to date, \$431.82.

At 2 p. m. Elders Brim, Fox and Cluff addressed the congregation, and the good spirit was felt by all who were blessed with the privilege of attending the conference. The singing of the Laie choir, under the direction of Elder Fox, was a feature of excellence and art that a good many of our Utah choirs could well be proud of did they only possess it. Although the Hawaiian mission is not a lucrative one (and in this respect it is perhaps no exception among the missions of the Latter-day Saints), it affords an experience that could not be obtained in any other part of the world. We labor in peace, and not in want of anything particularly, only the assistance of the spirit of God, and during our conference we experienced the same, to the great joy and satisfaction of all present. The Saints, considering their circumstances, are doing well, and the mission is in a good condition, under the direction of Elder Enoch Farr.

The following appointments were made for the coming season: Elders Cluff, Harris and Nalhe to the Islands Maui, Molokai and Lanai; V. R. Miller and Kaiu to Kohala Hawaii; A. A. Brim and Nihipoli to Kona Hawaii; R. B. T. Taylor and A. J. Merrill to Kauai; Isaac Fox, G. A. Wilcox and John R. Tibby on Oahu; Elder Sanford Allred to remain on the plantation, and J. S. Hyde, teacher of English school. The conference adjourned with "aloha" (love) to all the Saints in Zion.

Yours truly,
J. S. HYDE, Clerk.

TOOELE STAKE CONFERENCE.

TOOELE CITY,
April 27th, 1885.

Editor Deseret News:

The Quarterly Conference of the Tooele Stake convened in Tooele City on the 25th and 26th of April, 1885.

Present of the Quorum of the Twelve, Elders A. Carrington, F. M. Lyman and John H. Smith, also President H. S. Gowan, Counselor C. L. Anderson and a good representation of the Bishops, Presidents of quorums and leading men of the Stake.

The Saturday morning meeting was occupied in giving reports of quorums, Indian mission, district schools and the Stake in general, interspersed with suitable remarks by Apostle F. M. Lyman.

The Bishops, in the afternoon, reported the condition of their wards, and Apostle John Henry Smith occupied a portion of the time in imparting valuable instruction that was listened to with marked attention.

In the evening the Y. M. M. I. Associations of the Stake held their quarterly conference, at which reports were given by each association. The officers of the Stake organization for Mutual Improvement were also presented and sustained, and a programme of exercises was executed very satisfactorily; after which Apostle Carrington offered some very good suggestions and words of counsel.

On Sunday morning, at 10 o'clock, the commodious meeting house was filled to its capacity.

The Sabbath schools of the Stake were represented by Supt. Jeffries, and the 43d Quorum of Seventies by Bishop John Shields.

Apostle Lyman presented the general authorities of the Church and the authorities of the Stake, all of whom were unanimously sustained in their several positions.

Apostles F. M. Lyman and John H. Smith then occupied the remaining portion of the morning in an interesting manner, the Spirit of the Lord richly sustaining them in their words of comfort and instruction.

At the afternoon meeting, during the administration of the sacrament, Apostle Lyman treated upon the object and importance of this ordinance and the duties of the quorums of the Priesthood.

Apostle A. Carrington also treated upon a number of principles, advising and counseling the Saints and strangers present in that which tends to salvation.

In all the reports given, it was gratifying to learn of the progress being made among the Latter-day Saints in the works of righteousness and the increased faith made manifest. We truly have had a time of refreshing from the Lord in the outpourings of the Spirit during our conference, in the instructions given and the good music and singing discoursed by the Tooele choir, under the leadership of Professor John Bowen.

H. S. GOWAN, President.
GEO. ATKIN, Clerk.

BED-BUGS, FLIES.

Flies, roaches, ants, bed-bugs, rats, mice, gophers, chipmunks, cleared out by "Rough on Rats." 15c.