THE DESERET NEWS.

TRUTH AND LIBERTY.

No. 22 **Salt Lake City, Wednesday, June 30, 1875.** **Vol. XXIV.**

ESTABLISHED 1850.

THE DESERET NEWS, WEEKLY.

One copy, one year, with postage, $3 65
" six months, " " 1 85
" three " " " 95

THE DESERET NEWS: SEMI-WEEKLY.

One copy, one year, with postage, $4 25
" six months, " " 2 15
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THE DESERET EVENING NEWS.

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DAVID O. CALDER,
EDITOR AND PUBLISHER.

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By Telegraph.

AMERICAN.

NEW YORK, 22.—The Anglo-Brazilian *Times* of May 22 says that the American frigate *Lancaster*, which lost the doctor and several seamen here, took the yellow fever with it to Bahia, and other medical men and an officer died on the passage. By permission of the Minister of Marine, the frigate obtained a Brazilian medical doctor to go with the vessel to the U. S.

Beach, this afternoon, closed his address for the plaintiff, and submitted the cause to the jury by reading an extract from an address of Daniel Webster. The extract was an admonition to jurors to do their whole duty according to their oaths, regardless of consequences.

Abbott then said they had a number of requests to charge, and asked if his learned friend desired to make any. "We have none to make," said Beach. "We will hear your requests now," said Judge Neilson. Abbott then read the requests to charge; they were very voluminous and fifty-five in number, of which a copy was handed to the court. During the reading of the requests Abbott quoted from several authorities, to which Morris objected, on the ground that the counsel was using arguments, but Judge Neilson said the reading of them could do no harm; "Any way," said he, "they all relate to divorce cases, and I am perfectly familiar with them." When Abbott had finished reading, Beach requested the court to appoint some time and place for the hearing of an application to re-open the case, on the ground of newly discovered evidence. To this Judge Neilson stated that he would like to hear what the defense had to say about it; but Evarts replied they had nothing to say in the matter. Judge Neilson said there was no necessity for fixing a time and place to hear the motion, as no objection was raised on the other side, and if the affidavits which the counsel said he had to sustain the application were given him, he would examine them, and give his decision tomorrow before he began his charge. The affidavits were then passed up to his honor, and the court adjourned.

NEW YORK, 23.—Specials from the Black Hills expedition give details confirming Custer's gold reports. The formation is slate, with quartz veins, also coarse granite. The *Tribune's* special says the highest yield is thirty-seven cents per pan. No survey has yet been made to test the extent of the gold fields, and professor Janney is cautious about giving any opinion. Rich gold quartz is also reported; but no prospect or assay has yet been made. No Indians have disturbed the command, though their signs are abundant.

The complaint in the suit brought in the name of the people against Peter B. Sweeney, to recover over seven millions, alleged to have been fraudulently abstracted from the treasury of the county of New York, was yesterday filed in the county clerk's office.

NEW YORK, 24.—The French holders of five million dollars worth of the first mortgage bonds of the New York, Boston and Montreal Railway have filed a bill in equity in the United States Court, praying for a receiver and such other relief as the court can give; the plaintiffs complain that they were induced to purchase said bonds on false representations.

The Brooklyn court room was crowded this morning. Beecher and his wife were among the Plymouth throng. Judge Neilson said that, under the circumstances he was compelled, in the examination of the affidavits, to deny the application for a reopening of the case and, in accordance with Beach's request, the papers were filed with the clerk of the court. Judge Neilson then stated that the jury might retain their seats if they so desired while he delivered the charge. After congratulating the jurors on the approaching close of their labors, and saying that he had habitually refrained from stating his own opinions on the questions of fact, he said—"this hour it is your duty to accept, fully and without a shade of mental reservation, the rules of law stated; but on the other hand I wish to pay a like degree of respect to your great office. You are the sole judges of the weight of the testimony, and of the credibility of the witnesses. A sense of this restrains me from commenting on the proofs at large, and from indicating to you what my own opinions may be on the questions of fact involved. Your recognition of that, as of your relation to the court and to the cause, is due to the oath you have taken to render a true verdict according to the evidence. My recognition of it is due, not only to you, but to these parties, as the moral force of a verdict depends largely on the fact that it is the unbiased judgment of twelve men selected from the body of our citizens and, in the most solemn form known to our laws, consecrated to the service."

He then stated that the counsel had extracted so much testimony from the hundred and eleven witnesses, that if he was to quote it to them they could not reach their deliberations until days hence, weary and exhausted. The pleadings had been stated in their hearing, and they understood that the charge of adultery lay at the bottom of it. The Judge said that some of the testimony relates to the principal question in issue, some of it to the credit due to certain witnesses, and some of it to the mere question of damages.

"The pleadings have been stated in your hearing, and you perceive that the charge of adultery, denied by the answer, lies at the foundation of the case. Upon the issue thus joined the burden of proof rests on the plaintiff; you are also to understand that the evidence should be such as to carry conviction to the minds of just and prudent men. Should it point to actual guilt more directly than to any other reasonable hypothesis, the wrong charged in this complaint might be proved by direct or by circumstantial evidence; but such a charge is not usually proved, or indeed probable, by direct positive evidence. The reason is obvious. In most instances where, under social restraints, an apparently proper intimacy degenerates into licentious acts, the evil intent and life put on the garb of innocence. To such cases, to all cases of doubt and difficulty, the law of evidence, searching and flexible, applies peculiar tests. The presumptions and inference drawn from the facts, and from his conduct according to the dictates of experience, so that finally the question of guilt or innocence may be determined by the jury in the light reflected by surrounding circumstances. A few simple illustrations and references of this character may enable you to understand, sufficiently for the present purpose, the difference between direct, circumstantial and presumptive evidence. If a witness should testify that he had seen the actual commission of the sexual act charged, it would be what is called direct positive evidence; if a witness should testify that the wife and the paramour of the defendant had occupied the same room all night in such a manner as tended to the conclusion that they had slept together; or if he had admitted guilt, that would be circumstantial evidence. If to a letter received by the defendant, explicitly charging him with the adultery he answered simply, saying, 'I am sorry and hope to be forgiven;' or if, on being thus charged in a conversation by one having an interest in the matter, he had made no answer whatever, that, by a natural process of reasoning, would be presumptive evidence."

The Judge said—"Circumstantial evidence must be acted upon very cautiously. The evidence bearing on the principal question, that of adultery, may be taken up in its order. Thus, first, as to the writing referred to; secondly, as to the oral admissions; third, as to the tacit or implied admission; and further as to the general conduct of the defendant. I purpose briefly to call your attention to some of the more important matters falling under each of these heads. Your conclusions should not be drawn from one of these classes of evidence, but from all the testimony on this branch of the case combined. In taking up the writings referred to you will observe the plaintiff's letter of the 26th of of December, 1870, demanding that defendant should leave his pulpit and the city, was the first open act of hostility. That demand was withdrawn at the interview had by the parties at Moulton's house on the evening of December 30, 1870. The plaintiff claims that that was in deference to the wishes of his wife at that time. A paper written by Mrs. Tilton in respect to her relations to the defendant was kept by Moulton, and the copy of it which plaintiff had was torn up after having been read or stated to the defendant, and the original was also torn up afterwards by Mrs. Tilton, with her husband's assent. The proof of the contents of that paper was ruled out, because the writing was a confidential communication by the wife to her husband, and because he was was the party to its destruction. But that ruling was no destruction, as no charge written by Mrs. Tilton could have been evidence against the defendant. That same evening Beecher, with the assent of the husband, called on Mrs. Tilton. He then obtained the paper commonly called the retraction, afterwards surrendered to Moulton. The next paper in order is that of January 1st, 1871. It is in Moulton's writing, except the lines at the bottom and the signature, written by Beecher. A question of fact in dispute as to this paper deserves your attention. Mr. Moulton says that it was dictated, sentence by sentence, and that it was read over; Mr. Beecher denies that dictation and that reading. As to the degree of credit to which these witnesses, thus in conflict, may be relatively entitled you are to remember they speak of what occurred at a time of great excitement. They may not have been equally affected, but while the one was pouring out his thoughts in the agony of self-depreciaton, the other may well have been moved in sympathy. The law has a tender consideration for an infirmity of memory, thus inherited. The witness is not expected to speak of events with certainty as to the subject thus spoken of by those witnesses. You should be prudent in reference to mere probabilities. You are not to indulge in speculations or lightly to consider a matter which has been affirmed because it may not seem reasonable."

The judge said that a reference by him to the other papers would be nearly unnecessary, but from them it appears that the defendant was conscious of having committed some wrong or offence affecting the plaintiff and his family. "With that observation to the imports of the papers I submit them to your consideration, that you may take them in connection with the proofs at large, and determine whether the charge or offence was established."

"Passing to the second branch of evidence, as to the principal charge, I call your attention to the alleged oral admissions, the confession of a party, made deliberately against his own interest as to facts known and understood by him, which, if clearly proved, he regarded them as of a high class of evidence, and deservedly so, because it is contrary to experience for men to admit what hurts them if not true; experience proves rather that men evade or deny the truth when truth hurts them. Testimony to prove an oral admission should be carefully scrutinized." The jury should be satisfied that the witness clearly understood, correctly remembered and fairly repeated what was said; but he cautioned them against relying on such testimony too implicitly; and they should find its counterpoise in the caution against the too ready rejection of it.

The third class of evidence in the arraignment stated, as to tacit or implied admissions, in theory it appeals to a principle peculiar to presumptive evidence. It is assumed that on suitable occasions most men have such regard for their own interests that, on being unjustly charged or maligned, they will speak out in denial or justification; hence it is that silence may often be regarded as a confession. The most obvious difficulty in applying this doctrine arises from the consideration that all men may not act alike in the same circumstances," and that the jury may possibly ascribe to a sense of guilt what really was due to mere surprise, or to some unknown restraint. "The testimony of plaintiff and of Mr. and Mrs. Moulton is as to two forms of admission, the one oral, the other tacit or implied. In considering these portions of that testimony, which relate to the defendant's actual admissions of guilt, you will recall the doctrine, stated under a former head, to the effect that a reasonable doubt as to want of apprehension, or of memory, or of fairness," in that the witness proving such admissions imposes upon the jury the exercise of great caution upon the testimony. "You will enquire whether the witnesses are correct in their statements, or whether the defendant was misunderstood by them. In considering the other portions of their testimony, as to the implied admission, also contradicted by the defendant, you will enquire whether, in the conversations had by him with witnesses, his adultery with plaintiff's wife was spoken of in clear and express terms. If you find that he was thus charged so that, acting on the impulse common to most men, he would have denied it if without foundation. If you will consider the inference to be drawn from, and any apparent excuse for, his silence, the remaining class of evidence as to the principle question in issue relates to the conduct of the defendant. In the first place you will consider his conduct in his intercourse with Mrs. Tilton as proved by Joseph H. Richards and Kate Carey. The circumstances stated by them are claimed to disclose an undue familiarity. Your attention has been called to a series of events, to the reasons which may have lead to certain modes of action, of aciescence, of restraints, to occasional disturbances, apprehensions and resentments, lapsing into seasons of peace and patient endurance. The counsel have given you their views as to the significance of each fact and circumstance, but in and through it all the vital and absorbing question remains, not whether the defendant acted wisely and well, but as he would not have acted if innocent of this peculiar charge. I recur to the letter of the 26th of Dec., delivered by Bowen, in which plaintiff said to defendant—'I demand that, for reasons that you explicitly understand, you immediately cease from your ministry of Plymouth Church, and that you quit the city of Brooklyn as a residence.' The question is as to the manner in which this demand was read. The plaintiff's theory seems to have been that, as the offence charged in this complaint had been perpetrated, the reasons thus generally refered to would be apprehended. On reading the letters the defendant said—'This man is crazy.' It is for you to consider whether that remark was or was not in the nature of a suggestion that there was no sensible reasons for making that demand, and whether, in conversation, or in tone and manner, the defendant betrayed any consciousness of guilt."

The judge referred to the policy of silence and suppression, advocated early in the trouble, as an artificial expedient which failed. Judge Neilson continued at considerable length, taking up the evidence seriatim, and concluded before recess. After the judge had got through reading his charge, he took up the requests to charge, and instructed the jury that the defendant was not obliged to prove himself innocent; that the mere proof of opportunity to commit the act was not proof of the guilt of the party concerned; that the destruction of a paper which was evidence in the case raised the presumption that its production would be unfavorable to the party who destroys it; that none of the defendant's letters declared his guilt, but only contrition and reproach for the trouble he had caused. The fact that the plaintiff cohabited with his wife after learning of her guilt was in favor of the innocence of the defendant the Judge thought was not very applicable to this case, and he would not therefore so charge. The jurors were to take into consideration the fact of the plaintiff's six months' silence after the alleged confession at his wife's request.

When the judge had completed his comments on the requests to charge, he asked if the counsel were content, and Beach replied—"We are." One of the jurors asked if there were any papers relating to the case which could be given to them when in the jury room, and Beach said he had no objection. Evarts stated that there were some papers which were not in evidence, and Judge Neilson replied that the jury could have any papers which they desired relating to the case. Judge Neilson asked a court officer what arrangement had been made for the jurors' dinners, and he was told that all necessary preparations had been made. The court officers were then sworn in to take charge of the jury and to allow no communication with them, except by permit of the court, and at one o'clock the jury retired to their deliberations on the case. After the jury retired the spectators remained in the court room discussing the merits and demerits of the charge, and it was agreed on all hands that it was very favorable to the defendant.

WASHINGTON, 24—Messrs. Frost, Norcross and Smith, the Commissioners appointed by the Secretary of the Treasury to examine the post office building at Chicago, have made a report to Secretary Bristow. The commission condemns the foundation, and the stone used in the building, and recommend that the building be torn down and that the stone be abandoned. Sec'y Bristow will immediately give orders that all the work be stopped, and that steps be taken to preserve the structure in its present condition until the matter can be submitted to Congress.

ST. LOUIS, 23.—In an interview with the *Times'* reporter Senator Ingalls stated, to-day, that he was opposed to Grant as a candidate for the Presidency; he said he could not carry one state in the Union if he should run. Kansas was dead set against him. Bristow, of Kentucky, was the strongest man in the Republican party, and in his opinion he would be the next President. He believes the Republicans can elect their man without difficulty.

SYRACUSE, N. Y., 23.—The Prohibition State Convention completed its organization this forenoon, and nominated the following—Secretary of State, G. D. Dusenberry; Controller, Anson A. Hopkins; Treasurer, Stephen B. Ayres.