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OFFICIAL JUSTIFICATION OF MURDER.

We publish to-day in full the plea of Assistant Prosecuting Attorney C. S. Varian, in the so-called "trial" of William Thompson at Beaver for killing E. M. Dalton at Parowan. It has been stated that it was more in the nature of an appeal for the defense than an argument for the prosecution. The public can now judge fairly whether or not this was correct. In our opinion no other conclusion can be honestly arrived at than that the officer sworn to prosecute undertook instead to defend the culprit. If ever there was a case of darkening counsel by words without knowledge, and of covering up the plain truth with heaps of worthless verbiage it is this effort of C. S. Varian's.

The defendant was charged with the crime of manslaughter under the laws of the Territory of Utah. He was a deputy marshal, and was endeavoring to arrest a man charged with unlawful cohabitation. In doing so he deliberately borrowed a rifle, laid in wait for his man, lingering until the victim had passed the hiding place so that his back was toward the officer, then the latter called him to halt and immediately shot and killed him.

The territorial statute allows an officer to use force and justifies homicide when necessary, in case of resistance and attempted escape of a person charged with felony. If he is not charged with felony the officer is not justified in using such force. In this case the offense charged against the murdered man was not a felony. It never was a felony under any law. That being the case the officer was not justified, and the evidence established deliberate killing, and did not show that the man killed made any resistance or attempt to escape.

Mr. Varian went a long distance out of his way in order to confuse the terms felony and misdemeanor and try to make them identical. What for? to excuse the killing of a person charged with an offense not classed among high crimes, under the pretence that he was fleeing from arrest. But the law is too plain for him and shines through the clouds and dust of his sophistry and circumlocution. Here it is in a few words:

An officer may not use such force as that exercised by Thompson except when necessary to the arrest of a person accused of felony. Dalton was accused of an offence which the law that created it declares a misdemeanor. What can be clearer than that the officer was not authorized by law to shoot him in order to effect his arrest, even if he was trying to escape? There is no law of the United States that authorizes such killing. The territorial statute under which Thompson was prosecuted (in form) distinctly forbids killing under the circumstances disclosed at the trial. What followed? Why, the public prosecutor, instead of presenting the plain and simple and incontrovertible side of the prosecution, made a confusing, sophistical and disingenuous plea for the defense. And he announced a doctrine that is contrary to law and to public policy; that is, that a deputy Marshal may shoot down a citizen charged with a simple misdemeanor, if he thinks it necessary to effect his arrest.

We have no hesitation in pronouncing this a monstrous and diabolical proposition, unsupported by law, murderous in its nature and calculated in its tendency to disturb the public peace and provoke bloodshed and anarchy. Let any candid person read Assistant District Attorney Varian's so-called argument, and compare it with the third section of the Edmunds Act and sections 88 to 97 of the Penal Code, and we will risk the conclusion. Mr. Varian did not go so far as to tell the jury in so many words that they should acquit the manslayer, but the tendency of his argument was to that end, and the charge of Judge Boreman was in the same direction.

It now remains to be seen whether the Government of the United States will sustain the bloodthirsty, unprecedented and lawless doctrine enunciated by one of its representatives in this Territory. And if deputy Marshals are to be turned loose with loaded rifles to shoot down unarmed and peaceable citizens in the streets, in the manner in which E. M. Dalton was assassinated by Wm. Thompson, then it will be time for every man to take what measures will be deemed best and safest, to preserve himself from murder at the instigation of those whose duty it is to preserve peace and protect life and property. This question must be determined definitely and at once.

DEATH OF AN UNJUST LAW.

A special dispatch, which will be found in another part of the paper, informs us that the Governor of Arizona has signed the bill which repeals the anti-"Mormon" test oath law of Arizona. In our sister Territory in the south the unconstitutional abortion in the form of a law has been tried, convicted, sentenced to death and executed. This is the fate to which all such measures destructive of freedom and the fundamental principles upon which the government of our common country was built should be consigned. They bear the same relationship to the commonwealth as individuals who revel in lawlessness and trench upon the rights of the people, and are much more dangerous. The latter are within reach of suppression by laws of a sounder and more preservative character. When a law of itself is destructive of right and intrinsically non-protective, the mischief wrought by it, especially when its power is wielded by corrupt administrators, is incalculable. The action of the Governor and Legislative Assembly of Arizona ought to teach the country a salutary lesson on the so-called "Mormon" question. In that Territory the Saints are largely in the minority. As peaceable, honest, industrious and progressive citizens they are not inferior to any people in the Republic, and are unequaled as developers of a new country. In Arizona, even if there were, as in Utah, a small army of political vultures, there is no incentive to pounce upon the poor "Mormons" on that account. There is nothing to be gained by it. The only incentive that could lead to such an oppressive policy would be to illfauntc line with the general howl against a people whom it has become fashionable to abuse. To the honor of the leading non-"Mormon" minds of Arizona be it said that those who refuse to float with the popular anti-"Mormon" current, against the right and the evidence under their very eyes, largely preponderate. Here in Utah the situation is different; not because the virtues of the "Mormon" people are less than those of their co-religionists in Arizona, but they are in the majority. A crowd of political hacks and their followers clamor for the reversal of the rule in reference to the relative positions of majorities and minorities in all communities in the Republic. Hence the demand for special legislation and pressure brought to bear upon Congress by the foulest misrepresentations. Why should not the country and Congress take note from the action of the Arizona Legislature? The logical inference to be drawn from it is that oppressive and unconstitutional enactments—always out of place—are especially unnecessary here. This fact has still more force when the honesty of "Mormon" local officials is considered.

Arizona is favored with a chief executive who is not a factionist. He evidently is what every man in a similar responsible position ought to be—the Governor of the whole people, seeking the welfare, happiness and prosperity of all who are under his executive supervision. Not only is he anxious that all should stand on an equality under the law, in keeping with the Declaration of Independence, the Constitution and his oath of office, but he rightly apprehends it to be his duty to use the influence and power of his office against the enacting or maintenance of legal measures that are unjustly discriminative against any one class. His course stands out in bold and honorable relief from that of those of Utah's Governors who have sought by subterfuge and political jugglery to induce Congress to tie the majority of the people of this Territory hand and foot that they might, while politically prone, be a prey to unscrupulous place and spoil hunters.

FIFTY CENTS A MONTH FOR LIFE.

O. J. H., the cash collector of the fifty-cent League, is in trepidation lest the seeming success of its two hirelings in Washington should start the idea that the job is done, and thus check the flow of half-dollars into his hands as treasurer. So he is out with three-fourths of a column of League taffy for miners, the burden of which is, the monthly four-bits must be still forthcoming, as there will be lots of work to do, for the object of the League is "the overthrow of Mormonism as it exists and has existed." This, he says will be contested by the "Mormon" leaders "to the bitter end," and "it is probable that this generation will not witness the end" of the labors of the League. This means that half a dollar a month will be required for at least a generation of the foolish people who have been caught in the toils of the League collector of revenue.

O. J. H. makes the thing as easy as possible for the Loyal Leaguers, outside of steady contributions to the fund that he fingers for love of the cause, hatred of "Mormonism" and—a valuable consideration. He says they need not attend meetings; indeed, "meetings are not obligatory" at all. The obligations of the concern, he says, are simply these: "Enrollment and payment of dues." What could be easier? All you have to do is to enroll your name and pay your money. O. J. H. will take all you like to hand in, as treasurer, secretary, promoter, manipulator and grand centre of cash gravity. Your name and half a dollar to begin with, and fifty cents a month for a generation, make you a full-fledged Loyal Leaguer without further effort. Hollister will do the rest. He will save you the trouble of any thinking or other responsibility. Of course a "Mormon" who is suspected of acting on advice from others is a rebel and a slave; but a Leaguer who pays his monthly tax—just that and nothing more—is a "loyal" and "Liberal" freeman.

So, you half-dollar donators, don't imagine for a moment that there is to be any let-up to the fifty cent demand. For Hollister says: "No, the work we have before us is to enforce growth in a given direction, and growth regardless of time!" The growth you see is to be "enforced." That is the proper term to use. Payment of half-dollars is to be enforced by the discharge of workmen in mines and smelters who will not submit to be bled for the benefit of Hollister's League. "Growth in a given direction" is to be "enforced" and the whole League business from beginning to end is a forcing process in the direction of half-dollars. And this is to be "regardless of time."

Therefore rattle in your half-dollars and let Hollister handle them; for, enrollment and payment of dues are the signs of "manhood" and "independence," of loyalty and leaguery, and you can make up your minds that this is a life tax, for the destruction of "Mormonism," which is indestructible, is the ostensible object, and thus you will be pouring your cash stream into a bottomless hole. But then while Hollister is there to manage it who can doubt that "growth will be enforced in a given direction," even if that direction is the revenue that runs in the direction of Hollister?

ANOTHER CONSPICUOUS FAILURE.

The grand jury of the First Judicial District has ignored the indictment against Joel Ricks, of Logan. Quite right. This is another of the numerous spite cases, sent up by the ignoramus Goodwin, which have utterly failed in everything but trouble to the falsely accused and fees to the deputies and the Commissioner.

It will be remembered that Mr. Ricks demanded an examination, contrary to the usual method before the Logan functionary, who favored "waiving," as by that means he could grab his fees and save trouble and an exhibition of his own ignorance of law and logic. When the prosecution had done its little utmost, no evidence having been adduced, the discharge of the defendant was demanded. But Goodwin, with that ludicrously pompous air of his, which he imagined was dignity, informed Mr. Ricks that if he could prove his innocence and would produce a witness that the prosecution wanted but could not find, he would be discharged, otherwise he would stand committed.

That such a stupid, coarse and ridiculous numbskull is continued in the office of U. S. Commissioner in an important county like Cache, argues a terrible scarcity of non-"Mormon" material in the north, gross indifference to common decency on the part of the Territorial Supreme Court, and a deplorable lack of respect for its own authority on the part of the United States.

VARIAN'S VAGARIES.

Those who have taken the pains to read carefully the whole of Mr. Varian's voluminous argument in the Thompson case at Beaver, and have devoted sufficient time to the theme of the orator to form conclusions at all, must, if they read comprehensively and reflected without prejudice, have concluded that there were a great many things conspicuous by their absence and a still greater array diminutive by their presence. As a whole, the speech (to call it an argument is to dignify it without sufficient cause) is strikingly suggestive of the effort of a 'police court' lawyer who has read just enough of law to form superficial conclusions, and, having no comprehension of the philosophy of his matter or its fitness for the occasion, puts in his efforts wherever there is a place big enough to receive them.

The fact that as a prosecuting officer he struck his colors and went over to the opposition, would not amount to anything if the conditions otherwise had been proper. It is a circumstance which occurs but rarely, for the reason that the accused having a representative supposedly the peer of the people's attorney and whose duty it is to make the details and theory of his case his special care, the services of the one who prosecutes officially need not be drawn out in that direction but be confined to his own side of the case. Still, it is not only his right, but his duty to take the interests of the *whole* people into consideration, and remember that hounding a prisoner to an unjust conviction is not what the better classes require at his hands; in short, he is not supposed to be the hero of a legal combat at the expense of suffering innocence, even though his calling be to prosecute. But was there such a state of affairs in the case of the The People vs. Thompson, as justified Mr. Varian in forsaking his position in the proceeding to adopt that of the defense? We answer no, and mean no, because we are as sure we are right as we are certain that the gentleman referred to was wrong—wrong in law, wrong in fact, morally and logically wrong.

After stating that the case hinged upon a proposition of law, as to whether or not an officer armed with a warrant [and a Browning rifle] had a right to take life in the furtherance and completion of his duty; and that he had devoted considerable time and study to the subject, Mr. Varian says that "this question involves, perhaps, the construction of the Federal law as it is exemplified in the statutes as well as the construction of the Territorial law in relation to kindred matters. I prefer in my discussion to consider the matter solely new in the light of the Federal law. As your honor is aware, there is no common law—criminal common law—known to the jurisprudence of the United States. There are no common law offenses. Our ancestors did not bring with them that portion of the body of the common law." This was a very artful commencement; it has the ring of fairness in it when considered *per se*; it is only when given its place in the chain which follows and considered as a link thereof that its fairness withers as you proceed, and finally disappears altogether. He would have it understood that the question involves a construction of the Federal law, likewise of the Territorial law—but later on the reader will have no difficulty in finding the place where he throws the latter overboard altogether, repudiates it as so much surplusage, words and sentences having a meaning but no actual force or effect. This would naturally give rise to the question as to the necessity of discussing it at such great length, or, for that matter, of discussing it at all. One has to go to the pages of current history and resort somewhat to immediate comparison to ascertain exactly what the attorney's meaning was, for, be assured, he *had* a meaning, and it was not the dramatic effect consequent upon a great forensic display altogether, either.

It is pretty well known that Mr. Varian is an adept in the matter of reversing himself when occasion requires such a performance. Those who do not know this can post themselves by looking over his record as an attorney in Salt Lake. We cite one instance: When certain officers of the city government, something over a year ago, took such steps as seemed to them available and effective to abolish the practice of prostitution in our midst, the first two or three of the cases brought against offenders were appealed to the District Court; here Mr. Varian, in his official capacity, again went over to the defense and moved to dismiss every one of the cases, alleging as his excuse that he would not believe the witnesses upon whose testimony the convictions were had in the court below, under oath; but shortly after, desiring to wreak vengeance upon the chief mover in the scheme against the prosecutor's friends, he concocted the scheme of having said mover indicted and prosecuted for conspiracy—to secure which, in both instances, he used the evidence of the *very men* he had previously stated to the Court were not fit to prosecute with! This will do for one instance, and serves to enlighten us to to why he used the Territorial statute for a while and then threw it away like a loathsome thing—because it served his purpose to use it for a time, giving as it does authority to an officer to kill a fugitive when the punishment of the offense charged in the warrant would subject the offender to imprisonment in the penitentiary; and for the further reason that it gives his so-called argument the necessary veneering of all-sided consideration and comprehensiveness. Later on, when the necessary groundwork had been laid with its assistance and it was necessary to crown the work with a national crest, the statute could not figure and perforce had to go. The fact that this inconsistency was glaring must have occurred to himself when he thought it all over; but what of that? As in the instance cited, his purpose had been accomplished and stultification was an altogether inferior matter.

If the law of the United States controls—concerning which there is no dispute—if it is not only superior to but erasive of the local enactment on the same subject — which we deny — the pleader should have planted himself upon it exclusively. Another reason why he did not do this was because to acknowledge its potency first, last and all the time would have been to make most of his vapid rhetoric not even showy for the time being. He says the common law is not recognized where the statutes define offenses, which is true, and that the government statute in relation to all things is supreme. Very well; the government law has (as he himself stated in a moment of thoughtlessness) set aside the common law rule which made polygamy and unlawful cohabitation capital crimes, and reduced them to the rank of mere misdemeanors, for the reason—as given truly by himself again—that we are wiser, better and more merciful now than when the common law edict had full sway. Just so; yet Varian, while praising the civilization which has so ameliorated our condition as to reduce the pains and penalties attached to a violation of certain laws, shows how those who commit such violations have not changed an iota; how the offense itself has not changed—it is *only the name of the thing* that has undergone transformation! In other words, unlawful cohabitation in 1668 was a capital crime under the common law, and punishable with death; under the law of to-day it is a misdemeanor punishable with imprisonment and fine—thanks to our enlarged hearts and expanded minds; but being as bad now as it ever was, and practiced by as depraved men as of yore, we *call* it a misdemeanor, meaning thereby that we have advanced as relates to the title of the offense only, but reach the authors of such sin with the same punishment that was inflicted 200 years ago, thus practically still lingering in the dark ages—when it is necessary that a brutal deputy marshal be upheld in the slaughter of a man only *accused* of the lightest grade of offense known to the highest statutory law!

For a lawyer, it is absurd to discuss the subject of common law in the way Mr. Varian does it for the reason that he gives no satisfaction as to whether or not it is our reliance now or ever has been as a means of determining offenses not sufficiently explained otherwise. What is the common law, concerning which the prosecuting attorney speaks so flippantly? Is it or not a collection of precepts and practices evolved out of the necessary demands of people in different ages from the dawn of Christianity down to the era of printing presses and steam locomotion? If it is not the unwritten law, meaning by its very denomination that it has no origin, no special record and no peculiar application, what else is it? It is applicable where there is no other form of law, and where other forms prevail it passes into its proper sphere of a historical guide, an illuminator by precept only. It is in force where nothing more recent has been created, because, crude though it is, it contains essentially the requisite philosophy for our guidance and government. As soon as there is a statutory enactment by a competent body, upon a particular subject, the common law is no longer operative as relates to that subject; Mr. Varian said as much in substance, but in other places said so much the other way that one expression neutralized the other. Why couldn't he say that a law of Congress had *completely* rubbed out the common law making polygamy and unlawful cohabition felonies, and substituted as its own work all that we can now recognize as the law in relation to the legal measure of those offenses—the provision that they are misdemeanors purely, simply and uncontrovertibly? Was it not because to have done so would have been to fully represent the calling he is supposed to follow, by appearing as the People's advocate and demanding at the hands of the jury simple justice for the people? And, further, because the defendant was in jeopardy only for killing a "Mormon," and that to have been consistent there, would have been to be inconsistent with his inconsiderate, unconditional, unreasonable malignity toward everything and everybody wearing the name of "Mormon" here? It looks that way; he would rather let Thompson go, with twenty mortal murders on his crown if needs be, than jeopardize what he doubtless cherishes so dearly—his vindictiveness toward the people of Utah.

TERRITORIAL SEGREGATION.

A News correspondent states that H. W. Smith, of Idaho, who boasts of being the originator and author of the anti-"Mormon" test oath, has been recently engaged in a wholesale segregating scheme. Having sold out his Eagle Rock constituents when a member of a former Legislature, being a member of the one now in session he has lately been engaged in a plot to dispose of the entire Territory of Idaho by the popular process of segregation. One part was to go to Washington Territory and the other to the State of Nevada. A man who will boast of the authorship of a measure that outrageously trenches upon a vital provision of the Constitution of his country and compels the section of it in which he resides to exist on the by-laws, so to speak, may be reasonably expected to do almost anything in keeping with "ways that are dark." Heretofore the gentleman has been entitled to be designated as "Test Oath" Smith, but perhaps it would be more proper in the light of alleged late events, to signalize him as "Segregator" Smith. The legal and judicial devotees of the dividing process, as applied to "Mormon" victims, will have to look to their laurels. Mr. Smith is giving greater breadth of application to the principle.

THE NATURAL RESULT.

The encouragement given to deputy U. S. marshals, by the liberation of Wm. Thompson, Jr., who assassinated Edward M. Dalton, appears to be bear-