EVENING NEWS

Published Daily, Sundays Excepted, AT FOUR O'CLOCK.

PRINTED AND PUBLISHED BY THE
DESERET NEWS COMPANY.

CHARLES W. PENROSE, EDITOR.

Tuesday, - October 21, 1884.

PEOPLE'S TICKET.

FOR DELEGATE TO CONGRESS,

JOHN T. CAINE.

UNITED STATES vs. RUDGER CLAWSON.

ARGUMENTS FOR THE DEFENSE—SPEECHES OF MESSRS. BENNETT AND RICHARDS—CLOSING REMARKS OF THE DISTRICT ATTORNEY.

Judge Bennett said he stood there representing his client Rudger Clawson, accused before them of having committed, within the county of Salt Lake, the third judicial district of this Territory, an offense against the law. He did not stand there to defend any church, or any theories. He stood there to demand, to insist that that court—as he knew that court would do—and that jury as he believed it would do, should apply only to this case the ordinary rules of law and testimony. If he could believe that that court, which he did not believe, or that jury, which he did not believe, would convict this defendant on anything but legal evidence, he would close his mouth, take his hat and leave this presence. He insisted upon it for the honor of this great nation, for those instincts of manhood and fairness which characterize the courts and juries, that they weigh this evidence and give a verdict, not dictated by prejudice, but actuated only by the light of conscience and the proven fact. Let him admit for the moment that all that his friend had said was true about the Mormon Church, about the rule of priesthood—everything that he has said in that regard, let it all for a moment be taken as true, could this great government of ours, could the enlightened people of this country of ours, afford, to convict this client simply because these things are true? Did they not owe it to the law, did they not owe it to themselves—they did owe it to his client, to convict, if at all, on proof; their consciences must be clear, their intellects must be convinced; if so, and they found his client guilty, he should have no word of fault to find. If, by reason of circumstances alluded to, taken in connection with insufficient laws, it be true, it could be true, or should prove true, that an accused person before the court and jury should go free when he was guilty, where was the fault? Either in the law which was laid before them as a basis upon which a conviction must be had, or in the jury? He only asked them to divest their minds of all feelings of prejudice, if they ever had any, and direct their minds only to the one question under the law of our common country, and proof laid before them, is this defendant guilty of the offense charged? They should presume nothing because he is a member of a certain church. He must be treated as an American citizen charged under the law with an offense. He could not speak to the jury as his friend had done upon popular feeling and popular prejudice. He should disdain to do it in any case, so easy was it to get up a hue and cry of "stop thief" against any person who is a member of an unpopular church. Governments that had attempted to raise such a hue and cry had always been characterized by acts of tyranny. He need not allude to such acts. They had read history. They knew about it. They remembered the massacre of St. Bartholomew, when the reigning house of France, with Catherine de Medici reposing in a window of the Louvre with her boon companions exulted in the murder of those poor Huguenots. They "stamped them out;" but that page of history is a lasting disgrace to France; aye, a disgrace to human nature. Coming down later in history, and they would remember, each of them, the scenes enacted in England to stamp out the rule of the Catholic church, when the most costly edifices, erected by the greatest artists, were demolished, paintings of inestimable value erased and wiped out of the culture of the world. Later on they would remember when the Jew was proscribed, deprived of civil privileges; they would remember the contest that waged year after year, decade after decade, as to whether or not the Jew should represent his people and have a place in the houses of Parliament. From the beginning of history as he had said, until this hour, the efforts of governments to suppress particular religions had been unbroken acts of tyranny. Our government could not afford to do that; his honor on the bench, the gentlemen of the jury, himself now lifting his voice before them, were all interested to see to it that this great government of ours shall not repeat the crimes of other governments. (Applause.) If there were wrongs in this church—and there were in all churches, especially this, as he verily believed—suppress them in a legal way. If to-day the law was not sufficient, make it sufficient to-morrow. But commit no act of tyranny, no act of injustice. This court, this jury would not understand him and he wanted it distinctly understood—as favoring or in any way palliating anything that may be wrong in the Mormon or any other church; and he might say—though it would be unpopular to say it—that the greatest wrongs in all history have been in the churches from the beginning of time to this hour. He sympathized with the eternal principles of justice. According to those principles, and in obedience to them, he asked them to decide fairly upon their consciences, the law as the court should give it to them, and the facts as elicited before them in regard to the guilt or innocence of his client.

What were the jury here to try? Any question in regard to the Mormon Church? No. Any question in regard to witnesses having perjured themselves or not? Yes, so far as that relates to the value of the testimony before the Court, so far as it might relate to any organization. If they were to try a conspiracy case existing between members of the Mormon Church to suppress the facts and defeat the law, then the argument of his friend might be pertinent; otherwise not. Whether he intended it or not he would not say; but the argument to him had the effect—or was intended, as he apprehended, to have the effect to prejudice the minds of the jury against his client irrespective of the facts.

Now, what was the case before them? It was charged that the defendant, having a lawful wife living and undivorced within three years prior to the finding of the indictment, married, actually married, within the Third Judicial District of the Territory, one Lydia Spencer. That was the question of their inquiry. They were to find these things as facts. They were not to guess at them. They were to find them as facts beyond any reasonable doubt. Hence he would proceed to ask, in dissection of the evidence, whether the prosecution had established beyond doubt what they alleged and set forth.

Mr. Bennett then proceeded to take up the points of the evidence. Referring to the evidence that Florence Dinwoodey was his wife, yet he reminded the jury that there was no proof that she was his *first* wife. He might have married half a dozen before he married her; but he merely mentioned this in passing. He also warned the jury against drawing an inference of a plural marriage; for if they could draw such an inference, then the same inference could be drawn in regard to cohabitation. Before doing such a thing he asked them to beware. If the counsel and court are to be charged with cohabitation, unlawful and punishable under the law, because they visit their lady friends who are presumed to be innocent, the law so presumes, there would be no safety for anybody. And he meant this in no improper sense. He spoke of it to distinguish the value of testimony upon which the prosecution asked their verdict. What had they (the prosecution) upon which to make an inference in this case. Nothing except the fact as they claimed, that this man, the defendant, is a member of the Mormon Church, and they rushed from that to the conclusion that he is such a member that they (the jury) might infer anything bad and nothing good—a position too ridiculous, unless they were forced by prejudice to entertain it for a moment. And they must not forget the fact—it was proven before them and not contradicted—that this defendant and Lydia Spencer were full cousins, and that would explain many more things in this case, unless, as he said, they were willing, as he knew they were not, to indulge in inferences such as counsel for the prosecution asked them to draw.

Mr. Bennett next proceeded to allude to and comment upon the testimony given by James E. Caine in reference to some alleged admission defendant had made in April of last year. He (Mr. Bennett) had learned during rather an extensive practice—he was sorry to say too long, for he was now getting old—not to brand people as perjurers without most excellent reason. He did not think it was a fair way to try a case. The reputations of men and women were too sacred to permit anyone—especially a privileged member of the bar—to apply such epithets. He had seen many good men mistaken; many good men and women endeavor to tell the truth, and yet act altogether wrong. But in his experience and practice he had known of very few cases where people committed prjury. It was not half as common as counsel might glibly claim it to be; and he said this in order to follow it by this statement: he did not believe that James E. Caine committed perjury, but he did believe he was mistaken. Among all the crimes with which his client had been charged, and all the offences that this tremendous Church is supposed to be guilty of, he had never heard it claimed, in court or out of court, that these men—the men connected with this Church—were fools. They might be knaves; they might be anything the gentlemen of the prosecution might choose to call them, for aught he knew; he was not there to defend them in that respect; but he had never heard of their being fools. Before this conversation occurred which Caine testified to, the evidence showed that rumor had got it that defendant had taken a second wife. But Caine, for some reason, or other, had gone over to the prosecution. He had become an informer. His zeal had overrun his discretion. He had become part of the prosecution in this case. Having given the facts to the prosecution he had stuck to them, right or wrong. But he (Mr. Bennett) would repeat that an informer and tale-bearer, from the time Judas had imprinted the betrayal kiss upon the Savior of mankind, were characters subject, at all events, to criticism, if not detestation.

Mr. Bennett took up the point as to whether the offence, if there had been one committed, came within the venue of the Third Judicial District Court. He claimed that they had utterly failed to prove anything in this respect. This alleged offense—why was it done, where did he do it, when did he do it? On these points there was an utter blank. Their own witnesses—whom they abused like a pickpocket—the head of the Church, who is supposed to know all about the church affairs—testified that a plural marriage could take place in the Endowment House, and also out of doors, and that was all the proof. They asked them to infer upon no testimony, upon no suggestion at all, that this marriage took place, as they allege, in the Endowment House in Salt Lake. What had they shown as to where this was done, or as to when it was done? They had shown nothing. They did not know that it ever had been done. This was just as essential an element in this offence as the fact that it was done at all.

The prosecution seemed to pooh pooh the testimony that the defense had introduced. On the other hand the prosecution had furnished no evidence upon which a conviction could be had. But the whole proceeding showed the bald, bare-faced fact, that for some reason, unknown to the speaker whatever it might be, these parties had been willing to come in here and endeavor to convict a citizen of an infamous and felonious crime, presuming upon the fact that the gentlemen of the jury, hating the Mormon church, would say he is guilty. He said, yes: if his client was guilty of polygamy find him guilty, and give him the extent of the law. He did not stand there to palliate the guilt of criminals, but to see that they had justice. His country meant justice; his honor on the bench sat for the dispensing of justice; the jury were ministers of justice. Much as they despised olygamy, much as they might condemn robbery and murder, their flag would be stained, their prestige as the greatest nation of the world would be trailed in the dust, if the ministers of our law could violate that law by which they are bound, and counting upon prejudice, counting upon feeling, convict people of infamous crimes. He sympathized not with this church nor any other church that arrogated anything like political power to itself. But he knew, the gentlemen of the jury knew from history how easy it was to prosecute, he might say persecute the greatest errors that ever arose in the world, and how futile it was to undertake to put down such a thing by violating the laws themselves. And he had now the opportunity of saying, and saying where it was pertinent, that the mistake which the friends of Americanism, as it is called, the friends of our government all along had made in this matter was, they had tried to make a whistle out of a pig's tail, and it did not work, it never will work. The jury were there to vindicate, not violate the law. They had heard it said it were better that ninety-nine guilty men go free than that one innocent man should be punished. They could afford to have it in their consciences that insufficient testimony failed to bring conviction. His client must not be convicted for an imaginary offence. When they found him guilty punish him, not before. The responsibility was not his, but theirs. They had a duty to perform. He charged them to see that they performed it well. In his opinion there was no testimony upon which to convict. Yet if they found a verdict upon such testimony it would go out to this whole people, and to the civilized world, that a jury had been found in Utah, because of the prejudice existing against the order of things there, who, with or without testimony, would convict men of infamous crime, and the reproach would not only be upon them, but upon their laws, their government. They could not afford it. He closed by simply calling their attention to what this case is—not what the Mormon Church is, not whether it is rebellious and dictatorial, not to what we despise—not one or all of these things, the question simply was, did this defendant, his client, having a wife living and undivorced, marry another woman within three years prior to the finding of the indictment within the Third Judicial District of Utah? There was no proof of such a charge, neither was there proof of cohabitation. Therefore he had to say that, no matter what suspicion may have been raised, they had their duty to perform, and representing the sovereignty of the law, under the evidence, find his client not guilty.

Mr. Bennett was followed by Mr. F. S. Richards, most of whose remarks we also give in detail:

There are few occurrences in life, said Mr. Richards, that ought to be attended with greater solemnity than such occasions as this, where twelve citizens of the Republic assume the grave responsibility and high prerogative of sitting in judgment upon a fellow being, and men upon whom devolves this sacred duty should exercise every possible precaution against being influenced even in the slightest degree by any suspicion or opinion which they may have entertained before they entered the jury box; because the law which commands obedience, and demands punishment for its violation, not only guarantees to every person accused of crime absolute freedom from any presumption of guilt, but it goes even further than this, it throws around the defendant, as a protecting shield against suspicion and prejudice, the presumption of innocence, which can only be overcome by competent evidence establishing his guilt beyond a reasonable doubt.

No man is required to prove his innocence of crime, the law presumes that for him; in every criminal prosecution it is incumbent upon the government to prove the defendant's guilt, and no amount of supicion, rumor or accusation can suffice to justify a conviction in the absence of legal and competent evidence. The law does not cry out for vengeance because of some supposed wrong, it only demands retribution in case of an actual offense fully proven to have been committed. Were the rule otherwise no man's life or liberty would be secure, but any citizen would be liable to become the victim of passion or misguided zeal, and to be sacrificed upon the altar of suspicion and prejudice. It was for these reasons that you gentlemen were asked, before you were sworn to try this cause, whether you had any prejudice or bias against this defendant, and were required upon your solemn oaths to say that you would find a true verdict according to the law and the evidence as it should come to you in open court during this trial. Bearing these things in mind, let us examine the evidence adduced and see whether, as has been claimed, the prosecution has made out a case against the defendant.

Much has been said about the weight of circumstantial evidence, and it is of the utmost importance that we understand correctly the rule governing it, as this case rests entirely upon this class of evidence, which at times becomes very conclusive.

For instance, a man before retiring at night looks out and sees the ground clear and bare, when he awakens in the morning it is covered with a mantle of snow; although he may not have seen or heard a single flake fall, there is no need of testimony to convince him that it snowed during the night. It is such conclusive circumstantial evidence as this that warrants a conviction in a criminal case, and then only when the evidence is utterly irreconcilable with the innocence of the defendant, and cannot be explained upon any other reasonable hypothesis than that of his guilt.

But is there a particle of evidence in this case that appears to you with this force? Let us look at it and see. In the first place the defendant is charged with having seen his cousin, Lydia Spencer, at the store a number of times. Does any one of you think for a moment that that circumstance is irreconcilable with the innocence of this defendant? That a man's female cousin cannot come and visit him at a store, in a public place, in sight of every person in the store, without that being evidence that she is his wife? Why, it is ridiculous. But the prosecution have shown that he visits her on Third South Street. Yes, and she was doing work for the store, and it appears to you in evidence here that when she returned the work she was directed to him for her pay. Gentlemen, can you say that it is impossible, that it is unreasonable to suppose that the defendant may have gone there to take work to this lady and to bring it back again to the store? Can you say it is unreasonable to suppose that the very parcel which Mr. Young carried from her to the defendant at the store was some of that work? Can you say that such proof as that convinces you beyond a reasonable doubt that she was the wife of the defendant? But say the prosecution: "We do not stop there. He ate dinner with her once." True, this young man, the cousin of Lydia Spencer, had the audacity to eat a dinner with her in the house where she was living; and it also appears in evidence that he was guilty of the heinous offence of drawing two or three buckets of water for her on different occasions; that he so far forgot himself as to take this cousin to the house of Mr. Young, a mutual friend, where they ate dinner and spent the evening? Does it not seem strange to you that men of intelligence will stand before you and seriously and earnestly ask you to convict a man of crime upon such evidence as that? But, say they: "We don't stop there. His photograph was in her bedroom or sittingroom." That settles it. It seemed when this fact developed that if there had been any particle of doubt before about the defendant's guilt of this offence, that it was settled then. His photograph was found in Cousin Lydia's room! What absurdity! If every time a gentleman's photograph was found in the room of a lady other than his wife, it could be regarded as proof of bigamy, many men would be liable to prosecution, and the greater a man's celebrity, the more imminent his danger. After a while Lydia Spencer comes to live at the house of defendant, his wife was then in a condition when she needed help, two months before the birth of her child, here was a relative who was willing to render her that assistance, one who was also doing sewing for the store. Was it evidence of the defendant's guilt for her to wait upon his wife during her confinement? But they say, "Why did she move away from his house?" Another very suspicious circumstance. The wife got well, and the necessity no longer existing for Lydia Spencer to remain there she really did move away; she went to Mrs. Smith's house. The prosecution would have you infer the defendant's guilt because she went to his house and then would have you convict because she moved away again. What logic! Those are the circumstances upon which the prosecution rely, in connection with the fact that Lydia Spencer was a member of the 18th Ward Mutual Improvement Association, while the name of Lillie Clawson and not that of Lydia Spencer was on the roll. There is not a particle of evidence before you, gentlemen of the jury, showing that Lydia Spencer ever answered to the name of Lillie Clawson, or showing that either Lydia Spencer or this defendant presented the name there before that association as Lillie Clawson. There is no evidence before you that Lydia Spencer's name ever was presented—no evidence that either the defendant or Lydia Spencer had anything to do with getting the name, Lillie Clawson, upon the record. You do not know how it came there. Some third person in whom they had no interest, and who was not responsible, may have gone there and had that name put on the record. And yet you are asked to say that such a circumstance as that is irreconcilable with the innocence of the defendant. No man can be convicted on such circumstances; if he can, then there is no longer any protection from prosecutions in this country, even for innocent persons.

Now we come to what the prosecution regard as the important evidence in this case, and certainly if the case has any standing in this court it must rest upon that very slender prop—the alleged admission of the defendant to James E. Caine that Lydia Spencer was his wife. A great deal has been said about the weight to which admissions are entitled, and the gentleman who opened for the prosecution called your attention to the frequency with which men guilty of crime had made confessions, and of the infatuation that there was impelling men to come forward and confess their guilt. Did the gentleman ever hear of a case of infatuation that impelled a man to come forward and make such a confession as this. I have never heard or read of such a case, and I guess the gentleman never did. No, gentlemen, this is not the class of cases in which that infatuation occurs. The prosecution realized when they brought out this so-called confession that it was improbable; that improbability was stamped on the face of it, and branded it all over; and they had to account for it in some way, and so they proposed to account for it on the infatuation theory. It is entirely too transparent; you can see through it. There have been cases in the annals of history, the books are full of them, where men's consciences have been laden with guilt until the load became unbearable, and they were irresistably impelled to confess. That is the kind of confession that the law contemplates and attaches weight and importance to. It is where a man voluntarily comes and, in the language of the law writers, deliberately confesses his guilt. The party making it must have done it, knowingly, realizing what it meant and being willing to abide by the consequences. Gentlemen, was there any such admission as that made by this defendant to James E. Caine, even if all that Mr. Caine said was so; and as to what said, you are the judges. I say if you were to give it all the force to which it would be entitled if it stood before you unimpeached, uncontradicted and unquestioned, you could not say it was such a confession as would justify you in finding the defendant guilty as charged. It was attempted at one time in this case to make it appear that this defendant was a believer in polygamy. That effort utterly failed. As near as they came to it was to show that he was a Mormon. The gentleman says "if then he did believe it, if it were not true that he had married this woman, why didn't he deny it then and there, it was his duty to deny it, and a failure to do so would be evidence of his guilt." Is that so? Let us see.

Suppose Mr. Clawson, the defendant, had been entirely innocent of this offence, conscious of his innocence, knowing that it would be an impossibility for anybody to cause him any trouble, and believing, as has been intimated here by the prosecution, that it would be regarded as a meritorious act, would he have been apt to deny an imputation that would rather reflect honor than discredit upon him? Can you say that a failure to deny it, or even a laughing evasion of the question by replying to your friend's inquiry for such Mr. Caine was supposed to be, "So they say," is irreconcilable with the theory of innocence in this case? No, gentlemen, such admissions as this lack all the elements which should give them weight and force. Mr. Caine went to him and asked him, "Is that your second wife?" Caine says he replied "Yes." The other witnesses say his answer was, "So they say," and as he said it he smiled. Now, which is the more probable statement? It is unreasonable to suppose that he would have said what Caine said he did if he was a guilty man; if entirely innocent it is quite reasonable to suppose that he might have answered just exactly as it is said he did answer. Now, gentlemen looking into your consciences, remembering the oath you have taken, can you say that the evidence on this point is irreconcilable to any other reasonable hypothesis than the guilt of this man? And that is the only thing in all this case that even furnishes an inference of guilt. If that particular thing was not in this case, I do not apprehend the gentlemen would stand here for one moment and ask you to give a verdict of conviction, so you see how slender is the thread upon which this prosecution hangs.

The prosecution admit that the burden of proof in this case is upon them, and in the next breath call your attention to the fact that Lydia Spencer has not been put on the stand to disprove the alleged marriage and would have you infer his guilt from this circumstance. Irresistible logic! While acknowledging that they are bound to prove his guilt beyond a reasonable doubt and having utterly failed to do so, they ask you to convict because he has not proven his innocence. The law does not require that of this defendant, or any other defendant, and it is a very fortunate thing for society at large that the law does not require any such thing.

Gentlemen, what possible motive could the young man Lund have had in testifying in relation to this matter as he did if it was not true? He was neither a Mormon nor related to the Clawson family as the prosecution proposed to show in their effort to break down his testimony. I will not reiterate what Judge Bennett has said, and said so well, about the testimony of Lund, Rogers and Decker. If witnesses come on the stand to commit perjury, they know what they are going to say in all its details. One of the best tests that can be applied to witnesses, one of the greatest proofs of their reliability is the fact that they do not agree in all the minor particulars pertaining to the same transaction. You take half a dozen individuals and let them behold the same occurrence, and you won't find any two of those men who will tell you in exactly the same words what transpired. We have as a striking example of this the testimony of the Evangelists, where there were four witnesses, all having equal opportunities of knowing what transpired during the eventful career of their great master, while as a whole there is a perfect harmony, no two of these men have recorded the same incident in the same language. Some have dwelt at length on one thing, and others have passed that by and treated at greater length upon something else. It is human nature, and by this same rule we test the capacity of witnesses. When men do not agree in all the details of a transaction but do agree upon the main fact to which they testify, the very fact of their difference in those minor details is evidence of their truthfulness and of their knowledge of the main fact to which they testify.

One word, upon the question of jurisdiction. There are three things that the Government have to prove, and the burden is on them from the beginning to the end of this prosecution, it never shifts, and if they fail in any of these things their case falls to the ground. They must prove a first marriage, then a second marriage, within three years before the finding of the indictment, the first wife being living and undivorced, they must also prove the place of the second marriage to be within the jurisdiction of this Court. Having utterly failed in regard to the jurisdiction, for there is not a scintilla of evidence to show where the marriage took place, if indeed there ever was one, the prosecution advance the argument that this is something peculiarly within the knowledge of the defendant, and that he should have put witnesses on the stand to prove that the marriage was not contracted in this district.

Let us see the logic of that suggestion. The prosecution having failed to prove the defendant guilty of any offence committed in this district, it becomes his duty in order to obtain an acquittal on this indictment, to put witnesses on the stand to prove that he is guilty of committing the offence in some other district, or to prove that he has not committed it at all, and yet the burden of proof is admitted to be on the prosecution. Can you, gentlemen, consider such an argument as this for a moment. The mouth of the defendant may remain closed; the law does not require him to say a word or produce a witness either as to place or time, any more than it does in regard to the fact of marriage; and when, standing at this bar the indictment was read to him, and he answered "not guilty," the scales of justice were no longer evenly poised, the presumption of his innocence fell into his side of the scales, and there it remains; the prosecution have to throw into the other side of the scale sufficient competent and legal evidence to overcome that presumption before a conviction can be had in this case, and before the defendant need say aught in his defense. Have they done it? Will you, gentlemen of the jury say that upon the trifling circumstances brought before you here in this case, you can be justified in your consciences in sending this defendant to a felon's cell? No, I will not believe it.

During the opening of this case I could not help thinking that if a stranger were to come into the court room, wholly uninformed as to the issue that was being tried, and was asked the question "what is going on?" he would have been as apt to say that the Mormon Church was on trial for not keeping a marriage record and producing it when the prosecution demanded it, or that the witnesses who have testified were on trial for perjury, as to answer that my client, this defendant, was on trial in this court on a charge of polygamy or bigamy. As Judge Bennett has so ably said, you are not trying the Mormon church, President John Taylor and his associates are not defendants at this bar, nor, gentlemen of the jury, has it yet come to that, that it is a crime for a man to be a Mormon; the issue, and the only issue in this case, which you have to try, is the guilt or innocence of this defendant.

Now, gentlemen of the jury, a few words more and I will close. With the testimony in your minds, with this presumption of innocence in favor of the defendant, with this rule of circumstantial evidence requiring that before you can find the defendant guilty, it must appear that all these circumstances are irreconcilable with any other reasonable conclusion than that he married this woman, Lydia Spencer, in this district, within the last three years, I say, gentlemen, with these things in your mind, can you possibly come to the conclusion that you are justified in rendering a verdict of guilty in this case? I do not believe it. I cannot believe it. And in conclusion, I have but to express the hope that the verdict which you will render in this case will be such that you will have no reason for regret, nor feeling of remorse, when you stand face to face with this defendant at the bar of the universe, in the presence of the Great Judge of all, and when you there behold inscribed in characters of living fire the words of the Great Master, "With what judgment ye judge, ye shall be judged; and with what measure ye mete, it shall be measured to you again."

Mr. Dickson, Prosecuting Attorney, followed Mr Richards. He stated briefly and rapidly that if the jury believed certain charges made by the other side, that the prosecution had dragged into court a countryman whom they hoped to convict by reason of the prejudices of the jury—then he hoped the jury would bring into court a verdict of not guilty, with a rebuke to the prosecution.

There are three things that the prosecution must prove—the marriage to Florence Dinwoodey, the marriage to Lydia Spencer, and that the last marriage took place within the jurisdiction of this court. The first we have undeniably proved; no attempt has been made to dispute it. As to the second we say we have proved that some time after the month of August, 1882, and before the 1st of May, 1883, the defendant took to himself Lydia Spencer as a wife.

This is too serious a matter to be laughed out of court; it is not a fair way to take the individual circumstances seperately, and to thus combat them; it is not upon the circumstances, singly that our case depends; but upon the whole considered together.

Mr. Bennett says we have no evidence to show that the defendant made any visits to Lydia Spencer except during the hours of the day; this is a mistake. We have shown that he was found there as late as 12.30 at night

Mr. Richards.—Excuse me. I don't think that has been shown.

Mr. Dickson—He entered the gate, and that, taken with the other circumstances, makes proof presumptive. Judge Bennett's remark, if relations were such as we claimed between defendant and Lydia Spencer, that there would have been a storm of protests from Florence, comes to my mind here. Do the defence not know that no matter how many protests and complaints the first wife may have made, the law does not permit us to put her on the stand against her husband? But she has been in court every day of this trial, and had the defense desired to do so, *they* could have placed her upon the stand with evidence which would have utterly demolished the prosecution! The silence of the defendant when he was jokingly asked by his sister-in-law as to his second marriage, was an admission of his guilt, even if he had never made the admission he did to Caine. The defense saw that they must break down the testimony of young Caine at all hazards. I do not affirm that the defense themselves concocted the story told by the three witnesses. I will be charitable, and say that they could not have interrogated them before they put them on the stand. But a conspiracy was undoubtedly formed to break down Caine's testimony after he had been on the stand. If Caine had really said, as Lund says he did, "By Jove, I don't know what you did say," don't you think Rudger Clawson would have prompted his counsel that moment to ask Caine the question, "Have you not admitted that you didn't know what he did say?" But, no; that question was not thought of, because Clawson knew no such conversation had ever taken place as that alleged by Lund.

The defense have thought to prejudice our cause by stigmatizing young Caine as a tale-bearer, and asserting that he had brought his stories to the prosecution. But such an assertion, gentlemen, I can state, is wholly unwarranted. It stands uncontradicted that this assertion was made by Clawson. "I couldn't have said what you state, Jim, because ever since I have been indicted I have been most cautious." Cautious of what? Is not that tantamount to an admission? Cautious of stating the truth. We say that he had committed the marriage alleged in the indictment, and that he was guilty as we charge. Judge Bennett asks when this marriage took place? We have defendant admitting it in April, 1883, to Mr. Caine, and we answer between August, 1882, and May, 1883. Now as to where? We claim that it was in the jurisdiction of this court. Mr. Beatie has testified that defendant never left Z. C. M. I. for a holiday between August and December, 1882; Spencer Clawson's books show entries in the handwriting of the defendant every day in January, February and March, 1883, and Mr. Clawson states that the defendant never was absent more than a few hours at a time; does not this show that he did not leave this county to celebrate his marriage?

Gentlemen of the jury, let me trust that no one of your number will be frightened by the assertions that if the defendant were pronounced guilty, the Mormon people would have it to say that he was so found because his jury were Gentiles; if you have any reasonable doubt let him have the advantage of it, but I ask you, do not be frightened out of what is right and just.

At the close of Mr. Dickson's argument the Court adjourned till 10 o'clock this morning.

At ten o'clock this morning Chief Justice Zane, pursuant to his announcement last evening, charged the jury in the Clawson case and they proceeded to the jury room in charge of two sworn officers of the court, bailiffs Hurd and McCurdy. Shortly afterward the Court took recess till twelve o'clock, but the jury still being out, the regular recess soon followed until 2 p. m. At that hour Court reopened, but up to the hour of going to press, no verdict had been returned.

DEATHS.

JONES.—At her residence, near Warm Springs, 19th Ward, at 6.30 p. m., October 20th, 1884, of general debility, in the 58th year of her age, Harriet Bruckshaw Jones, wife of George R. Jones, lime manufacturer.

Funeral services at the 19th Ward meeting house at 2 p. m. Wednesday, October 22nd, Friends of the family invited.

BROCKBANK.—At BigCottonwood, October 21st, of typhoid pneumonia, Jane Park Brockbank, daughter of Isaac and MaryAnn Park Brockbank; born December 12th 1873.

Funeral from 8th Ward meeting house on Thursday the 23rd, at 2 p. m. Friends of the family are respectfully invited.