UNITED STATES vs. RUDGER CLAWSON.

FIRST ARGUMENT FOR THE PROSECUTION—ASSISTANT U. S. ATTORNEY VARIAN ADDRESSES THE JURY.

The arguments in the Clawson case, on trial in the District Court, commenced this morning. Mr. Varian, for the prosecution, arose to address the jury at ten minutes past 10 o'clock:

Once more, he said, after the lapse of many years, the government of the United States was brought face to face with the Mormon Church. He said after many years, for notwithstanding the legislation that had been on the statute book during all these years and notwithstanding the fact that it was believed and had been believed that open violations of the law (directed particularly against the prominent crime in this community) had taken place, that few, very few prosecutions under the law, had been brought into the courts of justice. Perhaps there might be reasons for this which would be apparent to every man who lived in this community; at least, certainly, there might be reasons made apparent by what had transpired in this case, showing the difficulty which surrounded a prosecution of this kind in this community. For years the Church dominant in this community had arrayed itself in one particular matter against the law of the land, claiming the protection of the Constitution, asserting that in it is guaranteed religious liberty and protection in this particular matter. In this way this church had defiantly set its face against not only the legislation of the Federal Congress, but the decisions of the Federal courts, and it (the church) had assumed to be to itself a law higher than the law of the land—forgetting that it had its very existence from this government: that the very land upon which whre built its temples and its tabernacles; that the very fields from which it drew its tithing fund; that the very expenses which enables it to carry on its local government, in great part, at least, had fallen from the munificent hand of the government—it has presumed to arrogate to itself a power that did not belong to it—to take from the people that which belonged to them.

First, in the history of this matter it was claimed in behalf of this people and this church that it was a tenet of their faith to practice plural marriage—that that being so, it was under the protection and should receive the protection of the Constitution of the United States, and upon that issue it went to the country and upon that issue it went to the courts, and upon that issue it fell to the ground. The Federal Supreme Court shattered that theory in the Miles case, which all would recollect went from the court in this district through the Supreme Court of this Territory to the Federal Court in Washington. It was squarely presented, and the decision squarely made, that no such article of faith in any sense could be deemed to be under the protection of the Federal Constitutiion.

Now, recollecting that the defence in this matter, to which he was now alluding, was predicated upon what was said to be the law of the Almighty, it would seem to the heretic, at least, that if obedience was required to the law as given by God, that the same obedience would require a submission to the consequences. If martyrdom was to be invoked, martyrdom must be endured, and it was hardly to be expected that those who practised what was termed and known as a crime against the law of their country, when called upon to answer the consequences, should seek to defeat the administration of the law by acts of concealment, by covering up the acts and facts, by denial as well as evasion, by equivocation and fraud. That was not the history of martyrs in this world; that had not been the history of men who, misguidedly perhaps, believed that they were right in performing acts in defiance of the law of the land; on the other hand history was full of instances where men had fearlessly submitted to the consequences of the law. The spectacle presented in this case was one of an organized community, an organized religious society, teaching from its pulpits, speaking through its press, announcing through its oracles as an article of its religious creed, that not only was it right, but it was the duty of every man who could do so to enter into what was termed plural or celestial marriage. Speaking through these various means, it (this organized religious community) said unto this people and the world, that the Supreme Court of the United States was not the final arbitrator, notwithstanding the fact that under the Constitution to it has to be submitted the final determination of all questions arising under t. Notwithstanding that fact this religious society assumed to itself the right to sit in judgment upon the judgment of the Supreme Court, and to decide for itself what laws were constitutional and what were not constitutional.

In this case the prosecution had called many witnesses, as it might have seemed to some of the jury, without much necessity therefor. But they had a reason for the calling of every witness who was sworn. They threw out subpœnas and brought into court the heads of the church, those prominent in authority, its Elders and its Bishops wherever they could find them, as well as the immediate relatives on either side of the families intimately interested in this prosecution, for the purpose of exhibiting to the jury and to the Court something of the difficulty and the reason of its existence in carrying on a prosecution in this community against any member of this Church. The prosecution wanted to show to the jury directly if they could, indirectly if they could not, that although it was enjoined upon this people publicly at their meetings and in their tabernacles to live their religion, yet that command was only to be carried out in secrecy, that it was to be enshrouded in the darkness of the night, that no one connected with the ceremony must know his neighbor, that no one connected with the ceremony must allow his right hand to know what his left hand did.

No one, from the President down—from him who stood as the great mediator between this people and their Master, down to the humblest Elder in the Church—no one had said that he had the slightest idea where any record could be found which in any way would show that the marriage had taken place. Such an abject absence of memory, such an utter blank of thought, such an utter disregard of every obligation imposed upon a citizen of the common country, was, he apprehended, never exhibited in a court of justice before. "I do not remember," "I do not recollect," "I think there must be such a record, but I do not know where it is," "I do not dare to inform myself," "I will not be good enough to inform myself"—these and similar expressions fell fast and faster from the mouths of those witnesses; and he submitted to the jury that, as they looked over this case and reviewed it in their minds, all this plainly showed to them that there was an organized effort, an organized system directed in its objects to frustrate and defeat the administration of justice. There was an innocent forgetfulness, a forgetfulness which, if it was innocent, characterized and stamped the witness with a new credibility; on the other hand there was a forgetfulness which was guilty in its origin and its conception, and a man could commit perjury by saying he did not remember or that he did not recollect, as he could by affirming a negative to a fact.

The prosecution had been charged by the Church with excessive zeal; it was said they were manifesting too much zeal in this matter; in other words that they were enquiring into things that did not concern them. If the officers of the government representing this and other prosecutions were manifesting any over-zeal in the performance of their duty in their endeavors to enforce the law, he failed to see it, and he took this opportunity of saying, in behalf of the office he was now representing, that they purposed going forward in this matter, and manifesting all the zeal that cases would warrant in their endeavors to bring into this country a law of the land which ought to be predominant and pre-eminent here. That was what they were going to do about it. This case against this defendant stood before them upon two charges—one for an unlawful marriage, and one for unlawful cohabitation. So far as the second offence was concerned, he would leave the discussion of that matter to those who would follow him, it being his purpose only, in the opening, to direct attention to the chain of evidence that had been woven about the defendant and which, he thought, was abundantly strong and capable of holding him fast upon the charge that had been presented against him.

Mr. Varian then proceeded to expound to the jury the law on circumstantial evidence, contending that under certain circumstances it was worthy of the same belief as other evidence. In this case direct and positive evidence could not be obtained, and therefore they had had to rely upon circumstantial evidence. He commented upon the disappearance of Lydia Spencer, Mrs. Annie Dinwoodey and Mrs. Margaret Clawson. The first he said had "gone where the woodbine twineth," the second had vanished "into thin air," and the third "had taken the underground railroad"—all had gone, nobody knew where. But notwithstanding this, that the rule of law put the burden upon the prosecution to make out the case, still, as part of that rule, or embraced in its scope, there was something more. A *prima facia* case might be made against a defendant which required explanation: but if the facts were all peculiarly and particularly within the knowledge of any one else, he must be called upon to combat the presumption raised by the facts already in evidence against him, and if he failed to do so the facts in such a case might ripen into proof sufficient in degree.

Mr. Varian next proceeded to review the evidence in the case. He referred particularly to the three witnesses that had been brought forward to impeach the testimony of James E. Caine and contended that witness' testimony had not been shaken in the least. On the contrary, the cross-examination of those three witnesses had tended very materially to strengthen and build up the case, and certainly showed that Caine in maintaining that the defendant had (in reply to his question as to whether Lydia Spencer was his second wife) never wavered in regard to the reply that he received, namely, "Yes." The commission of this crime, he contended, had fortunately been brought to light. A chain of circumstances had been woven around this defendant strong enough and connected enough to raise in the minds of the jury, beyond a reasonable doubt, the conviction to a moral certainty, that he had violated the law, and that he must atone to the offended law. Were they (the jury) to sit back in their chairs and say "no man saw this marriage, no witness recorded it, no book is produced to bear testimony to it." If they did, they gave no weight at all to the evidence that had been adduced in this case—evidence of the very best and most convincing character. If they did do that, then they might close the court: "because," said Mr. Varian, "I tell you that you never will get a case of polygamy here where you can establish the fact by persons who *saw* it." He thought he was justified in saying—from what had been made apparent in this case by the witnesses they had called—that there was a settled, persistent determination on the part of the Mormon Church and its adherents to close all the channels that lead to the temple of justice, to frustrate in every way and defeat the ends of justice and to prevent the enforcement of the law. In this style Mr. Varian proceeded to attack the Mormon Church, and to contend that it used fraud, perjury and corruption to defeat the laws of the country.

1.30 p.m.

The Court reassembled at this hour, when Mr. Varian continued his argument in behalf of the prosecution. At the outset he commented upon the fact that the defendant had not been put upon the stand; but inasmuch as the defendant had a perfect right not to go on the stand, he (Varian) would not have the jury infer anything prejudicial to the defendant from that fact. It might, however, be contended that the act was not committed within the jurisdiction of the Court; but he maintained that the evidence had shown that the defendant was not absent from the city for any length of time at the period when it was presumed he had committed this crime.

The speaker concluded with an appeal to the jury on the horrors of polygamy, and said that the day would come when polygamy "must go." He spoke in very spread-eagle style on this latter point, and predicted that something would yet come upon "this people" that would, "Like a whirlwind of fire" sweep "the blot" out of existence, to the great joy of the people of this great, enlightened and advanced age.

Judge C. W. Bennett then proceeded to address the jury in behalf of the defendant. A synopsis of his argument will appear to-morrow.

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 conscienees 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 defendan, and Lydia Spencer were full cousinst 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 terrors 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 responsibilty 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 o