

### "A SECOND DANIEL."

Respectfully inscribed to General D. H. Wells, imprisoned for conscience' sake, May 3, 1879.

Then answered they and said before the king; that Daniel, which is of the children of the captivity of Judah, regardeth not thee, O king, nor the decree that thou hast signed, but maketh his petition three times a day.

Then the king commanded and they brought Daniel and cast him into the den of lions.

DANIEL VI. 13, 16

Attend, ye champions of right  
And scorners of the wrong,  
Whose souls, reflecting Freedom's light  
Around her standard throng!  
Of modern tyrants 'tis my lot  
To sing, of justice sold:  
A Daniel to the judgment brought  
Like unto him of old.

Where ermined Malice sat enthroned  
And Bias held the rule,  
Where Perjury, of Vice condoned  
Became its pliant tool,  
The aged hero took his stand,  
In mien and action plain,  
To face, on Freedom's holy land,  
Inquisitors of Spain.

For Conscience was on trial now;  
The human gift divine,  
Fair Reason, from her throne must bow  
Before a bigot's shrine.  
A sacred oath must sundered be  
A secret rite expressed  
Or "justice" claimed as penalty,  
Fidelity's arrest.

"Thou shalt forswear thyself," was made  
Behest of legal tongue,  
On him whose speech was never stayed,  
When battling 'gainst the wrong;  
And blinded Justice stood aghast,  
Her sword and balance fell,  
As from judicial lips were passed  
Those keywords of a hell.

All ears were strained to catch reply,  
And thus it came: "To me,  
There's nought so base beneath the sky  
As coward treachery;  
What ye require, my soul would bend  
Neath Shame's avenging rod;  
I never yet betrayed my friend,  
My country or my God."

For this, the veteran chieftain brave  
To a dungeon cell was sent,  
And, like a guilty felon slave,  
Held fast in banishment.  
Shades of our patriotic sires!  
Look down from heavenly rest  
And quench with tears indignant fires  
Within thy children's breasts.

How long shall suffering fortitude  
In silence bear its load,  
And cries of injured multitudes  
Be answered with the good?  
Has justice all her claim renounced?  
Is patriotism dead?  
Has liberty, by law denounced,  
Our land forever fled?

Oh, tell it not in Askelon,  
Nor in the homes of Gath,  
That Freedom's chosen home hath won  
The thunders of God's wrath!  
That Ichabod must written be  
On all her noble towers,  
That Law hath strangled Liberty  
And tyrants are her powers!

But look! the dungeon opens wide,  
The duration hours flee;  
With friends and comrades at his side,  
Once more our brother's free.  
The God of Daniel, ever true,  
His servant hath restored,  
And Israel's wealth of praise is due  
A lion of the Lord.

Behold the grandeur and display,  
As far as eye can see,  
Where youth and age, in bright array,  
Are come to welcome thee.  
The waves of human masses roll  
Like billows of the sea,  
And gladness breaks beyond control  
Of legal tyranny.

We honor him who would not bend  
The cringing suppliant's knee,  
Though tempted, even with threats, to lend  
His voice to perjury.  
A "second Daniel" we attend,  
Who braved oppression's rod,  
And never yet betrayed a friend,  
His country or his God.

The heavens smile approvingly  
On heroism's test,  
While Zion's heart beats lovingly  
With patriotic zest.  
The skies are rent with loud acclaim,  
A nation's bosom swells,  
And Israel's thousands bless the name  
Of Daniel Hanmer Wells.

O. F. WHITNEY.

May 6, 1879.

### THE MILES CASE CONCLUDED.

After recess on Monday, Judge Tilford resumed his speech for the defense. He referred to the history of Carrie Owen. From her own statements she joined the "Mormon" Church of her own accord, in 1876, when it was supposed that

Miles was at the bottom of the sea. She was not the inexperienced girl the defense had represented, but an educated governess. Miles, coming to England as a missionary, relations were renewed between them. He frankly told her of his relations to the other girls, and she consented to be the first wife; came with him to Utah. The animosity she has shown toward the defendant and the threats she has confessed to have made to marry him first and kill him afterward, showed that all confessions made by her as a witness must be taken with a great deal of caution. And, being of an accomplice, they cannot be taken without strong corroborative testimony. The marriage, if it took place at all, took place at the Endowment House. The only witness we have to this is Caroline Owen, and the law says her testimony is insufficient without it is corroborated. This has not been done. But we will examine her testimony, and prove it to be utterly unreliable. She tells us that after leaving the Marshal's house, she went after Miles, because he had stolen her clothes, and in the same breath that she permitted him to stay with her whenever he wished. Afterward she tells us she followed him because she loved him so. Next, that she wrote the *Herald* letter at the dictation of Miles. This letter shows its author to be well educated. Miles is not. Miss Owen is. She also cites the brutality practiced upon her by Miles on the bridal night, and after being rescued, acknowledges that ten days later she flew back to the arms of the villain who had wronged her. She has made several different statements as to the time she first heard of Miles' marriage with Spencer. First it was at the altar, next it was when Miles told her as they were leaving the house, next that Katie Connelley told her of it the first. I shall take the ground that the last statement, only, is true. Her whole story is as palpable an inconsistency as was ever presented before a jury.

Judge Tilford then read the Owen *Herald* letter. She says herself that this latter "is full of lies." She says she did it because she loved John Miles. One who will lie for love will lie for revenge. Before Commissioner Sprague she could not remember the garments taken off by Emily Spencer in the Endowment House, yet six months later she described them. She has not proven a marriage between Miles and Spencer.

Judge Van Zile then made the concluding argument. He was there to prove that Miles first married Spencer and then Owen. Without Owen's testimony, the marriage of Spencer with defendant has already been proven. Miles went to England and again met Owen. She came to Salt Lake with him. He informed her of his contemplated marriage with the Spencer girls, but she was to be the first if Taylor would allow it. The intention to take more than one wife was proven. The only question is, was Owen the first? At a conversation at Connelley's it is learned that Emily Spencer was to go first. She is seen in the Endowment House on the very day set for the marriage of Miles and Owen. Why was this? At the reception, Miles took Spencer and Owen both to supper and afterward took Spencer home. Is not this act significant?

Miles intended to marry these three girls. It has not been proved that he changed his intention. John Taylor's instructions corroborate it, and he must have married the oldest first, if at all. Emily had had her endowments before, but Owen sees her taking off her robes in the House. Katie Connelley states that Miles introduced Spencer as his wife Emily Miles. Leo Dykes says he heard Miles call the woman on the piano stool his wife, and Katie Connelley says this woman was Emily Spencer. The case is proven.

I believe Daniel Wells married them and knew it. Too many clothe themselves with the loop hole (Beautiful metaphor!) that they don't remember.

My friend (Tilford) attacks Miss Owen's testimony. You have seen her on the stand, a lady accomplished and educated. Her character was so reliable that after acquiring an education she became a governess. The best of girls often run away with scallawags.

The reason her testimony before the Commissioner was not so complete as now was on account of the Endowment House oath ringing in her ears.

I do not deny that she wrote the *Herald* letter, but Miles was with her, and as she says he dictated it.

Marshal Shaughnessy testifies to having heard Miles say that the price of her coming back to him was a retraction in the paper.

At St. George he tells her that he married her for his second wife and that she could go to Salt Lake and tell the damned lawyers so. They could not convict him. "If I do not, it will not be because I have not tried."

The judge withheld his charge until Tuesday morning. It is as follows:

#### Gentlemen of the Jury:

The defendant, John H. Miles, is on trial, charged with having violated a law of the United States prohibiting bigamy or polygamy in the territories or other place over which the United States has exclusive jurisdiction.

The peculiar circumstances surrounding the case, and the trial, gives to it more than ordinary interest, and have naturally caused some excitement. It will, therefore, be your especial and imperative duty to guard your minds against any and all outside influence, and to try this case as calmly and dispassionately as you would any other, and to decide according to the evidence as produced in open court, applying to the facts the law as given you by the court, uninfluenced by any bias or prejudice against or sympathy for the defendant. Divest your minds, therefore, of any feeling and prejudice which may prevent you from carefully and accurately weighing and giving a true and impartial verdict, just alike to the defendant and to government.

By a wise and humane provision of the law, the defendant must be regarded as innocent until his guilt is established beyond a reasonable doubt, and if the prosecution fail to establish by this full measure of proof any of the facts necessary to constitute the crime charged against the defendant, then the law makes it your duty to give him the benefit of that doubt and acquit him. The law also makes you the sole judges of the facts, the weight of the evidence, and the credibility of the witnesses.

I have said the prisoner's guilt must be established beyond a reasonable doubt. An important thing, therefore, for you to understand is what is meant by a reasonable doubt and what amounts to proof beyond a reasonable doubt. It is easier perhaps to understand this, than it is to define it. A reasonable doubt is such an one as would rise in the minds of reasonable men on any subject—just such men as you are, who are selected because you are reasonably competent men to try such a question. Proof beyond a reasonable doubt is such as will produce an abiding conviction in the mind to a moral certainty that the fact exists, that is claimed to exist, that the fact to be proved actually exists; such proof as produces an abiding conviction in the mind of moral certainty that the fact exists, so that you feel certain that it exists; a balance of proof is not sufficient. In a civil case the balance of proof is sufficient. A balance of evidence is that which you think is most likely to have been the fact; the way that your mind preponderates upon a question of fact, that makes out a balance, but that will not answer here; you must go beyond that. There must not only be a balance of proof, but there must be this measure of proof which removes all reasonable doubt, all doubt that arises in your minds as reasonable men and produces an abiding conviction, to a moral certainty that the facts charged exist.

A juror in a criminal case ought not to condemn unless the evidence excludes from his mind all reasonable doubt, as I have explained it, as to the guilt of the accused. That is, unless he be so convinced by the evidence, no matter what the class of the evidence, of the defendant's guilt, that a prudent man would feel safe to act upon that conviction in matters of the highest concern and importance to his own dearest personal interests.

Proof beyond a possibility of doubt is not required, because such proof never can be made. It is not to be shown to you that it is not possible that this respondent is innocent, to show beyond all possibility of doubt that he is guilty, but it is required of the government to produce such evidence that when you look it over as reasonable men, no doubt arises in your mind; that is, no reasonable, fair doubt, as to

any fact necessary to be made out to establish the crime charged upon the respondent.

I have been thus particular in stating this to you to impress it upon your minds as the guide by which you are to be governed throughout this whole case in your investigation of the facts in controversy.

No little has been said in course of the trial and in the arguments about circumstantial evidence, and as to the force and effect to be given to such evidence, it is proper that I should say to you that what circumstances will amount to proof can never be matter of general definition. The legal test is the sufficiency of the evidence to satisfy the understanding and conscience of the jury. On the other hand, absolute metaphysical and demonstrative certainty is not essential to proof by circumstances. It is sufficient if they produce moral certainty to the exclusion of every reasonable doubt. Even direct and positive testimony does not afford grounds of belief of a higher and superior nature. The rule, even in a capital case, is that should the circumstances be sufficient to convince the mind and remove every rational, reasonable doubt, the jury is bound to place as much reliance on such circumstances as on direct and positive proof, for facts and circumstances cannot lie, but each of the circumstances essential to the conclusion should be fully established, in the same manner and to the same extent as if the whole issue rested upon it.

It is sometimes thought and sometimes stated that jurors in this verdict swear that the prisoner is guilty or not guilty. The jury are sworn to no such thing. They declare, in rendering a verdict, the result of the conviction of their minds, from the evidence produced, having previously sworn to give a true verdict according to the evidence.

The following special charges, submitted by the prosecution, were also given:

The statute under which the defendant is indicted, and which the government charges he violated, is section 5352 of the Revised Statutes of the United States, and reads as follows:

Section 5352.—Every person having a husband or wife living, who marries another, whether married or single, in a territory or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than five hundred dollars, and by imprisonment for a term of not over five years; but this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage is absent for five successive years, and is not known to such person to be living; nor to any person by reason of any former marriage which has been dissolved by decree of a competent court; nor to any person by reason of any former marriage which has been pronounced void by decree of a competent court on the ground of nullity of the marriage contract.

It will be observed that in order to convict the defendant of the offense charged the people must show:

First—That the defendant, Miles, had a wife living and that that wife was she who in this trial is called Emily Spencer.

Second—That having said living wife he did, within this Territory, and within this district, marry another woman, viz: Miss Caroline Owen.

And if you should find that these two propositions have been proven beyond a reasonable doubt, then and in that case your verdict should be guilty.

As heetore stated, it is incumbent upon the prosecution to prove:

First—That the defendant, Miles, had a living wife at the time he married Miss Caroline Owen, or, in other words, the prosecution must show that the defendant had married Miss Emily Spencer, and that afterwards, and no matter how soon afterwards, if the next minute, if it was a separate and distinct act, and while Emily Spencer was still living and his wife, he married Miss Caroline Owen.

In order, however, to prove this fact, it is not necessary that the prosecution should prove all the actual marriages by one who was an eye-witness of the ceremony, but proof that the prisoner has declared himself and has been reputed to be married is all that is necessary and will support a conviction.

"In all criminal prosecutions, the confessions of a party, his admissions and acts amounting to confessions or admissions are not only admissible, but often the strongest evidence against him," and this is true in a prosecution for bigamy as well as in every other case.

Mr. Greenleaf, a standard authority, says, and I charge you that it is the law and applicable to this case:

"Any recognition of a person standing in a given relation to others is *prima facie* evidence against the person making such recognition that such relation exists, and if the defendant has solemnly and seriously admitted the marriage, it will be received as sufficient proof of the fact."

And, again, the same authority, the marriage of one indicted, bigamy may be proved "by the deliberate admission of the prisoner himself."

I therefore charge you in case that it is competent for prosecution to prove the marriage of the defendant to Miss Emily Spencer by the admission of defendant; and if you find in case that the prosecution has proven the first marriage, by admission of the defendant or otherwise, and that while said Emily wife was living, he married Miss Caroline Owens, then the secution have made out their charge in the indictment, your verdict should be guilty.

The above was modified by court, as follows:

"The declarations of the prisoner and the fact that he has recognized or recognized and cohabited with the woman alleged to be his wife is only evidence tending to prove an actual marriage, and it is for you to decide whether the evidence is sufficient to warrant in finding that the prisoner was fact married to the alleged wife, and unless you so believe, you should acquit, although you believe the prisoner recognized and cohabited with her as his wife."

The fact that the defendant married Miss Emily Spencer, proven like any other fact, by the admissions of the defendant or by circumstantial evidence. It is not necessary to be proven by witnesses who present at the ceremony. Therefore, in this case, if you find all the facts and circumstances proven in the case, and from admission of the defendant, or either, that the defendant, Miles married Emily Spencer, and, while she was yet living and his wife, he married Caroline Owens, as charged in the indictment, your verdict should be guilty.

A legal wife cannot [test against her husband], but what appears in a case that the wife is not a legal wife but a bigamous plural wife then she may test against the bigamous husband. And her testimony should be just as much weight with the jury as any other witness if the jury believe her statements to be true. Her evidence may be taken like evidence of any other witness.

prove either the first or the second marriage. And so in this case, you are at liberty to consider the testimony of Miss Caroline Owens, if you find from all the evidence in this case that she is a second wife, and give it all the weight that it is entitled to. And may it to prove the first marriage, to wit: The marriage of defendant and Emily Spencer, or other fact which, in your opinion, proven by her testimony. In this case stand that case stand any other witness in the case you may take her testimony if believe it as you do the testimony of any other witness to prove fact about which she has testified.

The following was given at request of the defence, all the injunctions submitted by the defence being rejected by the court with this one exception:

Beyond the fact of a valid marriage, the jury must also find the evidence, beyond a reasonable doubt, that the alleged marriage with Emily Spencer, if at all the first marriage, and was entered into prior to the alleged marriage with Caroline Owens, otherwise defendant is entitled to a verdict not guilty.

Following is by the court:

Now, gentlemen, I have over all the points of law I now deem applicable to the case. The facts are entirely and completely within your power. The entire responsibility of the case is now given into your keeping, and probably no woman mine could add to this feeling of responsibility, and I only mean it so that you will be careful of your duty on account of this responsibility.

This is not a government of men