

THE DESERET NEWS.

TRUTH AND LIBERTY.

No. 35.

Salt Lake City, Wednesday, September 27, 1876.

Vol. XXV.

ESTABLISHED 1850.

THE DESERET NEWS, WEEKLY.

One copy, one year, with postage, \$3 65
" six months, " " 1 85
" three " " " 1 05

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TERRITORIAL DISPATCHES

PER DESERET TELEGRAPH LINE.

SECOND DISTRICT COURT.

The Lee Trial.

BEAVER, Sept. 18.

In the Lee trial this morning Spicer made a motion that Lee be discharged, on the ground that the statutes of 1852, under which he was indicted, had been repealed by an act of the governor and territorial legislature, passed and coming into effect at 12 m., March 4th, 1875. He read several sections from manuscript sheets of the new penal code, citing numerous authorities from Bishop on Statutory Crimes, sec. 151, 175 & 7 in support of sec. 2, page 1, new penal code, claiming that Lee must be discharged; he also read from the United States digest for 1870, page 667, section 89, and argued that that statute was not retroactive; and from the United States digest of 1875, page 706, sections 65 and 66, and other authorities. He continued to argue at great length in support of his motion, and concluded by saying that the legislative assembly intended when constructing the new penal code, that all persons guilty of crimes previous to the passage of said code, should be pardoned and condoned; that prison doors were all to be opened and the guilty set free, and it was to be the advent of a year of jubilee to evil-doers.

The prosecution made no reply. Judge Boreman, replying, said: I do not think there is anything in the point raised, admitting that the statute of 1852 is expressly repealed, but the authorities cited were not applicable to the case, and the Judge could not see that any jubilee was granted to John D. Lee by the territorial legislature or by the law.

Denny began the opening address for the prosecution at 11.52 a. m., and continued till recess, at 2.30 p. m., confining himself to the acts of Lee in inciting Indians to attack the emigrants before the answer to the message sent to President Young was received, and acting in opposition to the directions of the council at Cedar, showing that Lee was the main leader of the massacre from beginning to end. He made an accurate review of the evidence. After recess he continued the argument till 3.30 p. m.

J. C. Foster, of Pioche, followed for the defence and is now advancing the theory that Lee participated in the massacre by order from higher authority at Cedar, and the witnesses are not competent because they were actual participants.

The general impression is that the jury will agree on a verdict of guilty, as charged in the indictment. It is said the defence will take an appeal.

BEAVER, Utah, Sept. 19th.

This morning Bishop began his closing speech for the defense. He reviewed the evidence with tolerable accuracy, handling and interpreting portions as given by each witness to his side of the question, and denounced several as having testified to only such facts as related to Lee, screening themselves and showing, in his mind, that they were actual and some willing participants in the massacre; that the church had resolved to sacrifice Lee, discarding him and leaving him to a fate consequent on such evidence as had been introduced. He assailed the evidence of Nephi Johnson, McMurdy and Hamblin with considerable ridicule, denouncing it as untrue, and that these witnesses were part of a conspiracy to hang Lee, conjuring the jury not to consent to this sacrifice by their verdict, in order to lift the odium and cloud of guilt that the world had cast upon the "Mormon" people because of the massacre; but throw aside the evidence of men's hands imbued with blood. He closed his remarks at 11.45 a. m., having occupied all the morning, reading also a proclamation of President Young, with accompanying instructions, September, 1857, when

Governor of the Territory, as to the army supposed to be coming from the east with hostile intentions towards the people, begging the jury to consider the peculiar state of the country at that time, the emigrants having aggravated the Indians to such an extent that nothing less than their destruction would appease their wrath.

Howard commenced the closing speech in the case at ten minutes to 12, and in replying to Bishop's remarks said he had been engaged constantly during the past three months in sifting the facts and everything related or connected with the massacre. As in his opening address, he repeated again that he had come there for the purpose of trying John D. Lee, because the evidence led and pointed to him as the main instigator and leader, and he had given the jury unanswerable documentary evidence proving that the authorities of the "Mormon" church knew nothing of the butchery till after it was committed, and that Lee, in his letter to President Young a few weeks after, had knowingly misrepresented the actual facts relative to the massacre, seeking to keep him still in the dark and in ignorance; that he denounced the aspersions hurled by Bishop against the testimony of Hamblin, McMurdy and Johnson, and defied him and the world to disprove or impeach their testimony. He had read all the assistance any United States official could ask on earth in any case. Nothing had been kept back, and he was determined to clear the calendar of every indictment against any and every actual guilty participant in the massacre, but he did not intend to prosecute any one that had been lured to the Meadows at the time, many of whom were only young boys and knew nothing of the vile plan which Lee originated and carried out for the destruction of the emigrants.

Howard is now delivering the most able and eloquent address ever heard in this country, voice and argument are plainly heard in the residences around the court house.

3.30 p. m.—Howard finished his remarks. The court adjourned till to-morrow at 10 a. m., when the Judge will deliver his charge and the case be given to the jury.

BEAVER, Utah, Sept. 20th.

This morning the court met pursuant to adjournment. Judge Boreman, having been detained in consequence of his having had to write his charge, detained the court till 11.22 a. m. He apologized to the jury and the bar and proceeded with the reading of his charge, saying that in order to aid the jury in arriving at a proper conclusion as to the facts he would read his instructions, which he had prepared, and explain the law touching the case. He said the jury were the sole judges of the facts which had been brought out in evidence and also of the credibility of the witnesses. Whatever I may say to you with reference to the acts in the case is not binding upon you. The court is the sole judge of the law, and the jury therefore cannot pass their judgment upon any question of law. Therefore, whatever is declared by the court to be law is conclusively binding on the jury. The prisoner at the bar John D. Lee stands before you, charged with being a participant in one of the most atrocious massacres of human beings, men, women and children, in the Mountain Meadows, in the south-west part of this district, in 1857, that was ever known in any civilized part of the world, and the evidence shows that the persons killed were emigrants who had before, with a number of wagons and cattle, passed some of the settlements below here, in the southern part of this Territory, and when it was about to pass out of the Territory on to the deserts west, on their way to Southern California. For several days a combination of Indians and white men had been making an attack upon their encampment at the Mountain Meadows. The Indians and white men

viewed with each other in their fiendish work of destroying over 120

men, women and children. You have heard the part which the prisoner played in that dreadful tragedy. It has been alleged that he shot one woman with a gun, one with his pistol, cut the throat of another, and told an Indian not to spare a young woman whose life the savage asked him to spare. It is for you to say whether the witnesses who gave this testimony are to be believed, and John D. Lee be considered guilty or innocent. It is for you, upon your oath, to say whether any fact is before you or not on any particular point. If you believe the testimony of the witnesses, then truly there is no escape for the prisoner. The testimony is overwhelming, and were it not for the sake of justice it perhaps would be better to have it forever sleep in oblivion. Were these witnesses unworthy of belief the most that can be said is that all they have testified to should be taken with great caution and particularly those who were participants. Admissions of Lee to accomplices are fully justified of necessity, because there was not and could not be any objection to their testimony. His accomplices could not be disbelieved simply because they are accomplices. Their testimony is entirely sufficient, if corroborated by other witnesses, non-participants. Any admissions the prisoner may have made as to the part he took therein is recognized in law as strong evidence against him. You have nothing to do with any other person than the prisoner now on trial. You have only to do with the case before you, and the charge in this case is murder in the first degree. It is not every killing of a human being that is murder. Murder in the first degree must be done with malice aforethought, either expressed or implied, and malice is the essential ingredient of the act. It need not be expressed, it may be implied from the acts done. In this case malice is not susceptible of direct proof. If the killing alleged was done by or participated in by the prisoner, and done with malice aforethought, wilfully, deliberately, and premeditatedly, then he is guilty of murder in the first degree, and it is your duty to find, and upon your oath you cannot find him guilty of a lesser crime. But you must in your verdict bring in a verdict of murder in the first degree. If you find that the killing was not wilful or premeditated, it would be murder in the second degree; it would be either that degree or not at all. Justifiable and excusable homicide must arise from unavoidable necessity. Was there anything to show that the killing was either justifiable or excusable? Nothing whatever appears to me that the killing was excusable. Nothing whatever appears to show that the assailants were doing any lawful act. It is not necessary to prove that a great number of persons were killed, nor yet necessary to prove the names of those who were killed, which were not shown. Before you can find the defendant guilty, you must believe from the evidence, beyond a reasonable doubt, that the prisoner is guilty, and taking the evidence together it must exclude all other possibility of a doubt. I will now read you the instructions asked on the part of the prosecution and defence, and given by the court. [He here reads the instructions.]

Volunteer admissions by the defendant may be taken by the jury as evidence of his guilt. The jury are the sole judges of the credibility of the witnesses who have testified in this case. Although the jury may be satisfied that the offence charged in the indictment has been committed, yet if they find witnesses here accomplices in this crime they cannot find the defendant guilty unless they find corroboration by other witnesses of the offence. If the jury believe from the evidence that there has been conspiracy among the witnesses for the prosecution to shield themselves, it is a matter the jury may take into consideration for the purpose of determining the credibility of witnesses in this case. The jury may find murder in the first degree, second de-

gree, or manslaughter, or acquittal. The jury retired to their room at 11.45 a. m., and now 3.15, have not returned.

The Verdict.

At 3.30 p. m. the jury came into court. Verdict—murder in the first degree.

BEAVER, Utah, Sept. 21.

Bishop asked a delay of ten days before sentence was passed on Lee, to give him time to file grounds of appeal. The court granted a delay. Lee is sad and mad and threatening belittles. There is much comment on certain letters in a certain sheet respecting the jury in the Lee case, which are full of the basest falsehoods and wilful misrepresentations, and the editorial attack on Prosecuting Attorney Howard is denounced as unjust.

A jury has been empanelled to try the case of Idaho Bill, Al. Winn and Hanson, and the trial is now going on.

CORRESPONDENCE.

The Sad Accident at the Depot.

OGDEN CITY, Utah,
Sept. 18, 1876.

Editor Deseret News:

Two accidents, one very serious and possibly fatal, happened this morning on the platform of the Utah Central Railroad, to Mrs. Esther Duce, and her son Thomas Duce, of Hyde Park, Cache County. It appears that one of Wells, Fargo & Co.'s express agents from Montana, was crossing from the Utah Northern to the U. C. R. depot. He was carrying a couple of short, double-barrelled shot guns, which were loaded with very large buck shots. When on the last named platform, one of the guns fell from the agent's hand to the ground and discharged, and most of the charge entered the body of Thos. Duce. He received twelve wounds—three on his right arm, producing a compound comminuted fracture. The balls passed through the arm. He received five wounds on the right side, one about four inches above the ankle, one about four inches below the knee, two on the thigh, and one in the right side above the hip joint. One ball struck the fore finger of the right hand, breaking the finger; another ball struck the forefinger of the left hand, breaking that finger also. One ball entered the left hand, glancing upward, and coming out just above the wrist, breaking the left arm. Another ball entered his back, a little to the right of the spinal column; this ball did not pass out, but was extracted. Another ball (the only one) is buried in the fleshy part of the thigh and cannot be extracted. Mrs. Duce received one shot, which entered on the right side of the neck, passing through and lodging on the left side, from whence it was extracted.

The wounded persons were removed to the Beardsley House, and Dr. P. L. Anderson, assisted by Dr. A. S. Condon, were called in, who set and bound up the fractured members of the body, dressed the numerous other wounds, and administered such soothing medicines as were thought advisable. Mrs. Duce was removed in a vehicle and Thomas on a bier to the residence of Mr. Charles Welsh, on Franklin Street, where they receive every attention of their many kind friends in this city. Good hopes are entertained of an early recovery of the mother, but the son lies in a very precarious condition. The husband and father, and also the wife of the son, were immediately informed of the accident, by telegraph, but will not be able to reach here until to-morrow. The sad occurrence was purely accidental, and I am informed that the agent here has said that Wells, Fargo & Co. will pay all costs for medical attendance, etc.

In haste, yours,
SEMPER.

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ERY, Augusta, Maine. w33