

there has never been any association between the two families; could not say what the exact date of the visit to Ogden was; he asked me if I would like to go to Ogden, and I told him yes; he was only in my room on the occasions mentioned in my answers to Mr. Dickson; have never lived with the defendant as his wife since the 1st of May, last year.

To Mr. Dickson—He may have accompanied me to the depot when we went to Ogden and drove me home when we returned.

Alicia Arnold testified—The defendant is my father; I have lived at my mother's during the past two years; father has been home every night, save one, whenever he was in the city, and that was when he stopped at the other house—the occasion of the child's sickness.

Eliza Gardner was the next witness. She said: I live in the Fourteenth Ward; know Fanny Arnold; my residence is three blocks away from her place; previous to two months ago I lived close to her house—next door; I know defendant; have been acquainted with him two years; I saw him at Fanny Arnold's frequently during last summer—could not say how often; he was there sometimes in the afternoon and other times in the morning; have been in the house since the 1st of May, 1885, and have seen defendant there; have never seen the defendant there at night; he usually went in the back door, and came out the same way; the house fronts on the street; have seen Mr. Arnold there during the present year.

To Mr. Rawlins—He came to the house the same way visitors usually do.

Fanny D. Arnold was recalled by Mr. Dickson and said—I invited the defendant to come and take meals with the children; we all ate together.

John Tyler, clerk of the Broom Hotel, Ogden, testified—I am clerk at the Broom Hotel; was there during the month of May, 1885; I know the defendant; he came there in May, 1885, in company with a lady; he registered as "O. P. Arnold" and "Mr. Arnold; I saw the lady with him, and asked him to register; he did so and signed "Mr. Arnold;" he said he wanted two rooms. (The hotel register was shown to the jury.) The rooms adjoined each other, and were connected with a door.

To Mr. Rawlins—The rooms were separate; the defendant asked for two rooms; he did not select the rooms; I gave them to him.

Deputy Marshal Tom F. Smith was sworn and said—I know defendant; know where Fanny Arnold lives; have seen the defendant coming out of that house since the 1st of January, 1886; that was between 8 and 9 o'clock in the morning; the boy was waiting in a buggy outside; he had his hat and overcoat on; that was on the 29th day of January, one and a half hours after sunrise.

Miss Alicia Arnold was recalled and said her father usually left home before 7 a. m.

Deputy Marshal E. A. Franks said—I saw defendant go in and out of Fanny Arnold's house several times in January last; I saw him go into the house between 7 and 8 o'clock in the evening, and come out between 10 and 11. He then went up to the Continental; this was on the 15th of January; I saw him again on the evening of the 17th; he came out about 11 o'clock, went up to and returned.

To Mr. Rawlins—The defendant was at the Continental about 10 on the night of the 15th; I followed him right up; do not know where he went after he left the hotel; on the night of the 17th he went into the house about 9; he came out about 11, went up to the Continental; followed him back to the house, and I saw him enter it; I then passed on to First North Street; do not know where went.

The prosecution then rested their case and court adjourned to 10 a. m. to-day.

This morning the defense recalled E. A. Franks for further cross-examination. He testified—On the 17th of January last, when I saw the defendant go from Fanny D. Linnell's house, he went to the Continental Hotel; he called at the telephone for Dr. Benedict; he next went into the bar-room, and then returned to the house; there was a light there; he went in at the front door; on the 15th I watched him go to the house; there was a light there.

Dr. H. J. Richards was called for the defense, and said—I am a practicing physician and surgeon; about the 20th of July, 1885, I was called to visit the defendant's sick child, at the house on First West Street; I prescribed for the child, and advised them to keep it out doors as much as possible and take it out riding; it was quite ill.

To Mr. Dickson—I left the city for a few weeks a couple of days after I attended the child.

James Jack testified—I am acquainted with defendant; his business office is at the same place as mine; he usually comes between 7 and 8 o'clock a. m.

Fannie D. Linnell testified—I had sickness in my family last January; Dr. Benedict called there with Mr. Arnold on one occasion; two of the children were ill with sore throat; it was about the middle or latter part of January; we feared an attack of diphtheria.

To Mr. Dickson—Dr. Benedict was there once at night; it might have been 10 p. m.; he came several times in the daytime; the children were sick during the remainder of that month.

To Mr. Rawlins—Diphtheria was prevalent at that time, and I feared it.

H. G. McMullan testified—I remember when Mr. Arnold pleaded guilty to the charge of unlawful cohabitation; it was in April, 1885.

Mr. Rawlins—Did Mr. Arnold make any statement to the court as to his intentions?

Objected to by Mr. Dickson. Objection sustained.

Mr. Rawlins argued that it was material evidence in the case, as the promise made at that time was a disclaimer of defendant's relationship with his plural wife. It would be but the inference that he had held her out to the world as his wife since that time. Had it been his lawful wife the divorce would have been admissible, but as in this case the marriage was not legal, the only way possible for him was to make a public declaration, which he had done. They wanted to show that he promised to obey the law.

Mr. Dickson said the question related to a period prior to the first date in the indictment, and was not material.

The Court ruled that this evidence might be admitted.

Witness, to Mr. Rawlins—Mr. Arnold promised the Court that he would obey the law in future; this was on the 13th of April, 1885.

Mrs. Alicia Arnold testified—I am the wife of the defendant; since May 1st, 1885, he has lived at my house; he was absent in February and April, 1886, and in October and November, 1885; he was away from the Territory; he was in Ogden in 1886, when they were building the railway track; he was not absent from home last January; he lived with me when he was in the city, and took his meals at home; he always stayed at my house at nights, except once in the summer of 1885.

To Mr. Dickson—I was at Ogden with him on several occasions, and sometimes stayed over night.

Mr. Rawlins stated that the defense had one other witness whom they wished to introduce—Dr. Benedict; Capt. Greenman had been looking for him but had not succeeded in finding him.

It was learned that Dr. Benedict was at South Jordan, so the defense rested without his evidence.

Mr. Dickson made the opening argument to the jury, claiming that the defendant's conduct had been such as to lead the neighbors to believe that his relations with his former plural wife had not terminated. Mr. Dickson did not believe the defendant had kept his promise to obey the law and abandon his second wife for 24 hours. Deputy Franks had watched him visit the plural wife on two evenings in January. The conduct of the defendant, as shown by the evidence, was such that the jury should convict him.

Mr. Rawlins said the defense had some requests to make of the Court in reference to the charge of the jury. They wanted the following instructions given:

1. Cohabitation in the sense of the law means to live or dwell together as husband and wife, and before you can find the defendant guilty, you must be satisfied from the evidence beyond a reasonable doubt, that the defendant, while living with his lawful wife, Alicia Arnold, also lived or dwelt with Fanny Dora Linnell, within the period mentioned in the indictment, as his wife.
2. Cohabitation means having the same habitation; not a sojourn, a habit of visiting, or a remaining for a time; there must be something more than mere meretricious intercourse.
3. If the jury find from the evidence that the defendant, before the 1st day of May, 1885, withdrew himself from his second wife, and thereafter ceased to hold her out or acknowledge her as such, but lived and dwelt with his lawful wife, ostensibly refraining from dwelling with such unlawful wife, though he supported and visited her and her children, and though she may have been sometimes known as or called Mrs. Arnold, you should find the defendant not guilty.
4. If you find that the defendant merely visited the house of Fanny Dora Linnell for the purpose of seeing or inquiring after the welfare of her or his children, or ascertaining their wants, but not for the purpose of marital association or holding her out or acknowledging her as his wife, and that he did not hold her out or claim her as such, you should find the defendant not guilty.
5. The word visit, according to its ordinary and usual signification, means to keep up the interchange of civilities; to practice going to see others.
6. If you should find that the defendant passed a night at the house of Fanny Dora Linnell, in caring for and nursing a sick child, the circumstance ought not to be considered against him.
7. The jury should not convict the defendant unless you find beyond a reasonable doubt that the defendant within the time specified in the indictment, lived with or held out as his wife Fanny Dora Linnell. What is meant by holding out in this sense is such language and conduct on the part of the defendant as would lead the world to believe that the parties were associating and living together as husband and wife.

Mr. Rawlins said the Supreme Court had fixed the meaning of the word cohabitation as dwelling together as husband and wife, and this definition had a special bearing on this case. The defendant had disavowed his relation with the polygamous wife, and had only visited his children. It would be unreasonable to say this constituted a crime. The children were legitimate, having been made so by the Edmunds law. Because the polygamous wife had been called Mrs. Arnold was not a reason for conviction, for the defendant could not help that. He had ceased to claim her as his wife. A public avowal of this act had been made in Court, thereby removing all possibilities of leading people to believe that they still maintained the relation of husband and wife. There was no habit and reputation of marriage in the case on trial.

In addressing the jury, Mr. Rawlins argued that the agreement between the defendant and his polygamous wife, and the former's promise made in court, dissolved the polygamous relation existing between them. Their children, however, were legitimate. There had grown up between the parents, during their years of association, feelings of affection for each other, which could not be sundered in a moment, and which must be considered in dealing with this question. The defendant, notwithstanding these circumstances, and an adverse public feeling, had promised to obey the law. He had, however, continued to visit his children. The District Attorney had said he could not do this, but the affections of his heart said he must. The prosecution asked what no man with the instincts of manhood could do,—turn a deaf ear to the appeals of his innocent offspring. It was said he might support them. But the mere support of tender children was but a small part of a parent's duty. They needed his fostering care, and there should be no censure attached to him for visiting them daily, if he considered it necessary. The law was not so harsh as to forbid these visits, though the District Attorney demanded it, lest the man was so debased that he would disregard his solemn promise in court, and violate the law. The most that could be said of the defendant was that he had visited his former polygamous wife and her children. He had ceased to cohabit with her, and proclaimed that fact to the world. But that proclamation did not require that he should become a brute and cast her and her children adrift. She still looked to him for support and assistance in rearing their children. He should surely have the privilege of smoothing the path of that life that was now scarcely worth the living, since she had been deprived of the care of a husband. Yet the District Attorney says the law will not permit it; that it would not permit the woman to receive any attention whatever. The man who, under the evidence in this case, came to the conclusion that the defendant was guilty, must himself be of that corrupt nature that he would perform an act that no decent man would be guilty of. If the law was as inhuman as the District Attorney said it was, the man who continued to it and disregarded the life of his offspring was unworthy the name of a man. If the defendant was convicted under the evidence in this case, it would be impossible for him to say that he would obey the law because he could not learn what that law required. The Court had said he could visit, and now the prosecution wanted him sent to the penitentiary for doing so. If he was convicted, it would stop all progress at bringing people within the law. The example in this case would be pointed to for the effects of promising to observe the law, and that example would be sufficient to deter others from giving a similar assurance. The District Attorney himself would not know how to live to conform to his own definition of the law, and would find himself in a fix if he should be converted and baptized, "that is if they would not hold him under, which I think they would." The jury in this case would not be justified in finding any other verdict out of that of guilty.

The court took recess until 9 p. m. This afternoon, F. S. Richards made a powerful argument before the jury, pointing out the absurdity of the District Attorney's claim that the defendant had violated his promise made to the Court. The visits he had made to the home of Fanny D. Linnell were only those which were justifiable, and it was beneath the dignity of the government to vindictively pursue a man for visiting and nursing his children when they were ill. In order to procure a conviction, the steps of the defendant had been dogged for weeks by deputy marshals, and the worst that could be said of him was that he was giving aid to a sick child. The honor of the prosecution of the defendant was shown in the course followed by the officers. He had promised to obey the law, and then the deputies had hounded him night and day, to find something against him. Had he visited his children by stealth, that would have been brought against him. But he had visited them openly, as he had a right to do, under the instructions of the court, and for that he was relentlessly followed by the District Attorney. There was one thing he did besides visiting his children, and that was to take their mother out riding. And what a terrible offense in the eyes of the District Attorney! If the jury gave a verdict of guilty in this case, it would mean that if ever a man who promised to obey the law should be in the presence of his former wife, or should visit his children under her care, he was guilty of a crime. If this was true, the law was more cruel than the most tyrannical edicts that had been issued by Pagan kings, and was not entitled to any respect. But this was not the law. These parties had been husband and wife, that relationship terminated April 13, 1885, and had not been resumed. The acts of the defendant under these circumstances were innocent, and he was therefore entitled to acquittal.

Mr. Dickson closed for the prosecution. He opposed giving the instructions asked for by the defense. In addressing the jury he said the laws against polygamy and unlawful cohabitation had never been respected in this Territory. The law was not more severe than was necessary and usual when crime was committed. It might be true that innocent children were compelled to suffer, but that could not be prevented. As for the woman suffering, she knew when she married the defendant that it was a felony, and must bear the suffering therefor. They both committed the deed and must bear the cross, however heavy it might seem. It had been said her life was not worth living when she was deprived of a husband, but she only had herself to blame for the pain they suffered. Their children, though innocent, would have to suffer, but that could not be helped and must be borne. When the murderer was executed, it might break the heart of his innocent wife and bring ignominy on innocent children, but that made no difference. It might be, as suggested by Mr. Rawlins, that the District Attorney might be converted and shake hands with traitors. If he did he should be made to feel the weight of the law. He did not want the defendant convicted for visiting his sick children. It was not necessary for him to do as he did. He might have sent a carriage to take his child out riding, and not gone himself. If he had only visited the house when the children were sick, that might be excused. When the defendant promised to obey the law, the polygamous wife was his wife still. It was said that the marriage, being illegal, could not be dissolved by divorce. But this defendant should have done all in his power to make it apparent, not only to the court but to all, that he meant to keep his word when he said he would keep the law, and should have filed a bill with the court setting forth the facts, and asking the court to make a decree setting forth that the marriage between him and his plural wife was illegal and void. Every man who made the promise should do this, and put an end to the polygamous status. It was their duty to do this and the status could not be changed in any other way. The defendant had not done this, so both women were his wives still. If this was not done, there was no place at which the line of cohabitation could be drawn. If the woman was divorced he could visit her at any time, and also visit her children. He might even sleep under the same roof with her, and commit no offense against the law or good morals. But as this defendant had not dissolved the relations with his polygamous wife by a decree of the court, he could not visit her as he had done, without causing the conclusion that the relation of husband and wife was still maintained. The jury might say that when the woman or her children were sick he might visit them, but not at any other time. He could provide for them when in health, but must abstain from visiting them while they are living with their mother. He could send his lawful wife and have her bring the children to him, where he could give what case he chose, but that was as far as he could be permitted to go unless he had the unlawful marriage annulled. The law was not aimed at meretricious intercourse, but to break up the polygamous household, and put away the semblance of polygamy from this community. Young people growing up in Utah could not learn to respect the monogamous home if the polygamous home was permitted to exist by its side. It was the evil example of polygamy that was sought to be removed, and the status of the polygamous family must be dissolved. In the present case there was no evidence that there had been any change in the manner of living after the defendant made the desired promise.

Mr. Sheeks corrected Mr. Dickson in this statement, but the latter reasserted it as true. The District Attorney said the visit to Ogden within a month of the time of the defendant's appearance in court on the former charge, and writing his name on the register, for that of his polygamous wife, was conclusive evidence against the defendant. That act alone was sufficient to convict. The Court instructed the jury that, if they found that the defendant, during the periods named in the indictment, having a legal wife and also a polygamous wife, associated with the latter under such circumstances as to indicate that he held her out as a wife, they should convict. He could visit his children, but should do it under circumstances that would not indicate that he was associating with their mother as her husband. It was not necessary for a divorce to be obtained from the second wife. The fact that they had been married should be taken into consideration, as should also the promise of the defendant in court. All of the facts should be considered in finding a verdict, and coming to a conclusion as to whether he held out Fanny D. Linnell to the world as his wife and cohabited with her as such. The jury then retired in charge of an officer. The jury returned a verdict of guilty on all three counts.

WANTED!

Good, Clean Cotton Rags at Deseret Paper Mill.

FROM DETROIT.

A PRISON AND PRINCIPLE PRESERVED, A BETTER THAN THE WEALTH OF THE WORLD AND WEAKNESS.

HOUSE OF CORRECTION, DETROIT, MICHIGAN, September 26, 1886.

Editor Deseret News:

Dear Brother—Perhaps I am trespassing in writing so often, but I feel that our condition partly justifies me in imposing upon you and your readers, as it appears to us the only means by which we can reach all who have so liberally, both in word and deed befriended us in our unenviable situation. Many of our friends earnestly request us to write to them and we are as anxious to do it; but it is impossible, as even these few lines are sent you through the special kindness of our deputy, who extends to us every favor the prison rules will allow. It, however, all the Saluts appreciated the pages of the News as highly as we prisoners in Detroit do, there would certainly be a copy in every house and all would read at least part of this our humble communication; the News, *Bikuben*, *Millennial Star*, *P. L. Journal*, *Juvenile Instructor* and *Historical Record* never fail, and the *Era* and *Scout* *Harolden* we receive part of the time, for all of which we heartily thank our brethren, as also for books, pamphlets and other similar favors. I also feel to express my special thanks to the editor of *Bikuben* for his kindness in taking the trouble to translate my letter for the benefit of my Scandinavian friends while I cannot perform my real duty to write to him specially; however, it is not only those who have tried to lighten our burden here with literary blessings that I desire to express my gratitude to at present; there are many ways in which both we and our families have been remembered by the Saluts, for which words are inadequate to express our feelings of gratitude.

Our health is at present good with the exception that I am considerably pained by rheumatism. Our hope of deliverance before our term of sentence is out is not quite dead yet, but is badly shaken. The entire absence of any fairness or justice toward us in the past leaves but a meagre hope for any clemency in the future. History furnishes but few instances or parallels of so unjust and atrocious a crime against innocent men as we have been subjected to by what ought to be courts of justice, and we can but naturally suppose that even if the President should be disposed to grant us a pardon, he will be so intimidated by our enemies and so influenced by false reports that he will drop the whole thing. We cannot deny that we are sick and tired of prison life; I have heard and read of ancient Saints being imprisoned for the Gospel's sake, but my imagination never could comprehend the feelings of a prisoner in his lonely cell, thousands of miles from all that is near and dear to him; it is agony that words fail to express; but while we drink the bitter cup of hate, envy and malicious hatred, poured full unto us by our enemies, we rejoice in the knowledge that there is no cloud so dark nor no mist so thick but that at some time the sun will again send its illuminating rays through it, and that when the day dawns, when the cup of the wrath of a just God shall be filled, and He shall say there shall no more be given time, then I hope my garments shall be clean from the blood of this generation, and though to-day I feel the burden is heavy and grievous to bear, yet the wealth of a Vanderbilt or the power of a Bismarck outside the Gospel of Christ, would weigh as air in the scales to exchange for eternal life. The poet's words, after all was lost, are worth remembering:

"The best of all I still have left, My faith, my Bible and my God."

We were greatly disappointed in not seeing Brother Caine or hearing anything from him, but suppose it could not be avoided. Friends, please remember us with a word now and then.

Your brother and fellow-laborer in the Gospel of Christ,

CHR. I. KEMPE.

P. S.—Three weeks ago I saw all the brethren from Idaho, they were all well and felt well. C. I. K.

BIRTHS.

PEARSON—To the wife of Henry Pearson, of the 21st Ward, of this city, on October 5th, a fine boy, weighing 12 pounds. Mother and child prospering.

KELLY—To the wife of John Kelly, Portage, Utah, October 1st, at half-past 11 a. m., a fine son.

A Clear Skin

is only a part of beauty, but it is a part. Every lady may have it; at least, what looks like it. Magnolia Balm both freshens and beautifies.