

Judge Sandford (sharply) — We wish no imputations of that kind here.

There was some further talk between the attorneys and the hearing was closed, and the question taken under advisement by the court.

We deem it proper to append an explanation to the foregoing account of the proceedings in this extraordinary matter. The implied imputation cast upon the memory of Judge Sprague by Judge Zane is, we are authoritatively informed, utterly unjust, because without foundation in fact. We refer to the assertion that the deceased attorney received one hundred dollars more than he was entitled to for acting in the capacity of examiner. We are assured that Judge Sprague's compensation was ten dollars a day, that he performed twenty days' work, and received therefor two hundred dollars. This is the first time we have ever known Judge Sprague's probity to be impugned, and as the dead cannot speak for themselves, it is but right that his character should be defended against what appears to be an unfounded insinuation.

If this insinuation proceeds, as was once asserted, during a legal proceeding, by Judge O. W. Powers, from one who himself accepted of a thousand dollars more than he was legally entitled to, it comes with exceeding bad grace.

#### Onelda Stake Conference.

The regular quarterly conference of the Onelda Stake will convene at Franklin on Sunday morning, Jan. 27th, at 10 o'clock, and will continue during that and the following day.

A full attendance of the Bishops, High Councilors and home missionaries is desired.

Geo. C. PARKINSON,  
Sol. H. HALE,  
M. F. COWLEY,  
Presidency of the Stake.

#### Mrs. Hendrickson's Case.

On Jan. 11, at Ogden, Mrs. Hester Hendrickson was committed to the penitentiary by Judge Henderson, because she would not testify before the grand jury, as she was a legal wife, and the prosecution was against her husband, who is now absent in Norway, being in that country on a mission.

In the Supreme Court on Jan. 16, J. L. Rawlins called up the case on a writ of *habeas corpus*. In this case a charge of polygamy is sought to be proved against John Hendrickson, who is alleged to have married Mrs. Hendrickson and Mary Lloyd on the 1st of January, 1895. Mrs. Hendrickson had

testified that she was married on the date named, and was the lawful wife of John Hendrickson. She claimed her privilege of declining to testify against her lawful husband, and the Court, Judge Henderson, ordered her committed to the penitentiary for contempt.

Mr. Rawlins said the order of the court, in allowing the grand jury to be the judges of the qualifications of a witness, was unlawful, and her imprisonment in consequence was also unlawful. The testimony constituted her the lawful wife, *prima facie*. The Supreme Court of the United States had ruled that a lawful wife could not be compelled to testify against her husband; that if a prior marriage was not proved, she could claim this privilege; and that the question, whether or not she was the lawful wife, could not be left to the jury. In this case the whole matter had been left to the jury, and the question was not as to her own marriage, but as to another marriage. The order of the court was therefore clearly outside of the law, as the competency of a witness is a question exclusively for the court. The first section of the Edmunds-Tucker law reads as follows:

"That in any proceeding or examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called, *but shall not be compelled to testify in such proceeding, examination or prosecution without the consent of the husband or wife, as the case may be; and such witness shall not be permitted to testify as to any statement or communication made by either husband or wife to each other, during the existence of the marriage relation, deemed confidential at common law.*"

In this case there was no consent of either of the witness or her husband. She might even refuse to be sworn as a witness. She could be called, but without the consent named in the law could go no further. Instead of passing upon her competency, the court abrogated its functions, and passed the subject to the grand jury. Even there her evidence made her out to be *prima facie* the lawful wife, but still it was sought to compel her to testify in violation of law. It appearing by all the evidence at hand that she was the lawful wife, she must remain so until proven otherwise.

Judge Sandford—She said she was

Mr. Hendrickson's lawful wife. Could they go no further?

Mr. Rawlins—They had no right to ask further questions till the court ascertains whether or not she is a competent witness. If she is competent and refuses to testify, then contempt proceedings may follow.

Judge Sandford—Then the whole matter of competency is with the court?

Mr. Rawlins—It certainly is. The grand jury have no powers in that respect. It is a mere appendage to the court, for a specific purpose. The court is to determine questions of law. In this case the court never passed on her competency but attempted to shift that to the grand jury, which had no right with it.

Judge Henderson—Your idea is that the practice before grand and petit juries is the same.

Mr. Rawlins—As to competency, yes.

Judge Henderson—Suppose a witness refuses to answer on the ground of immateriality?

Mr. Rawlins—Then the court must determine. The jury has no right to pass on the materiality of testimony or the competency of the witness. That is the universal practice. The opinion of the court, not of the grand jury, is binding upon the witness. The court in this case, even before the grand jury passed on her competency, ordered her committed for contempt. If she had been the polygamous wife, unless this court is prepared to overrule the Supreme Court of the United States, she could not testify to the first marriage, because that has to be proven before she becomes a competent witness. This witness is clearly entitled to a discharge from custody.

Ogden Hiles, assistant district attorney, said that the issue was not as to the competency of the witness, but was the question a proper one for the jury to ask. The court had informed the jury that the question was proper, but if the witness was the lawful wife, her testimony could not be used against her husband. She declined to testify at all, except to state that she was the lawful wife, and claimed her privilege under the law. We don't know whether she is the lawful wife or not; she may be mistaken. Suppose Mary Lloyd should claim the same. Are we bound by her answer? The question is not as to her competency; it is as to the propriety of propounding the question. It is not for the witness to say she is the lawful wife, but for the court and grand jury to de-