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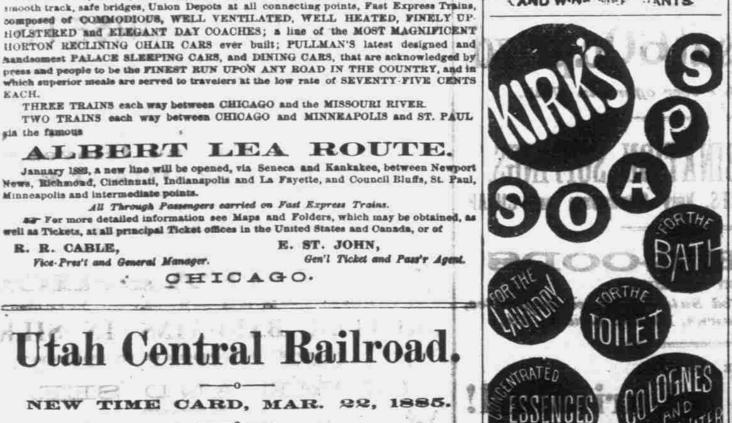
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EVENING NEWS.

ARGUMENT OF J. R. McBRIDE BEFORE THE SUPREME COURT OF NON.

These cases, aside from any consequences to the defendants, are impor-tant, as they bear upon the meaning and application of the Act of Congress reating the offense of cohabitation. It is of the utmost importance that a aw which may affect so many people, should not only be construed, but so correctly construed, that the legal mind shall be satisfied and all reasonable controversy set at rest. This consideration induces me, after the already elaborate argument, to add a few suggestions on one feature of these

For this purpose I have carefully one over the act itself, have undertaken to examine it from the point of makers occupied, and, giving legal ef-lect to all that it contains, tried to ascertain what it is, and apply it to the facts of the case in hand. I have sought to reach the legal result, so that, not only for this case, but for all others, we may have a plain guide, so far as the law may be involved. First-I will state the facts of this case from the record. The defendant, Cannou, #ssuming for this argument

that he is charged with being a "male person," is alleged by the indictment to have committed the offense of cohabiting with more than one woman, between the first day of June, 1882, and the first day of February, 1885, viz.; that he did cohabit unlawfully with Amanda Cannon and Clara C. Mason, at the County of Salt Lake, erritory of Utah. The prosecution showed by proof that

defendant resided at 246 First South Street, Salt Lake City; that be-fore July, 1862, he married Amanda 'annon, named in the indictment, and that he had lived and cohabited with her even since; that she is the mother of nine children, born since the same marriage, eight of them being now resident at his said house. That by the same ceremony and at the same time, he, defendant, married Sarah Cannon, who is not named in the indictment. About 1874, Clara C. Mason, named in the indictment-then a widow with two children-was married to defendant, and ever since has resided in said house of defendant. In this house Clara Mason occupied

during the last three years, two rooms on the east of a hall which passes through the house from north to south, with one child, born of this marriage, two orphan children which she was rearing and one child by a former marriage Amanda Cannon with her children occupying the rooms proven by appearances, in defiance of on the west side of the hall. The bedroom of Clara C. Mason was in the northeast corner of the building, on the second floor. Amanda Cannon's bedroom was in the southwest corner of the same building, second floor. Defendant's bedroom was in the southeast corner on the same floor. There is a hall running north and south through the centre of the bouse on the second loor, Amanda's bedroom being separated from defendant's by this hallway, and there is no room between defendant's and Clara's. Clara Cannon's child of her marriage with defendant not lewd, or lascivious, or adulterous, was born January 11th, 1882, she having ard two born prior, but both were

us, dining and sleeping rooms. The testimony showed that defendant sist took his meals about every third day with these women and their families in their apartments and one meal with each on Sunday. The orphan children had ived with Clara for the last five years. In Clara's bed room were two beds.occupied by herself and the four children who were with her all the time. The defendant had been heard to speak of Amanda Cannon as his wife, but no time was given as to when this state-ment was made. It was shown that other man in the Territory. But we Amanda Cannon and Clara are both nembers of the Mormon Church. On

this statement of facts the prosecution rested their case.

The defendant then offered to prove (and for the purpose of this case will pensible element of the offense-not all be taken to have proved): That Amanda Cannon was married to de-fendant before Clara; that before the passage of the law of March, 1882 punishing cohabitation, he had alternately occupied the sleeping room and bed of each: that each with her family occupied and still occupies separate apartments as already proved; that on the tpassage of the Edmunds law, the defendant announced to both these women and their families, that he did not intend to

Did the Court mean that the "continual to the continual to the c their families, that he did not intend to violate that law, but should live within it, giving his reasons, and that he has not since occupied the bed or sleeping rooms, or had any sexual intimacy with Clara, and to that extent, they by mu-tual agreement, separated; that these women and their families, are dependent on him for support, and that he dence of a fact to be

offer of this evidence was obected to as immaterial, irrelevant and competent, and the objection was We have, then, before us a case showing this state of facts. A defendant who had married one of the women 25 years ago, the other about ten ears ago, followed in each by the usual cohabitation as of marriage, and the birth of children, under the roof of deendant. On the passage of the law of 882 the defendant separated himself rom the sexual relations that had be-Clara, but still supported and sustained it gave an instruction on which her and her children in his house. Will these facts show the defendant guilty of a violation of the law of 18827 testimony in the whole case. Nor was The statute is remarkable for its

brevity. It reads:
Sec. 3.—"That if any male person in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than | ready specified, had not one word of one woman, he shall be deemed guilty of a misdemeanor." It is manifest that the first thing to do is to ascertain what the word "cohabits" in this statuet means.

What constitutes "cohabitation" is matter of law—that I premise at the outset. Webster defines "cohabit" "to dwell with," "as to live in the same country"-in its first or primary sense. It lis too obvious for dispute that the word in this statute does not mean cohabitation in this sense; living in the same house or in the same country was not prohibited. If that were so, any male person living in the same country, with the woman would be guilty, or any such person who kept would be guilty. The next definition by Webster is "The state of living together as man and wife." And if it should appear that a man lived with two women as wives, though neither of them in fact were such as one are such as a man and wife." them in fact were such, or one was, and the other not, he would be guilty. But what does living with a woman as a wife imply? It is admitted that sexual intercourse with a woman not cohabitation, and that any number of criminal interviews of this kind would not constitute an offense under this statute; and is it not equally true that any amount of innocent liv-ing without such intercourse under the same roof does not constitute the of-fense? Does not cohabitation mean a

living together in the enjoyment of the rights that attach to marriage, if marriage has taken place, or the same is a secret aid to beauty. rounding the passage of this statute not tell, and you can't tell. Polygamy had been prohibited by law, but the proof of marriage had been so difficult, and the time of the statute by reason of the elapse of time was so short, that this law against co-

habitation purposed among other rea-sons, to supplement and make effect-ive the legislation which had been so fruitless in prosecuting polygamy. The actual proof of the marriage was dispensed with, that theacts which followed it might be washed by the law. The conabitation which resulted from the polygamous marriage, which had not heretofore been punishable, was made an offense with a view to suppress the consequences of that marriage, to wit, the birth of illegitimate children, and the thrusting of innocent offspring into life, with the brand of crime upon them.

Is not the idea of sexual relations inevitably connected with the thing forbidden? What sense could there be in inserting the term "male person" into the statute unless it was intended.

inevitably connected was inevitable controlled to give that fact significance and effect? The very idea of forbidding the association of persons of opposite sex is based on the fact that such association of said estate and petition for distribution was the impropriety that was forbidden; but if the association as man and as woman is immaterial, as the decision of this case in the court below implies, then this element in the statute is practically eliminated.

It is idie to say that it is necessary in order to an and as woman be guilty by and distribution made as prayed for.

Outlier to Amelia bus.

Estate of Charles Button, usually in said in said count of the same for said estate and petition for distribution of the estate of said deceased and that the 7th day of July A. D., 1885, at ten o'clock a. m., at the Court Room of said Court, in the City of Sait Lake, County of Sait Lake and Territory of Utah, has been duly appointed by said Court for the settlement of said account and distribution of said estate, at which time and place an person interested in said estate may appear and show cause, if any there be, why an account should not be settled and approvant distribution made as prayed for.

Outlier to the court below to the court below implies, then this element in the statute is practically eliminated.

It is idle to say that it is necessary and distribution made as prayed for.

Outlier to the court below to the court below in th It is idle to say that it is necessary that a defendant be a man, in order to be guilty, and that he can be guilty by simply doing acts which any woman could do as well as he could. A woman can reside in the house, eat with the

family three times a week, control and govern the children, and furnish sup ort for all, as well as a man, and if a man does only these things, and exercises no privilege of his sex, is he any more guilty than if he were a woman? Suppose that Angus M. Cannon were in fact a cunuch, could he be guilty of cohabiting in the sense of this law? And if he lived in the same relations to these two women that a eunuch would, UTAH IN THE CASE OF A. M. CAN- could be be guilty? Go further. A male child above the age of infancy is a "male person;" would the fact that such a child lived under the same roof,

or even occupied the same bed wit two women make him an offender? Certainly not, and the reason is, that ecause no sexual relations existed of ould exist between them. If a brother lived in the same hous with his two grown-up sisters, both of whom were supported and maintained by him openly, would the facts alone show him guilty of the crime de-nounced in this act? Certainly not, and why? Because no sexual relations would be shown; but to show that the sexual relation is the gist of the offense suppose it could be proved that I shared their bed, his guilt would be admitted. I am not insisting that actual or positive proof of sexual timacy between a defendant and two women shall be shown in order to

make out guilt under this statute: I only insist that the jury shall have sufncient evidence to satisfy them, that sexual relations do exist, and that no conviction can be hhd, when it i shown that they do not exist, What I maintain is: that as matter of law, the jury must find that a defendant shall have sustained, not innocent, but forbidden sexual relation with the two women, or no verdict of guilt can be supported. What evidence will satisfy them is another thing What I contest is, the doctrine, that man may be as innocent of improper conduct with these women as a brother should be with his sisters, and yet be condemned to the penitentlary for acts that are not only not wrong, but in truth commendable and praiseworthy, and the refusal to do which would condemn him in the eyes of any just per-

Take this case as an example. The defendant does nothing except to provide for his children and their mothers, and aid by his presence in their training for future duties, for which they are all dependent on him. The prosecution proved no impropriety on his part, and they objected to positive proof of actual invocence in his defense, and yet he is convicted on appearances which are not only innocent, but it is admitted that he is innocent of any actual wrong or impropriety. It is said, that the law is aimed at the scandal of a man living with two

women, but there is no scandal where there is no criminality. Scandal results from criminal or conduct which implies it. But it is inverting proof to say that "scandal" proves the crime. The vice of the construction contended for, is in assuming that evil may b the truth. Appearances, may be evidence of facts, but they are not the facts themselves—nor can they overcome facts. The reason why the lawmaker in this statute discarded the usua adjectives, "lewd," "lascivious," "addulterous," etc., as a prefix to the word "cohabit," is an obvious one. They did not intend to permit an issue to b raised on the character of the conabi tation. It was intended to meet a pe culiar state of things where the parties indulging in the practice might claim it as a religious rite. They said it was because the gratification of the pasdead. The families live separate, with distinct households throughout—kitchens, dining and sleeping rooms. in the actual without reference to the motive or

purport. But this does not prove that the actual connection between the parties was also intended to be dis pensed with. We admit that actual sexual intercourse alone will not make the offensethat constitutes the well-known crime of adultery-neither does dwelling In the same place constitute the ofcontend that taken with the dwelling

together, there must be evidence that satisfies the fury, that sexual relations exist between the parties. In other words, the sexual relation is an indisil-but a necessary constituent, and on its absence the offense cannot exist. There is another point in this case which deserves notice. The Cour below added to the facts which it spec ified was necessary to constitute th offense, "that if the defendant, besides living in the same house and eating at the tables of these two women every duct" already specified, living in the same house and eating at the tables of

these two women was to be considered as proof of the offense? If that be so, the charge gives this conduct a double meaning. If the "conduct" is meaning. If the "conduct" is first to be maintained as eviwas not financially able to provide a and then as the ultimate fact, conclusion of guilt, then the "conduct" consldered as evidence amounted to .nothing, and it may well be said that the word "fail" was "not on the slate of the prosecution." If the court meant that if the defendant "held out" those women in such manner as that the pub lic and the jury would understand he was living with them as wives, which would imply sexual relations, then the charge misled the jury, for the Court distinctly held that sexual relations need not be proved or found by the jury, and if the court meant that if he once said that these women were his wives since the passage of

passage of cohabitation, there was not one word of there any "conduct" except that first specified in the charge to which such an instruction could apply. So that this part of the charge, unless it was held to be construed by those facts al-

testimony for its basis. So, take any view of this part of the charge that we may, it was erroneous. I regard the questions thus briefly presented as the vital ones in this case and the Musser case, and I submit that both judgments must be reversed for the errors which I thus have indi-

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privileges, if no marriage has been celebrated? Must not this interpretation of the statute be applied especially when the circumstances surport tell and war and to beauty.

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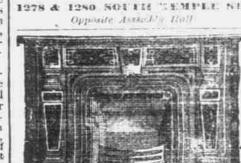
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