DESERET EVENING NEWS.

TRUTH AND LIBERTY.

VOL. XIX SALT LAKE CITY, UTAH TERRITORY, MONDAY EVENING, JANUARY 11, 1886 NO. 41.

ARGUMENTS IN THE SNOW TRIAL.

ELOQUENT PLEAS IN BEHALF OF APOSTLE LORENZO SNOW WHEN ARRAIGNED ON SECOND INDICTMENT.

We published on Saturday the arguments offered in behalf of Apostle Snow when being tried for the first time before Judge Powers. Following are those delivered on Tuesday last when the same defendant was on trial on the second indictment against him. These arguments not only afford interesting reading now, but will be referred to with no less interest by future generations whose honor for the men who made these stirring, and logical appeals will only be equalled by their detestation and contempt for the judge and jury to whom they were made in vain.

MR. KIRKPATRICK.

The defendant is indicted under the third section of the act of Congress, known as the Edmunds law, which provides that "if any male person in a Territory or other place over which the United States have exclusive jurisdiction hereafter cohabits with more than one woman" he shall be punished as therein provided. It is charged that the defendant, during the year 1881, cohabited with more than one woman, and your investigations are limited to the conduct of the defendant during that year. The facts of the case as developed by the evidence lie in a narrow compass and are briefly these: The defendant has seven wives now living. He resides in Brigham City in this Territory. Upon a certain block in that city stand two houses; one known as the "old homestead," under whose ample and hospitable roof the defendant, before the passage of this law of Congress, resided with several of his wives. About twenty rods distant separated from the old homestead by a substantial fence through which there is a gateway, stands what is called the "brick house." This house is the home of the defendant where he resides with one of his wives, Minnie Snow. He moved from the old homestead to this house in May, 1882, as soon as the provisions of the Edmunds act became known in Utah. There he has ever since made his home, his business office is there, he receives his mail there, he lives, he eats, he sleeps, he dwells there, and this was the fact throughout the whole of the year 1884. At the old homestead reside three of his wives, and the remaining three reside in other parts of the town. These ladies own the property on which they reside, conveyed to them by the defendant before the passage of the act. To all of them, except Minnie, with whom he has exclusively lived since May, 1882, he has been married for many years, to some of them for over forty years. To Minnie he was married in 1871. They each have a family of children. The defendant is in the 72d year of his age. All of these women are supported by the defendant. They bear his name. The evidence shows conclusively that the defendant did not, during the year 1884, nor has he since May, 1882, lived, dwelt, taken a meal, slept or made his home at any house, except the "brick house," nor with any woman except Minnie Snow. On two or three occasions only in 1884, he visited the old homestead; these visits were made specially to see one of his daughters who was dangerously ill, having sustained by an accident, a fracture of the skull; she and her mother, Sarah, leaving at the time of the injury gone to Pleasant Valley for her and taken her home with them. The visits were made in the day time and were not to exceed a half hour each in duration. On one occasion in November, 1884, the defendant called with a carriage at the house of Harriet Snow, one of the wives, took her and his sister Eliza to the house of her son, a few miles from Brigham City; he proceeded to his farm some distance further on; returning in an hour, he took Harriet and his sister in the carriage and left them at their home in Brigham City. Throughout this trip the carriage was driven by a man named Olsen, with whom the defendant sat on the front seat, the mother and sister sitting on the back seat.

In 1884, the 70th anniversary of the defendant's birth was celebrated in Brigham City. A banquet was given in the Co-op hall, called the Odd Fellows' Hall. It was a public occasion and the people of the city and vicinity in general attended to tender their congratulations, and to testify the high regard in which they held the defendant. At that banquet, all these ladies were present.

Evidence has been admitted of the general or public repute as to the defendant's manner of living, and the relation he bore to these women during the year 1884, and it is all to the effect that it was generally understood, accepted and believed by the public that the defendant lived and dwelt at the brick house with Minnie Snow exclusively, that his home was there; that he had not during 1884, nor indeed since May, 1882, lived or made his home at any other place, or associated with any other woman as a husband associates with his wife. There is no evidence that he has held out or announced any other woman during said time as his wife. There is no evidence of sexual intercourse with any other woman. The defense could and would have proved that there had been none during said time, nor since the passage of the act, but the Court has ruled such evidence inadmissible. We have the right, therefore, to assume that except with Minnie Snow, whose youngest child is 3 months old, no such intercourse has taken place.

Prior to the passage of the Edmunds act, these women were all well known to be the wives of the defendant; since that time he has obtained no divorce from any of them in the courts; he has supported them and their families in comfort, and he has been kind and considerate in his treatment of them all. All of them are of advanced age except Minnie Snow, who is now about 35 years of age.

These facts are established by indisputable evidence; indeed, there is no conflict in the evidence as to any of them. The prosecution has placed upon the stand all of these women, and has been permitted to cross-examine them. Their testimony has been candid and straightforward without the slightest attempt at evasion or subterfuge.

The prosecution has also called the deputy United States marshal who made the arrest of the defendant upon this charge, and he has testified that the defendant was at the time concealed in a closet in the "brick house," but upon being summoned came forth and delivered himself up to the officer.

The grand jury has subdivided the alleged cohabitation of the defendant into three distinct offenses; one of which may be rightly said to embrace the year 1883, another the year 1884, and another the year 1885. Upon the indictment for the year 1885 he has been already tried and convicted; he is now on trial before you on the indictment for the year 1884, and the third indictment yet remains to be tried.

Gentlemen of the jury, you are asked by the prosecution to convict the defendant upon this evidence of the crime of unlawfully cohabiting during the year 1884 with more than one woman. I claim that neither in act nor intent is the defendant guilty of the offense charged against him. Now, in order to arrive at a just conclusion as to his guilt or innocence, you should know and consider the circumstances in which he was placed at the time. This law of Congress, enacted in March, 1882, declares that "if any male person thereafter *cohabits* with more than one woman," he shall be punished as therein prescribed. What is the meaning of this word "cohabit?" I do not speak of its present meaning, for it has recently been defined by the Supreme Court of the United States in the Cannon case. But what was the meaning of this word at the time of the passage of the act, and during the year 1884, prior to its recent definition by the Supreme Court? You will observe that Congress does not attempt to define it. It is usual for the Legislature to define more or less specifically the acts which constitute a crime, made punishable by law. Open any book of criminal statutes, and you will find that murder, arson, robbery, and the long catalogue of statutory offenses are defined with great particularity; the acts and intents which shall constitute them are laid down with precision, so that all may know beforehand the nature and character of the acts prohibited by law. But in this law of Congress we have only the general unlimited term with no attempt at a definition. Whoever "*cohabits*" shall be punished.

Was, then, this word "cohabit" so simple in signification, so readily understood, that no definition was required? Would all men at once understand it in the same sense? On the contrary, we find it to be a word full of uncertainty and ambiguity. It has one meaning in popular language, another in technical language. As the chameleon changes its hue with every object on which it rests, so this word changes its signification with every subject to which it is applied. Chief Justice Zane, delivering the opinion of our Supreme Court in the case of the United States vs. Musser, says it is a word of "flexible" signification, which is equivalent to saying this it is a word of ambiguous meaning. No one will deny that in popular use the idea of sexual intercourse is its essential element. If either one of this jury were charged with cohabiting with a woman, he would instantly understand that sexual intercourse was implied by the charge. As uttered upon the popular tongue that is the meaning. The learned Chancellor Walworth, of New York, repeatedly held that sexual intercourse was also the proper legal meaning of the word. Mr. Bishop, a distinguished law writer, differs from Chancellor Walworth, and holds that that idea is not an essential element in the definition. The Supreme Court of Utah, after a long and exhaustive discussion at the bar, and great consideration by the court, excluded from the definition of the term, as used in this act, the idea of sexual intercourse. This definition has received the high approval of the Supreme Court of the United States, but not its unanimous approval, for two distinguished members of the court, Justice Field and Justice Miller, dissent from the opinion, and Justice Miller does not hesitate to say that he knows of no instance in which, in a criminal statute, the word cohabitation has ever been used in any other sense than that of sexual intercourse.

Now, gentlemen, there is one fact which I wish to impress strongly upon your minds, and which I beg that you will hold prominently before you at every step in your investigation of this case. It is this: that the decision of the Supreme Court of Utah, confirmed by decision of the Supreme Court of the United States, defining this word cohabit, so far as they do define it, were both rendered *after* the time mentioned in this indictment; *after* the year 1884; *after* the defendant had committed the acts here charged to be criminal. In the light of those decisions you are to guide his conduct. Those acts were committed as charged at a time when this word still floated on the waves of ambiguity and uncertainty, fluctuating with every subject to which it was applied, for the decision of the Supreme Court of Utah was rendered in June, 1885, and the decision of the Supreme Court of the United States has just been announced.

But, gentlemen, ambiguous and uncertain as this word "cohabit," then was in its ordinary applications it was peculiarly so in its application to the conduct of the defendant and his co-religionists who were living in polygamy. The courts have held that this law of Congress was enacted with direct reference to the system of polygamy as it existed in Utah. Congress was aware that polygamy was sanctioned by the religious creed of the Mormons, that it was practiced here, and that this law was intended to suppress that practice.

For twenty years the law against polygamy, passed in 1862, had stood among the laws of Congress, but the government had taken no energetic measures to enforce that law. Two or three convictions had been had during that time. But the law had fallen practically into disuse, and was almost a dead letter upon the statute book. There were many polygamists here in 1862, who had married their wives prior to the passage of that law, and who were therefore unaffected by its provisions, for criminal laws, (however it may be with *definitions*) can never be retroactive; and after the passage of that law many persons, encouraged by the inaction and seeming acquiescence of the government, contracted polygamous marriages, and not being prosecuted or molested by the government or its officials, the statute of limitations soon ran in their favor, and they were no longer liable to prosecution for polygamy. And during all this time, and down to the passage of this Edmunds law in March 1882 there was no law against cohabitation; no law which forbade the association of the polygamous husband with his wives. Polygamy had been practiced and tacitly sanctioned by the government until a large class of persons having gone into it, stood now protected by the lapse of time and the bar of the statute of limitations. Numerous families of children had been born in polygamy, and there being no law prohibiting the utmost freedom of association, those families naturally lie together by all those unspeakable sympathies and affections which bind the father to the child, the husband to the wife, the wife to the husband, the children to their parents.

Upon this condition of things, upon a people so delicately and anomalously situated there suddenly fell, without warning, like the crash of doom, the law of 1882. That law peremptorily prohibited under severe penalties the cohabitation of any male person with more than one woman. What would be its effect upon the conduct and relations of the polygamists of Utah? What was the meaning of this word "cohabit" as applied to them? It was in the sack plain enough that Congress did not intend to absolve the polygamous father from any of the duties and responsibilities which pertained to his relation as a father. For by the seventh section of the act, the children of all polygamous marriages which had been solemnized in accordance with the ceremonies of the Church of Latter-day Saints are made legitimate—thus placing them upon the same plane and clothing them with the same rights as the law bestows upon the children of the legal marriage—the same right of inheritance—the same right to call upon the father for education, for support, and for the discharge of all those duties which the father owes to the child. So far then as the polygamous father and his children are concerned, this law did not sever nor attempt to sever the relations and the associations existing between them; by legalizing those relations they were made closer and more intimate than before.

But as regards the father and the mother of those children thus made legitimate, what was the effect of this law upon the relations existing between them? It has been likened by Your Honor (addressing Judge Powers) to a decree of divorce. The comparison is felicitous and striking, but still I may be permitted to say it is inadequate. Similar things are never the same. True there is a separation in the one case as in the other, but different in kind, in character and degree.

A divorce implies alienated affection, usually bitter resentment. The love which once existed has been turned to hatred. The court may compel by its decree the payment of alimony, but it is a forced contribution, reluctantly given. How different the separation in the other case! Here there is no alienated affection; no bitter resentment. The affection which once existed glows still in undiminished warmth. For this is the mother of his children, united to him by covenants, consecrated by a common faith, and which they believed to be indissoluble in time and eternity. The love of the father for his children, and for the mother of his children, is as strong and as deep as before. This, at least, no law can prohibit, no edict can annul. It exists by virtue of a higher law. It is written by the finger of God himself upon the universal heart of humanity.

Behold, then, the difficulty, the infinite difficulty of his position. The law does not compel him to obtain a decree of divorce, nor is he compelled to make or place on record any public declaration that she is no longer his wife. Nor can he, without her consent, take away from her his name. But it is his duty to support her, and her children—to educate and train them intellectually and morally to the extent of his ability. He must assist in caring for the family; he cannot throw the whole burden upon her. He may nay, he must, in the discharge of those duties, visit the house where the mother and children reside, for he cannot tear them from her arms. In sickness and in suffering, cold must be the heart that could deny to her and to them the presence and the sympathy of the father. All these things he may, nay, it is his imperative duty, to do, but nevertheless, says the statute, he must not cohabit with her, or with more than one woman.

What, then, must he do to escape the fell determination of this law? Gentlemen of the jury, what would you have done? Put yourselves in his place. I appeal to you individually and personally. Go back to the year 1884, the time laid in this indictment, and remember that the meaning of this word "cohabit," as it then stood in the statute of Congress, had not then been fixed by judicial definition. You must define it for yourself. You are to select from the multiplied meanings of this most ambiguous term one by which your conduct shall be governed. You are no lawyer, and if you ask the law its oracles are dumb, or give back dubious and dissonant responses. Bewildered, groping in the midnight darkness, what can you do? You find in ordinary language, in popular speech, and with that you are familiar, that the word cohabit has a well understood signification, and that is *sexual intercourse*. Suppose that in default of light from any other quarter, you adopt this meaning of the word, and conform your conduct to it. You henceforth cease sexual intercourse with more than one woman. You do more. While you make occasional visits, as in sickness, or when circumstances requires it, in discharge of the duties you owe to your children, while you support her and them, you thenceforth cease to live, to sleep, to eat, to dwell, to make your home, except at the one house and with the one woman; if after all that you should be convicted and punished because you had cohabited with more than one woman, what would you think of the justice of your conviction you? What would you think of a jury which, taking a definition of this statute, unknown at the time, arrived at by the courts after your alleged offense was committed, should make an *ex post facto* application of that definition to your past conduct, and punish you for not knowing and doing what it was impossible for you at the time to know and to do?

And what would you think of a Grand Jury which, not content with one indictment, should under such circumstances subdivide your past conduct into three offenses in order to crush you under the load of accumulated penalties and forfeitures? And yet that is this case. The defendant upon the passage of the Edmunds law ceased to cohabit with more than one woman in the only sense in which he could then understand the term. Not only did he cease sexual intercourse, but while in the discharge of the duties incumbent upon him, he visited on rare occasions the houses where his other wives and their children resided; and provided for their support, but he therefore did not live with, sleep nor ate nor made his home at any but the one house or with any woman but Minnie Snow. The evidence only shows the two visits to his sick daughter in 1884, the ride to Little Valley, where Sarah Snow and her daughter were in the carriage with him and Olsen, and the birthday anniversary.

These women lived upon their separate property and there is no evidence that during that time he introduced or announced or held them out as his wives, or associated with but one of them as a husband associates with his wife.

And yet you are asked by the prosecution to find him guilty. Can you do it and preserve your self-respect? Would such a verdict have any tendency to make the law respected, or would it bring disgrace upon the administration of justice?

You may convict him because he is a Mormon; because you are prejudiced against him or his religion, but you cannot convict him upon evidence, for there is no evidence to justify such a verdict.

But the Attorney for the government, feeling the weakness of his cause, falls back in desperation upon the fact that at the time of the arrest by the Marshal, he had attempted to conceal himself from the officers in a closet or cellar in the brick house where he resides, and it is urged that this is equivalent to a confession of guilt, and in default of anything else you are expected to convict him on this. A word as to that: Gentlemen of the jury, you have been selected by us to sit upon the case of the defendant, and the manner of your selection is peculiar. The law under which you are empanneled excludes from the jury box, every man who believes as he does, and the prosecution will exclude by peremptory challenge every man who is a member of his religious faith. Practically this might say that he regards the laws of his country as of higher obligation than any religious dogma and that he would try the case impartially and decide it in accordance with the law and the evidence. Practically every Mormon is banished from the jury box in this poor unfortunate land of Utah, which God has made so beautiful, and man has made so miserable, where party passion acting in combination with religious zeal has so embittered the prejudices and inflamed the animosities of men that reason is well nigh banished from her throne, you have been summoned to this jury box from the ranks of those who are believed to be arrayed in deadly hostility to the sect of which the defendant is a member. Naturally, gentlemen, inevitably a jury so selected is regarded with deep distrust by the great body of his co-religionists, and it has gone abroad that before such a jury there is no hope for the accused; that accusation is equivalent to conviction.

Do you wonder, gentlemen, that under such circumstances, believing that he could not obtain a fair and impartial trial in the courts, this defendant concluded to avoid arrest if he could, and so concealed himself in the place where he was found by the officer? Can that fact be treated as a confession of guilt?

But, gentlemen, I do not forget that when you took your seats in that jury box you said that you had no bias, no prejudice against the defendant, either personally or on account of his religion, or for any cause whatever, and with uplifted hand you called God to witness that you would try him fairly and impartially, and a true verdict render according to the law and the evidence. Do you remember those solemn pledges? I remember them, and I for one am willing to believe that you will keep those pledges. I do believe it from the bottom of my heart. I believe you have the courage and the manhood to do it. I believe that as honorable men you will regard the manner of your selection as placing you under the highest and most solemn obligations to banish from your minds all prejudice, all passion, all party or religious rancor, to weigh and consider this evidence impartially, to give the benefit of every doubt, to judge him in mercy and with Christian forbearance, remembering the circumstances in which he was placed, the difficulties and perplexities with which he struggled, and that you will so acquit yourselves in the delicate position in which you stand that your verdict in this important case shall command the approval of your own consciences and the approbation of every lover of justice.

F. S. RICHARDS.

May it Please the Court—Gentlemen of the Jury:

The impression seems to have gone forth in this community, that in trials of this character the attorneys for the defense are wholly without hope of obtaining an acquittal. A rumor of this kind may have come to the ears of some of you. A report that the defense believes that you are prejudiced, that you will misjudge the facts, and that this case was decided and a verdict virtually rendered against this defendant before you had heard one iota of the testimony; it is possible that you have been told that counsel for the defense know that they can not obtain for their clients in these cases fair and impartial trials, and that they appear and make argument simply to air their own rhetoric and vent their own oratory. I mention this rumor that I may for myself and my associates absolutely and emphatically repudiate any such idea. In this jury-box are men with whom I have been acquainted for the greater part of a score of years, my fellow-citizens and fellow-townsmen. With some of you I have had professional and business relations, such as to create trust and confidence; and for me to stand in this Court to-day, and believe you capable of entering the jury-box with the deliberate and unalterable intention of convicting my client, would be to assert that I am a believer in the idea of the total depravity of man. Gentlemen, I am not so far gone in a distrust of mankind as that belief would indicate. It is my duty, and one which I observe with pleasure, to have faith in this jury—to think that when you held up your hands to high heaven and swore to be unbiased and fearless in the discharge of your sacred trust, you meant exactly what you said, and that you will take a pride in adhering strictly to your promise. Therefore, what I say to you is not as the sounding brass and tinkling cymbal, but in the full tide of reason and from the bright hope and firm conviction of my soul. I believe that you will understand the facts of this case as I shall recall, just as I understand them, and that you will consider them without fear, without prejudice, without expediency, in the light of the law as it shall be given to you from the bench.

The first thing which you should attempt to determine in every trial of this character is: What are the elements which are essential to constitute the offense with which the defendant is charged? And the second point is: Are all of these necessary ingredients actually present in credible evidence? Lorenzo Snow is charged with unlawful cohabitation with more than one woman, during the period named in the indictment, between the first day of January and the thirty-first day of December, 1884. Now, gentlemen, this particular offense, as it has been defined by this Court, as it has been designated by the Supreme Court of this Territory, and as it has been declared by the most exalted judicial tribunal in this republic consists of two distinct and requisite elements. One of these is the living of a man with more than one woman, and the other is the holding out of these women by him as his wives. And although the learned counsel for the government may say to you in his closing argument, as has already been asserted in this and similar cases, that the only fact necessary to be proven is that the defendant has lived a life which would lead the public to believe that the ladies named were his wives, I ask you to eliminate any such unjust and fallacious idea from your minds. Do not get any such foolish and wrongful impression as that the prosecution, under any circumstances, can dispense with either one of the necessary constituent elements of the offense, and then demand a conviction at your hands. Gentlemen, my client might have been a polygamist during the year 1884; he might have owned and acknowledged that every woman with whom the indictment charges cohabitation was his wife during the whole of that period; he might have declared this relation publicly in the pulpit, in the streets of Brigham City, or in the newspapers, all these things, even if proven—as they most emphatically have not been—would not and could not under the rulings of the Court constitute the unlawful cohabitation charged against my client in this case. I desire to impress upon you that you should not be mislead by assertions of the character which I have just controverted, and which might cause you to render a verdict not in conformity with law or conscience. I maintain that I have expressed a correct view of the law and that nothing of a contrary nature will be given to you from His Honor, who presides in this Court.

Gentlemen, it is not the simple, passive relation of polygamy which Congress has declared against in the section of the law under which this indictment is brought. Certain disabilities are imposed upon the defendant, even for the status itself. He must not hold or hold office, nor perform jury duty during the existence of that status; but that he should be subjected to punishment—that he should be tried, convicted, fined and imprisoned. It is required that he should do much more than remain passively in that condition. He must have lived with these women as a husband lives with his wife. In such cases as the one now on trial, the manner of living constitutes the habit and repute of marriage. What is the evidence of any habit and repute of living together as man and wife, in this case selected by the prosecution? For that proof we rely upon the testimony of witnesses for the prosecution, and let me say, in passing, that upon this testimony the law will not permit counsel for the government to cast discredit. It is the testimony offered to you by the prosecution upon which you are requested to find a verdict of guilty, and the power to impeach it or impugn it does not legally nor justly lie in the mouth of counsel for the government. He introduced these witnesses and he is irrevocably bound by their assertions. The fact is that these witnesses have not been contradicted; the defense has made no effort to controvert their testimony, and what is that testimony? All of these women, except Minnie, with whom alone cohabitation is not denied, testified to you positively and unequivocally that at no time during the year 1884 did they live with the defendant, or did the defendant live with them. There is no doubt nor dispute regarding the truthfulness of their assertions. If it had been possible to produce testimony of a contrary character, the prosecution would have introduced that other evidence. I asked some of these ladies if they had lived with the defendant as husband and wives during 1884, and they answered "no." I then put the question in its general sense: "Did the defendant live with you, during 1884, as a husband or otherwise?" and they answered, "he did not." It is proven to you beyond the shadow of a doubt that he did not once sleep in any one of the residences of these ladies, that he never ate there, and, gentlemen, there is no evidence before you that he ever called at any one of the houses except that of Sarah, at which he made two visits to see a daughter, their child, who had suffered a serious injury of a fractured skull by being thrown from a carriage. The attending physician was present at these interviews, and testifies to the effect stated. Upon one other occasion only he was in the company of Sarah, the mother of the injured daughter, and that was when defendant and Sarah went to Little Valley as soon as the accident was reported to them. They went to find their child, to care for her and bring her to her mother's home; and upon their woeful journey they traveled in the same conveyance. Was there any crime in such a journey and in such visits of paternal solicitude? These are absolutely the only circumstances tending to show that the defendant associated with Sarah as a husband, neighbor, acquaintance or in any other capacity; and yet it is upon the fact that Lorenzo Snow was gentle and tender enough to perform the humane, loving duty that a demand for a conviction is partially based. On one occasion he was in the company of Harriet during the year 1881. At a time when defendant's sister was visiting him, he and that lady rode in a carriage driven by a hired man to the front of Harriet's residence, and without there alighting, Harriet came from the house and entered the vehicle, riding upon the rear seat with Mr. Snow's sister Eliza, while defendant and the coachman occupied the front seat. They were driven to the home of Sarah's son, Lucius, at which place the two ladies alighted and remained, while defendant went away immediately to visit his farm, beyond the city. The carriage still bearing the defendant returned in an hour, the two ladies were picked up and carried back to the home of Harriet, which she entered and the defendant, again without alighting, at once drove from the locality. This is his only living with Harriet. But, seriously, is there any living together or holding out in these few facts? Is there any unlawful association? Is there any reason for the claim that this was cohabitation with either or both of the ladies named? So far as the others are concerned, the other ladies mentioned in the indictment, Adeline, Eleanor, Phoebe and Mary, there is not a particle of evidence that he had been seen in the company of either of them during the year 1884, except on the occasion of the anniversary of his 70th birthday, when he met some of them and a hundred other friends and acquaintances in a public hall. Therefore, there are but five facts upon which a conviction is demanded—five facts which I rehearse to you and which I wish now to reiterate that you may not lose sight of them: First, the brief and casual meeting of Mr. Snow in the same conveyance with Sarah to the place where their daughter was lying with a fractured skull; second and third, the two calls of the defendant at the house where their dear daughter was upon a bed of sickness, made in the presence of the doctor, and which were for the obvious and undisputed purpose of learning of the condition of his sick child; fourth, the ride taken by my client in company with Harriet and two other persons to the house of Harriet's son; and fifth, the anniversary dinner eaten with his hundred friends. And upon those bare facts you, gentlemen of the jury, are asked in this, a land of justice, to render a verdict of guilty! And of what? Of unlawful cohabitation; of having lived with these women as husbands live with wives, and of having held them out to the world as his wives. Gentlemen, the Supreme Court has held that unlawful cohabitation means these two things, and that without both of them proven it cannot be maintained. I insist, and any reasonable man must acknowledge, that neither of these essential elements has been established.

At this point I desire to warn you against falling into a pitfall which I fear may be opened for your feet. It has been suggested by counsel in other prosecutions of a similar nature, and I have a right to anticipate it in this case. I am compelled to advert to it before its utterance, as I have no privilege of reply to the prosecutor's closing speech; and the power to impeach it openly and significantly suggested that because my client did not live with these women and perform his marital duties to them all alike, he ought to be convicted of this offense because of his injustice and partiality. Gentlemen, this is a monstrous idea. The law required my client to live with not more than one wife, and because the prosecution cannot prove that he has lived with more than one, he is still to be convicted of the offense; and such absurdity and cruelty are justified as a measure of public policy! Gentlemen, as widely as the poles are separated, you may differ from the defendant's religious belief, from his marital methods, from his taste and conduct; you may coincide with an ingenious but heartless theory heretofore advanced by the prosecution in this court room, that this defendant's separation from a portion of his family was a desertion and neglect of some of his wives; that this conduct was unjust and even cruel to the women who were thus deprived of his companionship. But, gentlemen, that can have nothing to do with your verdict. Did the defendant endeavor in good faith to obey the law? You are not sworn to judge Lorenzo Snow for what he has not done, but for what he has done; not for having failed to perform his marital duties, but for having lived with these women as his wives. The defense sets up the claim that Lorenzo Snow has obeyed the law. The prosecution's argument would lead you in a wild confusion through this Territory, and which your outstretched hands can stay.

But, gentlemen, if you fail to view the grandeur of your position, if you fail to act as becomes moral heroes, mark my word: the future will bring its retribution of regret to your hearts. No act of oppression can go forever unwhipped of conscience and destiny. This is true of individuals and nations. Read the blazing lesson of history, and it says that from the hour when Persia's myriad army was tossed like chaff from the shore of the land which it had hoped to desolate, down through the many ages until the hour when the Corsican corporal swept like the archangel of war in an avenging triumph over the tyrannical nobility of Europe, yes, search your story until this present hour, you will find that destiny has been lying in wait to bring retribution to every family and every land which has transgressed the laws of justice and humanity.

Gentlemen, this world has had her chapters written in blood and tears. She needs no more. Your verdict, now to be rendered, will become a part of an important historical epoch. I entreat you, by the regard which you have for your own fair fame; by your love for your children; who will judge you in the light of the future; by your admiration and hope for your country and her reputation, that you will not be swayed by prejudice, but that you will be guided by facts presented to you. I ask you in the name of all that is sacred and dear to the human heart, to render a verdict which will not pale your faces, nor bring to the cheeks of your posterity the blush of shame; and that you will render such a verdict as the history of your country may truthfully say was not animated by cowardice or vindictive hate; and that verdict will be "not guilty."