

BEAVER.

Further Evidence of the Conspiracy of the Mormon Priesthood.

District Attorney Howard Makes a Few Remarks on the Situation.

Bishop Says the Mountain Meadows Church Has Gone Back on Him.

How the Butcher Lee Takes His Conyction.

Full Report of Judge Boreman's Charge.

Special Correspondence Tribune.

BEAVER, Sept. 20, 1876.

The conspiracy of the Mormon priesthood to convict Lee is consummated, so far, at least, as it lies in their power, and they doubtless imagine that in aiding the prosecution, they succeeded in giving an unqualified denial to the charge that Mormon juries will not convict and at the same time pave the way for the admission of Utah into the Union. How far they have succeeded by this political trial and conviction, in accomplishing these two objects remains to be seen. Mr. Howard realized that he has gone

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to secure this conviction, but he went there feeling confident that it was the only plan by which he could succeed in breaking the Mountain Meadows ring, and place himself in possession of such facts as would enable him to convict the higher Church authorities implicated in the massacre.

Mr. Bishop, who considers the priesthood have now dropped him and his client, says, that the prosecution never can secure another conviction of the Mountain Meadows assassins, because the witnesses will not swear to any facts tending to show the guilt of their good brethren. He claims to have been ticketed by the priesthood—that was when they had need for him—and also to have been kicked by them—that was when they had need to drop him.

On the other hand, Mr. Howard says he has the Church in a corner where he can compel it to deliver up every man directly or indirectly connected with the massacre.

Adair to-day asked Mr. Howard what he would advise him to do in his case. The District Attorney counseled him to plead guilty to the indictment. Adair replied by saying, "I'll see you in a—first."

HOW LEE TAKES IT.

Lee feels apparently much better than he did before conviction. When the jury returned their verdict, not a feature of the old calprit's face moved, and he was soon afterwards heard to boast of his complacency in listening to the words which stamped him a murderer and recommended him to the hangman.

THE CHARGE.

Judge Boreman's charge was as follows:

GENTLEMEN OF THE JURY: In order to aid you in arriving at the correct conclusion in your verdict, the duty devolves upon the Court to give you in charge the law applicable to the case, and to make such suggestions as the necessities of the case may seem to require.

You are, however, the sole judges of the facts and of the credibility of the witnesses; and whatever I may say to you respecting the facts, although it may assist you in the consideration of the case, is not binding upon you. As the jury are the sole judges of the facts, so, on the other hand, the Court is the sole judge of the law, and the jury cannot pass their judgment upon any question of law. Therefore, whatever is declared by the Court to be the law is conclusive and binding upon you.

The prisoner at the bar, John D. Lee, stands before you charged with being a participant and leader in a most atrocious and unprovoked massacre of human beings, men, women and children, at Mountain Meadows, in the south east part of this District, in the month of September, 1857.

The evidence shows that the persons killed were emigrants, who had passed with a number of wagons and many cattle through the settlements of this Territory, and were about passing out of the Territory upon the deserts to the west, on their way to Southern California. Before beginning their journey over the wide deserts, they were recruiting their stock upon the varied rich grasses of the Mountain Meadows. For several days a combination of Indians and white men had been making attacks upon them—but haying failed in every effort at their overthrow and being driven back, the resort was had to the basest treachery and deception to effect their destruction. Under a white flag—a flag of truce—the prisoner at the bar approached the emigrants, and having there met a delegation from them, the fears of the emigrants were somewhat allayed, and they gave up their arms, putting them into wagons from the attacking party, and then being unarmed, they put themselves under the protection of the white men of which the prisoner, Lee, was one. You have heard the sickening details of the bloody and scendish work which followed. Indians and white men vied with each other in their efforts at the wholesale murdering of over one hundred and twenty human beings, men, women and children, who had been disarmed and lured from their stronghold behind their wagons. You have heard the part which the prisoner played in this dread tragedy—how it was said he shot one person with his gun—how he shot others with his pistol, and cut the throat of another, and told an Indian not to spare a woman's life whom the savage asked to have spared. It is for you to say whether the witnesses who state these things told the truth, and it is for you to say whether, from the testimony, John D. Lee can be considered innocent. If there be any good reason for disbelieving the testimony given before you, then the defendant may be innocent, and it is for you, upon your oath, to say whether, as alleged, the fact is proven or not. But if you believe the testimony detailed by the various witnesses, then truly there is no escaping the conclusion that the prisoner is guilty. The testimony is overwhelming. And the human heart revolts at the fiendish cruelty displayed; and were it not for the requirements of justice, it should forever be sheltered in oblivion. But it was too horrible a deed to slumber forever, although for nineteen years the perpetrators have gone unpunished.

The defense has introduced no witnesses or evidence to refute the testimony for the prosecution, but risks the whole case upon the hope to shake your confidence in the witnesses for the prosecution. Were these witnesses unworthy of belief? The most that could be said is that the testimony of a portion of the witnesses, those who were participants in the massacre, should be taken with great caution, if uncorroborated in a material point by other evidence. Were said parties unworthy of belief, the law would not allow them to be put upon the witness stand. The admission of accomplices is fully justified by the necessity of the case; and there was not and could not have been any objection to their introduc-

tion. Who else could tell what took place upon that bloody field but those who were present, willing, or unwilling? After their introduction, you are to weigh their testimony and sift the truth therefrom. Accomplices are not to be disbelieved, simply because they were accomplices, but you are to weigh their testimony in connection with the other evidence, and being found corroborated in any material point by other evidence, their testimony is entirely sufficient to warrant a verdict in accordance therewith.

In regard to admissions said to have been made by the prisoner, the rule of law is that if the *corpus delicti*, the massacre itself, has been proven, then any voluntary admissions made by the prisoner in regard to his guilt is admissible against him, and is recognized as strong evidence of his guilt, and fully sufficient to warrant a conviction thereon, even if his actual participation had not otherwise been proven. If the massacre itself had not been proven, any admissions that the prisoner might have made that there had been such a killing, and that he had been a participant; would, of course, be but weak testimony and would not warrant a conviction upon such admission alone; but it is a very different thing, where the killing is shown, as in this case, by other testimony. The fact that the massacre occurred is not disputed, and hence any admissions the prisoner might have made in regard to his participation therein is recognized in law as strong evidence against him.

It is hardly necessary for me to say that you have nothing to do with the guilt or innocence of any other person than the prisoner at the bar. He alone is upon trial, and it is no concern of this jury whether the other parties indicted be ever brought to justice or not. You have alone to do with this case.

The charge in this case is murder in the first degree. But it is not every killing of a human being that is murder. To constitute murder, the killing must have been with malice aforethought, either expressed or implied. Malice is a wrongful act done intentionally and without good cause or excuse. Malice is an essential ingredient in the killing to constitute the crime of murder, but it need not be expressed, but may be implied from the acts done and the general course and conduct of the party. In most cases malice is not susceptible of direct proof, but may be established from inferences more or less strong to be drawn from the facts and circumstances connected with the killing and which indicate the disposition or state of mind with which the killing was done. If the killing alleged was done or participated in by the prisoner, and done with malice aforethought and was wilful, deliberate and premeditated, he is guilty of murder in the first degree; and it is your duty to so find, and upon your oath you cannot then find him guilty of a lesser crime, but you must bring in a verdict of murder in the first degree.

If, however, you find from the evidence that the killing was with malice aforethought, either expressed or implied, but not wilful, deliberate and premeditated, it would be murder in the second degree. And if the killing was unlawful, but there was no malice, the crime would be manslaughter. In other words, if the killing was by the prisoner, or if he participated therein, and was with malice aforethought, you cannot say it was simply manslaughter, but it is of a high grade offense; and if justified from the evidence that there was malice aforethought, and was wilful, deliberate and premeditated, you cannot say it is murder in the second degree—but your verdict must be murder in the first degree. It would be either of that degree or no crime at all, but justifiable or excusable homicide. To be justifiable homicide, it must have, first, arisen from unavoidable necessity, without any will, intention, or desire, in the party killing, and therefore without blame, as, for example, the execution according to law of a criminal who has been lawfully sentenced to death; or, second, it must have been committed for the advancement of public justice—for example, if an officer, in the discharge of his duties, is assaulted and resisted, and should kill his assailant. Excusable homicide can only exist in two ways: First, when the act was what is called a misadventure, that is, where in doing a lawful act, the party without any interest to hurt, unfortunately kills another; and, second, when a party acting in self defense kills his assailant. The question then arises: Was there anything to show that the killing was other justifiable or excusable? Was there any "unavoidable necessity" shown? Was there anything to show that the killing was without will, intention or desire? And nothing whatever appears to make the killing justifiable homicide. There is no evidence to show that the assailants were doing a lawful act when the killing occurred—nor that they who did the killing were acting in defense of themselves, their families or property.

In arriving at the guilt or innocence of the defendant, it is not necessary to prove that a great number of persons were killed. It is sufficient if the killing of one human being has been proven. Nor is it necessary that the name or names of those killed should be 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 any other hypothesis but the guilt of the prisoner. Proof beyond the possibility of a doubt is not required, but that you have an abiding conviction in your minds to a moral certainty that the prisoner is guilty.

I will now read the instructions asked on the part of the prosecution and given by the Court:

The voluntary and deliberate admissions or confessions of the defendant made after the commission of the offense, may be taken by the jury as evidence of his guilt. The jury may and should consider the circumstances surrounding the defendant and under which the alleged confessions were made, and if the jury believe the said confessions, they would be warranted in acting upon them as evidence of guilt, the *corpus delicti* being proven by other evidence.

And I will now read the instructions asked in behalf of the defendant and consented to by the prosecution, and given by the Court:

First—The Jury are the sole judges of the credibility of the witnesses who have testified in this case.

Second—Although the jury may be satisfied that the offense charged in the indictment has been committed, yet if they find the witnesses in this case were accomplices in the commission of the offense, they cannot find the defendant guilty, unless those witnesses be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense. And such corroboration will be insufficient if it merely shows the commission of the offense or the circumstances of such commission, but they must connect the defendant with the crime charged in the indictment.

Fourth—If the Jury believe from the evidence that there has been a conspiracy among the witnesses for the prosecution to shield themselves, or any other person or persons, from punishment for the commission of the crime charged in the indictment, by the conviction of the defendant alone, it is a matter that the jury may take into consideration for the purpose of determining the credibility of the witnesses.

In this case the jury are instructed that they may find a verdict of murder in the first degree, or murder in

the second degree, or manslaughter, or not guilty, as they shall think warranted by the testimony.

Now, gentlemen, I have discharged my duty to you in this case, and it rests with you to say upon your oaths whether the defendant be guilty or not. It is to be hoped that you are able to show your manhood, and give your verdict in accordance with the evidence, without regard to any outside influences. Your duty is not only to the prisoner at the bar, but also to the people, and your own consciences.

No more of the Mountain Meadows cases will be tried at this term of court.

J. C. Y.