

THE LEE TRIAL.

Address of E. D. Hoge, Esq., of Counsel for the Defense, to the Jury, in the Second District Court, at Beaver, August 4, 1875.

GENTLEMEN OF THE JURY:

It now becomes my duty to lay the facts, as adduced by the evidence in this case, before you; and to make a few remarks, in order to assist you in arriving at a correct conclusion as to the guilt or innocence of John D. Lee, the prisoner at the bar. I shall attempt to confine my remarks to the evidence, as I understand it, and to the legal effect or bearing of that evidence when applied to the crime charged against the defendant in the indictment.

I do not deem it necessary to comment upon all the testimony which has been detailed to you by the witnesses for the prosecution; but will confine myself to that portion only which seems to have any relevancy to the issue before you, and to draw a proper conclusion therefrom, and assist you in forming a just opinion that will commend itself to all reasonable men who have become acquainted with the testimony in this case. It is my duty as an attorney to assist you in this, and I do not wish to attempt to mislead you; nor do I consider that it is the province of an attorney to try to draw your minds away from the evidence, in order to prevent you from arriving at a conclusion not based upon the facts in this case. The prosecuting attorney (I wish he were in the room) in his remarks yesterday, told you in sweeping terms, "that the evidence was conclusive!" And this assertion was the sum and substance of Mr. Carey's remarks, with the exception of his declamation over the righteous indignation which he pretended he felt. He did not deign to lay before you a statement of the testimony and by a fair deduction justify himself in making such an assertion. No! But he told you that if he himself ever were guilty of such an offence as John D. Lee is charged with, he would at once go before the authorities or officers of the law and confess his guilt, and ask them to punish him for it. Gentlemen, did you look at Mr. Carey's head? Did you believe what he said? Do you believe for a moment that he would have walked up and put his neck in the halter without a trial, judge or jury? If you do, take another look at his physiognomy, and, with your knowledge of human nature, you will readily conclude that he would have gone in an opposite direction—you will immediately come to the conclusion, that he would not have faced the officers of the law without a most forcible compulsion. No, gentlemen, this argument, or rather declamation, is not made in good faith on his part, but, having no testimony to convict the defendant, he uses this paltry subterfuge for effect only, and for the purpose of prejudicing your minds against the prisoner.

In commenting on the testimony, I shall first notice that of Klingensmith. He comes before you and tells a long disconnected story, the substance of which I will take up, comment upon and compare with that of the other witnesses for the prosecution. On the Sunday before the emigrants passed through Cedar City—which was the Friday following—a meeting was held in which the destruction of the emigrants was discussed. He said that Haight advocated their destruction and that he (Smith) opposed it. But he could not tell you a single word of what was said in reference to the destruction of the emigrants. Gentlemen, could he tell you one single word of what Haight said? No? Could he tell you a syllable of what any one else said at that meeting? No! He could only remember that the destruction of the emigrants was discussed and determined upon. Now, gentlemen, I wish you would bear in mind that this happened upon a Sabbath day. A day set apart by the Christians in all the world to be remembered and kept holy, and upon which they assemble in their temples and churches for meditation and prayer, to worship Almighty God, the Giver of all good; to send up thanksgivings to an all-bountiful Father in heaven, and to pray to Him to forgive their trespasses as they forgive those who trespass against them. A day upon which they assemble to hold communion with their Redeemer. Now, picture to your own mind, gentlemen

of the jury, this congregation at Cedar City on the day in question, the communicants having assembled in accordance with their Christian custom, with Bishop Klingensmith presiding. Haight makes the startling announcement that one hundred and fifty emigrants, men, women and children, who are advancing towards their little settlement, must be slain, and that the members present must assist to slay them! It is impossible that any person who was then and there present could ever forget the language in which such an announcement was made? Is there a man on this jury who believes that if he had been present on such an occasion he would have forgotten every word spoken after a lapse of eighteen years. No! gentlemen, the language would have rung in your ears to this day, yea, even unto the day of your death. But suppose a person who took no part in the discussion should have forgotten the words spoken, would it be possible that a man who took a prominent part in it should ever forget it? Klingensmith says he opposed Haight. If he opposed him, he must have had some reasons for his opposition, and in the contest between them a part of the argument, the substance, if not the form, must needs have made an impression upon him. He must have been convinced, for he acknowledges himself to have taken a prominent part in the massacre. He therefore abandoned his first position of opposing the killing, and he should therefore remember something of the argument which carried conviction to his own heart, and led him to take part in such a horrible deed. But no! Not a word, not a syllable, could he remember.

I now appeal to you as men of reason and sound sense, and ask if you can believe this statement? I ask nothing unreasonable from you. All I ask is, that you will duly weigh and consider the probabilities of the truth of it.

He next goes on to state, that on the Monday following, he met Higbee, Haight, and others in the old fort at Cedar City. A conversation in regard to the destruction of the emigrants took place. But he could not remember one word of what was said. All he could say was that their destruction was talked about. When asked what was said, he invariably answered: "I don't remember." He was always ready with an excuse that he could not remember, whenever he thought there was danger of being contradicted. He next says that he and Joel White were ordered by Haight to carry a letter to the Bishop at Pinto Creek. He did not remember the contents of the letter, but he was positive that the object of the message was one of peace, and directing the Bishop to use his influence to allay the angry passions of the Indians. In this part of his testimony he is corroborated by Joel White, thus far, that they were sent as messengers of peace to prevent an outbreak by the Indians, who, he said, "were excited and mad." I now leave it to you, gentlemen, to reconcile this statement with his former one, in regard to the destruction of the emigrants, if you can, asking you to bear in mind that he said that on Sunday Haight called upon the people to destroy the emigrants, and now he (Haight) sent him and Joel White with a message of peace, and ordered the Bishop to restrain the Indians that the emigrants might pass unmolested through the country.

I will next call your attention to that part of the testimony of Klingensmith wherein he is contradicted by Joel White and others. The theory of the prosecution is that Klingensmith was compelled to do all acts and things done by him, an unwilling actor in this bloody tragedy from beginning to end. To support this theory, Klingensmith always used the expression that he did as he was ordered. It must be borne in mind that Klingensmith was a bishop in the church and had therefore few superiors. But aside from this, Joel White, called for the prosecution, testified that Klingensmith volunteered to go. Hence it is clear that Klingensmith told another lie. Klingensmith says that while on the way to Pinto, he and Joel White met John D. Lee. This is the first time John D. Lee has been mentioned at all; and here let me call your attention a few minutes to the plan of the prosecution in this matter. It became necessary to have some one to corroborate the testimony of Klingensmith, and

Joel White, an accomplice, with his hands as deeply dyed in the blood of the unfortunate emigrants as Klingensmith's, is selected for this purpose. Therefore White's testimony begins with the journey to Pinto, and he says, "We met John D. Lee."

Question. "What did John D. Lee say?"

Answer.—"When we told him that we were going to Pinto to try to allay the angry passions of the Indians, so that the emigrants might pass along, he answered, 'I have something to say about it, and I will see to it.'"

Now, I want to call attention to the plot between Klingensmith and Joel White, and in which they have been assisted by Bill Hickman since this trial commenced. White has been kept hid here in Beaver, in order to prevent any of the attorneys for the defense, or anybody else, except those concerned in the plot, from speaking to him. He has been kept at the room occupied by Klingensmith and Bill Hickman. As evidence justifying me in making this statement, I will call your attention to what he himself said on the witness stand. We asked him if he was permitted to speak to the defendant's attorneys. He answered that he was not, and that he was in the hands and custody of Bill Hickman. The Court thereupon ordered that he be at liberty to talk with Lee's attorneys. We also asked him to make a diagram of the ground of the emigrants' camp and corral, also of the route which the emigrants travelled when they left the corral, and that travelled by the two wagons. Before he had time to answer, the Court adjourned, after ordering him to prepare the diagram and produce it when the Court met again after recess. He then came in with a diagram, and we asked him the question, "Who made this diagram?" He answered, "Klingensmith assisted me to make that diagram; he (Smith) gave me some ideas, I drew the pencil myself, but the ideas were Klingensmith's."

Now, gentlemen, am I not justified in saying that it was a put up job? This man White was brought here and trained by Bill Hickman and Klingensmith, so that he might corroborate the perjurer, Klingensmith. He did corroborate him on one point, and on one point only, and that was in regard to the circumstances of going to Pinto and the meeting of John D. Lee on the road. It is quite likely that Klingensmith and White had some conversations together, and therefore with the aid of Bill Hickman they have put up this job. But there were several points in Klingensmith's testimony which it would have been material to corroborate, but which escaped their notice. Such men as Hickman, Klingensmith and White even are not capable of concocting such a story as will stand the test of a cross examination without exposing its fallacy, and it fully appears in this case that their nefarious design was an absolute failure.

Klingensmith and White proceed on their errand of mercy as sent by Haight to deliver the message to Bishop Robinson at Pinto. Klingensmith testified that while on their way, returning from Pinto to Cedar, they met Ira Allen. They asked him if there was anything new. He (Allen) answered, "The emigrants must die. The die is cast, their doom is sealed." This is important evidence in some respects, and, if true, tends to strengthen the case for the prosecution. But, it seems, that Hickman and Klingensmith have neglected to post White upon this particular point. White says that they (himself and Klingensmith) did not meet Ira Allen. And of course, not having met him, no such conversation took place. Here the plot ailed upon a very material point, and this circumstance tends to show that Hickman and Klingensmith were not equal to the task for which they had been selected. There's another circumstance which throws discredit upon this testimony of Klingensmith—this, namely, that while he cannot remember a word of what was said at the meeting on Sunday, or in the conversation had in the Old Fort on Monday, he now details distinctly the very words spoken by Allen at a casual meeting on the road.

Reconcile these false and contradictory statements if you can, gentlemen of the jury, and then say that the evidence convinces you, beyond a reasonable doubt and to

a moral certainty, that John D. Lee is guilty as charged in the indictment!

Do you believe that, after this message of mercy had been sent by order of Haight, the meeting of and conversation with Ira Allen could have escaped White's attention? Do you not believe that such conversation would have made an impression upon the memory of White as lasting as the mind itself?

Permit me to digress here one moment for the purpose of stating what I understand to be the theory of the prosecution. None of the witnesses saw John D. Lee at Cedar City. If they had testified that they saw him at that place they perceived that it would have been easy to disprove their false statements. They therefore meet Lee, solitary and alone, some distance from Cedar, in order that it should be impossible to contradict them. And still it was necessary, to support their plan against Lee, that he should be seen in that vicinity in order that he might with plausibility be charged with having been connected with the conspiracy claimed to be entered into at Cedar. You must recollect that Lee lived at Harmony, some twenty-five miles distant from Cedar, also that the emigrants had not yet passed, and yet Klingensmith testifies that Haight told him that he had already sent Lee to incite the Indians to butcher the emigrants. Klingensmith also testified that while he and White were returning from Pinto on the Tuesday morning, they met the emigrants just leaving camp, some six miles east of Pinto and about twenty-two miles west of Cedar. How can this statement be true, if the emigrants did not pass through Cedar until the Friday following, as before stated by him?

I will next call your attention to the testimony of Klingensmith at the field of slaughter. In order to convict Lee, it was necessary for the prosecution to bring him in as leading spirit at that place. Upon this point they failed also. But they insist that you must overlook their failures and convict him upon the statement, contradictory and contradicted as it is, of this man Klingensmith, who stands before you in the character of a confessed assassin. When they arrive at the Mountain Meadows, John D. Lee, according to Klingensmith, is in command of the "troops." They were called troops by the prosecution and by Klingensmith. The men from Washington were denominated "Southern Soldiers," and the men from Cedar were called "Northern Soldiers." Lee, as I said before, must be the leading spirit, and incite the men for the fray. Consequently he must make a speech and issue words of command; but how is he to do this so that all can hear him? Some contrivance must be resorted to, that all the men in the ranks may hear him. Klingensmith explains how this was done. He says the "troops" were ordered to form a hollow square. That's it, gentlemen; a hollow square was formed, and now the soldiers can hear what is said. So far, so good; but now let us see of how many men these "troops" consisted. All the witnesses together can account for twenty-four men only. But suppose there had been thirty-two men. That would have formed a square of eight men to a side, and would have taken up twelve feet square, allowing eighteen inches to each man, according to military rules. Just imagine, gentlemen, the commander standing in the middle of that immense square, making that inciting speech that was to fire the hearts of the "troops," and raising his voice to the highest pitch so that all the "soldiers" might hear him. Don't you think he got hoarse? This, gentlemen, is no fancy picture of mine. The prosecution have conveyed the idea that there were so many men present that it became necessary for John D. Lee to put them through these military evolutions and form them into a hollow square, in order that they might hear what was said. But unfortunately this theory has one defect, and that is, it is not true. Joel White says that no hollow square was formed, and he is corroborated by Young, Pierce and Pollock, who are all witnesses for the prosecution. And thus again the plot of Hickman and Klingensmith failed to get witnesses to corroborate the chief perjurer in this case. Now, gentlemen, no hollow square having been formed, you may safely conclude that no speech was made. The whole is a fabrication to sup-

port the statement made by Klingensmith that the plan of decoying the emigrants out of their stronghold had been laid at Cedar City, and that Lee as commander was to lay this plan before the "troops," which according to Klingensmith's testimony he did in the "hollow square." Now, gentlemen, in reference to this statement, I am convinced that you have come to the same conclusion as I have, that Klingensmith has added another stain, that of perjury, to his already blackened soul. Klingensmith sticks with great tenacity to the statement that John D. Lee was in command of the "troops" at the Meadows. But, if he was in command, what order did he issue? What command did he give? When Klingensmith was asked on cross-examination what order was issued or command given by Lee, he answered, "I never heard or knew of Lee, upon the field at Mountain Meadows, or at any other place, issuing an order or giving a command." Now, that being so, could Lee have been in command, as stated by Klingensmith in his direct examination? The whole, gentlemen, is a baseless fabrication and conspiracy, as before stated, gotten up for the purpose of convicting the defendant at the bar, and to save the worthless neck of that villain, Klingensmith.

Klingensmith next goes on to state that, while the "troops" were standing in the "hollow square," the command was given to march, and they then marched in double file from the camp to the vicinity of the corral at the Meadows, under the command of Higbee. Joel White says, that they marched in single file. But Pollock, Young and Pierce all agree in their testimony that no orders were given to march, no order was given to fall into line, and that all those who did go, went of their own accord and without any regard to order.

These discrepancies, gentlemen, may seem unimportant, but when a witness comes upon the stand who confesses himself to be an accomplice in one of the most damnable crimes ever recorded in the annals of a civilized community, and who has a theory which he attempts to carry out in his testimony, it is of the greatest importance that he should be corroborated by credible witnesses before his evidence is entitled to consideration, and not contradicted, especially by the witnesses for the prosecution, as this man has been.

Next, Klingensmith states, in his cross-examination, that one Bateman was sent to the emigrants camp with a flag of truce for the avowed purpose of carrying out the "treaty." He does not state what treaty he had reference to, but leaves it, so far as the evidence is concerned, to conjecture. But we say that the treaty referred to was this—it was a treaty previously agreed upon between the citizens and the Indians, the conditions of which were, that if the emigrants would agree to deliver their horses and cattle to the Indians, then they agreed to cease their hostilities and let the emigrants pass without further molestation. After the return of Bateman, Lee was sent to the emigrant's corral to carry into effect, in good faith, this treaty. The Indians, as he supposed, had previously withdrawn. Lee took two wagons with him, for the purpose of carrying the children, the sick, and those who had been wounded in the several attacks made by the Indians, to Cedar City.

Klingensmith states that Lee with the two wagons went immediately in front of the emigrants as they came out of the corral, the women next to the wagons, and the men in the rear. On cross examination he stated that the emigrants followed exactly in the track of the wagons. But White says, and shows by his diagram also, that the emigrants did not follow in their track, but came out on the road a considerable distance west from where the wagons first struck it. Klingensmith says also that the soldiers and emigrants marched in parallel lines for two hundred yards; and at the word "halt!" which had been previously agreed upon as the command of "fire!" the "troops," carrying their guns across their left arms, halted, and all of them fired. With the exception of this statement, there is not another word of testimony to show that any white man fired a single shot, except the one fired by Klingensmith himself. White denies having fired a shot himself, and says that he did not see any other white

man fire. Klingensmith not only acknowledges having fired his gun, but states that he was particular to take aim and was sure he brought down his man. Notwithstanding this confession, and notwithstanding the fact that he stands before you a clearly proven perjurer, he wanted to make you believe that he was an exemplary man, and that his bosom was all but overflowing with the "milk of human kindness."

Klingensmith states that he marched at the head of the column, which was marching parallel with the emigrants. White says, he himself was at the rear end of the column, and that the column did not march parallel with, but in the rear of, the emigrants; and that at the first fire the Indians came rushing down in overwhelming numbers upon the emigrants, slaughtering men, women and children. Now, therefore, is it not a reasonable inference and in fact the only rational conclusion at which we can arrive, that the Indians were the only ones who fired, with the exception of Klingensmith?

Another theory of the prosecution is, that Lee incited the Indians to massacre the emigrants. There is not one word or syllable of testimony to substantiate this, except what Klingensmith says; which is, that Haight or some one else told him such was the case. While at the Mountain Meadows Smith says that the Indians were under the control of Carl Schurtz, and that Higbee had command of the "troops." Lay aside the testimony of Klingensmith, which I think I have conclusively shown is unworthy of your serious consideration, and what testimony have we left that reflects upon John D. Lee? None whatever.

When his statement is stripped of all the inconsistencies and contradictions with which it is clothed, there is nothing left but a deformed, limbless and hideous skeleton.

Gentlemen of the Jury, look at this man Klingensmith, and say if villain, coward, murderer and assassin are not written upon every line and lineament of his features? Not even old age, and the soothing influences of time, with its gentle tread, can stamp out or efface the damning marks of crime upon his villainous countenance. He stands before you proven to be a perjurer, a confessed assassin. He stands before you, gentlemen, a confessed moral coward, and God hates a coward. Klingensmith confessed himself a coward and hated of God when he said he did not have the moral courage and manhood to raise his voice to stay the hand of the slayer, but, as stated by himself, voluntarily imbrued his hands in the blood of over one hundred innocent victims, men, women, and children. I ask you, gentlemen, how much credit is due the statement of such a man? Do you for a moment believe any of his evidence? Don't you feel morally certain in your own minds that he has lied? Villain and perjurer are too prominently stamped upon his every feature, for you to believe him, I am sure. Did he impress a man of you that he was telling the truth? No, gentlemen. When you come to look over his testimony and weigh it coolly and dispassionately in your minds, can you say it is true? I can't think it possible that you can. Can you say from the evidence that John D. Lee is guilty of the offence with which he is charged? Don't it raise a doubt in your minds of his guilt? Test this evidence in the crucible of reason and I am sure you will arrive at the same conclusion that I have about Klingensmith, who, on the witness stand, acknowledged himself to be a cold blooded murderer and assassin, that he is unworthy of belief.

Aside from the circumstances already enumerated and which tend to show that Klingensmith is unworthy of belief, there is another circumstance of a more convincing nature and which I only need to call your attention to in order to impress on your minds that he is utterly unworthy of belief, except he is corroborated by credible witnesses. I now allude to the price at which he is brought to testify.

Suppose a witness should come upon the stand and testify, and, after having detailed a story which was calculated to fasten the guilt of a horrible crime upon the prisoner at the bar, he should afterwards confess that the prosecution had paid him ten thousand dollars for his testimony. Gentlemen, could you convict the prisoner

upon such purchased testimony? Would your consciences allow you to pronounce him guilty without compunction? If you would, then your souls would be equally stained with the foul blot which the blood-money fastened upon the perjurer's soul! Now you may ask me if I mean to assert that Klingensmith has sold his testimony for ten thousand dollars. Gentlemen, I will prove to you that he has sold it for a sum equal to more than twice that amount. He has sold it to save his own life! Klingensmith has purchased his own life by giving the testimony which you have heard! Do you suppose that Klingensmith would thrust his neck into the halter and expire upon the gallows for the sum of ten thousand dollars! No, gentlemen! Worthless as his life is, still to him it is worth more than money. He has not that love for his fellowman that would make him take money that others might enjoy, while he would have to undergo the torments which retributive justice will be sure to mete out to him for his crimes beyond a felon's grave. Gentlemen, he has sold his testimony for a purpose, and that purpose is to convict John D. Lee. Throw aside the testimony of this accuser, and what evidence have you left upon which Lee can be convicted? Not a tittle!

Gentlemen, Judge Sutherland has already fully stated to you our theory, which is the only reasonable one, of the consummation of the unfortunate and horrible massacre, and I shall not repeat it.

There is another point in the evidence which I do not want you to overlook. The witness Bradshaw states, that after the Indians had attacked the emigrants at Mountain Meadows, he heard Haight say, in a sermon at Cedar City, that "if it had not been for that old fool interfering, the destruction of the emigrants would have been accomplished by the Indians before now." Now, gentlemen, what "old fool" could be alluded to? It could not be Klingensmith. He never claimed to have had anything to do with the Indians, and he says the only men who had anything to do with them were Lee and Carl Schurz. Haight must therefore have meant John D. Lee. He could not mean Carl Schurz, because he was a very young man, a mere boy, and could not therefore be called an old fool.

I hardly deem it necessary to call your attention to the testimony of Mrs. Hoag, one of the witnesses for the prosecution. The prosecuting attorneys are evidently ashamed to refer to her, and if they attached the least importance to her evidence, it of course would destroy their whole theory of the case. She had learned her story like a parrot, and as she was deaf as a post, neither the attorneys nor the court could stop her until she had rattled off all she had to tell. She said, among other things, that Lee said that a man was sent with a message from Cedar City to Salt Lake City and he returned with an answer to Harmony on the third day, thus traveling about five hundred and fifty miles in less than three days and two nights. We did not deem it necessary to cross-examine her because there was not a person in the room who believed a word of what she said.

Now, gentlemen, I have gone over the testimony. Outside of that which I have laid before you, is there any evidence which connects John D. Lee in any manner whatever with what the prosecution call a "conspiracy?" Not a word, not an iota! John D. Lee is not even mentioned at all. And still, upon the testimony of Klingensmith, contradicted as he is by White and others, and even by himself, the prosecution ask you to bring in a verdict of guilty! They want to impress upon you that it is necessary to make an example of the defendant, because he is charged with being concerned in the "conspiracy," as they call it. Will you do it, gentlemen? Will you make an example of this old man, and shed his blood to appease public clamor? Will you violate your oaths, and dye your hands in innocent blood, because the prosecuting attorney says that the "public demand it?" Gentlemen, no! You will not violate your oaths and honor, but will judge according to the law and the evidence.

I now call your special attention to the law as laid down by his Honor on the bench, in his instructions to you, and I wish you will carefully weigh it, and apply it to the evidence in this case. It is as follows:

"Before you can find the prisoner guilty you must, from the evidence, believe, beyond a reasonable doubt, that the prisoner is guilty, and taking the whole evidence together it must exclude every other hypothesis but the guilt of the prisoner. A reasonable doubt is only such a one as would arise in the minds of reasonable men, such as you are, who are selected because it is supposed and expected that you are reasonable men and compelled to try such a question. Proof beyond the possibility of a doubt is not required, because such proof never can be made. It is not necessary to show to you that it is not possible that the prisoner is innocent to show beyond all possibility of a doubt that he is guilty; but it is required that the prosecution produce such evidence that when you look it over as reasonable men, you do not doubt the prisoner's guilt; that the evidence produces in your minds an abiding conviction to a moral certainty of the guilt of the defendant. Proof beyond a reasonable doubt is something more than the preponderance of evidence; a preponderance of evidence will do to render a verdict in a civil case, but not so in a criminal case. You must be satisfied from the evidence, beyond any fair, reasonable doubt, of the defendant's guilt; you must have an abiding conviction to a moral certainty of his guilt, or you should acquit him, but absolute certainty of guilt is not necessary—moral certainty is sufficient."

I ask you to give the testimony due consideration, in connection with the law as given to you by the court. Weigh and digest it well, try it in the crucible of reason, and then ask yourselves if you have no reasonable doubt of the defendant's guilt as charged in the indictment. If you have not, then you must find him guilty. I am no apologist for crime—especially such a horrible crime as that charged in this case. We do not come before you to defend crime; but we come before you to defend the rights of John D. Lee, the only defendant who is on trial before you. You have nothing to do, except to perform your sworn duty, to find him guilty or not guilty according to the evidence. Feeling confident that you understand the testimony, and that you will bring in a verdict in accordance with the evidence before you, without fear or favor, I leave the case with you.