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PROVO CITY, UTAH, SATURDAY, FEBRUARY 7, 1891.

PRICE FIVE CENTS.

MUST HAVE A NEW TRIAL.

The Opinion in the
Hancock Case.

Associate Justice Miner
Delivers the Opinion of
the Supreme Court.

Mistakes of Facts and Errors
of Law Are the Grounds
of the Reversal.

The Opinion in Full, Contain-
ing an Extended Review
of the Noted Case.

The Supreme Court on Wednesday
handed down its opinion in the Geo.
W. Hancock case, tried in this city
last February term of Court. The
following is the opinion in full:

The indictment in this case charges
this defendant and two others with
the murder of Henry Jones on the 24th
of April, 1888. It was found by the
grand jury on the 8th day of March,
1890, or thirty-two years after the al-
leged crime was committed. Defendant
Hancock was tried separately.

Therecord shows that on April 24th,
1888, the deceased, Henry Jones, was
living with his mother, Hannah Jones,
his brother John Jones, and little sis-
ter, Ellen H. Brown, in a small dugout
at Payson, Utah Territory. At this
time Ellen was a child of about 5 years
of age.

At the time of the trial it appeared
from Ellen's testimony that at about
9 or 10 o'clock in the evening of April
24, 1888, she was awakened by a dis-
turbance outside the dugout, caused by
the firing of guns. She remembers
seeing her two brothers, Henry, the
deceased, and John, get up hurriedly
dress themselves, take their guns and
go out on the roof through a chimney
hole, that soon after this five or six
men came into the cabin and wanted
her mother to tell them something, but
she would not. They then went to the
men's room and killed her mother.

There being no light in the room, she
was unable to distinguish who was
present. She was a stranger there at
this time and did not know the de-
fendant Hancock. That several weeks
after she saw Charles Hancock, the
deceased's brother, on the street and
recognized him as the man that killed
her mother, and that on July 4, 1888,
she saw the defendant and recognized
him as one of the men who were pre-
sent when her mother was killed, and
that she was frightened at seeing him
and went and told her father. It also
appears that on this occasion de-
fendant Hancock was a constable, that
he was a man of Indian wars and
gained were constantly kept out to
guard against Indians from the In-
dian side and that Hancock and others
on Jones' place were secured a
sentence on the part of Jones and his
brother to stand before that night and
escape from the settlement, and to
meet the United States army, then not
far distant, and that Jones was in fear
of injury from the hands of the de-
fendant Hancock, and that he was shot
at this time, which fear induced him
to attempt to leave the country with
stolen horses.

That in order to frustrate this scheme
which had been discovered, Hancock
had been placed at the corner where
the horses were kept at Jones' house,
to prevent his escape as well as to
guard against surprises from Indians.
That after Jones had escaped from the
dugout he went from place to place in
that vicinity to escape pursuit and was
much frightened, and that he was shot
in the arm while eluding pursuit, or in
attacking an antagonist, which was
alleged to be the defendant, Jones
continued his efforts to escape, and
varied in the morning arrived at a town
called Salem, or Pond Town, some
three or four miles from his mother's
house. That the posse, including the
defendant, Hancock, and many others,
were in hot pursuit and caught the de-
fendant at this latter place, disarmed
him and took him prisoner. Hancock
seemed to be in command. A guard
was placed on each side of the de-
ceased. Hancock was a little to the rear
and others about and around them. In
this position they started with the de-
ceased to return to Payson with him.
This was supposed to be three or four
hours after the killing of Mrs. Jones.
Thus guarded, the party started for
Payson. What followed is a matter of
speculation, as the witnesses disagree.

It appears, however, from the testi-
mony of Wilson (a witness for the
prosecution), whose testimony was
discredited and impeached in many
ways, that Hancock directed the posse
in charge of Jones to take him to Pay-
son. All were armed except the de-
ceased. While walking along in the
direction of Payson, and talking about
the stealing of horses, etc., Jones re-
marked that he didn't want to go with
them; that they had killed his mother
and he was not going with them, etc.
About this time Jones looked up and
saw some other parties coming towards
them and remarked: "There come
some more of the d—d cusses after
me!" He then stopped and threw up
his hands, at which time, the prose-
cution claims that Hancock remarked
to his companions, "Now slap it to
him, boys!" a gun cracked and then
another, and Jones fell mortally
wounded, and soon afterwards died
where he was shot. There was a large
party present at this killing, most of
Jones' body was taken by some one
other than the defendant, and placed
with that of his mother, without wash-
ing or changing his clothes. The sup-
ports to the roof of the dugout were
taken down and the roof lowered to
cover the remains, and they were both
left thus entombed.

It also appears, under objection from
defendant's counsel, that a long time
prior to this killing Jones had been
estranged by parties then unknown.
The defendant is not proved as having
any complicity in that act.

That prior to and after the killing,
Hancock had been a person of good
moral character. Different and con-

tradictory accounts of the killing of
Mrs. Jones and her son, and of the
time when the killing took place, ap-
pear from the testimony, but enough
does appear to show that the killing of
Mrs. Jones was a different transaction
from that of the killing of Henry
Jones, and whether Hancock was
present at her death or not, is left in
dispute and uncertain.

On the trial defendant was convicted.
Defendant's counsel assign
two errors as grounds for a reversal
of the verdict and judgment of con-
viction. Among them are the fol-
lowing:

3. The Court erred in allowing
Henry Gardner against the objection
of counsel for defendant, to testify
that Henry Jones had been castrated
and had no testicles.

7. The Court erred in refusing each
one of the several requests asked for
the defendant, to-wit, severally, each
one of the twenty-one requests appear-
ing in the record.

8. The Court erred in charging the
jury as to the effect of good character
in the case.

9. The Court erred in charging the
jury upon the facts as to the belief
of the attached witnesses who testified
to the exact language thirty-two years
after the transaction.

10. The Court erred in charging the
jury that time does not run in favor of
murder, and in charging that no lapse
of time washed out the stains of blood,
that the murderer makes, and in
charging generally upon the facts of
the case.

The Court erred in charging the
jury as to the subject of justification,
the defendant not having made or
asked for justification, but denying
the killing, and the charge of the sub-
ject of killing was an argument that
the defendant was guilty.

We do not consider it necessary to
review each assignment separately.
In the course of the trial it appears
by the testimony of Henry Gardner,
counsel for defendant, that Hancock
had been castrated some considerable time be-
fore the alleged homicide. It nowhere
appears that the defendant had any
hand or complicity in this transaction,
or was in any manner chargeable there-
with, or that that fact in any way
tends to elucidate the question in
volvement, or throws any light upon
the question of the guilt or innocence of
the defendant. The presumption is
that this testimony was admitted for
the purpose of showing malice on the
part of the defendant, and we think
the learned judge admitted the testimony
for that purpose, and the prosecution
failed to connect the defendant
with the act of castration. This, we
think, was error. The only object for
its admission, if it was admissible at
all, would be to show that the de-
fendant committed the act, or assisted
in its commission, and that he must have
had malice against the deceased at
that time; and when the prosecution
failed to connect the defendant with
the act of castration, and the defendant
was not shown to be a malicious man,
his admission, under the circumstances,
would naturally tend to awaken a pre-
judice in the minds of the jury against
the defendant. Testimony of this transac-
tion was for the purpose of showing
malice, and should not have been allowed.

Error is assigned upon the refusal
of the Court to instruct the jury as
follows:

18. In a criminal trial evidence
of the good character of a person is of
value not only in doubtful cases, but
also when the testimony tends very
strongly to establish the guilt of the
accused. It will of itself sometimes
create a doubt, when without it none
would exist.

17. There is no case in which the
jury may not, in the exercise of a
sound judgment, give a person the
benefit of a previous good character.
No matter how conclusive the other
testimony may appear to be, the
character of the accused may be such
as to create a doubt in the minds of
the jury, and lead them to believe, in
view of the probabilities, that a person
of high character would not be guilty
of the offense charged, that the other
evidence in the case is false, or the
witness mistaken.

The Court refused these requests,
but instructed the jury as follows:

Proof of the good character of the
person charged with the offense is al-
ways allowed in this class of cases, and
the weight to be given to it is to be
determined by the jury. It is all-in-
clusive in doubtful cases. Where the
evidence, outside of the presumption
of good character, is clear and explicit,
on which no doubt can be cast, good
character will only cause the jury to
hesitate and think about the matter.
The jury will always remember that a
man has to commit his first crime. He
cannot commit all the crimes, if he
commit any, at once; he has to break
over the rules of good conduct and
good life for the first time, some time
in his life.

We think the requests numbered 16
and 17 should have been either given
to the jury or embraced in the charge
of the Court, and that the instruction
given to the jury on the Court's own
motion was erroneous. This charge,
as given, limited the effect of good
character to doubtful cases, and that
in cases where the evidence was clear
such evidence would only have the
effect to cause the jury to hesitate and
think about the matter. In other
words, that in clear cases of guilt good
character should have no weight, ex-
cept for the jury to stop and think, but
in doubtful cases it is all-important.
We think the charge was misleading.
In doubtful cases the jury should give
the defendant the benefit of the doubt,
and acquit; and to do so it would not
be necessary for the defendant to add
proof of good character to the doubt
already existing in order to be entitled
to an acquittal.

It is in clear cases therefore where
evidence of good character is of the
most avail. There may be cases
made out so clear that no good charac-
ter can make them doubtful; but there
may be others in which evidence given
against a person without character
would amount to a conviction, in
which a high character would produce
a reasonable doubt, or in which high
character will actually outweigh evi-
dence which otherwise might appear
conclusive. "Good character is an
important factor with every man; and
never more so than when he is put on
trial charged with an offense which is
rendered improbable in the last degree
by a uniform course of life wholly in-
consistent with any such crime. There
are cases where it becomes a man's
sole dependence, and yet may prove

sufficient to outweigh evidence of the
most positive character. The most
convincing cases are some-
times satisfactorily rebutted by it, and
a life of unblemished integrity becomes
a complete shield of protection against
the most skillful web of suspicion and
falsehood which conspirators have
been able to weave. Good character
may not only raise a doubt of guilt
which would not otherwise exist, but
it may bring conviction of innocence.
In every criminal trial it is a fact
which the defendant is at liberty to
put in evidence, and being in, the
jury have a right to give it such
weight as they think it entitled to."

People v. Garbutt, 17 Mich. 9.
People v. Mead, 50 Mich. 233.
Comm. v. Minor, 140 Mass. 479.
Common v. People, 16 N. Y. 501.
Harrington v. State, 19 Ohio St.,
284.

1 Blsh. Crim. Prac. 1115-6.
3 Greenl. Ev. 25.
People v. Asil, 44 Cal. 255.
Renshaw v. People, 43 N. Y. 5.
Heine v. Commonwealth, 91 Pa. St.,
145.

State v. Daly, 53 Vt. 442.
Coleman v. State, 59 Miss. 454.
Wharton's Crim. Ev. 66.

This charge also gave the jury to
understand that a man was expected
to commit his first offense, and the
jury may have been led to believe
from it that the offense charged might
be one of the crimes that the defend-
ant might be expected to commit for
the first time, and that a matter of
course; if the defendant had a good
character and had never been con-
nected with any crime before, he
might now be expected to be guilty of
this one; that the time had come at
last for the defendant to break over
the rule of good conduct and commit
his first offense, and that this might
properly be expected from all men.
We think this was an error, and that
it was not cured by a subsequent in-
struction to the jury at the close of a
case, where the Court said:

"Gentlemen of the jury, I may have
overlooked one important matter. I
do not remember now what I said to
you in reference to the character of
the defendant. The character of the
defendant is to be considered by you
in weighing all the testimony in the
case. If his character, notwithstanding
all the evidence in the case, raises a
doubt in your mind as to his guilt,
innocence, or acquittal, you must
decide in his favor."

When conflicting charges are given,
one of which is erroneous, it is to be
presumed that the jury may have fol-
lowed that which is erroneous.

Grand Rapids & Indiana Railway
Company v. Munroe, 47 Mich. 152.
Jones v. Talbot, 4 Mo. 335.
Brown v. McAllister, 30 Cal. 537.
Squire v. Alexander, 58 Cal. 21.
Plaintiff v. Jameson, 17 Pa. 153.
Murray v. Commonwealth, 79 Pa.
St. 311 391.

34 Iowa 375.
49 Kan. 142.
20 Mo. 183.
35 Ill. 183.
91 Ill. 63.
14 Kan. 114.

The Court also instructed the jury
as follows: "The long time that
has elapsed since the murder, that is
charged was committed and the com-
mitment of the prosecution is not to
be considered at all. It is not an
element to determine the guilt or in-
nocence of this party, on way or an-
other. Time does not run against the
murderer or in his favor. No lapse of
time washes out the stains that blood
shed by the murderer makes."

This charge was possibly given un-
der a mistake of fact. We cannot con-
clude that the length of time that has
elapsed since the homicide should not
be a strong circumstance to enter into
the consideration of the jury in test-
ing the testimony of the witnesses, in
favor or bias of those left to relate
the circumstance of this alleged murder
and as bearing upon the probabilities
of the guilt or innocence of the ac-
cused.

Hart v. People, 110 U. S. 574.
For the reason stated the verdict
and judgment of the Court below
should be set aside and a new trial
granted.

WE CONCUR. ANDERSON, A. J.

A Great Railway Strike.

Chicago, Feb. 6.—A Montreal spe-
cial says that a strike of the conductors,
brakemen and switchmen on the
Canadian Pacific Railway is threat-
ened and may be put into operation
at any hour. It will extend from St.
John, N. B., to Vancouver, British
Columbia, and will have repre-
sentatives from all over the line have ap-
proached the assistant general man-
ager of the road and demanded an in-
crease of pay. What the company
terms a reasonable advance was of-
fered, but not accepted. The demand
of the Canadian Pacific men will
probably be followed by one on the
part of the Grand Trunk employees,
who belong to the same organization,
and who are awaiting to see the up-
shot before taking action.

Vice-President Shugness was
interviewed this afternoon with re-
ference to the report that the Cana-
dian Pacific Railway trainmen con-
templated striking. He denied that
there was any trouble with the con-
ductors and said certain concessions
were made to the other hands.

The Baptists hold regular worship
every Sabbath at the Swedish Luth-
eran Church on "G" street, between
6th and 7th streets, at 7-30 o'clock
in the evening. Prayer-meeting each
Wednesday evening at 7-30 o'clock.
Young People's meeting at 7 o'clock
on every Sabbath. Sunday School
and Bible Class at 2-30 o'clock meet
The Ladies Home Mission Circle meet
at 3-15 o'clock in the afternoon.

H. B. THURMAN, Pastor.

THE INSANE ASYLUM.

Report of the Medical
Superintendent.

Average Monthly Atten-
dance of Patients
Reaches 132.

A Large Number of Applica-
tions for Admission of In-
sane Persons Refused.

The Crowded Condition Ren-
ders Futile any Attempt at
Systematic Treatment.

To the President and Board of Directors
of the Territorial Insane Asylum:

GENTLEMEN—I have the honor to
submit to you herewith my annual
report, with details of the operating
of the Asylum for the fiscal year end-
ing November 30, 1890. Appended to
the report will be found tabulated
statements of the movement of
patients, and also tabular statements
of the receipts, expenses and disburse-
ments of the board and treatment
account.

ANNUAL SUMMARY OF MOVEMENT OF
PATIENTS.

	MALES.	FEMALES.	TOTAL.
Number of patients in Asy- lum December 1, 1889	66	61	127
Number of patients admit- ted during the year end- ing December 1, 1890	17	28	45
Number of patients under treatment during the year	63	58	121
Number of patients dis- charged during the year	13	20	33
Number of patients died during the year	3	6	9
Number of patients dis- charged and died during the year	15	26	41
Number of patients in Asy- lum November 30, 1890	70	65	135

The above summary shows that the
population of the Asylum has in-
creased, and that the number of pa-
tients admitted during the year has
been one hundred and thirty-five, and
that the lowest monthly at-
tendance of patients during the year
has been one hundred and thirty-six,
or an average monthly attendance of one
hundred and thirty-two. The crowded
condition of the Asylum made it ne-
cessary to refuse admission to more
patients, except as vacancies occurred
from discharge or death; and the limit
by permission of your honorable
Board was placed at one hundred and
thirty-five—seventy males and sixty
females. This number fills the
building, causing occupancy of every
available space wherein a patient can
be placed with any degree of safety.

I would state in this connection, that
I have been obliged to refuse admis-
sion to a number of patients, and the
number of applications for admission of
insane persons to the Asylum, on the
ground that the institution cannot
with safety accommodate any more at
present.

The general health of the inmates
has been good. No epidemic has pre-
vailed, and most of the fatalities have
been from causes that were progressive
and which originally produced the
mental disease with which the patient
suffered. There have been a few cases
of fever of a malarial character, also
some cases of erysipelas, but no deaths
from any of these causes. In April
last a tragedy occurred whereby a
patient, Isaac A. Chapman, lost
his life at the hands of another patient.

This was thoroughly investigated at
the time by the coroner, and also brought
before the board. While no blame could
be attached to any one, yet it serves to
illustrate the great danger which exists
in the crowded condition of such in-
stitutions, especially when there are
no facilities to separate those whose
insane impulses have homicidal
tendencies.

During the year the new
building, now in course of construction,
when completed and fitted up, will
enable the management to place the
admission of the affairs of the
Asylum, and the treatment of the
patients, upon a new basis, that will
do away with many of the features
which are at present so detri-
mental to the physical and mental
well-being of the patients and which
inhibit so heavily against any attempt
at rational treatment. In fact, this
number of patients, crowded together
as they must be under present cir-
cumstances, renders futile any efforts at
systematic treatment, and makes the
Asylum little better than a house of
detention in which we do the best we
can to attend to the physical needs of
the patients.

Our percentage of discharges was
gratifying. Under the circumstances I
am satisfied they would have been
greater had we not been subjected to so
much noise and excitement around the
buildings. During the whole of the
past summer and fall the great number
of men and teams employed about the
grounds and buildings, and the noise
and confusion incidental to the pro-
gress of such work have had a de-
moralizing effect upon the inmates,
and have also increased the labors of
the attendants very materially. We are
anxiously looking forward to the time
when quietude will again prevail
around the outside of the institution,
feeling certain that it will be con-
ducive of a greater degree of quietude
within.

Some of the patients discharged
during the past year have been, by my
advice, permitted to go upon parole to
the care of their friends, with the un-
derstanding that, should it become
necessary, they could be returned at
once. These were cases that had
made considerable progress toward
recovery, and, in my judgment, simply
needed the quiet of home surround-
ings and friends to complete the cure.
I am pleased to be able to state that
this method has proved successful in
all of the cases paroled, and none have
been returned. In some cases, where
I deemed it for the patient's good, I
have counseled the outgiving of an
order of the court for the removal of
patients to the guardianship of their
friends. There were patients of whose
eventual cure I felt less sure than I
did of the cases released upon parole,
and therefore was not willing to take

upon myself the responsibility. One
of the cases has been returned; but
some have gone on to perfect recovery,
and I feel satisfied they would not
have done so had they remained here.

There are a great many matters per-
taining to the present condition of
the Asylum that I might bring before
the board in this report, but I realize
that many of the objectionable features
stated in this report, as well as those
being remedied as speedily as is
within the power of the board, or that
they cannot be remedied until the ad-
ditions to the Asylum are completed.

The sanitary condition of the Asylum
building has been good, considering the
over-crowded condition. The
abundant supply of water furnished
by the pumping plant enables us to
keep the closets and sinks thoroughly
flushed, thus removing at once all
deleterious matter, preventing any
accumulation of filth and keeping the
sewer pipes from fouling.

The financial condition of the board
and treatment fund will be found
tabulated in table 4, in connection with
the ledger balance sheet attached.
The cost per capita per diem for cure
and treatment for the past year has
been \$4.10 cents.

FARM AND DAIRY.

Statement of products of the farm
will be found in table No. 7; also see
table 8 for separate statement of dairy
products (which is included in that of the farm).
The Jersey herd has done fairly well,
and kept the Asylum supplied with a
sufficiency of a superior article of
butter and milk. Our stock and teams
have done well during the past year.
We have had an abundance of vegeta-
bles for the table all through the
seasons, and will have a sufficiency
until the spring time. The total pro-
duce from the farm, at market values,
was \$5,819.55, the cost for labor on
farm (inclusive of that of patients)
\$1,317.75. The products of the dairy
in milk and butter was, at market
values, \$2,182.94; the expense for help,
hay and grain, etc., was \$1,634.23 (see
table 8).

LAUNDRY.

In view of the fact that we are soon
to have a new laundry building, and
improved machinery for that very im-
portant and to an institution of this
kind, indispensable department, I
forbear saying anything about the
present arrangements, except to state
that the old laundry, now in use, is
about worn out, causing the work de-
manded of it to be done in a very
laborious and unsatisfactory manner.

THE ELECTRIC LIGHT.

As in the past year, the electric light
has given good satisfaction, but will
require, at an early date, a thor-
ough overhauling and repairing. The
many improvements made in this class
of lighting (tending to efficiency,
safety and economy) since our plant
was put in, renders this necessary.
So far, however, I have no words but
those of commendation for this de-
partment. The cost per hour per 10-
candle power lamp has been 12-10
cents.

CONCLUDING REMARKS.

The coming year bids fair to be one
of increasing care and anxiety to the
management of the Asylum, owing to
the many changes that must be made
to bring this institution from its pre-
sent condition to that of an asylum in
the full sense of the word, yet I do
not doubt that this will be successfully
accomplished, knowing that the mem-
bers of the board will give all the as-
sistance, encouragement and advice
that is within their power, as they
have done in the past—and for which
I wish to express at this time my most
sincere thanks and appreciation.

Respectfully submitted,
WALTER R. PRICE, M. D.,
Medical Superintendent.

PROVO, November 30, 1890.

Auction! Auction! Auction!

To the Ladies of Provo:

The undersigned will sell at public
sale, to the highest bidder for cash, a
full stock of Ladies' Hats, trimmed
and untrimmed, also feathers and rib-
bons, etc., on Wednesday, February
11, 1891, at 2 o'clock p. m., at Stubbs'
new building, west of the Postoffice.
Come all and get your share.

BESS BACHMAN,
Deputy U. S. Marshal.

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WE CARRY A FULL AND COMPLETE STOCK OF

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Call and examine Goods and Prices, make your pur-
chases, and we will save you money.

A. EGGERTSEN Supt.