

State of Kansas vs. E. C. Walker and Lillian Harman

Section 2, Pages 31 - 60

Documents from State of Kansas vs. E. C. Walker and Lillian Harman.

Moses Harman (1830-1910) was a free-thought journalist who lived in northeast Kansas from 1879 to 1896. In 1880 he began publishing a paper in Valley Falls to champion his liberal beliefs, including separation between the state and organized religion and legal equality for men and women. In 1883 it was renamed Lucifer the Lightbearer. E. C. Walker of Valley Falls was the co-editor.

On September 20, 1886, Harman presided over a marriage ceremony between Walker and Harman's 16 year old daughter Lillian, without a clergyman or justice of the peace present. The couple were arrested for living together as man and wife without being legally married and received short jail sentences, which were extended when they refused to pay the court costs.

Harman and Walker appealed their case to the Kansas Supreme Court and the Court's opinion, issued March 4, 1887, affirmed their conviction by the Jefferson County criminal court and instructed the couple to follow the requirements for a legal marriage. This is the Kansas Supreme Court case file, which includes: Appellants briefs, Supreme Court syllabus & opinion by Judge Johnston, original court complaint from the Jefferson County District Court County district court papers; the decision, appeal, and newspaper clippings.

Date: 1887

Callnumber: Supreme Court. Appellate Court. Case file #4312, State of Kansas vs. E. C. Walker and Lillian Harman

KSHS Identifier: DaRT ID: 307665

Item Identifier: 307665

www.kansasmemory.org/item/307665



State of Kansas vs. E. C. Walker and Lillian Harman

State of Kansas, Jefferson County, ss:

I, Mr. F. Lillibury, being duly sworn, on oath say that I am
County Attorney of Jefferson County, in the State of Kansas, and that the
allegations set forth in the within Information are true, to the best of my knowledge and be-
lief, so help me God.

Subscribed in my Presence and Sworn to before me by
this 29th day of September A. D. 1886

Sial

Geo. A. Duncan
Clerk of Dist. Court

No. _____

The State of Kansas,

Plaintiff,

E. C. Walker vs.

Lillian Harman

Defendant

Information.

I True Bill

Filed Sept-29 1886

Geo. A. Duncan
Clerk of the District Court

WITNESSES,

W. Harman
E. C. Walker

Lillian Harman

W. L. Harman

Geo. A. Duncan

Geo. A. Duncan

Entered according to Act of Congress, in the year 1871, by George W.
Craw and Henry M. Spaulding, in the office of the Clerk
of the District Court, at Topeka, Kansas.
Geo. W. Spaulding & Co., Printers and Binders, Topeka, Kansas.

(5)

State of Kansas vs. E. C. Walker and Lillian Harman

G. B. HAMILTON & CO.,
TOPEKA, KANSAS.

In the District-Court- of Johnson County.

The State of Kansas
vs. Plaintiff
E. C. Walker. and
Lillian Harman.
Defendants.

Motion to Quash.

And now come said defendants, jointly
and severally as may be necessary, to
preserve their respective rights, and move
the Court to quash the information filed
against them herein for the reason that
said information does state sufficient
facts to constitute any public offense
against the laws of the State of Kansas.

David Perryman.

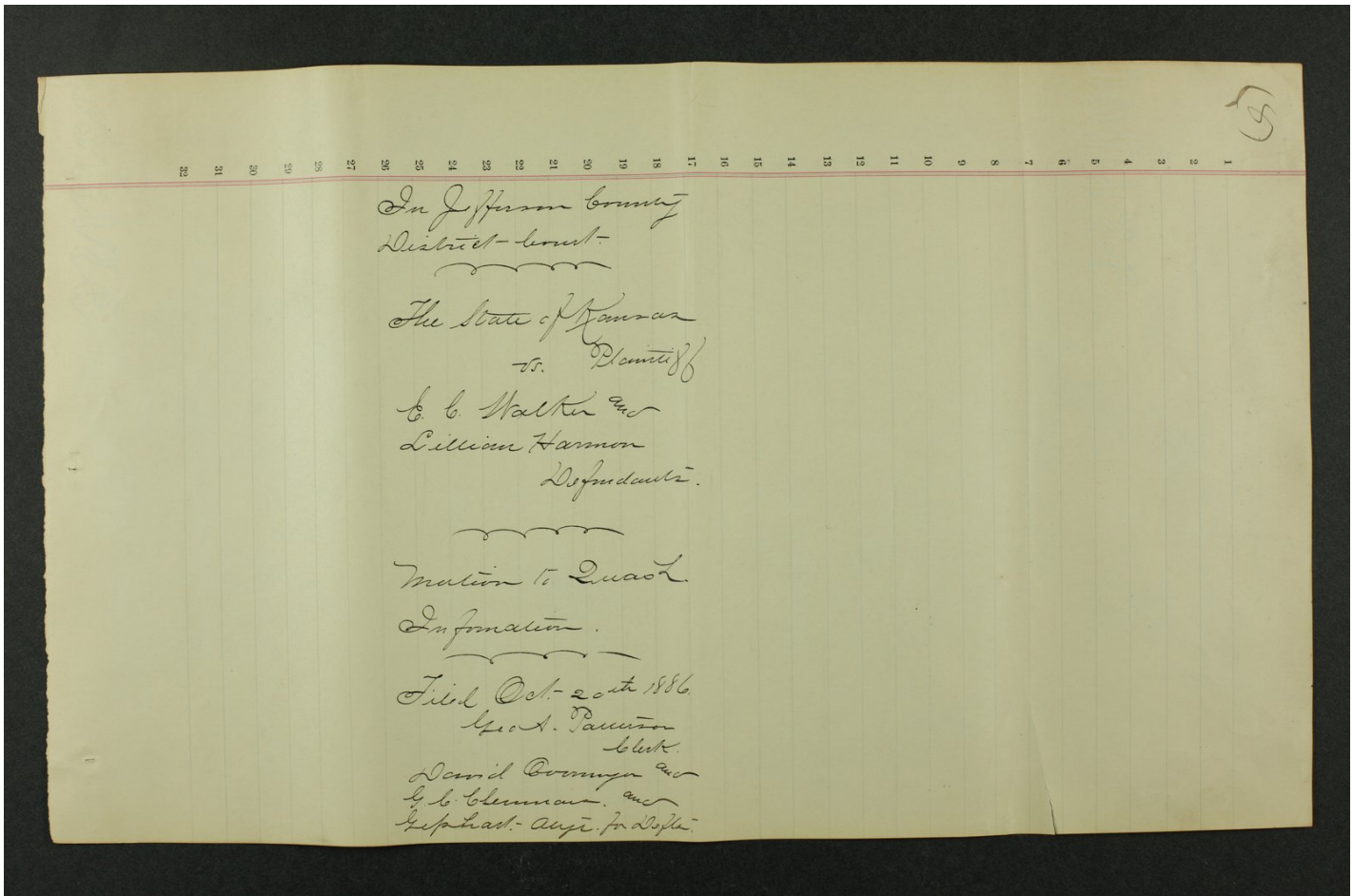
and E. C. Edmunds. and

Cephus.

Attorneys for Defendants.

67

State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman

C. B. HAMILTON & CO.,
TOPEKA, KANSAS.

1 State of Kansas Jefferson County,
2 In the District Court of said County.
3 The State of Kansas
4 vs. Plaintiff } Motion for a
5 E. C. Walker and } New Trial.
6 Lillian Harman }
7 Defendants.

8
9 Come now the defendants E. C. Walker and
10 Lillian Harman. and move the court jointly and
11 severally to grant them and each of them a
12 new trial

13
14 1st Because the court instructed the jury in
15 a material matter of Law.

16
17 2nd That the verdict is contrary to the law
18 and contrary to the evidence.

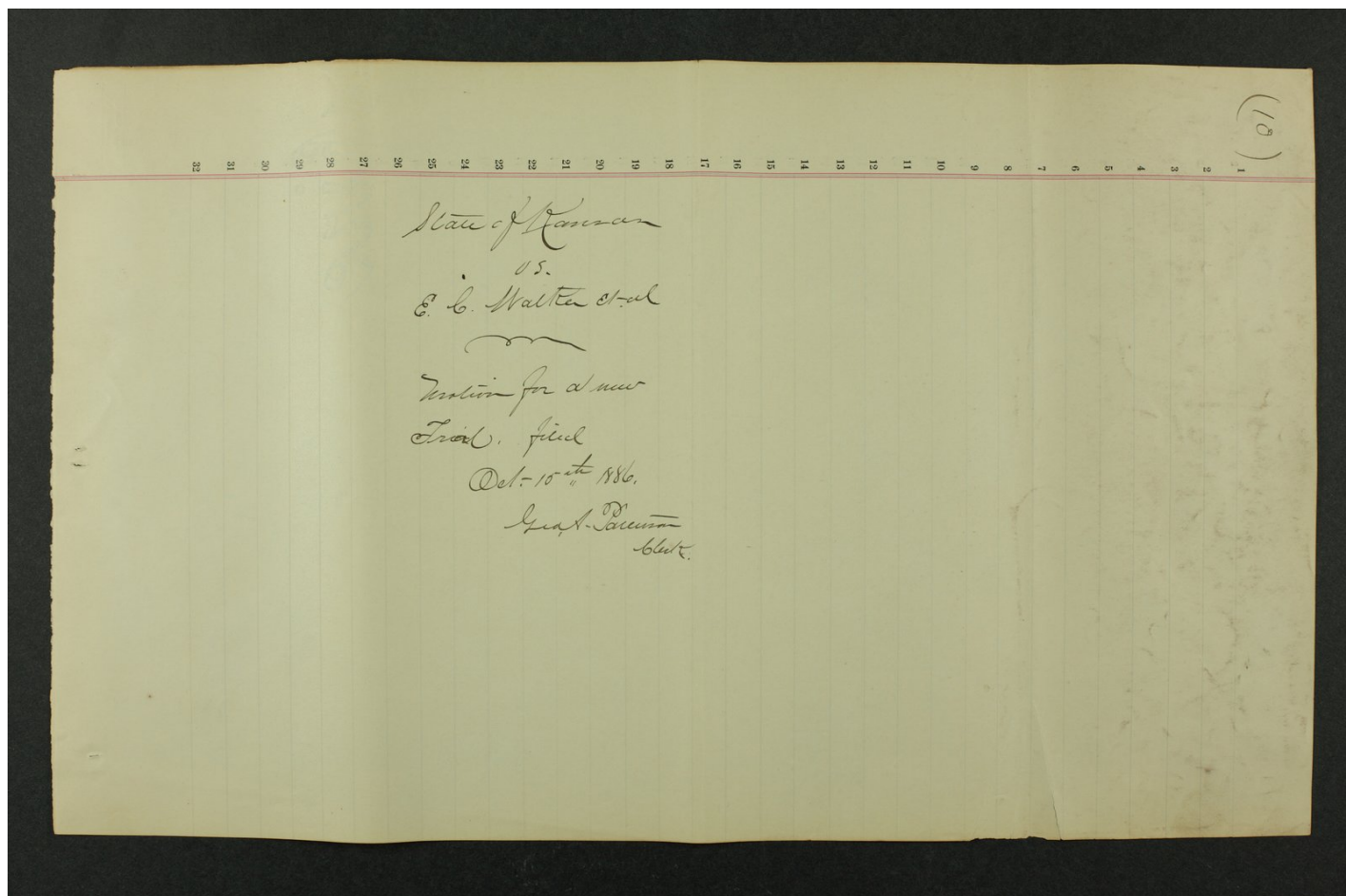
19
20 3rd Error of law occurring at the trial and
21 excepted to by the defendants. Each of them.

E. C. Walker and
Lillian Harman.

by David Overmyer and
Ch. C. Clemens and
Septest their
Attorneys.

(9)

State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman

C. E. HAMILTON & CO.,
TOPEKA, KANSAS.

In the District-Court of the County of
Jefferson in the State of Kansas.

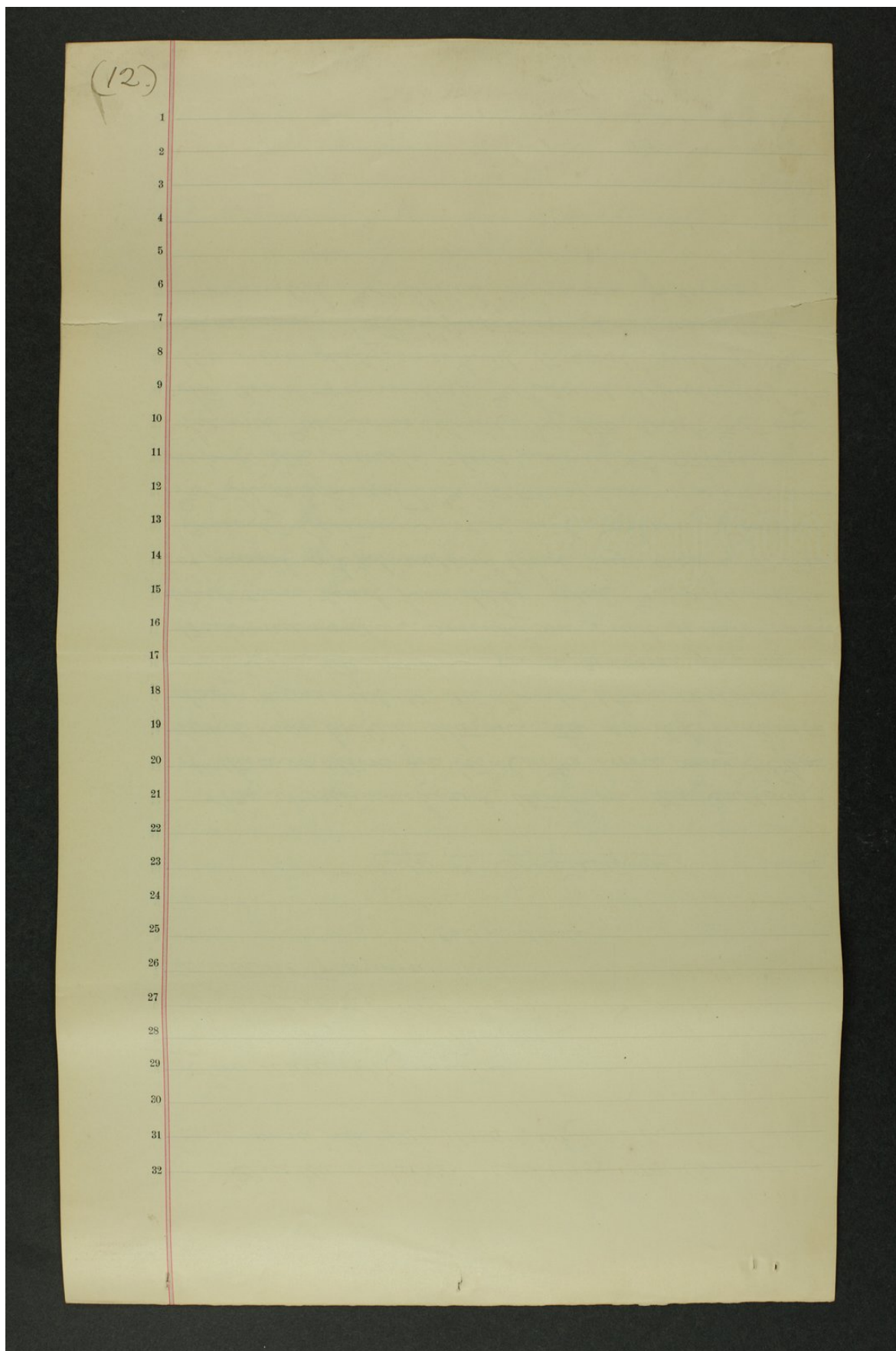
The State of Kansas
v. Plaintiff }
E. C. Walker and
Lillian Harman }
Defendants

Bill of Exceptions.

Be it remembered that on the calling
of this action for trial and before any steps
had been taken therein, the said Defendants
duly presented to the Court their certain
verified Petition for a change of venue
to some other county in said district, which
Petition had been duly filed and due notice
of said application had been given to the
County Attorney of said Jefferson County
and he appeared and opposed said application
upon its merits alone; said Petition was
heard and considered by the Court, and by
the Court overruled, and said Defendants, at
the time duly excepted to said ruling and
decision. The Petition so presented
overruled and denied was as follows;

(11)

State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman

C. B. HAMILTON & CO.,
TOWNSHIP, KANSAS.

In the District Court of Jefferson County,
The State of Kansas, Plaintiff,

vs

E. C. Walker, and
Lillian Harman, Defendants

The petition of said E. C. Walker and
Lillian Harman, defendants, herein, respectfully
shows to the Court:

That your petitioners cannot have a fair and
trial of this action in the said County of Jefferson,
where the same is now pending, for the reason that
the minds of the inhabitants of said County are so
prejudiced against the defendants; that ever since the
arrest of your petitioners, certain jealous and ~~unjust~~
malicious persons have constantly endeavored to so
work upon the minds of said people as to prevent
even decent treatment as prisoners to your petitioners,
to prevent them from giving bail, and to render an
impartial jury impossible in said County; that be-
cause of these efforts, the magistrate before whom
your petitioners were brought for examination, fixed
their bail at the sum of one thousand dollars, al-
though he fully knew that these petitioners were act-
ing solely upon their honest convictions, and that
there was not the remotest danger of their flight; and
for the same reason they have been incarcerated and
guarded ever since their arrest, with as much vig-
ilance as if they were murderers seeking every means
to escape from the country and avoid a trial. Every
officer and magistrate connected with said im-
prisonment has been fully satisfied all the time
that the mere personal recognizance of these pe-

(13)

State of Kansas vs. E. C. Walker and Lillian Harman

(17)

tioners, or their mere parole would be ample to secure their attendance to answer this information; but all of said officers have acted as they have because of their fear of public sentiment in said County; and at the same time said zealous and malicious persons have from the first made such violent attacks upon these petitioners, that their most intimate friends have been by fear of business or social ruin, or of physical violence, deterred from going upon the bonds of your petitioners, and they have been thereby prevented from giving bail, and have remained prisoners in actual custody to this day.

That the Valley Falls Register, the New Era, the Ashaloosa Independent, the Sickle, the Osawkee Times, and the Argus, being all the newspapers published in said County of Jefferson, have, all of them, since the arrest of your petitioners, endeavored to influence the whole County against them, and to make a fair jury in said County impossible, by the publication of the bitterest editorial denunciations and downright libellous falsehoods against your petitioners who were in prison and unable to make defense to these charges and insinuations so as to reach the public mind in said County. The said newspaper, the New Era, published at Valley Falls, the principal town in said County and the home of these petitioners, and widely circulated through said County and among its people, contained the following article in its regular issue of September 30th, A. D. 1886

State of Kansas vs. E. C. Walker and Lillian Harman

O. B. HAMILTON & CO.,
TOPEKA, KANSAS.

The Free Lover Flouted

"Lucifer's" Junior Editor, E. C. Walker, and his "Autonomistic" Companion, Lillian Harman, Bond over to Court.

E. C. Walker and Lillian Harman, were arraigned before Justice Simpson Monday morning to answer to the charge upon which they were arrested the 20th inst, namely illegal Cohabitation, or living together as man & wife without being married.

Walker was brought over Monday morning from Okaloosa, where he has been in jail since the Tuesday previous, apparently only - thing but the cause for his confinement, - owing to the fact that the jail was full to overflowing, the girl was not detained there, but was brought home and given her liberty, except an officer of the law kept an eye on her movements.

About 10 o'clock Monday morning the case was called, and of the interested parties there were present E. C. Walker and Lillian Harman, defendants, M. Harman, senior editor of Lucifer, Mrs. Walker, the aged mother of E. C. Walker, and M. F. Hiser, the prosecuting witness.

The attorneys for the state were County Attorney Gillely, and L. A. Myers. The defense was represented by Hon. David Overmyer, of Topeka.

M. Harman was the principal, and in fact the only witness examined. He stated that he was perfectly cognizant to the

(157)

State of Kansas vs. E. C. Walker and Lillian Harman

(16)

peculiar compact entered into between his daughter Lillian and E. C. Walker, that it was all in accordance with his fullest and freest consent and approval.

The counsel for the defense admitted all the allegations of the information, and sought to support his position with copious citations from various high court decisions, and from a very liberal construction of the common law disclaiming and ignoring the right of legislative bodies to modify or restrict that law by statutory enactment.

The prosecution was ably conducted by W. F. Gilkey, and L. A. Myers, who, of course, showed up the fallacy of Mr Overmeyer's argument on this point; and Justice Simpson was but a few seconds in coming to a conclusion when the arguments were closed; and the announcement of his decision binding them over to the District Court in the sum of \$1000 each, was received with rapturous applause by the large audience present; this was evidence sufficient to show that public opinion was not in the least influenced by the heretical and vicious doctrine advocated by the counsel for the defense, who seemed determined to convince not only the court, but the audience as well, that he was standing up for a cause that deserved to receive the sanction and the unqualified approval of all mankind.

State of Kansas vs. E. C. Walker and Lillian Harman

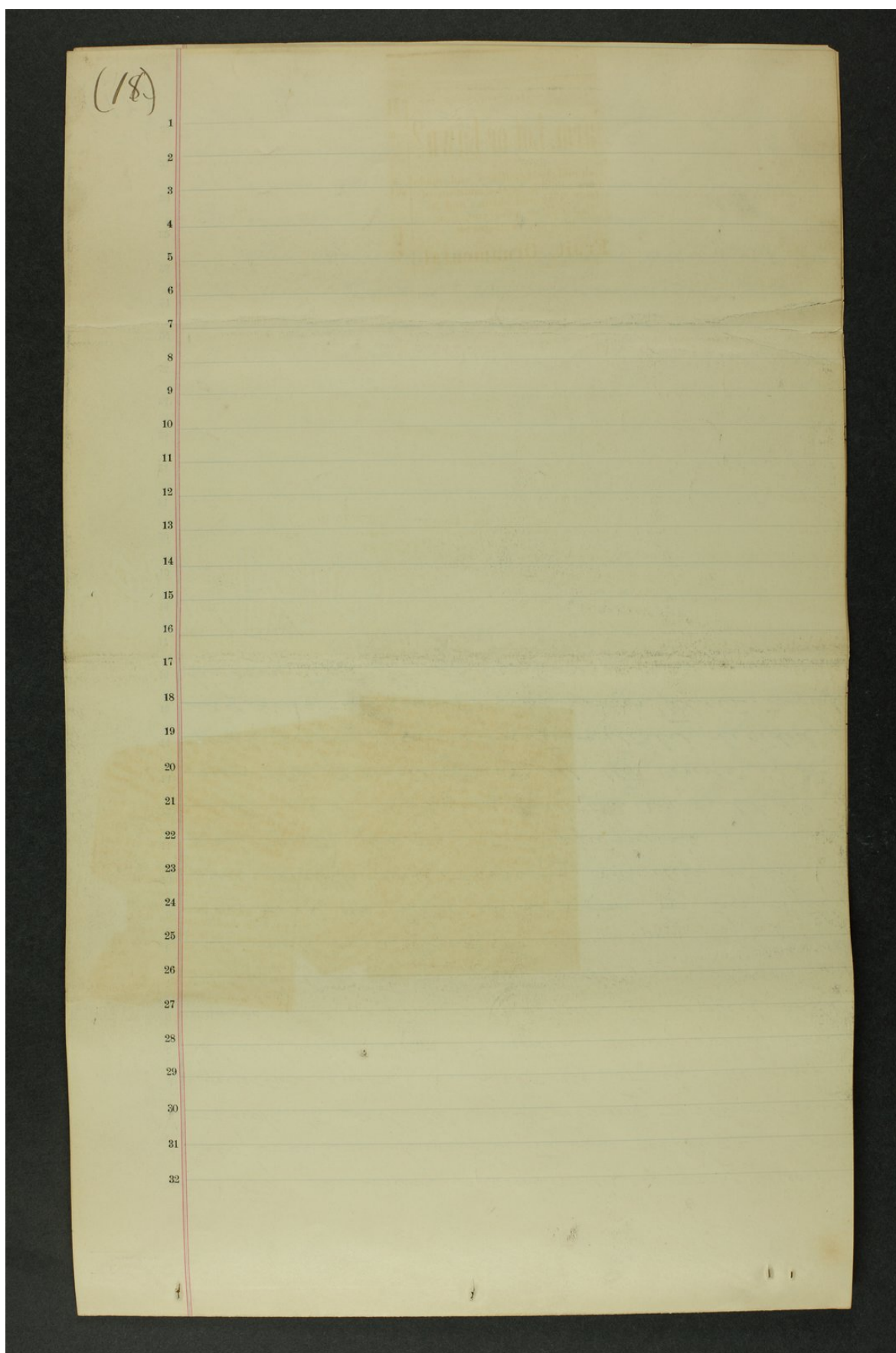
C. B. HAMILTON & CO.,
TOPEKA, KANSAS.

The prisoner maintained a very cheerful disposition through the proceedings, and went to jail the next morning without any further effort to procure bail. The mother stated that N. H. Harman, uncle of the girl offered to go on her bond, but she refused, as he would not go her bail in the first place. She will be a guest of the Sheriff until court convenes, as there is no room for her in the jail, Walker will occupy quarters at the jail with the rest of the prisoners.

It is to be hoped that the case, let it run the gamut of all the courts if it will may be incontrovertibly decided against these social marplots, moral lepers and conspirators.

(17)

State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman

C. E. HAMILTON & Co.,
TOPEKA, KANSAS.

Our readers are perhaps familiar with the arrest and preliminary examination of E. C. Walker and his pretended wife, Miss Lillian Harmon, both of Valley Falls, and connected with the disreputable outfit called the Lucifer. While most of the county papers are giving them a kick on their down hill road, The TIMES wishes to offer its heart-felt amen to the course being pursued by the law and morality party of Valley Falls. Now arrest the king bee of the tribe and close the rotten concern and Valley Falls will smell more like the roses than she has for many a day.

And thus has public sentiment been worked upon against your petitioners.

E. C. Walker

Lillian Harman

Subscribed and sworn to before me this 14th day of October, A. D. 1886

Geo A. Patterson

Clerk of District Court

(Endorsed.) In the Jefferson County District Court.
The State of Kansas, Plaintiff, vs. E. C. Walker and
Lillian Harman, Defendants. Petition and affidavit
of defendants for change of venue. Filed Oct. 14, 1886.
Geo A. Patterson, Clerk. David Overmeyer, G. C. Clemens
Attorneys for defendants

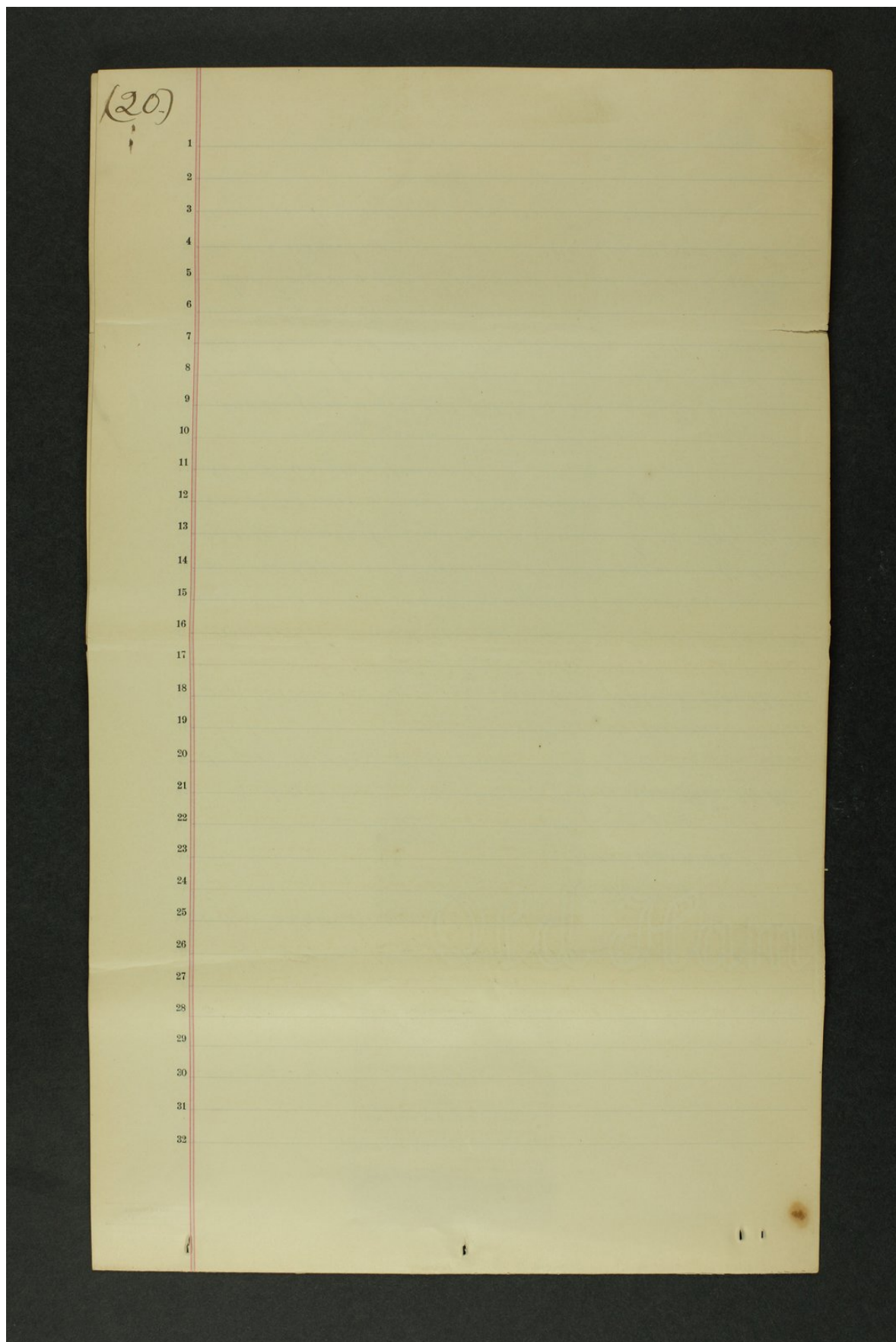
And the foregoing verified petition was all the evidence
of any kind presented upon the hearing of said ap-
plication, and no counter showing whatever was
made by the State.

That before a jury had been called in said action
the defendants jointly and severally moved the Court
to quash the information for the reason

(18)

The last number of "Lucifer" is

State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman

And the following in its regular issue of October 9th A. D. 1886;

We honestly believe it to be the duty of the citizens of Valley Falls to get rid of the free love and anarchist organ there as soon as possible, for the sake of the reputation of the town and the county. As an indication of the impression given abroad by the sufferance of that and kindred spirits in their midst, our readers are cited to the following extract from the *Troy Chief*, edited by Senator Sol. Miller:

A TROY HONORABLE—John N. Reynolds and his disciples may get up before a Doniphan county audience, and abuse this county for a wicked and lawless community; but we want to call attention to the fact that the single town of Valley Falls, (formerly Grasshopper Falls,) in Jefferson county, can alone discount the entire county of Doniphan in clean-strained beastliness and crime. It has more murders, more mobs, more vice, more scandals, than our whole county. For years, it has had a society of Spiritualists, Infidels, Free Lovers, and other kindred isms, that scandalized the whole community. Of late they have added Socialism and Anarchy to their attractions. They have a newspaper called *Lucifer*, a

editor in said County, in its issue of a recent date, says E. C. Walker in the County Jail "spunk" like a regular gun in that city. I have been in the Judge Gary, said. Virginia Winchester

And the *Sickle*, published at Okaloosa in said County, contained the following editorial in its regular issue of September 24th, A. D. 1886;

Mr. E. C. Walker, one of the proprietors of the *Lucifer*, published at Valley Falls, and a young lady named Harman, daughter of the partner of Walker, concluded that it was "not good for man to be alone" and decided to "hook on." They neither one believe that there is any authority for marriage, and that all that is necessary is simply a "hankering" after each other, (at least that is the way it looks to an outsider,) and acted on their emotions. A brother, we believe, of the girl, not liking the arrangement and objecting to the parties living together as man and wife without even a pretense of marriage, swore out a warrant for their arrest on the charge of adultery. The parties were taken before R. D. Simpson, justice of the peace, who bound them over to the district court. Officer Boles brought the parties to the county seat where Walker was placed in jail. The girl, we understand, obtaining bail.

So much for the great principle of "free love." If the law is of any account in the premises we hope it will be made effective in this case. Free-love, carried to that extent, is asking a little too much of a Christian community. The *Lucifer* is somewhat indignant over the arrest of the parties; perhaps that is all right, but the community has some rights that the "Devil" should be made to respect, and in the name of the virtue of the rising generations the law of matrimony is one of them.

heart-felt amen to the course pursued by the law and morality party of Valley Falls. Now arrest the king bee of the tribe and close the rotten concern and Valley Falls will smell more like the roses than she has for many a day.

C. B. HANCOCK & CO.,
TOPEKA, KANSAS.

State of Kansas vs. E. C. Walker and Lillian Harman

And the following
9th A. D. 1886;

issue of October

The Argus published at Winchester in said County
contained the following editorial ^{in its issue} of a recent date
We had the pleasure of meeting E. C. Walker
the Valley Falls free love crank, in the County Jail
yesterday. He howls about "free speech" like a regular
Chicago Anarchist, & had he been in that city
this summer he would probably have been in the
smut-cultured crowd that Judge Gary, ruled.
Argus Winchester

And the Sickle, published at Okaloosa in said
County, contained the following editorial in its reg-
ular issue of September 24th, A. D. 1886;

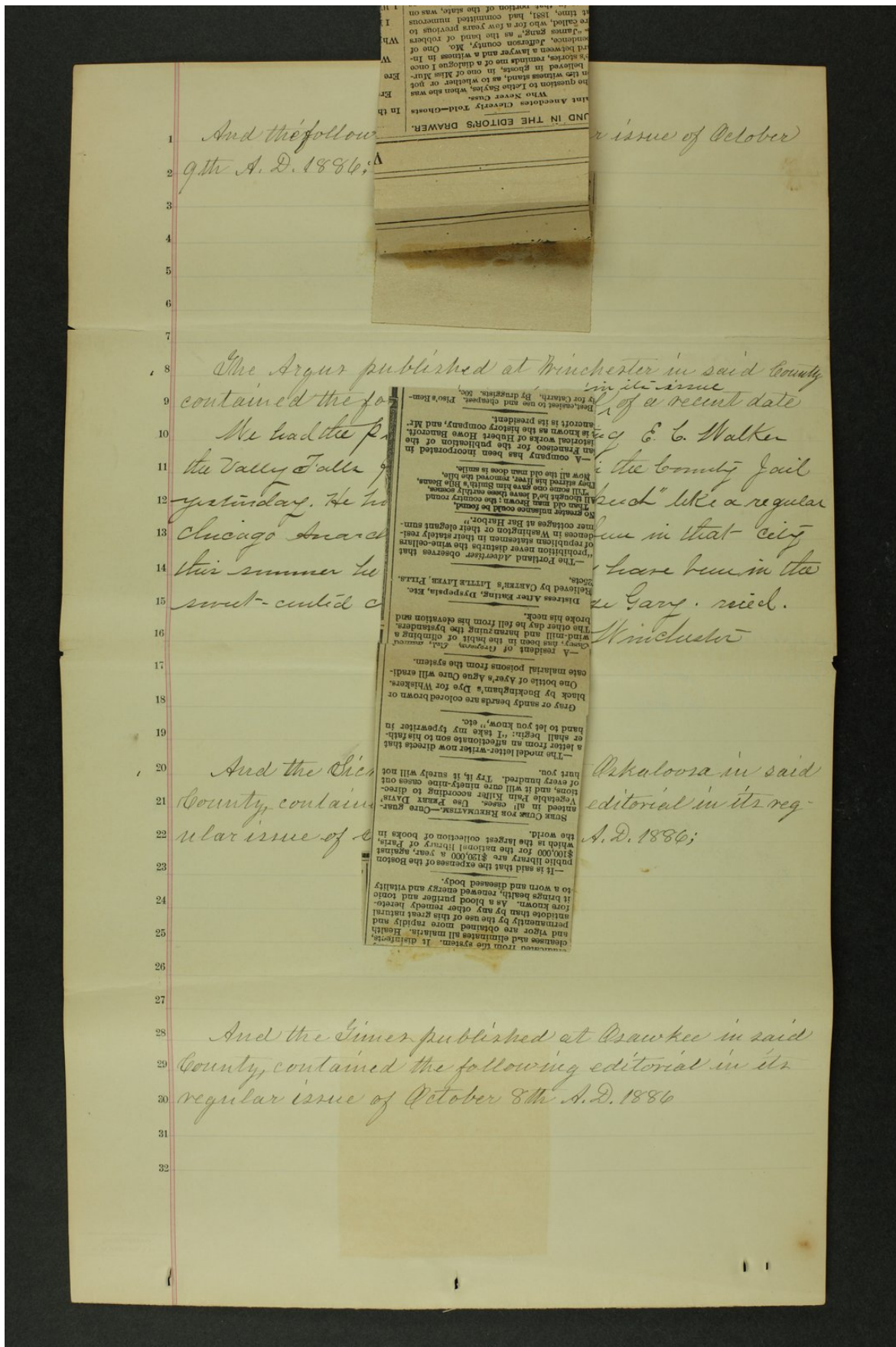
Mr. E. C. Walker, one of the
proprietors of the Lucifer, published
at Valley Falls, and a young
lady named Harman, daughter of
the partner of Walker, concluded
that it was "not good for man to be
allone" and decided to "hook on."
They neither one believe that there
is any authority for marriage, and
that all that is necessary is simply
a "hankering" after each other, (at
least that is the way it looks to an
outsider,) and acted on their emo-
tions. A brother, we believe, of the
girl, not liking the arrangement
and objecting to the parties living
together as man and wife without
even a pretense of marriage, swore
out a warrant for their arrest on the
charge of adultery. The parties
were taken before R. D. Simpson,
justice of the peace, who bound
them over to the district court. Of-
ficer Boles brought the parties to
the county seat where Walker was
placed in jail. The girl, we under-
stand, obtaining bail.

So much for the great principle
of "free love." If the law is of
any account in the premises we
hope it will be made effective in this
case. Free-love, carried to that ex-
tent, is asking a little too much of
a Christian community. The Luci-
fer is somewhat indignant over the
arrest of the parties; perhaps that
is all right, but the community
has some rights that the "Devil"
should be made to respect, and in
the name of the virtue of the rising
generations the law of matrimony
is one of them.

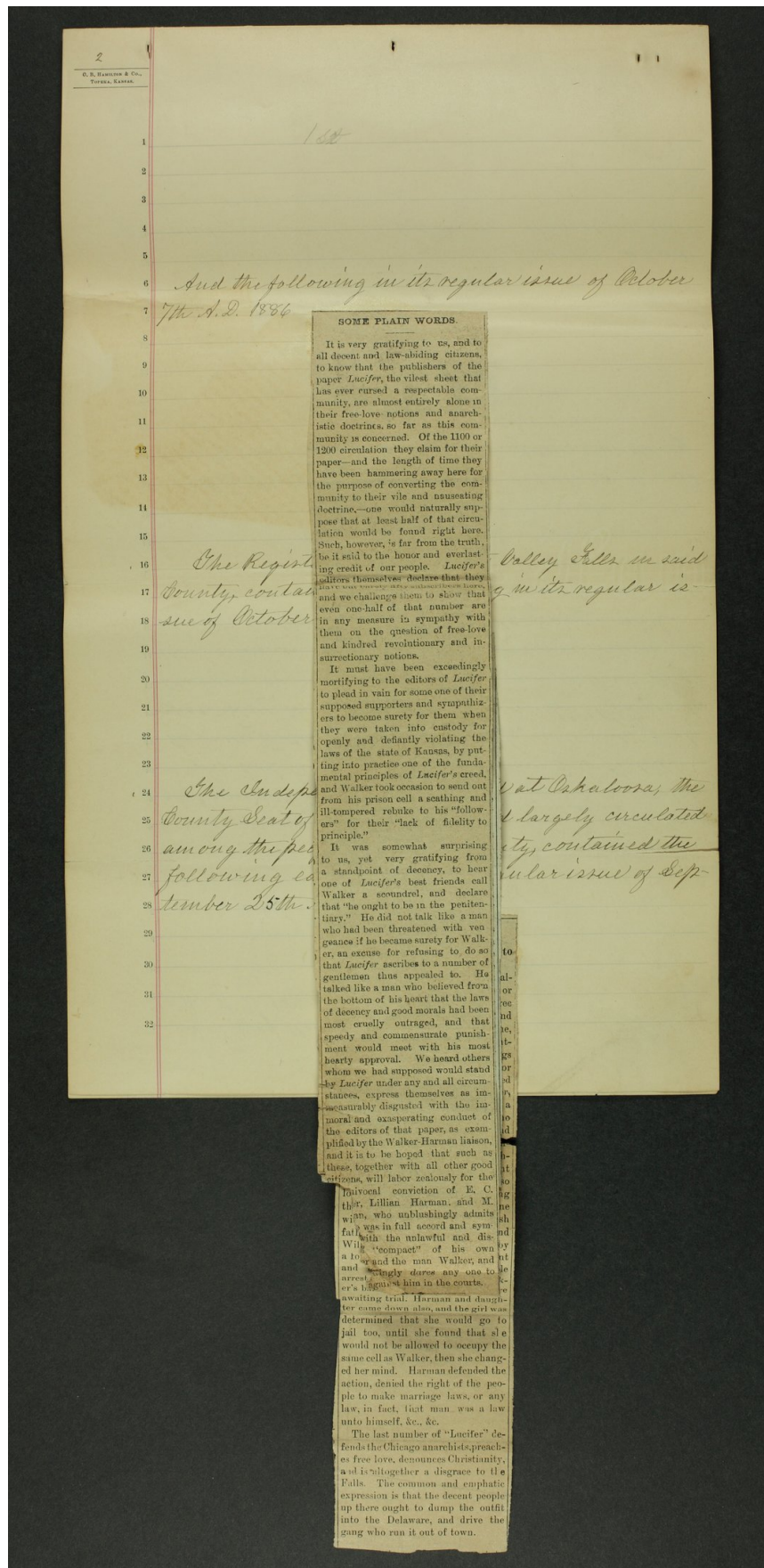
And the Sickle in said
County, contained
regular issue
of a recent date
editorial in its
A. D. 1886

C. B. HAMILTON & CO.
TOPEKA, KANSAS.

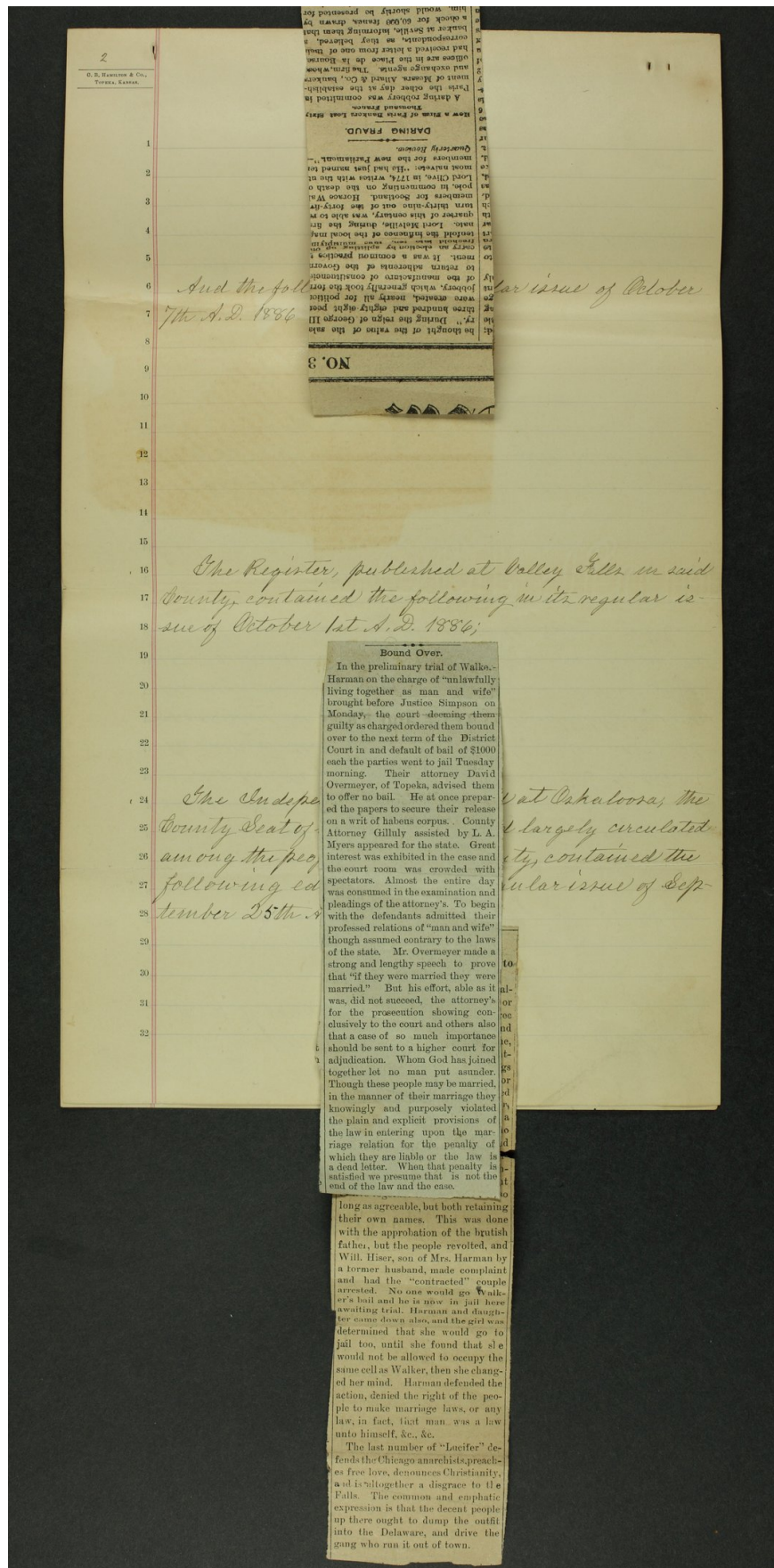
State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman

2

G. B. Hamilton & Co.,
Topeka, Kansas.

And the following issue of October 7th A.D. 1886

The Register, published at Okauchosa, the County Seat of said County, and largely circulated among the people of said County, contained the following editorial in its regular issue of September 25th A.D. 1886

FREE LOVE.

An Illegal "Contract" Leads to a Jail Cell.

There has been published at Valley Falls, this county, for two or three years past, a paper of free thought, free love, anarchistic and socialistic proclivities. Its name, "Lucifer," they explain, means 'light-bearer,' etc., but from its teachings one would presume it was named for the devil himself. A crack-brained chap named Harman runs the paper, assisted of late by one Walker, a man near 40 years of age, and who is said to have a divorced wife and several children in Iowa. Last Sunday Walker and 16-year old daughter of Harman made an agreement to live together as man and wife so long as agreeable, but both retaining their own names. This was done with the approbation of the brutish father, but the people revolted, and Will Hiser, son of Mrs. Harman by a former husband, made complaint and had the "contracted" couple arrested. No one would go Walker's bail and he is now in jail here awaiting trial. Harman and daughter came down also, and the girl was determined that she would go to jail too, until she found that she would not be allowed to occupy the same cell as Walker, then she changed her mind. Harman defended the action, denied the right of the people to make marriage laws, or any law, in fact, that man was a law unto himself, &c., &c.

The last number of "Lucifer" denounces the Chicago anarchists, preaches free love, denounces Christianity, and is altogether a disgrace to the Falls. The common and emphatic expression is that the decent people up there ought to dump the outfit into the Delaware, and drive the gang who run it out of town.

State of Kansas vs. E. C. Walker and Lillian Harman

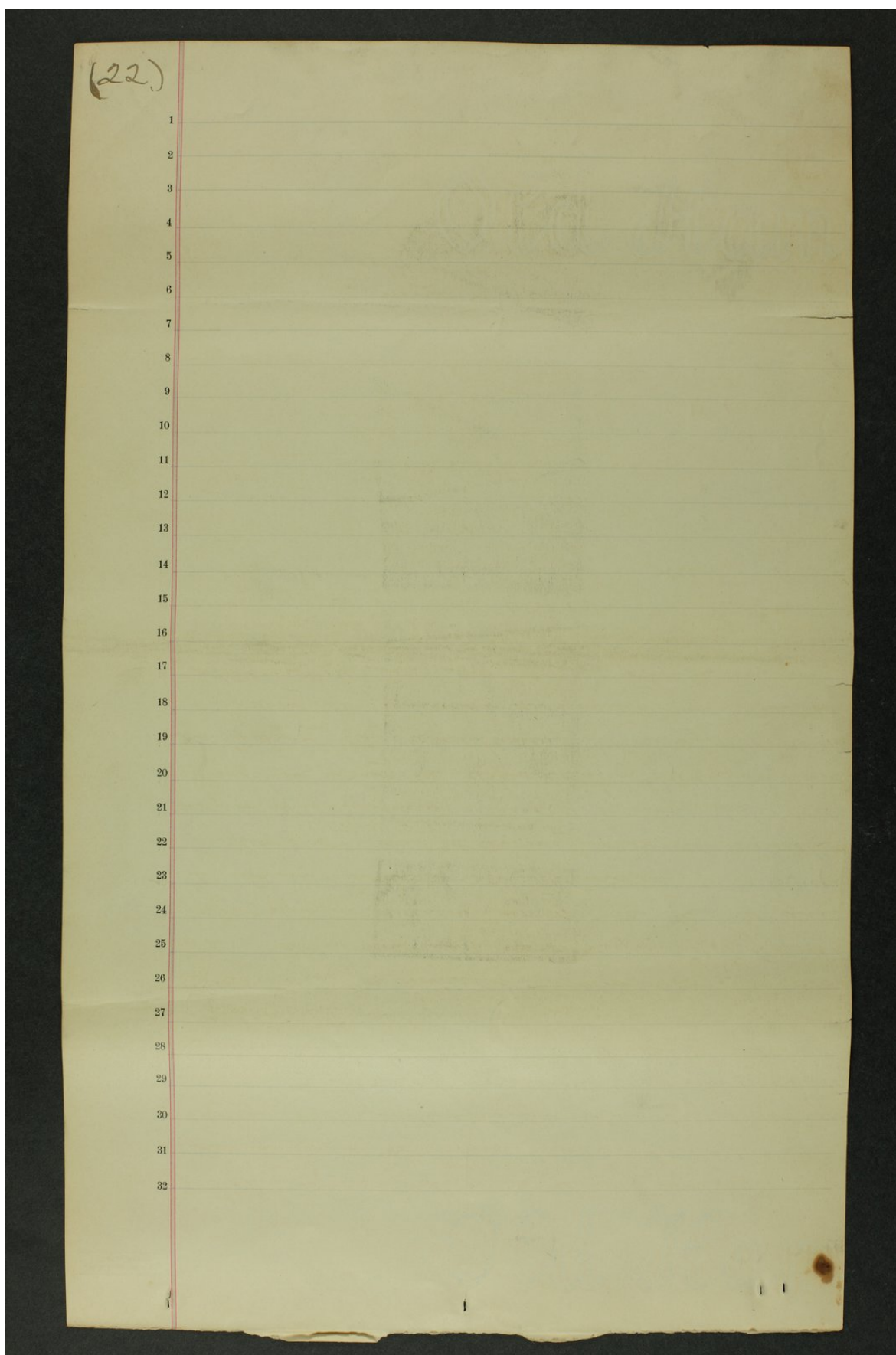
C. R. HAMILTON & Co.,
Topeka, Kansas.

x 1 that the facts therein alleged did not
2 constitute a Public offense against the
3 laws of the State of Kansas; which motion
4 was by the Court overruled and the defendants
5 at the time, jointly and severally, duly
6 excepted to said ruling and decision.

7 Thereupon said action came on for
8 trial and was tried before the Court and a
9 jury empaneled and sworn in the case;
10 and the state produced and gave and adduced
11 to the jury the following evidence, which
12 was all of the evidence of any kind
13 offered or given, upon the trial of said
14 action. The defendants having introduced
15 no evidence whatever, the following is the
16 whole of the said evidence introduced on
17 the trial

(21)

State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman

C. S. HAMILTON & CO.
TOPEKA, KANSAS.

1 More Harmon being first-duly sworn
2 testified as follows.

3 My Name is Moses Harmon. I am one of
4 the editors of the paper called Lucifer the
5 light-bearer. Published at Valley Falls
6 Kansas. I am acquainted with the defendants
7 E. C. Walker and Lillian Harmon. Mr. Walker is
8 associated with me in business he has been
9 associated with me since Dec. 1882. he is
10 Associate Editor of the paper called
11 Lucifer I am editor-in-chief Lillian Harmon
12 is my Daughter.

13 I saw the defendants at my residence
14 at Valley Falls on the 19th day of September
15 1886. They then entered into what we call an
16 Antinomistic marriage. There present
17 were, W. F. Hiser and Malissa Walker the
18 defendants mother myself and the defendants

19 There was no marriage license procured
20 there was no marriage ceremony performed
21 by any Judge Justice of the peace or
22 licensed preacher of the Gospel. as we did
23 not think they had any business there. we
24 did not send for any of them. The paper
25 called Lucifer of date Oct. 1st 1886. contains
26 the statement read on the occasion in
27 question by myself also that made by the
28 defendant Walker. and by Lillian my
29 Daughter. Also a short statement following
30 made by myself.

31 here the State said to the Jury said statement
32 as published in Lucifer which statement
are as follows to wit:

(23)

State of Kansas vs. E. C. Walker and Lillian Harman

(24)

AUTONOMISTIC MARRIAGE PRACTICALIZED.

While distinctly denying the right of any citizen or citizens whether minority or majority, to inquire into our private affairs, or to dictate to us as to the manner in which we shall discharge our private duties and obligations to each other, we wish it understood that we are not afraid nor ashamed to let the world know the nature of the civil compact entered into between Lillian Harman and Edwin C. Walker, at the home of the senior editor of *LUCIFER* on Sunday, the 19th of September 1886, of the common calendar. As our answer, then, to the many questions in regard thereto we have reproduced as near as possible the aforesaid proceedings.

I.

M. Harman, father of Lillian Harman, one of the parties to this agreement or compact, read the following, as a general

STATEMENT OF PRINCIPLES IN REGARD TO MARRIAGE.

Marriage—by which term we mean the various attractions, sentiments, arrangements and interests, physical, social, material, involved in the sex-relations of men and women—is, or should be, distinctly a personal matter, a strictly private affair. There are, or should be but two parties to this arrangement or compact—a man and a woman; or perhaps we should say a woman and a man—since the interests, the fate, of woman is involved, for weal or woe in marriage, to a far greater extent than is the fate or interests of man. Some one has said, "Marriage is for man only an episode, while for woman it is the epic of her life." Hence it would seem right and proper that in all arrangements pertaining to marriage woman should have the first voice or control. Marriage looks to Maternity, Motherhood, as its most important result or outcome, and as Dame Nature has placed the burden of maternity upon woman it would seem that marriage should be emphatically and distinctively woman's work—woman's inheritance.

It need not be said that this is not the common, the popular and especially the legal view of marriage. The very etymology itself of the word tells a very different story. Marriage is derived from the French word *marier*, meaning the "husband." And never did the etymology of a word more truly indicate its popular and legal meaning than does the etymology of this one. Marriage as enforced in so-called Christian lands, as well as in most heathen countries, is preeminently man's affair—man's institution. Its origin, (mythologic origin) declares that woman was made for man, not man for woman, not each for the other. History shows that man has ruled over woman as mythology declares he should do, and the marriage laws themselves show that they were made by man for man's benefit, not for woman's. Marriage means or results in the family as an institution, and the laws and customs pertaining thereto make man the head and autocrat of the family. When a woman marries she merges her individuality as a legal person into that of her husband, even to the surrender of her name, just as chattel slaves were required to take the name of their master.

Against all such invasive laws and unjust discriminations, we as autonomists hereby most solemnly protest. We most distinctly and positively reject, repudiate and abjure all such laws and regulations, and if we ever have acknowledged allegiance to these statute laws regulating marriage we hereby renounce and disclaim all such allegiance.

To particularize and recapitulate:

Marriage being a strictly personal matter we deny the right of society, in the form of church and state to regulate it or interfere with the individual man and woman in this relation. All such interference, from our standpoint is regarded as an impertinence and worse than an impertinence. To acknowledge the right of the state to dictate to us in these matters is to acknowledge ourselves the children or minor wards of the state, not capable of transacting our own business. We therefore most solemnly and earnestly repudiate, abjure and reject the authority, the rites and ceremonies of church and state in marriage as we reject the mummeries of the church in the ceremony called baptism and at the bedside of the dying. The priest or other state official can no more prepare the contracting parties for the duties of marriage than he can prepare the dying for life in another world. In either case the preparation must be the work of the parties immediately concerned. We regard all such attempts at regulation on the part of church and state as not only an impertinence, not only wrong in principle but disastrous to the last degree in practice. Here, as everywhere else in the realm of personal rights and reciprocal duties, we regard intelligent choice—untrammelled voluntarism—coupled with responsibility to natural law for our acts, as the true and only basis of morality.

As a matter of principle we are opposed to the making of promises on occasions like this. The promise to "love and honor" may become quite impossible of fulfillment, and that from no fault of the party making such promise. The promise to "love, honor and obey so long as both shall live," commonly exacted of woman, we regard as a highly immoral promise. It makes woman the inferior, the vassal of her husband, and when, from any cause, love ceases to exist between the parties, this promise binds her to do an immoral act, viz.: It binds her to prostitute her sex-hood at the command of an unloving or unlovable husband.

For these and other reasons that will readily suggest themselves, we, as autonomists prefer not to make any promises of the kind usually made as part of marriage ceremonies.

II.

E. C. Walker, as one of the contracting parties, made the following statement:

This is a time for clear, frank statement. While regarding ALL public marital ceremonies as essentially and ineradicably indelicate, a pandering to the morbid, vicious, and meddlesome element in human nature, I consider this form the least objectionable.

I abdicate in advance all the so-called "marital rights" with which this public acknowledgment of our relationship may invest me. Lillian is and will continue

to be as free to repulse any and all advances of mine as she has been heretofore. In joining with me in this love and labor union, she has not alienated a single natural right. She remains sovereign of herself, as I of myself, and we severally and together repudiate all powers legally conferred upon husbands and wives.

In legal marriage, woman surrenders herself to the law and to her husband, and becomes a vassal. Here it is different, Lillian is now made free.

In brief, and in addition: I cheerfully and distinctly recognize this woman's right to the control of her own person; her right and duty to retain her own name; her right to the possession of all property inherited, earned or otherwise justly gained by her; her equality with me in this co-partnership; my responsibility to her as regards the care of offspring, if any, and her paramount right to the custody thereof should any unfortunate fate dissolve this union. And now, friends, a few words especially to you. This wholly private compact is here announced, not because I recognize that you, or society at large, or the State have any right to inquire into or determine our relations to each other, but simply as a guarantee to Lillian of my good faith toward her. And to this I pledge my honor.

III.

Lillian Harman then responded as follows:

I do not care to say much; actions speak more clearly than words, often. I enter into this union with Mr. Walker of my own free will and choice, and I agree with the views of my father and of Mr. Walker, as just expressed. I make no promises that it may become impossible or immoral for me to fulfill, but retain the right to act, always, as my conscience and best judgment shall dictate. I retain, also, my full maiden name, as I am sure it is my duty to do.

With this understanding, I give to him my hand in token of my trust in him and of the fidelity to truth and honor of my intentions toward him.

IV.

Then M. Harman said:

As the father and natural guardian of Lillian Harman I hereby give my consent to this union. I do not "give away the bride," as I wish her to be always the owner of her person, and to be free always to act according to her trust and truest impulses, and as her highest judgment may dictate.

Then followed the usual congratulations.

V.

The next morning the following was read to the parties named, by Constable Boles:

STATE OF KANSAS,
JEFFERSON COUNTY, ss.

W. F. Hiser, of lawful age, being duly sworn, on oath says, that on the 20th day of September, A. D. 1886, in the County of Jefferson, and State of Kansas, E. C. Walker and Lillian Harman did then and there unlawfully, feloniously, live together as man and wife without being or having been married; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Kansas.

Signed by W. F. Hiser.

Subscribed and sworn to before me, this 20th day of September, A. D. 1886.

R. D. SIMPSON, J. P.

only pursuit of hers of the marriage, I give her to marry Mr. Walker before that time. She was present at the marriage with my present wife and my present wife's mother. She is

Seventeen (17) years old in December - at the time of the marriage they stood up

State of Kansas vs. E. C. Walker and Lillian Harman

(24)

After the marriage they occupied a room in my house that night, only one bed in that room. They were arrested the next morning. This transaction all occurred in Jefferson County, State of Kansas. There was never any other marriage that I know of. As I would have been likely to know of any such.

Here the defendants expressly admit that there was no license and that no marriage ceremony was performed by any Judge Justice of the peace or licensed preacher of the gospel. That neither of the defendants belonged to the Society of Friends or Quakers.

The said Moses Harman being cross examined by the Council for defendants testified as follows:

I am the only parent of Lillian Harman living at the time of the marriage. I gave my consent for her to marry Mr. Walker some six months before that time. The Mr. Harman who was present at the marriage was my wife's son, my present wife is not Lillian's mother. She is

Seventeen (17) years old in December - at the time of the marriage that I mentioned

State of Kansas vs. E. C. Walker and Lillian Harman

C. B. HAMILTON & Co.,
TOPEKA, KANSAS.

1 Swearer (17) years old in December -
2 at the time of the marriage they stood up
3 on the floor and joined hands, and kissed.

4 Question by the Court-

5 Do you know what the
6 relation of husband and wife is in this
7 State, I do. Did they enter that relation
8 yes or they did in good faith.

9
10 Mr. F. Huser testified as follows.

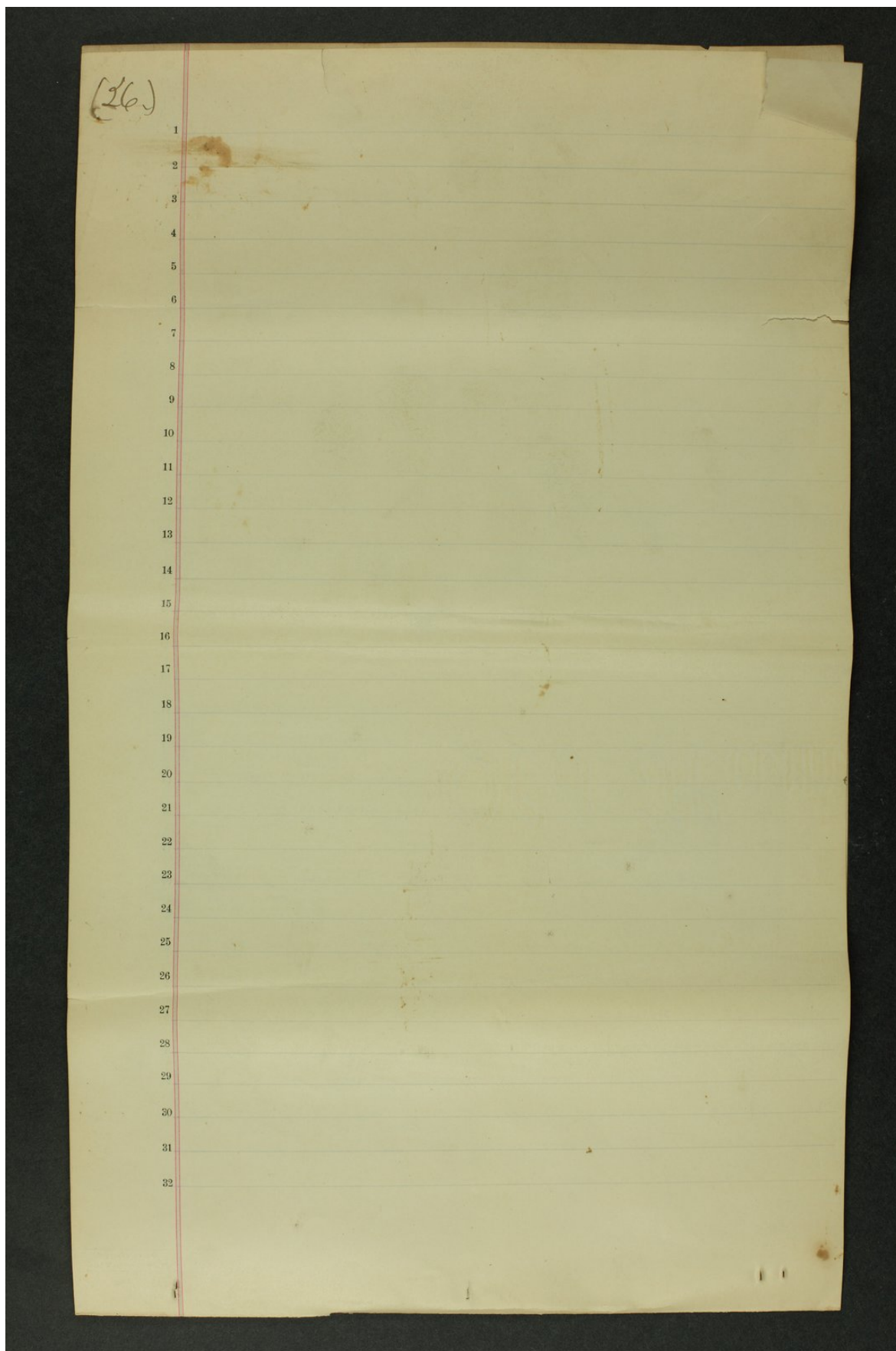
11 I was present at the marriage at
12 Mr. Harmon's home.

13 They went together that night, occupied
14 a room alone. They were arrested next
15 morning.

16 At the conclusion of said evidence the
17 defendants jointly and severally demurred
18 thereto and moved the court that they be
19 discharged from further custody - which
20 motion being argued by counsel was
21 by the Court overruled; to which ruling
22 and decision of the Court the defendants, at
23 the time, jointly and severally, duly
24 excepted.

(25)

State of Kansas vs. E. C. Walker and Lillian Harman



State of Kansas vs. E. C. Walker and Lillian Harman

2nd of December 1892

C. B. HAMILTON & CO.,
TOPEKA, KANSAS.

At the proper time, the defendants duly
requested the Court, in writing, to give to the
jury the following instructions.

In the Jefferson County District Court.
The State of Kansas.

vs. Plaintiff
E. C. Walker and
Lillian Harman
Defendants.

Instructions of the Court.

Instruction 1st. The information which forms the
basis of this trial is founded upon a
section of the marriage act which reads
as follows:

That any persons living together
as man and wife within this state with-
out being married, shall be deemed guilty
of a misdemeanor;

The questions for you to decide are
1st. Did the defendants at any time within
two years before the complaint was filed
in this case, live in the County of Jefferson
live together as man and wife. 2nd
if so

2nd. Whether, at the time of so living together
if they did, they were married?

(27)

State of Kansas vs. E. C. Walker and Lillian Harman

(28)

Instruction 27th It must be proved that- the defendants
lived together as man and wife; that-
is, in the same manner as men and their
wives usually live together. In short-
the circumstances of their living together
must be such, that so far as appearance
is concerned, the public would have
reason to suppose they were husband
and wife. Occupying the same room or
the same bed for a single night- will
not constitute such a living together
as the statute contemplates, the law is
directed, not against single acts- however
wrongful in themselves, but against-
a habit- a way of living; and the co-
habitation aimed at is not a single
occurrence, but an habitual cohabita-
-tion, continued day after day, as the co
habitation of husband and wife, no matter
how much the defendants may have in-
tended in future to continue their cohabi-
-tation, they cannot be convicted because
of their future intentions. It must be found
beyond a reasonable doubt that- when
this proceeding was begun the defendants
had then, already, been living together, as
man and wife. Furthermore, whatever their
intentions as to the future, and whatever might
be the case if a charge of the same kind should
at some time hereafter be made against them,
they cannot be convicted upon this trial
for no offence had yet been committed