

of the act of a public officer, just as they had a perfect right to.

At this point court took recess till the afternoon.

This afternoon Mr. Young continued his argument. He said a thorough investigation would show that the charge against the "Mormons" that they had a government within a government was entirely false. It may be that in times past there have been expressions that were loose, but not approved of. That no treason was thought of is plain in the fact that there was no effort to guard the expressions made. The term treason had been applied to the utterances of "Mormons" when no such thought had entered their minds. The half-masting of the flag had been called an insult. There was no such intent. The flag at half-mast is a sign of mourning, and that is all there can be said of it. Its being placed at half-mast may be regarded as inopportune, because it indicated a mourning at the court's decisions. It was inopportune—an inappropriate action—but it was no treason. No intelligent man can say that an indication of mourning is treason. The flag belongs to every citizen, and using it as a symbol of mourning, of grief, of sorrow, is not treason.

Court—Was there a cause for mourning?

Mr. Young—I suppose some of the people thought there was; but that was not treason. There was no aspect of treason, and it cannot be distorted to that. It may have been disrespect to the courts, and should not have been done. But it was not and could not be treason. Why, in Boston, when the Fugitive Slave Acts were in force, the people of the north claimed that they were unconstitutional. Money was raised for their repeal. Under that law, in the Burns case, the government captured a slave in Boston and sent him back. The people of Boston half masted all of the flags on the public buildings. That was no treason.

Court—Do you think that was to indicate sorrow, or as an insult to the government?

Mr. Young—I would say it was an indication of sorrow. The people there did not want to insult the government—and they were not treasonable.

Court—There can be acts that are not punishable, but are treasonable.

Mr. Young—The framers of the Constitution defined treason, and it still becomes their descendants to change the definition. As I have said the demonstration when Mr. Wells was released was not treason or treasonable. Mr. Dickson has urged that the raising of money to defend men in court was treason. That is a new doctrine to me. I always understood that men have a right to a fair trial—that they have a right to test the legality of any law. I maintain the right as a citizen to test the constitutionality of any law; and that every man, be he Mormon or Gen-

tile, has a right to a fair trial and to a proper defense, and it is not treason to employ means to contest legally any cases in courts. The history of this nation shows that before the war there was much of this, and even the Supreme Court of the United States had to be rearranged before certain acts could be declared constitutional. And I say that the testing of laws before the national tribunal will not be denominated treason by any gentleman.

I say, further, that the religious belief of this applicant can be no test of his right to citizenship. We have not yet come to judging in the domain of conscience, for we cannot do it constitutionally. Lord Macaulay says that if such things as this was not persecution, there could be no religious persecution. Mr. Young then read from Lord Macaulay's essay, in which he says that to punish a man because, from some doctrine he holds, it is believed he will commit an offense, is persecution, and foolish and wicked. To argue that because a man is a Catholic that he is bound to murder a heretical sovereign, and then base a law on that assumption is persecution. And counsel in this case have used the same arguments that were used against the Catholics in England, with only the change that it is "Mormons" to be disfranchised now instead of Catholics. But the British nation forever silenced the argument there, and in justice it should be forever silenced here. In this case the applicant has shown himself eligible for citizenship in every sense, and it is his right to be admitted. It is urged that he belongs to a sect that has taught a doctrine which is incompatible with the laws of the nation. It is urged that the "Mormons" must obey the Priesthood; and they say that every "Mormon" in good standing must go into polygamy. What is the fact? The great majority of the "Mormon" people—nineteen-twentieths—have not gone into it, and are therefore not in good standing. The argument is its own refutation when compared to the facts. Say what you please of "Mormon" sermons and the revelations they have, but from their actions you can find no fairer record in any part of the Union. Judge us by our acts, not by the opinions and expressions of avowed enemies.

HON. S. R. THURMAN

said that his connection with the case had been irregular, owing to his necessary absence, and he had not expected to make an argument. There were some points, however, which had not been fully developed, and to these he would refer. This proceeding was indeed a strange one. We have passed along in the history of this Territory to a time when men speak of a certain people as becoming more liberal, and less peculiar and exclusive than they had been. In other words, they are growing more like other people. Congress has gone over this ground time and time again, on the suggestion of counsel for the other

side. Congress had had this matter before them for the same purpose sought to be effected here, and in every instance Congress has refused to take the step that the court is now asked to take. The strongest witness on the other side, H. W. Lawrence, said the people were growing better, and men were saying the "Mormon" question was about solved. Now, on the eve of a great political battle; on the eve of a most important election; when it was claimed that the "Mormons" were in the minority, it is now asked of the court that the "Mormons" be disfranchised. There is no foundation for such an outrage. Go back to the attitude of men in 1857 and 1858, if you will, yet the fact today stares you in the face that the very things complained of are working out, and the cause, if ever there was any for this proceeding, passed away a generation ago. The man who says that for the past 15 years—we will name that period—every man has not had the fullest liberty, so far as the "Mormons" are concerned, that man has some reason for stating a falsehood. It is said that in August 200 or 300 young Mormons voted the adverse side; now this court is asked to disfranchise those Mormons and all others.

When I first entered the court room, as a spectator in this case, Gilmer was on the stand, and he was saying that if he told what he knew, his life would be in danger. Did your honor believe him? Did anybody believe him? I think not. There was falsehood on his face, and he is unworthy of belief. Henry W. Lawrence was not afraid and he had worked in the Endowment House; Mr. Lawrence was even anxious to make "explanations," and thus gave vent to his prejudices. If the rumors that have been brought in here as evidence were thrown out, there would be a vast difference in the record. The half-masting is cited as a disloyal act, and the whole "Mormon" people are to be held responsible; yet it did not occur in any town throughout the whole Territory, except on a few places in Salt Lake, and the act is one that even the people here condemn. That trailing of the flag has also been shown to be an invention. What purpose could there be in it? It was either the purest accident, or it never happened at all.

"Mormon" applicants have been naturalized for years, and recently they have been asked to specially agree to obey certain laws. Now it has been discovered that by objecting to their application in a court of justice "Mormons" can be prevented from becoming naturalized. Just what logic there is in the position I leave for the present.

Mr. Lawrence told how he was neglected by those who had before patronized. What would be done with any leading "Liberal" if he were to join the People's party. He would not only be ostracised, he would be hung in effigy.

Reference has been made to the defense fund. Was the raising of it unlawful? Why, at that time there was a movement organized and on