LAW AND LOGIC.

Arguments in the Case of Lorenzo Snow

BEFORE THE UNITED STATES SUPREME COURT.

Lucid Statement of the Issues Involved by F. S. Richards.

MAURY FAIRLY CRUSHED BETWEEN THE UPPER AND NETHER MILL-STONES.

Pointed and Conclusive Remarks by Geo. Ticknor Curtis.

IT LOOKS AS IF THE COURT WERE CONVERTED.

NEWS' Special Correspondence.

The arguments in the Snow *habeas corpus* case began before the Supreme Court of the United States, on Thursday, January 20th. It lacked but half an hour of 4 p. m., the time at which the court closes each day, when F. S. Richards, who made the opening arguments, began his remarks. After stating the case as disclosed by the record, he called the attention of the court to the fact that the case involved two distinct propositions, on either or both of which they relied for a favorable decision from the court.

THE FIRST,

and the least important, was that the judgment was void because of its uncertainty. On this point Mr. Richards occupied the time until the court adjourned. His contention was that a judicial sentence must always impose a definite punishment, and in view of the existence of a legislative statute which allowed prisoners a remission of the number of days' confinement when their behavior entitled them to it, and as the judge in the sentences made no allowance for such a contingency, but had ordered that the prisoner be held until all three sentences had been satisfied to the full extent allowed by the law, independent of the statutory provision, or if allowance could be made for good behavior, no provision was made for it in the sentence, therefore it was uncertain, and being uncertain it was void. In answer to a question Mr. Richards stated that they would be safe in relying on either point alone, but did not choose to rest upon both.

THE SECOND POINT

was that three sentences were sought to be imposed upon the prisoner for a single offense. The record and the indictments taken as presented by the graud jury showed that the offense of unlawful cohabitation had been maintained continuously and uninterruptedly from the 1st day of January 1883, until the 1st day of December, 1885. The indictments, while they separated this period in the first place into two distinct years and in the second to eleven months, nevertheless covered the whole period within the years and months named without omitting a single day. The point sought to be established by Mr. Richards was that there could be but one offense for the period named. He cited a number of English and American cases and had still others on his brief, which time did not allow him to bring orally before the court, all of which bore with singular analogy on the case under consideration. In one case it was held that the taking of coal from day to day for a period covering four years on a coal mine in which some 40 persons were interested was

BUT ONE OFFENSE,

for the reason that there had been no cessation, and the taking, while felonious, was in all respects continuous. In another case a man had attached a fraudulent pipe to a gas main from which, for a protracted period, gas had been drawn during the day and turned off at night, and which had been consumed without passing through a gas meter, yet it was held to be only one offense. In the case of drawing wine from a vat at different periods by a fraudulent tube, the act was held to be continuous, as also in the case of killing a number of horses in one day and of selling different loaves of bread, all were held to be continuous, and being continuous were therefore but one offense. The judge in one case reasoned that it was as just to hold that every stitch taken by a tailor on the Lord's day constituted a new and distinct offense as to hold that an act continuous in its nature could be segregated. Other cases were cited to show that where illegal fares had been collected by a public carrying company, punishment could not legally be imposed for every taking; but that the indictment could cover all the ground of illegal actions in one continuous direction either for the

WHOLE PERIOD

or any part thereof until the finding of the indictment. The same rule held good in the case where a pilot had been employed against the regulations provided, and an endeavor had been made to inflict punishment for every vessel or boat on which he had been employed; but the decision of the court was that there was but one offense and the prosecution could only so proceed until the practice had been interrupted by the interference of the State. So with regard to the cohabitation of the prisoner. There was no evidence to show that the cohabitation on which he was convicted had been interrupted in any manner whatever from the 1st day of January, 1883, to the 1st day of December, 1885, either by act on the part of the prisoner or by any interference of an external or legal nature. The prosecution could not sit idly by for years, and then swoop down upon the unsuspecting citizen and pile on indictments by a process of segregation which, if tolerated, could be made to place him in prison for life and absorb a fabulous sum in fines. There must be an interruption in the relationship of cohabitation as construed by the courts, a clear cut, palpable interruption before it was possible that two indictments or three could be found at one time for a past offense. As this act, beyond all doubt, and according to the wording and the dates of the very indictments was continuous, it was

BUT ONE OFFENSE.

Being one offense, the judgment, so far as it concerned the second and third penalties, was void for the reason that it inflicted three penalties for a single offense. The statute limited the infliction of punishment on the offense charged to six months' imprisonment and $300 fine; yet the court had sought to impose 18 months' imprisonment and $900 fine for an offense which the law explicitly provided could not bring upon the prisoner more than one-third either of the measure of imprisonment or the amount of the fine.

Mr. Richards called the court's attention to the statement of the Supreme Court of Utah in the Snow decision, that they have only found one case sustaining the segregation theory. He then reviewed that case, which was decided by the Supreme Court of Massachusetts, and clearly showed that it was wholly inapplicable to the case at bar and that, when tested by the rules of law applicable to such cases in Massachusetts, it did not sustain the prosecution's theory.

Mr. Richards was continually interrupted by interrogations from the court—an evidence always of interest in a case on the part of the bench—and among others were.

THE FOLLOWING:

Chief Justice—Suppose that in these three sentences included in one, there had been a separate sentence in form, upon each one of these indictments, would you then claim you could take advantage of this question?

Mr. Richards—Yes. Because even then three penalties would be imposed for one single offense.

Justice Gray—What would you say if the man is indicted for this offense and at the date of the indictment is not arrested or imprisoned, and at the next term of the court, a month later, he is indicted again?

Mr. R.—We say that would be entirely competent. Our contention is that so long as the act of the parties remains unbroken, so long as it remains without any interruption or prosecution on the part of the Government, so long it is but one continuous offense.

Justice Harlan—Was not that question raised on the trial of the second or third case?

Mr. R.—Yes, by the plea of former conviction.

The Chief Justice—Was not that the question you sought to review here on writ of error the last time?

Mr. R.—That was one question. We sought on that writ of error, to review all the errors that the court had committed. But the main purpose, if your honors will remember, the real point we were seeking on the last writ of error, was to get a definition of that

WONDERFUL WORD

that we cannot find out the meaning of. We wanted to know something more about what "cohabit" meant. This was the real purpose of the last case.

Justice Blatchford—There is a further question whether that can be reviewed, not having been called up in the trial.

Mr. R.—We are not here asking a review of the decision of the lower court on the plea of former conviction. We are here claiming before this court, that, after having passed one judgment, the court exhausted its jurisdiction. We are not asking for any review upon the plea of former conviction.

Justice Miller—You do no go upon the ground of its being error alone, but upon the ground that the second and third judgments were void?

Mr. R.—Absolutely void.

The Chief Justice.—Suppose there had been separate judgments in each case, and in the second case tried you had plead a former conviction, would you ask this court to release him on a writ of *habeas corpus*, or must you not have it determined on writ of error, whether that would be proper?

Mr. R.—I can only answer in this way: I am not sure that I fully understand you. I understand this court to have said in the Lange case and in other cases of this class, that no man can be twice punished for the

SAME OFFENSE.

It can make no difference whether two judgments are rendered in the same case for the same offense, or whether they be imposed in two different cases for the same offense. Whenever it appears to this court that two or more penalties have been imposed for the same offense, then the case comes within the jurisdiction of this court on *habeas corpus*, as is distinctly shown by the following language of the court delivered in the Lange case:

"If there is anything settled in the jurisprudence of England and America, it is that no man can twice receive punishment for the same offense."

At the conclusion of Mr. Richards' argument, Assistant United States Attorney General

WILLIAM A. MAURY

began speaking. He held that the case presented two questions. First, whether it was on a footing with the Lange case referred to by Mr. Richards—in other words whether the judgment was void; and second, whether the second and third sentences in the case were void because of uncertainty. He expressed himself as amazed at the claim of the counsel for Mr. Snow that there was but one judgment. The contention that there was but one judgment, as the record would demonstrate, had no warrant whatever. In the case of Lange there was one verdict and two judgments; in this case, however, there were three distinct verdicts. Now it is claimed, because he was sentenced and judgment pronounced upon these verdicts *seriatim*, that it was but one act and that there is no separation or division, and that the whole thing must be taken as one act. Now I say the case of Bigelow puts an end to this plea. Bigelow was convicted by the Supreme Court of the District of Columbia for embezzlement. He was arraigned and put upon his trial on fourteen separate and distinct indictments, each one for embezzlement. After the trial had began and evidence had been introduced, the court determined that there could not be a consolidation of these indictments and trial upon

ALL OF THEM.

Thereupon the case was withdrawn from the jury in the face of the objections made and he was put upon his trial on one indictment.

Justice Miller—That is not strictly correct, I think, Mr. Maury. The case was not withdrawn from the jury, but thirteen indictments were, and the trial continued on the other.

Mr. Maury—He then came to this court on the ground that there had been an infraction of a constitutional right which protected him from being twice placed in jeopardy for the same offense. This court said it might be so. This court said that it would not undertake to determine that question, because that was the very point that was raised in the court below and determined.

Justice Matthews—I would like to ask you a question on that point: Suppose that in this case, instead of the three indictments laying the offense as of three successive years, each indictment had laid it during the same period, that is, all three indictments had been for an offense named as committed from such a day, in 1883 to a certain other day in 1883 or any other year, so that, in the face of the three indictments, the period during which the cohabitation was alleged to have

UNLAWFULLY EXISTED

was identical in point of time, and that the prisoner, having been found guilty on all three, had been separately sentenced for three successive terms, would you contend, in that case, that it differed from or was similar to this, so that he could not be delivered from the second term of imprisonment by the expiration of the first?

Mr. Maury—I contend that the same principle applies. The deliverances of the court in a number of cases are to this effect, and I give the words: "Where the court has jurisdiction it has a right to decide every question that arises in the case, and whether the decision be correct or not, its judgment, until reversed, is regarded as binding in every other court." In other words, there can be no judicial inspection behind the judgment save by an appellate court.

Justice Miller—This is the case of a judgment pronounced by the court at one time in regard to the three verdicts of guilty. The court in assuming to make this one judgment, had before it all the records of these three cases, and if they are here we are to be placed in the position of that court. Now, whatever the court might have done in regard to these pleadings, the one being a part of the other, whether that would be jurisdictional or not, is not exactly the question that is before us now. The question before us is, the court having before it these indictments, verdicts and pleadings which show that there was no actual separation of the offense of cohabitation (*which this court against my judgment in the Cannon case held not to mean actual connection, but a living together, as if they were man and wife*), now the court having all these cases before it, was it in its power, was it in its constitutional and legal power to impose more than

ONE PUNISHMENT

for what had occurred during those two or three years? All outside of that I do not think important. That is the question.

Mr. Maury—That very issue was very pointedly raised in the second and third cases by the plea of former conviction.

Mr. Justice Miller—Very well, I understand that. That court might have erred and possibly finding that since then, at another term, sentenced him to imprisonment again. It might have been mere error. But the court is brought face to face with the point that here I am pronouncing one judgment, and the question is, is it one offense or is it three offenses. The question is, does that go to the jurisdiction?

Mr. Maury—I do not understand that the court pronounced one judgment? I understand that it pronounced three judgments.

Justice Miller—It may go for what it is worth. It looks to me like one judgment.

Justice Bradley—You would not contend that if two indictments should be found against a man for stealing the same horse at the same time, that two judgments could be given against him successively? Supposing the court should, on the plea of former acquittal on one of those indictments, on the trial of the second indictment, overrule the plea, (and commit an error undoubtedly) would it not be an error but

A VOID ACT

as well? A thing may be void as well as erroneous.

Mr. Maury—Certainly it may.

Justice Bradley—You would not contend that the same thief could be susceptible of two indictments and two judgments? The one judgment would be void would it not—the second judgment?

Mr. Maury—No, sir, I do not think so.

Justice Bradley—That is the point.

Mr. Maury then stated that he understood the rule to be that there could be no judicial inspection behind a judgment where the court that renders the judgment had jurisdiction. A number of questions were then asked, and among them the following:

Chief Justice—It seems to me that the question is not one of former conviction, and I want to present to you the view which I take of this sentence. The sentence shows there were three indictments found on one day for the different periods for the crime of cohabitation. These indictments show upon their face that they were for a cohabitation which was continuous from the 1st of January, 1883, until the time of filing the indictment. There were three indictments and there were three verdicts, and the prisoner was called up for sentence upon those three verdicts, and they gave what you say are three sentences, punishing this man by imprisonment for 18 months for unlawful cohabitation between January 1, 1883, and December 1, 1885. This is all embraced in one sentence and in one record. Nor, can we ignore the fact that this is a sentence of 18 months for unlawful cohabitation when the law says that for one offense there shall be a punishment of

ONLY SIX MONTHS?

Justice Gray—Let me put the case to you in a little different aspect. Assuming that these are to be treated as three sentences, the record that is before the court shows that the three indictments were for successive periods of one successive cohabitation. Assuming, for the purpose of this argument, that it is illegal so to treat them, that it is illegal to divide the continuous cohabitation, when the court had before it the evidence of the conviction on three successive years, or parts of them, of successive cohabitation, and has rendered judgment for the cohabitation, has it not exhausted its jurisdiction and sentenced the prisoner in the same sense as in the Lange case? And after having passed one sentence for the same purpose, had it not exhausted its jurisdiction and passed another sentence for the same offense?

Justice Bradley (to Maury)—The difficulty in my mind is outside of your argument entirely. It may be that you can throw some light on the question that troubles me, and I will state it: Is cohabitation from January 1st, 1883, to December 1st, 1885, one crime or three? If it is only one crime, then I have one view of it. If it can be made three crimes, then your position is sustained. But there is the thing behind the form, behind the indictments, behind the verdict, and that is the question of whether the matter is capable of being divided?

To this question Mr. Maury replied: I say as the civilians here often said that *res adjudicata* can

MAKE BLACK WHITE

and white black. I say, if that is done here, that it is no concern of yours. That is my answer to that question. *Res Adjudicata* may make black white. I am here in defense of these principles. I say when a court has jurisdiction, that when once the power is committed to it, you cannot take its judgment by a side wind, I do not care what the injustice. I may agree with your honor that this was one continuous act, that it is one sentence, but I say your honors cannot go behind that judgment.

While this query, as will be seen, was repeatedly put to Mr. Maury, in different forms by nearly all the justices, he attempted no other explanation, and the inference is that he felt his case in that regard was very weak. He stated that he had relied confidently on the question of jurisdiction and for that reason had not deemed it necessary to go into the question of the nature of the offense—and this, according to the repeatedly expressed opinions of different members of the court, was the question at issue—whether Lorenzo Snow's cohabitation during the two years and eleven months was one offense or three offenses.

GEO. TICKNOR CURTIS

closed the case. He was not interrupted by the court, (save once, when a short query was put to him.) All the questions they desired to ask having already been put. He talked quietly and clearly to the points, emphasizing those already advanced in favor of the petitioner, Mr. Snow. It was evident that the court had taken the view advanced by Mr. Snow's counsel and the failure of Mr. Maury to even attempt an explanation of this proposition so repeatedly put to him, could serve only to convince them how hopeless was his case. "With great respect for the counsel on the other side," said Mr. Curtis, "it seems to be nonsense to talk about this being three judgments."

Mr. Maury—I don't think I said that.

Mr. Curtis—It is one judgment. With regard to the second point, there can be nothing plainer than that the time during which this offense lasted has nothing whatever to do with the quantity of punishment. That is fixed by statute. There certainly was but one offense committed by this man. Argument and further discussion will not elucidate the matter any more. I leave it on the face of the judgment.

It looks like a foregone case, and the leaning of the court towards the views of the counsel for Mr. Snow, if we may judge, seemed so decided that Mr. Curtis must have deemed it of little importance to talk further when he did not see fit to occupy all the time that remained to him. There was no attempt at eloquence. It was altogether a plain and logical statement of legal facts relieved and brightened by the pungent and frequent inquiries from a bench which was altogether attentive as well as inquisitive.

The Cure More Dangerous than the Complaint.

The Anti-Mormon bill which Congress rushed through last Wednesday is a direct cut into the Constitution and all of its guarantees. Under the plea of polygamy, not in the United States but within the Territory of Utah, the bill referred to actually declares that all Territorial acts, honestly and legally incorporating societies and associations, so far as they are in any way connected with the Mormon Church, are annulled, and that their affairs are to be wound up and the associations dissolved by the Attorney General.

That polygamy is not in accord with the general sentiment in this country all will admit. That one person, aided by another, and any moral or political right to wage war upon a family at peace and happiness within itself, when their acts cannot possibly save or damn others than themselves, is now, as it ever has been, and ever will be, debatable.

In 1856 the Republicans pledged themselves to suppress polygamy, but on examination of the rights of the Mormon Church as a religious body within the Constitution, with all their disregard of the rights of some persons, in order to advance the prosperity of others, they never dared to make so direct a cut into the Constitution as the Democrats who voted for this anti-Mormon bill have made.

Congress has the right to declare that plural marriages from and after the passage of a law forbidding, it is a crime, and to define the punishment of all parties entering upon this relation after the passage of such a law. This we all admit. It has the same right to declare that every man in this country must select a woman, and by love, art, force or strategy compel her to live with him in marital relationship, and to punish all who remain single after the law is passed, no matter if there are not persons to mate with, but no right to punish for that which was not an offense till the law was passed.

The Mormon Church is a religious body, and a very devout one it is too. It takes its place in church line with other religious associations, strictly within the Constitution. It has, as a church, the same rights in this country that has any other religious organization. Robbery and fornication are each declared to be offenses against the laws of God and man. Polygamy is denied by the laws of man, but not by the laws of God. Because here and there members of other churches break the laws against robbery and fornication, Congress is not warranted in defying the Constitution, annulling the Church organizations, and confiscating their properties and rights. Under the Coustitution laws cannot be made retroactive. Men cannot be punished for offenses committed before the law declares them against law, nor can the honest relations of plural marriage entered upon in good faith years ago, be honorably disturbed, even when such anti-plural marriage law be passed. Congress can say thus far you have gone, your rights cannot be disturbed or your peaceful relation broken in upon, but from this time henceforth, those who take to themselves plural wives shall be punished.

This we concede, and care not how quick Congress makes such declaration.

But Congress is battering a very large hole through the walls of the Constitution when it enacts or sanctions a religious test in this country. Equally so when it declares that the acts of a Territory, passed by a majority of the people of such Territory, in strict conformity to the Constitution of the United States, can be annulled or disturbed.

If the Territorial legislation of Utah can thus be ripped apart and the legally acquired rights of corporations, associations and individuals be wrenched from them, the same power of Congress can rob the people of every other Territory.

Such a law cannot stand the test of the courts, and its passage is a deeper