

## PASSING THE SENATE.

SENATE, Washington,  
June, 22, 1874.

Mr. FRELINGHUYSEN. I move that the Senate proceed to the consideration of House bill No. 3097 in relation to courts and judicial officers in the Territory of Utah.

Mr. SPENCER. We cannot pass that.

Mr. FRELINGHUYSEN. I move that the Senate proceed to the consideration of this bill.

Mr. DAVIS. I understand that this is the bill relating to Utah, which of course will give rise to some discussion.

Mr. FRELINGHUYSEN. I think not.

Mr. DAVIS. I have heard Senators say they meant to discuss it. I do not intend to discuss it myself. There is a large number of unobjectionable cases on the Calendar and I think they ought to be considered. It is only intended to consider such as are unobjectionable, and I think that we ought to proceed with them.

Mr. FRELINGHUYSEN. I think we ought to proceed with the Utah bill.

Mr. LOGAN. I was one who proposed to discuss the bill, but in view of the circumstances I shall not do so.

Mr. FRELINGHUYSEN. I want the Utah bill taken up first.

Mr. WRIGHT. At the last session of Congress, a bill much less severe and much more objectionable than the bill that is now presented to the Senate—I mean much more objectionable to any persons who deem that legislation on this subject is advisable—passed the Senate. I am not aware that the bill as it stands now is particularly objectionable. This fact is patent that in Utah they are substantially without courts and without any of the machinery that is necessary to enforce the law. Now we are within sixteen hours of the adjournment. The question is whether we shall take up this bill at this time and if possible pass it, or whether we shall occupy our time in pressing private bills. I believe that this bill can be passed in half an hour or an hour.

Mr. WRIGHT. I have said nothing in reference to the merits of this bill, as to how we should vote or what disposition should be made of it. I am only speaking of the necessity of some action on the subject. That we should pass some bill, either this with amendments or some other bill, in view of the condition of things in Utah, it seems to me is patent to every person. Now, the question is whether we shall spend half an hour or an hour at this time of the night for the purpose of disposing of this bill, or whether we shall have a scramble here over private bills and let this go over. It seems to me that on every principle I can possibly think of, it is due to the country that we should take up this bill and make some disposition of it.

The PRESIDENT *pro tempore*. The question recurs on the motion of the Senator from New Jersey to take up the Utah bill.

The question being taken by yeas and nays, resulted—yeas 25, nays 23.

So the motion was agreed to.

Mr. ANTHONY. As the Utah bill has been taken up—

Mr. FRELINGHUYSEN. Let us get on with it.

Mr. SARGENT. There is a bill which has passed the House to prevent the slavery of Italian children reported favorably by the Judiciary Committee of this body. I do not think it will take a minute to pass it. If it is passed, there is an amendment reported by the Judiciary Committee that the House can concur in. It is a most humane bill, and I trust it may be allowed to pass.

The bill was read the third time and passed.

SENATE, Washington, June 23.

Mr. FRELINGHUYSEN. I now move that we proceed to the consideration of the Utah bill. I have this statement to make—

Mr. SPRAGUE. We have five minutes yet for the Calendar.

Mr. FRELINGHUYSEN. I have this statement to make—

The PRESIDENT *pro tempore*. The bill will come up in six minutes without any notice.

Mr. FRELINGHUYSEN. I have

the floor now and I wish to make my statement. The bill as it will be presented to the Senate will be free from all objection by any one who wants to have order and law in Utah, for I have prepared a series of amendments which will prune the bill of anything that could be objectionable to any one who wants law there. The Attorney General has written to us. He has told me this morning that you cannot convict any person who is guilty of crime, and that the Territory is in a lawless condition. Now it seems to me that when we have that opinion from the administration, when the House of Representatives has passed a bill, that it is our duty not to adjourn until we establish law there.

And now I want further to say, that if any member of the Senate thinks that the amendments which I will propose do not render the bill unobjectionable, I will accept any amendments in reference to polygamy and bigamy, so as just to have a bill which establishes law in that Territory as in every other, and with those modifications I think the bill can be passed in ten minutes.

Mr. SARGENT. I wish most earnestly with the Senator that there may be good order in the Territory. I think the proposition the Senator makes to eliminate from the bill anything relating to a disturbing course there, which he mentioned, may facilitate the passage of the bill. I am afraid, and have been for some years past, on account of the high condition of fanaticism of certain people in that Territory, that we might have a civil war there. I know that they will go to the wall if that civil war comes. I know that their fertile fields will be plowed with the plowshares of war, and their homes will be devastated; that the thrift, the commendable thrift which now exists throughout the Territory will cease and there will be desolation, because they cannot stand up against the Government of the United States; but I also know that they will stand up. I speak from considerable and a somewhat intimate knowledge of the persons and conditions of things in Utah. I believe they will stand up and involve these consequences.

I think further that the progress of time, the influx of Gentiles, is wearing away that prejudice, religious or otherwise, on the part of the people of Utah, and is gradually solving this question. I think they are in the condition of an iceberg that has broken from its fastenings in the north and floated down into the warmer seas, dissolving on all sides, and that soon this question will disappear from public view, unless you aggravate it by aggressive measures, unless you bring force to bear against them and compel them to resist, and we all know religious wars never succeed or very rarely succeed in putting down the sect against whom they are waged. I think it is better to leave that question to time, as I say; and if these provisions can be eliminated from the bill, and an amendment which I wish to propose, saving the jurisdiction of probate courts, which are the county courts of Utah, to pass upon the matters relative to town sites as is provided by the United States laws in regard to town sites, I will make no opposition to the bill, certainly no factious opposition; I will not attempt to talk against time or embarrass the Senate in any way. With that understanding I have no objection to the bill coming up and being considered.

The PRESIDING OFFICER. (Mr. Anthony in the chair.) The question is on the motion of the Senator from New Jersey.

The motion was agreed to; and the Senate as in Committee of the Whole, proceeded to consider the bill (H. R. No. 3097) in relation to the courts and judicial officers in the Territory of Utah.

Mr. RAMSEY. I hope the Senator from New Jersey will allow the bill to be laid aside informally to take up the post-route bill.

Mr. FRELINGHUYSEN. I have no power to give way to any one and shall not.

Mr. RAMSEY. Then, Mr. President, I will make a last effort to save the post-route bill. I move to lay this bill aside and proceed to the consideration of the post-route bill, which will require some time for its enrollment, in which every one here is more or less interested and for which I am very much importuned both by members of the House and Senate.

The PRESIDENT *pro tempore*.

The Senator from Minnesota moves to lay aside the present and all prior orders and proceed to the consideration of the post-route bill.

Mr. FRELINGHUYSEN and Mr. HOWE called for the yeas and nays.

The yeas and nays were ordered.

Mr. HOWE. I simply want to say myself that if we never have another post-route bill in the Senate of the United States, I will try to be content, if it is necessary to forego any more, in order to have that small modicum of legislation which is required in order to commence and prosecute a suit to judgment in any one of the courts of the United States whether within the limits of a State or within the limits of a Territory. You cannot do that to-day in the Territory of Utah, you cannot convict a criminal there; and I think the first work for us to do is to accomplish that labor; and if we cannot accomplish that, as I said before, save at the expense of that very important bill which is in the hands of my friend from Minnesota, I would rather sacrifice that. If the Senate differ from me, I want to know who the individuals are that differ.

Mr. MORTON. There is need for legislation in Utah; there is no doubt about that; but I think there is not time to deal with so delicate and difficult a question as exists there, in the few hours we have left. I am satisfied that this bill will give rise to discussion and that there will be differences of opinion about several provisions in it. I think there is not time, and for one I shall vote for the motion made by the Senator from Minnesota.

Mr. FRELINGHUYSEN. Mr. President, I would say to the Senator from Indiana that I have submitted the bill to those who have been most opposed to it, and I think they will eliminate from it everything that is objectionable, and I will accept the amendments.

Mr. BOUTWELL. It is quite plain that there is no difficulty in passing both bills. We have agreed to adjourn at four o'clock; but no doubt the House will concur in a resolution extending the time to ten or twelve this evening, or until twelve to-morrow, and either of these bills is of sufficient importance not only to justify but to require the extension of the session for a few hours. Therefore I hope that whichever bill we take up—I am in favor of taking up the bill relating to Utah and shall so vote—we shall act upon both these bills before we adjourn. There is really no difficulty in the way. There is no necessity for an adjournment at four o'clock this afternoon.

Mr. DAVIS. Nearly every State in this Union is interested in the post-route bill, and unless it passes within the next hour it probably cannot become a law this session. The Utah bill can follow it, and if it passes ten minutes before the expiration of the session it can become a law. I hope the post-route bill will be taken up and acted on. There is no objection to it.

Mr. WRIGHT. I have just one word to say about this bill. We have been here seven months. The law officer of the Government has pressed upon us almost every week since we have been here the necessity of action upon this bill. There is the most incontestable evidence that such a state of lawlessness obtains in that Territory that it is impossible to organize a jury and have a trial and have any criminal brought to punishment. Now we are hesitating here whether we shall take this bill up and pass it when everybody knows that we can, if we will give our attention to it, pass that, and the post-route bill also, before four o'clock. There need not be, there should not be, any trouble in reference to this bill. The Senator having it in charge has stated that it will be eliminated of everything that is objectionable, the only and sole object being to give them a law so that they can organize their courts and juries and have the administration of justice in that Territory as they have in the States and other Territories. And yet at this time it is insisted that we shall lay this bill aside and pass a bill that we are as certain to pass before we adjourn as any bill that we have passed on the Calendar before.

Mr. RAMSEY. Why does the Senator so infer?

Mr. WRIGHT. I am very certain that there will be no adjournment of this Congress without passing the bill the Senator from Minnesota has in charge. We can pass this bill and pass that just as easily if we turn our attention to them,

as we have done the business this morning.

Mr. RAMSEY. The post-route bill is an important bill to all the new portions of the country, in the West and South, the poorer portions of the country; they have the greater interest in it; without it they cannot get their mails. Improvements are extending and settlements are thickening both in the South and West, and yet you deny them mail facilities. With all the expenses of the Post Office Department they cannot participate unless these post routes are legalized by law. The older portions of the country are indifferent to it. The State of Maine, that the honorable Senator comes from who has opposed the taking up of this bill so strenuously, has its mails supplied by railroads. They are post-routes by law; they require no special legislation; but these remote and new settlements in the West and South are entirely without these facilities unless this bill passes, however trifling some gentlemen may consider the thing to be.

Mr. LOGAN. It seems to be almost impossible to have any legislation in reference to questions involving certain matters connected with the Territory of Utah. Time and again the attempt has been made. I do not say, nor will I, that it is a disgrace to Congress that they will not act upon a proposition of this kind; but if there is anything approaching a disgrace attaching to the Congress of the United States now in existence, it is the fact that in one end of the Capitol a polygamist sits, and no man has the nerve to turn him out of the Congress of the United States. If there is another approaching disgrace, it is that Congress has not the manhood and the boldness to stand up and strike at this shame and disgrace to the institutions of this country.

The PRESIDENT *pro tempore*. The Chair thinks it is not in order to make such references to the other House.

Mr. LOGAN. Then I withdraw what I said in reference to the House, but I do not in reference to the polygamist. I appeal to Senators on this floor, I know many of us have been reminded during this session that the republican platform had something to do with legislation; I do not think platforms have anything to do with legislation; but inasmuch as I have been reminded of it, let me remind Senators here time and again you have announced to the world that this "twin relic of barbarism" should be extirpated from this country; and yet in the last session of Congress, and now, when this bill is brought forward to give power to the courts to administer justice in that Territory the same as it is elsewhere, in conformity with the law, we find men ready in every possible way to thwart legislation for the purpose of allowing the courts to administer justice in that Territory.

Why is it? Has polygamy stretched out its arm until it fastens its power on every man in this Chamber? Is it true that the head of the Mormon church has more power in Congress than the morals of the whole country? Is it true that the head of that theocracy, after boasting that he could control Congress, is able to say to the country that Congress is afraid to deal with him?

Sir, these are facts. The country will ask us why it is that we are afraid to deal with polygamy; why we are afraid to give the courts the power to deal with it; why we are afraid to legislate in the direction of Mormonism; why we are afraid of the power of the head of the church of Mormonism, this polygamic church. Sir, if the Congress of the United States is afraid to deal with such barbarism as this, it is not fit to represent the Republic that we do represent.

Mr. TIPTON. Mr. President, I do not understand that it is any evidence of cowardice on the part of republican members of the Senate that they have not acted affirmatively on this question of Utah and her institutions. If that is to be taken as evidence of cowardice, then I say that there is equal evidence of cowardice on another question, not so far as the Senate is concerned; but we are told that the platform of the party requires something on this subject. I ask the honorable Senator, then, how does it come that the platform of the party also requires something on the question of civil rights, and yet the bill that was passed by the Senate has not yet become a law, as

I understand, while there is power enough in the Congress of the United States belonging to that party to make it a law?

Mr. LOGAN. Will the Senator allow me a word right there?

Mr. TIPTON. Yes, sir.

Mr. LOGAN. In reference to the platform, I said that I asked no legislation on account of any platform, but that it was thrown in the teeth of certain Senators here that platforms said certain things, and I only retorted on that by reference to legislation on this subject.

Mr. TIPTON. I undoubtedly labored under a misapprehension; and as time is so important I accept the apology of the Senator from Illinois, and will not continue my remarks.

Mr. BOGGS. I hope that the bill in charge of the Senator from Minnesota will be taken up. It has been urged upon the Senate for several days. It will take but a few moments. It is a very important bill, and I think it will meet with no opposition; while the bill in relation to Utah will involve a good deal of discussion. I hope, therefore, the bill of the Senator from Minnesota will at once be taken up and disposed of.

Mr. RAMSEY. It can be passed in fifteen minutes.

Mr. BOGGS. To the western country it is very important.

The PRESIDING OFFICER. The question is on the motion of the Senator from Minnesota to postpone the pending order with a view to take up the post-route bill, upon which the yeas and nays have been ordered.

The question being taken by yeas and nays, resulted—yeas 33, nays 24.

So the motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 3604) to establish certain post-routes.

The bill was read the third time, and passed.

Mr. FRELINGHUYSEN. I move that the Senate proceed to the consideration of the Utah bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. No. 3097) in relation to courts and judicial officers in the Territory of Utah.

The Committee on the Judiciary proposed to amend the bill by striking out section 7, in the following words:

"SEC. 7. That the common-law of England, as the same is defined and modified by the courts of last resort in those States of the United States where the common law prevails, shall be the rule of decision in all the courts of said Territory so far as it is not repugnant to or inconsistent with the Constitution and laws of the United States and the existing statutes of said Territory."

The amendment was agreed to. Mr. FRELINGHUYSEN. I offer an amendment to come on page 6, in the sixty-third line, after the word "appeals,"

Mr. BAYARD. Is the seventh section stricken out? That seems to me a most innocent-looking section.

Mr. FRELINGHUYSEN. I would say to the Senator from Delaware that the seventh section was stricken out at the instance of those who thought it might confer some criminal jurisdiction which was objectionable.

The PRESIDING OFFICER (Mr. Edmunds in the chair). The amendment of the Senator from New Jersey will be reported.

The CHIEF CLERK. On page 6, in line 63, after the word "appeals," it is proposed to insert:

"A writ of error from the Supreme Court of the United States to the supreme court of the Territory shall lie in criminal cases where the accused shall have been sentenced to capital punishment or convicted of bigamy or polygamy."

The amendment was agreed to.

Mr. FRELINGHUYSEN. There were a number of amendments which I proposed to make to this bill that do not go as far as some amendments which those who have been opposed to the bill propose to make, and therefore I will hear what amendments they desire to make.

Mr. SARGENT. On page 4, section 3, line 12, I move to strike out all after the word "divorce" down to and including the whole of line 28, on page 8.

The Chief Clerk read the words to be stricken out, as follows:

"When a bill is filed by a woman to declare a marriage or pretended marriage void, on account of a previous subsisting marriage of the defendant to another woman, the court or judge thereof may grant such reasonable sum for alimony and counsel fees as the circumstances of the case will justify; and may likewise, by final decree, make such allowance for the maintenance of the complainant and her children by the defendant as may be just and reasonable. And whenever, in any proceeding for divorce, or in any civil cause or in any criminal prosecution, it is necessary to prove the existence of the marriage relation between two persons, it shall not be necessary to prove the same by the production of any record or certificate of the marriage, but evidence of cohabitation between the parties as husband and wife, and the acts, conduct, declarations, and admissions of the parties shall