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UNLAWFUL ENFORCEMENT OF LAW.

THE editor of the New York *Tribune*, like others who close their eyes to the gross actual evils around them, and strain their sight in gazing at imagined and exaggerated irregularities afar off, has been much exercised of late on the Utah polygamy problem. And he has expended much time in the construction of ingenious measures—on paper—for the overthrow of the peculiar institution. One long editorial of recent date is devoted to the subject of "How to Prove a Marriage," or the explanation of means to "facilitate the proof of polygamy."

It is surprising to us that so many clever persons devote such a large share of their precious time and uncommon talents to a question that really concerns them so little. Of what particular consequence is it, for instance, to Mr. Whitelaw Reid, of the famous journal which Horace Greely made, if some men living in the Rocky Mountains marry more than one wife? He lives and moves and has his being in populous New York, about three thousand miles away and, so report says, is engaged to be married to an accomplished and rich young lady. Why does he trouble himself so much on the subject of the alleged morals of a handful of people in this distant region and elevated altitude? It may be answered, he is a leading journalist and this is a public question which he has the right to discuss. Just so. But why give such prominence to it when matters of much greater moment, that vitally affect society in his own neighborhood are permitted to remain without comment?

The agitators of public thought seem determined to continue to hold up the subject of "Mormonism" before the world, and to keep it from slumbering or going down into obscurity. So much better for it and for its dissemination everywhere. It is all in the providence of God who is its author, and the more they assail it the better will be its opportunities for finding access to the hearts of those who value and desire the truth. Unwittingly they prepare the way for the authorized exponents of our faith, and are doing a good work for us, while their intention is to bring evil upon us.

The object of the article to which we have referred is to clear the way for the conviction of men who have contracted plural marriages. How does the writer propose to effect this? Something after the same fashion as most of the plans which the fanatics who have a monomania on this question generally propose. Enforce the law in an illegal manner. Punish those who evade the law by another evasion of the law. Make the law triumphant in one thing by departing from it in another. Overcome an alleged wrong by perpetrating an actual wrong. What positive and general good will be accomplished by such a course, it is rather difficult to perceive.

The New York luminary's method may be summed up in one sentence of his article. He says:

"There is strong reason for declaring that the plural marriages of Utah shall be provable by the easier and simpler modes which have been found sufficient in civil controversies."

That is to say, use the evidences accepted as proofs in civil cases as competent in criminal prosecutions. But is this the practice? Is this in accordance with the established rules of jurisprudence. Is it designed for general application? No. It is contrary to the recognized course of the courts in England and America. It is to be a special mode of procedure in "Mormon" cases. It is not for ordinary bigamy, but for this peculiar polygamy. The editor recognizes that there is in fact a difference between our polygamy and the crime called bigamy, but admits that it is known in law only as the same. Yet he would have a different legal method of meeting the former than that against the latter. He also admits that in the practice of the courts and the rules of evidence:

"The contrast is very strong between the willingness of a judge to 'presume' a marriage when legitimacy is to be sustained, and the conscientious hesitation when the result will be punishment."

He frankly avows that there is a great distinction between the kind of evidence required to establish a marriage in a civil suit and that to prove it where the marriage is alleged as a crime. He says:

"In these cases the general rule has been to require strict proof of an actual and valid marriage; declaration or reputation or even a ceremony not strictly valid, are not deemed enough."

Yet he would have these general principles of law and established rules of judicature set aside in order to proceed against the "Mormons." Even the protection thrown around the alleged bigamist by the law is to be denied the accused polygamist. And yet the former, if guilty, has played the part of a villain, deceiving both victims to his fraud as well as violating the law, while the latter, if truly accused, has merely entered into plural conjugal relations with the knowledge and consent of all the parties.

In proving the legitimacy of the offspring of a disputed marriage, in a case of a widow's claim for part of the alleged husband's estate, in actions for divorce and other cases not involving a criminal prosecution, great latitude is given in the application of evidence. But when a man is placed in legal jeopardy, when the issue involves the liberty of the defendant, the law rightly requires more direct evidence of marriage, and nothing but actual proof is deemed sufficient to secure conviction. But now it is sought to strain the laws of evidence for the purpose of reaching as many "Mormons" as posssible, and this just to gratify a popular prejudice formed and fostered by a few fanatics who assume that plural marriage is an evil to society, an assumption based upon theory, without facts to sustain it.

Why this bitterness of spirit and desire for injustice toward the conscientious adherents of the "Mormon" social system? Supposing that in carrying out what they believe to be a Divine requirement, they come in contact with a law of the land. Should that law be enforced by extraordinary and unusual methods? If so, why? If there are troubles and difficulties arising out of this system they fall upon its adherents, not upon those who raise the outcry against them. And we deny emphatically that any evil occurs to society through our marriage system, and defy its opponents to show any better condition of general society in monogamous regions than exists among the polygamous Latter-day Saints.

We would advise the brilliant editor of the New York *Tribune* to devote his energies to the reformation of New York morals, which are as corrupt as those of the doomed cities of the plains, and leave the "Mormons" of Utah to work out a social problem that may yet be the means of purifying so-called "Christian" society, and saving the world from general destruction.

THE RIGHTS OF JURORS UNDER THE LAW.

THE recent decision of the Supreme Court of the United States, in the Miles appeal case, while reversing the judgment of the Supreme and Third District Courts of Utah, and setting aside the verdict of the jury, yet sustains some points as ruled on by the lower tribunals. The most important of these is the exclusion of certain jurors who avowed their belief in the divinity of the doctrine of celestial marriage.

The Decision says: "We find nothing *in the record* in relation to the empanelling of the jury, which would have required the Supreme Court of the Territory to set aside the verdict and judgment of the District Court" The record shows that the Court followed the Utah statutes in the trial of challenge of jurors for actual bias. That is, the cases of the challenged jurors were referred to three triers appointed by the Court, who found in each case of the jurors objected to for their religious belief, that the challenge was true.

The record, no doubt, is clear on this point, and the Supreme Court had to judge from the record. But there are two facts which do not seem to appear of record that ought to be understood, as they will have pertinent bearing on future cases of challenge for actual bias. The law provides that

"The triers are three impartial persons, not on the jury panel, appointed by the Court."

Reference to the minutes of the trial will show that three *impartial* persons were not appointed by the Court, but persons who were just as much partial on one side, as the rejected jurors were said to be on the other. They were members of the bar whose sentiments were well known, and who were certainly as strongly biased as the jurors were alleged to be. It does not appear in the record of the case that the law in relation to *impartial* triers was not complied with, so the Supreme Court had no opportunity of ruling on that point. The law further provides that:

"Sec. 252: On the trial of a challenge for actual bias, when the evidence is concluded, the court must instruct the triers that it is their duty to find the challenge true, if in their opinion the evidence warrants the conclusion that the juror has such a bias against the party challenging him as to render him not impartial; and that if, from the evidence, they believe him free from such bias, they must find the challenge not true; that a hypothetical opinion, unaccompanied with malice or ill-will, founded on hearsay or information supposed to be true, is of itself no evidence of bias sufficient to disqualify a Juror. The court can give no other instruction."

The challenge must be found true if the evidence shows that the juror has a bias against the party challenging him. If he have not such bias they must find the challenge not true. A hypothetical opinion not founded on malice or ill-will will not disqualify the juror. The Court must so instruct and can give no other instruction. It is evident that there is no intention in the law to disqualify a juror for a matter of belief or opinion. The absence of malice or ill-will relieves the juror from the challenge. Was it shown, or can it be shown that the rejected jurors had any such bias against the prosecution in the Miles case? We think not. The answers they gave on their *voir dire* showed to the contrary, and the examination before the triers was but a repetition of the proceedings in open court.

The decision of the triers is final. This relieves the Court from all blame or responsibility, if the triers appointed are impartial persons. But it does not relieve the triers from the requirements of the law in their case, which are that they shall "decide truly according to the evidence," and be guided by the principle laid down above concerning opinion and malice or ill-will, nor from the responsibility of the oath which they are required to take that they will do so.

The Act on Criminal Procedure, in which these provisions occur, was copied almost intact from the California Code. It has been taken advantage of for a purpose never designed by the legislators of the State that originated it, or the Territory that has adopted it, and, as we view it, contains some things that are in conflict with the Act of Congress known as the Poland Bill. For instance the law of Congress provides that:

"Each party, whether in civil or criminal cases, shall be allowed three peremptory challenges, except in capital cases where the prosecution and the defense shall each be allowed fifteen challenges."

The law in question provides that:

"If the offense charged is punishable with death or with imprisonment for life, the defendant is entitled to ten and the Territory to five peremptory challenges. On a trial for any other offense, the defendant is entitled to five and the Territory to three peremptory challenges."

The difference is easily perceptible. If that is fatal to either it is to the Utah statute, though of course it does not affect the very same law in California, the Poland Bill being a piece of special legislation for Utah. The law evidently needs revision, and while it should be made entirely harmonious with the Act of Congress, it ought to be so constructed that advantage cannot be taken of it to deprive any juror, no matter what may be his creed or "hypothetical opinion," of the right guaranteed to him by the supreme law of the land.

Legislators ought to be very careful in the adoption of codes from other sources, lest provisions may be accepted that are not fully adapted to our local requirements and circumstances, and courts should so guard the rights of either side in a trial, and of those entitled to sit as jurors that no injustice may be done and no principle of fundamental law be violated.

A MOCKERY OF JUSTICE.

A PRISONER has just been released from the Penitentiary whose case is peculiar. His name is Alonzo Colton, his home is in Minersville, Beaver County, and he has served out a term of five years imprisonment, lacking the time allowed for good behavior under the territorial law known as the "Copper Act."

The peculiarities of his case are these: He was punished for polygamy under the provisions of an Act which had no reference whatever to that offence. The evidence, if it proved anything at all, showed that he had married two wives contrary to the provisions of the congressional law of 1862. At the time of his trial the constitutionality of that law was a matter of doubt, and therefore he was not accused of bigamy or polygamy, but was indicted for lascivious cohabitation under the territorial statute. When the trial took place, however, the territorial law had been repealed. Yet he was sentenced by J. S. Boreman—then Associate Justice, but now plate-passer *pro tem* on extraordinary Methodist occasions—to the full term of imprisonment imposed under the law of Congress, namely five years.

The injustice of the whole thing will be seen from a brief investigation of the facts The law under which he was indicted reads thus:

"If any man or woman, not being married to each other lewdly and lasciviously associate and cohabit together, or if any man or woman married or unmarried is guilty of open or gross lewdness * * * every person so offending shall be punished by imprisonment not exceeding ten years, and not less than six months." etc.

It was not shown that the defendant was guilty of any act contemplated and designated in that law. On the contrary the evidence, such as it was, pointed to the fact that he was married to the woman with whom he was accused of cohabiting. No lewdness or lasciviousness was proven against him. It was not in evidence that he had violoted in any way the provisions of the Act under which he was indicted. It was merely an attempt to convict him of polygamy under the act against lascivious cohabitation. And, as we have said, when he appeared for trial the law was not in existence, having been repealed by the enactment of the new penal code, its abolition, for one reason, being brought about by the iniquitous policy inaugurated by Judge McKean and imitated by Boreman, of trying to punish a man for an offence against a doubtful law, under color and cover of a different law framed against a totally different offence.

The defendant, anticipating acquittal, was undefended. He stated to us some time ago that he had engaged and paid for the assistance of counsel, whose names he furnished us, but who failed to appear. He did not attempt to secure others, and the Judge whose duty it was to acquaint the jury with the law and its inapplication to the case at bar, sentenced the man to five years' imprisonment in the Penitentiary. The facts were brought repeatedly to the attention of the then Governor who, while admitting the hardship of the case and promising to do his best in the matter, was too cowardly to perform a simple act of justice by pardoning the convict. If he had not been a "Mormon" the Penitentiary would not have held him a week. As it was he served out his time, a victim to judicial injustice and executive timidity.

He is now a free man, and his position is to be vastly preferred to that of the person who consigned him to the fate of a felon under an obsolete law which he had not violated. For he has paid the unjust penalty and endured wrong for a principle, for which he will in no wise lose his reward; while the official then "clothed with a little brief authority," can no longer "play such fantastic tricks before high heaven," but is on the downward grade, and when Eternal Justice pronounces his doom, "verily he will not come out thence until he has paid the uttermost farthing."

PROOF OF CITIZENSHIP.

THE position taken by the United States Government in the dispute with Spain over the Buzzi case, involving the citizenship of an individual, is a sound one, and should be universally understood. The Spanish Government took the ground, that in determining the citizenship of a Spaniard claiming to have been naturalized in the United States, it had a right to go behind the papers and investigate the case on its merits Secretary Blaine instructed the counsel on the part of this Government to insist upon a contrary rule. As was stated in our dispatches of April 23d,

"The State Department holds that in determining the question of citizenship, naturalization papers regular in form and duly issued by a competent tribunal, shall be taken not only as *prima facie* but as conclusive proof of the citizenship of claimant. This position was conceded by Baron Blanc, former umpire for the Commission, and it is understood that our Government will insist upon this construction."

This position has been frequently taken by the Courts, and is sound in law as it is in common sense. When an alien does all that lies in his power to secure his naturalization papers, complying in all respects with the law affecting his case, and receives his certificate with the seal of the Court, he cannot in reason be held responsible for any failure of duty that may occur on the part of the Court or the clerk thereof. His certificate is and should be *prima facie* evidence that he has complied with the law, and of his citizenship and the Department of State goes further and holds it as conclusive proof thereof. This declaration from so high an authority is valuable and significant.

TRYING TO WEAR THEM OUT.

THE case of Edward Bird for embezzlement has been again continued in the Third District Court. This is the fourth time it has been postponed. An important witness, it is now alleged, can not now be procured. It is exceedingly doubtful whether he will ever be forthcoming. We regard these repeated postponements of this case as mere makeshifts, and designed to weary and wear out the parties to the prosecution, who have been put to great trouble and expense times and times again in order to be ready when required, with the necessary evidence, which is of the most positive character.

It is also evident to all who are acquainted with the facts and the course pursued in our Federal Courts that this defendant escapes from being brought to trial because he is an anti-"Mormon," and one of the prominent movers in the so-called "Republic of Tooele" which was established by the "Liberal" party in that region, obtained and maintained by fraud, and resulting in robbery and imposition on the people. If this defendant had been a "Mormon" Bird, he would have been caged long ago. As it is, the case is put off again and again with the hope doubtless of worrying the witnesses until they will give it up in disgust.

Another of the "Liberal" gang who was convicted some time ago of fraud in obtaining goods under false pretenses, was released pending the pronunciation of sentence and has gone scot free, the sentence never having been delivered. We ever heard of such an occurrence when a "Mormon" was convicted. We do not forget these things and they ought not to be passed over in silence.

We hope the parties who have the proofs in the present case will hold on to the ropes and do their duty, no matter how many times the attempt to wear them out may be repeated.

Fred. Hopt, the convicted murderer of John F. Turner is to be shot on the 20th of this month.