TRUTH AND LIBERTY.

DESERET EVENING NEWS.

SALT LAKE CITY, UTAH TERRITORY, THURSDAY EVENING, APRIL 16, 1885.

cide upon the elections and qualifica-tions of its members; and at or after the first meeting of said Legislative one at least of whom shall be of the Assembly, whose members shall have political party that was in the minorbeen elected and returned according to the provisions of this act, said Legis-such party there be in such precinct, conformable to the organic act of said Territory and not inconsistent with of the persons appointed to preside, Territory and not inconsistent with other laws of the United States, as it shall deem proper, concerning the fil-ling of the offices in said Territory de-clarged back of the offices in said Territory deling of the offices in said Territory de-clared vacant by this act." Section 5552 of the Revised Statutes, which the foregoing act amends, reads to the persons so appointed, who, pre-to the persons so appointed, who, pre-sourd said office, shall take and subscript an other the persons so appointed, who, pre-sourd another, whether married or single, in a Territory, or other place over which the United States have exclusive juris-the Unite diction, is guilty of bigamy, and shall ously endeavor to prevent any fraud,

years; but this section shall not ex-tend to any person by reason of any former marriage whose husband or day of election, to the number of six, whether they construction, to determine whether they conform. **five successive years and is not known** at or immediately after the time designated for opening the polls, may elect to such person to be living, nor to any person by reason of any former mar-and the person so to be living of the parsage and the person person by reason of any former marriage which has been dissolved by de-cree of a competent court, nor to any Sections 10 and 11 prescribe how bal-

riage which has been pronounced void by decree of a competent court on the and for keeping the boxes during the voting and until the canvass; and sec tion 12, provides how the judges shall keep the lists, etc.

of March 22, 1882, the quatifications of "SKC. 13. Every voter shall designate voters prescribed by the Territorial Legislature, whose right to do so was the name of the person or persons voted for, with a pertinent designation of the office to be filled, and when any question is to be decided in the affirm-States, over twenty-one years of age, ative or negative, ne shall state the pro-and constant residents in the Territory: position at the bottom of the ballot, and write there under yes or no, as he the election, and no person was to be deemed a resident unless he was a tax-payer in the Territory; if females, one of the envelopes hereinbefore pro-

single, and any man who hereafter sin istration as a roter, still maintains that in the first place, that the pleader has relation to applicable plurality of wives, al-not in any of the complaints, alleged, as matter of fact, that the plaintiff was the act of March 22d, 1882, until the a legally qualified voter, cutitled to be day he offers to register and to vote, h

NO. 122.

have cohabited with man. Without regard may not in fac registered as such. He has preferred, more than one w in each case, with variations to suit to the question whe ther at the time he entered into such a relations it was a the circumstances, to aver the existrohibited and punishable o whether by reason of lapse duce its commission a prosecut t may not be barred, if he still im ains the relation he is a bigan advenuest, because that is the hich the fixed habit and prict his living has established. plurality of wives, more than on woman whom he recognizes as wife, of whose children he is the acknowledged father, and whom with their children he maintains as a family.

status as to several wives may well continue to exist, as a practical relaion, although for a period he may no in fact cohabit with more than one : h that is quite consistent with the constant recognition of the same relation to many, accompanied with a possible intention to renew cohabitation will with that, are concerned, there is no difficulty. Each of the plaintiffs i me or more of the others when it may be convenient.

> bigamy or polygamy, at some previous time, in violation of some existing statute, and as an additional punishment for its commission, that he is dis-tranchised by the act of Congress of March 22d, 1882; nor because he is guilty of the offence, as deflued and punished by the terms of that act; but because having at some time entered into a bigamous or polygamous relation, by a marriage with a second of third wife, while the first was living, he still maintains it, and has not dissolved it, although for the time being he re-

SUPREME COURT OF THE UNITED STATES.

VOL. XVIII.

OCTOBER TERM, 1884.

Territory of Utah.

Jesse J. Murphy, Appellant, No. 1027. Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pet-tigrew, E. D. Hoge and Arthur Pratt.

Mary Ann M. Pratt, Appellant, No. 1928. rs. Alexander Rainsey, A. S. Paddock, G. L. Godirey, A. B. Carleton, J. R. Pel-of Commissioners made and published rules providing for said registration, for the appointment of registration of commissioners made and published rules providing for said registration, for the appointment of registration of commissioners made and published rules providing for said registration, for the appointment of registration of commissioners made and published rules providing for said registration, for the appointment of registration, for the appointment of registration, for the appointment of the said the said

No. 1029 Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettrazew, E. D. Hoge and Harmel Fratt

Ellen C. Clawson and Hiram B. Clawson, Appellauts. No. 1030

No. 1030.
 Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettikerew, E. D. Hoge and James T.

James M. Barlow, Appellant,

No. 1031. es. Alexander Ramsey, A. S. Paddock, G. L. Goufrey, A. B. Carleton, J. R. Pet-tigrew, E. D. Hoge and Harmel Pratt.

Ligrew, E. D. Hoge and Harmel Pratt. I. The Board of Commissioners appointed for the Territory of Utah in pursuaace of sec. 9 of the act of Congress approved March 22d, Bs2, entitled "Au act to amend ser. sholof the Revised Statues of the Uait ed state. In reference to begany and for other purposes. (21 Stats, 30.) have no pow er over the registration of voiers or the ron-thet of relections. Their authority is limited to the appointement of registration and election of the Uait is deputies of the subscribe the following other purposes. (21 Stats, 30.) have no pow er over the registration of voiers or the ron-thet of relections. Their authority is limited to the appointement of registration and election of the subscribe the following to the appointement of registration and election of the subscribe the following to the appointement of registration and election of the subscribe the following to the appointement of registration and election of the subscribe the following to the appointement of registration and election of the subscribe the following to the appointement of registration and election of the subscribe the following to the appointement of registration and election of the subscribe the following to the appointement of registration and election of the subscribe the following to the appointement of registration and election of the subscribe the following the subscribe the following to the appointement of registration and election of the subscribe the following the subscribe the following the subscribe the following the subscribe the subscribe the following the subscribe the subscribe the following the subscribe the subscribe the subscribe the following the subscribe the su to the appointment of registration and elec-tion office s to the canvass of the returns made by such officers of election, and to the issue of certificates of election to the per-rous appearing by such canvass to be abave.

2 The registration and election officers 2. The registration and election officers thus appointed are required, unit other provisions be made by the Legislative As-senially of the Territory, to perform their daties nucley the existing laws of the United States, including the act of Match 22d, 1882, and of the Territory, so far as not inconsist automatic action.

As the Board of Commissioners had no 3 As the Board of Commissioners had no lawful power to prescribe conditions of reg-istration or of voting, any rules of that char-acter promulgated by them to govern the registration and election officers were null and word; and as such rules could not be ning word, and as such rules could not be pleaded by the registration officers as law-tul commands in justification of refusals to register persons claiming the right to be registered as values, their illegality is no ground of liability against the Board of

Commut-solutes. 4_{α} The registration officers were bound to register only such persons as, hence quali-fied units, the laws previously in force, and officing to take the oath as to such qualifi-cations preserved by the territorial act of 1-58, we callso not disqualified by the eighth ection of the act of Congress of March 22d.

That section provides, as to males, that h trove than woman ; and as to

afterward ordered, directed and super-vised a registration of the voters of the Appeals from the Supreme Court of the Territory of Utah, for the general election in said Territory, to be held on the seventh day of November, 1882, for the election of a Delegate for said Territory to the Forty-eighth Congress, and for such other elections as might be held prior to another registration of votors of said Territory; and on or about the 10th day of August, 1892, the said Board

referred to and called the 'Board of

"Tnat said Board of Commissioners

tigrew, E. D. Hoge and John S. Lind-sus. Mildred E. Randali and Alfred Randall, Appellants. No. 1029. rs. during the week commencing on the second Monday of September, 1882, and among other rules, wilfully and

ommissioners

maliciously made and published the following: 'Rule I.

'There shall be appointed one registration officer for each county, and one deputy registration officer for each precinct thereof. 'Rule II.

'Such registration officer shall, on the second Monday of September next, proceed by himself and his deputies in the manuer following: The registration officer of each county shall pro-

six months, and in the precruct of one month mimediately preceding the date hereof, and (if a male) and a na ive bona of natu al zed (as the case may be) cit zen of the United States, and a tax-payer in this Territo -, (or if a female), I am native to a Terrino s, (or if a formate, i am native oo a, o, nasa, alized, or the wife, widow or daugh-ter (as the case may be) of a native born o, naturalized cit zen of the United States, and F do fortace solemnity swear (or afficin) that I am not a bigamis, nor a polygam st; that I am not a violator of the laws of the United States p consisting bigamy or polygamy; that I do not live or conabit with more that

one woman in the marvinge relation, nor does any relation exist between me and any woman which has been entered into or con-tinued in violation of the said laws of the United states p obliting becamy or polygisiny, (and if a woman) that I am not the wife of a polygamist, nor have I entered into any relation will any man in violation of the laws of the United States concerning

polygamy or bigamy. Second of bigany. ~u scribed and sworn to before me, this —— day of —— 1881.

Registration Officer, ---- Precinct. 'And said registration officer, or his

deputies, shall add to said lists the

September, 1882.

qualifications are as follows:

same

requested the said elendant, Arthur Pratt, to put plaintiff's name on the registry list of voters of said precinct, and to register him as a voter therein. That the said defendant, Arthur Pratt, acting under the directions of the other defendants, wilfully and malic-iously refused to receive said affidavit or to swear plaintiff thereto, or to register him as a voter of said pre-cluct, but on the contrary wilfully and

maliciously struck plaintiff's name off the list of registered voters of said precinct, and left his name off the list

of voters of said precinct, made at said That afterwards, before the close of said registration, and on the 14th day of September, 1882, the plaintiff pre-sented a duplicate of said last-named affidavit to the defendant, E. D. Hoge, then acting as county registration off.

then acting as county registration offi-cer for said county of Sait Lake, and informed him of the ruling and action as aforesaid of the defendant, Arthur Pratt, and requested the defendant, F. D. Hoge, to correct and reverse said ruling, and to instruct the defendant. Arthur Pratt, to swear plaintiff to said this court.

affidavit and register him as a voter, and the suid defendant, E. D. Hoge, wilfully and maliciously refused to correct or change said ruling and OW8:

hundred and fifty-two of the R :-vised Statutes of the United States in reference to bigamy, and for

"Be it enacied by the Senate and House said last-named affidavit, and informed of Representatives of the United States of America in Congress assembled, That section filty-three hundred and fiftythem of the action and ruling of the defendants, Arthur Pratt and E. D. Hoge, and requested said board to re-verse and correct said rulings and actwo of the Revised Statutes of the United States be, and the same is hereby, aducated so as to read as folion, and to direct that plaintiff's oath

sioners wilfully and maliciously re-fused to correct or change said rulings, and affirmed and approved the same, and said last-named ruling was made before the close of the registration in said precinct, and when there was still

time for plaintiff to have registered be-fore the close of the registration, "And, on information and bellef, the plaintiff alleges that the defendants all knew that, unless the plaintiff's name appeared on the -registration list then being made of the voters of said pre-

any marriage contract or relation with any woman within the last six years, and has continuously and openaly re-sided in the city of Salt Lake, in said Territory of Utah, for more than twea-ty years last past." She presented to the deputy regis-tration officer an affidavit setting forth the same facts.

the complaint by all the defendants, on the ground that it did not state facts sufficient to constitute a cause of ac-tion. These demurrers were sustained, and the plaintiffs electing to abide by their pleadings, judgment was ren-dered for the defendants, which are

The act of March 22, 1882, is as fol-

'AN ACT to amend section fifty-three. action, and approved and affirmed the "That on the 16th day of September, 1892, the plaintiff presented to said Board of Commissioners a duplicate of

to said affidavit be taken, and that he be registered as a voter of said pre-cinct, and the said Board of Commislows, namely: "Every person who has a husband or wife laying who, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter

marries another, whether married or single, and any man who hereafter simultaneously, or ont the same day, marries more than one woman, in a Territory or other place over which the United States have exclusive juris-diction, is guilty of polygamy, and shall be purished by a fue of not-more than five hundred dollars and by

imprisonment for a term of not more than live years; but this section shall not extend to any person by reason of any former marriage, whose husband

Subscribed and sworn to before me this isth day of September, A. D., 1882. "And at the same time the plaintiff requested the said defendant, Arthur

the same facts.

now brought by appeals for revision to

other purposes.

cree of a competent court, nor to any person by reason of any former marground of nullity of the marriage con-At the time of the passa "e of the act

conferred by the organic act of Utah, were as follows: If males, they were required to be citizens of the United during the six mouths next preceding

never has been a bigamist or polyga-mist, and is not combining and never has consulted with any man except her has doard of five person shall not exclude any person otherwise eligible to vote from the polls on ac-count of any ophion such person may son, has not marriage contract or relation with any woman withm the last six years, and has continuously and openly re-sided in the city of Sait Lake, in said Territory of lith, for more than twea-And in entering upon the considera-tion of this point it is to be observed, in the first place, that the pleader has not in any of the complaints, alleged, though from though from

be punished by a fine of not more than five hundred dollars, and by imprison-ment for a term not more than five cinct, any of such judges decline to been negatived. To ascertain this we have to compare the allegations of the complaint in each

lot-boxes, keys, etc., shall be procured,

disqualifications affixed by law have of pwhich he is the head. And th

It is not, therefore, because the pershown to have been a qualified voter, unless disqualified by the latter act. The only question is, whether they have

brought themselves within the mean-ing of that act. The language on which the questions arise occurs in the \$th section, and is: "That no poly gam1st, bigamist, or any person co habiting with more than one woman, and no woman conabilting with any of the persons described as aforesaid in this section," etc., that is, with any polygamist, bigamist, or person co-habiting with more than one woman, shall be entitled to vote at any election

shall be entitled to vote at any election beld in the Territory. In the case in which Mary Ann M. Pratt is plaintiff, she clearly excludes berself from the disqualifications of the act. She alicges in her complaint "that she is not and never has been a transfer a polygamist. He can only cease to be such when he has finally and

husband are plaintiffs. Tuey are "that the plaintiff, MilGred E. Randall, for more than three years last past has be the home of a separate family, none of which he himself may, dwell in or en and is the wife of the plaintiff even visit. The statute makes an ex-Alfred Randall, who is and prior to March 22d, 1882, was a native-born citizen of the United States of Ameripress distinction between bigamists and polygamists on the one hand, and those who cobabit, with more than one woman on the other; where-as, if cohabitation with several wives a; that she has not on or since March 22d, 1882, cohabited with any bigamist polygamist, or with any man cohabit was essential to the description of those who are bigamists or pulyga-mists, those words in the statute would in with more than one woman that she is not a bigamist or polygamist, and never has been a bigamist or polygambe superfluous and unnecessary. 11 follows, therefore, that any person ist, and has not in any way violated the act of Congress entitled 'An act to amend section 5352 of the Revised having several wives is a bluamist of polygamist in the sense of the act of March 22, 1882, although since the date statutes of the United States in referof its passage may not have combined ence to bigainy, and for other pur-poses,' approved March 22d, 1882." with more than one of them. Upon this construction the statute is not open to the objection that it is an er post facto law. It does not seek in woman claiming the right to vote, are this section and by the penalty of disthat she does not, at the time she franchisement to operate as a punish ment upon any offence at all. finent upon any onchere at all. The crime of biganny or polygamy consists in entering into a bigannents or polyga-mous marriage, and is complete when the relation begins. That of actual codisqualification in the language of the act. These requirements are fully The case of Eilen C. Clawson is difhabitation with more than one woman is defined and the punishment pre-scribed in the third section. The disferent. In the complaint, filed by herfranchisement operates upon the exist-ing state and condition of the per-on, and not upon a past offence. It is, self and her husband, it is alleged that she "is not and never has been a bigamist or polygamist, and is not cohabiting and never has cohabited with any therefore, not retrospective. He alor man except her husband, the co-plain-tiff herein, to whom she was lawfully is deprived of his vote who, when he offers to register, is then in the state married more than fifteen years ago, and of whom she is the first and lawful and condition of a bigamist or a polyg-amist, or is then actually cohability wife; that the plaintiff, Hiram B. Clawwith more than one woman. chisement is not prescribed as a penalson, has not married or entered into maliciously refused to receive the affi- any marriage contract or relation with ty for being guilty of the crime and offence of higamy or polygamy; for, an any woman within the last six years, has been said, that off more consists in sided in the city of Salt Lake, in said Territory of Utah, for more than twenthe fact of unlawful marriale, and a prosecution against the counter is ty years last past." It is quite consistent with these statements, that the husband of the barred by the lapse of tiret years, by section 1041 of the Revised Statutes Continuing to live in that state afterwards is not an offence, although corulings and to direct the registration female plaintiff was at the time she habitation with more than one woman claimed registration, a bigamist, or a polygamist, or that he was then cohabis. But as one only be from reaches ting with more than one woman; and mous or polygamous state without cothat she was cohabiling with him at the same time. She would be, on either he is in that sense a bigamist or a supposition, expressly disqualified polygamist, and yet guilts of no crimisapposition, expressly disqualified polygamist, and yet guilts of no crimi-from voting by the eighth section of the act of March 22d, 1882, and she does those disqualifications of a voter unact of March 22d, 1882, and she does der the act of March 22d, 1882, the objection is not well taken that reprenot negative the fact. It cannot, therefore, be inferred that sents the inquiry into the fact by he was a lawfully qualified voter. The cases of Murphy and Barlow are the officers of registration as an unlawful mole of prosecution for crime. In respect to the fact of acteal cohabitation with more than one woman the objection is equally ground-less, for the inquiry two the fact, so far as the registration officers are aualike in substance. In Murphy's case, the allegations are, "that he has not since more than three years prior to March 22d, 1882, married or entered into any marriage contract or relation with any woman, or in anywise violatthorized to make it, or the nuber of election, on chaffence of the right of ed the act of Congress approved July 1 'under the existing laws of the 1862, defining and providing for the the voter if registered, ar - required to determine it, is not, in view of its United States and of said, Ter- punishment of bigamy in the Territoand has not viocharacter as a crime, not for the pur-pose of punishment, but for the sole purpose of determining, as in cise of

rotatled to be registered as a voter; and the stration onicer must either require such (c) stration officer must enter require such discretion of the outh, the form of which is given in the territorial act, or otherwise to site variable of the negative limits the dis-quirite attack of the negative limits the dis-quirite attack of not exist. Last which course is its located to adopt it is not accessive in these cases to decide. 8. The plane its in these accounts seeking to be added at a set of the sector of the sector.

fore over dimages for being anlaw uny de prived of ones right to be registered as vote - must ellege in their decla arons, as insise of ari, that hey were lecally qual-fiel voters, of that allegation being omitted, must alrege all for facts necessary to show, as minutes of law, that they were quotified voters, show to this end it is necessary that they should negative all the σ squalifications. pronounced by the law.

7. A bit familist or polygamist, in the sense of the et h h section of the act of March 22 of factor is his section of the act of March 22, 1882. Is a man waw, having contracted a be consisted polygramous man large, and be consisted polygramous man large, and be consisted by the section of two or more writes, in intrins that relation , all search at the time when he offers to be re-poserference a voter and this without ref-erence to the question whether he was at any time units of the offense of bigans of polygram, or whether any prosecution for such offense was horized by the Lype of time, acidity is it necessary that he should be guilty or solygramy nitier the first section of the acts of March 22, 1982. The constiof the action. Matchi 224, 1882. The eighth section of the action not intended, and does not observe us and additional penalty pre-sorthed on the prinsharent of the offense or parygalax, out me evidenties is as a dis-quilible action of a voice. If is not, the effort objections de as an explose factor by soid has no retro, writte operation. The das from his end of how of the average and a since and co-obsions of the person and ne a sea a part offerance.

Li wer, a condingly Held-8. It was accordingly *Held*— 1. That as no the five defend justs below, econocial the Board of Commissioners under the board of Commissioners and the contribution of the act of March 22d, 1882, the demonstrate wave rightly sus-baned reaction in time as a confirmed. 2. This, in the cases in which Jesse d'Mur-phy field dames M. Barlow respectively, were planneds, they do not affere shall her were and polygram dis or bigam sits at the time, here offered to sensitive at homes they. true diev offered to segister, allhough they deay that facy we can that time hade to a erminist prosecution for polygamy of logamy, suddenvicint they we e-consisting with more conclusion concernment, and not show ing themselves on selegatly qualified voice the lust ment of the demurrers as to all the

09

defeatables is all most. 3. That in the case in which Ellen C. Clawson, with her hus and, is paratiff. as the decharation does not deay the dis-qualification of one who is at the time co-habiting with a polygamist or biga and, the unament as to all the decendants is af

4. That in the cases in which Mary Ann M. Prattault Mildred E. Randell, with her M. Fratt and M dired K. Kondwil, with her husband, are the respective plantifiers, as all the disquarifications are denied, and it is alleged that the defendants, the re-oscra-tion officers, without and maticionsity re-fused to register them as vote s, the judg-means as to Hogy and 4, adsay in one, and a different formal P is the scheme as to Hoge and Harmel Poart in the other, are reversed, and the causes remanded for further proceedings.

In these actions, five in number Alexander Rainsey, A. S. Paddock, G L. Godfrey, A. B. Carleton and J. R Pettigrew, defendants in all, were per sons who composed the board appointed under section 9 of the act of Congress, approved March 22, 1882, entitled "An act to amend section fiftythree hundred and fifty-two of the Ze-vised Statutes of the United States, in reference to bigamy, and for other purposes" 22 Stats, 30. E D. Hoge, punishment of bigamy in the Terrialso a defendant in all the cases, was tories, and has resided continuously appointed registration officer for the and openly in the counties of Weber county of Sait Lake, in the Territory of Utab, by that board, in pursuance of past, and has not violated any of the that section of the act. The other defendants, one of whom is joined in each action, to wit, Arthur Pratt, John S. Lindsay, Harmel Pratt and James T. Little, were respectively deputy registration officers in designated election precincts in which the plain- since the 22d day of March, 1882, cotiffs in the actions severally claimed habited with more than one woman. the right to be registered as voters. and has never been charged with or The object of the actions was to recover damages, alleged to have arisen by reason of the defendants wrongfully and multiciously refusing to permit the plaintiffs respectively to be registered as qualified voters in the Territory of 18th day of September, 1882, he perthe right to vote at an election held in Arthur Pratt, then acting as deputy that Territory on November 7th, 1882, registration officer in and for the fourth

nes of all analitied voters in su habits, with more than woman; and, as to females, that no woman cohabitang with any polygomist, against, or man cohabitang with more than one woman, shall be enabled to vote, and consequently, no such person is istration officer shall strike from said list, upon their taking and subscribing to the aforesaid oath, and the said reglists the names of said persons who fail or refuse to take said oath, or have died or removed from the precinct, dr are disqualified as voters under the act of Congress approved March 22, A. D. 1882, entitled 'Au act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes .' Provided That the action of any registration officer may be revised and reversed by this commission, upon a proper show

ing: And provided, further, That if the registration officer be unable to procure the registration list from the office of the clerk of the county, or if the same have been lost or destroyed, the said officer and his deputies shall make a new registry list in full of all legal voters of each precinct of the county, costs of suit." under the provisions of these rules. "That said Board of Commissioners

also, by rules, provided for the appointment of and appointed three judges of election for each election precinct in said Territory. "And on information and belief, the plaintiff alleges that the defendant, F. D. Hoge, was appointed registration fullows: officer for the county of Salt Lake, in said Territory of Utah, and the defend ant. Artaur Pratt, was appointed deputy registration officer for the fourth election precinct of the city Salt Lake, in said county, and that each accepted the appointment, duly qualified, and respectively acted throughout the said registration as such registration and deputy registra-

tion officer. "And the plaintiff alleges, that on the second Monday of September, 1882 the defendant, Arthur Pratt, as deputy registration officer for said fourth preinct in the city and county of Salt Lake, aforesaid, acting under the direction of the other defendants, commenced registering the voters of said precinct and making a registration list of such voters, and continued daily therein until the evening of Saturday of the same week, when the registration was closed.

"And the plaintiff alleges that he is a native citizen of the United States of America, and prior to the 22d day of March, 1882, was more than twenty-one years of age: that he has resided continuously in the Territory of Utah for more than eleven years, and resided continuously in the fourth precinct of Salt Lake City, in said Territory, more than two years past; that he has,

for more than ten years prior to the November election in 1882, lawfully exercised the rights and enjoyed the privileges of the elective franchise in said Territory, and has, for more than ten years last past, owned taxable property and been a tax-payer in said Territory, and that his name was on the last registration list of the voters of the

second precinct, Ogden City, Weber County, Utah, made prior to the second Monday of September, 1882.

"And the plaintiff alleges that he has not, since more than three years prior to March 22d, 1882, married or entered into any marriage contract or relation and Sait Lake, Utah, for ten years last provisions of the act of Congress approved March 22d, 1882, entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other pur-poses;' and that he has not, on or accused or convicted of bigamy or polygamy, or cohabiting with more than one woman, in any court or be-

fore any officer or tribunal. "And the plaintiff alleges that on the for the election of a Delegate to the precinct in Salt Lake City, aforesaid, orty-cighth Congress. In the case in which Jesse J. Murphy lendant, and offered to verify, and re-

the said judges refused to receive his vote, on the ground that he was not registered as a voter in said precinct. sions shall not affect the prosecution or punishment of any offence already committed against the section amended "And, on information and belief, the plaintiff alleges that the defendants, by the first section of this act.

and each of them, intending to wrong-"SEC. 3. That if any male person, in a Territory or other place over which fully deprive the plaintiff of the electhe United States have exclusive juristive franchise in said Territory, wilfully and maliciously, by the acts and in the manner aforesaid, refused the diction, hereafter cohabits with more than one woman, he shall be deemed galliv of a misdemeanor, and on conplaintiff registration as a voter, at the viction thereof shall be punished by a said registration commenced on the second Monday of September, 1882, fine of not more than taree hundred dollars, or by imprisonment for not and deprived the plaintiff of the right to vote at the election held in said Termore than six months, or by both said ritory on the 7th day of November, 1882, an.1 at all elections under said registrapunishments, in the discretion of the court. "SEC. 4. That counts for any or all of

tion, whereby plaintiff nas sustained the offenses named in sections one and damage to the amount of twelve handred dollars. "Wherefore the plaintiff prays judgthree of this act may be joined in the same information or indictment. ment against the defendants for the "SEC. 5. That in any prosecution for bigamy, polygamy, or unlawful cohabsum of twelve hundred dollars and

itation, under any statute of the United In the case in which May Ann M States, it shall be sufficient cause of Pratt is plaintiff and appellant the comchallenge to any person drawn or sumplaint is similar in all respects, except the allegations as to her qualifications moned as a juryman or talesman, first, that he is or has been living in the practice of bigamy, polygamy, or un-lawful computation with more than as a voter, and the contents of the af-idavit which she offered to the depone womai, of that he is or has been nty relistration officer. The averguilty of an offence punishable by either of the fore-oing sections, or by ments as to her qualifications are as

section frug-inrec hundred and fifty-two of the Revised Statutes of the "And the plaintiff alleges that she is a native citizen of the United States of America, and prior to the 22d United States, or the act of July first, day of March, 1882, was more than eighteen hundred and sixty-two, entitled 'An act to punish and pre-vent the practice of polygamy in the Territories of the United twenty-one years of age; that she has resided continuously in the Territory vent of Utah for more than thirty years, and States and other places, and dis-approving and annulling certain acts resided continuously in the third precinct of Salt Lake City, in said Territhe Legislative Assembly of the tory, for more than two years last past; Territory of Utau;' or, second, that he that she has, for more than five years believes it right for a man to have more prior to the November election of 1882, hawfully exercised the rights and enthan one living and undivorced wife at the same time, or to live in the practice of cohabiling with more than one wofranchise in said Territory, and has, for more than five years last past, man; and any person appearing or ofowned taxable property and been a fered as a juror or talesman, and chal-tax-payer in said Territory, and that lenged on either of the foregoing proupds, may be questioned on his onth as to the existence of any such list of the voters of the third precinct. oath as to the existence of any such made prior to the second Monday of

cause of challenge, and other evidence may be introduced bearing upon the question raised by such challenge; and this question shall be tried by the court. And the plaintiff alleges that she is not, and never has been, a bigamist or polygamist; that sne is the widow But as to the first ground of challenge of Orson Pratt, Sen., who died prior to shall not be bound to answer if he shall the 22d day of March, 1882, after a say upon bis oath that he declines on continuous residence in said Territory the ground that his answer may tend to criminate hunse'f; and if he shall of more than thirty years, and that since the death of her said husband she answer as to said first ground, his anhas not cohabited with any man." The attidavit proposed by her contained the same allegations

swershall not be given in evidence in any criminal prosecution against him him for any offence named in sections one or three of this act, bat if he de-Aifred Randall and Mildred E. Randall, plaintiffs in anotaer action, sue as husband and wife, is the right of the clines to answer on aby ground,, he shall be rejected as incompetent. wife, for injury to her by reason of be-"SEC. 6. That the President is hereing deprived of her right to vote. The

averments in the complaint as to her by authorized to grant amnesty to such classes of offenders gality of bigamy, polygamy, or unlawful cohabitation, before the passage of this act, on such "Aud the plaintiffs allege that the plaintiff, Mildred E. Randall, is a ma-tive citizen of the United States of America, and prior to the 22d day of conditions and under such limitations as he shall think proper; but no such annesty shall have effect unless the March, 1882, was more than twenty conditions thereof shall be complied one years of age; that she has resided with. continuously in the Territory of Utah

"SEC. 7. That the issue of bigamous for more than twenty years, and resided continuously in the second preor polygamous marriages, known as Mormon marriages, in cases in which cinct of Salt Lake City, in said Terri such marriages have been solemnized tory, for more than two years last past according to the ceremonies of the Mormon sect, in any Territory of the United States, and such issue shall that she has, for more than ten years prior to the November election in 1882. lawfully exercised the rights and en-joyed theprivileges of the elective franhave been born before the first day of chise in said Territory, and has for January, Anno Domini eighteen aunmore than five years last past, owned taxable property and been a taxpayer dred and eighty-three, are hereby legitimated. "Sec. 8. That no polygamist, biga-

in said Territory, and that her name was on the last registration list of the mist, or any person consbiting with more than one woman, and no woman consbiting with any of the persons de-scribed as aforesaid in this section, in voters of the second precinct, made prior to the second Monday of Sep-tember, 1882. "And the plaintiffs allege that the plaintiff, Mildred E. Randall, for more any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any than three years last past has been and election held in any such Territory or is the wife of the plaintiff, Alfred Ranother place, or be eligible for election dall, who is, and prior to March 22d, or appointment to or to be entitled to hold any office or place of public trust, 1882, was a native-born citizen of the United States of America; that she has not on or since 22d of March, 1882, cohonor or emolument, in, under, or for any such Terri'ory or place, or under habited with any bigamist, polygamist, the United States.

or with any man conabiting with more "SEC. 9. That all the registration than one woman; that she is not a bigand election officers of every descripamist or polygamist, and never has been a bigamist or polygamist, and has tion in the Territory of Utan are here-

ters and to further regulate the man-

ner of conducting elections in that Territory. That act contains the following provisions:

"That the assessors in their respontive counties are hereby constituted are rightly brought here by appeal, acthe registration officers, and they are required to appoint a resident deputy in each precinct to assist in carrying out the provisions of this act, and be fore the first Monday in June, 1878, in person or by deputy, they shall visit every dwelling in each precinct, and make careful inquiry as to any or all case by the respective plaintiffs is, that persons entitled to vote, and each as- the defendants, and each of them, in-

ssor or deputy, in all cases, shall ascertain upon what ground such person claims to be a voter, and he shall resubscribe in substance the following oath or affirmation :

TEERITORY OF UTAH, | ss:

United States.

'I, ____, being first duly sworn, depose and say that I an over twenty one years of are and have resided in the Territory of Utah for six months, and in the precinct of ______one month next preceding the date he, cof, and (if a male) am a ('native born,' or 'naturatized,' as the case may be) citizen of the United States and a tay payer in this of the United States, and a tax-payer in this Territory; (or, if a female.) I am 'native born' or 'naturalized,' or the 'wife,' 'widow, or 'daughter,' (as the case may be.) of a native born or naturalized citizen of the

'Subscribed and sworn to before me this day -----, A. D. 18-. "Upon the receipt of such affidavit, the assessor as aforesaid shall place

the name of such voter upon the register list of the voters of the county. "SEC. 2. It shall also be the duty of the assessor of each county, in person or by deputy, at the time of making the annual assessment for taxes in each year, beginning in 1879, to take up the transcript of the next preceding regis-tration list and proceed to the revision of the same, and for this purpose he shall visit every dwelling-house each precinct, and make careful in-quiry if any person whose name is on his list has died, or removed from the precinct, or his otherwise disqualified as a voter of such precinct, and if so, to crase the same therefrom, or whether any qualified voter resides therein whose name is not on his list, and if so, to add the same thereto, in the manner as provided in the preceding section. "SEC. 3. It shall also be the duty of each assessor, in person or by deputy, during the week commencing the first Monday in June of each year, at his office, to enter on his regist, ; list the name of any voter that may have been omitted, on such voter appearing and

complying with the provision of the tirst section of this act required of voters for regristration purposes. "SEC: 4. Upon the completion of the list, it shall be the date of each as-sessor as aforesald to proceed to make out a list in alphabetical order, for each precinct, containing the pames of all the registered voters of such precinct, and shall, on or before the first day of July in each year, deliver all of said lists and affidavits to the clerk of the county court. "SEC. 5. The clerk of the county ourt shall deliver to the assessor the registry lists whenever necessary for the revision thereof, or adding names hereto, and the assessor in person of by deputy shall, during the week com-mencing the second Monday in Sepember in the year 1878, and every

second year thereafter, enter names of voters in the registry list in the manner provided in section three of this act, and upon the list being completed, proceed as required by section four of this act: Provided, That in such case he shall deliver the lists and affidavits on or before the 10th day of October in each year. "Sec. 9. Voters removing from one

election precinct to another in the same county may appear before the assessor at any time previous to the delivery of the registry list to the clerk of the county court, and have their names erased therefrom, and they may thereupon have their names registered in the precinct to which they

Mr. Justice MATTHEWS, after making the foregoing statement, delivered the opinion of the Court.

These cases, although actions at law, were not tried by jury : and, therefore cording to the provision of the act of Congress of April 7, 1874, 18 Stat. pt. 3,
p. 27; Supplement Rev. Stats. 12,
Stringfellow V. Caia; 99 U. S. 610; Hechi
v. Boughton, 105 U. S. 235; Woolf V. Hamilton, 108 U.S. 15. The wrong complained of in each

tended to wrongfully deprive the plaintiff of the elective franchise in said Territory, wilfully and maliciously, by quire each person extitled to vote and the acts and in the manner atoresald. The requirements of the eighth sec-desiring to be registered to take and refused the plaintiff registration, as a tion of the act, in reference to a voter, at the said registration commenced on the second Monday of September, 1882, and deprived the plain- offers to register, cohabit with a polytiff of the right to vote at the election gamist, bigamist, or person cohabiting heid in said Territory on the 7th day of with more than one woman; and it is November, 1882, and at all elections under said registration." The acts which, it is alleged, were the act. These requirements are fully done by the five defendants, as a Board of Commissioners or Canvassers, underithe law of March 22, 1882, and which contributed, to the wrong, and constituted part of it, are that they prescribed as a condition of registration an unauthorized oath, set out in the complaint, in a rule promulgated by them for the government of the registration officers; and that the deputy registration officer having, in obedience to such rule, "acting under the directions of the other ucfendants," wilfully and davit tendered by the plaintiff, in lieu of that prescribed by the rule of the and has continuously and openly re board, and to register the plaintiff; and that the county registration officer, on appeal, having refused to order otherwise, the Board of Commissioners also refused to reverse and correct these

> of the plaintiffs respectively, but affirmed and approved the same By an examination of the ninth section of the act of March 22, 1882, pro viding for the appointment and pre scribing the duties and powers of that board, shows that they have no functions whatever in respect to the registration of voters, except the appointment of officers, in place of those previously authorized, whose offices are by that section of the law declared to be vacant; and the persons appointed to succeed them are not subject to the direction and control of the board, but are required, until other provision be made by the legislative assembly of the Territory, to perform all the duties relating to the registration of voters. The board are not ries, ritory." authorized to prescribe rules for gov- lated any of the provisions of the act dition of registration. The statutory ing eligible for such election shall ap-pear to have been iawiully elected." or in anywise violated the act of Conover the subject of declaring the quali- mitted. fication of voters, it is not a just inviso, that it was incended to admit by registration or the right to vote, any

the polls, for the reason assigned,

eraing them in the performance of these duties, much less to prescribe any qualifications for voters as a con-1882, cohabited with more than on powers of the board are limited to the woman, and has never been charged appointment of the registration and with or accused or convicted of bigamy election officers, authorized to act in or polygamy, or cohabiting with more the first instance under the law until than one woman, in any court or before provision is made by the Territorial any officer or tribunal." In Barlow's Legislature for the appointment of case, the statement on one point is the would be quite compared that he has not, on the returns and the issue of certificates of election "to those persons who, be-

The proviso in the section does indeed gress approved July 1, 1862, defining declare "that said board of five per- and providing for the punishment of polls on account of any opinion such person may entertain on the subject of bigamy or poly zamy," but, fu the ab-sense of any general and express power over the subject of declaring the sons shall not exclude any person bigamy in the Territories. That is to There is no greater objection in nomi But in both cases the complaints

ference, from the words of this pro- omit the allegation, that, at the time the plaintiffs respectively claimed to be implication the existence of any au-thority in the board to exclude from each, either a bigamist or a polygamist. It is admitted that the use of these registration of the right to vote, any rit is annitited that the disc of these Territory under previous laws. But that question is, we think, no longer open to discussion. It has passed be-tions of a voter shall be. The prohibition against excluding any person from substantially denied. That such is their case is maintained by the appel-

every other condition address for the right of suffrage, the qualification of one who alleges his right to vote precisely similar to an inquiry into the fact of nativity, of and, or of any other status made necessary by law as a condition of the elective tranchise officers would be authorized to de termine for that occasion, in case of question in any instance, upon the fact of marriage as a continuing status of law, to a similar inquiry for the like purpose into the fact of a subsist-ing and continuing bigamous or poly-gamous relation, when it is made, as by the statute under consideration, a disqualification to vote. The counsel for the appellants in argument seem to question the con-

argument scenn to question the con-stitutional power of Congress to pass the act of March 22nd, 1882, so far as it abridges the rights of electors in the Territory under previous laws, 'But that question is, we think, no longer open to discussion. It has passed be-yond the start of the st judgment. The people of the United States, as sovereign owners of the National Territories, have supreme

	for the election of a Delegate to the		been a bigamist or polygamist, and has	tion in the Territory of Utan are here-	tered in the precinct to which they	the polls, for the reason assigned.	their case is maintained by the appel- Sta	stop as sovereign owners of the
	Forty-eighth Congress.	and signed and presented to said de-	not in any way violated the act of	by declared vacant, and each and every	may removed of the state	must be construed, with the additional	lants.	tional Territories, have supreme
		lendant, and offered to verify, and re-	Congress entitled 'An act to amend	dury relating to the registration of	"SEC. 7. The clerk of the county	injunction, "nor shall they retuse to	The words "bigamist" and "boly-1	many owners there and the first of the first
		quested the said defendant to take and	section 5352 of the Revised statutes of	voters, the conduct of elections, the	court shall file and carefully preserve	count any such vote on account of the	gamist' evidently are not used in this in	wer over them and their inhabitants.
	the complaint is as follows:	certify plaintiff's oath to the following			all said affidavits and registry lists, and	opinion of the person casting it on the	statute in the sense of describing those mi	the exercise of this soverligh Th-
		affidavit, to wit:		and the second second from the second s	shall make a copy of each precipct	subject of bigamy or polygamy," to	the second second second and the second se	nion, they are represented by the
	"The plaintiff above named com-		proved March 22d, 1882."	and the issuing of certificates of other	registry list, and cause the same to be	annis to the sclion of the board in can-	and malagered another to be talgested on D	vernment of the United Status, 10
	plains of the defendants, and on in-	TERRITORY OF UTAH,		and A server and the state of a s	region j novi and cause the paint to be	reasing the poturne of elections made		nom all the powers of government
	formation and belief alleges, that af-	County of Salt Lake, \"".		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	posted up at least fifteen days before		the second se	er that subject have been delegated,
	ter the 22d day of March, 1882, and	'I, Jesse J. Murphy, being fi st duly sworn,	be blay registration oncer and rejected	shall, when other provisions be made	any election, at or near the place of	to them by the officers holding such	The second s	bject only to such restrictions as
	prior to the first day of July, 1882, un-	depose and say: I am over twenty one years	by nim contained the same anegations.	by the Legislative Assembly of said	election, and shall make and transmit	clections; or, if it includes more, it is	the race, and a true code of morality, are	e expressed in the Constitution, or
	der the provisions of section 9 of an	of age, and have continuously resided in	In all other respects the complaint is	Territory as is hereinafter by this sec-	another copy to the judges of election.		If such there be; because, in the pro-	enecessarily implied in its turms or
	act of the Congress of the United	the Territory of Utah for more than six	similar to all the others.	tion provided, be performed under the		general principle to govern all officers	viso in the ninth section of the act. It is	the management and the state
	States, approved March 22d, 1882, and	months, to wit, for more than eleven years last past; I have resided in the fourth pre-	Hiram B. Clawson and Ellen C.	existing laws of the United States and	court shall cause to be printed or writ-	concerned in the registration of voters		
	entitled 'An act to amend section 5352		Clawsou also sue as husband and wire,	of said Territory by proper persons,	ten a notice, which shall designate the			
	of the Revised Statutes of the United	next preceding the da e hereof, and now re	In the wive's right, and the averments	Who shall be appointed to execute such	offices to be filled and stating that the	It follows that the rules promulgated	denied his tong on account of any ino	wer of society over its members
	and the second sec		in the complaint as to her qualifications	offices and perform such duties by a	election will commence at-, desig-	by the board, prescribing the form of	opinion on the subject.	at it is not absolute and unlimited.
	States, in reference to bigamy, and		are as ionows:	board of five persons, to be appointed	nating the place for holding the polls]	oath to be exacted of persons offering	It is argued that they cannot be un- Bu	it in ordaining government for the
	for other purposes,' the President of	property owner and taz payer in said Terri-	"And the plaintiffs allege that the	by the President, by and with the ad-	one hour after aunvice and continue	to register as voters, and which con-		the in ordanning government for the
	the United States by and with the con-		Disintiff, Ellen C. Clawson, isla native	vice and consent of the Senste not	antil connet on the day of 19	stitute the directions under which it is	to the passage of the act of March 22d, the	renories, and the people who inhabit
	sent of the Senate of the United States,	Tersitory of little sevent and the plasting	citizen of the United States of	more than three of whom shall be	framing the day of election 1 Deted at	allered the registration officers acted	1882, had contracted a bigamous or to	em, all the discretion which belongs
	duly appointed the detendance, areast-	Franchise in said Territory for more than	America, and prior to the 22d day of	more stan three of whom shall be weinders of the political party; and a	[naming the day of election.] Dated at	were without force and no effect can	polygamous marriage, either in viola-	legislative power is vested in Con-
	der Ramsey, A. S. Paddock, G. L.	ten years hast past. I have not, within	March, 1882, Was more than twenty-	i majority of whom shall be a anoram	Bernath Berna	be given to thom It connet he allowed	tion of an existing law, such as that of tro	ess; and that extends, beyond all con-
	Godfrey, A.B. Carleton and J.R. Petti-	three years prior to the 22d day of March,	One years of ages that she has resided	The memoers of said board so an-	If it A Admit of which alight he mattail the		July 1, 1862, or before the enactment of tin	oversy, to determining by law, from
	grew, to perform the duties mentioned	1882, or since, having a wife living, married	continuously in the Territory of Ulah	pointed by the President shall each pe-	A copy of which man be posted up	venting the registration of the plain-	July 1, 1862, or before the enactment of the	ne to time, the form of the local gov-
	in said section, to be performed by a	finnously and openly 'resided in the coun-	for more than thirty-three years and	ceive a salary at the rate of three	has rease paseen mays metore uneclection,	tiffe for the paristration officare prore	any law forbldding it; for to do so trained would give to the statute a retrospec- the	maeric is a particular Territory, and
	board of five persons, and by virtue of	ties of Weber and Salt Lake, in the Terri-	resided continuously in the fifth pre-	thougand dollars not annum and shall	in three puotic places in said precinct	not hound to ober thum, and if the	would give to the statute a retrospec- the	equanneation of those who shall
	said appointment, they became a board	tory of Utah, for there than three years	ginet of Salt Lake Outr in sald Theme	continue un office untilithe Logiciative	Dest calculated to give notice to all the	not bound to obey them, and it they	tive effect, and by thus depriving citi- ad	minister it. It resis with Congress
8		the start tot make that shired years	chief of Salt Lake City, in sald Terri-	continue in puice until the Legislative	voters. It shall also be the duty of the	old so, they did it in their own wrong.	zeus of civil rights, merely on account to	say whether, in a given case, any of
	in said section.	have not, on or since the 22d day of March.	LUCY, LOF HOUSE LURD LWO VOLPS HESE	ASSEMBLY OF SHIELEPPTIOTY SIDELI HIMLEP	all we of the county count to give boil to	There was no relation between the	af most offeners on ets second of ante th.	
			PROV. LINE DIE HAN. IOF HIMPE LINE LAN	DECVERIOR FOR HIDLEY SERVEL CHIRCEN AN DEFEN-	I an the lists an measure that the senior	I DOATH AND THE OTHERPS BODOINION BY	and have welled to destant the old the state and the state in the	and the second state of th
	"And, on information and bellef, the	or simultaneously, or on the same day,						
	plaintin alleges that, after such ap-	married more than one woman, or on or						
	August 1994 the last named five de-	since said last named date married or en	enjoyed the privileges of the elective	board, and keeps journal of its pro-	of any person registered until sunset	for what the latter may have illegally	liaw, and therefore void. And the con-jit elusion is declared to be necessary, rig that the words polygamist and biga- ha	tht of suffrage it may previously
	fondante dala enalified as such an-	with any woman, or cohabited with more	tonucinse in said Territory, and has,	ceedings, and attest the action of said	of the fifth day preceding the day of	done under their instructions, and,	that the words polygamist and biga- ha	ve conferred, or at any time modify
		than one woman, or in anywise violated the	AVA HIVLC LIBER INC. VERTS HESE THESE.	I DUALU ADDRET LAIN MECLICIC. A DC CHRVRNS	lelection - Neld objections obell he	TENERATOR, TEL COBRECTION IN LAW NO.	and the same transmission of the second the second burger of the	- Long of starts The second starts which the starts which the start starts which the start starts which the start starts which the starts whic
	pointees, came to Utan land organized	act of Congress entitled 'An act, to amend						
	as a board, and entered upon the ex-	eastion filled the Dominad Statester of the	tax-payer in said Territory, and that	in said Territory for members of the	and delivered to said instice, who shall	and the wrongs complained of.	having violated the first section of the as act, are guilty of polygamy; that is, i tic	known to our system as a constitut
	ercise of the powers and the discharge		her name was on the last registration	Legislative Assembly thereof shall al-	issue a written notice to the person	The judgment in favor of the defen-	not are guilty of notweeney, that is let	anal franching balangs medanthe
	of the duties granted and imposed by	for other purposes," approved March 22d,	list of the voters of said fifth precinct.	so be returned to said board, which	objected to, stating the place, day, and	dants, composing the Board of Com-	Hevery nergon who has a husband or Co	onstitution to the State, under the
and 1	said section y of said act of Congress.	1889. My name is on the jast registry list of	made prior to the second Monday of	so be returned to said board, which shall cauvas all such returns and issue	hour when the objection will be heard.	missioners, upon their demurrer, there-	act, are guilty of polygamy; that is, i the "every person who has a husband or Co wife living, who, in a Territory or other pe place over which the United States the	only thereaf he when the Clarkes and to the
	That after said organization, said five	voters of the second precinct, Ugden City.	September, Dog	certificates of election to those persons	The person making the objection shall	fore, was rightly rendered.	place over which the United States tic	on man and inad and to mboonsta
Birter	defendants were commonly called	Weber County, Utah.	"And the plaintiffs allege that the					
The seal	'commissioners,' and are hereinafter	JESSE J. MURPHY.	plaintiff, Ellen C. Clawson, is not and	shall appear to have been lawfully	notice upon the person objected to.	dants, the registration officers, stand	marries another, whether married or up	oon the coremnant of the White
Carles 1						A state of the sta	marries succeded, Another married of all	how me Movernment of the Child

a second s