Mr. Blackurn. I was perfectly willing as a member of the committee of conference that existing law should be enforced in this Territory under the recent act passed by Congress, but I did not see any necessity for ousting men from office when under the law of the Territory of Utah they would remain, in all cases where the statute declared that the incumbent should hold until his successor was elected and qualified. I tried to get a modification to that extent and failed. I trust that in this statement I do not violate the secrets of the committee-room.

Mr. Butterworth. Allow me to call the attention of my colleague on the conference committee to the fact that it was agreed in the conference committee that what the gentleman proposes was effected by the law as it stood.

Mr. Blackburn. I mean to deal fairly in this matter, and I was going to say that while the amendment which I offered was voted down, every member of the conference committee insisted that the law itself provided for the case. I only sought to make it more specific, and to give it a construction which would prevent any such practices as the gentleman from Ohio [Mr. Converse] has suggested as possible.

The intent of the law is, then, very clear. It was stated in the debate. To prevent "anarchy." Not to make any vacancies in office, but to provide for filling such vacancies as might be caused by the failure of the election. The language of the statute is too plain to leave any dubiety. The law firm makes an argument beginning, "If the amendment upon its face leaves a doubt as to its meaning or is susceptible of two constructions." But it is not susceptible of two constructions, it leaves no doubt as to its meaning in any mind but one who has, to use their own language, no "better foundation than his own wishes." Such vacancies *as may be caused* by the failure to elect, and none other are to be filled by appointment. If there are none, then none can be so filled. It doesn't take a lawyer to determine that. But these legal gentlemen argue that if no such vacancies occur, the present officers holding over, then

"We have the strange and humiliating spectacle presented, of Congress (a body embracing among its members some of the most distinguished lawyers in the United States), in its closing hours pushing aside business of great national importance, to enact a statute which was then, and must forever remain utterly inoperative, and a silly farce."

Well, who is responsible for that? Is the law to be twisted from its plain meaning and intent to save the reputation of Members of Congress who, in the closing hours of a long session were hurried into a piece of supposed necessary *legislation* and not having time to investigate the matter, enacted something that was not required? We think not. Courts do not generally construe laws simply to sustain the consistency of the promoters thereof. If the grave and reverend Senators "engaged in child's play," that will not alter the language nor the effect of their legislation.

This law firm assumes that

Congress had full knowledge of the statutes of Utah authorizing certain officers to hold the offices until their successors were duly elected and qualified.

Now that is nothing but assumption. The facts are that the gentlemen who engineered this Amendment were not familiar with the laws of the Territory, as is glaringly manifest in the debate and the inability to answer questions which some members propounded bearing on the very question in dispute. Worse than that. They proved in their remarks, which we have already published from the *Record*, that they were unfamiliar with the text and bearings of the Edmunds act passed by themselves. Their ignorance however does not and should not affect the plain letter and intent of the Amendment.

And, to go behind the position of certain members of Congress on this subject, it is evident that even the Judges who applied to them for legislation did not understand the law and the situation—for it would be out of the question to suppose they intended to misrepresent. They informed Congress that at the August election "there would have been chosen successors to *all the present county officials* and also to the Territorial Auditor and Treasurer as directed by the territorial statutes." Their request for legislation was based on this assertion. And yet it was not true. There is no Territorial statute which directs the election of successors to all those officials in August, 1882. Only a portion of those offices would have expired at that date, even if there were no provision for the incumbents to hold until their successors were elected and qualified. The information was wrong, and deceived the members of Congress who were urgent for the amendment into the notion which they expressed. Some of them stated that after August 10th, there would not be a single officer in the Territory of Utah, but a reign of lawlessness would ensue. No such condition of affairs exists to-day. It is folly then to assume that "Congress had full knowledge of the statutes of Utah." But even if they had it would not affect the question of the application of the law nor permit its wresting away from its language and intent.

There is another assumption made by the law firm which is equally baseless; that is that the wording of the statute "presupposes that a failure to elect" "*caused* a vacancy in certain offices." It presupposes nothing but that it *might* cause such vacancies, and under such a contingency it supplied the possible void. And this is not, as the law firm declares, providing for "an *impossible event*." It was quite possible and probable and almost certain if the information (?) published by the Judges had been correct. They ask further whether Congress designed "to have two men, one holding over, the other holding by appointment," etc. Certainly not, and there is no need for any such thing unless the Governor attempts to go beyond what the law provides. That is the only thing which will produce the "confusion worse confounded." They then intimate that Congress designed to repeal certain acts and parts of acts. If there is any "child's play" about this matter here it is, in the law firm's Opinion. If Congress designed to do anything of the kind it has been singularly silent upon its intention, for there is not a line in the law signifying anything of the sort. It is another groundless assumption of the law firm's. The ensuing argument about the validity of two conflicting laws is wasted, for there is no conflict between the Amendment authorizing the filling of vacancies and the law providing for holding over.

These *legal gentlemen* next skippingly and cheerily hop over a number of authorities which they could not well ignore, but which they dared not quote because that would have bounced them sky high from their untenable position. The cases hus cited and slighted are most positive and indefinite this conclusion, viz: That when the statute provides that an *incumbent of an office shall hold* for a certain period and until his successor is elected and qualified, his term of offices includes the time in which he holds over, and consequently that a failure to elect his successor does not cause a vacancy. This is the whole case in a nutshell and is conclusive of the argument, Where there is a vacancy, then in the case considered, the Governor can fill it; wherein the law provides for holding over there is no vacancy for anybody to fill, whether authorized by Act of Congress, the territorial statutes or even by the eminent law firm that pleads with such remarkable sophistry.

We do not dispute the power of Congress to set aside any territorial statute, but we do affirm that in the Hoar Amendment no territoral statute is set aside and no vacancy is created, and we defy any one, however accustomed to construe and find hidden meanings which no other eyes perceive, to prove that the Amendment does either of those things.

As to the scare held up to office holders about the terrors of the law, if they do not act on the Opinion of this law firm, as soon as the Governor shall appoint and the appointees qualify, that is so much balderdash and mere sound and fury signifying nothing, except this—it shows without doubt that these lawyers admit there is *no vacancy now* in the offices held by these incumbents, and that being the case is it not beyond dispute that there is nothing for the Governor to fill? In their last paragraph they give their whole argument away. If there is a vacancy which the governor can fill it was caused by the failure to elect, and was open on the 11th of August. If there was none then and there is none now, as the law firm admits, how can the Governor put anything where there is no place to put it?

The law firm has been singularly unfortanate in thus rushing into print. Every candid legal mind that considers their argument will perceive the weakness of their cause. The gentlemen who wrote it have a well-earned reputation at the bar. That they should put forth such a string of assumptions and sophisms, in paragraphs some of which are turgid and obscure, would be surprising if it were not for the insubstantial nature of the cause they have undertaken to defend. This is better exposed to the light of day by their attempt to champion it than by anything that could be said on the other side. They have no doubt done the best they could with a poor, weak cause. But if we had the legal reputation of those gentlemen, it would take a much larger retaining fee than they are likely to get in this case or any other, to induce us to place our name at the foot of so lame and halting an attempt at a legal argument.

THE RULES FOR REGISTRATION.

WE publish this evening the Registration Rules adopted by the Utah Commissioners to regulate the November election. It will be seen that in many respects they closely follow the law, that is, the provisions of the Edmunds Act and of the Territorial statutes, so far as they can be harmonized. In some other particulars, however, they are not in accordance with any statute, local or congressional.

It was expected that the Commissioners would take some latitude in their rendering of the section of the law which defines their powers. The supposition was that they would devise measures to prevent persons from voting sought to be disfranchised by the late anti-polygamy legislation. And considering the ambiguity of the Edmunds Act it wos anticipated that they would go beyond the letter of that law, and by inference assume the right to do things which neither territorial nor national law directly authorized them to perform.

For instance: The Edmunds Act requires elections to be conducted by "*proper persons*" appointed by the Commissioner under the existing laws of the United States and of this Territory." It also declares that "no polygamist, bigamist or any person cohabiting with more than one woman, and no woman cohabiting with such persons shall be entitled to vote." But it does not provide any means by which they shall be prevented from voting. And the local statutes not being framed with a view to any such prevention, the means at command to exclude such persons from voting privileges were thought scarcely sufficient to effect, before the November election, the sweeping change in the voting strength of the Territory which was desired by some parties and aimed at in the law of Congress. Therefore it was expected that the Commission would perhaps go a little beyond the exact letter of the law, in order to the conducting of an election at which polygamists, etc., could not vote.

But under the consideration that the Commissioners appeared to be fair and just men, who desired to accomplish what was required of them in the spirit of the law and with no special desire to favor or injure any class of the community, it was not anticipated that they would go very far beyond the limits of their defined authority. Whether they have done so or not is open to question. And the first point to be considered here is, are the Commissioners endowed by law with any legislative power whatever? If so, where is the provision which confers it upon them? We fail to find it. Their whole authority is contained in section nine of the Edmunds act, and nothing of the kind is mentioned there. The Legislative Assembly has prescribed a certain oath to be taken by every person who desires to be registered with a view to voting. The Commissioners in their Rule 3 have added to the form of oath provided by law. In doing so they have assumed legislative powers not warranted by any law either of the United States or of this Territory.

But their action in this respect is not a surprise, in view of what was expected of them by the country and the narrow limits of the laws under which they are required to act. Examination of their legislation however discloses the fact that they have in their Rule 3 not only transcended the bounds of their lawful powers, but imposed one condition which is out of harmony with all the legislation that governs them in the discharge of their duties. It is contained in the words italicized in the following:

And I do further solemnly swear (or affirm) that I am not a bigamist nor a polygamist; that I am not a violator of the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman *in the marriage relation*.

This italicized expression is not to be found in the Edmunds act, nor any other law in relation to Utah. The language of the law is, as we have quoted it above. "No polygamist, bigamist, or any person cohabiting with more than one woman, etc." If the Commissioners claim the right by implication—they certainly cannot show it by the letter—of the law, to enact or impose this additional oath, they will utterly fail to find any shadow of right to insert the words "in the marriage relation," because that changes at once the purport and object of the law under which they act and from which they derive their powers.

Let us look at the effect of this provision. It will exclude from the registry lists, and consequently *from the polls*, all persons who cohabit with more than one woman *in the marriage relation*, but let in the libertine, the whoremonger, the adulterer and the seducer; it will also exclude every woman who is married to a man who cohabits with any other woman in the marriage relation, whether by her consent or not, and let in prostitutes and harlots however vile and polluted. A married man who consorts with the denizens of the lowest haunts of vice, or keeps any number of mistresses, or leads astray other men's wives or betrays and seduces innocent girls is, under this provision of the Commissioners, competent to be registered and to exercise the suffrage, but a man who has married two or more wives and lives with them in the marriage relation is not permitted to register or to vote.

This is in close accord with Governor Murray's official morality, and is indeed the illegal and immoral oath prescribed by him to notaries public, tacked on to the oath provided in the local statute. If the Commissioners can stand the effect of their action, we can. We are not under any concern about this, let it be understood. Persons whom the Edmunds Act seeks to deprive of the franchise were not intending to vote at the November election. They would have stayed away from the polls if there had been no new legislation in their case like that enacted by the Commissioners. But they did not intend and do not intend, by staying away from the polls, to relinquish any right of citizenship or any privilege of law of which unconstitutional legislation has sought to deprive them. Therefore this premium on lasciviousness and encouragement of debauchery, embodied in the oath added to the law by the Commissioners, will not affect our side of the question.

If it had not been inserted it might have kept quite a number of "Liberals" away from the registration officers. Some of them would, with unblushing cheek, have taken the oath that they do not cohabit with more than one woman, but others, notoriously unchaste, we think have yet enough self-respect and sense of danger arising from perjury not to subscribe to an oath which their lives will not justify. Now, however, they can take it with impunity in company with the most corrupt debauchees in the country, while the husband of two wives, who has kept himself true to his marriage covenants stands aside as unfit for such company, as he truly is.

The excluded husband of plural wives will stand on a moral plane which the tainted and defiled cohabiter with women *out of the marriage relation* cannot reach by any process, and may congratulate himself that a dividing line is placed between him and the besmirced voter, even if it is drawn without the shadow of legitimate authority.

But if the Commissioners have gone too far in Rule 3—they have not gone far enough in Rule 8, supposing that they have any power at all to prescribe the oath. They there provide that the registration officers whom they appoint, and their deputies, shall take a certain oath, but it does not include the cohabitation clause at all, they simply swear that they are not bigamists or polygamists; they may cohabit with as many women as they please, in or out of any kind of a relation, but may strike the names off the registration lists of those who do not take the Commissioners-enacted oath in all its parts. How is that for consistency?

The question will arise what are the people going to do about it? We say let every man and woman who can take the oath lawfully be sure to register, and then be sure to vote at the November election. At the same time let every point be guarded so that the enactments and the rules wherever they are contrary to the Constitution or the law may be properly tested. While we protest against the oath as illegal, let it be subscribed to by those who can do so conscientiously; and while we submit for the present to the law which was framed to deprive men and women of the franchise, unconstitutionally, we will not neglect to contend for right and liberty by every lawful means. The battle is only just getting ready. Let us prepare for the fray. We have not ourselves alone to consider, our liberties as citizens of this republic, and our vested rights under the supreme law of the land; but the rights and liberties of our children, and the cause of human freedom throughout the country. Let us be found on the right side. The object now to be achieved is the election of a Delegate to Congress by the People's Party by means of its monogamous voters. That can be accomplished if those voters will do their duty. If it is unpleasant to subscribe to an illegal and unjustly discriminating oath, never mind. Protest, and go ahead so that the unprincipled enemy who have plotted for a shameful purpose may not succeed. And, meanwhile, the struggle will be inaugurated, which will demonstrate whether or not this great nation is to depart entirely from that Constitution which is at once its safeguard and its chief glory.

Correspondence.

SALT LAKE CITY,
August 25, 1882.

Editor Deseret News:

I desire to call the attention of the Honorable Commissioners (appointed under the Edmunds bill) now in our city making preparations for the election of a Delegate to Congress, and the public generally, to the following inconsistent and illegal wording of the oath prescribed by the said Commissioners, to be taken by the male population of this Territory, who are over 21 years of age, before they are considered entitled to vote, viz., "I do solemnly swear (or affirm) that I am not a bigamist nor a polygamist, that I am not a violator of the laws of the United States prohibiting bigamy or polygamy, that I do not live or cohabit with more than one woman (IN THE MARRIAGE RELATION) nor does any relation exist between me and any woman, etc., etc

The words "*in the marriage relation*," are improper and illegal as will be seen by reading section eight of the Edmunds bill, which is the only section that affects the right of people to vote.

This section applies to both male and female alike, and the words "in the marriage relation" do not appear in that section; consequently these words should be stricken from the oath, so that the true intent and meaning of the law may be carried out. The law is a double-edged sword and disqualifies not only the polygamist and bigamist but any person cohabiting with more than one woman, any woman cohabiting with any of the persons described in section eight.

Consequently I would suggest to the honorable Commissioners the consideration of this point, and that they frame the oath in the exact language of the the statute, viz., "section eight."

And I would further suggest that men who are well known to be guilty of cohabiting with more than one woman, or women cohabiting with more than one man (not in the marriage relation) be not permitted to vote, and that a list of these parties' names be furnished by those who know them, and if their names appear on the registration lists after revision, that they be proceeded against under rule 5 of the Commissioners, and if their names still remain on the list on the day of election, and if they attempt to vote that they be challenged; and be prevented from casting their votes. This is nothing but fair, and I think that quite a number of those who have been the loudest in calling for and demanding this Edmunds law, will be prevented from voting as well as the polygamist and bigamist. Yours truly,

A LOVER OF RIGHT AND
CONSISTENCY.