

(Continued from page 69.) gets on who will not jump at every chance of conviction. The summoning clerk must be what is called in Philadelphia a "jury fixer," your judges must bring themselves within the old statute against "evil procurers of dozes," that being the designation of certain persons who made it a business and a trade to find twelve men predetermined on a verdict desired by the party who employed them.

An attempt has been made and will be again to justify this unreal mockery of a trial by saying that unless you pack the jury you cannot get convictions. As a matter of fact this may be true. Generally it is vain to hope that a jury of the country representing the popular feeling and sense of right will carry out to its bitter end a law regarded by the mass of the people, whether rightly or wrongly, as unjust, oppressive, and cruel. That is why we have juries. For that reason trial by jury is the great safeguard of civil liberty. To make them efficient to that end they are judges of the law as well as the facts, and their verdict on both is conclusive. By the exercise of this power they have nullified tyrannical statutes many times. You cannot but remember the notable case of Woodfall, when the life of English liberty was saved at its last gasp by the stubborn refusal of the jury to find a verdict according to the law of libel, as laid down by Lord Mansfield. The sentiments of the people were not consulted when you made this law, but you cannot evade their judgment upon it when it comes to be executed. They were not represented in Congress, but they must be represented on the jury. The effort now made to substitute a packed jury for a jury of the country is a very poor attempt to defeat the most sacred right which the Constitution guarantees. I solemnly trust that it will turn out as impotent as it is unauthorized.

II. The promoters of the law in question, not satisfied with trying their victims by a court and jury composed of their enemies, concluded to go a little farther, and punish them without any trial at all. The frightful penalty of disfranchisement is to be visited upon them without conviction. Men were directed to be stripped of their citizenship, rendered incapable of voting, expelled from office, to which they had been legally chosen, and deprived of all right to participate in the government they lived under for crimes of which they were never even accused before any legal tribunal. Commissioners are appointed to carry this out, who, reversing the presumption of law and declaring the whole population to be guilty, proceeded to convict individuals by a test oath of their own fabrication.

The right to do such things as these does not depend on the jurisdiction of Congress over the Territories. No matter how exclusive your power may be, you cannot exercise it in a fashion like that. The Supreme Court decided that the State of Missouri could not put such a provision in her constitution. It is a bill of pains and penalties, or bill of attainder, which is expressly forbidden by the Constitution. There is no legislative body on this continent that has authority by an arbitrary decree to deprive freemen of their civil rights for offences of which they are not judicially convicted. It is a burning shame that such a decree should be found among the acts of Congress.

If any man thinks that disfranchisement is not punishment, or that the judgment of an election officer is equivalent to a legal conviction, let him read the opinion of the Supreme Court of the United States in Cumming's case (4 Wall.) delivered by Judge Field, or the clear and unanswerable exposition of the subject given by Judge Strong, Huber vs. Kelly (3 Persifer Smith). If he does not believe on such authority and such reasoning, he would not believe though one rose from the dead.

III. When I first read this law I did not believe that its supporters really wished it to operate upon any but persons who might be legally convicted of offences thereafter committed. The words are capable of that construction, and it is not fair, if it can be avoided, to suppose that a legislator intends to violate the Constitution. But the debates show that I was mistaken upon the matter of fact. The actual intent was to make it *ex post facto*. The Commissioners so understood it, and they were subservient enough, to

carry it out. They gave it a retroactive effect, which reached back for a whole generation, and laid its punitive lash not only on men who were never convicted, but upon men (and women, too) who could not be convicted because their offences were condoned, because they were protected by the statute of limitations, or because they had been already tried and acquitted. Nothing was a defense against this iniquitous act, which suddenly, without warning or trial, reached back like the terrible hind hand of a gorilla, and throttled all that it grasped. An argument certainly cannot be necessary to prove that this is an outrage on the Constitution as well as on the principles of natural justice.

IV. But the pains and penalties of disfranchisement are to be carried still further. By the laws of Utah the right of suffrage belongs to women as well as men. It was bestowed upon them formerly and rightfully by the territorial legislature, with the consent of the United States, expressed by the governor, who had an absolute veto. There is no kind of doubt about the right being legally vested. This is so clear and unquestionable that the Federal judges themselves, with every inclination to exclude them from voting, were compelled to decide that it could not be done. Of this acknowledged right it is now proposed to deprive them by a bill of pains and penalties, not grounded upon any pretence of guilt, but coupled with an admission that the suffering parties are perfectly innocent.

It will hardly be pretended that the rights of a woman when once legally vested are less sacred than those of a man, or that he more than she is protected by the Constitution against the wrath and malice of political rulers. If the male voters of Utah are free men, the females are free women. One is no more subject to be disfranchised by a bill of pains and penalties than the other. Can either of them be so treated?

The right of suffrage is part of a voter's property. Its value is inestimable, because it is the right preservative of all other rights. You cannot deprive him of it without due process of law. You can as well make a legislative decree to take the lands and goods of these men and women in Utah as take the ballot from them. The ballot is especially valuable to them at this moment as their only weapon of defence against the enemies who are prowling around them to capture their government and use it as an engine to plunder and oppress them. The security, not of their liberties only, but of their peace, property, and lives, depend upon their being able to keep it. The sin of these otherwise virtuous and innocent women has consisted solely in voting to sustain honest government against the rapacity and fraud which seek to overthrow it.

V. The end and object of this whole system of hostile measures against Utah seems to be the destruction of the popular rule in that Territory. I may be wrong—for I can only reason from the fact that is known to the fact that is not known—but I do not think that the promoters of this legislation care a straw how much or how little the Mormons are married. It is not their wives but their property; not beauty, but booty, that they are after. I have not much faith in political piety, but I do most devoutly believe in the hunger of political adventurers for spoils of every kind. How else can you account for the struggle they are now making to get possession of all the local offices in the Territory, including the treasurer, auditor, and all departments of public money? If they do not want to rob the people, why do they reach out their hands for such a grab as this?

If you will look at what is called the Hoar amendment, consider how it came to be put into the appropriation bill of last session, and reflect upon the nefarious claim which the governor and his adherents are now making under it to despoil the people of the local offices which they alone have the right to fill, you will be forced to the conclusion that the public liberty of no people has ever before been so shamelessly assailed. I do not say that the claim is sustained by the law or that Congress had any intention to authorize the robbery, for I am satisfied of the contrary; but the animus of the anti-popular faction is revealed by the whole transaction in a light that utterly discredits it.

Legally it makes no difference what was the ultimate purpose of those who instigated this political

enterprise. But will you, as friends of the Constitution—could you, even if you were its enemies—say that Congress has power to decree the removal of territorial officers, and direct their places to be filled by others? Even if you could justify the outrage upon the people of removing the agents to whom they have entrusted their money and their business, and forcing upon them others in whom they have no confidence, what right have you to deprive individuals of their property without due process of law? Their offices are property in which, like their goods and lands, they have a legally vested estate. The Hoar amendment is construed (falsely, I admit) as authorizing all these offices to be seized and used as a means of forcing the people to maintain their enemies and pay them salaries for any acts of oppression and fraud which they may choose to perpetrate.

Do not charge me with overstating the danger to which the Territory will be exposed if its government shall be captured by those who are now trying to take it. The experience of the whole world in all time shows that the want of home rule is the want of everything else that is honest and fair. Rulers forced upon a people are never just. It is as certain as the rising of the sun to-morrow that if the people are put under foot they will be trampled down without mercy. And their total destruction will be accomplished very soon. They cannot stand what South Carolina did; there is no "ten years of good stealing there."

VI. No reasonable man can justify or even excuse such enactments as those proposed in the new bill now pending before you, unless it be assumed that the people of Utah have no rights that a white man is bound to respect.

It appoints a commission to perform the functions of the legislature and to redistrict the Territory. The apparent purpose of this is to gerrymander the district so as to give the minority control of the legislative body. With a majority of nearly twenty to one, the commission will find the way to that object so steep and crooked that they scarcely can hope to reach it. But the cunning man who drew this bill inserted a provision that the "existing election districts and apportionments of representation concerning members of the legislative assembly are hereby abolished." There can be no election at all for members of the legislature unless new districts are made by this commission. By simply declining to act it can extinguish the territorial legislature altogether. That was the very trick by which the election of the territorial officers was defeated last August. The Edmunds' bill declared that all registration and election offices should be vacant until they were filled by appointments of certain commissioners. Those commissioners would not make any appointments until after the time for holding the election had passed, and so there was no election. To expect that the same game will not be played over again requires the charity that believeth all things. This bill would put the extinction of the territorial legislature into the power of a single member of the commission, for the redistricting is to be done, not by a majority, but by all, and a dissent of one would make the action of the others inoperative.

It would be wearisome to say what might be said about those parts of this bill which authorize a person to be kidnapped and held as a witness who has not been subpoenaed or notified, its subjection of private papers to unreasonable searches and seizures, or the inhuman disregard which it shows of family feeling and the sanctities of private life by compelling men and women lawfully married to testify against one another.

VII. These enactments, made and proposed, are in the main a comprehensive bill of pains and penalties, not against persons guilty or supposed to be guilty of polygamy or any other heinous crime, but against people known and acknowledged to be innocent. They are intended to disfranchise whole masses of free persons, reduce them to the condition of slaves, and deprive a community of its natural and constitutional right to an honest government of its own. For such a bill there is not only no warrant in the Constitution, but it is expressly interdicted. Nor is there any precedent for it except the reconstruction laws of 1867, and they were admitted to be unconstitutional by their author and by the counsel who undertook to defend them, and to my certain

knowledge they would have been declared void by the Supreme Court in the case of McAdie, if we had not been circumvented by an act of Congress taking away the jurisdiction. It is true that they were made effectual, but it was done by the Fourteenth Amendment. The opponents of free government in the South, knowing that Congress had no such power, forcibly injected their bill of pains and penalties into the Constitution itself, and there it lies now, side by side with the provision which forbids it. But the infection served only for that occasion; it did not abrogate the prohibition. Bills of pains and penalties are as odious as ever. It is the duty of every public man and every private citizen to hate such things with all his mind and heart and strength, as I hope you do.

Coming back to the original and fundamental proposition that you have no authority to legislate about marriage in a Territory, you will ask what then are we to do with polygamy? It is a bad thing and a false religion that allows it. But the people of Utah have as good a right to their false religion as you have to your true one. Then you add that it is not a religious error merely, but a crime which ought to be extirpated by the sword of the civil magistrate. That is also conceded. But those people have a civil government of their own, which is as wrong-headed as their church. Both are free to do evil on this and kindred subjects if they please, and they are neither of them answerable to you. That brings you to the end of your string. You are compelled to treat this offense as you treat others in the States and in the Territories—that is, leave it to be dealt with by the powers that are ordained of God or by God himself, who will in due time become the minister of His own justice.

BY TELEGRAPH.

PER WESTERN UNION TELEGRAPH LINE.

A M E R I C A N.

CLEVELAND, O., 15.—A life saving crew goes to Cincinnati this afternoon. The Masons are moving to aid the flood sufferers. The river here is rising and already outside its banks. It is raining lightly.

Cincinnati, 15.—At noon the river was 66 feet. At Mayeville it fell six inches during the night, and is still falling. Fick & Pearce's warehouse floors collapsed this morning; they contained 30,000 bushels of grain. The Licking River is rising and will rise all day. The river is falling at Frankfort; 1,500 people are dependent; and the loss there will be \$200,000. It rained all day yesterday, till 7 this morning. At Marietta the river is rising three feet. A report of last week's flood is expected at Zanesville. Many contributions are coming in from individuals of \$10 and upwards. The principals of schoolhouses are doing bona fide duty, the schools being lodging houses. A Masonic relief committee raised \$5,000, and will distribute it along the river. The Chamber of Commerce has given \$1,000 to Newport, the same to Dayton, Ky.

Pittsburg, 15.—Both rivers continue to rise. The Monongahela is now 19½; Alleghany 20½. In Alleghany the rain stopped this morning, and it is now clear. It is still raining at the headwaters and rising rapidly there, and 25 feet is expected before the flood reaches its height. No damage is apprehended except from submersion.

Jeffersonville, 15.—The water surrounds the city. Every street is submerged; boats are the only method of travel. The river is rising still at New Albany, with prospects of two feet more. Many people are suffering terribly and moving to higher ground.

Hardentown, Ind., 15.—The river rose one and a half feet last night, and is still rising. Some houses were carried off and unroofed. No casualties yet.

Tremont, O., 15.—Heavy rain. At 5 o'clock this afternoon the dam gave way. About the same time the trestle work for the new bridge of the Lake Shore Railroad was swept away.

Elkhart, Ind., 15.—Heavy rain all day; snow and slush five inches deep.

Indianapolis, 15.—A committee sent to Lawrenceburg last night report all provisions delivered. Today's suffering is increasing, and more assistance is needed immediately. Another car-load of provisions, coal-oil, candles, delicacies for the sick goes to-night. The opera-

tor at Gullford says it is still raining at 6 o'clock p.m., with indications that it will continue during the night.

Little Rock, 15.—The Arkansas river has risen nearly three feet to-night; it is 15 feet above low water mark. The Ouachita and other rivers are also rising. Fears are felt in the bottom of another disastrous overflow.

Wheeling, W. V., 15.—River 28 feet; rising.

Cincinnati, 15.—The relief committee of the Board of Trade have raised \$4,000 for the relief of the Ohio flood sufferers.

Newport, Ky., 15.—Mayor Hanlan has issued an appeal to the country for aid. He says three thousand families are destitute. Contributions are being sent to W. H. Lefe, Treasurer of the Citizens' Relief fund. The town has just recovered from an epidemic of small-pox.

Madison, Ind., 15.—River 45½ feet, and rising. It will take 6 feet more to do serious damage. The adjacent fields are flooded for miles.

Cincinnati, 15.—At Pittsburg the river is rising; raining all day; greater rise expected.

Zanesville, O., 15.—The Muskingum is rising fast; raining all day. At Pomeroy the river is falling 1½ inch an hour. Steady rain this morning.

Paducah, Ky., 15.—Rising an inch an hour; heavy rains last night.

Cincinnati, 15.—The State Legislature will amend its loan act, and local capitalists will in the meantime advance the money. The voluntary contributions are now \$40,000. At a benefit to-morrow night, at the Grand Opera House, Langtry and Haverly's Minstrels volunteer their services.

Williamsport, 15.—A flood is threatened up the river; danger imminent.

Major Warden of Jeffersonville, Indiana, telegraphs for relief. He says thousands of people are homeless, and suffering greatly.

New York, 16.—In answer to the appeal for aid from Mayor Warden, of Jeffersonville, Ind., Mayor Edison asks the presidents of the various Exchanges to form organizations for the purpose of responding to this and other calls that probably will be made.

Cincinnati, 16.—1.30 p.m.—Water 64 feet. Drexel, Morgan & Co., telegraphed \$5,000 this afternoon.

Prospects of rain less threatening at 11 a. m. the river stood 64 feet 4½ inches.

The first drowning from boats occurred to-day. Two boys in a frail boat gathering drift wood in the northwestern part of the city, fell overboard and were drowned. Skiffs to-day crossed the river freely, and one or two small steamers carried loads of sight-seers up and down between Newport bridge and the suspension bridge. The town of Dayton, Ky., is nine-tenths under water. People have abolished the practice of paying for services. If any one demands pay for carrying people or provisions, his boat is confiscated. In Columbus and other small suburbs the people devote their time to assisting each other. In many houses the last rice invaded porlors and pianos were swung to the ceiling. Distribution at the railroads affect the disturbances of newspapers at the time when they are most in demand.

Chicago, 16.—Mayor Harrison having received appeals from New Albany, Jeffersonville and other cities on the Ohio river, issues an address inviting churches, business men and other to subscribe liberally to meet the exigencies of the occasion.

Wabash, Ind., 16.—Much live stock and growing wheat are destroyed by floods in this section; total damage the past ten days, \$100,000.

Memphis, 16, noon.—The river is within 2 feet 7 inches of danger lines, and rising 10 inches a day; will go over the banks below. Planters are preparing for trouble. Railroads all right.

New Albany, Ind., 16.—River rising slowly; half an inch an hour; 7½ inches last night; 100 houses gone, 1,200 in the water; 5,000 people homeless. Loss over a million, and may be greater. Congress and the Legislature appealed to. The distress can't be over estimated. No loss of life. Water three feet above the famous flood of 1832. At Hardentown the river fell 15 inches last night.

Pittsburg, 16.—River rising at headwaters, but the danger is past here.

Louisville, 16.—The river reached the highest point, 44 feet 5 inches; 33 inches higher than the flood of 1832; it will probably rise slowly till night, when it is hoped the receding