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[*Continued from First page.*]

Again he says:

A citizen is informed that by the laws of the State he is entitled to aspire to any office or pursue any other avocation which any other citizen can. Yet when he is about to enter in the office or avocation he is required to swear to his innocence of a particular crime; it then becomes evident that if he can not truly take the oath required he is excluded. Can it be doubted that for all the purposes of the disqualification the guilt of the individual is ascertained? In what does it differ from the general enactment that a candidate for office shall be required to prove and establish his innocence of a specified crime? Admitting a person to be guilty, he is neither accused, tried, nor convicted by any tribunal known to the laws; yet he is punished with unerring certainty and the utmost celerity; his conscience is made his sole accuser and judge; his punishment commences with the commission of the crime, and terminates only when he ceases to exist; he is excluded from the sympathy of his peers, no legal doubt can intervene to produce his acquittal; an error of his judgment involves his soul in the awful guilt of perjury or punishes him without guilt. I have no hesitation in declaring that this act provides a mode of ascertaining and punishing guilt which is not only unwarranted by the Constitution, but is also in direct contravention of several of the most important provisions of the declaration of rights by which the liberties and privileges of the citizens are guarded. * * * When once it is admitted or proved that a citizen has a right to aspire to office, or to pursue any lawful avocation, it seems to me impossible that he can be legally deprived of that right by a punishment for an offense committed without a trial by jury; and I can perceive no sound distinction between a law which deprives one of his right without a trial and that which ascertains and punishes his guilt by an illegal mode of trial.

He then refers to the governor's right to grant pardons, and says:

We can not presume that the General Assembly intended by this act to interfere with the constitutional prerogative of mercy vested in the executive, yet this act, if constitutional, imposes a penalty which can not be remitted and inflicts a punishment beyond the reach of executive clemency.

In the same case Judge Ormond says, p. 379:

This is a highly penal law; it excludes, unless its terms are complied with, all persons from practising as attorneys and counselors at law in the courts of this State. It must, therefore, receive a strict construction, in accordance with well-established principles, and the authority to pass it be clearly and fairly discoverable from the Constitution.

And, on page 38:

It is so offensive to the first principles of justice to require a man to give evidence against himself in a penal case, that independent of the constitutional interdict, no one in this enlightened age will be found to advocate the principle.

But it may be said this is not a case of this kind, as no corporal or pecuniary punishment is the consequence of a refusal to take the oath against dueling. But are not the results the same whether punishment follows from the admission or is imposed as a consequence of silence? Can ingenuity make a distinction between a punishment inflicted in this mode, as a consequence of a refusal to take the oath, by closing one of the avenues to wealth and fame, and a positive pecuniary mulct? If there is a difference, I think it entirely in favor of the latter, so far as the amount or weight of the penalty could affect the decision of the case. On page 381:

With great deference to the opinions of others who may differ from me, I think that the requisition by the Legislature, in substance and effect, requires the applicant for a license to give evidence against himself, and that, if not within the letter, is at least within the words of the prohibition—the very foundation of which is, that every one is presumed to be innocent until the contrary appears.

Judge Pitman, in the same case, refers to the fact that the statute under consideration rendered any one engaged in selling spirituous liquors an incompetent juror, and authorized the question to be propounded to him, and says:

This law authorizes the court to inquire of the juror, who may be challenged on this account. It is true the law says, "He may decline to answer;" but what then? Is the fact to be proved by other evidence? No; this silence is considered as sufficient proof, and he is excluded accordingly. He is therefore compelled to answer if he does not wish to be excluded as unworthy to sit as a juror, or does not wish to be considered as concerned in a traffic which may be considered as infamous. The maxim of the common law recognized by the Constitution is that every man is presumed to be innocent until he is proved to be guilty. The whole spirit of this law appears to me to be at variance with the rights of property as well as person. The Legislature has no right by an act to confiscate the property of the citizen.

Now, Mr. President, I beg the Senate to bear in mind that the two cases just referred to were precisely similar to the case now under consideration. The statutes of Alabama and of Virginia were aimed against dueling, just as the Edmunds act is aimed against bigamy. The means resorted to for the suppression of the vice and the punishment of the offender were the same in each case, a test-oath, which attorneys at law in the one case and officers of the State in the other, were required to take, swearing that they had not and would not engage in a duel, etc. In the case before the Senate a like test-oath is applied to a citizen of Utah, requiring him to swear that he is not a bigamist or a polygamist; and the commission appointed under the act requires his oath to cover all his past life. If he has ever at any time been guilty, though it may have been before the passage of the act by Congress making bigamy a crime in Utah, or if the case occurred since the passage of the law, though it may have long since been barred by the statute of limitations, still he is required to swear that he never committed the act, or he is driven from the polls and denied the right to hold office.

As already stated, the Supreme Court of the United States held the lawyer's test-oath to be unconstitutional; they also held the Missouri test-oath, which applied to ministers of the Gospel and other officers, unconstitutional. The supreme court of Virginia held the dueling test-oath unconstitutional, and the supreme court of Alabama held a like test-oath unconstitutional; and I apprehend there is no United States court, nor is there any respectable court of any State in the Union, that would hold the Edmunds act as construed by the commission constitutional. If the test-oath in four similar cases was unconstitutional and was so adjudged by courts of the highest authority, how can the Edmunds act, similar in all its objects and aims, be held constitutional by any good lawyer, by any competent court, by Congress, or by the country?

But I must notice the two remaining constitutional objections. The Constitution of the United States denies to Congress the power to pass any bill of attainder. The Supreme Court of the United States has held that the acts of Congress prescribing the test-oaths above mentioned were bills of pains and penalties in the nature of a bill of attainder, and as such inhibited by the Constitution. What is a bill of attainder? A bill of attainder, as I understand it, is a judicial sentence by Parliament or by Congress; in other words, it is a legislative usurpation of judicial power, as when Parliament passed a bill to attaint A B of high treason and directed his execution and the confiscation of his estate. This act is in the nature of a bill of attainder. It does not attaint the Mormon who refuses to take the test-oath of high treason, but it does assume judicial functions and confiscate his property in his office without judicial trial or the judgment of any court. It usurps the power that properly belongs to the courts alone of determining the question of the guilt or innocence of the accused.

I may be told that the British Parliament centuries ago enacted test-oaths, and that no man was allowed to hold office until he had taken the sacraments of the Church of England and the oaths of abjuration, etc. This is true; and it is also true that the enlightenment of the age and the triumph of reason have long since swept these oaths from the statute-book, and the Jew and the dissenter sit to-day by the side of the churchman in the Parliament of the realm.

But it does not follow from this historical fact that Congress now has or ever did possess any such powers. The Parliament of Great Britain has established a particular church. Has the Congress of the United States any such power? Parliament has established an aristocracy and provided for the grant by the King of titles of nobility. Can Congress do the same? Certainly not. Why not? Because there is a written constitution in this country which expressly forbids it. There was none in England. Such is the omnipotence of the Parliament of Great Britain that, with the consent of the King, it may change what they call the constitution at pleasure. The Congress of the United States with the President has no such power. The Parliament of Great Britain has power to confiscate the property of the subject beyond the period of his life, and either with or without the use of test oaths, if it should so will to deprive a subject of his *property* without due process of law. The written Constitution of the United States, which it has no power to change, denies to Congress the power to do either. From the difference in the powers possessed by Parliament and by Congress, the Senate will readily perceive the reason why the British test-oaths can as precedents be of no avail to the advocates of similar oaths in this country.

There is, therefore, no escape, Mr. President, from the position that the eighth section of the act in question is a bill of pains and penalties, in the nature of a bill of attainder, the passage of which is expressly forbidden by the Constitution of the United States. My ninth objection is that it is an *ex post facto* law.

What is an *ex post facto* law? It is thus defined by Mr. Justice Chase, delivering the opinion of the Supreme Court of the United States in the case of Calder and Wife vs. Bull and Wife, 3 Dallas, 386:

1. Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal, and punishes such action.
2. Every law that aggravates a crime or makes it greater than it was when committed.
3. Every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed.
4. Every law that alters the legal rules of evidence and receives less or different testimony than the law required at the time of the commission of the offense in order to convict the offenders.

See also 1 Kent's Com., 408; Sergeant on Const. Law, 356; Smith's Com. on Const. Construction, 372.

In Fletcher vs. Peck, 6 Cranch Reports, 138, Chief Justice Marshall, delivering the opinion of the Supreme Court of the United States, says:

An *ex post facto* law is one which renders an act punishable in a manner in which it was not punishable when it was committed. Such a law may inflict penalties on the person, or may inflict pecuniary penalties which swell the public Treasury. The Legislature is prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime which was not declared by some previous law to render him liable to that punishment.

In the case of Ross (2 Pick., 169) it was held that if a statute add a new punishment, or increase the old one, for an offense committed before its passage, such an act would be *ex post facto*. The party ought to know, says the court, at the time of committing the offense, the whole extent of the punishment.

Will it be questioned by any one that the disfranchisement practised in Utah under the Edmunds act is legal punishment of a high character? The punishment inflicted on the Mormon who refuses to take the test oath in Utah is precisely the same which the Constitution inflicts on the President of the United States, or any other high official, who is impeached by the House of Representatives and convicted by the Senate. He is removed from office and disqualified to hold and enjoy any office of honor, trust or profit, and he is still liable and subject to indictment, trial, judgment and punishment for the crime of bigamy, according to law; just as the President, if impeached and convicted, would be liable in the courts to trial and punishment for his crime after he had suffered the penalties which follow the conviction on impeachment. And this high penalty of removal from office, and disqualification, is inflicted under an act of Congress passed long after the crime was committed.

Can any lawyer defend an act so palpably *ex post facto* and void, inflicting the highest punishment known to the Constitution of the country for a crime committed before its passage, a punishment as high as that which follows the conviction of the highest officer of the government when impeached for high crimes and misdemeanors?

I beg to refer to the fact that the Utah Commission has in practice denied the citizen of Utah who does not now practice polygamy, the right to hold office if he practised it at any time during his past life. The Commission in their first report, page 6, say:

Did Congress intend that those only should be excluded who at the very time of their registration or election were then living in polygamy or in unlawful cohabitation with more than one woman? If so, such a construction would render this section a perfect nullity. The means of evasion are patent to the dullest apprehension. We therefore conclude that neither the letter nor the spirit of the statute requires such a narrow construction, and in our published rules and regulations we gave the exclusion a wider scope and application.

In the case of Jennings, he admitted that he practised polygamy prior to the passage of the statute, 1st July, 1862, making it penal, but that one of his wives died about 1871, and he had never since had more than one wife; and upon this state of facts he claimed the right to vote. The question was submitted to the commission, and they decided that having once practised polygamy, though it was before the passage of the act making it penal, and if afterwards the crime had long since been barred by the statute of limitations, still he was ineligible, and they refused to permit him to vote or hold office.

Now, apply to Jennings' case the rule laid down by Mr. Justice Chase, and the act is clearly unconstitutional, because it inflicts a greater punishment than the law annexed to the crime when perpetrated. In addition to the old penalty, it denies his right to vote, forfeits his estate in his office, and denies to him the right to hold office, which could not be done, because no previous law, in the language of Chief Justice Marshall, rendered him liable to that punishment.

And in the language of the supreme court of the State of Massachusetts, cited in the above-stated case, if it does not increase the old it adds a new punishment for an offense committed before its passage. How could a Mormon, at the time of committing the offense years ago, know, in the language of the last-named court, the whole extent of the punishment? How could he know that the wisdom of Congress would at some future day pass the Edmunds bill?

This law therefore punishes the citizen of Utah for what is now held to be an offense by legislative enactment, and not by the judgment of a court, denying him the right to a trial by jury, and in that respect it is also unconstitutional. The Constitution says, article 3, section 2, paragraph 3;

The trial of all crimes except in case of impeachment shall be by jury.

I beg the pardon of the Senate for taking up so much time reading authorities. But as they are in points and are the opinions of able judges, and as the question is an important one, I have relied upon your indulgence. These authorities establish the points I have taken against the law to my mind beyond all question.

First. That the citizen of Utah who is an office-holder has a property in his office.

Second. That this act of Congress violates the social compact, Magna Charta, and the Constitution of the United States by depriving him of that property without due process of law in this, that he is in effect convicted and his property forfeited without presentment or indictment of a grand jury; that he is denied a trial by jury; that he is denied the right to be confronted with the witnesses against him; that he is denied compulsory process for obtaining witnesses in his favor; that he is denied the assistance of counsel for his defense; and that he is compelled to be a witness against himself in a criminal case or that his silence is construed as conclusive evidence of guilt.

Third. That the act is in the nature of a bill of attainder, and is an usurpation by the legislative department of the Government of the functions assigned by the Constitution to the judicial department, being a sentence of forfeiture pronounced by Congress, which, being a judicial and not a legislative act, can only be done by the judiciary after trial and conviction.

Fourth. That the law is not and was not intended to be a law prescribing qualification for office, but a penal law forfeiting his property for the commission of an act which at the time of its commission had no such penalty annexed by law, and that the act or offense is punished by this law in a manner different from that prescribed by law at the time of its commission; and that the law is for this reason *ex post facto* and void.

The defendant is put upon trial not before a judicial tribunal, but before a commission appointed by Congress; he is made the witness against himself, and if he refuses to swear that he is not guilty he is judged to be guilty and punished by disfranchisement.

But I may be told that while the authorities I have referred to might well apply to a similar act passed by Congress applicable to the States, as in the case of the lawyers' test-oath, or passed by a State as in the case of the Missouri test-oath, that they do not apply to a test-oath passed by Congress as applicable to a Territory. And it may be claimed that the power of Congress over a Territory or the inhabitants of a Territory is absolute and uncontrollable, and that Congress may pass any law it thinks proper to pass applicable to Territories without constitutional restraint.

I deny the correctness of this position, and respectfully submit that the Congress of the United States has no greater power to violate the Constitution of the United States in the Territories, nor to pass laws that are unconstitutional as applied to the citizens of a Territory, than it has to pass like laws applicable to the citizens of States. Under what delegated power does Congress derive its right of absolute legislation in the Territories? I presume it must be found in the following grant, if found at all:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory and other property of the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

The language "territory and other property," putting territory on the same footing with other property, does not seem to contemplate the government of communities or districts of country. But it seems to refer to rules and regulations respecting the territory as property as distinguished from population or an organized community. Territory and *other* property does not seem to mean a territorial Government, but it puts territory as property, because it says that and other property. It would seem that this was the intention of the framers of the Constitution, who, treating it as property, were careful to protect the claims of the General Government and of the States to it as property.

But however imperfect the language of the Constitution may be, to confer such power, it must be admitted that Congress has practised upon the rule that it had the power to legislate for the Territories from the earlier periods of the Government; and the Supreme Court has sanctioned that practice. But this claim does not prove, nor has the Supreme Court held, that the power of Congress in the Territories is omnipotent, or that Congress may violate the spirit and letter of the Constitution by its legislation as applicable to the Territories. There are many things that Congress has no more power to do in the Territories than it has in a State. To illustrate: Congress has no power to pass any law applicable to any Territory for the establishment of religion, or the prevention of the free exercise of religion therein; nor can it grant any title of nobility in a Territory; nor can it destroy or abrogate the right of trial by jury; nor can it suspend the privileges of the writ of *habeas corpus* unless in case of rebellion or invasion; nor can it pass any law requiring excessive bail, or impose cruel or unusual punishments; nor can it by law justify unreasonable searches and seizures without the proper warrants; nor can it deny to any person the right to be confronted with the witnesses against him when on trial in any criminal case; nor can it deny to the defendant compulsory process to compel the attendance of his own witness; nor can it deprive any one of life, liberty, or property without due process of law; nor can it pass any law abridging the right of citizens of the United States to vote on account of race, color, or previous condition of servitude; nor can it establish involuntary servitude, except as a punishment for crime; nor can it pass any bill of attainder or *ex post facto* law; nor can it compel any person to be a witness against himself in any criminal case; nor can it destroy the principles of local self-government in a Territory as practised for the last fifty years; nor can it refuse to govern the Territory according to the genius and spirit of our republican form of government; nor can it exercise any authority not delegated by the Constitution.

These instances are, I trust, sufficient to show that there exists in Congress no absolute power of unlimited legislation in the Territories. Congress has the right to dispose of and make all needful rules and regulations respecting the territory, in the singular, not Territories, and other property of the United States. That is the grant of power, and that is all of it. But this does not delegate to Congress the right to made any laws as applicable to the Territories or any rules or regulations for their government which violate the genius and spirit of our republican institutions, or which are prohibited to Congress by the Constitution; nor, indeed, any which are not within the scope of its delegated powers.

The language as applicable to the District of Columbia, etc., is very different and much more full and ample. That provision gives to Congress the power to exercise exclusive legislation in all cases whatsoever over such District, not exceeding ten miles square, as may by cession of the particular States and the acceptance of Congress become the seat of Government of the United States, and to exercise a like authority over all the places purchased, by consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.

In the first case the language is, Congress may dispose of and make all needful rules and regulations concerning the territory (not Territories) and other property of the United States. In the last case, Congress may exercise exclusive legislation in all cases whatsoever.

The framers of the Constitution well understood the force and import of language, and it is very evident that they did not intend to confer power as plenary in the one case just quoted as they did in the other. In so far then as the right to legislate for the Territories is concerned, I am of the opinion Congress can rightfully exercise no power except such as is delegated to it by the Constitution. In the case of the District of Columbia and other places above mentioned, as the grant is plenary, Congress may exercise exclusive legislative powers and enact and enforce any law that is not in conflict with some prohibitory provisions of the Constitution.

The Supreme Court has held that the powers of the Territorial Legislature extend to all the rightful objects of legislation, subject to the restriction that their laws shall not be inconsistent with the laws and Constitution of the United States. (1 Peters 543.)

The test-oath prescribed by the constitution of Missouri during the war was similar to that prescribed under the act of March, 1882, as applicable to Utah in its disfranchisement, and was declared null and void by the Supreme Court of the United States, because it was a bill of pains and penalties, which neither the State nor the General Government had any right to pass.

I insist that Congress has no power in the Territories to pass any law violating these fundamental provisions of the Constitution. By Articles 9 and 10 of the Amendments to the Constitution, the rights not delegated to the Congress by the States in the Constitution are reserved to the States respectively or to the people. The reservation of them to the States respectively, speaking of them as organized bodies, would embrace a reservation to the people who composed the State. But as many of the people might not be inhabitants of a State, but might live on the territory belonging to the Government, the reservation is put in the alternative "to the States respectively or to the people." Therefore the reservation of powers not delegated, applied as well to the people of a Territory as to the people of the States.

Congress may go to the extent of the delegated powers in passing laws for the Territories or in punishing crime there; but it has no right to pass laws prohibited by imperative provisions of the Constitution. Nor has it the right to exceed the delegated powers in the enactment of laws for the government of the Territories. I deny that the power is anywhere delegated to Congress in the Constitution to destroy local self-government as long practised in a Territory, or to destroy a republican form of government in a Territory, or to destroy the right of trial by jury which the Constitution declares shall be preserved. The accused is in every case entitled to a speedy and public trial by an impartial jury before any penalty or punishment or disability of any kind can be inflicted upon him.

Again, Congress is required by the Constitution to guarantee to each State a republican form of government. Will it be insisted by anyone that Congress has a right in a Territory belonging to the United States, inhabited by citizens of the United States, who are entitled to the protection guaranteed by the Constitution to citizens, to destroy a republican form of government, and to govern the Territory by commissions of military men, or civilians, or satraps, or provisional governors in an arbitrary, tyrannical, or unconstitutional manner, violative of the very first principles of republican government? The framers of the Constitution intended no such inconsistency as a guarantee of a republican form of government in the States and the destruction of republican government in the Territories.

If Congress has the power to destroy the Territorial government in Utah, and send commissioners, military dictators, or satraps to govern the Territory for five years, it has the same power to embrace in the same category all the territory belonging to the United States. And if it may govern any portion of it, it may govern all of it by a satrap. And if it may continue such government for a term of years there is no reason why, in its good pleasure, it may not continue it for one hundred years or five hundred, making the Territory a province to be plundered at will by the party in power.

I can never subscribe to the doctrine that citizens of the several States, who leave their homes in the States, and establish homes in the Territories, thereby lose their rights as citizens of the United States under the Constitution, or lose the protection the Constitution guarantees to them against arbitrary tyranny or oppression. Nor can I believe that Congress may rightfully in such case govern them outside of the Constitution, or that it may exercise despotic, arbitrary, or unlimited power over the people of the Territories. They are as much citizens of the United States as are the citizens of the several States, and they are as much entitled to exercise the rights guaranteed by the Constitution as any of the other citizens of the United States are. They have a right to all the protection that the history clauses of the Constitution throw between them and the exercise of arbitrary power, whether it is attempted to be exercised by Congress or any other department of Government.

The Government of Great Britain though a monarchy does not claim the right to exercise any such power over the English-speaking inhabitants of Great Britain or the British provinces. When the original thirteen States were provinces of Great Britain the people claimed the right of local self-government, and they resorted to revolution, and open resistance to the government, rather than submit to taxation without representation. By an attempt to exercise the very power that it is now proposed by some persons that the United States shall exercise over Utah, the British Government lost the provinces which at the end of the war became thirteen sovereign and independent States, which united and formed this great Government of ours. The power of local self-government lies at the very foundation of our system. The powers of the General Government are limited to the grant made by the States in the Constitution, and the citizens of the States and of the Territories of the Union are alike protected by the inhibitory clauses of the Constitution to which I have invited the attention of the Senate.

The proposition is a monstrous one, that the Government of the United States has the power to destroy local self-government as it has heretofore existed in the Territories, to subvert the principles of our republican system there, or to send irresponsible commissions, agents, or despots to insult, rob, and plunder the citizens of a Territory, whose constitutional rights are inalienable and should be protected wherever the flag floats over an American freeman. If such power exists it is the power of brute force, not of right, a power which no enlightened republic can afford to exercise over its citizens.

A few words about the practice and policy of the Government in its legislation in reference to the Territories may not be out of place here. After Virginia had ceded the northwestern territory to the Government of the United States, the Congress, in 1787, passed an ordinance for its government, in which it is provided that:

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time; which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved by Congress; but afterward the Legislature shall have authority to alter them as they shall see fit.

In a subsequent part of the ordinance it is provided that—

So soon as there shall be 5,000 free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships to represent them in the General Assembly.

It then fixes the number of representatives at 1 to every 500 free male inhabitants until the number shall amount to 25, after which the proportion of representatives shall be regulated by the Legislature. It then prescribes the qualifications of representatives and voters. It also provides for filling vacancies, etc. This was the earliest act passed by Congress for the government of the Territory, and at that time it was called district and not Territory; and as you will readily see, Mr. President, the Congress provided for a republican form of government for the Territory, and for local self-government of the Territory, so far as the legislative functions were concerned. See Statutes at Large, volume 1, page 51.

By act of May 26, 1790, provision was made for the government of the territory of the United States south of the Ohio River, which the statute declared should be similar to that which was then exercised in the territory north of the Ohio. (Volume 1, page 123.)

As you see, Congress did not leave the governor and judges to legislate, but authorized them to select laws from those passed by the States for the Territory until it had sufficient inhabitants to enable it to elect a legislature, when it was to assume legislative functions; and the same rule was applicable to the territory south of the Ohio River.

Kentucky was part of Virginia, and with the consent of Virginia she formed herself into a State, and was admitted into the Union 1st of June, 1792.

Tennessee having been ceded to the United States by North Carolina, was admitted into the Union with but little Territorial history.

The Territory of Mississippi was organized April 7, 1798, with the same privileges which the people of the Northwestern Territory enjoyed under the ordinance of 1787 except the provision as to slavery. By act of 10th of May, 1800, the right to elect representatives was provided for with property qualification. The property qualification was removed by act of October 25, 1814 (volume 3, page 143,) and it had representative government until its admission into the Union.

On the 3rd of March, 1817, the Territory of Alabama was organized from a portion of the Territory of Mississippi, and the representatives elected under the laws governing the Mississippi Territory who fell within in the Territory of Alabama were to continue as the legislative assembly of that State. The town of Saint Stephens was declared to be the seat of government for the Territory until it should be otherwise ordered by the Legislature thereof.

By act of April 30, 1802, the people of the eastern part of the Northwestern Territory were authorized, in a convention elected by the people, to form a State government preparatory to admission into the Union, with such name as they might adopt. The State of Ohio was thereupon organized as a State and admitted into the Union. (See volume 2, page 173.)

Having purchased the Territory of Louisiana from France, the President was authorized, by act of March 31, 1803, to take possession of it and to use any part of the Army and Navy necessary for that purpose. We had just purchased the Territory, the inhabitants were not friendly to the people of the United States and did not speak our language, hence it was necessary to use extraordinary means to take possession of the Territory and to form a government there. A Territorial government was established by act of March 26, 1804, which vested the legislative power in the governor and thirteen fit and discreet persons of the Territory, with the powers usually given in such cases. (Volume 2, page 284.)

A similar instance occurred in the case of the Territory of Florida. A hostile state of feeling had existed between the Spanish Government in Florida and the people of the United States for many years. Finally, the Government of the United States purchased the Territory of Florida, and by the act of March 30, 1822, a Territorial government was established there, and, as the people were foreign and spoke a still different language, extraordinary means were deemed necessary in the government of the Territory, and the legislative power was vested in the governor and thirteen of the most fit and discreet persons in the Territory, to be called the legislative council, appointed annually by the President of the United States. There was also a short period when the Northwestern Territory was controlled by a governor and judges. But these were extraordinary occasions, at an early period of the Government, when there did not seem to be any fixed policy in reference to the organization and control of the Territories. But after the arbitrary government of the Territory of Florida had ceased we find no more instances of the application of such rules to any Territory, and for the last sixty years there has been no instance that has fallen under my observation where the right to elect the General Assembly and in most cases the local officers has been denied to a Territory.

The unbroken practice for more than half a century has been uniformly in favor of local self-government so far as the election of the Legislative Assembly was concerned.

The Territories of Illinois, Indiana, Michigan, Mississippi, and Alabama were given the same right of self-government which was secured to the people of the Northwestern Territory by the ordinance of 1787.

The State of Maine formed a part of the Territory of Massachusetts, and with the consent of Massachusetts was formed an independent State and was admitted into the Union in 1820. (Volume 3, page 544.)

The Territory of Arkansas was organized by act of March 2, 1819, and the legislative power was vested in a Legislature, to be elected by the people so soon as it was organized.

The Territory of Missouri was organized under an act of June 4, 1812. A governor, legislative council, and a house of representatives elected by the people had the legislative power. (See volume 2, page 744.) And by an act of April 27, 1816, the qualified voters were authorized also to choose the legislative council. (Volume 3, page 328.) There were other instances in the early unsettled period where the legislative council as well as the governor were appointed by the President, but the house of representatives was invariably elected by the people. These instances occurred when there was no settled policy applicable to the Territories. For the last half century, as a rule, the legislative council and house of representatives, and generally the local officers, have been elected by the people under the various acts providing for the organization of the respective Territories. This rule applied to the following Territories organized as hereafter stated:

Minnesota, by act of March 3, 1849, (Volume 9, pages 403, 404.)

New Mexico, act September 9, 1850. (volume 9, page 448.)

Nebraska, act May 30, 1854 (volume 10, page, 278.)

Kansas, by the same act (volume 10, pages 284 and 285.)

Territory of Washington, act March 3, 1853 (volume 10, page 172.)

Territory of Oregon, act August 14, 1849 (volume 9, page 323.)

Territory of Utah, act September 9, 1850 (volume 9, page 453.)

Territory of Nevada, act March 2, 1861 (volume 12, page 210.)

Territory of Colorado, act February 28, 1861 (volume 12, page 172.)

California, having formed a State government without Territorial pupilage, was admitted as a State September 9, 1850 (volume 9, page 452). The collection laws were extended over the Territory by an act of March 3, 1849 (volume 9, page 400); and in all these later instances, without exception, the right to elect their own General Assembly is given to the people of the Territory. The same is true of the remaining Territories of Dakota, Montana, Wyoming, Idaho and Arizona.

Now, let it be borne in mind that the Government invited emigrants from the different States into the Territories. By giving them lands for their homes and holding out other inducements it got them to occupy the Territories, and it established Territorial governments with the privileges already mentioned.

This has been an unbroken practice, as already stated, for more than fifty years, and thousands and tens of thousands of people have been induced to go into the Territories and settle by the well known policy of the government, and they have acquired rights there under the Constitution and laws which Congress has neither moral nor legal authority to take from them. They have acquired the right of local self-government so far as the election of their own members of the Legislature and their own local officers are concerned, and we have no moral right, after inducing them to go to the Territories, with the assurance that they would have the rights the acts of Congress gave, and which half a century's practice confirms, to abridge or destroy these rights.

Take, as an illustration, the Territory of Utah, at which the unfriendly legislation is aimed. The people of that Territory exposed themselves as those of few Territories ever have, and they endured an amount of suffering and privation that few people have ever been able to bear. They located in that distant wilderness, at the time a thousand miles from the nearest settlement in any of the States. Congress extended over them the laws of the United States and gave them a liberal Territorial government. Under it they have grown and prospered to a remarkable degree, and because there have been 12,000 persons found there who will not swear that they have at no time in their lives been guilty of bigamy or polygamy, it is proposed by members of Congress and others occupying high positions to destroy the government of Utah so far as its elective form is concerned, put it under a commission appointed by the President, deny to its people the right to elect their own members to the Legislature or their own local officers, deny them the right to elect a Territorial Delegate to Congress, which every Territory enjoys, put the feet of the power of this Government upon their necks and crush them because there have been found among them 12,000 men and women who will not take an illegal oath which has been tendered to them, and who are therefore presumed to be guilty of bigamy or polygamy.

If this unconstitutional and illegal action applied only to the guilty parties, there would be some pretext for the usurpation; but we punish 138,000 people who have not practised polygamy in order to make sure that we have punished 12,000 who are believed to be guilty of that offence. We not only tear down the Territorial government, but we expose the whole people of the Territory, the innocent as well as the guilty, to a system of government which will enable those in authority to rob and plunder the people at pleasure. And it must, I suppose, be understood by the people of Utah that they are to be governed by a commission or a satrap, until the population who have heretofore practised polygamy, and who are a small minority of the people, consent to abandon their plural-wife system, and adopt instead of it the system of prostitution, fœticide, and sexual impurity practised in other sections of the Union.

But they have another sin to atone for before they can be forgiven. The people of Utah for the last twenty years have felt that the Republican party in power has done them great injustice; consequently they are not as good Republicans as it is thought by some of the leaders of that party they ought to be. They must therefore consent to change their politics, at least to the extent of agreeing to be admitted into the Union as a Republican State, before the innocence of a large majority of the people will be considered by the political party in power sufficient to atone for the guilt of the minority.

The Utah Commission, in prescribing an oath for the voter, was careful not to interfere with the sexual privileges of non-Mormons in the Territory; consequently they require the voters to swear that they are not bigamists or polygamists, and that they do not cohabit with more than one woman in the marriage relation. If they do they are denied the right to vote or hold office. But each inhabitant of Utah who has a wife and as many mistresses as he chooses to keep, if he does not claim that he keeps them *in the marriage relation*, has a perfect right to vote and hold office. It will therefore doubtless be required of the Mormons that they abandon their system of cohabiting with more than one woman "in the marriage relation" and adopt in its stead the system of one wife with such other indulgences outside of the marriage relation as they choose to practice.

When they have consented to do this, and adopt the more popular mode against which there is no such popular clamor as exists against polygamy, and when they have declared themselves in favor of the Republican party, their many sins will doubtless be forgiven by the high priests of the party, and they will be remarkably proper people to trust with the delicate and responsible duties of self-government. In other words, if they will only change the name, and resort to the same practices under a different name, and will sacrifice their political opinions and join the party in power, they will be embraced as brethren, and they will no longer be proscribed, and made the victims of popular vengeance.

The Utah Commission report about 150,000 people in the Territory. Of this number there are 40,000 non-Mormons, leaving about 110,000 Mormons. Of this number about 12,000, male and female, as the women vote there, declined to take the oath, and are set down as practising polygamy. As the oath applies to all their past lives it is fair to infer that not more than 12,000 now living have ever engaged in this pernicious practice; and probably many of the 12,000 refused to swear that they were not polygamists or bigamists, not that they had practiced polygamy, but because they approved it.

There are over fifty millions of people in the United States; and there are probably twenty times as many persons practising prostitution, or illegal sexual intercourse, in the other parts of the Union as the whole number who practice it in Utah. Many of the features of its practice in the other States and Territories, including fœticide, illegal divorce &c., are quite as revolting or more so than in Utah. It is assumed in the other parts of the Union, where a greatly larger number of persons practice sexual impurity than the whole number of Mormon polygamists, that polygamy must be put down at any cost. It is certainly a matter of great importance that polygamy, prostitution, fœticide, and illegal divorce, whether practised in Utah or in any other part of the United States should be put down. And if we have it in our power by constitutional means to accomplish that end no one would be more rejoiced than I. But having taken a solemn oath to support the Constitution of the United States, I cannot as a Senator vote for a measure which I am satisfied is a plain violation of the Constitution to crush out polygamy, or to accomplish any other object. And we would do well to bear in mind that if the Congress of the United States disregards and violates the Constitution of the United States in its eager haste to crush a sect but a little over one hundred thousand strong, the result of the precedent may be the crushing out of one sect after another, until it ends in the complete overthrow of the liberties of fifty millions of people, who are expected to applaud our efforts to crush the Mormons without regard to constitutional difficulties or constitutional obligations.

No matter what the popular applause may be on the one hand or the popular condemnation on the other, I will join in no hue and cry against any sect that requires me to vote for measures in open violation of the fundamental law of the land. And we would do well to bear in mind that an illegal persecution of any sect always excites sympathy for the persecuted and greatly increases its numbers. The late Alexander H. Stephens, of Georgia, when asked what would be the effect of the Edmunds bill on Mormonism, replied, "The effect will be to make more Mormons."

But I may be asked, "What means can we adopt to destroy this great evil in Utah?" I reply we can not do it by passing unconstitutional laws, or adopting illegal or unconstitutional means, or by striking down republican government in the Territory.

The Christian churches of this country spend hundreds of thousands of dollars every year sending missionaries to foreign lands where polygamy is practised. In India and China alone more than 500,000,000 of people practice or acquiesce in the practice of polygamy. And yet the Christian churches are not discouraged, but they send missionaries there, hoping finally to convert the whole mass of the people. Why, then, should we not send missionaries to Utah where only about 12,000 people practice and a little over 100,000 people believe in polygamy? If the Christian churches are willing to make the effort to convert 500,000,000 of polygamists in the East, why should they not with less effort convert 100,000 within the limits of our own land? If the first task is within the range of possibility, what is there to discourage us from the smaller undertaking? There are a great many people in Utah who might be converted by the proper effort. They are our neighbors, our fellow-citizens. Shall we give them up as reprobates, and make no effort to save them, and join in a crusade to crush them? They speak our language, they are within easy reach. Why give them up and turn to the heathen of other lands, who neither understand our language nor have anything of race or sympathy in common with us? Have the Christian churches done their duty to the Mormon people? If you cannot convince their leaders you can convert thousands of the people. It may be easier to cry "Crucify them" than it is to try to help convert them. But can the churches reconcile it to conscience that duty is as well performed in the one case as the other.

There is also another mode of accomplishing it. If the honorable Senator from Vermont, or any other gentleman of his distinguished ability who feels the very deep interest that he evidently does in suppressing polygamy, will head a colony of 50,000 New England people, who will settle in Utah, my high estimate of the energy and enterprise of the people of New England justifies the conclusion that in a few years the present prevailing usages of Utah on the social question will give place to what by popular consent are admitted to be the more refined, delicate, voluptuous and attractive practices of the people of New England. Immigration into the Territory sufficient to control its vote at the ballot-box, and missionaries from Christian churches to teach the people of that Territory the truths of the Gospel, are an infinitely better remedy than unconstitutional, arbitrary, and oppressive enactments by Congress.

MARRIED.

WALTON-BATEMAN—In Salt Lake City, January 17th, 1884, by Counselor Daniel H. Wells, T. H. Walton and Mary E. Bateman.

The groom is the son of Joseph Walton and the bride the daughter of Joseph Bateman, both residents of Alpine City, Utah County, U. T.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One light grey Horse, 2 or 3 years old, dark mane and tail, no brands visible.

If not claimed and taken away within 10 days from date, said animal will be sold at the District Pound at Bountiful, Davis Co., on Friday, January 25th, 1884, at 2 p. m.

THOMAS F. FISHER,
District Poundkeeper.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One strawberry roan 2 year old Horse Colt, hind feet white, stripe in face, branded J M on left thigh.

One bay 2 year old Horse Colt, branded J M on left thigh.

If the above described animals are not claimed and taken away on or before January 25, 1884, they will be sold to the highest bidder at the Estray Pound, Tooele City, at 10 a. m.

M. NELSON,
District Poundkeeper.

LEGAL NOTICE.

In the Probate Court of Salt Lake County, Territory of Utah.

In the matter of the Guardianship and Estate of Elizabeth Smith, Priscilla Smith and Emma Pearl Smith, Minors.

Notice of Guardians Sale of Real Estate at Private Sale.

NOTICE IS HEREBY GIVEN, THAT in pursuance of an order of the Probate Court of the County of Salt Lake, Territory of Utah, made on the twenty-first day of December, A. D., 1883, in the matter of the Estate and Guardianship of Elizabeth Smith, Priscilla Smith and Emma Pearl Smith, minors, the undersigned, the guardian of said minors will sell at private sale to the highest bidder for cash, and subject to confirmation by said Probate Court, on or after Tuesday the fifth day of February, 1884, all the right, title, interest and estate of the said Elizabeth Smith, Priscilla Smith and Emma Pearl Smith, minors as aforesaid in and to all that certain lot, piece or parcel of land, situate, lying and being in Salt Lake City, County of Salt Lake and Territory of Utah, and being part of lot (6) six, in block (75) seventy-five, Plat "A" Salt Lake City Survey, particularly described as follows:

Commencing one rod East from the Northwest corner of said lot and running thence East two rods, thence South ten rods, thence West two rods, thence North ten rods to the place of beginning, containing twenty square rods.

Bids or offers may be made at any time after the first publication, and before the said fifth day of February, 1884.

All bids or offers must be in writing and delivered to the undersigned at her residence, 29 N. West Temple Street, Salt Lake City.

Dated January 12th, 1884.

SUSAN E. SMITH,
Guardian of the persons and estates of Elizabeth Smith, Priscilla Smith and Emma Pearl Smith. d48 6w