RUDGER CLAWSON'S CASE.

FULL TEXT OF THE U. S. SUPREME COURT'S OPINION SUSTAINING THE ACTION OF THE LOWER COURTS.

Supreme Court of the United States. No. 1235—October term, 1884.

Rudger Clawson, appellant, vs. The United States. Appeal from the Supreme Court of the Territory of Utah.

A question of bail pending an appeal from a judgment of conviction in one of the courts of the Territory of Utah for the crimes of polygamy and unlawful cohabitation. January 19th, 1885.

Mr. Justice Harlan delivered the opinion of the Court.

The appellant having been found guilty by a jury in the District Court for the Third Judicial District of Utah, of the crimes of polygamy and unlawful cohabitation, charged in separate counts of the same indictment, he was sentenced, on the conviction for polygamy, to pay a fine of five hundred dollars, and to be imprisoned for the term of three years and six months; and, on the conviction for unlawful cohabitation, to pay a fine of $300, and be imprisoned six months. From the whole of the judgment an appeal was taken to the Supreme Court of the Territory, and the judge before whom the trial was had gave a certificate that, in his opinion, there was probably cause therefor. The appeal was perfected and the certificate was filed in the proper office.

The defendant, thereupon, applied to the court in which he was sentenced to be let to bail pending his appeal. The application was denied, the order reciting that "the court being of the opinion that the defendant ought not to be admitted to bail, after conviction and sentence, unless some extraordinary reason therefor is shown, and there being no sufficient reason shown in this case, it is ordered that the motion and application for bail be, and the same is hereby, denied, and the defendant be remanded to the custody of the United States marshal." The accused then sued out an original writ of habeas corpus from the Supreme Court of the Territory. In his petition therefor he stated that he was then imprisoned and in the actual custody of the United States marshal for the Territory at the penitentiary in the county of Salt Lake. He, also, averred that, upon the denial of bail by the court in which he was tried, "he was remanded to the custody of the said United States marshal, who from thenceforth has imprisoned and still imprisons him" under said order of commitment, which "is the sole and only cause and authority" for his "detention and imprisonment;" that "his said imprisonment is illegal" in that "he has been and is able and now offers to give bail pending his appeal in such sum as the court may reasonably determine;" and that, "as a matter of right and in the sound exercise of a legal discretion, the petitioner is entitled to bail pending the hearing and determination of said appeal."

The Supreme Court of the Territory overruled the application for bail, and remanded the petitioner to the custody of the marshal. From that order the present appeal has been prosecuted.

By the laws of Utah regulating the mode of procedure in criminal cases, it is provided, among other things, that the defendant in a criminal action may appeal to the Supreme Court of the Territory, from any order made after judgment, affecting his substantial rights. Laws of Utah, 1878, Title VIII, chap. 1, sec. 360. To that class belonged the order made by the court of original jurisdiction refusing bail, and remanding the accused to the custody of the marshal. But no appeal was taken from that order. And as the accused sued out an original writ of habeas corpus from the Supreme Court of the Territory, we cannot, upon the present appeal, consider whether the court of original jurisdiction properly interpreted the local statutes in holding that the accused "ought not to be admitted to bail, after conviction and sentence, unless some extraordinary reason, therefor is shown." There is nothing before us for review except the order of the Supreme Court of the Territory, which discloses nothing more than the denial of the application to it for bail, and the remanding of the prisoner to the custody of the marshal. That order, in connection with the petition for habeas corpus—assuming all of the allegations of fact contained in it to be true—only raises the question, whether, under the laws of the Territory, the accused, upon perfecting his appeal and filing the required certificate of probable cause, was entitled, as matter of right, and without further showing, to be let to bail, pending his appeal from the judgment of conviction. Upon the part of the government it is insisted that the court below had, by the statute, a discretion in the premises which, upon appeal, will not be reviewed.

THE ANTI-"MORMON" POSITION CRITICIZED.

A short time since we stated as a matter of fact, that the prominent lawyers of Idaho were intensely disgusted with the character of the anti-"Mormon" measures passed by the Legislature of that Territory. To-day we are enabled to present an article on the local situation generally from the pen of an Idaho attorney, and surrender to it most of our editorial space. Many of the gentleman's points are sound and well taken, as will be readily perceived by the reader. But this soundness is confined within the limits of the legal aspects of the question with which he deals. Most of the matter contained in the last two paragraphs of the article is, in our opinion, somewhat far-fetched, showing that the writer was at sea without a rudder when he diverged from points of law. An importance is, for instance, given to the so-called young men's democratic organization that by no means legitimately belongs to it. The hypothesis of young men disclaiming a belief in and "hating and despising" plural marriage and yet holding tenaciously to fellowship in the Church which incorporates it as a tenet of its faith, is unreasonable.

AN APPEAL FOR JUSTICE.

A LAWYER'S PLEA FOR CONSTITUTIONAL RIGHTS.

At the very beginning of this plea, the writer wishes positively to disclaim any sympathy for the persons who violate our laws by practicing the crime of polygamy; but earnestly desires that all, whether in legislating against this crime or prosecuting those charged with it, should keep within the bounds of the Constitution. We will first consider the test oath, recently passed by our Legislature.

In regard to all test oaths, we can rest fully assured that they will not stand under our Constitution. One of the oldest principles of law is that a man is presumed to be innocent until he is *proved* guilty; this is a rule of evidence of so long standing that none can question it. You cannot alter that rule by assuming the guilt of persons—requiring them to establish their innocence instead of requiring the Government to prove their guilt—and in declaring that their innocence can be shown only by the taking of a test oath, and in the refusal to take the test oath, make that conclusive evidence of guilt and punish a man, in that we will not allow him to hold office, to sit on a jury, and perhaps not even to vote. All this will not stand.

In the case of Cummings vs. the State of Missouri [4 Wall Reports] as decided by the Supreme Court of the United States, a case involving the question of the validity of test oaths, the court said: "The theory upon which our political institutions rest is, that *all* men have certain inalienable rights; that among these are life, liberty and the pursuit of happiness; and that in the pursuit of happiness all avocations, all honors, all positions are alike open to every one, and that in the protection of these rights all are equal before the law. Any deprivation or suspension of any of these rights for past conduct is punishment, and can be in no otherwise defined. Punishment not being, therefore, restricted to the deprivation of life, liberty or property, but also embracing deprivation or suspension of political or civil rights. The constitution of the United States says: 'No State shall pass any bill of attainder, *ex-post facto* law, or law impairing the obligation of contracts. In the case before the Supreme Court previously cited the court defines the meaning of the term 'Bill of Attainder' in these words: 'A bill of attainder is a *legislative* act which inflicts punishment without a *judicial* trial.' If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legislative functions, exercises the powers and offices as judge; it assumes, in the language of the text books, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishmeht in accordance with its own notions of the enormity of the offence. 'Bills of this sort,' says Mr. Justice Story, 'have been most usually passed in England, in times of rebellion or gross subserviency to the crown, or of violent political excitements—periods in which *all* nations are most liable (*as well the free as the enslaved*) to forget their duties, and to trample upon the rights and liberties of others.' And this is not all, the clauses in question (clauses in Constitution of State of Missouri requiring test oath) subvert the presumptions of innocence, and alter the rules of evidence, which heretofore, under the universally recognized principles of the common law, have been supposed to be fundamental and unchangeable. They assume that the parties are guilty; they call upon the parties to establish their innocence; and they declare that such innocence can only be shown by an inquisition, in the form of an expurgatory oath, into the conscience of the parties. The objectionable character of these clauses will be more apparent if we put them into the form of a legislative act. They impose a penalty without the formality of a judicial trial and conviction, for the parties embraced by the supposed enactments would be incapable of taking the oath prescribed. To them its requirement would be an impossible condition. Now, as the State, had she attempted the course supposed, would have failed, it must follow that any other mode producing the same result must equally fail.* * * Take the case before us: The Constitution of Missouri, as we have seen, excludes, on failure to take the oath prescribed by it, a large class of persons within her borders from numerous positions and pursuits. It would have been equally within the power of the State to have extended the exclusion so as to deprive the parties, who are unable to take the oath, from any avocation whatever in the State. Take still another case: Suppose that, in the progress of events, persons now in the minority in the State should obtain the ascendency, and secure the control of the government; nothing could prevent, if the constitutional prohibition can be evaded, the enactment of a provision requiring every person, as a condition of holding any position of honor or trust, or of pursuing any avocation in the State, to take an oath that he had never advocated or advised or supported the imposition of the present expurgatory oath. Under this form of legislation, the most flagrant invasion of private rights, in periods of excitement, may be enacted, and individuals, and even whole classes, may be deprived of political and civil rights."

In the light of this decision of the very highest authority, will any legislator assist in passing a bill that will in the least degree cause punishment to be inflicted without a judicial trial?

But the proposed bill goes further—is more than a bill of attainder, in that it interferes with the freedom of speech and of the press, which is expressly forbidden by the Constitution. If these bills become law, we do, in the most emphatic manner, interfere with both. By reading the press dispatches we learn of orders, associations, organizations of men banded together to do away with monopoilsts. They hold their meetings; their speakers teach in language not to be misunderstood. They publish their speeches under such alliterative headings as "Blood, bullet and bayonets. But in New York, in Chicago and other places, so long as these theorists only teach and publish—so long as they do not commit some "overt act," the law cannot touch them, because freedom of speech and of the press is guaranteed to every one of them as well as us; the law cannot interfere. It has been reserved lor the Thirteenth Session of the Idaho Legislature to enact a law—to advocate further laws, which are not only bills of attainder, but which abridge the freedom of speech and of the press. We do not believe there is a man of them who is simple enough to think that such legislation will stand; "it is not and it cannot come to good."

We may all be agreed in hating this sect, or order, with a holy hatred, but is it right, is it just, for us to go on at the rate our Legislature has been going in legislating against an organization which we all agree has one great vice? Is there not some political capital to be made in all this? Are we doing unto others as we would like to be done by?

If the pending jury bill becomes law, we know numerous settlements in the southeastern counties in which it would be impossible to find a jury of six men who are not members of the organization at which this legislation is aimed. What then are those people to do for juries? In these cases we practically do away with the right of trial by jury in this proposed legislation. Hon. members may vote on these questions as they please, but those who wish to support the Constitution of the United States, will vote against legislation, which is a bill of attainder because it inflicts punishment without a judicial trial; which goes against the fundamental rules of evidence in presuming every man guilty until he proves himself innocent; which abridges alike the freedom of speech and of the press, and finally, which practically precludes the possibility of a large lot of fellow citizens from enjoying the right of trial by jury.

Men making laws for a great and growing territory should not allow themselves to be carried away by prejudice or popular clamor. Reason should obtain rather. The writer would remind Hon. gentlemen that popular clamor and public opinion are not always safe things to tie to. Times of excitement and agitation are not good—not healthful to society. Especially should such a feeling be excluded from a legislative body. We in Boise well remember a few weeks back under what excitement and hurrah, the rules being suspended, the test oath was crowded, rushed through the Legislature. We need not ask what the constituents of Hon. members will think of such legislation. Those who have conversed with the best lawyers in the country, know well enough what opinion is almost universally entertained in regard to that oath, and we ask then is it best to continue this course of excitement and agitation? Truly we can say, that laboring under such influences, wise judgment has fled.

We have shown that on legal grounds as well as on the questions of right and justice, our present course cannot be safely pursued. Now let us inquire whether the necessities of the case demand our attention to the extent that is proposed by our legislators. Those who read the Salt Lake *Tribune* (a paper with most able editors and which is the strongest opponent of the Mormon system) will see that almost every day arrests and convictions for polygamy and unlawful co-habitation are being made. Now, what law is used for this successful prosecution? The act of Congress known as the Edmunds' Law, which applies to all Territories or other places over which the United States have exclusive jurisdiction. That law applies to us in Idaho. Nay, more: we have in addition the strongest kind of an anti-polygamy law on our statute books already. What need then of any further legislation on this vexed question? By that same paper, and by conversing with eminent legal gentlemen from Salt Lake, the writer learns of a politigal organization there known as the Democratic Club, the leaders of which are a son of the late Brigham Young, and a very eloquent and able lawyer, also of Mormon parentage, by name J. L. Rawlins. These young men by their clever organization have drawn aronnd them numerous other young men, sons of leading Mormons, many of whom have not and will not sever their connection with that Church, although they do not believe in, but heartily despise polygamy. Now, when we see such sure signs of decay and disintegration in that Church, shall the Legislature of Idaho pass such laws to destroy the effect of all that, and thereby bind that sect closer together, and disenfranchise the very men that are most earnestly endeavoring to rid the Mormon Church of polygamy? You will do that by persisting in your present course. You say to every young Mormon, no matter how much he may actually despise polygamy: "See here! if you do not sever entirely your connection with that body you shall never hold office, sit on a jury, nor vote at any election in this Territory." The poor young Mormon who, perhaps, was initiated into that sect when a little child, who has worshiped there all his life, in astonishment may well exclaim: "What! I have never broken a law of my country. I not only do not believe in polygamy, I abhor, I detest it. And now you tell me that I must cease to worship there altogether. You say, in effect, if you must worship, come over to us and do it in our way. Before I will submit to be thus bound in my conscience, I tell you, honorable gentlemen, I'll see you damned first, and then I won't!" This is what every young Mormon, with the least spark of manhood in him would be bound to say. Thus would we bind that unhappy people more closely together, instead of allowing that gradual but sure process of decay to proceed by letting them alone, and let Time, that great corrector, do the business, as it surely is doing, and will.

Let us all, therefore, see to it, that our course is the course of justice. Let the laws of our country be rigidly enforced; but do not, for our country's sake, go beyond her laws and Constitution. Let us lay to heart the excellent words of our greatest General, when he exclaimed from his inmost soul: "Let us have peace!" "To what base uses we may return, Horatio."

LEX.

THE IDAHO PERVERTERS.

A good deal of our space to-day is devoted to the doings of the Idaho wing of the anti-"Mormon" raid. The oppressive measures enacted by the Legislature of that Territory are the test oath bill, which passed before last Christmas, and the election law, which appears in the News to-day.

The bills of the same class that were defeated are, one defining and punishing bigamy and polygamy by McKern; another of the same kind and title by Clough; and still another by Crawford. Also one defining bastardy by Brearly, and a jury bill defining the qualifications of jurors, etc., which prescribed that no "Mormon" could sit on a jury. All these went by the board.

Thus it will be seen that the anti-"Mormon" agitators concluded to forego any measures whose object is the infliction of pains and penalties through the courts on persons deemed guilty of polygamy or unlawful cohabitation, and leave that to a one-sided application of the United States statutes on the subject. They confined themselves to the infliction of penalties of a political character, by bills of attainder, providing for that species of punishment independent of judicial process.

Doubtless the conspirators, on mature reflection, considered it a work of supererogation to legislate in a direction in which they had been forestalled by Congress, and decided to confine their operations to seizing all citizens who belong to the Church of Jesus Christ of Latter-day Saints by the throat, politically, and holding them prone, flattering themselves that all their other desires could be attained by that process.

The outrageously unconstitutional laws named as having passed the most infamous body of alleged lawmakers probably that ever convened in the United States, are of the most mischievous and disgracefully tyrannical character. The test oath bill, the chief sections of which appeared in these columns some time ago, excludes every member fo the Church from holding any county or precinct office whatever, while the act which we publish in full to-day, provides for their total disfranchisement.

Governor Bunn's message which accompanied the election bill when he returned it to the Council, after signing it, is one of the most superficial and illogical documents we ever perused, and from the facts set forth in Sheriff Homer's affidavit, is evidently in conflict with his own convictions. His statement that there is no disfranchisement for those who prefer the law of the land before "indulgence in crime and salacity," is rich in the face of the fact that the vast majority of the people it proposes to reduce to political serfdom are guilty of no offence of any description except that prescribed by the iniquitous law—belonging to an unpopular organization, apostasy from which is made the price of political privileges. We hope that the people whose liberties are assailed will never be on an "equal plane of association and action" with the infamous perverters of republican institutions, and invaders of morality to which Governor Bunn has allied himself. Such a condition could not be brought about without the peaceful, law-abiding situation of the settlements of Latter-day Saints being broken up by the introduction of drinking dens and houses of prostitution. The message itself is a piece of superfluity, performed to give him favor with the anti-"Mormon" bigots. Had this not been his ulterior purpose he would have simply signed the bill instead of making a parade in documentary form which neither added to nor took from the measure a hairsbreadth.

Mr. Homer's affidavit shows up the character of Gov. Bunn in one of its phases, but still another not touched is the gross conduct of which he is habitually guilty, including drunkenness and other doings that render him a nice regenerator to talk about" indulgence in crime and salacity."

No wonder the people whose liberties are so oppressively assailed petitioned for annexation to Utah of the counties where they reside. The reason is obvious. The condition already exists in Idaho which the same class of enemies of popular institutions here would delight to see established in Utah. They have been working to that end with vigor that is worthy of a better cause, but as yet have only been measurably successful. They feel that any situation would be safer and better than that which is threatened in the Territory north of us. Yet in that petition, those who prayed the Legislature for the boon of banishment from a Territory where they are deprived of the most common rights of citizenship, could not help expressing, in connection with their request, their unmeasured contempt for the majority of the body they addressed. Under the circumstances this expressive blurt of indignation was quite excusable, and showed a refreshing absence of any attempt at hypocrisy in the hope of gaining a point. Th petition received no consideration whatever, as might have been anticipated.

For want of space the election bill referred to, does not appear in the semi-weekly or weekly issues, but the more striking of its sections have been previously published in this journal.—[Ed. D. N.]

LECTURING ABOUT THE "MORMONS.

We learn from the Chicago *News* that a Rev. A. Wormser, of Cedar Grove, Wis., is lecturing in the great city of the northwest on the subject of "Nine Days Among the Mormons." From the brief synopsis that is given of the lecture it would seem that the reverend gentleman has nothing very bad to say about the much maligned people o whom he presumes to speak; indeed the impression which he formed during his nine days' visit seems to have been rather favorable than otherwise. He has evidently not shut his eyes to everything that is good among the "Mormons," and determined to believe nothing in their favor, and, though we cannot endorse all of his conclusions, he deserves credit for manifest honesty of purpose. His apprehension as to the future danger from "Mormonism" is in a political rather than a social or moral sense, and if others who are in the habit of expressing fear as to the growth of "Mormonism" were as honest as he is they would say the same. It is the old, old feeling: "If we let him thus alone, all men will belive on him; and the Romans shall come and take away both our place and nation."

Those who affect horror at the practices of the "Mormons" and express fear of contamination with them are densely ignorant of the true character of that people, or else they are rank hypocrites, and an investigation of the facts would generally prove the latter to be the case.

What Mr. Wormser says about the Latter-day Saints taking pride in a numerous progeny, though it may seem strange to people imbued with Malthusian ideas, which means a considerable proportion of the people of this as well as other nations, is nevertheless greatly to the credit of the Saints, and will be considered so by every thoughtful and pure-minded reader.

Mr. Wormser said of his visit to Utah that:

"He found the Mormons of Salt Lake City the most quiet and orderly people with whom he had ever mingled. He considered theirsystem the most perfect as to organization, but thought it entirely a money power. Every one of them contributed one-tenth of his substance to the priesthood besides contributing to building, emigration, and other funds. One-fifth of all the Mormon population of the territory held office either of honor or emolument. The chief danger the country had to fear from Mormonism, he thought, was that when the Territories in which they lived became States, this people would hold the balance of power and thus control legis-