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BIGAMY AND THE COMMON LAW.

A FEW days ago we made reference to some remarks by a lawyer, in relation to polygamy or bigamy and the common law. We have since been reminded by another lawyer, that bigamy is not a common law offense. As there is considerable misunderstanding on this subject, we devote a little space to it to-day.

It is evident from the writings of those learned jurists who are considered authorities, that bigamy was first declared a crime under the secular law in England, in the time of James I, and that the laws concerning it, which now prevail in England and the United States, are based upon the statute enacted under the reign of that King. Wharton (American Criminal Law, sec. 2627) says: "The American acts are founded in principle upon the English statute of 1 Jac. 1 c 11, the established and known construction of which, as is remarked by Mr. Davis, may be considered as also adopted." Bouvier (Law Dictionary vol. 1, p. 168) says: "The statutory provisions in the U.S. against bigamy or polygamy, are in general similar to, and copied from the statute of 1 Jac. 1 c 11, except as to the punishment." Bishop (Criminal Law, Sec. 502) says: Polygamy—that is simple polygamy, as distinguished from open and notorious cohabitation—was not an offence in the temporal courts until 1 Jac. 1 c 11 made it such when, committed "within his majesty's dominions of England and Wales;" consequently in this country its criminality rests *only on our own statutes.*" And to make the matter still more positive, the same author says it is not *known under the* ancient common law, and is therefore purely statutory. (Bishop on Statutory Crimes, sec. 577).

From these quotations it will be seen that bigamy or polygamy is not a crime at common law, but is entirely a statutory offence. It may be asked was there no law in England of any kind against bigamy previous to the enactment in the time of James I? We answer yes, but it was entirely canonical, or ecclesiastical. Bishop on Statutory Crimes (sec. 579) says: "In England, polygamy was always punishable canonically, but it seems not to have been a civil offence until the reign of James I."

This leads to an investigation of the nature of this so-called crime. If polygamy was a crime *per se*, how was it that it was not considered a civil offence in England until 1604? The priests made it a crime, but the law did not. They imbibed their notions from old Rome. The Protestant Episcopal Church was an offshoot of the Papacy. Its regulations on marriage were, to a great extent, copies of Romish Church law. Under the rules of that organization it was as much of a crime for a priest to marry one wife as for a layman to marry two wives. Bouvier (Law Dictionary vol. 1, p. 165) says: "According to the canonists bigamy is threefold, viz.: real, interpretative, and similitudinary. The first consisted in marrying two wives successively (virgins they may be) or in once marrying a widow; the second consisted, not in a repeated marriage, but in marrying a harlot; the third arose from two marriages, indeed, but the one, metaphorical or spiritual, the other carnal. This last was confined to persons initiated in sacred orders, or under the vow of continence."

A corrupt, apostate priesthood introduced rules which were contrary to the law of God, and sowed the seeds of the multiplied abominations of the latter times, by "forbidding to marry," which the ancient apostle denounced as "a doctrine of devils." It is a similar class of men who are now stirring up the country against "Mormon" plural marriage, and it was under the influence of their kind, that laws were enacted which have crowded thousands upon thousands of women out of the marriage state, rendering it impossible for them to become honorable wives and mothers. Enforced monogamy is the offspring of priestcraft, and its fruits are seen in the foul corruptions of modern Christian cities.

It might be thought that though there is no English common law against polygamy, there may yet be American common law bearing upon it, seeing that the law of James I was passed previous to the settlement of this country. Bishop says it would have passed into the common law of our country but for its peculiar phraseology. "The difficulties are that by its terms it is made local to England and Wales; and that the efficacy of a part of what is in its provisions depends on the action of ecclesiastical courts, which were never established in this country." (Statutory on Crimes, sec. 580). The provisions of that statute are very similar to those of the anti-polygamy act of '62, the latter being evidently drawn from the former. The crime is in the marriage, not in the intercourse. The laws against bigamy in the various States are similar to it, but differ in some particulars, some adding clauses upon the continuance of cohabitation, and others having special provisions in regard to place of trial, &c.

Utah having no marriage law is somewhat peculiarly situated. Our statutes do not define what is necessary to constitute a marriage. In prosecutions for bigamy it is necessary to prove both the first and second, or punishable marriage. Language is necessarily ambiguous or illogical, used in relation to bigamous marriages. Under the law they are all considered void, and therefore no marriages at all, and crime is attached and a penalty affixed to something that has no existence. A marriage with a second wife, the first wife living and undivorced, is said to be not a marriage, yet that marriage which does not exist is declared criminal and punishment is imposed for doing something that cannot be done. Putting this verbal difficulty aside, there being no statutory provision defining what is a marriage in Utah, the question arises, how in case of [illegible] be proved? Marriage is legally defined to be a contract. Cohabitation without such contract does not constitute marriage. Bouvier (Law Dictionary, vol. ii, p. 108) says: "To make a valid marriage, the parties must be willing to contract, able to contract, and have actually contracted." An invalid marriage then must be also a contract, but one which the parties or either of them are not in law competent to engage in. To prove bigamy then, both these contracts must be proven.

It has been proposed, as a plan to catch "Mormons" who have married plural wives, when the ceremony cannot be proven, to obtain legislation making the cohabitation evidence of the offence. But it will be seen, on close examination, that this would not give much comfort to those anxious souls who pretend so much aversion to polygamy that they want to put all polygamists in prison. The cohabitation must be the consequence of a contract, to make it evidence of a marriage. Else every high-minded Federal official who fights polygamy and practises prostitution, would be in frequent danger of punishment, and of each partner in his criminal relations claiming him for a husband. And, as the people of Utah are well aware, the object of the crusade against them is not to prevent or punish illicit intercourse, but to break down and defile the holy order of celestial marriage which God has instituted. The contract, then, in each case must be proven in order to establish the offence, and though no ceremony may be considered requisite under the common law to constitute a marriage, a contract is its essential feature, and must be proven both in the first or legal marriage and in the second or bigamous marriage, to constitute a breach of the law whether cohabitation is proven or not. Bouvier mentions as one of the evidences of marriage that, "it may be inferred from continual cohabitation, and reputation as husband and wife, except in cases of civil actions for adultery or *public prosecutions for bigamy.*" (Law Dictionary, vol. ii, p. 109.)

We refer to these matters that some legal points, on which many of our friends have but obscure ideas, may be presented for their reflection, merely adding, in conclusion, that while they do not affect our marriage relations before God and the Church of which we are members, they should be studied and understood from the standpoint of secular law.

DUTY TO FRIENDS ABROAD.

BY the courtesy of President John Taylor we have perused a letter from Elder James Reece, now laboring in the British mission, principally in the county of Norfolk. He draws a terrible picture of the present distress of the working classes, and their gloomy prospects for the future. He has been well received in his travels, and had full liberty of speech in public while proclaiming the gospel of Jesus Christ and bearing testimony to the divine mission of Joseph Smith.

He touches on a subject of considerable importance; that is, the neglect of many of the gathered Saints in keeping their promises to friends left behind. In some instances they have received assistance from their former employers, when emigrating, and since their arrival in Utah have never sent a line expressing their appreciation of the favor, announcing their safe arrival, declaring their satisfaction or otherwise, or in any way giving information of their condition or existence. We think, with him, that such carelessness and ingratitute is highly reprehensible.

We have heretofore endeavored to remind the Saints gathered from the various countries of the old world of their duties to distant friends, and we now take occasion to reiterate. No person who has borrowed money to aid in his emigration is justified in remaining a debtor a moment after he can honorably gain sufficient means to settle with his creditor. Particularly is this the case when the lender is depending on the return of his money to effect his own deliverance. And supposing the debtor is not able to discharge his liability, should he not have the grace to write to his friend, inform [illegible] of affairs in Utah [illegible]

But, aside from the question of indebtedness or favors received, if the Saints in Utah who have relatives or acquaintances still in the old world would write an occasional letter, they may know by their own feelings before they were gathered, how highly such communications would be prized. This apathy and indifference to the feelings of the scattered members of the Church of Christ is not at all in accordance with the spirit of the gospel, and is especially in opposition to the teachings of the Savior: "Whatsoever ye would that men should do unto you, do ye even so to them." Is not this a sufficient hint to those that are "at ease in Zion?"

BAL MASQUE.

WE understand that the Hebrew Benevolent Society of this city have obtained the use of the Theatre for a *bal masque* on the 21st prox. It has been rumored that the committee could not obtain the use of the building for this purpose; and as the occasion is one of historical and semi-religious interest to the Hebrews, being commemorative of providential interferences for their race in the days of Queen Esther, the supposed refusal was construed by those who are ever ready to misrepresent the people of Utah, as an intended slight to the Jewish race.

We take this opportunity to present the matter in its true light. There had been some feeling in regard to *bal masques* in general, and to one in particular, at which certain matters, which are held sacred by the bulk of the people here, were publicly burlesqued by inconsiderate or vulgar maskers. But the committee of the Benevolent Association have pledged themselves that nothing of this character shall be permitted at their entertainment, and as the object is a charitable one, the building will be allowed for this purpose on the day above mentioned. If it had been refused, the refusal would not have been from any disrespect to the Hebrews nor either of them, but for the reasons named.

But this does not affect the main question, which is, as we view it, the general effects of this kind of amusement. We must say that we, with many others, view them in general as evil and non-conducive to public morals. We do not think such entertainments suitable for the Latter-day Saints, and while we would in no way interfere with the enjoyments of others or lay a straw in the way of our Hebrew friends, for many of whom we entertain great respect and the destiny of whose race we consider connected in some degree with our own, we must express our firm conviction that the Latter-day Saints will do well to exempt from among their recreations, one that is open to so many avenues to evil as the *bal masque.*

AN IMPORTANT "INTERVIEW."

ON the second, third and fourth pages of this issue will be found a full report of an interview between President John Taylor, and U. S. Collector Hollister, representing the New York *Tribune.* It contains many points in relation to the position of the Latter-day Saints on the marriage question, and, coming from the voice of authority, is entitled to candid consideration from the press and the country.

In consequence of the great pressure upon our columns, we cannot this evening make any comments upon the views expressed by the interviewer, except to say that he evidently has no conception of the facts or motives that govern our religious belief and practice, and therefore is unable to give us credit for that sincerity which has been exhibited by our endurance of all things for our faith, but which the unprejudiced, discerning mind will clearly perceive shining in every utterance of our esteemed President, who bears in his body the marks of the world's antagonism to our religion unexcused by the pretense of aversion to polygamy.

We commend the report of the interview as good Sunday reading for friends and foes.

THE DECISION IN FULL.

WE give our readers, to-day, the full text of the decision of the Supreme Court of the United States in the Reynolds case. Lack of space will prevent much present comment on this remarkable document. We were in hope that on a perusal of the ruling, unabridged, we might be able to form a different opinion of the probity and ability of the learned judges who rendered it. But we find our first opinions confirmed, and feel profound regret that the highest judicial court in the land can descend to the level of popular prejudice, and adopt such flimsy arguments as appear in the decision in support of an attempt to suppress "an establishment of religion."

The arguments and quotations in reference to the admission of second hand testimony, as stated by Justice Field, are clearly opposed to the ruling; for it does not appear, either from the testimony or reasoning that the witness was kept from appearing in court by any act or influence of the defendant.

The admission of the testimony of jurors who had formed an opinion, is glossed over by statements which the evidence shows to be incorrect. The juror named stated positively, as appears in the decision, that he had formed and expressed an opinion, and that *he still entertained it.*

There is no proof that the jurors refused were themselves living in polygamy. If there were proof that these jurors considered polygamy right, it would not affect the case at issue. The question was not, "Is polygamy right?" but, "Has the defendant violated the law of Congress passed in 1862?" And they were certainly as competent to sit on that question as those who had formed opinions in regard to the guilt or innocence of the prisoner.

By the ruling and arguments of the Supreme Court, laws may be enacted against any religious practice; because opinions only are free from the interference of the law. Therefore baptism may be prevented by legislation on just as valid reasoning as that offered against plural marriage. It may be said that the ruling draws the line at practices which interfere with the peace and good order of society. To which we answer that it has never yet been proven that "Mormon" plural marriage does so interfere. We claim to the contrary. It is still an open question, which the Supreme Court has begged most emphatically in its consideration of the subject.

These are in brief a few of our opinions on the decision, which we have the right to express, for, though the sophistry of the Court makes any religious practice suppressible by the law, we still have the glorious privilege of forming opinions without being liable to pains and penalties for entertaining them, even if they do differ from those of the authors of one of the weakest documents ever issued by a court of appeal.

MORE ANTI-RELIGIOUS LEGISLATION.

BY a dispatch from Washington, to-day, we learn that the Senate Judiciary Committee have reported favorably on Christiancy's bill, the provisions of which have been heretofore imperfectly reported by telegraph. It provides that in any prosecution for polygamy under the Act of '62, in which the defendant is a believer in a religious system or sect among whom marriages are not celebrated publicly, the evidence of eye-witnesses to the ceremony shall not be necessary to establish the marriage, but the habitual recognition of the defendant of his or her husband or wife, and the mutual recognition of a child or children as their own, shall be deemed sufficient and competent proof upon which the jury may act. The President is allowed to grant amnesty to those who have committed polygamy before Dec. 9, 1878. It excludes from juries, *on trials for polygamy,* those who acknowledge that they themselves practice polygamy or believe in the "Mormon" religion.

We are rather inclined to believe that the latter clause is an exaggeration of the disposition. For although the Constitution is being pulled into the mire by Congress and the Courts, we do not think the country has yet arrived at a point when a "religious test" will be thus openly applied, which would be tantamount to a declaration that the supreme law of the land is no longer entitled to any respect. An attempt is to be made to pass the bill this session.

SCHOOL AGE AND SCHOOL APPROPRIATIONS.

WE have received a letter from a friend in Weber County in regard to what he considers a defect in the school law. But it seems to us that the chief defect is in the construction placed upon the law by the trustees of the school district in which he resides. It appears that children there over sixteen years of age, to the number of thirty-five, have been refused admission to the district school. Our correspondent thinks the law should be changed, adding two years to the "school age," so that pupils up to 18 years of age may be admitted to the district schools, as many of them would learn more at that age than when younger.

We are at a loss to know where the trustees find their authority for excluding children from the schools who do not happen to be between the ages of six and sixteen. The school law says nothing about such exclusion, neither can it be justly inferred from the language of that statute. There may be some dubiety in regard to the use of school moneys for the benefit of children under or over the ages mentioned, but there is nothing that can be so construed as to exclude them from the district schools. Neither does the law say that the school moneys raised by taxation shall not be used for the benefit of children under six or over sixteen years of age. It provides that the "county and district apportionment" shall be made