THE SNOW CASES.

DECISION OF THE SUPREME COURT OF THE UNITED STATES.

October Term, 1885.

In error to the Supreme Court of the Territory of Utah.

Lorenzo Snow, Plaintiff in Error, No. 1277. *vs.* The United States.

Lorenzo Snow, Plaintiff in Error, No. 1278. *vs.* The United States.

Lorenzo Snow, Plaintiff in Error, No. 1279. *vs.* The United States.

[May 10, 1886.]

Mr. Justice Blatchford delivered the opinion of the Court.

These are three writs of error to the Supreme Court of the Territory of Utah to review judgments of that Court affirming judgments of the District Court of the First Judicial District of that Territory, rendered on convictions of the plaintiff in error on indictments founded on Section 3 of the Act of March 22nd, 1882, (22 Stat. 31,) for cohabiting with more than one woman. Each of the judgments imposed imprisonment for six months and a fine of $300.

The question of the jurisdiction of this Court over these writs of error presents itself at the threshold. It was not suggested by the counsel for the United States at the argument, nor referred to by the counsel for the plaintiff in error, for the reason, as the Court has been advised by both parties since the argument, that a decision on the merits was desired; and for the further reason, that this Court, at the present term, in Cannon v. United States, (116 U. S., 55,) took cognizance of a writ of error in a like case. But the question has presented itself to the Court, and, since the argument, we have been furnished with a brief, on the part of the plaintiff in error, in support of the jurisdiction.

Section 702 of the Revised Statutes provides as follows: "The final judgments and decrees of the Supreme Court of any Territory, except the Territory of Washington, in cases where the value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars, may be reviewed and reversed or affirmed in the Supreme Court, upon writ of error or appeal, in the same manner and under the same regulations as the final judgments and decrees of the Circuit Court. In the Territory of Washington, the value of the matter in dispute must exceed two thousand dollars, exclusive of costs. And any final judgment or decree of the Supreme Court of said Territory in any cause [when] the Constitution or a statute or treaty of the United States is brought in question may be reviewed in like manner."

So much of this section 702 as relates to the Territory of Utah was carried into the section from section 9 of the Act of September 9th, 1850, establishing a territorial government for Utah, (9 *Stat.*, 455,) which provided that writs of error and appeals from the final decisions of the Supreme Court of the Territory should be allowed and might be taken to the Supreme Court of the United States, "where the value of the property or the amount in controversy, to be ascertained by the oath or affirmation of either party, or other competent witness," should exceed one thousand dollars, except only that in all cases involving title to slaves, and on any writ of error or appeal on a *habeas corpus* involving the question of personal freedom, no regard should be had to value.

So much of section 702 as provides for the review of "any final judgment or decree" of the Supreme Court of the Territory of Washington "in any cause when the Constitution or statute or treaty of the United States is brought in question," is taken from the Act of March 2d, 1853, establishing a territorial government for Washington, (10 Stat., 175,) which, after providing that writs of error and appeals from the final decisions of the Supreme Court of the Territory should be allowed and might be taken to the Supreme Court of the United States, "where the value of the property, or the amount in controversy, to be ascertained by the oath or affirmation of either party, or of other competent witnesses, exceeds one thousand dollars, except that a writ of error or appeal shall be allowed "upon writs of *habeas corpus* involving the question of personal freedom." This section does not cover the present cases.

Section 1911 relates exclusively to writs of error and appeals from Washington Territory, and contains a provision that they shall be allowed "in all cases where the Constitution of the United States, or a treaty thereof, or Acts of Congress, are brought in question." That provision exists only in regard to Washington, and is not found in Section 1909 in regard to the eight other Territories.

Section 709 of the Revised Statutes applies only to a writ of error to review a final judgment or decree in a suit in the highest court of a State.

There being thus no statute in force on December 1st, 1873, to which time the enactments in the Revised Statutes related, giving to this court jurisdiction of a writ of error to the Supreme Court of Utah in a case like those before us, an Act was passed on June 23d, 1874, (18 Stat., 253,) entitled, "An Act in relation to courts and judicial officers in the Territory of Utah," section 3 of which contained this provision: "A writ of error from the Supreme Court of the United States to the Supreme Court of the Territory shall lie in criminal cases, where the accused shall have been sentenced to capital punishment or convicted of bigamy or polygamy." The writ of error in Reynolds v. United States, (98 U. S., 145,) was brought under that statute, the conviction being for bigamy under section 5352 of the revised Statutes. This section 5352 was taken from section 1 of the Act of July 1st, 1862, (12 Stat., 501,) entitled, "An Act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," which section 1 declares that every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, shall (with certain exceptions) be adjudged guilty of bigamy. The Act then proceeds to disapprove and annul all Acts and parts of Acts theretofore passed by the Legislative Assembly of Utah, "which establish, support, maintain, shield or countenance polygamy," with the proviso, that the Act "should not affect or interfere with the right 'to worship God according to the dictates of conscience,' but only to annul all Acts and laws which establish, maintain, protect or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances." Hence, section 3 of the Act of 1874, speaking of "bigamy or polygamy," referred to the crime denounced by section 1 of the Act of 1862 as carried into the Revised Statutes.

Then came the Act of March 22d, 1882 (22 Stat., 30), section 1 of which amended 5352 of the Revised Statutes, the original and new sections 5352 (leaving out the exceptions) being as follows, the parts in each which differ from the other being in italic:

Original.	*New.*
"Every person *having* a husband or wife living, who marries another, whether married or single, in a Territory or other place over which the United States have exclusive jurisdiction, is guilty of *bigamy*, and shall be punished by a fine of not more than five hundred dollars, and by imprisonment for a term not more than five years."	"Every person *who has* a husband or wife living, who, *in a Territory or other place over which the United States have exclusive jurisdiction, hereafter* marries another, whether married or single, *and any man who hereafter simultaneously, or on the same day, marries more than one woman*, in a Territory or other place over which the United States have exclusive jurisdiction, is guilty of *polygamy*, and shall be punished by a fine of not more than five hundred dollars, and by imprisonment for a term *of* not more than five years."

Section 3 of the Act of 1882 is the one on which the indictments in these cases were founded. It is in these words: "If any male person, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than three hundred dollars, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the courts." This section creates a new and distinct offense from bigamy or polygamy, one which is declared to be a misdemeanor, (there having been and being no such declaration as to bigamy or polygamy,) and the punishment for which is much less than the punishment for bigamy or polygamy. The act of 1882 made no provision for any writ of error from this court in a case under section 3, while by the then existing Act of July 23d, 1874, a writ of error could lie on a conviction of bigamy or polygamy. By no proper construction can the offense of cohabiting with more than one woman be regarded as identical with the offense of bigamy and polygamy. The Act of 1882, in sections 1, 3 and 5, classes bigamy or polygamy as a different offense from the offense of cohabitating with more than one woman; and we cannot regard a statutory provision for a writ of error on a conviction of bigamy or polygamy as authorizing one on a conviction, under section 3 of the act of 1882, of cohabiting with more than one woman.

On the 3d of March, 1885, the following act was passed, (23 Stat., 443:) "No appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law or in equity in the Supreme Court of the District of Columbia, or in the Supreme Court of any of the Territories of the United States, unless the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars." Sec. 2. "The preceding section shall not apply to any case wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States; but in all such cases an appeal or writ of error may be brought without regard to the sum or value in dispute."

This Act is relied on by the plaintiff in error as covering the present cases. The first section of it applies solely to judgments or decrees in suits at law or in equity, measured by a pecuniary value. If the second section applies to a criminal case wherein "is drawn in question the validity of a" "statute of, or an authority exercised under, the United States," without regard to whether there is or is not any sum or value in dispute, the question still remains for consideration, whether, in the present cases, the validity of a statute of the United States, or the validity of an authority exercised under the United States, is drawn in question.

The peculiar language of section 2 is to be noted. In section 709 of the Revised Statutes, allowing a writ of error to review a final judgment or decree in any suit in the highest Court of a State, in which a decision in the suit could be had, the language is, "where is drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision is against their validity." This language is taken from section 2 of the Act of February 5th, 1867, (14 Stat., 386,) where it is reproduced *verbatim* from section 25 of the Judiciary Act of September 24th, 1789, (1 Stat., 85.) In section 2 of the Act under consideration the words "and the decision is against their validity" are not found. In section 1911 of the Revised Statutes, in regard to Washington Territory, the language, adopted substantially from the Act of March 2d, 1853, (10 Stat., 175,) is "in all cases where the Constitution of the United States, or a treaty thereof, or Acts of Congress, are brought in question;" and is not limited to the case of a decision against the validity of the Act of Congress is brought in question, but only where the validity of a statute of the United States is drawn in question, or where the validity of an authority exercised under the United States is drawn in question; but this is not limited by the requirement that the decision shall have been against such validity.

In the present cases, the validity of a statute of the United States is not drawn in question. No such question is presented by the bills of exceptions, or the requests for instructions, or the exceptions to the charges, or anywhere else in the records. Nor is the validity of an authority exercised under the United States drawn in question. The plaintiff in error contends that the construction of the Act of 1882 is drawn in question, and also the authority exercised under the United States by which he was tried and convicted; that the authority of the United States is invoked to deprive him of his liberty, in a Court established by Congress, and acting solely by Federal power; and that the question is, whether the authority exercised by the Court under the Act of 1882 is a valid authority, and within the scope of that Act, because the contention is that the Court misconstrued the statute and acted beyond the authority which it conferred. The authority exercised by the Court in the trial and conviction of the plaintiff in error is not such an "authority" as is intended by the Act. The validity of the existence of the Court and its jurisdiction over the crime named in the indictments, and over the person of the defendant, are not drawn in question. All that is drawn in question is whether there is or is not error in the administration of the statute. The contention of the plaintiff in error would allow a writ of error from this Court in every criminal case in a Territory where the prosecution is based on a statute of the United States; and, indeed, might go still further, for the authority of every court sitting in a Territory is founded on a statute of the United States. From the fact that a given criminal case involves the construction of a statute of the United States, it does not follow that the validity of "an authority exercised under the United States" is drawn in question.

There is a decision of this Court on this point, in Bethell v. Demaret (10 Wall., 537.) The 25th section of the Judiciary Act of 1789 allowed a writ of error from this Court to the highest Court of a State, "where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of such their validity." The case referred to was a writ of error to the highest court of a State, and it was contended that that court, in rendering the decision complained of, acted under the authority of the State, and so there was drawn in question an authority exercised under the State, which, in the particular case, impaired the obligation of a contract, and was repugnant to the Constitution of the United States, and the decision was in favor of the validity of such authority. To this view, this Court, speaking by Mr. Justice Nelson, gave this answer: "The authority conferred on a court to hear and determine cases in a State is not the kind of authority referred to in the 25th section; otherwise, every judgment of the Supreme Court of a State would be re-examinable under the section."

In the recent case of Kurtz v. Moffitt, (115 U. S., 487, 498,) it was said by this Court, speaking by Mr. Justice Gray, as the result of the examination of numerous cases which are there cited, that "a jurisdiction conferred by Congress upon any court of the United States, of suits at law or in equity, in which the matter in dispute exceeds the sum or value of a certain number of dollars, includes no case in which the right of neither party is capable of being valued in money." In each of the present cases the pecuniary value involved does not exceed $300, even if the fine could be called a "matter in dispute," within the statute. As to the deprivation of liberty, whether as a punishment for crime or otherwise, it is settled by a long course of decisions, cited or commented on in Kurtz v. Moffit, (*ubi supra*,) that no test of money value can be applied to it, to confer jurisdiction.

We conclude, therefore, that we have no jurisdiction of these writs of error, and that they must be dismissed for that reason.

It is urged, however, that this Court took jurisdiction of the writ of error in Cannon v. United States, (116 U. S., 55,) and affirmed the judgment on a conviction under the same section 3 of the Act of 1882. The question of jurisdiction was not considered in fact in that case, nor alluded to in the decision, nor presented to the Court by the counsel for the United States, nor referred to by either party at the argument or in the briefs. Probably both parties desired a decision on the merits. The question was overlooked by all the members of the Court. But, as the case was decided at the present term, and the want of jurisdiction in it is clear, we have decided to vacate our judgment, and recall the mandate, and dismiss the writ of error for want of jurisdiction, in order that the reported decision may not appear to be a precedent for the exercise of jurisdiction by this Court in a case of the kind.

True copy.
Test: JAMES H. MCKENNEY.
Clerk Supreme Court, U. S.

THE TREASON OF THE MORMONS.

Editor Democrat:

I have heard very frequent reference made to the "treason" of the Mormons. As I have lived in their midst, and claim to have used the eyesight and common sense that the Almighty has graciously endowed me with during my ten years' residence among them, I deem it not boasting in me to say that I think I am prepared to give a truthful account concerning them.

My parents were members of the Mormon Church for seven or eight years previous to my birth. I was born and lived in England till I was nearly twenty-one years of age. I was taught by them, as well as by the publications and ministers of the Mormon Church there, that the Constitution of the United States and the Declaration of Independence was inspired by Deity. It was enjoined upon me that as soon as I landed on this soil I should lose no time before declaring my intention, and taking essential steps to become an American citizen.

Since my arrival here in this much misunderstood, because much misrepresented, territory, I have watched with critical eyes the doings of the Mormon people. Have attended very many of their public and private meetings, and have listened attentively to the addresses of their leading men. I have never heard any authorized Mormon exponent denounce, in the slightest degree, the institutions of my adopted country. It is true that since the passage of measures inimical to their peace and destructive to their liberties, their voices have been heard protesting against those infringements. They have used the constitutional and time-honored rights of petition and appeal to the courts. They have, furthermore, criticised the doings of officers of the Government, who, because, perchance, so far away from the seat of general government, have assumed the role of dictators and tyrants over our people.

But never have any of them said one word in discurtesy of the dear old flag, or the grand old Constitution, whose folds and whose provisions should encircle us all, irrespective of creed, color, or previous condition. We sincerely consider that the so-called anti-Mormon statutes, passed by the United States Congress, are unconstitutional, because they have not been enacted on account of national or moral necessity, but to all intents and purposes because of our religion. Tell me not of the old argument concerning the burning of widows, etc. It is a sad commentary on the intelligence of any one who would put such a comparison forward.

I am not a polygamist nor a polygamist's son; but I do know that the lives of our good Mormon polygamists are favorably comparable with the lives of your purest and best monogamic Christians. I trust I shall not be charged with treason for making this truthful and demonstrable assertion.

I visit their Sunday schools, which by the way, comprise an aggregate of 55,000 members. Their young mens' and young ladies' associations for mutual improvement number perhaps 25,000 members. Then there are ladies' relief societies, with their wards, the primary associations. There is very little difference in the *modus operandi* of the Mormon Sabbath schools and that of the Christian schools. I am a worker among them, and among my teachings (and I use my case but as an example among many), I teach the children respect for all government officers, and especially for all laws framed harmoniously with the Constitution. We teach the children to pray to the Father, "Thy Kingdom come, Thy will be done on earth as it is in heaven;" and we may believe more firmly in the literal significance of that petition than do some who are called Christians.

Our young people's associations meet weekly in separate sessions. Their treason consists in disquisitions and lectures on scientific, religious, social, and political subjects, special attention being applied to the study of the Bible.

The relief societies indulge in such rebellion as meeting together once a month, and comforting each other as did those primitive Christians of the first century, A. D. They have their sewing meetings, and by gradual stitching many a quilt is made and in due season distributed to some poor soul. These women are of great utility in visiting and providing for the temporal wants of their poorer sisters.

The primary department is composed of youngsters who meet once a week and rehearse a few lines which have been committee to memory, and indulge in select readings, etc. This may be denominated the nursery for Mormon male and female orators.

Religious services are held on every Sabbath, and occasionally on week days, under the auspices of these much spoken of Mormon Bishops. As for my judgment, I will say that if there is any treason in any of these meetings, then the New Testament is full of it, for though I would not ask any one to admit the truth of Mormonism, I affirm that the Mormons base all their assertions upon the utterances of that sacred book.

Nay, more; I listen to the Mormon apostles, and this is what they tell: "Love your enemies. Pray for them that despitefully use you. Revile not those who revile you." I know that these men are not enemies to the government of the United States. I know that such counsel as they give would perpetuate the glorious principles on which our government is erected.

It is considered treasonable in United States laymen that we suffer ourselves to be dominated by the "priesthood." But be it known that every man in good standing, yea, a great majority of boys among the Mormons, hold the priesthood. And if held by such a host, wherein comes the domination? Especially the very apostles, the great file leaders, tell the people emphatically that they are under no obligation to follow them or any one unless they hold up a right course to pursue. With due respect I affirm my belief that of all organizations on earth, none accord more liberty of action to laymembers than does the Mormon Church. All things are done by common consent in church matters. Of course this produces a great State of union. But have any, especially Christians, objection to union? Our union is said to be treason! If so, then must our Lord have been treasonable for He prayed for the perfect unity of his disciples, as He and the Father were one. Then would God Himself be so denounced, for, His great exponent Paul says that one of the great intents of having certain officers in His Church was the unity of the Saints, etc.

Yes, dear sir, when all that can be will be revealed on the housetops it will be shown that if the Mormons have had any treason it is against themselves in making some of the vilest vipers on earth rich, who afterward turn round and still devour their children. Their treason will be shown to have consisted in making the desert to blossom as the rose, in being the means, in God's hands, of bringing many from poverty and oppression to affluent freedom; of building hundreds of towns, villages and hamlets, and filling them with humbly comfortable homes. And but for the advent of so-called Christian civilization they would present to the world the unparalleled spectacle of saloonless and highly moral towns.

If any think this is an over-drawn picture, I respectfully refer them to a purely Mormon settlement, where no brothel exists, nor saloon, nor gambling hell, and where one may live a year and not see a drunkard. These, and a thousand other features not mentioned, are all the treason we indulge in.

All we ask for is the *truth* and nothing but the *truth*. We court investigation of our sayings and doings. No people expect more sincerely to meet the great Judge of all, and to be judged according to their deeds than do the Mormon people; and surely, if they are not afraid to meet this court, they do not fear the most rigid examination, on the basis of truth and justice, by mankind.

Misrepresentation and malevolence are our greatest foes.

JOSEPH IRWIN.
Lake Town, Rich Co., Utah.
—*Pomeroy's Democrat.*