DESERET NEWS:

WEEKLY.

TRUTH AND LIBERTY.

PRINTED AND PUBLISHED BY THE

DESERET NEWS COMPANY.

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WEDNESDAY - MAY 20, 1885

THE JURISDICTION QUESTION.

THE recent decision of the Supreme Court of the United States, declaring that they have no jurisdiction in cases of unlawful cohabitation appealed from the Utah courts, was recognized everywhere as sweeping in its effects, and as a movement which left the people of this Territory in a very disadvantageous position.

The anti-"Mormon" class openly rejoiced at the failure of the appeal, because it left the "Mormons" at the mercy of courts which have no mercy in such cases. They made merry over the fact that no judicial power could review the extreme and unprecedented rulings of courts avowedly antagonistic to the faith and sentiments of the class of people thus deprived of redress. The very ground of these rejoicings is an argument against the decision of the higher court.

The "Mormons" and those who, while opposed to their creed, desire that no injustice may be done to its adherents, viewed the decision with great regret, and considered that the higher court shirked an important duty. They considered that advantage was taken unnecessarily of a thin technicality, to avoid the responsibility which rested upon that court. Sound lawyers generally concede that if a ruling had been given upon the merits of the case, the course of the lower courts must have been condemned, both on the question of segregation and of constructive cohabitation.

The arguments on these points we expect to present to our readers as soon as possible in full. They were made by Messrs. George Tickner Curtis and Franklin S. Richards, and will be found most thorough and conclusive. The only way to escape from their force was the avenue chosen by the court. And that this was not strictly a legitimate opening, but rather an evasion and a subterfuge, will appear very clearly when the following is correctly understood.

After the case had been submitted, His Honor the Chief Justice, addressed a communication to Mr. Curtis who has a national reputation as a constitutional lawyer, asking his views on this question of jurisdiction. That gentleman replied, in a pointed letter, from which we will make a few extracts. Mr. Curtis commences by stating that though not connected with the Cannon case before the court last year, he listened to the argument of Mr. F. S. Richards and was strongly impressed with his bearing and his ability, and that gentleman having prepared a brief on the question of jurisdiction which met it squarely and removed all doubt, he would forward a copy of it to the court.

He goes on to explain that the Attorney General had instructed the Solicitor General in the Cannon case, and Gen. Maury in the Snow case, not to raise the question of jurisdiction, because it was of the greatest importance that the court should give a decision which would settle the meaning of unlawful cohabitation. He says he regarded the precedent in the Cannon case as settling the question of jurisdiction, that one precedent in its favor being as good as twenty; and, he says:

"It will be a very great misfortune if these cases of Mr. Snow should be dismissed for want of jurisdiction, not only on his account, not only on account of the numerous persons in Utah who are situated very much in the same way, but because there are persons in other Territories whose lives are harassed by the uncertainty that hangs over them, and who are liable to have the law ruled differently in their Territories from the rulings in Utah, and this without the superintending control and ultimate authority of the Supreme Court of the United States. These considerations, although of great gravity, of course cannot govern the question of jurisdiction.

"Although it is not for any appellate court to amplify its jurisdiction, there is great propriety and even necessity for the exercise by the court over which you preside, of all the appellate jurisdiction which by a fair construction of the statutes appears to be vested in it. I say *necessity*, because there is a high public expediency in maintaining that appellate jurisdiction which the Constitution has made the means of securing uniform constructions throughout the Union, of all its own provisions and of all statutes passed in pursuance of its powers. True, we must find jurisdiction given by some law, or it cannot be exercised. But in a case of doubt, and where the doubt is not a very serious one, it would seem safest and best to solve that doubt in favor of the jurisdiction, because of the great public necessity for uniformity of interpretation of all Federal powers."

"There is all the greater reason for this where the question relates to appeals from Territories, in criminal cases tried in inferior courts, because in reference to Territories there is no appellate jurisdiction out of the Territory excepting that of the Supreme Court of the United States that can possibly be invoked; whereas in the States, in criminal cases, there is always a supreme appellate jurisdiction over the inferior tribunals open in any case to which the State Legislature may see fit to extend it. Doubts about jurisdiction in civil cases may well be solved by considerations different from those which apply to criminal cases.

"In criminal cases, it would seem that a doubt about jurisdiction ought to be solved with some leaning in favor of the jurisdiction, unless the legislation evinces a clear intent to exclude it. A man, for example, who is under sentence of death in a Territory of the United States ought to have any doubt about the appellate jurisdiction of the Supreme Court of the United States determined by reasons which cannot exist in a civil case, or in any case involving only a question of property."

"It seems to me that the precedent made by the Cannon case would not have been any stronger if the Government had moved to dismiss the case for want of jurisdiction, and the motion had been argued and overruled, and the case had been argued and decided upon its merits."

These extracts show the nature of Mr. Curtis' views. The argument made by Mr. Richards and endorsed by Mr. Curtis is very strong, and we believe unanswerable. We will quote as much of the brief as we can find space for, sufficient to give our readers the main points, which will recommend themselves to every thoughtful mind.

Mr. Richards cites section 702 Revised Statutes of the United States in reference to Washington Territory, providing that "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*" by the Supreme Court of the United States on writ of error or appeal. Also Section 709, providing the same in regard to the decisions of the highest courts of the States on similar questions, and adds:

In 1885 Congress passed the following act, which was approved by the President March 3d of that year:

"An act regulating appeals from the Supreme Court of the District of Columbia, and the Supreme Courts of the several Territories.

"Be it enacted by the Senate and the House of Representatives of the United States of America in Congress Assembled—

"That no appeal or writ of error shall hereafter be allowed from any judgment or decree in any suit at law 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.

"Section 2. That 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."

He shows that these provisions relate to any case, civil or criminal, in which "the validity of a treaty or statute of or an authority exercised under the United States," is drawn in question, and that Congress meant to extend to the Territories the same provisions in these regards as in reference to the States. And he cites authorities to prove that the Supreme Court of the United States had repeatedly ruled that section 709 extends to criminal cases.

He then proves that the construction of a statute of the United States, to wit, the Edmunds law, is directly drawn in question and that therefore the court had jurisdiction in the case and says:

"The authority of the United States is invoked to deprive the citizen of his liberty, in a court established by Congress, and acting solely by Federal power; and the vital question in the case is, whether the authority exercised under the 'Edmunds law' is a valid authority, and within the scope of the act. When upon the record the question is raised that the territorial court has misconstrued the law, and acted beyond the authority it confers, then this Court has jurisdiction under the provisions of the second section of the act of March 3d, 1885."

Among the authorities cited to prove the meaning of the act, he gives the following:

"In Tennessee vs. Davis (10 Otto, 284), Mr. Justice Clifford says: 'The writ of error to the State court will not lie at all, unless *the construction* of some clause of the Constitution, or some act of Congress or treaty, is drawn in question, and the decision was adverse to the party setting up such right or title. If those conditions concur, the writ will lie, irrespective of the amount in dispute, provided it appears that the right or title set up depends upon *the construction* of the Constitution, an act of Congress, or some constitutional treaty.' (Williams vs. Norris, 12 Wheat., 117.]

In Dupasseur vs. Rochereau, (21 Wall., 130,) the State Court had not given due effect to a judgment of a Court of the United States and it was held to involve *the validity of an authority exercised under the United States.*

Finally he submits that the question of jurisdiction was set at rest by the precedent in the Cannon case. That decision, as we now know has been withdrawn. But we believe no sound lawyer will dispute the fact that the arguments in Mr. Richard's brief go right to the root of the matter and demonstrate the jurisdiction of the Court.

In the light of the letter of Mr. Curtis and the brief of Mr. Richards, what can be clearer than that the Supreme Court of the United States has dodged the issue, in order to avoid a decision which would be against the extreme rulings of the Utah courts, and wouldgive some show of justice to the persecuted people of this Territory?

THE SITUATION IN IDAHO.

RELIABLE information received from Blackfoot, Idaho, is far from being reassuring. The news of the decision of the U. S. Supreme Court in the Snow cases has intensified the bitterness of feeling that animates the breasts of the anti-"Mormon" crusaders. They seem to be inspired with a vindictive determination to crush the objects of their animus out of existence or, as Judge Zane once put it to one of his victims according to the kind of mercy he has exhibited—grind them to powder. A hundred and forty-five new indictments—presumably all or nearly all against "Mormons"—have been ground out. Of course the segregation process is liberally employed, by which indictments or counts are multiplied against each victim.

One of the victims is Bishop Stewart, of Malad, who has two indictments to answer to. He is being pursued with exceptional relentlessness, as it is but a short time since he emerged from the Idaho penitentiary after having served a term under conviction for unlawful cohabition.

One feature of the anti-"Mormon" prosecutions, or rather persecutions, at Blackfoot, shows questionable wisdom on the part of some of those who are placed in jeopardy. There are in Idaho a number of lawyers who are well known enemies of the "Mormon" people, and are hand and glove with those who are bringing them into bondage. Occasionally those characters are being employed by the brethren to defend them, on the ground that, being non-"Mormons," or more correctly anti-"Mormons," they have influence with the courts. Aside from the fact that, on general principles, those men are not deserving of patronage that fills their pockets at the expense of the brethren, it encourages them to help the prosecution or multiplication of fresh cases to create business for themselves. In that way they are enabled to make one hand fill the other.

The feeling is general that the "Mormon" people, as a body, will be excluded from the privilege of voting at the ensuing election in Idaho, under the disgraceful test-oath act. And thus freedom shrieks under the operation of the demoniacal crusade, and the cries of an oppressed people ascend to heaven.

In the north as elsewhere, croppings of plots and counterplots are coming to the surface, showing that all who profess to be Saints are not worthy of the name. Those conditions show two effects that are the necessary result of the peculiar situation. Events of the present are potent developers of character. They polish and brighten those qualities that cause the nobility of manhood to shine in unusual brilliance and strength. They also evolve the hypocrite and the traitors. Thus all classes are having and will have in the future more than now, opportunities of acting the roles they elect as most congenial to their inclinations, be they high or low. The hypocrites have to be allowed opportunities as well as the righteous, and after they have acted their part in the most interesting of modern dramas, their acts will be proclaimed as from the house tops. The exposure of those deeds will cause fear to seize the hypocrite in Zion. Let the work go on and every man act out the part of his choice, be that what it may.

A MASTERLY ARGUMENT.

THE argument of the celebrated lawyer, George Tickner Curtis, before the Supreme Court of the United States in the Snow case, which was published in Tuesday's DESERET EVENING NEWS is a masterly presentation of the rights of conscience involved in the present attack upon the religious liberty of the "Mormons" under color of law. The religious aspect of the plural wife question is exhibited with fidelity, and it is separated from the purely legal part in such a skilful manner that no lawyer can fail to appreciate the distinction.

Of course the able jurist occupies a different position to that which the "Mormons" take in reference to the rulings of the Court on the anti-polygamy laws. But while accepting them as final, he shows in a clear and comprehensive manner that though penalties may be imposed for conduct that is prohibited by law, there is no law and can be no constitutional law to punish a man for his belief, the expression of that belief, or the establishment or continuation of relations growing out of it which are not in actual violation of constitutional law. Thus, a man who has several wives, who have been sealed to him by a religious ordinance for time and eternity, may call them his wives—in the religious sense—and they may maintain that relation, if he does not actually cohabit with more than one of them in a carnal way, and there is no law that can or should interfere with him.

The religious relationship of "Mormon" marriage is very clearly set forth, and the testimony in the Snow case touching on this matter is brought in deftly by way of illustration. The effect of the religious influence upon the minds of pure, virtuous and devout women, enabling them to embrace with freedom and fervor, something that repels others who do not understand it nor view it in the same light, is explained in a way that is calculated to remove much prejudice against the system. It effectually disposes of the fallacy that the "Mormon" women are under bondage in relation to this matter. And that common error is undoubtedly the cause of a very great amount of the violent prejudice entertained towards the "Mormons." It is supposed that the "down-trodden women of Utah" are under some species of coercion, and the desire to do something desperate to relieve them is at the foundation of many movements inimical to the people of Utah. This great mistake is exposed in the splendid address of Mr. Curtis.

The errors, inconsistencies and self-contradictions of the lower court in the Snow case are held up to full view, and the argument as to the wrong done to the defendant is conclusive and unanswerable. That his acts as testified to in the prosecutions against him were innocent, in fact and in law, were honorable, justifiable and beyond the reach of the enactments against polygamy and unlawful cohabitation, is demonstrated beyond successful dispute. Judges Powers and Boreman each come in for their share of censure, in the scathing remarks that expose the combined barbarity and ignorance which characterized their insulting utterances against the defendant.

It is proved that having more than one wife and introducing more than one woman as a wife, do not constitute unlawful cohabitation, and that it was a gross error in the lower court not to so instruct the jury as requested. And the necessity of taking into consideration the conditions and domestic relations existing when the Edmunds act broke in upon them, in order to arrive at a legitimate construction of the law, is argued comprehensively. This introduces a graphic relation of "Mormon" history, embracing the period between the exodus from Nauvoo and the first prosecutions under the Edmunds law.

The duty of the Court to define the meaning of the statute, so as to carry its provisions into effect without injustice, without infringing upon religious faith and institutions, and without requiring the people whom it affects to cast their families adrift upon the world, is urged in strong and convincing terms. And the wrong is acknowledge and deprecated of judging the "Mormon" question as it is judged almost universally without investigating it upon its merits and examining the other side.

The entire argument is strong, and the points made in it are telling and pungent. They go straight to the mark. It is rare that a non-"Mormon" grasps the situation with the force and fidelity exhibited in the speech of Mr. Curtis. The style is admirable, and the address abounds with polished sentences and indications of the literary talent as well as the legal erudition and ability of the eminent jurist who has struggled so manfully for the rights of an oppressed people.

That the Court failed to pass upon the questions so eloquently presented, proves nothing against their validity. On the contrary, after reading the argument every unbiased person must be strengthened in the conclusion that the Court, unable to resist the force of the plea, and unwilling to rule so as to relieve the unpopular "Mormons" from the unlawful pressure brought to bear upon them, escaped from the issue by the convenient opening afforded in the excuse of lack of jurisdiction.

However, this grand effort will not fail of accomplishing good. It will be read by leading men and women who are interested in the irresistible "Mormon" question, and will aid in disseminating correct information, which is one of the great objects we have in view. It ought to be published in pamphlet form, with the argument of Franklin S. Richards, which will be shortly printed in the DESERET NEWS, and should be widely distributed for the good of the public.

Prospects Good.—From W. S. Hansen, of Deweyville, Box Elder County, we learn that a larger acreage than usual has been sown in that settlement, and that the crop prospects are thus far good.

INDIVIDUAL FREEDOM IN THE "MORMON" CHURCH.

THE demand made of the "Mormon" Church to give up a part of its creed to please the majority of the American people, proceeds from egotism, intolerance and arrogance combined. It supposes that, "We, the majority, must be right because we are the biggest." It acts on the principle of might over right. And it assumes to dictate and compel where it cannot rightfully command or polemically convince. It also largely springs from ignorance. If people who talk so glibly on this demand understood the subject, they would see that it is impossible for the "Mormon" Church to do anything of the kind. And further, they would perceive that no person, power, body or authority under heaven has the right to make any such requirement. The Church is independent in its sphere, and has the right to hold any doctrine that seems right to the majority of its members, and to promulgate it as an article of faith.

But there is a great deal of misinformation in regard to the position of the Church in relation to the laws which the "Mormon" people are asked to promise to obey. It is represented that if the Church would only do so and so, if the Church would command this obedience, if the Church would remove alleged pressure upon the people, the whole thing would be so easy that falling off a log would be hard labor in comparison. When it is known that these same people who are to be relieved, instructed, commanded and so on, are themselves the Church, perhaps the folly of all this talk will dawn upon the minds of those who have been misled by it.

Every man or woman, every boy or girl, who has been baptized into the "Mormon" Church and remains in its fellowship, has an equal vote in its affairs as an organized ecclesiastical body. One of the principles of its constitution is that "all things shall be done by common consent." It takes the whole body to comprehend the Church. The head is but a part of it. The revelations of God are just as binding upon the head as upon the foot. And the leaders of the Church are no more responsible for the doctrines that form the accepted creed of the Church than the members are. They cannot change a principle. It is not for them to set aside a decree of the Almighty. The body of the people understand what the Lord has communicated concerning the principle of celestial marriage, and if a leader was to depart from it, his defection would be a matter of regret, but not of difference to their faith or practice.

It is not within the province of any man to direct the people to disobey a law of God. The idea that this could be done in the Church of Jesus Christ of Latter-day Saints is entirely erroneous. It may as well be dismissed from the consideration of the "Mormon" question by those who wish to discuss it or to arrive at correct conclusions.

The law of God and a statute made by man appear to be in conflict. What are the "Mormons" to do in relation to the matter, and what is the attitude of their Church? The answer is, every man stands upon his own agency, and the Church does not interfere with it. He can take his choice. He is left free to act upon his volition. He can learn what is right if he wishes to do so, and need be in no doubt about it. But his course is open and no obstruction is placed in his way or force exercised to restrain or compel him to proceed.

But it is claimed that men who have agreed to obey the law as construed by the courts are punished, ostracised, ruined in business, threatened in various ways, and those who would do so are terrorized into refusal to comply. Who claims it? Not the parties themselves. There is no man who has made the promise who utters such a complaint, there is no man who has refused who has alleged that he has been in any way compelled to do so. Who, then, brings these charges against the Church? No one that we know of, except a few vile scribes who uphold the very worst elements of society, apologize for bestial corruption as "the common vices of humanity," and advocate the gambling house, the drinking den and the brothel as antidotes to "Mormonism." They make the assertions, they repeat them without the slightest foundation for their falsehoods, and keep up the assault with little obstruction because decent people do not care to be always noticing their blackguardism.

They refer to a gentleman who has figured prominently in this condition, and every now and then impudently drag his name before the public in an attempt to illustrate their charge, while his position and exemption from harm are proofs of the falsehood of the accusation. The DESERET NEWS pointed out the error of the position he took, as it had the right to do. And this is cited as proof of ostracism, denouncement and ruination. It is repeatedly asserted that the article was written by President George Q. Cannon. We have never noticed the falsehood before. It is uttered with frequent repetition to make it appear that the leaders of the Church figure in these matters. Other articles that have appeared in these columns have been attributed by those reckless