DESERET EVENING NEWS.

TRUTH AND LIBERTY.

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NOTICE.

ALL PERSONS KNOWING THEMSELVES to be indebted to the Estate of William Hopwood, deceased, are requested to call at the residence of Elizabeth Hopwood, 17th Ward, Salt Lake City, and settle immediately.

ELIZABETH HOPWOOD, Administratrix. d137 10d

NOTICE.

Territory of Utah, County of Salt Lake, in the Probate Court of said County.

In the matter of the Estate of FERAMORZ LITTLE YOUNG, Deceased.

PURSUANT TO AN ORDER OF SAID Court in said matter, notice is hereby given that Monday, the 8th day of May, 1882, at the hour of 10 o'clock a.m., at the County Court House of Salt Lake County, Utah Territory, is the time and place set for the hearing of the petition of Lucy D. Young, for the administration of the estate and property of the said Feramorz Little Young.

All persons having any interest in said property, or who are heirs or claim to be heirs of said deceased, are hereby notified to be and appear at said Court House at the time and place aforementioned, to hear said petition and to present the same if so disposed.

H. BUCKHOLTZ,

Clerk Probate Court, Salt Lake Co., Utah.

NOTICE.

In the Probate Court of Cache County, Territory of Utah.

IN THE MATTER OF THE ESTATE OF JOHN CONRAD, DECEASED.

Order to show cause why Order of Sale of real estate should not be made.

MARGARET A. CONRAD, THE ADMINISTRATRIX of the estate of John Conrad, deceased, having filed her petition herein praying for an order of sale of all of the real estate described in said petition, for the purposes therein set forth.

It is therefore ordered by the said Court that all persons interested in the estate of said deceased, appear before the said Court on Monday, the 5th day of May, 1882, at 11 o'clock in the forenoon of said day, at the Court House of said Court, at the Court House, in the County of Cache, to show cause why an order should not be granted to the said administratrix to sell so much of the real estate of the said deceased as shall be necessary.

And that a copy of this order be published at least ten consecutive days in the Deseret News, a newspaper printed and published in Salt Lake County.

MILTON H. HAMMOND, Probate Judge.

Dated April 26th, 1882.

TERRITORY OF UTAH, County of Cache. } ss.

I certify the foregoing to be a true, full and correct copy of the original order, on file in my office.

Witness my hand and the seal of the Probate Court for said County, this 29th day of April, A.D. 1882.

[L.S.] JAS. T. HAMMOND, Clerk of said Court.

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UTAH CONTESTED ELECTION CASE.

(Continued.)

The following facts, which are pertinent to the inquiry now in hand, are found from the foregoing extract:

1. Polygamy is the basis a fanatical hierarchy which is antagonistic to our institutions and laws, and no one who is subject to it can be well disposed toward the Government of the United States.
2. It is a disgrace to our civilization and offensive to the moral sense of mankind.
3. It breeds open defiance of our laws, and renders a republican form of government impossible where it prevails.
4. It is hostile to civil society, and fatal to the welfare of the State.

IS MR. CANNON A POLYGAMIST?

We next inquire is Mr. Cannon a polygamist? That he is, in the fullest, broadest, and most complete sense, is proven by his own confession, over his own signature, in the following language:

In the matter of George Q. Cannon. Contest of Allen G. Campbell's right to a seat in the House of Representatives of the Forty-seventh Congress of the United States, as Delegate from the Territory of Utah:

I, George Q. Cannon, contestant, protesting that the matter in this paper contained is not relevant to the issue, do admit that I am a member of the Church of Jesus Christ of Latter-day Saints, commonly called Mormons; that in accordance with the tenets of said church I have taken plural wives, who now live with me, and have so lived with me for a number of years, and borne me children. I also admit that in my public addresses as a teacher of my religion in Utah Territory I have defended said tenet of said church as being in my belief a revelation from God.

GEORGE Q. CANNON.

This paper was given by Mr. Cannon to prevent the contestee from going into the proof fully and squarely, which he proposed to do by calling witnesses who would have been compelled to disclose the facts. The paper was intended to be an unqualified surrender and agreement as to the fact of his being a polygamist in the broadest sense, and must be so considered. It therefore distinguishes this contest from all those that have preceded it, in which this question of polygamy was raised. In the last contest which Mr. Cannon had with Mr. Maxwell, in the Forty-third Congress, (1874,) he denied most emphatically that he was "living with four wives or living or cohabiting with any wives in defiant or willful violation of the law of Congress of 1862." He denied that he was then "living, or had ever lived, in violation of the laws of God, man, his country, decency, or civilization, or of any law of the United States." These broad denials on the very issue which was the chief one involved in that contest, doubtless had a great deal to do with the finding in Mr. Cannon's favor.

But in this contest we have not only no denial, but an open confession. We have a man knocking for admission at our doors who is a confessed preacher and practicer and apostle any defender of polygamy in its most odious form; who, in obedience to the doctrines of that church, which he claims teach that it is right and righteous to marry more than one wife, has taken plural wives and lived and cohabited with them, and they have borne him children, and who has taught and teaches this doctrine as a revelation from God. The plain and unambiguous question now is whether such a man, under the law of the land and the customs and prerogatives of this House, is qualified to hold a seat as a Delegate from the Territory of Utah?

The Parliament of England, one of the greatest legislative bodies on the earth, has just expelled by an overwhelming vote a person who sought to hold a seat among its members because in the light of this Christian century he profanely avowed his disbelief in the existence of a God. This could not have been done in this government, under whose Constitution "no religious test shall ever be required as a qualification for any office under the United States." But polygamy has been held by the Supreme Court of the nation not to be religion, but a crime.

Chief Justice Waite, in delivering the unanimous opinion of the court in Reynolds *vs.* United States, after fully defining what is the religious freedom which has been guaranteed under the Constitution, says:

Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, almost exclusively a feature of the life of Asiatic and African people. At common law the second marriage was always void, (2 Kent's Com., 79,) and from the earliest history of England polygamy has been treated as an offense against society. After the establishment of the ecclesiastical courts and until the time of James I, it was punished through the instrumentality of those tribunals, not merely because ecclesiastical rights had been violated, but because upon the separation of the ecclesiastical courts from the civil, the ecclesiastical were supposed to be the most appropriate for the trial of matrimonial cases and offenses against the rights of marriage, just as they were for testamentary causes and the settlement of the estates of deceased persons. By the statute of 1 James I, chapter 11, the offense, if committed in England or Wales, was made punishable in the civil courts, and the penalty was death. As this statute was limited in its operation to England and Wales, it was at a very early period re-enacted, generally, with some modifications, in all the colonies. In connection with the case we are now considering, it is a significant fact that, on the 8th of December, 1789, after the passage of the act establishing religious freedom, and after the convention of Virginia had recommended, as an amendment to the Constitution of the United States, the declaration in a bill of rights that "all men have an equal, natural, and inalienable right to the free exercise of religion, according to the dictates of conscience," the Legislature of that State substantially enacted the statute of James I, death penalty included, because, as stated in the preamble, "it had been doubted whether bigamy or polygamy be punishable by the laws of this Commonwealth." (12 Henning's Statute, 691.)

From that day to this, we think it may be safely said, there never has been a time in any state of the Union when polygamy has not been an offense against society, cognizable by the civil courts, and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guarantee of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. Marriage, while from its very nature a sacred obligation, is nevertheless, in most civilized nations, a civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and obligations and duties with which government is necessarily compelled to deal. In fact, according as monogamous or polygamous marriages are allowed, the principles on which the government of the people, to a greater or less extent, rests. Professor Lieber says polygamy leads to the patriarchal principle, and which, when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy. Chancellor Kent observes that this remark is equally striking and profound. (2 Kent's, Com., 81, note c.)

Under the facts and the law thus clearly laid down, will it be just for this the highest legislative tribunal of this great Christian Republic to admit to its membership one who openly and unblushingly charges God with inspiring and revealing and commanding to be preached and taught among men a doctrine not only of filth and lust, but of hostility to our Government and defiance to our laws; a doctrine which profanes and defiles the pure and holy law which binds the families and forms thereby the great foundation of social virtue on which a free nation must rest; a doctrine which insults the sacred titles of mother, and wife, and sister and daughter; a doctrine which ignores the mighty progress of mankind and defies the civilization and literature and philosophy which Christianity has brought to light among men.

WHAT QUALIFICATIONS MUST A DELEGATE HAVE?

But notwithstanding that polygamy is an institution of the character we have stated, and that Mr. Cannon is its representative, it is contended that under the Constitution and law we have no right to refuse him a seat as Delegate from Utah. This leads us to enquire into the powers of Congress over the Territories, and how far this House has the right to prescribe qualifications for the admission of Delegates therefrom.

The only portion of the Constitution of the United States which refers to the Territories is article IV, section 3, clause 2, which provides:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.

This clause of the fundamental law has received the most learned and elaborate consideration by the Supreme Court, in Scott *vs.* Sandford, (19 Howard 393, &c.,) wherein, after going fully into the whole history of the Territories from the time of the first cession to the Government it has held that this clause—

Applies only to territory within the chartered limits of some one of the States when they were colonies of Great Britain, and which was surrendered by the British Government to the old confederation of the States in the treaty of peace. It does not apply to territory acquired by the present Federal Government by treaty or conquest from a foreign nation.

To all other territory it is held that the Constitution does not extend, and cannot be extended by Congress, except in so far as Congress may enact the provisions of the Constitution into a part of the organic law of such Territory. This has been done in regard to Utah: first, by the act of Congress which organized that Territory, and which provides that "the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable;" and second, by the Revised Statutes, section 1891, which provides, in somewhat different language, but of the same purport, that "the Constitution and all laws of the United States which are not locally inapplicable shall," etc.

The Constitution and all the laws of the United States are, therefore, a part of the statute law of the Territory of Utah, so far as they are applicable locally to that Territory.

Now, what was the design of the framers of the constitution in reference to the Territory which they provided for in the clause which we have quoted above? The history of the subject clearly shows that they intended to commit the unorganized Territories wholly to the discretion and unlimited power of Congress. This is so decided by the courts in all the cases in which the subject is considered; this was so held in Scott vs. Sanford, (*supra*,) and Judge Nelson, in Benner vs. Porter, 9 Howard, 235, says:

They are not organized under the Constitution nor subject to its complex distribution of the powers of government or the organic law, but are the creatures exclusively of the Legislative department, and subject to its supervision and control.

It is held by Judge Story that:

The power of Congress over the public Territories is clearly exclusive and universal, and their legislation is subject to no control, but is absolute and unlimited, unless so far as it is affected by stipulations in the cessions, or by the ordinance of 1787, under which any part of it has been settled. (Story, Constitution, section 1328, Rowle, Constitution, page 237; 1 Kent's Commentaries, page 243.)

The Supreme Court of the United States, in a very recent case, says:

The power is subject to no limitations. (Gibson vs Chouteau, 13 Wall., 99.

See also Stacey vs. Abbott, (1 Am. Law, T. R. 84), where it is held by the supreme court of one of the Territories that they "are not organized under the Constitution; they are exclusively the creatures of Congress."

But there is something more shown by the history of the clause in the Constitution in reference to Territories and the decisions of the courts thereon. It is clear from both these that it was never intended that the status of the Territories should in any respect approach so near the character and position of sovereign States as to require that whatever agents these Territories might be entitled to on the floor of Congress should have the status and qualifications of members of Congress. The Territories, in the minds of the framers of the Constitution, had none of the rights and attributes of the States.

From the commencement of the Revolutionary war serious difficulties existed between the States in relation to the disposition of large and unsettled territories which were included in the chartered limits of some of the other States. Some of these States, and particularly Maryland, which had no unsettled lands, insisted that as these lands were wrested from Great Britain by the common endeavor and by the common expense and in a common cause that the money arising therefrom ought to be applied in proper proportions between the States to pay the expenses of the common war, and not be used by the States within whose chartered limits they happened to be. These contentions were the source of great uneasiness to those who particularly desired the continuance and prosperity of the Union. The Confederate Congress, September 6, 1780, passed a resolution strongly urging the State to cede these lands to the Government for the purpose of maintaining peace and to secure the public credit in carrying on the war. On October 6, 1780, Congress passed another resolution, pledging itself that if these lands were ceded as requested by the September resolution, that they should be disposed of for the common benefit, and be settled and be formed into distinct republican states, which should become members of the Federal Union and have the same rights of sovereignty and independence and freedom as other States. These controversies in reference to the territories continued down to 1784, when Virginia ceded the vast territory lying northwest of the Ohio River. The only object of the State in making this cession was to put an end to the threatening and dangerous controversy and to enable Congress to dispose of the lands and appropriate the proceeds as a common fund for the benefit of the States. This was the state of affairs when the Constitution of the United States was formed. It was necessary that the lands thus ceded should be sold to pay the common debt of the war, and that regulations should be made for their management and control until sold or otherwise disposed of. Besides these ceded territories there were arms and munitions of war and various property which came to the United States from the several States. It was necessary then to provide for these in the new government about to be formed under the Federal Constitution, and the clause was inserted which gives Congress the power "to dispose of and make all needful rules and regulations respecting the territories or other property belonging to the United States."

This provision had a plain, palpable, unmistakable purpose, which was to provide for the sale and control of the Territories ceded to the United States by the States for the purpose of the cession.

The Chief Justice, in Scott vs. Sandford, says in reference to this clause:

It begins its enumeration of powers by that of disposing, in other words making sale, of the lands or raising money from them, which, as we have already said, was the main object of the cession, and which, accordingly, is the first thing provided for in the article. It then gives the power which was necessarily associated with the disposition and sale of the lands—that is, the power of making needful rules and regulations respecting the Territory. And whatever construction may now be given to these words, every one, we think, must admit that they are not the words usually employed by statesmen in giving supreme power of legislation.

It must not be forgotten, too, that Territorial representatives had been sent from these Territories while they yet belonged to the States; that a Territorial form of government had been expressly provided by the confederation under the ordinance of 1787, and that this act without any change or modification had been re-enacted in 1790 under the Federal Constitution by Congress. Territorial Delegates were therefore not unknown when the Constitution was framed. Why were they not mentioned? Why no qualification fixed if they they were to have any but such as Congress might see fit to provide? No other parts of the Constitution were made to apply to the Territories except the clause we have quoted. On the contrary, they were spoken of as property, and power was given to Congress to dispose of them as property, and to make all needful rules and regulations respecting them as other property of the United States. They were put in the same category with the other chattels of the Government. There is, therefore, nothing in the Constitution which will justify us in believing in the light of its history the qualifications of agents who might be appointed to look after the interests of the Territories on the floor of Congress should be the same or even like those of members of Congress. This is so, we maintain, with regard even to that Territory over which the Constitution extends directly and immediately, because it was within the control of the Government at the time the Constitution was framed. If, therefore, the Constitution did not contemplate the requirement of such qualifications for Delegates as agents of the Territory within its immediate purview, with much less plausibility can it be contended that it should require them where it is only extended as a part of the statute law.

It is also important to observe the wide distinction which Congress has always made between the powers and status of a member of Congress and a Delegate from a Territory.

A member of Congress is sent by a State, by virtue of its irrefragible right to representation under the Constitution of the United States. This right Congress cannot abrogate or control or limit or modify in any way.

A Delegate is an agent of a Territory, sent under the authority or permission of an act of Congress. This right or permission is subject to the merest whim and caprice of Congress. It can be utterly wiped out or modified or changed just as Congress may see proper at any time.

A member of Congress must have certain qualifications under the Constitution.

A Delegate need have none but what Congress sees fit to provide.

A member of Congress is the representative and custodian of the political power and interests of a sovereign State, which is itself a factor and part of the Government.

A delegate has no political power, but is only a business agent of the Territory for the purest business purposes. Chief Justice Marshal, in discussing the power of Congress to govern the Territories, in Insurance Company vs. Canter, 1 Peter 511, says, in reference to the people of Florida: "They do not, however, participate in political power; they do not share in the Government until Florida became a State; in the mean time Florida continues to be a Territory of the United States, governed by virtue of the clause in the Constitution." He has no right to vote or aid in shaping the policy of the Government in war or peace.

A member of Congress is an officer named in the Constitution of the United States, and contemplated and provided by the framers thereof at the time of the organization of the government. He is a constitutional officer.

A Delegate is not a constitutional officer in the remotest sense. There were no Delegates mentioned or thought of by the framers of the Constitution.

A member of Congress is chosen under section 2, article 1 of the Constitution, which provides that—

The House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. No person shall be a representative who shall not have attained the age of twenty-five years and been seven years a citizen of the United States, and who shall not when elected, be an inhabitant of the State in which he shall be chosen.

This specifically and definitely and indubitably fixes how and where and by whom members of Congress shall be chosen and what qualifications they must imperatively have. "No person shall be a Representative," etc., without these qualifications.

A Delegate is chosen under section 1862 of the Revised Statutes which provides that—

Every Territory shall have the right to send a Delegate to the House of Representatives of the United States, to serve during each Congress that may be elected by the voters of the Territory qualified to vote for members of the Legislative Assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such Delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

This fully and very clearly provides how Delegates shall be chosen and what power they shall have, but does not enact or provide any qualifications or hint at any. This is the same provision substantially which has been made for Delegates from 1787 down to this time. The provision in the act of July 13, 1787, for the government of the Northwest Territory, is that the joint assembly of that Territory "shall have authority, by joint ballot, to elect a Delegate to Congress who shall have a seat in Congress with the right of debating, but not of voting."

These few marked points of distinction between the two offices not only show that the constitutional qualifications for members do not apply to Delegates, but that none of the legislation which has ever been enacted on the subject seems to have been founded on the belief that they did.

Mr. Atherton and Mr. Jones, with three other members of the Committee on Elections, urgently recommended the admission of a Delegate from the Territory of Alaska. In their report making this recommendation, they say:

Its people ask protection and consideration, and to this end have elected and sent here a Delegate to represent them in this Congress and bring before Congress the wants of this Territory. He bears with him the credentials of election and a certificate that he was so elected, not bearing, it is true, the seal of a State nor the signature of a governor. The people have neither, nor does the law require that he should present such a certificate. He is not a Representative but a Delegate, declared by the inhabitants, who have been guaranteed the rights of all other citizens, and to his qualification to be so admitted this House is the sole and only judge. Congress has done so before, and in support of this, ever unwilling to deprive any people of their civil and political rights, and where those rights exist, although for a time suspended, there must be a remedy, and that remedy with Congress. At the second session of the Third Congress, 1794, James White presented his credentials claiming to be a Delegate from the territory south of the Ohio River, then not organized.

[To be continued.]

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