

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

Appeals from the Supreme Court of the Territory of Utah.

Jesse J. Murphy, Appellant,
No. 1027.

Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettigrew, E. D. Hoge and Arthur Pratt.

Mary Ann M. Pratt, Appellant,
No. 1028.

Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettigrew, E. D. Hoge and John S. Lindsay.

Mildred E. Randall and Alfred Randall, Appellants.

No. 1029.

Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettigrew, E. D. Hoge and Harmel Pratt.

Ellen C. Clawson and Hiram B. Clawson, Appellants.

No. 1030.

Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettigrew, E. D. Hoge and James T. Little.

James M. Barlow, Appellant,
No. 1031.

Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton, J. R. Pettigrew, E. D. Hoge and Harmel Pratt.

1. The Board of Commissioners appointed for the Territory of Utah in pursuance of sec. 9 of the act of Congress approved March 22d, 1882, entitled "An act to amend sec. 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes," (22 Stats. 30.) have no power over the registration of voters or the conduct of elections. Their authority is limited to the appointment of registration and election officers, to the canvass of the returns made by such officers of election, and to the issue of certificates of election to the persons appearing by such canvass to be elected.

2. The registration and election officers thus appointed are required, until other provisions be made by the Legislative Assembly of the Territory, to perform their duties under the existing laws of the United States, including the act of March 22d, 1882, and of the Territory, so far as not inconsistent therewith.

3. As the Board of Commissioners had no lawful power to prescribe conditions of registration or of voting, any rules of that character promulgated by them to govern the registration and election officers were null and void; and as such rules could not be pleaded by the registration officers as lawful commands in justification of refusals to register persons claiming the right to be registered as voters, their illegality is no ground of liability against the Board of Commissioners.

4. The registration officers were bound to register only such persons as, being qualified under the laws previously in force, and offering to take the oath as to such qualifications prescribed by the territorial act of 1878, were also not disqualified by the eighth section of the act of Congress of March 22d, 1882.

5. That section provides, as to males, that no polygamist, bigamist, or any person cohabiting with more than one woman; and, as to females, that no woman cohabiting with any polygamist, bigamist, or man cohabiting with more than one woman, shall be entitled to vote, and consequently, no such person is entitled to be registered as a voter; and the registration officer must either require such disqualifications to be negated by a modification of the oath, the form of which is given in the territorial act, or otherwise to satisfy himself by due inquiry that such disqualifications do not exist; but which course he is bound to adopt it is not necessary in these cases to decide.

6. The plaintiffs in these actions seeking to recover damages for being unlawfully deprived of their right to be registered as voters, must allege in their declarations, as matter of fact, that they were legally qualified voters, or, that allegation being omitted, must allege all the facts necessary to show, as matter of law, that they were qualified voters; and to this end it is necessary that they should negative all the disqualifications pronounced by the law.

7. A bigamist or polygamist, in the sense of the eighth section of the act of March 22, 1882, is a man who, having contracted a bigamous or polygamous marriage, and become the husband, at one time, of two or more wives, maintains that relation and status at the time when he offers to be registered as a voter; and this without reference to the question whether he was at any time guilty of the offense of bigamy or polygamy, or whether any prosecution for such offense was barred by the lapse of time; neither is it necessary that he should be guilty of polygamy under the first section of the act of March 22d, 1882. The eighth section of the act is not intended, and does not operate as an additional penalty prescribed for the punishment of the offense of polygamy, but merely defines it as a disqualification of a voter. It is not, therefore, objectionable as an *ex post facto* law, and has no retrospective operation. The disfranchisement operates upon the existing state and condition of the person and not upon a past offense.

8. It was accordingly held—
1. That as to the five defendants below, composing the Board of Commissioners under the ninth section of the act of March 22d, 1882, the demurrers were rightly sustained, and the judgments affirmed.

2. That, in the cases in which Jesse J. Murphy and James M. Barlow respectively were plaintiffs, they do not allege that they were not polygamists or bigamists at the time they offered to register, although they deny that they were at that time liable to a criminal prosecution for polygamy or bigamy, and deny that they were cohabiting with more than one woman, and not showing themselves to be legally qualified voters, the judgments on the demurrers as to all the defendants is affirmed.

3. That in the case in which Ellen C. Clawson, with her husband, is plaintiff, as the declaration does not deny the disqualification of one who is at the time cohabiting with a polygamist or bigamist, the judgment as to all the defendants is affirmed.

4. That in the cases in which Mary Ann M. Pratt and Mildred E. Randall, with her husband, are the respective plaintiffs, as all the disqualifications are denied, and it is alleged that the defendants, the registration officers, wilfully and maliciously refused to register them as voters, the judgments as to Hoge and Lindsay in one, and as to Hoge and Harmel Pratt in the other

are reversed, and the causes remanded for further proceedings.

In these actions, five in number, Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton and J. R. Pettigrew, defendants in all, were persons who composed the board appointed under section 9 of the act of Congress, approved March 22, 1882, entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," 22 Stats. 30. E. D. Hoge, also a defendant in all the cases, was appointed registration officer for the county of Salt Lake, in the Territory of Utah, by that board, in pursuance of that section of the act. The other defendants, one of whom is joined in each action, to wit, Arthur Pratt, John S. Lindsay, Harmel Pratt and James T. Little, were respectively deputy registration officers in designated election precincts in which the plaintiffs in the actions severally claimed the right to be registered as voters. The object of the actions was to recover damages, alleged to have arisen by reason of the defendants wrongfully and maliciously refusing to permit the plaintiffs respectively to be registered as qualified voters in the Territory of Utah, whereby they were deprived of the right to vote at an election held in that Territory on November 7th, 1882, for the election of a Delegate to the Forty-eighth Congress.

In the case in which Jesse J. Murphy is plaintiff below and appellant here, the complaint is as follows:

"The plaintiff above named complains of the defendants, and on information and belief alleges, that after the 22d day of March, 1882, and prior to the first day of July, 1882, under the provisions of section 9 of an act of the Congress of the United States, approved March 22d, 1882, and entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' the President of the United States by and with the consent of the Senate of the United States, duly appointed the defendants, Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton and J. R. Pettigrew, to perform the duties mentioned in said section, to be performed by a board of five persons, and by virtue of said appointment, they became a board of five persons with the powers named in said section.

"And, on information and belief, the plaintiff alleges that, after such appointment, and prior to the first day of August, 1882, the last named five defendants, duly qualified as such appointees, came to Utah and organized as a board, and entered upon the exercise of the powers and the discharge of the duties granted and imposed by said section 9 of said act of Congress. That after said organization, said five defendants were commonly called 'commissioners,' and are hereinafter referred to and called the 'Board of Commissioners.'

"That said Board of Commissioners afterward ordered, directed and supervised a registration of the voters of the Territory of Utah, for the general election in said Territory, to be held on the seventh day of November, 1882, for the election of a Delegate for said Territory to the Forty-eighth Congress, and for such other elections as might be held prior to another registration of voters of said Territory; and on or about the 10th day of August, 1882, the said Board of Commissioners made and published rules providing for said registration, for the appointment of registration officers and judges of election, and the canvass and return of the votes; directed said registration to be made during the week commencing on the second Monday of September, 1882, and, among other rules, wilfully and maliciously made and published the following:

Rule I.

"There shall be appointed one registration officer for each county, and one deputy registration officer for each precinct thereof.

Rule II.

"Such registration officer shall, on the second Monday of September next, proceed by himself and his deputies in the manner following: The registration officer of each county shall procure from the clerk of the county court the last preceding registry list on file in his office, and shall, by himself or his deputies, require of each person whose name is on said list, or who applies to have his name placed on said list, to take and subscribe the following oath or affirmation:

"TERRITORY OF UTAH,
County of Salt Lake. ss:

"I, _____, being first duly sworn (or affirmed), depose and say: That I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of _____ one month immediately preceding the date hereof, and (if a male) am a native born or naturalized (as the case may be) citizen of the United States, and a tax-payer in this Territory, (or if a female), I am native born, or naturalized, or the wife, widow or daughter (as the case may be) of a native born or naturalized citizen of the United States, and I do further solemnly swear (or affirm) that I am not a bigamist nor a polygamist; that I am not a violator of the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any woman which has been entered into or continued in violation of the said laws of the United States prohibiting bigamy or polygamy, (and if a woman) that I am not the wife of a polygamist, nor have I entered into any relation with any man in violation of the laws of the United States concerning polygamy or bigamy.

"Subscribed and sworn to before me, this _____ day of _____ 1881.

Registration Officer, — Precinct.

"And said registration officer, or his deputies, shall add to said lists the names of all qualified voters in such precinct whose names are not on the list, upon their taking and subscribing to the aforesaid oath, and the said registration officer shall strike from said lists the names of said persons who fail or refuse to take said oath, or have died or removed from the precinct, or are disqualified as voters under the act of Congress approved March 22, A. D. 1882, entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes.' Provided, That the action of any registration officer may be revised and reversed by this commission, upon a proper showing: And provided, further, That if the registration officer be unable to procure the registration list from the office of the clerk of the county, or if the same have been lost or destroyed, the said officer and his deputies shall make a new registry list in full of all legal voters of each precinct of the county, under the provisions of these rules."

"That said Board of Commissioners also, by rules, provided for the appointment of and appointed three judges of election for each election precinct in said Territory.

"And on information and belief, the plaintiff alleges that the defendant, E. D. Hoge, was appointed registration officer for the county of Salt Lake, in said Territory of Utah, and the defendant, Arthur Pratt, was appointed deputy registration officer for the fourth election precinct of the city of Salt Lake, in said county, and that each accepted the appointment, duly qualified, and respectively acted throughout the said registration as such registration and deputy registration officer.

"And the plaintiff alleges, that on the second Monday of September, 1882, the defendant, Arthur Pratt, as deputy registration officer for said fourth precinct in the city and county of Salt Lake, aforesaid, acting under the direction of the other defendants, commenced registering the voters of said precinct and making a registration list of such voters, and continued daily therein until the evening of Saturday of the same week, when the registration was closed.

"And the plaintiff alleges that he is a native citizen of the United States of America, and prior to the 22d day of March, 1882, was more than twenty-one years of age; that he has resided continuously in the Territory of Utah for more than eleven years, and resided continuously in the fourth precinct of Salt Lake City, in said Territory, for more than two years past; that he has, for more than ten years prior to the November election in 1882, lawfully exercised the rights and enjoyed the privileges of the elective franchise in said Territory, and has, for more than ten years last past, owned taxable property and been a tax-payer in said Territory, and that his name was on the last registration list of the voters of the second precinct, Ogden City, Weber County, Utah, made prior to the second Monday of September, 1882.

"And the plaintiff alleges that he has not, since more than three years prior to March 22d, 1882, married or entered into any marriage contract or relation with any woman, or in anywise violated the act of Congress approved July 1st, 1862, defining and providing for the punishment of bigamy in the Territories, and has resided continuously and openly in the counties of Weber and Salt Lake, Utah, for ten years last past, and has not violated any of the provisions of the act of Congress approved March 22d, 1882, entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes;' and that he has not, on or since the 22d day of March, 1882, cohabited with more than one woman, and has never been charged with or accused or convicted of bigamy or polygamy, or cohabiting with more than one woman, in any court or before any officer or tribunal.

"And the plaintiff alleges that on the 13th day of September, 1882, he personally went before the defendant, Arthur Pratt, then acting as deputy registration officer in and for the fourth precinct in Salt Lake City, aforesaid, and signed and presented to said defendant, and offered to verify, and requested the said defendant to take and certify plaintiff's oath to the following affidavit, to wit:

"TERRITORY OF UTAH,
County of Salt Lake. ss:

"I, Jesse J. Murphy, being first duly sworn, depose and say: I am over twenty-one years of age, and have continuously resided in the Territory of Utah for more than six months, to wit, for more than eleven years last past; I have resided in the fourth precinct of Salt Lake City more than six months next preceding the date hereof, and now reside therein; I am a male native born citizen of the United States of America, and a property owner and tax payer in said Territory of Utah. I have, under the laws of the Territory of Utah, exercised the elective franchise in said Territory for more than ten years last past. I have not, within three years prior to the 22d day of March, 1882, or since, having a wife living, married another, or another woman; and I have continuously and openly resided in the counties of Weber and Salt Lake, in the Territory of Utah, for more than three years prior to the 22d day of March, 1882, and I have not, on or since the 22d day of March, 1882, having a wife living, married another, or simultaneously, or on the same day, married more than one woman, or on or since said last named date married, or entered into any marriage contract or relation with any woman, or cohabited with more than one woman, or in anywise violated the act of Congress entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' approved March 22d, 1882. My name is on the last registry list of

voters of the second precinct, Ogden City, Weber County, Utah.

JESSE J. MURPHY.

Subscribed and sworn to before me this 13th day of September, A. D., 1882.

"And at the same time the plaintiff requested the said defendant, Arthur Pratt, to put plaintiff's name on the registry-list of voters of said precinct, and to register him as a voter therein. That the said defendant, Arthur Pratt, acting under the directions of the other defendants, wilfully and maliciously refused to receive said affidavit or to swear plaintiff thereto, or to register him as a voter of said precinct, but on the contrary wilfully and maliciously struck plaintiff's name off the list of registered voters of said precinct, and left his name off the list of voters of said precinct, made at said registration.

"That afterwards, before the close of said registration, and on the 14th day of September, 1882, the plaintiff presented a duplicate of said last-named affidavit to the defendant, E. D. Hoge, then acting as county registration officer for said county of Salt Lake, and informed him of the ruling and action as aforesaid of the defendant, Arthur Pratt, and requested the defendant, E. D. Hoge, to correct and reverse said ruling, and to instruct the defendant, Arthur Pratt, to swear plaintiff to said affidavit and register him as a voter, and the said defendant, E. D. Hoge, wilfully and maliciously refused to correct or change said ruling and action, and approved and affirmed the same.

"That on the 16th day of September, 1882, the plaintiff presented to said Board of Commissioners a duplicate of said last-named affidavit, and informed them of the action and ruling of the defendants, Arthur Pratt and E. D. Hoge, and requested said board to reverse and correct said rulings and action, and to direct that plaintiff's oath to said affidavit be taken, and that he be registered as a voter of said precinct, and the said Board of Commissioners wilfully and maliciously refused to correct or change said rulings, and affirmed and approved the same, and said last-named ruling was made before the close of the registration in said precinct, and when there was still time for plaintiff to have registered before the close of the registration.

"And, on information and belief, the plaintiff alleges that the defendants all knew that, unless the plaintiff's name appeared on the registration list then being made of the voters of said precinct, his vote would not be received at the election to be held November 7, 1882, or at any election until after another registration of voters.

"That at an election held throughout the Territory of Utah, on the 7th of November, 1882, for the election of a Delegate for the Territory of Utah for the Forty-eighth Congress, the plaintiff went before the judges of election in said fourth precinct of the city of Salt Lake, in the county of Salt Lake, at the place where the votes in said precinct were being taken, and offered to vote at said election, and tendered and offered to take the same affidavit, but the said judges refused to receive his vote, on the ground that he was not registered as a voter in said precinct.

"And, on information and belief, the plaintiff alleges that the defendants, and each of them, intending to wrongfully deprive the plaintiff of the elective franchise in said Territory, wilfully and maliciously, by the acts and in the manner aforesaid, refused the plaintiff registration as a voter, at the said registration commenced on the second Monday of September, 1882, and deprived the plaintiff of the right to vote at the election held in said Territory on the 7th day of November, 1882, and at all elections under said registration, whereby plaintiff has sustained damage to the amount of twelve hundred dollars.

"Wherefore the plaintiff prays judgment against the defendants for the sum of twelve hundred dollars and costs of suit."

In the case in which Mary Ann M. Pratt is plaintiff and appellant the complaint is similar in all respects, except the allegations as to her qualifications as a voter, and the contents of the affidavit which she offered to the deputy registration officer. The averments as to her qualifications are as follows:

"And the plaintiff alleges that she is a native citizen of the United States of America, and prior to the 22d day of March, 1882, was more than twenty-one years of age; that she has resided continuously in the Territory of Utah for more than thirty years, and resided continuously in the third precinct of Salt Lake City, in said Territory, for more than two years last past; that she has, for more than five years prior to the November election of 1882, lawfully exercised the rights and enjoyed the privileges of the elective franchise in said Territory, and has, for more than five years last past, owned taxable property and been a tax-payer in said Territory, and that her name was on the last registration list of the voters of the third precinct, made prior to the second Monday of September, 1882.

"And the plaintiff alleges that she is not, and never has been, a bigamist or a polygamist; that she is the widow of Orson Pratt, Sen., who died prior to the 22d day of March, 1882, after a continuous residence in said Territory of more than thirty years, and that since the death of her said husband she has not cohabited with any man."

The affidavit proposed by her contained the same allegations.

Alfred Randall and Mildred E. Randall, plaintiffs in another action, sue as husband and wife, in the right of the

wife, for injury to her by reason of being deprived of her right to vote. The averments in the complaint as to her qualifications are as follows:

"And the plaintiffs allege that the plaintiff, Mildred E. Randall, is a native citizen of the United States of America, and prior to the 22d day of March, 1882, was more than twenty-one years of age; that she has resided continuously in the Territory of Utah for more than twenty years, and resided continuously in the second precinct of Salt Lake City, in said Territory, for more than two years last past; that she has, for more than ten years prior to the November election in 1882, lawfully exercised the rights and enjoyed the privileges of the elective franchise in said Territory, and has, for more than five years last past, owned taxable property and been a taxpayer in said Territory, and that her name was on the last registration list of the voters of the second precinct, made prior to the second Monday of September, 1882.

"And the plaintiffs allege that the plaintiff, Mildred E. Randall, for more than three years last past has been and is the wife of the plaintiff, Alfred Randall, who is, and prior to March 22d, 1882, was a native-born citizen of the United States of America; that she has not on or since 22d of March, 1882, cohabited with any bigamist, polygamist, or with any man cohabiting with more than one woman; that she is not a bigamist or polygamist, and never has been a bigamist or polygamist, and has not in any way violated the act of Congress entitled 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes,' approved March 22d, 1882."

The affidavit presented by her to the deputy registration officer and rejected by him contained the same allegations. In all other respects the complaint is similar to all the others.

Hiram B. Clawson and Ellen C. Clawson also sue as husband and wife, in the wife's right, and the averments in the complaint as to her qualifications are as follows:

"And the plaintiffs allege that the plaintiff, Ellen C. Clawson, is a native citizen of the United States of America, and prior to the 22d day of March, 1882, was more than twenty-one years of age; that she has resided continuously in the Territory of Utah for more than thirty-three years, and resided continuously in the fifth precinct of Salt Lake City, in said Territory, for more than two years last past; that she has, for more than ten years prior to the November election in 1882, lawfully exercised the rights and enjoyed the privileges of the elective franchise in said Territory, and has, for more than five years last past, owned taxable property and been a tax-payer in said Territory, and that her name was on the last registration list of the voters of said fifth precinct, made prior to the second Monday of September, 1882.

"And the plaintiffs allege that the plaintiff, Ellen C. Clawson, is not and never has been a bigamist or polygamist, and is not cohabiting and never has cohabited with any man except her husband, the co-plaintiff herein, to whom she was lawfully married more than fifteen years ago, and of whom she is the first and lawful wife.

"That the plaintiff, Hiram B. Clawson, has not married or entered into any marriage contract or relation with any woman within the last six years, and has continuously and openly resided in the city of Salt Lake, in said Territory of Utah, for more than twenty years last past."

She presented to the deputy registration officer an affidavit setting forth the same facts.

In the case in which James M. Barlow is plaintiff and appellant, the averments in the complaint are altogether like those in the case of Murphy, which has been set out in full.

In each case a demurrer was filed to the complaint by all the defendants, on the ground that it did not state facts sufficient to constitute a cause of action. These demurrers were sustained, and the plaintiffs electing to abide by their pleadings, judgment was rendered for the defendants, which are now brought by appeals for revision to this court.

The act of March 22, 1882, is as follows:

"AN ACT to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section fifty-three hundred and fifty-two of the Revised Statutes of the United States be, and the same hereby, amended so as to read as follows, namely:

"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 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; but this section shall not extend to any person by reason of any former marriage, whose husband or wife by such marriage shall have been absent for five successive years, and is not known to such person to be living, and is believed by such person to be dead, nor to any person by reason