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"LIVING IN POLYGAMY."

SINCE the renewal of public attention to the "Mormon" question, aroused by the indefensible course of the Governor of Utah, in certifying to a falsehood for the purpose of depriving the "Mormons" of any representation in Congress, we have seen in the public journals repeated allusions to the practice of "living in polygamy in defiance of the law." Our Delegate is referred to as one who thus lives, and a great many suggestions and instructions and demands are made to Congress in reference to him and the people whom he has so ably represented, on the hypothesis that they are living in defiance of law.

We wish to show, beyond the possibility of refutation, that this is a mistaken view of the case. The opinions and recommendations, and moralizings and threats of the press and the clergy in relation to this matter are based upon incorrect premises. There is nothing in the Constitution or the laws of the United States against the practice called "living in polygamy."

The Constitution makes no allusion to the subject directly or indirectly. It is silent altogether on the marriage question. It was evidently the intention of the fathers of our country to leave that subject outside of national control, to be regulated in the various States as the people in each might determine. If marriage is recognized as "ordained of God," and it is admitted that in a properly solemnized matrimonial ceremony "God has joined together" the parties united, as many so-called "Christians" profess to believe as well as the "Mormons," then Congress has no Constitutional right to meddle with marriage, for it is an establishment of religion," specially protected from congressional interference by the highest law of the land. The Constitution certainly does not forbid polygamy, nor attempt to regulate marriage of any kind in any way.

The laws of the United States are equally silent upon the subject of "living in polygamy." We shall here be met by clamorous citations to the law of 1862. But we maintain that there is nothing in that statute that forbids "living in polygamy." Read it carefully and see if there is any such provision. What is the law aimed against? Simply an ordinance, ceremony or "establishment' of the Church of Jesus Christ of Latter-day Saints. It declares that "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 provides that such person "shall be punished by a fine of not more than five hundred dollars and by imprisonment for a term not more than five years," certain specified conditions excepted.

The offense here declared to be bigamy is the marrying of more wives or husbands than one. That which is here legislated into a crime is the contract, not the cohabitation. If a man has a wife legally married to him, and lives with other women in carnal cohabitation, this law does not affect him so long as he has made no contract or agreement of marriage with those women. It is the only thing that could possibly sanctify the man's actions which is by this statute constituted criminal. The living with the women, their bearing children to him, his support or his neglect of them, or his conduct in any way towards them is not forbidden so long as he does not contract marriage with them. Just as soon as he marries them or either of them, this law is after him, but not before.

Those who concocted and worked for the passage of the law cared nothing for the practice of cohabitation with more women than one, it was the marrying of them that they were opposed to. It was known that the Church of Jesus Christ of Latter-day Saints had an ordinance of marriage, under authority of an accepted revelation from God, whereby plural marriages might be solemnized under certain regulations and covenants. It was against that ceremony that the law was aimed and directed. It is that ceremony which now constitutes the offence. For, if a man marries a plural wife under its formula, and does not live with her, the law of '62 makes his act an offece; while if a married man lives with a woman besides his wife, so long as he does not marry her his acts are not by this law made an offence. "Living in polygamy" is then not a crime under the Constitution or laws of the United States.

Those who make so much noise about "living in polygamy" and are anxious to spy out cases that can be reached by the law, do not care anything about mistress-keeping, or promiscuity, so long as there is no marriage. Two or more women married to the same man, by the same kind of contract which binds him to act fairly and justly towards each in his marital relations, in his care of all the parties and their offspring, is a condition of affairs that excites them terribly. That is a "Mormon" affair. But the case of a married man living lewdly with a mistress, without any contract or obligation to support her, or responsibility as to her children and his, becomes no object of their pursuit; the law does not reach him. His case is after their own sort; it is anti-"Mormon."

When papers talk then about the duty of Congress to refuse a seat to a man "living in polygamy contrary to law" they are urging a course that cannot be sustained by the law. In the case of our Delegate they are entirely away fram the mark. There is no law of the United States that can touch him. Living with his wives is not a crime against the law. And as to the act constituted an offence by legislation, the statute of limitations bars a prosecution three years after it was committed. Also the law cannot be retro-active. It must then first be proven, not merely alleged in newspapers, that he has married plural wives since 1862, and then that the contract made with at least one of them was entered into less than three years ago. This is impossible of proof, because it is not true in fact, therefore conviction cannot be had, consequently Congress cannot lawfully refuse him his seat on the grounds taken by the prodigies of the press who undertake to teach legislators their duty.

SETTLEMENT ON "SCHOOL SECTIONS."

THE case of Jane Hodgert, a settler on a school section of land in Utah, recently referred to in this paper as having been decided by the Department of the Interior, is one of importance to many persons in this Territory. It is pretty well known that under the Government survey, sections sixteen and thirty-six in each township are reserved by law for the purpose of being applied to schools, whenever Congress shall make them available for that purpose. But in many instances those sections have been settled on and valuable improvements made previous to the survey, and pre-emptions have been entered for them or portions of them. The question is, are such claims or pre-emptions valid in law.

Robert Hodgert settled on a portion of section 36, township 6 S., range 2 E., Salt Lake City district, in the year 1855. In May, 1867, he died, leaving his widow in possession of the property, on which she has continuously resided. The township plat was filed March 15, 1869. Mrs. Jane Hodgert filed her declaratory statement April 8, 1876, claiming settlement in 1855, and finally proved up, entered and paid for the land April 5, 1878, all of which was regular, and would have been without dispute if the entry had not been for part of a school section. But in consequence of its being of that character, the Commissioner of the General Land Office at Washington decided to cancel the entry.

Messrs, Stayner and Simmons of this city, in behalf of Mrs. Hodgert, thereupon promptly appealed to the Department of the Interior, and Secretary Schurz reversed the decision on grounds that cannot be impeached. He showed that there has yet been no grant of school lands to Utah, and therefore that the Territory has acquired no vested interest in them, but that the legal title still vests in the United States. The controversy therefore was between Mrs. Hodgert and the Government. By the Act of Feb. 26, 1859, it was provided:

"That where settlements *with a view* to pre-emption have been made before the survey of the lands in the fields which shall be found to have been made on sections sixteen and thirty-six, said sections shall be subject to the pre-emption claim of such settler, and if they, or either of them, shall have been or shall be reserved or pledged for the use of schools or colleges in the States or Territory in which the lands lie, other lands of like quantity are hereby appropriated in lieu of such as may be patented by pre-emptors."

This makes the matter clear and insures justice alike to the settler and the Territory. The *bona fide* claimant who settled upon a school section before the Government survey, and *with a view to pre-emption*, can obtain a patent for his land in the usual manner, and other lands as an equivalent will be set apart for the schools, so that the Territory, or State created out of, it will suffer no loss by the pre-emption. Our friends who are in a similar position as to land as the client of Messrs. Stayner & Simmons should take notice of this important decision, which those gentlemen have succeeded in obtaining.

This case suggests the inconsistency of the course pursued by the Government in relation to the school lands in the Territories, and the necessity of congressional action concerning them. At the very time that the people in these newly settled regions most need assistance to provide competent education for their children, the help designed by the reservation of the school lands is withheld. When these Territories acquire Statehood, which they cannot reach until they have grown to a certain condition of population and self-support, then apples are thrown into their bearing orchards—the school lands become the property of the new State and are made available for the purpose designed. This should be changed. Give the Territories the fruit while their trees are acquiring growth—give them the school lands while they are mostly in want of the means.

If Congress would heed the repeated memorials that have been presented on this grievance, a sensible and beneficial thing would be accomplished, almost as important as the cheese-paring efforts at bogus economy effected during the last two sessions. Give us the school lands, and help us to establish an efficient and comprehensive school system in all the Territories.

NOT DONE YET.

ALTHOUGH the excitement throughout the country occasioned by the outrage perpetrated by a Territorial Governor in taking the position of an autocrat and trying to nullify the ballots of nearly the whole voting population, has to some extent subsided, influential journals still refer to it in terms of condemnation. We clip two or three more extracts that our readers may be posted on the opinions of the press.

The Washington *Post* of Jan. 17th says further on this subject, under the caption "Off With His Head:"

"Will Mr. Hayes permit the outrage on civil liberty recently perpetrated by Governor Murray, of Utah, to pass unrebuked? Will this man, who has trampled the laws under his feet and clearly violated his official oath, be permitted to hold the office which he has thus disgraced?

In refusing to certify to the election of Cannon as Delegate to Congress, when Cannon was conceded to have polled thirteen-fourteenths of all the votes cast, Governor Murray was guilty of a gross violation of the law.

In certifying to the election of Campbell, who, as he and all the world knew, was not elected, Governor Murray put his signature to a lie and, so far as he was able, disfranchised the people of Utah.

Since the *Post*, in announcing the decision of Murray, took occasion to speak of it as the occasion demanded, the press of the country has voiced public opinion. And it is a fact worth recording to the credit of the press and the public, that Murray's act finds neither defence nor apology. Blinded by prejudice, having his wrath inflamed against the Mormons, this weak-minded fanatic has undertaken to elect a Delegate for the people of Utah. In so doing he has rendered himself a fit subject for impeachment. But, as he is too small game for a great outlay of candle, Mr. Hayes should dispose of him by the immediate removal of his official head.

It is said by some of Murray's friends that the question of Cannon's religion, or irreligion, has nothing to do with this decision. That is not true. The Utah Gentiles openly assert that Cannon was refused the certificate because he is a Mormon. The shallow falsehood that Cannon had not been naturalized will not stand in the face of the positive evidence of his naturalization which is contained in the records of the court in Utah. A transcript of the record of his naturalization was sent to his city, years ago, and is now a part of the records of Congress.

Mr. Cannon will be seated as Delegate in the next Congress. The House will not so disgrace itself as to exclude a man so fairly and overwhelmingly elected. But justice demands the removal of the officer who has attempted this wanton outrage on the rights of the people of a Territory."

From the Philadelphia *Times*, which we have previously cited, we take another extract or two:

"The action of Governor Murray, of Utah, in rejecting all the votes cast for the Mormon Apostle, George Q. Cannon, for Delegate to Congress, and certifying Mr. A. G. Campbell as elected, has all the flavor of a Louisiana or a Maine Returning Board, and the new house should consider and decide the question with uncommon care. There can be no possible partisan interest involved in the dispute, as Delegates have no votes and are powerless in Congress, and the House can afford to be entirely honest in disposing of the contest."

The *Times* gives a history of the case, condemns the action of the Governor in unmeasured terms, as an attempt "to hold an election himself to reverse the will of the people." It goes on to discuss the power of the House of Representatives to regulate its own membership, and says in conclusion:

"Whether Mr. Cannon should be excluded from the House because of his practice of polygamy is a very grave question, and it should be decided in accordance with a well-considered policy of the government in treating with organized polygamists. Thus far polygamy has been tolerated for many years in disregard of our laws. There is but one way to overthrow it, and that is by excluding the polygamist from every official position, from Congressman to juror and constable; and until that policy shall be resolutely enforced, Mr. Cannon is no more ineligible to a seat in Congress because of unlawful polygamy, than would be many others for unlawful gambling, adultery and corruption of the ballot."

The New York *Times* has a long leader on the main points of this question, and, coming from the chief organ of the party to which Mr. Murray belongs, it is significant and valuable. After giving the particulars of the election, the protest and the reply, with the action of the Governor, the *Times* presents the following powerful argument:

"It will be seen, then, that the argument of Mr. Campbell rests chiefly upon two propositions: First, that the functions of the Governor are not purely ministerial in the matter of issuing a certificate of election; and second, that the vitiation of the ballots cast for a candidate who received the highest number of votes elects the candidate who received the next highest vote. But, as some of the incidental parts of the contestant's plea comprises points raised in the struggle which is constantly going on in Utah, these are interesting. The act of the Territorial Legislature giving the right of suffrage to women has been considered by the non-Mormon population of the Territory as an expedient to fortify in their present position the Mormon majority. Campbell urges, in his protest, that this act is void "because it attempts to confer the privilege by a special act, and on easier terms of qualification than those required by existing general laws applicable to the other sex, thus violating the rule of uniformity." But Congress, which has the right to annul any statute of any Territorial Legislature has not exercised its revisory functions in this particular case. And it must appear that Campbell's position is untenable when he assumes that the women's vote included in the 18,586 cast for Cannon was illegal and void. But, assuming that the Mormon female vote is illegal, how does Mr. Campbell propose to prove that it was all cast for Cannon? There is no system of registry in Utah by which it can be ascertained for whom any single person's ballot was cast. It may be assumed that the women voted for Cannon, but this is mere assumption.

Another phase of the woman suffrage question in this case is found in the plea that there were more women who voted for Cannon than there were men. That is to say, assuming that the votes of all the Mormon women were illegal, and that they were all cast for Cannon, the deduction of these illegal votes from the total of those cast for Cannon would leave him with fewer legal votes than Campbell. When we consider that Cannon had 18,568 votes, and Campbell had only 1,357, this proposition seems a bold one. Furthermore, as there is nothing in the returns of the local canvassers to prove that there were more women's votes cast for Cannon than there are legal votes in the whole Territory, it is not easy to see what possible bearing this assertion can have on the case. If there should be a contest in the House of Representatives, Mr. Campbell's assertion would not be of the least avail unless accompanied by evidence.

But, after all, Governor Murray is right in issuing the certificate to Campbell rather than Cannon, if he has power to go behind the returns, and if the vitiation of the votes cast for the highest candidate elects the candidate next below him. The Governor may grant a certificate on evidence which may be subsequently thrown out by the House of Representatives. In this instance, however, it is difficult to see where the Governor of Utah finds his authority to issue his certificate to a minority candidate, even admitting the irregularity of the poll of the vote cast for Cannon. There is nothing whatever in the returns from the canvassers to show any fatal defect or irregularity. And if there were, the law under which the Governor acts simply says that he and the secretary "shall unseal and examine the returns, and furnish to each person having the highest number of votes for any territorial office a certificate of election." There is nothing here to warrant the Governor in admitting extrinsic evidence going to show the disqualification or ineligibility of the candidate "having the highest number of votes." It is his business to give the certificate to the person who appears on the face of the returns, to be elected, and to send the contestant to the House of Representatives for redress.

Then, again, there is no principle in law or equity which gives to a person receiving the smaller number of votes an office for which the person receiving the larger number of votes is subsequently proved to be disqualified. The House of Representatives has repeatedly decided that the unseating of a sitting member does not necessarily give his seat to the contestant. It would be absurd to say that Campbell, who received a moiety of all the votes cast in Utah, is elected because the opposing candidate, who had a majority of 17,211, is ineligible. The whole business smacks of persecution and pettifogging. Polygamy in Utah is offensive to the moral sense of every true American. It is becoming more and more objectionable to the advancing generation of Mormons. But polygamy can never be extirpated in Utah by any unnatural straining of the principles of our form of government."

The arguments, strictures and demands for Murray's removal which have come from the leading journals of his own party ought to be sufficient to operate even upon his dull brain, and show him the immensity of his blunder and the depth of his folly. An official with ordinary sensitiveness to honor, and less under the dominion of inordinate vanity than the object of this almost universal condemnation, would at once resign the position for which he has proven himself unfit. But he is not that kind of a Kentuckian.

Portugal wants to make peace between England and the Boers.