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ERRORS IN THE REYNOLDS CASE.

WE published last evening the text of the petition for a re-hearing before the United States Supreme Court in the Reynolds case. The grounds on which the application is based, are the improper reception of hearsay or second-hand testimony in the District Court during the trial; and *the unlawful* addition by the Judge of the words, "at hard labor" in the sentence pronounced. The "assignments of error from the 11th to the 16th" referred to in the petition, all have a bearing upon the first of these points.

It will be seen by reference to the decision of the highest court that, in answer to the argument of the counsel for the plaintiff in error and the authorities they quoted, *showing that the testimony of* Amelia Jane Schofield at the former trial, repeated by persons who were then present, was not admissable in that shape at another trial *under a new indictment, the rule* being that, unless the witness is dead or proven to be outside of the jurisdiction of the Court, evidence by another party of what the witness had formerly testified to is not allowed, the Chief Justice replies that no one must be permitted "to take advantage of his own wrong." This appears to be sound reason as well as good law. But its application depends upon the question of fact, whether or not the witness was kept from the court by the action of the defendant. The Chief Justice jumps to the conclusion that she was. But there is no proof of this to be found in the record. The benefit of a doubt on this matter is not accorded to the defendant in the trial, who is the plaintiff in error, but it is assumed in one sweeping assertion that he voluntarily kept the witness away. Let us see how much foundation there is for this: From the record of the trial it appears that a deputy marshal testified that he went to Mr. Reynolds' house with a subpœna, which he had filled up with the name of *Amelia Jane Schobold*, and on asking for Mary Jane Schofield was informed she was not at home, and on asking defendant where she was, he replied, "That you will have to find out;" he *thought* defendant added, "She does not appear in this case."

The Court at 9 p. m. issued a subpœna for Amelia Jane Schofield, "returnable instanter," and at 10 o'clock next morning the officer testified that he went to Mr. Reynolds' house, saw his first wife, asked for the witness wanted, and was told that she had not been there for three weeks. Thereupon the Court admitted three persons to testify as to what they heard the absent witness state at the former trial.

Now where is the proof that the witness was kept away from the Court by "the voluntary act of the defendant?" This might have been inferred by the Court, but inference is not proof. The Chief Justice says "Enough had been proven to cast the burden upon him (the accused) of showing that he had not been instrumental in concealing or keeping the witness away." Indeed! The accused was required to prove a negative, was he? Is not this reversing the rule? If it is assumed that the accused had spirited the witness away, should not the burden of the proof of this be upon the prosecution? The ruling presents so many strained points in favor of the Court below, and assumptions against the appellant, that it is very wide open to strong suspicion of an intention to stretch the law beyond due limits, if necessary to dispose of the case suitably to popular prejudice.

The addition of the words, "at hard labor" is clearly a violation of the law, and whether intentional or otherwise, tends to vitiate the sentence.

In view of these points the appellant is justly entitled to a re-hearing, but it remains to be seen whether the Court will avail itself of some technical objection to the re-opening of the case, or will give the accused the benefit of a full and impartial presentation of the errors involved therein.

It is thought by some that the Supreme Court of the United States does not grant re-hearings of cases decided; but this is a mistake, the rule being that a re-hearing is allowable if the Court so grants, and a decision may be reviewed during the term in which it was rendered; for all of which numerous examples might be cited.

THE "MORMON" QUESTION.

THE Washington *Capital* of the 19th inst. has the following pungent paragraphs on the "Mormon" question. In publishing extracts from the public journals bearing on this subject, we merely offer them as the views of influential writers, without any endorsement on our part. The *Capital*, whenever it strikes at anything, manages to give it a capital hit. The annexed appears under the heading "The Mormon Female:"

"Quite interesting it was to see two Mormon wives standing in dangerous proximity to our most respectable President Hayes, pleading for polygamy. This little dramatic scene occurred in the White House last week. And by the same token the Mormon wives took the lead in their argument, and as Orson Pratt floored Hot-scotch Newman in Utah, they bossed the President in the debate argumentative at the national capital. Their first direct and most incisive question was, 'What right has the General Government to ignore territorial laws and tear them away from their husbands, and to bastardize their children and deprive them of all right and inheritance?'

It has no right to do so. In the first place, and most emphatically, the Constitution forbids the passage of *ex post facto* laws, and so any law interfering with Mormon marriages previous to its passage would be utterly and absolutely unconstitutional.

Their next point was that these Mormon wives were happy, wanted to live with their husbands, religiously believed they were right in so doing, and objected not to other women having a share in their husbands' names and property. Who, then, would be benefitted by tearing them away? How would morality be served by doing so? Would not only distress, poverty, demoralization, result? There was no good answer to this given. Nor can any very good answer be given.

Congress should see to it that when they do legislate on this Utah question, they should do it like statesmen, and not like fanatics. There are many and important interests to be considered, and there are not a few of the best observers who think that the best thing that can be done in the matter is not to legislate on it at all.

The polygamy of Utah is doing no harm to the United States. The Territory, as far as the Mormons are concerned, is a type of morality, and we should be glad to see their representative delegate, Cannon, a gentleman above reproach, compared, as far as genuine gentlemanliness and purity and integrity of character is concerned, with any of the high moral Christian statesmen who antagonize the Mormons. But the Christian statesmen would undoubtedly weaken.

Mrs. Sarah Spencer puts the case in a nut-shell when she says that the difference between the Mormons and the Christian statesmen is, that the *Mormons* marry their mistresses, the congressmen don't."

In commenting upon the Woman Suffrage Convention the *Capital* says:

"One feature, however, was quite novel and entertaining. Two delegates from Utah, each married to the fractional part of an elder, appeared and put in their testimony. They seemed two modest, well-behaved women, and not at all ashamed of their patriarchal condition, and accompanying the delegation that visited the White House, put in a protest to the criminal prosecution of the polygamous dwellers of Utah. They called attention to the fact that any such law carried into effect would throw thousands of wives out upon the world and render the multitude of children illegitimate.

The President looked grave as this startling result was presented, and promised to "go slow" in the business. The polygamous followers of the Prophet Smith will be prosecuted all the same, for they are guilty of owning some rich silver mines in Utah, and we Christians want them. Therefore we cannot abide your polygamous conduct. Our pious souls are filled with wrath, and will so continue until we dispossess these sinners of their ill-gotten wealth and many wives.

As our Hebrew friend said after leaving Delmonico's: 'God is joost; he has poonished this man alreaty. I have my pockets full mid his spoons."

TWO MEASURES OF INIQUITY.

WE publish in full, this evening, the two anti-"Mormon" bills introduced in the Senate by Mr. Christiancy, who, by the by, notwithstanding his reported denial of any intention to resign his position as Senator, has accepted the post of U. S. Minister to Peru. His loss will not be felt to any extent in the national Legislature, as his abilities are not of a very high order, and in his old age he has permitted himself *to* become the tool of designing persons, who concoct measures inimical to the people of this Territory, and induce him to assume the paternity of their ill-begotten schemes.

The main object of the Senate bill 410 is to exclude "Mormons" from the *jury box, in any trial of a* "Mormon" for practising that part of his religion known as plural marriage. It provides a special cause for challenge in their case, one that has no parallel in the proceedings of courts either in this country or the old world. Is there any law or rule of jurisprudence which allows a juror to be questioned on his oath as to whether he has ever committed an offence against the law? When a murderer is to be tried, it is not uncommon to question a juror as to his views in relation to capital punishment, for a very simple reason. The penalty for murder being death, it is thought inconsistent to permit one who is opposed to the infliction of capital punishment to sit in judgment on a case involving that punishment. But who ever heard of a juror being asked, in a murder case, if he is now or ever has been a murderer? In a larceny case, if he is now or ever has been a thief? In a case of arson, if he is now or ever has been a house-burner? A man who had been *convicted* of any of these crimes might with reason be challenged as a juror on any such case, and so in regard to one who had been *convicted* of the offence called bigamy. But to make the juror answer questions as to his own acts, and reject him as incompetent if he declines to answer, is a process foreign to our jury system, and one that smacks of the Spanish Inquisition rather than American jurisprudence.

But this bill goes still further "in the direction sought." Under it a juror may be challenged as to his moral, religious or legal *belief* on a given question. This is carrying things to a terrible length. If this is not "a religious *test*," which the *Constitution* provides shall never be required as a qualification to office, it is so near like it that the difference cannot be detected.

Now let it be observed that this bill is not designed for the preservation of the public morals, but as a means towards the punishment of the members of a religious body for the practice of one of the essential tenets of their faith. If this is not the case why does it not require a juror to state whether he is now living or ever has lived in sexual cohabitation without marriage? Why not challenge a juror on his practice of seduction or adultery? And to make the whole affair consistent, why not disqualify the judge on the bench, the prosecuting attorney at the bar, and all other court officials who take part in the case at issue, if they are or have been guilty of illicit intercourse with the opposite sex? This would perhaps be too sweping, and, in some periods of our history here, would have left our Federal courts bare of officers of any kind.

That the whole scheme is designed as an attack upon a religious system is patent to all who consider, and that its devisers and promoters care neither for established rules of law nor constitutional provisions is to clear to permit of a moment's doubt. We do not think Congress has advanced far enough in its repudiation of the restricting power of the "supreme law of the land" to enact such a measure.

The other bill is less likely to pass than the first. It is too ridiculous for much serious consideration. The old gentleman who introduced it has been imposed upon, by persons who have no more respect for age than they have for justice and consistency. It makes inference proof. "Conduct of the defendant tending to prove or authorise *an inference* of any marriage charged or involved in the case, shall be competent *evidence to prove* the marriage of such persons," etc. The "Mormon"-eating officials who spend their time in Washington weaving nets for "Mormon" feet are always too anxious to trap us, and generally succeed simply in making themselves ridiculous and a nuisance in the noses of respectable, honest lawmakers.

All these bits of special legislation tend to confirm the Latter-day Saints in the belief that, if they were to cohabit with as many women as they pleased without any pretence of marriage, become the fathers of hosts of children without acknowledging the parentage, cast off the victims of their unrighteous passion to perish, and turn the unrecognized offspring adrift to swell the elements of vice and infamy with which the land abounds, no notice would be taken of their acts, they would not be debarred from the rights of Statehood, nor made the objects of special laws and peculiar pains and penalties, but would pass along with the mass, unprosecuted, unpersecuted and uncondemned. But because they marry wives, father all their children, and strive to carry out principles which they sincerely receive as divine, they are opposed, condemned, maligned and legislated against, and the whole machinery of judicial, legislative and executive power is invoked for their destruction. As God lives there will come a day of reckoning for all this, and then let hypocrites in church and state, who plot against the innocent, prepare to receive their full reward.

OGDEN CITY ELECTION.

FROM the *Junction* of the 31st ult. we learn that the citizens of Ogden met on the 30th in public caucus to nominate municipal officers for election on February 10th. The meeting convened in the Court House, but as the place was too small to accommodate the multitude, an adjournment took place to Union Hall, a new building on Fourth Street. The proceedings were quite animated, but resulted in the nomination of good men for office. Following is the ticket:

Mayor:—Lester J. Herrick.

Aldermen:—First Ward, David M. Stuart; second ward, Charles F. Middleton; third ward, *Joseph* Stanford; fourth ward, Wm. B. Hutchins.

Councilors:—Edwin Stratford, Robert S. Watson, Robert McQuarrie, Israel Canfield, W. W. Burton.

Marshal:—William Brown.

Recorder:—James Taylor.

Assessor and Collector:—Thomas D. Dee.

Treasurer:—Aaron F. Farr.

We regard this as a strong ticket. The candidates are all well known, substantial and intelligent citizens. It may be objected with some show of reason that more of the members of the former Council are not to be returned, as in all legislative bodies it is wise to retain enough of the elements of experience to balance new material. This, however, is perhaps a small defect, as the two re-nominated members may be able to keep track of unfinished and other business requiring a knowledge of their status and details, and the Recorder, who is a very efficient officer, is also re-nominated, and can aid in giving necessary information of this character. Several of the new nominees also have served the city faithfully in former times.

We think the entire ticket will be supported by the great bulk of the people of Ogden. The present Mayor is a gentleman of large experience in civic affairs, but he has occupied the Municipal chair for a great many terms, and the citizens considered rotation in office preferable to a life lease. The present nominee held the position for two or three terms with great credit to himself and benefit to the city, and is well qualified for the position. Of course personal predilections always exist in the choice of men for public office, but we do not think any valid objections can be raised against any of the nominees on this ticket, and therefore believe and hope that they will all be elected by a large and cordial vote. The people have met and discussed the matter, *now let the* voice of the majority be the voice of all. Union and activity are the needs of the times.

THE CHRISTIANCY BILL.

WE have received a copy of the Christiancy Bill as amended by the Senate Judiciary Committee, to whom the original bill was referred on the 10th inst. after being read twice. It was reported Jan. 20th, with forty-two lines stricken out, viz., from the third to the forty-fourth. The title was also changed. It was placed on the calendar and now reads as follows:

45th Congress } S. 410.

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 is 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 has exclusive jurisdiction, hereafter marries another, whether married or single, and any man who hereafter simultaneously, or on the same day, marries more than one woman, in a Territory or other place over which the United States has exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than five hundred dollars and by imprisonment for a term 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 is absent for five successive years, and is not known to such persons to be living; nor to any person by reason of any former marriage, which has been dissolved by a decree of a competent court; nor to any person by reason of any former marriage which has been pronounced void by a decree of a competent court, on the ground of nullity of the marriage contract. The foregoing provisions shall not affect the prosecution or punishment of any offense already committed against the section hereby amended.

Sec. 2. That in any prosecution for bigamy, under any statutes of the United States, it shall be sufficient cause of challenge to any person drawn or summoned as a juryman or talesman: first that he is or has been living in the practice of bigamy or polygamy, or that he is or has been guilty of an offense prohibited by this section; or, second, that he believes it morally, religiously, or legally right for a man to have more than one living and undivorced wife at the same time, or to live in the practice of cohabiting with more than one woman. And any person appearing or offered as a juror or talesman, and challenged on either of the foregoing grounds, may be questioned on his oath as to the existence of any such cause of challenge, and other evidence may be introduced bearing upon the question raised by such challenge. But as to the first ground of challenge above mentioned, the person challenged shall not be bound to answer, if he shall say upon his oath that he declines on the ground that he fears his answer may tend to criminate himself; and if he shall answer as to said first ground, his answer shall not be given in evidence in any criminal prosecution against him under this section; but