

have read, and contradicts what is known of all men. If an office is taken from me of honor, of trust, of profit, I am disgraced and degraded; and yet I am told it is no punishment! No punishment to take bread from my family! No punishment to stamp my name with infamy! No punishment to exclude me from the ranks of honorable association with my fellow men! It is an outrage to tell me that, in this country of constitutional guarantees. What is this, if it is not a bill of attainder?

Mr. President, as I said before, I am prepared for the abuse and calumny that will follow any man who dares to oppose any bill here against polygamy; and yet, so help me God, if my official life should terminate tomorrow, I would not give my vote for the principles contained in this measure.

MORE SOUND SENATORIAL ARGUMENT.

In the Senate of the United States on the 16th of February, during the debate on the Edmunds bill, Senator Morgan handled the subject in vigorous style. We give up considerable space to this discussion believing it will interest our readers as much as anything we can present. Following are Senator Morgan's remarks:

Mr. President, yesterday I expressed a desire to assist as far as I could in the passage of some law for the purpose of suppressing the crimes of polygamy and bigamy in the Territory of Utah and in the other Territories of the United States. When I first looked over this bill, I became satisfied that it contained some very grave constitutional difficulties. When I came to consider how much the Government of the United States has to do in the matter of regulating offenses or crimes in the Territories in the future, I found that while it was proper that we should take every necessary step in our advance toward the accomplishment of this end, we ought to proceed with a great deal of caution.

In addition to the people of Utah we have a population amounting to over 300,000 people in the United States subject to our jurisdiction who have grown up under the system of polygamous marriages, and in whose social organization polygamy is considered one of the essential features. I refer to the Indian tribes. We do not hold these people to the moral accountability to which we hold the people of Utah or the people of the other Territories or States of this Union, for the reason that we do not regard them as a Christian people. We have forbore to enact any laws for the punishment of polygamy among the Indian tribes; we have wisely done so, in fact, as a matter of necessity, because we found those tribes living under a system of social organization and social government which tolerated polygamy and which has attended their methods of government from the earliest history that we have of these races on this continent, and I believe elsewhere throughout this hemisphere. In the progress of our civilization, we shall be compelled to bring the Indians as well as the Mormons within reach of that system of law which is considered to lie at the foundation of our social institutions, and we shall be a great many years in executing our purposes.

We shall have a great deal of legislation to enact, a great many judicial decisions to make, a great many arrangements and contrivances to consummate, for the purpose of easing the yoke, I may call it, of our civilization upon the necks of these people so as to cause them to become satisfied with our system of government and to be co-workers with us in the advancement of all the beneficent ends that we think we are attaining in the course of our public administration.

It is therefore a question which is not to be treated in a spirit of madness. It is not to be looked at as a question which should invoke our sudden anger, and drive us into legislative excesses. We have been too long getting mad about this condition of things in Utah; we have forbore too much; we have too long tolerated the evil in this and other Territories now suddenly to institute very radical measures for its extinction. Under any and all circumstances it becomes our duty, certainly, with reference to the Indians

who may become citizens of the United States in the future, and are under the protection and shelter of the Constitution of the United States to a large extent, to move cautiously, quietly, and often slowly in the arrangement of our system of laws, so that they can comprehend it, and we can adapt it to the changes we are constantly working in their social condition.

There is no occasion just at this moment of time for being unduly excited about this business. I think if it was ever becoming in the American Senate to proceed with coolness and quietness and deliberation, carefully searching every inch of the ground upon which we plant our feet, it is at this very moment of time when there is a great cry against polygamy in the Territory of Utah under Mormon influence. It is one of the highest duties of every government in moments of excitement to stem the current of the tide of fury, of rage, or of wrath, and to appeal to the Constitution; to place the people against whom an assault is made or against whom an accusation is brought on the ground on which we place all other people in dealing with them, fearing lest we might, in an unguarded moment, do ourselves the wrong of violating the Constitution of the country in our attempt to inflict upon other people harsh and sudden legislation.

It was said by the honorable Senator from Arkansas (Mr. Garland) yesterday, that this was apparently harsh legislation. He said the reason for it was that the case needed a harsh remedy. If the case requires a harsh remedy, there is for that reason, if for no other, the greatest occasion why we should be very deliberate in approaching this matter with the true test of legislative enactments—so they conform to the Constitution!

It may be that the committee on the judiciary do not understand this bill as I do in the seventh and eighth sections as they are numbered in the print; but if they do understand it as I do, it seems to me to be easy of demonstration that the bill is unconstitutional in that particular. I notice that the language of the bill operates in *presenti*. It speaks of a certain existing condition of men and things. It speaks of a person who is a polygamist, of a person who is a bigamist, of a person who is cohabiting with more than one woman, and of a woman in the same condition. It speaks of persons who hold office as well as of those who are now eligible to office. From the moment that this enactment is signed by the President of the United States, after it has passed the two Houses of Congress, it will operate upon these classes of people, upon the people thus described, and what will be the effect of its operation? The seventh section provides:

That no polygamist, bigamist or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to or be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States.

I understand that section of the bill to mean that if a man now holds an office of honor, or a place of trust, or an office of emolument, under a Territorial government, or under the United States, in connection with a Territorial government, when this bill is signed it will operate *eo instanti*, to disqualify him from holding that office a moment longer, and deprive him instantly of it. Do I understand the bill or not? Is that the meaning of the committee? That certainly is the meaning of the language of this section, there being no words to confine its operation to offenses hereafter to be committed or offices hereafter to be held, and none to suggest such an intention.

A gentleman is said to occupy a seat on the floor of the House of Representatives as a Delegate from Utah who is a Mormon. It has been frequently said that he is a polygamist, that he has a plurality of wives, and belongs to the Mormon Church. Would it be the effect of this bill if it should pass both Houses and be signed by the President of the United States, to disqualify him from holding the office that he now occupies? So I read the seventh section, and no member of the committee denies, I believe, that that is the proper construction. I shall accept the silence of the membership of that committee as an evidence that they construe this section of the bill as I do, that it

would operate instantly upon its being signed to exclude that gentleman from the office he now holds on the floor of the House of Representatives.

Mr. Edmunds. If the Senator will pardon me—

The Presiding Officer, (Mr. Harris in the chair.) Does the Senator from Alabama yield to the Senator from Vermont?

Mr. Morgan. Certainly.

Mr. Edmunds. As debate is now limited, I beg the Senator and everybody else to understand that no silence of any member of the Committee on the Judiciary is to be construed as having any effect, negative or affirmative.

Mr. Morgan. Neither negative nor affirmative! Then we are left in a state of convenient doubt on this matter. I do not doubt the construction; and I ask the Senator from Vermont if he does not so construe this section that it would have the effect to oust every man from office, immediately upon the bill becoming a law, who now holds an office contrary to its provision?

Mr. Edmunds. I will reply to that by and by, if I have the time.

Mr. Morgan. I regret very much that the Senator from Vermont is disposed to treat this subject flippantly. It is rather too serious for that. He cannot disembarass himself of the incumbrances of the Constitution of the United States; neither can I. The weight of the obligation that I hold to support that instrument would prevent me from voting for the bill when the chairman of the committee does not say whether it means to oust a man from office who now holds one.

Mr. Edmunds. If the Senator will pardon me, I beg him to understand that I neither intend to treat him nor to treat the disease this measure is intended to cure, flippantly at all. The committee will endeavor to speak for itself in its own time and in its own way, and if there be any doubt as to the meaning of the bill, the committee will endeavor to explain it. The committee is not able so far to see any doubt as to the legal effect of the measure.

Mr. Morgan. I shall then accept to myself the compliment of not being worthy of an answer to the question which I had the honor to address to the Senator from Vermont.

Mr. Edmunds. Oh, no; we do not mean that at all.

Mr. Morgan. The Senator from Vermont does not use words incautiously. He does not use them without attributing to every word that he uses in every sentence its proper and full signification, and the words that have been used in this section of the bill mean, according to my judgment, and no member of the committee has yet denied it, that it is a bill to legislate out of office those men who now hold office who have been guilty of bigamy or polygamy or of cohabitation with more than one woman. If that be the nature of the bill, it is subject to some very serious constitutional objections, such as I think the Senate almost as a body would be prepared to sustain, especially since these questions have been passed upon by the Supreme Court of the United States in several well-considered cases.

What is an office of honor, or public trust, and of emolument? What is the nature of the right that a man holds in an office of honor or public trust, and of emolument? I see a distinguished gentleman before me to-day who is the head of the Army of the United States. He holds an office of emolument, of honor and of public trust. Would it be held for one moment that for any cause whatsoever the Congress of the United States would have the right to say in respect to that gentleman that he shall be ousted from his office? Would it be held for a moment that any civil tribunal, not being a judicial tribunal or a court of impeachment, would have the right to pronounce him guilty of any crime against the laws of the United States and deprive him of his office?

An office is, in one sense, property; the emolument is a matter of value, and is a legal right.

Mr. Jones, of Florida. Will the senator permit me to ask him a question?

Mr. Morgan. Yes, sir.

Mr. Jones, of Florida. Does the senator doubt the power of Congress at any time to abolish the whole army and every officer in it?

Mr. Morgan. That is a very different question from taking but one officer and abolishing him for a crime alleged against him by act of Congress.

Mr. Butler. If the senator will allow me, I should like to propound a question right there.

Mr. Morgan. Certainly.

Mr. Butler. The Senator cited the case of the Delegate from Utah, and said that the bill would disqualify him from holding office, by reason of his living in polygamy. I should like to ask the Senator if that gentleman or any other person living in the Territory of Utah may not put himself entirely beyond the reach of this act, if it has the construction which the Senator puts upon it, by ceasing to be a polygamist, and thus put himself entirely within the power of holding office and voting?

Mr. Morgan. He might put himself beyond the reach of the act by ceasing to be a polygamist. At the same point of time, however, when this act takes effect, he is described as a bigamist; and he is defined in the seventh section as a "polygamist, bigamist, or any person cohabiting with more than one woman." That is in the present tense; so that the living in polygamy, or living in bigamy, or living in any other improper association, exists at the same moment of time that the law would take effect, the same instant the two acts concur. Instantly he loses his office under the proposed statute. What for? He loses it for an act of bigamy perpetrated before the statute takes effect.

Mr. Butler. I do not so understand it. If he continues to be a bigamist ten minutes after the passage of the act, as a matter of course the act would operate upon him, but if he ceases to be a polygamist or bigamist ten minutes before the act is approved by the President of the United States, I do not understand that he would be subject to it at all. It is a mere disqualification by reason of committing something which the law prohibits; that is all.

Mr. Morgan. A man who committed murder ten years ago, until he has been acquitted of that offense is a murderer; and so you would describe him in speaking about him. He does not lose the character of a murderer because the offense was committed ten years before, any more than a man would lose the character of a polygamist or a bigamist if that offense had been committed ten days before. The suggestion made by the Senator from South Carolina would compel us to enter very minutely into particulars to ascertain whether a man had lost his office or not. It might depend upon his mere mental state. Having been a polygamist, and living as such up to the date of the enactment of the law, at what time would it be ascertained, and by what means would it be ascertained, that he had or had not changed his purpose? If you establish that he had been a polygamist, then it would devolve upon him to prove the negative, that since that time he had not been a polygamist; and if he could not prove it, that would be a new offense committed under this act itself, I suppose? The act, it must be observed, defines a crime; it defines the crime of polygamy and several other kindred crimes in the same act, and in the very act in which you define the crime you make the punishment the loss of a man's office, and you remove him from his office by describing him as a polygamist or bigamist or person, in the present tense, engaged in such unlawful commerce.

Mr. Pendleton. If the Senator from Alabama will allow me, I should like to ask him to state how, if a man has been married by valid contract to two or three or more women, he can cease to be a polygamist until that tie is dissolved?

Mr. Morgan. I do not know, unless he gets himself convicted and gets a pardon.

Mr. Pendleton. A change of opinion clearly would not affect the case.

Mr. Morgan. That does not affect the case at all. Now, how easy it would be for the committee to place words in that section, if it desired to do so, to make its meaning entirely clear that this act shall not be held to operate on persons who have been heretofore guilty of polygamy, bigamy, or other kindred offenses, but shall apply to punish persons who may hereafter commit these offenses against the law—against this act. If the committee decline to receive suggestions of that kind, or to bring in an amendment to make it clear to the mind of the Senate that that is what it means, what can we suppose except that the purpose is to leave room for a construction which is entirely different from the text itself?

This, Mr. President, is to all intents and purposes an *ex post facto* law. If I have rightly construed the language in which the seventh section is couched, it undertakes to create a crime and punish a man for the commission of it at a time before the statute itself was enacted, certainly before this method of punishment is prescribed; and if I understand anything in reference to constitutional law, it is that you cannot impose a new punishment upon one who has been guilty even of a crime against the law, so as to make it retroactive in its effect and in its operation.

When we read section number 7 in connection with section number 8, however, the intent of the legislator, as expressed in these two sections, becomes much more apparent, it seems to me, to enact a bill of attainder, a bill of pains and penalties, which is expressly prohibited in the Constitution of the United States. It is very true that the eighth section of this bill does not expressly give to the five commissioners provided for by it the power to reject the vote of a voter because he has lived in polygamy, or in bigamy, or in any other prohibited or unlawful commerce with the other sex, but it is the intent and purpose of the act that these five commissioners shall have the power to reject a man's vote from the ballot box who has been found by them to be in this condition of guilt.

Now, Mr. President, I think I can safely affirm, upon judicial decisions of the Supreme Court of the United States, that that feature of the statute is unconstitutional. It is not so perfectly apparent on the face of the text of the act as is the other proposition which is found in the seventh section, because the eighth section is very cautiously worded, and while it gives to the five commissioners power to reject a vote, it does not in express words say that they may do so for this cause. That is the substance of section 8, and that is the meaning of it; it is the whole purpose and intent of the appointment of commissioners, that they shall have power to enforce this law against a man by finding him guilty of polygamy or bigamy or unlawful cohabitation, and for that cause to deprive him of the right of suffrage, and to reject his vote from the ballot-box.

I desire to call the attention of the Senate first to the law organizing the Territory of Utah, enacted in 1850. That act prescribed, in section 5, the qualifications of voters, as follows:

"That every free white male inhabitant above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said Territory; but the qualifications of voters and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly: *Provided*, That the right of suffrage and of holding office shall be exercised only by citizens of the United States, including those recognized as citizens by the treaty with the Republic of Mexico, concluded February 2, 1848."

The Senator from Missouri [Mr. Vest] yesterday construed this as a grant of privilege by an act of Congress to a citizen of the United States residing in the Territory of Utah, and he was entirely correct in his construction of it; but whether that is a privilege which cannot be modified by subsequent legislation is a different matter. I hold to the doctrine that the Congress of the United States can modify and qualify that privilege by additional legislation. I have no doubt upon that point. They can disqualify for any crime that they see proper to make the cause or ground of disqualification, because, as has been repeatedly said by various Senators on this floor, the power of legislation is reserved over the Territories in the hands of Congress.

(Continued to-morrow)

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