

DESERET NEWS:

WEEKLY.

TRUTH AND LIBERTY.

PRINTED AND PUBLISHED BY
THE DESERET NEWS COMPANY.

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WEDNESDAY, - MARCH 8, 1882.

VEST ON THE QUESTION OF THE HOUR.

IN the Senate on the 16th of February, during the debate on the Edmunds bill, Senator Vest made the following remarks, as reported in the *Congressional Record*:

"Mr. President—I desire to say only a few words. I shall detain the Senate but a few moments. I desire to take notice of the position taken yesterday by gentlemen who criticized the remark I then made. My idea is embodied in the amendment which I have just offered. I shall not undertake to add anything to the authorities and the able argument made by the Senator from Alabama (Mr. Morgan). If this be not a bill of attainder under the theory of the Constitution of the United States, there never has been a bill of attainder proposed in all history. Never in the darkest days of the Stuarts or the Tudors, never in any of the darkest days of despotism, I undertake to say here, weighing my words deliberately, was there ever enacted a statute more exactly within the meaning of a bill of attainder than the seventh and eighth sections of this bill.

The first question which meets us, *in limine*, is, does the Constitution of the United States apply to the Territories, or are those Territories completely at the mercy of Congress, as asserted here yesterday by gentlemen, not trusting to memory. The Senator said:

It merely shows that a Territory in that position was outside of the fundamental law, and was in a position to be legislated for at the will and discretion of Congress without any limitation.

Why, Mr. President, with all respect to the senator from Florida, what a monstrous doctrine is this, that any portion of the territory of these United States inhabited by the people of the United States are at the mercy of Congress without any limitation! Chief Justice Taney did not think so when he declared that the citizen and the national Constitution went into the Territories side by side under the Constitution of the country, and he said in illustrating the proposition that there was a constitutional limitation on the power of Congress with reference to the Territories as well as with reference to States. He said:

For example, no one, we presume, will contend that Congress can make any law in a Territory respecting the establishment of religion, or the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people of the Territory peaceably to assemble, and to petition the Government for the redress of grievances.

Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel any one to be a witness against himself in a criminal proceeding.

These powers, and others, in relation to rights of person, which it is not necessary here to enumerate, are, in express and positive terms, denied to the General Government; and the rights of private property have been guarded with equal care.

So he goes on for page after page announcing the proposition, which I hold to be self-evident, that under the Constitution the limitations upon the power of Congress must be applied to the people of the Territories as well as to the people of the States. And then the further question arises, which seems to be mathematical in its demonstration, can the Congress of the United States pass such a bill as this for the Territories, it being in the nature of an *ex post facto* law? The Constitution says in so many words Congress shall not pass any bill of attainder or *ex post facto* law either in the States or the Territories anywhere within the Territorial domain and jurisdiction of this Government. Then what is a bill of attainder? The Supreme Court of the United States has stated it in language so distinct that there can be no question about it. After quoting the clause of the Constitution to which I have referred, Judge Field said:

A bill of attainder is a legislative act which inflicts punishment without a judicial trial.

Senators, what do you propose to do? Do you give these people in the Territory of Utah a judicial trial? Do you give them the forms of trial or the right to prove that they are guilty of the charge made against them? I know it is said that this applies to future transactions or future punishments. It applies to no such thing. A bill of attainder inflicts punishment without a judicial trial, and in this bill the seventh and eighth sections prohibit a judicial trial. You destroy the courts, you destroy the functions of every Territorial officer, and you put in lieu and stead thereof a commission of five men responsible to their own passions and prejudices alone.

As the Senator from Alabama (Mr. Morgan) said, I know the feeling against any Senator who stands here and criticizes even the language of the bill. *Inter arma silent leges*; and if there be no flagrant war in this domain of ours to-day, all the passions which evoke war are in strict with life and instinct with feeling. I am not here to defend polygamy; I would resent the imputation as a personal insult from any man at any time or in any place, but while I abhor polygamy, while I have denounced it, while I have introduced the two first bills introduced in this Senate against it, I revere the Constitution of my country and the rights of personal liberty guaranteed to every American citizen. I tell you now, Senators of the United States, pass the bill and you establish a precedent that will come home to plague you for all time to come. The feeling that to-day exists against polygamy may exist to-morrow against any church, against any class in this broad land, and then what this Constitution meant to guard against, the waves of passion mounting high, we shall be told that the Constitution of the United States enabled Congress to pass this act which in its every feature is a bill of attainder, denounced by that instrument as against public policy and absolutely void.

Mr. President, the Supreme Court, in the case of *Cummings vs. The State of Missouri*, from which the

If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases, the legislative body, in addition to its legitimate functions, exercises the powers and office of judge.

What are we doing here? We are acting as a judiciary; we declare that every person who is a polygamist, without trial, without invoking the aid of the judiciary at all, shall be punished in a certain manner. Ah, but we are told that there is no punishment in this bill. We are told that taking away the right of suffrage is no punishment. Mr. President, we in this bill take away the right to hold office, and the Supreme Court has decided *in totidem verbis* that that is a punishment as much as if a man be convicted and sentenced to the penitentiary.

The disabilities created by the constitution of Missouri must be regarded as penalties.

What were they? That you should not vote or hold office. I know them very well and understand them very fully—

they constitute punishment.

Any gentleman who had lived under that constitution for five years would come to the conclusion that it was slightly of a punitive nature.

We do not agree with the counsel of Missouri, that "to punish one is to deprive him of life, liberty, or property."

The same argument we hear now—

"and that to take from him anything less than these is no punishment at all." The learned counsel does not use these terms—life, liberty and property—as comprehending every right known to the law. He does not include under liberty, freedom from outrage on the feelings as well as restraints on the person. He does not include under property those estates which one may acquire in professions, though they are often the source of the highest emoluments and honors.

Mr. President, we are told that the doctrine I have evoked is true as to taking away from a man the right to practice his profession, but that it does not apply to the right to vote or to hold office. Let me ask gentlemen to listen while I proceed with this opinion:

The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending and the cause of the deprivation determining this fact. Disqualification from office may be punishment, as in cases of conviction upon impeachment. Disqualification from the pursuit of a lawful avocation, or from positions of trust, or from the privilege of appearing in the courts, or acting as an executor, ad-

ministrator or guardian, may also, and often has been, imposed as punishment.

Then Judge Field proceeds with historical examples to show that deprivation of office has been in all civilized countries a punishment. In this bill you propose that no man shall hold office who has been guilty of the offenses denounced in this act, and you propose that, without any trial before any judicial tribunal whatever. If that would not be a bill of attainder or a bill of pains and penalties in any country on the globe, I should like to know what could be.

Mr. Edmunds. Will the Senator from Missouri allow me to ask him a question?

Mr. Vest. Certainly.

Mr. Edmunds. I should be glad to know upon the principle he is now announcing, how the Senator can defend the fourteenth amendment to the Constitution of the United States which declared by a sheer act of the will of the State that a certain class of persons who had been engaged in war against the United States should not be entitled to hold office, although before that time under the constitutions and laws of their own States as well as of the United States, they were entitled to the right to hold office?

Mr. Vest. With all respect to the Senator from Vermont, that question is hardly worthy of serious consideration. That is a portion of the Constitution of the United States, and the Constitution can be amended under its own provisions at any time and in any respect. But here is an act under the Constitution, here is a law professing to be passed under the limitations of the Constitution which it violates.

Mr. Edmunds. But my friend will not forget—he is a Missourian himself—that the inhibition against holding office in the State of Missouri was by a constitutional provision of that sovereign State; and if that will not stand, then how can this stand?

Mr. Vest. But the Supreme Court of the United States declared that that constitutional provision of Missouri violated the Constitution of the United States.

Mr. Edmunds. I differ from my

Mr. Vest. In regard to holding office this decision is clear.

Mr. Edmunds. But the Senator will certainly remember that the question there was whether a particular person had a right to carry on his function as a minister of the gospel, which is not supposed in my part of the country to be a political right.

Mr. Vest. Mr. President, I know very well the *Cummings* case came up on the right of Cummings to exercise a clerical vocation; in other words, he was a Roman Catholic priest. Judge Field went further and defined what a bill of attainder was under the Constitution; and what was it? Shall I read it again? What is a bill of attainder? It is taking away an office of trust or honor from a man without a judicial trial. He held so in that opinion, and when the Senator from Vermont can overturn that decision, then he can defend the seventh and eighth sections of this bill, and not before.

Mr. Edmunds. May I ask my friend another question, for we are both desirous of getting at the real point?

Mr. Vest. Certainly.

Mr. Edmunds. Then on his principle how can Congress pass—it has not yet passed, to be sure, and therefore it is not a case in point so far—the bill that is now pending on our calendar, to terminate the official functions of all the internal-revenue collectors of the United States, who now by law hold during good behavior? How can we vacate all those offices?

Mr. Vest. When that question is under discussion I will meet it. I presume Congress can abolish any office.

Mr. Edmunds. But it does not propose to abolish the office of internal-revenue collector.

Mr. Vest. I do not know the provisions of the bill in regard to internal revenue collectors; but I undertake to say that if there is a provision in that bill which assumes to take his office away from an internal revenue collector as a punishment for crime, by act of Congress, without trial before a court, it is unconstitutional. That is all I have to say in regard to that bill, which I do not recollect ever to have read.

I declare here that the Supreme Court of the United States has over and over proclaimed that whenever

you undertake to deprive a man of a position of honor, trust, or profit, without a trial before a judicial tribunal, by an act of Congress, that act of Congress becomes a bill of attainder and is unconstitutional and void; and the only question now before us is, does this bill do that thing? Its words are plain, distinct, and exact. Not only does it so provide, but it goes further, and provides that on a judicial trial no man shall sit on a jury whose heart entertains one single prejudice in favor of polygamy. With a jury so constituted, with a judge appointed by the Executive of the United States to try all offenders, we are still told that this bill will be inoperative and useless unless we violate the Constitution and say further that there shall be no trial except before these five commissioners. In other words, you strike down what these gentlemen are pleased to term, and what I term too, an anti-republican Territorial government, and you propose to set up an anti-republican star-chamber in the Territory of Utah. Gentlemen proclaim, and justly proclaim, that the hierarchy which, within the dark chamber inaugurated by Brigham Young and Joe Smith, carry out their ecclesiastical theory to the destruction of both body and soul is monstrous, and so it is; but here we propose to inaugurate another star-chamber of five men, responsible to nobody, governed alone by their own prejudices, or passions, or feelings, or opinions; who can say who shall be elected; who can say who shall vote, and who can pass upon all laws; who can say to the people of the United States "We order this thing." Never in the days of the inquisition was there any more questionable mode of punishment. What is the limitation on their power? Is there any appeal from them? Mr. President, the principle is wrong, unconstitutional, and against every principle that the American people heretofore have been accustomed to revere.

Mr. Edmunds. May I interrupt my friend again? May I call his attention to a decision of the Supreme Court of the United States on the *Reynolds* case, in the case of *Reynolds*, even without the provisions of this bill, the Supreme Court of the United States held upon the principles of the common law that the fact of jurors who were called living in polygamy; and that appearing and they being challenged by the government, it was a good ground of challenge on a trial for polygamy already. So I suggest to my friend, without intending to interrupt the course of his remarks, that all this bill provides in that regard is really to put into convenient statutory form the essential principle held by the Supreme Court of the United States.

Mr. Morgan. Will the Senator from Missouri allow me?

Mr. Vest. Certainly.

Mr. Morgan. I should like to ask the Senator from Vermont whether that decision of the Supreme Court was not a decision made by the court when the juror was disqualified?

Mr. Edmunds. Of course it was; that was what I said.

Mr. Morgan. Suppose that decision had been made by a board of Federal officers not in a court house, would that be a judicial decision?

Mr. Edmunds. It would be a competent decision when it was a question of the right of voting, I have no doubt; but I am speaking to the point that my friend from Missouri made as to the juror challenge clause in this bill; and that was that he thought it was violative of the principles of the Constitution. I only called the decision to his attention to show, what I supposed everybody knew before, that this provision in the bill is merely putting into form what is the substance of the law already.

Mr. Morgan. May I ask further, does the honorable Senator from Vermont by this bill mean that five commissioners can try a man for bigamy or polygamy, and exclude him from voting because he is guilty of it?

Mr. Edmunds. I do not hear the Senator.

Mr. Morgan. Does the Senator from Vermont hold that the five commissioners provided for in the eighth section of this bill can try a man for bigamy or polygamy, and on the ground of his guilt exclude him from going to the ballot-box?

Mr. Edmunds. The buzz in the Chamber is such that I do not even now hear what the Senator from Alabama is saying.

The Presiding Officer. Senators

will please suspend until there is order in the Chamber.

Mr. Morgan. I was asking the Senator from Vermont whether with the eighth section of this bill he holds that the five commissioners who are appointed a board of canvassers have the right to convict a man of bigamy or polygamy under this act, and therefore exclude his vote from the ballot-box?

Mr. Edmunds. I Most certainly do not. I do not hold that the five commissioners have a right to convict anybody of anything, whether stealing a chicken, or taking a glass of whisky, or chewing tobacco, or violating the Sabbath, or doing anything that may be prohibited by law in any case whatever. They are to do precisely what the constitution of Vermont and I think of Alabama provides that the political officials of those States may do,—pass upon the qualifications for the time being of a voter, those qualifications being fixed by law.

Mr. Morgan. The Senator then holds that if one of these disqualifications is the violation of a criminal statute of Alabama or Vermont, these five commissioners can ascertain the guilt of the party and therefore exclude his vote.

Mr. Edmunds. It is not of the slightest consequence whether the supposed disqualification violates a statute or whether it does not. It does not make it any better or worse. There may be a disqualification fixed by law for a perfectly praiseworthy act. The political power has a right to say that no man shall be a voter who gives alms, if you please; no man shall be a voter who is not fifty-five years of age, and that would exclude my friend from Alabama and myself both. The political power has a right to say that, and it is not necessary to send it to a court to try our age in advance. The political function goes on determining through the agencies provided by the political law, whether we come within the qualification; and the nature of the qualification is of no possible consequence to the principle of the political right of determining the status of the man who offers to vote.

Mr. Vest. Mr. President, the senator from Vermont must excuse me when he says I attacked the constitutionality of the provision in regard to jurors in this bill. I did not discuss the effect of that provision. I merely mentioned it, in passing, to show that the Judiciary Committee should be willing to say that persons should be convicted of the crime here denounced before the disqualification for office attached, because of the machinery of the law here provided for trying such offences. They have their own judge, their own jury, their own witness, and yet forsooth we are told that with all that there must be an additional provision that, without trial, this punishment shall follow.

A great deal has been said here about the power of Congress over the Territories. I shall not go over that thrice-told tale in regard to the clause of the Constitution which provides that Congress may make all needful rules and regulations in regard to the territory and other property of the United States. I assent to the propositions of the Senator from Delaware (Mr. Bayard) and the Senator from Arkansas (Mr. Garland) that the Congress of the United States can under the Constitution impose conditions and limitations upon the people of any Territory. I agree that the statute exists which the Senator from Arkansas invokes in favor of this bill, by which the acts of territorial legislatures must be submitted to the Congress of the United States. What has that to do with the question before us now?

The Senator from Delaware was pleased to speak of my putting up a man of straw and then demolishing him. Why, sir, there are regiments of men of straw already invoked in favor of this extraordinary bill. Who said anything about the power of Congress over the Territories except under the Constitution? What I object to in this bill is that it is a bill of attainder, unconstitutional in the Territories, unconstitutional in the States, unconstitutional wherever the flag of the Republic waves to-day in supremacy. It is a bill of attainder because it inflicts a punishment, in the language of the Supreme Court of the United States, without trial by a judicial tribunal. Who gainsays it? Who has a doubt about it? He who says it is not a punishment to deprive a man of office, gainsays and contradicts the decision of the Supreme Court of the United States, which I