DESERET EVENING NEWS THURSDAY MARCH 26 1908



Document Handed Down By Chief Justice James F. Ailshie And Associates Given In Full-Another Sad Blow to Ex-Senator Fred T. Dubois and His Followers Who Sought To Disfranchise the Mormon People in Idaho.

Special Correspondence.

556; Cunningham vs. Moody, 3 Idaho,

Boise, Ida., March 25 .- In the case 125 125. "It requires no argument nor cita-tion of authority to establish the prop-osition as a well-founded legal con-clusion that no one can exercise the of Alfred Budge, judge of the Fifth judicial district of this state, whose election was contested by Dudley D. clusion that no one can exercise the elective franchise, serve on a jury or hold office who comes within the in-hibitions of section 3 of the 'Sur-frage and Elections' article of the con-stitution. In such case the only in-quiry to be made is: Does the defend-ant come within the constitutional enumeration of prohibited persons or classes as charged in the complaint? Tencray, an elector, in a proceeding sofore the district court of the Sixth judicial district, which court sustained a demurrer of the defendant to the complaint, whereupon an appeal to the higher court was taken, the su-

preme court yesterday rendered a deision confirming the action of the CHURCH HISTORY. "On February 3, 1895, the territor-ial legislature passed an act regulating elections within the territory and pre-scribing the qualifications of electors, and section 16 of the act contained what has been popularly known ever since as the "Test Oath" (Sess, Laws, 1885, p. 110.) At that time it was generally conceded, we believe, even by the Mormon authorities and eccle-siastics themselves, that bigamy, po-iygamy and plural and celectial mär-riage was a tenet of the Church of Jesus Christ of Latter-day Saints and was taught by it and practised by some of its members. "In support of this assumption see lower court and defining the constitutional provision upon which the complaint was made. The appellant complaint was made. The appendix was represented by Richards & Haga, and the respondent by Clark & Budge and Hawley, Pucket & Hawley. The opinion was written by Chief Justice James F. Altshie and concurred in by associate Justices Sullivan and Stew-This proceeding represents a violent fort on the part of ex-Senator Fred Dubois to gratify his unsatiable dedisfranchisement of the

on people in Idaho; but this de-of the supreme court practically nties the knight of "home purextracts from Church history and Church doctrines quoted in Hilton vs Roylance, 69 Pac, 660, 25 Utah, 129, 91 Am. St. Reps, 821. See also Davis vs Beason, 133, U. S. 333, 33 L. Ed. 637; Reynolds vs United States, 98 U. S. 145; 25 L. Ed. 244; Late Corporation of Lat-ter-Day Saints vs. United States, 136 U. S. 1, 34 L. Ed. 478. It was at that time a burning issue in this territory as to whether anyone who taught such a doctrine or oreed or practised the principles thus taught should be al-lowed the elective franchise or to hold any office of profit or trust. "The test oath provision was inextracts), and marks one great step to-is complete defeat in this state, original proceedings were in-d in November, 1906, and were apon section 3, article 6, of the constitution, which were the sole as for the contest against Judge as for the contest against Judge re's election. The article in ques-provides that no person is per-d to vote, serve as a juror, or any civil office who "is a biga-polygamist, or is living in what nown as patriarchal, plural or tial marriage," etc. The complaint

that Judge Budge was at the ad still is a member of the Church, which did then and does teach polygamy and enages and assists persons to enter such marriages as are prohibited

e constitution. defendant demurred to the com-i, first on the ground that the in which the complaint was filed o jurisdiction of the subject mat-second, that the complaint did late facts sufficient to constitute se of action, and third, that the mint was ambiguous and uncer-tate that the did not state what was "The supreme court denied that

that it did not state what was in alleging that defendant was "in what is known as celestial cause was dismissed. The ap-ta from that indement was from that judgment. supreme court gave the matter lost careful and thorough consid-n and rendered an pinion, which full as follows

"We have been urged by the emi-nent and distinguished counsel on both sides in this controversy that whatever view we may take of the jurisdictional question just considered, that we also question just considered, that we also pass upon and define the terms 'celes-ual' and 'patriarchal' marriages as they are used in the above quoted section of the constitution. We ap-preciate the fact that this case might be determined and disposed of by us on the jurisdictional question alone. On the other hand, the demurrer raised the sufficiency of the complaint, and particularly in respect to its charging defendant with celestial and patriarch-ial marriage, and the demurrer was marriage, and the demurrer was tained generally by the trial court hout specifying upon which ground, the jurisdictional question and sufficiency of the complaint have i fully and exhaustively argued orally and by briefs and the ques-s are directly raised and have been ns are directly raised and have Under

constitution.

CHURCH HISTORY.

'In support of this assumption s from Church history and

any office of profit or trust. "The test oath provision was in-corporated into section 504 of the re-vised statutes of 1887, and its sub-stance was also embodied into section 501 of the same code. In 1889 the case of Davis vs Beason was taken to the supreme could of the United State

case of Davis vs Beason was taken to the supreme court of the United States where it was argued in December of that year. In that case it was con-tended that the statute of Idaho was in controvention of the first amend-ment of the Constitution of the United States, and was an unlawful and un-monored interferences with reliefous warranted interference with religious

"The supreme court denied that contention and sustained the acts of the territorial legislature, and that de-cision would equally apply at this time to the validity of the constitutional provision now under consideration. Section 3 of article 6 of the Constitu-tion prescribes substantially the same qualifications for electors as was re-quired by the foregoing territorial stat-nites. We must now determine the meaning of the language used in this section in the light of conditions as they existed at the time the constitu-tional convention was in session in July, 1889. "As said by the supreme court of the United States in Maxwell vs Dow.

"As said by the supreme court of the United States in Maxwell vs Dow, 176 U. S. 601, 44 L. Ed. 305: "The safe way is to read its language in con-nection with the known condition of af-fairs out of which the occasion for its adoption may have arisen, and then to construct it, if there be therein any doubtful expressons, in a way, so far as is reasonably possible, to for-ward the known purpose or object for hich the amendment (constitutional) was adopted.' See 8 Cyc, 730, and cases cited. cases cited.

AS TO DEFINITIONS.

"It would be useless to go to dic-tionaries and lexicons for definitions of such words and terms as 'celestial mar-'lage' and 'patriarchal marriage' 18.9 here used in the organic law of the state. We are now removed nearly 19 years from the time about which we must inquire as to the social, civil and political conditions that confronted the constitutional convention and the people of this territory, and for that informaconstitutional convention and the people of this territory, and for that informa-tion we must turn to the public history of the day as it can be gathered from the press, public writings and current literature of that time, aided by what-ever memory we may have left as to the occurrences of those days. "The principal and primary object of the people and their representatives in the constitutional convention was to suppress and forever outlaw and dis-countenance bigamy and polygamy within the state of Idaho, under what-ever name or designation it might be given or under whatever doctrine or creed it might be recognized, taught or practised by any person or organiza-tion. So when the convention came to writing section 3 of the article on "suf-frage and elections" they were con-fronted by the fact that while in the language of legislatures, courts and law writers, anything which looked like having more than one wife, at one and the same time, was defined as bigamy or polygamy; nevertheless, this organi-zation of Latter-day Saints, commonly called the Mormons, was employing and using other terms and expressions iconcerning the marital relation and which terms might also signify bigamy and polygamy; so the convention in-cluded those other terms also in sec-tion 3 as herein set out. and polygamy; so the convention in-cluded those other terms also in sec-tion 3 as herein set out. "No more importance seems to have been attached by the convention to the words 'celestial' and 'patriarchal' than to the words bigamy and polygamy, and, indeed, we have been unable to hearn where any member of the conlearn where any member of the con-vention ever offered to define either of those terms as meaning anything other than bigamy or polygamy-no stress seems to have been laid upon them 'So far as we are able to ascertain section 3 appears to have been adopted by the convention without debate, and whatever discussion or debate took place in the convention on this subject must have occurred over the adoption of section 4 of article 6, or concerning the electration of rights, or both. The consensus of opinion or both. The consensus of opinion seems to have been that the convention would strike down bigamy and polyg-auny, and that since the Mormon Church taught those practises, the in-cidental result would be to strike at that organization and deprive its mem-bers and adherents of the elective furnishing. The convention bers and franchise. bers and adherents of the elective franchise. The convention seems to have thought that since the Church taught a specific and peculiar doc-trine with reference to 'celestial and patriarchal marriage' that in the event of a prosecution they might discialm the doctrines of bigamy and polygamy and yet justify substantially the same teaching and practises under the Church names of 'celestial' and 'patri-archal.' salve Acts like a poultice. Good family salve. M. 1. Drug Dept. 112-114 Marn archal



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tion than any other court or judicial body in the land. AN EXPLANATION,

AN EXPLANATION, "Turning to this phase of the in-quiry, we find that President Wilford Woodruff of the Mormon Church is reported as having said in the course of a speech delivered in 1883, in dis-cussing the maritage relation: "So I will say to our friends here— the strangers within our gates—that any man that marries a wife by any authority other than the authority of the holy priesthood is simply married for time, or until death do you part. When you go into the spirit world you have no claim on your wife and chill-dren. The ordinance of having them sealed to you by one having authority

have no claim on your wife and chil-dren. The ordinance of having them sealed to you by one having authority of the holy priesthood must be at-tended to in this world. Father Abra-ham obeyed the law of the patriarchal order of manriage. His wives were sealed to him for time and all eternity, and so were the wives of all the pratri-archs and 'prophets that obeyed the law.' (69 Pac. 668. "Prior to the foregoing utterances by President Woodruff, Orson Fratt, an elder of the Church, who appears to have attained a high standing as an expounder of the Church doctrine, said: Tt seems, then, that if we wish to fulfill the object of our creation and if we are truly in the Lord, we must go into the eternal world as married, not for time, not by some justice of the peace that is an infidel, not by a man that has no right to join us to-gether under the revelation and au-thority of the Most High, but we must be married for eternity by a man who has the right to speak, being command-ed of the Lord, holding the keys of authority and power, who can say to the man and woman. 'I pronounce you husband and wife for time and all eternity.' Then you will be married according to the pattern given. Then you will have a claim upon each other after death. But have married people according to the pattern given. Then you will have a claim upon each other after death. But have married people in the nations a claim upon each other after death? I mean those who have not been married after the pattern and authority of heaven. By no means, Their contracts are made only for a authority of heaven. By no means, Their contracts are made only for a little space-some 20, 30, 50 or 70 years, as the case may be. Then death

Then concession 20, 30, 50 or 10 years, as the case may be. Then death comes along and the contract runs out; and when you come in the resurrec-tion, who are you? Have you any wife there? Oh, no. Why not? Be-cause you were not sealed or married to each other by Divine authority. That is the reason, . . . The word to each other by Divine authority. That is the reason. . . The word of the Lord told you to gather up here. What for? That you might, among other things, be married according to the law of God. I am endeavoring to tell you some of our peculiarities. We do believe that every man who gathers up with the saints, whether married by the Gentile law or not, should be married by one holding Divine author-ity to officiate, and thus have the ordi-nance, the ministration, sealed on earth, that it may be sealed in the heavens.' (69 Pac. 668. ETERNAL RELATIONSHIP,

"In the 'Articles of Faith.' page 457, written by Dr. James E. Talmage, acting under appointment and by au-thority of the Church, the author wrote: 'Marriage, as regarded by the Latter-day Saints, is ordained of God, and designed to be an eternal relation-ship of the sexes. With this monitor Latter-day Saints, is ordained of God, and designed to be an eternal relation-ship of the sexes. With this people it is not merely a temporal contract to be of effect on earth during the mortal existence of the parties, but a solemn agreement which is to ex-tend beyond the grave. In the com-plete ceremony of marriage, as pre-scribed by the Church, the man and the woman are placed under coven-ant of mutual fidelity—not "until death do you part," but "for time and for all eternity." A contract as far reaching as this, extending not only throughout time, but into the domain of the hereafter, requires for its vali-dation an authority superior to that of earth; and such an authority is found in the holy priesthood, which, given of God, is eternal." "In the 'Key to Theology,' by Par-tey P. Pratt, as reported in Hilton vs. Roylance, with reference to the bind-ing effect and continuance of the marital relations, it is stated as fol-lows: 'All vows, covenants, contracts, marriages, or unions not formed by revelation and sealed for time and all deternity, and recorded in the holy archives of earth and heaven by the revelation and sealed for time and all aternity, and recorded in the holy archives of earth and heaven by the ministrations of the holy and cternal priesthood, will be dissolved by death, and will not be recognized by the aternal authority after the parties have entered through the vail into the eternal world. This is heaven's eter-nal law, as revealed to the ancients of all ages, who held the keys of eternal priesthood, after the order of the Son priesthood, after the order of the Son of God, and as restored with the priesthood of the saints of this age. BRIBHAM YOUNG QUOTED. "President Brigham Young of the "President Enghant i young of the Mormon Church is reported in Hilton vs. Roylance to have stated in a pub-lie discourse as late as May 8, 1870, as follows: 'I will say a few words on a subject which has been men-tioned here; that is, celestial marriage, God has given a revelation to seal for

BEGINNING AND END.

"In the Hilton-Roylance case, in considering and discusing when a cel-estial marriage begins and ends, the court says: In 1 Whitney, Hist. Utah, p. 212, speaking of the doctrine of celestial marriage, the author said: 'It was to the Latter-day Sains the key to the celestial kingdom, where, ac-cording to their faith, family relation-ships formed on earth according to Divine law will be perpetuated. Hence the revelation enjoining celestial mar-riage was entitled, 'Revelation on the Eternity of the Marriage Covenant, in-cluding plurality of wives. How can "In the Hilton-Roylance case, it Eternity of the Marriage Covenant, in-cluding plurality of wives. How can 'family relationships' be formed on earth, and 'perpetuated' in the celestial kingdom, if they are not to begin until both parties are dead? Evidently the historian meant that a marriage by au-thority of the Church was for both time and actimum. The redeation referred and eternity. The revelation referred to relates to the eternity of the 'mar-riage covenant,' and doubtless refers to all marriages solemnized by authority of the Church, whether monogamous or plural.

"TIME ONLY" MARRIAGES.

"TIME ONLY" MARRIAGES. "From the foregoing it seems clear that the Church looked upon and re-garded marriages celebrated and sol-emnized by mere civil authority and with only the sanction of law as mar-riages for 'time only,' while marriages solemnized by a duly constituted Church authority, or as they put it, 'by the holy and eternal priesthood of the saints,' was termed and designated by them as a 'celestiai' or 'patriarchal' marriage, binding not only during this life, but throughout the life to come. "It will also be seen at once from "It will also be seen at once from these quotations and citations that at the time of the constitutional convention the Church recognized the two kinds of marriage—one for time only, or, in other words, for this life only: and the other for both time and eter-nity, or for this life and the life here-after. The latter were termed 'celes-tial' or 'patriarchal' mariages. Now, it was evidently the intention of the convention to prohibit more than one celestial or 'time and eternity' mar-riage, as well as to prohibit more than one terrestial or 'time only' marriage, But the prohibition on the celes-tial or patriarchal marriage was only intended to extend to the same period of time and to the same extent as the prohibition on the time marriage namely, to this life.

WHAT LAWS ARE FOR.

"Constitutions and statutes are drafted and adopted for the govern-ment of men and the regulation of

hereafter, and there can be no objec-tion to his marrying her for both 'time and eternity.' but what the con-stitution objects to and forbids is a man having more than one wife at any one time whether he be united, joined or married to her by celestial marriage ceremony for 'all time and eternity' or by a purely civil marriage ceremony by a justice of the peace or other civil of-facer, 'for time only.' Nor does the fact that a man belongs to a church that feaches that marriage ceremonies celebrated by its duly authorized offi-cers and ecclesiastics remains in force and effect during both this life and all eternity disqualify him for an elec-tor so long as it does not teach or countenance more than one of such marriages for the same person during the same period of time so as to make such marriage bigamous or polyga-mous.

it is so respondent."

NOTICE.

Mormon Battalion.

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lly presented to the court. Under at condition of the proceeding, we are nclined to the belief that we should ass upon this latter question and that decision thereon would be a judicial the definition of the respective and the spectrum of the second base ession as distinguished from obiter In the light of the further conten-imade by them that the question olved is of such general public im-tance that the views of the court last resort ought to be speedily on thereon, the court has conse-ntly examined the matter with more in usual care and diligence, and we dily express the conclusion reached our research and investigation our research and investigation.

the first place, it is urged by lant and admitted by respondent section 3 of article 6 of the con-tion is self-operative and self-actis and needs no legislation to carry is and needs no legislation to carry is provisions into effect. Indeed, this ourt has on several occasions held ther and similar negative and pro-lbitory provisions of the constitution as self-executing. Kats vs. Herrick 12 Idaho, 1; Day vs. Day, 12 Idaho

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GROWING STRONGER

Apparently, With Advancing Age.

Apparently, With Advancing Age, "In 1896 at the age of 50 years, I col-lapsed from excessive coffee drinking," writes a man in Mo. "For four years I shambled about with the aid of crut-ches or cane, most of the time unable to dress myself without help. "My feet were greatly swollen, my right arm was shrunken and twisted inward, the fingers of my right hand were clenched and could not be extended except with great effort and pain. Nothing seemed to give me more than during all this time and for about 30 years previously. I drank daily an average of 6 cups of strong coffee-rarely missing a meal.

an average of 6 cups of strong coffee-rarely missing a meal. "My wife at last took my case into her own hands and bought some Pos-tum. She made it according to direc-tions and I liked it fully as well as the best high-grade coffee. "Improvement set in at once. In about 6 months I began to work a lit-tle and in less than a year I was very much better, improving rapidly from day to day. I am now in far better health than most men of my years and apparently growing stronger with ad-vancing age.

ment of men and the regulation of their conduct in a civil and temporal government of human beings in this life. Constitutions and statutes care nothing about what men believe with reference to a future existence; indeed, they are intended in this American Union to protect a man in believing Union to protect a man in believing anything he wants to believe with ref-erence to the future. They do not deal with beliefs but with acts and practises. They protect any man in be-lieving anything he wants to believe with reference to the future, but they

with reference to the future, but they prohibit him acting or practising any-thing in any manner contrary to good morals or the public weal as pre-scribed by the laws of the land. "As said by Chief Justice Waite in Reynolds vs. United States, 98 U. S. 145, 25 L. Ed. 244: "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices."

religious belief and opinions, they may with practices." "This conclusion is clearly borne out and supported by the provisions of section 4 of article 1 of the con-stitution, known as the 'declaration of rights.' There the framers of the con-stitution specifically recognized the right of every one to the 'enjoyment of religious faith and worship,' and asserted that no one should ever 'be denied any civil or political right, privilege, or capacity on account of his religious opinions.' It also provided that 'liberty of considence' should not be construed to either justify or 'ex-cuse acts of licentiousness or justify polygamous or other petricious prac-tices . . , nor to petricital presen, organization or association to directly or indirectly ald or abel, counsel or advise any person to commit the crime of bigamy or polygamy, or any other crime.' The section referred to is as follows: follows:

THE CONSTITUTION,

"'Section 4. The exercise and en-joyment of religious faith and wor-ship shall forever be guaranteed, and no person shall be denied any civil or political right, privilege, or capacity on account of his religious options; ar political right, parvilege, or capacity on account of his religious options; but the liberty of conscience hareby secured shall not be construct to dis-pense with oaths or affirmations or excuse acts of heentousness or justify polygamous or other pernicious hrac-tices, inconsistent with norality of the peace or safety of the state; not to peace or safety of the state; not to permit any person, organization or as-sociation to directly or indirectly hid or abet, counsel or advise, any person to commit the crime of bigamy or ho-lygamy, or any other crime. No per-son shall be required to attend by support any ministry or place of wor-ship, religious sect or denomination, or pay tithos against his consent; not shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are foreyer prohibited in the state, and the legislative shall provide by law for the punishment of such crime. NOT CRIMES HERE.

NOT CRIMES HERE.

"Now, celestial and patriarchal mar-riages to be participated in in the next world, or a future life, cannot be crimes here and in this life under a civil and man-made government, but whenever they are practised in this present life to the extent of more than one at a time, they become bigamous one at a time to the extent of more in or polygamous and are prohibited the organic law of the state. It the fore clearly appears that the conve-tion their was guarding against and practices and apparently growing stronger with ad-vancing age.
"I am busy every day at some kind of work and am able to keep up with the procession without a cane. The arm and hand that were once almost use-less now keep for abead in rapidity of movement and heauty of penmanshin."
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