*Continued from page 213.)*

The cases of Murphy and Barlow are alike in substance. In Murphy's case, the allegations are, "that he has not since more than three years prior to March 22d, 1882, married or entered into any marriage contract or relation with any woman, or in anywise violated the act of Congress approved July 1, 1862, defining and providing for the punishment of bigamy in the Territories, . . . and has not violated any of the provisions of the act of Congress approved March 22d, 1882, etc., . . . and that he has not, on or since the 22d day of March, 1882, cohabited with more than one woman, and has never been charged with or accused or convicted of bigamy or polygamy, or cohabiting with more than one woman, in any court or before any officer or tribunal." In Barlow's case, the statement on one point is stronger. It is, "that he has not, on or since the first day of July, 1862, married or entered into any marriage contract or relation with any woman, or in anywise violated the act of Congress approved July 1, 1862, defining and providing for the punishment of bigamy in the Territories. That is to say, that, although he may have married a second wife, it was before any law existed in the Territory prohibiting it, and, therefore, it could not have been a criminal offence when committed.

But in both cases the complaints omit the allegation, that, at the time the plaintiffs respectively claimed to be registered as voters, they were not each, either a bigamist or a polygamist.

It is admitted that the use of these very terms in the complaint is not necessary, if the disqualifications lawfully implied by them are otherwise substantially denied. That such is their case is maintained by the appellants.

The words "bigamist" and "polygamist" evidently are not used in this statute in the sense of describing those who entertain the opinion that bigamy and polygamy ought to be tolerated as a practice, not inconsistent with the good order of society, the welfare of the race, and a true code of morality, if such there be; because, in the proviso in the ninth section of the act, it is expressly declared that no person shall be excluded from the polls, or be denied his vote, on account of any opinion on the subject.

It is argued that they cannot be understood as meaning those who, prior to the passage of the act of March 22d, 1882, had contracted a bigamous or polygamous marriage, either in violation of an existing law, such as that of July 1, 1862, or before the enactment of any law forbidding it; for to do so would give to the statute a retrospective effect, and by thus depriving citizens of civil rights, merely on account of past offences, or on account of acts which when committed were not offences, would make it an *ex post facto* law, and therefore void. And the conclusion is declared to be necessary, that the words polygamist and bigamist, as used in the eighth section of the act, can mean only such persons as having violated the first section of the act, are guilty of polygamy; that is, "every person who has a husband or wife living, who, in a Territory or other place over which the United States have 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 have exclusive jurisdiction."

But there is another meaning which may be given to these words, which, we think, is the one intended by Congress. In our opinion, any man is a polygamist or bigamist, in the sense of this section of the act, who, having previously married one wife, still living, and having another at the time when he presents himself to claim registration as a voter, still maintains that relation to a plurality of wives, although from the date of the passage of the act of March 22d, 1882, until the day he offers to register and to vote, he may not in fact have cohabited with more than one woman. Without regard to the question whether at the time he entered into such a relation it was a prohibited and punishable offense, or whether by reason of lapse of time since its commission a prosecution for it may not be barred, if he still maintains the relation he is a bigamist or polygamist, because that is the status which the fixed habit and practice of his living has established. He has a plurality of wives, more than one woman whom he recognizes as a wife, of whose children he is the acknowledged father, and whom with their children he maintains as a family, of which he is the head. And this status as to several wives may well continue to exist, as a practical relation, although for a period he may not in fact cohabit with more than one; for that is quite consistent with the constant recognition of the same relation to many, accompanied with a possible intention to renew cohabitation with one or more of the others when it may be convenient.

It is not, therefore, because the person has committed the offence of bigamy or polygamy, at some previous time, in violation of some existing statute, and as an additional punishment for its commission, that he is disfranchised by the act of Congress of March 22d, 1882; nor because he is guilty of the offence, as defined and punished by the terms of that act; but, because having at some time entered into a bigamous or polygamous relation, by a marriage with a second or third wife, while the first was living, he still maintains it, and has not dissolved it, although for the time being he restricts actual cohabitation to but one. He might, in fact, abstain from actual cohabitation with all, and be still as much as ever a bigamist or a polygamist. He can only cease to be such when he has finally and fully dissolved in some effective manner, which we are not called on here to point out, the very relation of husband to several wives, which constitutes the forbidden status he has previously assumed. Cohabitation is but one of many incidents to the marriage relation. It is not essential to it. One man, where such a system has been tolerated and practiced, may have several establishments, each of which may be the home of a separate family, none of which he himself may dwell in or even visit. The statute makes an express distinction between bigamists and polygamists on the one hand, and those who cohabit with more than one woman on the other; whereas, if cohabitation with several wives was essential to the description of those who are bigamists or polygamists, those words in the statute would be superfluous and unnecessary. It follows, therefore, that any person having several wives is a bigamist or polygamist in the sense of the act of March 22, 1882, although since the date of its passage may not have cohabited with more than one of them.

Upon this construction the statute is not open to the objection that it is an *ex post facto* law. It does not seek in this section and by the penalty of disfranchisement to operate as a punishment upon any offence at all. The crime of bigamy or polygamy consists in entering into a bigamous or polygamous marriage, and is complete when the relation begins. That of actual cohabitation with more than one woman is defined and the punishment prescribed in the third section. The disfranchisement operates upon the existing state and condition of the person, and not upon a past offence. It is, therefore, not retrospective. He alone is deprived of his vote who, when he offers to register, is then in the state and condition of a bigamist or a polygamist, or is then actually cohabiting with more than one woman. Disfranchisement is not prescribed as a penalty for being guilty of the crime and offence of bigamy or polygamy; for, as has been said, that offence consists in the fact of unlawful marriage, and a prosecution against the offender is barred by the lapse of three years, by section 1044 of the Revised Statutes. Continuing to live in that state afterwards is not an offence, although cohabitation with more than one woman is. But as one may be living in a bigamous or polygamous state without cohabitation with more than one woman, he is in that sense a bigamist or a polygamist, and yet guilty of no criminal offience. So that, in respect to those disqualifications of a voter under the act of March 22d, 1882, the objection is not well taken that represents the inquiry into the fact by the officers of registration as an unlawful mode of prosecution for crime. In respect to the fact of actual cohabitation with more than one woman the objection is equally groundless, for the inquiry into the fact, so far as the registration officers are authorized to make it, or the judges of election, on challenge of the right of the voter if registered, are required to determine it, is not, in view of its character as a crime, nor for the purpose of punishment, but for the sole purpose of determining, as in case of every other condition attached to the right of suffrage, the qualification of one who alleges his right to vote. It is precisely similar to an inquiry into the fact of nativity, of age, or of any other status made necessary by law as a condition of the elective franchise. It would be quite competent for the sovereign power to declare that no one but a married person shall be entitled to vote; and in that event the election officers would be authorized to determine for that occasion, in case of question in any instance, upon the fact of marriage as a continuing status. There is no greater objection, in point of law, to a similar inquiry for the like purpose into the fact of a subsisting and continuing bigamous or polygamous relation, when it is made, as by the statute under consideration, a disqualification to vote.

The counsel for the appellants in argument seem to question the constitutional power of Congress to pass the act of March 22nd, 1882, so far as it abridges the rights of electors in the Territory under previous laws. But that question is, we think, no longer open to discussion. It has passed beyond the stage of controversy into final judgment. The people of the United States, as sovereign owners of the National Territories, have supreme power over them and their inhabitants. In the exercise of this sovereign dominion, they are represented by the government of the United States, to whom all the powers of government over that subject have been delegated, subject only to such restrictions as are expressed in the Constitution, or are necessarily implied in its terms, or in the purposes and objects of the power itself; for it may well be admitted in respect to this, as to every power of society over its members, that it is not absolute and unlimited. But in ordaining government for the Territories, and the people who inhabit them, all the discretion which belongs to legislative power is vested in Congress; and that extends, beyond all controversy, to determining by law, from time to time, the form of the local government in a particular Territory, and the qualification of those who shall administer it. It rests with Congress to say whether, in a given case, any of the people, resident in the Territory, shall participate in the election of its officers or the making of its laws; and it may, therefore, take from them any right of suffrage it may previously have conferred, or at any time modify or abridge it, as it may deem expedient. The right of local self-government, as known to our system as a constitutional franchise, belongs, under the Constitution, to the States and to the people thereof, by whom that Constitution was ordained, and to whom by its terms all power not conferred by it upon the government of the United States was expressly reserved. The personal and civil rights of the inhabitants of the Territories are secured to them, as to other citizens, by the principles of constitutional liberty which restrain all the agencies of government, State and National; their political rights are franchises which they hold as privileges in the legislative discretion of the Congress of the United States. This doctrine was fully and forcibly declared by the Chief Justice, delivering the opinion of the court in *National Bank* v. *County of Yankton*, 101 U. S. 129. See also *American Ins. Co.* v. *Canter*, 1 Pet. 511; *U. S.* v. *Gratiot*, 14 P. 256; *Cross* v. *Harrison*, 16 H. 164; *Dred Scott* v. *Sandford*, 19 H. 393. If we concede that this discretion in Congress is limited by the obvious purposes for which it was conferred, and that those purposes are satisfied by measures which prepare the people of Territories to become States in the Union, still the conclusion cannot be avoided, that the act of Congress here in question is clearly within that justification. For certainly no legislation can be supposed more wholesome and necessary in the founding of a free, self-governing commonwealth, fit to take rank as one of the co-ordinate States of the Union, than that which seeks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement. And to this end, no means are more directly and immediately suitable than those provided by this act, which endeavors to withdraw all political influence from those who are practically hostile to its attainment.

It remains to be considered whether, in the two cases in which Mary Ann M. Pratt and Mildred E. Randall and husband are respectively the plaintiffs, and in which the plaintiffs have shown a title to vote, the defendants who were registration officers, are sufficiently charged with a legal liability.

As we have pointed out, they were bound by virtue of their appointment under the 9th section of the act of March 22d, 1882, to perform their duties under the existing laws of the United States and of the Territory. The law of the Territory then in force, being "An act providing for the registration of voters and to further regulate the manner of conducting elections in this Territory," approved February 22d, 1878, made it the duty of the registration officers and their deputies "to make careful inquiry as to any or all persons entitled to vote," and ascertain in all cases upon what ground the person claims to be a voter, and it is provided that "he shall require each person entitled to vote and desiring to be registered to take and subscribe in substance the following oath," &c. The form of the oath is then set out, containing a statement of all the particulars which, according to the laws then in force, were necessary to show the qualifications of a voter. It was then provided, that, upon the receipt of such affidavit, the officer "shall place the name of such voter upon the register list of the voters of the county."

The act of March 22d, 1882, created the additional disqualifications which have been mentioned, and which, of course, are not met by the oath as prescribed by the territorial act of 1878, and it is not consistent with the express provisions of the act of Congress, that every person willing to take the oath in the form prescribed by the territorial act shall be permitted to register as a voter. Either the oath itself must be regarded merely as a model, to be modified by the operation of the act of Congress, so as to meet by appropriate denials the several new disqualifications created by it, and then to be taken with the prescribed effect of entitling the person subscribing it to register as a voter without other proof; or else the effect of the act of Congress is to limit the class entitled to take the oath in the form prescribed by the territorial act, with the effect thereby given to it, to those who are not subject to the disqualifications which the act of Congress imposes. The existing laws of the United States and of the Territory, under which the election officers are bound to perform their duties, must include the act itself, which provides for their appointment and defines their duties, and if they have not the right to exact an oath different from that the form of which is given in the territorial act, they must otherwise satisfy themselves that persons offering to register are free from the disqualifications defined in the act of Congress. In doing so, they are of course required to exercise diligence and good faith in their inquiries, and are responsible in damages for rejections made without reasonable cause, or maliciously.

In the two cases last referred to, the allegations of the complaint show, not only that the several plaintiffs were legally entitled to be registered as voters, but declare that the refusal of the registration officers to admit them to the list was wrongful and malicious. The demurrers admit the plaintiffs' case, as thus stated, and therefore ought to have been overruled.

It follows that the judgments in the three cases in which Jesse J. Murphy, Ellen C. Clawson and Hiram B. Clawson, her husband, and James M. Barlow are the respective plaintiffs, are affirmed as to all the defendants; in the two cases in which Mary Ann M. Pratt and Mildred E. Randall and Alfred Randall, her husband, are the plaintiffs respectively, the judgments in favor of the five defendants, Alexander Ramsey, A. S. Paddock, G. L. Godfrey, A. B. Carleton and J. R. Pettigrew are affirmed; and as to the defendants, E. D. Hoge, John S. Lindsay and Harmel Pratt, the judgments are reversed, and as to them the cases are remanded, with instructions to overrule the demurrers, and for further proceedings. *And it is so ordered.*

## CONFERENCE ANNOUNCEMENT.

OXFORD, Idaho, April 13th, 1885.

*Editors Deseret News*:

The regular Quarterly Conference of the Oneida Stake will convene in Oxford, Idaho, on Saturday, April 25th, and continue during the following day.

WM. D. HENDRICKS,
S. H. HALE,
GEO. C. PARKINSON.
Stake Presidency.

## TERRITORIAL ITEMS.

CULLED FROM LATEST EXCHANGES.

—Nevada has a compulsory school law which she is beginning to enforce.

—A female, of Idaho Springs, Colorado, attempted suicide by taking a large dose of morphine a few days ago, but the timely and skilful use of a stomach pump foiled the design.

—Two Black Hills miners were seriously injured a few days ago by an unaccountable explosion. One of the victims, Wm. Waugh, had both his eyes blown out. The other unfortunate was less seriously injured.

—John Duling, who is employed in the Union Pacific railway shops, at Omaha, was brutally assaulted and robbed of a gold watch, chain and ring, and about $15 in cash, by two footpads, on Sunday night.

—Several artesian wells have recently been bored near Lehi and prove to be a grand success. Flowing water is struck at a depth of about fifty feet and makes it exit from the pipes with considerable force. If they can be found to exist in the various places now contemplated for trial, it is thought that the most of the bench land in that region can be brought under cultivation.



## ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One light stud HORSE, 3 or 4 years old, white spot in forehead, some white on nose, branded WN combined on right shoulder and thigh.

One black 5 year old HORSE, right hind foot white and a swelling on same foot, branded T on left shoulder.

If the above described animals are not claimed on or before April 28th, they will be sold at public auction, at the estray pound in Tooele City, at 10 o'clock a. m. April 28, 1885.

M. B. NELSON,
District Poundkeeper.
Tooele City, U. T., April 18, 1885.

## NOTICE.

Before the Hon. Elias A. Smith, Probate Judge, in and for Salt Lake County, Utah Territory.

In the matter of the application for disincorporation of the Iron Manufacturing Company of Utah, Salt Lake County, in Chambers.

PURSUANT TO AN ORDER OF SAID Probate Judge in said matter, entered herein on the 20th day of April A. D., 1885, notice is hereby given, that Wednesday, the 27th day of May A. D. 1885, at 10 a. m. of said day at the office of the Hon. Elias A. Smith, Probate Judge of Salt Lake County, at the County Court House in Salt Lake City, has been appointed the time and place for the hearing of the application of John C. Cutler as Secretary of the "Iron Manufacturing Company of Utah," Salt Lake County, praying among other things for an order declaring said company dissolved as provided for by law.

Salt Lake City, April 20th., 1885.

JOHN C. CUTLER,
w4t Clerk Probate Court.