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CHARLES W. PENROSE, EDITOR.

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MORE SOUND SENATORIAL ARGUMENT.

IN the Senate of the United States on the 16th of February, during the debate on the Edmund's 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:

[CONCLUDED.]

It is very true that it is not a republican manner of dealing with such questions to deprive a man twenty-one years of age of his right of suffrage unless it is for a cause which makes him infamous; it is very true that the doctrine of equality in the exercise of suffrage prevails under our system as essentially in the Territories as it does in the States. Where we grant the right of suffrage in a Territory to the people thereof it is always understood to be granted upon terms of equality as between each other. It is that which makes the right valuable under the Constitution of the United States and makes republican institutions, in the sense in which I mention them, equally pervade all the communities of this country.

I do not take issue upon the question that the Congress of the United States have the power to impose additional disqualifications. I do, however, say that there is another feature of the law, another feature of constitutional law, the just rights and benefits of which belong to every man who is a citizen of the United States, irrespective of what part of the country he may be found, that protects him against a conviction for a crime, no matter what the punishment may be, unless after conviction had according to due course of law, and by the decision of the judicial department of the government. You cannot place the citizens of the United States in any part of its domain where the laws of the United States obtain and where courts are organized for the purpose of enforcing those laws, and there deprive him of the rights which the Constitution guarantees to him—the rights that the Constitution has affirmed in his behalf. Whenever he is accused of crime, whatever the punishment of it may be, he has a right to be tried according to the forms of law and by judicial tribunals, except only in the cases excepted in the Constitution, of trials by court-martial.

This bill deprives a citizen in the Territory of Utah of that right; this bill enables five commissioners appointed by the President and confirmed by the Senate, without any trial or hearing at all, without information, without indictment, without summoning a witness, to institute an inquiry and to arrive at a conclusion that a person, a citizen of the United States in the Territory of Utah, has violated this law, and that in consequence of his violation of it he must be disfranchised as a punishment. I think it will not be denied that the taking from a man the right to vote in consequence of an act which is denounced in the statute as being criminal is a punishment. You may lock him up in the penitentiary after you convict him before a court and jury, and that is punishment; you may fine him, and that is punishment. By your fine you take so much of his property for the public use in the nature of punishment. You may disqualify him for office, or remove him from office as a punishment. You can deny him the right to vote, and that is punishment. But who can do that is the question. It must be done whenever a crime is alleged in the statute and the punishment is annexed to the offense by the statute, by the judicial tribunals of the country and according to the forms of law. That is a guarantee that is not given to the citizens of the United States by the Constitution; it is merely preserved in that instrument. That right belonged to American civilization and law long before the Constitution was adopted. It is like the right of bearing arms, like many other rights that might be mentioned here, which existed in behalf of the citizen in colonial times and existed in every State; and the provisions which were introduced in the Constitution by way of amendment, as well as those in the original instrument, which stand for the protection of these rights, were mere guarantees of an existing right and were not the creators of the right itself.

It has been a right of an American citizen during all the colonial period, and it is a right in every State also, and so it is a right in every part of the territory of the United States over which the Federal Government has exclusive jurisdiction, that the citizen, when he is confronted with a crime and punishment as the result of his guilt, if it is to be affixed upon him, has a constitutional right to trial by due process of law and by judicial authority. This bill takes that right away. Is it any answer to say that the right to vote is not property, that it is a mere privilege; or that the right to sit on a jury is not property, is only a privilege? Certainly not; because, even though it is a privilege—put it upon the lowest classification that you please—if a statute says that man shall be deprived of it, if that is affixed as a punishment under the same law which prescribes the guilt, it is punishment for a crime. Then the very statute which characterizes the offense as a crime entitles the man to a trial according to the forms of law and before a judicial tribunal.

Whatever you may choose to declare a crime in this country, I do not care what it may be, the very moment that you declare it a crime by a statute of the United States, that moment the Constitution comes in and guarantees to that citizen that no punishment for that crime can be inflicted upon him of any character whatsoever unless it is done according to the due process of law and through the judicial tribunals of the country. That is my proposition. This bill pays no attention to this guarantee of the Constitution. These five commissioners have the right, as I interpret the proposed statute, and as I have no doubt it was intended to be interpreted, to assemble themselves together as a board of review, as a returning board, a board of canvassers to examine the ballot boxes in the Territory of Utah; and when they find, in their private judgment and upon such evidence as they may think proper to receive, without the presence of and without being confronted with the accused, without indictment or information, that a man is guilty of bigamy or polygamy, they will take his ballot from the box and destroy it, and thereby disfranchise him, depriving him of one of his rights of citizenship, and that too, not merely for the purpose of rejecting the vote of a man who, under the statute, might not have had the right to vote, but to punish him for the crime of bigamy by taking from him the elective franchise.

That is a right which was guaranteed at the time we enacted the law organizing this Territory; for the moment we put the citizens in Utah in possession of the rights of American citizens within that Territory by the Act of 1850; we gave them then the guarantees of the Constitution of the United States, which would follow them in all cases and in all places, for the protection of their personal rights, secured to them under the law by the community at large, and to all men who are described in the fifth section of the act of 1850 as being citizens and settled in that Territory.

Two cases have come up in the Supreme Court of the United States in close succession, which I think clearly establish the doctrine for which I am contending now as against this section of the bill, and I will take the liberty of reading something from those decisions to show their applicability to the section upon which I have been remarking. The first was the case of Cummings *vs.* The State of Missouri. An attempt was made in the constitution of that State to deprive a number of persons of certain rights and privileges of a similar character because they refused to take what was called there the iron-clad oath, who refused to exculpate themselves for having participated in the then recent rebellion. It is not necessary to read all the statement of the case in order to get before the Senate the part of it which I think is applicable to this particular matter. The court say:

> Every person who is unable to take this oath is declared incapable of holding, in the State, "any office of honor, trust or profit, under its authority, or of being an officer, councilman, director, or trustee, or other manager of any corporation, public or private, now existing or hereafter established by its authority, or of acting as a professor or teacher in any educational institution, or in any common or other school, or of holding any real estate or other property in trust for the use of any church, religious society or congregation.
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> And every person holding, at the time the constitution takes effect, any of the offices, trusts, or positions mentioned, is required within sixty days thereafter, to take the oath; and if he fail to comply with this requirement, it is declared that his office, trust or position shall *ipso facto* become vacant.
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> No person, after the expiration of sixty days, is permitted, without taking the oath, "to practice as an attorney or counselor at law, nor after that period can any person be competent, as a bishop, priest, deacon, minister, elder, or other clergyman of any religious persuasion, sect, or denomination, to teach or preach, or solemnize marriages."
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> Fine and imprisonment are prescribed as a punishment for holding or exercising any of "the offices, positions, trusts, professions, or functions" specified, without having taken the oath, and false swearing or affirmation in taking it is declared to be perjury; punishable by imprisonment in the penitentiary.

After commenting further upon the nature of the oath that was required under that constitution, the court proceeded to say:

> We admit the propositions of the counsel of Missouri that the States which existed previous to the adoption of the Federal Coustitution possessed originally all the attributes of sovereignty; that they still retain those attributes, except as they have been surrendered by the formation of the Constitution, and the amendments thereto; that the new States, upon their admission into the Union, became invested with equal rights, and were thereafter subject only to similar restrictions, and that among the rights reserved to the States is the right of each State to determine the qualifications for office and the conditions upon which its citizens may exercise their various callings and pursuits within its jurisdiction.
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> These are general propositions, and involve principles of the highest moment. But it by no means follows that, under the form of creating a qualification or attaching a condition, the States can in effect inflict a punishment for a past act which was not punishable at the time it was committed. The question is not as to the existence of the power of the State over matters of internal police, but whether that power has been made in the present case an instrument for the infliction of punishment against the inhibition of the Constitution.
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> Qualifications relate to the fitness or capacity of the party for a particular pursuit or profession. Webster defines the term to mean "any natural endowment or any acquirement which fits a person for a place, office, or employment, or enables him to sustain any character with success." It is evident from the nature of the pursuits and professions of the parties, placed under disabilities by the constitution of Missouri, that many of the acts, from the taint of which they must purge themselves, have no possible relation to their fitness for those pursuits and professions.

And here is what fits this case. A man who has been guilty of polygamy or bigamy may still have a large proprietory interest in the country; he may and ought to have a very numerous family to protect by his ballot; he has a great interest in the enactments of laws for the preservation of the rights of human beings considered by themselves. It is scarcely to be supposed that a man by a course of conduct of this character has disqualified himself in any essential way from casting an intelligent vote, or that he has lost his interest in the community to that extent that he is not expected to feel any responsibility in connection with his vote. So that the disconnection between the punishment inflicted and the causes of disqualification and the purposes and offices of the ballot were not more obvious under the constitution of Missouri than they are in the case before the Senate to-day. There can be but one interpretation given to this statute as it stands reported by the committee, and that is that the deprivation of the right of suffrage is intended only as a punishment. So I think the Supreme Court justly would be bound to hold that this law would not be valid.

> There can be no connection between the fact that Mr. Cummings entered the State of Missouri to avoid enrollment or draft in the military service of the United States and his fitness to teach the doctrines or administer the sacraments of his church; nor can a fact of this kind or the expression of words of sympathy with some of the persons drawn into the rebellion constitute any evidence of the unfitness of the attorney or counselor to practice his profession, or of the professor to teach the ordinary branches of education, or of the want of business knowledge or business capacity in the manager of a corporation, or in any director or trustee. It is manifest upon the simple statement of many of the acts and of the professions and pursuits that there is no such relation between them as to render a denial of the commission of the acts at all appropriate as a condition of allowing the exercise of the professions and pursuits. The oath could not, therefore, have been required as a means of ascertaining whether parties were qualified or not for their respective callings or the trusts with which they were charged. It was required in order to reach the person, not the calling. It was exacted, not from any notion that the several acts designated, indicated unfitness for the callings, but because it was thought that the several acts deserved punishment, and that for many of them there was no way to inflict punishment except by depriving the parties who had committed them of some of the rights and privileges of the citizen.

I care not what right or privilege of a citizen it may be that you deprive him of, whether it is the right of holding office or whether it is the right to vote, or whether it is any other right that may be named, the right of property or what not, if the purpose is to deprive him of any right or privilege as a punishment for crime, then you must bring in the judiciary and have the man tried for the crime before the right can be forfeited under the Constitution of the United States.

> The disabilities created by the constitution of Missouri must be regarded as penalties—they constitute punishment. We do not agree with the counsel of Missouri that "to punish one is to deprive him of life, liberty, or property, 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. 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 pursuits of a lawful avocation or from positions of trust, or from the privilege of appearing in the courts, or acting as an executor, administrator, or guardian, may also, and often has been, imposed as punishment.

The court then proceeded to make a citation of authorities of great value, some from other countries in which bills of this character were passed, under which it was held that inflictions of the character to which I now refer were punishments for crime. Speaking of the state of feeling in this country at the close of the late war, of the great exacerbation that existed among the people—some communities were enraged against others, some people against others, some sections against others—the court proceeded to say:

> It was against the excited action of the States, under such influences as these, that the framers of the Federal Constitution intended to guard. In Fletcher vs. Peck, Mr. Chief Jusuce Marshall, speaking of such action, uses this language:
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> "Whatever respect might have been felt for the State sovereignties, it is not to be disguised that the framers of the Constitution viewed with some apprehension the violent acts which might grow out of the feelings of the moment, and that the people of the United States in adopting that instrument have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the States are obviously founded in this sentiment, and the Constitution of the United States contains what may be deemed a bill of rights for the people of each State."

After having considered the *ex post facto* nature of this enactment, its operation on existing rights, emoluments, honors, privileges and trusts, the court proceeded to discuss the other feature, to which I now desire to call the special attention of the Senate:

> No State shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

It will be observed, of course, that that language is made applicable by this section of the Constitution to States, but not to States alone. The Supreme Court of the United States has repeatedly held that these restrictions are just as obligatory upon the Congress of the United States as they are upon the States themselves.

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

There is the brief definition of a bill of attainder, a legislative act, which inflicts punishment without judicial process. A more perfect definition could not be given. You can neither contract it, nor can you enlarge it, without depriving it of its proper force. But is this bill before us to-day a bill which by legislation inflicts punishment without judicial process? What is the object of disfranchising a man because he is a polygamist or bigamist? It is not to preserve the purity of the ballot-box, but it is to inflict a punishment upon him for that crime which the Congress feels may be at work destroying the foundations of society.

> 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; it assumes in the language of the text books, judicial magistracy; it pronounces upon the guilt of the party without any of the forms or safeguards of trial, it determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity of the offence.

Mr. President, it is not only a transgression of constitutional law in its spirit, but it is a direct transgression of the very letter of the law.

> "Bills of this sort," says Mr. Justice Story, "have been most usually passed in England in times of rebellion, or gross subserviency to the crown, or of violent political excitements; periods in which all nations are most liable (as well the free as the enslaved) to forget their duties, and to trample upon the rights and liberties of others."

Mr. President, I venture to say that there is no gentleman on this floor who has a more profound abhorrence of that Mormon hierarchy that exists in Utah and some of the neighboring Territories, and no one who feels greater anxiety for its being trodden down, than I do. No one has considered the necessity as more imminent than I do that we should take all proper and legitimate steps for the purpose of crushing out this bane of all civil society in those Territories, this growing evil, which it seems to me if tolerated much longer must overwhelm that western country, beautiful as it is, with the pall of destruction and despair. But sir, I am not willing to persecute a Mormon at the expense of the Constitution of the United States. I am not willing to go to the Indian tribes where polygamy is practiced and take up those men and inform them that they shall not have the right to life or liberty because they are polygamists; and we have just the same right to tell an Indian that he shall not live because he is a polygamist as we have to tell a Mormon that he shall not vote because he is a polygamist, provided we make that the penalty of the crime and give the power to a legislative tribunal to declare his crime and punish it. We must be cautious in times like these how we employ our power. It is the power of a people who have a written constitution, but they should be careful when the circumstances arouse them to anger, as in that time we are apt to do something that may sap the foundations of our liberties. This is not the time for us to permit transgressions of the Constitution of the United States; it is a time when we should hold up the standard of the Constitution and ask all men to respect it.

In a succeeding case in the same volume of reports, where the honorable Senator from Arkansas himself came forward to assert his rights against an act of Congress to practice in the Supreme Court of the United States, an act of Congress had been passed which was intended to disqualify him and all such persons who had in any way engaged in or aided or supported the cause of the rebellion, from the right of practicing law, as well as from a number of other rights which are mentioned in the act. Two acts indeed were passed. The first was not considered to be radical enough at the time, and afterward it was extended so as to include lawyers. In that case the oath that was prescribed by the act of Congress was in substance, as stated by the court:

> First, that the deponent has never voluntarily borne arms against the United States since he has been a citizen thereof;
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> Second, that he has not voluntarily given aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto;
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> Third, that he has never sought, accepted, or attempted to exercise the functions of any office whatsoever, under any authority, or pretended authority, in hostility to the United States;
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> Fourth, that he has not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto; and,
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> Fifth, that he will support and defend the Constitution of the United States against all enemies, foreign and domestic, and will bear true faith and allegiance to the same.

The honorable senator was not in a condition to take that oath, because he had been a member of the Senate of the Confederate States, and had otherwise participated in the rebellion. The Supreme Court, in commenting on this statute, say:

> The statute is directed against parties who have offended in any of the particulars embraced by these clauses. And its object is to exclude them from the profession of the law, or at least from its practice in the courts of the United States. As the oath prescribed cannot be taken by these parties, the act, as against them, operates as a legislative decree of perpetual exclusion. And exclusion from any of the professions or any of the ordinary avocations of life for past conduct can be regarded in no other light than as punishment for such conduct, the exaction of the oath is the mode provided for ascertaining the parties upon whom the act is intended to operate, and instead of lessening increases its objectionable character. All enactments of this kind partake of the nature of bills of pains and penalties, and are subject to the constitutional inhibition against the passage of bills of attainder, under which general designation they are included.
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> In the exclusion which the statute adjudges it imposes a punishment for some of the acts specified which were not punishable at the time they were committed; and for ather of the acts it adds a new punishment to that before prescribed and it is thus brought within the further inhibition of the Constitu-