THE UTAH BILL IN THE SENATE.

SPEECHES OF SENATORS VEST, MAXEY AND MORGAN.

AN INFAMOUS MEASURE EXPOSED.

Mr. Vest. However much any one of us may be opposed to the institution of polygamy (and I yield to no living man in desiring to abrogate it directly or indirectly), I will never agree as a member of this or any other legislative body, to strike down a fundamental principle of the common law and of the law of all civilized countries, If any doctrine is established beyond doubt in every civilized country or semi-civilized country where the institution of marriage is the foundation of the state, if there is any doctrine dear to the English and American heart, if there is anything crystallized in the civilization of Christian peoples and states, it is the absolute, the eternal, the undoubted confidence of the relation between husband and wife. The first section of this bill strikes down that confidence. It does not propose to make the polygamous wife, who in the eyes of the law of the United States is no wife at all, come into a court of justice and divulge or testify to the confidential relations between her and the man with whom she has lived; but it takes the lawful wife, it takes the woman who is married by the law of the State in which she and her husband originally lived, and it says that the lawful wife shall be forced to come into court and state what occurred between her and her husband in the confidential relations which exist between them, in the secrecy of the nuptial chamber, striking down every doctrine of the common law, every doctrine of our jurisprudence, and throwing wide open to the prying curiosity of the world the communications passed in the confidential relations between husband and wife.

But, sir, I can put it stronger than the Supreme Court itself. In 13 Peters, page 223, the Supreme Court of the United States said unanimously:

> The rule is founded upon the deepest and soundest principles of our nature, principles which have grown out of those domestic relations that constitute the basis of civil society, and which are essential to the enjoyment of that confidence which should subsist between those who are connected by the nearest and dearest relations of life. To break down or impair the great principles which protect the sanctities of husband and wife, would be to destroy the best solace of human existence.

And in another case they say:

> It would shake the very foundation of society.

And Mr. Greenleaf, in his work on evidence, lays down the same doctrine, and there is no exception. Yet the first section of this bill allows the polygamous wife to go free, but drags in the lawful wife and compels her to disclose to the world the confidential relations between her and her husband. Sir, I say, if there is any doctrine upon which our civilization is based, which is a part of our religion, it is that the husband and wife are one, and I have no sort of toleration for this new doctrine that you may enter the chamber of the husband and wife and drag her into a court of justice and compel her to state what her husband had said to her, and place her under the torture of the cross-examination of an infamous attorney, breaking down every sanctity that should be placed around the holiest relation, that of husband and wife.

The Senator from Massachusetts told us that the pure love of one man for one woman was the basis of our religion, and that this bill was intended to protect that; and yet in the very first section of this bill it strikes down the very foundation-stone of Christian marriage, the doctrine that the husband and wife are one, that no human law can drag the woman into court and compel her to disclose what her husband said to her under the sanctity of the marriage-roof. For that reason I say that this amendment should be adopted by the Senate, so that the wife can only be compelled to testify as to the fact of marriage. Beyond that this relation of husband and wife is sacred.

Mr. Vest. The principle upon which the law was based was that the wife should not be put in antagonism to her husband. It was based upon the Christian idea that the husband and wife were one; it was based upon the idea that after a man and woman had assumed this relation no human law could step between husband and wife and make a wife a witness against her husband in any event. Now the Senator from Massachusetts imagines a case where the wife is brought in to testify to the polygamous marriage; the man is a polygamist——

Mr Hoar. Will the Senator allow me to put to him a question? If the doctrine rests on the theory that husband and wife are one, how can that be applicable to a case where husband and wife are half a dozen?

Mr. Vest. I am not discussing polygamy; I am discussing monogamy. I am discussing the Christian relation of husband and wife, in which I believe and in which only I believe, and I say the doctrine of the common law and of all civilized and Christian countries is that the wife shall not be brought in and made to become the opponent, in law or otherwise, of her husband. Now the Senator says that he wants the lawful wife to come in and testify as to the polygamous marriage. Well, the polygamous wife can testify to it. Is the lawful wife to be brought before the court and made to convict her own husband and put him in the penitentiary. and take him away from both his lawful and unlawful wife?

This Senate, representing a Christian people, will permit any woman to testify to her lawful marriage and to the lawful relation between her and any man and to the legitimacy of her own children. For that reason I do not take away from her the right to testify to her own marriage, but I would stop there, and I would not put her in antagonism to her lawful husband in a court of justice in subversion of all the principles of our jurisprudence and that of every civilized country.

Mr. Maxey. I do not suppose that any man is more opposed than myself to polygamy in all its forms and phases; but this first section strikes at a different thing. It strikes not at polygamy, but at monogamy. At common law, as I understand it, no man can have at one and the same time more than one wife, nor can any woman have at one and the same time more than one husband, and that relation under the common law really merges the existence of the wife into that of her husband.

The situation of the wife has been wonderfully and wisely ameliorated as years have rolled by, and yet, under the common law you could not make a wife go in and testify against the husband, or the husband against the wife, or one for or against the other. Under the recent law reforms a wife may testify against her husband in certain cases and the husband against the wife, but it is a voluntary act purely and wholly. But here it is provided that the lawful wife may not only voluntarily give testimony against the husband but may be compelled to go into a grand jury room or elsewhere, and testify. That is an utter violation of every principle of the common law and of every principle of statute law that I know anything about so far as the statutes have modified the common law in respect to evidence. The amendment of the Senator from Missouri, it does seem to me, is right.

Something has been said about the second wife and the third wife. I know of but one wife under the common law, and I believe that according to the theory of our Government, according to the great foundation principle of society as organized by the Colonies, brought here from Great Britain enacted into our State constitutions and into our statutes, it never was designed nor intended in this country that there should be any other principle save that of monogamy. That is my belief about it, and hence I have been willing to go as far as the farthest in any wise, legitimate method to stamp out polygamy. But when it comes to saying that a man has a lawful wife and that lawful wife shall be compelled to go into court and testify against him, that is going very far beyond reaching polygamy. That is in my judgment breaking into the sacred precincts of a lawful marriage, and in direct violation, as I think, of every principle of of law, justice, and right reason, and against the most sacred relation that can exist between man and wife. A Mormon may have one lawful wife as well as anybody else, and may have but one lawful wife, and yet under this bill if the Mormon has but one wife, a lawful wife, and the grand jury thinks proper to investigate that man's conduct, that lawful wife, though the most confidential relations exist between her and her husband, may be made to testify.

The whole theory of the first section in my judgment is wrong.

Mr. Morgan. In case of any criminal act committed by the husband on the body of the wife or by the wife upon the body of the husband, the party injured would be competent to testify to such an act as that, the object being to preserve the rights of individuals during the marital relation. But that qualification of the common law which is adopted into the Oregon statute never had any application to actions brought in the name of the State for the vindication of the authority and power of the State against husband or against wife; as, for instance, it never applied to a case of homicide, a case of robbery, a case of mayhem, or anything of the kind, unless the injury inflicted was upon the body of the wife.

Now we come to the case of New Hampshire. New Hampshire has so far relaxed the common-law rule as to permit the husband or the wife to be a competent witness for or against each other in civil actions or in criminal actions, unless it may be at the expense of the violation of marital confidence, putting the right of the husband of the wife to testify very much on the ground of the relation that exists between the attorney and his client or the physician and his patient.

But neither of these cases, it is obvious, reaches the doctrine which is put into this bill of the right of the State to compel the husband or to compel the wife to testify against the one or the other, as the case may be. Making a witness competent to testify at his option or for his personal protection is a very different matter from compelling that witness to testify at the instance and demand of the State. The Senator from Kansas desires this rule to be adopted as it is reported in this bill, and he finds a reason for that, he says, in bringing about a more perfect equality between the husband and the wife in matters of personal and private right. I shall not undertake to enter into any disquisition or philosophical inquiry as to how far the independence of the wife or the independence of the husband may be sustained without the destruction of the marital relation, of all its confidence, and of all its purity, and of all its excellence, and of all its trust. It is enough for me that I do not find in any enlightened Christian country in the world, upon the statute-book, the same compulsory power which is sought to be embodied in this bill and put into the form of law for the purpose of suppressing polygamy in Utah.

Mr. President, we can scarcely do anything at all touching the marital relation that would be more injurious to it than this proposed act. It is not necessary for the independence or the comfort or the happiness of either husband or wife that they should have authority to go into court and reveal against each other confidential communications, matters, a knowledge of which has been derived through the intimate association which the law and which the institutions of society create between a man and his wife. There is no occasion, so far as they are personally concerned, for persona protection that either of them should have this right. There may be, and I believe there are some tates in the American Union, perhaps it is so in the District of Columbia, where the wife or husband may be examined as witnesses for themselves and against the other party in cases of divorce. That is a very great stretch, and a very dangerous one, too, in the law relating to the regulation of marital relations between a man and his wife. This bill provides:

> That in any proceeding and examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called and may be compelled to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be.

If this bill had stopped at the point of being "a competent witness," that would have been enough, and I should have made no objection to it; but when you compel the husband or the wife to come into court and diclose those matters in the face of the world which have been acquired from each other through the confidence of the marital relation, you do something that has a greater tendency to break up and destroy that relation in all its harmony, its unity, and its excellence than the Mormons are doing to-day by their inroad upon it through their polygamous practices.

I maintain that the Government of the United States is not put in that distressing attitude toward this question. We have the power to suppress this evil in the Territories, just as much as the States have within their limits. I do not know of any State that, for the purpose of the suppression of bigamy or polygamy, has resorted to this compulsory process of compelling the lawful wife to testify against her husband, or for him either, or the lawful husband to testify for or against his wife; and unless some Senator can show that the precedent has been established in the experience of some of the States which will lead us to this extent, it seems to me that the answer is conclusive that we ought not to take it.

We are admitting too much of the power of this crime and the perpetrators thereof when we find it necessary as a Congress of the United States to usurp to ourselves control over the marital relations of this country that no other civilized government has as yet ever attempted to usurp, We are admitting too much. It is not necessary to go to that extent in order to punish this crime; and if we set the example we shall probably find in the various States of this Union a number of pretexts for legislation of a like character.

Senators have made long and able arguments, and anxious arguments too, upon the subject of the prevalence of divorce in the United States. It is enough to alarm any community to know that the sacred relation of husband and wife is being dissolved on all hands and in every quarter of this country with such enormous rapidity as is now going on; but we can do nothing that will make the marital relation so precarious, so dangerous to the peace of families and of society as to incorporate in our statutes here a precedent which will lead up to the doctrine that the States should in civil as well as in criminal procedure make the husband and wife witnesses against each other, even against their own consent, in all matters of confidence touching their association as husband and wife. It is a dangerous innovation.

Now, sir, there are doubtless tens of thousands of people in the United States who would seek occasion to employ themselves as witnesses for the purpose of breaking up the marital relation if the laws of the States did not put a prohibition upon them. I know that some of the States have relaxed their laws very much in this particular. In the State that I have the honor in part to represent on this floor we have been very cautious upon this question, and we have not allowed the husband and wife to testify in divorce cases. We have compelled the parties to bring their testimony from extraneous sources, the object being to destroy the temptation, rather than to hold it out, which exists in the minds of a a great many persons under a momentary dissatisfaction to break up that sacred relation which lies at the foundation of the family.

The legislation is of a dangerous character: and surely the Congress of the United States for the purpose of suppressing the crime of polygamy in one of the Territories ought not to venture upon it. Let us stop at thes words, "shall be a competent witness," and let them if they choose to do it, go into court and testify, permit them to do it notwithstanding the confidence of the relation in which they acquired the information That certainly is as far as I am willing togo.

SPEECHES OF SENATORS MORGAN AND CALL.

Mr. Morgan. Mr. President, the first section of the bill is not applicable alone to the Territory of Utah, to Mormons or other persons who profess to connect Christianity with polygamous practices, but seems to be universal in its application.

> That in any proceeding and examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation.

The case has been argued here entirely upon the supposition as I understand it, that there is some necessity for this very stringent rule in order to get at the secrets of Mormon marriages. The Senator from Arkansas [Mr. Garland] informed us that they were conducted in secrecy, and not even the light of a dark lantern was allowed to shine upon them; that a priest officiated behind some screen or veil, and was not permitted often to see the persons who were making the contract before him.

That does not apply to a lawful marriage, and it makes no difference if it does apply to a lawful Mormon marriage; the amendment offered by the Senator from Missouri makes the wife a competent witness for the purpose of proving the first marriage, the lawful marriage, and puts her under the power of law, so that she can be compelled to attend court and testify to the lawful marriage. The secrecy, therefore, which may attend the subsequent relations or pretensions of marriage between a Mormon and his subsequent alliances seems to have no effect upon the proposition as it is now before the Senate.

We are not trying by this feature of this bill to remove the difficulty of proving the second marriage, as I understand the argument of the Senator from Arkansas, but to remove the difficulty of proving the first marriage; and the amendment of the Senator from Missouri expressly makes the wife a competent witness to prove the first marriage, and puts hor under the power of the law so that she can be compelled to testify to it.

Now, I maintain that is as far as we ought to go in reversal of the laws as they have been recognized in Christendom. It is very true that no court in the United States, whether a State court or a Federal court, has any authority under the common law, or under any statute to recognize a bigamous or polygamous marriage as being in any sense valid. That has not been done in any court except by an act of Congress. The Congress of the United States is the only body, so far as I know, that has ever directly and in terms recognized a bigamous or polygamous marriage as being in any sense valid, and it did so in what is called the Edmunds act by providing that the issue of such marriage should be legitimate. I read the seventh section:

> Sec. 7. That the issue of bigamous or polygamous marriages, known as Mormon marriages, in cases in which such marriages have been solemnized according to the ceremonies of the Mormon sect, in any Territory of the United States, and such issue shall have been born before the 1st day of January, A. D., 1883, are hereby legitimated.

This body, therefore, is the only one, I think, in Christendom that has ever admitted the fact of the statute itself that a marriage could be bigamous or could be polygamous and could be valid to any extent whatever. But this body and the party of which the Sentor from New York was speaking so boastfully as having placed its feet upon the twin relics of barbarism, slavery, and polygamy have made a distinct recognition of the legitimacy of a Mormon marriage so far as to make the relationship between the children and their parents one entirely legal, bearing with it all manner of rights of property and protection of every kind.

After we have tried that system, it appears that we must revoke it, we must take a different ground, we must take higher ground than we have done heretofore, and not only must we take higher ground in reference to Mormon marriages and bigamous and polygamous marriages generally, but in reference to all acts of that kind wherever perpetrated in the United States. Now, I maintain that it is not necessary that we should go to that extent.

The Senator from New York, in the remarks which he has just submitted to the Senate attempts to characterize all those who oppose this feature of this bill as being engaged in an attempt to break down the bill itself. Disclaimers have been made by Senators who have argued this question in respect of the toleration of polygamy and bigamy; and they have also said, and I now say on my part, that I am anxious to enact any law that Congress has authority to enact which will reach this evil and expurgate it. I do not hail from a section of country that is responsible in any social sense for Mormonism or Polygamy. No such ism or error as that sprang up in Southern society, any more than slavery had its origin there.

The honorable Senator from New York represents a state that tolerated the Oneida community right in the very bosom of the Commonwealth for a great many years and had to wait until Mr. Noyes and his associates, his free-lovers, consented of their own accord to break up that illegitimate and scandalous community that they had in New York before the State could touch it. They acted very wisely in that matter. They allowed public opinion to destroy the Oneida Community.

They did not undertake by harsh statutes, such as we are enacting here, to put the heavy hand of the law upon those people who plead at least that they were influenced by religious convictions in their association in the Oneida Community in New York. They enacted some statutes for its suppression, but they were more in the direction of persuading the dissolution of that community than of compelling it by the iron hand of law; and I have very serious doubts as to the policy of the measure we are enacting now. At the same time I mean to go along with the Committee on the Judiciary in the enactment of any system of laws which they believe to be essential to the extermination of polygamy, provided that in doing so we do not break down the boundaries of society and civil institutions in this country.

Now let me call to the attention of the Senate the power that we place in the hands of any man in the District of Columbia who may choose to scandalize, to worry, and to annoy a family in the City of Washington under the statute. I read:

> The lawful husband or wife of the person accused shall be a competent witness and may be called and may be compelled to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be.

A man goes before the grand jury of the District of Columbia to bring an accusation against a married man in this District of illicit cohabitation, of bigamy or polygamy. He summons the wife of that man to the grand jury room, and says to her: "Madam, what do you know about the conduct of your husband? You are compelled to go, you are obliged to testify, whether you know anything derogatory to the character of your husband or not." And this party who chooses to put the prosecution on foot can take any woman out of any house in the District of Columbia and march her into court and compel her to testify upon her oath in respect to the conduct of her husband. I maintain that as we are here for the purpose of legislating in order to suppress a particular evil in a particular place, called Mormonism or polygamy in Utah, we ought to confine the operation of the bill to that Territory and to that sect, and not come in here with a universal bill which enables a malicious person who chooses to do it to compel the wife of any citizen residing in the District of Columbia or in any Territory of this Union to go into a Federal court and to give her testimony, in spite of her protests, against her own husband and against the honor and sanctity of her own family.

Reformers, Mr. President, sometimes neglect necessary restraints when they set out for the purpose of accomplishing their ends. They sometimes forget the boundaries which the law and which the experience of mankind have thrown around communities and around individuals for the protection of the most sacred rights and relations in society; and it seems to me that the Senate Committee on the Judiciary animated by an earnest and grant you a proper desire to entirpate Mormonism from the Territories, have brought in the first section of this bill a measure which, if we should enact it, would destroy not only every idea that we have ever entertained of the principle through which the common law has regulated the relations of husband and wife, but it will expose society in this country to the outrageous interference of any person in the world who may choose to turn an enemy against any man and against his family.

I will never vote for a bill which exposes exery married woman in the District of Columbia to the power of subpœna to be carried before the grand jury of this District to testify as to the conduct of her husband in respect to his relations to her; and although the committee may not have thought it was necessary to guard this bill in the particular I have mentioned, yet they have come in with this broad proposition, and Senators who are able lawyers get up to defend it in its broadest extent before the Senate and that, too, as they say, upon authority—authority which consists in a series of books that have been read which do not really bear upon the question.

There has not been a State in the American Union which has so far relaxed the rules of evidence as to put the wife of any married man in the United States in the power of an informer and compel her to go before a grand jury and testify in regard to the marital conduct of her husband. That degree of relaxation is left to the Congress of the United States, which, while it relaxes in the direction that I speak of and withdraws all protection from society of the chrracter to which I refer, at the same time in the Edmunds act itself legitimated the issue of bigamous and polygamous marriages; calls them bigamous and polygamous marriages in the very act itself.

Now, let us have some respect for our own consistency. I will go along with this committee in their effort to extirpate polygamy among the Mormons. This is the object we are trying to accomplish; but in doing that I am not to be expected to break down all the barriers of the common law which surround individuals and societies in this country and to expose the people of this land to the impertinent and intrusive influence of those thousands of