

THE MAIN QUESTION.

THE EDMUNDS BILL AND THE HOAR AMENDMENT.

Has the Governor of Utah Territory the right to fill the offices, which, but for the Edmunds bill, would in August have been filled by election of the people under the Utah statutes?

Such grave and far-reaching consequences may attend the answer to be given to this question, that it seems to us that it behooves all good citizens of Utah in the consideration thereof to lay aside all temporary or personal considerations as contradistinguished from the ultimate and general good, all passion and prejudice, all differences of political opinion which do not necessarily enter into the question.

Whichever way the question may be answered, our conclusion should rest upon a just and fair construction of the law, and should have some better foundation than our wishes on the one side or the other.

There need be no serious difference as to rules of construction. These have been clearly and fairly stated in the slaughter house cases in 17th Wallace 72, where Mr. Justice Miller, in speaking of the construction of the amendment to the Constitution, uses the following language:

"But what we do say, and what we wish to be understood is, that in any fair and just construction of any section or phrase of these amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued additions to the Constitution until that purpose was supposed to be accomplished, as far as constitutional law can accomplish it."

Passing over that portion of the Edmunds bill which defines certain crimes and provides for the punishment thereof, and for legitimizing of certain children, what was the "purpose" and "pervading spirit" of the residue of the law? First, prohibiting polygamists from being eligible for election or appointment to, or holding any office or place of public trust, honor or emolument in or under any such Territory or place, or under the United States; and to prohibit any person holding office under or by reason of the votes of polygamists. Second to oust all the registration and election officers in this Territory of Utah, and supply their place with an impartial commission, who should thereafter, and until other provision should be made by a legislative assembly to be elected in a certain manner, perform each and every duty relating to the registration of voters, the conduct of elections, the canvassing and returning of the same, and the issuing of certificates or other evidence of election, under existing laws of the United States and said Territory.

Under this second heading it may be properly said that Congress took knowledge, that under the said laws of Utah the election to certain offices would take place in August, 1882, and intended that the action of said Commissioners should apply to said elections in August, and that the officers so to be elected in August were to supersede the then incumbents, and to hold such offices under certificates or other evidence of election from such Commissioners, and not otherwise.

What was "the evil which" the laws in regard to holding office was "designed to remedy?"

1st. To turn all polygamists out of office and to debar them from voting or holding office in said Territory.

2nd. To prevent any person from being elected to or holding office through the vote of polygamists.

3rd. To provide as speedily as might be for a fair election.

The President delayed the appointment of the Commissioners until it was too late for them to provide for the registration of voters, and in consequence thereof there was no election for the offices which should have been filled in August.

Under these circumstances the Hoar amendment to the Edmunds law, was passed by Congress. What prompted Congress to pass this amendment? What was the evil which this amendment was destined to remedy? What was this "process of addition" to the Edmunds law designed to accomplish? The proceedings in Congress show, that this additional legislation was prompted by, and based upon the letter read before the Senate from the Judges of the Supreme Court of the Territory of Utah.

In this letter of the Judges, the evil to be remedied and the remedy for the evil are unmistakably pointed out,

After reciting the reasons for the failure of the election in August, the Judges then speak of some of the evils to be remedied and say:

"That at such election there would have been chosen successors to all the present county officials, and also to the Territorial Auditor and Treasurer, as directed by the Territorial Statute; that those successors cannot now be chosen, for the reasons given; that this failure to elect is liable to cause general disturbance and trouble, especially in view of the well known fact that many of the present incumbents are understood to be polygamists, and so disqualified under the law referred to, to hold office."

Then the Judges proposed a remedy for these evils. (The italics are our own.)

"We therefore ask that Congress shall take such measures as will provide for legal successors to ALL the present incumbents in office, whose successors would have been chosen at the August election, and thereby secure the continuance of good order, and the regular and undisputed support of organized government, which otherwise would be seriously jeopardized."

We will not incorporate in this article the discussion in the Senate which occurred when the amendment was proposed, but a reference to the same will show that Senators Hoar, Bayard, Lapham and Brown all understood, and were of the opinion, that the amendment authorized the Governor to appoint all officers who should have been voted for in August, but as to whom, an election by the people failed, by reason of there having been no lawful registration. There would therefore seem to be no question as to what were the evils Congress was seeking to remedy, or as to what they intended and tried to do, to remedy these evils.

Did Congress, in the Hoar amendment, provide such a remedy as they clearly intended to provide?

If the amendment, upon its face, leaves a doubt as to its meaning, or is susceptible of two constructions, then the rules of construction heretofore given should be applied; and tested by those rules, we find that the question propounded in the beginning of this article should be answered in the affirmative.

But we do not concede that any different construction from the one we have indicated can fairly be put upon the amendment. The amendment is as follows:

"The Governor of the Territory of Utah is hereby authorized to appoint officers in said Territory to fill vacancies which may be caused by a failure to elect on the first Monday in August, 1882, in consequence of the provisions of an act entitled 'an act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes,' approved March 23d, 1882, to hold their offices until their successors are elected and qualified under the provisions of said act; Provided, that the term of office of any of said officers shall not exceed eight months."

We understand that great stress is laid upon the word "vacancies" in said amendment by those who differ with us as to our construction of this statute. The very wording of the statute contemplates and presupposes a vital fact, that a failure to elect in August in consequence of the provisions of the Edmunds law caused a vacancy in certain offices.

And as far as the effect of the law is concerned, it matters not whether in the amendment Congress is construing the legitimate operation of the Edmunds law, and determining that under the Edmunds law, and the failure of the election, a vacancy occurred; or, whether it is by the very terms of the amendment, declaring these vacancies. The result reached is the same.

The vacancies spoken of in the amendment is not intended to apply to, or operate upon, what might or might not be a vacancy under the statutory laws of Utah. The reference in the amendment is not to supposed holdings and rights of officers, or vacancies in office, under the statutes of Utah, but to vacancies occurring by reason of certain Congressional acts. If the amendment had read as follows:

"As under an act to amend Section 5,352 of the Revised Statutes," etc., etc., "no election can be held to fill the offices which should have been filled on the first Monday in August, 1882, under that law, and as by reason of such failure, vacancies must occur in the offices, which should have been held but were not filled under that law; now, therefore, the Governor of the Territory of Utah is hereby authorized," etc., etc.; the wording would have been somewhat different, but the meaning the same.

If the failure to hold an election in August under the Edmunds law, or the Hoar amendments created vacancies in office, which should have been filled in August, then the question with which this article

opens must of course be answered in the affirmative. On the other hand, if those who take an opposite view are right, and no such vacancies did or could occur; if notwithstanding the Congressional enactments the Territorial statutes in regard to officers holding over until their successors are duly elected and qualified, are still in force; we have the strange and humiliating spectacle presented, of Congress (a body embracing among its members some of the most distinguished lawyers in the United States), in its closing hours pushing aside business of great national importance, to enact a statute which was then, and must forever remain utterly inoperative, and a silly farce. Grave Senators of all parties and all shades of opinion unanimously consenting to lay aside momentous questions to engage in the child's play of authorizing the Governor of Utah to do certain acts on the happening of an impossible event: which acts, on the hypothesis that the offices held until their successors are elected and qualified, were prohibited by law.

However it may be in regard to the laws of the several States of the Union, as far as the Territories are concerned, Congress is presumed to have knowledge of all their laws. We may assume, then, that Congress had full knowledge of the statutes of Utah authorizing certain officers to hold the offices until their successors were duly elected and qualified; yet with their knowledge they authorize the Governor to fill certain vacancies.

Did Congress design to produce confusion worse confounded? to have two men, one holding over, the other holding by appointment, claiming the right to, and exercising the duties of every such office? Or, did Congress design to repeal and put aside all acts and parts of acts inconsistent with or repugnant to the laws they were then enacting?

If the two laws, the one of the Territory, the other of Congress, are inconsistent or in conflict, the law of Congress must stand. First, because it is the latest expression of the legislative will, and second because it is the supreme legislative will, before which no opposing Territorial enactment can stand.

We may also further say, that it is a well established principle of construction in courts of justice, that if the latest expression of the Legislative will is fairly open to two constructions, one of which will make the statute operative and effectual, and the other inoperative and worthless, that construction will be adopted, which will give it validity and effect. Of course it is hardly necessary to say, that if the officers of whom we have been speaking hold over under the Territorial statute, in defiance of the Congressional enactments, the Governor has no power of appointment, and the Hoar amendment is worse than nonsense.

In pursuing our investigation in this matter we have not overlooked a line of decisions embracing such cases as:

The people vs. Whitman, 10 Cal., 38, in which case is a dissenting opinion by Mr. Justice Field; The people vs. Tilton, 37 Cal., 614, in which there are also dissenting opinions; State vs. Lusk, 18 Mo., 353, in which is a dissenting opinion by Judge Scott; and Commonwealth vs. Hanley, 9 Penn. State, 513.

We might well advert to the fact that these were cases arising under the limitations of State Constitutions, and in the enforcement of State laws, framed expressly to enlarge the elective power of the people, and to curb and curtail the appointing power; and might well argue that the theory and practice of our General Government towards the Territories was the reverse of this; our General Government claiming and exercising the power to fill by appointment the highest and most important offices in every Territory.

But we waive this for the present, and hold that the cases cited above are inapplicable to the question we are now discussing, because Congress has full power to set aside the Utah statutes which provided that certain officers should hold their offices until their successors were elected and qualified; and in the passage of the Edmunds law and the amendment thereto it has exercised this power, set aside the Territorial statutes in that regard, and provided for vacancies in certain offices by reason of matters beyond and independent of the Territorial statute.

As citizens of this Territory, deeply interested in its prosperity and the happiness of its people, we present these our views to our fellow-

citizens, trusting that in some degree at least we may be able to aid in the proper and permanent settlement of some of the important questions which now vex the public mind.

These considerations induce us to give an affirmative answer to the question with which this article opens, and to further say that, in our opinion, as soon as Governor Murray shall, under said Congressional enactments, have made his appointments to said offices, and said appointees shall have qualified as provided by law, the further holding over by the former incumbents in said offices, will be wrongful and illegal, their acts void, and they, acting in violation of law, will become subject to criminal prosecution and punishment.

MARSHALL & ROYLE.

REGISTRATION RULES.

THE RULES ADOPTED BY THE COMMISSION FOR THE APPOINTMENT AND GOVERNMENT OF REGISTRARS, ETC.

At the meeting of the Commission yesterday afternoon the following rules were adopted for the appointment and government of registrars, the conduct of the registration and of elections, the making of returns and so on, for the delegate election in November:

RULE 1.

There shall be appointed one registration officer for each county, and one deputy registration officer for each precinct thereof.

RULE 2.

Such registration officer shall, on the second Monday in September next, proceed by himself and his deputies in the manner following: The registration officer of each county shall procure from the office of the clerk of the county court, the last preceding registry list on file in his office, and shall by himself or his deputies, require of each person whose name is on said list, or who applies to have his name placed on said list, to take and subscribe the following oath or affirmation:

TERRITORY OF UTAH,
County of Salt Lake. } ss.

I, _____, being first duly sworn (or affirmed) depose and say that I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of _____ one month immediately preceding the date hereof, and (if a male) am a native born or naturalized (as the case may be) citizen of the United States and a tax payer in this Territory, (or if female), I am native born, or naturalized, or the wife, widow or daughter, (as the case may be), of a native born or naturalized citizen of the United States, and I do further solemnly swear (or affirm) that I am not a bigamist nor a polygamist; that I am not a violator of the laws of the United States prohibiting bigamy or polygamy; that I do not live or cohabit with more than one woman in the marriage relation, nor does any relation exist between me and any women which has been entered into or continued in violation of the said laws of the United States, prohibiting bigamy or polygamy, (and if a woman) that I am not the wife of a polygamist, nor have I entered into any relation with any man in violation of the laws of the United States concerning polygamy or bigamy.

Subscribed and sworn before me this _____ day of _____, 1882.

Registration Officer,
_____ Precinct.

And said registration officer, or his deputies, shall add to said lists the names of all qualified voters in such precinct whose names are not on the list upon their taking and subscribing to the aforesaid oath, and the said registration officers shall strike from said lists the names of said persons who fail or refuse to take said oath, or who have died or removed from the precinct, or are disqualified as voters under the act of Congress approved March 22, A. D., 1882, entitled, "An act to amend Section 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes. Provided, That the action of any registration officer may be revised and reversed by this Commission upon a proper showing, and, Provided, further, that if the registration officer be unable to procure the registration list from the office of the clerk of the county, or

if the same have been lost or destroyed, the said officer and his deputies shall make a new registry list in full of all legal voters of each precinct of the county under the provisions of these rules.

RULE 3.

Upon the completion of the lists it shall be the duty of each registration officer to prepare triplicate lists in alphabetical order for each precinct, containing the names of all registered voters, one of which lists, together with the affidavits shall be filed in the office of the clerk of the county court; one list he shall cause to be posted up in each precinct at least fifteen days before the day of election, at or near the place of election, and the other lists shall be transmitted by him to the judges of election of the several precincts for use at the polls.

RULE 4.

Voters removing from one election precinct to another, in the same county, may appear before the registration officer at any time previous to the filing of the lists in the office of the clerk of the county court, and have their names erased therefrom, and they may thereupon have their names registered in the precinct to which they may remove.

RULE 5.

The registration officer of each county shall cause to be written or printed a notice which shall designate the office or offices to be filled, and stating that the election will commence at _____ (designating the place for holding the polls) one hour after sunrise and continue until sunset on the _____ day of _____, A. D. 18____. Dated at _____, on this _____ day of _____, A. D. 18____.

_____, Registration Officer.
A copy of which shall be posted up, at least 15 days before the election, in the three public places in the precinct best calculated to give notice to all the voters. It shall be the duty of the registration officer to give notice on the lists posted as aforesaid, that the deputy registration officer of each precinct will hear objections to the right to vote of any person registered, until sunset of the fifth day preceding the day of election. Said objections shall be made by a qualified voter, in writing, and delivered to said deputy registration officer, who shall issue a written notice to the person objected to, stating the place, day and hour when the objection shall be heard. The person making the objection shall serve, or cause to be served, said notice on the person objected to, and shall also make return of such service to the deputy registration officer, before whom the objection is to be heard. Upon the hearing of the case, if said officer shall find that the person objected to is not a qualified voter, he shall, within three days prior to the election, transmit a certified list of all such disqualified persons to the judges of election appointed by this Commission, and such judges shall strike such names from the registry lists before the opening of the polls.

RULE 6.

This Commission will appoint three capable and discreet persons, who are eligible under said act of Congress, in each precinct of the several counties, to act as judges of election, one at least of whom shall be of the political party that was in the minority at the last previous election, if any such party there be in such precinct. And the persons who shall be appointed registration officers in each county are required as soon as may be after their appointment to transmit to the secretary of this Commission, by mail, at Salt Lake City, the names of three persons who are proper and eligible persons to act as judges of election in each precinct of the county, for the information of this Commission. The secretary of this Commission will make out certificates of said appointments, and transmit the same by mail or other safe conveyance to the persons so appointed, who, previous to entering upon said office, shall take and subscribe an oath or affirmation that they will well and faithfully perform all the duties thereof to the best of their ability, and that they will studiously endeavor to prevent any fraud, deceit or abuse of any election over which they may preside, and that they are not bigamists or polygamists. If in any precinct any of such persons appointed judges decline to serve or fail to appear, the deputy registration officer of the precinct shall appoint a judge or judges to fill the va-