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apart?

and meritorious.

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ation in determining the meaning and

application of the language of the

legislature to successive cases as they

I am firmly convinced, after a very

stitutional question which involves the

was under arrest, as his "wives," and

In approaching the subject of relig-

ligious persecution has been carried

on by governments, or in the name of public authority, the whole essence of the atrocious wrong has been this-power has said to the weak: "Re-nounce your religious opinions, recant

your religious beliefs, or die, or go to prison." This was what was said by

prison." This was what was said by Philip II and the Inquisition to the

whole anti-Catholic party in his do-minions. This is what was said by

Bloody Mary, of England, when she

burnt her Protestant subjects at the stake. This was what was said in the persecution in Northern Italy in the

persecution in Northern Italy in the seventeenth century, to the subjects of the Duke of Savoy, when the great Protector of the Commonwealth of England signified that if that persecu-tion did not cease the English guns should be heard in the Vatican. This,

too, was what was said (with inex-pressible grief and shame I advert to

it) by my Puritan ancestors of Massa-chusetts when they hanged Quakers. This is what I am to show will be said by this Edmunds act to the Mormons of Utah, if it is to be construed and

applied here as it was construed and applied by the territorial judges. If I fail in showing this, I shall fail in this branch of my argument. If I succeed in showing this, these judgments will

I pass to the more immediate thresh-hold of the constitutional question.

But before I cross it I must advert

again to the two religious persecu-tions which stand nearest in time to

the establishment of our Constitution.

be reversed.

thorough study of these cases, that both of these inquiries trise on these records. I am to submit to you a con-In Walnut, Cherry and American Mahogany, CHICAGO. Our Goods are on Sale in all the Principal Stores in the country.

religious liberties of these people called Mormons; and it arises in this way: This man was convicted three several times on evidence which was precisely this and no more, that ones centain day R. E. POHLE. he casually introduced an acquaint-ance of his to two women, who were Manufacturer of Center, Library & Pillar Exten sion, Kitchen, Breakfast & Common Extension present in the marshal's office when he that is all there is of his language which is in evidence in these cases. The whole of his other conduct, if you

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in our fundamenta use of his language as part of the evi-dence of guilt, without violating his rights of conscience. On the other of belief or any conduct which is not in visions must be taken into consideraltion; and when that is not the case, it also happens that the time of the en-actment of the law, the circumstances which led to it, the public facts and public equilies which surround it, each and all are of it and proper consider-stion in determining the meaning and hand, if he spoke of the women as his "wives," in a sense of a claim of right

to maintain a carnal relation with we have not yet reached a condition of them or to dwell with both of them, things in which belief when so held, notwithstanding the prohibition of the and so professed, and carried out in statute, the evidence of his language innocent conduct, is to be touched by might go to the jury, along with the other facts proved, without violating his religious freedom; and if the whole explicitly and carefully understood. evidence, taken together, had a reasonhave asked for this variation in the orable tendency to show unlawful co-habitation, under a proper definition of that offence, he could have been con-victed without a violation of his re-ligious freedom. The imperative ne-cessity, therefore, for a careful instruction to the jury to find in what no reason for misapprehending me. Of course I do not stand here to contend sense and with what intent he used the word "wife," or "wives," which inthat a man's religious belief operates to prevent the legislative power from struction was not given, and was reprohibiting conduct which that power fused, is perfectly apparent. The Chief Justice: Was there a redeems injurious to the welfare of so-ciety. The Mormons once made that contention, at least up to a certain point; but I am not asked to make that quest of that kind? Mr. Curtis: I am going to show presently what the request was, and I

contention now, and I could not make The whole of his other conduct, if you grasp all its incidents in one bundle, resulted from moral and religious duties as ne estimated and believed his religious duties to be, and this I shall demonstrate to you, I think is the precise question nees. Without a donot, it presents a constitutional qualitation, and a very grave one. say that it covers the whole ground. The sole proof of Mr. Snow's lan-guage consists in the fact that when it if I were. Beyond a doubt, the leg-islative power, where it has full legislative authority over any community, may punish overt acts, may define such and such conduct to be malum prohib *ilum*, and the man who continues that conduct must be punished if he is conuestion, and a very grave one. The first proposition to which I have to ask your attention is stated on the 22d page of my brief. The construction given by the court below to the 3d section of the act of March 32d, 1882, and on which the value of the state of victed; but with all that and notwith-standing all that, when there is clear evidence before this Court that the statute has been so construed and so applied to a state of facts, by an inferior court, that conviction and punish-ment have been reached, and sould only be reached, by trenching on the plaintiff in error was thrice convicted, makes it violate the first amendment The extreme importance of having it rights of conscience, then the person

makes it violate the first amendment of the Constitution, because it makes the statute punish the profession of a religious belief belief, when under that construction, it is applied to the evidence in the three class now before the Court. cannot be touched. The section to which I refer in this book, is entitled, "Revelation on the Eternity of the Marriage Covenant, in-cluding Plurality of Wives. Given through Joseph Smith, in Nauvoo, Hancock County, Illinois, July 12th, Thus, Mary Snow, speaking of 'Mr. Snow's occasional visits to her, said,

deal of antecedent history to be taken in answer to a question put by the into account. I do not propose to go prosecution: "In these visits, and in [Here follow quotations from the evelation.]

deal of antecedent history to be taken into account. I do not propose to go over the whole of it, because most of us here fare degal and fhistorical scholars. You, Mr. Chief Justice, in a recent case, Reynolds vs. United States, (98 U.S.,) had occasion to de-velop the subject somewhat. It is necessary for me, on this occasion, to supplement what you then said by a little further development of the sub-ject; and, moreover, it is necessary to me to show what was the religious Mr. Justice Field: Is that the book kuown as the Mormon Bible? Mr. Curtis: No, it is not. Mr. Richards: What we call the Book of Mormon is sometimes called the Mormon Bible Mr. Curtis: This book which I have in my hand is the recognized embodi ment of the law of their church. Justice Field: Does that contain what is supposed to have been found

for me to show what was the religious herself, in her own house, and he has persecution on which history had set the seal of its condemnation before our could have meant only that spiritual on steel plates? Mr. Richards: No, your Honor, but the Book of Mormon does. Constitution was made. In all the and religious the which, according to modern ages of the world in which re- her and his belief, is created by one of and religious the which, according to Chief-Justice: This is a supposed subsequent revelation, is it not? Mr. Richards: This book contains the revelations received by Joseph Smith. The Book of Mormon was translated by him from the plates retheir marriages according to the law of their church, and may be wholly dis-

tinct from any carnal relation or any cohabitation, although they hold that it sanctifies the carnal relation. Eleanor Snow. Married 35 years ago ferred to, which were gold, and is a history of the ancient inhabitants of this continent. n Nauvoo; resides in her own house;

lived in company with Harriet and Sarah. Mr. Snow lives across the block, and has lived there about four block, and has lived there soout four years; in 1855 Mr. Snow called on her for a few minutes two or three times; she says, "I guess I recognized him as my husband and he me as a wife dur-ing 1885." She could not have meant a recognition of any other than the spir-itual and religious tie. Sarah Snow. Married nearly forty

itual and religious tie, Sarah Show. Married nearly forty years; has lived for nearly thirty years at the old homestead on Main Street; from that time she was marin which several women stand as the wives of one husband. But whether we have to act upon this subject as legislators, or as judges, or as philanried until about ten years ago she lived with him, but has since had a place by harseli; "he has not introduced me as we can do no good, we can accomplish nothing but pain and misery for others, and mortification and baffled hopes his wife for the last ten years, as I can remember, but there has been no less and disappointed efforts for ourselves. the relation of husband and wife;" unless we can rise to that condition of mind which enables us to stand in the inner circle of their feelings and con-victions, and so far to treat them. as our equals—equals before the law, she must have meant the spiritual and religious relation. Minnie Snow. She is the wife with whom he has lived exclusively for four equals before the God who made us all. Without doing so, we can never ex-pect the Mormon women to meet us years in the full sense of conabitation he says? "I know all the other ladies

who have testified, they are his wives;" she, too, could only have meant "wives," according to their re-ligious belief. She testifies again: "He has not, ito my knowledge, publicly claimed these other women as his half way, or to meet us at all. There is a gross error that is stand-ing in the way of all efforts of the Christian world, by whomsoever at-tempted, to reach this, which is ac-counted so great an evil. We cannot, wives; he has never spoken to me of them as his wives, to my knowledge; certainly they are his wives, and it was so understood in the family during the unless we meet the Mormon women of Utah half way, and recognize who and what they are, we cannot a complish anything useful. It is unphilosophical,

there was something of a different re-2. Association and acts of a kind that lation. could not have been dictated by any-

Mr. Curtis: In their belief. Justice Miller: Well, in their belief. Now, the extract which you read from thing but a religious obligation and These acts were every one innocent that book, as I caught the idea, was to They were not done in the assertion the effect that the purpose of these plural marriages was to multiply of any right of cohabitation. children and to increase the race. Is

He had a perfect right to do them. They have not the smallest tendency that different from any other mar o prove cohabitation. riagel Mr. Curtis: I am coming to that There was no cohabitation presently. Justice Miller: As that is the founeither Sarah or Adeline.

It is only by strained, distorted an dation for your saying that there is a artificial constructions of this word "cohabitation," that these acts can be distinction, at least in their belief, and that their behef is something that has reached and condemned. not anything to do with this carnal re-What were they? sult of an ordinary marriage, 1 would like to know what it is. Visiting at rare intervals.

Supporting. Driving out in a carriage with one of Mr. Curtis: Perhaps, sir, I cannot answer in your way, but I certainly see my own way about it clear enough. nore of them. Attention to a sick child What are we to do with the great posi-tive fact that polygamy existed in the Semitic race from the origin of that A festivity on his birthday in the place of their public worship. Now look at his religious belief—his race? It was sanctioned by God Al-mighty, was regulated by the law of Moses, was practised by all the patriand theirs. The relationship evinced by his con-

duct is purely and exclusively moral archs; and what are we to do with the and religious. negative fact that our Savior never prohibited it? Are we to conclude What "flaunting in the face of the world of the ostentation and opportuthat it is a fit condition for modern so nities of a bigamous househeld" is lety? No. Are we to conclude that there here? What did your honors mean by that it is a state of things that governments

may not prohibit? Certainly not. What then is the conclusion? There anguage? Does it apply to these acts? What is a bigamous household? Do you mean that there is a housemust be some conclusion to be derived from it. The conclusion is plainly and indubitably this: That from the first origin of the human race, the marriage old where the parties do not live in the same house?

Do you mean that there is a houserelation, the marriage condition, has comprehended a carnal relation, a sex-ual union, which exists for us as it hold when they live . ne, five, ten miles does for all the other animals, in or-Remember, 1 pray you, that here, in der that there may be a continuation of species; but beyond and behind all that is the ceptral Hebrew idea of marone case. Sarah lives in one house and Minnie in another. That in another case Adeline lives in one house and Minnie in another; and the proof is in-controvertible that he never was seen riage, that it is a religious relation, a spiritual relation, whether it be monog amous or polygamous-that it is a rela-tion between soul and soul. Now, what n company with Adeline anywhere during the time covered by the indict-

Iuring the time covered by the indict-nent, and that he dwelt exclusively with Minnie. If had duties to discharge toward these women. These duties are natural; they spring from the law of natura. ment, and that he dwelt exclusively with Minnie. He had duties to discharge toward these women.

from the law of nature, They are of moral obligation. sincerity whatever we may think of the reliaion as an imposture—they carry the relation into the endless futurity, and then say that it exists forever, whether it is a relation between one They are of perpetual obligation. They are of sacred obligation. They are duties, which, when we consider how and when they were as-sumed, and how they have become and one, or one and two, or one and woven into the texture of his life, i

three. would be barbaric to punish. Iney accept the doctrine of the res-

would be barbaric to punish. The law says what? That he shall not "cohabit" with more than one of them. Is that word to receive an interpre-tation that will require him to re-rounce every duty, to dishonor the dead, and agonize the living, and bring shame upon himself? Is it to receive an interpretation without any reference to the obliga-tions or restraints resting on the sov-ereignty which enacted the law? Is it to be made to mean a construc-tive dwelling together, when there has tive dwelling together, when there has been nothing but the discharge of du-Corinthians, and there it will stand forever. There it stands, too, in the belief of these Mormons; fixed and immutable in their faith as it is in the ties of the highest obligation? This constructive cohabitation makes this single word the most elastic that was ever put into a statute.

faith of all mankind who accept the revelations of the New Testament. The Mormon founder and prophet may There is nothing that it will not reach. Let me enumerate. have been an impostor-aye, a consci-ous impostor, if we choose to call him. 1 Consbitation with sexual inter-course. That is, of course, within the But ou the doctrine of the resurrecstatute. tion and the kindred doctrine of the atonement, he is one with the whole

2. Cohabitation by dwelling under the same roof, without sexual inter-course. That was Cannon's case. Now we come to the dividing line. Christian Church throughout the world. Let us see things as they are, and give them their due significance. Another part of their doctrine is this: 8. Cohabitation by dwelling under that among those whose circumstances different roofs, but occasionally seeing each other, and without sexual admit of it, whose means and opporintercourse.

unities allow Lof it, and consent is Consbitation by dwelling in dif-ferent towns, but writing to each other, sending supplies, delicacies, medicines, given by all the parties, because the relation cannot be entered into other-wise he who presents in the other etc., in case of sickness, 5. Consultation by hving in different countries, but corresponding, and

world the greatest number of beings brought into existence here will re-ceive a higher consideration there. speaking of each other as husband and 6. Cohabitation by acts of kindness and attention during a series of years, although not dwelling together; and then when the death-bed scene comes, and the husband stands there for a last

tarewell, and when all is over for this life, he follows her remains to the

But then here comes a difference in their views. There is a portion of them —and oh! if the people of the United States would only see it, here is the is-sue of this terrible business—there are Mormons, hundreds and thousands, without Tarritors who hold the midden in that Territory, who hold the religion n all its integrity, and in all its length and breadth just as all the



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