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CHARLES W. PENROSE, EDITOR.

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CIVIC POWERS AND JUDICIAL HAIR-SPLITTING.

THE Decision of Judge Hunter in the billiards case is singular, if not profound. His sentences put one in mind of the bones in Ezekiel's vision; there are very many of them, and "behold they are very dry." We have met with no one yet, who, on a first reading of the Opinion, is able to understand it. This may be on account or general dullness, and it may be on account of the obscurity of the writer's style. Two sentences would have been made clearer if differently punctuated, but the corrections did not reach us in time for alteration. The document, however, was strictly according to copy. Intelligent men, after wading through its weary length, have asked us seriously, "What does it all mean?" We advise them to read it through three or four times at their leisure, when they will find that it means four things.

First. That the court erred in the ruling in the case of the same parties on the 5th inst., through failure to notice the amendment to the City Charter, passed February 15th, 1862. The original Charter gave the City power to license, tax, regulate, suppress *or* prohibit billiard tables. The Court held that because this disjunctive conjunction "*or*" was in the sentence, the City had not the power to license and tax and regulate, etc.; that the fee required for a license amounted to a tax, and that the City could not exercise both powers, they being several and separate; that if it licensed billiards, it could not tax them, and *vice versa*. But it is now discovered that the amendment to the Charter substitutes the word "and" in place of "or," and therefore the Court erred in its decision, but the Judge lays the blame on counsel who argued the case, the attorneys on either side having failed to bring it to His Honor's notice. We were not aware that a Judge was compelled to confine himself to the citations of law by counsel, but were under the impression that if they failed to quote the law fully, the Court—supposed to be even more familiar with statutes and authorities and principles than the members of the bar—would supply the omission and take the broadest view of the matter possible and consistent.

Second. The Court now decides that the City Council has the right to license *and* tax *and* regulate billiard tables at the same time, these powers being consistent with each other; also that it has a separate right to suppress billiard tables.

Third. That while the City has the right to license and to tax, etc., it cannot tax under the form of a license, nor license under the form of a tax, nor regulate by a license or a tax. This is hair-splitting with a vengeance. The question at once arises, is it correct? And if so, what is the difference between a license and a tax, and why may not regulations be issued in the shape of either or both? Judge Hunter says: "revenue is taxes." That is a peculiar way of stating the proposition. It conveys the idea that nothing else is revenue but taxes. Indeed His Honor states distinctly that licenses cannot be issued for revenue, but does not favor us with any reason or authority for this assertion.

But it appears as a matter of fact that licenses are issued all over the civilized world for revenue purposes. This is not their primary use, it is true. They are permits granted under certain specified conditions. And one of the main objects in view in their issuance is to regulate the business carried on under their restriction. They are granted in the spirit of control. The fact that they are made necessary in law implies regulation and restriction. The funds obtained through their issuance, go into the treasury of the government or branch of the government by which they are granted, as revenue to be used for public purposes. And what objection can there be to this?

The revenue of the United States consists of taxes, duties, customs, funds from the sale of public lands, fines, forfeitures; etc. It includes, in law, as well as in good English, the income of a person or corporation. All that goes into the treasury of Salt Lake City is therefore its revenue, whether derived from licenses, taxes, fines, or any other source. To say therefore that taxes only are revenue, or in Judge Hunter's language, that "revenue is taxes," is to misstate the principle. Taxes are revenue, but revenue is not always taxes. A mare is a horse, but a horse is not always a mare. It would be just as correct to say "a horse is a mare," as to say "revenue is taxes."

The revenue laws of the United States include the taxing, licensing and regulating powers. Taxes are imposed on certain articles, permits are granted under certain conditions, and restrictions and regulations of a very stringent character are prescribed for the government of the persons taxed, all under the same laws.

According to another ruling of Judge Hunter—that in the liquor case, it is the amount of fee levied which determines whether it is a license or a tax. This is a different definition of the terms to that given in the latest decision. The sum of $250 per quarter for license fee he declared to be so much that it was in the nature of a tax. But he failed to show the financial line where a license end- and a tax begins. If $350 per quarter is a tax, how much is a license fee? Is it $200, or $100 or $1? His Honor admitted that in licensing liquor saloons, the necessity for extra police service involved in the liquor traffic, allowed the imposition of a higher license fee than would cover the mere cost of issuing the license. Who can tell how much this should be? Can the Judge fix the amount? He certainly has no right to do so. Where does the discretion lie to regulate this, if not in the City Council? That is where it rightfully belongs, and no court holds the authority to set bounds and limits as to the amount of license fee which that body in its lawful discretion considers it necessary to impose.

Besides, a license and a tax being different in their nature, the magnitude of the former or the small amount of the latter does not figure in the argument, for they remain distinct in principle and are not affected by their dimensions. A license is a permit, a tax is not. A license is issued under certain conditions; a tax is levied without any such condition. And neither is changed by the greatness or smallness of the sum attached to either. A tax of a dollar does not make it a license, a license fee of a thousand dollars cannot make it a tax.

Fourth. But no matter what powers the City may have in these respects, the Court rules that the City cannot tax, or license, or regulate the owners or keeper of billiard tables, because the Charter defines their right to "license, tax, regulate and suppress" billiard tables. Here is more legal hair-splitting. This is dwelling on the letter and driving out the spirit. The evident intent of the Legislature is ignored, and verbal strictness adhered to without regard to common sense and the general principles of legal construction. It would be quite consistent with a pettifogging fifth-rate attorney's plea, but is lamentable in an occupant of the judicial bench. The City, then, may tax a table, regulate a table, but not do anything with the owner. His Honor may say, "that is according to the letter of the law." But who does not know that courts are empowered to interpret the law according to its spirit and intent, and to carry into effect its evident object? By this ruling the evident object of the law is defeated, and the authority empowered to regulate these matters in the interest of the public is set aside, for the benefit of persons who wish to defy regulations made for the welfare of the community.

There is one thing that the City has power to do according to Judge Hunter's decision in this case. The Council can suppress billiard tables. If those who own them and derive revenue from their use will not subscribe to regulations made by the civic authorities, who are empowered by section 70 of the Charter to establish and execute such ordinances as they may deem necessary for the peace, good order, regulation, convenience, etc., of the City, and for the health, safety and happiness of the inhabitants thereof, then the City Council will be justified in exercising the extreme authority which His Honor admits they hold, and suppress public billiard tables altogether.

No one wishes to see measures carried to extremities, but on the other hand parties must not be allowed to defy the municipality and disregard its regulations. The public will sustain its own officers in the exercise of all lawful powers when used for the public benefit, and courts should of right uphold the conservators of the peace and aid in the maintenance of laws, local or otherwise, which are enacted in the interest of public order. We greatly regret the course which is being taken to play into the hands of those who are fostering in our midst the elements of disorder, and trust that, as in the case of others who have taken a similar course, their rule may be brief and the effects of their wrong-doing may soon be overcome.

A. G. CAMPBELL'S LETTER TO PRESIDENT GARFIELD.

THE letter addressed to President Garfield over the signature of Allen G. Campbell, to which we have previously made very brief allusion, has been noticed by several papers, and we therefore refer to it at greater length, as it contains a number of gross misrepresentations and some positive untruths. Every one here knows that Campbell himself is incapable of writing such a letter, poorly composed as it is, not because he is unable or unwilling to falsify, but from utter lack of capacity. However, he has adopted the letter as his own, so the responsibility must rest upon his shoulders.

The letter starts out with an attempt to justify the course of the minority candidate, in attempting to secure a seat in Congress against the wishes and votes of the people. He says:

"All those who know me personally will also know that I have not put in a claim to a seat in Congress as a Delegate from the Territory of Utah for the mere pay of the place, nor even for the honor which the position brings."

In reply to this we have to say that Mr. Campbell is chiefly known here as a claim-jumper, one who attempts to obtain by fraud and impudence the property of others, and as the individual who is now attempting to "jump" a seat in Congress which rightfully belongs to the gentleman elected by an overwhelming popular majority. His claim to the seat in Congress is regarded in the same light as his attempt to gain possession of the iron claims in Iron County, which had been held, to his knowledge, for many years by other parties. His nefarious claims in the iron case were set aside by a Federal Court, as his impudent claim to the seat as Delegate will be set aside by the Federal Congress. He endeavors to excuse himself as follows.

"I would not for a moment, with the light vote polled for me, claim the seat, but for the fact that my only opponent in the late election was an alien, and that he cannot attempt to cure this disability without bringing to the front the fact that he is also a polygamist law-breaker, and consequently not well disposed toward the Government and laws of the United States. Besides these facts, it is well known that many of the votes polled for him were cast by women of foreign birth and girls under age. I was the only citizen candidate, and I claim the seat on that ground."

He says further on this point:

"I hold myself prepared to prove that the pretended certificate of naturalization, upon which my contestant relies is a bogus certificate, unsustained by a line of record in the court from which it purports to have been issued."

The citizenship of Mr. Cannon is not a subject on which Mr. Campbell has the right or the power to decide, and seeing that the same objection had been previously interposed before Congress—the only body which has the authority to pass upon the question—and been adjudged untenable, it makes but a poor excuse for Campbell's position, with the "light vote" that he admits was polled for him. There are three statements made in these quotations, and each of them is false.

First, that Mr. Cannon is an alien. The facts are, that he was duly naturalized, that he received his certificate, and that a valid record was made of the judgment of the court; the minority candidate has been deceived on this point by those who are making a tool of him, but as he holds himself "prepared to prove" his assertions we would like to see him begin and bring forth his strong reasons. We assure all who may have thought that he is able to do what he claims, that it is an impossibility, as will be demonstrated at the right time and in the proper place. Our word is a sufficient offset to his at present. He offers no proof for his bold assertion, we have offered none for our denial except the fact of previous action of Congress. But we know all the points upon which his principals rely for their case, and we know also that they are entirely without force and legal effect.

Second, That Mr. Cannon is a polygamous law-breaker. This is just as untrue as the first assertion. He has no means of proving that the gentleman he assails has broken the law of 1862, which is not and cannot be retro-active. And if he could so make it appear by argument, that would be no bar to a seat in Congress; it would take a conviction in court to have any effect, and it is well known that there is no law which can reach Mr. Cannon's case, or it would very soon be applied to him by those who have thrust Mr. Campbell into the gap for their own devices and purposes.

He quotes the following from our Delegate's reply to the contestant for his seat to the Forty-third Congress:

"I am not living or cohabiting with any wives in defiant or wilful violation of the law of Congress of 1862 prohibiting polygamy in the Territories."

This assertion was and is perfectly true. It has been used for the purpose of injuring Mr. Cannon among his own supporters. But it has never had the intended effect because the gentleman's life, character and reputation are above reproach, and he is respected by all who know him, everywhere, whose esteem is of any value. The statement is true for several reasons; among them, that he has never lived in defiant or wilful violation of any law. His plural marriages were contracted either when there was no law against them, or when the unconstitutionality of the law was deemed certain by himself, his immediate friends, and many legal minds not connected with them. And for another and very potent reason, that there is no law of Congress against "living and cohabiting" with any number of wives, the law of 1862 not touching cohabitation, but only the ceremony or contract of marriage.

Third. That women of foreign birth and girls under age voted at the last delegate election. On this falsehood the letter has also the annexed paragraph:

"Under the laws of Utah, Mormon wives can go to the polls, taking with them if they choose, girls under 21 years of age, and by simply declaring that they are wives of a Mormon citizen, and that the girls are his sisters or daughters, they can all vote for a Delegate to Congress, and many such, doubtless, did vote at the last election. Under the general practice of the country, it is equally competent for these same persons, who were wives for the purpose of voting under the Territorial law, to appear next day in the Court House and deny that they were wives if the question of infringing the law of Congress prohibiting polygamy should be brought up."

The person who penned that knew that he was stating positive falsehood. Under the laws of Utah such a thing is impossible. No one can go to the polls and obtain the right to vote under any circumstances. We have a registration law, and no person who e name does not appear on the Registration List can vote. It cannot be corrected at the polls. Further, no person, male or female, can gain a place on the Registration List without taking an oath that he or she is over 21 years of age, and, in the case of a male, a native born or naturalized citizen of the United States, or of a female, that she is the wife, widow, or daughter of a citizen. This is according to the Territorial law conferring the elective franchise on women and to the statute requiring registration. No Register will place a woman's name on the List unless she has sworn that she is twenty-one years of age, and a citizen of the United States, or is the wife, widow or daughter of a citizen, and also that she has resided in the Territory for six months and in the precinct one month preceding registration. This is both the law and the practice, and those who assert to the contrary know that they are uttering intentional falsehood. Also the term "wife" in the law is well understood to mean what it says, in its legal sense, and is so construed by the officers of the law.

To prove these points beyond reasonable question, we here insert copies of the form used for the registration oath, partly filled up to make the matter clear to all, the italics being the only insertion. This is the form for county, territorial and delegate elections:

Territory of Utah. } ss. No.
County of Salt Lake. }

I, *Sarah Jones*, being first duly sworn, 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 next preceding the date hereof, and am *the daughter of a naturalized* citizen of the United States.

Subscribed and sworn to before me, this.....day of.....A.D. 18..... .....Assessor, Salt Lake Co. By.....Deputy.
[Signed.] .....

This is the form for municipal elections:

Territory of Utah, } ss. No.....
Salt Lake City. }

I, *Jane Smith*, being first duly sworn, depose and say that I am over twenty-one years of age, and have resided in Salt Lake City, Territory of Utah, for six months next preceding the date hereof, and am *the wife of a native born* citizen of the United States.

Subscribed and sworn to before me, this.....day of.....A.D. 18..... ..... Assessor, Salt Lake City, by.....Deputy.
[Signed] .....

In the face of these forms and facts how can men with any pretence of honor, utter the palpable untruth which has been repeated to press reporters in the east by our mendations Governor, as well as by A. G. Campbell, in his deceptive letter to the President?

The aspersion thrown upon the women of Utah is as unmanly and despicable as it is false and without foundation in fact, such cases never having occurred in the history of the Territory, but are manufactured in the letter for effect. Indeed there have been but two or three cases of trial here for polygamy under the act of 1862, while to hear those who are continually endeavoring to bring mischief upon our people, it might be thought that trials were common, and convictions scarce because of false swearing. It is a foul libel on the people of Utah, who are forbidden by their religion to lie, and of whom it can be said before God, that a more truthful people cannot be found upon the face of the earth. Yet this person, who is a perjurer in intent, having taken every means in his power to obtain the mining property of others by false pretences, insinuates that it is the general practice of the country to do in relation to polygamy, what he has done in order to sieze upon iron claims.

He further informs President Garfield that:

"There are thousands of young men and women there who long for deliverance from the hateful shadow of polygamy, and who are ready to come to the front as soon as they are assured that Congress and the administration are determined to free them."

This is of the same character as the rest of the epistle. And it is the sorriest kind of rubbish. There is nothing in the world that Congress can do to break up the family organizations of the people of Utah, but the women and children of polygamous families would deplore as the heaviest of calamities. "Free them?" From what? From wifehood and fatherhood? From home and its cherished associations and loving ties? Do any of the women and children of Utah want this? Why, there is nothing to hinder any of them now from severing these connections if they wish to, any more than there would be after Congressional interference. No woman can be compelled to continue her plural wifehood against her desire. He conjugal relations are freely formed, and there is no bondage to keep her in them. This is a country of railroads and