Utah can against them; for the general court of Massachusetts did declare that those only should be admitted to the full rights of citizenship, who were members of some church within the colony; a stretch of power of which the "Mormons" are guiltless.

Shortly before, or about the time of the separation of the colonies from the mother country, there was a number of statutes of England in force abridging the freedom of the press, denying the right of petition, and also that of discussion in public assemblies, and even authorizing the magistrates to suppress such assemblies. For the violation of these statutes many men were fined and imprisoned. Hearing of these proceedings the colonists were profoundly moved at the recital. They were free men, having wrenched their liberty from the grasp of the tyrants who would have crushed them; and they determined to set the seal of condemnation upon these despotic acts. They did so, by adding to the Constitution of the United States, which they had framed, additional guarantees of freedom, behind which they, their descendants and the men of every clime who should choose America as their home, might securely entrench themselves in resisting the encroachments of tyranny. Has Judge McKean read those amendments? The first declares in plain and positive language that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or of the right of the people peacably to assemble, and to petition the government for a redress of grievances." The second says that, "a well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." As American citizens, in coming to this country the settlers brought that Constitution, and the principles which it enunciates, with them. They brought the right of trial by an impartial jury, not a packed jury, with them. Upon every line of that Constitution, upon every fold of the flag which waved over it, liberty was written in letters of living light—not license, but liberty. Liberty of conscience—liberty to worship God according to the dictates thereof. The men who brought it never dreamed that there was any law, common or otherwise, higher than it. Like the Pilgrim Fathers they did not wait for parish priests to come and marry them—there were no Methodist ministers here then—they married as their consciences dictated no law of God or man forbidding their union. A man who can talk religion and law as flippantly as Judge McKean does ought to understand both; why does he, in his "opinion" ignore the fact that we had the Bible and the Constitution with us when we came here, and that we based our action upon the foundation they furnish? He professes to believe the former as well as we. Why does he call us immoral, because we believe in the marriage law practiced by Abraham, Jacob, Moses, Samuel, David, Solomon and many other men whose lives, if he has ever been a Methodist preacher, he must have repeatedly held up for the people to imitate? A man, who has ever been a believer in the Bible, much more a preacher of its divine truths and examples, should be ashamed to ever allude to it again as worthy of notice who takes the position which Judge McKean has done.

TERRITORY OF UTAH. IN THE THIRD DISTRICT COURT.

In the matter of the applications of Richard Douglas, Ralph Douglas, and William Kay, for naturalization. } January Term '71, Salt Lake City.

OPINION OF CHIEF JUSTICE JAMES B. McKEAN, ON NATURALIZATION.

These applicants for naturalization being sworn on their *voir dire*, each admitted that he has two wives, and children by each wife; and each alleged that he was married to the second woman prior to the act of Congress, of July 1, A. D. 1862, which denounces severe penalties against those who shall be convicted of bigamy or polygamy. On being further interrogated by the Court, they all admitted that they are now cohabiting with their second wives, and two of them urged as an excuse for doing so, that their first wives are now old and can no longer bear children. The applicants are Englishmen.

McKEAN, C. J. At the last September Term of this court, Sandberg and Horsley, neither of whom had actually committed bigamy or polygamy, applied for naturalization. The former said "that he regarded it as in accordance with the laws of God for a man to have more than one wife at the same time; and that if the laws of the country forbade it, he regarded it as his duty to obey the laws of God rather than the laws of man." Horsley refused to answer, and by his manner as well as by his words, said, in substance, that that was his own business and not the business of the court." Their applications were rejected. The applications now at bar present other questions than those then considered. These three men seem to think, that because they took plural wives prior to the act of Congress of July 1, 1862, they violated no law by doing so. Let us first consider this question, and afterwards turn our attention to the fact that they are still cohabiting with their so called second wives.

The government of the United States acquired the Territory of Utah from the Mexican Republic, whether by the Treaty of Guadalupe Hidalgo in A. D. 1848, or by previous conquest, or by both, is, for our present purpose, immaterial. And it is a familiar principle of international law that "the laws, whether in writing, or evidenced by the usage and customs of the conquered or ceded country, continue in force, until altered by the new sovereign. (Johnson's Lessee *vs.* McIntosh, 8 Wheat, 589; Soulard *vs.* United States, 4 Peters, 512; United States *vs.* Arrendando, 6 Id, 712; United States *vs.* Perchman, 7 Id, 86; United States *vs.* Clarke, 8 Id, 444; Delassus *vs.* United States, 9 Id, 133; Mitchel *vs.* United States, 9 Id, 734; United States, *vs.* Fernandez, 10 Id, 305; Smith *vs* United States, 10 Id, 330; 15 Cal. 226; 18 Cal. 11; 20 Cal 387; 24 Cal. 644, 1 Op. Atty.-Gen., 27; Wheaton's Law of Nat 327.)

The Court is bound to take judicial notice of the laws in force in this Territory, at the time of its cession to the United States, not inconsistent with the public policy of the United States, and not since abrogated by the new sovereign. "Those laws are not regarded as foreign so as to require proof of their existence." (Wells *vs.* Stout, 9 Cal. 494; The People *vs.* Folsom, 5 Cal. 380; Freemont *vs.* The United States, 17 How. 542.) It is well known that the principles of the Roman Civil Law prevail in Mexico. But it may be said, as some have asserted, that the pioneers of the present inhabitants of this Territory found Utah unoccupied by civilized men, and that, therefore, no system of laws prevailed here when those pioneers took possession of the Territory, and raised the flag of the United States. Without, at present, either conceding or controverting this position, let us enquire what, in case it were true, was the status of the settlers before Congress had legislated for the Territory.

"In the absence of proof to the contrary, the common law is presumed to exist in those States of the Union which were originally colonies of England, or were carved out of such colonies." "The same presumption prevails as to the existence of the common-law in those States which have been established in territory acquired since the Revolution, where such territory was not, at the time of its acquisition, occupied by an organized and civilized community, but where the population, upon the establishment of government, was formed by emigration from the original States." "As in British colonies, established in uncultivated regions by emigration from the parent country, the subjects are considered as carrying with them the common law, so far as it is applicable to their new situation; so, when American citizens emigrate into territory which is unoccupied by civilized men, and commence the formation of a new government, they are equally considered as carrying with them the same law, in its modified and improved condition under the influence of modern civilization and republican principles." (Norris *vs.* Harris, 15 Cal. 226.) "It is the common jurisprudence of the United States, and was brought with them as colonists from England." (1 Kent's Com. 342-3.) "Our ancestors brought with them the general principles of the common law of England, and claimed it as their birth-right." "It ought to be assumed by this court as a part of the jurisprudence of the State." (Opinion of the Court by Story, J. in Van Ness *vs.* Pacard, 2 Peters 144.)

The Federal Courts will administer the common law, the civil law, or whatever system may prevail in a particular State. (The People *vs.* Folsom, 5 Cal. 374; Wheaton *vs.* Peters, 8 Peters 591; Kendall *vs.* United States, 12 Id. 524; Pennsylvania *vs.* Wheeling Bridge Co., 13 How. 518,564.)

Common law is that general body of law, those general principles and those general usages which are to be found, not in the legislative acts of any particular State, but that generally recognized and long established law which forms the substratum of the laws of every State." (Forbes *vs.* Scannell, 13, Cal. 285; Van Varen *vs.* Johnson, 15, Cal. 308; Reid *vs.* Eldredge, 27, Cal., 346.) "The statutes passed in England before the emigration of our ancestors, which were in amendment of the law, and which are applicable to our situation, constitute a part of our common law," (Patterson *vs.* Winn, 5 Peters, 233; Cathercart *vs.* Robinson, Id. 264, 280; Taylor *vs.* Thompson, Id. 258.)

Some of the inhabitants of this Territory came hither from the organized States of the Union, but a large proportion came from the British Isles, particularly from England; others came from Germany, Holland, Norway, Sweden and Denmark; a large majority of the adults are foreign born; all came from countries where monogamy is the marital rule, and where polygamy and bigamy are denounced and punished as monstrous crimes; all came from countries whose laws, like the Roman civil law and English common law, condemn the man who has two wives as a bigamist, and the man who has more than two wives as a polygamist, and all of which countries severely punish such criminals.

It makes no difference whether the pioneers who settled in Utah found here the principles of the Roman civil law, or brought here the principles of the English common law; those two great systems of jurisprudence with equal emphasis condemn polygamy and bigamy which are regarded as practically the same crime. Blackstone says: "Polygamy can never be endured under any rational civil establishment, whatever specious reasons may be urged for it by the eastern nations, the fallaciousness of which has been fully proved by many sensible writers." "It has never obtained in this part of the world, even from the time of our German ancestors." "It is therefore punished by laws both of ancient and modern Sweden with death. And with us, in England, it is enacted by statute 1, Jac. I. C. 11, that if any person, being married do afterwards marry again, the former husband or wife being alive, it is felony." (Blackstone's Commentaries, Vol. 4, p. 164 marg.) Chancellor Kent says—"No person can marry while the former husband or wife is living." "If there be no statute regulation in the case, the principle of the common law, and not only of England, but generally of the Christian world is, that no length of time or absence, and nothing but death or the decree of a court confessedly competent to the case, can dissolve the marriage tie." (Kent's Commentaries, Vol. 2, pp. 79-80.) The same writer says—"The direct and serious prohibition of polygamy contained in our law, is founded on the principles of Christianity, and the laws of our social nature, and it is supported by the sense and practice of the civilized nations of Europe. Though the Athenians at one time, permitted polygamy, yet, generally, it was not tolerated in ancient Greece, but was regarded as the practice of barbarians. It was also forbidden by the Romans throughout the whole period of their history, and the prohibition is inserted in the Institutes of Justinian. Polygamy may be regarded as exclusively the feature of Asiatic manners, and of half civilized life, and to be incompatible with civilization, refinement and domestic felicity." (Kent's Com., Vol. 2, p. 81. See 1 Domat's Civil Law, 13, and Chambers' Encyc., 6, Vol. 336.)

Emigrants have been coming into this Territory from prior to the Treaty of Guadalupe Hidalgo, which was proclaimed A. D., 1848, to the present time; and whether they found here the principles of the civil law, or brought or found here the principles of the common law, they were alike forbidden to practice the crime of bigamy, and that, too, without any Congressional legislation upon the subject. But by the Organic Act for this Territory, approved Sept. 9, A. D., 1850, Congress, among other things, provided a Supreme and three District Courts for the Territory, and enacted that "the said Supreme and District Courts respectively shall possess chancery as well as common law jurisdiction,"—thus by statute adopting for the Territory the system of jurisprudence which the emigrants had brought hither. And the Act of Congress, of July 1, A. D. 1862, denouncing penalties against the crime of bigamy, was in strict harmony with the principles of both the civil and the common laws. It is quite time that certain men in this community who mislead the people, who prate about their loyalty to the Constitution while they denounce every law that opposes their lusts; it is quite time that such men had learned that "the jurisdiction of a nation, within its own territory, is exclusive and Whatever the present applicants for naturalization may have supposed in regard to the law prior to 1862, they now know that the law condemns their conduct. If they have any desire ever again to become the law-abiding men which the court presumes they once were, let them at once begin to obey the laws,—laws in harmony with the principles and practices of all civilized nations; let them no longer listen to the precepts, no longer imitate the examples of false teachers, who would have them believe that the man who turns away from the wife of his youth, and takes to his bed and board and bosom one or more young concubines, does a deed of piety,—a deed, however, which reminds civilized men of the filial piety which prevails among certain African tribes, where children rid themselves of their aged parents by knocking them on the head with a club.

These applications for naturalization must be rejected.

[SPECIAL TO THE DESERET NEWS.]

By Telegraph.

FOREIGN.

At a quarter to nine the staff arrived, with General Von Kumecke in front, followed by fifty officers with all kinds of arms and in all sorts of uniforms. They did not stop, but rode down the Champs Elysees to the house of Queen Christina, where their headquarters were established. Three hundred yards behind the staff came a battalion of the 88th, with drums and fifes. Then came the troops of the blue dragoons. After these marched a mixed detachment of Bavarians, composed of infantry and cavalry, followed by two hundred men of every variety of the Prussian line; then a corps, consisting of about a dozen officers of artillery at the head of a little column, which was closed in by some thirty red horses, and containing, altogether, probably two thousand men, brought up the rear.

By a quarter past nine, the whole body had passed the Arc de Triomphe and was descending the Elysees. Several hundreds had now assembled, but no real crowd, and all seemed tranquil, the people present manifesting little ill temper.

At a quarter-past ten, the patrol hussars came back from the Arc and trotted to the Ponte Maillot; at the same moment, half-a-dozen infantry soldiers turned the corner of the Avenue St. Cloud and posted a sentry on the Place in the rear of the Avenue de l'Imperatrice. They then entered the Rue de Preabourg and began billeting in the houses surrounding the Place l'Etaile, whose doors were all open. The moment the solitary sentry was observed, the mob surrounded him, gazing and gaping at him like astonished children.

At this time the crowd began to increase near the Palais de l'Industrie. The troops were halted at Point de Jour. Only a few dragoons had entered up to ten o'clock. No advanced guard had been pushed forward.

QUAILS.—We saw some specimens of the quails Bro. Roberts brought with him from the East, this morning; he had four that he was going to send to Ogden, to be let loose there. They are fine specimens, and are like young partridges. Now, you sportsmen of Ogden, let them alone for a few years and you will then have plenty of game. Bro. R. has a number for Provo and vicinity.

ITEMS FROM THE "JUNCTION."—The following are from the Ogden *Junction*, of yesterday:

"On Saturday last as a construction train on the Union Pacific railroad was traveling westward, just as it approached the Thousand Mile Tree a spark of fire from the engine fell into a keg of gunpowder, which was left uncovered on one of the cars. An explosion, of course, took place immediately and William Ryan and two Chinamen were severely scorched. The Johnnies were taken care of by their pigtailed friends, and Dr. Nellis was called on to wait upon Ryan, who was badly burned on his hands and face, but he is expected to recover.

"Last Sunday while taking in water at Rosedale, Donald McKenzie, a fireman, fell from the tank to the ground, cutting his head, bruising one eye and severely injuring his back. The injured man is now under the care of Dr. Nellis, progressing favorably."