JUDICIAL DECISION.

TERRITORY OF UTAH, THIRD DISTRICT COURT.

In the matter of the applications of JOHN C. SANDBERG and WM. HORSLEY, for naturalization.	September Term, 1870, Salt Lake City.

Opinion of Chief Justice James B. McKean on Naturalization.

Sandberg, a Swede, and Horsley, an Englishman, applied for naturalization, and as it must appear to the satisfaction of the Court, among other things, that the applicants are men of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; and as it was important to learn their views on the rights and duties of American citizens, and whether or not they believed the Act of Congress prohibiting polygamy to be binding upon them, the Court interrogated them accordingly. Sandberg answered, in substance, 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.

MCKEAN, C. J.—It is a principle of universal application that witnesses in litigation cases, and, in some of the States, prisoners under indictment, may have questions put to them which it is optional with them to answer or not. If to answer would criminate them, they may refuse to answer. The refusal, however, almost invariably damages their testimony in the estimation of the Court and jury.

What are the rights of an applicant for naturalization, and what is the duty of the Court in the premises?

Among other facts this Court "should be satisfied" that the alien has resided within the United States five years at least, and within three years before his admission shall have declared on oath or affirmation, etc., that it was *bona fide* his intention to become a citizen of the United States, etc. (2 Statutes at Large, 153.) And at the time of his final admission to citizenship, the alien, "shall declare on oath or affirmation" "that he will support the Constitution of the United States, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to every foreign prince, potentate, state or sovereignty whatever, and particularly, by name, the prince, potentate, state or sovereignty whereof he was before a citizen or subject."

But before admitting the alien to citizenship, it shall further appear to *the satisfaction of the Court*, that during the five years of his residence within the United States, "he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same." (2 Statutes at Large, 153—4.)

The second subdivision of article 6 of the Constitution, provides that, "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the Supreme law of the land, &c.

Therefore he who swears to support the Constitution of the United States, swears at the same time to support the laws of the United States which shall be made in pursuance thereof. Congress passed an act, approved July 1, 1862, entitled "an act to punish and prevent the practice of polygamy in the Territories of the United States and other places," etc. In the first section of that act is this provision; "That every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States have exclusive jurisdiction, shall," etc. "be adjudged guilty of bigamy, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, and by imprisonment for a term not exceeding five years." (12 Statutes at Large, 501.)

Now, suppose an applicant for naturalization should state to the Court that he objected to some provisions of the Constitution, and would not obey and support them; or, suppose he should state that he would not absolutely renounce his allegiance to his native country, and that in the event of a war between that and this country, he would fight for his native land; shall the judge who presides in the Court violate his own oath by admitting such a man to citizenship? Or, suppose the applicant, in a spirit of defiance, refuses to answer in regard to these things, how can the Court possibly *be satisfied* that such a man "is attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same?" In either supposed case it would be a solemn mockery to administer the final oath of naturalization to such an alien.

An applicant for naturalization asks for a favor; asks for the high privilege of American citizenship: and he must show, *to the satisfaction of the Court*, that he is worthy of it. More than a witness in a litigated case, more than a party in a civil or criminal cause, should he expect, and be expected to answer questions. This court needs not to be informed that many other courts have been very negligent, criminally negligent, in this matter of naturalization. The practice of such courts can form no precedent for this. There are some things of which Courts are bound to take judicial notice; and this Court takes notice of the fact that it is in session in Salt Lake City, in the Territory of Utah; and that there are many men who defiantly trample upon the Act of Congress against polygamy, and call their conduct liberty, who preach and practice the heinous crime of bigamy, and call it religion. Surrounded by such influences, guided by such leaders, aliens come into this Court, and ask for the high privilege of citizenship. Well what are their views of American civilization? What do they believe to be the rights and duties of American citizens? Before they take the oath of citizenship, let the Court "be satisfied" that they understand its full meaning, and recognize its solemn obligations. Let the Court "be satisfied" whether they believe the supreme law of the land, to be the Constitution, the laws of Congress, and the treaties of the United States; or whether they believe it to be the revelations of some polygamic prophet. Let the Court "be satisfied" what pretended laws of God they mean to obey, and what positive laws of man they mean to defy.

In this country a man may adopt any religion that he pleases, or reject all religions if he pleases. But no man must violate our laws, and plead religion as an excuse; and no alien should be made a citizen, who will not promise to obey the laws. Let natives and aliens distinctly understand that in this country licence is not liberty, and crime is not religion.

Sandberg "satisfied" the Court that he is *not*, and Horsley failed to satisfy the Court he *is* a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. The duty of the Court is plain. These applications for naturalization must be rejected.

THE RULING OF CHIEF JUSTICE McKEAN.

THE ruling of Chief Justice McKean, in the matter of the applications of John C. Sandberg and Wm. Horsley for naturalization, which appeared in our issue of yesterday will be read with some degree of surprise by the public, and by none more so than by jurists outside of the Territory of Utah. The statements enunciated are so novel and contain so many strange ideas that we shall preserve the ruling as a curiosity for our children to read. It will serve the purpose admirably of illustrating how ridiculously men can speak and act and what absurd positions they can assume, when they attempt to follow the lead of prejudice or to perpetrate wrong under the semblance of law.

Chief Justice McKean is from New York, we believe; would he presume to render such a decision as that we published yesterday were he on the Bench in that State? Every man who has any acquaintance with Courts knows that he would not. He, himself, knows full well that such questions as he asked of Sandberg and Horsley are never propounded in Courts to men applying for the rights (not the privilege as he would have us believe) of citizenship. With as great propriety might a Judge ask an applicant for naturalization whether he was a Sabbath-breaker, or whether he believed it right for men to break the Sabbath, or whether he ever intended to break the Sabbath; and because he declined to answer these questions to his satisfaction decide that his "application for naturalization must be rejected!" Certainly if Judge McKean is warranted in deciding that because a man *believes* in the religious doctrines of the people with whom he is connected, he is, therefore, not a man of good moral character, any other Judge would be warranted in deciding that if a man's *acts* were in violation of a moral law, his application for naturalization should be rejected.

We have known men who were strong advocates of the proper observance of the Sabbath. If a man performed certain acts on the Sabbath day, he had, in their view, violated the sanctity of God's holy day; he had broken God's moral law; he could not, in their opinion, be other than an immoral man. Suppose a Sabbath-breaking alien should apply to a Judge holding these views for the rights of citizenship, would he not, according to Judge McKean's rendering, be warranted in rejecting his application? Or, suppose a blasphemer, a frequenter of houses of ill-fame, an adulterer or a man who is known as a liar were to apply for naturalization to a Judge who held strict views of morality, would he catechise him as to whether he had ever been guilty of these immoral acts, or believed in practicing them, or would ever be guilty in the future of practicing them? And if he did not thus question him, and the alien did not answer "*to the satisfaction of the Court*," would he "violate his own oath by admitting such a man to citizenship?"

In the Judge's own State, New York, blasphemy against God, contumelious reproaches and profane ridicule of Christ and the Holy Scriptures, whether uttered by words or writing, are immoral acts, and it has been said, are offences punishable at common law. And in that State it was determined that to revile the name of the Savior and wantonly and maliciously to ridicule his character, was indictable. Is Judge McKean as scrupulous in questioning aliens upon these points, when they apply to him for naturalization, as he is upon their belief in "the revelations of some polygamic prophet?" Or is it so much worse to *believe* the Bible, which happens to be a collection of writings, most of which are from the pens of polygamous prophets who lived in and were descended from a polygamous nation, than it is to break the Sabbath, blaspheme the name of God, commit whoredom and adultery and be a liar?

It may be said there is no law of Congress against these latter crimes and immoralities, while there is against polygamy. But the Bible—that Book which is declared to be the great substratum of Christian ethics, on which the common law, as declared judicially by the English Courts, from whence our American Courts have taken it, is founded—the Bible, which is at the foundation of the whole judicial system of Christendom, denouces those crimes and pronounces penalties against them. But how is it with polygamy? Which is the law of Congress against: the *practice* of or the *belief* in polygamy? The Judge in his zeal outstrips Congress, he makes the *belief* in polygamy a crime! He would punish a man for that which many able men, profound thinkers and reasoners declare a man is not accountable for, and cannot control, namely, his belief. These applicants, for aught that transpired in the Court, may have been educated in this belief from early life. One of them we know to have been trained from early boyhood in the belief that polygamy, as practiced by the Latter-day Saints, is a divine institution. It was engrafted in his mind probably years before the passage of the Act of 1862, yet because he cannot deny this belief "*to the satisfaction of the Court*," though known to be a virtuous, industrious, truthful and honorable citizen, Judge McKean declares him to be an immoral man, "unfit to be naturalized." Did we live in Spain, under the reign of Philip the Second, such decisions might be familiar to us; but living in the United States, in the year of grace 1870, we declare them outrageous and abominable. Philip said, "Better not reign at all than reign over heretics!" Our Chief Justice seems to have adopted that infamous sentiment a little altered to suit the difference in the circumstances: Better not naturalize at all, or make men citizens, than to naturalize or make citizens of "Mormons!"

The Israelites, it is well known, believe in and practice circumcision. It is a part of their religion. They observe it conscientiously. But suppose Congress were to pass a law, as in the case of polygamy, declaring it a penal offence. Must the Jew, therefore, forsake this practice of his religion, and be excluded from the covenant which he firmly believes God made with his forefather Abraham? Must he, though he firmly believes that his eternal salvation and acceptance with God depends upon complying with the law of circumcision, renounce that law and take upon himself all the consequences which such a departure from what, in his mind, is God's law, involves? A Legislative body might say: "such a law is disgusting, it is brutal, it is opposed to the spirit of the age, it is an act of cruelty to children which endangers life and which we cannot tolerate in a Christian nation, we declare it Mayhem and shall punish it with severe penalties." The alternative would thus be presented to the Israelites of disobeying the the laws of man and risking the penalties of that, or, on the other hand, of disobeying what they as a nation, believe to be the law of God and enduring the eternal consequences of such disobedience. This is precisely the position of the Latter-day Saints respecting polygyny, with this exception, that its practice among them is not universal as circumcision is among the Israelites.

Just suppose that such a law as we speak of were passed by Congress, and two uncircumcised, Jewish aliens were to present themselves, each accompanied by two witnesses of good repute, before a Judge and ask to be naturalized. The Judge, knowing them to be men of Israelitish faith, asks the first one if he has been circumcised! The alien replies that he has not. Not satisfied with this the Judge pursues his inquiries. He asks him if he believes it right and in accordance with the laws of God for a man to be circumcised. The alien, true to his convictions, though uncircumcised himself, replies that he does believe it to be in accordance with the laws of God for a man to be circumcised! The next alien is interrogated in the same style. He, also, is not circumcised; but, knowing that the other had incurred the Judge's displeasure by answering as he did, determines to be reticent, and replies that he has not been circumcised, but as to the other questions he does not think it necessary or proper to answer them. Whereupon the Judge decides that the first "'satisfied' the Court that he is *not*, and the second failed to satisfy the Court he *is* a man of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the same. The duty of the Court is plain. These applications for naturalization must be rejected."

These are imaginary cases; but in all their particulars they are such cases as Judge McKean has decided upon.

Men of Israel, Citizens of the United States, Lovers of freedom, Descendants of the patriots of the Revolution, what think ye of a Chief-Justice of a Territory who renders such decisions?

There are 2,208 cannon in the forts and on the walls around Paris.

In Ohio, a candidate for the Methodist ministry must not use tobacco.

Complaint is made at Troy, N. Y., against "female corner loungers."

There were 488 barrels of coffee drank at the recent Soldiers' Reunion, at Des Moines, Iowa.

In Scotland 551 places of worship, of all denominations, have services in whole or part in the Gaelic language.

An Iowa doctor told a man that he had a diagonis of the polphemus, and it scared him so bad that he shot himself dead.

Wm. F. Baker, of Wellesly, Mass., has issued tin cards of invitation to the "Tinth Anniversary" of his wedding.

Somebody has discovered that in forty years a snuff-taker devotes twenty-four months to blowing his nose.

It too often happens that experience, like the stern lights of a ship, illumes only the path you have traveled.

A little girl was heard to wish, the other day, "that she was a boy, so that she could swear when she dropped her books in the mud."

New Haven, Conn., is deeply shocked by the new sign of a second-hand clothier publicly announcing that he has left off clothing of every description.

When a Saratoga gentleman solicits a lady to join in a mazy waltz, he inquires: "Will you demonstrate your agility in a whirl?"