

## RULING OF JUDGE TWISS

ON THE VALIDITY OF THE WOMAN'S SUFFRAGE LAW.

In the matter of application of Ann M. Thompson on application for writ of mandamus vs. John B. Gehr, Deputy Registrar of elections.

The applicant, in her application for a writ of mandamus, on oath says, that she was on the 15th day of May, 1872, and ever since has been and is now a married woman, the wife of William Thompson, who was that day in due form of law, admitted as a citizen of the United States; that ever since they both have been such citizens; that she is over 21 years of age; that she has lived in the Precinct and County of Beaver and Territory of Utah, continuously, more than five years last past. She also alleges that on the 14th day of September, 1882, she applied to the Respondent as Deputy Registrar of voters in Beaver Precinct aforesaid, to be registered as one of the voters of the Territory of Utah, upon the registry list of said precinct, and at that time tendered to the respondent as said registrar her affidavit, which is fully set out in the application, containing all the allegations and statement of facts required in the affidavit required by rules of the Territorial Commissioners appointed under and in compliance with the last Act of Congress approved March 22, 1882, commonly known as the Edmunds bill. But neither in her affidavit presented to the respondent nor in her application to this Court for writ of mandamus, does she say that she is, in person, or by her husband as her authorized agent, or otherwise, has ever paid any tax, or that she is, or ever was, a tax-payer in this Territory, or make any statement tending to show that she is a tax-payer.

That upon the presentation by her to the respondent, of her affidavit, she requested him to receive and take said affidavit and place her name as a voter upon said registry list, then and there being prepared by him, but that the respondent as said registrar refused to take said affidavit, and refused to so register the applicant.

Wherefore she prays that a writ of mandamus be issued requiring the respondent to take and receive said affidavit and register the said applicant on said registry list.

Upon the filing of the application it was ordered that the respondent show cause on a day named why he should not register the applicant as demanded by her. Upon the appearance of the respondent he admitted the truth of the allegations contained in the application, but contended that upon them she did not show that she was a voter entitled to be registered, or to the writ of mandate prayed for.

The case has been thoroughly presented by counsel on either side. On the part of the applicant it is claimed that the Territorial act of Feb. 12, 1870, known as the female suffrage act, is valid, in full force and effect according to the terms thereof, and that she is entitled to register and to vote.

The respondent claims that the act conflicts with and is inconsistent with the Act of Congress, and therefore she has no right either to register or to vote. The question submitted to me by counsel is whether the applicant on her statement or application has a right to vote; if she has, she has an undoubted right to be registered; if she has no right to vote it is not claimed that she has a right to be registered as a voter.

In considering this question thus raised, I have not undertaken to determine whether any other married woman is or is not a citizen by virtue of her marriage to a citizen; nor whether any woman except the applicant is entitled to vote, nor to determine the validity of the act of 1870. I assume, for the purpose of this case, (but for no other), that it is consistent with all acts or Congress and therefore valid, and shall decide this case upon what I consider a just construction of the Territorial statutes found in Chapter II, Title III, of the Compiled Laws under titles as follows: "An Act prescribing certain qualifications necessary to enable a person to be eligible to hold office, vote, or serve as a juror," approved January 21, 1859, and "An Act, conferring upon women the elective franchise," approved February 12, 1870. Although there is a difference of eleven years in the dates of these statutes, they are in the Compiled Laws, placed in the same chapter, under the gen-

eral head or title of "Elections and qualifications of officers." Section 40 of the Compiled Laws (sec. 3 of the act of 1859), provides that "neither shall any person be entitled \* \* \* to vote at any election unless he is a male citizen of the United States, over twenty-one years of age, and has been a constant resident in the Territory during the six months next preceding said election."

This section alone, disconnected with any other provision, confers the franchise upon male citizens of the United States over 21 years old, having been resident in the Territory for six months; but if read and considered in connection with section 42 of the same chapter (section 6 of Act of 1859), must be read with the suffix, "provided he is a tax-payer in this Territory." These two sections taken and construed together, clearly express the intention that although a person may be a male citizen of the United States and a resident of this Territory for six months, yet if he is not "a tax-payer in this Territory," he shall have no voting residence in this Territory. Section 42 is an important qualification of section 40, inasmuch as it determines what male citizens of the United States of six months' residence in the Territory have a voting residence in the Territory. Section 43 (section 1 of the Act of 1870) provides that "every woman of the age of 21 years who has resided in this Territory six months next preceding any general or special election, born or naturalized in the United States, or who is the wife, widow or the daughter of a native-born or naturalized citizen of the United States shall be entitled to vote at any election in this Territory."

Section 2 of the Act of 1870 (not numbered as a section of the Compiled Laws) repeals all laws and parts of laws conflicting with section 43. Section 43 differs from section 40 in the extent of conferring the elective franchise upon the females therein described, who have resided in this Territory six months, but no further. The two sections read together disconnected with section 42, permit the male citizens therein described and the female therein described, who have been residents of the Territory six months, to vote, but when read with reference to and qualified by section 42 none of the persons described in either section can vote unless they are tax-payers.

The provisions that the person must live in the Territory six months before he or she can vote is very far short from being repugnant or inconsistent with the other provision that such person must be a tax-payer before possessing a voting residence.

A provision conferring the elective franchise upon females in the terms of section 43 has nothing in it inconsistent with a provision in the general statutes of the Territory, that no person shall have a voting residence unless he is a tax-payer. I find nothing in section 43 that in the least interferes, conflicts or is inconsistent with the full and entire force of section 42, that all voters must be tax-payers. As a general rule it may safely be said that a subsequent statute will not repeal a former one, if they can both reasonably stand together, and that a repeal by implication is not favored.

When acts can be harmonized by a fair and liberal construction it must be done, and if possible to reconcile the acts, it will be done. If two statutes on the same subject can stand together without destroy in the evident intent and meaning of the latter one; there will be no repeal. To repeal a statute by implication there must be such a positive repugnance between the provisions of the new and the old that they cannot stand together, or be consistently reconciled. [Potter Dwaris, on statutes, 154; Sedgwick on construction of Statutory and Constitutional Law, 18 and note; McCoy vs. Smith, 1 Back 459.]

I am of the opinion that the act of 1870 (if not inconsistent with the acts of Congress) can stand in full force not inconsistent with or repugnant to the tax-paying provision of 1859, and thus females and males have the same and equal rights to the elective franchise under the law. Any other construction of the statutes that would give one class of persons the right of voting upon easier and different terms than those given to another class, would make an inequality in the laws, odious to every sense of justice, and to every principle of republican government. Such statutes would be monstrous and an

offense to a government of equal and just laws.

Judge Emerson in Lyman vs. Martin says: "All regulations upon that subject (the elective franchise) must be reasonable, uniform and impartial;" "any provisions which should impose upon a particular class of citizens, conditions and requirements not required of all others is void."

The act of 1870 must have one of these effects: 1st, it must repeal the entire provision requiring tax-paying qualifications, and permit all persons otherwise qualified to vote; or, 2d, it must repeal in part the tax-paying clause, leaving it in force as to males, and not in force as to females, requiring male voters to pay taxes and exempting female voters from the tax-paying burdens; or, 3d, the tax-paying qualifications stands good, in full force, and applies equally to both male and female voters.

I believe the latter is the true and just construction of the law, and as the applicant has not shown herself in any way to be a tax-payer, she is not a voter under the statutes of this Territory, and not being a voter, has no legal right to a writ of mandamus compelling the respondent to register her as a voter. The writ is refused.

STEPHEN P. TWISS, Judge.  
GIBSON CLARK,  
ZERA SNOW,  
Attorneys for Petitioner.  
PRESLEY DENNY,  
Attorney for Respondent.

## KENTUCKY CONFERENCE.

The Kentucky Conference of the Church of Jesus Christ of Latter-day Saints was held in Butler County, Sept. 2d, at the residence of Brother A. Nourse. There were present on the stand, Elder John Morgan, President of the Southern States Mission, J. G. Rigler, President of the Kentucky Conference, Elder A. H. Snow, of the Tennessee Conference, also L. B. Reynolds, W. G. Paul, and L. A. Kelsch, traveling Elders in the Kentucky Conference. After singing and prayer President Bigler explicated the object of the Conference and hoped the Saints and Elders would be profited during our meetings.

Elder Reynolds stated that he in company with Elder Kelsch had succeeded in opening a new field of labor in Grayson County, had preached the Gospel to a great many people, and thought good would result therefrom.

Elder Snow spoke of the unchangeableness of the Gospel and made some very encouraging remarks.

Elder Paul said that it was necessary for us to live like Saints if we claim the name, and to keep the commandments of God for the name alone will not save us.

President Morgan had visited various conferences throughout this mission. Everything seemed to be moving along nicely; was pleased to see the zeal of the Elders in the performance of their duties. Said the principles of the Gospel are revolutionizing the world and would continue to do so till the kingdoms of this world should become the kingdom of our God.

Sunday, Sept. 3rd.  
At the appointed time meeting opened by singing and prayer.

President Bigler then presented the general authorities of the Church, John Morgan as president of the Southern States mission, J. G. Bigler as president of the Kentucky Conference, L. Kelsch clerk of the conference, and L. B. Reynolds, W. G. Paul and L. Kelsch as Traveling Elders in the Kentucky Conference. It was moved that Jas. W. Hendricks be set apart as president of the Butler County Conference. All were unanimously sustained.

President John Morgan then followed with an excellent discourse, showing the necessity of having the Priesthood, with all the gifts and blessings that were enjoyed in the primitive church.

Adjourned till 2 p.m.  
Seats were arranged under the shade of the trees and the congregation partook of a plentiful repast.

2 p.m.  
Meeting opened as usual, when Elder Kelsch alluded to the hatred of the people toward the Saints in all ages of the world, and bore his testimony to the restoration of the Gospel.

Elder Snow spoke on the apostasy of the people from the primitive Church, and bore his testimony to its restoration in this generation.

President Bigler described some of the principles of the Gospel, exhorting the Saints to be united and faithful to their duties. Hoped that they had all been benefited in associating together during the Conference.

The congregation then sang, "O my Father Thou that Dwell'st."

Benediction was offered by Elder Reynolds.

L. LELSCH, Clerk.

## KANAB STAKE CONFERENCE.

Kanab Stake Conference convened at Kanab, 10 a.m., September 9th, 1882. Present on the stand H. O. Spencer and James L. Bunting of the Stake Presidency. Bishops of the several wards and others, opened by singing and prayer.

President James L. Bunting made a few pointed remarks.

Brother Lewellyn Harris said he had been acting as a missionary among the Indians and Mexicans of Arizona and New Mexico. Is now on his way to make a short visit among his friends here in Utah. He gave a very interesting account of his labors among the Indians, etc.

Brother Allen, from Arizona, made some very interesting remarks concerning the condition, labors, and feelings of the people at St. Joseph and Sunset, and sought to encourage very much.

Singing and benediction. Adjourned till 2 p.m.

2 p.m.  
After singing and prayer, Bishops H. B. M. Jolley, R. J. J. Cutler, and W. D. Johnson, Jr., represented their respective wards. The studying of law, registration and elections, and co-operation were treated upon; also, W. D. Johnson, Jr., gave an interesting account of his visit to the City of Washington. Singing and benediction. Adjourned till 10 a.m. Sunday.

Sunday, 10 a.m.  
After singing and prayer, Bishop Thos. Chamberlain, of Orderville Ward, Richard S. Robinson presiding Priest at upper Kanab, W. D. Johnson, sen., of Johnson Ward, and Elder John Covington, of Moccasin district represented their respective Wards or districts, and encouraged the rearing of the youth in Zion in the right way; the necessity of obedience, of being true to our religion.

Patriarch Joel H. Johnson spoke of the persecutions of the Latter-day Saints, and of all the prophets and righteous men, through every dispensation down to the present time; gave good counsel and felt to bless all who sought to keep the commandments of the Lord.

Adjourned till 2 p.m.

2 p.m.  
After the opening exercises the sacrament was administered; Statistics of the several Wards were read; general and local Authorities of the Church presented to the Conference and unanimously sustained the following named persons—Thos. C. Emmet, Wilford H. Haladay, Moses M. Emmet and Joseph C. Young—were put before the Conference to be cut off the Church of Jesus Christ of Latter-day Saints for cattle stealing. Unanimously carried.

Pres't. James L. Bunting, H. O. Spencer, Patriarchs Joel H. Johnson and Elijah R. Billingsley occupied the rest of the time; encouraged us to keep out of debt, do our duties, attend to our prayers, help build temples, pay our donations and tithing, help gather the poor, co-operate together, and keep the commandments of God.

Conference adjourned for three months; singing; benediction by E. R. Billingsley.

FRANCIS L. PORTER,  
Ass't Stake Clerk.

## Correspondence.

BURKES GARDEN,  
TAZWELL CO., I.A.,  
September 11, 1882.

Editor Deseret News:

The ignorance often displayed by educated men when writing or speaking upon religious subjects is illustrated in the following extracts from a letter written by a alleged professor, and published in a paper of one of the leading orthodox churches:

"The true Church of Christ divides itself into sects as naturally as a tree divides itself into branches. It is the will of God that it should be so. A tree with a trunk

and no limbs would be a monstrosity. One organic church in the world and no sects, would soon become so corrupt that good men would have to go out into the world to get into tolerable society. The statement made in the first sentence would have been very good if the word "branches" had been used instead of "sects." Branches are nourished by the sap which comes through the main trunk of the tree from the roots. A branch severed from the trunk of the tree would die a natural death. A branch of the church severed from the church would die a spiritual death. Sects in the sense used by the writer are each independent of the other and of the body. They are not governed by the same head, hence the comparison made by the learned writer is not logical. A tree with a limb growing detached would be a curiosity. One organic church built upon the rock of revelation could not become so corrupt as imagined and described and remain the Church of Christ. If organized, instructed and fed by the wisdom of men the fear expressed would doubtless come true.

We hear sometimes about orthodox churches. The "Mormons" fortunately are not among the orthodox ones. They are not "of the world" or they would be fellowshipped by it. The wisdom of men decides the orthodoxy of the sects. The "Mormons" are satisfied with the knowledge of truth as revealed from heaven. Some of the talented ones among those who prate so much of their learning and culture, often display more signs of ignorance and delusion and of the "blind leaders of the blind" than those they decry as deluded. Does it not seem strange that men who make such reasonings, as referred to, should hold the influence that they do? Does it seem strange that so-called Christianity is losing its hold upon the minds of many of the thinkers of society? And does it not seem strange that sects calling themselves orthodox, with their "mourners benches," days of probation, infant baptism, and organizations not after the pattern of the Bible teachings should vaunt so much of their Christianity and should affect disgust toward principles taught in the book they laud so much? Men of ordinary experience, depending upon their knowledge, have set themselves up as guides, religiously, of the people.

The people in many instances accept their teachings in face of the fact that the Bible teaches differently. They have for an excuse, in keeping them from accepting the truth, the fear of the world. "Who-soever, therefore, shall be ashamed of me and of my words in this adulterous and sinful generation of him also shall the Son of Man be ashamed when He cometh in the glory of His Father with the holy angels." It takes strong determination on the part of the believer to accept the truth and face the hatred of the world, hence the "Mormons" or Saints are a people fitted, by their inherent noble qualities and by their experience, to achieve a great moral and religious reform among the people of the earth. That such a reform is needed, that the whole lump needs to be leavened, the close observer will not deny.

May that happy time hasten when "out of Zion shall go forth the law, and the word of the Lord from Jerusalem."

The season of the year is approaching when politics command the attention of the citizens of the States. Old Virginia has been of late years considerably stirred in her political and financial affairs. Under the leadership of Wm. Mahone a new order of things is agitating this noted old State. Her early history compares with any of her sisters. Corruption and demagoguism have been blighting her fair record the past few years. She is not alone in this respect among the sisterhood of States.

How can any ordinary individual expect great things of single States these days, when he takes into consideration the example of Congress before the nation?

JOHN CARLISLE.

LEVAN, Juab Co., Utah,  
September 18, 1882.

Editor Deseret News:  
We have just had a two days meeting on the 16th and 17th inst., which was truly a time of joy to all the Saints of this place, and much timely and valuable instruction was given. We were joined by Pres't. George Tensdale and K. H. Brown