conduct. Standing here, as I do, on his absolute constitutional right to the free exercise of his religion, I ask you to see that his conduct consists of—

1. A declaration, in which he used the word "wife," in speaking of Harriet and Sarah. He could have meant nothing but the spiritual and religious relation.

2. Association and acts of a kind that could not have been dictated by anything but a religious obligation and duty.

These acts were every one innocent and meritorious.

They were not done in the assertion of any right of cohabitation.

He had a perfect right to do them.

They have not the smallest tendency to prove cohabitation.

There was no cohabitation with either Sarah or Adeline.

It is only by strained, distorted and artificial constructions of this word "cohabitation," that these acts can be reached and condemned.

What were they?

Visiting at rare intervals.

Supporting.

Driving out in a carriage with one or more of them.

Attention to a sick child.

A festivity on his birthday in the place of their public worship.

Now look at his religious belief—his and theirs.

The relationship evinced by his conduct is purely and exclusively moral and religious.

What "flaunting in the face of the world of the ostentation and opportunities of a bigamous household" is there here?

What did your honors mean by that language?

Does it apply to these acts?

What is a bigamous household?

Do you mean that there is a household where the parties do not live in the same house?

Do you mean that there is a household when they live one, five, ten miles apart?

Remember, I pray you, that here, in one 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 incontrovertible that he never was seen in company with Adeline anywhere during the time covered by the indictment, and that he dwelt exclusively with Minnie.

He had duties to discharge toward these women.

These duties are natural; they spring from the law of nature.

They are of moral obligation.

They are of perpetual obligation.

They are of sacred obligation.

They are duties, which, when we consider how and when they were assumed, and how they have become woven into the texture of his life, it 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 interpretation that will require him to renounce 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 obligations or restraints resting on the sovereignty which enacted the law?

Is it to be made to mean a constructive dwelling together, when there has been nothing but the discharge of duties of the highest obligation?

This constructive cohabitation makes this single word the most elastic that was ever put into a statute.

There is nothing that it will not reach. Let me enumerate.

1. Cohabitation with sexual intercourse. That is, of course, within the statute.

2. Cohabitation by dwelling under the same roof, without sexual intercourse. That was Cannon's case. Now we come to the dividing line.

3. Cohabitation by dwelling under different roofs, but occasionally seeing each other, and without sexual intercourse.

4. Cohabitation by dwelling in different towns, but writing to each other, sending supplies, delicacies, medicines, etc., in case of sickness.

5. Cohabitation by living in different countries, but corresponding, and speaking of each other as husband and wife.

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 farewell, and when all is over for this life, he follows her remains to the grave, and writes on the gravestone, Harriet, wife of Lorenzo Snow—that, too, is unlawful "cohabitation!"

Have we enacted a law so barbarous as this, in the vain hope that we can stamp out of the human heart a religious belief in a relation that subsists in it when oceans roll between the parties, and when one has crossed the gulf that separates time from eternity? No, we have not! Such constructions are impossible.

The trial judge had before him the very impressive testimony of Mrs. Harriet Snow, which I have quoted, showing the religious doctrine of their church on the subject of plural marriage, bringing clearly and sharply to his attention that in their belief there is a spiritual relation, for time and eternity, between a husband and his wife or wives, yet he says not one word to the jury about this doctrine, but he tells them to take Mr. Snow's *language*, of which there was no evidence whatever concerning *Adeline*, and, coupling it with his continuing to support her, to convict him of unlawful cohabitation with two women, one of whom is *Adeline*, in whose company he was never seen during the time charged, and the other of whom was *Minnie*, with whom he habitually dwelt.

Now, I must ask your honor's attention to the language of Judge Boreman, on page 25. This is what that Judge says on the subject of polygamy in a written judicial opinion:

"In the case under consideration we find a state of affairs which, by the facts developed in this class of cases, is coming to be well known to have a common existence in this Territory. The wife of a man's youth, and all the other women with whom he has lived as husband more or less of the time, and who have reared children to him, are, as they grow old, pushed off to lead a more lonely life, and the principal attention of the man is given to the youngest and most favored of his women. It is a natural result of a system founded on sensualism, and is the same here as in every other country where polygamy or any other system exists to shield the lust of men."

Oh, rare judicial consistency! These unfortunate Mormons are first charged with neglecting their elder wives, and pushing them off to lead lonely lives, and then such kindness and attention and care for the elder ones as they do show is used to convict them of unlawful cohabitation, by the aid of a legal presumption that they cohabit with the older ones, notwithstanding they have pushed them off! Can judicial folly go further than this?

I observe that the learned counsel who represents the Government on this occasion has echoed in his brief a considerable part of this cruel insult to the prisoner who was before the court. In order to inflict that insult, Judge Boreman misread and misrepresented history; for what he states as the same result of the system of polygamy in every other country is not true. If any man has lived within the last two hundred years who understood India and all the East better than Edmund Burke, his name has not become known to the world. In his speech before the House of Lords on the impeachment of Warren Hastings, and in his speech in the House of Commons on Mr. Fox's East India Bill, he shows with distinctness the provision that is always made for the great polygamous families.

Now what was true, and always has been true, of the greater harems of the East, is true of the lesser households, and has been true in all ages. A modern Turk, of whatever condition of life, who has more than one wife, would no more think of treating his eldest wife, or his elder wives, as this Territorial judge imputes to all men in all countries where polygamy prevails, than he would think of killing his grandmother. "Where polygamy or any other system exists to shield the lust of man." It is because this is the public cry, because this is the imputation—that this system exists to shield the lust of men—that we postpone, we put aside, we forego all efforts to understand it, and to see whether it is or is not something else.

Justice Miller: If I do not interrupt this portion of your argument, I would like you to explain this spiritual aspect. You have referred several times to the spiritual aspect of this Mormon marriage, these plural marriages as distinguished from the ordinary relations of husband and wife, and you have read from that book to show that there was something of a different relation.

Mr. Curtis: In their belief.

Justice Miller: Well, in their belief. Now, the extract which you read from that book, as I caught the idea, was to the effect that the purpose of these plural marriages was to multiply children and to increase the race. Is that different from any other marriage?

Mr. Curtis: I am coming to that presently.

Justice Miller: As that is the foundation for your saying that there is a distinction, at least in their belief, and that their belief is something that has not anything to do with this carnal result of an ordinary marriage, I would like to know what it is.

Mr. Curtis: Perhaps, sir, I cannot answer in your way, but I certainly see my own way about it clear enough. What are we to do with the great positive fact that polygamy existed in the Semitic race from the origin of that race? It was sanctioned by God Almighty, was regulated by the law of Moses, was practised by all the patriarchs; and what are we to do with the negative fact that our Savior never prohibited it? Are we to conclude that it is a fit condition for modern society? No. Are we to conclude that it is a state of things that governments may not prohibit? Certainly not. What then is the conclusion? There must 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 relation, the marriage condition, has comprehended a carnal relation, a sexual union, which exists for us as it does for all the other animals, in order that there may be a continuation of species; but beyond and behind all that is the central Hebrew idea of marriage, that it is a religious relation, a spiritual relation, whether it be monogamous or polygamous—that it is a relation between soul and soul. Now, what have these Mormons done on that subject? They have added to the central idea of the Hebrews this further idea—they carry their idea forward into eternity, and they believe it, and certainly we have no right to question the sincerity whatever we may think of the religion as an imposture—they carry the relation into the endless futurity, and they say that it exists forever, whether it is a relation between one and one, or one and two, or one and three.

They accept the doctrine of the resurrection as it was given by St. Paul with such vivid prophecy of what is to happen at the last day, when this corruptible shall put on incorruption and this mortal shall put on immortality, and we shall be changed. "There is a natural body," says the great Apostle, "and there is a spiritual body"—masterly exposition—in which are united, in one brief sentence, truths of philosophy and reason, with information communicated by the Holy Spirit. There it stands in the Epistle to the 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 faith of all mankind who accept the revelations of the New Testament. The Mormon founder and prophet may have been an impostor—aye, a conscious impostor, if we choose to call him. But on the doctrine of the resurrection and the kindred doctrine of the atonement, he is one with the whole 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: that among those whose circumstances admit of it, whose means and opportunities allow of it, and consent is given by all the parties, because the relation cannot be entered into otherwise—he who presents in the other world the greatest number of beings brought into existence here will receive a higher consideration there. 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 issue of this terrible business—there are Mormons, hundreds and thousands, in that Territory, who hold the religion in all its integrity, and in all its length and breadth just as all the others do, but who have only one wife. What is the difference between them? Why it is simply a difference of interpretation of their religious law. One portion of them accept polygamy as mandatory; the other portion accept it as permissive; and if the government and people of the United States would only see what is their duty, this is the avenue, and the issue out of this whole difficult problem, as time shall go on, and as the providence of God shall bless our efforts. But of one thing there is a fixed moral certainty. The monogamous wives will suffer any extremity before they will be driven from the side of their polygamous sisters.

I now come, if your honor please, to the language of this Court in the case of Cannon. In the second case tried, Judge Powers, in his charge to the jury, garbled a sentence from the opinion of this Court in the Cannon case, and did not point out to the jury the difference between the facts of that case and the facts of the case he was then trying, and the jury must have been misled. The language of this Court in Cannon's case in reference to the statute was this:

"It seeks not only to punish bigamy and polygamy when direct proof of the existence of those relations can be made, but to prevent a man from flaunting in the face of the world the ostentation and opportunities of a bigamous household, with all the outward appearances of the same relation which existed before the act was passed, and without reference to what may occur in the privacy of those relations."

By a household I should understand persons dwelling in one house, or if dwelling in more than one that the head of the house should be going back and forth, and living alternately with one and alternately with the other wife.

The opinion of this Court was delivered December 14, 1885. It did not reach Utah until just before the 2d of these cases were tried. On the trial of the 1st case, Judge Powers was guided by his own unassisted wisdom and his zeal to procure conviction. On the trial of the 2d and 3d cases he had the opinion of this Court in Cannon's case before him in its full text.

It must have been manifest to him that the sentence which he quoted was an illustration only of the facts of the case that were covered by the opinion; that it could have no application to a case which this Court could not have foreseen.

If we analyze the language of this Court, we find that it speaks of—

1. A bigamous household.

2. The ostentation and opportunities of a bigamous household.

3. The flaunting in the face of the world that ostentation and those opportunities.

4. A continuance of the same relations which existed before the act was passed.

5. The non-inquiry into the privacy of those relations.

Taking all these ideas together, just as they were expressed, it was apparent that they applied only to the case of a man who dwelt under the same roof with two women, ate habitually at the separate table of each about one-third of the time, and had no other home or dwelling-place. This state of things constituted the ostentation and opportunities of a bigamous household, and the flaunting of them in the face of the world. These were the relations which were continued after the passage of the act, as they existed before its passage.

Moreover, in Cannon's case, there was no language that had been used by him in reference to the two women as his "wives;" nothing but his conduct was in evidence; and it was that conduct alone by which he held them out to the world as his "wives." No element, therefore, of the religious sense in which these people regard each other as husband and wife or wives, and are accustomed so to speak of each other, appeared of record in Cannon's case. This Judge Powers must have known if he read the opinion of this Court.

He read to the jury the sentence above quoted; made them believe that it applied to Mr. Snow's case; never told them to inquire in what sense he spoke of Harriet and Sarah as his wives; left them to apply the language of this Court to his relations with Adeline, and, admonishing them sharply of the obligations of their oath as jurors to take the law from the court, he procured a conviction.

(See that portion of his charge which is on the top of page 22 of Record, No. 1279.)

I must now, as rapidly as I can, call your attention to the references which show historically the intent and meaning of the first amendment of the Constitution, which forbids Congress making any law "prohibiting the free exercise of religion."

When the Constitution was before the States for adoption, while none of them made its amendment a condition precedent to their ratification of the instrument, six of them positively insisted on having various amendments made in the mode provided for, and three of them gave great emphasis to their demand for an amendment on the subject of religion. These were New Hampshire, Virginia, and North Carolina.

New Hampshire couched her demand in these words:

"The Congress shall make no laws touching religion, or to infringe the rights of conscience."

Virginia and North Carolina used a greater amplitude of expression. Both of them said:

"That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conscience, not by force and violence; and therefore all men have an equal, natural, and inalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established in preference to others." (Journals of the old Congress, vol. iv.; Appendix, pages 52, 53—59.)

In this comprehensive summary of the whole doctrine, philosophy, and right of religious liberty we may trace unmistakably the hand of Jefferson, seconded by the hand of Madison. We know what Jefferson did for the establishment of religious liberty in Virginia by the bill which he drew and promoted until it became a law. Speaking of this bill in his autobiography he says he "meant to comprehend within the mantle of its protection the Jew and the Gentile, the Christian and the Mohammedan, the Hindoo and Infidel of every description."

Madison and Patrick Henry, by their course in the Virginia assembly, when they were framing their bill of rights in 1776, left no doubt possible concerning the broad scope of religious freedom. When the subject of amendments of the Constitution of the United States came before the House of Representatives of the First Congress, Mr. Madison took the lead in formulating and carrying them through. What occurred on the subject of religion is to be found in the Annals of Congress.

1st Congress, 1789, pages 699, 757-759.

So that there is no difficulty whatever in understanding the constitutional meaning of the "free exercise of religion."

It does not comprehend solely modes of public worship or external acts. It comprehends also the holding of religious beliefs and their avowal, whatever they may be, and the only possible limitation upon religious belief is that it shall not be pleaded in excuse for conduct which the legislative power sees fit to prohibit because it is injurious to the welfare of society.

If, therefore, the Edmunds act is to be so construed, and so administered and applied as to make it encroach in the smallest degree upon the right to hold and the right to avow a religious belief, it is so far noperative and void. We cannot legislate against an idea. We cannot legislate against a thought or an expression of it. We cannot force any belief out of the human soul.

If the expression of a religious belief connects itself with conduct, with external acts, we must discriminate between that conduct and those acts which are plainly dictated by the belief, and are not *per se* injurious to the public welfare, and those which are so injurious, or are declared to be so, although dictated by a sincere religious belief.

For example, in the cases now before the court, it is proved in evidence that there is a certain religious belief on the subject of marriage which makes it to those who hold the belief a religious and spiritual relation for this world and the next. That relation continues to subsist for them, although they never see each other, and although no cohabitation of any kind is possible. We may legislate to break up the carnal relation and to prevent continued cohabitation of a certain kind if it can be judicially defined. But all the while, and when the carnal relation and the cohabitation are broken up, or are voluntarily discontinued, there remains in the soul the religious and spiritual tie which we cannot reach and must not touch in punishing the conduct. Again, if the conduct of the parties towards each other continues to be that, and that only, which the religious belief dictates as a duty—which the common sentiments of humanity dictate—as visits of sympathy, contributing to support, providing the means of subsistence for women and children, in sickness or in health, in sorrow or in joy, acts which are not *per se* injurious to the public good, we cannot define them as unlawful cohabitation without violating the rights of conscience. By so doing we punish acts dictated by a religious belief in a religious and moral duty, the discharge of which is in itself perfectly innocent and harms no one. On the other hand, if the conduct is such that when put to a jury under proper instructions, it warrants the conclusion that the parties were living in defiance of the law under a pretext of religious and moral duty, and that is of itself the kind of conduct which the law, rationally interpreted, meant to denounce, it may be punished.

There can be no pretense that this has been Mr. Snow's conduct in 1883, or in 1884, or in 1885.

I have now to ask your honors' indulgence to permit me to read something I have set down in writing in regard to the Mormon religion, because I meant to weigh every word that I say here on that part of the subject. This Mormon religion is the most remarkable phenomenon of its kind that has occurred for centuries. It is founded on an alleged new revelation. That is neither here nor there. It is believed by hundreds of thousands of people all over Christendom, and whether we call it an imposture or call it what we will, there is the fact that it is extensively believed.

This religion has been made the foundation of a very remarkable society. Like other religions, good and bad, it has its martyrs. Its prophet and founder was for his teaching put to death by a mob. Joseph Smith was murdered in jail, June 27, 1844, by an armed mob, disguised as negroes, and no one of his assailants was ever brought to justice. Several of his adherents lost their lives by lawless popular violence. The whole body of them were expelled from the country where they first gathered; where they built the city of Nauvoo, around which they made the region blossom like the rose. They were driven into a foreign country; that country became the property of the United States. They grew and increased, their religion all the while maintaining its hold upon them, and exercising a great power over their lives. They made a community more orderly, more moral, more thriving, than any equal number of people anywhere. The blots and scars and sores and scabs that are on our civilization in all our great cities and larger towns are not on theirs. In exclusively Mormon towns, there are no drinking shops, no gambling houses, no houses of prostitution, and none of that immorality which so shocks us in all our great centres of population. There is no profanity; nowhere is Sunday more religiously observed—not even the Presbyterian Scotland or rigid Connecticut. Ninety per cent. of them own their houses and lands. Their farms average less than twenty acres each. This is a state of things unparalleled in any other part of the world.

Their religion, as I said before, is one that exercises great power over their lives. They accept all the cardinal doctrines of Christianity, and both the greater sacraments. That feature of their religion which sanctions polygamy is what makes them obnoxious, and it is the grand provocative of the antipathy that breaks through the ordinary restraints of religious tolerance.

The popular mode in which they are attacked is by representing the women as slaves to the lust of men. This is the universal cry, and it is false. The relation of plural wives to one husband is just as voluntary on the part of the Mormon women, who are alleged to be the sufferers by it, as is the case with any other form of the marriage relation. This affords an explanation of the fact that there can be, as there are, purity, innocence, and womanly virtues among these women. If we seek a further explanation, it is to be found in the fact that the common ideas and customs of the world teach women to regard marriage as the one thing needful, and this explains why many women should prefer being one of several wives to not being a wife at all. But we must add to this the religious belief which they have embraced, and must have embraced before they can enter into the relation, because no Mormon priest or official of any kind anywhere ever has performed or can perform a marriage ceremony for any one who does not accept the belief, nor can a marriage be solemnized unless the first wife, if it is the marriage of a second, gives her consent. In this very case of Snow it is in evidence that he was married to two women on the same day, a thing that could not happen without a mutual consent; and it is a well known fact, as occurring frequently within the past forty years in that Territory, that women ask their husbands to marry one of their friends. Now you have the whole explanation of what it is so difficult to understand. That difficulty of understanding it, and the added unwillingness to understand it, or to reflect upon it with any kind of fairness, affords to their persecutors the opportunities and stimulus for breaking over all the bounds of religious toleration, for invoking and using the machinery of criminal law and pushing it up to and beyond the barriers which have been erected for the security of the rights of conscience.

It is the function of this high tribunal, raised above all prejudice, free

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