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AN INCONSISTENT DECISION.

THE Supreme Court of Utah has affirmed the decision of the First District Court in the Bassett case. The full text of the decision will be found in another column. The question in regard to the eligibility of a certain juror is of minor importance as it only affects the case of the appellant. The main question not only affects his case but also the large majority of cases under the Edmunds Act. It is of public as well as private moment. It is the right to call the legal wife to testify against her husband and particularly as to confidential communications made to her during coverture.

At common law this is not admissible. The Court acknowledges that. But it is claimed that under the laws of Utah the testimony of the lawful wife is competent in a case of polygamy or unlawful cohabitation. If this is correct of course the statute takes precedence of common law provisions. The Court cites both the law of 1878 and that of 1884, and takes the position that the latter supersedes the former. This looks plausible, but will it stand the test of close criticism? We shall see.

Section 1156 of the Civil Code of 1884 provides:

"1.—A husband cannot be examined for or against his wife, without her consent, and a wife for or against her husband without his consent, nor can either during the marriage or after, without the consent of the other, be examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, *nor to a criminal action or proceeding for a crime committed by one against the other.*"

The words we have placed in italics make the gist of the question now in dispute. It is argued by the court that polygamy is a crime committed by the husband against the wife and therefore the wife, under this clause of the statute, may be permitted to testify in a case under the Edmunds Act. But it has been the aim of all the Legislatures that have enacted laws for Utah to guard the common law rights of husbands and wives in this particular. And there is no doubt that, as a matter of fact, not a member of the Assembly of 1884 desired to change the law in regard to it. The representatives of the people were not likely to enact anything which would be directly opposed to the sentiments of their constituents. In adopting the Code in its present form, they had no idea that such an advantage could be taken of the wording of this section as is now claimed by the Court. They certainly understood this clause to signify that which is recognized as a crime against the husband or wife by the community for whom the law was framed. The legislators imagined they were embodying in the new Civil Code a similar provision to that in the Criminal Procedure Act of 1878, which is in conformity with the common law and harmonious to all previous legislation on the subject in this Territory.

The question is, what is meant by "a crime committed by one against the other?" The answer is, "criminal violence." That is the generally understood signification of the phrase. The argument of the Court intimating that poison administered to a wife by a husband is not criminal violence, is a very poor shift from the right position. It is a species of violence and it is certainly criminal. If poison has no violent effect upon the human system, the Court might have some ground for such a thin and transparent quibble but the object of this exception in the law relating to evidence was evidently to shield the wife, or the husband as the case might be, from attacks upon the person.

In a marriage between "Mormons," the right of the husband, under the rules of the Church that solemnizes the marriage, to take other wives under given circumstances, is recognized by the first wife. It is believed by both to be proper and in some cases essential. How can the subsequent marriage of a plural wife by the husband, be construed under these circumstances into a crime against the lawful wife? If it is declared a crime against society by legislative enactment, that does not constitute it a crime against the wife who assumed marital relations with the understanding that they permitted such a future union. The sentiments, customs and general convictions of the people whose elected representatives enact a law, ought to govern the construction of the law when its exact signification is in doubt. And when the majority of legal wives reject the idea that any crime is committed against them by the marriage of their husbands with plural wives, it looks like a hard strain upon the rules of construction to make them the objects of crime when they have no personal grievance.

The Criminal Procedure Act of 1878 Section 421 says:

"Except with the consent of both, or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other, in a criminal action or proceeding to which one or both are parties."

This is the true sentiment of the community for whom and by whose elected legislators the act of 1884 was passed. It explains the meaning of the clause in dispute. But we understand the Court to assume that this has been repealed by the later law. We do not view it in this light. It is certainly not repealed in terms. The object of the Civil Code of 1884 was not to repeal the Criminal procedure Act of 1878. And it does not specifically repeal any part of it. The closing section of the Code provides:

"Sec. 1288. All acts and parts of acts in contravention with this Code are hereby repealed, saving and excepting all rights, actions, and rights of action which shall have accrued and exist when this code takes effect, and all actions then commenced shall be prosecuted to a determination in conformity to the rules herein prescribed so far as applicable."

Is section 421 of the Criminal Procedure Act of 1878 in contravention of section 1156 of the Civil Code of 1884 both of which we have quoted? We think not. One act was intended to govern criminal proceedings, the other to govern civil proceedings. But when speaking of the rights of witnesses, in the latter it was sought to make them conform to the former, and for fear the wife's right of exemption from testifying against her husband in a criminal action might be endangered, the clause in dispute was inserted in that which else related to civil causes.

We claim that the older section is not repealed. It stands side by side with the other. They are *in pari materia*. They are to be construed together. One throws light upon the other. Take them together and there is no doubt left as to the meaning of the words in dispute. It is then all in harmony with the legislation of the Territory from the beginning and in accord with the common law. It is also at one with the national sentiment and the rights of married persons as frequently defined by the Supreme Court of the United States.

An attempt to make the Court's construction of the law really legal was put forth in the Edmunds bill, which was changed by Tucker and afterwards altered by the Conference Committee. But Congress, bitter as most of its members were against the "Mormon" system, would not sanction such an outrage on marital rights. So the bill as it passed both houses contained a provison similar in form, and to the same effect as the law of Utah stands, when both the sections we have quoted are construed together. Here it is:

That in any proceeding or examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called, but shall not be compelled to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be; and such witness shall not be permitted to testify as to any statement or communication made by either husband or wife to each other, during the existence of the marriage relation, deemed confidential at common law.

This we believe will be declared the law when this case shall have been finally adjudicated. It must be taken up to the court of last resort, and thank heaven, an appeal cannot be denied by the lower courts, for it is provided for in the Poland law. Until this end is reached we suppose lawful wives, against their will and against the protest of their husbands, will be put upon the witness stand to violate the confidences of wedlock and help to destroy that sanctity of the home which the anti-polygamy fanatics pretend to foster and preserve.

WHY WE DON'T DISCUSS THE TEST OATH.

IT seems that the silence of the DESERET NEWS on some questions gives almost as much concern to the enemies of the "Mormons" as its utterances. If we speak out plainly they are offended at our exposure of their folly and villainy; if we let them lie on without notice they are hurt at our indifference. We do not seem to please them in either case. Well, we are not conducting this paper for their pleasure, and are not over sensitive as to their feelings either one way or another.

The remarks made in this paper on the subject of the test oath provided in the new anti-"Mormon" bill, seemed to irritate the Leaguers and their chief organ considerably. We let the wind out of the bladder with which they attacked the monogamous "Mormons" who might see their way clear to the polls in spite of that obstacle. We pointed out the immense difference between their position and that of men who had entered into plural family relations and eternal covenants, and between the pledge sought to be imposed upon the latter by the courts, and the oath required of the former, as voters, by the proposed law. Of course this enraged the sophists who endeavored to make the two different positions the same and the two requirements equal.

We then dropped the subject, as having said all that was necessary. But our silence seems to provoke the organ of the Republican faction of the Fifty-cent League, and the question is repeatedly asked why we do not talk on this question. Something very "significant" is portended by this indifference. Well, to relieve the anxiety and suspense which our opponents are suffering on this point, we will explain. There are two reasons why we have not touched on this subject further: The first is, we are not reduced, like the organ aforesaid, to the necessity of filling up editorial space every day with harpings on the one strain. We do not wish to sicken our readers, in that fashion, with perpetual repetitions. The second is, we have not a tithe of the anxiety in regard to the matter as that which is exhibited by the disappointed promoters of the Tucker infamy, who are now shivering in their shoes over the anticipation of possible entire defeat. The third is, the test oath is not yet a law, and may amount to nothing but vain words expressive of a desire but futile as to any force. And we see no particular use in spending much time or wasting much space in debating as to what the "Mormons" can or cannot do, lawfully and conscientiously, in regard to an alleged something that may yet turn out to be nothing.

When the President signs the "emasculated" measure—bad enough in all reason with so many vicious parts taken out—it will be time enough to enter seriously into the question of what course is to be pursued to save the Territory from plunderers and adventurers. At present it is still in abeyance. Neither our gentle banter nor our clear exposure of their sophistry seems to have pleased our assailants. But the outcome, whether the bill becomes a law or not, will, in our opinion, make them the sickest crowd that ever tried to eat crow.

THE SPEECH OF A STATESMAN.

THE speech of Senator Call on the anti-"Mormon" bill which now hangs in the balance awaiting the weight of the President's touch, is worthy the attention of every person who has any interest in the "Mormon" question. It will be found in another column, as reported in full in the *Congressional Record*. It is the speech of a statesman. It comes from the heart of a humane and "Christian" gentleman. It deals with the subject from a lofty standpoint. Senator Call does not grovel in the mire of bigotry nor move on the level of popular ignorance and fanaticism. Neither does he condescend to the tricks of the pettifogger in handling the law and the Constitution of his country. He enters into its spirit and is not deceived by the specious pretences of those who claim to have kept within the limits of its letter.

Senator Call did not fall into the error of Senator Vest, who attempted to oppose the bill without having mastered its details. It had been changed so much from the original measure that Mr. Vest was unable to attack it with that confidence which comes from knowledge of every part of the ground. This speech exposes the evils of the scheme against the "Mormon" Church, the "Mormon" religion, the "Mormon" people, in such a complete and systematic and logical manner, that Senator Edmunds who replied to Mr. Vest, could not utter a word against Mr. Call. It is a masterpiece of genuine and vigorous exposition both of constitutional law and its assailment by the proposed legislation.

The eloquent gentleman will never have occasion to regret this defence of a Church and people whose faith and customs he is opposed to, and who are the targets for the envenomed shafts of the multitude in Church and State. It does honor to his head and his heart. And the people of Utah owe a debt of gratitude to their accomplished and fearless defender which eternity only can properly repay. We commend the speech to the careful perusal of all our readers.

A SCAVENGER IN JOURNALISM.

As a specimen of the style in which the morning organ of the Four bit-League "argues" with an opponent, we let ourselves down low enough to present the following:

"The NEWS copied on Friday night an article from the New York *Standard* which says of the Edmunds-Tucker bill, that it is 'in effect a measure designed to enable the Gentile minority to govern the Mormon majority by excluding their votes,' etc. To make it more binding the NEWS puts above this and other extracts the heading, 'Rational Remarks on Anti-Mormon Measures.' No distinction is expressed by the *News* on the proposition thus stated and quoted, that under the bill the Mormons would be excluded from voting. If, then, it is "a rational remark" that Gentiles will be put in rule in Utah, the *News* must mean one of two things; either that under the bill it would be proper to exclude all Mormons from registration, and from the polls, or else that the Mormons will of their own motion refuse to take the oath prescribed for electors."

This is the "honest" and "respectable" manner in which the sheet in question usually engages in controversy. The *Standard* speaks of the *design* of a measure; the *Tribune* argues on it as though its *effects* and *operations* were the subject. We endorsed the remarks of the *Standard* as "rational." So they are. The *design* of the bill was exactly as stated. But this does not argue that the effects will be according to the design. If our enemies scheme to get us into their power, it does not follow that we shall fall into their snare. Because the villains who are engaged in this political plot *designed* to exclude all "Mormon" votes, it is not sure that their design will be successful, even if the means they adopted to effect it should receive the sanction of law. The law of 1862 was *designed* to suppress plural marriage. Did it accomplish the purpose? Our enemies have been *designing* for over half a century; have their designs been successful?

The "rational remark" does not necessarily mean either one or the other of the two things which the *Tribune* garbler and sophist lays down so dictatorially. If the design fails, neither one will be the outcome. It would not be proper to exclude any "Mormon" "from registration or the polls" who chose to take the oath, nor need the "Mormons" "of their own motion refuse to take the oath" because their unscrupulous enemies designed it "to enable the Gentile minority to govern the Mormon majority by excluding their votes." On the contrary it would seem that common prudence would suggest the propriety of defeating that design.

The *Standard* states one thing, the *Tribune* scribe states another and then argues as though it was the utterance of the *Standard*. That is the invariable style of his logic. It is the logic of lying, the resort of a knave, the low level of a scavenger in journalism.

TOPOLOBAMBO.

HUBERT HOWE BANCROFT'S great historical work still progresses in spite of the drawbacks from fire and otherwise which have occurred to retard it. Every volume is full of interest to the living, and of value to posterity.

The following excerpt is from that portion of the work devoted to the history of California:

"At present the country lying about the river Fuerte on the west coast of Mexico, has assumed a special interest from the fact that the Topolobambo colonists have chosen it for their new home. The banks of the river are old historical ground. As early as 1532 one of the expeditions of the conquerer of Mexico was annihilated on the very spot. In that year Cortes dispatched two vessels from Zacatula under Hurtado de Mendoza, his cousin, and Mazuela. Their object was nothing less than to reach Asia, that continent being believed to be connected with America in the far north. The vessels touched at Santiago, discovered the Tres Maria, and after a long storm anchored at an unknown point on the coast. Provisions being nearly exhausted, the men became mutinous, and part of them returned southward with one vessel. Driven ashore in Banderas Bay they were killed by the natives with the exception of two or three who escaped to Colima. The other vessel, with Hurtado and the men remaining loyal, resumed her northward course and finally ran into the month of the river Fuerte or Tamotchala. At that time the natives seem to have been strongly opposed to the immigration of foreigners, for they fell upon the Spaniards and slaughtered them to the last man."

A RESPECTED OCTOGENARIAN

THIS being the 1st of March, it is the eightieth anniversary of the birthday of Apostle Wilford Woodruff. We join with his friends, which are a host, in wishing him many happy returns of the day. His has been an eventful as well as long life. A just man with a stainless record. He has traversed sea and land and lifted up his voice proclaiming the restoration of the Gospel and warning this generation of coming judgment. As a proselyter his success has at times been phenomenal, having been the means of bringing a multitude of people into the Church. His activity is only equalled by the genuine simplicity of his character. The latter trait is so conspicuous a feature of his composition that we doubt if Nathaniel of old were more frank, and free from guile than Brother Woodruff. The community have reason to be proud of such as he, being, in the essence of the term, an honest man. We but echo the wish of every Latter-day Saint when we say, may God bless and comfort him in his old age.

RESISTANCE TO FEDERAL ENCROACHMENTS.

THE minority report of the Senate Judiciary Committee in regard to the Hoar bill "To provide inquests under national authority," is deserving of notice and the support of all legislators who are opposed to "centralization." It was signed by Senator George and all the Democratic members of the Committee. The bill under consideration, besides being objectionable in itself, they declare "establishes an unwarrantable Federal espionage over matters confided exclusively to the jurisdiction of the States."

This is one of the growing evils of the times, and has gained increasing force ever since the close of the war. The advent of the Democratic party into power bid fair to check this tendency which was fostered by Republican influences. It requires a determined stand on the part of all true supporters of Constitutional principles to put an effectual barrier in the way of further encroachments.

The doctrine of "implied powers" is too elastic for the preservation of our system of government in its original integrity. The instrument on which its stability depends gives no warrant for any such powers, except for the purpose of carrying into effect those that are expressed. The powers are not thereby enlarged, but only the means are permitted to render their execution free and unimpeded. The powers not bestowed in terms upon the Federal Government, are expressly reserved to the States respectively or to the people.

This balance of power is the very mainspring of our political machinery. Whenever undue preponderance is given to the national authority so that the rights of the respective States or either of them are invaded, the equipoise is disturbed and the advantage gained on the one side is taken at the expense of the other, the whole arrangement is thrown out of harmony and its object is to that extent thwarted and rendered abortive.

It must always be remembered when this subject is discussed, that the powers of the Federal Government are those only that have been bestowed upon it and given up voluntarily by the individual States. The States derive their powers from the people, the General Government its authority from the States. And such powers as have been given up by the several States are expressed and defined in the Constitution, the rest are all reserved.

It is the duty of Democratic statesmen, then, to watch every effort of those who would infringe upon States' rights for the sake of increasing the national power. No matter how small the encroachment may appear, it should be resisted on principle. And the strong report of the minority of the Judiciary Committee against Senator Hoar's attempt to vest improper authority in Federal hands, should receive the endorsement of their compatriots in the House and the support of Democrats everywhere.

EXPOSURE OF CRIME.

THE New York *World* has been rendering good service to the public, as well as increasing general interest in its columns, by exposing some of the worst criminals who infest the great commercial capital of the country. The arrest and conviction of the "Astrologer" De Leon was due to the neat detective work of a *World* reporter. That vile and heartless preyer upon human credulity, drove a roaring trade in the shipping of young women to Panama, where they were led to expect high wages in respectable employment, but only to be betrayed into a life of vice and horror which, through the trials of the climate added to the effects of their situation, became as short as it was shameful. He was thoroughly entrapped and exposed and now endures a felon's doom.

The recent conviction of a Mrs. Austin, who plead guilty to a charge of abduction, was also due to the efforts of the *World*. This woman kept an establishment supposed to be for massage treatment. But under cover of this pretense, young girls of tender age were induced to enter a life of shame, without the knowledge of their parents and friends, who were kept in complete ignorance of these dreadful doings. These girls went to their work, as was supposed, every morning, returning at a regular hour in the evening. And thus the awful truth was concealed and the vile business was carried on under the cloak of respectability.

The *World's* exposure was complete as in the De Leon case, and the woman's admission of the abduction offense was only made to prevent further inquiries and save herself from further penalties. She has been sentenced to four and a half years' imprisonment at hard labor. The court recognized the force of the only plea that her counsel could offer. That is, that she was worthy of lenient consideration because she