the passage of the prohibiting act. It was only shown that my client had dwelt with Clara C. Cannon in a conjugal relation, previous to March 22d, 1882; and upon the arbitrary inference drawn therefrom, which inference we could and would have rebutted if allowed, conviction was had. The marriage and mutual association before such association became criminal, were thus made elements of the offense; and by this means the Edmunds Act was clearly made to operate as an *ex post facto* law.

"IN THE MARRIAGE RELATION."

It is claimed that this statute only refers to cohabitation "in the marriage relation," and the Court below, in this and numerous other cases, has so construed it. The words of the statute give no color to such an interpretation, and if the public example of cohabiting with two or more women is an injury to society, the injury would not be less because in one case neither the man nor woman claimed any right, but knowingly acted as law breakers without any excuse of conscience or belief. It is misleading to assume that this statute refers only to cohabitation under a marriage relation or claim of a marriage relation, and that the word cohabit relates only to those associating under the form of a marriage contract. Such an assumption treats the void marriage relation as a constituent of the offense and a part of its definition, instead of treating it only as a matter of evidence tending to raise presumptions of fact going to establish the offense.

Cohabitation does not mean the living together of husband and wife, but the living together of a man and woman as husband and wife live together. It refers to the manner of life and not the contract, and therefore includes the husband and wife and all men and women who assume their habits of living. Unless this is the meaning of the term, statutes against lewd and lascivious cohabitation could not be enforced unless the prosecutor could show a void marital contract or relation, and such statutes would fail to reach cases intended to be included. In such cases it is the habit and frequency of visits and sexual relations which make the cohabitation. The term cohabit has no reference to a marriage contract or claim of marriage, valid or void, but refers only to the habit of married persons, and unlawful cohabitation means those who adopt that habit without authority of law, and whether this adoption of the habit is or is not under a claim of marriage does not go to the constituents of the offense.

It is not permissible to limit the term "any male person" to the term "any male person who in a polygamous relation," etc. Such a construction would not only incorporate new words and create a new meaning, but would give an *ex post facto* application to the law by making a past act an essential part of an offense to which a new punishment was annexed, and would revive past offenses though prosecutions were barred by the statute of limitations. The eighth section of the Edmunds Act shows that this offense is not dependent on any marital relation. That section provides for the disfranchisement of every bigamist, polygamist, and person who cohabits with more than one woman. Here are two classes of persons subject to disfranchisement; the bigamist or polygamist who continues in the status but commits no offense under section three, and the person who thereafter violates the provisions of section three by cohabiting with more than one woman. There is no room for doubt under the language of section eight that a person who cohabits with more than one woman is within the prohibition, though he may be neither a bigamist nor polygamist, and that the person who shall cohabit with more than one woman represents in this section the place occupied by the "male person" in section three. Neither need be a bigamist or polygamist to violate the provisions of either section.

THE POLYGAMOUS STATUS.

This Court, in construing the eighth section of the act, decided in substance that it is not intended as a punishment for the crime of bigamy or polygamy; that it declares the status of one who thereafter maintains those relations; that such status is not necessarily criminal or dependent on the continuance of sexual relations, but that it adheres to the person who has ever contracted a polygamous relation, until he, in some undefined way, abandons the relation. It is clear the status so defined arises out of the polygamous contract made at some past time, and is the effect of the contracted relation. No such status can exist with reference to the offense of unlawful cohabitation which is not dependent on any contract relation. The words "bigamist or polygamist" of the eighth section are construed to mean any one who in past time has been and still is in those relations, and do not imply an existing criminal status. The words "person cohabiting with more than one woman," in the same section, imply a present criminal state punishable by the third section, and to this crime no status is given after the criminal act ceases. Thus a sharp contrast is drawn between a status non-criminal in itself, and which follows a polygamous contract, and the actual crime of unlawful cohabitation which, under the third section, can not be followed by any status after the unlawful act ceases. Other considerations already mentioned show that there can be no unlawful cohabitation presumed in law from any prior status, but the very gist of the offense must be proved as a fact. The crime of unlawful cohabitation requires no marital contract as a constituent of the offense, but consists solely in illegal acts irrespective of any contract, while the status declared by the eighth section arises wholly from the force of a contract, or a prior holding out of two women as wives, under such circumstances as to imply a contract. The criminal act of cohabiting with more than one woman is clearly a different thing from the act of maintaining (or dissolving) the status of a bigamist or polygamist. A person may hold out to the world by his acts, or by express assertions, that two women are his wives, and thus be in the status which deprives him of civil rights, but if he refrained from cohabiting with more than the legal wife he would not violate the third section of the act.

By interpolating into the third section the words "as wives" or "in the marriage relation," the court below has brought into section three and made illegal, or at least made an important part of the offense of unlawful cohabitation, the status of the eighth section which is not criminal and cannot be punished.

"IN THE INTEREST OF MORALITY."

The Court has done more; it has sought to rob the measure of the pretense of morality, which constituted its alleged cause and being. The Edmunds law was given in the supposed interest of social purity; the sanctity of the American home; the protection of the legal wife in the possession of her husband's time, wealth and caresses. This extraordinary construction changes the act from what it claimed to be—a broad, exalted, moral measure—to a spying, partial, special act of individual prosecution. Brazen harlots, caressed and favored mistresses may flaunt their crime eternally in the face of betrayed, neglected wives; and the courts of Utah can find no help nor protection for *them*. Under the Utah judicial construction, Congress intended to have said, not "if any male person commits this offense," but "if any male *Mormon* commits the offense he shall be punished." Can this tribunal, the greatest of all law courts on earth, consent to aid such selfishness and cruelty? Good laws carry in the one hand impartial chastisement; in the other, mercy. The Edmunds Act has yet to receive a construction which will credit it with being the bearer of either quality.

MUST PLURAL WIVES BE ABANDONED?

We approach now the question in this case more important than any other to the people of Utah. That Congress intended by the enactment of the Edmunds law to put an end to the practice of polygamy in the Territories may be granted, but did Congress intend by any portion of that law to require the polygamous husband not only to cease living with his plural wives, but also to abandon the women themselves? Did Congress intend that the aged plural wife, the sharer of her husband's life work, and the mother of his children, should be turned out by him to beg from door to door, or die in the poor-house? Or that the younger plural wife should be cast into the street to starve or become a harlot? If Congress did not intend such barbarous inhumanity, what right have the courts to construe and misconstrue, to entangle and mystify the act until men and women can find no reasonable, honorable method of solving the difficulty and obeying the law except in death?

If your Honors please—I know that you have decided that polygamy is not and cannot be any part of religion. That decree is a legal *ultimatum*. But no edict of any court, however just may be the declaration, or exalted the tribunal, can stifle conscience or extinguish belief. It matters not in what mistake a faith may be founded; a believer is a believer still. This plaintiff in error and his wives—with their fellow sufferers, entered into this polygamous relation in answer to a message claimed to be divine. This relation is esteemed by them to be not only honorable upon earth, but sacred and eternal in the heavens. They lived in mutual trust and fidelity, in fulfillment of vows as solemn and to them as sacred as can possibly exist between human beings. It is a mistake to suppose that fearless love and tender esteem cannot wait upon their footsteps. Husbands love their wives, and wives love their husbands; parents love children, and children love parents—with the same protecting and implicit affection, in the households of Utah as in other Christian homes. The ties of conjugal love and parental care are tender to feel a wound but strong to resist separation—not less among the Mormons than in other parts of this broad, free land. And yet when this statute was enacted, my client did, as was done by others, all that the law, all that humanity, all that civilization could ask him to do. He was not, could not be required to fling from him as a thing of no worth, the love and trust which had endured for years; to say to the woman who regarded him as other Christian wives regard their husbands: "Begone! Out into the street with your nursing babe, to meet the fate of a betrayed, deserted woman!" He could not say: "Go your way to be slighted and wronged; but give me the little one from off your breast." He had a right to care for his legitimate children—made his lawful offspring by this very act; and he had no right to sully or ruin their lives by parting them forever from a tender mother. It was his legal duty to provide for their wants; it was his moral duty to maintain their mother in the state of simple comfort to which she had been accustomed.

The eminent gentleman who so ably represents the Government in this case, said in his argument that I had drawn a pathetic picture. Thank God, he did not, he can not accuse me of insincerity or exaggeration; if there is pathos in the simple narration of truth concerning my client's conviction, then there may be something in my unskilled words to touch the feelings. The gentleman says you must apply heroic treatment in such cases as this. But to be heroic you need not be brutal. I can maintain from the record of this case that Angus M. Cannon did all that law or reason could demand in order to conform to the requirements of the Edmunds law. The two things which he did not do were to send his polygamous wife adrift in the world to meet a Hagar's fate; and he did not plot the destruction of his own little ones. If to fail to be such an inhuman wretch is to commit crime, then and then only is he criminal. This land wants no citizens who will drive women forth to miserable toil, starvation or harlotry; nor men who will plant the seeds of base dishonor, cowardice and contempt in the hearts of their children. My client did not do this—such was the front of his offending; and I cannot feel ashamed to stand in this honorable presence and boldly say that upon this point we offer no defense.

DEFENDANT'S INTENTIONS.

The plaintiff in error in this case was anxious to show that he declared his intention to observe the Edmunds Law before the act was approved, and that he did obey the law from that time; that he abandoned the bed of Clara C. Cannon, but permitted her and her children to remain in his house, not being able to provide any other home for them. There was not a particle of proof that he claimed this woman as his wife after the enactment of the Edmunds Law, but on the other hand he offered to prove by the witnesses for the prosecution that he had declared his intention to obey that law, and did obey it; thereby giving up his marital or polygamous relations with her. Upon these facts he was sent to the penitentiary.

If he was rightly convicted and sentenced, then the most important inquiry to that portion of the people of Utah who have practiced polygamy, but who revere the law, is whether they are expected to abandon entirely the women who have, under the sacred religious rites in which they believe, become their wives, and who are the mothers of their children; and if not what their conduct towards them must be in order to conform to the requirements of the law.

From the rulings in the case at bar, it is evident that if the plaintiff in error had been financially able to build another house, distant any number of miles from that in which he lived, and had there domiciled Clara C. Cannon and her children, and had visited and provided for them, he would have been convicted and received the same sentence.

The theory of the Court below seems to have been that the polygamous status having once attached, and not having been removed, the defendant was guilty of unlawful cohabitation if he continued to furnish a home and provide for his plural wife, she living with her children, although he had declared his intention to obey the Edmunds law, and had actually done so.

Counsel for the prosecution declares that even if the plaintiff in error really did not live with Clara C. Cannon as his wife, he failed to give notice to the public of his intention to put her aside; and therefore that he was properly convicted. Passing the absurdity of this claim I seriously ask: what publicity was to be given to this man's personal intention? The law, the court and the prosecution, all fail to say whether such declaration shall be made in a newspaper, in a mass-meeting, or by the town-crier. I maintain—and this claim will not be seriously disputed for a moment, that my client is answerable to the law for his acts and intentions—not for the notification which he did or did not give, in some incomprehensible way, to an unappreciative public.

LOGICAL RESULT OF ZANE'S RULINGS.

The logical result of the court's rulings and sentence is to force every polygamist to abandon his plural wives and refuse to provide for them. His declarations are worth nothing, else why was the plaintiff in error not permitted to show that he announced his intention to put aside the plural wife and then conformed his conduct to such announcement.

If he had gone into the market places, or upon the house tops and proclaimed his intention to put her aside, and had still continued to provide for her and her children, and had visited her and them socially, or to discuss matters of mutual interest to them all, under the ruling of the court below he would have been found guilty of unlawful cohabitation.

Congress meant no such thing. Religion, humanity, civilization alike forbid it. The law-giver who would enact that the wife, taken under any rite, who had gone with her husband to a desert, and amidst its dangers and privations had helped to build a home, blessing him by her love and that of the children she bore him, should be abandoned by that husband to destitution and want, would deserve the execration of every honorable man.

Congress did not mean it—for in the seventh section of the Edmunds Law it provided that the offspring of polygamous marriages born before the first day of January, 1883, shall be legitimate; and it is incredible that those who enacted this law expected the husband to provide for the children, but to drive from his home, and from them, their mother; or that he should be prevented from visiting both mother and children, and consulting with them as to the education and training of the children.

No tribe of savages have yet been found capable of this.

Congress did not intend to stifle the dictates of humanity, nor to drive the mother from her child. The object was to stop the practice of polygamy, and after the polygamous practices had ceased, nothing but sheer brutality could require the abandonment of the plural wife to destitution and want.

Whether the polygamous relation yet exists, or whether the woman is still claimed and treated as a wife, should be determined by a jury upon all the facts in each case, and under fair and unequivocal instructions from the bench as to the law; but I protest against any American citizen's being deprived of his liberty by such proceedings as were had in this case.

CHAMELEON CONSTRUCTIONS.

Your Honors, I do not doubt that there are errors enough in this record to require a reversal of the judgment of the lower court. But whether or not you shall so decide, whether you shall reverse or affirm, I respectfully but earnestly ask that the law shall be fully and unmistakably construed. The Chief Justice of the Supreme Court of Utah has said that the term "cohabitation" is "chameleon-like in its character, and changes its colors" with the transitions of time and condition. How can men be expected to conform to the mandates of a statute which is now white, now green, now red. Is it not unworthy of the greatest nation of the earth that its criminal laws should vary their tints according to the religion or politics of the offenders? The legislative acts and judicial interpretations of the republic should not be written in sand nor viewed as the figures of a kaleidescope.

PLEA FOR CONSTITUTIONAL INTERPRETATION.

Men who have been charged with having violated the provisions of this act declare that they have sought in vain to escape its condemnation. Can it be possible that it was intended, as it has been construed, to be a snare threading its web this way and that across every path, and leaving no possible avenue of escape? I cannot believe that Congress intended such a thing, or that it was ever designed to have the cruel and inhuman construction contended for in this case. The present extremity justifies the most earnest appeal for a full and plain interpretation of this law, and, in behalf of my client and many other alleged offenders, in behalf of the true women and pure children whose fates depend upon your decision, I ask you for an impartial, humane and constitutional construction.

[The argument was supported throughout by numerous citations of legal precedents and authorities, a list of which would be lengthy and unnecessary. The gentleman was frequently interrupted in his argument, as is the custom in this tribunal, by questions from the bench, and his answers were always pertinent and comprehensive. It is matter for regret that the entire argument, answers, and debate could not be published.]

ANOTHER GRAND JURY "REPORT."

SALT LAKE CITY,
December 19th, 1885.

To the Hon. Chas. S. Zane, Judge of the Third District Court, Territory of Utah:

Your grand jury, duly impaneled and sworn, for the September term of said court, respectfully submit the following report of work done by them during the term, commencing September 14th, 1885:

We have investigated 79 cases under the laws of the United States, in 68 of which we have found indictments. We have ignored seven and have left five cases unfinished, in anticipation of further evidence.

We have investigated 61 cases under the laws of the Territory, in 42 of which we have found indictments. We have ignored 14 cases and left four unfinished, awaiting further evidence.

In investigating the above cases we have examined over 350 witnesses, a great many of whom we found decidedly opposed to giving evidence in the cases in which they had been summoned, and it is the opinion of the grand jury that a number of these witnesses committed perjury.

Complaints having been made to us of various nuisances, endangering the public health, which were allowed to exist within the corporate limits of the city, we inspected such premises as were complained of for our own satisfaction and the benefit of the public at large. Having satisfied ourselves that such nuisances were permitted to exist, we deemed it advisable to refer the matter to the city authorities for consideration. For this purpose Marshal Phillips was summoned. He informed us that he intended to commence cleaning up the city at once, and would abate such nuisances as were found, and that the City Council contemplated the drafting of an ordinance on this subject more stringent in its provisions than that now in force, in order that the sanitary condition of the city might be improved. Up to the present time no action has been taken in the premises that we are aware of. We look forward to the time when more efficient sanitary regulations may be provided, and a system of sewerage established conducive to the health and well-being of the inhabitants.

We have visited both the city and county jails. The former we found to be neat and clean, and the accommodations for prisoners all that could be desired. The food was wholesome and substantial, and the entire arrangements reflect credit on the efficient superintendent, City Marshal Phillips.

The county jail is located in the basement of the county court house, below the surface of the ground, and we found the cells to be very dark, damp and unhealthy. They are poorly ventilated and, as a consequence, are filled with foul air. The accommodations for the prisoners are meagre. They are compelled to sleep on thin straw mattresses, and these are laid on the damp floor of the cells. We consider that this jail is entirely unfit for the confinement of prisoners. The officer in charge, when the condition of the jail was referred to, informed us that the county authorities intended to commence the erection of a new jail immediately. Two months have elapsed since our visit, and we are not aware that anything has yet been done in the matter. In view of these facts, we consider it our duty to severely censure the county authorities for not furnishing better accommodations for persons held in custody by them.

In pursuance of your Honor's urgent instructions to us in reference to the suppression of houses of ill-fame in this city, we have made a thorough investigation. We have summoned a large number of persons, among them the Justice of the Police Court, the City Marshal and all the members of the police force. Upon being questioned as to their knowledge of the existence of houses of ill-fame within the city limits, they were unable to give us information sufficient to warrant finding indictments in such cases. One policeman stated that he did not think the law would sustain them in suppressing these houses. When members of the police force visited these places they would be invited into the sitting room and all the doors of the other rooms would be locked, so that they were given no opportunity of seeing who were in the rooms, and claimed they could not search the house without a search warrant; that it was not their business to file complaints against these houses, their keepers or inmates; that was left to the City Marshal.

The only keepers of *houses of ill-fame* against whom we could procure sufficient evidence to warrant finding indictments, were Mrs. Fields and Fanny Davenport, and these we promptly indicted.

In connection with this subject, the City Marshal stated that if the present grand jury could not secure sufficient evidence at this term to indict the keepers of other houses of ill-fame within the city limits, he would go to work, with the assistance of the police force, and furnish such evidence as they could obtain for the next grand jury.

We found that the keepers of several of these houses, and a few of the inmates, were at stated times notified by the police to appear at the Justice's Court, where they were arraigned for violating the city ordinance in respect to prostitution. They usually plead guilty, the keepers being fined $99 and the inmates $50 each. We have examined the records of the Justice's Court, from which it appears that the last arrests made of this character were on September 30, 1885.

We desire to direct the attention of the Court to the fact that the prosecutions referred to in our former report are still being pressed in the court of Justice Speirs against persons charged with resorting to the houses of prostitution established for the purpose of enticing people into a violation of the law.

Inasmuch as this Court and the District Attorney refuse to permit such prosecutions to go on, we do not understand why they are still pressed in the lower court. Certainly no public good is to be attained thereby. Revenge and malice should no longer be permitted to masquerade under the form of law.

We beg to call your Honor's attention to the fact that during the time that we have been in session, while we have impartially investigated all cases brought before us, neither fearing frowns nor courting smiles, we find that we have been the victims of scurrilous abuse, indulged in by a portion of the press of this city, and in some instances members of the grand jury have been molested in their persons and property by parties unknown to them, and, as we believe, for purposes of intimidation, in consequence of the performance of their sworn duties as grand jurors of your court.

MORRIS R. EVANS,
Foreman of the Grand Jury.