

EVENING NEWS

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CHARLES W. PENROSE, EDITOR.

Monday, March 27, 1893

IS THE EDMUNDS BILL UNCONSTITUTIONAL?

The following in reference to the eighth section of the Edmunds bill is from the pen of an able lawyer and appeared a few days ago in the Ogden Herald. We produce it in these columns because it gives expression to the views of many capable persons. The argument turns chiefly on the application of the provisions in that section to the actions and status of the class of persons named therein, previous to the passage of the law. If those persons are disfranchised or disqualified from holding office for acts prior to the passage of the enactment, then the arguments advanced in the annexed article, and which embody the views of many members of Congress and other well-informed men, are undoubtedly correct.

But Mr. Hobson of New York, and other legal luminaries have aimed to show that it cannot apply to any acts or conditions performed or entered into previous to its passage. The words "shall be entitled," he maintained, proved conclusively that it referred to the future and not to the past. Thus, person, in his view, must be bigamist, polygamist or man cohabiting with more than one woman or woman cohabiting with any such person after the passage of the act, to be deprived from voting and holding office, and this must be proven and decided by some authority competent to decide upon the question.

As to whether judicial decision is essential for the settlement of this question there are differences of opinion. Some contend that it can be decided as other questions of qualification for voting and holding office, such as a test oath or the requirement of proof of qualification from the party objected to. But the disqualifications here provided for are peculiar, and are made criminal offenses as well as barriers to political rights and privileges, and must be viewed in that light in order to obtain a full understanding of the subject. The points in the following article are clearly put and will aid in arriving at a correct comprehension of the bearings of the law, which, in its intent and purpose at least, is certainly anti-republican, unprecedented, and un-American.

"The Edmunds bill, having passed both Houses of Congress, is likely to soon become a law by approval of the President. Sufficient time has elapsed since its endorsement by the House of Representatives to allow a fair consideration of its provisions—its present effects and prospective results; and it is quite reasonable that people who will be affected by this proscription measure should now turn upon it the full light of the higher law which congressional enactments must be viewed. Living in the glory of this Republic, being partakers of its bounteous freedom, and always looking upward to the beneficent charter bequeathed by the inspired Fathers of the nation, it is but natural that we should refer reverentially to the Constitution in time of trial. The fundamental law of our free government is the crucible in which every statute must be tested. Failing to withstand the heat of reason, the enactment is dead. If, as is maintained, the Edmunds bill is unconstitutional because it is directed against three great bulwarks which are thrown around the person and property of every American citizen.

These three provisions in the Constitution are:
First—That a man cannot be punished until judicially tried.
Second—That he cannot be punished for an act innocent when committed.
Third—That when tried he cannot be made to bear witness against himself.

The founders of our government, realizing the terror of popular clamor and the unreasonableness of an excited commonwealth, wisely restricted legislative excess to certain well defined limits, and declared all encroaching enactments to be unconstitutional and void. To make the safeguard real and effectual, they placed above all petty strife and all partisan law-making, a high tribunal with power to pass a final approval or condemnation of every statute. Therefore unto this court of last appeal every citizen must look for the interpretation of the law; and by its decision even Congress itself must abide.

It is provided in section 3, article I, of the Constitution, that "No bill of attainder or ex post facto law shall be passed." The Supreme Court of the United States, in the case of Cummings v. the State of Missouri (4th Wallace, page 523), defines a bill of attainder as follows: "A bill of attainder is a legislative act which inflicts punishment without a judicial trial."
Within the meaning of the Constitution this is an individual case, and not a statute. In these cases the legislative body, in addition to its legitimate functions, exercises the power and office of judge in the language of the text books, judicial machinery; it pronounces upon the guilt of individuals, without any of the safeguards of trial; it determines the sufficiency of the proofs produced, whether or not the degree of punishment, and it thus exercises the power of the judiciary within its own notions of the expediency of the case.

The obnoxious judicial power here referred to, as being characteristic of this unconstitutional legislation, is attempted to be exercised by Congress through the medium of the Edmunds bill. Section 8 of that measure reads as follows:

"That no polygamist, bigamist or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as above in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election, or to be eligible to hold any office or place of public trust, honor or emolument in or under the United States."

What could be plainer in the point at issue than the language above quoted? By this bill it is attempted without trial or conviction to disfranchise and disqualify from holding office, all persons who are at the time the bill becomes a law polygamists or bigamists. In this respect it is not only a bill of attainder but an ex post facto law, because it imposes the punishment of disfranchisement and disqualification from holding office to that prohibited when the offense was committed.

This assertion is proven by the same eminent authority (pages 325 and 326) where the following definition is given:

"By an ex post facto law is meant one which imposes a penalty which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required."

In Fletcher v. Peck, Mr. Chief Justice Marshall defined an ex post facto law to be one "which renders an act punishable in a manner in which it was not punishable when it was committed."

Inasmuch as there is no provision in the bill for determining judicially that a person belongs to either of the classes proscribed, it is likely that the commissioners will either arbitrarily disfranchise persons suspected, or prescribe a test oath to be taken by the voter, which will be in effect requiring him to bear witness against himself, as his refusal to take the oath would afford the desired evidence of his disloyalty.

It is evident that this bill is precisely such an enactment as the Supreme Court of the United States had in view when it declared that—
"The great American statesman and lawyer, Gen. Alexander Hamilton, as recorded in the work of his son, John C. Hamilton, entitled the 'History of the Republic of the United States,' has described this kind of legislation and its effects in such a clear and forcible manner that it is regarded as a statement of the case now under consideration—written in the light of present experience, instead of the production of a century ago."
Nothing is more common than for a free people in times of heat and violence to gratify impulsive passions by letting into the government measures which afterwards prove fatal to themselves. Of this kind is the doctrine of disfranchisement and disqualification by acts of the Legislature. The dangerous consequences of this power are manifest. If the Legislature can disfranchise any number of citizens at pleasure, by general description, it may soon assume the power to condemn all those whom particular circumstances may render obnoxious, without hearing or trial. No man can be safe, nor know when he may be the innocent victim of a prevailing passion. The name of liberty applied to such a government would be a mockery of common sense. It is a government in which the people are to be losers in the event, whether they suffer a deprivation from the rules of general and equal justice, or from the true principles of universal liberty.

The words of the Constitution, the utterance of the great statesmen, and the language of the Supreme Tribunal of the Republic may well be deemed prophetic. They sound now the warning note against oppression, as if the immortal patriots of other generations had been inspired to see in vivid light the future of their children. Unanimously they proclaim such tyrannical, proscription enactments as the Edmunds bill, unrighteous and void. If these united voices be not heeded, if the stern truths of Free Government, which they promulgated, be to-day declared obsolete, then there is no human justice, but beyond all such unworthy doubt is the Faith which animates every loyal citizen in the destiny of his country. While the glory of the Nation is being filled the future with triumphal light, we need not fear proscription. It is engraved upon every stone of Liberty's Temple that the majestic structure can survive a breach in its foundation. When in various anger false priests within the edifice shall be permitted to tear away the underlying principles of the Constitution that they may drive false and most worshipers, then and not till then will the time have come for the common ruin of the Republic.

F. S. R.

"MORMON" VETERANS.

LEAVING SAINTS WHO WERE IN JACKSON COUNTY, MO.

HISTORIAN'S OFFICE,
Salt Lake City,
March 24, 1893.

Editor Desert News:

With the assistance of Brother S. K. Gifford I have been enabled to collect a list of names of the Saints who were in Jackson County, Missouri, in 1833, and who are still living and in the Church:

Samuel Kendall Gifford, born Nov. 11, 1821.

Henry Dill Gifford, born April 28, 1825.

Rhoda Gifford Hatfield, born April 28, 1827.

Lorayne Stevens, born Feb. 7, 1812.

Lucy Diantha Morley Cox (Smith), born Oct. 4, 1815.

Coriella Morley Cox (Smith), born Nov. 23, 1823.

Isaac Morley, born May 2, 1829.

Mariah Demill Funk, born May 12, 1820.

Oliver Denhall, born March 30, 1829.

Adella Demill Squire, born April 29, 1832.

Katharine Knight Johnson, born Oct. 14, 1832.

Martha Ann Knight (W.), born June 11, 1833.

Elvira Pamela Mills Cox, born Jan. 10, 1833.

John R. Murdoch, born Sept. 13, 1829.

Marcus L. Shepherd, born Oct. 10, 1824.

Caleb Clark Baldwin, born Jan. 10, 1824.

James K. Baldwin, born Jan. 10, 1824.

Abigail Baldwin Boyd, born Jan. 10, 1824.

James Bennett Brackes, born June 14, 1816.

Lucetta Brackes Maxwell, born 1823.

Yonah Jaques, born 1823.

Alfred N. Billings, born 1823.

Deborah Patten Billings, born 1830.

Edith Patten Billings, born 1832.

Rachel Mahala Loveless, born August 23, 1804.

Joseph Loveless, born June 1, 1831.

Neshti Loveless, born August 11, 1833.

Rachel Drollinger, born June 14, 1798.

Phil Diddle, born 1833.

Susanna Benson Vance, born Feb. 8, 1833.

Alva Benson, born 1833.

Polly Benson, born 1833.

Elizabeth Egbert Hammond, born March 22, 1824.

Sally Crandall, born June 18, 1805.

Jacob Crandall, born July 25, 1831.

Clara I. Moore, born Sept. 12, 1824.

John P. Porter, born July 25, 1818.

Nathan T. Porter, born July 10, 1820.

Sanford Porter, Jr., born June 20, 1823.

Lyman W. Porter, born May 5, 1833.

Nancy Porter Clark, born August 8, 1827.

Benjamin Slade, born 1801.

Eliza Ann Herrick, (maiden name), born 1821.

Lucy Jane Herrick, born 1821.

Diaca Herrick, born 1821.

David Carson, born October 4, 1825.

Elvira E. Carson, born Sept. 10, 1821.

William Carson, born Jan. 5, 1818.

John Carson, born Nov. 18, 1819.

Elizabeth Griffith, born 1821.

Polly Ann Ewing, born March 16, 1833.

Simoon Cook Drollinger, born March 22, 1832.

Hannah Egbert, born 1823.

Charles A. Burk, born 1823.

Danilla Lyman, born March 10, 1816.

Chapman Duncan, born July 1, 1812.

Samuel Egbert, born March 24, 1814.

Joseph Egbert, born March 10, 1818.

Hannah E. Brundage, born 1815.

James A. Lemmon, born March 12, 1815.

Peter Lemmon, born January 11, 1817.

Martha Ruth B. Hampton, born January 14, 1820.

Charles Brought Hancock, born about 1823.

George Washington Hancock, born March 8, 1828.

George Hancock Rawson, born 1828.

Alanson Colby, born 1828.

John Taylor, born 1828.

Edward Partridge, born 1828.

James Phelps, born 1828.

Clarinda Stanton, born March 9, 1797.

Warren Hancock, born October, 1831.

Joseph Perry, born 1831.

Barrett Cole, born 1831.

Levi Ward Hancock, born April 7, 1833.

Elizabeth Gilbert, born August 6, 1800.

H. W. Brizze (now in Arizona), born 1800.

Brother W. Woodruff—Brother Levi Hancock helped to build the storehouse and printing office in Independence. He left money to secure his inheritance, and was back at Farland when the Saints were driven, so that he was with Zion's Camp that went up Missouri to redeem Zion. He was also a member of the Mormon Battalion.

Sister Elizabeth Gilbert was the wife of Brother Sidney Gilbert, who was the agent for the Church in Zion and kept the storehouse there. Sister Gilbert was the first woman in the Church who landed in Jackson County, Mo., in 1831.

Brother Chapman Duncan was taken to be tarred and feathered with Bishop Partridge, but I believe Brother Duncan got away unhurt. He saw the printing office torn down.

I think George Slade, who was in Jackson County, is in Salt Lake City. There may be some of the Stringhams, and perhaps Brother Cleaveland and his wife at Centerville. I think one of these is living.

S. K. GIFFORD.

BY TELEGRAPH.

FROM WESTERN UNION TELEGRAPH LINE.

A MERICAN.

LATEST DISPATCHES.

Canadian Guests at Chicago.

CHICAGO, 27.—The Canadian guests arrived yesterday, and were on change at one o'clock. Speeches were made by various delegates representing the chief cities of Canada, all of whom expressed a hope and belief that the new future within bring their cities into closer commercial relations with Chicago and the shipping interest of the great West. It was announced that this afternoon the delegation would visit the principal elevators to-morrow, would spend the day at the stock yards and on Wednesday would visit Pullman and inspect the cable railway system on State Street. Much attention is being paid to the guests who represent large and important interests in their several cities.

Mason's Petition.

WASHINGTON, 27.—The Supreme Court did not reach decision in the matter of the petition of Sergeant Mason for writ of habeas corpus and certiorari.

Centennial.

The final meeting before Judge Cox of Cortland and Boyleville to consider the bill of exceptions will be held this afternoon. There is no prospect that the object of the bill of exceptions will be granted. Judge exhibits much interest in reading accounts of executions. He read the reports of the seven hangings of last Friday and remarking that all died without showing fear, said, "I'll die without flinching too, if I'm executed, see if I don't." He insists, however he will get a new trial.

Opposition to Admission.

The democrats have evidently determined to oppose the admission of Dakota as a State into the Union. At the request of democratic members of the Senate the territorial committee on the bill favored its recommendation so they could submit a minority report against it.

Teller.

It is now positively stated that Teller will be nominated on Wednesday, for Secretary of the Interior. A senator is authorized for saying that the President has said the position had been offered Teller and accepted by him.

Another Candidate.

Phoebe Cousins, the woman suffrage advocate of St. Louis, applied to the President to be appointed one of the Commissioners to reorganize Utah Territory.

President Arthur has nominated S. P. Rounds, of Chicago, for public printer.

Edin A. Ireland has been nominated by President Arthur for U. S. Marshal for Utah.

DIED.

In the 17th Ward of this City, March 26th, 1893, at 11 p.m., of cerebral spinal meningitis, WILLIAM HOPWOOD; born December 18th, 1848, at Stockport, Lancashire, England. Deceased leaves a wife and four adopted daughters.

Funeral services at the family residence, at 1 p.m. to-morrow, March 28th.

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Marie Geistinger as Boccaccio

FRIDAY, March 31.

OPERETTA'S FAVORITE OPERA.

LA BELLE HELENA

Marie Geistinger as Helena

SATURDAY, April 1st, at 9 p.m.

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BOCCACCIO!

Saturday Evening.

Farwell performance, the Comic Opera by Johann Strauss, of

THE BAT, OR, CONTEMPT OF COURT

Grand Chorus! Enlarged Orchestra!

CONDUCTOR, - - - - - A. NOWAK

SENIOR MANAGER, - - - - - MAX LUBB

Box Plan for sale of reserved seats open Wednesday, March 29, at 10 a.m.

Prices of Admission: Parquet \$1; 1st Circle, 50c; 2d Circle, 30c; 3d Circle, 20c. Reserved Seats, 50c Extra.

ESTRAY NOTICE.

I HAVE IN MY POSSESSION:

One roan speckled COW, four years old, crop of hair on left hind leg.

One red and white 2 years old STEER, hobbles, one from foot.

If the above animals are not claimed and taken away within ten days from date will be sold at public auction on Saturday, April 1, 1893, at 1 p.m. at the district pound, at Logan Utah.

O. O. CROCKETT,
District Poundkeeper.

Logan, March 23, 1893.

FARM FOR RENT.

A FARM OF 40 ACRES TO RENT ON very reasonable terms, about 10 miles from this city. For particulars apply to

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NOTICE.

In the Probate Court, in and for Salt Lake County, Territory of Utah.

In the matter of the Estate of RICHARD V. MORRIS, deceased.

PURSUANT TO AN ORDER OF SAID Court, in said matter, notice is hereby given that Friday, the 31st day of March, A. D. 1893, at 10 a.m., at the County Court House in Salt Lake City, the heirs appointed by said court the time and place for the hearing of a petition of Eliza Morley, for probate of a certain document therewith filed, purporting to be the last will and testament of Richard V. Morris, deceased, and that letters testamentary issue to petitioner at which time and place all persons interested may appear and oppose the Probate of said will.

D. BOCKHOFF,
Clerk of the Probate Court, Salt Lake County, Utah.

SALT LAKE CITY, March 24, 1893.

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