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THE TRIUMPH OF RIGHT.

THE special dispatch to the DESERET NEWS on Monday evening, announcing the decision of the Supreme Court on the segregation question, occasioned much joy in this community. It was not only a signal for the release of the venerable Apostle Lorenzo Snow and other honorable gentlemen from an unjust and unlawful imprisonment, but it was a sign that there is some hope for justice to the "Mormons" in the highest tribunal of the land, and that the judicial branch of the National Government is not entirely swayed by the power of popular prejudice. The mark of integrity in that Court was as much a subject of congratulation as the effects of the important decision which it has rendered.

From the first enunciation of the infamous doctrine of segregation by District Attorney Dickson, we have taken the ground which is now declared to be the law by the Court of last resort. That is, that the offense called unlawful cohabitation is continuous; that it is only one offense up to the time when action is taken against it by prosecution; and that the penalty imposed in the third section of the Edmunds act is the extreme punishment that can be legally inflicted.

The doctrine of segregation, by which one offense can be divided into as many offenses as desired by a grand jury, or rather by the Prosecuting Attorney, who dictates the matter, was invented for the purpose of gratifying the expressed wish of Chief Justice Zane, who, from the bench of the Third District Court, declared that the penalties presented by law were not sufficient for the enormity of the offense committed by a man who holds out to the world more than one woman as his wives. He wanted him to be punished with extreme severity. But as he had no power to legislate directly and change the language of the statute to suit his vindictiveness, District Attorney Dickson planned the scheme by which the effect desired could be produced without changing the wording of the law.

It was to the effect that instead of one indictment covering the time during which a defendant was charged with living with his wives, as evidently contemplated in the statute creating the offense, his offense could be divided up, so that a separate indictment might be found for each year. The Court jumped at the scheme and sustained it as good law. The now notorious Judge Powers went further, and ruled that an indictment might be found for every day of the time during which a defendant lived with his wives. This was logical if not legal. And on the same rule it might be argued, with just as much show of reason and right, that an indictment might be found for every minute as for every day.

But fearing that the separate indictment scheme would fall through on a judicial test, separate counts in the same indictment were substituted. As many as half a dozen counts were made against some defendants and only one each against others, according to the notion or animus of the Prosecuting Attorney. Some of the victims to this illegal arrangement are now in the penitentiary suffering unlawful imprisonment, others having served one term have several counts or indictments hanging over their heads, and others are at large, keeping from arrest because of the prospect of threatened multiplied fines and terms of imprisonment unauthorized by law.

Under the amended law in relation to appeals to the Supreme Court of the United States it was supposed that this iniquity would prevail without remedy. And when, in the case of Apostle Lorenzo Snow, appealed to that Court, it was dismissed for alleged lack of jurisdiction, the persecutors of the "Mormons" rejoiced with fiendish glee, being assured that the segregation infamy could be worked without check or hindrance. But the Organic Act provided for an appeal on *habeas corpus* denied by the lower courts, and now the whole plan for multiplying penalties for cohabitation is declared illegal. The numerous counts are swept away as well as the separate indictments.

Thus it is shown that "the law as construed by the courts," to which all "Mormons" are required to bow down without question, may be, and in these cases has been, legally as well as morally wrong. And the efforts of the representative of the Government were devoted, not to defending the procedure of the lower courts, but to perpetuating the wrong and rendering it incurable. He could not bring forward anything substantial to prove it was right, but endeavored to make it appear that the highest Court had no jurisdiction in the matter, even though the Utah courts had ruled that black was white. The Court could not be made to see it in that light and hence the sweeping decision.

Unfortunately, no method has yet been discovered by which a competent ruling can be had on the legal meaning of the term unlawful cohabitation. The ever changing definitions of the Utah courts are entitled to no more public respect than their segregation theory and practice. If the Supreme Court of the United States were to pass on this point, we have no doubt that the legal pettifogging of Mr. Dickson and the judicial gymnastics of Judge Zane would be as effectually flattened out on that question as on the matter just decided. It is a terrible rebuke to those officials, as well as to Judge Boreman and all others who have been engaged in this unlawful business.

Judge Hays, of Idaho, is in the same boat with the others. Some of the victims to his vengeance are now in the Detroit House of Correction. Their friends should take immediate steps for their release. Persons sentenced to a year's imprisonment and upwards may be confined in eastern penitentiaries. But no person can be so sentenced for unlawful cohabitation, and the judgment by which those brethren have been sent to Detroit is void and illegal. They may sue for damages against Dubois, who carried them away to Detroit.

We understand that Mr. Dickson does not intend to offer any factious opposition to the release of any of the prisoners unlawfully detained. This shows good judgment on his part. Seeing that they are under illegal durance, it would be very imprudent as well as cruel to hold them further. As to what can be done against those who have been instrumental in keeping men in prison in violation of law, we do not intend to say anything at present. What is done in that direction in future will determine the course to be pursued in vindication of the law. But those who are so zealous for obedience to law under all circumstances and conditions ought not to complain if they are dosed a little with their own medicine for the benefit of their future official health.

As the law stands, interpreted by the highest legal tribunal, an indictment for unlawful cohabitation cannot be found for more than one offense up to the date of the indictment, no matter which year the prosecution may choose to found it upon. After a defendant has been indicted, if he breaks the law again and it can so be made to appear, he may be subject to another indictment. But whether the time covered by the indictment is one year, two or three or any other period, several indictments cannot be made at one time for that offense, neither can several counts be made in one indictment, and he can only be sentenced to six months' imprisonment and three hundred dollars fine for infraction of the third section of the Edmunds Act, no matter how spiteful may be the Attorney that prosecutes or how vindictive the Judge that passes sentence.

This is a great victory, not merely for those who have been suffering from judicial injustice, but for law and right in Utah. And it is because of that, that we congratulate our friends who are to be released and those who are freed from the vexatious prosecutions that threatened them, our valiant home attorney, Hon. F. S. Richards, who has so faithfully fought their battles in the courts, Hon. George Ticknor Curtis, who has given the benefits of his long experience and high legal status to a maligned and oppressed people, and the just and true everywhere who delight in fairness and are supporters of the principles of constitutional law.

THE ORIGIN OF SEGREGATION.

AT this juncture of the crusade it will doubtless be interesting to give, from the record, some facts in relation to the system of segregating the offense of unlawful cohabitation into any desired number of indictments or of a multiplication of counts in one bill. We do not believe that Judge Zane, who, generally speaking, is a good lawyer, believed in its validity, his scruples on that ground having been overcome by his fanaticism, and the humiliating influence exercised over him by District Attorney Dickson, who has not only acted in the courts of Utah in the spirit of a persecutor, but with the air of an autocrat. The record shows the conversion of Judge Zane in practice if not in theory.

On May 2nd, 1885, Parley P. Pratt pleaded guilty to an indictment for unlawful cohabitation. When about to receive sentence Judge Zane gave him a judicial lecture, in the course of which he expressed regret that the law did not authorize him to inflict a heavier punishment than six months' imprisonment and a fine of $300, which penalty he imposed. In his extra-judicial zeal he overshot the mark and included hard labor, which is unauthorized by the law, and he therefore subsequently eliminated that part of the judgment. Judge Zane, in other subsequent cases, expressed the same regret regarding the lightness of the legal penalty.

Afterwards Mr. Dickson came to his relief with the theory that the offense of unlawful cohabitation could be segregated into any number of indictments against the same person, and still later could include any desired number of counts in the same indictment. Thus it was made possible to send a man to prison for periods ranging from six months to the full term of his natural life, with a possible fine that could not be reached by a millionaire. This theory was introduced by Mr. Dickson Sept. 16th, 1885. On that date the grand jury came into court and their foreman stated to Judge Zane that they desired further instructions on a certain point, and suggested that District Attorney Dickson state the case to the court. Mr. Dickson briefly stated the circumstances, as follows: A case had come up for investigation by the grand jury, in which a man was charged with unlawful cohabitation, and the evidence tended to show that since February, 1883, he had lived a portion of each week with each wife. Mr. Dickson had informed the grand jurors that they might, under those circumstances, if they believed the evidence, present a separate indictment for each month and each week during that period, and had suggested the propriety of finding at least an indictment for each one of the three years. Some of the jurors were in doubt as to the legality of such a proceeding, and they had come into court for instructions.

The Court (Judge Zane) instructed the jury that an indictment might be found for any portion of the time, within the three years past, in which the offense was proved to have been committed, whether it be for a year, a month or a week.

On October 9th, 1885, one of the most extraordinary and outrageous proceedings known to modern jurisprudence occurred. Three grand jurors were expelled from the panel because they declined to find more than one indictment against a single individual for the same offense. Following is a full account of what took place, Commissioner McKay acting for the District Attorney on the occasion:

The grand jury came into court at 11:30, and presented one indictment under the laws of the United States.

Mr. McKay then arose and stated that there was a matter he wished to bring to the attention of the court, which had been discussed informally and otherwise in the grand jury room. At least one member of the grand jury claimed the right to say whether he should find an indictment or not, when at the same time he admitted the evidence sufficient to warrant it, claiming that it would be a usurpation on the part of the grand jury to find an indictment under certain circumstances, notwithstanding the evidence warranted it. Mr. McKay then stated the objection was in relation to finding more than one indictment for unlawful cohabitation in a certain period. The juror referred to said he would do no such thing, in spite of being reminded that his oath required it, under the instructions of the Court. Under the circumstances Mr. McKay thought the juror incompetent.

The court asked for his name and Mr. Clayton was named as the juror.

Mr. Clayton said yes, he was the one, and desired to correct Mr. McKay in one particular. That he had not refused to indict where the evidence warranted it. That he had voted for indictment in that case.

Mr. McKay stated that the point he made was that the juror refused to find more than one indictment. The juror assumed to say whether the law was correctly laid down by the court or not. It was not disputed that the grand juror had a right to say whether the evidence was sufficient or not, but the grand juror claimed that even where the evidence was sufficient, the finding of more than one indictment was unconstitutional; that the law of 1862 fixed the maximum punishment for polygamy, and the Edmunds law showed it to be the intention of Congress to fix the utmost punishment for unlawful cohabitation, which he termed the "junior" offense, at six months' imprisonment and $300 fine; and to find two or more indictments against a man he might be punished to even a greater extent than for polygamy.

Mr. McKay stated further that there was another juror he asked to have taken off for substantially the same reasons, Mr. Jacob Moritz; and he was informed that there were others.

Mr. Davis stated that in certain cases he had the same opinion as Mr. Moritz.

Mr. Clayton was interrogated by the Court and said he believed it was unconstitutional to find more than one indictment. The Constitution provides that excessive fines or unusual punishments shall not be imposed. He said he did vote for indictment where "the evidence" warranted it, but to go back and find an indictment for every day, or every month or week, he would not do it. Notwithstanding the evidence showed that defendant had been living in unlawful cohabitation for three years, he would find but one indictment. He had advised with no one, talked with no one, except perhaps his wife.

Mr. Moritz and Mr. Davis thought that where parties had been indicted, tried and convicted, those parties ought to have a chance after they came out, then if they didn't live within the law they were ready to indict them.

The Court then interrogated each of the other jurors as to whether he took the same position, but they all responded in the negative.

Court—Mr. Moritz, Mr. Davis and Mr. Clayton: I am surprised, gentlemen, that after you took the oath you did, that you would investigate and inquire into all the matters that were brought before you, and whenever the evidence was sufficient you would find the truth, and nothing but the truth; that you would not be influenced by fear, favor or affection, or by any reward, or promise or hope thereof, but in all your presentments, you would present the truth, the whole truth, and nothing but the truth, that you will state you will not do it——

Clayton—I have stated that I would, and did so.

Court—The effect of your statement is to that effect.

Clayton—I don't understand it that way——

Court—Men must be careful when they take oaths——

Moritz—We had no evidence. We didn't take a vote on it.

Court—But you have no right to state you would not do it. You cannot trifle with your consciences like that in this court. It is astonishing that men have not more regard for their oaths than that. Where the evidence is sufficient you have no discretion whatever. If it is sufficient to indict, you must indict; if it is not sufficient, you cannot indict. You have no more discretion than this Court has when a case is submitted to it. If the evidence is one way, the Court, under its oath, cannot find another. If a case is submitted to the Court, if the evidence is with the plaintiff, it cannot find the facts the other way. So with a grand jury; you have not the slightest discretion. You must move directly according to your oaths, and find the truth according to the evidence. You have no right to say you will not indict though the evidence may be sufficient. You have no right to say a law is unconstitutional or wrong after the Court charges you that it is the law. It is the duty of the Court to charge you what the law is with respect to your duties as grand jurors, and has so charged you. Gentlemen, you are excused as unworthy to sit on a grand jury. Next time you come before the Court and are questioned as you were in this case, as members of the grand jury, answer frankly and honestly, and if you go on the grand jury you must be governed by your oaths.

Mr. Moritz, Mr. Davis and Mr. Clayton, you may retire, you are discharged from this grand jury.

This afternoon Mr. McKay made an argument in support of the proposition that the Court had power to fill the vacant places in the grand jury. He read from the decision of the Supreme Court in the Clawson case, affirming the legality of the open *venire* process in obtaining a petit jury, and contended that it was within the power of the Court to adopt the open *venire* course in the present instance.

At the close of his remarks, Mr. McKay moved that an open *venire* issue, and the Court ordered that it be for six names, and be returnable forthwith.

This proceeding was followed, as the 200 names on the jury list were exhausted.

Upon the return of the open *venire*, J. S. Scott, J. T. Clasbey and A. Gebhardt were selected to fill up the grand jury."

The foregoing proceeding will doubtless furnish delightful reading to the originators and formulators of the segregation theory. The lecture of the court to Mr. Clayton and his fellow-dissentients is specially edifying, and the learned judge will doubtless not receive any comfort from the development of the fact that the jurors who were so summarily ejected from the panel were in that instance ahead of itself and Mr. Dickson as constitutional lawyers. The rebuke administered to those jurors for trifling with their consciences and oaths appears somewhat grotesque at this stage of the crusade.

It is a legal axiom that "common sense is common law." It appears to be a sensible proposition that the grand jury thus depleted and subsequently restored to its original numerical proportions was an illegal body. The logical result of this fact is that all its subsequent findings and proceedings were of the same complexion, as an invalid fountain cannot emit a valid stream.

We have shown the origin of the perfidious theory that in order to prosecute an unpopular class a law which prescribed a maximum penalty of six months' imprisonment and a fine of $300 can be so twisted and stretched as to enable bigoted and merciless legal administrators to incarcerate their victims for life and rob them of their property. From the beginning made here by W. H. Dickson and C. S. Zane, the villainous system extended, the rotten thread being cut up by the corrupt Powers of the First and the pusillanimous Boreman of the Second District, and from this impure centre it radiated northward into Idaho.

The finding of numerous indictments for the same offense, after being operated for some time, was abandoned, those who conducted it evidently being aware of its illegal character. They doubtless expected that if ever it was taken squarely before the Supreme Court of the United States it would be demolished. Resort was then had to the equally monstrous method of incorporating a multiplication of counts in one indictment, in the delusive hope, doubtless, that one of the two judicial enormities might possibly stick, by failure of a decision being reached in the Court of last resort. A large number of victims have served out full terms under this legal persecution, but happily for those now incarcerated under it, the decree of the United States Supreme Court plucks both horns out of the head of the judicial monster.

JUDICIAL PERVERSION OF LAW.

THE infamous scheme by which "Mormons" could be imprisoned and fined to almost unlimited extent, having been knocked on the head by a ponderous blow from the hand of the Supreme Court of the United States, another trick of the Prosecuting Attorney and the Utah courts by which "Mormons" may be punished unlawfully, comes up for renewed investigation. We refer to the ruling that, in a case of unlawful cohabitation, presumption of a certain fact or condition of things is greater than actual proof to the contrary. This was another feature of the Snow case, the judgment in which has just been declared illegal.

The third section of the Edmunds Act renders any man liable to punishment who cohabits with more than one woman. It was conclusively proven by the witnesses for the prosecution in the Snow case, that the defendant had lived with but one of his wives since the passage of the Edmunds Act. But the theory was propounded by the prosecution that cohabitation with the first or legal wife was to be presumed, and that it, then, cohabitation with another wife was admitted or could be proven, the offense charged would be substantiated. The evidence, however, was direct against the presumption. As a matter of fact, it was proven that the defendant had not lived with the legal wife. This was established beyond reasonable question. Yet the court ruled that the presumption was to be taken in spite of the proof.

Without such a ruling Elder Snow could not have been convicted. He was an Apostle and his conviction was greatly desired by Judge Powers, then on the bench, having been nominated by the President to the office but not confirmed by the Senate, and he hoped, by sending a "Mormon" Apostle to prison, that he would gain prestage and renown and secure the judgeship which he only occupied for the time being. That he failed of his purpose was but just and a part of the retribution that will overtake him for his wrong-doing.

This absurd and *evidently false* doctrine was afterwards adopted by the Supreme Court of the Territory, and now stands as the law and the practice in the Utah Courts. We need not say to persons acquainted with the law that the presumption accepted is new to criminal jurisprudence. It is admitted in civil practice, but is then subject to removal by evidence. But in the prosecution of "Mormons" under the Edmunds Act, cohabitation with the legal wife is presumed, no matter if the fact is that the husband has not associated with her in any manner whatever, and testimony as to the fact is not even admitted in evidence. Thus, presumption is exalted above proof and the hypothetical is made greater than the actual.

And this is the kind of "law as construed by the courts" that the "Mormons" are required to bow down to and worship, and regard as above the word and commandments of Almighty God and the dictates of enlightened conscience! We regard the ruling on this point as just as false and absurd and illegal as the ruling on segregation which has been shattered to pieces. And it only requires a similar test to bring it to a similar fate. The stronghold of the supporters of judicial oppression and unlawful rulings against the "Mormons," is the denial of jurisdiction in the highest court of review. Their only security is in immunity from revision. They are not willing that their acts and decisions shall be passed upon by competent authority. They prefer to wield unlawful power and shelter themselves from question as to improper use.

And the excuse for all this wrong is that it is necessary to successful prosecution of these "Mormons." It is the same in the administration of the law as in the framing of the law. The "Mormons" cannot be successfully assailed by legislation, unless the fundamental principles by which legislators are constitutionally bound to be guided are disregarded and trampled upon. And they cannot be successfully reached by the law, unless the established principles of law are treated in a similar manner.

This should make rational people pause and reflect. And the question should become general, is it right or politic to violate law in a frantic endeavor to execute law? And the idea ought to penetrate to the minds of the thoughtful, that a people cannot be as bad as they are painted who cannot be reached by law unless the law itself is perverted in the attempt to bring them under its penalties. One thing is certain, respect for the law and its administrators can never be promoted by such palpable departures from its well known provisions and principles as have disgraced the judicial crusade against the "Mormons" under color of the Edmunds Act.

George E. Houghton committed suicide in Fresno, Cal., on the 5th inst.