

REPORT OF THE UTAH COMMISSION TO THE SECRETARY OF THE INTERIOR.

A LENGTHY DISQUISITION ON AFFAIRS IN UTAH, IN WHICH THEY FLATTER THEMSELVES THAT THE COMBINED EFFORTS OF ANTI-"MORMONS" HAVE RESULTED IN AN "INCIPIENT CONTEST WITHIN THE CHURCH;" COMMENT THE FEDERAL OFFICIALS; EXPLAIN WHAT THE LAW WAS ENACTED FOR; HOW MERCIFUL THE COURTS HAVE BEEN, AND HOW DIRELICT THE LEGISLATURE; RECOMMEND ADDITIONAL LEGISLATION, AND MAKE SOME OUTRAGEOUS SUGGESTIONS.

Submitted Oct. 28, 1885.

Sir—We have the honor to submit a brief history of the transactions and proceedings of this Commission since our last report of Nov. 18, 1884, to secure certain recommendations heretofore made, and to present others for

ADDITIONAL LEGISLATION

in the nature of amendments to the existing laws for the suppression of polygamy which a thorough, continuous, and careful investigation has commended to our judgment.

The usual annual revisions of the Utah registration lists for the present year were duly and thoroughly made at the time and in the manner and form prescribed in the local registration law by officers appointed by this Board, and the general election following such revisions was held on the 3d day of August last. The principal officers chosen at the election were commissioners to locate university lands, members of the Council and House of Representatives of the Legislative Assembly, also county and precinct officers throughout the Territory.

In a few election precincts votes were cast for the office of Territorial superintendent of district schools, but were not canvassed by the canvassing board because in the

JUDGMENT OF THE COMMISSION,

confirmed by the opinion of the Attorney General of the United States, the office can only be filled by appointment of the Governor, subject to confirmation by the Legislative Council. No person living in the practice of polygamy was allowed to register, or vote, nor was any such person elected or commissioned to any office at this nor at any previous election held under the supervision of the Commission.

This point therefore has been surely reached, that the name of

A POLYGAMIST CAN NOT NOW BE FOUND

upon the registration lists, and none of this class are holding office. Nevertheless it is true that nearly all the officers chosen at the last election, as in the others to which reference is made, are Mormons who, while they do not actually live in polygamy, subscribe to the doctrine of polygamous marriages—marriages as a divine revelation—a law unto all—higher and more binding upon the conscience than any human law, local or national. One very notable exception, however, to this general rule was furnished in the last election in the county of Summit. In this county the entire non-Mormon ticket was elected, and among the officers thus chosen was a member of the House of Representatives of the Legislative Assembly. He is the first person not a member of the Mormon Church, and opposed to their system, who has been elected in many years.

In a former report we called attention to the fact that a number of

SUITS FOR DAMAGES

were instituted in 1882 against the Commission by certain Mormon citizens whose names had been excluded from registration, and who are not permitted to vote. The District Court decided these cases against the plaintiffs, and on appeal to the Supreme Court of the Territory, these decisions were affirmed. An appeal having been taken by the plaintiffs to the Supreme Court of the United States, the decisions of the court below were sustained as to the members of the Commission. While the opinion delivered by the Supreme Court in these cases somewhat restricted the number of those who were excluded from suffrage by the Commission, yet it proved to be a timely and valuable interpretation of the law, affirming the constitutionality of the act, and settling the meaning of several provisions which were of doubtful and difficult construction.

In our report for 1884 we stated that there had been an increase in the number of plural marriages during that year, placing the aggregate number of males and females who had entered that relation as nearly as could be ascertained at 459. According to the best information we have been able to obtain there have been

VERY FEW POLYGAMOUS MARRIAGES

during the present year. It would not, however, be prudent to consider this other than a suspension of the practice, resulting from the rigorous enforcement of the law in all its parts, and not an actual surrender occasioned by a general and decided change of sentiment regarding the doctrine itself. Indeed, if all operations under the present law by the Commission and the courts should at once cease, or even if a halting, hesitating, uncertain policy

should take the place of the rigorous one now in active force, it is altogether likely that plural marrying would again become very general in Utah. The firm attitude of the Government, the faithful and energetic execution of the law, the recommendations of the Commission for additional legislation advancing step by step as the exigencies of the case seemed to demand, the fearless prosecutions of offenders in the courts, all sustained and encouraged by an almost unanimous public sentiment throughout the country, have exerted in the past year

A REPRESSIVE INFLUENCE UPON THE MORMON PEOPLE

never before experienced by them since their establishment in Utah. The evidence of this comes to us in many ways.

The plea of guilty entered in seventeen cases of unlawful cohabitation with the assurance to the court by many of the persons thus arraigned that they would not thereafter offend against the law themselves, nor advise, counsel, aid nor abet in any way its violation by others; the constantly increasing number of those in high standing and influence in the Church who are now known to counsel full obedience to the laws affecting polygamy; the vehement exhortations by the high priests of the Church, many of whom are now fugitives from justice, addressed to the faithful urging them to live their religion at whatever sacrifice; the inflammatory appeals of the newspaper organs of the Church to the fanaticism of the radical elements of their following in which the officers of justice honestly and conscientiously administering the law are bitterly denounced, while those of their own members who have declared their intentions in the future to obey the law are branded as traitors to their Church and their people, from whom all fellowship should be withdrawn. All these are

EVIDENCES OF MUCH INTERNAL AGITATION,

and show that independent thought and action among the people are commencing to assert themselves more and more.

This incipient contest within the church, however feeble on the one side and correspondingly strong on the other, is an encouraging feature of the Utah situation. It is the fear of this which has inspired the threats of ostracism so freely indulged in by the leaders of the Church towards all who declare their intention to obey the laws. It is true that some who had offered and were ready and willing when arraigned to give assurance to the courts that they would henceforth yield full obedience to the law, afterwards succumbed to those assaults, and went to prison rather than accept liberty at the expense of the withdrawal of all religious, social and business fellowship, but there will be more hereafter who will accept the law and abide by it, and fewer who will prefer the penitentiary in order to escape the persecutions of the Church as the vigor of the law is increased by additional legislation.

Every step forward by the Government will give more strength and courage to the men whose desire is to respect and obey the law. A single step backward in legislation, or in the administration of the present law, if nothing more shall be given in the way of legislation, will help the Church to crush out this growing spirit of opposition, and perhaps lose to the movement against polygamy all that has been gained by the passage of the Edmunds Act.

In the enforcement of this existing law the present officers of the Federal courts in Utah are

ENTITLED TO SPECIAL COMMENDATION.

The performance of the arduous and trying duties imposed upon them has been characterized by decided ability, untiring zeal and unprecedented success. Since the present prosecuting attorney, whose appointment two years ago was made upon the earnest request of the Commission, was installed in his office, 33 indictments have been found for polygamy and unlawful cohabitation, there have been 23 convictions and 43 cases are now awaiting trial. A large proportion of this class of cases is in the court presided over by the Chief Justice of the Territory, at Salt Lake City. The civil docket of this court is very large, but polygamy cases have been given precedence over all others. The great increase of business brought to this court by the active prosecution of offenders under the Edmunds act has made it necessary that the appointment of an additional Judge in that Territory should be authorized by Congress. It is unfortunate at this time that the remuneration for such services as have been rendered during the past two years is so small that the Prosecuting Attorney and his assistant have found it necessary, considering their personal interests, to

TENDER THEIR RESIGNATIONS.

The very best talent, coupled with the utmost integrity of character, is essential for success in this service, and these are possessed in the fullest degree by the present incumbents. The loss of these efficient officers is much regretted by every citizen of Utah, regardless of party affiliations, who desire that the Territory may be relieved of polygamy.

The defenders of polygamy in Utah

lay much stress upon the fact that the prosecutions under the Edmunds act are directed solely against those who maintain the polygamous relations. They charge that alleged sexual derelictions by persons who do not belong to the Mormon Church are not investigated and punished under the Edmunds law, and that therefore the execution of the law is partial. But this is an error. The law

WAS NOT DIRECTED AT INDIVIDUAL LASCIVIOUS PRACTICES,

but against the assault made by the Mormon Church upon the most cherished institution of our civilization—the monogamic system. The laws for the suppression of polygamy were chiefly inspired by the apprehension that if this practice should be even tolerated anywhere in the United States, it might one day become a serious menace to the institution of monogamy, which the world has come to consider the most potential factor for the advancement of civilization everywhere. It was against this danger that the law was aimed, and accordingly the courts have held that the living with two or more undivorced wives at the same time in marital relationship, and holding them out to the world as such, constitutes that kind of cohabitation which is by its very nature an attack upon the monogamic system—the sacred family association which is the chief pride and strength of our social fabric—and to do this is the very offense for which the law provides a punishment. But in dealing with this class of offenders

THE COURTS HAVE BEEN MERCIFUL.

The uniform rule has been to give all persons thus arraigned the opportunity by a full renunciation, and a solemn promise to refrain henceforth from the practice to avoid the imprisonment part of the penalty for such offense.

In this connection it may be properly said that there is no local statute in Utah against adulterous or lascivious practices, and the responsibility for this is altogether with the Mormons themselves, as such legislation in all the Territories is always left by Congress to the Legislatures.

By the provisions of the Ninth Section of the act of 1882, under which this Commission was organized, authority is given to the Legislative Assembly of Utah, "at or after the first meeting," thereof, to "make such laws conformable to the Organic Act of said Territory and not inconsistent with other laws of the United States as it shall deem proper concerning the filling of the offices in said Territory declared vacant by this act." The first session of the Legislative Assembly held thereafter was in January, 1884. It was composed of members in both branches chosen entirely by the Church agencies. A bill was passed through both Houses, which failed to receive the approval of the Governor, because, in his opinion, it did not meet the requirements of the act, and, as the Executive of that Territory has

AN ABSOLUTE VETO,

it failed to become a law. The next meeting will occur in January, and another opportunity will then be presented to the Legislative Assembly to conform the laws of the Territory to the Federal laws in the respect mentioned. It will, indeed, be a most gratifying consummation if this could be well and faithfully done, but, judging of the future by the past action of the Legislature, and remembering that all its members with a single exception, were chosen as before, there can be little hope or expectation that a safe and satisfactory result will be reached through its enactments at the coming session. Not the least of the obstacles the Government has to encounter in enforcing the laws against polygamy, in spite of the most efficient and sincere efforts of all the authorities charged with its extirpation, is the fact that the legislative power of the Territory in all its force and strength is arrayed against the desires of the people, and of the Government in this respect, and from this power no helpful legislation can be expected, although it is supported by the National Treasury. Therefore we consider it our duty to urge upon Congress the earliest possible attention to the subject of

ADDITIONAL LEGISLATION.

We invite attention to the suggestions made in our reports of October 30, 1883, and April 29, 1884, which were substantially embodied in Senate bill 1283, reported from the judiciary committee of the Senate and passed by that honorable body during the last Congress, but which failed to pass the House of Representatives. We also call attention to certain additional recommendations made by us in our report of November 18, 1884, which have not yet received the attention of Congress. For convenience of reference we present the following summary of the

RECOMMENDATIONS

made in the reports of the Commission up to this date, October:

1. The enactment of a marriage law.
2. Making the first or legal wife a competent witness in prosecutions for polygamy.
3. Restoring to the first or legal wife the right of dower, as at common law, or other interest in the real estate, as provided in the statutes of many of the States.
4. Providing for a fund, to be furnished by the Department of Justice, to the proper legal authorities in the Territory.
5. The conferring upon the United

States Commissioners concurrent jurisdiction with the Justices of the Peace in civil and criminal matters.

6. The appointment of the Territorial Auditor and Treasurer, Commissioners to locate university lands, of the Probate Judges, County Clerks, County Selectmen, County Assessors and Collectors and County Superintendents of District Schools by the Governor of the Territory, subject to confirmation by the Commission.

7. Authorizing the selection of jurors by open venire, especially in cases prosecuted by the United States.

8. Giving the District Courts jurisdiction of all cases of polygamy, wherever in the Territory the crime may have been committed.

9. Investing the Territorial Courts, in United States cases with a power co-extensive with that possessed by the United States Circuit and District Courts in the matter of contempt and the punishment thereof.

10. Exempting prosecutions for polygamy from the operation of the general limitation laws.

11. The process of subpoena, in all cases prosecuted by the United States, to run from the Territorial Courts into any other District of the United States.

12. Provision for the binding over of witnesses on the part of the government in all United States cases to appear and testify at the trial.

13. When a continuance is granted upon motion of the defendant, provision should be made for taking the depositions of witnesses on the part of the Government, the defendant to be confronted with the witness at the time and to cross-examine, the deposition to be used in case of death, absence from the Territory, or of the concealment of witnesses so as to elude process of subpoena.

14. Making it a penal offense for any woman to enter into the marriage relation with a man, knowing him to have a wife living and undivorced. This should be coupled with a provision that in cases where the polygamous wife is called as a witness in any prosecution for polygamy against the husband, her testimony could not be used against her in any future prosecution, with a like provision as to the husband.

As supplemental to the foregoing, we submit the following

SUGGESTIONS:

1. That the term of imprisonment for unlawful cohabitation fixed by Sec. 2 of the act of 1882 be extended to at least two years for the first, and three for the second offense.

2. That all persons be excluded by law from making a location or settlement upon any part of the lands of the United States who shall refuse on demand to take and subscribe an oath before the proper officer of the Land Office in which his or her application is made, that he (if a man) does not cohabit with more than one woman in the marriage relation, and that he will obey and support the laws of the United States in relation to bigamy and polygamy, or (if a woman) that she does not cohabit with a man having more than one living and undivorced wife and that she will obey and support the laws of the United States in relation to bigamy and polygamy.

3. That the laws with reference to the immigration of Chinese, and the importation of contract laborers, paupers and criminals, be so amended as to prevent immigration of persons claiming that their religion teaches and justifies the crime of polygamy, as this would cut off the chief source of supply to the Mormon Church.

In our last report we expressed this opinion: "It is not unlikely that finally the Federal Government will find it necessary to take into its own hands all civil power in this Territory" (Utah). An examination of our previous reports will show that we have refrained from suggesting any radical change in the form of the civil government of Utah, although a very general demand has been made by the non-Mormons residing in that Territory that this Commission should recommend to Congress what is termed a

LEGISLATIVE COMMISSION,

i.e., a commission to be composed of nine or thirteen, or some other convenient number of members, to be appointed by the President, and in whom all legislative authority conferred by the Organic Act of the Territory upon the Legislative Assembly, as now constituted, should be vested. But we have thought such action on our part would not be in consonance with the sentiment of Congress as expressed in the Edmunds act, until the opportunity given in that law to the Mormon people to abandon their offensive system could be fully considered and accepted or declined by them.

It will be remembered that the act offers full amnesty for past offenses; that it legitimates all children born of polygamous marriages before the first day of January, 1883, and also invites the people, through a Legislative Assembly to be chosen by themselves, to formally accept this generous offer of Congress to condone the past, and only requiring of them that they shall obey the law in the future. We have indulged the hope that they would finally see their line of duty in yielding

A WILLING ACQUIESCENCE TO THIS BEHEST,

but we have been disappointed so far as the action of the leaders of the Church and the principal part of their following are concerned.

The declaration often repeated during the past year by the chief officers of the Church that it is their settled determination to refuse obedience to the

law; the persistent use of their great power and influence to defeat all efforts from within as well as from without the Church to put an end to polygamy, and their persecution of those of their own number who have signified their desire to obey the law, have convinced us that some

MORE DECISIVE PLAN,

to reduce the power of this polygamic element, and to correspondingly increase that of the Federal authority in the civil government of Utah should be presented to Congress at this time for its consideration. Besides the Legislative Commission plan to which reference has been made, several others have been considered. One of which is to extend the list of officers recommended by us in our last report to be made appointable, so as to embrace all which the law now requires to be filled by election. All these appointments could be properly made by the Governor of the Territory, subject to confirmation by the Commission.

It is a sufficient answer to the criticism that this plan is unrepudiable to say that all these civil officers are chosen by the dictation of the civil authorities, with a view chiefly to strengthening and maintaining a polygamous system there existing, the proposed method requires the selection through an agency directed and appointed by the Federal Government in order to secure a more effective enforcement of the laws for the suppression of polygamy.

STILL ANOTHER PLAN

is that adopted by the Territory of Idaho, which is substantially the franchisement of all persons who are members and contribute to the support of a church, one of whose doctrines is that the practice of polygamy is given by divine command as a privilege and a duty to its members.

It is true that there are some objections to each of these plans, but it would undoubtedly be true of all methods however perfect that could be devised, and it is for Congress to determine whether the important result sought to be secured in Utah, will justify the adoption of a plan which under ordinary circumstances might be considered extraordinary and severe in character, but which in this case is believed by many to be essential to

A SPEEDY AND CERTAIN ERADICATION OF POLYGAMY.

It may be said for the legislative commission plan, that it is simpler and direct.

Of the appointment plan, that all offices, including those of the Legislative Assembly, remain undisturbed, that they are all to be filled from the body of the people, as now, by agencies under the direct control of the Federal Government, and that the influence of the same would be partial.

Of the Idaho plan, although a more extreme and a more severe than either of the others, that it reaches to the very root of the system. But whatever may be thought of these suggestions, Congress would certainly render a service of incalculable value to Utah, and indeed to the whole country, if it would devise some measure whereby these misguided people could be brought out from under the thrall of which has so warped their minds and their consciences, and the crime committed in the name of religion is considered by them a duty and blessing equally to those who commit it and those who aid, abet or defend its commission.

For the Commission.

ALEXANDER RAMSEY,
Chairman.

ATTORNEY MINER DISBARRED

JUDGE ZANE'S OPINION—A LONG DISQUISITION ON MORALITY.

NO LAW OR JUSTICE IN FEDERAL COURTS FOR "MORMONS."

In the Third Judicial District Court of Utah Territory, Salt Lake County.

In the matter of the citation of Alexander Miner, to show cause, etc.

At the present term of this court Aurelius Miner, an attorney and counselor at law thereof, was convicted of the crime of unlawful cohabitation and sentenced to imprisonment in the penitentiary for the term of six months and to pay a fine of \$300 and the costs of prosecution. Before judgment, was asked by the Court if it was his intention in the future to obey the laws of the United States respecting polygamy and unlawful cohabitation and not to advise other people to break them; to which he answered that he would obey all the laws of Congress. When reminded of the obligations of his oath as an attorney, he answered that he was admitted to practice before the act referred to took effect, that he took an oath to support the Constitution of the United States; that since he had reached majority there had been laws of the United States in force which he said publicly that he would not obey, and that there were other laws in force before his time, which probably would not have obeyed, had he lived during the time they were in force; that he was ready to obey all constitutional laws; that he differed from the courts to the validity of the law against polygamy and unlawful cohabitation; that when a law reaches into the domain of morals he had a right to so differ