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"THE MORMON QUESTION."

UNDER the above heading the *National Republican* of May 15th publishes in full the argument of Hon. Jeff Chandler before the Judiciary Committee of the House of Representatives, on the new Edmunds bill referred to that committee. It occupies nearly nine columns of small type, and is an exhaustive criticism on the chief sections of that iniquitous measure. The whole address, with the discussion that occurred with members of the committee during its delivery, are worth reproducing in full, but it is so voluminous that we believe our readers will prefer a synopsis with some literal quotations.

The celebrated lawyer commences by drawing attention to the Edmunds law as it now stands and refuting the statement, believed by many, that a man in Utah with five wives can cast six votes. He quotes the law to prove that such a man has no vote at all, that he and his wives are prohibited from voting and holding office, and that they are simply permitted by the law to exist. He passes on to consider the absurd excitement over the polygamy question, referring to the statement of Mr. Baskin that only two convictions for polygamy had been secured, one before and one since the passage of the Edmunds law, and intimates that if such convictions had been had in Vermont instead of Utah, the country would not have been so shocked, and that it is difficult to distinguish between the moral perfidy of such occurrences in Vermont and in Utah. The statement of fact is not exactly correct, but that is the fault of Mr. Baskin, not Mr. Chandler. There have been a few more convictions, but the gentleman's remarks are just as applicable to the point.

He then asks what grievances the Gentiles urging this new legislation have to complain of, and says:

"The Gentiles come here with a representative who tells you that he has lived in that Territory for twenty years, and that during that time this so-called Mormon element held absolute political power within the Territory of Utah; they make all the laws that affect the domestic welfare of all the people living in that Territory, and yet, during the three hours which he occupied in his argument before this committee, he could not or did not recollect a single instance where the Gentile population, though in a small minority, have been unequally or unjustly treated by this legislation. Now, so far as they present themselves here as a class, they state no grievance against themselves. They do not come here and say that the political power of Utah ought to be taken out of the hands of this majority because the majority use that power oppressively against them. Not at all. They do not say that taxation is unequal or unjust, or that any privileges are denied them which are enjoyed by the majority, or that there is anything in the exercise of domestic government which gives them the slightest cause to complain. Do they say that they receive unfair treatment in the courts of Utah? Not at all. Do they show you a single instance in the adjudication of that Territory, from its creation down to this hour, wherein the Gentiles have not been fairly and justly treated by the courts? Not at all. Then what do they complain of? It is that the majority does not deport itself in a manner to excite the approval of the minority. A population of 150,000 does not in all things conduct itself so as to meet the absolute and unqualified approval of 30,000, and therefore they ask that the political power of the majority shall be taken away from those 150,000 and be left with the minority."

That states the case of the conspirators exactly. It is their whole question, concisely put. Mr. Chandler then attacks the provision in the new bill compelling the legal wife to testify against the husband, and remarks:

"Our civilization protests against the introduction of husband and wife as witnesses against each other. The sanctity of the marriage relation is so great in the esteem of our civilization, that it is believed no discord should be permitted or promoted between husband and wife by bringing them into conflicting relations with each other in the court, and, therefore, it was not within the thought of the framers of the Constitution that the wife or husband would ever be compelled to testify against each other."

He then assails the inequality of anti-"Mormon" legislation, because it acts specially on the "Mormons" and not on the "Gentiles." A colloquy between the gentleman and members of the committee results in the demonstration of the accuracy of his strictures, and the freedom permitted to "Gentile" illicit relations while "Mormon" plural marriage is punished with heartless severity.

The common idea being advanced by a committeeman that the gravity of the "Mormon" offense is in the acknowledgment of the plural relation and the claim that it is right, Mr. Chandler responds:

"Now, does it not resolve itself into this: Here is a man who holds out by his conduct that he is guilty of illicit cohabitation. He does not introduce his partner in the offense as his wife, but he assumes this offensive relation publicly and notoriously, and that is called notorious adultery, and is deemed as such. Now, here is another party who says I claim a certain relation, legal relation, with my partner in business; but the offense in its moral character, so the anti-Mormons say, is precisely similar in moral turpitude to the offense under the other name. The two transactions differ from each other only in this, in one no pretense of marriage is made, there is no pretense of honesty, no pretense of decency. In the other there is a claim of decency, and that is condemned the more severely of the two. Certainly there is not the moral state of pollution in the one as in the other. In the one case there is total depravity and abandonment made public; in the other there is a claim that it is honest, and how the transaction that is precisely the same in its outward features should be condemned more harshly because it is pretended to be honest than the one admitted to be dishonest, I do not see. But it does seem to me that the constituents of the two matters are different in this—one relation is sincere, the other dishonest. Now, is it wise to make the husband or the wife a witness against each other in the cases where the motives are good, and not in the other. Is that an intelligent, just, humane proposition? That it is not such is conceded when it is made special. If it were a wise, just rule of evidence you would apply it to the entire United States. You would not shrink it up, you would not restrict it to the meager dimensions of Utah, and apply it to a particular class only in Utah. You express a distrust of it yourselves when you limit it, and when you say that it is only intended for a few people, thereby you declare that it is not suitable for the many."

The Chairman objecting that Congress cannot regulate the laws of a State, Mr. Chandler answers:

"It does not apply to all transactions, to everything over which the federal government has jurisdiction. It only applies to cases of bigamy, polygamy, and unlawful cohabitation. Why not apply it to all cases of contract, and in all cases where you want to discover facts in court by evidence? Why not make it general? Why not break down this barrier against the introduction of husband and wife in toto? Why make it limited and partial? If it is a good thing it should be open to all, and not made special and limited to a class. Congress ought not to be governed by an uproar on the part of a few people who go out to Utah; people who do not live there, who have no interest in common with those people, who know nothing of the wants and needs of that community, but whose sole business it is to gain notoriety by inflaming the country against them. If this community is going to recommend a bill that bill ought to stand upon a solid legal and impartial basis. It ought not to treat our whole political philosophy with contempt.

The next point discussed is the provision of the new bill authorizing the arrest of witnesses "if there is reasonable ground to believe that they will not obey a subpœna." The wrong and illegality of such a measure are strongly presented, and we make this extract from that part of the agreement:

"Any man who has administered law knows that an instruction to a jury which authorized the jury to find a verdict according to their belief would be held erroneous. They must believe from the evidence. You do not submit controversies in any shape to a mere belief. You determine and adjudicate the controversies that come before courts on evidence, and any statute that dispenses with evidence in order to come to any conclusion is vicious for that reason. The Constitution forbids the arrest of a person except on probable cause. Probable cause has been defined so often by our courts that it is understood to be composed of evidence. There must be an affidavit of the party having some knowledge of the subject, and then there can only be an arrest preliminary to a hearing. The party arrested on probable cause is entitled to a hearing before commitment. This statute does tolerate imprisonment without a hearing."

The excess of power this would give over "Mormon" families is enlarged upon, and the plea that this extraordinary stretch of authority is justified by the extraordinary nature of the case, is effectually disposed of. In answer to questions as to what would be justifiable in the case of a community that recognized horse stealing as an institution, Mr. Chandler says:

"If the organization include persons who take no part in committing crime, then only those who commit criminal acts can be punished. If parties live in a community and sympathize with others who violate the law, such sympathy does not render them criminally liable. Persons can only be punished in this country for overt acts. You cannot reach and punish sympathy, opinion or feeling merely. * * * It may be conceded for the sake of argument that their belief that they are right does not protect them from prosecution, but does their sincerity make them *worse* than a person doing the same act, knowing it to be wrong. Should the rules of procedure be changed against a people and made harsher than they otherwise would be, because that people is honest in doing the forbidden act? The difference between bigamy in Utah and Vermont is this: In Utah the parties believe they are right; in Vermont they know they are wrong. The ordinary methods of justice are sufficient to punish the man who knows he is wrong, but extraordinary measures are necessary against the honest wrong-doer. Is an error in belief more to be punished than intentional wrong-doing? Error in belief is not criminal per se. If one who does a forbidden act under a conviction that it is morally right to do the act is punished in excess of the punishment inflicted upon a person doing a similar act knowing the act to be wrong, such excess of punishment falls upon the honest transgressor because of his belief."

The fallacy of the idea that a man can be punished for advocating plural marriage is thoroughly exposed in extended remarks, and the speaker asks:

"Will any lawyer say that if I recommend a man to commit bigamy that I could be jointly indicted with him for committing bigamy? Can I participate with another man in bigamy? It is not in the nature of a joint offense. There is no conspiracy which would lie, nor would any court construe that if I recommended a person to commit bigamy, and he did commit bigamy, that I could be held for his bigamy. * * * Otherwise you would condemn men for their approval, you would condemn men for their sympathy, you would condemn them for their intent, and under our system of criminal law I defy any lawyer to present any well-considered case from any court that holds that persons are liable for sympathy with one who has committed a forbidden act. If you extend punishment to sympathy, what becomes of your principle of strict construction? Can you convict a man except for an act which he has committed? "Act and intent," the Supreme Court of the United States has repeatedly said, constitute a crime, and not intent, but the forbidden act and intent together are necessary."

Mr. Chandler, after some further discussion with the committee, explains that he is not asking for any repeal or change of existing laws, but protesting against the passage of the bill in the hands of the committee, which, he says, "has not a provision in it that does not violate settled and accepted doctrines of our law." He admits that from the standpoint of the Government, polygamy is assailed as a crime. But remarks:

"Now will you remove in the punishment of that crime all the safeguards to personal liberty? If we can suppress and subdue other criminals without doing anything but what is in perfect accord with the great principles of personal safety, why not regulate this matter by the same rules? All coercive process is naturally slow. You cannot at once expunge any state of things from the face of the earth. There have been established great guides of procedure which will not be departed from to punish murder, larceny or arson, or any other crime. We have adopted these methods because of their supreme excellence; because of the good which they do to society in their careful, judicious, wise and humane administration.

"Now, you have a crime which offends a certain class of people who have worked themselves into a frenzy, and who are pursuing the Mormons as a calling, although they have not suffered a particle from them or anything relating to polygamy. They only know of polygamy by hearsay; they have become perfectly enraged at what they call the terrible state of immorality in Utah, and they come to this committee and clamor that all the great principles of our law be suspended that we may punish this outrageous race of polygamists in the Territory of Utah. The remedy is tenfold worse than the disease."

The speaker then touches on the project to disfranchise the women of Utah. He thinks women have their own way pretty well now, without the ballot, and is not an advocate of woman suffrage in general. But as all who practice polygamy are already disfranchised and woman suffrage is permitted in the Territory, he cannot see why the principle of local self-government which gives them the ballot should be interfered with. He then takes up the Legislative Commission scheme, advocated by Baskin, and the following colloquy ensues. Mr. Chandler remarks:

"Here is a proposition to give thirteen men the right to legislate.

"Mr. Stewart. That is not in this bill.

"Mr. Chandler. No; but that was in the proposition of the gentleman who came here to ask your help in humiliating the Mormons. The proposition is that the Mormons cannot be trusted to govern themselves, and you are asked to send thirteen men out there to govern this community. This is his proposition. Now I say either proposition is condemned by the philosophy of our system. It was said long ago that taxation without representation was tyranny. That was our definition, I believe, and that is the standard definition of tyranny—that taxation without representation is tyranny. You are asked to disfranchise all the Mormons and turn the government over to 30,000 Gentiles, and allow the minority to govern the majority, and to tax them without representation, or to send thirteen men out there, who will make the minority still less, to govern all the others. You are asked to put legislative authority in the hands of these thirteen men with power to tax those who will be without the power of representation in that body. If that was tyranny when this government was established, is it less so now?

Mr. Stewart. I do not think it is worth while to spend any time arguing that point.

Mr. Chandler. I will leave it.

Mr. Stewart. It occurred to me individually that it was not worth while to dwell further upon that point. If the chairman agrees with me in that, you might as well save the time.

The Chairman. You are arguing, Mr. Chandler, the proposition of committing the whole legislative power of the Territory to a commission.

Mr. Chandler. Yes, sir.

The Chairman. That is not in the bill.

Mr. Chandler. No, sir; but it is in the argument of the gentleman who appeared here the other day.

The Chairman. I think as it is not in the bill that I may safely say to the subcommittee that we do not propose to put it in."

Mr. Baskin's Legislative Commission scheme being thus satisfactorily sat down upon, Mr. Chandler next takes up the proposition to appoint fourteen trustees to assume the management of the property of the "Mormon" Church, whereupon the Chairman of the committee remarks:

"I am authorized to say on behalf of the sub-committee that we do not propose to become partners in running the Mormon Church. The question is what may be done, or what should be done, in reference to the incorporation of the Mormon Church, and the amount of property it shall hold is a question you may discuss. The committee does not mean to abridge your line of argument, Mr. Chandler, but simply say wherein we agree, and save you discussion. We accede to your proposition with reference to this church government."

That disposes effectually of the main scheme in the bill, runs the sawdust out of the Edmunds doll, so to speak. The question of dissolving the corporation known as the Church of Jesus Christ of Latter-day Saints being recognized as a proper subject for discussion, Mr. Chandler vigorously assails the proposition and says:

"I take it for granted that the State cannot disestablish this church. In the first place, while the Constitution of the United States does not say that the federal government shall not pass a law impairing the contract, that is a law of the federal government without saying it, and if there is any doubt about these decisions I will hunt them up and furnish them, to the effect that a contract, so far as the treatment of it by the federal government is concerned, is as sacred and as inviolable by the federal government as it is in the hands of the State governments.

"Now, there is a further provision that no law shall be passed for the establishment of religion, or to affect the free exercise thereof.

"The Chairman—'Respecting an establishment of religion,' are the words of the Constitution.

Mr. Chandler. Does that law that provides against the establishment of religion permit the disestablishment of all religions but one? May you, because the language of the constitution is that you shall not establish a religion, do the reverse—disestablish a religion? Another provision of the constitution is that no religious test shall be made in the administration of the government.

Mr. Stewart. Right there let me ask you a question, if you will permit the interruption. You ask has Congress power to disestablish religion. Is it disestablishment of religion for Congress to repeal, or undertake to repeal, a charter granted by a territorial legislature to any church? Is that a disestablishment? Are not the people still at liberty to exercise their religious right without any corporate right?

Mr. Chandler, it is in the power of the government to incorporate a church, but after it has incorporated a church the contract between the government in granting the charter of the incorporation in church cases is precisely the same as a contract granting a charter in any other instance, as for a college, etc. Now, there is no doubt but a church is a private charity, and that has been decided in 14 Gray and several Massachusetts cases by Judge Hoar and others that a church is a private charity, and there is no such thing as a public church in this country; that a church is not for the public at large, but for the benefit of those who contribute to its established form of worship, for the circle who conform to the requirements of its ritual. It is a private trust for their own benefit, and therefore being such makes it a private charity. In three cases in Massachusetts where the attorney general undertook to intervene to correct what he alleged to be abuses of such charities, the Supreme Court dismissed the case on the ground that the State had nothing to do with them; that they were simply a private charity, prescribing their own rules of government and their own methods of redress, and to those rules of government and methods of redress alone was the charity committed."

* * * *

"And the courts have gone so far in the authorities cited here as to hold that if a person appointed a trustee by the court is not cordially in sympathy with the objects and doctrines and purposes of the trust, that fact is of sufficient importance to authorize the court to remove him and appoint somebody else."

The right of a Hindoo to establish his religion even within sight of the national capital, and of a Hindoo corporation to hold property is contended for, and it is shown that if Congress granted a charter to a Mohammedan Church to hold property it could not impair the title afterwards, nor modify or repeal the charter unless it reserves to itself that right in the charter. A long discussion follows in which Mr. Chandler maintains that a religious corporation whose rights were defined at the time of its creation has a title to everything which grows out of those defined rights.

Mr. Chandler next defends the "Mormons" from the general charge that they will not obey the laws, and shows that there can be no complaint against them generally, and that in attempting to enforce the laws against bigamy and polygamy, after the present mode, violation is done to the very things that the law holds in high esteem. He takes up the question of unlawful cohabitation, and explains the uncertainty that hangs over its meaning, giving some of the latest definitions of the Utah courts, which seem to have astonished the committee, and they could scarcely believe that a court would hold that a man could be deemed guilty of criminal cohabitation with women when it is not shown that he lived under the same roof, slept in the same bed or visited with them. The right and duty of men to support their plural families the committee frankly concede. Mr. Chandler remarks on this point:

"Now, in every country of the world—in the old countries—these plural marriages have been tolerated, and in no country of the civilized world is it made reprehensible to support the offspring of such a marriage. Why, the missionaries held a congress among themselves in Calcutta a few years ago to take into consideration the policy that they were to extend to the Hindoos whom they converted, and who maintained these relations, and it was never thought improper by any of them for the party to support the wife *and offspring after conversion, and* the discussion of the subject went so far as to say that it was inhuman and unchristianlike not to do so. Yet it is criminal in these people in Utah to do that which is right. I say that there can be no case of constructive cohabitation as distinguished from real cohabitation. These men believe that if they obey this law as so construed, and desert their offspring and renounce their wives, they will be ostracised, and so they would be in the District of Columbia or elsewhere."

The infamy is next exposed of the proposition in the bill to render the house of any man who has a family record, liable to summary intrusion, that private papers may be searched for to secure evidence of an unlawful family relation. It is shown that this is not constitutional, and that it cannot be done even by an order of court. The case of Boyd vs. the United States is cited (116 U. S.) in which it was held by the Supreme Court that an order to deliver papers, though made by a court, for the purpose of being used in a criminal case, is a violation of the provision of the Constitution against unlawful searches and seizures.

The provision in the bill to confiscate the "Mormon" Church property and forfeit its charter, then comes in for Mr. Chandler's vivisection. He takes it to pieces and shows its unlawful and dishonest character. He ridicules the use of the word "escheat" in the bill and proves that it is put there without a knowledge of its meaning. He explains:

"Property escheats to the government only in case of an extinction of tenure—where there are no heirs to receive it. (4 Kent's Com. 424.) This section does not make a new definition of the word 'escheat,' but uses it with its old definition, and makes that provision of the bill, so far as the doctrine of escheat is alluded to, absurd.

"The word 'forfeiture,' which is miscellaneously thrown into association with the word escheat, indicates an entirely different state of facts from those governing escheat. Chancellor Kent says (4 vol. 426) there is a distinction between escheat and forfeiture to the crown. The law of forfeiture went beyond the law of escheat. It extinguishes forever all inheritable quality of the vassal's blood. Their blood was attainted. The law of forfeiture rests upon a corruption of blood, which, in this country, is universally abolished. (4 Kent's Com. 426.)"

He enters into a learned discussion of the powers of the Government in this matter, shows that the provision limiting the property of the Church to $50,000 was passed ten years after that charter was granted, and contends that as the charter was a contract between the Church and the Government—the Territorial act being