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AN OUTRAGE AGAINST LEGAL WIVES.

ONCE more a Federal Court in Utah has shown itself capable of so interpreting and applying the law as to give it the force and effect of new legislation. Practically it is the exercise of legislative functions by the judicial power. Contrary to usage, the precedents of centuries and the general understanding of the spirit and meaning of both statutory and common law, in relation to the incompetency of husbands and wives to testify against each other except by mutual consent, in a criminal action, Judge Zane on Saturday permitted the legal outrage perpetrated by District Attorney Dickson in requiring a legal wife to give evidence for the prosecution in a case against her husband.

Mrs. Langton was compelled to answer the questions of the public prosecutor intended to make her husband appear guilty of unlawful cohabitation. The replies were not such as were anticipated, and they failed to establish anything against the accused, who was acquitted because of the total lack of evidence against him. It was not proven that he had committed any unlawful act or even that he had a plural wife. The gossip of chattering and unreliable persons who tried to make out a case to injure him was all that the prosecution could offer against Isaac Langton, who has been put to untold trouble and expense because the Prosecuting Attorney is so ready to catch up any silly story or piece of petty spite which a Gentile may have against a "Mormon," whose guilt is assumed as soon as he is accused, and who receives the damage instead of the benefit of a doubt.

It seems that the delay in the passage of the Edmunds bill, making it lawful to compel the legal wife to testify in certain cases against her husband, became so irritating to the prosecuting officers here that they could not wait any longer. So they concluded to make the local law answer their purpose. The ruling of Judge Zane on this point will be found in another column. It turns on that clause in the statute he quotes from which makes an exception to the rule excluding the testimony of husbands and wives against each other, in "a civil action or proceeding by one against the other or proceeding for a crime committed by one against the other."

The object of this exception is clear. It is to make the wife a competent witness when her person is assaulted or she receives bodily injury from her husband. It is not to place her, unwillingly, in a position to criminate her husband, or to make her appear against him in a charge of crime against the public. The very object of the statute making the husband and wife incompetent witnesses against each other, is "to encourage confidence and to preserve it inviolate." This is so stated in the law.

The offense of unlawful cohabitation is one that has been created for a special purpose. According to the construction of the courts it relates to plural marriages. It is the holding out and living with more than one woman as wives. It is said to be a crime against society. But that it is not a crime committed by the husband against the wife in the class of cases for which the law was enacted, is evident, from the fact that the wife has entered into the relationship of marriage with her husband under institutions that provide for plural marriages. She is a consenting party to the arrangement. Her very marriage is contracted with the understanding that he may establish marital relations with others. When a man cohabits with another woman by consent of the wife, when she does not regard it as any crime against her, when she has no complaint to make, how can his alleged offense against society be construed into a crime committed against the wife?

The meaning of the statute quoted by Judge Zane is definitely determined in the laws of 1878:

"Sec. 421. Except with the consent of both or in cases of criminal violence upon one by the other, neither husband nor wife are competent witnesses for or against each other in a criminal action or proceding to which one or both are parties."

The law of 1884, from which Judge Zane quotes, does not repeal this section. They both stand together. They are to be construed together. They are to be viewed *in pari materia*. The crime committed by one against the other which allows the testimony of one against the other, is the crime of personal violence. It is so defined in the law. These statutes taken together are in accordance with good common sense, with the principles of common law, with the established doctrine in regard to the public policy of rendering incompetent the testimony of husband and wife for or against each other, and with rulings of the Supreme Court of the United States. While the persons of the husband and wife are protected from violence by these laws taken together, the essential unity of the marital status is not broken nor the sanctity of matrimonial confidence invaded. But in the rendering of the later law to the exclusion and ignoring of the other equally valid law, the general principles which forbid the arraying of the wife against the husband are violated, cast down to the ground and stamped upon.

The great principle upon which the exemption of husband and wife as witnesses against each other is founded is the legal theory that they are ONE. And as no defendant can be compelled to be a witness against himself, the wife whose legal identity is merged into that of the husband, cannot be made to appear against him of whom she is a part.

Bouvier, vol. II, page 659 says:

"The reason for excluding them from giving evidence either for or against each other, is founded partly on their identity of interest, partly on a principle of public policy which deems it necessary to guard the security and confidence of private life, even at the risk of an occasional failure of justice. They cannot be witnesses for each other, because their interests are absolutely the same; they are not witnesses against each other, because it is against the policy of marriage."

Greenleaf, in his great work on the law of evidence, Vol. I, page 286, says:

"Communications between husband and wife belong also to the class of privileged communications, and are therefore protected, independently of the ground of interest and identity, which precludes the parties from testifying for or against each other. The happiness of the married state requires that there should be the most unlimited confidence between husband and wife; and this confidence the law secures, by providing that it shall be kept for ever inviolate; that nothing shall be extracted from the bosom of the wife, which was confided there by the husband."

That there are some exceptions to this is admitted, and they are provided for in the Utah statutes. In relation to them Greenleaf says further, page 395:

"To this general rule excluding the husband and wife as witnesses, there are *some exceptions*; which are allowed from the necessity of the case, partly for the protection of the wife in her life and liberty, and partly for the sake of public justice. But the exception which calls for the wife's security is described to mean, 'not a general necessity as where no other witness can be had, but a particular necessity, as where, for instance, the wife would otherwise be exposed without remedy to personal injury.'"

In the references to support this principle it is shown that the admissibility of such evidence is only in "cases of personal injuries committed by the husband or wife against each other," and it is said that Mr. Justice Holroyd held that even in such cases, "the wife could only be admitted to prove facts, which could not be proved by other witnesses." In the case of the State vs. Welch, quoted by Greenleaf, it was held that:

"On the trial of a man for the crime of adultery, the husband of the woman with whom the crime was alleged to have been committed has been held not to be admissible as a witness for the prosecution, as his testimony would go directly to charge the crime upon his wife."

He refers to another case in point, which also shows clearly that the crime or wrong committed by the husband against the wife, to permit her testimony, must be one of injury to her person and not such an injury as that inferred by Judge Zane.

"The wife is not a competent witness against the husband upon an indictment against him for subornation of perjury to wrong her in a judicial proceeding."

(People vs. Carpenter, 9 Barb. 580.)

But we will come now to the ruling of the highest court in the land on this very important question. In the case of Stein vs. Bowman in error to the District Court of the United States for the Eastern District of Louisiana, the Court reversed the decision of the court below and one of the chief errors was the admission of evidence by the wife against the husband. The court ruled that

"It is a general rule that neither a husband nor a wife can be a witness nor or against the other."

"This rule is subject to some exceptions; as where the husband commits an offense against the person of the wife."

"In the case of the King vs. Cluver (2d Term, 268) the Court held that a wife should not be called in any case to give evidence even tending to criminate her husband."

"It is sound doctrine that trust and confidence between man and wife shall not be betrayed."

"It is, however, admitted in all the cases that the wife is not competent, except in cases of violence upon her person directly to criminate the husband; or to disclose that which she has learned from him in their confidential intercourse."

"And it is conceived that this principle does not merely afford protection to the husband and wife which they are at liberty to invoke or not, at their discretion, when, the question is propounded; but it renders them incompetent to disclose facts in evidence in violation of the rule."

"Can the wife under such circumstance, either voluntarily be permitted or by force be compelled to state facts in evidence which render infamous the character of her husband? We think most clearly that she cannot be. Public policy and established principle forbid it.

The rule is founded upon the deepest and soundest principles of our nature. Principles which have grown out of those domestic relations that constitute the basis of civil society, and which are essential to the enjoyment of that confidence which should subsist between those who are connected by the nearest and dearest relations of life. To break down or impair the great principles which protect the sanctities of husband and wife, would be to destroy the best solace of human existence.

We think that the court erred in overruling the objections to this witness." (Peters vol. 13, p.p. 135, 136.)

We have not quoted all that the Court said on this subject, nor the host of authorities referred to in the decision, but have given copious quotations because they bear so squarely upon the question which this community has to meet. When the authorities go to show that a legal wife is not *permitted* except in a case of personal violence to testify against her husband, what must be thought of proceedings which *compel* her against her will as well as the protest of the defendant, to give evidence for the purpose of convicting her husband of crime particularly when she has no personal grievance against him?

It will be seen from the citations we have made, that the ruling of Judge Zane is not only at variance with the laws of the Territory on which he has professed to decide, but with the principles of law and public policy which have prevailed from time immemorial, and with the decision of the Supreme Court of the United States, all of which are in accord with each other and with that common sense which should underlie all law and enter into the administration of all measures for the public welfare.

In their eager anxiety to push to extremes the unprecedented proceedings against the "Mormons," Attorney Dickson and Justice Zane have made a serious blunder, as well as perpetrated a flagrant legal outrage against the home, the family and the sacred rights of wifehood which they have hypocritically pretended to desire to protect.

DEATH OF AN OLD ANTI-"MORMON."

A RECENT issue of the Richmond *Conservator* alludes to the death of Hon. Amos Reese, which is said to have recently occurred at Leavenworth, Kansas, as "one of Missouri's conspicuous pioneers," and says:

"He was born December 2, 1800, at Winchester, Va., came to Missouri in 1820, and settled at Old Franklin, opposite Boonville. He then studied law with Judge David Todd, was admitted to the bar, and shortly after became prosecuting attorney for that district, which comprised all northwest Missouri. After the passage of the Missouri compromise, Mr. Reese went to Liberty, Clay County, and practiced law there and at Richmond and Platte City. In 1834 he moved to Kansas City and became one of the original thirty members of the Leavenworth town company, only four of whom are now living. In 1830 Mr. Reese was married in Liberty to Judith Trigg, daughter of Gen. Stephen Trigg, and they celebrated their golden wedding six years ago."

No mention is made of the manner or cause of his death or of the part he played in the early persecutions of the Saints in Missouri, but possibly an account of the latter may be furnished by some of the survivors of that trying period of the Church's history who may still remember him. Sufficient is known to warrant us in saying that he was a bitter anti-"Mormon," and if the full truth were known it would probably appear that he was an active mobocrat.

After the battle of Crooked River, where a few brethren met a large party of mobocrats on their way to the settlements of the Saints for the purpose of raiding them, and had a conflict in which Apostle David W. Patten and others were fatally wounded, and when Bogart, the leader of the mob had fled and a general panic ensued among his followers, Amos Reese and Wiley E. Williams hastened to Jefferson City to Gov. Boggs with that "information of a most appalling character," of which the latter subsequently wrote. As a result of their statement to him, the utter falsity of which we can easily imagine, Governor Boggs issued his famous order, "that the Mormons must be exterminated or driven from the State."

Wiley E. Williams' subsequent career and miserable death were characteristic of the anti-"Mormon" mobocrats. He died early in the year 1843, and Isaac Russell and William Dawson (the latter now living at Leni) were with him at the time of his death, and, at the request of a relative, assisted in preparing him for burial. He suffered excruciatingly from some mysterious malady, feeling as if he was burning up from internal heat, and repeatedly implored those who surrounded his bedside to carry him to Crooked River (about one mile distant) and throw him into the stream.

THE GOVERNOR AND THE LEGISLATURE.

THE Legislative Assembly has been in session forty-six days and has considered a large number of important measures. Several excellent bills have been passed, but none have received the signature of the Executive. Some have been vetoed and others have been treated with the medicine of silence. The excuses offered by the Governor for rejecting the bills which he has deigned to notice, have been so flimsy that they could not be viewed as reasons. It is to be presumed that he has none at all to offer in regard to the bills on which he is silent. We do not know but that is the wisest policy to pursue. If he is determined not to sign any bills at all, and has no better excuses to offer than those advanced in his vetoes, it would be wiser to sit still and say nothing than to try to make a show of reason when no reason exists.

It is alleged, with how much truth we do not pretend to decide, that the Governor will not sign any bills unless the Council confirms his nominees for the offices of Auditor, Treasurer and Superintendent of District Schools. He has intimated his determination not to sign a bill for the payment of jurors, if the money is to be disbursed by an Auditor and a Treasurer elected by the people. The Governor claims the right to nominate those officers, and contends that the present incumbents are not of right entitled to their positions.

Supposing, for argument's sake, that he is correct as to his view of the law in regard to those offices. Does that justify him in withholding his signature to bills which have no relation to them? Is it right to prevent legislation on important matters affecting the welfare of the Territory in which the dispute as to those officers does not figure in any shape? Does it not look like factious opposition and stolid obstruction? Is it not indeed an exhibition of petty tyranny and an exercise of absolutism altogether foreign to the spirit of republicanism? And is it not an arbitrary display of "one-man power" that looks both piggish and paltry?

There certainly can be no valid reason offered for dogged obstinacy or spiteful retaliation under such circumstances. If the Governor has apparent ground for a dispute with the Council in regard to his right to make certain nominations, he has none to stand upon in refusing or omitting to sign bills passed by both Houses of the Assembly, and that cannot be affected by the question to which he attaches so much importance. And we think that on fair investigation he will not appear to be justified in blocking the wheels of justice, and stopping the machinery of the territorial government, by cutting off the financial current, simply because he differs with the Council about the construction of a single section of the Organic Act or the validity of a territorial statute.

He must take into consideration that the law providing for the election of the Auditor and Treasurer stands upon the statute book, having been duly approved and signed by his predecessor in office, and having never been disapproved by Congress. The Legislature, in face of that statute, cannot very well recognize his interpretation of the Organic Act, seeing that he is not a court, and that for thirty-four years a contrary view to his has prevailed in this Territory, and the latter has been considered, ever since the Englebrecht and Snow cases, to have been sustained in spirit by the Supreme Court of the United States. That court certainly recognized the Territorial Marshal and Attorney-General, elected by the Legislative Assembly, as *de facto* officers, and their official acts as valid, and also laid down the principle that a territorial statute not disapproved by Congress had the tacit approval of that body.

Previous Governors held views somewhat similar to those of Governor Murray, and the law providing for the election of the Auditor, Treasurer, and Superintendent of Schools was enacted as a settlement of the dispute between the Executive and the Legislature, Governor Emery signing the bills with that understanding. In all the controversies on this matter, however, no Governor has attempted, till now, to make the question an issue involving the conduct of public affairs and the administration of justice. The funds of the Territory have been handled by the servants of the people appointed or elected as the people desired. This is certainly right and republican, whatever views may be held as to its conformity with a certain interpretation of the Organic Act. The people should say how and by whom their money shall be disbursed, and any regulation to prevent that is unrepublican and unjust.

But the Governor stands stiffly on his interpretation of Section 7 and summons to his aid what he calls the "decision" of the Utah Commissioners and of the Attorney General. The so-called "decision" of the Commissioners is simply impertinence and usurpation. It is not worth the ink that made the marks on the paper. Five legislators would have had just as much right to formulate an opposite opinion and call that a decision as those Commissioners had. And they were wrong in an important part of their opinion, as has since been determined, and as the Attorney General has shown. The "decision" of the Attorney General, though more entitled to consideration, is no more of a "decision" than theirs. He is not a Court. He has no judicial authority. The Legislature is not bound by his view any more than by the Governor's. And no Court is bound by it. It is simply the opinion of an official attorney of great ability. So the united "decision" of the Governor, the Attorney General and the Utah Commission, is not a decision in any legal sense and the "decision" of the Legislature is just as final as theirs.

But if we grant that the view of those gentlemen is right, taking merely the letter of the law without its spirit, is the Governor right in the position he assumes? We think not. He has acknowledged, in his message to the Legislature and in accepting the official reports of the Auditor and the Treasurer, that they are *de facto* officers. This cannot be successfully disputed. Then their official acts are legal. Until their successors are elected—or appointed—and qualified, they can legally disburse the Territorial funds. They are in exactly the same position now that they were two years ago when he signed the appropriation bill, on which they handled the public moneys without dispute. If they are not legal officers now, they were not legal officers then. If they could perform the duties of their offices legally then, they can perform those duties legally now, and until their successors are duly qualified by law. No one can truthfully say they did not faithfully fill their official positions. The Governor's obstructions then are wrong, even if his argument concerning the law is right.

If the Governor has the right to nominate those officers he has not the right alone to appoint them. The Council holds the key to that situation. The Council may confirm or reject his nominations. Even supposing he has the right to nominate, he takes care to make such nominations as he well understands the Council, if true to their position as representatives of the people, could not consistently approve. If his nominations are disapproved, what then? No vacancy by which he can appoint *ad interim* can legally occur. Admitting his own views of the Organic Act, except on the death or resignation of the officers. They will continue to "hold over" according to law, and the refusal of the Governor to sign appropriation bills because he holds certain views about the appointment of the officers who are to disburse the money, is wrong and in the nature of determined obstruction.

Thus, whether in regard to general legislation, or bills that relate particularly to the disposition of public money, unless the Governor has some "other reasons" for vetoing or neglecting to sign measures devised by the people's legislators for the public benefit, than his objections to the present mode of filling the offices of the Auditor and Treasurer, he occupies a very imprudent and anomalous position. To use his own pet phrase he stands as the embodiment of "nullification." His views of law are not judicial. His duty is to sign laws, not to interpret them, to execute, not to "nullify" them. The Legislature have a right to their opinion just as much as he has a right to his, and only a competent court can decide as to the validity of the laws which he disputes while they remain in force and unrepealed. We offer these remarks for his candid consideration.

THE NEW ELECTION BILL.

THE new election bill, which was introduced by Mr. West and has passed the House, is an excellent measure. It is designed to meet the provision of Section Nine of the Edmunds law in regard to the termination of the offices of the Utah Commissioners. The law only contemplated their retention until the Legislature of 1884 should meet, and provide for the filling of the offices to which they were authorized to appoint "proper persons" for the time being. An election law was passed at that session, but it was vetoed by the Governor, who made an elaborate and detailed message giving his reasons for not signing the bill.

The measure now on its passage is, in its main provisions, similar to the bill killed by the Governor in 1884. But the objections which he offered to that bill have been squarely met in this. That is to say, every point which he then made has been provided for, except one or two, the utter fallacy of which he must himself perceive, when he comes to carefully examine the measure and compare it with his remarks.

The only objection worth mentioning that has not been met is that in regard to the uniformity of ballots. The Governor thought that the ballots should be of the same size, color, etc.,