POLYGAMOUS MARRIAGES IN UTAH.

[House of Representatives, Washington, D. C., Saturday February 17.]

Mr. BLAIR, of Missouri. Mr. Speaker, the bill introduced by me upon the subject of polygamy in Utah is in the words following:

A bill to legalize polygamous marriages in the Territory of Utah, and to dismiss prosecutions in said Territory on account of such marriages.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all marriages heretofore solemnized in the Territory of Utah, under and in accordance with the rules and regulations of the Church of Christ of Latter-day Saints, and children born under such marriages, be, and the same are hereby legalized.

SEC. 2. That all prosecutions now pending in any of the courts of said Territory on account of such polygamous marriages be, and the same are hereby, dismissed; and the jurisdiction of said courts over such cases is hereby withdrawn; and it is hereby made the duty of such courts to dismiss all such prosecutions which have or which hereafter may be instituted, by indictment or otherwise, in their courts, respectively.

SEC. 3. That this act shall be in force from and after its passage.

The legalization of polygamous marriages in Utah, and the offspring of such marriages, as will be seen, is the object of the bill. The subject is not only a perplexing one to solve, in consonance with the laws of the land and the prejudices of our people, but it is one of vast importance, not only to the citizens of the United States, but to those whom it more directly affects. We must recognize the marriages among the Mormon people as legal and in harmony with the principles of republican government, validate them, or else leave that people to be prosecuted, fined, and imprisoned in the penitentiary of Utah. Not until recently have they been brought face to face with the danger that surrounds them, and to see the doom that awaits them. All of them now see that the very foundation of society in Utah is about to be broken up, and the most serious consequences visited upon that people. As this difficulty grows out of a misunderstanding as to what constitutes marriage, I propose to first treat of that institution.

Marriage is said by some to be a natural contract, or a contract in the state of nature; by others a civil contract, and by others an ecclesiastical contract. For myself, I consider some of those characteristics unmeaning and as creating a distinction without a difference. Under all those expressions or characteristics it is but one and the same contract. The distinction between marriage as an institution or relation and the contract essential to entering into that institution or relation is entirely lost sight of; as also the distinction between the contract of marriage and the celebration or solemnization of the contract. They take the power that simply regulates the contract and the relation for the contract itself. Hence, where it is regulated by the civil power, it is called a civil contract; by the ecclesiastical power, an ecclesiastical contract; and where neither of these exist, a contract under the law of nature.

Mr. Speaker, to suppose that marriage or the contract of marriage is the creature of either civil or ecclesiastical law is to suppose that civil and ecclesiastical governments antedate marriage. The institution of marriage was ordained by God; and the contract to enter into that institution or relation arose necessarily in a state of nature, before civil or ecclesiastical law existed. No civil or ecclesiastical authority has the power to abolish marriage or the contract of marriage. To concede such power would but be to defeat the purposes of God in the creation of man. All either can do is to regulate them. Where civil law is in the ascendancy, marriage and the contract of marriage are regulated by it; if the ecclesiastical, by it. If the civil power be supreme it may confer the right to regulate it upon the church, and *vice versa*.

Marriage being of divine origin, and the contract of marriage originating in a state of nature, we must go to the earliest and most ancient histories to learn what it is. Mr. Speaker, in a state of nature we find it monogamous and polygamous; under divine law we find it monogamous and polygamous. Upon almost every page of the old Bible we find polygamy written. Not only so, the Bible gives us marriage in a more detestable form by a hundred fold than in Utah. Utah has its polygamy; the Bible its polygamy and concubinage. By tradition, marriage in a state of nature has been polygamous, and continues so to this day; by the divine law we find it commencing with Lamech, thirty eight hundred and seventy-five years before Christ; and conceding, for the sake of the argument, that it ceased in the days of the Apostles, it covered a space of thirty-nine hundred and twenty-five years, by the express approval of God.

Now, Mr. Speaker, I am prepared to submit a proposition to Christians and students of moral philosophy. "If it be true that moral principles never change, and that marriage is based on moral principle; and it be true that polygamous marriages existed for thirty-nine hundred and twenty-five years, or a less period, by the approval of God, is polygamy morally right or wrong?" But polygamy traces itself further down than that. While we have no express account of it in the New Testament, it is equally true that we have no express prohibition of it therein. In this opinion I am not only sustained by many divines, but by the author of the New American Encyclopedia. He says in volume thirteen, page 465, in speaking of polygamy, "There are no positive injunctions in the Bible against the practice."

Mr. Speaker, between 1853 and 1865, only sixteen to nineteen years ago, a number of ministers of the gospel, sent as missionaries to India, and belonging to the Baptist, Congregational, Episcopal, Methodist, and Presbyterian churches, assembled in Calcutta in convention and declared that polygamous marriages were not contrary to divine law. (D. O. Allen on India, page 601.)

Now, then, in view of these facts, who can dogmatically affirm that polygamy is contrary to the law of God? And who, in view of these facts, can declare that marriage is the union of one man with only one woman in the holy estate of matrimony? I ignore from this discussion polygamy as it principally exists in Thibet.

Mr. Speaker, think not that my ramble through the Bible and sacred history is simply to show polygamy not contrary to the law of God; far from it. My object is to elucidate the subject of marriage, and to throw these facts before the minds of the members of this House that they may see that our law writers have not defined marriage at all; in other words that they have taken the "contract" of marriage for "marriage" itself, and have also confounded the power that regulates the contract with the contract itself. Civil and ecclesiastical law regulates man, but does not create him. Civil and ecclesiastical law regulates marriage and marriage contract, but creates neither. Marriage and the contract of marriage exist independent of either.

Sir, our law writers upon marriage lay down the law to be that the *lex loci contractus*—the law of the place where the contract is made—must determine the legality of the marriage; and this rule applies as well to nations where marriage is controled by the ecclesiastical and civil law as the law of nature.

By this just and reasonable rule this whole question might be settled, but for the exceptions made by some with reference to polygamy. Wheaton, however, in his Law of Nations, page 181, in treating of this subject makes no exceptions. After stating the law to be that the *lex loci contractus* must govern, he says:

"Infinite confusion and mischief would ensue with respect to legitimacy, succession, and other personal and propriety rights, if the validity of the marriage contract was not determined by the law of the place where it was made."

That the exception does not obtain as to polygamy in the United States, see also 11 Alabama, 826; 5 Hunph., (Tennessee,) 13; 10 Met., (Massachusetts,) 457; 23 Missouri, 561; 30 Missouri, 72. And, by note on page 183 of same author, it will be seen that Hon. Caleb Cushing, in giving his opinion as Attorney General of the United States, November 4, 1854, was not prepared to subscribe to the doctrine that polygamy is an exception to the general rule that the *lex loci contractus* must govern marriage. He says, "perhaps" it is.

It then clearly appearing, from sacred and divine history, that marrriage is the union of one man with one or more women in the holy estate of matrimony, and taking the law to be as laid down by Wheaton and the Alabama, Tennessee, and Missouri cases cited, and that the *lex loci contractus* must govern, whether it be the law of nature, civil or ecclesiastical, we are bound to hold polygamous marriages among the Mormons at the date of our treaty with Mexico, and since valid.

I now propose to notice the law of conquest, or acquisition, as governed by the law of nations. I lay down the law to be that when a whole nation is conqured, and its territory ceded to the conqueror, the laws of the conquered nation remain intact, as well as its whole machinery of government, until they are changed, modified or abolished by the conqueror; and where a part of its territory with the people thereon only are ceded, as in the case of Mexico to the United States, then that the laws and customs of the conquered Government at the date of the treaty control the rights, privileges, and immunities of the people, and their relations to each other, until the Government of the conqueror interposes its laws. (Wheaton, Law of nations, 54; 2 Merivale's English reports, 156; 4 Modern English Reports, 222; 1 Jacob and Walker's English Reports, 27; and note "A."

Then, sir, whether the laws of Mexico expressly recognized polygamy, or whether they failed to prohibit it at the date of the treaty, is immaterial. In either case, the law of nations governing conquest or acquisition makes the polygamous marriages of the Mormons at the date of the treaty with the United States legal and valid. To say that had the Mexican laws expressly recognized polygamy at the date of the treaty we would have been bound under the law of nations, to recognize the polygamous marriages of that people then existing, and then to say that we are not bound to recognize them because the laws of Mexico did not expressly recognize them, is, in view of the fact that their polygamous marriages were known almost over the world at the time, but denying justice upon the sheerest technicality, and of which any lawyer would be ashamed to avail himself in the courts of our country. Shall the legislative and judicial departments of our Government do that which an honorable, high-minded practitioner at the bar would scorn to do?

England, in dealing with her conquered provinces in India and elsewhere, does not only sustain me in the general principle of the law of nations, but as with reference to its special application to polygamy also. England at home is monogamous, while England abroad, as in India, is polygamous. Sir, conceding the law of nations to be as I have stated, then, outside of and uncontrolled by treaty stipulations this Government had the power and right one year after the date of the treaty with Mexico to have prohibited future polygamous marriages among the Mormons. It failed to do it; but acquiesced in them until July 1, 1862, (and no longer, as I will show,) and now is taking advantage of its own laches, of its own criminal neglect, to persecute or suffer that people to be persecuted and harassed.

Mr. Speaker, our neglect to prohibit polygamy among that people for thirteen years amounts to a confirmation of it under the law of nations. In the absence of civil law the law of nature and ecclesiastical controls. Suppose that we were to cede that Territory to England, and the Mormons should remain on it, and we, having recognized polygamy for thirteen years, would not the law of nations compel England to recognize existing marriages as legal and valid? I assert most positively that it would, and have the example of England with her conquered and ceded provinces and the decisions of her courts already cited to sustain me. Shall England be more regardful of the obligations imposed upon her by the law of nations and public policy than the United States, or shall England be more generous and indulgent to her polygamous citizens in India than the United States to her polygamous citizens in Utah?

Sir, I shall now proceed to another point in the line of my argument. The treaty to which I have referred, between the United States and Mexico, was signed at Guadalupe Hidalgo, February 2, 1848. By the provisions of that treaty the Mexicans upon the ceded territory had one year from its date to elect to continue citizens of Mexico; and in case of a failure to do so they then became citizens of the United States. As stated, the United States passed no law interfering with polygamy until July 1, 1862; and that was against bigamy simply, without defining it.

Now, then, I wish to call the attention of gentlemen upon this floor to two remarkable phenomena in the history and legal jurisprudence of our Government.

Sir, what law controlled marriages in Utah from the date of the treaty up to one year thereafter, the time when the people became citizens of the United States Government? Was it the law of Mexico or the United States, or was it the law of nature or ecclesiastical?

From one year after the date of the treaty up to July 1, 1862, did the civil law of the United States, the ecclesiastical, or the law of nature control marriages in Utah?

When these questions are answered it seems to me that the minds of gentlemen will not be free from doubt as to the propriety of the present policy pursued towards the Mormons.

From the date of the treaty to the expiration of one year thereafter they must be regarded as in a transition state, and without civil law. From one year after the date of the treaty to July 1, 1862, they must be regarded as without any law upon the subject of marriage other than their own ecclesiastical law.

If the ecclesiastical law of the Mormons did not control marriages from the date of the treaty to the expiration of one year thereafter, then monogamous marriages during that period were invalid; as also from the expiration of the one year next after the treaty up to July 1, 1862, and in fact to the present day, for none but ecclesiastical marriages have been celebrated among the Mormons.

If we have to trace monogamous marriages during those periods to the ecclesiastical law for validity, why not polygamous? If the monogamous are not valid, then we should validate them, and if we validate them, why not while we are at it validate the polygamous?

But, Mr. Speaker, if gentlemen, to escape ecclesiastical marriages, prefer the law of nature, then I respectfully refer them to the decisions of the supreme courts of Alabama, Tennessee, and Missouri, declaring marriages among the Indians, under the law of nature, valid. (11 Alabama, 826; 5 Humph., (Tennessee,) 13; 23 Missouri, 561; 30 Missouri, 72.)

That the marriages under the law of nature among the Indians and others have been and are polygamous there can be no question; and that the tribes to which the Indians belonged involved in the decisions of the supreme courts of Alabama, Tennessee, and Missouri, allowed marriages, in their character polygamous, is sustained by history and the facts developed in those cases.

The savages are a law unto themselves. The Mormons, as to marriage, have been a law unto themselves. If the marriages under the law of nature among the savages are regarded as legal and valid by our courts, why not treat the marriages under the law of nature among the Mormons with like impartiality? Whether, then, regarded as marriages under the law of nature, or the ecclesiastical or law of conquest, or the *lex loci contractus*, they must be held to be legal and valid.

But, sir, there is another point in connection with this subject which I shall now notice, and which, aside from every other consideration, in my opinion settles this whole matter forever.

In section one, article nine, of our treaty with Mexico, we expressly stipulated that the people upon the ceded territory should be "protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction." (United States Statutes-at-Large, page 930.)

The treaty says that the Mormons shall be secure in the free exercise of "their religion." I emphasize the expression "their religion;" and not only that, but that treaty says that they shall be protected in the free exercise thereof "without restriction."

The question for us to determine at this point is "what was the religion of the Mormons at the date of that treaty?" As applicable to religious denominations Webster defines religion to be "any system of faith and worship; as the religion of the Turks, of Hindoos, of Christians; true or false religion." The Mormon religion, at the time of the treaty, was simply their system of faith and worship. What was that system, and by whom shall it be proven? Is there any other way to prove it than by the system itself as published to the world, and by the statements and the declarations of its leading men?

Now, sir, let us take these, as is done with every other religious denomination, and what will be the result? Will it not as certainly lead to the establishment of polygamy as a part of the system of Mormon religion as that the Christian system will lead to faith in Christ? Christians accept Christ as their Prophet; what he said is a part of their religion. Mormons accept Joseph Smith as their prophet; what he said is a part of their religion. Does not the system of Mormon religion clearly show that polygamous marriages were revealed to Joseph Smith as their pro-

Concluded on page 57.