PROPOSED LEGISLATION FOR UTAH.

ARGUMENTS

AGAINST

THE NEW EDMUNDS BILL,

BEING SENATE BILL No. 10;

A BILL TO AMEND AN ACT ENTITLED "AN ACT TO AMEND SECTION FIFTY-THREE HUNDRED AND FIFTY-TWO OF THE REVISED STATUTES OF THE UNITED STATES IN REFERENCE TO BIGAMY AND FOR OTHER PURPOSES," APPROVED MARCH 22, 1882,

MADE BY

HON. GEORGE S. BOUTWELL,
HON. JEFF. CHANDLER,
HON. F. S. RICHARDS,
A. M. GIBSON, ESQ.,
HON. JOSEPH A. WEST, AND
HON. JOHN T. CAINE,

BEFORE THE

COMMITTEE ON THE JUDICIARY OF THE U. S. HOUSE OF REPRESENTATIVES,

FIRST SESSION, FORTY-NINTH CONGRESS.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1886.

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THE NEW EDMUNDS BILL.

WASHINGTON, D. C., *April* 26, 1886.

The committee met pursuant to adjournment.

The committee having under consideration Senate bill No. 10, Hon. Jeff Chandler, of this city, proceeded to address the committee in opposition to the adoption of the same.

ARGUMENT OF HON. JEFF CHANDLER.

Mr. CHANDLER. Mr. Chairman, for the purpose of a clear understanding of the controversy in its present state, it seems to me to be well to call the attention of the committee to the law as it now is. It can then be determined whether the law proposed is necessary to accomplish what the Government may reasonably claim the power to accomplish, or whether the law proposed is dictated more by a desire to accomplish political ends than to correct any abuses which may properly, legally, and conservatively be corrected by legislation.

Under the law as it now is, a polygamist, bigamist, or one who unlawfully cohabits has no rights whatever, except possibly the right to exist. He is a person tolerated—whose life is simply spared. Beyond that he cuts no figure so far as the interest which he may exert in either making laws or administering them. So it seems to me that the moral pollution with which we are shocked every time this subject is brought to our notice, and the terrible danger which threatens the Government with which we are constantly reminded, is expelled practically from this controversy by the law as it now is.

The inquiry was made the other day whether a person having five wives did not really cast six votes? The person having five wives casts no vote at all. No man who has more than one wife is permitted to vote in Utah. He is not permitted to hold any office, is not permitted to sit upon the jury, and is not taken into calculation at all in the operation of the Territory from its beginning to its end. The legislation as it now stands inflicts punishment more severe upon a polygamist and bigamist in Utah than in any other part of the United States. If, then, the law inflicts upon this class of persons its severest condemnation, if it has gone to the limit of constitutional toleration in punishing people who violate the law in this respect, and further legislation is called for it must be addressed to another class than those already suffering under the extremest penalties which is consistent with constitutional limitations.

It is not necessary for me to read the bill of 1882, or the law of 1882, for that is well understood, and it will not be controverted that under that law a polygamist, bigamist, or one who unlawfully cohabits is absolutely excluded from the rights and privileges and power of a citizen, as I have already mentioned.

Now, it was suggested the other day that this class was secluded by some method of retirement from our observation, so that the law could not discover them and tell you how many there were. That is not possible. The census of the population of Utah is taken under precisely the same system of vigilance which prevails in all parts of the Government of the United States, and the domestic relations of every person in the Territory of Utah are taken cognizance of precisely as those domestic relations are taken cognizance of elsewhere. The taking of that census is not within the control or subject to the influence of the people who live in that Territory. Beside that, the law of 1882 provides for a system of registration requiring that every person of the character I name shall be excluded from the right to vote. So that there are two methods prescribed by law for the enumeration and detection of the persons who occupy or sustain the condemned relations which are here inhibited. When that enumeration was made, it appears that there were from ten to twelve thousand of those called polygamists, bigamists, and those who unlawfully cohabit. Many of these are old people.

It was said here the other day that only two cases of conviction had been had of bigamy or polygamy since the Edmunds law. Whether those two cases arose out of marriages before the Edmunds law was enacted, or whether they were marriages that were not within the statute of limitations, but made before the Edmunds law was enacted, was not stated.

Mr. BASKIN. One was a case before the Edmunds law, so that there has only been one case since the Edmunds law went into effect.

Mr. CHANDLER. One case of polygamy has resulted in conviction in the Territory of Utah during the period of four years. If that solitary

case had occurred in Massachusetts or Vermont, the country would not have been shocked as it has been by its having occurred in the Territory of Utah. I am unable to distinguish the difference in the moral perfidy, from our own standpoint, of a case of bigamy in Vermont and one in Utah. There having been but one conviction of polygamy since 1882, it does not seem to me, the courts being in the control of the so-called Gentile element, restrained by no sense of friendship to the Mormons, they also having the executive officers of the courts and the constabulary of the Territory, that the danger from polygamy is so appalling as we might at first suppose. We ought not to become absolutely disheartened, but treat the subject with some degree of composure.

The CHAIRMAN. Did I understand the statement made by you to be that the conviction of which you speak was a conviction under the Edmunds bill?

Mr. BASKIN. One under the Edmunds bill—the Runnels case—and one before the Edmunds bill. This case I speak of was brought by the Mormons to test the constitutionality of the law.

Mr. CHANDLER. While I am on the subject of the different elements which exist in the Territory of Utah, I would call the attention of the committee briefly to the complaint that is here. Now every lawyer knows, and every gentleman who has given any thought to the subject knows, that our jurisprudence rests upon the assumption that he who is injured will be the first to complain. All the processes of redress are set in motion because of the resentment of some party upon whom an injury falls. If any man is suffering from improper or wrongful treatment the law adopts that great principle of nature, the sense of self-preservation in the individual, and allows the individual injured to exert that principle in setting in motion the methods of redress. The law also secures the right of petition to Congress if a class of people be oppressed. It contemplates that any one suffering from a grievance may come to Congress and lay it before that body and ask for redress. Or if the injury be such that a court will take notice of it, a court may act.

The Gentiles come here with a representative who tells you that he has lived in that Territory for twenty years, and during that time this so-called Mormon element held absolute political power within the Territory of Utah. They made 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 uses 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 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 these 150,000 and left with the minority.

What is it that they desire in this bill before this committee? The first section provides that in any proceeding and examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called and may be *compelled* to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be.

There are constitutional provisions against compelling the party himself to testify against himself. At the time that this constitutional provision was made a wife was not a competent witness against her husband under any circumstances, neither was the husband a competent witness against the wife. If it had been contemplated that the wife or husband would have been in the future brought into conflict with each other as witnesses, does any man doubt that the provision would not have been so extensive as to forbid the summoning of the wife against the husband?

We are told here that the social circle in the marriage relation and the family which is a product of it is the most sacred subject of our legislation; that it is the initial matter of interest that the law is devoted to the protection of; that the purity of the marriage relation is the uppermost thought of the law. That proposition is acceptable to everybody.

Those who place the highest estimate upon the sanctity of the marriage relation object to the passage of this bill. It is thought to be such as will impair and injure this relation to make the husband and wife hostile witnesses against each other. 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 that 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.

It is true this bill says that they shall not be required to disclose any confidential communications between each other, but what are confidential communications? Who is to determine what are confidential communications? The theory of this bill is that anything which will expose the relation of polygamy or bigamy is of such deep concern to the United States that it shall not be kept private or confidential, and therefore if the spirit of this bill be observed, anything which will tend to the conviction of either party of any of the crimes condemned in this law ought to be exacted of the husband or wife. That in law could not be considered confidential because that is just what the law is reaching for, and the law would be absurd to say that we make you competent witnesses for the purpose of proving a certain thing, and yet we so construe the law that the thing is confidential of which the law is in search, or that the evidence which establishes that fact is confidential. Therefore I say it is absurd to state any limitation of confidence will be recognized.

One of the first principles of just legislation is that it shall be equal;

that it shall be uniform. This bill does not propose to make the husband and wife witnesses against each other in all cases. It is not a statute changing the rule of evidence in that respect through the United States, nor is it a statute changing the rule of evidence in that respect in the Territory of Utah; but it is a statute changing the rule of evidence in respect to Mormon prosecutions and none others. It does not apply to Gentiles. It is not a rule of evidence that can be applied to ordinary cases in the Territory of Utah. It is not general in respect to its application to the United States at large, nor is it general in respect to its application to the Territory of Utah at large; but it is partial and special and oppressive, and directed at a class only of people in the Territory of Utah.

Judge Cooley, and writers on the Constitution, hold that laws ought to be equal; that that is the great test of their justice. It would probably not be held that this law would be unconstitutional because of its inequality, but this committee has to do not only with the constitutional objection, if there be one, but it has to do with the question whether this would be a wise law or not.

Mr. STEWART. Do you say that this law has no application to the Gentiles in the Territory of Utah?

Mr. CHANDLER. That is what I said.

Mr. STEWART. What is your authority for saying so? The provisions of this law are general, and would be in force over every part of the United States where the statutes prevail.

Mr. CHANDLER. Well, the provisions of the third section of the law as it stands are as follows:

> That if any male person, in a Territory or other place over which the United States has exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $300, or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court.

Yet the Supreme Court hold that that section only applies to Mormons and actual cases where the vice which is supposed to be condemned by that section have been brought before the court, and the party charged with it, being a Gentile, was released on habeas corpus, because it was said that the intent of Congress was to deal with the subject of polygamy, bigamy, and unlawful cohabitation among Mormons. Now that certainly is as general in its language as this bill. If the Edmunds law, which is general, does not apply to illicit relations between Gentiles, will it be held that this bill is dealing with illicit relations between Gentiles?

Mr. STEWART. Do you say that if a Presbyterian, or Episcopalian, or Methodist, or anybody else was prosecuted under this statute in any Territory of the United States, or in the District of Columbia, that the objection you raise here could be made to this statute? Is that your opinion as a lawyer?

Mr. CHANDLER. It would not be if it were not for the decision of the Supreme Court. I am bound by that.

Mr. STEWART. They have not given a construction of this statute.

Mr. CHANDLER. But they have given a construction to the law already in operation, and I am unable to distinguish between the general character of the law as it now is and the general character of this section as proposed. It is held that the law as it now is is confined to Mormon defendants, and it seems to condemn all who unlawfully cohabit; yet the Supreme Court say that it is evident it was the intention of Congress to limit it to Mormons.

Mr. STEWART. What case is that?

The CHAIRMAN. I suppose that the fact is, that if the Supreme Court said so it was mere *obiter dictum*. Has there been any Gentile arraigned under that section of the Edmunds bill upon whom it operates?

Mr. CHANDLER. The chief justice of the Territory released a man upon a writ of habeas corpus on that construction, and I understand the Supreme Court of the United States has accepted that construction of the statute as the correct one.

Mr. STEWART. That case was not before the Supreme Court of the United States, was it?

Mr. COLLINS. Was it in his petition of habeas corpus that he was not a Mormon?

Mr. CHANDLER. That was the ground upon which the case was decided.

Mr. STEWART. You have no record of that case here, no opinion of the chief justice, have you? But no matter. The phraseology of this sections seems to be so broad that I could not understand any possible ground for making that point.

Mr. CHANDLER. The record will show that the party was released on habeas corpus. It will show the grounds upon which he was released, and it was because when this law was construed it was held not to apply to ordinary cases of open and notorious adultery as distinguished from alleged unlawful cohabitation. The party who was the victim of this relation was the sister of the man's wife, and the relation was notorious and flagrant, but it was held, and I think, without being able to turn to it this moment, that the Supreme Court itself has said that this was not for the purpose of purifying the morals of the people generally, but was dealing with the subject of Mormon marriage relations only. I am satisfied the Supreme Court so held.

Mr. ROGERS. At that point I will call your attention to a class of decisions with which you are familiar, and which perhaps mislead you on that point. You are aware that in several States the statutes forbid cohabitation. Now, so far as my own reading has gone, open and notorious crimes of this kind are not sufficient to make out illegal cohabitation, but that, in order to make out illegal cohabitation under the statutes, it is essential that the parties shall have assumed the marriage relation, or hold themselves out as such. There is that distinction between a case of illegal cohabitation and the one you are trying to sustain.

Mr. CHANDLER. If that is the correct exposition of this statute, then it confirms my statement that the statute itself adopts the definition of cohabitation which you give, and limits its operations to Mormons, and that is precisely what I say.

Mr. STEWART. It limits its operation to polygamistic marriages. In other words, it is not aimed at the general crime of impurity, but bigamistic marriages by anybody. Is not that so?

Mr. ROGERS. That is the square issue that I suggested to you, and if you will allow me I will state it again. In the one case society is not in the slightest degree imposed upon by the open and notorious adultery of the parties. In the other case where Mr. Smith holds out a party that is not Mrs. Smith as Mrs. Smith, he does impose a fraud on the society where he lives, and the supreme court of my own State made that distinction in the determination of that question. In other words, although the cohabitation existed in both cases, the holding out to the community and to society the idea that the man was married to the woman made the difference, and yet the man living in open adul-

tery cannot be convicted under the statute in my State of illegal cohabitation. It makes no difference how notorious it may be, this illegal cohabitation does not exist; but if the marriage relation is held out, if the assumption of the false relation is presented to society, then the law takes hold and punishes the man, whether he belongs to the Mormon religion or not, for the crime of illegal cohabitation.

Mr. CHANDLER. 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 such. Now, here is another party who says I claim a certain relation, legal relation, with my partner in this 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 no worse 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 others? 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; you thereby declare that is not suitable for the many.

Mr. STEWART. Does not that law apply to all the territory over which the United States has jurisdiction?

Mr. CHANDLER. It does under your construction.

Mr. STEWART. You cannot do any more. You cannot regulate the laws of a State without an amendment to the Constitution.

Mr. CHANDLER. 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 committee 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. If this be a salutary rule make it general in the United States, and if it

is not a salutary rule of evidence why introduce it in Utah against the Mormons only? But it is contended here that this is such an aggravating and polluting system that in dealing with it the standards of justice should be changed, the rules of procedure changed, so that we may the more completely overthrow this evil than we would be able to do if we did not make the change. This proposed legislation assumes it to be the fact that in the opinion of Congress and this committee it is of greater benefit to the people of the United States to convict a man of polygamy or bigamy than it is to preserve the methods of procedure which have been sanctified during our entire history.

We have a maxim of law which furnishes possibly better than any other the criterion which should govern in the making of laws as well as in the administration of laws, and that is that it is better that ninety-nine guilty men escape than that one innocent man be convicted. How many times has that been solemnly declared by the highest judicial tribunals of this country? What does that maxim disclose? What does it signify? It signifies that ninety-nine parts of the administration of law consists of conservatism, in prudence, in humanity, while one part only consists of revenge and public passion. That there should be ninety-nine parts of caution, ninety-nine parts of stability in your jurisprudence, where there exists one part of excitement and uproar. I say that it is of much greater consequence to this country to preserve intact the great principles which have distinguished our jurisprudence, made it a blessing to the country and a pride to the people; that it is of infinitely greater consequence to preserve the law in its purity than it is to reach a conviction by relaxing the rules of safety.

This life is not dedicated to the conviction of men. That is not our only national ambition to degrade man and to increase the class of criminals in the United States. We have arrived at our high state of civilization by the preservation of the law as it is, and under its active elevating force we have grown to a great people. Are we justified in suspending the salutary principles which have done us so much service in the past to meet this particular exigency? I think not.

The next section provides that in any prosecution for bigamy, polygamy, or unlawful cohabitation under any statute of the United States, whether before a United States commissioner, justice, judge, or grand jury, or any court, an attachment for any witness may be issued by the court, judge, or commissioner, without a previous subpœna, compelling the immediate attendance of such witness when it shall appear to the commissioner, justice, judge, or court, as the case may be, that there is reasonable grounds to believe that such witness will not obey a subpœna.

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 not tolerate and contemplate that. It contemplates that if the judge thinks he has

good ground for belief—not that there is probable cause, not that he will hear evidence on the part of the party against whom this thing is aimed, who must be present and heard and show that there is nothing, in the suspicion—but if he has cause to believe he will not be present an attachment may be issued, though no subpœna may have been issued and the party put in jail and kept there ten days without a hearing. It may be the husband or the wife either. Now suppose a judge administered this law who felt the zeal requisite for a man who is appointed to go to the Territory of Utah and morally purify it, and he finds a prosecution about to be instituted against the husband, he believes as a matter of course that the wife will not appear. In that case he is authorized by this law, if it be valid, to issue an attachment for the woman and keep her in jail for ten days, and at the end of that time she may be discharged. The bill says:

Provided, That no person shall be held in custody under any attachment issued, as provided by this section, for a longer time than ten days; and the person attached may at any time secure his or her discharge from custody by executing a recognizance, &c.

According to that she may secure her release within the ten days by giving bail, but at the limit of ten days she must be discharged. But here is the power given an officer of the law to put a person in jail ten days without any evidence at all, without a hearing, and upon nothing except the belief of the judge that the party will not obey the subpœna. Is that justice? Does that prevail in any civilized communities in this world? Is it constitutional? Now, in the case with which you are all familiar, of Bradley *v.* Fisher, reported in 13 Wallace, the subject of contempts before courts is gone over very fully by the Supreme Court, and they hold that though a court might punish a person for contempt committed in the presence of the court without hearing the evidence, yet it is wise before punishing a person for contempt in the presence of the court even to give him a hearing; but in all cases of contempt out of the presence of the court there is no power to imprison without a hearing.

This bill does not contemplate a case of contempt, because there can be no contempt of the process of the court until issued; there can be no failure to observe a process until the process has an existence, and has been served. This statute undertakes to authorize a judge or an officer administering justice in Utah to take possession of the witness and incarcerate him without any process of law whatever. A person goes before him and says: Here this party will probably leave the Territory unless you issue this attachment, and that may be made good ground for him to have the belief which is spoken of. The statute does not fix any criterion which shall govern him in this matter, and, therefore, he is to judge what it means, and you are asked to give him power to take witnesses in a prosecution and confine them without a hearing as to the grounds of belief.

It is said that bigamy, polygamy, and unlawful cohabitation are offensive to our civilization, and because they are offensive to our civilization this extraordinary and unusual remedy ought to be permitted. Is not an act which takes a man's liberty without due process of law offensive to our civilization? Is our civilization offended in only one particular? Is it the crime of bigamy or polygamy alone at which our civilization can be offended? If you trample upon our methods of justice and abolish the principles of personal security which we have built up through centuries, and which we have inherited from our ancestors, it seems to me that our civilization is infinitely more offended than by

the crime of bigamy. Is bigamy more offensive than horse-stealing? Is bigamy more offensive than murder? Is it more offensive than treason? Yet there is no proposition to change the rule or method of procedure in any other offense than this single one. In the esteem of the law bigamy and polygamy are not ranked as the most depraved offenses of the code. The crime of murder in the opinion of civilization is the graver offense, and yet you do not propose to suspend the ordinary methods of procedure in regard to murder.

Mr. STEWART. Is not there this difference, Mr. Chandler, in all the crimes which you have mentioned, that they are universally recognized as crimes by all societies of men? Now, suppose you had an organized government where horse-stealing or any other of these crimes which you speak of in an offensive sense were recognized as an institution, would you not say that in such a case as that some unusual remedy might be applied? There is that difference between this crime of polygamy as it exists in this Territory and the ordinary crimes with which humane governments deal. There is an organized government, which, as it is said, upholds and recognizes this thing as a part of their social system, and they uphold and sustain it, and say they are going to stick to it. Now the direct question is when you come to deal with it whether you are justified in using extraordinary measures. That is the point you should argue.

Mr. CHANDLER. That is the one I am going to argue, and I thank the Governor for asking the question. We had a statute in Missouri—where we administer the law, I suppose, as correctly as any community in the world—which made it criminal for anybody to aid or abet or sympathize with the rebellion, and after the war, when we were in a terrible state of excitement, a great many arrests were made under that section which condemns sympathy with the rebellion, and after a protracted struggle before one of the best courts we ever had, differing politically from the persons charged, it was held that there was no power in the Government to punish a man who did not contribute directly to a specific act forbidden to be done, and that it was not competent to enter the dominion of private feeling or opinion or sympathy to punish; that the Constitution forbids such punishment.

That question assumes the existence of an organization to commit crime. If the organization be such as to make the members thereof conspirators, then they may be punished as such under the law as it now is. (See section 5440, Revised Statutes of the United States.) 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. The case supposed by Governor Stewart is purely imaginary. If one man steals a horse, his neighbor cannot be punished because he sympathized with the person who took the horse. It is intimated by the question that the Mormons are worse than other people who commit bigamy, because they believe they are right. 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 the 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 Ver-

mont 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 therefor 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 acts of the two are the same in law, but their beliefs are different. Under the theory of this bill the one who is honest in his belief must be punished more savagely because of his belief. Old, settled, and salutary rules of procedure are to be suspended in his case, while the evil-minded transgressor can invoke these old, settled, and salutary rules to secure to him a fair trial.

The idea that because a certain man belongs to a certain church, and a certain other man who steals horses also belongs to that church, you can punish the church is a cruel proposition to make, and has not in it the slightest legal support. Let me read an authority or two upon that point, inasmuch as it is now up. I will read from 54 Mo., 405, Howard *v.* Stewart:

> It will thus be perceived that mere knowledge and mere intent stand upon one and the same footing, and an examination of the adjudicated cases, both in England and in this country, show that the great current of authority flows in the above indicated direction, and that so long as a design to commit a misdemeanor remains (*in fieri*) unclothed with any of the attributes of legal tangibility, it will constitute no basis of defense to an action.

Another decision:

> If an explanation of the term "aiding and abetting," as used in our statute, or in the common-law definition of an accomplice, should be deemed necessary it is proper that the explanatory terms used should convey a correct idea of the meaning of the offense. The court probably did not mean to hold that the mere mental approval by a bystander of a murder committed in his presence would make such bystander a principal in the murder, yet the use of the disjunctive (or), between the various terms employed to describe the crime of an accomplice, necessarily leads to this interpretation of the instruction. The words "or approving of" have no place in legal phraseology to explain the meaning of the words "to aid and abet." The fact itself is incapable of proof. Mental operation, not accompanied with any action or language, are beyond the reach of testimony.

Now in the doctrine of conspiracy, so often appealed to (if that doctrine is applicable to this case then there is no need of this bill, because under section 5440, as you gentlemen all know, conspiracy to commit any offense against the United States is now punished), where two or more conspire to commit any offense against the United States they may be punished. If two or more persons conspire to commit bigamy or polygamy, if the law of conspiracy apply to such a transaction, which I claim does not and cannot, then the law is now ample, and two persons who conspire to do an act may be punished for that act if the act itself be condemned. But the degree of participation in the act itself must be shown in order to convict. Here is a case where a party stood by while a murder was being committed; he stood by and approved the crime of the defendant, but did no act to contribute to the murder, and therefore the court say that it is incompetent to punish him; that it is impossible under our law to punish him for approval of a murder. The Supreme Court in these very class of cases drew the line between the opinions which these men entertained and the extent to which punishment may go for an act done. In these cases it has held that they could be punished only for overt acts done.

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. Can two men be indicted jointly for one committing perjury? Not at all. The statutes punish subornation of perjury, but do not punish two persons for the crime of one. Why? Simply because the two cannot be jointly implicated in the moral perfidy of the false swearing by one. Take a case of bigamy where a man marries a women unlawfully; can any other man participate in that particular case of bigamy with him? Why the law is well established, that the advice of one man to another to commit a crime amounts to nothing unless the party advising actually aids him in it, and the crime must be such that he can aid him. Suppose I advised a man to steal a horse; you cannot tell the weight that the advice has; I was not present to aid him in stealing the horse. I simply advised him to steal the horse. I undertake to say that while all this condemnation of polygamy and bigamy has been attempted to be extended to this church, there is no legal principle that would carry the liability of polygamy and bigamy or unlawful cohabitation beyond the parties who participate in it.

The CHAIRMAN. Cannot a man be held accessory to the crime of suicide of another?

Mr. CHANDLER. Yes, if a statute so declares, but would you not hold that in order to be an accessory he would have to do some act to aid that suicide? That is the proposition I am discussing, that a man must do some act which the tribunals may see that the legal effect of is to contribute to the crime denounced. As long as you leave your contribution in mere suspicion or conjecture, it is not contribution in law, but one must have so contributed to the act and must have been so implicated in the act that what he did can be proved to contribute to it. 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.

But where is the authority for saying that the Mormons approve of bigamy, polygamy, and unlawful cohabitation? Has such proof been filed before this committee?

The CHAIRMAN. Before you pass from the point that you are now discussing I will ask you, does this new act, Senate bill No. 10, propose anything in reference to the competency of jurors who are implicated in the same offense?

Mr. CHANDLER. No, sir; but the law as it stands now does.

The CHAIRMAN. And you are arguing on the validity of the law as it now is with a view to its amendment, I suppose?

Mr. CHANDLER. No, sir; I am arguing against this bill to show that there is not a provision in it that does not violate settled and accepted doctrines of our law. The law as it now stands punishes bigamy, polygamy, and unlawful cohabitation, and that is all that can be done. I

am not complaining, if the committee please, of the construction which has been given to the law as it now stands by these decisions here referred to in Utah. There is no proposition before this committee to repeal the law. There is no proposition here to modify the law, and the only objection we raise is against the bill proposed; against legislation for the future. Any one who will read the memorial of the ladies of Utah and see the citations of adjudications there and not denied, the questions ruled upon by the court being set out in full, will see that if any law can be made efficient in reaching the result sought for, the law as it now stands does that. It goes to the limit of cruelty.

The CHAIRMAN. From whom is that memorial?

Mr. CHANDLER. It is from the ladies of Utah, a highly respectable class of ladies who live in Utah. They are Mormons. That is their only offense. They come here and complain of their own grievances, not of those of others, as the Gentiles do, who have no grievance of their own to bring with them; but these ladies come here setting up their wrongs, and I have not heard their statement of the case denied. If you were called upon to take their evidence you would accept it with as much faith and confidence as you would the evidence of anybody.

Suppose this were the Young Men's Christian Association complaining that you were proposing to pass a law to make their wives swear against them. They would be incensed at the idea of turning their wives against them; but it is entirely different with Mormons. It is highly proper to invade what sanctity there is left in the marriage relation in Utah, where it would not be under other circumstances. If you are prosecuting this legislation to preserve that sanctity, will you preserve it by disintegration of the relation itself?

The CHAIRMAN. Is that particular petition or memorial in pamphlet form, or in any form in which any gentleman here may be furnished with a copy?

Mr. CAINE. I will furnish the committee with copies.

Mr. STEWART. Mr. Chandler, you have used the term prejudice considerably in connection with this matter; now is not this the situation, is it not true that one of the facts recognized as existing, that the general sentiment of the country is against polygamy as practiced or supposed to be practiced in Utah, and is not that the root of all the controversy which is now existing between the General Government and the Mormons of Utah, and do you not suppose it would be true that if the Mormon women and Mormon men would publicly and universally stop the practice of polygamy, what you call prejudice would vanish? Is not that the sole issue?

Mr. CHANDLER. I do not know.

Mr. STEWART. I do not know myself. I simply asked that question.

Mr. CHANDLER. I recognize the fairness of that question, and I do not want to say that prejudice is entirely the controlling influence in this case, but there is not an intelligent American who does not know that prejudice to some extent is involved, and that prejudice has darkened the history of this country at every step. We used to hang people in Massachusetts as witches. We had an outrageous system which we tolerated, and we are ashamed of it.

Mr. COLLINS. And there were no lawyers on the bench?

Mr. CHANDLER. No. At least I take it for granted there were not or they would not have rendered such decisions. Now, what I say is, that polygamy is nothing more or less, from our own standpoint, than a crime. You cannot make any more out of it than that. Now, will

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 corrective process is naturally slow. You cannot at once sweep any state of things from the face of the earth. There have been established great guides of procedure which cannot be departed from to punish murder, larceny, or arson, or any other crime. We have adopted them 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 it 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. This remedy is ten-fold worse than the disease. I believe that men develop under the protection that our law gives them faster than they do when these protections are torn down and our prejudices aroused to stamp out certain practices. Civilization is of slow growth. It does not thrive under persecution. It grows like a flower grows out of favorable conditions, out of humane surroundings, under Christian and charitable treatment; our Constitution is the grandest code of principles ever known in the annals of our race, and I can conceive of no wrong that can appeal to us so strongly as to justify a committee of lawyers representing the Congress of the United States in suspending any one of the great principles of that Constitution. I protest against it being done.

This bill proposes to disfranchise the women of Utah. I never got very much excited in favor of woman suffrage, and I do not know that I ever shall. I think they have their own way now pretty generally. I never knew them to want anything that they did not get it, but still the law tolerates female suffrage, and all who are polygamists or bigamists are disfanchised. They are under the ban now. They are forbidden to appear in the elections at all. Those who do not practice polygamy are asked to be excluded from voting. Under the theory of our Government the people of a given locality know better what is to their interest than the people who live remote from them. To this end, we have established a system of local governments, which is the pride of our Constitution. Nothing compares in sanctity or in wisdom with the right of local self-government in the United States. The right of local self-government is the subject of political conflict and agitation throughout the world. The Territories of the United States have been permitted to govern themselves without exception for the last sixty years. There was an exceptional government established in the Territory of Florida at one time, but only to meet a temporary state of affairs. Since that time the people of the Territories have been allowed to govern themselves.

Mr. STEWART. All except you people here in Washington.

Mr. CHANDLER. Here the Government owns us body and soul. They own our parks and buildings; they own our streets, and we have but little to govern ourselves about.

The CHAIRMAN. Would not the reverse proposition, in some degree, be true—that you own the Government?

Mr. CHANDLER. Not at all. I think the most insignificant position a man can occupy in Washington is to be a simple citizen. If he is not clothed with power he may not be a man to be looked upon with contempt, but he is regarded with the most painful indifference. But they do not propose to establish such a government in Utah as we have here. Here you have a committee for the District of Columbia alone, and besides you own three-fourths of everything that is worth owning in the District. Then, again, a conference is constantly going on between the agencies you establish for government and yourselves. You do not give the Commissioners any power to legislate, as is asked for in Utah. 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 who have got sense enough to govern this community. That 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 of tyranny, I believe, and that is the standard definition, that taxation without representation is tyranny. You are asked here either to disfranchise all the Mormons and turn the government over to thirty thousand 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 in 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 for the subcommittee that we do not propose to put it in.

Mr. CHANDLER. Very well. Now the next proposition is to appoint a board of government for the Mormon Church. The President is authorized to appoint trustees, and the Senate to confirm them, and they are to organize and to report to the Secretary of the Interior. A theological bureau is to be established, which shall be under the enlightened administration of Secretary Lamar. He is to be clothed with sacerdotal robes, and to retreat into some obscure place when these theological questions arise and dispose of them. Now, can the Government of the United States, no matter how ambitious, do that? I say not. I do not suppose there can be much controversy about the relation which the church sustains to the General Government or to any government. That matter came up in Massachusetts, where the first rays of a higher

civilization were first seen, as it is supposed. Judge Hoar held that churches were private trusts.

The CHAIRMAN. I am authorized to say on behalf of the subcommittee 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 that Mormon Church and the amount of property it shall hold; that is a question which 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.

Mr. STEWART. The questions of the repeal of the charter of the church and the emigration society and so on are fair questions for discussion. All this is incorporated in the Senate bill.

Mr. CHANDLER. Everybody remembers, as quick as his attention is called to it, the great controversy in the Dartmouth College case and the distinction which the Supreme Court drew in that case between private and public charities. In that case the college was incorporated before the Government was formed, and the simple question arose, or the two questions were, first, was it a private charity, and, second, if it was a private charity, could the Government of the United States control its board of management in any degree?

The CHAIRMAN. Not whether the Government of the United States could control it, but the government of New Hampshire.

Mr. CHANDLER. Well, the State government. It is the same thing.

The CHAIRMAN. Under the prohibition of the Constitution to impair the obligation of the contract.

Mr. CHANDLER. Now, while there is no provision forbidding Congress to impair a contract, still the Supreme Court has held within the last two years that that is such a fixed principle of our law that it is equivalent to a constitutional provision, and that the Federal Government can no more impair a contract than a State can. So that I may discuss this or allude to it briefly as though the constitutional provision against impairing contracts applied as well with respect to the Government of the United States as to the State.

The CHAIRMAN. I think the committee would like to hear you upon that question and upon the powers that Congress has, and, if it has the power, the exercise of it in reference to any limitations upon this incorporated ecclesiastical institution.

Mr. STEWART. And if it has power to repeal its charter.

The CHAIRMAN. And in that connection whether the incorporation of this church institution makes it a private or public corporation?

Mr. CHANDLER. Yes, sir. Now, I have the brief here with these authorities set out in terms.

The CHAIRMAN. If you have a brief of the authorities and do not care to read them, and will furnish them to the stenographer we will see them.

Mr. CHANDLER. 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 at 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. Now, does that law that provides against the establishment of a 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 not 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, &c. Now, there is no doubt but a church is a private charity, and it has been decided in 14 Gray and several Massachusetts cases, by Judge Hoar and others, that a church is a private charity, and that 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 forms of worship, for the circle which conforms with the requirements of its ritual. It is a private charity which they establish for their own benefit, and therefore, being such, makes it a private charity. In three cases in Massachusetts the attorney-general undertook to intervene to correct what he alleged to be abuses of such charities. The supreme court dismissed the cases on the ground that the State had nothing to do with them; that they were simply private charities, 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.

This bill contemplates interfering in some measure with a private charity. In Missouri after the war was over the Saint Charles College was taken possession of by the State because of the war, and because of the fact that those who were implicated in the rebellion, those who were in the Confederate service, were curators of the college, and they declared a vacancy by statute for that reason and filled it, and the supreme court of Missouri, the members of which were not at all in sympathy with these people who were put out, but in perfect sympathy with the State government as it then was, held to the same doctrine as laid down in the Dartmouth College case and in the other cases, that it was too well established to be controverted that a private charity could not be governed by the State, and by act of legislature they could not put out the curators of the college and appoint others; that the legislature could not declare a vacancy and fill that vacancy when so declared; and the court further said that not only cannot legislative bodies of a State remove a curator, neither can a court unless it is judicially ascertained in a proceeding against a trustee that he has violated his trust. He may be removed by a judicial proceeding upon that plea and that plea alone; not by the legislature but by the beneficiaries only under the trust. He may be removed when it is shown to the court by the beneficiaries that he violated the terms of the trust and did not administer it according to its provisions.

And the courts have gone so far in the authorities cited here quite

profusely 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 that fact is of sufficient importance to authorize the court to remove him and appoint somebody else.

This church is by implication declared to be such a religious body as is protected by the Constitution. The Constitution does not permit the passage of any law in respect to the establishment of a religion. The Mormon Church, in contemplation of the Constitution, is a religious body. If it be a religious body, then it is entitled to have the same protection as any religious body, though its doctrines are not universally approved of. The declaration of the Constitution of the United States is a declaration of neutrality of the Federal Government in respect of religious opinion. It does not matter whether the man is a Jew or a Gentile, a Hindoo or a worshipper of the sun.

Suppose citizens of the United States buy a lot under the shade of this Capitol and dedicated it to the worship of the sun; has Congress any jurisdiction over it? I say not. In the controversy in the Senate over this bill it was claimed that if Mohammedans should undertake to establish a chapel in this country they could be forbidden. I deny it. Who is authorized to descend into the interior of this question and decide what is and what is not religion? You can punish overt acts that are forbidden, no matter whether the violator be a Methodist, a Baptist, or belong to the Hindoo Church, but when you have done that you have exhausted your power and you have no authority, whatever to determine the moral difference or the theological difference between a set of Hindoo opinions and a set of Catholic opinions.

The value of this constitutional provision is that it guarantees absolute freedom of opinion. That was what it was meant to chronicle. That was what was meant to be protected. I deny that you can condemn this church because you would not join it, and condemn the Hindoo Church because you would not join a Hindoo circle of worshipers, or that you can legislate against the worshipers of the sun because you hold in high derision their opinions.

Mr. STEWART. To illustrate my idea, suppose the Hindoos came here to some one of our Territories, and by an act of the Territorial legislature incorporated a Hindoo Church. Now, while it might be true that the Hindoos would have the right to exercise their own private belief, and to associate together for the worship of their deity, or whatever it might be, would it necessarily be true that Congress could not dissolve that organization as a corporate body? In other words, would that be an interference with the exercise of the personal right of every individual in this country to entertain and believe and worship anything and anybody he saw proper to do? In one case you deal with the individual, you give him perfect freedom, and in the other case you deal with an organization which derives its existence directly from the Territorial legislation. Now, do you say that a case of that sort, that Congress has no power to dissolve that body, and leave them to continue their methods of worship, but not under corporate form?

Mr. CHANDLER. That returns to the inquiry whether there is any legal sanctity in the charter. It will not be contended that if the church took title to a quarter section of land under the laws of the Territory, and in pursuance of a law which Congress empowered the legislature of that Territory to enact, which law would be equivalent in such case to Congress enacting it itself, that Congress could impair the title afterwards, unless Congress in granting the charter reserved to itself the power to modify or repeal the same. Congress cannot modify, repeal, or

change charters to private charities or to private property. Now, in the illustration which the governor makes is involved the principle which hangs over this case. We speak of a Hindoo Church. Would the law be different in regard to a Hindoo Church? Because such church is less popular than churches we esteem is there a different rule of law to be applied to it than if it were popular with us?

Mr. STEWART. I only put it in that way as an illustration. I do not suppose it makes any difference.

Mr. CHANDLER. There is in this case unconsciously a prejudice, the same as there would be in the case of a Hindoo establishment. As was said by a Senator, if the disciples of Mohammed undertake to erect a church in this country it would be visited by consequences that we would not quite be willing to visit upon a church that stood high in our favor.

The CHAIRMAN. I agree entirely with you upon that point irrespective of the character of the religious belief; but what I want to call your attention to is this: Suppose the Territorial government of Utah had passed an act incorporating this Church of Jesus Christ of Latter-Day Saints, and given them the privilege of holding $1,000,000 worth of property in the Territory, and subsequently the proposition was asked by some other denomination of religious people, could the law in favor of the Mormon Church be held to be valid when an equal privilege was denied to every other denomination?

Mr. CHANDLER. By the legislature of Utah?

The CHAIRMAN. Yes, by the legislature; and suppose such an inequality was established, would it be in the competency of Congress to destroy this and put all religions upon an equal footing; because you remember the principle of mortmain acts in England, as well as in this country, to divest religious bodies of their power to hold vast amounts of property, because of the tendency of establishing a particular religious opinion upon the part of society or the Government. In other words, while Congress could not forbid the free exercise of religious belief, it did pass an act in relation to the Mormon Church, and is not that *pro tanto* a law respecting an establishment of religion, where it has given to one denomination of religion an advantage in the matter of holding property over any other?

Mr. CAINE. There is no such exception.

The CHAIRMAN. I ask the question, not for the purpose of interrupting Mr. Chandler's argument, but to direct his attention to a subject upon which I have made up no positive opinion, and upon which I wish to be enlightened.

Mr. CHANDLER. If the legislature of a State should establish the Catholic religion, or endow it with certain exceptional privileges, and discriminate against other churches to the extent that those privileges were forbidden, if they could be judicially measured, over others, it might be argued that they would be void. Certainly they would not be void up to the line of equality which that church had with all others, and it would only be void in proportion as they were discriminating against others; but I do not know how that subject could be reached. Here is a legislative body that incorporates a church with certain privileges. That corporation has nothing to do with any other. Suppose it is the pioneer church of that Territory, suppose there were no other churches at the time of its ordination and of its establishment, would its privileges, which were legal when made, and which the legislature had the power to bestow, be affected because other churches came upon the same territory afterwards and secured less privileges? Who would have the

right to complain in such a case as that? Another church could not complain of the excessive privileges given to its first neighbor's church, and in which it had no property rights or theological interest. So that it does not seem to me there is any standard in law, as long as you tolerate all churches, to determine whether one was more favored at the time of its creation or its incorporation than the other was at the time of its incorporation at a period subsequent. The church had no right to corporate privileges at all until they were bestowed. Because other religious assemblies went into that Territory afterwards, and the legislature did not choose to extend similar privileges to those they had in the first instance granted, would that operate in law to repeal any privileges of the first? It seems to me not. One railroad company may be exempt from taxation and another not.

The religious corporation whose rights were defined at the time of its creation has a title to everything which grows out of those defined rights. That is the theory upon which all *ex post facto* laws are forbidden in criminal actions, and all laws impairing the obligation of contracts are forbidden. Whatever is lawful when done maintains its lawful character forever, and although a church subsequently endowed did not have the full measure of privileges that the first had, still that could not operate, it seems to me, to repeal the first charter or to modify it. It does not seem to me that it in any wise abridges the privileges of the first, which were lawful when conferred.

But to proceed. Here are laws already enacted which are addressed to the punishment of bigamy, polygamy, and unlawful cohabitation. These three aspects of one vice is the subject-matter of all this debate. There is no complaint of the Mormon people generally. I have heard nothing but eulogy of them in their relations as citizens. They were the pioneers in that Territory. They carved out of that mountainous, sterile region a field of enterprise, and laid the foundation of a community which has prospered wonderfully. They have been instrumental in promoting the improvements which the Government prosecuted across their Territory, and there is to-day, after twenty-five or more years of settlement in that region, nothing said against them as just and correct governors. Nothing is said against them as legislators; nothing in the world is charged up against their moral rectitude and their fairness, except these three subjects, which are really one subject.

Congress in dealing with that subject had recourse to its power to correct and punish crime. In treating of that subject it has gone to a length which no State has gone, and to which the Federal Government has not gone in respect to any crime. It is now proposed, notwithstanding the penalties of bigamy are severer in Utah than in Vermont, notwithstanding they are severer there than anywhere else in civilized countries, to add to them. It is proposed that, notwithstanding all the methods of discovery and punishment of crime, and the rules of redress which are acceptable elsewhere are open to the Government there, certain other additional and extraordinary remedies and methods shall be employed.

These methods, if employed, endanger the very condition of things which the law pretends to hold in high esteem—the sanctity and purity of the marriage relation, and the personal security of the citizen. It for the first time proposes to bring the husband and wife into hostile litigation against each other. Not the unlawful husband and wife, because there is no objection to that under the law as it now is, but the proposition is that the lawful husband and wife shall be arraigned against each other in the courts. It was said by the gentleman on the

other side that you could not punish any more cases under this law than under the other, and that is why he recommended the extraordinary remedy of disfranchisement. Now, if you cannot punish any more cases what good will be promoted by this change. It will visit upon these people an unusual and especially harsh method of procedure. He stated that the practice of cohabitation was secret and difficult of discovery, and therefore he did not know to what extent it prevailed. If we do not know to what extent it prevails, how are we justified in saying it does prevail to the extent of half the inhabitants of the Territory. There is no evidence before this committee that the law lacks in efficiency, or there is any lack of zeal in punishing bigamy, polygamy, and unlawful cohabitation as the law now stands, and that the laws as they now are are not perfectly adequate to them.

It is said, however, that they will not obey the law, and because they will not promise to obey the law some other law should be enacted; that because they will not, as it is said, promise to obey the law the whole community shall be punished illegally. I want to call your attention just a moment to the law complained of. In regard to letters and declarations of parties who were asked if they would obey the law some made no reply and some declared that they would be ostracised if they did. What is the law of which they complain? It is not that they are punished for bigamy or polygamy, because not in a single case was any statement made wherein polygamy or bigamy was punished, but it was in cases of unlawful cohabitation. It was in these cases and in the law as construed in these cases that these parties refused to say that they would support the law or remained silent when asked. What is the objection to the construction of the present law? It is this: A man is held guilty of cohabitation with a second wife; though he has not visited her for a period of five years, he is adjudged guilty of unlawful cohabitation and punished, though he has not cohabited. The Supreme Court of the United States held that it was not necessary that these illicit, offensive relations be paraded constantly before the public by cohabitation; that the party was guilty of cohabitation in contemplation of that statute though he had not met the person with whom he was adjudged to be guilty for five years.

Mr. STEWART. Or he had not been living with her.

Mr. CHANDLER. Yes, sir; if he had not been under the same roof with her and she not lived under the same roof with him. They held that unlawful cohabitation was proved if he supported her. Justice Miller, dissenting from that opinion, says he knows of no instance where cohabitation has been construed to mean what the magistrate of the Utah court construed it to mean. The memorial of the Mormon ladies sets out the case very clearly, showing to this committee that if a person had entered into that relation years before the Edmunds law was enacted, and there was no other proof before the court than that he entered into that relation, then he is presumed to be guilty of unlawful cohabitation, notwithstanding he shows that he has not visited the person for five years; that any support of his offspring and of his so-called second wife is sufficient evidence to authorize the conviction of guilt. I say that is against the judgment of the civilized world, and that construction is what they complain of.

The CHAIRMAN. Do you say that was decided in the opinion of the Supreme Court?

Mr. CHANDLER. Yes, sir. We are not asking now that the law as construed be repealed; we say, as the law now is it is sufficiently harsh for anybody, no matter how bitterly he feels against the Mormons.

Mr. STEWART. Were not these relationships, these trials of cases, for the most part those that were established after the passage of the law of 1862 prohibiting polygamy?

Mr. CHANDLER. I suppose so.

Mr. STEWART. Then they went into it with their eyes open. They knew it was against the law.

Mr. CHANDLER. I am not complaining of the punishment of it under a proper construction of the law. I want the committee to keep in mind that we are not asking that the law be repealed. The statute of limitations cuts off the crime of polygamy or bigamy if it occurred so many years ago; but they say that because they entered into relations of polygamy or bigamy at a period which would protect them under the statute of limitations, yet, if they supported their offspring since the statute of limitations, or their wives, they are guilty of unlawful cohabitation; not polygamy or bigamy.

Mr. STEWART. You do not mean to say that simply supporting an offspring of one of these plural wives would be sufficient ground to find the party guilty of unlawful cohabitation, do you?

Mr. CHANDLER. I undertake to say that the supreme court of the Territory of Utah, in punishing these people, has held that it is not necessary to show that they lived under the same roof, slept in the same bed, or visited each other. But if they supported wives and offsprings with whom they entered into that relation, they are not punished for bigamy or polygamy, because those crimes are barred by the statute of limitation, yet they are punished for unlawful cohabitation.

Mr. STEWART. That might be evidence which might go to the jury as a tendency to show the relation.

Mr. EDEN. Are they not allowed to rebut?

Mr. BASKIN. They held that although they had not lived together, his holding her out to the public and treating her as his wife, showed the connection. It was holding out to the public the relation.

The CHAIRMAN. Do I understand you to say, Mr. Chandler, that is the opinion of the supreme court of Utah, which you have just alluded to?

Mr. CHANDLER. Yes; and as I understand, it has been affirmed here, to the effect that if they had not seen each other for three years, yet the holding out of the woman as his wife was sufficient; if he supported her it was sufficient to convict of unlawful cohabitation.

The CHAIRMAN. If I understand your interpretation it is this: That while they could not be committed for polygamy or bigamy because the polygamistic or bigamistic connection was formed more than five years before the prosecution was instituted, yet the very continuance of this bigamistic or polygamistic relation was, in the opinion of the court, evidence of unlawful cohabitation.

Mr. CHANDLER. All the evidence necessary to convict was that since that period the father had supported the offsprings of his unlawful marriage or the wife to whom he was unlawfully married.

The CHAIRMAN. The seventh section of the Edmunds act provides that the issue of bigamistic and polygamistic marriages are hereby legitimized.

Mr. CHANDLER. Yes.

Mr. CAINE. Up to a certain time.

Mr. CHANDLER. Then why the father should not support his legitimate children without conviction for unlawful cohabitation I do not know.

Mr. EDEN. I do not understand that the decision referred to has been affirmed by the Supreme Court.

Mr. CHANDLER. That construction of the supreme court of Utah has been affirmed in the Cannon case in the Supreme Court of the United States.

The CHAIRMAN. It should be reported in 116.

Mr. CHANDLER. And Judge Miller dissents on the ground that he never heard of an unlawful cohabitation which was purely ideal, as this is. There must be something more than mere fancy, and therefore he preferred to deal with facts rather than fancies, which establishes, in his opinion, that this was constructive cohabitation only; that was what these men complain of; and there is not a State in the Union that I am able to mention which does not provide that the father shall support his illegitimate child. Bastardy is punished in nearly every State in the Union, and one of the penal consequences placed upon the father for having such a child is that he shall support it, so that the mother may not become a charge on the public; but if that is done in Utah, it creates an ideal case of unlawful cohabitation.

Mr. STEWART. That is not the law in my country. He is to make a contribution during the infancy of the child, but that is simply by way of penalty, and it is not very heavy. After the child passes its infancy, perhaps after the first year, there is no law to compel further contribution.

Mr. CHANDLER. I went over some ten or twelve States, and I found that the law provided, under such circumstances, the father was to support the victimized parties.

Mr. STEWART. That is right.

Mr. CHANDLER. It is right everywhere but in Utah, and there it is evidence sufficient to punish a man for unlawful cohabitation. If he does this humane act it is sufficient evidence to convict him for unlawful cohabitation. 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. 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. 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.

I have rambled through this subject. The committee has called my attention to specific things, and I have left other matters untouched which I intended to speak of, and have not gone through the subject coherently.

The CHAIRMAN. I do not want you to feel that the interruptions should have the effect of curtailing your argument in any degree. The purpose really has been to call your attention to points which members of the committee felt were necessary in their own opinions to be discussed.

Mr. CHANDLER. Certainly; I understand it in that way. There is a section in the Edmunds bill that authorizes the inspection of marriage

certificates given by any officer, clergyman, priest, or person performing civil or ecclesiastical functions, whether lawful or not, in any place in the Territory. That of course includes any private residence or other place where these certificates may be if any of these people feel curious enough to make the search.

Mr. STEWART. What section is that?

Mr. CHANDLER. The fifth section. It says:

> And it shall be lawful for any United States commissioner, justice, judge, or court before whom any proceeding shall be pending in which such certificate, record, or entry may be material, by proper warrant to cause such certificate, record, or entry, and the book, document, or paper containing the same to be taken and brought before him or it, for the purpose of such proceeding.

The first part of the section is as follows:

> That every certificate, record, and entry of any kind concerning any ceremony of marriage, or in the nature of a marriage ceremony of any kind—

Now, what the ceremony can be in the nature of a marriage ceremony that is not a marriage ceremony I do not know. That is a peculiar kind of marriage which only exists in Utah—

> made or kept by any officer, priest, or person performing civil or ecclesiastical functions, whether lawful or not, in any Territory of the United States, and any record thereof in any office or place shall be subject to inspection at all reasonable times by any judge, magistrate, or officer of justice appointed under the authority of the United States, and shall on request be produced and shown to such judge, magistrate, or officer by any person in whose possession or control the same may be.

The CHAIRMAN. Before you pass from that point, will you state whether you make any objection to that section or an equivalent provision for having a public record and evidence of the ceremony of marriage?

Mr. CHANDLER. I do not know that there is any particular objection to it. The law of marriage has been treated in Utah precisely as it has been treated in all catholic countries. It was never made the subject of legal record in the common-law offices for many years.

The CHAIRMAN. In catholic countries the marriage must be a sacrament.

Mr. CHANDLER. Yes. In Utah marriage is a sacrament of the church. There has been no law, I understand, passed upon the subject. I suppose Congress can take charge of this subject of marriage. It has the power to do it, and the power to abolish the Territorial government, and leave these people without any government, like wanderers. But is it wise to establish a different rule for this Territory in that respect? If it is necessary to have an advertisement of the marriage, I suppose there is no constitutional difficulty in the way of doing it. This fifth section provides that private records of the family may be inspected at any time to find a certificate, without any warrant, without any probable cause being shown. The officer is given a visitorial power over the family. He may go into the family circle any time he feels in the humor, whether any case be pending or not, and demand to see their private papers for the purpose of making evidence to establish this unlawful relation, and to secure the conviction of a member of the family. In the case of Boyd *v.* The United States, recently decided, reported in 116 U. S., it was held 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 seizures and searches.

The CHAIRMAN. What case is that?

Mr. GIBSON. It is a case just reported. This opinion was only recently handed down by the Supreme Court.

Mr. CHANDLER. I say that section of the bill is condemned by that decision. I now call your attention to the proposition to confiscate this church property and forfeit its charter. Has it ever happened in this country that the Government saw fit to appropriate the property of a private corporation? It may provide laws or methods of procedure for the forfeiture of a charter of a corporation, if it be such a corporation as the Government has a right to control, and if it has transgressed the law of the State. In such case a judicial inquiry would be necessary to show that there had been such acts as in law work a forfeiture of the charter, and that it was such a charter as the Government could forfeit. But is there any decision that the Government can take the property after the forfeiture? I know of none. I can find none. While they may visit upon a corporation a forfeiture of its charter under certain circumstances, provided the corporation be of such a character that the Government has the right to direct its course of action, but it cannot take away the property from the stockholders and appropriate it to itself.

It is provided in one section of this bill that proceedings be instituted to escheat this property to the Government.

Section 13 of this bill cannot be maintained if passed, for the reason that it is not competent for Congress if a corporation has taken property in excess of the amount under its charter it may hold to forfeit that property to the United States. This bill provides that the Attorney-General shall institute proceedings to forfeit and escheat to the United States property of corporations held in violation of section 1890 of the Revised Statutes.

This contemplates in effect that all of said property which shall be held in excess of $50,000 shall be confiscated by the United States Government.

The doctrine of escheat has nothing to do with the matter, and the word "escheat" is used in the bill without an apparent knowledge of its meaning. 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 extinguished 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.)

If the church or any other corporation has assumed to take land or property in excess of the amount which the law permits them to take, and in violation of the law the conveyance of such property to such corporation under such circumstances is simply void and is no conveyance. The utmost that the Government can do in such case is to repeal the charter of the corporation which has thus offended, but it cannot take this property. Even at common law, where the Government takes land by escheat or by forfeiture, it takes it with the title which the party had against whom the forfeiture was enforced. It is taken in the plight and extent by which he held it, and the estate of a remainder man is not destroyed or divested by the forfeiture of the particular estate.

But the law limiting the power of the church to hold over $50,000 worth of real estate was passed ten years after the charter was granted, in which there was no such limitation. If the charter of the church be a contract between the church and the Government, then Congress, reserving no power to repeal or modify it, can not change its capacity to hold property. If anything is settled in this country it is that the Government can not change the constitution of a private charity, unless in the act of incorporation, or in the general law existing at the time of the incorporation, the power to change it was expressly reserved to the Government, which is not the case here. The limitation, therefore, to enforce which provision is here made, is void and can not be enforced.

Mr. STEWART. I will call your attention to the first section of this bill, which provides that the wife is a competent witness in this case. The wife in many cases is admitted to testify against her husband, such as in acts of violence, or outrage upon her rights. For instance, if the husband commits an assault and battery upon her I suppose she is permitted to testify and ought to testify. Then, does not that question turn upon this point, if you concede that a second marriage is an outrage on the rights of the wife, as adultery is an outrage on the legal wife, is there any intrinsic objection to her testifying, except the sacredness of the marriage tie? Women do not have many rights under the common law, any way, and is there any intrinsic objection to having the woman put on the stand to testify against the husband who is guilty of an outrage on the rights of the wife? If there is no violation of any right, it is of course conceded that it would infringe the principle you uphold if you permitted her to testify, but it seems to me when you concede—if you do concede—that a second marriage is a violation of a sacred right of hers, that you do not violate any sound principle when you put her on the stand and compel her to stand up and testify not only in her own interest, but, in the view of the crime, in the public interest. If it is an outrage against good morals, as well as against the wife, why should you not compel her to testify—not so much in her own interest, as in the case of an act done in violation of the public right and in the public interest? Now, what do you say to that?

Mr. CHANDLER. I have simply to say to that, in the first place, the whole question, as I appreciate it, rests upon the assumption that such an act of the husband is a personal injury to or a violation of the rights of the wife.

Mr. STEWART. Is that denied by anybody, except the Mormons?

Mr. CHANDLER. Well, I do not know; I have not consulted many of them on the subject, and really could not say what they think about it.

The CHAIRMAN. I think the cases in which he is brought in to do it is where, for her own protection, she may swear the peace against her husband.

Mr. GIBSON. They are permitted to do it, and in Utah there is a law which permits it in cases of assaults, when they are put upon the stand and compelled to testify.

Mr. STEWART. Then is it not simply a question of sound public policy, if, under all circumstances, you compel a woman to testify? In other words, is it necessarily any outrage upon her? Is it such an infringement of principle, or of a departure from the well settled rules, if you compelled a woman to testify? I am speaking about it now as a sort of abstract principle, because of course that is the argument upon which this provision must rest. If it rests at all, it must be on the theory that in the first place the personal right of the first wife, or the wife, has been outraged by the second marriage; and secondly, upon the

principle that the institution to be suppressed requires that every possible research should be made to all means of evidence, in order to secure convictions, as it is, I understand, difficult to make this proof. So it becomes simply a question of public policy under all circumstances as to what is best to be done.

Mr. CHANDLER. I agree that there is no constitutional impediment in the way of making the wife testify against the husband, and it may be that the evil which is sought to be corrected is sufficiently grave to depart from the ordinary methods of investigation in order to expose and to punish the offense, but I do not think so. That must be the assumption. Now, then, would it be proper, in order to punish a man for polygamy, as much as it is abhorred by parties who never had anything to do with it, to compel a party himself to furnish evidence to establish that? We all say no. We all say that if you undertake to make the party charged furnish the evidence to prove him guilty of the crime it would not be right.

Mr. STEWART. We all agree to that.

Mr. CHANDLER. Now, you have traced him to a relation with a person who does not esteem this conduct of his as an injury to her. She enters the relation with him voluntarily.

Mr. STEWART. She is the first wife.

Mr. CHANDLER. Yes, she is the first wife, and becomes so under a system that contemplates others and agrees to it. Now, no personal violence is involved, which has been the solitary exception in the law heretofore of admitting her testimony. Why has the wife not been compelled to testify when the assault is physical? Will anybody tell me why the relation of husband and wife is so sacred that where she is beaten and bruised she is not compelled to testify to it?

Mr. STEWART. I think that rests upon the common-law principle that the personalities of the parties are swallowed up in the man.

Mr. CHANDLER. That is the theory of the common law; that there was a unity in interest, a unity in affection between the husband and wife; and so sacred was that unity from invasion and discord that the law, up to a certain period, would not impair that unity by permitting either party to come into a tribunal against the other and endanger it. Now, the exception to that rule was in the case where the wife was beaten and bruised she might be called in to testify where no other evidence was accessible. The limitation in the first instance was where there was no other evidence secured. That is exceptional. Suppose a man commits murder, why not make the wife come in and tell his confession to her that he has committed the murder? Is there any public reason or public policy that would shelter a man from the testimony of the wife in a case of murder and not in a case of bigamy?

Mr. STEWART. I think I can state the reason.

Mr. CHANDLER. I should be glad to hear it.

Mr. STEWART. Your statement of the case shows that this original idea is founded on the notion of unity. Now, when you admit the plurality it is different.

Mr. CHANDLER. Yes, but the committee cannot argue from two standpoints. The committee cannot argue from the standpoint of unity and then shrink away from it and argue the case from the standpoint of plural marriages. I am talking to the point of this unity between man and wife.

Mr. STEWART. Unity on the one side and plurality on the other. We are dealing with plurality.

Mr. CHANDLER. You are dealing with the punishment of bigamy. It is no worse in one State than in another. If a man marries two wives

it is the same no matter where done. In the District of Columbia you never thought it wise to establish this rule. It is simply a crime here as in Utah. Now, when I ask you to say whether you regard it as a wise policy to make the wife a witness against the husband in order to charge the husband with murder, you must answer that question affirmatively, or else I must answer the question negatively in bigamy cases, because we must look at an offense in the grade that the law gives it. The law has always classed murder as more debased and depraved than bigamy, polygamy, or unlawful marriage. Why step down to a grade of crime and pick out a subordinate crime, and make the wife a witness in that subordinate crime, when you will not go to the full length of extending her testimony to the higher one? Why does the human mind shrink away from one and not shrink away from the other? The more hideous and ghastly the crime the greater the excuse and necessity for making her an eligible witness. Now, this proposed law does not do any such thing as that. This bill contents itself with one particular violation of law, and in that particular case makes her a witness in the other cases, and I say when you do that, you express a distrust of the very doctrine which you propose to establish in the particular case. You have got to make it universal in regard to crimes committed by her husband, or else you express when you make it exceptional your distrust of the principle in those cases to which you do not apply it.

I believe polygamy is punished in Utah as in Vermont, and if you would not bring the wife into court in Vermont in an attitude of hostility to her husband, I cannot see why you should do it in Utah, and if you would not bring the wife into court as a witness in a case of murder, where human life is taken away, will you depart from the ordinary methods and usages to introduce her in a case of bigamy?

The injury to her rights is purely constructive, and just as this cohabitation we speak of is constructive. There is no physical injury done her, nor is her marriage title affected, and so far as she can assent to this matter, she does assent, so that the reason in this case for making the wife a witness against the husband because of some special injury falling upon the wife, only exists constructively. It does not exist in reality. It exists because we fancy it an injury to her, while she does not fancy it an injury to her, and we imagine the injury, and make it the foundation of introducing her. She is introduced because, in our opinion, an injury is inflicted upon her, and not because any violence has fallen on her person; if any legal invasion of her rights has taken place, it is only ideal. I say that if it be not a sound principle to introduce the wife in all criminal prosecutions against the husband, it is not wise to make it an exception in this case.

At the request of the committee, Mr. Chandler submitted the following brief to accompany his argument:

BRIEF.

In order to deal intelligently and justly with what is known as the Mormon controversy, it is necessary to know how that controversy at present stands.

There is no proposition pending before this committee to repeal or in any wise modify the laws applicable to these subjects as they now stand.

There is no grievance upon the part of the Gentile population against

the Mormons pending before this committee to be looked into or judged of at this time.

There are 180,000 people in the Territory of Utah, who may be divided into three classes:

(1) The Mormons, comprising 150,000 of said 180,000.

(2) 30,000 Gentiles, so called.

The third class is made by subdividing the Mormon population into bigamists, polygamists, and those who are said to unlawfully cohabit. Of this class, there is not to exceed 12,000 in the Territory.

The law as it now stands punishes polygamy and bigamy with greater severity than the same crimes are punished elsewhere in the United States, and the crime of unlawful cohabitation, which only has an existence in the criminal laws against the Mormons, creates a new offense and punishes it with harsher penalties than is adultery punished in any other part of the Union.

No polygamist, bigamist, or person who unlawfully cohabits, can have, in the Territory of Utah, or hold any public office in the said Territory, nor is such person eligible as a grand or petit juror.

No legislation is proposed by which the capacity of the courts in Utah to try persons accused of said offense are to be enlarged. So that under the proposed legislation no more cases can be tried than can now be disposed of by said courts.

In the light of this state of the legislation, it becomes necessary, first, to consider the nature of the bill pending before this committee, known as the Edmunds bill, which has passed the Senate and is now here for action.

The bill proposes to punish the innocent for the guilty.

When the Constitution was formed the wife could not be a witness.

The only practical subject before this committee at this time is the consideration of Senate bill No. 10, introduced by Senator Edmunds and passed through the Senate.

The first provision changes the rule of evidence as it has heretofore existed in all civilized countries, and authorizes the court to compel either husband or wife to testify against either when arrested and charged with bigamy, polygamy, or unlawful cohabitation. This provision is exceptional in all respects. It is limited to a particular class of people charged with particular offenses, and is not regarded by the author of it as so well founded in justice and propriety as to be made general.

Section 2 of the bill authorizes, in any *prosecution* for bigamy, polygamy, or unlawful cohabitation, any commissioner, justice, judge, grand juror, or any court to issue an *attachment* for any witness without previous subpœna, compelling immediate attendance of such witness when it shall appear that there is *reasonable ground* to believe that such witness will unlawfully fail to obey a subpœna. This section does not require that there shall be probable cause, in the language of the Constitution, to believe that the party will avoid a subpœna, nor does it require that any evidence shall be necessary to be considered prior to such arrest. If the tribunal ordering the arrest professes to have reasonable ground to believe the witness will fail to obey the subpœna, that is sufficient. This applies to innocent people only. If guilty they cannot be made to testify.

We submit that this section is without a precedent in the jurisprudence of this country, and is special, and aimed at a particular class of people accused of particular offenses; that it is *partial* in its very terms, and *oppressive* in its very nature. No warrant is authorized to

be issued for the arrest of any person by the Constitution of the United States except upon probable cause. This provision is not dealing with the subject of contempts of court, because there can be no *contempt* of court in disobeying a process until the process shall have issued. This section permits the court to use its power in disregard of the *usual forms of law* and in an arbitrary and cruel manner, and permits a party so attached to be imprisoned, though there may be no evidence of an inculpatory character against the party charged.

Wharton's Pleadings and Practice, section 963, lays down this doctrine:

> Inferior courts, justices, and commissioners are limited in the issue of summary commitments to contempts committed in their presence unless ampler powers be given them by the legislature. Commissioners in the circuit courts have not even a power to commit a non-answering witness for contempt. The process must be asked for from the circuit judge. Nor can Congress give them the power. (Doll. *ex parte*, 27 Leg. Int., 20; S. C., 11 Internal Revenue Record, 36.)

Section 3 increases the period of limitation two years over what it now is. Section 4 is ambiguous and needless, and transfers to Congress the authority over subjects that have heretofore been left exclusively to the territorial legislature; is a violation of the principle of local self-government, which is among the most sacred of the principles of our civilization; provides for every ceremony of marriage, or in the nature of a marriage ceremony. No ceremony can be in the nature of a marriage ceremony that is not a marriage ceremony. That provision which deals with the ceremony in the nature of a marriage ceremony, after providing for a marriage ceremony, were it not in this bill, might very fairly be criticised as idiotic.

Section 5 authorizes any judge, or magistrate, or officer, or justice, appointed under the authority of the United States, to inspect any marriage certificate, whether there is any legal controversy pending involving such certificate or not, whenever such functionary is in the humor. It authorizes a search for and a seizure of a marriage certificate in the possession of the parties married, at the pleasure of an officer of the United States, without any warrant first being issued therefor, although said certificate is not relevant to any inquiry pending. In the case of Boyd against the United States, lately decided by the Supreme Court of the United States, it was declared:

> It does not require actual entering upon premises, and search for and seizure of papers, to constitute unwarrantable search and seizure within the meaning of the fourth amendment. A compulsory production of a party's private books and papers to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is within the spirit and meaning of the amendment. The seizure or compulsory production of a man's papers to be used in evidence against him is equivalent to compelling him to be a witness against himself in the prosecution for a crime, penalty or forfeiture, is equally within the prohibition of the fourth amendment.

This section is not limited to official papers or certificates, but includes every certificate, whether lawful or not, and any record thereof in any place shall be produced by any person in whose possession or control the same may be. This section possesses the same spirit of mischief as those preceding it in so far as it is partial and directed against a few people, and purports to authorize an inspection and seizure of papers under circumstances condemned by the Constitution of the United States, and violates that further provision which protects a person against producing evidence against himself, and declares him guilty of a crime for asserting his rights under the Constitution.

Section 7 disfranchises the women of Utah. The Senate that passed

this bill recognized the propriety of female suffrage in other Territories, and would tolerate it in Utah were it not that a scheme of unfair, unjust, and discriminating legislation is being accomplished against the people of that Territory. The right to make laws fixing the qualifications, which is tolerated in every other Territory, is taken away from the people of Utah.

Sections 8 and 9 of the bill deal with subjects that in all other Territories are left to the local government thereof.

The same is true of sections 10 and 11.

Section 12 provides for board of government of the Church of Jesus Christ of Latter-Day Saints, and proposes that the President shall appoint and the Senate confirm trustees who are expected, when so chosen, to take possession of the trust which, by law, and by the creators thereof, has been confided in explicit terms to others. It is not pretended in said section, nor is such the fact, that there is any vacancy in the Board of Management of said church, and that it is necessary for Congress to fill such vacancies; but it is a subjection of the church, its management, its doctrines, and its trust, and of its property, to the control of the Interior Department of the Government of the United States. Its purpose is to establish a theological bureau in that Department, and make the Secretary of the Interior the high priest of the Mormon Church.

This section of the bill violates all the traditions of our civilization, and expressly the Constitution of the United States. It cannot be contended successfully that the Government has anything to do with churches, church doctrines, or church property in the United States. That they are private charities has been too long settled to be open to further controversy. That their title to their property is as sacred and inviolable as that of an individual no man of ordinary learning or intelligence in this country will pretend. The United States can no more establish a board of government for a church than it can establish by law a guardian for a private individual. The usurpation of authority in an attempt to do so is as palpable and as inexcusable in the one case as in the other.

The Church of Jesus Christ of Latter-Day Saints is a purely private institution, as is stated in Attorney-General *v.* The Merrimac Manufacturing Company, 14 Gray, 602, as follows:

> Public worship may mean the worship of God conducted and observed under public authority, or it may mean worship in an open or public place, without privacy or concealment, or it may mean the performance of religious exercises under a provision for, or equal right in, the whole public to participate in its benefits, or it may be used in contradistinction to worship in the family or in the closet. In this country, what is called public worship is commonly conducted by voluntary societies, constituted according to their own notions of ecclesiastical authority and ritual propriety, opening their places of worship, and admitting to their religious services such persons, and upon such terms, and subject to such regulations as they may choose to designate and establish. A church absolutely belonging to the public, and in which all persons, without restriction, have equal rights, such as the public enjoy in highways or public landings, is certainly a very rare institution, if such a thing can be found. Religious charities of various denominations, incorporated by special acts of the legislature or under general laws, or, as is often the case, consisting simply of a company of persons associated together without any corporate capacity, and holding their property through the intervention of trustees, erect buildings and places of worship, consecrate them with religious ceremony, and make provisions in them for the due observance of sacraments and ordinances. * * * It has certainly never been held in this commonwealth, and we do not know that it was ever suggested, that the power of disposing of the property, or of changing the use in which it should be applied, did not remain as absolute and unquestioned as in the case of any other real property.

The above case grew out of an attempt on the part of the State of Massachusetts, through her attorney-general, to interfere in the admin

istration of church business, and resulted in declaring that the State had nothing to do with the matter, and had no standing in court to interfere with the trust in any manner.

In the case of Attorney-General *v.* Proprietors of Meeting-house in Federal street, Boston, reported in 3 Gray, pages 48 and 49, a similar question was raised and decided:

> The court is unable to perceive in this transaction any characteristics of a charitable foundation to be vindicated by the public through the attorney-general, on the ground that those who ought to reap the benefit of it are incapable of vindicating their own rights. * * * The court says, at page 49, "It is quite definite and certain who are the persons beneficially interested in such use, and they only could claim its execution in a court of justice or elsewhere."

A charity which may be controlled by the Government must be a public charity, as is said in 2 Perry on Trusts, sec. 710:

> Consequently a trust to establish a school which is not free, but the benefits of which are confined to particular individuals who are named in the will, is not a charitable trust, and will not be regulated by the courts.

Section 732, 2 Perry on Trusts, declares—

> Where a gift is not a public charity, but to a school that is not free and open to the general public, the attorney-general cannot maintain an information or bill. So if there is a gift or dedication of land for a church or meeting-house to be owned by the church, parish, society, or by pew-holders who have vested rights and can sue, the attorney-general cannot sue in his official capacity, unless the gift is so public and indefinite that no individuals or corporation have the right to come into court for redress. Suits to regulate such trusts must be brought by the parties interested. The church edifices of this country stand in a peculiar position. They are not free, open churches as those words are used in describing a public charity. They are owned by societies, parishes, churches, trustees, or pew-holders, and can be controlled by those bodies as corporations, or quasi corporations, and directed to such use as they see fit. For these reasons the funds given or contributed to build these edifices and keep them in repair are not funds given for public charitable uses in the legal sense.

The Church of Jesus Christ of Latter-Day Saints is for the benefit of the people who entertain that faith, and not for the public generally. The church was created by private donation and not by public funds. It was instituted to propagate the doctrines believed in by the members of that church, and the trust must be applied to sustain the purposes and doctrines for which it was created. The Government neither in its legislative nor judicial capacity can change such trust, subvert it, or pervert it. (6 Pennsylvania State, 209; 3 Gray, 58).

It is absolutely sacred, and will, by the courts, in the case of controversy, be upheld as created. This doctrine is fully established in 2 Perry on Trusts, section 733, and the authorities cited. The author says:

> And generally a charitable donation for religious purposes must be applied to sustain the purposes and doctrines of the donor, as indicated by him; and if the donor has not clearly stated the doctrines he intends the courts will inquire into the doctrines held by him, and, in order to ascertain it, will presume them to be the doctrines intended to be taught under the trust. * * * If the charter or organization of a church defines its relations and purposes and doctrines, the rules and regulations under which it must act, or, in other words, establishes a constitution to regulate and limit its actions, that body which acts according to its constitution will be the regular church, and entitled to the church property, whether it may be a majority or minority of the whole number of the whole church.

It is held that while the trustees of an eleemosynary corporation with visitorial powers have more authority than those of ordinary corporate bodies, it is nevertheless strictly limited, and the language of Judge Story, in Dartmouth *v.* Woodward, following in this respect the English authorities, that the Crown cannot, without the consent of the corporation, alter or amend the charter, should not be held to recognize the

doctrine that under our laws alterations or amendments can in all cases be made with such consent. * * * On page 581 it is said:

And besides, what right has the State, or those called upon to administer a charity, to dictate conditions to its founder? These conditions may seem to us foolish fancies. We may deem ourselves far more competent to establish such as will secure the general object, but it is not ours to say. When we so create such a foundation out of our own fortunes we shall be at perfect liberty to show our wisdom, but it is out of place in administering the fortunes of others. When Mr. Girard established his celebrated college, he imposed conditions offensive to a large majority of the community. No attempt was made, I believe, to dispense with the conditions and accept the gift. * * * One may do what he will with his own, and if his benevolent instincts lead him to expend his fortune for the good of others, public policy certainly requires that he shall be made to feel quite secure in his benevolence. This security he can never feel if his gift shall be subject to the changing opinions of its future administrators, with the frail check only of legislative consent.

Judge Story, in Allan *v.* McKeen, 1 Sumner, 300, says:

What is the extent and nature of this visitorial power? Is it the power to revoke a gift or change its uses, to divest the party entitled to the bounty? Certainly not. It is a mere power to control and arrest abuses and enforce a due performance of the statutes of the charity. The corporators, and these have no personal beneficial interest; their interest is rather a duty. Nor has the State received the grant. It is simply designated a body capable of executing its uses. Who then are the real parties in interest, clearly the beneficiaries of the charity? The right becomes, as it were, vested. They are, as it were, the equitable owners of the fund. The curators then having no power over the charity, but it being, on the other hand, their creator and their absolute rule of conduct, and the beneficial interest in the fund belonging neither to them nor the State, but to the beneficiaries only, who from the nature of the case cannot consent, I infer that the essential conditions of the charter are permanent so far as the change depends upon consent.

The case just quoted grew out of an attempt on the part of the legislature of the State of Missouri to substitute one board of directors or managements of a corporation for another, and the court, in the case cited on pages 586 and 587, held that this could not be done, and so deciding, quoted from the State of Ohio *v.* Brice, where it was said:

The university was a corporation, but the trustees were elected by the legislature for life, with power to remove or suspend one of their number for good cause until the next session of the legislature. Mr. Lindley, one of the trustees, had removed from the State, and, without any action of the board or judgment of removal, the legislature by joint resolution appointed the defendant trustee to fill the vacancy occasioned by Jacob Lindley having removed out of the State. Mr. Lindley, returning, claimed his place in the board, and the court held that he was entitled to it; that Brice was unlawfully appointed, because there was no vacancy. Judge Lane remarked: "This proceeding *a mortin* of a corporation is essentially advisory in its character. The jurisdiction of the common law permits no investigation of facts which may be followed by the laws of a right, or by the infliction of a penalty to be conducted *ex parte*. It is essential to its validity that the power should be duly summoned. In the present case, if the relator had forfeited his office by neglect of his duties, it was necessary that the corporation, after reasonable notice to him, and an opportunity for hearing, should investigate the facts, and determine his title to the office by sentence, and thus create the vacancy. Until this was done the relator was entitled to his seat, and the contingency had not happened in which the legislature could lawfully appoint a trustee.

There are no vacancies in this board, and Congress has no power to create vacancies in the way proposed by this bill. In 2 Perry on Trusts, section 735, it is held:

That the constitution or a charter could not be changed for reasons of mere expendiency, and that a court of equity could not remove trustees and appoint others except by incapacity, unfaithfulness, or failure to perform their duties. If a trustee is known to hold such opinions in relation to the trust as it is ordered to be administered by the court, that he cannot be expected cordially and faithfully to execute it, he may be removed and a proper person appointed.

So sacred is a trust in the estimation of the law that it is here held that a person executing it must be cordially in sympathy with its pur-

poses. It cannot be expected that such will be the case on the part of a board created in condemnation of the very trust which they are to administer. The fact that this church is incorporated makes no difference. It does not become public because of such incorporation. (4 Wheaton, 648, Dartmouth College case, where it was held that an act of incorporation did not change the character of the trust incorporated.)

But this section of the bill violates that provision of the constitution which contemplates that church and State shall forever remain separate; for it is said "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." (Article 1 of Amendments to Constitution.)

To the extent that this section contemplates a government of the Church of Jesus Christ of Latter-Day Saints as a substitute for the government created by the founders of that church, it is a law respecting the establishment of religion, and *pro tanto* prohibits the free exercise thereof. It is not only unconstitutional because it purports to authorize the Government to take possession of private property without due process of law, and without compensation, but for the reason above stated, that it interferes with the management of a private trust and with the due exercise of religious freedom.

Section 13 of this bill cannot be maintained, if passed, for the reason that it is not competent for Congress, if a corporation has taken property in excess of the amount under its charter it may hold, to forfeit that property to the United States. This bill provides that the Attorney-General shall institute proceedings to forfeit and escheat to the United States property of corporations held in violation of section 1890 of the Revised Statutes.

This contemplates, in effect, that all of said property which shall be held in excess of $50,000 shall be confiscated by the United States Government.

The doctrine of escheat has nothing to do with the matter, and the word "escheat" is used in the bill without an apparent knowledge of its meaning. 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 this 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 extinguished 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.)

If the church or any other corporation has assumed to take land or property in excess of the amount which the law permits them to take, and in violation of the law, the conveyance of such property to such corporation under such circumstances is simply void, and is no conveyance. The utmost that the Government can do in such case is to repeal the charter of the corporation which has thus offended, but it cannot take this property. Even at common law, where the Government takes lands by escheat or by forfeiture, it takes it with the title which the party had against whom the forfeiture was enforced. It is taken in the plight and extent by which he held it, and the estate of a remain-

der man is not destroyed or divested by the forfeiture of the particular estate.

The gentleman who was heard by this committee several days since as the representative of what is known as the Gentile population of Utah, made several recommendations to the committee of legislation which, in his opinion, ought to be had, not included in the present Edmunds bill.

He stated that the courts could not try more cases under any new legislation than they were able to dispose of, as the law now said; that there had been two cases since 1882 of convictions for polygamy, and about four hundred on charges of unlawful cohabitation. His theory is, and his recommendations were made in support of that theory, that the Mormon Church ought to be overthrown; that there was established in the Territory of Utah a theocracy, as he called it, which not only tolerated, but encouraged polygamy, bigamy, and unlawful cohabitation, and therefore all persons who belonged to or were constituents of that theocracy should be punished as *particeps criminis* in the crime above enumerated. This proposition, if it be entertained at all, requires an examination into the first principles of our constitutional government. His proposition requires this committee, if it be entertained, to determine, first, whether there is any warrant under the Constitution for such legislation as he desires; second, whether, if there be such warrant, it is policy for Congress to carry its power to the utmost extremity.

It will be kept in mind that the law as it now stands punishes all those guilty of the offenses by him complained against, and that under section 5440 of the Revised Statutes of the United States indictments may be found against any two or more persons who conspire to commit any crime against the United States. If the parties whom he desires to reach by the proposed legislation maintained the relation to persons who committed the offenses denounced by the law as it now is, of conspirators, then no further law is necessary for their punishment, because said section already provides for such cases.

It is denied that the principles of criminal law include persons not participating in the offense in any manner committed by another as co-conspirators.

There can be no such thing under such resolution as joined principals or co-conspirators between two men having for their joint object the unlawful cohabitation of one of them, or the commission of the crime of polygamy or bigamy by one of them. Two persons cannot be criminally jointly implicated in an act, the very nature of which can only be done by one. For instance, two or more persons cannot be jointly indicted for perjury. (Rex *vs.* Phillips, 2 Str., 921.)

Nor "if the offense charged does not wholly arise from the joint act of all of the defendants, but from some personal and particular act or omission of each defendant." (Wharton's Criminal Practice and Pleadings, 302, and authorities cited.)

The Supreme Court of the United States, in the case of ——— ———, has held that it is not competent for Congress to punish any person for a crime unless such person has actually committed some overt act which is, in terms, by law forbidden to be done.

It is not competent for Congress to pass a law authorizing the criminal punishment of people who associate in any relation or every relation of life with persons who commit crime. But penalties cannot be visited upon any citizen under our form of government unless it be shown that he actively participated in the doing of some criminal act,

or in the act charged against him. This principle runs through all the authorities, and is not controverted.

2 Wharton's Criminal Law, section 1402, where it is said: "There must be shown some sort of active participation by the parties charged."

The law as it now stands is ample for the punishment of all persons who commit the acts forbidden to be done, as above stated.

Nothing is better settled in this country than that the law cannot reach and punish the feelings and opinions of a person living within our jurisdiction. In the case of Murphy and the Glover test oath, reported in 41 Missouri, page 366, it is held:

It must be admitted that their opinions and feelings, when not put forth in any new act of resistance to the laws, belong to themselves, and cannot, with reason and justice, nor lawfully, be punished as if they were offenses against law.

On page 367 it is said:

The right to life, liberty, and property, that is, personal security, personal locomotion, the freedom from arrest, and private property where it exists, is protected by the Federal bill of rights to be taken away in any criminal case without due process of law.

In the case of The City of Saint Louis against William Fitz, 53 Missouri, 582:

The validity of an ordinance was considered which punished by its terms an individual who knowingly associated with persons having the reputation of being thieves and prostitutes.

In determining that case the court says:

We doubt the power of the State legislature to pass such a law giving it the construction which was given in this case. There is no doubt of the power of the legislature nor of municipalities, deriving their power from the legislature, to make police regulations designed to promote the health and morals of the community. Laws to prohibit or regulate gaming, sales of intoxicating liquors, houses of prostitution, and thus directly advance the morals and good order of society, are beyond question; but, as a general rule, legislatures do not attempt to regulate the morals or habits of individual citizens. When a positive breach of law is reached, or when the act specified is such as to justify an implication of an intended breach of law, then the criminal law may interfere, but not until then. So long as the power and right of locomotion are conceded, and a citizen has the right of selecting his associates, it is difficult to see how the legislature can interfere upon the mere ground of correcting the morals of the persons concerned. An association with thieves, or with persons suspected to be thieves, or having the reputation of being thieves, may be very injurious to the persons seeking such society; but it is not the business of the legislature to keep guard over individual morality.

On page 588 a separate opinion was given by one member of the court, who declared further:

I hold the ordinance absolutely invalid on the broad ground that its direct effect is to invade and necessarily destroy one, at least, of those certain inalienable rights of the citizen bestowed by the Creator and granted by the organic law—personal liberty.

It is evident, therefore, that the 138,000 Mormons living in Utah, against whom this proposed legislation is leveled, are guiltless of any offense against the United States. If they have done no acts which give the criminal courts jurisdiction over them to punish them, it is incompetent for Congress, and brutal injustice by legislative enactment, without hearing or trial, to sweep away all of their political and social rights. The legislation clamored for cannot affect the 12,000 polygamists, because there is nothing left to them under the law as it now stands but barren existence. The whole scheme proposed looks to the subjection of 138,000 industrious and guiltless people to the control of 30,000 who are covetous of their earnings and their possessions.

The theocracy complained of cannot be attacked as such, because the Constitution of the United States guarantees the free exercise of religious opinion. The Church of Jesus Christ of Latter-Day Saints, called a theocracy in this argument, has been recognized by Congress in all its legislation against the Mormons, and by the Supreme Court of the United States in all of its adjudications against parties charged with violations of law belonging to such church, as a religious body such as is protected by the Constitution of the United States. Such being the case, Congress lacks jurisdiction to legislate against it for its overthrow. There is no instance in the whole existence of the Government where the Territories have not been permitted to govern themselves by a majority vote of their inhabitants during the last sixty years. The principle of local government in the Territories is as thoroughly established by practice as is any political doctrine of the country.

Is is said that those who have been convicted of polygamy, bigamy, and unlawful cohabitation show no willingness to obey the law in the future. It will be remembered that only two have been convicted of bigamy or polygamy under the law of 1882. All others convicted under said law were accused of unlawful cohabitation, and the courts in Utah hold, as shown by the records presented to the Senate and printed in the Congressional Record, under date of April 7, 1886, that a person is held guilty of unlawful cohabitation, although he has had no sexual intercourse whatever. It is sufficient, under the interpretation of the law by the Territorial courts to convict, that the party charged was married to more than one wife at a period extending beyond a statute of limitations, and has sustained and supported such wives within the statute of limitations, though he has had no other relation to them than to support them, and though he has not visited them.

The documents read by the gentleman, which expressed the opinion of parties who have suffered under the law, do not show that any of them refused to obey the law against polygamy or bigamy. The full extent of their unwillingness to support the law as declared in Utah is that they are not willing to desert their offspring and desert the women whom they married years ago.

The most that can be said against the offspring of plural marriages is that they are bastards. I have examined the laws of most of the States of the Union on the subject of bastardy, and I venture the declaration that there is not one State in the Union that makes it a crime for the father to support his illegitimate child. England requires it. Nebraska, Kansas, Maine, Missouri, Mississippi, Alabama, New York, Wisconsin, Tennessee, and Illinois, and, I believe, every other State of the Union, require the father of an illegitimate child to support it. In Utah, however, it is made criminal to support it, and it is that construction of the law against which all these complaints are uttered.

Plural marriages exist in many of the old countries of the world to which the Christian associations of this country send missionaries. How persons converted to Christianity shall be treated with respect to their plural marriages after conversion has been the subject of controversy in religious circles. Whether the marriages entered into previous to the conversion should be tolerated after the admission of the converted person into the Christian Church has been the subject of great conflicting opinion; but it has nowhere been held by any religious assembly of the world that it is wrong, after conversion, to support the offspring of such marriages. In Third Systematic Theology, Hodge, 390, pub-

lished in 1873, it is held that Christianity requires the man to support all the women he has married; and yet an obedience to this principle of Christian doctrine is punished by the law of the United States in the Territory of Utah against the Mormons, but in no other spot of this earth.

(Howell *v.* Stewart, 54 Mo., page 405.)

It will thus be perceived that mere knowledge and mere intent stand upon one and the same footing, and an examination of the adjudicated cases, both in England and in this country, shows that the great current of authority flows in the above-indicated direction, and that so long as a design to commit a misdemeanor remains (*in fieri*) unclothed with any of the attributes of legal tangibility it will constitute no basis of defense to an action.

(The State of Missouri *v.* Cox, 56 Mo., page 33.)

If an explanation of the term "aiding and abetting," as used in our statute, or in the common-law definition of an accomplice, should be deemed necessary, it is proper that the explanatory terms used should convey a correct idea of the meaning of the offense. The court probably did not mean to hold that the mere mental approval by a bystander of a murder committed in his presence would make such bystander a principal in the murder, yet the use of the disjunctive "or" between the various terms employed to describe the crime of an accomplice necessarily leads to this interpretation of the instruction. The words "or approving of" have no place in legal phraseology to explain the meaning of the words "to aid and abet." The fact itself is incapable of proof. Mental operations, not accompanied with any action or language, are beyond the reach of testimony.

(The State to use Betts *v.* Purdy, 67 Mo., page 89.)

Neither a purpose to make an assault nor any amount of preparation for doing so will constitute an assault (5 intent to kill), unless followed by some hostile demonstration against the person toward whom the purpose is entertained. If the defendant had gone and procured the gun for the express purpose of taking the life of Andrews, but, after coming up with Andrews, made no demonstration toward the accomplishment of that purpose, he would not have been guilty.

RELIGION.

(1) The recognition of God as an object of worship, love, and obedience; right feeling toward God as rightly apprehended; piety.

(2) Any system of faith and worship; as the religion of the Turks, of Hindoos, of Christians; true and false religion.

(3) The rites or services—chiefly in the plural.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the freedom of speech or of the press, or the right of people peaceably to assemble and petition the Government for a redress of grievances.

ARTICLE VI.

SEC. 3. The Senators and Representatives before mentioned and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath of affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Language more comprehensive for the complete protection of every variety of religious opinion could scarcely be used; and it must have been intended to extend equally to all sects, whether they believed in Christianity or not, and whether they were Jews or infidels. So that we are compelled to admit that although Christianity be a part of the common law of the State, yet it is in this qualified sense, that its divine origin and truth are admitted, and therefore it is not to be maliciously and openly reviled and blasphemed against, to the annoyance of the believers or the injury of the public. Such was the doctrine of the supreme court of Pennsylvania in Updegraff *v.* The Commonwealth, 11 Serg. and Rawles, 349. (Vidal *et al. v* Girard's executors, page 199, 2 Howard.)

WASHINGTON, D. C., *April* 30, 1886.

Committee met pursuant to adjournment.

The committee having under consideration Senate bill No. 10, being a bill to amend an act entitled "An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March 22, 1882, Mr. F. S. Richards, of Utah Territory, proceeded to speak in opposition to certain provisions of the bill.

REMARKS OF MR. F. S. RICHARDS.

Mr. RICHARDS. Mr. Chairman and gentlemen of the committee, it is not my purpose to make any lengthy argument or any set speech on this bill. I desire simply to refer to a few of its provisions and to state to the committee some facts in regard to the operations of the present law in the Territory of Utah, upon the subjects which are treated of in the bill. In doing this I feel that I can speak understandingly in relation to the matter, because it has been my fortune to be engaged in the litigation that has arisen out of the so-called Edmunds law, both of a political and criminal character. I have been engaged in the cases when tried in the district courts and have followed them through the supreme court of the Territory up to the Supreme Court of the United States, and have discussed the questions involved before each of the tribunals named. I think, therefore, I may safely assume to know what the operation of the law is, and how it has been construed in the Territory of Utah.

Before entering upon the discussion of any particular provision of the bill, I desire to call attention to one or two statements that were made the other day by Mr. Baskin. The first that I will refer to is the assertion that this matter could be very easily disposed of, very quickly settled by the Mormon people themselves, if they would only have a revelation discontinuing the practice of polygamy. Now, I most emphatically object to that expression; not so much to the expression itself, as to the manner in which it was made, and the impression that it was evidently intended to have upon this committee, inasmuch as it carried with it, upon its very face, the imputation of insincerity on the part of the Mormon people in regard to this mattter. That is my objection. Mr. Baskin knows full well that the Mormon people are sincere in their belief in the divinity of this principle.

Mr. BASKIN. Some are and some are not; some are sincere believers, and some are hypocrites.

Mr. RICHARDS. I would like to have the gentleman name some of those whom he denominates hypocrites. I would like to have the names of such given to this committee.

Mr. BASKIN. I will furnish the committee with them at the proper time, when I come to submit my reply.

Mr. RICHARDS. I say here, and I say it boldly, without fear of the statement being controverted by evidence, that these people are not hypocrites; and by that expression I mean the majority of those Mormons who are in the polygamous relation, many of whom, however, have discontinued living in the actual practice of polygamy. They are not hypocrites. I know they are not, and I believe Mr. Baskin knows it, too. And I may say right here that any man who will go to Utah with an honest purpose and carefully investigate the lives of those people will become convinced that they are not hypocrites. Whatever grounds there may be for the charge of excessive religious zeal which has been made against them, I will not undertake to say; but of insincerity they cannot be truthfully accused. They most implicitly believe in the divinity of this institution of marriage. They have entered into their marriage relations from a high sense of religious duty and obligation. There may possibly be some isolated exceptions to this rule, but the great majority of the Mormon people—and counted in their number are the leaders of the Mormon Church—I assert it here most positively and emphatically—are sincere believers in the doctrines of their Church touching this point. If I had the time I could furnish such evidence of the fact as would convince any honest man that what I state is true.

The CHAIRMAN. I will say right here, Mr. Richards, that you need not trouble yourself with regard to that point. I do not think the committee will be guided in their deliberations upon this question one way or the other by that issue. We shall, of course, in dealing with the people and their religious belief, deal with them as if they were sincere in their belief.

Mr. RICHARDS. Thank you, sir. I need not then pursue that point any further. But, Mr. Chairman, you will see as I proceed that what I have said necessarily constitutes the premises to something which is to follow.

It being conceded, then, that the Mormons are sincere in their belief in regard to this matter, let us see what that belief is. They not only believe that under certain circumstances they are required to enter into this marriage relation, but that whenever entered into it becomes an eternal relation. That is a very pertinent fact. It may not at first seem of any consequence, and is entirely lost sight of by many people, but when you come to observe its bearing upon the conduct and expressions of the people, as I think I will be able to point it out to you in the course of my remarks, you will see and appreciate its importance. They believe, then, in this eternal relation. They do not believe it possible for that relation to be terminated by any earthly power. They hold that it not only continues through life, but that after death it will be resumed and perpetuated.

That being the faith of the people, and their religious belief, an act of Congress was passed in 1882 providing penalties for polygamy, and declaring that a man should not cohabit with more than one woman. It became apparent to many of them that they must conform their conduct to the requirements of this law, although there had been no judicial construction of the act. Its meaning was not known in the Territory of Utah; no one could tell what cohabitation consisted of, and

each person was left to construe the law for himself. The question was finally raised in the courts, but not for a long time after the passage of the act; it went into effect on the 22d of March, 1882, and yet, with one exception, no prosecution was commenced under it until the beginning of 1885, nearly three years afterwards. During all this time the people were permitted to go on as they had been doing, and no effort was made to find out what constituted unlawful cohabitation. The first decision rendered on the subject and which defined cohabitation was made in April or May, 1885, more than three years after the act went into effect. Some of the people directly affected by this law had complied with its requirements as then construed, and some had not. This was necessarily so in the absence of any authoritative construction of the statute. When it came to be construed, even members of the bar differed widely as to what was its true meaning, and when the question came before the Supreme Court of the United States, the learned judges composing that august tribunal could not agree as to all the constituent parts of the offense, although the majority of them did settle one important feature of the case, namely, that sexual intercourse was not an essential element of the offense.

Many prosecutions were brought under this statute, embracing different phases of the question. The Cannon case came here to the Supreme Court of the United States and was fully argued and decided. The facts in that case were these: Mr. Cannon had lived in the same house with two of his wives. He claimed to have had matrimonial intercourse with only one of them. That was his defense. The court said it made no difference whether that was so or not. He was living in the same house with them and claiming them both as his wives, which constituted unlawful cohabitation.

That was one case. After it came many others.

The CHAIRMAN. Let me understand. In that case was Cannon living in the same house with his two wives without any division at all between?

Mr. RICHARDS. The fact is this. The house was divided by a hall; each of the women had separate apartments, separate parlors, separate sitting-rooms, separate dining-rooms, and separate bed-rooms and kitchens.

The CHAIRMAN. On the same floor?

Mr. RICHARDS. There were two floors, and each wife had apartments on each floor; there was one front entrance to the house, one common entrance. The court held, that as all were dwelling under the same roof and in the same house, it constituted unlawful cohabitation. That settled one point. In the mean time, however, before this case was decided by the United States Supreme Court, and while it was pending, another case arose. I refer now to the Pingree case. That was tried in Ogden, shortly after the Cannon case was tried in Utah, and before the latter got to the Supreme Court of the United States.

In that case Mr. Pingree had two wives; they occupied two separate houses. Prior to the passage of the Edmunds act it had been his habit to dwell alternate weeks at each of the houses with the wife and children residing there.

The CHAIRMAN. How far were those houses apart?

Mr. RICHARDS. Probably 30 or 40 rods.

The CHAIRMAN. In the same inclosure?

Mr. RICHARDS. No, sir; there was a division fence between the two premises.

The CHAIRMAN. In Salt Lake City was this?

Mr. RICHARDS. No, sir; it was in Ogden. After the passage of the law he changed his manner of living. He removed his personal effects to one of the houses and dwelt there exclusively. He never visited the other family at all, except on such occasions as I am going to enumerate.

The CHAIRMAN. Did he subsequently dwell exclusively with the first wife or the second?

Mr. RICHARDS. He dwelt exclusively with the first wife.

His visits to the other family were simply of this character. It appeared from the evidence that during the time charged in the indictment, a period of nearly three years, he had on two or three occasions been invited to dine at the house of his plural wife with her and their children, some of whom were married and living by themselves, but had returned to visit the parents. He had accepted these invitations, going to the house after the children arrived there, and leaving before they went away. This had occurred on two or three occasions, to the best of my recollection. The only other visits which he was shown to have made were under these circumstances. His little girl, about eight or ten years of age, was severely burned; her injuries were so great that it was necessary for some one to remain with her day and night. He, as the father of the child, had gone there on a few occasions and watched at night with the sick child. The evidence showed conclusively that he had remained on such occasions in the sick room, and had confined his attention to the suffering child.

This was the testimony of cohabitation. It was also shown that when the law passed, Mr. Pingree had agreed to separate from his plural wife, and it was so understood by the whole family. Even the neighbors knew that they had separated, and that he was not living with her.

The CHAIRMAN. Did he continue to support her?

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. He gave her the means of keeping up the house, I suppose?

Mr. RICHARDS. Yes, sir; he furnished her a support.

Now, that was held to be a case of cohabitation.

The Snow cases were afterwards tried, and are now pending in the Supreme Court of the United States.

The CHAIRMAN. They are there now?

Mr. RICHARDS. Yes, sir; they are there now.

The CHAIRMAN. That is the case Mr. Curtis argued yesterday, I believe?

Mr. RICHARDS. Yes, sir.

Mr. HUNTON. And Mr. Richards also argued it?

Mr. RICHARDS. In the Snow cases—there were three of them—the offense having been segregated, and three separate indictments brought. Mr. Snow had lived with one of his wives exclusively, but not with the legal wife.

The CHAIRMAN. Since the passage of the Edmunds act?

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. But not with the first wife?

Mr. RICHARDS. No, sir; he had lived exclusively with a plural wife; not only had he lived exclusively with her, but it was public repute that he had lived with no other woman, and the *law only prohibits cohabitation with more than one woman.* Everybody in the neighborhood understood that he had only lived with the one; they knew it to be a fact and all the witnesses so testified. He was, however, convicted on the theory that as he had a legal wife living, cohabitation was presumed with her, although there was no proof that he had ever seen her or been in her

presence during the whole of the three years. To meet the requirements of the law there must be cohabitation with at least two women, and in these cases the cohabitation with one was wholly constructive.

I instance these cases to show how the court has construed this law. You will see presently the point I make in regard to it.

But I will first refer to one other case of construction, that of Solomon Edwards. Mr. Edwards was a married man; his wife left him and went to live by herself or with her children by a former husband. After the separation he married again and went to the home of his former wife, a distance of some 50 or 60 miles, as I understand, to get one of his children. My recollection is that he took his wife with him when he went for the child, which was willingly delivered to him. There was no intimacy whatever between him and the former wife; they were hardly on friendly terms even; she having left him and lived separately some time, and yet, although the only time he was in her presence was when he called to get the child, he was convicted of unlawful cohabitation.

The CHAIRMAN. Was she his only wife before she separated from him?

Mr. RICHARDS. Yes; I think she was at the time they separated.

The CHAIRMAN. There were no plural wives about it?

Mr. RICHARDS. I think, sir, that the one who left him had been his plural wife, but when she left she was his only wife, and he married the other after she left him. That was decided to be a case of unlawful cohabitation. Just think of it, a man's wife leaves him and he marries another; then goes to see the former wife for the mere purpose of getting his child; he takes that child away with the mother's consent, and for having been in her presence long enough to get the child he is convicted of unlawful cohabitation.

The CHAIRMAN. Is that the Snow case?

Mr. RICHARDS. No, sir; this is the Solomon Edwards case.

The CHAIRMAN. Has that case come before the Supreme Court of the United States?

Mr. RICHARDS. No, sir; it has not.

The CHAIRMAN. Will it come before the Supreme Court of the United States?

Mr. RICHARDS. No, sir; I presume not. It is impossible to bring every case before that tribunal.

The CHAIRMAN. He was convicted, you say?

Mr. RICHARDS. Yes, sir; he was convicted.

These are some of the constructions that the courts have placed upon this law. I might stand here until sunset relating similar instances.

The CHAIRMAN. I would like to ask you a question before you leave that point. You have once or twice spoken of one of these parties going to see his legal wife. Is it recognized by the Mormon Church in Utah and by the Utah courts—I mean among the Mormons—that if this Edmunds law goes into effect, that under it the lawful wife of the Mormon marriage will be the first wife.

Mr. RICHARDS. The first wife, whether married under the Mormon form of marriage, or by any other form of marriage, is the legal wife, as I understand it. If a man having married a woman in England comes to this country and marries again, whether one, two, or three women, the first wife would be the legal wife.

The CHAIRMAN. Are you aware of the decision that the court of matrimony and divorce in England have given in the case of Hyde *v.* Hyde?

Mr. RICHARDS. I am.

The CHAIRMAN. You know they have there decided that a Mormon marriage, even to the first woman, is not a lawful marriage according to English law?

Mr. RICHARDS. I am aware of that; but I am not aware that the American courts have ever enunciated any such doctrine.

The CHAIRMAN. The American courts have not, as I know of, but the English courts have never controverted that proposition.

Mr. RICHARDS. Not to my knowledge; the theory being that if a man enters into the marriage relation with one woman, there being an understanding between the parties at the time that somebody else may eventually come in as a plural wife, it would not constitute a legal marriage under the laws of England.

The CHAIRMAN. Yes, sir; in other words, that the law in England with regard to marriage is that it must be a contract between one man and one woman to live together in a state of matrimony, and no more.

Mr. RICHARDS. Yes, sir. I think I can state the doctrine held by the courts as to the legal wife in a very brief sentence.

The CHAIRMAN. In the Utah courts?

Mr. RICHARDS. Yes, sir; I think it will not be controverted that the woman who is first married to the man, whether by a Mormon ceremony or by any other religious ceremony, or simply by a common-law marriage or contract, becomes his legal wife. That is the law in this country, as I understand it.

The CHAIRMAN. And that under the operation of the Edmunds law, if, in obedience to that law, the Mormon husband abandon plurality of wives and return to a unity, that his real wife will be the one who was first married to him.

Mr. RICHARDS. His first wife will be the legal wife, but I do not understand that it has been finally decided by the courts that the cohabitation must necessarily be with the first wife. On the contrary, our Chief Justice stated on one occasion, in the Musser case, that it was optional with the man, so far as this law was concerned, which of his wives he lived with so long as he lived with only one of them.

The CHAIRMAN. You mean the chief justice of Utah?

Mr. RICHARDS. Yes, sir. The statute is not directed against "any male person who cohabits with any other woman than his legal wife," but against "any male person who cohabits with more than one woman."

The CHAIRMAN. If he cohabit with only one of the wives, under such circumstances he constructively cohabits with more than one woman. Is that the way the judge decides it? Does he decide that if he cohabit with only one of the wives that he will be held to have cohabited with more than one woman?

Mr. RICHARDS. This judge held that if a man cohabit with only one wife he does not violate the law, although the one he lives with be his plural wife.

Mr. HUNTON. That that was a compliance with the Edmunds law.

The CHAIRMAN. That is, he might make his election.

Mr. RICHARDS. Yes, sir; I so understand it.

Our Chief Justice refused his assent to the opinion of the Supreme Court of Utah in the Snow cases where the majority of the court held that a constructive cohabitation could occur. In that case you will remember the actual cohabitation was with a plural wife and not with the legal wife.

The CHAIRMAN. Has the question ever been raised in your Utah

courts—but excuse me; I do not want to break up the continuity of your argument.

Mr. RICHARDS. I am very glad, indeed, to have you propound any question that may occur to you, and will be pleased to answer as far as it may be in my power to do so.

The CHAIRMAN. Has the question ever come up distinctly before your Utah court as to what will be the effect under the Edmunds law of this previous relation to plural wives, if the question should ever arise as between whom the marriage was celebrated? Suppose there was a dower right, which there is not under your Utah law, as I understand——

Mr. RICHARDS. No, sir.

The CHAIRMAN. But suppose a wife, or any one of these wives, sought to enforce her right against the husband——

Mr. RICHARDS. It has always been conceded by everybody that the first wife is the legal wife. That has been conceded by all parties—Mormons and non-Mormons. The question has never been raised, because there has never, to my knowledge, been any contention about it.

The CHAIRMAN. That is what I wanted to get at. Then I understand you to say that by the Mormons, as well as the Gentiles, as they are called in your country, that the true marriage, if it exist at all, would be between the husband and his first wife.

Mr. RICHARDS. Yes, sir; it has always been so conceded.

The CHAIRMAN. And if he cling to the first wife, and abandon all the rest, the marriage to his first wife would be recognized as a legal marriage now in Utah.

Mr. RICHARDS. The marriage to the first wife is recognized as a legal marriage whether he cling to her or not. The matter of cohabitation has not been held to affect the legality of the marriage in any way. The first wife has always been regarded as the legal wife.

The CHAIRMAN. Suppose, that being so regarded, that she is the legal wife, he subsequently marry A, B, and C in the order named, and then after the passage of the Edmunds law he live exclusively with B, the second wife; will that be regarded under the decisions of the court as cohabitation, because his legal wife is A?

Mr. RICHARDS. That is the Snow case exactly, and that is the question now before the Supreme Court of the United States.

The CHAIRMAN. Yes, that is it, as I understand it.

Mr. RICHARDS. The chief justice dissented in that case from the majority of the court upon that very point.

The CHAIRMAN. Chief Justice Waite?

Mr. RICHARDS. No, sir; the chief justice of the Territory of Utah. He held substantially, as I understand it, that there could not be a constructive cohabitation in a criminal statute. That is, as I say, one of the questions involved in the Snow case, and which should be decided in a short time by the Supreme Court of the United States. The case was submitted yesterday.

Mr. EDEN. In the Snow case the chief justice dissented from the opinion of the court?

Mr. RICHARDS. Yes, sir; on that point.

The CHAIRMAN. I am very glad that you have given us this information. I am pleased to learn that that is the status of public opinion in Utah on the part of the Mormons and the anti-Mormons.

Mr. RICHARDS. It has always been so; there has never been any controversy there in regard to the status of the legal wife.

The CHAIRMAN. They have never recognized the validity of the decision in the case of Hyde *v.* Hyde?

Mr. RICHARDS. No, sir; never.

Now, to resume the line of my argument. I have referred to some of the different constructions put upon this statute, showing what has been held to constitute cohabitation, and I might multiply cases almost without number, and each one would differ somewhat from the preceding ones. This is not necessary, however, and I will pass to another point, after quoting the words of the district attorney to Mr. Dinwoodey, as to what he understood the law, as construed by the court, to require of a man in separating from his wives.

Mr. Dinwoodey is a prominent citizen of Utah. He had separated from his plural wife, but the separation had not extended so far back as to exempt him from prosecution. He inquired of the district attorney what line of conduct he should pursue in the future to escape the penalty of the law.

This point comes up in connection with the remarks made by Mr. Baskin the other day in relation to the refusal of persons prosecuted under the Edmunds law to promise future obedience to the law.

Mr. Dinwoodey wanted to know what that promise would mean if he were to make it, and he applied to the district attorney for information upon this point. Among other things, the district attorney told him that he must never visit his plural wife nor allow her to visit him. Practically, you will see, the husband and his plural wife were never to meet or see each other. Is it to be wondered at that Mr. Dinwoodey declined to make such a promise?

When the committee come to look into the nature and scope of the decisions which I have cited they will see why people decline to make such promises. In Mr. Dinwoodey's case, for instance, he had all the natural affection of a father for his children. He was not only bound to them by every tie of nature, but it was his moral duty to see that they were supported, educated, and by proper training qualified to assume honorable positions in society when they should become old enough to act for themselves. Not only so, but by this very act of Congress it was made his legal duty to do all that I have said.

The CHAIRMAN. They were legitimated?

Mr. RICHARDS. Yes, sir. Now, what does such a promise as that which he was asked to make imply? His children were in the home of the mother; necessarily so. Some of them were daughters; some of tender years. It was his right—I assert it here with the utmost confidence, because it appeals to every man's sense of humanity and justice—it was his right to confer, under proper circumstances and conditions, with the mother of his children as to what course should be pursued in their education and moral training.

Mr. HUNTON. And not only his right, but it was his duty.

Mr. RICHARDS. Yes, it was also his duty. But no, he was asked to make a statement from which would be implied the promise that under no circumstances could he ever visit the mother of his children or allow her to visit him. Let us see how far reaching this was. It not only went to the extent of making him promise that he would not observe and perform duties imposed upon him by the highest possible moral obligation, as well as by the law of the land, but it went farther; if one of his children lay prostrate upon a bed of sickness in the mother's home, aye, even if the child were nigh unto death, the father could not, without violating his solemn pledge, kneel with the mother by the bedside of their dying child. I ask you, gentlemen of the committee, whether any man should be asked to make such a promise as that?

The CHAIRMAN. Has the court of Utah ever decided that if a man

is living with his first wife, and living with her exclusively, and should visit at the home of his second wife, or any of his children, that that would be regarded as cohabitation?

Mr. RICHARDS. I cannot answer that in a better way, perhaps, than by referring to the Pingree case, where the man was living exclusively with his legal wife, and merely dined with the plural wife and her children two or three times, and attended their sick daughter.

The CHAIRMAN. Have you the record in the Pingree case?

Mr. RICHARDS. I haven't it here, but I am prepared to produce it as soon as it can be obtained from home, if desired.

The CHAIRMAN. Is it in print?

Mr. RICHARDS. No, sir; the notes have never been transcribed.

The CHAIRMAN. I only wanted to know the facts.

Mr. RICHARDS. I state these things upon my professional honor and say to this committee that what I have said in regard to these cases is absolutely true.

Mr. BASKIN. The courts in this country have held that a man can visit his children.

Mr. RICHARDS. I assert that in the Pingree case the facts are as I have stated.

Mr. BASKIN. I know nothing about that case.

Mr. RICHARDS. I know you do not. But I tried all these cases except the Edwards case. I have appealed to the courts and juries over and over again in these very cases to refrain from enforcing a harsh rule that was violative of every principle of humanity and right, and I know what I am talking about. I give the names of the cases, and I am prepared to substantiate the facts as I have stated them. I am aware that Mr. Baskin does not know the facts in these cases, because he was not present when they were tried.

Mr. BASKIN. Don't you know, Mr. Richards, that Judge Zane has decided, and very frequently decided from the bench that it was a man's moral duty to support these children, and that he had a right to visit them, but that he must break up the relation of husband and wife?

Mr. RICHARDS. No, sir; I do not think I ever heard Judge Zane say that it was the husband's right to visit the children of his plural wife or to confer with their mother concerning their welfare.

Mr. BASKIN. I happened to hear him say what I have stated. I was present at the time.

Mr. RICHARDS. I have mentioned cases where the reverse seemed to be the fact. The Solomon Edwards case is one in point.

The CHAIRMAN. Has that case been brought before the Supreme Court of the United States?

Mr. RICHARDS. No, sir; probably a hundred or more convictions have taken place in Utah, and it would be impossible to bring all the cases before the Supreme Court. We can only bring up such as involve the construction of the statute, and we try to make such a judicious selection as will bring up cases in which are involved the greatest number of questions possible, in order to facilitate the business of the court and secure a complete construction of the statute. But the case I refer to is one that there can be no question about, I think, and a transcript of the reporter's notes can be obtained if necessary. I have stated the facts as I understand them. I do not mean to say that the court has ever in so many words said that a man shall not visit his children. I do not say that, but I do say that men have been convicted for visiting their children and the mothers of those children, although the visits related only to the happiness and welfare of the children.

Mr. BASKIN. Has not the court, on the contrary, come out and said that he has a right to visit and maintain those children?

Mr. RICHARDS. I never heard it so stated, without conditions. If the children live with their mother he cannot, as I understand it, visit them at her home without rendering himself liable to prosecution under the construction of the courts.

Mr. BASKIN. I have. But even if the court says that he has not a right to maintain them, that does not alter the facts one particle. The law says that.

The CHAIRMAN. Has the court ever considered this question? I will ask both of you gentlemen (Mr. Richards and Mr. Baskin). Suppose a man who has contracted marriage under this Mormon system with plural wives, lives with the legal wife, according to your definition of that, or the plural wife lives in another house entirely separate, and he merely provides for her support, visiting her for that purpose and for no other, or not visiting her at all, but providing for her support, would that be regarded as unlawful cohabitation?

Mr. RICHARDS. I do not know of any case of that sort having arisen where he never visited the plural wife. In the case of Pingree the man went to see his children.

The CHAIRMAN. You know of no case that has arisen where the man, living exclusively with his legal wife, but providing for the support of plural wives by giving them money with which to support themselves, has been held under the Edmunds law to be guilty of unlawful cohabitation?

Mr. RICHARDS. No, sir; I do not remember ever having heard of such a case, except where the man visited his children and their mother.

The CHAIRMAN. That question has never arisen?

Mr. RICHARDS. No, sir. And I apprehend it will not arise.

The CHAIRMAN. Then I understand that a case has never arisen, and you do not think it will ever arise where the court will hold that such action on the part of the husband, he merely contributing to the support of the plural wife, will be regarded as constructive cohabitation?

Mr. RICHARDS. I do not know that it will. I have no reason to suppose it. This is the point I make, however, that the father has a duty devolving upon him, moral and legal, to care for his children. In no other class of cases is a man brought before the court and asked to make promises as to his future conduct except on charges for unlawful cohabitation. If a man be convicted of larceny, murder, or any other crime, he is not questioned as to his intention regarding the future. He is not asked if he intends to obey the law against homicide or larceny, and the fact that he does not promise to do so is not taken against him in fixing punishment, but in cohabitation cases he is asked the question whether it is his intention to obey the law as construed by the courts, and if he does not answer "yes" his punishment is increased because he does not promise. What does such a promise mean? It was construed in one case that although the man had not seen his wife for three years, he was guilty of cohabitation. In another case that when he visited his sick child and sat up with her, without any association whatever with the mother, that was unlawful cohabitation.

The CHAIRMAN. No other association than that he is under the same roof?

Mr. RICHARDS. Than that he is under the same roof. That is the law as it has been construed by the courts. It means that if ever he enter the same house she is in he is guilty of unlawful cohabitation.

Now I ask you the question, whether or not men are to be blamed for

refusing to make such promises, and whether it is fair that the gentleman should come here and represent to this committee, as has been done, or as I understood him to represent, that these people were living in defiance of law, and that it was a spirit of defiance, and that alone, that caused them to refuse to make these promises. The papers upon this point that have been delivered to the committee do not show all the facts in the case. These show the present condition of things. When this matter first came up in the courts, Mr. Musser, whose case was the second one tried, asked the court numerous questions as to what should be his manner of living. Other men came before the court, and asked how they should act in order to obey the law; how they would be expected to live, but the answers of the court were either so indefinite and vague, or the requirements made, were, as I have shown in the cases I have cited, so unreasonable, that they concluded there was no use asking any more questions. I have seen the judge trembling with passion and white with rage while talking to a prisoner who refused to make these promises, and who stood utterly helpless at the bar of the court. As I say, they finally concluded that there was no use of asking any more questions as to what they were expected to do, and what the promises that were sought to be exacted from them meant; therefore, when they were asked whether they would make any promise, they answered "No, we have no promise to make." I say when you come to trace the matter back to the very beginning and observe its development as I have done, you will see that this element of defiance is utterly lacking in many of these cases, and that men do not promise simply because they are not willing to say that they will be recreant to all of the duties imposed upon them by the moral and legal obligations which they have assumed.

I say that a man cannot under the rulings of the Utah courts say that he will obey the law as it is construed by them and at the same time be free to perform his moral and legal duties to his children. He certainly cannot if it is his duty to visit his children and confer with their mother in regard to their welfare. This he is not at liberty to do under the construction they place upon the law.

The CHAIRMAN. That was the Edwards case, where he visited the sick child.

Mr. RICHARDS. No, sir; that was the Pingree case.

The CHAIRMAN. The Edwards case was where he went to get the child.

Mr. RICHARDS. Yes, sir.

Mr. CAINE. How long was this man Edwards in the house?

Mr. RICHARDS. Only a few minutes, I think; but as to that I am not certain, for I did not try the case. I was told, however, that the woman he went to get the child from exonerated him most thoroughly in her testimony, stating emphatically that he had simply come for the child, and that no intimacy existed between them.

The CHAIRMAN. Was that trial at Ogden?

Mr. RICHARDS. No, sir; it was at Salt Lake City, before Chief Justice Zane.

Mr. CAINE. That was constructive cohabitation with a vengeance.

Mr. RICHARDS. As I said before, I might go on and talk at great length upon this subject, stating the facts of other cases, but I presume it is not necessary. The committee can see from what has been stated in what a dilemma a man is placed when he is asked to make such promises.

Mr. BASKIN. It would be very satisfactory to us all to have you bring

those cases in, because I do not have any such understanding as you have in regard to them, but quite the reverse.

Mr. RICHARDS. It does not make any difference about what understanding you may have. I have stated the facts. If the committee require it, I will produce the evidence, although I have to send to Utah for it. I am not responsible for the gentleman's understanding.

Mr. BASKIN. I undertake to say that when you produce the cases they will not bear your construction.

Mr. RICHARDS. I say most emphatically, on my honor as a gentleman and a member of the bar, that the cases are exactly as I represent them, and I can show it from the records. I think my statement will be equivalent to the statement of a person who admits that he does not know anything about them. There are a great many things that Mr. Baskin knows that I do not know, but there are a few things that I happen to know which he does not know. The reason I happen to know so well about them is because I was engaged in the trials of them. I have been in this litigation from its very inception and probably know as much about the cases tried and the questions involved in them as any other man.

There are several other matters that I would like to refer to, but I must pass on to the consideration of the bill before you, because I do not wish to weary the committee. My object in making these statements is to show from the facts the present condition of things in the Territory of Utah.

The CHAIRMAN. Will you allow me to ask you this question as to a matter of fact? I understand you to state that to an almost universal extent the Mormons have conformed, in your judgment, to the terms of the Edmunds law?

Mr. RICHARDS. They have, so far as my knowledge extends, discontinued living with more than one wife.

The CHAIRMAN. There are two modes in which they may conform: One is to live with neither of their wives. I understand some to make that point.

Mr. RICHARDS. Yes, sir; that is so in a number of cases.

The CHAIRMAN. That they will not live with either if they cannot live with both. They feel the obligation to be an equal one to each one of their wives.

Mr. RICHARDS. There are particular reasons for that. The only cases of that character that have come under my observation are those in which all the parties interested have agreed to the arrangement. The practice has been, as I understand in many cases, that the family would come together, and after talking the matter over, agree as to how they would live in order to conform to the law; whether the husband would live with the legal wife, or with another wife, or not live with any of them. Some of them have adopted one line of conduct, and some another.

The CHAIRMAN. Can you throw light upon another point about which there has been some discussion here before the committee, but with regard to which I have not yet gotten the facts exactly? I understand from Mr. McKay, who was here some time ago, that of the whole population in Utah, consisting of about 180,000 people, there was about 150,000 perhaps who had adhered to the Mormon creed, and about 30,000 of what are termed in Utah, in your parlance, Gentiles—150,000 to 30,000. Then he said of the 150,000 who adhered to the Mormon creed, there were about 12,000 who were implicated in the polygamist marriage. He did not say, and could not say, and I have never been able

to find out from anybody so far whether these 12,000 included the men and women who were in it, or whether it referred simply to 12,000 men.

Mr. RICHARDS. It includes the men and women who are in polygamy and the men and women who have heretofore been in it, but who are not now in it.

The CHAIRMAN. Then, if, taking the average number of the wives to the men who are in it to be, say, three, that would leave about 3,000 men in Utah who practice polygamy?

Mr. RICHARDS. I do not think there are over 2,000 men in polygamy. That is according to the best calculation I have been able to make; it was made for the benefit of the Supreme Court, and was presented to the court in Mr. Curtis's argument in the Snow case. It is founded upon the best data that I have been able to obtain, and is partially susceptible of demonstration, I think.

This is the computation: Assuming that there are 2,000 men, and that they, on an average, have three wives, that would make 6,000 women and 2,000 men now in polygamy; in all, 8,000 men and women.

Now, to go back to the 10,000 or 12,000 and see how those figures are obtained. When the Utah Commissioners were appointed they went out to Utah and prescribed an expurgatory test oath which excluded from registration and voting everybody who was in polygamy or who had ever been in that relation. The total number of persons so excluded was reported to be between 10,000 and 12,000. From the best information I have I do not think it ever reached 11,000, but it was reported to be between 10,000 and 12,000.

The CHAIRMAN. Including men and women?

Mr. RICHARDS. Yes, sir.

Now, if you take 2,000 men and 6,000 women, making 8,000 in all, from 10,000 to 12,000, you have from 2,000 to 4,000 remaining. You have between 2,000 and 4,000 persons, then, who, at some prior time, had been in polygamy, but who are not now. It is not an overestimate, I assure you. As a matter of fact the polygamous families of Utah to-day are very small compared with what they once were. I think you will see from all the data that three is a very fair average of the present polygamous households.

The CHAIRMAN. I will say to you, Mr. Richards, that you have given us more satisfactory and precise information than we have been able to get from any one yet on this subject. I am very much obliged to you for it. I would like to ask one other question on this point. What proportion of those who are now or who have been in polygamy were married prior to the act of Congress of 1862?

Mr. RICHARDS. I could not say as to the proportion, but a very great many of them, I think; a vast majority of them.

The CHAIRMAN. A majority of these 12,000?

Mr. RICHARDS. Yes, sir; of all.

The CHAIRMAN. Were married prior to 1862?

Mr. RICHARDS. That is my belief.

Mr. EDEN. That is 24 years ago.

Mr. RICHARDS. Yes, sir; I believe that to be true. I do not state it as a fact, because I cannot prove it, and I want to be very careful in my statements to the committee. Some things I know and am prepared to prove, if necessary, but I can only say of these computations that they are as nearly correct as the information at my command enables me to make them.

The CHAIRMAN. Take, then, those who are now or have been in this polygamous union to be 10,000 out of the 150,000 who adhere to the Mormon creed; who constitute the 140,000? Are they single persons?

Mr. RICHARDS. Not exactly; I am one of that class myself, and have a wife. I am a Mormon, and there are a great many others who are in the same position.

The CHAIRMAN. There are a great many Mormons who have never had but one wife?

Mr. RICHARDS. Yes, sir; a great number. The great majority of them never had but one wife.

Mr. A. M. GIBSON. There is one test. The census of 1880 shows that there are 5,000 more females in the Territory of Utah than there are men. Now, if, as Mr. Baskin stated the other day, one-half of the males were polygamists, where do the wives come from?

Mr. RICHARDS. The figures show the real state of the case. I take the figures of the Commission; they are not our figures. The Commissioners themselves have stated these facts in their reports. Had I known this question would come up, I should have brought with me one of their reports to the Secretary of the Interior. If the reports are examined, however, it will be found that they have stated that there has been no attempt at evasion on the part of the Mormons in regard to this matter, but that they have in good faith, all of them who were disqualified, yielded the franchise. They placed the number of disqualified persons at from 10,000 to 12,000. Then, of course, when we take out the widows and those who have been in that relation, but are not in it now, it brings the number down, as I say, to about 8,000, and as a a polygamist must have at least two wives, there could not be but about 2,500 men at the largest possible calculation, and I have placed the average of wives at three, which makes about 2,000 men. I think that is pretty conclusive of the question.

The CHAIRMAN. You have stated a fact which allows me to ask of you, therefore, this question, which you may answer or not, as you see proper. Is it the Mormon creed that there is any religious obligation to have plural wives?

Mr. RICHARDS. I will tell you, sir, what I understand the Mormon view to be in relation to that. There is a difference of opinion among Mormons, as I understand it, on that subject—not as to the rightfulness——

The CHAIRMAN. I understand that, but as to the divine mandate, or divine permission——

Mr. RICHARDS. Yes, sir; as to whether the revelation is mandatory, or merely permissive.

The CHAIRMAN. That is it.

Mr. RICHARDS. There are a great many of the Mormon people—I won't undertake to say how many, because I do not know—who firmly believe that it is mandatory upon them to have a plurality of wives whenever their circumstances will permit They believe that as sincerely as people can believe anything. Then there is another class of the Morman people who do not believe that it is mandatory upon them to have a plurality of wives, but who do believe that if they fail to enter into that relation they will not attain to the exaltation hereafter, and enjoy all the blessings that those will who enter into it. I may, perhaps, make myself better understood by expressing it in this way: There is a certain class who believe that if they do not enter into plural marriage they will be damned. There is another class who do not believe that they will be eternally damned if they do not enter into this relation, but they do believe that they will not attain to the same exalta-

tion and enjoy the same blessings as those who do enter into it. Mr. Caine, have I stated it as you understand it?

Mr. CAINE. Yes, sir.

Mr. RICHARDS. As to the proportion of each of these classes I cannot say, for I do not know. The fact that this difference of opinion exists I know to be true, because I am acquainted with individuals, whose names I could give if necessary, belonging to each of these classes, and they are just as firm in their several convictions as people can possibly be. Those who believe it to be mandatory are just as sincere in that belief as members of the other class are in their belief.

Mr. HUNTON. Is there any written tenet of the church on that point?

Mr. RICHARDS. Yes, sir; there is a revelation on the subject of celestial marriage to be found in the "Doctrine and Covenants of the Church of Jesus Christ of Latter-Day Saints," Liverpool edition of 1882.

The CHAIRMAN. I think you have stated it very much as Mr. Cannon stated it. When he was here in Congress some years ago I asked him that question, and he and I had a good deal of conversation on the subject. He stated it very much as you state it. I put this question in substance to him: "If it is mandatory that every man shall have two or more wives, then there will not be enough to go around, either as bigamists or polygamists."

Mr. RICHARDS. But I hope, Mr. Chairman, that you will remember I am not here contending for either construction.

The CHAIRMAN. I understand. I am simply remarking that you take very much the same ground that Mr. Cannon did. He held that it was permissive, but that there was a larger glorification in store for those who indulged in polygamistic relations.

Mr. RICHARDS. All Mormons believe that whether it be mandatory or permissive the glorification and exaltation will be altogether different with persons in that condition.

The CHAIRMAN. I am very much obliged to you for your candid statement on that subject. I did not intend to be too inquisitive.

Mr. RICHARDS. There is nothing with regard to this subject that I desire to conceal. The worst evil we have to contend against, Mr. Chairman and gentlemen of the committee, is the fact that the people of the country do not understand us and hardly seem willing to hear us. I do not mean that you do not want to hear us nor that Congress does not want to hear us, but the country at large will listen to people who misrepresent us rather than take our own statements in regard to matters in which we are most deeply concerned. People can get access to the public press to misrepresent the Mormons when we ourselves cannot get a hearing. If our countrymen knew us better they would think better of us and put a stop to much of the oppression of which we complain.

There is nothing about this thing, as I said before, that I desire to conceal. I am not ashamed to stand here to-day and tell this honorable committee that I am a Mormon. I do not blush to say that I believe in the divinity of the revelation on celestial marriage. I do not experience a particle of shame in telling you this, for I have a right to that belief. It is guaranteed to me by the Constitution of my country, and I do not think the time has yet come when the legislators of this great nation are going to try to stamp out even that religious belief when it is not accompanied by any overt act. That is where we stand to-day; and yet while that is true, the monstrous proposition is advanced here, in this very room, to disfranchise us because of our belief. I denounce it as a monstrous proposition. It is true the gentleman comes here

with all of his self-sacrificing eloquence and says to the committee: "For the benefit and the good of these people I am willing to lose my rights; I do not ask of you to disfranchise them alone, but you may disfranchise me also." He did not stop to call the attention of the committee to the fact that although he has been a resident of the Territory of Utah so many years he has all the time belonged to such a hopeless minority that his suffrage has not yet succeeded in electing anybody to any position, while our votes, because we happen to be in the majority, control the offices of the Territory. I doubt not that such self-abnegation on the part of my adroit opponent is too transparent to deceive this committee, or anybody else. You must see through it at a glance. The proposition is that you either disfranchise all the Mormons because of their religious belief, or if you are unwilling to do that, disfranchise everybody in the Territory by providing a legislative commission. I say it is a monstrous proposition.

Mr. Chairman, I shall not attempt to analyze this bill nor discuss all its objectionable features. You have already listened to able arguments against it, and eminent counsel have yet to speak in opposition to the measure. I shall content myself with a brief reference to some of its oppressive features.

A word as to the first section, which provides that the legal wife shall be a competent witness to testify against the husband. I desire to read a few sentences from the case of Stein *v.* Bowman, to be found in 13 Peters, in which the Supreme Court of this nation expresses my views on this subject in much better terms than I could possibly do myself.

The CHAIRMAN. Who was the judge delivering the opinion, Justice Strong?

Mr. RICHARDS. One moment and I will see. It has been some time since I looked at the case. On examination I find that the opinion was delivered by Mr. Justice McLean. The court says:

> The law does not seem to be entirely settled how far, in a collateral case, a wife may be examined on matters in which her husband may be actually interested, nor whether in such a case she may not be asked questions as to facts that may in some measure tend to criminate her husband, but which afford no foundation for a prosecution. The decisions which have been made on these points seem to have been influenced by the circumstances of each case, and they are somewhat contradictory. 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 her husband, or to disclose that which she has learned from him in their confidential intercourse.
>
> Some color is found in some of the elementary works for the suggestion that this rule, being founded on the confidential relations of the parties, will protect either from the necessity of a disclosure, but will not prohibit either from voluntarily making any disclosure of matters received in confidence; and the wife and the husband have been viewed, in this respect, as having a right to protection from a disclosure on the same principle as an attorney is protected from a disclosure of the facts communicated to him by his client.
>
> The rule which protects an attorney in such a case is founded on public policy, and may be essential in the administration of justice. But this privilege is the privilege of the client, and not of the attorney. The rule which protects the domestic relations from exposure, rests upon considerations connected with the peace of families. 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. And it is well that the principle does not rest on the discretion of the parties. If it did, in most instances it would afford no substantial protection to persons uninstructed in their rights, and thrown off their guard and embarrassed by searching interrogatories.
>
> In the present case the witness was called to discredit her husband; to prove, in fact, that he had committed perjury. And the establishment of the fact depended on his own confession—confessions, which, if ever made, were made under all the confidence that subsists between husband and wife. It is true the husband was dead, but

this does not weaken the principle. Indeed, it would seem rather to increase than lessen the force of the rule.

Can the wife, under such circumstances, either voluntarily be permitted, or by force of authority 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 principles forbid it.

This 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.

That quotation expresses my idea exactly as to the policy of making a wife a witness against the husband, but there is one other thing that I have to say on the subject, and I speak it with sorrow, because it is a point which, although conclusive of this question, ought not to exist. It has been held by the courts in Utah that the first wife may be compelled to testify against her husband. That is the rule there to-day, and I ask you with what reason Mr. Baskin comes here and seeks to have you encumber the national statute books by the enactment of that which is said to be the law and certainly is the practice there now? If the gentleman wants to know the cases in which this has been held, I am prepared to name them. The chief-justice of the supreme court of the Territory of Utah has held that under the existing statutes of the Territory the first wife is a competent witness, and may be compelled to testify against her husband; and several wives to my certain knowledge have already been compelled to so testify.

Now, the second section provides:

SEC. 2. That in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, whether before a United States commissioner, justice, judge, a grand jury, or any court, an attachment for any witness may be issued by the court, judge, or commissioner, without a previous subpœna, compelling the immediate attendance of such witness, when it shall appear to the commissioner, justice, judge, or court, as the case may be, that there is reasonable ground to believe that such witness will unlawfully fail to obey a subpœna issued and served in the usual course in such cases; and in such case the usual witness fees shall be paid to such witness so attached: *Provided*, That no person shall be held in custody under any attachment issued as provided by this section for a longer time than ten days; and the person attached may at any time secure his or her discharge from custody by executing a recognizance, with sufficient sureties, conditioned for the appearance of such person at the proper time as a witness in the cause or proceeding wherein the attachment may be issued.

I say, if the committee please, at the outset that this provision is unprecedented in the history of our jurisprudence. Such a law does not exist, so far as I know, among any English-speaking people, except in the Territory of Utah, where a section of the Revised Statutes has been held to authorize the doing of the very thing provided for in this section. The court now sends out an attachment for witnesses and has them arrested without having been previously served with subpœna and without any notice whatever. They claim the right to do it under section 881 of the Revised Statutes. The court does now all that it is to be authorized to do by this second section.

Mr. EDEN. The court, I suppose, admits them to bail?

Mr. RICHARDS. Yes, sir.

Mr. GIBSON. In the sum of $5,000.

Mr. RICHARDS. It has exercised this power in several cases; but particularly I will instance the case of Mr. Cannon, where his whole family were arrested, and his wives placed under bond of $5,000 each.

Mr. CAINE. And arrested on Sunday, too.

Mr. RICHARDS. Yes, sir, and arrested on Sunday. Their houses surrounded in the morning before they were up and the whole family taken to the court-house and compelled to give bail before they could secure their release.

Mr. HUNTON. That was not only arbitrary, but unconstitutional.

Mr. RICHARDS. It is the practice in Utah; they are doing it all the time, and now they ask Congress to legalize such doings.

Mr. EDEN. Under what law does the court undertake to do that?

Mr. RICHARDS. I think the district attorney told me he acted under section 881 of the Revised Statutes of the United States. But be that as it may, whether that is the section or not, they do these things, and claim to have the authority in law for doing them. If this claim is well founded, then certainly no other law of that kind is needed.

Mr. GIBSON. We do not want such action legalized by any act of Congress.

Mr. RICHARDS. We most emphatically object to having it legalized by any act of Congress. We insist it is in contravention of the constitutional right of the citizen. If I thought it necessary, and my time would permit, I would read from Cooley on Constitutional Limitations upon this subject.

Mr. EDEN. I notice that this section that you have spoken of in the bill requires proof to be made—"being satisfied by proof."

Mr. RICHARDS. The only proof that is necessary there now is simply an affidavit, and then the warrant issues.

The CHAIRMAN. Have you a reference to Cooley?

Mr. GIBSON. It is Cooley on Constitutional Limitations, sections 306 and 307.

Mr. RICHARDS. And then there is the case of Boyd *v.* The United States, decided at the present term of the Supreme Court, and reported in 116 U. S.; also the case of Stuart *v.* Palmer, 74 New York, 183 and 190. On page 190 the supreme court of New York says:

> It is a rule founded on the first principles of natural justice, older than written constitutions, that a citizen shall not be deprived of his life, liberty, or property without an opportunity to be heard in defense of his rights, and the constitutional provision that no person shall be deprived of these "without due process of law" has its foundation in this rule. This provision is the most important guarantee of personal rights to be found in the Federal or State constitution. It is a limitation upon arbitrary power, and it is a guarantee against arbitrary legislation. No citizen shall arbitrarily be deprived of his life, liberty, or property. This the legislature cannot do nor authorize to be done. Due process of law is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the proceeding be judicial, administrative, or executive in its nature. (Weimer *v.* Bunbury, 30 Mich., 201.) This great guarantee is always and everywhere present to protect the citizen against arbitrary interference with these sacred rights.

Passing on hurriedly to section 3, which asks for an extension of the statute of limitations, I do not know of any reason why the time should be extended for commencing prosecutions in this class of cases beyond the time fixed for the crimes of murder, treason, and other grave offenses. I submit that there is no reason for it, and that it ought not to be done. But I must not stop to discuss it, the time will not permit.

I am reminded, Mr. Chairman, that there have been only two convictions for polygamy in the Territory of Utah since the passage of the Edmunds law, which goes to show that there have not been the recent violations of that law in relation to marriages that are claimed.

Mr. EDEN. You mean convictions for unlawful cohabitation?

Mr. RICHARDS. There have been numerous convictions for unlawful cohabitation, but only two convictions for polygamy, even with the facilities that are afforded the courts by making the first wife testify

against her husband, arresting witnesses and packing juries. Yet while the courts exercise all these powers you are asked to grant them still more extraordinary ones.

I will refer briefly to section 5, which is as follows:

SEC. 5. That every certificate, record, and entry of any kind concerning any ceremony of marriage, or in the nature of a marriage ceremony of any kind, made or kept by any officer, clergyman, priest, or person performing civil or ecclesiastical functions, whether lawful or not, in any Territory of the United States, and any record thereof in any office or place, shall be subject to inspection at all reasonable times by any judge, magistrate, or officer of justice appointed under the authority of the United States, and shall, on request, be produced and shown to such judge, magistrate, or officer by any person in whose possession or control the same may be. Every person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than $1,000, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. And it shall be lawful for any United States commissioner, justice, judge, or court before whom any proceeding shall be pending in which such certificate, record, or entry may be material, by proper warrant, to cause such certificate, record, or entry, and the book, document, or paper containing the same, to be taken and brought before him or it for the purpose of such proceeding.

The proposition is broad and sweeping to allow the officers to indiscriminately search Mormon homes. And in this connection it may be proper for me to explain that with very few exceptions all male Mormons of adult age are elders, and have the authority, if they choose to exercise it, to solemnize marriages. Not the celestial marriages that we have been speaking of, which are eternal in their character, but such a marriage as would be binding between individuals during this life. Nearly every man in the Mormon Church has that authority, and under this section a judge might issue a warrant, and search the house of any man. For what? Why, for evidence that somebody has been married. I desire to show you how far-reaching this section is. While the authority to solemnize marriages is not exercised by many Mormons, the very fact that they possess it would give the officers a sufficient pretext for invading any house and prying into the secrets of any person who might be the object of their displeasure.

The CHAIRMAN. I do not understand you when you say that you, for instance, as a member of the Mormon Church, could solemnize a marriage.

Mr. RICHARDS. I mean that I am an elder of the Mormon Church.

The CHAIRMAN. You mean that you could solemnize a marriage?

Mr. RICHARDS. Yes, sir. A marriage for this life only.

The CHAIRMAN. But not an eternal marriage?

Mr. RICHARDS. No, sir.

The CHAIRMAN. What do you mean by that?

Mr. RICHARDS. I mean that as a rule marriages which are entered into by Mormons are eternal in their character and must be solemnized by certain persons who have the express authority. While I would not have authority to officiate at such a marriage, I could marry a man and woman for time, but not for eternity. It would be in the nature of a contract between the parties, witnessed by myself.

Mr. BASKIN. That is what you call a legal marriage?

Mr. RICHARDS. Yes, sir; if the parties were both single, and if not I could not officiate at the marriage at all.

The CHAIRMAN. You could solemnize what would be a civil, legal marriage?

Mr. RICHARDS. Yes, sir; I could do that; but a simple agreement between a man and woman to become husband and wife, even without

the intervention of any third person, is a valid marriage in Utah, if made *in præsenti* or followed by matrimonial cohabitation.

The CHAIRMAN. Your idea, then, is that according to the doctrine of the Mormon church a mere contract between two parties to be husband and wife, without any solemnization, would be a legal marriage?

Mr. RICHARDS. No, sir; I do not say that as a Mormon my conscience would recognize that sort of a marriage; but I say it would be a legal marriage in the Territory of Utah, although not in accordance with my conscience or the forms of my church. I would not want to be married in that way, nor to marry anybody else in that way. I am speaking of the possibility that such a thing might be done, and the pretext it would afford for the abuse of such power as is proposed to be conferred by this section.

The CHAIRMAN. Is there any law of marriage in Utah?

Mr. RICHARDS. No, sir; there is no marriage law in Utah. Marriage is recognized by the Mormons as a religious rite or sacrament. A genuine Mormon marriage is an eternal covenant. A man and woman are married for time and eternity, and such a marriage can only be performed by persons who have express authority delegated to them from the Almighty. That is what we call celestial marriage; but marriage at common law, or a legal marriage, as Mr. Baskin has called it, might be solemnized by any elder in the Mormon church.

Mr. CAINE. As by a justice, for instance, in the States.

Mr. RICHARDS. Yes, sir, or a bishop. I mention it for the purpose of showing the opportunity afforded by this section for officials to make unjust and unreasonable searches and invade the privacy of people's homes. These searches would not be confined to the houses of the few people who are supposed to solemnize these marriages, but under the broad language of that section the minions of the law could enter the house of any man and search his private papers under the pretext that they were in search of evidence that somebody had been married, when as a matter of fact the man whose house they were searching might never have solemnized a marriage in his life.

I submit that the door should not be opened which would permit the perpetration of such gross outrages upon any citizen; and the Constitution expressly forbids any such legislation or procedure.

Mr. HUNTON. Wouldn't the further effect of that section be to force a man in some cases that you can imagine to furnish testimony against himself?

Mr. RICHARDS. Most assuredly it would have that effect. If the man had any evidence in his possession against himself, it would in effect compel him to produce it.

Mr. HUNTON. And that is expressly condemned in the Boyd case.

Mr. CAINE. All Mormons keep family records?

Mr. RICHARDS. Yes, sir. The Boyd case is directly in point. My object now is not so much to discuss the strictly legal questions involved, because my able associates will do that, but to apply the facts and show how far-reaching these measures may be. It is the purpose of the advocates of this section to have Congress provide a means by which every Mormon home may be invaded, and if this section becomes law, no man's home would be sacred nor his private papers secure from the inquisitive eye of his enemies.

I understand that the committee do not care to have argument on the section which proposes to disfranchise the women of Utah, so I pass it without comment.

Section 8 is as follows:

SEC. 8. That all laws of the legislative assembly of the Territory of Utah which provide for numbering or identifying the votes of the electors at any election in said Territory are hereby disapproved and annulled; but the foregoing provision shall not preclude the lawful registration of voters, or any other provisions for securing fair elections which do not involve the disclosure of the candidates for whom any particular elector shall have voted.

There is no such law in existence.

The CHAIRMAN. Mr. Baskin, do you know of any such law?

Mr. BASKIN. No, sir; there is no such law. If Mr. Richards will permit me to do so now, I will answer just here that I think that section ought to be so shaped as to prohibit the Territory from passing any such law. There was such a law, but it is now repealed, and no such law exists. That ought to be so changed as to provide that the Territory shall pass no law providing for the marking of the ballot. I suppose there will not be any objection to that. It would simply prohibit the legislature from restoring any of these laws.

Mr. CAINE. We had a law similar to the Illinois law, but now our ballots are absolutely secret. We do not number the tickets at all. That used to be the case, and that is what they call the "marked ballot."

Mr. RICHARDS. I suggest that that section is absolutely unnecessary. There may be no great objection to it, because the legislature evidently wanted a secret ballot when they passed the law on the subject, and there is no danger that they will make any change. The governor has the absolute veto in the Territory of Utah, and I presume we will always have a governor there who will protect the secret ballot.

The ninth section is as follows:

SEC. 9. That the laws enacted by the legislative assembly of the Territory of Utah conferring jurisdiction upon probate courts, or the judges thereof, or any of them, in said Territory, other than in respect of the estates of deceased persons and in respect of the guardianship of the persons and property of infants, and in respect of the persons and property of persons not of sound mind, are hereby disapproved and annulled; and no probate court or judge of probate shall exercise any jurisdiction other than in respect of the matters aforesaid; and every such jurisdiction so by force of this act withdrawn from the said probate courts or judges shall be had and exercised by the district courts of said Territory, respectively.

What will be the effect of this section? It simply takes away from the probate judges power to grant divorces, and to determine when a town site is entered under the laws of Congress, who are the actual occupants of the land. That is all the jurisdiction the probate courts now have, except such as is retained by this bill. Is it not, Mr. Baskin?

Mr. BASKIN. That is the most important.

Mr. RICHARDS. I respectfully submit that it would work a very great hardship to take that away.

Mr. BASKIN. I do not think they ought to have jurisdiction.

Mr. RICHARDS. Why not? The statute expressly provides what shall be causes for divorce.

The CHAIRMAN. The statute of Utah?

Mr. RICHARDS. Yes, sir; and another thing: By act of Congress it is provided that when a party makes application in a probate court for a divorce, and the other party is not satisfied to have the trial take place in that court, he may have the case transferred to the United States district court before answering. Is not that an ample protection to all parties? On the other hand, what is the hardship that this provision would work? There are counties that are far remote from a district court. We have a Territory 300 or 400 miles in length, and there are

but three judicial districts in it. It is nearly 100 miles from some of the counties to the district court.

The CHAIRMAN. How many district courts have you?

Mr. RICHARDS. Three in the Territory. The judges are appointed by the President. There is one court that sits at two places in the district. The other two courts are held at one place in each district.

The CHAIRMAN. How are the probate judges appointed?

Mr. RICHARDS. They are elected by the people. I contend that there is no possible injury done to anybody by letting the law remain as it is. In a remote county 100 miles from the place where the district court is held a man or woman may sue for a divorce. If dissatisfied with the forum, the other party may, as a matter of right, have the case transferred to the district court. If both parties are satisfied, who is injured if the probate court tries the case?

Mr. EDEN. Are your probate judges lawyers?

Mr. RICHARDS. Some of them are not, but I submit that under these circumstances it would be unjust to compel parties to seek a distant forum in order to get a decree, and incur the enormous expense of taking their witnesses such a distance. Again, in the matter of acquiring title to town sites. Say a town having 500 inhabitants is situated 100 miles from the district court. Would it be right to require those 500 people to go 100 miles in order to secure the titles to their lots when the lots are probably not worth $100 each?

The CHAIRMAN. How many counties have you in Utah?

Mr. RICHARDS. About 22, I think.

The CHAIRMAN. And the judge of the probate court is a single judge?

Mr. RICHARDS. Yes, sir; elected in each county.

The CHAIRMAN. For how long?

Mr. RICHARDS. Two years.

The CHAIRMAN. Then you have justices of the peace, also?

Mr. RICHARDS. Yes, sir; in each precinct.

The CHAIRMAN. How many?

Mr. RICHARDS. That depends on the number of precincts in the county.

The CHAIRMAN. I mean how many in each precinct?

Mr. RICHARDS. One or more, as the circumstances may require.

The CHAIRMAN. Is there any law of Utah fixing the number?

Mr. RICHARDS. I do not exactly remember as to that.

The CHAIRMAN. Who appoints the justices of the peace?

Mr. RICHARDS. They are elected.

The CHAIRMAN. In each precinct?

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. Then you cannot tell me who determines how many justices shall be appointed in each precinct?

Mr. RICHARDS. My recollection upon that point is not sufficiently definite to enable me to answer with certainty.

Mr. CAINE. When a precinct becomes too large, by application to the county court, they divide the precinct, and then another justice can be elected.

The CHAIRMAN. Who compose the county court?

Mr. CAINE. Three selectmen and the probate judge. They are elected by the people of the county.

The CHAIRMAN. Three selectmen are elected by the people of the county?

Mr. CAINE. Yes, sir; they and the probate judge form the county court, which is similar to boards of county commissioners in other States and Territories.

Mr. RICHARDS. I confidently assert, then, that no good reason can be advanced why their jurisdiction should be taken from the probate courts.

The next section, section 10, is as follows:

SEC. 10. That the laws enacted by the legislative assembly of the Territory of Utah which provide for or recognize the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father of such illegitimate child are hereby disapproved and annulled; and no illegitimate child shall hereafter be entitled to inherit from his or her father or to receive any distributive share in the estate of his or her father: *Provided*, That this section shall not apply to any illegitimate child born previous to the passage of this act.

I submit that I can see no reason why that section should be enacted. It is the law in many of the States that illegitimate children inherit from the father when acknowledged by him. I did have a brief showing the number of States that have adopted a provision similar to the Utah statute upon this subject, but I cannot now refer to it.

The CHAIRMAN. Your Utah statute allows the illegitimate child (and by that I mean a child born out of your Mormon marriage) to inherit?

Mr. RICHARDS. Yes, sir; and also children born from polygamous marriages.

The CHAIRMAN. The Edmunds act makes all those children legitimate?

Mr. RICHARDS. Yes, sir; all born before January 1st, 1883, but prior to the time when they were legitimated, under our statute they could inherit the father's estate when recognized and acknowledged by him. To the best of my recollection that is now the law in the majority of the States. I am sorry I cannot give you the exact number, but I have had no time whatever for preparation, and must offer that as an excuse for the rambling and perhaps incoherent manner in which I have addressed you.

The CHAIRMAN. There is no occasion for you to make any apology. You have been exceedingly clear in your statement.

Mr. CAINE. In regard to the matter of recognition, I will state that I recollect very well when that statute was passed, and the recognition clause was put in by the governor of the Territory. That is, he made the suggestion that we should provide that the children to inherit should be recognized by the father.

The CHAIRMAN. In Virginia, the child, although illegitimate, inherits from the mother.

Mr. RICHARDS. Yes; and I think that is the law in nearly all the States.

Mr. HUNTON. They would here, also, under this law.

The CHAIRMAN. Does this law only apply to the father?

Mr. RICHARDS. Yes, sir. The provisions of this bill only apply to the father. Where such children inherit from the father the law applies only to cases where the children were recognized or acknowledged by him.

Mr. EDEN. In a number of States the recognition consists in a subsequent marriage.

Mr. RICHARDS. Yes, sir. A subsequent marriage would constitute evidence of recognition; the purpose of this provision is obvious. It is to protect persons from imposition; but that would not be necessary in Utah, because there the acknowledgment is usually so public, and the fact so well known, that there is not likely to be any difficulty with regard to it.

There are other provisions of the bill that I should like to comment upon, but I do not feel that I would be justified in detaining the committee longer.

I thank you for the patient hearing you have given me, and sincerely hope that when you come to finally consider the bill you will conclude that we have already law enough in the Territory of Utah on these subjects.

Mr. HUNTON. I understood the committee to request that there should be no arguments submitted upon sections 12, 13, 14, 15, and 16, which refer to the forfeiture of the property and appointment of trustees.

Mr. BASKIN. Oh, no; I did not so understand it.

Mr. RICHARDS. I so understood it.

Mr. HUNTON. I know that when Mr. Chandler, in arguing this case, got to that point, the chairman stopped him.

The CHAIRMAN. I would be very glad to hear you, not on the question of forfeiture to the United States, but with regard to what legislation may be had in reference to the holding of property by these two corporations.

Mr. EDEN. Simply in regard to this feature of escheat.

The CHAIRMAN. I understand that this corporation is, by the law of Congress of 1862, if I mistake not, limited as to the amount of property it shall hold to $50,000.

Mr. RICHARDS. There is a provision in that law that no religious corporation should thereafter acquire or hold real property of a greater value than $50,000.

The CHAIRMAN. Now, suppose this church has acquired a larger amount of property than that, what legislation should be had in order to bring it down to the limitation, or could there be any legislation had to diminish the amount of that property?

Mr. HUNTON. The only redress in a case of that sort, as I understand the adjudicated cases, is that the corporation may be dissolved, but there is no case anywhere that I have been able to find which authorizes that property may be taken away from the corporation.

Mr. EDEN. There might possibly be. I have not looked into it. It might, however, come within the jurisdiction of a court in some shape.

Mr. HUNTON. No; the courts have already taken that ground, that you may dissolve a corporation for violating its charter by holding more property than it is entitled to, but the property is not taken away from them. The courts wind up the corporation, and distribute the property among the corporators.

Mr. EDEN. That would require the intervention of a court, would it not?

Mr. HUNTON. Oh, yes. The question has arisen mostly with regard to bank corporations; they acquired more land than their corporate act entitled them to.

The CHAIRMAN. If you will allow me to refer to the point that is in my mind——

Mr. HUNTON. Certainly.

The CHAIRMAN. Where the ownership of the property is in the incorporators; where they own the property according to shares of stock, you would divide the property between them in proportion to their stock. But take Epiphany Church, for instance. Suppose you sold out the Epiphany Church, between whom would you divide it?

Mr. HUNTON. You would have to divide it among the congregation.

The CHAIRMAN. In what proportion?

Mr. HUNTON. That would have to be decided by the courts.

The CHAIRMAN. But then you are not a member to-day. Perhaps, and I hope you may be, to-morrow or next Sunday. You would come

in then for your share. But suppose you were in, and you were deemed unworthy and were put out, would you lose your share?

Mr. HUNTON. Yes, sir.

The CHAIRMAN. Now, the question is, who would be entitled to it; whether the pew-holders or the members of the church in good and regular standing.

Mr. HUNTON. That difficulty would not apply here, because the corporation of that church, as I understand, embraces every Mormon.

The CHAIRMAN. Suppose a man ceases to be a Mormon.

Mr. HUNTON. Then, of course, he would cease to have any interest in the church or its property.

The CHAIRMAN. You would divide it among the members of the church at the time of the decree, or at the time the suit was brought.

I call your attention to this aspect of the case because upon that point I would be very glad to hear any views you may desire to submit. The bill, as it comes from the Senate, provides that all of the property in excess of the $50,000, or if the corporation be dissolved, that the whole of the property of the corporation shall escheat to the United States.

Mr. HUNTON. And then be given over to the schools.

The CHAIRMAN. Yes, and then be given over to the schools. That is the proposition. I do not mean to say whether I am in favor of it or not. The question, however, is, what is to be done with the property in either of such events? I think that is the question that my brother Eden says is one for the courts, and therefore a provision might be inserted in this law not as stringent as this one, but one which should provide a means of determining, through some judicial tribunal, the private rights of the parties, should Congress see proper to adopt a policy looking to the dissolution of the corporation, or of limiting the amount of property that it should hold to $50,000.

Mr. GIBSON. Mr. Chairman, I understand that section 12 goes out in toto.

The CHAIRMAN. What does that section relate to?

Mr. GIBSON. That provides for the trustees.

Mr. BASKIN. The first part of it relates to another branch.

The CHAIRMAN. I can only say that I do not want to hear any argument on that question.

Mr. GIBSON. I understood that was the suggestion of Mr. Stewart the other day.

The CHAIRMAN. Brother Stewart and I the other day agreed that we did not want any argument of the question, and I said I did not feel disposed to run the church.

Mr. BASKIN. The first part of the section relates to the disincorporation; it is only the trustee business that——

The CHAIRMAN. It is only the idea of running the church. I have no idea of going into that kind of an arrangement.

Mr. EDEN. The thirteenth section is the important one.

ARGUMENT OF A. M. GIBSON, ESQ.

Mr. GIBSON. Mr. Chairman, Mr. Richards says he is quite fatigued, and does not feel able to go on further with this discussion, and therefore, with the permission of the committee, I will say a few words.

The question as to church corporations has been elaborately discussed in a number of cases, especially in New York, and in the Supreme Court of the United States; also in the famous Kentucky case, that stirred

up the whole State of Kentucky. The decision of the Supreme Court in that case was that the church government——

The CHAIRMAN. What case is that to which you refer?

Mr. GIBSON. Case of Watson *v.* Jones, 13 Wallace, 679. The Supreme Court of the United States held in that case that courts will interfere to see that property is not diverted from the purpose for which purchased or given; and the principle of organization will be considered, whether it is independent or one of a number under a general ecclesiastical control, in determining questions of departure from faith. The opinion to which the court refers in this decision as settling the law on that subject is one delivered by Chief Justice Gibson in the case of the German Reformed Church *v.* Seibert, 3 Barr, 291. In that case Judge Gibson says: "The decisions of ecclesiastical courts, like every other judicial tribunal, are final, as they are the best judges of what constitutes an offense against the word of God and the discipline of the church." The same has been held in a great number of New York cases decided by Chancellor Walworth. One of the most famous cases that ever was tried in the State of New York was before Judge Hand, Denio, 491, Miller *v.* Gamble. Another was the case of Robertson *v.* Bullions, 9 Barb., 64.

The syllabus in that case is as follows:

The late court of chancery in this State had no power to remove an officer of a religious corporation, or to disfranchise a member thereof.

Mr. BASKIN. That is an entirely different principle. That principle I will not controvert for a moment.

Mr. GIBSON. That is a very important case which was overruled by Judge Hand in accordance with the ruling of the court of appeals as it formerly existed in New York. Judge Walworth had held repeatedly that these questions in regard to the church must be determined by the membership of the church; and they were all property questions, too. One of the first cases decided was that of the Baptist Church of Hartford *v.* Witherill, 3 Paige, 304.

Mr. EDEN. That was a controversy between the church and some member of the church.

Mr. GIBSON. Certainly.

Mr. BASKIN. I think I could abridge that argument by stating this, that it is not only a rule of church corporations, but of all other corporations, that the court cannot remove an officer unless it be on account of some breach of duty.

Mr. GIBSON. Oh, yes; but this case went further than that. It went to the question of the property of the church, and the court settled the law on this subject, and that law has been universally recognized. There is not a court in this country that will not stand by it.

It comes right in here, Mr. Chairman, in this case, in reply to your question as to what is to be done with this money. Suppose you disincorporate the Mormon Church, what are you going to do with the property that it had—its real estate? I say it must be distributed to the membership of that church. The United States has no more right to it than I have.

Now, as to the question as to what is to be done with all in excess of $50,000. That is the point you were inquiring about, Mr. Chairman. The act of 1862 prohibits church organizations—charitable organizations of all and every kind—from holding real estate in excess of $50,000.

Now, as a matter of fact, the church property of the Mormon Church is held by the different congregations. It is not held by one trustee in

trust for all the Mormon people. Formerly that was the case—just precisely as the Catholic Church holds its property. The archbishop of the diocese holds the property in fee; it is so recorded. The absolute fee is in the archbishop or the bishop, as the case may be. In all other church denominations the rule is for the congregation to own the property—the real estate. Trinity church in New York, for instance, has $100,000,000 worth of property held by the corporation of Trinity church, and it is precisely that way in Utah. All the church property, as I understand, is held in that way.

The CHAIRMAN. By the separate congregations?

Mr. GIBSON. By the separate congregations.

The CHAIRMAN. But how much is held by this corporation of the Church of the Latter-Day Saints which has been incorporated.

Mr. RICHARDS. If Mr. Gibson will permit me, I will state that it has been a matter of very great doubt at least in Utah, since the passage of the law of 1862, whether there is any such corporation as the Church of Jesus Christ of Latter-Day Saints.

The CHAIRMAN. Then, the dissolution of that corporation would not affect anybody?

Mr. GIBSON. Not at all. If no such corporation exists.

Mr. BASKIN. If there is such a corporation under that act, then it presents a different question.

Mr. GIBSON. But, Mr. Chairman, we do not want this committee or this Congress to give these active, industrious, and zealous individuals, whose sole occupation in life is to make money out of this business, the opportunity to institute legal proceedings; to vex and harrass everybody in that Territory; that is the objection; and there is no cause for it. The Mormon Church is represented as a great corporation, owning millions upon millions of dollars worth of property; as having an exhaustless treasury. It is all false; there is no truth in it at all. There is just as much truth in that, Mr. Chairman, as there is in the telegraph dispatch which the gentleman who accompanied Mr. Baskin here, Judge Goodwin, sent to the Salt Lake Tribune the other day "that old Lamar is on another drunk."

Mr. BASKIN. I do not suppose this committee will pay attention to that. It is certainly foreign to the argument.

Mr. GIBSON. Our motives are questioned; this committee's motives are questioned.

The CHAIRMAN. This committee will not go into any argument of that question.

Mr. GIBSON. I do not propose it shall.

Mr. BASKIN. Lawyers do not usually make before lawyers those irrelevant statements that cannot bear on the case. You referred to me. I will state that I know nothing about such a dispatch.

Mr. GIBSON. You have not read it in the Tribune?

Mr. BASKIN. I have not, and even if I had, it has not anything more to do with this question than the man in the moon.

Mr. GIBSON. I understand that this act excepts the ground on which churches are built. It says "that no building or ground appurtenant thereto shall be forfeited which is held and occupied exclusively for the purposes of the worship of God."

Now, if that is in excess of $50,000, all right, but it is ambiguous. For instance, the Temple in Salt Lake City is a building, which, when completed, will cost several millions of dollars. So a Temple in Logan; so a Temple in Manti; so a Temple in Saint George.

The CHAIRMAN. You seem to be familiar with the New York cur-

rent of decisions on that subject; are there not decisions to the effect where there were limitations of the property that Trinity church, for instance, could hold originally, say to $100,000, that when it bought property, which, by the mere settlement of the city increased to a million, that did not invalidate the corporate right to hold?

Mr. GIBSON. That is the settled rule in New York.

The CHAIRMAN. That is my impression about it. If the limitation upon this corporation was $50,000 and it acquired property to the amount of $50,000, upon which it built a structure which cost a million, which was paid for by voluntary contribution, I am not disposed to think that that would invalidate the corporation.

Mr. HUNTON. It would stand as the original sum of $50,000.

Mr. BASKIN. I concur in that opinion most thoroughly.

The CHAIRMAN. I think you will find that that question has been adjudicated in New York; I have not looked at it for many years, but that is my impression.

Mr. GIBSON. A great many things have been adjudicated in New York that do not hold in Utah.

The CHAIRMAN. The question is, What is the law? We will try to properly administer the law in the case.

Mr. GIBSON. I have no doubt of that. Section 14 reads as follows:

SEC. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess of the amount limited by law, the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever.

Now that is another of the broad provisions just like that relating to the entrance into the houses for the purpose of searching for papers, &c. As to all real estate, the laws of Utah on that subject are plain and ample, and there is no necessity for going after the——

The CHAIRMAN. How is this property at Salt Lake City held, according to the records of the court? I mean where there is a house of worship—a tabernacle, I believe it is called. How does it stand? Who has the legal title?

Mr. RICHARDS. The Temple Block in Salt Lake City, upon which the Tabernacle and Temple stand, was owned by the Church of Jesus Christ of Latter-Day Saints before the passage of the act of 1862. That act expressly provided that property then held by the church could not be affected by the operations of that act, and if it had not so stated in terms, we all know that it would have been so anyway; that is to say, the prohibition was as to acquiring thereafter, and holding more property, but it did not apply to any property then held. The title now vests, as I understand it, in John Taylor, as trustee in trust for the Church of Jesus Christ of Latter-Day Saints. I think that is the way the title now stands.

The CHAIRMAN. There has been a suggestion that has come to me in some form or other, whether there is any property held by private parties in Utah upon secret trusts for this corporation?

Mr. RICHARDS. I do not know of any. I know that an idea of that kind has been and is circulated very industriously, and that statements have been made to that effect. It has been suggested here that the church has fabulous wealth, and all that sort of thing, but I have never been able to verify such statements.

The CHAIRMAN. The corporation itself, as I understand from you, then, as far as the record shows, does not hold any real property?

Mr. RICHARDS. I do not now recall a single piece of property in the Territory that is deeded directly to the church as a corporation.

The CHAIRMAN. How is it as to other church edifices in other parts of Utah; how are they held?

Mr. RICHARDS. Congregations in the different localities are incorporated under the laws of the Territory. We have in the Territory a general incorporation act by which any religious corporation or any congregation of religious worshipers may become incorporated.

The CHAIRMAN. To what extent? Is there any limitation?

Mr. RICHARDS. There is a limitation upon the amount of real property which such a corporation may acquire and hold; a limitation similar to that in the act of Congress.

The CHAIRMAN. The reason I ask the question is because in Virginia it has been the rule during the whole history of that State, that has crystallized into a statute of a later period, that every religious congregation may, in a city or town, hold two acres of land for the purpose of erecting buildings for public worship.

Mr. RICHARDS. There is no such custom of limitation with us or anything of that sort, either by statute or by custom. There is the general prohibition, of course, that no corporation or association shall acquire or hold over $50,000 worth of real property. These corporations hold the title to their respective meeting-houses.

The CHAIRMAN. In the Virginia law there is no limitation upon the amount of the value of the edifice. The congregation may build as splendid an edifice as they may see proper; they may build it of gold if they please. That is a contribution. They are only limited as to the quantity of land. It is really a mortmain provision.

Mr. RICHARDS. There is no such limitation there. The only limitation is as to the value of the land, and not the quantity.

Mr. CAINE. There is no danger of any of these corporations owning more than $50,000 worth of property.

Mr. RICHARDS. I do not know of any of our religious corporations owning real property that would sell for $30,000. The most valuable property they have is their church buildings or tabernacles, and I do not know of any tabernacle that would sell for that much money.

The CHAIRMAN. Do any of those corporations own any land that they rent out?

Mr. RICHARDS. No, sir; I am not aware of any. I do not know of an acre of land that is so owned and rented.

The CHAIRMAN. Is there any other point you want to refer to, Mr. Gibson?

Mr. GIBSON. I would like to refer to sections 15 and 16, which are in regard to the Perpetual Emigrating Fund Company. Do you want to know anything about that?

The CHAIRMAN. Yes; I do.

Mr. GIBSON. That company originated in this way. When the Mormons were driven from Nauvoo, the promise was made by the State authorities that the sick, the helpless, the weak, and those who were not able to go out at the time might remain until such period as provision could be made for their transportation. By the time the pioneer company had reached the Missouri River, while the other companies were straggling on the way, the mob drove out these unfortunate people, and with them, also, all the people who had come in and bought land from the Mormons. Before the main body left, at a great meeting, the peo-

ple entered into a solemn covenant with one another that no person should be left behind; that none should be deserted; that when they got located they would send back and bring these people. That was done after these people were driven out. They sent back such assistance as they could, and brought them along. Others of them were scattered through the country, but in time they were all brought to the Salt Lake Valley. Now, these persons who were thus befriended, prospering in the Territory, took the amount of money which they supposed had been expended in their behalf, and they dedicated it to the purpose of bringing to Utah such persons who might join the church and desire to go there. As I understand it, this company has no property. They have the obligations of some persons who were assisted to come out, but the company has its headquarters in Liverpool, and not in the United States.

The CHAIRMAN. It is a corporation incorporated by the Utah legislature?

Mr. GIBSON. Originally it was incorporated by the legislature of Utah, the legislature of the State of Deseret; that provisional government they formed out there.

The CHAIRMAN. Do you remember the date of it?

Mr. GIBSON. It was re-enacted in 1852, I think. I have not the date of the original act. The most of these people who were brought out to this country, those who were assisted, were aided in this manner. They have an office in Liverpool. If a person who is a member of the Mormon Church, in England or anywhere else, in Scotland, Wales, or even on the Continent, wants to save money to enable him or her to emigrate, they send whatever small sums they can save to the office in Liverpool. There they are credited for whatever amount it is, and when that accumulates until there is a sufficient amount to defray the greater part of the expense of bringing these persons out, then the Emigrant Fund Company advances the remainder. It is a co-operative institution. By sending all their passengers by one line of steamships—Williams & Guion, who have been carrying them for forty years—they get reduced rates, and they get reduced rates on the railroads. At one time I know the fare was $75 from Liverpool to Salt Lake City.

Mr. RICHARDS. And it has been less than that, I believe.

Mr. CAINE. They get very low rates for immigrants.

Mr. GIBSON. Now, what purpose is to be served by legislation of this kind? If you are going to say that because a man is a member of the Mormon Church he shall not put his feet on your soil, say so. Don't go about it in this roundabout way. This corporation may be disincorporated; may be wound up. Will that stop the Mormons from coming, so long as those in Utah by their thrift and their economy can save the amount necessary to bring them? Of course not. Why do you want to do this? Why is such a thing proposed? I ask it in all good faith. I would like some one to answer me why such a proposition is made. These people are good citizens. What they have done in the valley of Salt Lake speaks for itself. What they have done in every Territory where they have settled speaks for itself. I have seen in the village of Lower Kanab 600 people living, and living well, on 1,000 acres of irrigated land; having good, comfortable homes; maintaining schools, and maintaining their church. Now I want to know where you will find any other people who are doing that? You cannot find them.

These people have settled, Mr. Chairman, one great question that is troubling this country to-day. There is no conflict between labor and capital in Utah. By their system of co-operation, community co-operation, they have developed that country, and no other people could

have done it. Move them out of that country to-day; destroy what they have done, and the small number of non-Mormon population will starve to death. They are not tillers of the soil. They live by other means. I say more than that, Mr. Chairman, the whole intermountain region could never have been settled, could never have been developed, but for the Mormon population. They have no trouble about water rights. Their canals are dug; water is led where it can be drawn off to the land. They have a perfect system of equity as to the distribution of that water. There is no conflict. It is very rarely that any case is ever brought into court; isn't it, Mr. Richards?

Mr. RICHARDS. Very rarely indeed.

Mr. GIBSON. And I ask why this attempt?

The CHAIRMAN. Is the land all cultivated by irrigation?

Mr. GIBSON. Yes, sir; originally all was cultivated by irrigation. But this fact has been demonstrated that as considerable bodies of land have been irrigated, trees grow and verdure springs up; the rainfall sensibly increases, and it has been found in Cache Valley, for instance, that they can grow wheat without irrigation.

Mr. RICHARDS. Some seasons.

Mr. GIBSON. Yes, some years the rainfall is greater than others.

The CHAIRMAN. You are provided with an irrigating process in case there is no rainfall in those regions?

Mr. GIBSON. Oh, yes, sir; the whole country depends upon irrigation. Now, section 17 provides:

SEC. 17. That the existing election districts and apportionments of representation concerning the members of the legislative assembly of the Territory of Utah are hereby abolished; and it shall be the duty of the Governor, territorial secretary, and the United States judges in said Territory forthwith to redistrict said Territory, and apportion representation in the same in such manner as to provide, as near as may be, for an equal representation of the people (excepting Indians not taxed), being citizens of the United States, according to numbers, in said legislative assembly, and to the number of members of the council and house of representatives, respectively, as now established by law; and a record of the establishment of such new districts and the apportionment of representation thereto shall be made in the office of the secretary of said Territory, and such establishment and representation shall continue until Congress shall otherwise provide; and no persons other than citizens of the United States otherwise qualified shall be entitled to vote at any election in said Territory.

The last legislative assembly passed a bill which you will find in this Miscellaneous Document 238, Forty-ninth Congress, first session. That was vetoed by the governor. The committee can examine that for themselves and ask any questions they want to know about it hereafter. I have read the veto message of the governor, and I could see no good reason why this bill should not have been allowed to pass.

Mr. BASKIN. Have you given that veto message, with the document, to the committee?

Mr. GIBSON. I do not know whether the veto message is printed here or not. I do not think it is.

Mr. CAINE. We will furnish the veto message to the committee.

Mr. BASKIN. It is a very important document to go with the bill; it will explain the reason why the bill was vetoed.

Mr. GIBSON. Now section 18:

SEC. 18. That the provisions of section 9 of said act, approved March 23, 1882, in regard to registration and election officers, and the registration of voters, and the conduct of elections, and the powers and duties of the board therein mentioned, shall continue and remain operative until the provision and laws therein referred to to be made and enacted by the legislative assembly of said Territory of Utah shall have been made and enacted by said assembly and shall have been approved by Congress.

That is the Utah Commission of which you have heard. The act of 1882 provided that it should remain in existence until the legislative assembly of the Territory of Utah made provision for the registration

of voters, &c. The first legislative assembly that met after that law was enacted did pass such a bill. It was vetoed by the governor, who assigned his reasons therefor. Now, a bill was carefully prepared and introduced before the last legislative assembly of Utah, meeting the objection made by the governor; and that bill you will also find in this same document.

The CHAIRMAN. That bill redistricts the State?

Mr. GIBSON. No; there is another one which redistricts the Territory. This is the bill that provides for and prescribes qualifications for electors and office-holders, providing for the registration of voters and regulating the manner of conducting elections. That was also vetoed by the governor.

Mr. CAINE. That bill, if it had been enacted, would have dispensed with the Utah Commission.

The CHAIRMAN. What was the general provision of that bill?

Mr. RICHARDS. It made provision for the discharge of the duties now performed by the commissioners and their appointees and provided what local officers should do this work. In effect it superseded the commission.

Mr. GIBSON. As the Edmunds act of 1882 required to be done. The act of 1882 required such legislation on the part of the legislative assembly, and until such legislation was provided, the Utah Commission should continue. Of course it is an exceedingly difficult matter to get rid of a commission when one is once created. I never knew one to expire. I have known them to run for a great many years. Once you fasten a commission upon any people, and it manages in some way to hold on. It costs the Government of the United States for each commissioner $5,000 a year and the traveling expenses of each of these gentlemen. Originally their washing was included, but the auditing officers of the Treasury Department struck that item out. Since then they have not been able to have their washing paid for by the United States, but all their hotel expenses, clerk hire, &c., are paid.

The CHAIRMAN. What was the peculiar function of this commission?

Mr. GIBSON. Simply to appoint registrars and judges of election.

Mr. EDEN. They see to the registration.

Mr. GIBSON. They are to count the votes for the members of the legislative assembly. This act provides for everything. It provides as stringent an oath as can be asked. Originally, you know these people, when they went out there, found that the law said any male person who cohabits with more than one woman, or any woman cohabiting with a man in the polygamous relation, should not be allowed to vote. They pondered over that a great deal, and they came to the conclusion, I suppose, that if they prescribed an oath just as the law read, there would be a great many persons who were not Mormons who could not vote, who could not take it. So they interpolated "in the marriage relation," and that stood until the Supreme Court of the United States in Murphy *vs.* Ramsey decided they had no right to prescribe that, and then an oath was provided for the registrars to prescribe.

The CHAIRMAN. Where is the case of Murphy *v.* Ramsey to be found?

Mr. GIBSON. In 114 United States, 15.

The CHAIRMAN. Can you give me the reference to the leading Utah case that was decided by the Supreme Court of the United States some time ago?

Mr. RICHARDS. Reynolds *v.* The United States, 98 U. S.

The CHAIRMAN. Can you give me a reference to all the cases in which the Supreme Court have passed upon these questions? It will save me the trouble of looking into each volume to see where they are.

Mr. RICHARDS. Yes, sir.

Mr. GIBSON. These persons have no political power whatever. The bill which has been passed provides, just as it is provided in the election law of Pennsylvania, to a very great extent, for the appointment of registrars, and for the return of the votes, and all that.

I will leave this copy with the committee, and will supply the other members of the committee with copies, and they can examine for themselves this point. Is there any necessity for continuing this commission? That is, by providing, as suggested in the bill, "until the provision and laws therein referred to to be made and enacted by the legislative assembly of said Territory of Utah shall have been made and enacted by said assembly, and shall have been approved by Congress."

Congress has the opportunity, of course, of passing upon these laws of the legislative assembly. The organic acts of all the Territories—the old act of 1842—the general provisions are incorporated in all the organic acts of the Territories, and legislation of the Territories is not valid if disapproved by Congress. Congress has the power to disapprove of this legislation whenever it is made.

The CHAIRMAN. You say it has the power.

Mr. GIBSON. Yes, sir; it has the power, of course.

Mr. CAINE. That is reserved in all the organic acts.

The CHAIRMAN. Yes; and irrespective of that, I think it has.

Mr. GIBSON. Now, I pass over section 19, and also sections 20 and 21. If Congress is going to legislate upon that subject, or on any of these subjects, it ought to endeavor to make the provisions broad enough to cover everybody, and not to be made to apply to a particular class of people. I have no objection to section 20 at all. I would only suggest an amendment to sections 19 and 21.

Mr. EDEN. Does not section 19 apply to everybody?

Mr. GIBSON. You would think that an act of Congress that says "any male person, cohabiting with more than one woman," would apply to everybody, wouldn't you? But it has not been made to so apply. You know Congress enacts laws, and the courts construe them.

Mr. EDEN. I do not see how we can put any language in that would make it any plainer.

Mr. GIBSON. I could amend section 21, but I do not see proper to indicate now in what way.

Section 22 is as follows:

SEC. 22. That commissioners appointed by the supreme court and district courts in the Territory of Utah shall possess and may exercise all the powers and jurisdiction that are or may be possessed or exercised by justices of the peace in said Territory under the laws thereof, and the same powers conferred by law on commissioners appointed by circuit courts of the United States.

The act of 1874, known as the Poland act, took away from Utah its local judiciary, and extended the jurisdiction of the United States district courts, and the jurisdiction of the United States officers, marshals, and district attorneys, over the entire Territory. The county prosecuting attorneys are permitted to come in and take part if they want to, without pay, but the result of this law has been simply this, that district attorneys and marshals have increased their fees enormously. They charge up the fees allowed them under the fee bill of the United States, and they get that from the United States. The United States claims that that must be reimbursed out of the Territory of Utah, and the amount now is some $300,000.

An examination of the bills as rendered by these gentlemen at the end of every quarter would be very instructive to the committee, if it

had time to go into it. Invariably, whenever you legislate upon these subjects, you increase the expense that is entailed upon the United States. There are no means of auditing such accounts. They come here to the Treasury of the United States; they are passed over by the accounting clerks, who undoubtedly try to do the best they can; but constructive mileage is the invariable practice. It is the invariable practice by all United States marshals, and here you propose that each commissioner now appointed by the supreme court shall have the right to exercise the powers and jurisdiction that may be possessed or exercised by a justice of the peace in said Territory under the laws thereof. The people have their justices of the peace, and you are simply imposing aliens upon them, because the courts do not appoint the people who belong to the soil. The whole object of this is to create offices, and to impose upon these people men who have no sympathy with them, men who have no interest in common with the people. And by that I mean they have no interest in the real prosperity of the Territory. They are not, as a rule, property-holders.

Now, you must take into consideration this fact, that there is no other population on the face of this earth where so large a percentage of the people are owners of the land. It is the most astonishing fact I have ever known. Ninety per cent. of the heads of Mormon families are absolutely owners of the houses in which they live, the land which they cultivate. There is no other population in the world that approximates to it.

Now, with regard to the justices of the peace as they now are. They have only to pass on a controversy between Mormons, because when you go outside of a few settlements in Utah you do not find any non-Mormons. When you get to a mining camp there, you find non-Mormons. Now, do you want to impose upon these people this class of men to administer the law? It is doing by indirection what is sought to be accomplished by legislative commission. Nothing else. Is the principle of local self-government to be violated? People who have always had the right to choose their local officers are, in effect, to be deprived of it, because these people have their jurisdiction extended.

Section 23 is as follows:

SEC. 23. That the marshal of said Territory of Utah and his deputies shall possess and may exercise all the powers in executing the laws of the United States possessed and exercised by sheriffs and their deputies as peace officers; and each of them shall cause all offenders against the law, in his view, to enter into recognizance to keep the peace, and to appear at the next term of the court having jurisdiction of the case, and to commit to jail in case of failure to give such recognizance. They shall quell and suppress assaults and batteries, riots, routs, affrays, and insurrections, and shall apprehend and commit to jail all felons.

The CHAIRMAN. I see it states that the marshal of said Territory and his deputies shall possess and may exercise all the powers in executing the laws of the United States possessed and exercised by sheriffs and their deputies as peace officers. Does it mean under the laws of Utah?

Mr. GIBSON. No, sir. You will see that it does not if you will read on.

And each of them shall cause all offenders against the law, in his view, to enter into recognizance to keep the peace——

The CHAIRMAN. I understand; but to exercise all of the powers in executing the laws that are possessed by the sheriffs and their deputies. What are they?

Mr. GIBSON. It goes on from where you quoted just now:

And each of them shall cause all offenders against the law, in his view, to enter into recognizance to keep the peace, and to appear at the next term of the court having jurisdiction of the case, and to commit to jail in case of failure to give such recognizance.

What is that but the power of a committing magistrate?

The CHAIRMAN. I understand that, but why did they——

Mr. GIBSON. The first portion of it is a mere intention to mislead.

The CHAIRMAN. What powers have the sheriffs and their deputies as peace officers in Utah; anything special?

Mr. RICHARDS. I do not know of any special powers myself.

Mr. GIBSON. I do not know of any.

Mr. RICHARDS. The usual powers of such officers are those of conservators of the peace, I presume.

Mr. GIBSON. In Pennsylvania the sheriff is bound to quell a riot, if he can, if it occur within his view; or at least attempt to do so; but he cannot seize on any person and commit him to jail. He must take him before some magistrate.

The CHAIRMAN. He can take him to jail and keep him there until he gets him before a magistrate.

Mr. GIBSON. Oh, yes; he can do that; but these persons are to have the power to do more than that.

The CHAIRMAN. I recognize the point; go on.

Mr. GIBSON. The only thing that I care particularly to say about section 24 is to reply to the imputation and the insinuation that books of a sectarian character are used in the schools of Utah. Now, two years ago I made a careful examination as to that matter, and I stated here in my brief the character of the books that are used in the schools. I assert that there are no books of a sectarian character at all used in the schools of Utah.

Mr. WEST. In one case the schools were decided to be non-sectarian. They endeavored to avoid paying the school-tax on the ground that they were sectarian schools. Witnesses were brought from all over the Territory for one hundred miles, and it was shown conclusively that the schools were not sectarian in any sense.

Mr. GIBSON. As to the other provisions I have no remarks to make.

The CHAIRMAN. Section 24 in the bill, as I have it here, is in reference to dower, I believe.

Mr. GIBSON. It is 25 in my copy; yes, sir, it relates to dower.

I do not think of any other point, Mr. Chairman, just now, that I desire to call the attention of the committee to. I thank the committee for their courteous attention.

The CHAIRMAN. Is there anything further to be presented to-day?

Mr. RICHARDS. I do not wish to detain the committee, but I desire to ask one question in regard to section 12 in order that we may understand exactly what the position of Mr. Baskin is in relation to the matter. It is the section referring to the trustees.

Mr. BASKIN. I will answer the gentleman when it comes my turn.

Mr. RICHARDS. I understood him to say that he contended that the first part of this section would still remain. I will read the first part of the section, and ask Mr. Baskin what his position is, so that we may understand. It reads in this way:

That the acts of the legislative assembly of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints, and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may have legal force and validity, are hereby disapproved and annulled so far as the same may preclude the appointment by the United States of certain trustees of said corporation as is hereinafter provided.

Mr. BASKIN. I would stop before the last clause; stop with "are hereby disapproved and annulled."

Mr. RICHARDS. In other words, your desire is to have the act of incorporation repealed so far as it has any legal force and effect?

Mr. BASKIN. Yes; I want the act incorporating the church disapproved, which would render it null and void.

Mr. EDEN. This particular incorporation mentioned in the section?

Mr. BASKIN. Yes, sir; to render it null and void under the provision of the statute which I will read to you in answer, not only to these gentlemen, but also to Mr. Chandler.

Mr. RICHARDS. I simply wanted to know what the gentleman's contention on that point would be.

Mr. BASKIN. Yes, sir; I want to rub the corporation out of existence.

Mr. RICHARDS. It may be, Mr. Chairman, in consequence of our misapprehension as to what the committee would hear argument upon, and what not, that we may desire to be heard briefly upon this point.

Mr. BASKIN. There is to be an end of this argument some time, I hope.

The CHAIRMAN. I will say that the committee—and I presume I may speak for my co-members—are very anxious that there should be an end of this matter, but the proper end of the matter is to come to a right understanding of the facts necessary for just legislation, and I regard the time of the committee as very well spent in getting light in regard to the whole question, in order that we do the right thing. I do not, therefore, begrudge the time that is given to the discussion, although, of course, the time ought not to be wasted. I will be very glad to hear from the gentlemen upon that question. I mentioned some of my views in regard to that question to Mr. Richards, and a good while ago to General Hunton, and sent to him a reference for the benefit of Mr. Chandler. All that we meant to say the other day, as I understood it, was that we did not think you need argue the question of running the church by appointing subtrustees to do it.

Mr. EDEN. To run the church?

The CHAIRMAN. Yes; that we did not intend to run the Mormon Church.

Mr. BASKIN. We discussed that very question.

The CHAIRMAN. It was only with regard to that question, the question as to whether we should take away the corporate powers of that church, or what should be done with reference to the property that it held in excess of the amount allowed by the act; or if disincorporated, what should be done with the property of the church. That was a question which we stated we would like to hear you upon, with this understanding, as far as I am concerned, that I have never favored the idea of escheating any piece of property to the Government that any human being has an individual right to.

Mr. RICHARDS. I think I understand, Mr. Chairman, perfectly.

Mr. EDEN. Upon the question of appointing these trustees to manage the affairs of the church; that is the main thing.

Mr. BASKIN. I understand the chairman to mean this, that he does not believe in having escheated to the Government any piece of property in which an individual may be said to have a vested right.

The CHAIRMAN. Yes, sir; I would not take it away from him.

Mr. BASKIN. That is a general proposition that will strike anybody as fair.

The CHAIRMAN. If any corporation has to be dissolved, and an individual party has such property in that corporation as can be recognized by a court of justice, he shall have it, as far as I am concerned.

Mr. BASKIN. I claim in this case that no individual member of a church can be said to have a vested right in any church property, in that sense, like a private corporation, the property of which is represented by stock.

The CHAIRMAN. I am certain that the Government of the United States has none.

Mr. GIBSON (addressing Mr. Baskin). Do you claim that no congregation has any vested right?

Mr. BASKIN. I claim this, that if there is a statute applying to a church, in the nature of mortmain, then that is a declaration upon the part of the Government that it is against the policy of the Government that any church should acquire property beyond the amount specified in that statute of mortmain, or whatever it may be. You will remember that the history of the original statute of mortmain, the first that was enacted, was evaded, and it led to an amendment which embraced trustees.

Now, with regard to any property that is acquired over and above the amount which the Government has said it is against public policy that a church should hold, I claim it is an acquisition in violation of law, and that when the corporation is disincorporated because it has violated the law, or for any other reason, then there is property in existence to which there is no title, because it is not held in pursuance of, but against law. There is no vested title in that case.

If there be such property, as I have reason to believe there is, that is held in the hands of trustees, then that becomes a question for the courts, and I think that in the absence of any statute, although I am in favor of preserving that clause of the statute, I think it is the duty of the Attorney-General to institute a proceeding for the purpose of escheating that property.

The CHAIRMAN. This is a point that I would like to call to your mind in order that you may discuss it if you desire. Suppose that I make a conveyance of a thousand acres of land to Mr. Richards, whom I know to be a Mormon; make it over to him to hold for the benefit of the Church of the Latter-Day Saints. He gets a fee-simple title—a legal title in himself. The corporation is then dissolved, and you thus destroy the *cestui que* trust. Who does he hold for?

Mr. BASKIN. I think in that case it would escheat. It could not revert to the grantor for the simple reason he has received a consideration.

The CHAIRMAN: No; he may not have received any consideration for the benefit of the church. I put the case of making him a gift without any consideration.

Mr. BASKIN. There is just one of two courses to be taken in that case. The property must either escheat to the Government, or must revert to the original grantor and his heirs.

The CHAIRMAN. There is no doubt about that, that if I make a conveyance to a trustee for the benefit and in trust for a party who has no legal existence now, or whose legal existence is taken away from him, there is a resulting trust to the grantor; but, take another case: suppose Mr. Richards has bought the property from me with contributions from the members of the Mormon Church in Salt Lake City, or anywhere else. This man has contributed $10, and that man has contributed $10, and so on. He has put up his money to buy that property and he holds it for the benefit of that corporation. Is it right or just that the Government should forfeit the whole of that property to itself and not give the money back which bought the property to the parties who contributed it?

Mr. BASKIN. You suppose a case that would hardly ever arise, or that could apply to a case like a church. The trouble would be to find out who really contributed, and in what proportions they contributed. In a case where it is impossible from the nature of the transaction to have a resulting trust in favor of the persons who actually contributed or to the grantor and his heirs, then I see no other way, from the very

necessity of the case, than that there should be an escheat in favor of the Government—the sovereign power; but it seems to me these questions are idle and not covered by this bill.

The CHAIRMAN. This bill as it has come from the Senate proposes to make an escheat to the Government, and the Government is to apply the fund to a certain purpose—to the public schools?

Mr. BASKIN. Yes, sir.

The CHAIRMAN. That question is one that I was controverting, or, rather had in my mind as objectionable.

Mr. BASKIN. In relation to that, as I said, it is not the property we are after. I see the force of your suggestion, and I am in heartfelt sympathy with a great many of the questions you have asked to-day. If the fund could be traced to the persons who, in equity are entitled to it I would say, give it to them, but if there be a fund, and it should prove after these bodies are disincorporated—and with regard to the question of the right and duty of Congress to disincorporate both of these bodies, I will dwell when I come to reply—I say, if there be that kind of property, then I know of no place for it to go except as provided for in this bill. Of course if there be any persons who are equitably entitled to it, it is to be presumed that a court will give it to them under this bill.

Mr. CAINE. There would not be much left after the lawsuits were through with.

Mr. RICHARDS. I suggest to Mr. Baskin that there might be this kind of a case: This corporation might have acquired property and conveyed it subsequently to another party, to an innocent purchaser. The question is then what would become of the property? All these things should be provided for, because here is a statute passed in 1862, and no steps whatever taken to enforce any provision of it for twenty-four years, and there is a possibility that some property may have passed in that way.

The CHAIRMAN. I do not think there will be any disposition on the part of the committee to confiscate property which a party had taken by deed from the church, although it had been acquired irregularly.

Mr. RICHARDS. You mean, I presume, although the church may not have had the legal right to hold it.

The CHAIRMAN. Yes.

Mr. BASKIN. I merely said that in this view of the case, and that whatever provision should be made, if any, in the bill that the language of the law covers just such cases as that, so that——

Mr. EDEN. You say, Mr. Richards, if the church has conveyed the property. I understand this does not apply to property not held by the corporation.

The CHAIRMAN. I do not remember the exact language of this bill.

Mr. RICHARDS. My point is this: If the committee conclude to retain these sections of the bill they should be so modified as to guard all these points, and such matters ought not to be left entirely to the courts.

Mr. CAINE. We are more afraid of wrong constructions than we are of the actual language of the statute.

Mr. BASKIN. I claim that the court is the safest palladium of freedom in this country. We cannot afford to discredit courts. While they may make misrulings, there is review. This Supreme Court has not any prejudice against Mormons.

The CHAIRMAN. We will continue this matter to-morrow at 1 o'clock. I hope that the gentlemen who propose to discuss it will be here promptly at that hour.

Adjourned until May 1, 1886.

WASHINGTON, D. C., *May* 1, 1886.

Committee met pursuant to adjournment.

The committee still having under consideration Senate bill No. 10, Mr. Boutwell said:

ARGUMENT OF HON. GEORGE S. BOUTWELL.

Mr. BOUTWELL. Mr. Chairman and gentlemen of the committee, although I have not been present at the meetings generally of the committee, it may have appeared from the course of proceedings that I am not expected to discuss questions relating to affairs in Utah, either as they have existed in the past or as they exist at the present time. Of those affairs I know nothing. My retainer requires me to state such objections as occur to me to the bill that is before the committee and known as the Edmunds bill.

Before proceeding to the consideration of that bill by sections I think I am justified, from the course of events, and from the general character of the bill, without now considering its peculiarities, in saying that there appears to be interwoven into every fiber of that instrument a certain influence which may be said to arise from the condition of public sentiment in reference to the practices of the sect or organization to which the bill relates. In an experience not very short I have observed as to private affairs, and as to public affairs, that there is nothing more dangerous than to act under the influence of prejudice, excitement, or passion; and that those administrations of public affairs are wisest and best, and that none other are either wise or good, that do not always deal with questions upon principle, and so act that every public officer who takes part in public affairs can defend himself to himself as to what has been done.

We are to consider that here are 200,000 persons, some of whom, I suppose, are already citizens of the United States, and others who may become citizens of the United States. Their descendants, if born in this country, will, under the Constitution, be citizens of the United States; their numbers will augment; their power will increase; and while it is within the scope and within the proper administration of justice that violators of the law shall be punished, yet in all your proceedings every element that by these people can be fairly interpreted as persecution should be eliminated from the public policy of the country.

I have further to say, as a general observation, that it is not competent for you, sir, and not competent for this committee, not competent for the House of Representatives nor the Senate, nor the Congress of the United States to have any judgment whatever as to what a religion is. No person can read this bill without observing that it is not only aimed at the correction of what is deemed by the country a social wrong, but it contains provisions which can have no other effect than to pass judgment upon the question whether the belief of these people is a religion or not.

By the first article of the amendments to the Constitution of the United States, every public officer is deprived absolutely of the power to possess any judgment as to what a religion is. Wherever two or three persons are assembled to worship what they believe to be a Supremacy, you have no right to inquire by what threads or avenues they connect themselves with that Supremacy. They constitute a religious

organization, and by the Constitution they are exempt from all supervision; from all interference; from all control by the Government of the country. But there are provisions, I think, in this bill, as it has been prepared, which indicate most distinctly that the purpose is not so much to eradicate the social evil which is a crime, and which the Government can prosecute, as to destroy the organization; the religious organization in which it is asserted that the vice has its roots; and nothing can be more manifest as to the opinions entertained by those who support this bill than the statement made by Mr. Baskin, which is found near the top of the 24th page of the report of his remarks. It is in these words:

> The thing I wish to accomplish is to pass laws which will strike at the foundation of the theocratic system.

That is what this bill proposes to do, and it is a purpose which is prohibited by the Constitution of the United States, if there be any provision of that Constitution which takes effect upon the Government of the country in any respect.

And consider still further. There are many religions that are theocratic. The religion of the ancient Jews was a theocratic religion, and out of that organization has come largely the Christian dispensation; the morality of the Christian world, and the literature and poetry with which modern life is adorned, refreshed, and influenced. The conservative Jews at the present day are theocratic. Do you propose to strike down the Jewish organization because it is theocratic?

If you trace the Catholic Church to its elements, you will see that it is a theocratic organization. It traces its authority through their popes and bishops, and Christ himself, to the Supreme Being. Because the Catholic Church is theocratic, and you have absolute control by the Constitution in this District, do you propose also to destroy that church in this District, or in any way to interfere with it because it is theocratic? But that statement by Mr. Baskin discloses largely the spirit which enters into this bill, and gives character and voice to several of the sections on which I propose to comment.

Another general observation on which I shall have occasion to particularize as I go on is that persons accused of crimes are triable only under the laws and rules of evidence that existed at the time the offense was committed. I shall have occasion, in discussing one of the sections of this bill, to treat more largely upon that point.

The bill avoids entirely the recognition of that great principle of human nature, especially in this age of the world, that mankind are striving for the better. I know nothing of the condition of things in Utah, but if the inhabitants are human beings they will struggle on, if they are in error, and strive to escape from their errors. That is no reason why what are crimes by law should be passed over without punishment; but there is no reason why you should go further than to apply to the criminals those principles of investigation, those rules of evidence, which you apply to criminals of a different character.

When the Jay treaty was under consideration, in 1794, Fisher Ames, of Massachusetts, one of the few great orators to whom the people of this country have ever listened, defended that treaty against great odds, and made its ratification a success. In the course of his observations he had occasion to remark upon the tendency of human nature to that which is just, and he said, "If there could be a resurrection from the foot of the gallows, and if all the victims of justice could be made to live again and be gathered into a society, they would, however loath,

soon make justice, that justice by which they fell, the fundamental law of their state." That philosophical observation became a prophecy. The criminals of Great Britain of all sorts and conditions, men who had robbed upon the highway, burglars who had broken and entered houses in the night-time, every grade of criminals whose crimes were not punishable by death, were sent to Van Diemen's Land, and in process of time they organized a society in which justice was as carefully administered as in Great Britain itself.

I come now to the first section of this bill. If I had not read other sections I should be astonished at what it contains. Husband and wife are, by that bill, with reference to certain offenses, compelled to bear witness against each other. Why the husband was introduced does not appear. There is no charge that the women of Utah have ever been guilty of the crime of polyandry, and therefore there was no occasion, except to make the "gruel thick and slab," for introducing the husband and compelling him to testify against the wife, inasmuch as no cause could arise under the law in which he could furnish any testimony whatsoever.

An exception is made to the communications that are confidential. We are not told how the question whether a communication was confidential or not is to be settled. By the wife? She might say all communications were confidential. By the magistrate? He can have no judgment until he hears what the communication was. But the exception discloses the latent idea that was in the mind of the author. He felt that he was departing from a principle of law which has existed without interruption for more than four hundred years in Great Britain and in this country from the beginning. By that law all communications between husband and wife are confidential. It does not appear from this bill, but the contrary rather appears, that the marital relation between the husband and the first married wife is to be destroyed. A later section in the bill, following the common law, as it has been improved in later times, grants to the first wife dower in the property of the husband. Therefore, assuming that the marital relation is to subsist, what provision is made in this connection for the perpetuity of that relation? Every line of that bill tends to the destruction of the relation by the overthrow of the family; to the orphanage of the children while the parents are living; to every evil that comes to a family when the husband and wife are divided.

The reasons why husband and wife should not be required to testify against each other rest in a great public policy. The family is the unit of the state. It is under the family roof that children are educated for citizenship and for the duties of life; and therefore it has been the uniform policy of the law to go as far as it can go in protecting the family; in preserving it from division; in securing to the children the advantages of culture which the home and the family alone can give. And yet this bill, this section, overthrows this public policy, and attacks a uniform practice covering centuries, a practice that has ever been regarded as a fundamental element of civilization and of public prosperity. You may say that it relates only to a small body of people. Justice is the same in small things as in great. One man or one woman has the same right to the shield of the Constitution, the laws and usages that have been sanctioned by time, that the millions have.

On the point as to the sacredness of the communications between husband and wife, I read from Professor Greenleaf—from his first volume on Evidence. It is paragraph 254, volume 1, in the edition which I consulted.

The CHAIRMAN. Section 254?

Mr. BOUTWELL. It is found in paragraph 254. and in volume 1, but it will be paragraph 254 in any edition. He 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 forever inviolate; that nothing shall be extracted from the bosom of the wife which was confided there by the husband.

And in the presence of that authority which speaks for more than four centuries of English and American law, the author of this bill who counts himself, and with justice, among the first ten lawyers of this country, has not hesitated to incorporate into this section, and to give to commissioners and justices of the peace in the Territory of Utah power to put a question that for five hundred years, in no court of justice, either in Great Britain or in this country, has ever been put to a married woman during the life of her husband.

But, Mr. Chairman, suppose this bill to be passed, as I suppose it cannot be passed—but suppose it to pass, and a married woman is brought before a magistrate in Utah to testify against her husband. What is her position? She has three ways.

If she knows that he is an offender against the law of which this bill speaks, and she testifies truthfully as to what she knows, by that testimony she destroys, beyond all question, all her claims upon her husband. The marital relation is broken forever. She is an outcast, and her children, if not illegitimate, are discarded, and she is left to such fortune as the world will grant to her.

Second. If she stand mute and decline to answer, she is in contempt of court, and she can be incarcerated in prison, subjected to a fine, and be compelled to remain in prison until the humanity of the court shall release her.

Or, she may do what probably many women, under such circumstances, would do. She might, in contemplation of law, commit perjury and bring upon herself, if not the penalty of the law, which might or might not be enforced against her, the reflections that such an offense must leave upon the mind of a guilty person. Therefore, if you pass this bill as it stands, you subject the wife to one of these three conditions.

Now consider that section further. Is there any relieving feature in it? Is there any consideration which justifies the passage of such a measure into law in the circumstances that there are violators of the law in Utah? What would you think of such a policy with reference to a perfect organization of professional burglars, bank-robbers, men who are bound together over the length and breadth of this republic, and who have as perfect organization as the Knights of Labor? Would you think it excusable, even against men engaged systematically in a profession for the purpose of robbing, and if in the attempt to rob they were obstructed, with the intent of taking life as a means either of escape or of securing their booty? What would you think if there were legislation in any State, or in Congress, with reference to those parts of the country over which Congress has exclusive jurisdiction, that the wives of these men should be compelled to testify concerning what they might know of their husbands' practices?

I now leave that section.

The CHAIRMAN. As you are about to leave that section, and before

you do so, will it interfere with you at all if I should ask you a question or two with regard to it?

Mr. BOUTWELL. Perhaps not. I may not be able to answer the questions, however.

The CHAIRMAN. The section as it is now drawn, and as it has come from the Senate, compels the husband or wife to testify. What would you think of the provision that made her or him a competent witness, without compulsion, to testify?

Mr. BOUTWELL. I should think badly of it. It is an invitation to a wife. The case of the husband is superfluous. It is an invitation to the wife under some temporary influence; some passion that may pass away; some control to which she has allowed herself to be subjected, to give evidence that destroys the marital relation, and breaks up the family.

The CHAIRMAN. In other words, you would put it on the same ground upon which a lawyer is not only not compelled, but is not permitted to betray confidences.

Mr. BOUTWELL. Yes, sir; it is against the public policy that husband and wife should ever, in a court of justice, be permitted to disclose one word that has passed between them while the marital relation existed.

The CHAIRMAN. There is one other question which I would like to ask you. Suppose the testimony of the wife, where it is confined to the legal wife, was confined to the fact of her marriage to the husband?

Mr. BOUTWELL. That can be proved *aliunde*. It can be proved that they have lived together. I do not see any ground on which that question can be put. If she has any interest in proving it, I think she is entitled to prove it when she is in any court having jurisdiction of the subject-matter.

Again, in support of the view I have been taking, although of course it is unnecessary to add to the authorities, and it must be very well known to you, Mr. Chairman, and to the members of this committee, that an action of tort between husband and wife does not lie for the same reason.

The second section of this bill provides that whenever it shall appear to a commissioner, justice, judge, or court, that there is reasonable ground to believe that a witness will unlawfully fail to obey a subpœna issued and served in the usual course in such cases, an attachment may issue.

That is a departure from a practice that is very ancient. In order that an attachment shall issue to bring in a witness, there must be a case in the court, and the witness must be notified by a lawful subpœna issuing from that court to appear in that particular case, and the time when, and the place where he is to appear must be set forth in the subpœna, and the cause upon which he is subpœnaed, must be set forth so that he may be able to refresh his mind with reference to the testimony that he may be called on to give. If he fail to appear, an attachment may issue; that is, a capias, authorizing an officer to bring him in. Are not those wise provisions? They have been sanctioned by a long period of time. What is the security that this power will not be improvidently, or corruptly, or maliciously exercised? I know nothing about officers in Utah, but here is authority given to a commissioner, to a justice, to a judge, or court, as the case may be, whenever either of these officers shall think there is reasonable ground to believe that a witness will unlawfully fail to obey a subpœna, to issue an attachment. Now, unless in Utah they are more fortunate in regard to the character of these officers than the States that have had two hundred years' experience in administering law, there would be a great deal

of wrong doing. Nor is there even the provision that the party issuing the attachment shall be required to state that he not only believes but that he has reasonable ground for his belief. It enables these officers to send over the Territory attachments to arrest any person whom they may think has knowledge in regard to any cause that is pending in any court, and to hold those persons ten days in prison. To be sure there is an opportunity to secure a discharge from custody by executing a recognizance with sufficient sureties, but, when a man is dragged away from his home and put in prison, he may not always be able to find sureties. I doubt if there is any such statute in any civilized country. When in the time of the Stuarts and in the reign of the first George, men were caught up and put in the Tower without process of law, never were men arrested as mere witnesses and put in prison.

I come now to section 3, which contains——

The CHAIRMAN. I would at this point make this suggestion to you, Mr. Boutwell, that the seizure of the person upon an attachment on any reasonable ground, without the support of an oath or affirmation, might be regarded as contrary to the fourth article of the amendment to the Constitution.

Mr. BOUTWELL. My attention has not been called to that.

The CHAIRMAN. The language of it is:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue—

And I would suppose, *a fortiori*, no attachment for a witness—

but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Mr. BOUTWELL. What article of the Constitution is that?

The CHAIRMAN. It is the fourth article of the amendments. It occurred to me that it would cover, *a fortiori*, the case of a witness.

Mr. BOUTWELL. I should think that that was pretty conclusive against any such proposition as is here made. That lays down the law, the comcommon law as it existed when the Constitution was formed.

The CHAIRMAN. It came very much under Lord Camden's decision in the matter of the North Briton publications. It was obviously taken from that.

Mr. BOUTWELL. Yes, sir; and in connection with having my attention called to that provision of the Constitution, I will read section 1891 of the Revised Statutes, which it may be well to bear in mind, because it has application to some parts of this controversy:

The constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized, as elsewhere within the United States.

That would answer any plea that might be interposed that the Constitution did not apply to the Territory.

The CHAIRMAN. I never would make that plea. The Constitution applies everywhere.

Mr. BOUTWELL. There have been theories to maintain that the Constitution did not apply to the Territories.

The CHAIRMAN. I meant merely to say that I never entertained any such view.

Mr. BASKIN. And we do not entertain it out in Utah; no person. We know it does apply.

Mr. BOUTWELL. Now, then, as to section 3.

SEC. 3. That any prosecution under any statute of the United States for bigamy, polygamy, or unlawful cohabitation may be commenced at any time within five years next after the commission of the offense; but this provision shall not be construed to apply to any offense already barred by any existing statute of limitation.

That leaves a class of persons—that is, it may leave a class of persons who would be subject, by this law, to prosecution for either of the offenses named here who committed the offense when the statute of limitation was three years. That is to say, this provision exempts from the operation of this section those who committed the offense three years or more before the passage of this law; but if there are persons who committed the offense less than three years—that is to say, who committed the offense say two years before the passage of this law, and who had had the benefit of the statute of limitations for any period of time less than three years, they would be subject to the penalty of being liable to prosecution at any time within five years from the day when the offense was committed.

Mr. EDEN. Your point is, if I understand it, that in changing the statute of limitation in that way, it ought to apply to offenses that were committed after the enactment of the statute?

Mr. BOUTWELL. Yes, sir; after the enactment of the statute. It cannot apply to any others. If you choose to extend the statute, that may be done. I suppose to all lawyers—I am sorry to be obliged to except from that remark the author of this bill—the proposition is self-evident. The Constitution provides explicitly both as to the Government of the United States in one paragraph, and as to the States in another, that no *ex post facto* law can be passed. Pierce and others *v.* Carksadon, in 16 Wallace, page 234, contains specific reading on that point. Cummings *v.* The State of Missouri (4 Wallace, 277) is also specific. I read the syllabus. The court say:

An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed, or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required.

This case comes precisely in point. The evidence required under this bill would be different from evidence that would be required under the statute as it existed when the crime was committed.

In the case of Kring *v.* Missouri (U. S. Reports, 107, page 221) the syllabus, item 4, is this:

Within the meaning of the Constitution any law is *ex post facto* which is enacted after the offense was committed, and which, in relation to it, or its consequences, alters the situation of the accused to his disadvantage.

Mr. CASWELL. You do not construe this to impose any additional penalty?

Mr. BOUTWELL. No, sir; I am not arguing that point. I am arguing that it changes the rule of evidence by which the party is to be tried. In one case it is incumbent on the Government to prove that the offense was committed within three years, and in the other case it is only incumbent on the Government to prove that the offense was committed within five years, and inasmuch as the rule was three when the offense was committed, the change of the statute saying that he may be prosecuted and convicted at any time within five years is a change of the law of evidence, or the rule of evidence, or the mode of procedure, to the disadvantage of the accused.

The CHAIRMAN. Your argument on this point, Mr. Boutwell, would also apply to your strictures upon the first section.

Mr. BOUTWELL. Yes, sir; it would.

The CHAIRMAN. Which provides now that one of the married parties may be a witness against the other when it was not done before.

Mr. BOUTWELL. I will ask my associate to relieve me by reading this extract from a decision of the Supreme Court of the United States in the case of Kring *v.* Missouri.

Mr. CHANDLER. He makes these excellent observations.

The Supreme Court of the United States is quoting approvingly from Judge Denio in this opinion:

"It is highly probable that it was the intention of the legislature to extend favor rather than increased severity towards the convict and others in her situation; and it is quite likely that, had they been consulted, they would have preferred the application of this law to their cases rather than that which existed when they committed the offenses of which they are convicted. But the case cannot be determined on such considerations. No one can be criminally punished in this country except according to law prescribed for his government before the supposed offense was committed, and which existed as a law at that time. It would be useless to speculate upon the question whether this would be so upon the reason of the thing and according to the spirit of our legal institutions, because the rule exists in form of an express written precept, the binding force of which no one disputes. No State shall pass any *ex post facto* law, is the mandate of the Constitution of the United States."

This is reaffirmed by the same court in the cases of Shepherd *v.* People (25 N. Y., 406); Green *v.* Shumway (39 *id.*, 418); and *in re* Petty (22 Kans., 477) decides the same thing. In State *v.* Keith (63 N. C., 140) the supreme court of North Carolina held that a law repealing a statute of general amnesty for offenses arising out of the rebellion was *ex post facto* and void, though both statutes were passed after the acts were committed with which the defendant was charged.

In State *v.* Sneed (25 Tex. Supp., 66), the court held that in a criminal case barred by the statute of limitations, a subsequent statute which enlarged the time necessary to create a bar was, as to that case, an *ex post facto* law, and it could not be supposed to be intended to apply to it.

When, in answer to all this evidence of the tender regard for the rights of a person charged with crime under subsequent legislation affecting those rights, we are told that this very radical change in the law of Missouri to his disadvantage is not subject to the rule because it is a change, not in crimes, but in criminal procedure, we are led to inquire what that court meant by criminal procedure.

The word "procedure," as a law term——

The CHAIRMAN. You are now reading the language of the Supreme Court itself. You have stopped reading from Denio?

Mr. BOUTWELL. Yes; the quotation ended after the sentence, "No State shall pass any *ex post facto* law, is the mandate of the Constitution of the United States."

The word "procedure," as a law term, is not well understood, and is not found at all in Bouvier's Law Dictionary, the best work of the kind in this country. Fortunately, a distinguished writer on criminal law in America has adopted it as the title to a work of two volumes, "Bishop on Criminal Procedure." In his first chapter he undertakes to define what is meant by "procedure." He says: "S. 2. The term 'procedure' is so broad in its signification that it is seldom employed in our books as a term of art. It includes in its meaning whatever is embraced by the three technical terms, 'pleading,' 'evidence,' and 'practice.'" And in defining "practice," in this sense, he says: "The word means those legal rules which direct the course of proceeding to bring parties into the court and the course of the court after they are brought in;" and "evidence," he says, as part of procedure, "signifies those rules of law whereby we determine what testimony is to be admitted and what rejected in each case, and what is the weight to be given to the testimony admitted."

If this be a just idea of what is intended by the word "procedure," as applied to a criminal case, it is obvious that a law which is one of procedure may be obnoxious as an *ex post facto* law, both by the decision in Calder *v.* Bull (3 Dall., 386), and in Cummings *v.* The State of Missouri (4 Wall., 277); for in the former case this court held that "any law which alters the legal rules of evidence, and receives less or different testimony than the law requires at the time of the commission of the offense, in order to convict the offender," is an *ex post facto* law; and in the latter, one of the reasons why the law was held to be *ex post facto* was that it changed the rule of evidence under which the party was punished.

But it cannot be sustained without destroying the value of the constitutional provision, that a law, however it may invade or modify the rights of a party charged

with crime, is not an *ex post facto* law if it comes within either of these comprehensive branches of the law designated as pleading, practice, and evidence.

Can the law with regard to bail, to indictments, to grand juries, to the trial jury, all be changed to the disadvantage of the prisoner by State legislation after the offense was committed, and such legislation not held to be *ex post facto*, because it relates to procedure, as it does according to Mr. Bishop?

And can any substantial right which the law gave the defendant at the time to which his guilt relates be taken away from him by *ex post facto* legislation, because in the use of a modern phrase it is called a law of procedure? We think it cannot.

Mr. BOUTWELL. By whom was the opinion written?

Mr. CHANDLER. By Judge Miller, I think.

The CHAIRMAN. Neither that decision, as I understand, nor any of those you have cited bear directly upon the point you are now considering.

Mr. CHANDLER. The opinion on the Texas case which is quoted and approved by the court does bear upon it.

The CHAIRMAN. The opinion in the Texas case?

Mr. CHANDLER. Yes, sir. It is quoted in this and approved.

The CHAIRMAN. That where the limitation prescribed by an existing law has not expired, that it would be *ex post facto* to extend the limitation?

Mr. CHANDLER. Yes, sir; that the law would be held to apply to other cases.

The CHAIRMAN. It could not be extended to cases that existed at the time the new law was passed, and which were barred at the time the new law passed.

Mr. CASWELL. Suppose the full time had run.

The CHAIRMAN. That is the point. Is there any decision where it has been held that where the length of time had not ripened into a complete bar upon the existing law, that it would be *ex post facto* to extend the bar to a case which yet had time to run?

Mr. CHANDLER. I do not know of any such specific case.

Mr. BOUTWELL. I would say, Mr. Chairman, that in the case of Kring *v.* Missouri, there could be no reasonable construction of what the court say that would not be an answer to the question which you have put. They say within the meaning of the Constitution any law is *ex post facto* which is enacted after the offense was committed, and which, in relation to it or its consequences, alters the situation of the accused to his disadvantage. Can there be any doubt that when a law is changed——

Mr. CASWELL. Does not that have reference to evidence that would tend to convict of the offense rather than to the time of prosecution merely?

Mr. BOUTWELL. My opinion would be otherwise. My opinion is that when a person commits a crime he is to be tried by the law which existed at that moment.

Mr. CASWELL. Certainly; but not that relate to the time when he shall be tried?

Mr. BOUTWELL. Certainly. The rule of evidence in the one case is that he is to be convicted if the jury find that he committed the offense within three years, and in the other case he is to be convicted if the jury find that he committed the offense within five years. Can anybody say that the passage of such a law is not to the disadvantage of the criminal or the accused? Most clearly it is; and being to his disadvantage, under this statute, it is clearly unconstitutional as an *ex post facto* law.

The next section is No. 5. I omit section 4.

The CHAIRMAN. You make no objection to section 4?

Mr. BOUTWELL. Well, I consider my duty performed when I point out the legal and constitutional inconsistencies of this bill as I understand them. If I were a legislator I would make objection to the whole of this as being an attempt to overthrow a religious organization, instead of being a straightforward and direct attempt to secure, by those means that have been recognized as proper in the pursuit and prosecution of criminals, the men who have been guilty of violating the laws of the country. But I do not stop to discuss several of those sections.

Section 5 relates to marriages, and the evidence by which they are to be proved. It is required that every certificate shall be produced to a judge and magistrate, whether the marriage was lawful or not. A point might be raised as to whether a person who might have performed a marriage ceremony contrary to law should be required to produce evidence upon which he might be convicted. But my chief objection is to the part that begins with line 17:

> And it shall be lawful for any United States commissioner, judge, or court before whom any proceeding shall be pending in which such certificate, record, or entry may be material, by proper warrant, to cause such certificate, record, or entry, and the book, document, or paper containing the same, to be taken and brought before him, or it, for the purposes of such proceedings.

It is a very unusual thing to issue a warrant from a court, and to enter a house and take possession of a record or book of any sort. Such a proceeding is outside of the judicial experience of this country in civil causes.

The CHAIRMAN. Let me test it so as to see what extent the objection goes to, Mr. Boutwell. Suppose a clergyman of any denomination to keep a record of marriages, and there be no law requiring that record to be put into a public office, could not he, notwithstanding, be summoned as a witness and be compelled to produce, in connection with his evidence, under a subpœna *duces tecum*, a book in his possession?

Mr. BOUTWELL. Of course; that is a different case from this.

The CHAIRMAN. I only wanted to know.

Mr. BOUTWELL. Yes, but that is a different case from this.

The CHAIRMAN. And suppose that he refused to bring it.

Mr. BOUTWELL. Then he is in contempt of court.

The CHAIRMAN. Then, under a proper warrant, upon oath and affirmation, under that fourth article of the Constitution, if that book were necessary in the case, could not direction be given to an officer to bring the book into court for the purpose of the evidence?

Mr. BOUTWELL. I do not see how it could be done. The fourth article assumes to secure people against unreasonable searches and seizures. Now, the only cases that I have ever known were where it was supposed a felony was being committed—a house where burglars are assembled, or counterfeiters—then there has been a practice, undoubtedly, without any particular authority of law, for the police to enter. But I leave that. It is minor compared with——

The CHAIRMAN. Yes; and I want you to distinctly understand that my questions are not to be interpreted as indicating any conclusion of my own mind, but simply to call attention to points upon which I would like to have your suggestions.

Mr. BOUTWELL. You will remember the statement of the Earl of Chatham, which might be an exaggeration, but you will recollect that he said "The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter, the rain may enter, but

the King of England cannot enter! All his forces dare not cross the threshold of the ruined tenement." That may be an exaggeration of what the law is, but it shows how sacred are the individual rights of men.

The CHAIRMAN. No; the King may not enter, but the officer of the law under the warrant of the court may.

Mr. BOUTWELL. Well, in England the King was the fountain of the law. The King personally was one thing, but the King as the ruler was the source of all law. The courts were created by him, and when they pronounced a judgment it was the judgment of the King. Any reasonable interpretation, while making allowance for Chatham's exaggeration, was that the cottage of the poor man was his castle.

As to section 10 I have no observation to make, except that I do not see the justice of making children illegitimate who may be born out of wedlock after the passage of this bill, while those born previously are made legitimate.

The CHAIRMAN. You do not comment on sections 6, 7, 8, or 9.

Mr. BOUTWELL. No, sir.

The CHAIRMAN. Or 10?

Mr. BOUTWELL. No, sir; I come to section 12. I understand there has been some surrender or concession by somebody as to this section, the precise nature of which I do not know.

Mr. BASKIN. It has been conceded that all that section below line 7 goes out, ending with "validity"; all following "validity" goes out.

The CHAIRMAN. In what line is it?

Mr. BASKIN. Line 7, "are hereby disapproved and annulled." All following that goes out.

Mr. BOUTWELL. By whose authority does it go out?

Mr. BASKIN. By the authority of the committee.

Mr. CHANDLER. I understood, Mr. Chairman, it all went out and that is the reason I did not discuss that feature of it. I had the authorities here and wanted to be heard upon that part of the section which precedes the part he says now is to be omitted. If I had known there was a reservation of the character now claimed, I certainly would have desired to be heard upon it. I had the authorities which I think are decisive of the question.

Mr. BOUTWELL (addressing Mr. Chandler). I think the committee will hear you upon that.

The CHAIRMAN. Unquestionably.

Mr. BASKIN. I distinctly stated in my argument that I was in favor of repealing both of those.

The CHAIRMAN. Let me say that there was a remark made by Mr. Stewart in which I acquiesced, to this effect: I think he said to Mr. Chandler, "I do not think you need argue the question of a provision for running the church under the doctrine of the trusteeship."

Mr. CHANDLER. I understood it to be more extensive than that, if the chairman please; that I need not discuss these sections as they affected the property of the church, or the church government; and therefore, I omitted that part of it.

The CHAIRMAN. I am very sorry you were led to omit it, and we would be very glad to hear you upon that. There is no exclusion. I will say this, that when it is said that it was agreed that all should go out after such and such a word, that is rather an extension of the meaning of the committee. The committee are considering the bill which has been sent here from the Senate of the United States, and what counsel on either side shall consent shall stay in, or go out, will have no effect upon the

determination of the committee. The committee will let any part stay in, or strike it all out as they shall think proper.

Mr. BOUTWELL. I should be very glad, Mr. Chairman, to have an opportunity secured for Mr. Chandler to be heard upon this point, because I do not feel that I am prepared to discuss the question exactly in the aspect in which it is now presented.

The CHAIRMAN. Very well. Mr. Chandler, when would you like to be heard with regard to that point?

Mr. CHANDLER. I am ready at any moment to discuss that feature.

Mr. BOUTWELL. I have some observations to make upon it, as it stands. Of course there is nobody authorized to speak for the author of this bill, as to whether he will consent to have this portion stricken out. There is nobody authorized to speak for the Senate that has voted upon it, and therefore, for the present purposes, it stands.

The CHAIRMAN. And the consent of the Senate, looking to the independence of the House, will not be asked or acquiesced in unless the House consider its view as the proper one.

Mr. BOUTWELL. If they should happen, however, to be of one opinion and the House of another, how then?

The CHAIRMAN. I mean so far as the independent action of the House is concerned.

Mr. BOUTWELL. I understand that; but perhaps it would not be too much to say that there is nobody authorized to speak for the House just at this moment, with all due respect to the committee?

The CHAIRMAN. No; that is true.

Mr. BOUTWELL. Now, then, what is the proposition. Here was, it appears, as long ago as 1850 and 1851, an act of the legislative assembly of Utah providing for a corporation known as the Church of Jesus Christ of Latter-Day Saints, and then an ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints. In the act of incorporation, as I understand it—I have not read it carefully—there is no indication that by and through the agency of these corporations so created there was any purpose to violate any law of the United States. Upon the face of things it appears to have been a part of their church organization; an instrumentality of their religion. As I have said, it is not for us to judge whether their religion is the best or not. That it is theirs puts it under the protecting shield of the Constitution of the United States. If it does not appear that some use is made of this organization in violation of the laws of the country, most clearly the Government of the United States can have nothing to do with it. And yet here is a proposition—there having been originally one general trustee and twelve associates or assistants, as I understand—to introduce by force, by the authority of the Government of this country, into this instrumentality of this religious organization fourteen trustees, or a majority who are to have and to exercise all the powers and functions of trustees and assistant trustees. And to do what? They were to give bonds to the Secretary of the Interior to faithfully perform their duties. There is no attempt in this bill to change the nature of this organization, to increase or to diminish its powers, to enlarge or diminish its functions, but it is left just exactly as it was created by the acts of incorporation.

It is difficult to imagine that anybody could have drawn this bill, and had in view the objects for which this institution was created. By the charter it was declared that "the church should possess and enjoy continually the power and authority in and for itself to originate and make, pass, and establish rules, regulations, ordinances, laws, customs, and

criterions for the good order, safety, government, conscience, comfort, and control of said church, and for the punishment or forgiveness of the offenses relative to fellowship, according to church covenants."

The CHAIRMAN. What is that you read from?

Mr. BOUTWELL. From the duties of the trustees of this institution.

Now, wouldn't it be very extraordinary to see fourteen men, appointed by the Government of the United States, and under bonds to the Secretary of the Interior, performing those duties and reporting annually what they had done?

I know not whether this institution has property or not. But suppose it has property. What was the proposition of this bill? Was it anything else than that these trustees, appointed by the Government, should take possession of that property? And is not the possession of property substantially the sequestration of the property itself? What we mean by property is the possession of something of value with the privilege of its use and enjoyment. If this institution has property, and you put fourteen trustees in who are to take possession of that property, and give direction to its use and enjoyment, haven't you taken this property without due process of law and in violation of the Constitution of the United States? Can you find any answer in the circumstance that there is a reservation in the fundamental law that Congress may annul any act of the Territorial legislature? Admit that. But, in the presence of the fact that the institution is created by legal authority, that it existed for ten years, twelve years, without any action on the part of Congress by which any of the rights conferred upon it by its charter are in any way qualified, is not the Government of the United States bound to recognize as valid all lawful contracts made during that period? That is, contracts not against public policy.

And does not the decision of the Supreme Court in the Dartmouth College case apply in principle to such a case as would arise upon the question of property acquired by this corporation between 1851 and 1862? In that case a missionary founded an institution at Dartmouth, New Hampshire, by making the first endowment. On that fact the question was finally disposed of by the Supreme Court of the United States. It turned almost exclusively, perhaps altogether, upon that. The legislature of New Hampshire, after a time, introduced into that organization trustees of its own, upon the ground that they had chartered the institution and had also endowed it with lands. The court held that Mr. Wheelock was the founder of the institution, inasmuch as he made the first donation to it, and that although the State of New Hampshire had made other and larger contributions for the support of the institution when it became a college, the State made all those contributions upon the foundation which Mr. Wheelock had laid. The court held that the legislature could not interfere with the rules and regulations which Wheelock had established; that there was a perpetual contract between him and his successors in office on one hand and the State on the other. Now, if the Government of the United States has stood by for ten or twelve years and allowed this institution to acquire property not in violation of any law of the United States, I maintain that the Government of the United States cannot disturb the possessions so acquired, whether they are in excess of $50,000 worth of real estate or not. When the charter was granted the corporation had a right to acquire property; and that right cannot now be disturbed.

The CHAIRMAN. Do you consider the Dartmouth College decision, which rested upon the inhibition to the States to impair the obligation of contracts, as applicable to Congress?

Mr. BOUTWELL. Yes, sir. I am not quite sure that I can refer to any decision of the Supreme Court of the United States, but I think there are some readings in the reports which lead to the conclusion that it is not in the power of Congress to impair the obligation of contracts, and manifestly it ought to be so.

The CHAIRMAN. I incline very much to the direction of that thought, and I wanted to know what you thought upon the subject, and whether you had any authority upon it.

Mr. BOUTWELL. I have not; but I once had occasion, when I was preparing this edition of the Revised Statutes, to read all the opinions of the court from the beginning of the Government, and I only know that such an impression has been left upon my mind.

The CHAIRMAN. The inclination of my mind has been for a long while that the inhibition was necessary as to the States, but the delegation of such authority was necessary for Congress.

Mr. BOUTWELL. Yes; that is to say, Congress was not authorized to impair the obligation of contracts?

The CHAIRMAN. Yes, unless delegated, and the State was authorized, unless prohibited.

Mr. BOUTWELL. I think it is a very fair presentation of the case.

Now I leave this section, with the understanding that my associate is to have an opportunity to speak upon it.

Here is an application in section 13 of what is known in common law as the doctrine of escheat. Its ordinary force, as I understand it, is that where there is an estate and a failure of heirs to inherit, the estate passes to the Government. That the Government of the United States should undertake to apply that rule in any case that can possibly arise in the church organization in Utah, seems to me a departure from correct principles. There is, I believe, a limitation that corporations are not to hold real estate to an extent beyond $50,000; I take it that that rule applies to the acts of corporations after the passage of the law of 1862.

The CHAIRMAN. That limitation was in the act of 1862—the act of Congress in reference to this very corporation.

Mr. BOUTWELL. Yes; and any property which that corporation may have acquired previously it can hold, notwithstanding that act, and ought to hold upon every principle. But suppose that another corporation, or this corporation, since 1862, has acquired real estate in excess of $50,000, is not that a void transaction *ab initio*? Is not the nominal grantor, by operation of law, put in possession of the property? Is not the remedy of the nominal grantee, through some court of equity, if there be any, to recover the property as a trust, in the grantor?

The CHAIRMAN. You hold what I stated yesterday, that there should be a resulting trust to the grantor in a case of that kind, because the *cestui que* trust was a void person, or had no power to receive; that a trustee could not take a beneficial ownership, and there must, therefore, be a resulting trust in the grantor.

Mr. BOUTWELL. Yes; that is the way it appears to me.

Mr. EDEN. Then, if that view of the case be correct, the legislation of Congress would have nothing to do with it?

Mr. BOUTWELL. Nothing in the world to do with it, and all this talk about applying the doctrine of escheat to excesses seems to me as superfluous entirely. I do not see how it can have any application to the existing facts under the rules of law as we understand them.

Section 14 is superfluous upon the view we are taking, because if there is no title to property acquired by the conveyance, and a grantor be-

comes a trustee for the benefit of the *cestui que trust*, that ends all movement through the Attorney-General and others to get possession of the property. But it is unbecoming a Government of fifty or sixty million people, with revenues of three hundred or four hundred million dollars a year, to engage in the pursuit of small properties to which the Government has no right to set up a claim. To come again to a view which I have tried to present: Is there any possible reason to be given for such a proceeding, except to do what Mr. Baskin has asserted ought to be done, to destroy the Mormon Church not because it tolerates polygamy, but because it is a theocratic church. I do not suppose the author of this bill had in his mind that particular idea, but it shows how able men, under the influence of feeling or when controlled by a public sentiment, men who have had a large experience at the bar and in public affairs, can be led to propose measures which certainly cannot stand the test of investigation. Even the friends of the bill are compelled to admit that there are propositions in the bill which cannot be sustained.

Section 16 aims at the overthrow of the Emigrating Society. I am told that it has no property, and if the Attorney-General proceeds against it he will find nothing except an organization of men who are interested in bringing people from other countries here, and who receive contributions, and as fast as they come in they apply them forthwith to the object. They have no accumulation of any sort.

I come now to section 23, in which there is a slight peculiarity. The other sections I pass over.

SEC. 23. That the marshal of said Territory of Utah and his deputies shall possess and may exercise all the powers in executing the laws of the United States possessed and exercised by sheriffs and their deputies as peace officers; and each of them shall cause all offenders against the law to enter into recognizance to keep the peace and to appear at the next term of the court having jurisdiction of the case, and to commit to jail in case of failure to give such recognizance.

Sections 787 and 788 of the Revised Statutes define the duties of marshals.

SEC. 787. It shall be the duty of the marshal of each district to attend the district and circuit courts when sitting therein, and to execute, throughout the district, all lawful precepts directed to him, and issued under the authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty.

Section 788 is as follows:

SEC. 788. The marshals and their deputies shall have in each State the same powers, in executing the laws of the United States, as the sheriffs and their deputies in such State may have by law in executing the laws thereof.

The CHAIRMAN. That is very much the language of this twenty-second section up to a particular point, is it not?

Mr. BOUTWELL. Yes. Sheriffs and deputies, as peace officers, which does not mean——

The CHAIRMAN. Does the Revised Statute say, "By sheriffs and their deputies, as peace officers"? Please look at that.

Mr. BOUTWELL. No, sir. It does not say "peace officers." It says, "the same powers, in executing the laws of the United States, as sheriffs and their deputies."

Now, the marshal of the Territory of Utah may be a very excellent person. I might assume that, and be mistaken. By this bill he is endowed with authority to cause all offenders against the law—not stopping there, but all offenders against the law *in his view*—to be arrested and held in custody. He may, when on horseback, in a railroad car,

in the pursuit of somebody, compel any person to enter in recognizance to keep the peace, and to appear at the next term of the court having jurisdiction of the case. Further, he may commit the person to jail in case of failure to give such recognizance.

The marshal by the law of the United States is to serve precepts, is to attend the sessions of this courts and aid the judges, and yet in Utah he is to be endowed with this further power, to arrest all offenders against the law, *in his view*. That is, whenever he knows of a person who, as he thinks, is a violator of the law, he is to arrest him. He may then require every suspected offender so arrested to give recognizance to keep the peace, and in case he cannot do that, he may commit him to jail. I venture to say that in the worst days of the French Revolution there was never anything more offensive to personal rights than the authority to be given to marshals, when tramping over a Territory, to arrest persons and require them to recognize for their appearance, and in case they cannot so recognize, to put them in prison.

Mr. CASWELL. Do you not understand that that contemplates a complaint, an arrest, and arraignment?

Mr. BOUTWELL. No, I do not understand that it contemplates a complaint at all. The marshal is engaged in executing the laws of the United States, and yet he may cause the arrest of all offenders of law, in his view, not in the view of some court.

Mr. CASWELL. It means, as I understand it, whenever he has cognizance of the violation of the law, it is his duty to proceed and file a complaint.

Mr. BOUTWELL. Have you ever heard of a marshal or a sheriff undertaking to take a recognizance of a person accused of crime? Doesn't he take the offender before a magistrate, or before a commissioner?

Mr. CASWELL. I inquire whether that does not presume that there is to be an arraignment before a magistrate?

Mr. BOUTWELL. There is no evidence here of anything of that sort. Indeed, the contrary is the case. He is authorized to require the person whom he thinks is an offender against the law to enter into a recognizance. He does not go to any court. He may sit on his horse in the desert and require a man whom he has arrested, upon the ground that he thinks he is an offender against the law, to give recognizance for his appearance. If he cannot so recognize he may put him into the custody of some other person, to be kept in close quarters.

The CHAIRMAN. Let me call attention to what, under the statutes of the United States, is in contrast with the provision proposed in this bill of arresting in other cases of crime and offenses, is given only to a judicial magistrate.

Mr. BOUTWELL. Yes, sir. Isn't that in entire harmony with my observations?

The CHAIRMAN. Yes; entirely. It struck me in reading the section that the marshal is purely an executive officer, not a judicial officer at all.

Mr. BOUTWELL. Yes; he can do the thing he is authorized to do, and he can do nothing else.

The CHAIRMAN. He is not a judicial officer at all.

Mr. BOUTWELL. No, sir.

The CHAIRMAN. This section would seem to vest in him executive powers. A commingling of the executive with the judicial.

Mr. CASWELL. Is not this the idea? He is vested with all the authority of the sheriffs, and in most States the sheriff is directed, where he

has crime coming to his knowledge, to proceed to make a complaint; to cause the arrest to be made and to have the party brought before the magistrate. This provision says:

SEC. 23. That the marshal of the said Territory of Utah and his deputies shall possess and may exercise all the powers in executing the laws of the United States possessed and exercised by sheriffs, and their deputies as peace officers; and each of them shall cause all offenders against the law in his view——

Such coming to his knowledge, in the same way that sheriffs are authorized to cause the arrest of a person and the taking of him before a magistrate.

Mr. BOUTWELL. A sheriff was never authorized to arrest any person except upon a warrant duly issued by a court. A sheriff oftentimes, as a citizen, may, seeing a person in the commission of a crime, lay hands on him; but he does so at his peril, in a certain sense.

The CHAIRMAN. He does it according to the decision, I think, of Chief Justice Abbott in a leading case on that subject. The difference between a private citizen and an officer of the law is, that the officer of the law is justified if he does it upon reasonable ground.

Mr. BOUTWELL. Yes, but he must defend himself.

The CHAIRMAN. A private citizen does it at his peril.

Mr. BOUTWELL. Yes, there is that difference.

The CHAIRMAN. Now, with regard to the case that my brother Caswell refers to, of the right of the sheriff, or any other officer, if he sees a man in the violation of law, to arrest him and take him to the watch-house and hold him securely until he can have a hearing. This is done merely as a means of taking him before a magistrate; not for the purpose of exercising judicial power. It is done merely to secure his presence.

Mr. BOUTWELL. I pass over all that relates to the election laws with the single observation that so much as is here contained as provides that certain persons shall not exercise the elective franchise, although those persons have not been convicted of any crime in a court having jurisdiction of the case, is contrary to the Constitution in that it must be construed as a bill of pains and penalties. A man who has the right to vote cannot be deprived of his right to vote unless there is a law which enables a court to impose, as a part of the penalty for specified crimes, the withdrawal from that man of the right to vote.

Mr. EDEN. The present law in Utah is subject to the objection you are making now, is it not?

Mr. BOUTWELL. I have never examined it. If it is, I should think somebody would try the question and ascertain whether it is not a bill of pains and penalties, and consequently inhibited by the Constitution.

Now, Mr. Chairman, I thank you for the attention you have given me. My physical disability is such that I have not done quite justice to the case that I have had in hand, but it is what I have been able to do under the circumstances. At the end I repeat what I said in the beginning. The bill seeks the destruction of the Mormon Church as a religious organization. But when its unlawful features are removed, what remains? The church has a constitutional right to exist, and the Govment of the United States has no constitutional right to do any act or thing tending to its overthow.

I hope the committee will give Mr. Chandler the opportunity to speak of section 13, either now or at some other time.

The CHAIRMAN. Mr. Chandler, the committee will hear you now.

ADDITIONAL ARGUMENT OF HON. JEFF CHANDLER.

Mr. CHANDLER. Mr. Chairman, I am not going to take but a few minutes of the time of the committee which you have so kindly granted me. I wish first to call attention to the first paragraph of section 12.

SEC. 12. That the acts of the legislative assembly of Utah, incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints, and the ordinance of the so-called general assembly of the State of Deseret, incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and vitality, are hereby disapproved and annulled, so far as the same may preclude the appointment by the United States of certain trustees of said corporation as is hereinafter provided.

I say that that part of the bill is unconstitutional, for two reasons. The first reason is that the charter of the corporation which is there mentioned is a contract between the Government of the United States and a private charity established under that corporation, and that contract cannot be repealed. The second reason why it is unconstitutional is that no charter can be repealed except one of a municipal character purely, essentially and wholly created by the law-making branch of the Government for governmental purposes. A charter may be forfeited by judicial proceeding where it is partly public and partly private for non-user or misuser, but there must be a judicial hearing in order to forfeit it. But no law which undertakes to forfeit it without such judicial hearing can be upheld in the courts. This doctrine relates to a class of corporations which are partly private and partly public, like ferries and like corporations authorized to transport passengers and freight, and those corporations which the Government have a right to regulate, but which are supported by private funds, private contributions, from private stockholders. Where a corporation has that duplex character, and is dealing with public matters in such a way as that the Congress may control or govern its conduct—require prudence and care in the management of its business, for instance; require it to adopt certain precautions to promote the safety of those who are dealing with it—to that extent laws may be made governing it. If, however, it be a corporation which is established upon private contributions exclusively, like the contributions of stockholders, or the contributions of persons who establish ferries for the purposes of gain, those charters cannot be forfeited by Congress or by the law-making body of a State.

The CHAIRMAN. Have you an authority on that point?

Mr. CHANDLER. Yes, sir. Here is a case quoted in 10 Barber, supreme court, court of appeals of New York, in which they say:

The other ground upon which the title of the city in the ferries can be maintained has been stated to be *the sacredness of vested rights*. And admitting, therefore, that there is no contract within the constitutional meaning, and assuming that the charter is of no higher nature than a legislative act, which can be repealed at will; still, the corporation, having gone on and established the ferries under such charter, have become vested of a property right, which cannot be destroyed by the law-making power. It is the settled law of this State that vested rights in property, acquired by virtue of a statute, cannot be divested nor destroyed by a repeal or modification of the statute. (The People *v.* The Supervisors of Westchester, 4 Barb., S. C. Rep., 64.) The inhabitants of the city of New York have a vested right in the city hall, markets, water works, ferries, and other public property, which cannot be taken from them any more than their individual dwellings or storehouses. Their rights in this respect rest not merely upon the Constitution, but upon the great principles of eternal justice, which lie at the foundation of all free Governments.

To prevent misconstruction, it may be proper to remark that these conclusions do not necessarily exclude the legislature from all control over the ferries. Franchises of this description are partly of a public, and partly of a private nature. So far as

the accommodation of passengers is concerned they are *publici juris*; so far as they require capital and produce revenues, they are *privati juris*. Certain duties and burdens are imposed upon the grantees, who are compensated therefor by the privilege of levying ferriage, and the security from spoliation, arising from the irrevocable nature of the grant. The State may legislate touching them, so far as they are *publici juris*. Thus, laws may be passed to punish neglect or misconduct in conducting the ferries, to secure the safety of passengers from danger and imposition, &c. But the State cannot take away the ferries themselves, nor deprive the city of their legitimate rents and profits. The franchise, however, may be *forfeited* by non-user or misuser, judicially ascertained, and the Government, in the exercise of the sovereign power of eminent domain, may resume the property for public use, on making a just compensation, but not otherwise.

The CHAIRMAN. Isn't that a provision of the constitution of New York, that the State cannot take property for public use except upon just compensation?

Mr. CHANDLER. That may or may not be. I presume it is in the constitution of almost every State in the Union, that private property shall not be taken except for public use, and then only upon just compensation. But the proposition here established in this decision is that, though the corporation is partly public and partly private, it cannot be forfeited except by judicial proceeding. The legislature of New York cannot pass a law *ipso facto* sweeping away the franchise without any hearing of parties interested in it. That would be exercising purely judicial authority, and there is nothing better established than that the legislature cannot exercise such authority.

Now, if a corporation of that character has a right to be heard before it is condemned, then this law is vicious, because even if this were a *quasi* public corporation, which it is not, it would be entitled to a hearing, and its charter cannot be taken away from it arbitrarily without a hearing by an act of Congress. But, as is said here in this decision, which is simply one of a thousand, there is no break in the current of judicial opinions on this proposition that no property, whether it be vested in a corporation or in a trustee, or in a private person, can be reached and the title to that property changed, unless there be first a judicial hearing.

Now, it is not worth while, it seems to me, to detain the committee in arguing the proposition that any legal entity, no matter what its character may be, that is possessed of property, cannot be rifled of that property without a judicial hearing, and to say that this bill can sweep church property away and change the title to its property by mere force of an enactment, is to establish a doctrine that the courts have not recognized anywhere in this country, and which overthrows vested rights.

Now, this bill provides that these acts shall be repealed; that this charter shall be taken away by operation of this law, and not by reason of any judicial proceeding. But can this charter be taken away at all? That is the question. I say it cannot. If we were dealing with the corporation of Trinity Church, I suppose there would not be a lawyer in this country who would claim that the State of New York could pass a law repealing the charter of Trinity Church. It holds its property in abundance; it has acquired it and kept on acquiring it, and has buildings for rent which it has erected under its charter for many years with the assent of the State.

Is there power to take away and repeal such a charter as that? When you reach that class of corporations which are purely private, they cannot be changed by legislation. It does not matter whether the title to private property is in an individual, in a trustee, or in a corporation. As was held in the Dartmouth College case, and all the cases which have followed it, it does not give the property a public character, or the pur-

pose for which the charity was instituted a public character, because the title to its property is in a corporation. It is precisely the same as if it were held by John Jacob Astor. Suppose a trust were created in him and his successors, and the terms of the trust which invested him with the property in the first instance described the circumstances under which he might acquire other property. Is it competent in any legislative body of this country to change the circumstances under which he might acquire property? Is it competent for a legislative body to change the nature of a contract between two persons competent to contract? That is all there is about it. If Congress cannot pass a law annulling a contract for a sale of a house in Salt Lake City between two individuals competent to contract under the law when the contract was made; if it cannot pass a law changing the terms of that contract, it cannot pass a law affecting this contract, because there is no difference in the sacredness of them nor in the legal support which they have.

The CHAIRMAN. Suppose a corporation that was created without limitation as to time should be found by the Government of any country to be hurtful to public policy—destructive of public policy—is there any way of getting rid of it?

Mr. CHANDLER. No, sir; I say not. The Supreme Court of the United States say this in 8 Wallace. A statute which, for the declared purpose of encouraging the establishment of a charitable institution, and enabling the parties engaged in thus establishing it the more fully and effectually to accomplish their laudable purpose, gave the institution a charter, and declared by it that the property of said corporation should be exempt from taxation, and with an already existing statutory provision that every charter of incorporation should be subject to alteration, suspension, or repeal, at the discretion of the legislature, should not apply to it. It was held that that became, after the corporation had been organized, a contract, and its property was not subject to taxation so long as the corporation owned it and applied it to the purposes for which the charter was granted, and that it was forever exempt from taxation.

There was a charitable institution organized in Saint Louis, and there was a general law of the State that all charters should be subject to repeal or modification; but in granting this particular charter the legislature said that that general provision should not apply—that the property of that charitable corporation should forever be exempt from taxation.

Is there a power of government of deeper concern than the right to tax? Does not the power to tax touch the sovereignty of the Government closer than any other authority? That power lies at the very foundation of the ability of the State to govern, because there cannot be a government without revenues; and yet so sacred is a contract in the estimation of our jurisprudence, that where the sovereignty concedes to a charitable corporation exemption from taxation, that concession is to endure forever. Public opinion changes. Public opinion may to-day require that a corporation granted 25 years ago exemption from taxation, ought to be taxed. Now, what are these permanent principles of constitutional government enacted for except it be to beat back these changes of opinion. Cooley says in his work on Constitutional Law that that is the office of a constitution; that you read the constitution when made precisely as you read it 100 years afterwards. It is because public sentiment is fickle and changeable, inconstant, that a constitutional government is valuable. To say that because a former generation has made a contract that this generation does not approve of, that

we may therefore destroy that contract, is to take away all the sacredness and stability of contracts and of constitutional government, and to rest all our rights upon a shifting public opinion.

The CHAIRMAN. Do not understand me, Mr. Chandler, as intimating that if the Constitution limits the power of the Government, so that it cannot invade a contract of that kind, which I regard the charter of a corporation to be, that the legislative power would reach it; but I am speaking now of your general proposition, that the law-making power in itself, without any constitutional inhibition, cannot reach the charter of a corporation that is perpetual.

Mr. CHANDLER. It can reach a charter that is perpetual if it has a right to change the charter. It may change the charter if it be not a contract. If, however, the charter of a private charity be a contract, then I say that that contract endures forever, because the Constitution says that you shall not pass a law impairing a contract.

The CHAIRMAN. I admit that.

Mr. CHANDLER. Yes.

Now, the only question is the old familiar one, whether it be a contract; whether a franchise granted is a contract. That is the very thing decided by the cases cited, that a grant of a franchise is not, in point of principle, distinguishable from a grant of any other property. It will not be pretended, I suppose, that if there were a special law granting Brigham Young 160 acres of land, that any subsequent act of Congress, after the title vested in him, could take the land away. Nor could any subsequent act of Congress impose legal restrictions upon him in regard to the use of that land. He would be entitled to the enjoyment of that land to the fullest extent of his rights of enjoying it at the time when it was conveyed to him. You cannot clip off some of the privileges which attend a conveyance in fee-simple without impairing the conveyance. You cannot convey a man a right and then afterwards trim the right down to suit the changing state of public sentiment without impairing the right. All that makes a right of value; all there is in a right is, that it preserves its identity down the stream of time. If it may be modified, or taken away at the will of the legislature, it is no right. The person simply holds the privilege subject to recall at any time. That is no right. When we speak of vested rights that are enduring and secured, we mean those rights that cannot either be taken away in toto or impaired.

The CHAIRMAN. Excuse me, but perhaps you may discuss a question upon which you would enlighten my difference, at least, with you, or inclination to differ. In my view, the question of a repeal of a charter is one thing. The question of the Government seizing the property which it vested, as a vested right, in the individuals interested in the charter is an entirely different one.

Mr. CHANDLER. Certainly. I am not contending that Congress cannot provide for the forfeiture of a charter by a judicial hearing, provided it be either public or quasi public; but I am contending that Congress cannot repeal it where it is quasi public, and where private rights are implicated in it, without a judicial hearing. There are three classes of charters. First, those that are purely and absolutely public, where the government puts up all the funds, and they are enacted for the purposes of government. Of course Congress may modify and change them at will. There is an intermediate class of charters that are quasi public, such as ferries, bridges, railroads, and all that sort of thing. There is a third class of purely private charters, and over those private charters Congress has no power whatever. That is my position. However, with regard to the inter-

mediate or quasi public charters, Congress may provide for a forfeiture for non-user or mis-user. When it does forfeit, however, after a judicial hearing, the property cannot be taken, as is said by the court of appeals of New York; that remains forever the property of those who, in law, were entitled to it when the charter was granted. The corporation is simply a trustee in that case, and holds the legal title to that property. If the trustee becomes incapacitated to hold it, becomes extinct. Then the *cestui que* trust holds the property; the beneficiary of the trust holds the property.

In the first class of cases Congress may take a charter away without a judicial hearing. In the intermediate class it cannot take it away without a judicial hearing. In the third class it cannot take it away at all unless in the charter itself, or in the general law which existed at the time that the charter was granted, there was a provision that it might be taken away.

The CHAIRMAN. Take the intermediate class, where a corporation is established, not for mere private charity, private purpose, but from public considerations as well. What kind of judicial proceeding would you have to forfeit that charter where the corporation itself does not violate its charter?

Mr. CHANDLER. There would be none unless there was a mis-user or a non-user.

The CHAIRMAN. Then, in reference to the intermediate class, you hold that without a fault of the corporation itself, the charter could not be taken away by legislative or judicial proceeding?

Mr. CHANLDER. Yes, sir; unless there was provision in the charter itself reserving the right to take it away.

Mr. COLLINS. Or subject to some law existing before that?

Mr CHANDLER. Certainly. If there was a law existing at the time of the creation of the charter of that class, allowing the legislative branch of the Government to recall it at any time, then that is a part of the charter, and of course is subject always to that condition; but you take this intermediate class of corporations where that provision does not exist, either in the charter itself or in the general law, or in the constitution of the State, how is it? Is there any power to take that charter away without a judicial hearing, and can it be taken away except for cause? I say it cannot be. Otherwise, there is no distinction between a charter that may be repealed and a charter that may not be repealed. What is all this discussion that we have had in the Supreme Court of the United States for years and years over the status of a corporation having a provision for its repeal and the status of a corporation having no such provision? Has not the Supreme Court gone over that doctrine and decided as I claim the law to be?

The CHAIRMAN. The ground of that is, if you will allow me to suggest, that under the Constitution, a State is forbidden to pass any law impairing the obligation of contracts, and wherever there is a corporation which is a private corporation in part, that has been constituted by an act of legislature, it would be repealed, because to that extent it impairs the obligation of that contract.

Mr. CHANDLER. Well, I am assuming, Mr. Chairman, that the same disability rests on Congress. If I am wrong in that premise, then of course there is nothing in my argument. If Congress may repeal a contract whenever it sees fit, that is the end of the controversy; but the Supreme Court has held that Congress has no more power in that respect than a State, and they have held it lately. I can get the decision, if there is any controversy about that. It was held the other way in

old times, I remember, by the Supreme Court of the United States; but it is now settled by that tribunal that Congress has no more power to impair a contract than a State has.

Then this argument proceeds upon the assumption that this was a corporation organized by a State, and that the State is undertaking to recall that charter. If that were the case, then the State would be limited to two grounds upon which it could recall it: First, it must find in the charter itself a provision for recalling it. Second, it must provide for a judicial hearing by which it could be forfeited for cause, and unless you proceed in one of those two ways to take away a charter of one of those intermediate corporations, you cannot take it away at all.

I will admit that it does not make any difference if it is a private charity, if it has in its charter the provision that it may be repealed, because a private charter takes the grant with all its conditions and terms, but in this grant there are no such conditions and terms. Therefore you must treat this charter for this corporation precisely as though you had made a grant of land to an individual in the Territory of Utah. If you could take away that grant of land to that individual in Utah because he had called down upon himself public disfavor, and had become unpopular, then you can take away the charter of a private corporation if that corporation become unpopular and fall into disfavor. If you cannot do it in the one case, you cannot do it in the other case, and that is precisely what the courts say. There is no ambiguity about it. A grant of franchise is not, in point of principle, distinguishable from a grant of any other property.

When the Government of the United States, through the instrumentality of Utah, granted a charter to this private charity, and granted it unconditionally, it granted it forever. Congress cannot now intervene. The Government of the United States may forfeit a quasi public contract by authorizing its Attorney-General to bring suit alleging non-user or mis-user, and having a judicial hearing, and as a result that has established th t, take away the charter.

The CHAIRMAN. But without proof of either it cannot.

Mr. CHANDLER. Without proof of either it cannot. But a church is not a quasi public corporation, and the Government cannot intervene in its affairs at all, whether it misuses or abuses its privileges in the esteem of the Government or not; because the Government has no judgment of what is or what is not abuse of a church. The Government can have no opinion, legislative or judicial, concerning the proper conduct of a church, and therefore, when you step into the region of private churches, Congress having no authority to determine what is or is not an abuse of that charity, there can be no judicial cause for its forfeiture, but its management is left to the board of directors, who are appointed by the donor of the charity, and to whose judgment and opinion are committed exclusively, and forever, the welfare and management of that charity and its property.

The CHAIRMAN. Now, conceding that view, Mr. Chandler, do you hold that the Congress of the United States have established in Utah the corporation of the Church of Jesus Christ of the Latter-Day Saints with an irrevocable charter?

Mr. CHANDLER. Yes, sir.

The CHAIRMAN. Then what do you hold to be the effect of the act of 1862, limiting the amount of property that they may hold to $50,000?

Mr. CHANDLER. I hold that that has no reference whatever to this church.

The CHAIRMAN. Is that a qualification upon their franchise?

Mr. CHANDLER. No, sir. Now, let me read that, Mr. Chairman.

The CHAIRMAN. You hold that they are limited to the $50,000, do you?

Mr. CHANDLER. No, sir; I do not.

The legislature assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, or the construction or operation of railroads, wagon roads, irrigating ditches, colonization, and improvement of lands in connection therewith, or for colleges, seminaries, churches, libraries, or any benevolent, charitable, or scientific association.

Now, that law is addressed to the future.

The CHAIRMAN. What law is that?

Mr. CHANDLER. That is the law as it now stands, that was passed June, 1862, and there is a law of March 2, 1867. This is the law as it is retained in the Revised Statutes.

The CHAIRMAN. Please give the section of the Revised Statutes.

Mr. CHANDLER. Section 1889.

The next section is the one you allude to, the following relating to the government of Territories:

No corporation or association for religious or charitable purposes shall acquire or hold real estate in any Territory during the existence of the Territorial government, of a greater value than $50,000, and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States; but existing vested rights in real estate shall not be impaired by the provisions of this section.

Mr. CASWELL. At the time of the passage of this law?

The CHAIRMAN. What section is that?

Mr. CHANDLER. Section 1890; and that is the section that is alluded to, if I recollect, in the bill. Now, what does that mean? Why, all laws are *prima facie* prospective as distinguished from retrospective. That is the first rule of construction, that laws are made for the future. This law says so on its face: "No association for religious or charitable purposes shall acquire"—in the future. The law, taking it together, was providing for the establishment of corporations, and not for the government of corporations already established. It was providing for two things: the incorporation of charitable institutions, and for the government of those corporations when established.

The CHAIRMAN. Mr. Chandler, I do not want to disturb you, but can you refer to the exact language of the act of 1862 upon the subject of this Utah case?

Mr. CHANDLER. I can get it in a moment.

The CHAIRMAN. The act of 1862 was a separate statute applying to this case of Utah?

Mr. CHANDLER. Yes, sir.

The CHAIRMAN. In which they made this provision, which I see has been modified in the Revised Statutes.

Mr. CHANDLER. Yes, sir. Is there less sanctity in one provision with a corporation than in another? Would it be contended, Mr. Chairman, that if the property of the original church of Jesus Christ of the Latter-Day Saints was exempted from taxation, that in 1862 Congress could have passed a law repealing that exemption? Here is a church already on its feet; a charity already established with certain defined rights in its charter. In that charter and among its defined rights there is no limit on its power to hold property, is there? That is not disputed. If in the charter there was a provision that its property should be exempted from taxation, then it would come under the principle in

the 8th of Wallace and the law of 1862, if it undertook to subject it to taxation, when, by its charter made ten years previous, it could not be taxed, would the law taxing it be upheld? The decision in 8 Wallace is that it would not; that the entire family of privileges, no matter what they are, granted to a corporation, are preserved to the corporation as granted.

If this be a legal incorporation of the Church of Jesus Christ, then the terms of its charter of incorporation are in its charter provisions, and if Congress saw fit to endow it with unlimited capacity to take and hold property, it being a private institution, the law of 1862 cannot cut down that capacity to hold property. If so, why may it not change it in any other respect?

There is no difference in the character of the change made. One part is just as sacred as another. As is held in Connecticut, it is not a principle that a grant may be infringed upon, if the variation be not great, as every variation, the Supreme Court say, violates. Small injuries are as much inhibited as larger ones, and the least right is as anxiously protected as the greatest.

If you are going to examine the charity created by the law of 1859, or whenever it was created—what is the date of that law?

Mr. WEST. 1852.

Mr. CHANDLER. If you are going to survey off the privileges of that corporation created in 1852, you must look at the charter. If there be a legal sanctity attached to that charter when created; if there be no power in the charter reserved to the Government to repeal it, can you repeal it in detail because you think that the features of it which you propose to eliminate are trifling? This authority says not. It says:

> It is not a principle that a grant may be infringed upon if the variation be not great, as every variation violates; small injuries are as much inhibited as larger ones, and the least right is as anxiously protected as the greatest.

The CHAIRMAN. Did you give a reference to that book?

Mr. CHANDLER. Yes, sir: Bump's notes on Constitutional Decisions, page 164. This was the case of the Enfield Bridge Company *v.* The Connecticut River Company, 7 Conn., p. 28.

The CHAIRMAN. Is that the authority you have been reading from?

Mr. CHANDLER. No, sir; this is the only one thing I have read from this book—this last authority. I have been reading from the decisions of the Supreme Court of the United States.

The CHAIRMAN. You read an authority from New York?

Mr. CHANDLER. Yes, sir.

The CHAIRMAN. I wish you would just give the case you read from from New York, for I may not have that book.

Mr. CHANDLER. It is the case of Benson *v.* Moore, in New York, reported in 10 Barb. I read from pages 244 and 245. Now, my proposition is this, that the charter of this church was created under the terms of an act, which act describes, in explicit language, the privileges which the corporation received.

The CHAIRMAN. Have you that original act?

Mr. CHANDLER. No, sir; I have not. It is set out at large in one of the briefs before the committee.

Mr. GIBSON. It is in the compiled statutes of Utah.

The CHAIRMAN. Very well, if you have it here, that is all that is necessary.

Mr. CHANDLER. Can Congress hang along the flank of that corporation, and attack it whenever it sees fit? Can it take away from it what Congress chooses to esteem trifling privileges, or does the sacred pro-

tection which the Constitution extends to it preserve all its privileges under the charter? Does it preserve its identity absolutely as it was created, or is it left open to the assault of Congress whenever it feels in the humor?

Mr. CASWELL. Do you hold that Congress could not, at a subsequent day, fix the limit to its capacity to hold property that it had not then acquired?

Mr. CHANDLER. I hold this: I will answer the question as best I can. If the charter when made authorized this corporation to take $50,000 worth or $100,000 worth of property, and ten years afterwards it had acquired only $50,000 worth of that $100,000, and Congress undertook to interpose and say that it should not acquire the other $50,000, the repeal of half of its right would be unconstitutional.

Mr. CASWELL. Is that precisely the question?

Mr. CHANDLER. It may not be. I do not say that it is. I say, however, if you gentlemen construe this charter to give to this corporation the unlimited power to possess property, that is the fundamental consideration. If this charter, though not in terms, but by a fair construction, give this corporation an unlimited capacity to hold property, there is no power in Congress now to curtail that capacity.

The CHAIRMAN. Now, Mr. Chandler, does not your proposition—and I want you to meet it in its full force—amount to this: If this charter that was created in 1850 to 1852 gives to that corporation the power to unlimited acquisition of real estate, then as there is no power in Congress to repeal it, and Utah should come into the Union as a State, it would have no power to repeal it because of the inhibition upon a State to impair the obligation of contracts. Then, with its perpetuity of existence, that corporation might go on and acquire all the real estate in Utah?

Mr. CHANDLER. Well.

The CHAIRMAN. And there would be no political power in this country, in the States, or in Congress to limit that undefined accumulation of property?

Mr. BASKIN. There is an express provision in the organic act reserving to Congress the right to repeal.

The CHAIRMAN. I am very much interested in the ability with which Mr. Chandler is maintaining his proposition, and I want him to see where his proposition, it seems to me, will logically lead him to. I want to know if there is no political power in our system of Government which could curtail the property proportions of this institution which might go on increasing indefinitely, and finally absorb all the property of the State.

Mr. CHANDLER. I will answer that. I am not going to faint at the consequences of my own logic. [Laughter.]

The CHAIRMAN. I do not think you will. You are a bold man.

Mr. CHANDLER. I believe you cannot split this principle up into divisions; and when the Constitution undertook to provide for the inviolability of contracts, it meant precisely what it said.

Mr. CASWELL. Cannot we fence it in so that it cannot grow any more?

The CHAIRMAN. No; he says not.

Mr. CHANDLER. That is the matter in controversy.

The CHAIRMAN. I understand you say we cannot.

Mr. CHANDLER. I say, if it be fairly construed as the meaning of this charter that it has unlimited capacity to attain and hold property, there is only one remedy on this earth against it, and that is violence. If

rev. lution is justifiable, if public indignation is law, then, of course, I will abandon the argument.

The CHAIRMAN. You need not argue against that here.

Mr. CHANDLER. No, sir; I am not arguing it here. I am not referring to it as having any force before this committee whatever, as I know it has none here; but I am talking about the state of mind the people in such a community might be wrought up to in such a case. The state of mind which they would naturally be in, resulting from the constant increase of this property, might lead to a violent overthrow of the corporation itself; but I am discussing legal principles and the law of violence.

Suppose it has this unlimited capacity to attain property and it attains one county in a State. We can tolerate that. Suppose it undertakes to attain another county in the State. Where does the degree of acquisition furnish its limit? I say the limit has got to be in its charter. If it be not in its charter, although public feeling may stand aghast at it, that is a danger which will show itself against unwise acquisition of property, and a prudent corporation would prepare itself against such a state of public inflammation. Yet I cannot distinguish the line of acquisition in law, when the law itself has not marked that line. But that is purely an imaginary case. No such case as that ever did occur; no such case ever will appear on the face of the earth. That is an extreme case, which is appalling when it is mentioned, and an impracticable case; one that is not known anywhere in our history or in the history of any other country; so that it seems to me it is not an apprehension that is really to be felt.

The CHAIRMAN. I was only calling your attention to it, because it was an apprehension that was felt in the mother country, which was limited by the statutes of mortmain. The power of religious corporations to increase the amount of property, generation after generation, makes it a very important question whether, if once established with this unlimited power, there is no political power in the State that can limit it.

Mr. CHANDLER. Well, under the power of the English Government to sweep away this property, it did so.

The CHAIRMAN. That was just what I wanted to call attention to. The country from which we derive our institutions has unquestionably held that Parliament has the power to take this action in reference to a corporation; a corporation which is, in its nature, certainly political, and in its influence, as if it was a part of the institution of the Government itself. Now, that is the reason I asked you some time ago whether the adjudications that you read did not rest upon the express constitutional limitations in the written Constitution of this country.

Mr. CHANDLER. I think they do. If they did not I would not argue the case for a moment. If Congress has unlimited power over this subject, and there is no constitutional limitation on Congress to deal with contracts, I have nothing more to say; but I am assuming that there is such limitation. Our whole system of constitutional government was changed from that of the mother country. Of course we inherited a good deal from the mother country; but there was a good deal discarded out of that inheritance when we took it. We established our Government with divisions of power. Parliament may forfeit a charter, possibly, without any judicial hearing, so far as I know, because Parliament is not prohibited from exercising judicial power; indeed, Parliament always did exercise judicial power. There was always an appeal from the courts to Parliament. Parliament exercised judicial powers as much as legislative powers; but in this country Congress cannot do that. Then

there must be some difference between the powers of Parliament and the powers of Congress. What is that difference? The difference is that which has been made by these constitutional limitations. No matter whether we think they are wise or unwise, there is only one way to get rid of them and that is to repeal them. As long as they stand here they are to be expounded in favor of those things which they were put in to protect.

The CHAIRMAN. I dislike to make your discussion in any degree a conversational one, but we will perhaps understand you better by pursuing that course. Did the original act creating the Territory of Utah retain to Congress the power of disapproving of the acts of the Territory? In this act of 1862 I find that the following ordinance of the provisional government of the State of Deseret, and so on, is hereby annulled.

Mr. CHANDLER. Yes, sir. Now, that brings us back to the question which lies behind that law. Suppose Congress had passed a law for the distribution or sale of the public domain of Utah, and in enacting that law it contained a provision that Congress might approve or disapprove of the law which Utah enacted for that purpose. Now, what would be the status? Congress reserved to itself the right to disapprove that law—that is the sole reservation it makes. The law would be as valid as if made by Congress until disapproved. If half of the Territory of Utah had been sold under that law before it was disapproved, would anybody tell me that the contracts made under that law while it was in operation could be overthrown because Congress, ten years afterwards, disapproved the law? Congress did not reserve to itself the right, if the chairman please, to repeal the contracts made under the law which Utah might make. It only reserved to itself the right to approve, or disapprove, rather, of the law.

Until Congress did disapprove of that law, it was the law of Congress, and all the contracts made under that law while it was in existence are just as sacred and inviolable as though that provision were not in the law. The contract incorporating this private charity was made under that law before Congress disapproved of it, the Territory of Utah having the authority, with the assent of Congress, to incorporate this private charity; when incorporated, it being a contract, any disapproval of the law which Congress expressed afterwards would not be a disapproval of the contracts made under the law before the law was disapproved.

The CHAIRMAN. This is the language of the original constitution of the Territory:

> All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and if disapproved, shall be null and of no effect.

Mr. CHANDLER. Yes, sir. Now I admit the full force of that suggestion. They are submitted as made to the Secretary of the Interior, and they stand approved until disapproved. Are they not binding in the mean time? That is the first question. Are they not an equivalent for a direct law of Congress while they last? I say they are.

Nobody can say to the contrary, it seems to me, that until disapproved they are the law. Individuals took title to property under the law as it stood. Charters were granted to private charities under that law before it was disapproved. Congress, ten years afterwards, feels itself inclined to disapprove of the law, but in doing so it cannot deprive parties of charters unconditionally granted under the law before it was disapproved.

The CHAIRMAN. But it can say that it shall be null and void, and of no effect from the time of disapproval?

Mr. CHANDLER. In its operation for the future?

The CHAIRMAN. Yes, for the future. Congress having disapproved this law in 1862, what is the effect of it after that disapproval?

Mr. CHANDLER. Can they disapprove of the rights which have sprung up under the law before it was disapproved, and if one of the rights is that they are entitled to acquire property, can Congress disapprove of that part of the rights which they lawfully become possessed of?

The CHAIRMAN. So far as the acquisition of property up to that time is concerned it cannot, but it can prevent any further acquisition of property.

Mr. CHANDLER. I say not. I say that that charter, if it is sacred to protect them in the enjoyment of the property they then have, it is sacred only because it is a contract. If that contract contains a provision that they may acquire property in future; can any one tell me the difference between the two provisions of the contract? One provision of the contract permits them to acquire property, and they have acquired it. The provision is not limited to the acquisition of property within a given time, but it is a privilege to go on acquiring property for all time.

Now, mark you, it is a private estate, not a public estate; not quasi public, but wholly private in all its characteristics. Congress, by disapproving the law, cannot disapprove of any provision of that contract which has been made with the assent of Congress under the instrumentalities of Utah acting for Congress.

The CHAIRMAN. Then, do I understand you to say that after the act of disapproval which makes a law null and of no effect, that the corporation can, by virtue of that original enactment, go on, after the disapproval, and acquire property in excess of the limitation?

Mr. CHANDLER. That is precisely what I say.

The CHAIRMAN. Then what would be the effect of the annulment and making of non-effect the original law?

Mr. CHANDLER. It would be just this, and no more or less. If nobody had acted under that law it could have been repealed absolutely, undoubtedly.

Mr. COLLINS. Suppose in 1852, Utah, it then being much more remote as far as means of communication are concerned, had chartered the church, as you say, and the church the same day, or within a week, acquired property, and it took three or four weeks to get notice of its action to Congress, but when Congress did get notice of it, it undertook to annul the charter, do you say that the title had already vested, and the charter would have to remain intact?

Mr. CHANDLER. I would not say that would necessarily be so if the deeds had not passed. I am not arguing this on a mistake, or in completion of their rights, because if it was in a merely executory, inchoate state, not consummated, that is one thing. I am arguing it on the assumption that the right of the church, whatever it is, as expressed in that charter, was vested; and whatever it was as vested it is to-day.

Mr. CASWELL. It could continue to acquire property after the nullification act of 1862?

Mr. CHANDLER. Yes, sir; unless—I want to be treated fairly, and I want to be fair with the committee—

The CHAIRMAN. Certainly. I am merely trying to get at your meaning.

Mr. CHANDLER. Certainly. If the gentleman means that the provision in this law authorizing Congress to disapprove the law is equiva

lent to a provision in the charter itself that Congress may repeal or modify the charter, then my argument goes for naught; then I will admit that Congress would say, "You will stop right here." But I am arguing the proposition on the assumption that the provision in the law which authorizes Congress to disapprove of the law is not authority to repeal the charter and to disapprove of the charter. There is the distinction I make.

Mr. CASWELL. If the Territorial legislature gave charters with certain powers, they must be subjected to the original enabling act, must they not?

Mr. CHANDLER. Certainly. As I say, if you hold—if a court will hold—that that provision of law which allows Congress to disapprove of a law which Utah has enacted is equivalent in its meaning to a provision in the charter itself that Congress might repeal or modify the charter, then I have nothing more to say; but I say it is not.

The CHAIRMAN. Why not?

Mr. CASWELL. How can you distinguish it?

Mr. CHANDLER. I distinguish it because the law itself distinguishes it. If you are going to repeal a charter you must have a provision declaring that Congress, or the power granting the charter, may alter, amend, or repeal. Now, you have no such provision in this charter or act of the Utah legislature. In the charter there is no provision that you may alter, change, or repeal, is there? The only substitute for that which it is attempted now to establish is that Congress reserved to itself the power to disapprove of the laws which Utah enacted. Suppose that Utah passed a general incorporation law, authorizing corporations, colleges, and churches to take property under that law, and there was this same provision that Congress might approve or disapprove of that law, and a dozen colleges, and seminaries, and churches were really and actually established under the law of Utah, and Congress waited ten years before it expressed any opinion on the subject of the law in this case, the legal effect of Congress's silence is assent, because there was only reserved the right to disapprove, as they reserved the right to veto. A veto is simply a disapproval, and if the law is not vetoed, if the bill lays there in neglect, it becomes a law. Therefore there must be some positive dissent to that law in order to destroy it.

Congress grants to Utah the power to make laws affecting private property, for the creation of private trusts, and for the sale of land, and reserves to itself the right to disapprove the law. Congress sees the law that is there enacted, it is reported, and land is sold under the law. Privileges are granted under the law. Corporations are created with certain specific privileges in their charters.

People accept those charters and titles to land. Congress to-morrow, or next week, or the next year, but not until after the acceptance of these charters and titles to land, annuls the law. Does it annul the charters and titles to land? If it does not annul the charters and land titles there in their entirety, it does not annul them *pro tanto*. You cannot discover any fine distinction between a destruction of the charters and land titles as such, and destruction of them partially. Suppose in the very law in which Congress disapproved this Utah law it declared that every corporation formed under it shall be dissolved and its property confiscated, would any man tell me that the contract, lawful when made under the law of Utah, accepted by the beneficiaries, and contributions made to it, could be repealed by Congress, the charters absolutely taken away, because of the repeal of the law under which the charter is granted? I say not. I say that all that law means is that Congress

may disapprove of the law just as it says, but every title that is vested under that law while it was in force is sacred. The title is sacred to the extent that it is a title, to the very limits and borders of the privileges which are granted. When the law is repealed, then no others can be formed under it of any kind. But there is no doctrine in this country, I submit, that this committee or that Congress can appeal to, that will justify them in construing the law to mean that because the law is disapproved or repealed that all the rights which sprung into being and into sacredness under the law while it was in force are also repealed. If they are not repealed in their entirety, how can you say they are repealed partially? When you give away part of the proposition you might as well abandon it all. I say that that charter, precisely as it came from the hands of the legislature of Utah, and precisely as it was accepted by the beneficiaries of it, constitutes the title which was transmitted to them under the operation of that law and with the approval of Congress; and Congress cannot now reach its hand out and take away any part of that contract, any part of that title, or any one of its provisions.

That is my position. It may be absurd; it may be unsupported by the judicial voice of this country, but I would like to see one single authority of any American court holding that where a law is temporarily in force, as all laws are, that titles acquired under them may be destroyed. What does that doctrine amount to, if the committee please? Didn't Congress have the power to repeal all the laws that Utah made without a provision, such as is read here? Certainly it did. Is Congress not exercising in this bill, or asserting in this very bill, the power to repeal any law of Utah? Did that declare any new principle, or did it give these persons any notice of any extraordinary power of Congress? Not at all. It simply declared what Congress would have the right to do, what every State has the right to do in its own case, had that not been in the law, to wit, repeal all the laws that Utah enacted. But when it has permitted people to attain property under the law, no matter what the nature of the property, whether it be title to land or a contract of service to the Territory of Utah, that right or title is forever valid. Suppose a man had made a contract to do certain things for the Territory of Utah under a law authorizing Utah to make such a contract—and I think this is a fair illustration—he made a contract to furnish $100,000 worth of pork to the provisional government of Utah, under a law of Utah which Congress permitted the Territory to make, and after he had furnished $50,000 worth Congress passes a law, and say. We won't take the other $50,000 worth.

Mr. CASWELL. We do not differ so much as to the rights acquired before the nullification act of 1862 as we do as to the contracts made since that time.

Mr. CHANDLER. No. We only differ with regard to what the contract is. I am told, however, that this law has not been annulled up to date.

Mr. CAINE. Congress started out to annul it.

Mr. CHANDLER. It is a doubtful question whether it has ever been annulled or not. There is a proviso to that act. It provides that it shall have only a limited effect, as the committee will see. But the proposition I rest on is this. Suppose the law had been passed authorizing them to buy this $100,000 worth of pork; they made a contract for $100,000 worth of pork; then Congress repeals the law; would that repeal also one-half of the contract?

Mr. CASWELL. That does not necessarily follow. We do not propose,

for instance, to interfere with contracts made prior to the nullification act.

Mr. CHANDLER. Then it comes back to my original proposition. Does this charter contain permission to acquire other property than the $50,000 worth? Does the charter on its face authorize this church to own more than $50,000 worth of property?

The CHAIRMAN. Suppose it did. The law of Congress of 1862 interferes and fixes the limit, and says it shall not hold above $50,000, and if it does, the excess shall escheat.

Mr. CHANDLER. Yes, that is the very proposition fairly stated. If they could not pass a law to repeal the contract for pork, which was for $100,000 worth, after $50,000 had been furnished, and say we won't take the other $50,000 worth, how then can they repeal the provision of this charter that allows this church to acquire $100,000 worth of property and it only has $50,000 worth at the time the law is repealed? I say the contract for pork and the contract of permission to take an equal amount of property are equally valid, of equal force, and equally within the power of Congress to destroy. This limitation of the power of Congress to impair contracts is not to impair certain kinds of contracts, but it is an inhibition against impairing any contracts.

If this charter, fairly construed, authorized this church to take, when the charter was granted, $100,000 worth of property, and after it has acquired $50,000 worth Congress undertakes to say to it, You shall not acquire that other $50,000 worth of it, I say to that extent it is taking away and appropriating to itself one of the privileges of that charter. If it may invade a charter at all and take out one privilege, as the supreme court of Connecticut say, because of any reason which suggests itself to Congress, then there is no limit to which it may not go.

Mr. COLLINS. Suppose Congress step in when $50,000 of the $100,000 is acquired and annul the charter, doesn't it thus deprive the charter of the corporation of power to acquire the other $50,000 under its contract? Is not that the effect?

Mr. CHANDLER. I would say not, for this reason; that when Congress passed or made the contract for the $100,000 worth of pork, it incorporated into its contract the right to furnish the pork, the law authorizing contracts in the future, and while it may repeal that corporation, and not allow it to furnish any more pork after it had furnished the $100,000 worth, it cannot intrude itself into the midst of that contract and take one-half of it away by force. If, under the law providing for the sale of land, a man buy 640 acres, but before he clears it all the law under which he purchased is repealed, and it is declared in the repealing act that he shall have only one-half his purchase, would that be valid? If not, why not? If the committee please, I will not weary you any longer. I have a large number of authorities that I would like to cite, but I will put them on a brief and furnish them to you.

The CHAIRMAN. If you will just make a memorandum of them and give them to the stenographer, they will be printed as a portion of your argument.

Mr. CHANDLER. I will do that.

The CHAIRMAN. I will state that you have not wearied the committee at all, but the committee has rather been very much gratified with your argument.

Mr. CHANDLER. Thank you, sir.

In the case of Miner's Bank *v.* The State of Iowa, 12 Howard, page 4, the subject of the power of Congress to repeal and modify a charter when there is no provision in it for modifying it is considered.

There is one thing I wish to have understood, if I can, from the committee. There are a great many people who could not be heard in this case if we were in court, because in court a person cannot be heard unless he has some interest in the controversy. Now, Mr. Caine is the representative, the accredited Delegate, from Utah, and I ask that this committee permit him to close this argument. I think it is due to you, and due to the people whose representative he is, after he has heard and the committee has heard what may be said in favor of this bill, and what may be said against the Mormons, that Mr. Caine should have the right to close the argument. It is due to him as a representative.

The CHAIRMAN. As far as the matter of closing the argument is concerned, Mr. Chandler, I do not think it will make much difference who closes. While they say that all courts are only more intelligent juries, and I do not claim that we are any more intelligent than juries ordinarily are, yet I will say that I do not think the committee will be affected by the fact that a certain gentleman has been last heard in the controversy. Mr. Baskin, do you desire to go on at this time?

Mr. BASKIN. Mr. Caine was present and heard what I said in the opening, and he has a chance to respond to me. If you permit him to close, it gives me no opportunity to answer what he has said.

The CHAIRMAN. I was going to add that any one who wants to explain, or reply to any new matter which has been brought out by any gentleman in this discussion, will have the full opportunity of doing so.

Mr. CHANDLER. That is all I ask for Mr. Caine.

The CHAIRMAN. There shall be no advantage taken in this discussion as far as I can control it.

Mr. CHANDLER. If this were a case being heard heard here for the benefit of Mr. Baskin, of course he would have the right to be heard, but it is not; it is a public inquiry. Mr. Caine comes here as the legal representative of Utah Territory, and all he wants is a chance to be heard. He does not expect, by any argument or persuasion, to change the opinion of the committee; but suppose there are matters he can explain to the satisfaction of the commitee, ought he not to be permitted to present such explanation?

The CHAIRMAN. Certainly. I think, gentlemen, while we have been very much entertained with this discussion to day, as on yesterday, yet, as we sat four hours yesterday, and we have been in session nearly four hours to day, we will postpone the further discussion of this case until Monday.

Mr. BASKIN. I will promise the committee I will not occupy much time. I am rather tempted to forego any further argument rather than to have the discussion continued for another week. I will not occupy a great deal of the time of the committee, although there have been a great many things said here which would naturally call for an answer from me.

Mr. CAINE. I would like to inquire of Mr. Baskin whether there are any others to be heard on his side of this question?

Mr. BASKIN. I do not think there are any others who desire to discuss the legal proposition.

Mr. CAINE. I will ask if there are any others who wish to be heard upon the question at all?

Mr. BASKIN. Not that I know of. There are some persons here to whom I shall refer to verify some statements that I shall make, and that may call for an examination by the committee. It is a matter of parole, however.

Mr. CAINE. I will say that if there is testimony to be introduced, we

shall want to introduce testimony in rebuttal. We do not propose to have people come here and testify in your behalf without our having an opportunity to rebut such.

Mr. BASKIN. You are situated differently from myself. You can afford to discuss this matter to the end of the session. I am not in that position.

Mr. CAINE. I can, and I propose to do it, before I will be taken advantage of.

The CHAIRMAN. You need not be under any misapprehension, gentlemen; we will endeavor to hear you all fully.

Mr. CAINE. I would like to know what is the understanding as to who will go on next, whether Mr. Baskin or myself.

The CHAIRMAN. Mr. Baskin.

Mr. BASKIN. I will say, Mr. Chairman, that Mr. Caine was present and heard me open the discussion, and I think it is hardly fair to give him a closing under those circumstances. The natural order of the discussion would be, as we are in the affirmative in this matter, to have him go on and let me answer.

The CHAIRMAN. If Mr. Caine says anything after he shall have heard you that you want to reply to, you will have that privilege.

Mr. BASKIN. It would almost result, then, in another day for that purpose, because he is almost certain to say something that I will want to explain or answer.

The CHAIRMAN. We have heard now for two days nothing but on the Mormon side of the question.

Mr. BASKIN. Three days.

The CHAIRMAN. We would like to hear you a little while by way of refreshing us with a change.

Mr. BASKIN. I do not wish to be understood as having the least objection to Mr. Caine answering me, but you see it puts him in an attitude where he not only answers what I have said, but has an opportunity to make a speech, and I have no chance to answer him at all.

Mr. CASWELL. Oh, yes, you will have a chance to reply.

The CHAIRMAN. You need not be at all apprehensive on that point.

The additional authorities referred to by Mr. Chandler are as follows:

A grant of franchises is not in point of principle distinguishable from a grant of any other property. (Dartmouth College *v.* Woodward, 4 Wheat., 518; Derby Turnpike Co. *v.* Parks, 10 Conn., 522; Canal Co. *v.* Railroad Co., 4 G. & J., 1; Enfield Bridge Co. *v.* Connecticut River Co., 7 Conn., 28; Washington Bridge Co. *v.* State, 18 Conn., 53; Benson *v.* New York, 10 Barb., 223.)

A charter is a stipulation on the part of the State that the corporation shall be and continue a corporation for an indefinite time or for the term limited in the charter, unless sooner forfeited for some cause recognized by existing laws as a cause of forfeiture; that its constitution, organization, and mode of action, as prescribed by its charter, shall not be annulled or changed by the legislature; that members shall not be added or removed; that modes of election, expulsion, or suspension of members shall not be altered, and that whatever belongs to its organic constitution and action as a body corporate shall continue and be determined by the terms of the charter. In addition to which the powers specially granted to it are not to be withdrawn or diminished. (Comm. *v.* Farmers' Bank, 38 Mass., 542; Thorpe *v.* B. & R. R. R. Co., 27 Vt., 140.)

The implied powers conferred by a charter are held by a tenure as sacred as those which are expressly given. (People *v.* Manhattan Co., 9 Wend., 351; Commercial Bank *v.* State, 12 Miss., 439.)

A statute conferring upon a corporation the right to collect additional tolls is a grant and not a license. (Derby Turnpike Co. *v.* Parks, 10 Conn., 522.)

It is not a principle that a grant may be infringed upon if the variation be not great. As every variation violates, small injuries are as much prohibited as larger ones, and the least right is as anxiously protected as the greatest. (Enfield Bridge Co. of Connecticut River Co., 7 Conn., 28.)

If the foundation of a corporation is private, though under the charter of the Gov-

ernment, the corporation is private, however extensive the uses may be to which it is devoted, either by the bounty of the founder or the nature and objects of the institution. (Dartmouth College *v.* Woodward, 4 Wheat., 518; Trustees *v.* Bradbury, 11 Me., 118; Allen *v.* McKeen, 1 Sum., 276; Regents *v.* Williams, 9 G. & J., 365; State *v.* Heyward, 3 Rich., 389; Brown *v.* Hummel, 6 Penn, 86; Plymouth *v.* Jackson, 15 Penn., 44; Yarmouth *v.* Yarmouth, 34 Me., 411; Trustees *v.* State, 14 How., 268; S. C., 2 Ind., 293; Louisville *v.* University, 15 B. Mon., 642.)

It by no means follows that because the action of a corporation may be beneficial to the public, it is a public corporation. This may be said of all corporations whose objects are the administration of charities. But these are not public, though incorporated by the legislature, unless their funds belong to the Government. Where the property of a corporation is private, it gives the same character to the institution, and to this there is no exception. (State Bank *v.* Knoop, 16 How., 369.)

At this point the committee adjourned until 11 o'clock on Monday, May 3, 1886.

WASHINGTON, D. C., *May* 4, 1886.

The committee met pursuant to adjournment.

The committee still having under consideration Senate bill No. 10,

Mr. CAINE. May it please the committee, I spoke to you yesterday about allowing Hon. Joseph A. West to occupy a portion of my time. I am not feeling very strong to-day, and I would like to yield a portion of my time to him this morning, so that he may treat certain points, and relieve me to that extent. There are certain sections of the bill under consideration that I wish him to explain; he was a member of the late legislature of Utah, and knows what efforts were made by that body to anticipate this proposed legislation.

The CHAIRMAN. Very well; we will be pleased to hear Mr. West.

ARGUMENT OF HON. JOSEPH A. WEST.

Mr. WEST. Mr. Chairman and gentlemen of the committee, it is somewhat unexpected to me to be accorded the privilege of appearing before you and taking part in this discussion, although it is an opportunity that I have desired.

Having been a member of the late Utah legislature and a resident of that Territory for many years I believe I can safely claim to possess a knowledge of all the local and leading issues that at present agitate that distracted community; and I desire, if I may be able in the limited time at my disposal, to lay before this committee the true condition of political affairs there; to show to what extent past legislation has been effective in punishing bigamy, polygamy, and unlawful cohabitation; and how far the rights and liberties of that people had been encroached upon by those acts, and by the extra judicial efforts that were being put forth by the Federal officials of that Territory.

Prior to the passage of the Poland bill the Territorial authorities had charge of all criminal prosecution under the laws of the Territory of Utah. By this bill, however, the criminal business of the Territory was transferred to the United States authorities. The offices of Territorial attorney-general, Territorial marshal, Territorial district attorney, who were to appear in behalf of the people, and who were elected in conformity with laws that had been passed by the assembly and never disapproved by Congress, and under which no abuse of power had existed, were done away with, and these powers and authorities conferred upon United States officers.

Under the Poland bill the United States district attorney has power to appoint an unlimited number of assistant prosecuting attorneys. The supreme court of the Territory has power to appoint an unlimited number of United States commissioners, who sit as committing magistrates. The marshal has unlimited power to appoint deputy marshals. The results that have followed this enactment and the sweeping powers thus

conferred upon these officers is evidenced by the number of Federal officials who exist in the different parts of the Territory and the despotism that has grown up under their administration of the law. In every village of any considerable importance we find a United States commissioner; in every settlement of any considerable importance we find deputy marshals; we find district attorneys to attend to all the criminal business that may arise, either under the laws of Congress or under the laws of the Territory.

By a recent decision of the supreme court of Utah, and from which, I am very happy to state, Judge Zane has dissented, all criminal jurisdiction of any importance has been withdrawn from the justices of the peace. Heretofore they have exercised jurisdiction under a Territorial statute, authorized by the organic act, providing that justices of the peace should have criminal jurisdiction in cases where the penalty did not exceed six months' imprisonment and $300 fine. The result is that the United States courts in Utah, the three district courts, and the supreme court, have almost the entire monopoly of the criminal business and nine-tenths of the civil business arising both under the laws of the United States and under the laws of the Territory.

I submit, gentlemen, that in these matters the Mormons have no voice. No Mormon is found among the deputy marshals; no Mormon is appointed as commissioner; no Mormon occupies any position under the court; but, on the contrary, those who are vehemently opposed to the Mormon people in their utterances and in their public career are the men who are selected for these positions; men who are antagonistic to them, and are seeking constantly to procure additional legislation to further enslave the people of that Territory.

Mr. Baskin, in his argument, called the attention of the committee to the fact that only about one hundred convictions for unlawful cohabitation, and but two for polygamy had occurred in Utah since prosecutions actively began, a little over a year ago. I submit, gentlemen, if it is not wonderful that so many convictions have occurred, when we consider the vast amount of business that the non-Mormon ring in Utah has succeeded in monopolizing in the three district courts over which they have exclusive control; and also in view of the further fact that the actual practice of polygamy has so extensively ceased, and that the leading polygamists are either in prison, or in exile. To me, and to the people of Utah, the rapidity with which this work has been accomplished is marvelous in the extreme, and is only attributable to the very summary proceedings had, and the extra judicial methods employed in all these cases and to which I will fully refer hereafter. Here we have three district courts conducting almost the entire civil and criminal business of a Territory larger in area than all of New England, and containing a frontier, agricultural and mining population of about 200,000 people. The mining litigation alone, if properly attended to, would almost occupy the entire time of one court. Think of it, gentlemen, and ask yourselves the question, if under these circumstances so much has been accomplished in so brief a space of time, is it not the best proof that can be offered of the efficiency of the law as it now stands, and that there is no necessity for any further legislation upon this subject.

What was the object to be attained by the transfer of all Territorial criminal business to the Federal authorities in Utah? Why have they desired this? The laws of the the Territory were properly executed under the former administration. The people were satisfied with the officers who executed the laws; the non-Mormons had no reason to com-

plain, for if they failed to get justice in any of the lower courts they always had an appeal to the district courts. The district courts have ever held concurrent and original jurisdiction with all the courts of the Territory, and parties could immediately remove their cases without even joining issue, as was stated by Mr. Richards, in cases of divorce, before an answer was filed. The non-Mormons had a complete and effectual remedy for all wrongs, did any exist. But it was not the object of this legislation to secure and promote justice. It was simply to give these Federal officials an entire monopoly of this business, and thereby enable them to increase their emoluments of office. The object was to have unlimited power to bring an unlimited number of prosecutions, to harass and annoy the people of Utah, to pile up heavy bills of expense; to eat out the people's substance, and to make themselves wealthy out of the spoils of the people or the coffers of the Government. In nearly all criminal prosecutions there the costs are taxed against the defendant, and especially is this the case when the defendant is a Mormon.

As a result, some of the most outrageous abuses of power have grown up under the Federal administration in Utah. I have some of the recent papers of Salt Lake City which present a shocking state of affairs. There is one article which refers to a raid made in the town of Payson. I will read a brief extract from an editorial in the Salt Lake Herald of April 27.

Mr. BASKIN. Mr. Caine, I believe, is the editor of that paper?

Mr. WEST. No, sir; I beg your pardon; he is not the editor of that paper.

Mr. BASKIN. He is the proprietor?

Mr. WEST. No, he is not the proprietor either. Mr. Baskin, I did not interrupt you yesterday, although I listened to you for four hours, and during that time heard more falsehoods than I thought it possible for any one man to utter in so short a space of time. I will appreciate it if you will not interrupt me any more.

I will say that the Salt Lake Herald is owned by a joint-stock company. Mr. Caine may be a stockholder. The stockholders are very numerous. I think there are some forty or fifty; are there not, Mr. Caine?

Mr. CAINE. I think more than that.

Mr. WEST. Byron Groo, a non-Mormon, is the editor-in-chief. Mr. Caine has nothing to do with the management of the paper any more than any other stockholder. That article reads as follows:

The United States deputy marshals from this (the third) district made a raid into another county and district on Monday.

The third district is the principal district of the Territory, and the one in which the greatest amount of business is done.

They went to Payson, in the first district, where they subpœnaed a number of persons as witnesses to appear before the grand jury.

I think the number of witnesses subpœnaed on that occasion was about twenty. I have another reference to it in some other paper, but I have failed to find it.

Mr. CAINE. Suppose you state how far Payson is from Salt Lake City.

Mr. WEST. The article itself will give that information.

Mr. CAINE. Oh, very well.

Mr. WEST (resuming the reading):

These witnesses were brought to Salt Lake City, a distance of perhaps 70 miles, and being taken before a commissioner were compelled to give bonds for their appearance when wanted.

The Herald respectfully asks Mr. Attorney-General Garland, as head of the Department of Justice, and the Federal official immediately charged with the duty of seeing that expenditures of money by the Department are wise and economical, if he authorizes or approves this sort of thing, or does Mr. Garland understand how things are being managed here, in his name and apparently by his instruction? We have frequently called attention to the reckless, outrageous extravagance on the part of the court clique, and propose to continue the exposures until there shall come a cure for the evil, though the effort may carry us beyond the Attorney-General for the remedy.

The motive actuating the officials is fees, to get as much from the Government as possible, and keep it in the hands of the little ring. In Monday's raid, reported in our local columns, the deputies went from this city, because the fees would be greater than if the service were made by the deputies in the first district. Had the latter served the subpœnas the mileage would have been for, perhaps, 20 miles, while now it will be charged for more than three times that distance; but the outrage is more than ever glaring when it is known that a United States commissioner resides within an hour's ride of Payson. Yet the witnesses were brought past him, and carried 50 miles further in order that the pet commissioner in this city might get the fees in the case. It should be borne in mind that these witnesses are not bound over to appear before the grand jury of this district, but to go before the inquisitors of the first district at Provo, near the homes of the witnesses. Can any other interpretation be put upon the business than that the running up of large fee bills is the object of the marshal, the district attorney, and the favorite commissioner? If the first district deputies are incompetent, or incapable of a faithful performance of their duties, wouldn't the proper course be to remove them and install others, who would be efficient?

In order that the committee may understand the situation of this place with reference to Salt Lake City, I will simply state that Provo is situated here [indicating], and Payson immediately beyond. Provo is the city in which the district court of the second judicial district is held. They went from Salt Lake City. There was a commissioner and a number of deputy marshals in Provo. The grand jury before whom these people had to appear met at Provo, and yet they went by Provo to Payson, and arrested these witnesses on summary processes; brought them all the way back to Salt Lake City, a distance of 70 miles, and had them examined before Commissioner McKay.

I am personally cognizant of the fact that Commissioner McKay has gone from Salt Lake to Ogden, a distance of 36 miles, in order that he might have the preliminary examination of certain cases there, when we have had two, and sometimes three, commissioners in the city. Commissioner McKay seems to be a great favorite with the district attorney, and has had a monopoly of this business in that section. He has often been brought to Ogden from Salt Lake City to conduct examinations.

I have an affidavit in regard to the conduct of the marshal, to which I desire to call attention. I will read an affidavit made by Bradford W. Elliott. He is not a Mormon. I have a number of affidavits to the same effect, but it would consume too much time to read them all. The following is his affidavit:

TERRITORY OF UTAH,
County of Salt Lake, ss:

Bradford W. Elliott, being duly sworn, deposes and says that on October 20, 1884, he took the place and assumed the duties of guard at the Utah penitentiary, under appointment from United States Marshal Ireland; that said place had been vacant prior to my assuming its duties, about eleven days; that at the end of said month he, affiant, signed a voucher for the full month's pay, to wit, that of October, 1884; that said pay amounted to $75, but that he received but $29.05 of that amount, being pay for twelve days' service, and affiant has no doubt that said voucher was filed against the United States to the credit of said marshal.

And affiant further avers that a man named Kendall informed him that he also signed a voucher for full pay, when for nine days the place had been vacant.

Affiant avers that a man named A. G. Neeper informed him that in September, 1884, potatoes which were raised on the Government farm by convict labor, were sold to or charged to the Government in the support of the convicts in the penitentiary at the

rate of 75 cents per bushel when they were selling for 35 cents per bushel in the market at Salt Lake City, U. T., and that said Neeper was a guard at the time of said transaction, at the Utah penitentiary.

BRADFORD W. ELLIOTT.

Subscribed and sworn to before me this 16th day of November, A. D. 1885.
[SEAL.] CHAS. W. STAYNER,
Notary Public, Salt Lake County.

Now, this newspaper is full of affidavits, some of them showing how rewards are offered by the marshal for information that will lead to the conviction of polygamists; how he requires his deputies to divide their fees with him, although they receive but a small compensation, and he receives a large income, and how false vouchers are made and pay received for services not rendered. As a result the position of marshal of Utah Territory has become most lucrative, so lucrative in fact, and so much sought after that there were not less than twenty six applicants for that one position at the time the late marshal's term expired.

The following are copies of the affidavits left with the committee to which Mr. West referred:

TERRITORY OF UTAH,
County of Beaver:

James R. Lindsay, of Beaver City, Beaver County, being duly sworn, says: That I was appointed deputy United States marshal in June, A. D. 1883, by E. A. Ireland, and had charge of the second judicial district, and served all the processes issued from said district court. I received as compensation for services the first year one-half the fees allowed by law, and E. A. Ireland the other half of the fees, the said E. A. Ireland paying one-fourth the actual expense, and I paying three-fourths of said expenses.

I also served in the same capacity from July 1, 1883, to January 1, 1884, and during said time I paid all the expenses of said district and received as compensation one-half of the legal fees for my services; the other half was paid to E. A. Ireland, the United States marshal.

Also during my service as deputy United States marshal I took from Beaver to the Utah penitentiary, Messrs. Fennel, Callaghan, and four other prisoners, having with me two guards to assist. The actual vouchers for this service was $284. The net expenses incurred on this trip was $159.50. My share of said vouchers was $142, making me a loss of $17.50. On explanation with E. A. Ireland he paid $15 more, which still left me losses on the trip $2.50, and was 260 miles away from home.

JAMES R. LINDSAY,
Ex Deputy United States Marshal.

Subscribed and sworn to before me this 30th day of October, A. D. 1885.
[SEAL.] HENRY EMERSON,
County Clerk, Beaver County.

TERRITORY OF UTAH,
County of Salt Lake, ss:

George H. Kellogg, being duly sworn, deposes and says that he was convicted on February 4, 1885, for taking a horse and buggy, and was sentenced to one year in the Utah penitentiary on February 14, 1885, and pardoned by Governor Murray, under the Copper act, on December 23, 1885. And affiant avers that he was incarcerated in the said penitentiary prior to his trial and conviction four months awaiting trial, and that during his imprisonment he witnessed the following incident of cruel treatment: A man named John Smith, who was half witted, and has since been sent to the Territorial asylum, was put into what was known as the "sweat-box" 6 feet long, 6 feet high, and barely 3 feet wide, with chains on his legs (quite heavy ones), on one of the coldest nights in the winter, and he had to move around to keep warm, having no bedding of any kind, and the guards threw four buckets of cold water from the well over the prisoner, in the presence of affiant, and the prisoner afterwards told affiant that they threw more than affiant saw; that this treatment gave the prisoner a severe cold, and he was kept in the box all the next day until about 5 o'clock in the evening without food of any kind.

Affiant does not know the cause of this treatment, but he thinks the treatment very cruel, especially owing to the condition of the prisoner mentally. That for five months during the present year affiant was in charge of the dining-room at the peni-

tentiary; that he knows the character of the food supplied by the marshal and warden for the use of the prisoners; that it has come smelling so badly that two men had to take turns in dishing it up from the tubs to the plates. This occurred more than a dozen times during his charge of the dining-room. The bread was reported by affiant on one occasion as being moldy and mouse-eaten, caused by its being kept in a damp box; that the food was generally bad and unwholesome; that the surroundings, the sleeping rooms, and the bedding were all vile and unhealthy. The stenches arising from the unclean privy, and the soapsuds thrown over the yard, render the place filthy and unhealthy. That the whole affair was terribly badly managed, and no care given to the sick.

G. H. KELLOGG.

Subscribed and sworn to before me this 28th day of December, A. D. 1885.
[SEAL.] CHAS. W. STAYNER,
Notary Public, Salt Lake County, Utah Territory.

To whom it may concern:

Be it known that during the twenty months' imprisonment I endured in the Utah penitentiary I was for six months what is termed a trusty, and worked on the ranch outside the prison walls.

About eight months after my incarceration commenced Messrs. Ireland and Dickson offered to procure my freedom and pay me a reasonable sum for my time if I would aid them in "running in" polygamists, which I declined to do.

The officers of the penitentiary always treated me as kindly as I could expect, but I have witnessed several exhibitions of brutality exercised by the warden towards the prisoners, and many times the food served to prisoners was unwholesome and inadequate. Stinking meat, sour bread, and soup with maggots have often been sent in for prisoners to eat, and when they have respectfully protested some of them have been punished with sweat-box or shackles.

JESSE E. BILLINGSLEY.

Subscribed and sworn to before me this 27th day of October. 1885.
[SEAL.] JOS. F. SIMMONS,
Notary Public, Salt Lake County, Utah Territory.

TERRITORY OF UTAH,
County of Salt Lake:

Thomas Simpson, being duly sworn, deposes and says that he is a subject of Great Britain, born at Hull, Yorkshire, April 3, 1849, came to America, arriving at New York City about May 17, 1882, and reached Utah Territory and Salt Lake City about May 24, 1882. That he was a single man when he came to America, never having married any one in his life; that on July 12, 1883, being then still single, he married one Emma Everett, at the city of Salt Lake, county of Salt Lake, Territory of Utah, and was divorced from said Emma Everett by decree of the probate court, on December 11, 1884. That while in the condition last named, he having not married again, he was arrested by the Federal authorities on December 20, 1884, tried before Judge Zane, the judge of the third judicial district court of Utah Territory, for polygamy, and the act said to have been committed by marrying Emma Everett, he having previously married one Hannah Powell, twelve years before in England. He was actually convicted before a jury in said court on March 12, 1885, and sentenced March 14, 1885, to two years' imprisonment in the Utah penitentiary. That said conviction was obtained on very flimsy evidence, and through spite on the part of his former brother-in-law, who was the principal witness, and testified that affiant had stated to him that he was married in England prior to coming to America.

And affiant now here declares that he never did marry said Hannah Powell in England, nor prior to his marriage with Emma Everett at any time or place whatever, and never lived with her in England, and said Hannah Powell was still single when affiant was arrested. That Emma Everett was divorced from affiant before the arrest and trial aforesaid, and therefore affiant had no wife at all at the time of his said arrest and conviction. That since that time, to wit, October 12, 1885, President Cleveland pardoned affiant on the petition of himself signed by Judge Zane and the prosecuting officers of the court that convicted him. And that on the 20th of October, 1885, affiant was married to Hannah Powell by Judge Zane, the same being the date of his release, and the said Hannah Powell being the same woman named in the complaint against him for polygamy, on which he was tried and convicted.

That on or about the 7th day of November, 1885, affiant was accosted by one Moore, at the time a guard at the penitentiary in the employ of Marshal Ireland, who asked

him if he was at work, and on being advised in the negative said: "You damn fool, why don't you go and give some of these damned 'polygs' away, you can get $20 a head and don't have to appear against them in court. You can make $40 a day, for I know you know plenty of them."

And affiant also avers that a man named Mix, also at the time a guard in the penitentiary, proposed to affiant while he was imprisoned, that on emerging from the penitentiary he could get $20 a head for giving away polygamists. That the man Moore above mentioned endeavored to persuade affiant to go with him to the marshal's office to arrange about the matter.

And affiant avers that the food at the penitentiary during his sojourn there was in many respects unwholesome, that the meat was frequently sent out from the table as it could not be eaten, and the meal had to be made on dry bread and coffee. That the hash was also bad, and could not be eaten on several occasions.

That as a trusty affiant had to send bread to supply the marshal's family every other day, and that vegetables of all kinds and other things were also sent from the penitentiary to the marshal's residence.

THOMAS SIMPSON.

Subscribed and sworn to before me this 28th day of November, A. D. 1885.
[SEAL.] CHAS. W. STAYNER,
Notary Public, Salt Lake City, Utah Territory.

TERRITORY OF UTAH,
County of Salt Lake, ss:

John Aird, jr., being duly sworn, deposes and says that he was imprisoned in the Utah penitentiary from April 30, 1885, till May 29, 1885, owing to inability to pay his fine of $300 and costs, to which he was sentenced by Judge Zane for "unlawful cohabitation," under the Edmunds act.

That immediately on being sentenced as above, the affiant was take into the office of United States Marshal Ireland, and on asking the privilege of going out to try and get a friend to help him pay his fine, said marshal refused, and then made the following expression: "I wish to Jesus Christ I knew where John Taylor and George Q. Cannon were; I would snatch them bald-headed, the sons of bitches." That the marshal paced the floor and seemed very enraged and bitter.

That affiant was sent to the penitentiary that night. Next morning, when the prisoners were called in to breakfast and the guard had retired and bolted the door, some of the prisoners seized affiant and held his arms behind him while they placed a rope around his neck and hung him up to the joist of the room till his sight left him, and he was getting black in the face, as some afterwards told him. After he was let down he applied to the warden for something to relieve his throat, as he was so much hurt that he could not swallow, and he was also shaken in his nervous system so much that he was laid up for two days; and all the medicine that was furnished him of any kind was three morphine pills, which he did not take. That bad treatment had been usual for some time by the prisoners before affiant went there, and it was not until the affiant complained and the desperate character of his case forced itself on the attention of the marshal that it was stopped by his order. Men before that had been tossed in blankets, and compelled to fight with other prisoners to escape the terrors of "initiation" as it was called. No attention had been paid to anything of the kind before, although it was well known. Affiant had himself warned the guard that something was intended on him, but the guard, while promising to protect him, retired as above stated, and a prisoner bolted the door on the inside, and this left the prisoners to do as they pleased with affiant as above described.

That with the exception of one day, the meat used in the penitentiary was invariably bad, and all the food except the soup had to be eaten with the fingers. That it turned his stomach so much that he could eat but very little, the bread and the tea being the main articles of his diet the whole period of his imprisonment. That affiant was jailer of the city prison at Salt Lake City from August 1, 1880, to November 20, 1884, and that he knows the character of food served to prisoners in that prison, and also in prisons in Scotland. That the food in the Utah penitentiary is not only vastly inferior in quality, but is in every respect unfit for human food, and at times both meat and soup had to be sent back to the kitchen uneaten. That it is dished in a tub, and shoveled into the prisoners' tin pie-plates with some kind of a shovel.

JOHN AIRD, JR.

Subscribed and sworn to before me this 7th day o December, A. D. 1885.
[SEAL.] CHAS. W. STAYNER,
Notary Public, Salt Lake County, Utah Territory.

I will call your attention to another circumstance of which I am personally cognizant, to which Mr. Richards can testify, and which Mr. Baskins himself cannot deny. In these polygamous prosecutions, the families involved are very large, because, at present, actions are being brought against those who contracted this relation many years ago, and a great many witnesses are subpœnaed. The marshals will surround the habitation of a Mormon who is suspected of living in a manner that is held to be in violation of the Edmunds law, and will arrest all parties in the house. I have seen as many as sixteen marshals engaged in one raid a on Mormon habitation. They will, perhaps, surround the house in the evening, stay all night, and make a raid early in the morning when everybody are in, and before the people are up. They will oftentimes go into the bedrooms of ladies and wait there for them to put on their attire. Witnesses arrested under these circumstances are then taken long journeys, past commissioners who live in their immediate vicinity, and examined before Commissioner McKay, at Salt Lake, when the grand jury has been in session; and although defendants have been willing to waive the examination, they have been refused that privilege. The commissioners' court is sometimes held in the same building in which the grand jury has been in session.

Why is this done, and why is this privilege denied them? Simply because the officers are working these prosecutions for the money there is in them. They do not care anything about the moral features of the question. It is not because they are horrified at the morals of the Mormon people, but simply because there is money in it, and because they have matters so far under their control that they can make money out of the people and money out of the Government. That is why they want this additional legislation, to enable them to more successfully harass and annoy the people of Utah, and make themselves and their friends wealthy. The officers get their fees for subpœnaing these persons to appear before the commissioner. The commissioner gets his fees for the examination. Before they leave the room of the commissioner they are again subpœnaed to appear before the grand jury, and for this service additional fees are taxed. They go before the grand jury, and there they are examined and fees again charged.

These are but a few of the abuses that exist under the present extended powers exercised under former act of Congress specially applicable to Utah. I could refer to many more did my time permit.

The CHAIRMAN. Have these probate judges that you speak of—these probate courts in the county—criminal jurisdiction accordingto the laws of the Territory?

Mr. WEST. No, sir; they have not.

The CHAIRMAN. How could these parties be tried in the county; before what court?

Mr. WEST. These parties could be examined before the commisioners. There are United States commissioners in all the counties of the Territory appointed under the Poland act. They could be examined, and could enter into recognizance to appear before the grand jury at such time as they might be wanted.

The CHAIRMAN. I understand that, but you said awhile ago something about the United States court absorbing all of the criminal jurisdiction.

Mr. WEST. That was under the provisions of the Poland bill. The United States officers were to have charge of all prosecutions for violations of Territorial laws in the United States courts.

The CHAIRMAN. Prior to the Poland bill where was the criminal jurisdiction?

Mr. WEST. Prior to the passage of the Poland bill criminal jurisdiction was exercised by the Territorial courts; offenders were arrested by Territorial officers; the Territorial attorneys attended to the prosecution of these cases, and the sheriff attended to a great deal of business that is now attended to by the United States marshals. There was a time when the probate courts exercised criminal jurisdiction within certain limits. That is some time ago, but that jurisdiction has been taken away.

The CHAIRMAN. But they never exercised criminal jurisdiction as to polygamy, bigamy, or any of those offenses, after the law of 1862.

Mr. WEST. No, sir; those, of course, are United States offenses, and they could not exercise jurisdiction in those cases. I speak now of the monopoly of Territorial business. I will say further, that in taking this business from the Territorial authorities, and giving it into the charge of the United States authorities, who represent the non-Mormon element, they have just doubled the burden of these prosecutions upon the Territory. The Territorial fee bill was a very moderate one. It amounted in the main to about one-half of the charges that are allowed by the United States fee bill, and in making this transfer the expense to the Territory was doubled in this one particular alone, as United States officers were to be paid in all these cases according to the United States fee bill. It was also enormously increased by the reckless and extravagant methods pursued and the number of harassing and unnecessary prosecutions begun. As a proof of this I will state that the legislative assembly, which met two years after the passage of the Poland bill, appropriated for the payment of witnesses and jurors in territorial cases about $15,000; the next session it was increased to about $25,000, and then it advanced to $40,000. Two years ago it amounted to $50,000. The last assembly appropriated a little upwards of $70,000 nearly one-third of the entire Territorial revenue to defray the expenses of criminal prosecutions under the laws of the Territory.

The CHAIRMAN. For criminal prosecutions under the laws of the legislative assembly of Utah?

Mr. WEST. Yes, sir.

The CHAIRMAN. Those cases are tried in the United States courts, also?

Mr. WEST. Yes, sir. They are tried now in the United States courts.

The CHAIRMAN. Justices of the peace have now no criminal jurisdiction under your law?

Mr. WEST. According to a recent ruling of the supreme court, the jurisdiction of justices of the peace in all criminal cases except those of very trifling importance is removed.

The CHAIRMAN. And these justices of the peace and the judges of your probate court are elected by the people, are they not?

Mr. WEST. Yes, but these officers who how have charge of this business——

The CHAIRMAN. And the sheriffs and clerks of courts?

Mr. WEST. Yes, sir; but now the people of the Territory have no voice in the selection of any of the officers who administer the laws in any of these United States courts.

The CHAIRMAN. Because they are appointed by the President?

Mr. WEST. Yes, sir; the chief officers are appointed by the President, and those officers appoint the deputies. They are appointed by and from the non-Mormon element entirely.

Mr. Baskin comes here and states that the rights of the non-Mormons are abridged in Utah Territory. Not only have they a monopoly of this business; not only are the Mormons excluded entirely from the judicial

system of the Territory, but the Gentiles have all the post-offices. Who ever heard of a Mormon occupying a post-office of any value? He cannot be found. Every office in the gift of the Government is conferred upon the non-Mormon element.

The CHAIRMAN. Will you tell me what has been the character of those who have been appointed to the probate and county courts, whether they have been Mormons or non-Mormons?

Mr. WEST. They have been mainly Mormons; they are elected by the people.

The CHAIRMAN. All of them?

Mr. WEST. I presume nearly all have been Mormons. There have been instances where a county has been controlled by the non-Mormons, and they then selected non-Mormon officers.

Mr. CAINE. Some of the counties have sometimes elected non-Mormon officers?

Mr. WEST. Yes, sir; where the Mormon element predominates they elect Mormon officers, and where the non-Mormon element predominates they elect non-Mormon officers. The officers elected by the people, however, are curtailed in their functions, and many of them now are mere sinecures.

Under the Edmunds bill the Utah Commission has the entire appointment and control of all the registration officers throughout the Territory. These offices are all in the hands of non-Mormons, so that so far as election matters are concerned the Mormons have nothing to do with the election machinery in that Territory. It is entirely removed from their control or influence.

In the matter of jury service the Mormons have little or no voice or representation, either in civil or criminal cases. Under the Poland bill it was provided that a jury list of two hundred names should be made by the probate judge of the county in which the court was to be held, and by the clerk of the court; that the probate judge was to select a name, and the clerk of the court was to select a name, each selecting alternately, until two hundred names had been selected.

The CHAIRMAN. I would like to have a little further explanation as to how juries were selected under the Poland bill.

Mr. WEST. In this manner! Under the Poland bill one hundred names are selected——

The CHAIRMAN. By whom?

Mr. WEST. By the clerk of the district court and by the probate judge of the county in which the court is held. The district court clerk invariably selected non-Mormons and the probate judge Mormons. These two hundred names were put into a box and thoroughly mixed and mingled, and from that box were selected the grand and petit juries. The Mormon element, which comprises 85 per cent. of the population, had half the representation, and the non-Mormon element, embracing about 15 per cent. of the population, had the other half. Remember, these juries were to try all cases, not only offenses against laws of the United States, but offenses against the Territorial laws, and were also to try all the civil cases in which a jury was to be had.

We thought this measure was sufficiently oppressive and that the enemies of Utah should be satisfied. They had been given half the representation on the juries, when they were entitled to much less than that according to their proportion of the population. But no. They came to Congress and secured the passage of the Edmunds bill. It was provided in that law that no man who believed in the rightfulness of polygamy should serve on a jury impaneled for the trial of any of those

cases, and this provision, which to lawyers eminent in the profession was meant to apply only to trial juries, was held by the courts to apply to the grand jury also, and no Mormon can now sit upon a grand jury under any circumstances whatever. But how about the trial jury? All that was necessary to remove every Mormon from the panel was to bring forward a few cases of bigamy, polygamy, or unlawful co-habitation in the early part of the term, and endeavor to impanel a jury for the trial of those cases. The Mormons, on being called and questioned, would truthfully say, "Yes, it is a part of my belief that under the law of God a man has a right to take more wives than one." He would then be excused. Men have gone so far as to say that notwithstanding that belief, they would render a verdict strictly in conformity with the facts as proven, and yet they would not permit them to sit upon the jury. They were excluded. What was the result? Two or three cases of this kind were all that were necessary to remove every Mormon from the panel, and to completely exhaust the list as well, so that during the greater part of the year no Mormon could be found either upon the grand or the petit jury; the jury list was exhausted and jurors were summoned by open venire.

To verify the correctness of my statements in this regard, I will say that in the third district, embracing Salt Lake City, and the district in which, perhaps, two-thirds of the business of the Territory is done, they are now resorting to the open venire. The marshal goes forward and selects the jurors with open venire, invariably selecting non-Mormons of known bias against the defendants, and of expressed sympathy with the prosecution. How is it possible for a Mormon to receive justice at the hands of such a jury? Even in a civil case what opportunity is there for justice, when a Mormon and non-Mormon are joined in an action, with the animosity that exists between the two factions in that Territory?

Mr. GIBSON. And the juries are composed generally of professional jurors.

Mr. WEST. Yes, sir. I will say that I am in the insurance, real estate, and loan business at Ogden. My office happens to be in the same building with the district court of the second judicial district, and I see men hanging round that court room continually. They are a lot of loafers; men who have not sufficient energy and ambition to earn an honest livelihood, but who constantly hang round these court-rooms in order to have an opportunity to be summoned as jurors. Men who are known to be the bitterest enemies of the Mormon people are usually selected in all of these cases.

The CHAIRMAN. Prior to the Poland act were there any prosecutions in Utah for polygamy?

Mr. WEST. I think the Reynolds case was presented before that time.

The CHAIRMAN. Was that prior to the Poland act?

Mr. WEST. Yes, sir; that was prior to the Poland bill, I think. How is that, Mr. Caine?

Mr. CAINE. I really do not know.

The CHAIRMAN. I should think it was subsequent.

Mr. WEST. You may be right; I do not remember definitely about that, but I will say in that connection that the non-Mormon element in the Territory of Utah, which has been constantly clamoring for additional legislation, purposely delayed the commencement of these prosecutions for two evident purposes, the first of which was that they might impress upon Congress the fact that the laws thus far passed were insufficient

to meet the exigencies of the case. The second was, that the Mormon people who were disposed to construe the provisions of the Edmunds law perhaps a little more liberally than they should have done, who thought under its provisions that the Government did not propose to disturb the relation which had been formed prior to the passage of the law of Congress against them might incur under the subsequent rulings of the court additional penalties. For a period of nearly three years no prosecutions were had under this law.

The CHAIRMAN. Under the Edmunds law?

Mr. WEST. Yes, sir; unless I except one case of polygamy, that of Rudger Clawson. During all this time the non-Mormon ring were clamoring for additional legislation for Utah. They said that they could not, under the existing laws, bring the Mormons to justice. Finally, Congress said they did not think any further legislation necessary. It was intimated by the Administration that the laws already passed be executed before any additional legislation be had. Finally the Republican party went out of power and the Democrats came in. Then the party in authority in Utah, thinking there was no hope of getting additional legislation, began for the first time to institute prosecutions, principally for unlawful cohabitation, however, as polygamous cases were few, and did not occur among the leading men of the church, whom they principally wished to punish.

At the time the bill was passed some of the Mormon people, believing that its provisions were more sweeping than a casual reading would at first imply, and that were they not the rulings of the courts would be so broad as to make them reach almost every case in which they were interested, concluded to entirely separate from their families. Others selected one wife, and lived with her by the mutual consent of all. Others, again, believed that the Government did not propose to disturb existing relations, that the law would be *ex post facto* and violative of the Constitution if it reached back and disturbed the relations that had been formed prior to its passage. This latter class felt safe in continuing the relations that then existed, but were careful not to violate the law by contracting future marriages. The contract or obligation of marriage between Mormons practicing polygamy is the same with the second wife as with the first wife. The husband obligates himself to maintain and support her, and her children; and the children born to him by the second wife are to bear his name and share in his property. They regarded this as a sacred contract into which they had entered, and they did not believe, under the Constitution, that the obligations of that contract, entered into by them prior to the passage of the law, could be disturbed. The result was that some of them, believing that the Government did not mean to prosecute such cases, and being sustained in this view by the fact that prosecutions of this character were not commenced for nearly three years, felt safe and secure in the views and position they had assumed. No judicial interpretation of the provisions of the Edmunds law was had until nearly three years after its passage. When this anti-Mormon faction found that it could get no further legislation, it commenced to prosecute these old cases of unlawful cohabitation, and it soon became apparent that every Mormon who had ever been a polygamist was in danger.

Many were brought up and tried for these offenses. If it happened to be a lay member of the church, perhaps the grand jury would find but one indictment; if it happened to be a bishop, they would probably find two indictments; if he was an apostle, the number of indictments were increased. For instance, George Q. Cannon, I was in-

formed, had some sixteen indictments found against him for unlawful cohabitation alone, and one or two for polygamy. Judge Powers instructed the grand jury in the second judicial district that they could indict for every year that a man lived in that relation; for every month that they had so lived; for every week and for every day. Mr. Baskin remarked here the other day that Congress ought to increase the penalty for unlawful cohabitation, for that was the gist of the crime. As the law nowstands, under the rulings of the court, a man can be imprisoned for life.

The CHAIRMAN. That is in reference to prosecutions for unlawful cohabitation?

Mr. WEST. Yes, sir.

The CHAIRMAN. But there is only one prosecution that has ever been attempted against a man for polygamy.

Mr. WEST. Only one.

The CHAIRMAN. And that polygamy is found to be the time at which he contracts the second marriage?

Mr. WEST. Yes, sir; at that time the statute of limitations begins to run.

I will read from the brief of George Tichnor Curtis and Mr. Richards in relation to this point to show how it is held.

The CHAIRMAN. Have we that?

Mr. WEST. I will leave this copy with you.

I read from page 18:

To give the law the construction contended for by the prosecution would not only be in conflict with the great weight of authority upon the subject, but would be contrary to every principle of reason and humanity. It would enable the prosecution to sit supinely by for a period of three years, without any effort to enforce the law, and then, with one fell swoop, come down upon an individual with prosecutions enough, for offenses already committed, to render him liable to imprisonment for the remainder of his life, and to absorb in fines an immense fortune. Because if a man can be indicted for each year, he may be prosecuted for each month, or each week, or even for each day in the three years of limitation.

Those instructions had been given to the grand jury by the courts in Utah.

If indictment for each month, the imprisonment would aggregate eighteen years, and the fines would amount to $10,800; while an indictment for each week would entail an imprisonment of seventy-eight years, and fines amounting to $46,800. When the calculation is extended into days the result is simply appalling, showing an imprisonment of five hundred and forty-seven years, and fines amounting to $328,500. It is preposterous and impossible to believe that Congress ever intended to authorize or permit the perpetration of such an inhumanoutrage in the name of law.

The CHAIRMAN. Does Mr. Curtis maintain, then, that there can be but one prosecution for unlawful cohabitation?

Mr. WEST. Yes, up to the time the prosecution begins. But had the prosecution been begun immediately upon the passage of the law, they could indict and convict a man of one offense, and then after he had served his sentence, should he again commence the practice of unlawful cohabitation, they could arrest and prosecute him again.

Mr. EDEN. Is that based upon the theory of constructive cohabitation?

Mr. WEST. This is based upon the theory of constructive cohabitation. To show you that such is the case, I will quote the instructions of the judge to the trial jury in the very case which I have cited. The court charged the jury as follows:

It is not necessary that the evidence should show that the defendant and these women, or either of them, occupied the same bed, slept in the same room, or dwelt under the same roof; neither is it necessary that the evidence should show that within the time mentioned in the indictment the defendant had sexual intercourse with either of them.

So you see it refers to these cases of constructive cohabitation. Under that instruction to the petit jury a conviction was had upon three separate indictments, which indictments alleged the offense from the 1st day of January to the 31st day of December of 1883, from the 1st day of January to the 31st day of December of the year 1884, and from the 1st day of January to the 1st day of December, 1885, showing it to be one continuous offense of unlawful cohabitation.

Now, I will ask you gentlemen, what can a Mormon do who has ever been a polygamist, to avoid conviction under such extra-judicial methods and rulings, and with picked juries to convict? If he could prove without question, as several have done, that he had not had sexual intercourse with any but one of his wives, and had lived with her alone since the passage of the law, it would avail him nothing, and yet under such circumstances, with every element of cohabitation lacking, he could, under the rulings of the courts of Utah, be indicted and convicted enough times and fined a sufficient amount to imprison him for life and confiscate all his property, though he were worth a quarter of a million dollars. In all other cases, whether civil or criminal, a Mormon is equally powerless to receive justice at the hands of the courts. And yet Mr. Baskin comes here and asks that other chains be forged to further enslave the Mormon people.

Having proceeded thus far with my argument, I now desire to call your attention to some of the sections of the law under consideration. Section 17 reads as follows:

SEC. 17. That the existing election districts and apportionments of representation concerning the members of the legislative assembly of the Territory of Utah are hereby abolished; and it shall be the duty of the governor, territorial secretary, and the United States judges in said Territory, forthwith to redistrict said Territory, and apportion representation in the same in such manner as to provide, as near as may be, for an equal representation of the people (except Indians not taxed), being citizens of the United States, according to numbers, in said legislative assembly, and to the number of members of the council and house of representatives, respectively, as now established by law; and a record of the establishment of such new districts, and the apportionment of representation thereto shall be made in the office of the secretary of said Territory, and such establishment and representation shall continue until Congress shall otherwise provide; and no persons other than citizens of the United States otherwise qualified shall be entitled to vote at any election in said Territory.

For a number of sessions past the Utah legislature have endeavored to pass a law redistricting the Territory of Utah so as to meet the objections which have been made to the present law upon this subject.

The CHAIRMAN. I find the Reynolds case to which you referred was prosecuted under a section of the Poland bill.

Mr. WEST. I thought it might have been before the passage of the Poland act.

I desire to read briefly from the legislative memorial which was presented to Congress a few days since. I read from page 2. In that memorial it is alleged as follows:

To the honorable President, the Senate, and House of Representatives of the United States in Congress assembled:

GENTLEMEN: We, your memorialists, the legislative assembly of the Territory of Utah, respectfully represent that, having been elected by the citizens of this Territory duly qualified as voters under the provisions of the act of Congress known as the Edmunds law, we have met and labored diligently during the term of sixty days required by law, and have passed such measures as were necessary to the welfare of our constituents and to comply with the requirements of section 9 of the Edmunds act. But in the discharge of our duties we have met with persistent obstruction from the governor, who, exercising arbitrary and extraordinary powers, has nullified the chief labors of the session and has thrown the affairs of the Territory into per-

plexing confusion. We therefore memorialize your honorable body and earnestly ask your attention to the following facts and grievances:

It has been well understood from the opening of the present legislature that a deep-laid conspiracy has been formed for the purpose of effecting a revolution in Utah, by which the entire control of the Territory should be wrested from the large majority of its citizens and placed in the hands of a small minority, who have for a long time, by misrepresentation and falsehoods, sought to prejudice the Government and people of the United States against Utah and its people.

Unable by reason of numerical insignificance to wield any influence of importance at the polls, this conspiring minority have planned to obtain the entire disfranchisement of the majority or the concentration of political power in a commission of their own number, so that in either event the few shall rule while the vast majority shall be placed in the position of subjugated slaves.

At the head and front of this conspiracy stands Eli H. Murray, governor of Utah, who has openly advocated the disruption of the Territory by depriving its citizens of every vestage of local self-government, and who has, from the commencement of his administration, allied himself to the plotters against the peace of the people, and has persistently abused and insulted and maligned the majority in private, in public documents, and through the medium of the press. By the most atrocious falsehoods, by attempted usurpations, by insolent messages, he has sought to provoke a conflict between the people and the Federal authority, which he claims to represent, and between the legislative and executive branches of the local government.

During the present session he has vetoed twenty bills sent to him for signature, and thirteen bills he has contemptuously ignored. The excuses offered, where any have been given, have been in most instances of the flimsiest character, and in no case have contained vital objections or reasons that raised a pertinent issue. Every one of those measures would have been beneficial to the whole people of Utah, and while framed in response to the wishes of our constituents were in harmony with the Constitution and laws of the United States. Among the most important of those measures were bills for the following purposes: To allow bail as a right in cases of appeal from the lower courts to the higher except in capital offenses; to provide for an increased jury list and the payment of jurors; to regulate the legislative apportionment of the Territory; for the support of the Deseret University; creating a Territorial board for the equalization of taxes; for the support of the Territorial insane asylum; prescribing the qualifications of electors and office-holders; appropriating funds for Territorial expenses, &c.

The bill allowing bail was necessary to the ends of justice, for it is a farce to grant the right of appeal and then inflict the punishment appealed from while the appeal is pending. The bill increasing the jury-list was required, because the Poland law provides for only two hundred jurors for each year, and these have been found insufficient, necessitating a resort to the open venire system, which has been so shamefully abused that juries have been packed with persons chosen intentionally from the enemies of defendants. The bill followed strictly and exactly the provisions of the Poland law in the manner of selecting the jurors, but increased the number so as to meet every possible requirement without recourse to the open venire. It also provided for the payment of jurors and witnesses, and the veto not only continues the system by which the juries may be packed, but deprives jurors, who are compelled to serve, of any pay for their services for the ensuing two years. The bill apportioning the legislative representation of the Territory was framed in accordance with the following recommendation of the governor:

"I recommend that the districts be so constructed that each shall have a voice without being overborne by a larger neighbor which may be combined with it as now."

At the last session of the legislature he vetoed a bill drawn up at his suggestion, but stated that if the legislature would pass an act apportioning the Territory into twelve council districts and twenty-four representative districts, on the base of one councilor to every 12,000 and one representative to every 6,000 of population, he would be pleased to approve it. The bill was passed exactly in the form he proposed, but he neither signed nor approved it, nor mentioned it further, so it died a natural death. The bill we have passed is strictly in conformity with his expressed wishes, but he has refused to append his signature.

I would refer the committee to this bill, which is to be found on page 18 of this document (Mis. Doc. No. 238), and ask if a fairer bill can possibly be drawn than this apportioning the legislative representation. I am thoroughly conversant with that Territory, for I made an official map of it a few years since, and I am acquainted with every locality to which reference is made. I know that this bill was framed upon the basis of local representation, and that the different election precincts were so arranged as to give as nearly as could be to each lo-

cality a voice in the choice of members of the legislature. It was framed in exact accordance with the governor's wishes, but he did not sign it. And why? Simply for this reason: He wished to obstruct all needed legislation in Utah, and thereby influence legislation before this Congress. He desired to impress upon Congress the fact that the legislative, executive, and judicial authorities of the Territory could not harmonize, and that it was therefore necessary for Congress to pass additional laws. He vetoed some twenty of the more important bills of the session, and contemptuously ignored some fifteen more. You will find among them not only this bill, providing for the legislative apportionment, but a bill which met the requirements of the Edmunds law in relation to the Utah Commission. The governor of Utah Territory has always had the absolute veto power, and has always been a non-Mormon except in one solitary instance when Brigham Young was governor.

The CHAIRMAN. When was that?

Mr. WEST. When the Territory was first organized.

The CHAIRMAN. When was that, before 1855?

Mr. WEST. Yes, sir; they have always since been non-Mormons, and have had the absolute veto power. The governor can nullify the voice of the entire people. No legislation can become law without his consent, and when this gentleman stands before this committee and assails the legislation of the Territory of Utah he is assailing the governors of the Territory of Utah by whom those laws have been signed.

Mr. BASKIN. That is what I do.

Mr. WEST. He is assailing the non-Mormon governors; he is assailing the Congress of the United States, to whom those laws have been regularly submitted, and who have never, except in a very few instances, disapproved of any of them.

The local legislation providing for the legislative representation and doing away with the Utah Commission, it would seem from the provisions of this bill, cannot now be trusted to the governor, and why? Because they are afraid that the governor and legislative assembly might be able to come to a unity of understanding and harmony of action on this point. They are afraid that we might pass a law that would satisfactorily and equitably provide for the legislative representation, and avoid any further necessity for the useless and expensive Utah Commission. Therefore they desire to take this power away from the legislature, where it rightly belongs, and give it to the governor, the secretary of the Territory, and the three district judges, who represent the non-Mormon element. I ask you if that is fair or consistent? I am satisfied that so far as that law is concerned, and so far as the other laws are concerned to which the legislative memorial refers, that the present governor, who is appointed by the Administration, will be able to meet the legislative assembly, and they him. I am satisfied that he and the legislature can arrange this matter of legislative apportionment to the entire satisfaction of all the people in the Territory of Utah, save those clamoring to bring that people into complete bondage and serfdom. I think, if the legislative and executive power agree upon a bill, that ought to be sufficient, instead of saying it shall not take effect until approved by Congress. What is the evident object of the anti-Mormon faction in desiring such a provision as this when the governor has the absolute veto power? I will tell you. They wish a double opportunity to defeat all wholesome legislation upon these subjects, one with the governor and, failing there, another with Congress. Should this provision prevail and the governor by any chance happened to sign a bill that they did not

approve, pursuing their accustomed methods, they would assail him through their local press, call him a Jack-Mormon, say that he was bought by the Mormon Church, and transfer the war to Washington, where such arguments are sometimes made quite effective, and where might be delayed session after session the fairest and best legislation that could be devised on these questions. I do not exaggerate in the least, nor do I misstate the probable result should this provision become law, for such has been the policy of this anti-Mormon faction from the beginning.

It was illustrated in a mild way here yesterday when Mr. Gibson endeavored to correct a false impression sought to be made upon the minds of this committee. Mr. Baskin said, "Who is that man; he must be a Mormon; if he is not, he ought to be." The word "Mormon" is used as a term of reproach. It is reproachful to us. We do not claim to be Mormons, although we are called Mormons. It is a nickname given to that people; and when anybody, not a Mormon, says anything in defense of, or favorable to, the Mormon people, he is immediately assailed as a "Jack-Mormon," and subjected to the severest condemnation of the non-Mormon ring and of their unscrupulous paper, the Salt Lake Tribune. To substantiate what I say on this point, I will read a few extracts from that paper, which is the acknowledged organ of the non-Mormons of Utah.

The CHAIRMAN. What is the name of the Mormon organ?

Mr. WEST. The Deseret News. The Tribune is the organ of the Gentile people or the non-Mormon people, termed "Gentile" by a local custom. The terms "Gentile" and "Mormon" are used there to designate the two factions. As I said the Tribune is the organ of the non Mormons, the organ of the party represented by Mr. Baskin. I will read from it an extract just to show the policy pursued toward every one who has anything to say in favor of the Mormon people, and also to show the committee the utterly unreliable character of this paper. I read from the issue of March 26:

It is believed that Governor Murray's removal is due to the backing given Mormons by what are known as "Jack-Mormons." Professor Holden filed an opinion with the President to the effect that the Territory of Utah needed no legislation. He set forth that Utah needed only schools and churches.

Professor Holden, I will say, represents the mining interests of the Territory. He came down here to secure certain legislation on behalf of the mining industry. He is the accredited representative of the mining element, which comprises the great majority of the non-Mormon element in that Territory, and he made these recommendations. I will show you the results that followed presently. He was a gentleman for whom the Tribune previously had nothing but terms of praise and commendation. I do not know that he ever said anything before in favor of the Mormon people.

Postmaster W. C. Browe, while here, hobnobbed with John T. Caine, and said that the bringing in of the soldiers to guard the city, the ordering of canon to be brought into Salt Lake, and the placing of an additional battery at Fort Douglas, were all unnecessary measures.

J. RANDOLPH TUCKER'S BROTHER.

It is stated that the chairman of the House Judiciary Committee (J. Randolph Tucker, of Virginia), and which committee has now under consideration the Edmunds bill as it came from the Senate, has a brother in this city who has been retained as the paid attorney of the Mormon Church.

Delegate Caine feels confident. His private secretary is exultant over the prospects that legislation can only be had by a hard and bitter fight.

Because Secretary Lamar, at the request of the President, told Governor Murray that the President would now accept his resignation, he came in for his share of abuse. This same paper, in a former issue, made a statement something to this effect:

Lamar is said to be sick, but if the facts were known it would be ascertained that he was on a big drunk.

The CHAIRMAN. One moment. This is an anti-Mormon paper?

Mr. WEST. Yes, sir; the organ of the element represented by Mr. Baskin.

The CHAIRMAN. I do not intend that that extract shall go into the record with that statement in regard to my brother without a correction.

Mr. BASKIN. I am no more responsible for that than is the gentleman.

The CHAIRMAN. I do not care who is responsible for it; I merely want to say that the statement that my brother has been retained as the paid attorney of the Mormon Church is absolutely false.

Mr. CAINE. That is so. I will say that I have engaged all the attorneys that have been engaged, and I do not know Mr. Beverly Tucker; I have never met him; so he could not be engaged in any way.

Mr. HUNTON. We certainly have never recognized him as a colleague in the case.

Mr. GIBSON. The gentleman who sent this dispatch was Mr. Goodwin, who was here a short time since, and called upon the committee in company with Mr. Baskin.

Mr. BASKIN. How do you know that?

Mr. GIBSON. Well, I know it.

Mr. BASKIN. You do not know anything about it.

The CHAIRMAN. I saw some time ago an intimation of the kind that is contained in this dispatch. I informed myself on the subject, and what I now state is upon undoubted information. My brother has had nothing to do with that matter, and has known nothing about it. If he had he never would have sought to approach me on the subject, nor if he had, would his approach have had any effect upon me.

Mr. BASKIN. I will say this, that I have not the honor of knowing your brother, Mr. Chairman, but if he is a lawyer, I do not see that there is anything to prevent him from taking a retainer in this matter.

The CHAIRMAN. Except the fact that my brother is too honorable a gentleman to take a fee, or take a position with regard to any matter that was likely to come before a committee of which his brother was chairman.

Mr. WEST. I have a purpose in bringing this matter up, and it will be made apparent as I proceed. In regard to the statements of Mr. Holden, I will say that five or six editorials have been called forth on that subject in which Mr. Holden was subject to great abuse. Here is a sample. It is contained in the paper of March 27, 1886:

It is with horror and rage that the miners of Utah read in yesterday morning's Tribune the fact that Professor Holden, one of their agents to labor in Washington for the protection of their industry, had been instrumental in making trouble for Governor Murray, and had filed an opinion with the President that "no legislation is needed for Utah; only schools and churches are needed." To say that in so misstating the needs of this Territory, Professor Holden utterly and wickedly misrepresents all of the sentiments of those whose accredited representative for another purpose he is, is to state an absolute truism in the mildest form. He outrages the sense of every loyal man in the Territory by his smooth lies. It is an outrage that he should be in a position where he can have any right to assume to speak for Utah Gentiles. To use such a position to make statements which Professor Holden well knows would be resented as a personal affront by every one of those for whom he pretends to speak, is a shame-

ful and cruel imposition. Professor Holden has been pretending to work for the mining interests, but it seems he has been, doing even more eager work in another direction, and if his ideas should prevail, a more deadly blow would be struck at mining in Utah than any that has been threatened from Washington, for the result of it would be permanent Mormon supremacy and the total extinction of all forms of mining industry.

This is a sample of the assaults made upon everybody who presumes to say a kind word for Utah or her people.

The thrilling, blood-curdling stories told this committee by Mr. Baskin have principally been gleaned from this paper, the Salt Lake Tribune. They are not original with him by any means, but have been collected by the reporters of that journal, and published by the Tribune Company in various forms, and scattered broadcast throughout this and other lands. Their object has been to arouse a bitter and unrelenting prejudice against the Mormons, and thereby secure what they could not get otherwise—unjust and unconstitutional legislation, placing an insignificant minority, represented by them, in a position to usurp authority and tyrannize over the Mormon people. These stories have been replied to in detail in various publications, and have been proven to be absolutely false.

The majority of the statements that Mr. Baskin has quoted as extracts from the religious publications of the Mormon Church, if they are to be found there at all, they are certainly not in the form and connection in which they are given by him.

Mr. BASKIN. I read from your own church bible.

Mr. WEST. And you garbled what you read. You did not read what preceded or what followed, but took out independent paragraphs and put them with something else. You did not state the circumstances under which those statements were made or the occasions that gave rise to them. If you had read the whole of the text it would have presented quite a different phase and meaning.

I have before discussed the bill apportioning the legislative representation of the Territory of Utah.

Gentlemen, I ask you to reject section 17 and give the new governor of Utah and the legislative assembly thereof another opportunity to reach this question. Governor Murray would not permit any important bill to become law, because he desired legislation of Congress. I believe the present governor will meet the legislature upon this and many other questions of local and national importance.

Mr. EDEN. To what section do you refer?

Mr. WEST. To section 17, in regard to the legislative apportionment.

Now, with reference to the Utah Commission, I will read again from the memorial of the legislative assembly:

The bill prescribing the qualifications of electors and officer-holders was framed in pursuance of the following clause of section 9 of the Edmunds act, to wit:

"And at or after the first meeting of said legislative assembly, whose members shall have been selected and returned according to the provisions of this act, said legislative assembly may 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 legislature of 1884 passed an election law, as authorized by the foregoing, but it was vetoed by the governor, who specified a number of very trifling reasons for rejecting it. We framed a bill upon the groundwork of the former measure but avoiding the points objectionable to the governor as presented in his former veto message. He has peremptorily refused to sign it. The only reason that we know of for this refusal is the desire to continue in office the five comissioners appointed under the Edmunds law to select proper persons to fill the registration and election offices in the Territory. The design of the Edmunds law, as indicated in section 9, was to have those offices filled as the legislature should provide and thus abolish the commission. It was only designed to be temporary. As soon as a legislature elected under the provisions

of the Edmunds law should meet and provide for the filling of those offices, the object of appointing the commission would be accomplished; and the specific purpose of their appointment and of the election of a legislative assembly under their auspices was to prevent bigamists, polygamists, and persons practicing unlawful cohabitation from voting or holding office in Utah. This was secured by the election bill that the governor has vetoed, which provides for the registration of voters and imposes the following oath upon all applicants for registration:

TERRITORY OF UTAH, *County of* ———, *ss:*

I, ——— ———, being first duly sworn (or affirmed), depose and say that I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of ——— one month immediately preceding the date hereof, and I am a native-born (or naturalized, as the case may be) citizen of the United States, and a tax-payer in this Territory; and I do further swear (or affirm) that I am not a bigamist or polygamist, and that I do not cohabit with more than one woman.

Or, if a female, the following oath or affirmation:

TERRITORY OF UTAH, *County of* ———, *ss:*

I, ——— ———, being first duly sworn [or affirmed] depose and say that I am over twenty-one years of age, and have resided in the Territory of Utah for six months, and in the precinct of ——— one month immediately preceding the date hereof [and am a native born or naturalized, or the wife, widow, or daughter, as the case may be, of a native born or naturalized citizen of the United States]; I do further solemnly swear [or affirm] that I am not cohabiting with a bigamist, polygamist, or any person cohabiting with more than one woman.

——— ———.

Subscribed and sworn to before me —— day of ———, 188–.

——— ———,

Registration Officer for ——— Precinct.

The commissioners had no authority in law to impose any oath whatever. Their act in doing so was legislation. While they remain in office that oath is imposed without authority of law. But by the bill which the governor has vetoed, the oath would become legal and the object of the Edmunds law, in its political portion, would be fully accomplished. The veto of that bill nullifies one of the purposes of the Edmunds act, and continues in office a useless commission, costing the Government an average of $50,000 per annum, not including the $25,000 per annum for their salaries or the large amount for their personal expenses. This Territory, under the bill we passed, could attend to its own election business at a cost of not more than $5,000, which would be paid out of its own treasury. The veto of that bill, then, costs the United States Treasury about $75,000 per annum unnecessarily, and without any good result.

The oath contained in this bill is the same oath formulated by the commissioners and taken by all persons who have voted at the elections in Utah for some time past. At first the commissioners added the marriage relation clause to this oath and made all voters swear that they "did not cohabit with more than one woman in the marriage relation." That was designed to permit non-Mormons who were guilty of cohabitation outside of the marriage relation to register and vote; it was designed to permit those of both sexes who were guilty of sexual indiscretions to vote, while the Mormon, who assumed the responsibility of his act by acknowledging his wives and children, it was designed to exclude.

Section 22 extends the powers of United States commissioners. I will read it:

SEC. 22. That commissioners appointed by the supreme court and district courts in the Territory of Utah shall possess and may exercise all the powers and jurisdiction that are or may be possessed or exercised by justices of the peace in said Territory under the laws thereof, and the same powers conferred by law on commissioners appointed by circuit courts of the United States.

I do not think it is necessary to extend their powers. Every precinct has its own justice to attend to its cases. The commissioners are not elected by the people, while the justices of the peace are. These commissioners are appointed by the supreme court.

Mr. EDEN. Would that give them the power to try criminal offenses under the laws of the Territory?

Mr. WEST. Under the ruling the supreme court of Utah has made, it would not except in cases of very minor importance. How far this other authority extends, the authority conferred upon the commissioners of the circuit and district courts of the United States, I am not prepared to say. It is an extension of power, however, which I submit is contrary to republican institutions. I do not think it should be permitted. I think as far as possible these officers should be left to the choice of the people.

Section 23 extends the powers of the marshals, and gives them authority to sit as committing magistrates. That is to say, they can arrest a man and can bind him over. This would be conferring judicial authority upon an executive officer of the court, which, in my opinion, would be a dangerous thing to do.

The CHAIRMAN. We have heard the argument of Mr. Chandler and Mr. Boutwell upon that question, and it was very full.

Mr. WEST. Yes, sir; I do not design to dwell upon it, but simply to state that the powers which they now exercise are certainly sufficient, and I do not think that power ought to be extended.

Section 24 repeals the law providing for the election by the people of the Territorial superintendent of the district schools, and rests his appointment in the supreme court of the Territory.

Mr. EDEN. That has been pretty thoroughly discussed also.

Mr. WEST. I do not desire to discuss the question.

Mr. EDEN. Do not understand me as objecting to hearing your statement. I simply suggest that that subject has been thoroughly gone into already.

Mr. WEST. I wish simply to file the affidavit of L. John Nuttall, Territorial superintendent of the district schools, in regard to the nonsectarian character of the books used in the schools of Utah, and to say that this officer has been elected by the people for a number of years, and has given entire satisfaction. There was a suit brought in Salt Lake City, in the United States district court, to prevent the enforcement of a certain school tax. The non-Mormons resisted the tax upon the ground that the schools of the Territory were sectarian. The case was brought before Chief Justice Zane. The witnesses came from all parts of the country, some of them 50, 75, and 100 miles distant, and they all testified in regard to the character of these schools. The non-Mormons failed to prove that the schools were sectarian, and were compelled to pay the tax. Here is the affidavit from the superintendent:

TERRITORY OF UTAH, *County of Salt Lake, ss:*

Personally appeared before the undersigned, a notary public in and for said county, L. John Nuttall, who, first being duly sworn, on oath says: That I am a resident of Salt Lake County, Utah Territory, over the age of 21 years; and that pursuant to the provisions of section 16 of an act of the legislature of Utah Territory entitled "An act providing for the establishment and support of district schools, and for other purposes," approved February 20, 1880, which reads as follows, namely:

The Territorial and county superintendents and the president of the faculty of the University of Deseret, or a majority of them, shall, at a convention called by the Territorial superintendent of district schools for that purpose, decide what text-books shall be adopted in the district schools, and their use shall be mandatory in all the district schools of the Territory: *Provided*, That no text-book so adopted shall be changed within a period of five years from its adoption, except for sufficient cause, to be decided at a special convention, and any teacher changing the text-books shall forfeit his eligibility as a teacher. The county superintendents, with the trustees in their respective district, shall regulate the school terms, allowing such holidays and vacation as may be advisable.

I, as Territorial superintendent of district school, duly elected and commissioned, did, on the 4th day of April, 1882, call a convention as provided in the foregoing act; and on the 14th day of April, 1882, the said convention met and duly organized by electing L. John Nuttall president, Dr. John R. Park vice-president, and John B. Marben, esq., secretary.

That during the session of said convention the following text-books were unanimously adopted for use in the district schools of the Territory of Utah for the term of five years, namely:

Independent Series of Reader, Watson's Complete Speller, Ray's New Elementary Arithmetic, Ray's New Practical Arithmetic, Appleton's Standard Elementary Geography, Appleton's Standard Higher Geography, Swinton's New Language Lessons, Spencerian System of Copy Book, Writing and Penmanship, Anderson's Popular History of the United States, Krusi's System of Drawing.

Further, that on the 26th day of October, 1882, I issued a circular to the county superintendents, trustees, pupils, and patrons of district schools, a copy of which is herewith attached and marked Exhibit A, thus giving public notice of the adoption of the foregoing text-books, and that, as provided by law, their adoption should be observed, and be mandatory in the district schools of the Territory; and so far as I am advised, these books are exclusively used in the said district schools, and that none others are used therein as text-books.

L. JOHN NUTTALL,
Territorial Superintendent of District Schools, Utah Territory.

Subscribed and sworn to before me, by the above-named affiant, this tenth day of June, A. D. 1884.

NEPHI W. CLAYTON,
Notary Public.

The CHAIRMAN. Are the schools in Utah under that superintendent, Gentile schools?

Mr. WEST. Yes, sir; Gentile teachers are teaching under the general school system of the Territory. It is managed in this manner: The Territory is divided into school districts. Each school district elects its trustees. In a number of the districts where the non-Mormon element predominates, they elect non-Mormon trustees, and they employ non-Mormon teachers, as is the case in three of the precincts of the county in which I live.

I will state in those precincts where the trustees have been Mormons, non-Mormons have been employed as teachers in many cases.

Mr. EDEN. Do the Mormon and non-Mormon children attend the same schools together?

Mr. WEST. Yes, sir.

Mr. EDEN. They are not kept separate?

Mr. WEST. No, sir; they attend the same schools. There are no sectarian principles taught in any of the public schools of Utah. Sectarian books of every kind are excluded. Our school law provides that a convention shall be called at a certain time to determine the character of the school books to be used in the common schools. With regard to the leading educational institution of the Territory of Utah, it has been charged against it that many educated therein have become infidels; that there is a tendency to infidelity in our leading educational institution, and this because of the absence of everything appertaing to religion.

The CHAIRMAN. Who are the trustees, and who is the president of that institution?

Mr. WEST. The principal professor is Dr. Park. He has charge of the institution; he is a Mormon, but some of the other professors are non-Mormons. Professor Bishop is a non-Mormon, and he belongs to Mr. Baskin's party. He has charge of one department. Professor Rawlings, who is a non-Mormon, and who has taken a very active part against the Mormon people of that Territory, when I attended the uni-

versity was the professor of mathematics. Professor Bellview, then a non-Mormon, had charge of natural philosophy and history, and Mr. Benedict, another non-Mormon, if I was correctly informed, was professor of chemistry.

The CHAIRMAN. How is the university incorporated?

Mr. WEST. Under the laws of the Territory of Utah and is aided by the Territory. Salt Lake City gave it 10 acres of land, and the Territorial legislature have made appropriations for the erection of a university building, and in that university not only Mormons, but non-Mormons, have been employed as teachers, and both Mormon and non-Mormon children attend.

The CHAIRMAN. Have you a school of metaphysics and moral philosophy in that university?

Mr. WEST. I think we have.

The CHAIRMAN. Who is the professor of that?

Mr. WEST. I do not know who is the present professor.

Mr. CAINE. Professor Park is the principal and Professor Kingsbury, I think, is the chemist.

Mr. WEST. I would state that the teacher in the ward in which Mrs. Dr. Ferguson resides is a non-Mormon, is he not, Mrs. Ferguson? (A lady sitting in the room as a spectator.)

Mrs. FERGUSON. Yes, sir; and his predecessor, who taught there two years, was a non-Mormon.

Mr. WEST. Mrs. Ferguson resides in Salt Lake City, in the twelfth school district.

Therefore, the charges that have been made here that the schools are all under the control of the Mormons, and that Mormon tenets are taught in these schools, is absolutely false. I know it to be the case, for I have attended those schools and I know all about them. Therefore, there is no necessity for the appointment of a Territorial superintendent in this way to correct evils that do not exist.

The CHAIRMAN. Who elect the professors and officers of the university?

Mr. CAINE. The regents.

Mr. WEST. The institution is organized upon this principle: Under the territorial law there is a chancellor and twelve regents appointed by the joint vote of both houses of the assembly. The upper and lower house come together, and by a joint vote this educational board is appointed, and they have charge of the university; they employ the teachers. But in all the school districts of the Territory school trustees are elected by the vote of the people of the district, and they employ the teachers.

The CHAIRMAN. Are the regents of this university Mormons or non-Mormons?

Mr. WEST. I believe they are Mormons.

The CHAIRMAN. Is there any non-Mormon among them?

Mr. WEST. I do not know as to the past, but the last board of regents were all Mormons.

The CHAIRMAN. Have you a catalogue of that university?

Mr. CAINE. I have one at my rooms, and will be pleased to furnish it to the committee.

The CHAIRMAN. I wish you would.

Mr. WEST. Now, gentlemen, in view of all those facts, and of the further fact that the governor has the absolute veto power in that Territory and can nullify the will of the entire people; in view of the fact that all the courts are in the hands of non-Mormons; in view of the

fact that all election matters are under the supervision of non-Mormons; in view of the fact that non-Mormons fill all the Federal offices; in view of the fact that Mormons are not permitted to serve on grand or petit juries, except in a few cases in the early part of the term, when, perhaps, they have not been removed from the panel, I ask what more can the enemies of Utah want? What rights, what liberties have the Mormon people left? They have simply one that I can call to mind at present, and that is the right to pay taxes. They can elect a few local officers, but what do they amount to. Gradually, by legislation that is asked of this Congress, the rights of the Mormon people are being taken away, until it would be better, in my opinion, to place Utah under a legislative commission, than that this power should be turned over to the non-Mormon element of the Territory who have been seeking, as long as I can remember, to gain the political control there, and bring the great majority into bondage to them. I believe we would receive more even-handed justice at the hands of men who are non-residents of the Territory; men who might be appointed by the Administration, than we can receive at the hands of the non-Mormon element that exists among us. They are now simply seeking, by these insidious advances and encroachments upon our rights, to take away our liberties, and to accomplish in a more effectual manner what they could not accomplish if they had a legislative commission, because a legislative commission, appointed by this or any other Administration, would, to some degree at least, be fair towards the Mormon people, and this the non-Mormons of Utah cannot be, because of the prejudice which they entertain towards us.

Mr. CAINE. But they propose to have the legislative commission appointed from their own number.

Mr. WEST. Of course they do, but I do not think this would be done. I do not think that the President of the United States would consent to that. I notice in the appointments of the past he has considered that the people on either side of the question in Utah are not competent to exercise a fair administration of affairs, and he has appointed men from abroad; and if a bill were passed providing for a commission I do not think he would appoint anybody from that Territory for that very reason.

As I said before, the only right that is left us is that of paying taxes. We cannot even say who shall receive our taxes and who shall disburse them. For a period of nearly thirty years the people there have been permitted, either by the joint vote of the legislative assembly or through the immediate means of the ballot-box, to elect their Territorial treasurer and Territorial auditor, who receive and disburse their revenues, but by an arbitrary exercise of power which the legislature questioned, and which we did not believe was reposed in the governor, he removed our officers, and appointed officers of his own selection to fill those places, and the court sustained his action. As a result, the officers elected by the people were ousted, and other men put in their places, so that now we have no voice in the appointment of the men who receive and disburse our revenues. Neither can we say how the revenues of our Territory shall be disbursed.

The general appropriation bill of the last assembly, which was vetoed by Governor Murray, contained an appropriation of nearly $70,000 for the courts, an appropriation of $66,000 for our educational institutions, an appropriation of $45,000 for our Territorial insane asylum, and other appropriations for much needed internal improvements. None of these items, or any others in fact which the bill contained, were objected to by Governor Murray, yet this bill, providing for the necessi-

ties of the Territorial government for the next two years, by the arbitrary exercise of the veto power, was defeated, and as a result the Territory of Utah is paralyzed to-day in its local government, and in a great many other respects. The salaries of the officers of the Territory are unprovided for. The Territorial insane asylum is in debt $20,000. Governor Eli H. Murray, an ex-officio member of the board of directors himself, authorized this debt to be contracted. On his motion, as a member of the board, a loan of $10,000 was negotiated, and the directors became individually responsible for its payment. When these necessities arose, he said: "Money must be obtained; we must not permit this institution to be closed." He at first promised to sign an obligation with the board, but afterwards declined, alleging as his reason that were he individually pledged the assembly might attempt to make this item a rider upon the general appropriation bill. In consequence of the unsettled state of affairs in our Territory, the board of directors could not borrow money for the institution without becoming individually responsible. They borrowed the money needed, and signed their names to notes, payable after the appropriation should have been made. Governor Murray pledged himself upon his honor, as a member of that board and as governor of the Territory of Utah, that he would sign that appropriation bill, which was passed as a separate deficiency bill for the relief of the asylum. But did he do it? No. He permitted it to die an ignominious death in his hands, and a few days before I left home I received word that the note had been protested, and that I would be expected to pay my proportion of the obligation. That is the position in which we are placed. The asylum contains fifty or sixty patients.

Under a recent statute of the Territory of Utah the Territory is to pay one-half of the expense of maintaining the indigent insane, and as the institution has been completed since the session of two years ago, there was no appropriation for this expense last year and none now for the two years to come. As a consequence, the asylum is completely paralyzed, and unless relief can soon be had the institution will have to be closed and the poor unfortunates therein turned loose upon the community to obtain care and sustenance from the citizens at large.

These are some of the conditions and some of the results of the arbitrary exercise of the power that is conferred upon the non-Mormon element of the Territory of Utah.

The CHAIRMAN. Can you give me, in round numbers, what is the amount of the annual revenues of the Territory from taxation?

Mr. WEST. You will find it in this little pamphlet from which I have been quoting. This memorial contains the appropriation bill.

Mr. CAINE. The chairman is asking for the revenue.

The CHAIRMAN. You haven't the treasurer's report, have you?

Mr. WEST. No, sir.

The CHAIRMAN. Can you give me the amount of revenue?

Mr. WEST. I will state that this appropriation bill is supposed to dispose of all the revenues of the Territory for two years.

The CHAIRMAN. You have no revenues except from taxation?

Mr. WEST. No, sir.

The CHAIRMAN. Is the taxation equal and uniform upon all property in the Territory?

Mr. WEST. Yes, sir.

The CHAIRMAN. Are there any exemptions?

Mr. WEST. There are some exemptions. Our general revenue law can be found in the session laws of 1878.

The CHAIRMAN. What are the exemptions? What class of property is exempted?

Mr. WEST. Of course all buildings of the State are exempted; public school buildings are exempted, and churches of all denominations are exempted that are used for religious purposes exclusively.

Mr. CAINE. Only church property so far as the same is used exclusively for religious purposes and no revenue is derived therefrom; but this does not include the residence of the pastor or minister in attendance.

Mr. WEST. So far as the revenue law is concerned, I do not think the non-Mormon population has ever complained.

The CHAIRMAN. Have you any data upon which you can make an estimate of the relative amount of value of property owned by the Mormons and that owned by the non-Mormon element?

Mr. WEST. No, sir; that would be difficult to do. I do not think that can be done. I will say this, however, that the non-Mormon element in the Territory of Utah are principally interested in the mines. The Mormon people are an agricultural people. The wealth of the non-Mormons, as doubtless will be conceded by Mr. Baskin, is in the mines. The products of the mines are not taxed. No revenue whatever is derived from the product of the mines in that Territory. This important investment of non-Mormon capital is exempted from taxation.

The CHAIRMAN. But is not the property itself taxed?

Mr. WEST. The immediate improvements around the mines?

The CHAIRMAN. The real property itself; the value of the mine?

Mr. WEST. No, sir; that is not taxed, nor the ore.

The CHAIRMAN. I know you do not tax the ore, but don't you tax the property itself?

Mr. WEST. No, sir.

Mr. CAINE. We tax the improvements, just as you would real estate, without any reference to the value of the deposit.

Mr. WEST. In making the assessment we do not consider the value of the deposit itself. For instance, the hoisting works, the mills—the sampling mills—are taxed.

The CHAIRMAN. Suppose a man owns 10,000 acres upon which there is a valuable mine; that has an assessed value, has it not?

Mr. CAINE. That would be taxed just as any other real estate.

The CHAIRMAN. That is what I understand. In addition to that you do not tax the product of the mine?

Mr. CAINE. No, sir; though the mine may turn out $5,000,000 of ore, there is no tax on it.

Mr. WEST. Though the stock on the market should indicate that the mine is worth millions of dollars the mine is not taxed at all.

So that you observe that this important element of property, which is almost entirely in the hands of non-Mormons, is not taxed.

The general appropriation bill vetoed by Governor Murray aggregated $250,063.31. This was supposed to be the revenue for two years.

In addition to this, under the general school laws of the Territory, a tax of 3 mills on the dollar is assessed for school purposes, which amounts to about $106,000, making a total revenue for Territorial and school purposes of $356,063.31.

The total Territorial, county, and school taxes amount to 12 mills on the dollar per annum, and that on a very moderate property valuation.

Mr. CAINE. In addition to that, some cities are allowed to assess as high as 5 mills.

Mr. WEST. The Territory is out of debt, and the leading cities of the

Territory are out of debt. Although the Territory has been under the Mormon administration, so far as the immediate members of the assembly are concerned, the Territory is not in debt at all; the leading cities of the Territory are not in debt. Salt Lake City is paying off a debt of $250,000, incurred to bring the water from Utah Lake into the city, a distance of 25 miles.

The CHAIRMAN. The assessed valuation of the property in the Territory, according to your estimate, would be about eight or ten millions?

Mr. CAINE. More than that. Salt Lake City alone, I think, is taxed on eight or nine millions.

Mr. GIBSON. The total Territorial tax amounts to 12 mills on the dollar.

Mr. WEST. Or one and one-fifth of 1 per cent.

Mr. GIBSON. And the tax for municipal purposes alone in Salt Lake City is 5 mills on the dollar.

Mr. WEST. It would make it one and seven-tenths per cent.

The CHAIRMAN. The total would be about 17 mills, then?

Mr. WEST. Yes, sir.

I will further state that so far as the uniformity of the taxes is concerned, they are uniform in the different counties. I have been assessor and collector in the county of Weber, and while the law says property shall be assessed at a fair valuation, through a long established custom it is not assessed at more than half its value.

I find my time is rapidly passing, and I must leave a great many matters that I desired to touch upon. I have not time to answer all that Mr. Baskin said on yesterday. You are perhaps aware that a man can make more charges in one hour than a person can successfully reply to in treble that time; it does not take much time to make allegations.

The CHAIRMAN. Both of you have had full opportunity to make charges, and I think both are at the same disadvantage.

Mr. WEST. My statements in regard to political control of the Territory being in the hands of non-Mormons are facts that even Mr. Baskin will not undertake to deny.

Mr. BASKIN. But I can explain them a little.

Mr. WEST. There is one question that I desire to call attention to before I close, and that is the issue that arose between the governor and the legislative assembly. He claimed the right to appoint certain officers. Because the legislature did not concede to him that right, he vetoed all of the important legislation of the session. The fact that he was removed from his position for the sweeping exercise of the veto power is an indication that the legislative assembly was right in these matters. He was removed simply because he vetoed the general appropriation bill, and nullified other important acts of the legislative assembly which were necessary to the progress and welfare of the Territory.

As I stated, I have not time to refer to everything Mr. Baskin has said, but as one illustration of the desires of the gentlemen to pervert the truth in regard to the Mormon people, and which desire has manifested itself throughout his entire argument before this committee, I wish to call attention to the quotations that he made from the Book of Mormon in regard to polygamy. When Mr. Caine asked Mr. Baskin to read the title of this book he would not do it. He did not wish the committee to understand what it was. He said it was a Mormon bible. It is not a Mormon bible. The Mormon bible is the bible that is believed in by all.

Christians; King James's translation—that is the Mormon bible. On the title page of this Book of Mormon it reads as follows:

The Book of Mormon, an account written by the hand of Mormon, upon plates taken from the plates of Nephi. Wherefore it is an abridgment of the record of the people of Nephi, and also of the Lamanites; written to the Lamanites who are a remnant of the house of Israel; and also to Jew and Gentile; written by way of commandment, and also by the spirit of prophecy and of revelation.

Here is where we get the name of "Mormon;" the man who wrote this historical record was named Mormon. The plates were found in the western part of New York, and translated by Joseph Smith, who possessed the gift of translation.

The CHAIRMAN. When were they translated?

Mr. WEST. In 1830.

The CHAIRMAN. When were the plates found?

Mr. WEST. In the year 1827. The translation was completed and the work published in 1830.

I will read again from the title page:

Written and sealed up and hid up unto the Lord that they might not be destroyed; to come forth by the gift and power of God unto the interpretation thereof: Sealed by the hand of Moroni, and hid up unto the Lord, to come forth in due time by the way of Gentiles; the interpretation thereof by the gift of God. Translated by Joseph Smith, jr.

Joseph Smith is not responsible for the utterances contained in that book. It is simply a record. If a man should make a translation from the Hebrew or Latin, he would not claim to be responsible for every utterance that such work contained. This is simply a history, as written by one of the historians of that people. The fact that polygamy was prohibited among that people has nothing whatever to do with its practice to-day. This prohibition was to them, and not us. I will read it. It is to be found in verse 27, page 132:

Wherefore, my brethren, hear me, and hearken to the word of the Lord; for there shall not any man among you have save it be one wife; and concubines he shall have none.

Mr. Baskin stopped there; he would not read further. Why? Because the other section is very damaging to the gentleman's argument.

Mr. BASKIN. I know nothing about its effect; if it has any bad effect, I do not understand it.

Mr. WEST. The thirtieth paragraph, page 133, reads as follows:

For if I will, saith the Lord of Hosts, raise up seed unto me, I will command my people; otherwise they shall hearken unto these things.

Now, while the first quotation plainly forbids the practice of polygamy among that people, the last one as plainly implies that its practice might be commanded by the Lord at some future time, and of course when so commanded it would not be sinful, but right. The Lord sometimes gives one commandment in one dispensation, and a different one in another. As, for instance, the law of retribution in the dispensation of Moses, and the laws of charity and forgiveness in the days of Christ. Being the great lawgiver, he can change his laws at will, and make them suitable to the different dispensations to which they are given. The Nephites were a very wicked and lustful people, and hence polygamy among them was made very abominable, but among a virtuous people such would not be the case.

Mr. EDEN. That is not a record, but a prophecy also.

Mr. WEST. The Book of Mormon is a history and a record of prophecies and commandments given to the early inhabitants of this continent.

The event foreshadowed in the last extract quoted by me was fulfilled in the revelation given to the Latter-Day Saints, the revelation on celestial marriage from which the gentleman read, and which he endeavored, by garbling certain extracts, to make ridiculous.

The CHAIRMAN. Do I understand what you read there was a deliverance at the time to which the history relates?

Mr. WEST. Yes, sir.

The CHAIRMAN. And what time was that?

Mr. WEST. The period at which these statements occurred was, as near as can be ascertained from the record, about four hundred years before the coming of Christ. This is a history, according to the faith of the Mormon people, of those who inhabited the American continent in past centuries; of the people who built the cities of Central America, now in ruins, and those of North and South America. It gives the ancestry of the Indian tribes found here when America was discovered. It is simply an historical record.

With reference to the statement of Mr. Baskin, that the Mormons believed in the establishment of a latter-day kingdom, I will say that we do believe in the establishment of a latter-day kingdom, just as all other Christian denominations do; that we believe in the future reign of the Messiah; we believe that Christ will reign on earth as King of kings and Lord of lords; that the kingdoms of this world are to become the kingdoms of our God and of his Christ, and that he will reign forever and forever. That is all there is in his long harangue about the Mormons' belief in their establishment of a kingdom antagonistic to the Government of the United States. There is nothing in it at all. The very precepts of our faith, and our views upon governments in general, to which Mr. Caine, will refer, are diametrically opposed to those things. The Mormon Church has never undertaken to exercise any political power as against the Government of the United States. It is true, Mormons vote for Mormons, just as Democrats vote for Democrats; just as Republicans vote for Republicans; and just as Catholics would vote for Catholics if they were in the position we are to-day, with every religious denomination in the world opposed to us. Why are we united? It is because from the commencement, from the foundation of the church, we have been surrounded by bitter and unrelenting enemies; because our prophets have been slain; because scores of our people have lost their lives at the hands of cruel mobs; because we have been compelled to go beyond the borders of civilization, 1,500 miles into the wilderness, to seek an asylum where we could worship God according to the dictates of conscience. These persecutions that have constantly followed us have compelled us, for self-protection, to be united. Under the circumstances, how could we do otherwise than as we have done. We vote for our friends, because we can trust our friends, and we do not vote for our enemies, because we know them to be unworthy. If a different policy were pursued toward us there would not be that union among us that there is. This union, which should be no more a crime than the union of Democrats and Republicans, is the legitimate result of the persecutions to which we have been subjected.

Mr. CASWELL. Do they persecute you for any other cause than polygamy?

Mr. WEST. Our prophets were slain before polygamy was ever revealed to the church or known to the world.

The CHAIRMAN. When was that?

Mr. WEST. In 1844.

The CHAIRMAN. Was not polygamy revealed when Joseph Smith lived?

Mr. WEST. He received the revelation, but it was never known except by a few of the leaders of the church until after his death.

The CHAIRMAN. Then there was no polygamy ever revealed or known to the church until after the death of Joseph Smith, in 1844?

Mr. WEST. It was not known to the general membership of the church. Of course, those in authority knew the revelation had been received, but it was not openly practiced or published to the world. In 1852, after we had settled in Salt Lake Valley, the revelation was published here in the city of Washington, in a paper called "The Seer." The prosecutions in Missouri, however, took place before that revelation was given. The Mormons were driven from Kirtland, and they then went down to Missouri. The revelation was not given until after they had been driven from Kirtland into Missouri, then from Caldwell County into Clay County, and finally from Missouri into Illinois. The revelation in regard to celestial marriage was not given until after four general persecutions had occurred in which many lives were sacrificed.

The CHAIRMAN. Where was Joseph Smith killed?

Mr. WEST. At Carthage, Ill., June 27, 1844, when he delivered himself up on the promise of Governor Ford that he should be protected.

The CHAIRMAN. I remember of hearing a Mormon preach in Jefferson County, Virginia, on the very day the news came of Joseph Smith's death.

Mr. WEST. I wish now briefly to refer to those oaths that have been spoken of and to this statement in the Salt Lake Tribune. I understand the ceremony to which reference is made. That ceremony does not necessarily relate to marriage. The secrets attending the ceremony of the endowments, or what the Mormons claim to be the true and correct order of Free Masonry are not to be divulged, as the Free Masons are not permitted to divulge the secrets of their order; but we are permitted to say what does not occur in the Endowment House, and I can say truthfully and solemnly, as I hope to meet justice at the bar of God hereafter, that the oaths that were contained in the Salt Lake Tribune, and read here by Mr. Baskin, are not contained in any ceremony in the Endowment House, or in the ceremony of marriage as celebrated in the Mormon Church, either in the Endowment House or Temple; and as evidence of this I can call a number of witnesses.

There are three ladies and four gentlemen here belonging to the Mormon Church, and while I have not conferred with them in regard to this matter, I can refer to them as to the correctness of what I say, and I am confident not one of them will dispute the statement that I have made.

The CHAIRMAN. When did the Mormon Church go to Utah?

Mr. WEST. In 1847.

The CHAIRMAN. That was before the acquisition of the territory from Mexico?

Mr. WEST. Yes, sir.

The CHAIRMAN. Was the whole of Utah Territory acquired under the treaty of Guadalupe Hidalgo?

Mr. WEST. Yes, sir.

The CHAIRMAN. From Mexico?

Mr. WEST. Yes, sir.

The CHAIRMAN. And your church went to the Utah territory and settled there when it was a Mexican territory?

Mr. WEST. Yes, sir.

The CHAIRMAN. What do you consider to have been the law of that territory?

Mr. WEST. Of the Mexican territory?

The CHAIRMAN. Yes; the law of the Mexican territory after it was acquired, in relation to this question of polygamous marriages?

Mr. WEST. That is a disputed question. It is not admitted by us that the laws of Mexico were against polygamy. I do not know as to the facts, but I will simply say that it is a disputed question, and as to whether the common law was in force in the Territory of Utah prior to the law of 1862, I will say that that also is a disputed question.

The CHAIRMAN. Was there any legislation in the Utah territory, in the State of Deseret, allowing polygamy?

Mr. WEST. No, sir; none whatever.

The CHAIRMAN. Then there was no legislation on the subject of polygamous marriages until the act of Congress, 1862?

Mr. WEST. None whatever.

The CHAIRMAN. And polygamy has been practiced in the Territory of Utah from the time that you settled there in 1847?

Mr. WEST. Yes, sir; from 1847 to 1862.

The CHAIRMAN. How long after the death of Joseph Smith was it that polygamy was revealed?

Mr. WEST. It was publicly revealed immediately after the arrival of the Mormons in the Salt Lake Valley.

The CHAIRMAN. And that was in 1847?

Mr. WEST. Yes, sir.

The CHAIRMAN. And then polygamy began?

Mr. WEST. Yes, sir.

The CHAIRMAN. And it was practiced without any legislation to authorize it, or any legislation to forbid it?

Mr. WEST. Yes, sir; those are the circumstances of the case, and, Mr. Chairman, if the Mormon people desired perpetuating polygamy by the sanction of legislative law, as stated by this gentleman yesterday, why did they not do so when Brigham Young was governor?

The CHAIRMAN. When was Brigham Young first made governor?

Mr. WEST. He was first made governor just after the organization of the Territorial government, in 1851; he was the first governor of the Territory.

The CHAIRMAN. How long did he continue to act as governor?

Mr. WEST. Until 1858.

The CHAIRMAN. The army went there under command of General Sidney Johnston, and was there in 1858.

Mr. GIBSON. They arrived there in 1858, and Mr. Cummings, of Georgia, succeeded Brigham Young.

Mr. HUNTON. Judge Sinclair, of Richmond, went out as judge.

Mr. WEST. I wish to deny the allegation that the Mormons were responsible for the Mountain Meadow massacre. I can furnish testimony to prove this if necessary. The records of the trial of John D. Lee will conclusively prove that the Mormon people were not responsible for that terrible atrocity. The circumstances of that affair, briefly related, are these: A company of people went from Missouri to California during the gold excitement. They came into the northern part of the Territory of Utah, and passed completely through that Territory unmolested. It was when Johnston's army was marching to the Territory from the east, and when the people were arousing themselves for self-defense. These parties went through that Territory in perfect safety. They were insolent, by the way, it is true, and according to the evidence adduced at

the trial, some overt acts were committed by them, but they went through peacefully, and no man was hurt. When they got out beyond our line of settlements, in the vicinity of the Mountain Meadows, they poisoned a spring, by which means a number of the Indians were poisoned and died. Because of this, the Indians became enraged against them, and they, in connection with a few white men, who are always hovering on the borders and allying themselves with Indians, perpetrated that massacre. Brigham Young knew not one word of it until after it was all over, and when the news was brought to him he cried like a child.

The CHAIRMAN. When did that happen?

Mr. WEST. In 1857. It was while the army was approaching.

So far as the charges which Mr. Baskin makes against the Mormon Church, of blood-atoning people, cutting their throats, &c., for violating church laws, it is all nonsense. Mr. Baskin knows that it is not so.

Mr. BASKIN. I expect you to deny it, of course.

Mr. WEST. I challenge you, or anybody else, to come before this committee and say that they know from personal knowledge of any acts of violence of that or any other kind that the Mormon Church has ever committed. I challenge any man to do it. I have lived in that Territory all my life. I was born in Salt Lake. I am a Mormon, and I can truthfully say that I never heard such a monstrous doctrine taught as that made to appear from the garbled extracts read by this gentleman to the committee the other day. I know it does not form any part of the Mormon faith. I know that the Mormon people do not execute any such penalties against anybody, or any other penalties; that for violations of church laws, members are simply excommunicated from the church, and nothing more. Our books proclaim that it is not the province of the church to execute corporal punishment on any of its members; that men who offend against the law should be turned over to the law; that they should render unto Cæsar the things that are Cæsar's. That is the position of the Mormon people in reference to this matter.

In conclusion, gentlemen, I would ask, what rights or privileges have the Mormons left under the law as it now stands and under the policy now pursued in the administration of affairs in Utah? As I have shown, all Mormon polygamists, both male and female, whether they are now living in the practice of polygamy or not, are perpetually debarred from either voting or holding office. The non-Mormons have the entire appointment and complete control of all election and registration officers and the entire supervision of all the election affairs of the Territory. No Mormon has any voice or influence in any of these matters. The non-Mormons, through the governor, who is always of their number, hold absolute control over all local legislation and can nullify at will the unanimous voice of the legislative assembly. The non-Mormons have the complete control, and, for all practical purposes, the entire representation of the jury. The non-Mormons have charge of all the courts possessing any important jurisdiction. They control the entire criminal business of any consequence, both under the laws of Congress, and, by a recent ruling, under the laws of the Territorial legislature, as well, and of all civil cases involving more than $300. Among the hord of deputy marshals no Mormon can be found, and no Mormon is appointed, either to the office of commissioner or assistant attorney. They have seldom had any of the post-offices of the Territory of any value, though outnumbering their more fortunate citizens five to one. Every office in the gift of the Government is conferred upon non-Mormons, and in all matters legislative, executive, and judicial they either have no voice or influence

at all, or their voice or influence can only be exercised in conformity with the views and wishes of their political opponents. Under the rulings of the courts, a first wife can be compelled to testify against her husband; witnesses can be arrested on summary process without previous subpœna and imprisoned, or placed under bonds for their appearance when wanted, and a Mormon who has ever been a polygamist, though he may now be living apart from all his wives but one, and may have no marital intercourse with any but her, can be indicted and convicted as many times, and fined in such a sum as would imprison him for life, and confiscate all of his property, though he were a wealthy man. For, as I have shown from the records of the Utah courts, though a Mormon "does not occupy the same bed, sleep in the same room, dwell under the same roof, or have sexual intercourse with any of his wives, yet he may be found guilty and given the full penalty of the law, and that, too, for every year, every month, every week, or even for every day embraced within the period of statutory limitation." In other words, he can be convicted enough times to imprison him five hundred and forty-seven years and to aggregate in fines $328,500. And yet from such monstrous ruling we can have no appeal, for the law as it now stands permits no appeal from the courts, by which this doctrine has been enunciated to the higher and more unprejudiced tribunals of the land.

I ask, gentlemen, in all candor, what more can the enemies of Utah want? Is not our political bondage to them sufficiently complete under the law as it now exists, and under their peculiar administration in Utah, and should they not be satisfied? Can this nation afford, for the gratification of the political aspirations of a small unscrupulous minority in that Territory, to forge further chains with which to bind the lives, the the liberties, and the consciences of the Mormon people, who, by patient industry and personal sacrfices, such as the world has seldom seen, have created an Eden out of a desert, and founded a prosperous commonwealth upon the most sterile portion of the American continent?

I have occupied a great deal more of your time, Mr. Chairman, than I had expected to do. I thank you for your kind attention. I will request the committee to read the legislative memorial before they conclude upon any measure of legislation. It should be read. It comes indorsed, I was going to say, by the unanimous sentiment of the assembly; but there was one non-Mormon member of the assembly who did not vote for it or vote against it. It comes here, however, as a memorial of the legislative assembly, and it contains facts and figures in regard to the condition of affairs there that this committee should understand before any further legislation is enacted against the Territory.

I thank you, gentlemen, for your very kind attention.

ARGUMENT OF HON. JOHN T. CAINE.

Mr. Chairman and gentlemen of the committee, in behalf of my constituents I protest against the enactment of this proposed law; because it is unequal and partial legislation; because it is special and not general in its provisions; because it is subversive of rights and immunities which have been insisted upon and maintained by our race from immemorial time; because it violates the letter and spirit of the Constitution of the United States, and disregards the sound principles of good government laid down by wise men in every age of the world, and reaffirmed in the strongest language by the fathers of the Republic.

It is due to myself and those I have the honor to represent, that I should correct some of the many false and wicked misrepresentations which have been, during a long series of years, industriously spread abroad concerning the Mormon people. They have been persistently represented as disloyal, as seditious and turbulent, as stirrers up of strife, as immoral and lewd in their manner of life, as enemies of the State, and as prone to defy the authority of the Federal Government.

Coincident with the opening of this session of Congress the press of the land was filled with the most preposterous stories about an incipient rebellion and threatened uprising of the Mormon population of Utah. Representations were made to the President of the United States and to the Secretaries of the Interior and of War that armed bodies of men were gathering at Salt Lake City; that stores of arms and ammunition were secreted in that city; that serious danger menaced the representatives of Federal authority; that life and property were threatened; and that additional troops were needed to uphold the majesty of the law, prevent mob violence, and insure peace and good order.

The men who made these statements knew them to be without the shadow of foundation in fact. They knew that there was no organization and drilling of men in any part of the Territory; that there had been no gathering of bands, or of individuals, in Salt Lake City; that there had been no collection and secretion of arms and ammunition; that there was not the slightest evidence of a disposition on the part of the residents of the city to resort to mob violence; that life and property were not endangered. They willfully and deliberately deceived the President and his advisers. They procured gross exaggerations of their concocted stories to be telegraphed to the Eastern and Western Press for the purpose of re-enforcing their demand upon the administration for additional troops, and when a company of soldiers was ordered from Omaha to Salt Lake City and quartered there, the whole country was impressed with the belief that there was well-grounded cause for serious apprehensions.

An irreparable injury was done to an entire community by these wicked and designing men frightening capital in the United States. And, moreover, foreign investors in Utah have been and are greatly disturbed on account of the sensational fabrications, the truth of which was in their eyes confirmed by the action of the General Government. There are inquiries yet being made of the representatives of foreign capitalists in Utah from different parts of Europe concerning the probabilities of an insurrection or uprising in Salt Lake City.

But recently you saw the sort of slanders upon the Mormon people an indiscreet and blabbing official was the means of distributing broadcast over the country. Fortunately for the Mormons, these slanders involved Federal officials and Senators and Representatives in Congress, and the monstrous falsehoods were quickly overtaken by the exposure which promptly followed. But if the statements had affected Mormons alone they would yet be ringing through the land, and regardless of their inconsistency and self-evident falsity, would doubtless be accepted as gospel truth.

A more preposterous lie could not be forged than the one set afloat about 50 per cent. of the Mormon entries of public land being fraudulent. When the Mormons occupied Utah, nearly thirty-nine years ago, the area of land deemed possible of reclamation was necessarily limited. Only that which bordered streams of water was regarded as of any value. The hostile Indians for many years, as well as the supposed climatic conditions, prevented settlement beyond easy reach of Salt

Lake City. In every instance the requirements of the land laws as they then stood, and as they were subsequently amended, were strictly complied with. The Mormons have never been land-grabbers. They are not land speculators. They seek to become land-owners, to own their homes and to till the soil; to earn an honest living by the sweat of their brows. The average size of farms in Utah to-day does not exceed twenty-five acres, as the statistics of the last census show. And another remarkable fact shown by the official figures is that more than nine-tenths of the heads of Mormon families are land-owners. Point me to another people on the face of the earth of whom this can be said. The history of the human race demonstrates that the owners of the soil are always the conservative part of the population of every country. They have a greater interest in the general welfare, more regard for good government, and a higher respect for law and order than those who have no proprietary attachments. Agriculturists, when they own the land they cultivate, are never seditious, never turbulent. They have sturdy independence of character, and are tenacious of the rights of persons and property; but the government that provokes them to acts of resistance must persist for a long time in its disregard of fundamental law.

During the discussion upon this bill in the Senate a distinguished Senator, with great force of expression and manifest feeling, asserted of the Mormons that, "from their very first organization, beginning at Palmyra, N. Y., from thence to Kirtland, Ohio, from thence to Independence, Mo., from thence to Nauvoo, Ill., from thence to Council Bluffs, in Iowa, and from thence to Salt Lake, their track has been one of outrage, one of disregard of law, one of disregard of the public or private rights of the surrounding people, and such course has made it absolutely necessary that they should be driven from the communities or localities in which they had settled." The same Senator also declared that the Mormons were driven from Council Bluffs, Iowa, "because they were stealing property and everything they could get their hands upon, just as they did at Kirtland, Ohio, at Independence, Mo., at Nauvoo, Ill., and so on around the whole tramp that they made."

These accusations are stale. They have been refuted time and time again by men not of our faith who had knowledge of all the facts and affirmed whereof they knew. But the same stories are revamped and reiterated, sometimes by those who are ignorant of the truth, and again by others who proceed upon the theory that a lie persisted in answers their purpose better than authenticated facts.

Impartial history will some day set at rest these baseless slanders and unfounded calumnies. The Mormons can well afford to abide the judgment of posterity. The proofs are abundant and of record, and they know that "justice travels with a leaden heel, but strikes with an iron hand. God's mill grinds slow, but dreadfully fine."

Col. Thomas L. Kane, who, as all the world knows, was, like the peerless Bayard, *sans peur et sans reproche*, not only lived in the camp of the Mormons at Council Bluffs, but accompanied them in their weary way across the great plains till stricken down by disease, has left a most eloquent record of all that transpired immediately before, during and after the brief sojourn of the pilgrims on the banks of the Missouri River. His description of the deserted city of Nauvoo as he saw it a few days after the aged, sick, and infirm remnant of Mormons had been driven out, in violation of the plighted faith of the State authorities, by an armed mob, will move you to pity and to indignation. His account of what he witnessed of the distress, the suffering, the misery, and woe

of the unfortunates who were driven across the Mississippi River, and without food, without shelter, without medicine, without ministering care, died of disease, perished of hunger, exposure, and awful wretchedness, will stir your souls to their very depths. Read his narrative of the wrongs inflicted upon, of the sufferings endured, of the heroism displayed, of the patriotism and magnanimity manifested by the Mormons, who were causelessly driven from Nauvoo, and his eloquent portrayal will cause you to exclaim, "Alas! it was a piteous deed."

The statement so recklessly, so untruthfully made, that the Mormons were driven from Council Bluffs "because they were stealing property and everything they could get their hands upon," is a most wicked calumny. Colonel Kane joined the Mormon emigrants at Council Bluffs. He lived in their camps. He went out along the trails leading back to the Mississippi and met the bands wearily dragging their way to the Missouri. He was present when the request came from the Federal Administration to the Mormon leaders for a battalion of their young men to join the expedition which was to make a forced march from the Missouri to California, to seize and hold it against an anticipated British occupation. He tells how patriotism and love of the Union was manifested by the prompt response to this appeal from the General Government.

It was no trivial thing, this demand for one in every five of the able-bodied and strong to enter their country's service and abandon fathers and mothers, wives and children! Here were a people driven from their homes into the inhospitable wilderness, leaving a beautiful city they had built, leaving farms they had bought, abandoning the ease and comfort of happy homes, sacrificing nine-tenths of all they had of this world's goods, and a great Government which had not only declined to interpose its strong arm to shield them from their despoilers but had not even manifested the dictates of common humanity concerning the fate of helpless women, tender children, aged, sick, and infirm men who had been inhumanly expelled by mob violence from the shelter the authorities of Illinois had guaranteed them. There was pressing need for every vigorous and capable man. Twenty thousand souls had left Nauvoo with altogether inadequate preparation for subsistence in the wilderness. Stations had to be established, ground broken, seed planted, and food grown. But the religion of the Mormons taught them that they owed a duty to the Government even if that Government had neglected its duty to them as citizens. Moreover, they came of a stock that had never failed to respond to their country's call. Their grandfathers had helped to fight the battles of the thirteen colonies, and their fathers had borne the flag of the young Republic to victory on more than one hard fought field in the second war of independence. The man who knows the story of the expulsion of the Mormons from Nauvoo and what they endured during their unparalleled journey to Salt Lake Valley and wantonly, wickedly slanders them, is unworthy of the respect of mankind.

Colonel Kane, after his visit to Nauvoo in September, 1846, followed in the wake of the Mormons for a considerable distance through Iowa. Did he hear aught against them from the settlers who were then scattered between the Mississippi and the country of the Sac and Fox Indians? Not one word of complaint, but many expressions of sympathy. He returned to the Mississippi and by the way of the Missouri went to Fort Leavenworth for the purpose of joining the pioneer company of Mormon emigrants. Reaching that frontier post he could obtain no reliable information concerning the people he wanted to find. Then as now all sorts of unfounded stories were afloat concerning them.

Colonel Kane says:

Many as were the reports daily received at the garrison from all portions of the Indian Territory. It was a significant fact how little authentic intelligence was to be obtained concerning the Mormons. Even the region in which they were to be sought after was a question not attempted to be designated with accuracy, except by what are very well called in the West, "Mormon stories," none of which bore any sifting. One of these averred that a party of Mormons in spangled, crimson robes of office, headed by one in black velvet and silver, had been teaching a Jewish pow-wow to the medicine men of the Sacs and Foxes. Another averred that they were going about in buffalo short-robe frocks imitative of the costume of Saint John, preaching baptism and the instance of the kingdom of heaven among the Iowas. To believe one report, ammunition and whisky had been received by Indian braves at the hands of an elder with a flowing white beard, who spoke Indian, he alleged, because he had the gift of tongues; this, as far north as the Yankton Sioux. According to another yet, which professed to be derived officially from at least one Indian sub-agent, the Mormons had distributed the scarlet uniforms of Her Britannic Majesty's servants among the Pottowattamies, and had carried into their country twelve pieces of brass cannon, which were counted by a traveler as they were rafted across the East Fork of Grand River, one of the northern tributaries of the Missouri. The narrators of these pleasant stories were at variance as to the position of the Mormons, by a couple of hundred leagues; but they harmonized in the warning, that to seek certain of the leading camps would be to meet the treatment of a spy.

Evidently the distinguished Senator who talked about the misdeeds of the Mormons at Council Bluffs has recently come in contact with some of the stories Colonel Kane heard at Fort Leavenworth forty years ago. He is not quite as far behind the times as the London navy was who, after being converted at a revival meeting, knocked down the first Jew he met because, as he firmly believed, the Israelite had assisted to crucify our Lord and Saviour!

Undeterred by the stories he heard at Leavenworth, Colonel Kane set out alone to find the Mormons. It was a weary and disagreeable journey, and when he finally reached the camps at Council Bluffs a kind reception and a cordial welcome was accorded him by the Mormons. Speaking of his experience, he says:

After a recent unavoidable association with the border inhabitants of Western Missouri and Iowa, the vile scum which our society, to apply the words of an admirable gentleman and eminent divine, "like the great ocean, washes its frontier shores," I can scarcely describe the gratification I felt in associating again with persons who were almost all of Eastern American origin—persons of refined and cleanly habits and decent language—and in observing their peculiar and interesting mode of life; while every day seems to bring with it its own especial incident, fruitful in the illustration of habits and character.

Colonel Kane remained on the Missouri for several months making journeys between the advance pioneer camps in Nebraska and the rear stations in Iowa. The winter of 1846–'47 was a frightful experience for the Mormons. The friendship and generosity of the different tribes alone saved them from starvation. And in turn the strength, discipline, and watchfulness of the Mormons prevented the raids of the powerful and hostile Sioux upon the weaker tribes who had welcomed the outcast people.

The stations formed along the route from Nauvoo to the Missouri and from thence to Salt Lake Valley were not designed to be permanent. They were temporary makeshifts, absolutely necessary to enable a people twenty thousand in number, who had been inhumanly expelled from Illinois, to make that wonderful march of nearly two thousand miles. In all history there is no record of a like undertaking so peacefully and humanely accomplished. The people who transplanted themselves from the banks of the Mississippi to the shores of the Great Salt Lake committed no outrages, harmed not a single human being, respected the rights of the red and the white men alike with whom they came in contact.

Hear the testimony of the noble gentleman and Christian soldier whose character, like his sword, was without taint or suspicion of dishonor. He knew the Mormons, not only on their pilgrimage, but afterwards long and well in Utah. Colonel Kane says:

I should do wrong to conclude my lecture without declaring, in succinct and definite terms, the opinions I have formed and entertained of the Mormon people. The libels of which they have been made the subject make this a simple act of justice. Perhaps, too, my opinion, even with those who know me as you do, will better answer its end following after the narrative I have given.

I have spoken to you of a people, whose industry had made them rich and gathered around them all the comforts and not a few of the luxuries of refined life, expelled by lawless force into the wilderness; seeking an untried home, far away from the scenes which their previous life had endeared to them; moving onward, destitute, hunger-sickened, and sinking with disease; bearing along with them their wives and children, the aged, and the poor, and the decrepit; renewing daily on their march the offices of devotion, the ties of family, and friendship, and charity; sharing necessities and braving dangers together: cheerful in the midst of want and trial, and persevering until they triumphed. I have told, or tried to tell you, of men, who, when menaced by famine, and in the midst of pestilence, with every energy taxed by the urgency of the hour, were building roads and bridges, laying out villages, and planting corn-fields for the stranger who might come after them, their kinsmen only by a common humanity, and peradventure a common suffering—of men, who have renewed their prosperity in the homes they have founded in the desert—and who, in their new-built city, walled around by mountains like a fortress, are extending pious hospitalities to the destitute emigrants from our frontier lines—of men who, far removed from the restraints of law, obeyed from choice, or found in the recesses of their religion, something not inconsistent with human laws, but far more controlling; and who are now soliciting from the Government of the United States, not indemnity—for the appeal would be hopeless and they know it—not protection, for they have no need of it, but that identity of political institutions and that community of laws with the rest of us, which was confessedly their birthright when they were driven beyond our borders.

I said I would give you the opinion I formed of the Mormons; you may deduce it for yourselves from these facts. But I will add that I have not yet heard the single charge against them as a community, against their habitual purity of life, their integrity of dealing, their toleration of religious differences in opinion, their regard for the laws, or their devotion to the constitutional government under which we live, that I do not, from my own observation or the testimony of others, know to be unfounded.

Pardon me for trespassing on your time by recalling ancient history, but it is annoying that these border stories, these wild imaginings, these baseless fabrications which Colonel Kane heard from rumor mongers at Fort Leavenworth forty years ago should survive and be brought up against my people by a Senator of the United States, who gravely declares them to be as true as Holy Writ. There was some excuse for "Mormon stories," as Colonel Kane aptly terms them, in 1846. Western Missouri was the frontier line. The white population, what there was of it, was very largely composed of the outcasts of society. The Missourians were of course prejudiced against the Mormons. Those who had seven years before so ruthlessly and lawlessly expelled them from their homes in that State sought to justify their inhumanity by ceaselessly slandering the injured. They were active and unscrupulous in stirring up envy, enmity, and ill-feeling against the Mormons in Illinois. Those who are injured may forget and forgive, but those who injure never do. The Mormons taught and practiced a new religion. They were industrious, economical, and thrifty. They were unlike their neighbors in many ways. They refrained from blasphemy, abstained from intoxicating drink, and spent none of their earnings in riotous living. Their manner of life, their religion, was regarded by the ignorant and suspicious as full of mystery—strange, unnatural. Vague rumors concerning them had followed from the East, and those were soon magnified by the surrounding inexperienced and credulous multi-

tude. That prosperity which always attends patient industry and careful economy naturally excited envy and suspicion. I am charitable enough to believe that the majority of those who persecuted and maltreated the Mormons in Missouri and Illinois were misguided and misled by their own ignorance and fears, being worked upon and excited by unscrupulous and designing demagogues.

I can also understand how false impressions were created in the East concerning the Mormons after they were beginning to grow into a considerable community in their far-distant, new found home. They were isolated, and with few friends in the East who had the slightest knowledge of their religion and of their character as a people. It is true that many of the emigrants to California who had experienced kind treatment and enjoyed the liberal hospitality of the people of Utah gratefully made acknowledgments thereof in the Eastern press, but alas! good reports never gain the currency that evil ones do.

The troubles of 1857–'58 were caused by the infamous, false reports made to the Federal administration by Judge Drummond, who recently died in shame and want at his old home in Illinois, after wasting nearly thirty years of his life in dissipation and debauchery. His manner of life in Utah was of the most shameless character. He lived in open profligacy with a prostitute, and on more than one occasion placed the harlot on the bench while he was going through the mockery of administering justice. This abandoned wretch reported to the President and Attorney-General that the Mormons were in open rebellion; that they had destroyed the records of the courts, and were setting up a government of their own in defiance of the authority of the United States. He supported these falsehoods by affidavits.

There were no telegraph lines beyond the Missouri. It was thirty days journey from Salt Lake City to Independence. The first intelligence the Mormons had of these false representations made to the Federal authorities was a vague rumor that an army was on its way to chastise them. What was the outcome of the lavish expenditure of money attending the expedition under General Albert Sidney Johnston? The march from the Missouri River consumed more than a year, and in the mean time commissioners sent out to investigate the charges against the Mormons found them unsupported in a single particular. There was not a scintilla of truth in the monstrous lies that had been reported to the authorities at Washington.

The immense distance that separated Salt Lake City from the frontier settlements on the east and the west, the absence of means of speedy communication, and the comparatively few disinterested people who visited the region occupied by the Mormons made it possible for a dishonest official, like Judge Drummond, to deceive Mr. Buchanan's administration and convince as fair and impartial a man as Judge Black, then Attorney-General, that an army ought to be sent to Utah.

But all this has changed. Salt Lake City has for nearly twenty years been the resort of vast numbers of tourists annually. Keen, intelligent observers from every part of the world have visited Utah, and devoted months to the investigation of the Mormon people, their mode and manner of life, and have written volumes on the subject. Their industry, their thrift, their morality, their law-abiding character, the absence of social vice, of drunkenness, of lawlessness, the perfect security of life and property, and the respect they manifest for the religious opinions of others have been themes upon which scores of writers have waxed eloquent. And yet in spite of these acts the old prejudices, the old misconceptions, the stale slanders of a half century past, appear to

have as strong a hold upon the public mind as ever. A small lot of malignants in our midst whose purposes are unconcealed, whose object is political plunder, concoct the most preposterous slanders and have them telegraphed over the land, and they are accepted almost without question as true. Nine-tenths of the people of the United States believe that the Mormons were ready to rebel in the early part of last December, and were awed into submission by the prompt action of the President, in sending a company of soldiers from Omaha and quartering them in Salt Lake City. If this had not been done—if the demand for troops had not been heeded—of course the misrepresentations, the falsehoods, of the governor and his co-conspirators would have been exposed in due time, and the public might have partially comprehended the motives that prompted their wholesale lying. But the Government by acting upon these untruthful statements gave them the impress of truth. The masses only grasp general facts. Moreover, although convinced that deception was practiced by unworthy officials, the administration, instead of rebuking them publicly and thus repairing, to that extent, the wrong unwittingly done the people of Utah, has until quite recently retained these miserable falsifiers in office.

Understand me. I have no desire to censure the administration for the course it had pursued in Utah upon this matter. A condition of things had been brought about, deliberately and designedly, by the representatives of the Federal Government in that Territory, for the purpose of embarrassing the President and his advisers. Public sentiment had been manufactured, with the design of making it difficult to remove officials who were displaying unusual zeal in the prosecution of cases under the Edmunds act. These officials, by the fee system, were enriching themselves at the expense of the public treasury. The act of June 23, 1874, commonly known as the Poland act, deprived the probate judges of Utah, the local judiciary, of jurisdiction in criminal cases, and extended the jurisdiction of the district courts and enlarged the functions of United States commissioners and of the marshal and district attorney.

For instance, the district attorney was authorized to appoint as many assistants as might be necessary to take charge of all prosecutions under the Territorial laws and become entitled to the fees earned by such assistants. The law, however, expressly provided that the district attorney should not receive in all exceeding $3,500, and that the balance of the fees should be turned into the United States Treasury. But instead of being allowed only $3,500 per annum, he has been drawing $6,000 a year, and has appointed assistants to consume the balance of all the fees earned in Territorial cases. The United States commissioners, while the grand jury is in session, issue warrants for the arrest of alleged offenders, for the arrest of witnesses; hearings are had before these commissioners, witnesses are examined, and parties are bound over to appear before the grand jury, and witnesses required to enter into recognizance for their appearance. The sole object of this is to enable the commissioners to make fees—to draw money from the Treasury of the United States. Instead of witnesses being served with subpœnas, they are summarily arrested. Houses are invaded; in some instances have been broken into. The sleeping apartments of women have been entered and the occupants thereof grossly insulted. The bed clothing has been pulled off helpless women, exposing them to the rude gaze of brutal deputy United States marshals.

The whole course of these officials has been high-handed and ruth-

lessly indecent. If their purpose had been, as it doubtless was, to provoke the people, thus subjected to assault upon their personal liberties, to an outbreak, they could not have chosen a better way to accomplish their purpose. I venture to say that in no other community would such outrages have been tolerated. No other people would have patiently submitted, and have suffered brutal deputy marshals to have insulted helpless women, without wreaking vengeance upon them. That the people forbore and suppressed their just indignation was not because they were cravens; not because they were unmoved at these outrages; but because they knew that any act of violence on their part would bring upon the whole community unspeakable calamity.

The CHAIRMAN. Do you say that the actions of the marshals in the respects that you mention were authorized by the Edmunds act?

Mr. CAINE. No, sir; I do not say that they were authorized by the Edmunds act, but these are some of the abuses that have arisen under it.

The CHAIRMAN. You claim they are abuses of power?

Mr. CAINE. Yes, sir; abuses that have arisen under the enforcement of the Edmunds act. I may say that I have reason to know that these abuses not only are not sanctioned, but that they are entirely disapproved, by the administration. I have been told so in the most emphatic manner. One of the highest functionaries of the Government said to me that if the marshal could not get decent men in Utah to act as his deputies he had better import them from the eastern country.

The CHAIRMAN. Let me understand about the arrest of the women and others in their houses. Were they taken in custody for the purpose of being examined as witnesses?

Mr. CAINE. Yes, sir; as witnesses, without being previously served with a subpœna. And in this way the houses of women have been invaded, and they have been arrested and dragged before United States commissioners. Mr. Richards, the other day, cited one case. He referred to the arrest of the Cannon family on the Sabbath day, of their being held as prisoners during the greater part of the day, until bail was gotten for them in the afternoon.

The CHAIRMAN. That certainly is not authorized by the Edmunds bill?

Mr. CAINE. No, sir; but that is the way these officers lord it over the people out there. We have no rights that they are bound to respect.

The CHAIRMAN. Something of that kind, you insist, is proposed in the present bill?

Mr. CAINE. It is proposed to give the marshal and his deputies additional powers. They are exercising the most arbitrary power now, and this bill proposes to give them still more. Why, sir, if you give them the power that is contemplated in this bill, respectable people cannot live in that Territory, because they now virtually claim that they are the United States. When one of those deputy marshals is called to account, he will say, in effect, "I am the Government, and my person is sacred; you must not interfere with me." Where is there on the face of this globe another people who, individually and collectively, could and would exercise such self-restraint?

Mr. Chairman, this self-restraint on the part of the Mormon people is not because they are cowards or because they are ignorant. Neither is it because they are the mere puppets of an ecclesiastical hierarchy. It is due to the fact that they have an unwavering confidence that human affairs are ordered by Divine Providence, and an unswerving belief that in his own time the God they worship will deliver his people,

as of old he did the children of Israel. Their enemies would have you believe that the entire Mormon population of Utah have no independence of thought, and that in the exercise of their political rights they await the decision and act upon the dictum of the head of the Mormon church.

The representative of the non-Mormons of Utah who has appeared before you dwelt upon one theme—rung the changes upon one expression—Mormon theocracy. He wished to impress you with the belief that the first presidency of the Mormon Church is an oligarchy that rules with an iron hand the people of that faith. Nothing could be more preposterous. No people ever lived who are more democratic than the Mormons. Their church government is democratic throughout, everything being done by common consent. At the basis of the entire structure lies a principle of co-operation, which has enabled them to accomplish the development of a country which must have remained sterile had its reclamation been attempted by any other people. There is a spirit of inter-independence, spiritual as well as material, which largely directs their efforts. Mutual help, mutual support, mutual encouragement are taught and practiced. There is no conflict between capital and labor. We have no almshouses; we have no paupers. The bee-hive is our emblem.

A gentleman, well known in Washington, who visited Utah in 1881, in a pamphlet entitled "Utah and its People," contrasting the difference between Utah past and present, says:

> To-day on this soil, then considered barren beyond redemption, there has been raised an average of 73½ bushels of grain to the acre; wheat yields 61 bushels; oats 88 bushels. All over the Territory similar cases can be cited, and this, it must be borne in mind, is the produce of land still susceptible of much higher cultivation. The dreary wastes of alkaline plains and sage brush have given place to blooming orchards; the wigwam has been supplanted by a flourishing city; and pleasant cottages and comfortable homes dot this whole Territory. Who and what were the people who have accomplished this seeming herculean task?
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> Now, in the first place, let me say that I do not believe that this could have been accomplished by individual effort; that settlers isolated from each other, without mutual aid and assistance, would never have undertaken so great a task, and could not have accomplished it. The obstacles to overcome were too great; nature presented too forbidding an aspect to permit of this great conquest having resulted from the unorganized and undirected labors of isolated settlers. To cross those dreary wastes, to found a home far beyond the most distant settlement among savages, to achieve so signal a conquest over rugged nature was beyond the power of guerilla warfare to perform; there was needed the unifying element of a religious faith, welding individual interests together and forming closer social ties.
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> We give credit for sincerity to the bigoted Puritans, to the French Huguenots, to the followers of the Catholic Lord Baltimore, when they sought to found homes on this continent; but for men who, in face of far greater difficulties and undergoing a persecution equally as relentless as any from which our forefathers fled, we are content to shrug our shoulders, and with a sneer say, *fraud* and *superstition*.

A portion of the non-Mormon population—that portion which has sent representatives here to demand that nineteen-twentieths of the people of Utah shall be disfranchised and deprived of all political rights—insist that they have imposed upon them a theocratic government, an un-American Government. I had always supposed that there was one prominent feature of American institutions—the rule of the majority. The population of Utah to-day is probably about 200,000. Of this number at least 150,000 are Mormons. Of the remaining 50,000 non-Mormons I honestly believe that the majority are not represented by the faction that clamors for the disfranchisement and the disqualification of the Mormon majority.

Returning to the charge that Utah is governed by a "Mormon theoc-

racy." I wish to quote another paragraph from the pamphlet "Utah and her People." The writer says:

We have heard much of Mormon theocracy, of the despotic powers exercised by Mormon high priests, and have been told that the Mormon Church allow the struggling farmer to get established for the purpose of securing the result of his labors. We hear it gravely asserted that when the farmer is rejoicing in abundance and prosperity a long bill is presented to him by the bishop, in which there is footed up everything advanced him from his passage-money down to a loaf of bread or a glass of milk, given to him in the hour of need, and that he is now expected to acknowledge the debt and Land himself and his savings over to the church—to become its serf. Let us examine this charge.

One of the features in the Mormon Church which struck me most forcibly is its apparent democracy. Twice every year, on April 6 and October 6, the Mormons come from far and near to assemble in semi-annual conference in the great Tabernacle, which will hold comfortably 12,000 people, and when filled uncomfortably, by taking up all the standing-room, 15,000. Travelers relate meeting ox-teams in distant cañons, headed toward "Zion," in which will be, perhaps, some lone old woman, with a scant stock of meal and bacon, making a one, two, or three weeks' journey "to get her soul warmed up" at the conference.

At these conferences, lasting from four days to a week, every woman has a vote; male and female, humble believer and dignitary, meet on a common footing—having equal rights. At these conferences, and mark this well, every officer in the church, including Brigham Young, in his day, and John Taylor now, has to be re-elected to each and every position they hold. It may be said that this is but a mere form; that the head of the church is recognized as infallible and dictates his own election and that of his subordinates.

As long as there is perfect confidence in the first presidency and the twelve, we should naturally expect that their nominations would be heartily ratified. But here is a provision by which the church itself can curb any of its officers, even to its head, whenever there is a forfeiture of public approval by a departure from the lines laid down by usage and the collective church. Again, in a religion founded upon a conscious fraud, where those in authority are only seeking preferment and honors, where profit or ambition can alone be regarded as motives to action, how is it that there never has been a falling out among these clever rogues? You cannot understand it? Of course not. Oh, ye of little faith!

I insist, Mr. Chairman, that polygamy is the excuse, and that *political power* is the purpose of those who vex your ears and perturb the public mind with their rant and cant about the *moral evil*, the social vice of polygamy. The gentleman who has discoursed to you upon this subject has been disingenuous. I will not accuse him of the deliberate attempt to deceive this committee when, in reply to a question addressed to him, he said that he believed one-half of the male Mormon population of Utah practiced polygamy. I ask him if he does not know that the census of 1880 shows that the male population of Utah exceeds the female by nearly 5,000? If Mr. Baskin's assertion were correct, I ask this committee if the official statistics would not show that the females exceeded the males by at least one-half? Why, sirs, the principle of plural marriage was revealed to Joseph Smith in 1843. This revelation was not published to the world until 1852, but it was as much known to the church and its adherents as any other principle of its creed during these nine years.

The CHAIRMAN. Was polygamy known to the elders at this time?

Mr. CAINE. Yes, sir. The revelation was received in 1843 and published in 1852.

The CHAIRMAN. But it was not practiced by the elders?

Mr. CAINE. It was practiced to some extent.

The CHAIRMAN. Prior to 1852?

Mr. CAINE. Yes, sir; prior to 1852. Therefore, it has been for forty-three years taught by the church. In 1882 the political provisions of the Edmunds act were enforced by a commission appointed by the President of the United States, and every male and female citizen of that Territory who applied to be registered was required to swear that they were not a bigamist or polygamist, and that they did not unlawfully

cohabit in the *marriage relation.* They so fixed the oath that they could unlawfully cohabit outside of the marriage relation, but not in the marriage relation. What was the result? Not exceeding 12,000 persons were disfranchised, and by a manifest perversion of the intent of the law the commissioners held that a man or woman who had been once a polygamist, although the husband or wife, as the case might be, were dead, or the parties had ceased to live in the relation, they were still held to be polygamists. Now, Brigham Young left seventeen widows, and if we were to believe the stories about the average number of plural wives being somewhere from six to ten, we would have to concede that about 99 per cent. of this 12,000 disfranchised persons were females. I think it is beyond dispute that not to exceed 2,000 of the 12,000 were males. Therefore, after forty-four years, the male polygamists in Utah are a comparatively small number. Not only were the male polygamists, but the women, wives and widows, were deprived of all political rights. They cannot vote; they cannot hold office; they cannot sit upon juries. For the time being they can hold property, and provided they abandon the women whom they have solemnly covenanted to protect and cherish, cease even to visit them, they can live outside the walls of a prison.

The charge is made, and made quite extensively, that the population of Utah is largely made up of ignorant foreigners. In answer to this I submit that according to the census of 1880 the total population of Utah was 143,963. Of this number, 74,509 were males and 69,454 females. Of the total population, 99,969 were native born, as against 43,994 foreign born. There were 52,189 native-born males and 44,780 native-born females, as against 22,320 foreign-born males and 21,674 foreign-born females.

The charge is made that missionaries go over to Europe, pick up defenseless women and bring them out to Utah, when they are placed in rows, and that the elders then pass along and pick them out. That is another of the "Mormon stories" that we have been speaking about.

Several of the States and Territories have more foreign population in proportion than has the Territory of Utah. As to education, the statistics show that of all the States and Territories in the Union there are but thirteen showing a lower percentage of total population who cannot read, Connecticut having the same as Utah, 3.37 per cent. The money raised for school purposes in Utah is greater in amount than the school fund of three States and of any of the Territories save Dakota.

The CHAIRMAN. You say there is only a little over 3 per cent. adult population that cannot read?

Mr. CAINE. Yes, sir.

The CHAIRMAN. Does that appear by the census?

Mr. CAINE. Yes, sir; the extract I gave was from the census of 1880.

And here allow me to say that the gentleman has represented to you that the offense of unlawful cohabitation, which he maintains is the *gravamen* of the offense of bigamy or polygamy, is but lightly punished. He did not tell you that the courts of Utah have held that these cases of unlawful cohabitation can be segregated, and that an indictment can be found for every year, for every month, for every week, and for every day of this alleged cohabitation, and that the offenders may be convicted and sent to the penitentiary for the balance of their natural lives; and this, forsooth, is a light punishment! Not only can they be sentenced to six months' imprisonment for each segregated offense, but they can be fined $300 and the costs of the prosecution in each case, and if a man was ten times a millionaire he would be bankrupted by such proceedings. In order to show the committee how this segre-

gation works, I desire to read an extract from the Deseret Evening News of April 26, 1886, giving the court news of that day. It is as follows:

The hearing of criminal cases at the April term of the Third district court commenced this morning. * * *

The first case called for trial was that of the United States *v.* Stanley Taylor, against whom four indictments had been found, charging violations of the Edmunds law by living with and acknowledging as his wives Hannah Taylor and Mary Ann Taylor from April 1, 1883, to December 31, 1883; January 1, 1884, to December 31, 1884; January 1, 1885, to December 31, 1885; and January 1, 1886, to February 1, 1886, respectively. A plea of not guilty was entered to each charge.

The following open *venire* jurors were called, of whom Judge Zane remarked that they were "all odd numbers:"

That is equivalent to saying they are all non-Mormons, because in selecting juries, as explained to you by Mr. West, the odd numbers are drawn by the clerks of the district courts, and the even numbers by the probate judges, so that you can tell exactly whether a man is a Mormon or a non-Mormon by his number. It appears that none but odd-numbered men were summoned to sit on this jury; but these men were selected by an open venire.

The CHAIRMAN. Were they all Gentiles?

Mr. CAINE. I presume so; the judge said they were all odd numbers, and I do not think the marshal was ever known to summon a Mormon juror for a case of this kind. [Reading:]

The defendant was then called as a witness and testified that from April 1, 1883, to December 31, 1883, Hannah and Mary Ann Taylor, the ladies named in the indictment, were his wives and had lived with him in that relation.

The jury, by N. Trewick, foreman, rendered a verdict of guilty without leaving the box.

Sentence was fixed for Monday, May 3, and the other three charges were continued for the term, and the witnesses excused.

Mr. CAINE. It probably took less time to try that man than it has taken me to read the account of the trial. The defendant was convicted on his own testimony.

Mr. CASWELL. You do not understand he was called against his will?

Mr. CAINE. No, sir. He testified voluntarily. In preference to having his family called into court, he went on the stand himself; and that is done in a great number of cases.

Here is another case—the Bergen case. You will notice that the other three cases against Taylor were continued for the term. There are cases pending before the United States Supreme Court in which this question of the segregation of unlawful cohabitation is involved, and doubtless the courts in Utah are waiting a decision upon that point before proceeding further

The CHAIRMAN. Has that case been argued?

Mr. CAINE. Yes, sir. The cases were argued by Mr. Richards and by Mr. George Ticknor Curtis.

The CHAIRMAN. The other day?

Mr. CAINE. Yes, sir. They are what are known as the Snow cases.

The CHAIRMAN. Then it will be decided before the court adjourns?

Mr. CAINE. I presume so. The Bergen case which I was speaking of is a little different. I will read:

At the conclusion of the trial of Stanley Taylor this morning in the third district court the case of the United States *v.* John Bergen was taken up. The same jury as in the Taylor case was retained in the box to try the defendant, against whom the grand jury had found four counts in one indictment, charging unlawful cohabitation with his wives.

There were four indictments against Taylor, but in Bergen's case there were four counts in the same indictment.

Mr. Sheeks, for the defense, asked that the prosecution be required to elect upon which count they would proceed.

Mr. Dickson argued that section 1024 of the Revised Statutes of the United States authorized the prosecution to proceed upon all the counts in the indictment, and the court ruled that this position was the proper one. The defense took exception to the decision.

The clerk then read the indictment to the jury, the time included in the four counts being as follows: May 1, 1883, to December 31, 1883; January 1, 1884, to December 31, 1884; January 1, 1885, to December 31, 1885; and January 1, 1886, to March 31, 1886.

You see they bring the charges right up to date. The trial was still in progress when this paper went to press, but by subsequent papers I learn that he was convicted on all the counts and also held on the charge of polygamy. So that the probability is that John Bergen will be a very much older man when he gets out of the penitentiary than he is to-day.

Now, Mr. Chairman, that the purpose of the minority represented by the late Federal officials, and by the faction which has sent representatives here to clamor for additional legislation, is simply political, can be proved to you beyond any question of doubt. You are aware that the President of the United States removed Eli H. Murray from the office of governor of that Territory because he causelessly vetoed an appropriation bill and left the courts, the insane asylum, and almost the whole machinery of the Territorial government without financial resource. The pretext for this veto was the refusal of the legislative council to confirm nominations for certain Territorial offices made by the governor. For thirty-four years these offices have been filled by the chosen representatives of the people, or elected by the people themselves. The incumbents were ministerial officers; they were without political power or patronage. One was the Territorial auditor of public accounts, another was the Territorial treasurer, and the third was the superintendent of the district schools.

It is true that the organic act was silent as to the method of filling these particular offices. It did provide, however, that certain local offices should be created and filled as the legislative assembly might prescribe, and by inference offices which might, by necessity, be created by the legislative assembly should be filled by the governor's nominees, when the same were confirmed by the legislative council. The incumbents of the offices were elected by the people in 1881 under the provisions of an act of the legislative assembly, which prescribed the term of office to be four years, or until their successors were elected and qualified. That election was held during the first term of Governor Murray, and the persons chosen were duly commissioned by him. Nevertheless, he set up the plea that the term for which they were elected having expired, and the persons whom he had nominated not being confirmed, the incumbents were usurpers, and that because those whom he nominated were not confirmed by the legislative council, he would not approve the bill making appropriations for the courts, for the pay of jurors and witnesses, for the maintenance of the insane asylum, and for other public purposes; because, as he alleged, those in possession of the offices were irresponsible, and the bonds which they had given were null and void. This in the face of a well-recognized principle of common law, that the bonds of *de facto* officers were valid, and in despite of the decision of the Supreme Court of the United States, in the case of the Miners' Bank against the State of Iowa, where it is held that the acts of the legisla-

tive assembly of the Territory are valid until the same are disapproved by the Congress of the United States.

CHAIRMAN. Have you given the volume to which you refer?

Mr. CAINE. No, sir.

The CHAIRMAN. You had better give it.

Mr. CAINE. It is 19 Curtis, page 1; 12 Howard, Miners' Bank *v.* The State of Iowa. Bear in mind that there was no pretense that these officers had not faithfully performed their duties; there was no allegation that one penny of the public money had been wrongfully used or had not been accounted for. There could be no claim that the superintendent of the Territorial schools had exercised his powers for sectarian purposes. No sectarian books are allowed to be used in the public schools. The Commissioner of Education certifies to the fact that the public schools of Utah have been carefully managed and supervised. Facts speak for themselves. There is no Territory where the percentage of illiteracy is so low as in Utah.

The question about the appointment of those officers has been an open one in Utah for years. I do not pretend to construe the law or to say who is right and who is wrong in the matter, that is a subject for the courts. The facts are these, and I so represented them to the administration. The Territorial legislature, in 1852, created the offices of Territorial treasurer and Territorial auditor, and provided for the manner of filling the same by the joint vote of the legislative assembly. The dispute first arose during the incumbency of Governor Wood. He claimed that the organic act provided that those officers should be nominated by the governor, and appointed by and with the consent of the legislative council. When George W. Emery became governor, the question was submitted to him. I myself talked with him about it, and he said he wished that the legislature would provide that these officers should be elected by the people; that it was always safe to trust the people. He said, in substance "As far as I am concerned, I do not wish to enter into this controversy; I do not care about appointing any officers, and you had better provide for having them elected by the people. A law to that effect was passed and signed by the governor, I think that was in 1878, and those officers have been so elected ever since.

After Governor Murray had been there some time the question was again agitated, he claiming that it was his prerogative to appoint all Territorial officers by and with the advice and consent of the legislative council, under the provisions of section 7 of the organic act of the Territory. Now, the Territorial statute provided that they should be elected by the people, and I hold that this was the law of the land, binding alike upon the governor and the legislative assembly, and was in full force, not having been disapproved by Congress or set aside by any court of competent jurisdiction. The officers were, therefore, the officers *de facto* until superseded by legal successors. The fact that these officers held over, furnished no excuse for the governor's action in vetoing the appropriation bills, and thus crippling the Territory for the next two years.

Facts speak for themselves. There is no Territory where the percentage of illiteracy is so low as in Utah. Few States in this Union show so small a percentage of persons who cannot read as there are in Utah. No Territory in proportion to its population contributes so liberally for the maintenance of public schools. What, then, was the pretense for demanding the ousting of the auditor of public accounts, the Territorial treasurer, and the superintendent of public schools? That

they were Mormons; nothing else. Who were the persons the governor nominated to fill these offices? Non-Mormons; representatives of the faction that demand the disfranchisement of all the Mormons. This faction would not be satisfied while a single Mormon held office in the Territory. What did Mr. Baskin propose as a remedy for the evils of which he complained? A legislative commission, composed of thirteen persons, who were to exercise all the legislative power, uncontrolled save by the Congress of the United States, with power to appoint all local officers. Outside of a few principal cities, you could not find enough non-Mormon residents to fill the local offices. Who then would be imposed upon the people? Aliens; men who had no interest whatever in the prosperity of the people; men who had no local attachments, and no property interests. But I will not dwell upon the subject, since the committee has indicated it would not entertain such a proposition.

Mr. BASKIN. I do not propose to fill the local offices by appointment. I propose to leave that stand as it is; simply to give them legislative power.

Mr. CAINE. Don't you know the first thing the commission would do would be to disfranchise all the Mormons.

Mr. BASKIN. If I were a member of it that would be the first thing I would do. I would not let any man who taught Mormonism and tried to get others to violate that law have a vote. That is what I would do if I were on the legislative commission.

Mr. CAINE. That is just what I have said.

Mr. BASKIN. That is just what I would do.

Mr. CASWELL. Were these men who were turned out of office polygamists?

Mr. CAINE. No, sir. No polygamist can hold office.

The CHAIRMAN. Are none of the probate judges, sheriffs, clerks of the county, polygamists?

Mr. CAINE. No, sir.

Mr. RICHARDS. There has not been a polygamist in office for nearly four years.

Mr. CAINE. When the Edmunds law was passed, there were a great many of the officers who were in polygamy. Quite a number of the selectmen, who constitute a board similar to the board of county commissioners in other places, were polygamists. They resigned their offices. They saw that under the provisions of the Edmunds act they were not entitled to hold office, and that no question might arise as to the validity of their acts, they retired.

I know that in the city council of Salt Lake City, with which I was connected at that time as an officer, quite a number of the polygamists resigned, and men who were eligible were appointed in their places. A similar course was pursued in other cities and counties. Although they would doubtless have been entitled to hold their offices until their term expired, they preferred to resign, and they did so voluntarily, in order that no question should arise. Nearly all of those who were ineligible, whose places could legally be filled, took this course.

The CHAIRMAN. But those who were appointed afterwards believed in polygamy, although they did not practice it?

Mr. CAINE. Yes, sir; I suppose so. The question of belief had not entered into the controversy until recently. They have never been called upon to swear as to belief, except on juries. The test oath has not yet become a law. What my friend Baskin proposes is to make belief a qualification of voting and holding office.

The CHAIRMAN. The test oath is only as to jurors?

Mr. CAINE. Yes, sir.

Mr. CASWELL. What makes you think these men were put out of office because they were Mormons?

Mr. CAINE. Because there is no other good reason. There has been no reason assigned. They have never been incompetent, and have always discharged their duties faithfully. They have never been accused of any crime. The only crime that they have committed is that of being Mormons.

It may be said, however, that since the veto of the appropriation bill, and the adjournment of the legislative assembly, Governor Murray appointed persons to the offices above named, and that upon proceedings had in the courts, the chief justice of the Territory has sustained the action of the governor. This is true. But a sufficient answer to it is the mere statement that less than eighteen months since, the same judge, Chief-Justice Zane, held in *quo warranto* proceedings, begun by men appointed for the same offices to be filled by the joint action of the governor and the legislative council, and therefore the persons claiming by virtue of a nomination by the governor had no title, because the legislative council had not confirmed; and yet, in pursuance, as I verily believe, of a prearrangement and understanding, Chief-Justice Zane, within the past ten days, held that the incumbents were usurpers; that they had no title to the offices, and that the appointees of the governor, who had no more warrant or title to the offices than the persons whose claims, eighteen months since, he decided against, were duly appointed under section 1858 of the Revised Statutes of the United States, which provides that vacancies from resignation or death, during the recess of the legislative council, in any office, which under the organic act of any Territory is to be filled by appointment by the governor, by and with the consent of the council, may be filled by the governor granting a commission, which shall expire at the end of the next session of the legislative council.

The act of March 22, 1882, Senator Edmunds declared during the debate on the bill now before you was intended to apply to all classes and sects. When it was pointed out to him by Senator Brown that the court had held in one case where a non-Mormon had been arrested on a charge of unlawful cohabitation that it did not apply to such cases, Mr. Edmunds said that he was confident, when the facts were all known, they would turn out to be different from what they were represented to be.

I will read the third section of the Edmunds law, so you may understand the position:

> That if any male person in a Territory or other place over which the United States have exclusive jurisdiction hereafter cohabits with more than one woman, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $300, or by imprisonment of not more than six months, or both.

The committee will notice it does not say "any husband who cohabits," but "that if any male person in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be," &c.

The CHAIRMAN. In that particular section you read, the words "polygamy" and "bigamy" are not associated.

Mr. CAINE. No, sir. I want to refer to this case. It was that of one Rudolph Ames, a non-Mormon, living at Payson, Utah, who was arrested on a charge of unlawful cohabitation. He was first brought before a United States commissioner and bound over; he then sued out a

writ of habeas corpus before Judge Zane. I have the proceedings and can furnish them to the committee.

The CHAIRMAN. I wish you would.

Mr. CASWELL. Cohabiting is to live together as man and wife.

Mr. CAINE. It does not say "cohabiting as man and wife." The language is, "if any male person in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman," &c.

Mr. CASWELL. Any male person who shall cohabit with more than one. That is, shall live as man and wife?

Mr. CAINE. That may be a lawyer's definition, but there were some of us out there in Utah who were ignorant enough to believe that unlawful cohabitation had an element of sexual cohabitation in it; and we went on that presumption. But, alas, some of us are in the penitentiary, because we entertained that belief, and yet the element of sexual cohabitation, as I understand, has been an element in unlawful cohabitation cases both in England and in this country for 200 years. Rudolph Ames had seduced, debauched, his wife's sister while she was living in his house, and had continued cohabitation with her, she having a child by him. He was brought before Judge Zane on a writ of habeas corpus, and discharged on the ground that his offense was not one of unlawful cohabitation under the third section of the act of March 22,1882. I have the proceedings here as they occurred before the commissioner, and the decision of Judge Zane in the habeas corpus case. Senator Edmunds declared that a judge who would be guilty of rendering such a decision as this was represented to be ought to be impeached. If required I can submit the papers and leave you, gentlemen of the committee, to take such action as you think proper.

I submit to you, also, the facts in regard to the various and varied interpretations section 3 of the act of March 22, 1882, has undergone by the courts of Utah. In the first place, early in the beginning of the prosecutions for unlawful cohabitation, the case of A. M. Musser, convicted of unlawful cohabitation, the defendant, when asked by Judge Zane before passing sentence what his conduct in the future would be, inquired of the court which of his wives he might live with, and which one he should separate from. Judge Zane replied that he could live with either—that the law only permitted him to live with, to recognize, and "hold out" one woman as his wife.

In the unlawful cohabitation case of John Daynes, which was tried about the same time as the Musser case, Daynes' attorney asked the court:

If the defendant was compelled to live with either of his wives?

The answer of Judge Zane was:

There is no punishment imposed on a man that does not live with his lawful wife. Still it is his duty to live with his lawful wife, unless from some justifiable cause he lives separate and apart from her. It is a man's duty to live with his lawful wife and to support her and support her children, and with nobody else. The Edmunds law imposes no punishment upon a man who does not commit the offenses defined in that law, which are polygamy and unlawful cohabitation with more than one woman.

Mr. BASKIN. There is some mistake about it. If they were both polygamous wives, then I can understand it.

Mr. CAINE. In the Daynes case one was a lawful wife. He promised to obey the law, and is now living with his polygamous wife.

Mr. BASKIN. Not by the consent of the judge. There is some mistake about it, that a man can leave his legal wife and take up with his plural wife.

Mr. CAINE. That is just what I understand Daynes has done.

Mr. BASKIN. There is some mistake about it.

Mr. CAINE. That may be, but the mistake was with the court.

Mr. BASKIN. Judge Zane is a clear-headed man.

Mr. CAINE. Yes, he may be a clear-headed man, but he sometimes makes mistakes. Mark the fact, in the Musser case there was not one word about lawful wife. In the case of Lorenzo Snow, who was convicted of unlawful cohabitation in the first judicial district in December, 1885, the defense excepted to the ruling of the court, which was as follows:

> It is not necessary that the evidence should show that the defendant and these women, or either of them, occupied the same bed, slept in the same room, or dwelt under the same roof; neither is it necessary that the evidence should show that within the time mentioned in the indictment, the defendant had sexual intercourse with either of them. The question is, were they living in the habit and repute of marriage. The offense of cohabitation is complete when a man, to all outward appearances, is living and associating with two or more women as wives. If the conduct of the defendant has been such as to lead to the belief that the parties were living as husband and wife live, then the defendant is guilty. Of course the defendant might visit his children by the various women; he may make directions regarding their welfare; he may meet the women on terms of social equality, but if he associates with them as a husband with his wife, he is guilty. The Edmunds law says there must be an end to the relationship previously existing between polygamists. It says that relationship must cease.

The supreme court of the Territory sustained this ruling, and Judge Zane, in delivering the opinion of the court, said that where there was a lawful wife the law presumed matrimonial cohabitation with her, because it was a duty and was usual. The lawful wife of Snow was living and undivorced, and the relationship between the two was recognized, although it was claimed they did not live together as man and wife—the lawful wife testifying to this fact. It was proved, also, as the court recognized, that Snow had his home with only one of the women to whom he had been married, and that the intercourse with the others was not proved to be that of a man with his wives. Nevertheless, because he had a lawful wife with whom he did not live, it was held that the living with another woman not his lawful wife constituted unlawful cohabitation.

In another one of the Snow cases, there being three indictments against him, there was no evidence whatever that he had any intercourse with any of the women, except the one with whom he had lived from and after the passage of the act of March 22, 1882. In this case Judge Powers, of the first judicial district, instructed the jury as follows:

> If you find beyond a reasonable doubt, that the defendant had during the year 1884 a legal wife living in Brigham City, Box Elder County, Utah Territory, from whom he was undivorced; that he recognized her as his wife; held her out as such wife, and that during the same year he lived in the same house with the woman Minnie, recognizing her as his wife, associated with her as such, and supported and held her out as a wife, then the offense of unlawful cohabitation is complete, and you will find the defendant guilty. The legal wife in this case is the one whom the defendant first married.

This would seem to be the doctrine laid down in Judge Zane's opinion in the first case appealed to the Supreme Court, but he dissents, and Powers, himself with Boreman, his associate, overruled the chief justice. It does seem that the law is interpreted to fit each particular case. It is no better when we come to the Supreme Court of the United States. When the case of Murphy *v.* Ramsey, one growing out of the action of the Utah Commissioners in applying the eighth section of the act of March 22, 1882, was decided by the Supreme Court, a clear distinction was

made between those who were living in a polygamous state and not cohabiting with more than one woman, and those who continued to cohabit with more than one. The court said in so many words, that a man might have several wives, keep up several establishments, and yet if he did not cohabit with more than one woman he would not be guilty of a criminal offense. But a year later, in Cannon *v.* The United States, they held the opposite.

Mr. West has explained to the committee the manner of selecting jurors under the Poland law.

This act was the first attempt to deprive the people of Utah of the right of local self-government—"a right sacred to free men and formidable to tyrants only." By this law the selection of jurors was taken out of the hands of the majority and one-half of all jurors given to the minority; for as the clerk of the district court is always a non-Mormon, it follows that he will select his part of the jurors from his own class. Thus the non-Mormons, who could not have been over 10 or 12 per cent. of the population, were given 50 per cent. of all the jurors for their civil and criminal business.

The CHAIRMAN. Have you ever considered the question in this connection, about the qualifications for a juror? Do you consider it is unconstitutional to say that a man shall not sit on a jury who believes in polygamy, to try a case of this kind?

Mr. CAINE. I do not think it has ever been so claimed. I am not aware that such a point has ever been made. I was speaking about jurors generally, not jurors to sit on cases of polygamy specially. I claim, however, that a man is entitled to be tried by a jury of his peers and not by a jury of his enemies, who are warranted to convict. No charge has been brought against the integrity of Mormon jurors. In this connection I want to quote a distinguished authority, no less than our learned friend here, Mr. Baskin, who testified as follows, before the House Committee on Territories, January 21, 1870:

> I have been for five years past a resident of Utah. I must do the Mormons the justice to say that the question of religion does not enter into their courts, in ordinary cases. I have never detected any bias on the part of jurors there in this respect, as I at first expected. I have appeared in cases where Mormons and Gentiles were opposing parties in the case, and saw, much to my surprise, the jury do what is right.

This statement is found in a pamphlet entitled "Fruits of Mormonism."

Mr. BASKIN. Is that all of it—all that I said?

Mr. CAINE. That is all that is here. The document containing the full proceedings, I presume, can be found.

Mr. BASKIN. I remember the occasion very well, and I know just what I said.

Mr. CAINE. I hope you do.

Mr. BASKIN. I will explain that.

Mr. CAINE. You appear to have told some truth.

Mr. BASKIN. Yes; I do justice to every person, or at least aim to; but I will explain.

Mr. CAINE. The committee will see by this the character of the men who are deprived of the privilege of serving on juries in Utah.

When jurors are to be selected in the trial of a cohabitation case the *belief* of the person appearing or offered as a juror or talesman is inquired into. If he is a Mormon that is sufficient. The *sympathies* of jurors are also inquired into. The question is put, "Are you in *sympathy* with the Government in these prosecutions?" I know that these statements will seem improbable to you who are accustomed to the old-fash-

ioned administration of the law. I have some evidence on this point that I can give to the committee, if necessary.

Mr. Baskin dwelt at some length in his opening argument upon the defense fund, which he claimed was a combining together of the people, at the dictation of the church authorities, to resist the enforcement of the law against polygamy and unlawful cohabitation. This was a misrepresentation of the facts. The defense fund of which he spoke is a voluntary contribution for the sole purpose of providing those who were not able to pay lawyers with competent legal advisers. One of the cardinal principles of the Mormon Church is to befriend and assist those of the faith who are unable, by any cause, to help themselves. It is the bounden duty of Mormons to provide for the poor in their midst, and each ward and stake does this. The defense fund was made general, all wards and stakes forewarding contributions to John Sharp, who was chairman of the central committee of the people's party. These contributions were not sent to him because of his political position, but because he was a well-known gentleman, a man of means; and the mere fact that he was to be the receiver of these contributions was a guarantee to every one contributing that proper use would be made of the same.

This was simply Mormon co-operation, each one contributing, and when any one was brought up these parties saw that he had proper counsel. There was nothing illegal about it. No defiance of the law, or anything of the kind, because everybody submitted to the law, as you have seen; they went in and testified against themselves.

Mr. Baskin also dwelt at great length and with much emphasis upon what he claimed to be a fact, namely, that the Mormons questioned the good faith and the motives of those who urged the enactment of legislation against them, and the honesty of the interpretation of existing laws by the courts. He sought to torture into acts of resistance and defiance the mere exercise of constitutional right which the people have to appeal to the courts of last resort whenever they believed that error has been committed by the courts below. As has been pointed out to you so clearly and ably by Mr. Richards, the people from the beginning have been anxious to have a plain interpretation of the law against cohabitation, so that they might know what they had to do in order to comply with the same; and as Mr. Richards has demonstrated to you, when persons were asked to say whether they would obey the law in the future, they did not decline to promise in any spirit of defiance, but simply because they could not conscientiously agree to abandon, in the full sense of the word, the wives they had promised to cherish and protect, and to surrender the right and disregard the duty imposed upon them—to care for their children.

The CHAIRMAN. Let me ask you, if it is not objectionable, do you believe that the people of the Mormon faith, who have been engaged in polygamy, if they were permitted, or if it was not made unlawful by the interpretation of this law for them to provide for the support of their children, and if the women with whom they had formed this polygamous union, abandoning all the status of marriage with such women in all respects, that they would be willing to accede to that law, and to obey it?

Mr. CAINE. I can only answer that question by citing cases where leading men in the church have made arrangements with their families to live apart from them. I heard President Taylor say after the passage of the Edmunds law that he did not wish to appear before the country as an obstructionist, and that he arranged with his family to live apart from them; and, as I understand, he has not lived with them since.

The CHAIRMAN. Does he support them?

Mr. CAINE. Yes, sir, certainly; that I take for granted. Another gentleman, Lorenzo Snow, who is one of the oldest and most influential of the quorum of the apostles, lived apart from all his wives but one, and supposed he was living within the law.

The CHAIRMAN. A word in connection with legislation about this matter and the rights that grow out of it. It is proposed in this bill to restore the right of dower. Suppose that it should be provided that this right of dower should attach in favor of the first wife?

Mr. CAINE. That is the only one it proposes to attach to; it is the only one it could attach to legally.

The CHAIRMAN. I understand; but how would that be regarded by those who had formed this polygamous relation as to the relative rights of the first and the subsequent marriage?

Mr. CAINE. They would not regard it with any favor or sense of justice, because they are bound to their plural wives, to see that they are supported, and that provision is made for them, in the case of the death of the husband, the same as is made for the first wife. I think a man would be recreant to his duty who would not make provision for the women who had entered into marital relations with him in good faith, and for children who had been born to them.

The CHAIRMAN. What I was looking to was this: Suppose the man who has had this polygamous relation is to be regarded still under the law, and in legislation, as a married man, to whom shall he be considered as married; to the first, or any wife he may choose, or married to none, and with the privilege of marrying somebody else?

Mr. CAINE. The law, as we understand it, as was explained by Mr. Richards the other day, is that the first wife is the legal wife.

The CHAIRMAN. Yes; that is what I wanted to get your opinion about.

Mr. CAINE. That is as I understand it, and any right of dower that would attach to the first wife alone would work an injustice to the others.

The CHAIRMAN. Permit me to ask you this question, without going into any of the secrets of which Mr. West spoke: Is there anything in the marital obligation, the marital contract, looking upon marriage as a state which is the result of a civil contract? If that is the true method of looking at marriage, is there anything in the contract which is made by the man with his first wife, upon which the relation of marriage is founded, which is different from the contract which he makes with the second wife?

Mr. CAINE. Nothing whatever. The ceremony is just the same, and the revelation upon celestial marriage, which I wish I had time to read, applies just as much to a man with one wife as to he who marries two or more; that is, so far as entering into that order of marriage is concerned, and his hopes of eternal exaltation are proportionately just as great.

The CHAIRMAN. Why is it that you and Mr. Richards both hold that if there is a continuing marriage relation at all it must be between the man and his first wife? I want to get at how you determine that.

Mr. CAINE. She has doubtless the greater claim on him, being married to him first; she is probably the wife of his youth, and if there is any preference to be given, I would say it should be given to her; but still there are circumstances sometimes that might vary this. Suppose a man have a wife who has young children who require the care of the father more than the first wife's children do, who are grown and married and have left the parental roof. There might be circumstances

where it would seem that justice or duty would require a man to live with a wife other than the first; but my own feelings would be that, all other things being equal, the first wife should have the preference.

The CHAIRMAN. You have answered my question. You will remember that in answer to a former question you said that the nature of the contract entered into between the man and the first and second wife was not different at all.

Mr. CAINE. If you refer to the ceremony, the ceremony is just exactly the same.

The CHAIRMAN. You hold that the priority of obligation gives a preference of duty?

Mr. CAINE. I should think so. What is your opinion, Mr. Richards?

Mr. RICHARDS. I will try to answer that question, if desired by the committee.

The CHAIRMAN. I really would like to hear the views of you different gentlemen in regard to that.

Mr. RICHARDS. I do not wish to be understood as stating that there is any preference in the law of the church; all of the marriages are believed to be equally sacred; but, as a lawyer, I say that the first wife has a legal status that none of the other wives have; and I also say that this status is recognized by the Mormon people.

The CHAIRMAN. *Prior in tempore potior est in jure.*

Mr. RICHARDS. Yes, sir; the first wife occupies a legal status that is not claimed by any of the others; they realize that, and recognize the fact that such is the law. Each family—I cannot say each individual, because they are all interested in this matter; the husband and all of his wives, and, with them, their children—each family undertakes to determine for itself where the greatest moral obligation is in relation to this matter.

The CHAIRMAN. But what I want is to get your sentiment; you are very frank about it, and I will be very frank in putting the question. Suppose we were proposing to change the whole of the previous relation into the new relation, would the sentiment that exists among the Mormon people be such that they would feel that any wrong had been done in giving preference to the first wife over the subsequent wives in perpetuating the marriage relation?

Mr. RICHARDS. I would not answer that question by saying either yes or no. The circumstances of the different families would determine it. Some families would feel very much aggrieved, and others would feel comparatively satisfied. For instance, in the case of Lorenzo Snow, that has been referred to, he lived with his last wife exclusively, and the rightfulness of his action in so doing was recognized by every member of the family. The reason for it was simply this: The last wife had young children, while the children of the other wives were grown up and had homes of their own. The wives all felt that if he could only live with one, it was right and best, under the circumstances, that he should live with the last wife, and accordingly he did so. That was the feeling in that family. Take another family, differently situated, and the feeling might be the reverse. I do not know whether I make my meaning clear.

The CHAIRMAN. Yes; I understand you, I suppose, Mr. Richards, that it would put every man in an awkward predicament where he had plural wives of telling them that they might choose between themselves which one should be his future wife.

Mr. RICHARDS. Of course, sir, I realize the force of your question. I will say in this connection, however, that the Mormon people are not

wanting to give up any of their wives when you come to the question of choice between them.

The CHAIRMAN. I understand that.

Mr. RICHARDS. They say they want to retain them all.

The CHAIRMAN. Yes, sir; I understand, but I am putting this question to you, that if the law puts them to their election, as the equity courts say, what would be their idea as to the right and the duty of the husband under the circumstances?

Mr. RICHARDS. I think it would vary with the circumstances of the different families, just as I have stated. They would feel, very likely, everything else being equal, as Mr. Caine has suggested, that the first wife would be the one the husband should live with, but other circumstances might influence them to reach a different conclusion.

The CHAIRMAN. But if the relation of marriage was recognized by the law between the man and his first wife, with the recognition of the obligation on his part to look to the support of the other wives, with whom he had had this relation, and the children of the other wives, that, you think, would meet the general sentiment of the Mormon people?

Mr. RICHARDS. I can hardly say that, sir. I do not think anything would meet the general sentiment of the Mormon people that called on them to give up any of their wives.

The CHAIRMAN. I understand you, but if they have to abandon the system, then the recognition of the first wife as the lawful wife, and the one the man was to live with, would meet their acquiescence.

Mr. RICHARDS. It would be as good an arrangement, perhaps, as you could make, under the circumstances. At all events, I cannot at present suggest a better one.

The CHAIRMAN. I will not press you any further.

Mr. BASKIN. Will you allow me to ask you a question in this connection?

Mr. RICHARDS. Certainly.

Mr. BASKIN. Is it not a fact that the Mormon people acknowledge the first wife as the legal wife simply because the law over which they have no control so fixes it?

Mr. RICHARDS. Certainly; if there was no law there could be no legal wife. The question answers itself.

Mr. BASKIN. A law which they cannot control.

Mr. RICHARDS. That Mr. Baskin may understand me I will repeat what I stated before, that the marriages are all equally sacred in the opinion of the people.

The CHAIRMAN. In the ceremony; the circumstances creating them?

Mr. RICHARDS. Yes, sir; equally sacred and equally binding in their character. Now, if there was no law, I cannot conceive how there could be a legal wife.

Mr. CAINE. I want to say in this connection—and I do not wish to be misunderstood—that the church and the people know no difference between the wives, only that the wife first married is the first wife, and if she maintains her integrity, that is her place, and no one can take it from her. But so far as the wives are concerned, as I told you, the ceremony binding them to their husband is exactly the same, and their relationships to him are the same. They are all his wives.

I am not going to argue the legal points involved in the proposition to repeal the charter of the church of Jesus Christ of Latter-Day Saints. I merely wish to cite the committee to one case, The Miners' Bank *v.* The State of Iowa, which you will find in 19 Curtis, page 1, where the Supreme Court of the United States holds that the acts of the legis-

lative assembly are valid until the same are disapproved by Congress. The language of the court is as follows:

> Congress, in creating the Territorial governments, and in conferring upon them powers of general legislation, did not, from obvious principles of policy and necessity, ordain a suspension of all acts proceeding from those powers, until expressly sanctioned by themselves, whilst for considerations equally strong they reserved the power of disapproving or annulling such acts of Territorial legislation as might be detrimental. A different system of procedure would have been fatal to all practical improvements in those Territories, however urgently called for; nay, might have disarmed them of the very power of self preservation. And invasion or insurrections, or any other crisis demanding the most strenuous action, would have had to remain without preventive or remedy till Congress, if not in session, could be convened, or when in session, must have waited its possible procrastinated aid.
>
> The argument would render also the acts of the Territorial governments, even the most wholesome and necessary, and though indispensably carried to the extreme of authority, obnoxious to the charge of usurpation or criminality. The reverse of this argument, whilst it is accordant with the investiture of general legislative power in the Territorial governments, places them in the position of usefulness and advantage toward those they were bound to foster, and subjects them at the same time to proper restraints from their superior.

The CHAIRMAN. I have no doubt about that.

Mr. CAINE. Now, suppose that the legislative assembly of a Territory had passed a general incorporating act, as it was perfectly competent for it to do; that under this general law a corporation was organized and empowered to do certain things—acquire property and manage it in any way not forbidden by the Constitution or by any general enactments of the supreme power; that this corporation thus organized became vested with certain rights; will it be pretended that, if thirty-odd years later, the supreme legislative power should repeal, annul the general incorporating act, the corporations which had been organized under it could be deprived of their vested rights? The Supreme Court says that a law passed by the legislative assembly which was within the scope of legislative power intrusted to it is a valid law until Congress disapproves it. The organic act of Utah says—

> That the legislative power of said Territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act, but no law shall be passed interfering with the primary disposal of the soil. No tax shall be imposed upon the property of the United States, nor shall lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and if disapproved, shall be null and of no effect.

Now, the act of the legislative assembly incorporating the Church of Jesus Christ of Latter-Day Saints was within the scope of legislative power granted to the Territorial assembly of Utah. If vested rights acquired under a general act of that assembly could not be disturbed, could rights which are vested by a special act be disturbed?

I admit that any religious or charitable organization or association created or formed after 1862 could not acquire and hold real estate exceeding in value $50,000. But the act incorporating the Church of Jesus Christ of Latter-Day Saints contained no provision whereby the right to repeal or alter its charter was reserved. The body corporate created thereby cannot be deprived of any of its rights which are vested in it by virtue of a valid law without doing violence to the principle of law which was laid down in the Dartmouth College case, and in all the cases wherein the fundamental principle of the inviolability of contracts has been held to be sacred.

Mr. Baskin argued that the Mormon Church was a theocratic power, and that it was, in fact, the State in Utah—the power which controlled

the civil authorities. I deny that the Mormon Church is anything of the kind; that it is an ecclesiastical organization, and wields civil authority. The Mormons are largely in the majority in Utah. They are assailed by a minority which demands their disfranchisement. Self-protection has compelled them to unite. It is not their fault if the lines are strictly drawn. They did not make the issue. It was forced upon them, and they simply stand by one another. It would be precisely the same if the vast majority of the people of Utah were Roman Catholics, and the minority attempted, by ceaseless agitation, and by appeals to Congress, to deprive them of the right of local self-government.

If there had been any disposition on the part of the Mormon people to organize a theocratic government they had an excellent opportunity to have done so when they first went to that Territory, when there was no law in existence, when there was no government instituted there. But did they do that? Not at all. What was their first act upon arriving there? After they had given thanks to Almighty God for their deliverance, they showed their loyalty to their country by climbing up on Ensign Peak, a mountain behind the city, and there raised the American flag—the first time the Stars and Stripes had floated over the Rocky Mountains. In a short time they called a constitutional convention and adopted a constitution, and here it is. It is a very ancient-looking document. It is entitled "Constitution of the State of Deseret," and embraced in this pamphlet are also the journal of the convention which formed it and the proceedings of the legislature consequent thereon. There was no printing press established at that time in the Territory. This constitution had to be sent down to Kanesville (now Council Bluffs) to be printed. This convention assembled on the 5th of March, 1849, and they adopted a State constitution. They said in that constitution, in the

DECLARATION OF RIGHTS.

SECTION 1. In republican governments all men should be born equally free and independent, and possess certain natural, essential, and inalienable rights, among which are those of enjoying and defending their life and liberty, acquiring, possessing, and protecting property, and of seeking and obtaining their safety and happiness.

SEC. 2. All political power is inherent in the people; and all free governments are founded in their authority and instituted for their benefit; therefore, they have an inalienable and indefeasible right to institute government, and to alter, reform, and totally change the same when their safety, happiness, and the public good shall require it.

SEC. 3. All men should have a natural and inalienable right to worship God according to the dictates of their own consciences, and the general assembly shall make no law respecting an establishment of religion or of prohibiting the free exercise thereof, or disturb any person in his religious worship or sentiments, provided he does not disturb the public peace nor obstruct others in their religious worship; and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws; and no subordination or preference of any one sect or denomination to another shall ever be established by law; nor shall any religious test be ever required for any office of trust under this State.

Now, Mr. Chairman, those sentiments were uttered by the Mormons when they were not a part of the United States; the Territory had not then been acquired from Mexico.

The CHAIRMAN. And it was under that constitution that the church was incorporated?

Mr. CAINE. Yes, sir; and those are the principles they announced. If there is anything theocratic about that, or any union of church and State, I fail to see it.

Mr. RICHARDS. That was a year and a half before the organic act of the Territory passed.

Mr. CAINE. Its wording is probably crude, Mr. Chairman, but there are the broad principles of American liberty set forth, and the doctrines of local self-government and religious freedom plainly announced.

Mr. Baskin's argument was assertion and assumption. He asserted that the act incorporating the Church of Jesus Christ of Latter-Day Saints gave it power to make laws, and to punish infractions thereof in contravention of the law of the land. He read to you a portion of the 3d section of the act incorporating that church, and when asked to read all of the section, he refused, saying that he had read so much as suited his purpose. The part he refused to read was as follows, and I wish the committee to notice this language. He tried to make it appear that the charter authorized them to make laws that would be in contravention of the laws of the United States. Now, here is what the law says:

Provided, however, That each and every act or practice so established or adopted for law or custom, shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowships, or the religious duties of man to his Maker; inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality, and are *not inconsistent with or repugnant to the Constitution of the United States, or of this State, and are founded in the revelations of the Lord.*

That is what I wanted Mr. Baskin to read yesterday but he refused. He asserted that the doctrine of blood atonement, the actual shedding of the blood of sinners, was part of the creed of the Mormon Church, and thereupon assumed, and asked this committee to assume, that the act incorporating the church sanctioned the shedding of blood; that the slaying of those who broke their covenants was authorized.

I submit to you, gentlemen of the committee, that the case must indeed be a desperate one which is bolstered by such reckless assertions and such violent assumptions. He read to you various extracts from sermons preached by Brigham Young in support of his assertions about blood atonement. Later on, when he came to tell you about the early settlement of the Territory, and the legislation enacted by the pioneers, he assured you that Brigham Young was no fool. I submit that the gentleman by that statement disproved his former allegations, for if you believe that Brigham Young was not a fool, you cannot believe that he would preach the doctrine of blood atonement in any other than its figurative sense. It is preposterous, unworthy of the gentleman, and unworthy the serious attention of this committee.

He tried to make a case in point out of the killing of Ike Potter and negro Tom. I do not think it is necessary to refer to negro Tom. He told you what he was killed for.

Mr. BASKIN. He was a Mormon, too?

Mr. CAINE. What, a negro Mormon?

Mr. BASKIN. Yes.

Mr. CAINE. You will have to get better up in your Mormon theology than that. But no matter whether he was a Mormon or not, he was killed for his crime, doubtless by the friends of the outraged woman.

Mr. BASKIN. And had his throat cut?

Mr. CAINE. I do not know whether he had his throat cut or not. I think that is a new version. I have no recollection of having heard that before.

Ike Potter, I had the misfortune to know. He crossed the plains with me when he was a lad. He traveled in the same company that I did, and I can testify, gentlemen, that he was a very, very bad boy.

His parents had no control over him. After he got to Utah and grew up to manhood, he associated himself with horse-thieves, and subsequently allied himself with hostile Indians in the mountains east of Salt Lake. They made a business of stealing stock, and were planning a raid upon the settlements when Potter and a companion named Walker were arrested, I believe upon the charge of horse-stealing; it is so long ago that I have forgotten some of the details. He was confined in Coalville. The Indians, hearing of his imprisonment, threatened to rescue him, and serious consequences were apprehended. The authorities attempted to remove the prisoners to a place of safety, and while being removed they attempted to escape, and Ike Potter was shot and killed. Mr. Baskin told you yesterday that Potter told Walker that the guards were going to kill them, and that they tried to escape. I know nothing about what Potter thought or what he said. His guilty conscience was, no doubt, his own accuser. He felt that he deserved death for the crimes he had committed. The worst that can be charged is that he was killed, as many a horse-thief has been killed in places where Mormons were never heard of.

Mr. BASKIN. How do you account for his throat being cut?

Mr. CAINE. I know nothing about it; I never heard of that before; I believe that also is a new version.

Mr. BASKIN. Oh, bless my life!

Mr. CAINE. Oh, you may feel very impatient, but I have no recollection of hearing of his throat being cut.

Mr. BASKIN. I was present in court, and I heard twenty witnesses testify to it.

Mr. CAINE. I did not say his throat was not cut, but your assertion that his throat was cut by the Mormons is entirely voluntary on your part.

Mr. BASKIN. The Mormons killed him, didn't they?

Mr. CAINE. I do not know who killed him, neither do you; you would have been the very man who would have prosecuted them to the death if the Mormons had killed him. If they killed him wrongfully why didn't you convict them?

Mr. BASKIN. I was not district attorney at the time.

Mr. CAINE. You would have been very willing to have volunteered your services to prosecute them had there been any probability of conviction.

The CHAIRMAN. Gentlemen, let us avoid personalities, and go on with the discussion.

Mr. CAINE. I say the gentleman makes no case against the Mormons when he quotes the killing of the horse-thief Ike Potter and the ravisher negro Tom. If such things had occurred in this country, in Virginia, Maryland, or in the District of Columbia, they would have attracted little or no attention. Ike Potter was a poor, miserable horse-thief. Even his father, when he came and got his dead body, after putting it in a wagon said, "I have got you where I can control you at last. I never could do so before."

Mr. BASKIN. His father was a Mormon, was he not?

Mr. CAINE. I do not know whether he was or not at that time. I think not.

Mr. BASKIN. I do.

Mr. CAINE. They were rather an unfortunate family.

These incidents narrated by Mr. Baskin in support of his assertion that he believed Mormons murdered apostates, might serve the purpose of a sensational story writer, or clap-trap lecturer. A gentleman

who boasts that he has been practicing law for thirty years ought to be ashamed to come before a committee of lawyers with such flimsy tales. That Mormons do not blood atone their enemies is evidenced from the presence of the gentleman here to-day. He has lived in their midst many years, and has prospered and grown rich. Mr. Baskin well knows that in no place where he has ever lived are life and property more secure than they are in Utah.

I now come "to the law and to the testimony." I have here the "Book of Doctrine and Covenants," the contents of which all Mormons accept as orthodox.

The CHAIRMAN. Is that the same book Mr. Baskin read from?

Mr. CAINE. Yes, sir; or tried to read from. I will read the chapter entitled,

OF GOVERNMENTS AND LAWS IN GENERAL.

That our belief with regard to earthly governments and laws in general may not be misinterpreted nor misunderstood, we have thought proper to present near the close of this volume our opinion concerning the same.

(1) We believe that governments were instituted of God for the benefit of man, and that he holds men accountable for their acts in relation to them, either in making laws or administering them, for the good and safety of society.

(2) We believe that no government can exist in peace except such laws are framed and held inviolate as will secure to each individual the free exercise of conscience, the right and control of property, and the protection of life.

(3) We believe that all governments necessarily require civil officers and magistrates to enforce the laws of the same, and that such as will administer the law in equity and justice should be sought for and upheld by the voice of the people (if a republic) or the will of the sovereign.

(4) We believe that religion is instituted of God, and that men are amenable to him and to Him only for the exercise of it, unless their religious opinions prompt them to infringe upon the rights and liberties of others; but we do not believe that human law has a right to interfere in prescribing rules of worship to bind the consciences of men, nor dictate forms for public or private devotion; that the civil magistrate should restrain crime, but never control conscience; should punish guilt, but never suppress the freedom of the soul.

(5) We believe that all men are bound to sustain and uphold the respective governments in which they reside, while protected in their inherent and inalienable rights by the laws of such governments; and that sedition and rebellion are unbecoming every citizen thus protected, and should be punished accordingly; and that all governments have a right to enact such laws as in their own judgment are best calculated to secure the public interest, at the same time, however, holding sacred the freedom of conscience.

(6) We believe that every man should be honored in his station, rulers and magistrates as such being placed for the protection of the innocent and the punishment of the guilty; and that to the laws all men owe respect and deference, as without them peace and harmony would be supplanted by anarchy and terror, human laws being instituted for the express purpose of regulating our interests as individuals and nations, between man and man, and divine laws given of heaven, prescribing rules on spiritual concerns, for faith and worship, both to be answered by man to his Maker.

(7) We believe that rulers, states, and governments have a right, and are bound to enact laws for the protection of all citizens in the free exercise of their religious belief; but we do not believe that they have a right, in justice, to deprive citizens of this privilege or proscribe them in their opinions so long as a regard and reverence are shown to the laws, and such religious opinions do not justify sedition nor conspiracy.

(8) We believe that the commission of crime should be punished according to the nature of the offense; that murder, treason, robbery, and the breach of the general peace in all respects should be punished according to their criminality, and their tendency to evil among men, by the laws of that Government in which the offense is committed; and for the public peace and tranquility all men should step forward and use their ability in bringing offenders against good laws to punishment.

I wish to call the special attention of the committee to the following paragraph:

(9) We do not believe it just to mingle religious influence with civil government, whereby one religious society is fostered and another proscribed in its spiritual privileges, and the individual rights of its members as citizens denied.

(10) We believe that all religious societies have a right to deal with their members for disorderly conduct according to the rules and regulations of such societies, provided that such dealings be for fellowship and good standing; but we do not believe that any religious society has authority to try men on the right of property or life, to take from them this world's goods, or to put them in jeopardy of either life or limb, neither to inflict any physical punishment upon them; they can only excommunicate them from their society and withdraw from them their fellowship.

(11) We believe that men should appeal to the civil law for redress of all wrongs and grievances, where personal abuse is inflicted, or the right of property or character infringed, where such laws exist as will protect the same; but we believe that all men are justified in defending themselves, their friends, and property, and the government from the unlawful assaults and encroachments of all persons, in times of exigency, where immediate appeal cannot be made to the laws, and relief offered.

Now, Mr. Chairman, that is the law of the church, and I maintain that it is a complete refutation of the charges of blood atonement and similar crimes made by Mr. Baskin.

The CHAIRMAN. What was the date of this?

Mr. CAINE. There is no date given to it, but it is an old commandment given in the early days of the church.

Mr. WEST. That was given by the prophet, Joseph Smith?

Mr. RICHARDS. Promulgated prior to 1844.

Mr. CAINE. I would like to say here, by way of explanation, it is charged that this church is a theocracy, and it uses its influence in political matters. The facts are these: A great many of the leading men, the most influential men in the church, are prominent men in politics; prominent in State affairs; prominent in society and in business. We have no regular clergy, in the sense that clergy are spoken of in many other churches. A man may be preaching to-day, and to-morrow he may be merchandising, or he may be farming; he may be officiating in a public office; he may be a probate judge or a city alderman. But this does not unite church and state. The man does not hold the political office by virtue of his holding an ecclesiastical one. All men are called upon to preach as occasion may demand. If you go to a Mormon meeting, as they call it, or a Mormon church, as soon as the services are commenced a man may be called from the body of the congregation, and asked to come to the stand and preach, and that, too, without any previous preparation. All men are supposed to be ready to give a reason for the hope that is in them. We have no men whose special business it is to preach; all may be preachers, all may be politicians.

The CHAIRMAN. You have a priest, have you not, an apostle?

Mr. CAINE. The apostles are the second quorum in the church, and their duty is to preach the gospel to all the world. They are special witnesses to all nations; it is their business to go wherever a new missionary field is to be opened. For instance, if it were desired to send the gospel to China or to Japan, it would be the special privilege of an apostle to go there first and inaugurate the work. An apostle might not go, but it is their calling to open up the gospel to all the world.

The CHAIRMAN. Are there twelve apostles in the church?

Mr. CAINE. There are twelve apostles in the church. The church is organized on the same plan that it was in the day of the Saviour.

The CHAIRMAN. Some one at the head of yours?

Mr. CAINE. Yes, sir; there is a first presidency. We have something the same faith as regards the organization of the church as the Catholics have. The Catholics believe St. Peter to have been the head of the church after Christ. We also recognize him as having been the head of the church in his day, and that he and two others constituted the presiding quorum. After that there were the twelve apostles, and

the seventies, elders, priests, teachers, and deacons, all holding their respective offices, and having their respective callings.

The CHAIRMAN. Have you seventy elders?

Mr. CAINE. Yes, sir.

The CHAIRMAN. That is the sanhedrim?

Mr. CAINE. Yes, sir; we have several quorums of seventies. But all these men are not set apart to devote themselves to spiritual affairs and nothing else. They carry on business just like other men, and, of course, engage in political affairs. But because they engage in political affairs, that does not follow that they constitute a theocracy. They are men of influence, and if a man has influence, and he has come honestly by it, you cannot deprive him of it. No matter whether he goes into the pulpit, the social circle, or into business circles, he carries that influence with him into all the departments of life. Mr. Baskin says that John Taylor exercises great political influence. Of course he does, because he is an influential man. He carries that influence into the church, into business circles, into social circles. Wherever he goes his influence is felt, and it is a legitimate influence. He came honestly by it. He did not rob anybody of it, neither Gentile nor Mormon.

The CHAIRMAN. Is it a fair question to ask as to the amount of property this church owns?

Mr. CAINE. That, sir, I could not tell you; but there is nothing like the fabulous amount some of these gentlemen represent. I heard them discussing that point in the Senate one time, and Senator Hoar, seemingly in the most honest way, said he understood there were five millions of money belonging to the emigration fund. I do not believe there is $500 in cash belonging to it to-day.

The CHAIRMAN. Has the church a regular revenue?

Mr. CAINE. The church is entirely sustained by tithings, or voluntary contributions.

The CHAIRMAN. Is it the law of the church that the members shall tithe their revenues?

Mr. CAINE. Yes, sir; it is after the old Jewish system of tithing, and that is all that is required. There are no collections. If you go into a Mormon meeting no plate is passed before you for contributions.

The CHAIRMAN. Can you tell me what is the annual revenue of the church by these tithings?

Mr. CAINE. I do not know.

Mr. CASWELL. How do you enforce the tithing?

Mr. CAINE. We do not enforce it; it is entirely voluntary; I may give $5 or $500.

Mr. BASKIN. If I remember correctly, the report showed the revenue was $500,000.

The CHAIRMAN. Mr. Richards, do you know what is the annual revenue?

Mr. RICHARDS. I do not; I have not seen the report.

Mr. CAINE. Where did you see that report, Mr. Baskin?

Mr. BASKIN. I saw it published in the report of your conference.

Mr. RICHARDS. When?

Mr. BASKIN. When they made their first full report after Taylor was elected; but there have been several reports made.

Mr. RICHARDS. It must have been nine or ten years ago?

Mr. BASKIN. I suppose it may have been.

The CHAIRMAN. Do you have a tithing now?

Mr. CAINE. It is called tithing, but it is entirely a voluntary offering. Every man gives to the church what he feels able to. It is called

tithing. If I want to give $500, I give $500, and if only $100, I give only $100. There is no one to question me about it. It is a matter between the man and his God. If he chooses to be honest with his God, that is his affair, and if he chooses to be dishonest with his God, that also is his affair.

The CHAIRMAN. What are the tithings used for, for the support of the church worship, or as an investment?

Mr. CAINE. The revenues of the church are used for various purposes other than the support of the church worship and missionary objects. If there is a new settlement to be organized, and the people need assistance in any way, the revenues of the church are used for that purpose; if there is a road to be built, a canal to be dug, a cañon to be opened, or any matter of that kind where the people need help, it is given to them; if a new community goes out, and they want to build a house for worship, the church gives them a certain amount to aid them in doing so. The poor are largely supported from the tithing fund. We have some poor Indians around us there who are not properly fed by the Government, who are frequently assisted out of the tithing. I know that in years past a great deal of the church funds were used to support the Indians. This was done as an act of justice; we were in their midst, we were on their lands, and we wanted to have their good feelings. Brigham Young always said it was a great deal cheaper to feed the Indians than to fight them.

The CHAIRMAN. By whose direction are these revenues appropriated to these different objects?

Mr. CAINE. By the leading authorities of the church; by the trustee in trust, or by the presiding bishop.

The CHAIRMAN. Is he president?

Mr. CAINE. No, sir; not the president of the church; the bishop is the head of the church temporalities. The bishop might be the trustee in trust, but it is usually some one else; the present trustee in trust is John Taylor. I will further state that a great deal of the tithing fund has been expended in building the houses of worship and temples throughout the Territory. They are building a very elegant granite temple in Salt Lake City, which has cost a great deal of money. There are also temples at Saint George and Logan, which are finished, and another in course of construction at Manti. The temple at Salt Lake was commenced over thirty years ago.

The CHAIRMAN. Do the different houses of worship that are built in different parts of the country belong to your corporation?

Mr. CAINE. No, sir; they belong to their individual congregations or corporations.

The CHAIRMAN. How is the title held by them?

Mr. CAINE. By the bishop and the congregation.

The CHAIRMAN. The head of each congregation is called a bishop?

Mr. CAINE. That may or may not be, according to circumstances, but usually it is so.

Mr. GIBSON. There is also a president of a stake?

Mr. CAINE. For instance, each county in the Territory, or it may be two or more counties, form what is called a stake. Generally in the center of the stake will be a church building, where all the people in the stake can assemble for worship upon certain occasions, such as their conferences. They have thus a stake meeting-house that would be contributed to from the tithing derived from the whole stake. Then in each settlement, or, as it is usually called, "ward," is a meeting-house built from the revenues derived within its jurisdiction.

The CHAIRMAN. Is the head of the organization in Salt Lake City, the head of this central (?) place of worship, the head of the whole concern?

Mr. CAINE. The first president of the church resides at Salt Lake City, when at home, but he is absent just now.

The CHAIRMAN. Is he at the head of the entire establishment?

Mr. CAINE. The entire church?

The CHAIRMAN. Yes.

Mr. CAINE. Yes, sir. He is the president of the church, and also the trustee in trust.

The CHAIRMAN. Trustee of what?

Mr. CAINE. Of the church property and funds. He is the one referred to in the act incorporating the church.

Mr. RICHARDS. Will you allow me to make a statement upon that point for the information of the committee?

Mr. CAINE. Certainly.

Mr. RICHARDS. The Mormon people in general conference assembled have for several years past elected a trustee in trust to hold the title to property for the body of religious worshipers known and recognized as the Church of Jesus Christ of Latter-Day Saints. The present trustee in trust is John Taylor.

The CHAIRMAN. For the entire church?

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. What I want to get at is this: I want to know where the legal title to the real property is.

Mr. RICHARDS. I will try and tell you. The legal title to all the general church property vests in John Taylor, as trustee in trust for the Church of Jesus Christ of Latter-Day Saints.

The CHAIRMAN. Is there a deed of record which shows that?

Mr. RICHARDS. Yes, sir; I understand so. I cannot speak altogether of my own knowledge as far as the record is concerned. I have not examined the record.

The CHAIRMAN. But you know, according to all civilized society, there must be some evidence of title somewhere.

Mr. RICHARDS. I understand what you mean, and answer that I believe the records will show the title to be held as I have stated. I only make the reservation that a lawyer usually does in stating as a fact what he has not himself seen.

The CHAIRMAN. I understand; but I want to get all the information I can about it. Then suppose there is a house of worship in some county away from Salt Lake?

Mr. RICHARDS. Yes, sir. The title to such property would, however, be held either by certain local trustees, for the use and benefit of the people of that congregation, or stake, or ward, as the case might be, or else held by the local corporation, if they happened to have one. I mean a religious corporation there, formed under the law of the Territory.

The CHAIRMAN. How can they form a religious corporation?

Mr. RICHARDS. We have a general law in Utah which authorizes the incorporation of any religious or charitable association. Most of the religious denominations which are represented in Utah are incorporated under this law. I think Presbyterians, Methodists, and various other denominations have availed themselves of its provisions.

The CHAIRMAN. Without any limitation as to the amount of property they may acquire?

Mr. RICHARDS. There is a limitation. The law was passed after the act of Congress, and of course contains the same limitation.

The CHAIRMAN. Fifty thousand dollars?

Mr. RICHARDS. Yes, sir.

The CHAIRMAN. Does the $50,000 include only the property that is to be held by John Taylor as the chief trustee in trust, or does it include all the property of all those different corporations?

Mr. RICHARDS. Each separate corporation is a legal entity. John Taylor has nothing to do with many of the corporations and may not even be a member. It stands alone before the law and holds the title to its own property.

Mr. CASWELL. At the death of John Taylor what becomes of it?

Mr. RICHARDS. The deeds run to John Taylor as trustee in trust for the Church of Jesus Christ of Latter-Day Saints and his successor, and I presume his successor in office will take the title.

Mr. EDEN. The same as Brigham Young had it before him?

Mr. RICHARDS. Precisely; as it came to John Taylor through Brigham Young. The same property that is held by John Taylor was held by Brigham Young years before his death. I do not know of a single piece of real estate that has been acquired by John Taylor since.

The CHAIRMAN. You do not know of any other property that John Taylor, as trustee, holds for the benefit of this corporation, except this property of the Temple?

Mr. RICHARDS. The Temple block in Salt Lake City.

The CHAIRMAN. How much is that?

Mr. RICHARDS. A square containing about 10 acres called "Temple Block," on which stand the Temple and Tabernacle. It belonged to the church before the law of 1862 was passed. It was appropriated for that purpose when the city was first laid out.

The CHAIRMAN. Do you know of any other property that he holds?

Mr. RICHARDS. No, sir. I cannot now recall any other real property to which he holds the title, although there may be some. I am not sure as to that.

The CHAIRMAN. Does the head of the church in that way hold any fund on investments?

Mr. RICHARDS. I know nothing about that. I am not informed about the monetary affairs of the church.

Mr. BASKIN. Don't they own a larger portion of the co-operative stock?

Mr. RICHARDS. Not to my knowledge.

Mr. BASKIN. Then they have sold it recently.

Mr. RICHARDS. I cannot say as to that, but to the best of my knowledge they do not own a dollar's worth of that stock. I desire to say that most of the wards in the Territory are incorporated, and each corporation owns its own meeting-house, deeded to the corporation. That is the way the title is held. As I stated before, our incorporation act is general in its character.

Mr. WEST. This incorporation act was passed in pursuance of the provision of the Revised Statutes, which I am unable to refer to readily now, but which provides for the incorporation of companies for mining, manufacturing, religious, and charitable purposes. Recently the word "banking" has been inserted.

The CHAIRMAN. I saw that statute the other day. The provisions of that law are incorporated in the local statute; that is, it is included in the first section, and it provides for the incorporation of the companies for these purposes under certain regulations prescribed by the legisla-

tive assembly. They are all incorporated under that general provision.

Mr. RICHARDS. A question may arise in the minds of the committee as to why the Church of Jesus Christ of Latter-Day Saints was incorporated by a special act and other church corporations are erected under the general law. The reason for that is simply this: For a long time after the organization of the Territory there was no restriction upon the passage of private charters, but Congress did eventually provide that no legislative assembly of any Territory should pass a private incorporating act, but that they might provide general acts of incorporation.

The CHAIRMAN. That is the one Mr. West refers to?

Mr. RICHARDS. Yes, sir. Upon the passage of that act of Congress the legislature of Utah passed a general law providing for the incorporation of private corporations.

The CHAIRMAN. I rather think that that provision you refer to now is in the act of 1862.

Mr. WEST. I think it likely.

Mr. RICHARDS. I think that the act I refer to was passed in 1867.

The CHAIRMAN. In relation to acts of incorporation?

Mr. RICHARDS. Yes, sir. I think you will find it to be section 1889, revised statutes.

The CHAIRMAN. Mr. Caine, I hope you will excuse me for interrupting you.

Mr. CAINE. I am very glad to have these interruptions if by them you are enabled to get the information you desire.

The CHAIRMAN. That is what I am trying to get.

Mr. CAINE. We were referring to these stories about blood atonement, and in refutation of them I read the chapter on governments from the Book of Doctrine and Covenants. Now, following up Mr. Baskin's speech, or resuming the consideration of the subject, I will say that: these stories were followed by his introduction of the so-called revelations concerning the secrets of the Endowment House by a woman who found no fault until she discovered that another had preceded her. I could throw much light upon the history of her case, and show that she entered the relation with her eyes open, but I forbear. I deny that she or any other person who ever passed through the Endowment House was required to take an oath which was in contravention of his or her allegiance to the United States, or which bound him or her to set at defiance the laws of the land.

I make this general denial, and I will not pursue the subject further. I care nothing about the so-called exposure; I will, however, call the attention of the committee, for one moment, to the improbability of the whole affair. Mr. Baskin spoke about this lady having made a written statement of what passed at the Endowment House while it was fresh in her memory. I do not know whether any of the gentlemen of the committee are Masons or Odd Fellows, or belong to any of those secret associations which have initiation ceremonies; if so, I would like to know if, while the matter was fresh in their minds, they could go home and map it out, and make a diagram of the house where the ceremony took place, and remember all that was said and done there, much less a lady in the disturbed state of mind, that she represents herself to have been in, when she went through the Endowment House. I will say, Mr. Chairman, from my own knowledge of the subject, that it would be utterly impossible for any person to come out and write what takes place there. I have no wish to treat the lady with any disrespect, but I must say it

was an impossibility for her to have given anything like a faithful account of what took place in the Endowment House.

The ceremonies of the Endowment House are our sacred mysteries. They are founded, as we believe, in revelation. They are no more treasonable and no more in defiance of the temporal power than the rites, ceremonies, ordinances, and initiations of the secret society of Free Masons. As a little dramatic by-play, designed for effect on the country at large, Mr. Baskin, perhaps, was justified in parading his witness, and dwelling pathetically on her story, but he surely did not expect this committee to be convinced by this little side show that the Mormon people of Utah ought to be disfranchised.

He consumed more than an hour's time in quoting from laws passed by the pioneers of Utah, for what purpose; to prove that the people of Utah Territory ought not to be intrusted with legislative power. He does not assert that a single human being was injured by these laws. He does not say that they were passed for the purpose of aggrandizing individuals.

The laws to which he refers of 1854, under which cañons, and timber and water rights, and such like privileges were granted to a man, Mr. Chairman, were simply granted as temporary arrangements. It was frequently worth all the timber that was in a cañon to make a road into it. I do not know whether any of you gentlemen of the committee have been in that country, and understand its rugged character and the inaccessibility of timber there. I know this, however, that one of the apostles, when he went out there, said that he thought a man who went into a cañon and got a load of wood deserved to be saved; it was so difficult to get. Brigham Young had this grant of City Creek Cañon given to him, and I, of my own knowledge, have known it to cost him from $3,000 to $6,000 in one year to keep that road in repair; and all he would get from it in the way of tolls would be from the small amount of timber and fire-wood that was brought out. It was simply a plan by which men who had means were permitted to make roads into the cañons for the purpose of aiding people to get fire-wood from the mountains. They were given these grants for the purpose of protecting them in their rights in the roads they had constructed. It was done so that the people could get wood to burn for domestic purposes.

Now, with regard to these water-rights, Mr. Baskin knows very well that the water in Salt Lake is as free to its citizens as the air they breathe, all except the tax they have to pay to the city water-works for the expense of conveying it in pipes. There is no tax for the use of the water itself; there is no direct tax for irrigating water, not even for controlling it. The water is free to everybody. The city of Salt Lake, owing to its becoming more thickly settled and more people constantly coming in, had to get a special act through the legislature authorizing it to borrow $250,000 with which to construct a canal, and that is the only bonded debt in the whole Territory. The corporation had to construct a canal some 25 miles in length to bring additional water into the city for irrigation purposes. I presume the committee is aware we have to irrigate everything in that Territory; that not a tree, not a shrub, nor a bush, nor a blade of grass can be raised on the upper lands without irrigation, and therefore water becomes a very important item. It is in view of the importance of this water privilege that in those early days the control of it was placed in the hands of judicious and careful men to hold for the benefit of the people. No man to whom these grants were made has ever appropriated any portion

of it to his own use beyond what he was entitled to for the land he took up.

Talk about Ezra T. Benson's grant. I do not suppose that Benson's heirs own an acre of land where he had the grants for those springs. Just as soon as the land laws went into effect those things all came under the law; all temporary arrangements were either repealed or they became obsolete in and of themselves. There was no intention of interfering with any person's rights, nor was it the intention to prevent Gentiles from coming into the Territory and settling there. The people went and took the land they wanted on the borders of the streams, but, as I have shown you, there are no large tracts of land in Utah; they are all small farms. In regard to those islands in the Great Salt Lake that have been spoken of, the giving of the right to them to the Emigration Fund Company for their cattle was simply a temporary arrangement, and the islands have long since passed out of their control. They laid no claim to the islands whatever beyond a temporary possessory right. They are now owned by outside parties, as I understand, by Mr. Myers, a non-Mormon. All such grants were made to secure the water to the inhabitants, and to get roads worked into the cañons so that people could get fire-wood and timber for domestic uses.

At this point the committee adjourned until to-morrow morning at 10 o'clock, Mr. Caine to resume at that time.

WASHINGTON, D. C., *May* 5, 1886..

Committee met pursuant to adjournment.

ARGUMENT OF HON. JOHN T. CAINE RESUMED.

Mr. CAINE. We were speaking yesterday, when we adjourned, in regard to those old laws, which Mr. Baskin referred to, and I advanced the proposition that they were merely temporary arrangements made for the time being. There were many acts passed by the legislature which were adapted to the people, and the circumstances surrounding them, in that early period in Utah, which, as other circumstances arose, became obsolete. No person was injured by means of these laws; but, on the contrary, the people were greatly benefited. At that time the people of Utah were all of one faith; they were almost exclusively Mormons. There were few, if any, non-Mormons in the Territory at that period, except a few merchants. The rights of no person were interfered with by reason of these laws.

In reference to the remarks of Mr. Baskin relative to the farms of Utah, I will say that the official statistics show that the average size of farms in Utah is less than 25 acres in area. They show, moreover, that 90 per cent. of the heads of Mormon families own the land they cultivate and the houses they live in.

Hon. James W. Barclay, a member of the British Parliament, who visited Utah in 1883, gave his impressions of what he saw in an article published in the Nineteenth Century. I quote the following extract concerning the farms and farmers.

The CHAIRMAN. Is the whole article there?

Mr. CAINE. Yes, sir. I will leave a copy with the committee.

The total area under grain of all kinds is about 120,000 acres, and the produce about 2,500,000 quarters, besides some 10,000 acres in fruit, principally apples, peaches, and

grapes. The farms in Utah are small, averaging 25 acres each, and the holdings, of which there are about 10,000, are cultivated by the owner and his family. The value of improved land, with the right to water for its irrigation, is $25 to $100 per acre, but the public land without water may be had for $1.25 an acre, or even less. Mormon homesteads have a tidier appearance than is usual in the West, and the general air of comfort and prosperity which prevails is the best evidence of the persevering, industrious habits of the people.

The Mormon pioneers undoubtedly had an eye to securing whatever there was good in the desert country they had sought out as a place of refuge. They had been thrice driven by mob violence from the homes they had won by honest toil. They made an unparalleled journey across uninhabited plains, and over unexplored mountains to gain an abiding place. It was a land that all authorities agreed in describing as uninhabitable. A more uninviting country than the valley of Great Salt Lake in 1847 mortal eye has seldom rested upon. Nearly five thousand souls arrived there in that year, and the experiment of growing sufficient grain to support life during the coming winter was made. It required herculean labor to break the soil incumbered with sage brush, and bring the water from the mountain streams for irrigation. The harvest was scanty, and people barely escaped starvation. The crickets came down from the mountains in swarms, and nearly devoured the growing grain. Old men will tell you to-day that they have not forgotten the pangs of hunger they endured during the winter of 1847 and 1848.

Before 1850 there were nearly 30,000 people in Utah. Settlements were made in different localities. The reason for this was simple. The Mormons are an agricultural and pastoral people. They brought with them their herds of cattle, their flocks of sheep. Pasturage was an essential thing. The area of land which can successfully be cultivated by irrigation by a family is not great. The mountain sides, the cañons, do not afford a vast deal of pasturage. It was a necessity—absolute—not a matter of choice, to scatter the settlements in order to protect ranges wherever the stock fed. And again, the people settled in communities for self-protection against the Indians as well as to avail themselves of the water rights. Community co-operation is one of the features of the Mormon polity. A settlement was first made where the water could be, with the least labor and cost, brought to irrigate the land. The custom which has come to be recognized law in all other countries is, that those who first take out the water cannot be deprived of the quantity to which they thereby become entitled. The Mormons were provident and thoughtful of the future. They settled at the mouths of cañons where the mountain streams debouched. They did just what every forehanded people, pioneers, will do; they took all they could get. It is now made a serious charge against them that they monopolized the water and the arable land, not to aggrandize themselves, but to provide for their children and their brethren of other sections of the Union and of other lands, who might come to join them. Was it a crime?

Mr. Baskin dwelt at great length upon the acts giving certain individuals temporary control over the water and the timber in certain cañons near Salt Lake City. The reason for this has been given. It was to protect and husband the supply and insure an equitable distribution. He says there were toll-roads and bridges authorized. True. The men who had the means built roads and bridges, and were for a limited time allowed to charge tolls so that they might be reimbursed.

Mr. Baskin quoted to you the amount that was charged for tolls. Those charges might seem, in this country, rather exorbitant, but when you consider that the gentlemen who built the bridge over Bear River,

the one referred to, might not have one team go across it in a week, the tolls will not appear excessive. This bridge across Bear River was a great accommodation to the traveling public, people going into Idaho, Montana, and elsewhere in the north.

Mr. RICHARDS. Some of these cañon roads cost $50,000 to build.

Mr. CAINE. Yes; Mr. Richards reminds me that some of these cañon roads cost $50,000 to build. I have already told the committee that it cost Brigham Young to keep the road in City Creek Cañon in repair from $3,000 to $6,000 in a year. That was because of the damage done by freshets that came down in the early summer when the snows melted. Then there are what are called in that country "cloud bursts," that occur in the cañons, when the water will rush down in torrents, and tear away everything before it. Sometimes Salt Lake City itself has been in danger from these freshets.

I am told that the granting of charters to toll roads and bridges was the practice in almost every Territory. I believe it is an undisputed fact that for a long time the firm of Barlow & Sanderson, two enterprising Vermonters, had a monopoly of the stage-coach and mail-carrying business in Colorado, because they owned the toll roads through every available pass in a certain region. They got the charters from the legislature of Colorado, built the roads, and the tolls they were allowed to charge prevented competition in their business.

It is unnecessary to dwell longer upon this part of the gentleman's argument. Even if the laws of which he complains were enacted for the purpose he insists they were, that would be no good reason for disfranchising the Mormon people of to-day. Will it be seriously proposed to disfranchise the descendants of the men who, by even dishonest means, acquired fee-simple titles to all the land bordering streams of water, in order to control great pasture ranges in Wyoming, Montana, Idaho, Colorado, New Mexico, and Arizona? The intention to monopolize in such cases is evident. Land grabbing in Southern California by desert-land entries a few years ago created a great furore, but nobody has proposed to disfranchise the men engaged in that business.

The most remarkable part of Mr. Baskin's argument was in support of his proposition to disfranchise all the adherents of the Mormon Church; not for religious belief; he is too great a stickler for the Constitution to propose that, but for overt acts. Forsooth, what were the overt acts to be for which he would prescribe the penalty of disfranchisement? Joining the Mormon Church! Mere opinion. Religious belief is, in his eyes, sacred; but to be a member of a church organization, a church establishment, he would proscribe. A man might believe as much as he pleased in the doctrines of the Catholic Church; he might entertain the opinion that the Pope was infallible; believe in auricular confession, the celibacy of the priests, and the actual presence in the eucharist, but if he was baptized according to his faith and attended mass, he would be guilty of overt acts and might be punished therefor by disfranchisement.

Is it worth while to argue such a proposition? Would this committee entertain it for a moment? It would be an insult to the intelligence of any man to suppose that he could bring himself to believe that punishing a man for joining a church was not an interference with religious liberty. It is not for the legislative power to say what is or is not a religious establishment within the meaning of the first amendment to the Constitution. The author of the bill for religious liberty in Virginia, which was the great forerunner of the first article of our bill of rights, declared in his autobiography that it was "*meant to comprehend within*

the mantle of its protection the Jew and the Gentile, the Christian and the Mohammedan, the Hindoo and infidel of every nation." If the legislative power can determine what is and what is not a true belief, then religious liberty would depend upon the vacillations of the men who happen to constitute the legislature of the State. Thomas Jefferson well said:

> The impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and, as such, endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time.

Invariably, as Jefferson declared, the civil magistrate will "make his opinion the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own."

Mr. Baskin, in his argument the day before yesterday, in contending that the wife should be made a competent witness against her husband, cited the Iowa case. I submit that that case is not applicable. That was a case of bigamy, and the real offense in bigamy is the fraud and deception practiced upon the women; those are entirely absent in the case of polygamy. Mr. Baskin said, also, that if the Mormons had the power they would give polgyamy the immunity of law. I submit, Mr. Chairman, that they did not do so when they were the sole occupants of the Territory, and the president of their church, Brigham Young, was governor of Utah. The Mormons regard marriage as a religious ordinance, very much as the Roman Catholics do. They did not make any law on the subject, believing that such matters should be regulated by church government.

Mr. Baskin also contended for the repeal of the statute of limitation in cases of polygamy. If this statute should be repealed with regard to polygamy, I contend that it should be repealed for all other crimes. He claimed that the crime of polygamy was secret. I submit that all crimes are more or less secret. If the argument holds good as to one crime, it will hold good in all.

He also recommended increasing the penalty for unlawful cohabitation and making it the same as that for polygamy; but Mr. Baskin neglected to tell you about the segregation of that offense as practiced by the Utah courts, if cohabitation, as he contends, is the gist of the offense.

Mr. BASKIN. I have my doubt whether that ruling of the courts in Utah will stand the test of judicial scrutiny. The question is now before the Supreme Court of the United States. It is a new p int. I have always regarded the decision in Utah as carrying it to the very extreme limit.

Mr. CAINE. To say the least of it, it is a very doubtful practice. The committee can see if this segregation rule should be sustained by the upper court, that the Territorial courts have it in their power to imprison a man for the rest of his life; in fact, he would probably not live long enough to work out the penalties.

Mr. BASKIN. It would not hurt any innocent man.

Mr. CAINE. Oh, no, of course not; but there might be a very serious difference of opinion in regard to his innocence.

Mr. BASKIN. I do not think if that penalty prevailed there would be much cohabitation; I think it would stop it.

Mr. CAINE. I do not think Mr. Baskin has read history very carefully, if he thinks penalties are going to alter men's opinions, views, and acts, when it becomes a question of religion.

When Mr. Baskin, in endeavoring to defend the proposition that he

advanced, that he believed there were 50 per cent. of the male Mormon population in polygamy, and was shown the absurdity of his statement, he said there were a great many young men and young women in polygamy under twenty-one years of age who were not voters, and therefore were not counted among the disfranchised under the Edmunds act. It is very possible that there might have been a few young women in polygamy, under twenty-one years of age, who were not entitled to vote. But when Mr. Baskin says there were young men under twenty-one years of age in polygamy, I challenge his statement. I do not believe that he can cite me to a single case in the whole Territory. As a rule, young men do not go into polygamy. There may possibly be some few, but none under twenty-one years of age.

Mr. Baskin referred to the conflict in Utah Territory, and said there had been no such conflict in other Territories. My answer to that is that other Territories have not been afflicted with such a mischievous, meddling element, and there has been no appeal to public prejudice from other Territories. There has been no local issue similar to that which has arisen in Utah.

He said a great deal also about the public sentiment of the country on the Mormon question. I do not propose to argue that point. I merely submit to the committee that the public sentiment of which he speaks has been manufactured by the malcontents of Utah, through their misrepresentation of facts regarding the condition of affairs in that Territory; but public sentiment must not override the Constitution of the United States. This same public sentiment crucified the Savior of the world, and has been the moving power behind many of the greatest crimes that have disgraced the history of the world. I do not believe this committee is going to be influenced in the consideration of the Edmunds bill by any outside public sentiment which has been manufactured through the misrepresentations of interested parties.

In speaking about this matter, Mr. Baskin conveyed a threat to the members of this committee in saying that this public sentiment would be heard through the ballot-box. What was meant by that? The committee can draw their own inferences. I take it to mean that if you gentlemen do not heed them in this regard, why, they will make themselves heard through the ballot-box.

Mr. Baskin cited the acts of the legislature of Utah that were repealed by the Poland bill as a precedent by which the committee might repeal the act incorporating the church. Now, those acts that were repealed by the Poland bill did not confer any vested rights, as this charter does. There were no vested rights involved in them, hence they are not a case in point.

Mr. Baskin said a great deal about town sites and corporation surveys. I will say in regard to those matters that the land laws were not extended over the Territory when most of these settlements were made, and it was necessary to have local laws to regulate possessory rights. Just as soon as the land laws went into effect over the Territory they took precedence of these local arrangements. There was nothing to prevent a man entering land inside the corporations, provided it had not been used for corporation purposes. The town-site act only applies so far as the land it covers. The corporation may be a mile square, and still the town site proper may not be a quarter of that, or an eighth of it. These corporations did not prevent men from settling outside the town site or entering lands. These were simply municipal arrangements to bring the settlements under police regulation; to protect the settlers from Indian raids, from land-jumpers, and

other troubles that might affect them. They were for mutual protection. Of course if Utah had first been settled by the non-Mormons represented by Mr. Baskin, they would not have taken up land nor have appropriated water or cut any timber. They would have reserved all those privileges for the Mormons who might come after them. They would not have gobbled up anything. They never do.

Mr. Baskin contended that teaching polygamy was an overt act, and that non-polygamist Mormons who taught that doctrine were more guilty than those who had entered into polygamous relations. In answer I will say I have seldom or ever heard non-polygamists teaching that doctrine. Mormons usually preach what they practice and practice what they preach. Since the passage of the Edmunds law I have heard the president of the church in a public address state what the faith of the church was in regard to plural marriage. He then told what the law of the land was, and then added in substance, "Now, any person who enters into this relation from this time on does so at his peril. He will have to assume the responsibility himself." As I understand this matter men have got to be well persuaded in their own minds. They know what the teachings of the church are; they know what the faith of the church is, and they know what the laws of the land are. They must be responsible for their own acts.

The CHAIRMAN. What did he say as to those who had already entered into it?

Mr. CAINE. He stated what he had done himself. He said that he had lived apart from his wives; that they had come to a mutual agreement to so live; that after the passage of the Edmunds law he had called his family together and said to them, "There has been a law passed which forbids our present relations, and I do not wish to appear as an obstructionist."

Mr. BASKIN. Isn't it a fact he is under indictment for polygamy?

Mr. CAINE. He is said to be under indictment for unlawful cohabitation.

Mr. BASKIN. No; for polygamy, entered into since this bill was passed.

Mr. CAINE. That may be, but I do not think it possible.

The CHAIRMAN. Is that John Taylor?

Mr. CAINE. Yes, sir; I did not know he was under indictment for polygamy. Mr. Baskin being on the inside of the ring has opportunities of knowing that we have not.

Mr. RICHARDS. We are very glad to get that information.

Mr. CAINE. Mr. Richards, as his attorney, will, I have no doubt, be glad to know what his client is indicted for. Mr. Taylor, as I was saying, stated that he had called his family together and told them what the law was, and said that he had arrived at the conclusion that, inasmuch as he could not live with all his wives he would not live with any. He was then living in the official residence of the president of the church with some of his wives, and he said to them, "If you prefer to live here I will go to one of our other houses; if you prefer to go back to your own homes, why I will remain here; you can do just as you please." They all concluded to go to their own homes, and he lived there alone, having his sister as his housekeeper.

Notwithstanding the fact that he separated from his wives, and has continued living alone up to the present time, or up to the time he had to leave his home, still Mr. Baskin says he has been indicted both for unlawful cohabitation and polygamy. If he has been indicted for unlawful cohabitation, it must be the constructive cohabitation that

we have been hearing about; he acknowledges these women to be his wives, although he does not live with them, and has not lived with them since the passage of the Edmunds law. But he is indicted for unlawful cohabitation just the same. The theory of these gentlemen, I suppose is, that if he is not living with his wives, he ought to be living with them, and he should be punished anyway, if not for his offenses, at least for his influence.

Here let me say that there was no attempt to enforce the criminal portion of the Edmunds act, so far as the unlawful cohabitation was concerned, until after the election of Mr. Cleveland as President of the United States. The law was passed in 1882, and Cleveland's election was in the fall of 1884. No attempt was made to enforce the law during the year 1882. In the winter of 1882–'83 the anti-Mormons of Utah sent a delegation to represent them in Washington. A gentlemen came before this committee and stated that it was impossible to enforce the Edmunds law. He claimed that they could not secure the proper evidence, and wanted a bill passed similar to the one you have now under consideration, although not so extensive.

In the Forty-eighth Congress they made an effort to secure the passage of a bill to govern the Territory by a legislative commission. That matter was discussed before the Committee on Territories, before whom I had the honor of appearing in opposition to that scheme. Representations were then made that it was impossible to enforce the Edmunds law, as they could not procure evidence, but that if Congress would abolish the legislature and provide a legislative commission composed of nine or thirteen persons, that they could go to Utah, and, after becoming acquainted with the local situation, pass such laws as would reach the alleged evil and suppress polygamy. The measure, however, was defeated. There has been a continual effort on the part of the anti-Mormons to get additional legislation. In urging such legislation they always claimed that the Edmunds bill was a failure; that it did not go far enough. Now, let me ask wherein it does not go far enough? Why it does not give the minority party either the offices or control of the Territorial finances. It does not, in other words, give them the control of the Territory. They thought at first that under the Edmunds law they were going to get a strong foothold in the Territory; but the very first election held under that law demonstrated the fact that they were fearfully in the minority. The vote, I think, stood some 23,000 to less than 5,000.

I said that no effort was made to enforce the Edmunds law until after Mr. Cleveland was elected. Then the Federal officers, fearing that they would soon be turned out of office, as they belonged to the other political party, immediately set to work to enforce that law, and to make all the money out of its enforcement that they possibly could.

The CHAIRMAN. How was it the Mormon vote was 23,000 if the Edmunds law was enforced?

Mr. CAINE. It was enforced; that is, the political portion of it was. In speaking of its not being enforced, I was referring to the criminal part of it.

The CHAIRMAN. Didn't the political part of that law prohibit polygamists from voting?

Mr. CAINE. Yes, sir; but even after that there were over 23,000 votes cast for the Delegate elected on the People's ticket.

Mr. Baskin argued, as a reason for prescribing a test oath, disqualifying all the Mormons, that the Mormons had set the example by inserting a tax-paying qualification in the registration oath. I submit

that a tax-paying qualification is a very usual one, but it cannot be made a precedent for this proposed disfranchisement. You might as well make the requirement that a man must be a citizen of the United States to entitle him to vote a precedent for disfranchisement as the tax-paying qualification.

Mr. RICHARDS. Or that he should be twenty-one years of age.

Mr. CAINE. Yes, sir; or any other necessary requirement.

Mr. OATES. In the Territorial law the tax-paying qualification is made a condition of voting?

Mr. CAINE. Yes, sir.

Mr. OATES. That is the case in a good many of the States.

Mr. CAINE. I do not think, however, that it is very strictly enforced in Utah, because of the point having been raised that inasmuch as women were not required to be tax-payers, it was doubtful if the tax-paying qualification could be enforced against men. The point seemed to be regarded as well taken, and I believe in the later acts the tax-paying qualification was stricken out.

Mr. RICHARDS. I think it was in the very last bill.

Mr. CAINE. Yes; I think in the last election law passed the tax-paying qualification was stricken out.

Mr. Baskin endeavored to make it appear that the political control of Utah was exercised by a complete theocracy. I wish to file with the committee, in answer to that, the declaration of principles of the People's party. This was adopted at a Territorial convention of the People's party held in Salt Lake City October 13, 1882. It is the declaration of the principles of the political party which is composed largely of the members of the Mormon Church. I will not detain the committee with reading it all, but I desire to read a brief extract:

We repudiate and deny the charges of lawlessness which have been made against the people of Utah, and as proof that those slanders are without foundation, we point to the records of the courts, the chief of which are not in any way in the control of the people, and which demonstrates the striking fact that the so-called "Liberal" class, constituting less than twenty per cent. of the population of the Territory, furnishes over eighty per cent. of the criminals.

We further repudiate and deny the charges that in Utah a church dominates the state; that priestly control is exercised in any manner to infringe upon the freedom of the individual, either at the polls, in convention, or in any official capacity; that perjury or falsehood of any kind is justified, whether for the protection of persons from the action of law or for any other purpose whatever; that intolerance is exhibited either for the discouragement of emigration, the settlement of the public domain or invasion of the rights of any individual; that any unequal taxation is either encouraged or permitted; that public accounts are not given of the expenditure of public moneys; that the tenets of a church are taught in the district schools, or that the people are influenced to disloyalty or antagonism to the Government of the United States or any of its representatives.

We affirm that it is the duty of every American citizen to render obedience to the Constitution of the United States and every law enacted in pursuance thereof.

I wish also to read an extract from a little pamphlet I have here containing an editorial which appeared in the Salt Lake Daily Tribune—the anti-Mormon journal—of March 6, 1881. The article is headed "What Utah wants":

Apropos of the new and petty war recently started by the municipal government on the women of the town, the liquor dealers, and the gambling fraternity, one of the "enemy" said to us the other day: "It may be a hard thing to say, and perhaps harder still to maintain, but I believe that billiard halls, saloons, and houses of ill-fame are more powerful reforming agencies here in Utah than churches and schools, or even than the Tribune. What the young Mormons want is to be free. So long as they are slaves, it matters not much to what or to whom they are, and they can be nothing. Your churches are as enslaving as the Mormon Church. Your party is as bigoted and intolerant as the Mormon party. At all events, I rejoice when I see the

young Mormon hoodlums playing billiards, getting drunk, running with bad women, anything to break the shackles they were born in, and that every so-called religious or virtuous influence only makes the stronger. Some of them will go quite to the bad, of course, but it is better so, for they are made of poor stuff, and since there is no good reason why they were begun for let them soon be done for [laughter], and the sooner the better. Most of them, however, will soon weary of vice and dissipation, and be all the stronger for the knowledge of it, and of its vanity. At the very least, they will be free, and it is of such vital consequence that a man should be free, that in my opinion his freedom is cheaply won at the cost of some familiarity with low life. And while it is not desirable in itself, it is to me tolerable, because it appears to offer the only inducement strong enough to entice men out of slavery into freedom."

Probably our friend was wrong, but it reminded us, to compare great things with small, of the roaring, flaming hell through which the French nation broke its chains. Nothing short of that unparalleled upheaval, which involved all forms of human slavery in one smoking and bloody ruin, would have effected anything. The national convention spared nothing in Heaven or on earth, not even itself; in the fury of madness it dethroned God, beheaded the King, conquered Europe, and decimated itself time and time again; but within its brief term of three years it recovered itself, and from that memorable date France, after a century of revolutions required to perfect the work then begun, is at last the freest and most prosperous nation in Europe.

Mr. BASKIN. You will not undertake to say that the Gentile sentiment would sustain such an editorial as that?

Mr. CAINE. I do not know; this is from the Gentile organ.

Mr. BASKIN. Oh, no; it is a Republican organ.

Mr. CAINE. It is sustained by the Gentiles there, and sustained by the very gentlemen who have sent Mr. Baskin here to represent them, as their organ.

Mr. BASKIN. They subscribe for the paper the same as any other persons.

Mr. CAINE. Mr. Baskin is the representative of the "Tribune ring," as we call it out in Salt Lake.

Mr. BASKIN. That is a great mistake. I belong to a different party. I am a stockholder in a Democratic paper, and one of the directors in the company owning that paper. You are aware of that.

Mr. CAINE. I was not aware of your newspaper connections. I submit to the committee that this is the kind of proposal that the would-be reformers of Utah make to the young men born in that Territory of Mormon parents.

I wish to make reference, before I proceed further, to another pamphlet I have here. The women of Utah, in mass meeting assembled in Salt Lake City, called to consider the wrongs which they are suffering under the execution of the Edmunds law, passed resolutions and adopted a memorial to Congress, which I wish to file with the committee. The addresses and other proceedings of the meeting are there set out in full.

I wish now to briefly call attention to an article published in the New York Daily Tribune of May 4, giving an account of the hearing before this committee the previous day. The portion which I desire to read is as follows:

A rather dramatic incident of the proceedings to-day was the presentation by Judge Baskin of a certificate, which, in substance, was an agreement to dissolve a Mormon marriage. Delegate Caine was about to rise in his seat and declare it a forgery, when Judge Baskin threw the paper over to him and exclaimed, "I suppose you will not deny your own writing?" At the bottom of the agreement appeared the name John T. Caine as a witness to the agreement. The document is important as showing the falsity of the assertion made by Mr. Richards, a Mormon attorney, on Saturday, that a Mormon marriage was sacred, inviolable for all time, and could not be dissolved.

I do not, as a rule, care to notice newspaper accusations, but in order that the committee may understand the position of Mr. Richards and myself in regard to this divorce matter, a brief explanation is neces-

sary; but first I will state that I was not about to rise to my feet for the purpose of denying or declaring this thing a forgery. I well knew that it was being paraded through the country as part of the stock in trade of a lecturer, and that the fact of my name being to it as a witness was worked for all it was worth, whereas it had no significance whatever; any more, Mr. Chairman, than if you, on being asked to sign your name as a witness to any instrument that might be executed in your presence, could be held responsible for its contents.

I would like to have Mr. Richards explain this divorce matter, inasmuch as his statement is sought to be impeached.

Mr. BASKIN. Are we to have another speech?

Mr. CAINE. Not at all. I desire Mr. Richards to have an opportunity to explain this matter to the committee.

Mr. BASKIN. Mr. Caine is certainly competent to explain this matter.

The CHAIRMAN. We will hear you, Mr. Richards.

Mr. RICHARDS. Mr. Chairman, all I have to say in relation to the matter is simply this, that the agreement which was presented here the other day I understand to be simply an agreement of separation between the parties, an agreement that they would live no longer together. I have heard Brigham Young, in speaking of agreements of that sort, say that they had no more binding force or effect upon the parties, so far as dissolving the marriage relation was concerned, than a piece of blank paper. And that is my belief. That I understand to be the belief of the Mormon people generally. I say now, as I said when I was here the other day, that these marriages are eternal and cannot be dissolved by any power on earth. I am prepared to stand by that, and nothing can be brought showing directly that the elders of the Mormon Church have taught anything to the contrary. I do not mean by that that where people are once married they are obliged to live together all the time. I do not deny that a man and woman may separate and live apart; and that is exactly what that instrument was, an article of separation between the parties.

The CHAIRMAN. Let me ask you, as you are on your feet, how you do in Utah, where there is no law on the subject of divorce——

Mr. RICHARDS. There is a statute in the Territory of Utah on the subject of divorce.

The CHAIRMAN. Then divorce is to be obtained through a judicial proceeding?

Mr. RICHARDS. I will answer that in this way. My wife and I were married in the manner I have been speaking of, for time and eternity. If she was dissatisfied with my conduct, and was entitled to a divorce, had proper ground for a divorce, such a ground as is recognized by the law, she might go into the courts of Utah and obtain a divorce. That would release her so long as we lived, from any relation as a wife, but it would not dissolve the eternal relation. Does that answer your question, Mr. Chairman?

The CHAIRMAN. Then you would be unmarried up to the time you went to that bourne from whence no traveler returns; but when you got on the other side you would still be husband and wife?

Mr. RICHARDS. No, sir; I do not wish to be understood as assenting exactly to that. Let me express it in another way. In addition to the ceremony of the Mormon Church, which was performed at the time of our marriage, and which I say constitutes an eternal covenant of marriage between us, there was a contract entered into at the same time between us; our mutual promises to become man and wife constitute a contract, which, under the common law, made it a legal marriage.

The court, upon a proper showing, may dissolve that status of husband and wife, so far as it is recognized by the laws of the land, and we would not be permitted to live together; to come together again so long as we lived; but the marriage relation would still exist between us, as it always does, unless it is dissolved by some higher power than that which exists on this earth that I know anything about. That is as I understand it, and that is as I think the Mormon people understand it.

The CHAIRMAN. Is there any power in this world, according to your Mormon belief, that could dissolve the marriage?

Mr. RICHARDS. I do not know of any.

Mr. BASKIN. I would like, with the permission of the chairman and Mr. Richards, to ask Mr. Richards a question in relation to this document.

The CHAIRMAN. I have no objection; Mr. Richards may have.

Mr. RICHARDS. I have no objection, sir.

Mr. BASKIN. I do not know anything about the relations existing in this eternal world; we are dealing with this question so far as it relates to this world.

Now, I want to ask Mr. Richards if this form of divorce that was presented here the other day is not the form that is adopted in dissolving these plural relations between the husband and any of his wives, and whether, in order to accomplish it, it does not require the sanction of some elder, who signs it, as has been done in this case. I will ask him further if these kind of divorces are not very frequently obtained in that Territory, and whether they are not known as church divorces?

Mr. RICHARDS. I answer that I do not know of any mode by which a marriage of that sort may be dissolved, as I have already stated. Whether that sort of an instrument is common or not I am not prepared to say. I do not remember of having seen but one of them in my life until I saw this one, and I have not read that. Whether they are called Mormon divorces, or what they are called, I do not know, but if they have any force and effect at all, and mean anything, they simply mean that the parties agreed to separate and not to live together.

Mr. CAINE. Do you wish to convey the impression, Mr. Baskin, that the signing witnesses to that paper had anything to do with consenting to the divorce?

Mr. BASKIN. No, sir. I mean to say that this is what is known as the Mormon divorce certificate, and that that is the means by which those divorces are obtained.

Mr. CAINE. I will say to the committee that Mr. Richards's explanation in regard to this divorce matter is exactly as I understand it. Mr. Richards's former statement having been questioned, I desired to have him explain his position.

I wish, before resuming my direct argument, to read a translation of an article which appeared in a German newspaper, published in New York City, called the Volkzeitung, the organ of the Socialists. I refer to it in connection with the proposition to disincorporate the Mormon Church, to confiscate its property, to show you what the logical sequence of such an act would be.

AWAY WITH CHURCH MONOPOLIES.

The Senate of the United States recently passed a bill which actually confiscates the property of the Mormon Church and empowers the Territorial authorities to seize the church property and to apply the same to the ends of public education. This is right. This is a step forward towards the goal long striven for. Our Federal Government has taken the initiative in a veritable *advance*. This is no feint manœuvre, for it at the same time puts into the hands of officials the legal means to put them-

selves into the possession of the church property in spite of all the obstructions of our celebrated "common law." It is now the turn for our State officials to follow in the way marked out. Trinity church, with its hundred and odd millions of dollars, must now be treated in the same wise. The State should likewise immediately take possession of its property and apply it to bringing up our future citizens. Is there any plausible reason for accumulating millions of productive capital into the "dead hand" and letting it increase every year in geometrical proportion, merely for the purpose of fattening eye-rolling hypocrites? The same thing is true of the hundreds of millions which have been wrung by the Catholics, Presbyterians, and countless other religious sects from superstitious people. This capital works much more diligently and surely than it does in the hands of private persons without, too, being in the least affected by the heavy burdens which rest upon the property of private individuals. Church monopolies are just as dangerous to the State as secular monopolies. Religious corporations are just as heartless and soulless as worldly corporations. Down with them all! Our Federal Government has opened up the way. Progress in that direction cannot be held back.

I do not propose to argue the legal questions involved in the Senate bill which you are to pass upon. It has been elaborately discussed in the brief submitted and by the distinguished gentlemen who are here as the counsel of the Mormon people. I have deemed it just and proper, due alike to the cause of truth and right, and to a people whom I know to be loyal to the Government, honest respecters of its authority, conscientious, God-fearing, and law-abiding, to defend them against malicious slanders and unfounded calumnies.

I have an abiding faith in the American people's sense of fair play; in their common sense and common honesty. I do not believe that the senseless clamor which is heard on every hand against the Mormons represents the honest sentiment of the hard-headed masses. Beneath all this effervescence of prejudice and ignorance I believe there is a solid substratum of intelligence which, in due time, will be made manifest. I appeal to you who are trained lawyers and statesmen; men of learning and experience, possessing broad and catholic understanding, to withstand this assault of fanatics, of bigots; this raid of spoilsmen and plunderers upon a peaceable, industrious, and noble people.

This bill, as it comes from the Senate, surely can never become a law with your sanction. In not one of the States represented on this committee is the husband or wife made competent witnesses and compellable to testify. A proposition to compel wives to testify against their husbands, or *vice versa*, you know would not be tolerated by the legislatures of your respective States. No sane man would dare propose to empower your judges, courts, or justices of the peace to issue attachments for witnesses who had not first been subpœnaed in the regular way and failed to obey the mandate. Neither would your constituents content themselves with protests against a proposed law that authorized unreasonable searches and seizures of private books and papers to be made for the purpose of obtaining evidence against them. Is there a State in this Union that would enact a law legalizing the theft of church property?

I know that within my memory it was seriously proposed to disfranchise all Roman Catholics in several States and disqualify them from holding offices of trust and emolument, and that the Know Nothing, anti-Catholic party swept everything before it for a year or two, but I never heard that it was even contemplated to sequestrate the church property of the Roman Catholics.

There has been at one time and another propositions, supported by party organizations, to prohibit the immigration of Irish Catholics, but public sentiment was overwhelmingly against the narrow-minded and illiberal agitators.

I believe there is to-day an organization known as the American Al-

liance, which has for its motto "Americans must rule America." But neither of the two great political parties contending for supremacy in the United States would dare to acknowledge affiliation with or even sympathy for this organization.

Would you consent to have United States marshals and their deputies given the powers of committing magistrates? You would not intrust such power to your county sheriffs or their deputies. You would not agree that United States commissioners should have and exercise the functions of justices of the peace.

Mr. Chairman, less than 2 per cent. of the male Mormons are polygamists. The great bulk of the people who constitute that religious organization are monogamists. In forty-three years the practice has not grown to any considerable proportions. But do you think that legislation like this proposed in Senate bill No. 10, and the act of March 22, 1882, as interpreted by the courts, is calculated to eradicate what you no doubt honestly believe to be an evil? It is class legislation. The act of March 22, 1882, is a partial and an unequal law. It has been thus interpreted and enforced. Thomas Jefferson truthfully declared "that the opinions and belief of men depend, not on their own will, but follow involuntarily the evidence proposed to their minds; that Almighty God hath created the mind free, and manifested His Supreme will that free it shall remain by making it altogether unsusceptible of restraint; that all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who, being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in His Almighty power to do, but to extend its influence on reason alone."

The Mormons cannot surrender their belief in the divine character of the revelation concerning plural marriages because of "temporal punishments and burdens" or the impositions of "civil incapacitations." Their "opinions and belief" will "follow involuntarily the evidence proposed to their minds," and their sympathies will go out to those of their brethren who suffer for conscience sake. The vast majority have broken no law. They have obeyed and will obey the law. But they naturally sympathize with their brethren who are punished for not abandoning the women they love, and whom they solemnly promised to cherish and protect. Relations thus formed, the mass of the people believe ought not to be rudely and cruelly broken. A fair and merciful enforcement of the act of March 22, 1882, would not excite a feeling of opposition and create the impression of persecution. Convinced that the object is to persecute and not to reform general morals; to rob the whole people of their personal and political rights and hand them over to the Philistine spoilers, what motive will they have to obey the law?

And what do you suppose will happen if this unreasoning persecution continues? You cannot, you dare not follow to the natural end—the imprisonment, the spoiling, the extermination of 200,000 people. The time will never come again when hundreds of thousands of people can be banished as the Huguenots were from France, or murdered in cold blood as were Dutch Protestants under the supervision of the Duke of Alva.

In conclusion, Mr. Chairman, as the representative of the "citizens of Utah Territory, who, through long years of toil, have conquered the wilderness and converted it into fruitful farms, orchards, and gardens, and laid the foundation of a flourishing commonwealth," using the language of a petition, signed by thousands of loyal American citizens, ad-

dressed to the Senate and House of Representatives in Congress assembled, permit me in their behalf and in the most earnest and emphatic manner to protest against the enactment of this or any similar measure, for the following reasons:

(1) They are American citizens, entitled by the guarantees of the Constitution to all the rights and privileges which that status implies.

(2) They have shown by the most abundant and convincing proofs that they are capable of self-government, and that in its exercise thus far they have not forfeited the right to its continuance.

(3) The Territory of Utah has been organized upwards of thirty-five years, and during that period if any citizen has imagined he has had cause to complain against the rule of the majority, the Federal courts, whose judges and other officers have been appointees of the Federal Government, have always been open to redress any grievance or to correct any wrong.

(4) That the total Territorial, county and school taxes amount to twelve mills on the dollar per annum only, on a moderate valuation of property; and the tax for municipal purposes in Salt Lake City, which is the principal city in the Territory, is only five mills on the dollar.

(5) That the government of the Territory and all its affairs have been conducted in a judicious and economical manner is plainly evident from the lightness of the Territorial tax, being only three mills on the dollar, and the fact that, though a new country, with constant demands for the expenditure of funds for making improvements of every kind for the thirty-nine years of its settlement, the Territory does not owe one dollar of public debt. The counties and the municipalities are in the same condition, with few exceptions; Salt Lake City, which, by action of the legislature, was permitted to incur a debt of $250,000 for the construction of a canal, over 25 miles in length, the object being to bring the waters of Utah Lake into Salt Lake City for irrigating purposes, and which debt is now being steadily liquidated.

(6) That while the citizens of the Territory who form the majority party are being accused of all kinds of crime and wrong-doing, and for that reason are declared by the minority party to be unfit for citizenship, the facts are that in Salt Lake City for the year 1885 the proportion of the arrests and convictions for crime were twelve and one-half per cent. of the minority to one per cent. of the majority, and yet the majority outnumber the minority as five to one. And in that city, with the exception of one drinking saloon, the tap-rooms, brothels, gambling houses, pool tables, and other disreputable concerns are all conducted by members of the minority party.

(7) That in making this statement and comparison I am not prompted by any desire to extol the morality of those who compose the majority of the Territory, but to defend them against the many slanders which are circulated concerning them, and by this contrast to show that the assumptions of superior morality, probity, and other qualities claimed by the minority as reasons why they should be intrusted with the control of the Territory, are not founded in truth.

(8) That the object of the leaders of the minority party is not to have good, cheap, and orderly government in the Territory, but to get control of its finances, and to reduce the majority of the people to the condition of serfs—with no right to vote, to hold office, or to have voice in the affairs of government—only to be taxed and oppressed by the minority, to any extent they may choose, without hope of relief or power to protest.

(9) That, confident of the falsity of the charges which have been made against the majority party of Utah, they challenge the comparison of its

condition in education, good order, morality, low taxes (mines and their output are entirely free from taxation), economical administration of all its local branches of government, and in everything else which constitutes the strength and prosperity of a State, or which can be claimed as an evidence of good and safe republican government, with any of our neighboring States and Territories.

Mr. Chairman, I thank you very sincerely for your kind attention, and submit the matter for your consideration.

[S. 10. Forty-ninth Congress, first session.]

A BILL to amend an act entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States, in reference to bigamy, and for other purposes," approved March twenty-second, eighteen hundred and eighty-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any proceeding and examination before a grand jury, a judge, justice, or a United States commissioner, or a court, in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, the lawful husband or wife of the person accused shall be a competent witness, and may be called and may be compelled to testify in such proceeding, examination, or prosecution without the consent of the husband or wife, as the case may be; but such witness shall not be permitted to testify as to any confidential statement or communication made by either husband or wife to each other during the existence of the marriage relation.

SEC. 2. That in any prosecution for bigamy, polygamy, or unlawful cohabitation, under any statute of the United States, whether before a United States commissioner, justice, judge, a grand jury, or any court, an attachment for any witness may be issued by the court, judge, or commissioner, without a previous subpœna, compelling the immediate attendance of such witness, when it shall appear to the commissioner, justice, judge, or court, as the case may be, that there is reasonable ground to believe that such witness will unlawfully fail to obey a subpœna issued and served in the usual course in such cases; and in such case the usual witness-fees shall be paid to such witness so attached: *Provided,* That no person shall be held in custody under any attachment issued as provided by this section for a longer time than ten days; and the person attached may at any time secure his or her discharge from custody by executing a recognizance, with sufficient sureties, conditioned for the appearance of such person at the proper time as a witness in the cause or proceeding wherein the attachment may be issued.

SEC. 3. That any prosecution under any statute of the United States for bigamy, polygamy, or unlawful cohabitation may be commenced at any time within five years next after the commission of the offense; but this provision shall not be construed to apply to any offense already barred by any existing statute of limitation.

SEC. 4. That every ceremony of marriage, or in the nature of a marriage ceremony, of any kind, in any of the Territories of the United States, whether either or both or more of the parties to such ceremony be lawfully competent to be the subject of such marriage or ceremony or not, shall be certified in writing by a certificate stating the fact and nature of such ceremony, the full names of each of the parties concerned, and the full name of every officer, priest, and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony, and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony filed in the office of the probate court, or, if there be none, in the office of the court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded. Such certificate, or the record thereof, or a duly certified copy of such record, shall be *prima facie* evidence of the facts required by this act to be stated therein, in any proceeding, civil or criminal, in which the matter shall be drawn in question. Any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court.

SEC. 5. That every certificate, record, and entry of any kind concerning any ceremony of marriage, or in the nature of a marriage ceremony of any kind, made or kept by any officer, clergyman, priest, or person performing civil or ecclesiastical functions, whether lawful or not, in any Territory of the United States, and any record thereof in any office or place, shall be subject to inspection at all reasonable times by any judge, magistrate, or officer of justice appointed under the authority of the United States, and shall, on request, be produced and shown to such judge, magistrate, or officer by any person in whose possession or control the same may be. Every person

who shall violate the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. And it shall be lawful for any United States commissioner, justice, judge, or court before whom any proceeding shall be pending in which such certificate, record, or entry may be material, by proper warrant to cause such certificate, record, or entry, and the book, document, or paper containing the same, to be taken and brought before him or it for the purposes of such proceeding.

SEC. 6. That nothing in this act shall be held to prevent the proof of marriages, whether lawful or unlawful, by any evidence now legally admissible for that purpose.

SEC. 7. That it shall not be lawful for any female to vote at any election hereafter held in the Territory of Utah for any public purpose whatever, and no such vote shall be received or counted or given effect in any manner whatever; and any and every act of the governor and legislative assembly of the Territory of Utah providing for or allowing the registration or voting by females is hereby annulled.

SEC. 8. That all laws of the legislative assembly of the Territory of Utah which provide for numbering or identifying the votes of the electors at any election in said Territory are hereby disapproved and annulled; but the foregoing provision shall not preclude the lawful registration of voters, or any other provisions for securing fair elections which do not involve the disclosure of the candidates for whom any particular elector shall have voted.

SEC. 9. That the laws enacted by the legislative assembly of the Territory of Utah conferring jurisdiction upon probate courts, or the judges thereof, or any of them, in said Territory, other than in respect of the estates of deceased persons and in respect of the guardianship of the persons and property of infants, and in respect of the persons and property of persons not of sound mind, are hereby disapproved and annulled; and no probate court or judge of probate shall exercise any jurisdiction other than in respect of the matters aforesaid; and every such jurisdiction so by force of this act withdrawn from the said probate courts or judges shall be had and exercised by the district courts of said Territory, respectively.

SEC. 10. That the laws enacted by the legislative assembly of the Territory of Utah which provide for or recognize the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father of such illegitimate child are hereby disapproved and annulled; and no illegitimate child shall hereafter be entitled to inherit from his or her father or to receive any distributive share in the estate of his or her father: *Provided*, That this section shall not apply to any illegitimate child born previous to the passage of this act.

SEC. 11. That all laws of the legislative assembly of the Territory of Utah which provide that prosecution for adultery can only be commenced on the complaint of the husband or wife are hereby disapproved and annulled; and all prosecutions for adultery may hereafter be instituted in the same way that prosecutions for other crimes are.

SEC. 12. That the acts of the legislative assembly of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints, and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, so far as the same may preclude the appointment by the United States of certain trustees of said corporation as is hereinafter provided. The President of the United States, by and with the advice and consent of the Senate, shall appoint fourteen trustees of the said corporation, who shall have and exercise all the powers and functions of trustees and assistant trustees provided for in the laws creating, amending, or continuing the said corporation, which trustees so appointed shall hold their respective offices for the term of two years; and the trustees of said corporation shall annually or oftener make a full report to the Secretary of the Interior embracing all the property, business affairs, and operations of the said corporation; and the legislative assembly of the Territory of Utah shall not have power to change the laws respecting said corporation without the approval of Congress. Said trustees shall each give bond, payable to the United States, with good and sufficient security, for the faithful discharge of the duties incumbent upon him as trustee, in such sum as may be prescribed by the Secretary of the Interior.

SEC. 13. That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section three of the act of Congress approved the first day of July, eighteen hundred and sixty-two, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Sec-

retary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: *Provided*, That no building, or the grounds appurtenant thereto, shall be forfeited which is held and occupied exclusively for purposes of the worship of God.

SEC. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess of the amount limited by law, the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever.

SEC. 15. That all laws of the legislative assembly of the Territory of Utah, or of the so-called Government of the State of Deseret, creating, organizing, amending, or continuing the corporation or association called the Perpetual Emigrating Fund Company are hereby disapproved and annulled; and it shall not be lawful for the legislative assembly of the Territory of Utah to create, organize, or in any manner recognize any corporation or association for the purpose of or operating to accomplish the bringing of persons into the said Territory for any purpose whatsoever.

SEC. 16. That it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utah as shall be proper to dissolve the said corporation mentioned in the preceding section, and pay the debts and to dispose of the property and assets thereof according to law. Said property and assets, in excess of the debts and the amount of any lawful claims established by the court against the same, and that by law shall escheat to the United States, shall be taken, invested, and disposed of by the Secretary of the Interior, under the direction of the President of the United States, for the benefit of common schools in said Tersitory.

SEC. 17. That the existing election districts and apportionments of representation concerning the members of the legislative assembly of the Territory of Utah are hereby abolished; and it shall be the duty of the governor, Territorial secretary, and the United States judges in said Territory forthwith to redistrict said Territory, and apportion representation in the same in such manner as to provide, as nearly as may be, for an equal representation of the people (excepting Indians not taxed), being citizens of the United States, according to numbers, in said legislative assembly, and to the number of members of the council and house of representatives, respectively, as now established by law; and a record of the establishment of such new districts and the apportionment of representation thereto shall be made in the office of the secretary of said Territory, and such establishment and representation shall continue until Congress shall otherwise provide; and no persons other than citizens of the United States otherwise qualified shall be entitled to vote at any election in said Territory.

SEC. 18. That the provisions of section nine of said act approved March twenty-second, eighteen hundred and eighty-two, in regard to registration and election officers, and the registration of voters, and the conduct of elections, and the powers and duties of the board therein mentioned, shall continue and remain operative until the provision and laws therein referred to to be made and enacted by the legislative assembly of said Territory of Utah shall have been made and enacted by said assembly and shall have been approved by Congress.

SEC. 19. That whoever commits adultery shall be punished by imprisonment in the penitentiary not exceeding three years; and when the act is committed between a married woman and a man who is unmarried, both parties to such act shall be deemed guilty of adultery; and when such act is committed between a married man and a woman who is unmarried, the man shall be deemed guilty of adultery.

SEC. 20. If any person related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the civil law, shall marry or cohabit with or have sexual intercourse with such other so related person, knowing her or him to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction theroof, shall be punished by imprisonment in the penitentiary not less than three years and not more than five years.

SEC. 21. That if an unmarried man or woman commits fornication, each of them shall be punished by imprisonment not exceeding six months, or by fine not exceeding one hundred dollars.

SEC. 22. That commissioners appointed by the supreme court and district courts in the Territory of Utah shall possess and may exercise all the powers and jurisdiction that are or may be possessed or exercised by justices of the peace in said Territory under the laws thereof, and the same powers conferred by law on commissioners appointed by circuit courts of the United States.

SEC. 23. That the marshal of said Territory of Utah, and his deputies, shall possess and may exercise all the powers in executing the laws of the United States possessed and exercised by sheriffs and their deputies as peace officers; and each of them shall cause all offenders against the law, in his view, to enter into recognizance to keep

the peace and to appear at the next term of the court having jurisdiction of the case, and to commit to jail in case of failure to give such recognizance. They shall quell and suppress assaults and batteries, riots, routs, affrays, and insurrections, and shall apprehend and commit to jail all felons.

SEC. 24. That the office of Territorial superintendent of district schools created by the laws of Utah is hereby declared vacant; and it shall be the duty of the supreme court of said Territory to appoint a Territorial superintendent of district schools, who shall possess and exercise all the powers and duties imposed by the laws of said Territory upon the Territorial superintendent of district schools, and who shall receive the same salary and compensation, which shall be paid out of the treasury of said Territory; and the laws of the Territory of Utah providing for the method of election and appointment of such Territorial superintendent of district schools are hereby suspended until the further action of Congress shall be had in respect thereto. The said superintendent shall have power to prohibit the use in any district school of any book of a sectarian character or otherwise unsuitable. Said superintendent shall collect and classify statistics and other information respecting the district schools in said Territory, showing their progress, the whole number of children of school age, the number who attend school in each year in the respective counties and average length of time of their attendance, the number of teachers and the compensation paid to the same, the number of teachers who are Mormons, the number who are so-called gentiles, the number of children of Mormon parents and the number of children of so-called gentile parents, and their respective average attendance at school. All of which statistics and information shall be annually reported to Congress, through the governor of said Territory and the Department of the Interior.

SEC. 25. (a) A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance at any time during the marriage, unless she shall have lawfully released her right thereto.

(b) The widow of any alien who at the time of his death shall be entitled by law to hold any real estate, if she be an inhabitant of the Territory at the time of such death, shall be entitled to dower of such estate in the same manner as if such alien had been a native citizen.

(c) If a husband seized of an estate of inheritance in lands exchanges them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given or of those taken in exchange; and if such election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange within one year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange.

(d) When a person seized of an estate of inheritance in lands shall have executed a mortgage on such estate before marriage, his widow shall nevertheless be entitled to dower out of the lands mortgaged as against every person except the mortgagee and those claiming under him.

(e) Where a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase-money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage; but she shall be entitled to her dower as against all other persons.

(f) Where in such case the mortgagee, or those claiming under him, shall, after the death of the husband of such widow, cause the land mortgaged to be sold, either under a power of sale contained in the mortgage or by virtue of the decree of a court of equity, and if any surplus shall remain after payment of the moneys due on such mortgage, and the costs and charges of the sale, such widow shall nevertheless be entitled to the interest or income of the one-third part of such surplus, for her life, as her dower.

(g) A widow shall not be endowed of lands conveyed to her husband by way of mortgage unless he acquire an absolute estate therein during the marriage period.

(h) In case of divorce dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.