A PLEA FOR RELIGIOUS LIBERTY AND THE RIGHTS OF CONSCIENCE: AN ARGUMENT DELIVERED IN THE SUPREME COURT OF THE UNITED STATES, APRIL 28, 1886, IN THREE CASES OF LORENZO SNOW, PLAINTIFF IN ERROR, V. THE UNITED STATES

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A Plea for Religious Liberty and the Rights of Conscience: An Argument Delivered in the Supreme Court of the United States, April 28, 1886, in three cases of Lorenzo Snow, Plaintiff in error, v. The United States by George Ticknor Curtis

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GEORGE TICKNOR CURTIS

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Trieste

A Plea for Religious Liberty and the Rights of Conscience.

AN ARGUMENT

DELIVERED IN THE

SUPREME COURT OF THE UNITED STATES

April 28, 1886, in three cases of

LORENZO SNOW, PLAINTIFF IN ERROR,

v.

THE UNITED STATES,

On Writs of Error to the Supreme Court of Utah Territory.

BY GEORGE TICKNOR CURTIS.

When we compare the strange respect of mankind for liberty with their strange want of respect for it, we might imagine that a man had an indispensable right to do harm to others, and no right at all to please himself without giving pain to any one.

JOHN STUART MILL.

WASHINGTON, D. C.

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1886.

[Lorenzo Snow, commonly called "Apostle Snow," a rank in the hierarchy of the Mormon Church, was convicted and sentenced on three indictments in the District Court of Utah Territory, for violating the 3d section of the act of Congress passed March 22, 1882, known as the "Edmunds act." The judgments were affirmed by the Supreme Court of Utah, and the cases afterwards brought to the Supreme Court of the United States, by writs of error, and there argued together. The law under which Mr. Snow was indicted prohibits cohabitation "with more than one woman." The evidence in the case showed that he lived exclusively with one of his wives, and had no association with either of the others which would have been in any degree improper in any other gentlemen, but he had acknowledged them all to be his wives. The facts in evidence, and the questions arising on the bills of exceptions, so far as they were discussed by Mr. Curtis, sufficiently appear from the following stenographic report of his argument.]

ARGUMENT.

Once, may it please your Honors, and once only, in the course of my professional career, I have been counsel in a case in which the life of a human being was at stake. This was in the days of my youth—46 years ago—when the energies were full, when ambition was high, when applause was sweet, and the desire for success was keen. And now, when I have passed my three score and ten, have arrived at an age when we look backward and not forward, when fame no longer allures and little is left but duty to be discharged because it is duty, I find myself here engaged in a cause which is directly to affect the peace, the welfare, the safety, the religious constitutional rights of thousands of my fellow creatures, and may possibly draw into its consequences the lives of some of them. Bear with me this great responsibility, at least so far as to understand and appreciate the grounds of my apprehension. Bear with me while I separate those considerations and elements which are fit to be entertained by this Court, from those which belong exclusively to the statesman and the legislator. No one can be more sensible than I am, that when a statute is to be construed by a court,

it is the meaning and intent of the lawgivers that is to be ascertained. I do not need to be told that it is your province not to make laws, but to interpret and apply them. Nevertheless, it does happen under our system of government, that even when there is nothing to be determined but the construction of a law, constitutional provisions must be taken into consideration; and when that is not the case, it also happens that the time of the enactment of the law, the circumstances which led to it, the public facts and public equities which surround it, each and all are of fit and proper consideration in determining the meaning and application of the language of the legislature to successive cases as they arise.

I am firmly convinced, after a very thorough study of these cases, that both of these inquiries arise on these records. I am to submit to you a constitutional question which involves the religious liberties of these people called Mormons; and it arises in this way: This man was convicted three several times on evidence which was precisely this and no more, that on a certain day he casually introduced an acquaintance of his to two women, who were present in the marshal's office when he was under arrest, as his "wives," and that is all there is of his language which is in evidence in these cases. The whole of his other conduct, if you grasp all its incidents in one bundle, resulted from moral and religious duties, as he estimated and believed his religious duties to be, and this I shall demonstrate to you, I think, is the precise question here. Without a doubt, it presents a constitutional question, and a very grave one.

The first proposition to which I have to ask your attention is stated on the 22d page of my brief.

THE CONSTRUCTION GIVEN BY THE COURT BELOW TO THE 3D SECTION OF THE ACT OF MARCH 22, 1882, AND ON WHICH THE PLAINTIFF IN ERROR WAS THRICE CONVICTED, MAKES IT VIOLATE THE FIRST AMENDMENT OF THE CONSTITUTION, BECAUSE IT MAKES

THE STATUTE PUNISH THE PROFESSION OF A RELIGIOUS BELIEF, WHEN, UNDER THAT CONSTRUCTION, IT IS APPLIED TO THE EVIDENCE IN THE THREE CASES NOW BEFORE THE COURT.

In approaching the subject of religious liberty, there is of course a great deal of antecedent history to be taken into account. I do not propose to go over the whole of it, because most of us here are legal and historical scholars. You, Mr. Chief-Justice, in a recent case, Reynolds *v.* United States, (98 U. S.,) had occasion to develop the subject somewhat. It is necessary for me, on this occasion, to supplement what you then said by a little further development of the subject; and, moreover, it is necessary for me to show what was the religious persecution on which history had set the seal of its condemnation before our Constitution was made. In all the modern ages of the world in which religious persecution has been carried on by governments, or in the name of public authority, the whole essence of the atrocious wrong has been this—power has said to the weak: "Renounce your religious opinions, recant your religious beliefs, or die, or go to prison." This was what was said by Phillip II and the Inquisition to the whole anti-Catholic party in his dominions. This was what was said by Bloody Mary, of England, when she burnt her Protestant subjects at the stake. This was what was said in the persecution in Northern Italy in the seventeenth century, to the subjects of the Duke of Savoy, when the great Protector of the Commonwealth of England signified that if that persecution did not cease the English guns should be heard in the Vatican. This, too, was what was said (with inexpressible grief and shame I advert to it) by my Puritan ancestors of Massachusetts when they hanged Quakers. This is what I am to show will be said by this Edmunds act to the Mormons of Utah, if it is to be construed and applied here as it was construed and applied by the territorial judges. If I fail in showing this, I shall fail in this branch of my argument. If I succeed in showing it, these judgments will be reversed.

I pass to the more immediate threshold of the constitutional question. But before I cross it I must advert again to the two religious persecutions which stand nearest in time to the establishment of our Constitution. I have alluded to the persecution in northern Italy which Cromwell checked. It was while that persecution was going on that Milton penned that grand sonnet which rang like a trumpet through Christendom:

> Avenge, oh, Lord! thy slaughtered saints, whose bones
> Lie scattered on the Alpine mountains cold.

It was Milton, too, who, as Latin Secretary to the Protector's government, wrote the despatches which threw the shield of England over nearly all the Protestants of the Continent; a protection which they did not lose until Charles II basely sold himself to the French king for gold. That protection was not again afforded to them until William of Orange lifted the crown of England out of the degradation into which it had fallen when it was worn by his uncles.

What the poet said about the poor peasants of the Alps is what some future Milton may have to say if we do not find some better way out of this sad problem in Utah than any that we have yet tried. For, if the barriers of the Constitution are to be disregarded, we may soon hear that the blood of these people is demanded. We may take warning from the spirit of violence that prevails everywhere. Everywhere those who are disliked for any cause are made the victims of popular rage. At this moment a bill is passing through Congress to indemnify certain Chinese for outrages committed upon them by mobs. The Mormons will suffer anything rather than have their religious convictions forced out of them by persecution; and this is what is now tried by the machinery of the criminal law *as it is administered in that Territory.* They will obey the law when they can learn what it requires of them; and whatever is done to them, they will not be driven into rebellion, much as some

of their enemies might like to have them, for they hold the doctrine of non-resistance by physical force as a part of their religious creed. They will use no violence, but they may be made the victims of violence.

The persecution which Milton denounced, and which Cromwell stayed, occurred just three years before the persecution of the Quakers in Massachusetts. The most accurate account of the Quaker persecution is to be found in Palfrey's History of New England. It transpired one hundred and twenty-seven years before the Constitution of the United States was adopted.*

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*The persecution of the Quakers in Massachusetts occurred in 1658–59. The following account of the executions is to be found in Palfrey's History of New England, vol. ii, pp. 11-14 :

"For a little time there seemed reason to hope that the law would do its office without harm to any one. The first six Quakers who were banished after its enactment went away and returned no more. But William Robinson heard of it in Rhode Island, and Marmaduke Stevenson in Barbadoes; and they judged themselves to be commissioned to put it to the proof. They came to Boston, and were joined there by Mary Dyer, from Newport, and Nicholas Davis, from Barnstable. The four were arraigned and received sentence of banishment, with the addition that they would suffer death if they came back.

"Nicholas Davis and Mary Dyer found freedom to depart; * * * but the other two were constrained in the love and power of the Lord not to depart, but to stay in the jurisdiction, and to try the bloody law with death.' After four or five weeks they returned to Boston, and were again joined there by Dyer, who had again reconsidered her duty. Brought to trial under the recent statute, they were all three sentenced to be hanged on the eighth day following. Precautions were taken against a popular outbreak, for there was a general disgust at what was going on. A hundred pikemen and musketeers were detailed to guard the convicts to execution. A strong night watch was set, and sentries were posted in and around the town.

"At this point, without doubt, if not before, the government should have paused and retraced its steps. It would have had to acknowledge itself beaten; but this it could afford to do, and this it was obliged to do at last. Perhaps each party had continued to hope that the other would relent when the terrible gallows should be reared. But so it was not to be. The contest of will was to last longer. Whatever the rulers of Massachusetts in those days promised or threatened, that it was their practice to do. On the other hand, if they presumed that their antagonists were susceptible of fear, the supposition was a mistake. On the appointed day, the prisoners, sur-