SUPREME COURT OF UNITED STATES

Davis

Vs.

Beason, Sheriff.

03.02.1890

Mr. Justice FIELD, after stating the facts as above, delivered the opinion of the court.

2. On this appeal our only inquiry is whether the district court of the territory had jurisdiction of the offense charged in the indictment, of which the defendant was found guilty. If it had jurisdiction, we can go no further. We cannot look into any alleged errors in its rulings, on the trial of the defendant. The writ of habeas corpus cannot be turned into a writ of error to review the action of that court. Nor can we inquire whether the evidence established the fact alleged, that the defendant was a member of an order or organization known as the 'Mormon Church,' called the 'Church of Jesus Christ of Latter-Day Saints,' or the fact that the order of organization taught and counseled its members and devotees to commit the crimes of bigamy and polygamy, as duties arising from membership therein. On this hearing we can only consider whether, these allegations being taken as true, an offense was committed of which the territorial court had jurisdiction to try the defendant. And on this point there can be no serious discussion or difference of opinion. Bigamy and polygamy are crimes by the laws of all civilized and Christian countries. They are crimes by the laws of the United States, and they are crimes by the laws of Idaho. They tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman, and to debase man. Few crimes are more pernicious to the best interests of society, and receive more general or more deserved punishment. To extend exemption from punishment for such crimes would be to shock the moral judgment of the community. To call their [133 U.S. 333, 342] advocacy a tenet of religion is to offend the common sense of mankind. If they are crimes, then to teach, advise, and counsel their practice is to aid in their commission, and such teaching and counseling are themselves criminal, and proper subjects of punishment, as aiding and abetting crime are in all other cases. The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. It is often confounded with the cultus or form of worship of a particular sect, but is distinguishable from the latter. The first amendment to the constitution, in declaring that congress shall make no law respecting the establishment of religion or forbidding the free exercise thereof, was intended to allow every one under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the equal rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect. The oppressive measures adopted, and the cruelties and punishments inflicted, by the governments of Europe for many ages, to compel

parties to conform, in their religious beliefs and modes of worship, to the views of the most numerous sect, and the folly of attempting in that way to control the mental operations of persons, and enforce an outward conformity to a prescribed standard, led to the adoption of the amendment in q estion. It was never intended or supposed that the amendment could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order, and morals of society. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. However free the exercise of religion may [133 U.S. 333, 343] be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislantion. There have been sects which denied as a part of their religious tenets that there should be any marriage tie, and advocated promiscuous intercourse of the sexes, as prompted by the passions of its members. And history discloses the fact that the necessity of human sacrifices, on special occasions, has been a tenet of many sects. Should a sect of either of these kinds ever find its way into this country, swift punishment would follow the carrying into effect of its doctrines, and no heed would be given to the pretense that, as religious beliefs, their supporters could be protected in their exercise by the constitution of the United States. Probably never before in the history of this country has it been seriously contended that the whole punitive power of the government for acts, recognized by the general consent of the Christian world in modern times as proper matters for prohibitory legislation, must be suspended in order that the tenets of a religious sect encouraging crime may be carried out without hindrance.

3. On this subject the observations of this court through the late Chief Justice WAITE, in Reynolds v. U. S., are pertinent. 98 U.S. 145, 165, 166 S.. In that case the defendant was indicted and convicted under section 5352 of the Revised Statutes, which declared that 'every person having a husband or wife living, who marries another whether married or single, in a territory or other place over which the United States have exclusive jurisdiction, is guilty of bigamy, and shall be punished by a fine of not more than five hundred dollars, and by imprisonment for a term not more than five years.' The case being brought here, the court, after referring to a law passed in December, 1788, by the state of Virginia, punishing bigamy and polygamy with death, said that from that day there never had been a time in any state of the Union when polygamy had not been an offense against society, cognizable by the civil courts, and punished with more or less severity; and added: 'Marriage, while from its very nature a sacred obligation, is, nevertheless, in most civilized nations a [133 U.S. 333, 344] civil contract, and usually regulated by law. Upon it society may be said to be built, and out of its fruits spring social relations and social obligations and duties, with which government is necessarily required to deal. In fact, according as monogamous or polygamous marriages are allowed, do we find the principles on which the government of the people, to a greater or less extent, rests.' And, referring to the statute cited, he said: 'It is constitutional and valid, as prescribing a rule of action for all those residing in the territories, and in places over which the United States have exclusive control. This being so, the only question which remains is

whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or, if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary, because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances.' And in Murphy v. Ramsey, 114 U.S. 15, 45, 5 S. Sup. Ct. Rep. 747, referring to the act of congress excluding polygamists and bigamists from voting or holding office, the court, speaking by Mr. Justice MATTHEWS, said: 'Certainly no legislation can be supposed more wholesome and necessary in the founding of a [133 U.S. 333, 345] free, self-governing commonwealth, fit to take rank as one of the co- ordinate states of the Union, than that which secks to establish it on the basis of the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement. And to this end no means are more directly and immediately suitable than those provided by this act, which endeavors to withdraw all political influence from those who are practically hostile to its attainment.' It is assumed by counsel of the petitioner that, because no mode of worship can be established, or religious tenets enforced, in this country, therefore any form of worship may be followed, and any tenets, however destructive of society, may be held and advocated, if asserted to be a part of the religious doctrines of those advocating and practicing them. But nothing is further from the truth. While legislation for the establishment of a religion is forbidden, and its free exercise permitted, it does not follow that everything which may be so called can be tolerated. Crime is not the less odious because sanctioned by what any particular sect may designate as 'religion.'

4. It only remains to refer to the laws which authorized the legislature of the territory of Idaho to prescribe the qualifications of voters, and the oath they were required to take. The Revised Statutes provide that 'the legislative power of every territory shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States. 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 the lands or other property of non-residents be taxed higher than the lands or other property of residents.' Rev. St. 1851. Under this general authority it would seem that the territorial legislature was authorized to

prescribe any qualifications for voters, calculated to secure obedience to its laws. But, in addition to the above law, section 1859 of the Revised Statutes [133 U.S. 333, 346] provides that 'every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any territory hereafter organized, and who are actual residents of such territory at the time of the organization thereof, shall be entitled to vote at the first election in such territory, and to hold any office therein; subject, nevertheless, to the limitations specified in the next section,' namely, that at all elections in any territory subsequently organized by congress, as well as at all elections in territories already organized, the qualifications of voters and for holding office shall be such as may be prescribed by the legislative assembly of each territory, subject, nevertheless, to the following restrictions: First, that the right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of 21, or persons above that age who have declared their intention to become such citizens; second, that the elective franchise or the right of holding office shall not be denied to any citizen on account of race, color, or previous condition of servitude; third, that no soldier or sailor, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote unless he has made his permanent domicile in the territory for six months; and, fourth, that no person belonging to the army or navy shall be elected to or hold a civil office or appointment in the territory. These limitations are the only ones placed upon the authority of territorial legislatures against granting the right of suffrage or of holding office. They have the power, therefore, to prescribe any reasonable qualifications of voters and for holding office, not inconsistent with the above limitations. In our judgment, section 501 of the Revised Statutes of Idaho territory, which provides that 'no person under guardianship, non compos mentis, or insane, nor any person convicted of treason, felony, or bribery in this territory, or in any other state or territory in the Union, unless restored to civil rights; nor any person who is a bigamist or polygamist, or who teaches, advises, [133 U.S. 333, 347] counsels, or encourages any person or persons to become bigamists or polygamists, or to commit any other crime defined by law, or to enter into what is known as plural or celestial marriage, or who is a member of any order, organization, or association which teaches, advises, counsels, or encourages its members or devotees, or any other persons, to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a rite or ceremony of such order, organization, or association, or otherwise, is permitted to vote at any election, or to hold any position or office of honor, trust, or profit within this territory,'-is not open to any constitutional or legal objection. With the exception of persons under guardianship or of unsound mind, it simply excludes from the privilege of voting, or of holding any office of honor, trust, or profit, those who have been convicted of certain offenses, and those who advocate a practical resistance to the laws of the territory, and justify and approve the commission of crimes forbidden by it. The second subdivision of section 504 of the Revised Statutes of Idaho, requiring every person desiring to have his name registered as a voter to take an oath that he does not belong to an order that advises a disregard of the criminal law of the territory, is not open to any valid legal objection to which out attention has been called.

5. The position that congress has, by its statute, covered the whole subject of punitive legislation against bigamy and polygamy, leaving nothing for territorial

action on the subject, does not impress us as entitled to much weight. The statute of congress of March 22, 1882, amending a previous section of the Revised Statutes in reference to bigamy, declares 'that no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such territory or other place, or be eligible for election or appointment to, or be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such territory or place, or under the United States.' 22 St. 31. [133 U.S. 333, 348] This is a general law applicable to all terriories and other places under the exclusive jurisdiction of the United States. It does not purport to restrict the legislation of the territories over kindred offenses, or over the means for their ascertainment and prevention. The cases in which the legislation of congress will supersede the legislation of a state or territory, without specific provisions to that effect, are those in which the same matter is the subject of legislation by both. There the action of congress may well be considered as covering the entire ground. But here there is nothing of this kind. The act of congress does not touch upon teaching, advising, and counseling the practice of bigamy and polygamy, that is, upon aiding and abetting in the commission of those crimes, nor upon the mode adopted, by means of the oath required for registration, to prevent persons from being enabled by their votes to defeat the criminal laws of the country. The judgment of the court below is therefore affirmed.

NOTE.-The constitutions of several states, in providing for religious freedom, have declared expressly that such freedom shall not be construed to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the state Thus, the constitution of New York of 1777 provided as follows: 'The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this state, to all mankind: provided, that the liberty of conscience hereby granted shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.' Article 38. The same declaration is repeated in the constitution of 1821, (article 7, 3,) and in that of 1846, (article 1, 3,) except that for the words 'hereby granted,' the words 'hereby secured' are substituted. The constitutions of California, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland, Minnesota, Mississippi, Missouri, Nevada, and South Carolina contain a similar declaration.

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