

“Jailed on the Charge of Sodomy”: A Same-Sex, Interracial Marriage in 1888

Adam Yeich

The story, printed in Springfield, Ohio, about an occurrence in Fort Smith, Arkansas, began on July 13, with a white man, identified as Chesser, being arrested for disorderly conduct at the home of a black man, identified as George Burton, who was said to be known as a hermaphrodite.¹ In the course of Chesser’s trial, it came to light that he and Burton were married. Records were found that Chesser had gotten a marriage license on May 10 to marry a George Ann Holly, who was said to be George Burton. They were placed under arrest for sodomy.² The article concluded with the statement that this was thought to be the first case on record of two men living together as a married couple. This type of event is unheard of in historical texts concerning same-sex relations between men in the nineteenth century in America. There are a few accounts of relationships like



Nineteenth-Century Ohio Literature pairs forgotten readings with new essays that explain them. In this installment, Adam Yeich explains and presents an Ohio newspaper report of a same-sex, interracial marriage in 1888. *Nineteenth-Century Ohio Literature* is edited by Jon Miller at The University of Akron. For more information, visit ideaexchange.uakron.edu/nineteenthcenturyohioliterature.

this between women, but none between men and none between men or women that went so far as attempted legalization of the relationship, i.e. marriage. The fact that the story occurred in Arkansas but was found in a newspaper from Ohio requires looking briefly at background on both locations to provide some context for the text in question.

The source of this text, the *Springfield Daily Republic*, was printed in Springfield, Ohio, in Clark County from January 1887 until September 1888, when the name was changed to the *Springfield Republic-Times* after a merger with the *Champion City Times*. The paper was printed daily, as a smaller publication, with only four-page issues ("About Springfield daily republic"). As for the town of Springfield itself, by the 1880s it had grown to a population of over 20,000 from the industrialization of the city ("Springfield, Ohio"). Serving one of the major cities of southwestern Ohio, Springfield's paper attended not only to local issues and articles, but those on a national level, as seen in the text below.

The national news on this page of the July 13, 1888 *Springfield Daily Republic* has a horrible, sensational consistency. Floods run up millions in losses in Ohio; a cyclone passes over Michigan; a young mother burns to death after her coal oil stove explodes. A handsome train agent knocks down his wife and leaves town with his pretty young stenographer; an immigrant toddler is decapitated by the wheel of a train; a man chloroforms his companion and mutilates his body so he can stuff it into a trunk; and in Virginia a "colored demon," charged with criminal assault on a "respectable white lady," is taken from the sheriff's custody and hung in a nearby grove. In addition to the story on Chesser and



Nameplate of the Springfield Daily Republic. Ohio History Connection.

Burton's marriage, two more stories describe Arkansas: in Hot Springs, "country" toughs "perforate" and kill a policeman in a drive-by shooting, and a "race war" is predicted to be "imminent" between "White and Black Citizens" of Crittenden County, where blacks outnumber whites five to one and have control of nearly all political offices.

The changes in life, society, and economy in Arkansas reflected the changes occurring across the United States after Reconstruction and into the Gilded Age (roughly 1875–1900). There was massive economic growth, and a mass market was created. These growths were primarily (but not solely) a result of the expanded railroad. Railroad companies—often through newspapers—encouraged people to move to Arkansas to help cultivate the previously untapped lands available to grow and harvest crops. Many immigrants from Germany, Russia, and Poland, among others, moved into the area for this chance to prosper. The development of a national economy also led to demographic changes, as many people moved to cities and towns from rural areas. In 1888, for example, Fort Smith was well on its way to becoming the second largest city in the state, a status it established by 1900 (Moneyhon).

The location named in the dateline of the Springfield article concerning Chesser and Burton's marriage, Fort Smith is likely where they were "jailed on the charge of sodomy." A search of library catalogs suggests that Fort

Smith had perhaps nine newspapers in publication in 1888. Between the organization of Fort Smith's Sebastian County in 1851 and the end of the nineteenth century, more than forty newspapers were started and published in the county, most from the city of Fort Smith. The newspapers of Fort Smith are the most likely of all to have printed the story concerning "Jailed on the Charge of Sodomy," but as of now the original, Arkansas source for the Springfield article has not been found. It is not probable that the story printed in the *Springfield Daily Republic* was the original story, and while an article concerning the story may have likely run in one of the state newspapers, if it did, it also would have probably run in one of the Fort Smith papers.

Concerning Fort Smith, in 1870, a fire destroyed the officers' quarters at the fort, and the federal government decided to sell the Fort Smith property and land, but a later decision was made to move the Western Arkansas Federal District Court to Fort Smith from Van Buren in Crawford County, where Fort Smith was located. The city never had a sizeable African American community (Boulden). The fact is interesting to this study, as George was black and James, his husband, white. It seems their relationship, however it was defined, both before and after their marriage, would have been more conspicuous in a town with fewer African Americans than was typical of other large cities in the South.

To understand the events of "Jailed on the Charge of Sodomy," the historical context of the event must first be understood. The nineteenth century was a turning point in both the history of same-sex sexual behavior and the history of how society at large viewed and reacted to same-sex sexual behavior. Up until the last half

Jailed on the Charge of Sodomy.

FORT SMITH, ARK., July 13.—A white man named Chesser was arrested for disorderly conduct Monday at the house of a colored man named George Burton, who has been known here for some years past as a hermaphrodite. At Chesser's trial it came to light that he was married to Burton.

The county records were examined, and it was found that on May 10 Chester procured a license to marry George Ann Holly, who is no other than George Burton, and the marriage ceremony was duly performed at the house of Burton, a preacher named Campbell officiating. This rather stumped the official, as there could be no law found on the books covering the case.

Finally a physician was summoned and the so-called Mrs. Chesser subjected to an examination, when it was discovered that Burton was not what he professed to be, but a natural man. Upon this discovery both were lodged in jail on a charge of sodomy. This is thought to be the first case on record where one man was duly married to and living with another.

"Jailed on the Charge of Sodomy." Ohio History Connection.

of the nineteenth century—near the end of it, actually—there had never been a defined sexuality. People did not define themselves in any way based on their sexual behavior. There was no *gay* or *straight*, no *heterosexual*, *homosexual*, *bisexual*, *pansexual*, or any other term by which a person identified.³ Of course there were moral and legal constraints on having any sex deemed unnatural, constraints which many a man (and woman) struggled against, both within themselves and from within

society. From a legal standpoint, anti-sodomy laws existed in almost every state in the union during the nineteenth century. What is interesting is that, in all of the cases Jonathan Ned Katz examines in *Love Stories*, there was not a single case in the state of Arkansas for the nineteenth century.

Men who had sex with (and often loved) other men did not do so in the terms of relationships as we would see them today. The nineteenth century did not offer the means for these sorts of relationships. Men had “friendships,” “companions,” and “lovers,” whom they met either via a set of understood codes and behaviors or the use of coded language and innuendoes designed to keep their intentions private from those of society outside their small “community” of man-loving men. Katz wrote of men having lasting “friendships,” but these did not extend to marriage, and he implied that most of the time, romance between men did not include sexual relations, and sexual relations did not include romance. He explained, “Romantic lovers and sodomites [men having sex with men] inhabited separate, parallel universes, leaving a great unmapped space between them” (Katz 90). From the context of Chesser and Burton’s marriage, it would appear this was not always true.

While Burton and Chesser’s situation was unique for its permanence of marriage in a time where that was less than common, it was also unique on the level of race. Relations between blacks and whites were strained, especially in the South, though there is no evidence that this was prominent in Fort Smith at the time the marriage occurred. The marriage would, however, have been illegal according to anti-miscegenation legislation, which prohibited interracial marriage be-

tween any white person and another non-white person (Thompson 357). Burton is clearly identified as “colored” in the text of the article, as Chesser is identified as “white.” Marriage between races was illegal, but there were no clear laws preventing the amalgamation of people of different races (Berry 839). Sex between men of different races in America is also not touched upon in the historiography of same-sex behavior in the nineteenth century. The only exception found was the claim that because it was seemingly ignored in writings of the period, it could be presumed that “interracial sodomy may have been so uncommon it was invisible” (Katz 57). This is yet another reason urging greater study of Burton and Chesser’s marriage.

Why this story is so rare has been established, but another question—why media coverage of same-sex behavior between men was so infrequent in the nineteenth century—is also worth consideration here. Prior to the Civil War, there was very little mention of “sodomy” or any of the other terms of reference to same-sex behavior in American newspapers. As it was so often referred, the crime of sodomy was to be unnamed; it was reprehensible to be spoken. However, at the end of the nineteenth century, “men-lusting men were exposed to public view as a new form of urban entertainment” (Katz 288). This revelation shows how the activities of these “men-lusting men” went from hidden in whispered shadows to being moved into prominence for the entertainment of the general public. In addition, earlier media articles concerning sodomical behavior were brief, where they appeared at all, giving no details past the man’s name and the vague nature of his crime, “sodomy.” Katz’s observation may explain why this 1888

story has as much information as it does; forty or fifty years earlier, the notice may have been only “Burton and Chesser arrested for sodomy on July 13.”

Despite the information and context assembled here, the resources needed to flesh out this story into a further historical study are scarce, as only a few (and not nearly enough) Arkansas newspapers have been digitized. There is no information for Chesser or Burton in the criminal records of Arkansas for the period as documented in the National Archive. Physical copies of Arkansas newspapers are archived in various locations across Arkansas, Texas, and Oklahoma. However, this story is far too important to the history of same-sex behavior between men and the history of their homosexual counterparts today (as they are now identified) to be ignored. Further research will need done to give this event the attention it deserves and disseminate this finding to the larger community both within the scholarship and without.

Note on the Text

“Jailed on the Charge of Sodomy” was printed in issue 227 of volume 34 of the *Springfield Daily Republic*. The story appeared on the third page, at the bottom of the third column. As the story originated in Fort Smith, Arkansas, it is likely that this is not the original article told of the event. What is more likely is that this story was found in an Arkansas newspaper and was then reprinted in Springfield. The information about and the presentation of this text would be more complete with the inclusion of the originating article(s) from Arkansas. At this point in the research of this historical

text, there was no access to the archives of Arkansas's newspapers. None of the newspapers for the second half of the nineteenth century have been digitized into the *Chronicling America* database. As far as I was able to find, these necessary newspaper resources—if they exist—are only available in hard copy, stored in various archives around the state of Arkansas.

When recreating this text for use in this edition, I wanted it to remain as true to its original publication as I could possibly make it, errors or not. For this reason, there were only two minor changes made, both for simple clarity of the text, and neither of which at all affected the integrity of the original. The first change made was to the second paragraph. In the text of the *Springfield Daily Republic*, the section changed in the first line of the recreated text (second line of the original text) of the second paragraph read “and it was found that on May 10 Chester procured a license to marry George Ann Holly.” Here, I changed “Chester” to “Chesser” as that is the name by which he was referred to throughout the rest of the article—three more times. In addition, from my research, I found the marriage license referred to in the text, confirming that the man's name was in fact Chesser, not Chester, which could have been a simple typographical error on the part of the printer (“Arkansas, County Marriages, 1837–1957”).

The second change I made was in the second line of the recreated text (third line of the original text) in the third paragraph, and it was a simple punctuation change. The section originally read “Finally a physician was summoned and the so-called Mrs. Chesser subjected to an examination. when it was discovered that Burton was not what he professed to be, but a natural

man." The period between "examination" and "when" makes the second half of the sentence a fragment and some clarity of the likely intended message is lost. For that reason, I changed the period to a comma, as the sentence seems to be structured in such a way that the reason "Mrs. Chesser" was subjected to an examination at all was because Burton was not the hermaphrodite "he professed to be" but a natural man. Therefore, the officials needed to confirm that "Mrs. Chesser" was also a natural man before they could charge both of the men with the crime of sodomy and imprison them.

Jailed on the Charge of Sodomy

Fort Smith, Ark., July 13.—A white man named Chesser was arrested for disorderly conduct Monday at the house of a colored man named George Burton, who has been known here for some years past as a hermaphrodite. At Chesser's trial it came to light that he was married to Burton.

The county records were examined, and it was found that on May 10 Chesser procured a license to marry George Ann Holly, who is no other than George Burton, and the marriage ceremony was duly performed at the house of Burton, a preacher named Campbell officiating. This rather stumped the official, as there could be no law found on the books covering the case.

Finally a physician was summoned and the so-called Mrs. Chesser subjected to an examination, when it was discovered that Burton was not what he professed to be, but a natural man. Upon this discovery both were lodged in jail on a charge of sodomy. This is thought

to be the first case on record where one man was duly married to and living with another.

Notes

1. “Hermaphrodite” today is understood to mean a person (or animal) with both male and female reproductive organs. While this was one of its meanings back in the nineteenth century as well, it was also a term used to refer to a man who had sexual relations with other men. It was a term to imply a man was effeminate, as there was apparently no other way for the people of that period to comprehend same-sex sexual attraction in men other than the feminization of those men (“Hermaphrodite”).

This idea of hermaphroditism and effeminacy in men is also elaborated in Jonathan Katz’s text, where he elaborates on the idea of effeminate men and masculine women (301).

2. “Sodomy” is generally understood today to mean anal sexual intercourse (typically between two men), though it can also be used to describe oral sex in a negative connotation (“Sodomy”). However, this use is less common. In the nineteenth century—as well as prior to it—sodomy was an umbrella term used to describe any kind of sexual activity deemed unnatural, and “natural” meant sex that was procreative. If there was no reproductive possibility in the sex, it was unnatural and thus considered sodomy.

Jonathan Katz explains, providing evidence from literature and legal documents, how “sodomy” was a blanket term up to and during the nineteenth century to refer to all acts of “unnatural” or nonprocreative sexual intercourse. It is useful to note that in most cases, some form of penetration was necessary to constitute sodomy. Oral “penetration” or copulation was not recognized as a form of inappropriate sexual contact until later in the nineteenth century, when it was then added to the list of sexual contacts referred to as “sodomy” (64–71).

3. The term “homosexual” (and later, its supposed opposite, “heterosexual”) was not invented until 1869, and it is credited to an Austro-Hungarian writer, Karl Maria Kertbeny (Hatheway 103). The idea of homosexuality as a sexual identity—or really the idea of a person having a sexual identity at all—was not recognized until the end of the nineteenth century and into the first years of the twentieth century (Hatheway 49). Before this point, people were not known to identify as part of any group or “orientation” based on with whom they have sexual contact.

Works Cited

- “About Springfield daily republic.” *Chronicling America*, Library of Congress, chroniclingamerica.loc.gov/lccn/sn87076917/.
- Allsopp, Fred William. *History of the Arkansas Press for a Hundred Years and More*. Parke-Harper Publishing Company, 1922.
- Berry, Mary Frances. “Judging Morality: Sexual Behavior and Legal Consequences in the Late Nineteenth-Century South.” *Journal of American History*, vol. 78, no. 3, December 1991, pp. 835–56. *Academic Search Complete*.
- Boulden, Benjamin. “Fort Smith (Sebastian County).” *The Encyclopedia of Arkansas History and Culture*, The Central Arkansas Library System, www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=988.
- Hatheway, Jay. *The Gilded Age Construction of Modern American Homophobia*. Palgrave Macmillan, 2003.
- “Hermaphrodite.” *Oxford English Dictionary*, Oxford University Press, 2016, <http://www.oed.com/view/Entry/86249>.
- “Jailed on the Charge of Sodomy.” *Springfield Daily Republic*, 13 July 1888, p. 3. *Chronicling America*, Library of Congress, chroniclingamerica.loc.gov/lccn/sn87076917/1888-07-13/ed-1/seq-3/.
- Katz, Jonathan Ned. *Love Stories: Sex Between Men before Homosexuality*. The University of Chicago Press, 2001.
- Moneyhon, Carl H. “Post-Reconstruction through the Gilded Age, 1875 through 1900.” *The*

Encyclopedia of Arkansas History and Culture, The Central Arkansas Library System, www.encyclopediaofarkansas.net/encyclopedia/entry-detail.aspx?entryID=402.

Search results for James Chesser, Sebastian County, Arkansas. *Family Search*, Intellectual Reserve, familysearch.org/search/record/results?count=20&query=%2Bgivename%3AJames~%20%2Bsurname%3AChesser~%20%2Bmarriage_place%3A%22Sebastian%20County%2C%20Arkansas%22~

“Sodomy.” *Oxford English Dictionary*, Oxford University Press, 2016, www.oed.com/view/Entry/183887.

“Springfield, Ohio.” *Ohio History Central*, Ohio History Connection, www.ohiohistorycentral.org/w/Springfield,_Ohio.

Thompson, Debra. “Racial Ideas and Gendered Intimacies: The Regulation of Interracial Relationships in North America.” *Social & Legal Studies*, vol. 18, no. 3, 2009, pp. 353–71. *Electronic Journal Center*, OhioLINK.