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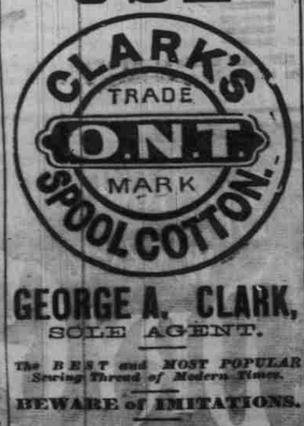

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UTAH CONTESTED ELECTION CASE.

(*Continued.*)

The law simply says to the people: Judge for yourselves, send up the man whom you desire to represent your interests, and he shall have a seat. I say that if there is no qualification prescribed by the law you cannot exclude him, the man whom the people have sent, after you have permitted them to send him and he holds the certificate of his election and comes here claiming his right to a seat. This House, under the law, has no power to exclude. Why now, for the first time, after the Delegate appears, apply additional qualifications and say that if he is a polygamist, a Catholic, a Methodist, or an atheist he shall not be seated, when there was no such provision in the law? By the opperation of that law that binds Congress, that binds everybody, he is entitled to come here, and, no limitations or qualifications having been specified, is entitled to his seat. There are many instances of the operation of law upon that principle, which are known to every lawyer, and the law is to be construed according to the language and import, and nothing can be added to it by mere construction changing the law. Therefore, whether you take the fact that the Constitution as applied to him and the qualifications therein specified operate upon him, or whether you exclude that thought or idea, or whether he comes here under the law without any qualifications being fixed by it, you have no right to exclude in either case, certainly not in the latter case, because there was not under the law at the time of his election any qualification prescribed, and this House is as much bound by the law as the Delegate himself or the humblest individual in the land.

I want now, Mr. Speaker to call the attention of the House, as briefly as I can, to one or two other propositions. I have forborne any discussion upon the number of votes shown by Mr. Cannon, naturalization, or anything of that kind; because it has been conceded by the majority of the committee that Mr. Cannon had over 18,000 votes and that Mr. Campbell had about 1,300; it is conceded that Mr. Cannon had been seven years a citizen of the United States, and also that he was an inhabitant of the Territory at the time of his election; if the constitutional qualifications are to be applied to him, that he is qualified. These facts being conceded, what is the reason he is not entitled to his seat? The gentleman from Tennessee says notwithstanding the infamy of the man—and I think the history of Congress bears him out in that—notwithstanding the infamy of the man, if he is sent here from a State he is bound under the Constitution to let him in; and if that law applies to a Delegate, the same logic would compel you to let him in.

But it is said here, and it has been stated repeatedly, that Mr. Cannon admits that he is or was a polygamist upon the 1st day of June, 1880. The principal objection that has been urged, and I may say the only argument that has been made, and in my judgment the only argument that can be made, is simply and solely that he was a polygamist, and therefore that he is a polygamist today. That is the argument and reason given why he should not be seated, and that is the naked question. Now I desire to address myself to that part of the argument under the operation of the anti-polygamy bill before referred to.

Mr. Townshend, of Illinois. Is there any evidence he was living in a state of polygamy since the adoption of that law?

Mr. Moulton. No, sir. I want to say a word or two as to the admission of Mr. Cannon as to being a polygamist. I want to call the attention of the House in the first place to the admission that they say was made and the circumstances under which it was made, to see what force and effect it has and how far and to what extent Mr. Cannon is bound by that admission or how it affects him.

In 1881, in the contest of Campbell *vs.* Cannon, at the end of a deposition that seems to have been taken in that contest, the admission is made that has been read. Now in the record there is not a particle of explanation given why it was made, or for what purpose it was made, or how it came to be there. I say there is not a particle of evidence in the record as to that. We are trying this case upon the law and upon the evidence. Some gentlemen have intimated that to exclude Cannon it is only necessary for them to know that he made that admission, without reference to what the law or the Constitution or anything else is. There is the admission. He protested at the time it was made against it, and says it is improper and irrelevant to any issue in the case. Still the admission is there, and it shows that he had been or was then cohabiting with plural wives. This is all it shows. It is an extraneous fact thrust into the record.

Now, suppose for the purpose of the argument the admission was made. We say very frequently we admit a thing for the purpose of the argument. That is done in pleading. But he makes it under protest, and puts it on the distinct ground it is wholly irrelevant. And I say here, as a lawyer, and I do not think any lawyer on this side will differ from me, that so far as the issue between Campbell and Cannon was concerned it was wholly irrelevant to any issue in the case, whether you apply the constitutional provision of qualification, or whether you take the law that makes no qualification. If the law prescribes no qualification then he has a right to come here and demand his seat under the law, whether he is a polygamist or not. There is the admission. This case must be tried by the law and the evidence.

Now, Mr. Cannon had the right to assume that polygamy was no issue in his contest with Campbell, for the reason that this House in the case of Maxwell vs. Cannon, in the Forty-third Congress, where the precise question was involved, the Committee on Elections unanimously decided that polygamy was no disqualification for a delegate; and this report was made by republicans, and the House sustained it, and Cannon took his seat. Therefore Mr. Cannon was justified in regarding polygamy as not being an issue and as not affecting his rights.

It is said that, the admission being made, the anti-polygamy law that was passed by this Congress operates and excludes Mr. Cannon. I admit that this law operates *in presenti*. I do not admit that it operates retrospectively: and I want to show to the House, which I think I can do in a very few moments, that this anti-polygamy law deprives Mr. Cannon of no right whatever, and cannot possibly affect him, for the reasons which I think I can give.

The first section of this act provides:

Every person who has a husband or wife living who, in a Territory or other place over which the United States have exclusive jurisdiction, who hereafter marries another, whether married or single, and any man who hereafter simultaneously, or on the same day, marries more than one woman, in a Territory or other place over which the United States have exclusive jurisdiction, is guilty of polygamy, and shall be punished by a fine of not more than $500 and by imprisonment, etc.

The third section provides:

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, shall be guilty of a misdemeanor, and fined and imprisoned, etc.

And I want to say to my friends on the other side of the House that the first and the third sections apply to this Territory here; that they apply to Washington City; but I am willing to give them the advantage of the charity of the presumption that they have not violated this law since it has taken effect.

Then the eighth section provides—

That no polygamist, bigamist, etc., shall be eligible for election or appointment to or be entitled to hold any office or place of public trust—

Under the government. If you say that this law operates *in presenti*, if you say that it operates now, it does not affect Mr. Cannon in the past. Mr. Cannon, in 1881, on the 1st of June, as you say, admitted that he was living with plural wives. That is admitted, but there is no admission or no proof of any violation of this law by Mr. Cannon since the passage of the law. And before a man could be convicted of any offense the offense must be proved against him. This law was passed this session. The admission was that he was living with plural wives before the law was passed.

Now, I want to call the attention of my friends on the other side to another fact, and I challenge contradiction from them. I say that Mr. Cannon was living in violation of no law of Congress or of the Territory prior to the passage of the act of this session.

You have all charged him with being a felon, with having lived in violation of the law. I say there is not a particle of proof of that assertion in this record, and a man is not to be sent to the penitentiary or condemned without proof. I ask my friends on the other side to take this record, examine it, and show if they can where Mr. Cannon has up to the present time violated any law of Congress.

The law which the act of this session was intended to amend is to be found in section 5,325 of the Revised Statutes. Why did Congress amend it? Because that law, under which Mr. Cannon was living, only provided that if after the passage of the law, which was in 1862, any man should marry more than one wife, should contract marriage with two or more women, he should be subject to the penalty prescribed. That law, which the act of this session proposed to amend, does not provide that the cohabiting with two or more women in Utah or any other Territory after the passage of that law shall be a criminal offense.

Now, if it is true that the marriage of Mr. Cannon to these women—and his answer in the case of Maxwell vs. Cannon, referred to by Mr. Pettibone, would go to prove as well as all the facts would seem to show that he was living with plural wives—yet, if it is true that he was married to more than one woman, and the marriages were contracted prior to the passage of the law of Congress of 1862, whose defects the anti-polygamy bill was intended to remedy, then simply cohabiting with plural wives since that law took effect was no offense.

Prior to the passage of the law of this session, Mr. Cannon was not living in violation of any law of the United States. If he has married since the passage of the law of this session, he having a wife living, or has cohabited with more than one woman, that would be an offense against the law. But I say there is not a particle of proof in the record or anywhere else to that effect. The presumption is that every man is innocent of any violation of the law until he is proven to be guilty.

The very passage of the act of this session shows that the construction I have given to the prior law did not provide a punishment for cohabitation with more than one woman. That was the very reason why the law of this session was passed. And the law of this session operates only upon persons hereafter; those who marry more than one woman or cohabit with more than one woman after the passage of the law. The former law applied only to marriages. The law of this session goes further, and applies not only to those who marry, but to those who cohabit with more than one woman.

Now, where is the proof that Mr. Cannon was married to plural wives subsequent to the law of 1862? Before that time there was no law in the Territory against it. That is the very reason why he answered as he did, as was read by my friend from Tennessee, [Mr. Pettibone,] that he was not living with plural wives in violation of any law. The statement was true at that time, because whatever marriages there were had taken place prior to 1862, and the law of 1862 could not operate retrospectively upon marriages that had taken place before the passage of that law.

If you say that the bill of this session operates upon Mr. Cannon, you must recollect that the provisions of that bill operate only after the passage of the bill. The bill uses the word "hereafter." It provides that any person who hereafter does so and so. If the charge against Mr. Cannon is that he has violated that law, then you must show that he has violated it since its passage.

Let us say to the conscientious gentlemen on the other side of the House, and I hope there are many of them, there is not a particle of proof that Mr. Cannon has violated this law. Besides, let me state another fact. One person alone cannot violate the law. It takes more than one. There must be two or more women to consent to the marriage with one man or to consent to cohabitation with him under this law to make it an offense.

The act of polygamy as defined by the bill of this session consists in the fact and in the intention. A great many of my friends have read from dictionaries in regard to the definition of polygamy. Why should you go to the lexicons, to the law dictionaries, to Webster, or anywhere else, when the law itself defines what polygamy is?

Here is the definition: "Every person who having a husband or a wife living in a Territory or other place over which the United States has exclusive jurisdiction, hereafter marries another, whether married or single, or upon the same day marries more than one, etc., shall be guilty of polygamy." And section 3 of the act of this session makes cohabitation with more than one woman a misdemeanor, subject to fine and imprisonment. This description of the offense is clear, and it excludes every other definition or descriptions of polygamy.

Now I would like to ask the gentlemen who are to follow me to point out how Mr. Cannon stands amenable to this law or has violated it. The presumption is that every man is innocent until the contrary is shown. And that presumption applies to Mr. Cannon's case. You must have positive and distinct proof before you can show him to be guilty under this law. Suppose he was to-day indicted for violation of this law, would his admission in 1881 that he was then a polygamist be any proof that he has been a polygamist under this law? Besides, here is the great fact that stares us all in the face, the universal presumption that every man obeys the law, that he violates no criminal law. You have to show it by proof if you make the charge that Mr. Cannon has violated the law. This is the law which gentlemen say he has violated, and this is the law which many of you gentlemen perhaps will base your vote upon against Mr. Cannon.

Now, I say that since the passage of the act of this session Mr. Cannon has not violated the law. It has not been shown that he is now living with two or more women. It has not been shown that since the passage of that law he has married any woman, he having a wife living at that time. No one of the elements that go to constitute the offense of polygamy has been proved in any manner.

Now, what is the presumption of law in such a case as this? On this point I want to read a single authority from one of the Missouri reports, (29 Mo., 259) a case almost exactly in point. It relates to the principle of presumption of innocence. In this case a party had charged a man and woman with living in adultery. An action of slander was brought. It was proved that the woman admitted that she had been married in Germany before she claimed to have married the person she was then living with. In the court below this instruction had been given:

If the jury find from the evidence that the plaintiff, Margaret Klein, was married in Germany to another person than Leonard Klein, the plaintiff, then such relation is presumed to continue; and it devolves upon the plaintiffs to prove to the satisfaction of the jury that such marriage was legally terminated before the date of the marriage certificate, read in evidence, or they cannot recover.

Now, the Supreme Court of Missouri, to which the case was appealed, declared that such was not the law—upon what principle? Upon the principle I have just enunciated, that the presumption is every man obeys the law; that where a penal or prohibitory law is passed the presumption is that everybody obeys it until the contrary is shown. Besides, even if it be shown that a person was at one time a violator of the law, there is the *locus penitentiæ*; there is the time for repentance; so that the presumption of innocence, charitably founded upon the experience of ages, and laid down in all the elementary books, prevails all the time until the contrary is shown. Here is the language of the supreme court of Missouri:

We think the first instruction which the court gave in this case at the instance of the defendants was erroneous. There was no presumption that a marriage, which was proved to have existed at one time in Germany, continued to exist here after positive proof of a second marriage *de facto* here. The presumption of law is that the conduct of parties is in conformity to law until the contrary is shown. That a fact continuous in its nature will be presumed to continue after its existence is once shown is a presumption which ought not to be allowed to overthrow another presumption of equal if not greater force in favor of innocence.

The court further says:

The presumption was that this marriage was a lawful one, and that the former marriage in Germany, if any such was established, had been dissolved.

I Read further from the language of the court:

There was not any evidence in this case, so far as the bill of exceptions shows, that the first husband of Mrs. Klein was still living; but if this had been established, we think she was still entitled to the benefit of the favorable presumption that the first marriage had been dissolved by a divorce, and that it was not incumbent on her, in this character of action and under the pleadings in this case, to produce a record of the judicial or legislative proceedings by which the divorce was effected.

Now apply that to this case. A year ago Mr. Cannon acknowledged that he was living with plural wives, which I have shown you was then in violation of no law of Congress whatever; I challenge any gentleman to show that at the time it was an offense against the law. Now you have passed a law making cohabitation with more than one woman and marrying more than one woman a crime. Why may it not charitably be presumed that Mr. Cannon, as a good citizen obeys the law as the rest of us do? That is the presumption of the law; and if so, how has it been shown that he has violated the law?

A good deal of newspaper comment and heresay testimony has been introduced here. I want to call attention to the fact that since the passage of this law the small remnant of polygamy which before existed in the Territory of Utah is fast disappearing. The polygamous relations of the parties are being broken up. The influence of this law is operating powerfully upon that people; for they now understand that if they live in violation of this law they are subject to fine and imprisonment. The presumption is that under the operations of this law polygamy will cease; that there will be no more violations of the law, and this presumption applies to Mr. Cannon's case.

But gentlemen say that this law operates against Mr. Cannon and excludes him. In what way? There are three sections applying here. The first section defines polygamy and makes it an offense; the third section declares cohabition an offense, and the eighth section, referring to those two sections, provides—

That no polygamist—

That is, no polygamist, as defined by this law; the first and third sections cannot refer to anything else; construing the whole statute together, this is the legal effect of the law and this is the language:

Section 8. That no polygamist, bigamist, or 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.

All the other provisions defining polygamy use the word "hereafter;" that is, after the passage of the act; and it is incumbent upon any one making a charge to show that the person accused has violated the law since this act went into operation.

[*To be continued.*]

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[*S. F. Monitor Aug. 25 1881.*]

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BOLTS, BELLS, SLEDGES, REAPERS, HAMMERS, THRESHERS, FEED CUTTERS, PORTABLE FORGES, SULKY HAY RAKES, THE SMITH PURIFIER, IMPROVED HOWE SCALES, FULL SUPPLY PLOW PARTS, WESTERN WHEEL SCRAPERS, WOOD BEAM RAILROAD PLOWS

"EUREKA" SMUTTERS AND BRUSH MACHINES.

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