UTAH CONTESTED ELECTION CASE.

(*Continued.*)

But it is claimed, as I have said, that Congress cannot fix the qualifications of a Delagete. If that is true, then certainly this House cannot fix his qualifications, because that would be an act of legislation, and the power of legislation does not reside in this House alone, but in both Houses of Congress. But let us look at this in another light. Section 1906 prescribes, as I have said, the qualification of citizenship for certain Delegates. Now suppose that to be the only qualification prescribed, would this House have the right to add to or take from that qualification? Certainly not; because that would be altering or amending a law, an act of legislation, the power to do which does not rest in this House alone, but in the Congress of the United States.

If what I have said is true, if the argument I have attempted to make has any foundation, Mr. Cannon was entitled to his seat when this House met, and he has been kept out only by the arbitrary power of this House. But it is claimed that section 8 of the act of 1882 will deprive him of the right to hold this office. That section says that no polygamist, bigamist, or person cohabiting with more than one woman in any Territory shall be entitled to hold office under the United States or any Territory thereof. But I suppose that no one will say that Mr. Cannon can be denied the office until he is proven to be a polygamist, a bigamist, or to have cohabited with more than one woman. In other words, under this law bigamy or polygamy is a disqualification for holding office. But I contend that you must prove that the disqualification attaches to the particular person before you can deny that particular person the office. But it is said that Cannon acknowledged that he had plural wives and was living with them. All right. When was that done? One year ago. But I say you cannot apply this law unless you prove that he has been guilty of bigamy or polygamy since the passage of this act of 1882. Why is that so? Because, under the law of 1862 defining bigamy the punishment was simply fine and imprisonment.

The disqualification of holding office was not a part of the punishment prescribed by that act of 1862. You therefore cannot apply in this case the law of 1862. Why not? Because it would be "adding a new punishment to an old offense; because it would be inflicting a greater punishment than was annexed to the crime" when it was committed. Because it would be inflicting a different punishment from that prescribed by the law in force when the offense was committed. And the Supreme Court of the United States has held such action unconstitutional. You cannot therefore make this law operate in an unconstitutional way. It must apply to the future and not to the past.

Mr. Ranney. Where has the Supreme Court decided that?

Mr. Davis, of Missouri. In 4 Wallace, United States Reports. But I understood the statute of 1862 says that a man who, having a wife living, shall in a Territory marry another woman, *shall be deemed guilty* of bigamy. In other words, the living with plural wives is not of itself an offence under that statute. He must have married after its enactment and had another wife living.

I say there was no testimony before the committee, there is no testimony before this House, as to when these plural marriages took place. We are therefore unable to decide whether they took place before or after the law was enacted. What then has bigamy to do with this case? Absolutely nothing.

I may say, that I wish this penalty could be applied to this particular case, but you cannot get my consent to do it in an improper way. I may say that I would like to have it applied now, so that these people may understand once for all that this thing shall cease.

But you ask me to deny representation to a Territory when it has sent a man here who has all the qualifications of any other Representative or Delegate, and who is under no disqualification, as I understand the law. You ask me to do this in violation of law, in violation of all precedent, in violation of all parity of reasoning, and under circumstances in which you would not dare to deny a Representative from a State a seat in this House. I cannot do it.

I know there has been an attempt to make capital out of this matter. I know we have been told that the people are in favor of ridding the country of this incubus. That is all very true. We are told that it is the will of the people that some action shall be taken in this matter; and we have already taken action in the law that we passed a few days ago. But when I am asked to consult the will of the people of this country, I must answer that I find their will expressed in their written Constitution and in their written laws, and my allegiance shall be to them until they are changed.

That is all, Mr. Speaker, that I desire to say at this time. I will reserve the remainder of my time until further along in the debate.

Mr. Thompson, of Iowa. In the time I have had the honor to occupy a seat in this body I have usually contented myself with casting my vote either for or against such measures as were under consideration. I certainly have had no ambition at any time or under any circumstances to persistently and continually seek a place upon the records of the debates of this House. As I before said, I have always contented myself, with simply casting my vote for or against such measures as may be under consideration. If I believe they are right I shall vote to sustain them. On the other hand, if I am convinced they are wrong I shall vote against them.

And I assure you, Mr. Speaker, that at the present time I should not say a single word were it not for the fact that I find myself in about as lonely a condition as any member of the Committee on Elections has ever appeared in before the House, having made a report in which I believe no other member of the committee coincides with me in the position I have taken.

I had hoped and trusted that this election case would be decided simply and purely upon its merits, as the evidence or admissions in the case presented it. I am sorry to observe, however, that it has assumed such an aspect. While as a legislator I am sorry for this, as a politician, and looking only to the success of the Republican party, I might be glad of it.

I had hoped that there would be no political controversy in this matter when it was admitted, as I supposed until a few minutes ago, that Mr. Cannon, who was claiming a seat here, had never for a single moment, either through himself or his friends, made a denial of the fact that he had continually lived, that he was to-day living, and that at the time of this investigation he was living in open violation of laws that had been passed by the Congress, in one body of which he sought a seat. Now, I wish to call attention particularly to the fact that such a statement has never been denied. And when the question was asked my colleague on the committee where we received this testimony how it came into the possession of the committee during this investigation, I thought I would when I got the opportunity state once for all the exact facts. I think my friend from Pennsylvania (Mr. Beltzhoover) has stated them exactly as they occurred, but I believe he did not have the evidence before him at that time.

During this investigation, in June, 1881, and after the time had expired for taking testimony, these parties came in and made an agreement that such testimony as each might desire to take on the question at issue might be taken irrespective of the fact that the time for taking testimony had expired. The consequence was that a portion of the testimony was then taken, and among others there was called, as a witness on the part of the contestant Angus M. Cannon. In his examination he was asked as to the peculiar belief of Mr. Cannon and the number of wives that he then had; and because of the seeming ignorance of this witness on that point other witnesses were about to be examined. Now, I will state what took place in the presence of Mr. Cannon and his attorney. It was admitted by each and every one of them (and the facts are stated in the record, which is in print to day and in the possession of the House) that on the 1st of June, 1881, when subpœnas were about to be issued for the purpose of proving Mr. Cannon's polygamous habits, he came before the officer taking the evidence and filed that written statement. It has never been denied from that day until I heard it questioned a few moments ago in this House. It is his own solemn admission, made in open court, by which he plead guilty to the indictment in the presence of the witnesses and the court. That admission was entered solemnly of record and by it he is bound. The taking of any further testtimony upon that point being thus obviated, the committee proceeded upon that admission; and we did right in doing so.

But I am not here for the purpose of arguing that branch of the case at all. I do not suppose it is going to be seriously contended that Mr. Cannon is entitled to a seat here. I have always been in accord with the committee on that question, as I am now. But I go further and insist that while Mr. Cannon is not entitled to a seat in this House, Mr. Campbell is entitled to the seat, and to this branch of the case I propose to address myself for a very brief period.

It will not be denied that on the 20th of January, 1881, Mr. Cannon gave notice of contest to Mr. Campbell; that afterward, and within the time prescribed by the statute, Mr. Campbell responded to that notice of contest and filed his answer, in which he places in issue every material allegation and charge contained in the notice of contest. This House seems to have forgotten the fact that Mr. Cannon all the way through has been the contestant; that Mr. Campbell stands here, and always has stood from the commencement of the contest, as contestee.

From the time this question was first discussed at all I have heard repeated allusions to the number of votes cast for the two candidates at the election held in Utah on the 2d of November, 1880. I want to ask those who are in favor of seating Mr. Cannon where under heaven they get any evidence of that vote? I ask this in good faith. I ask gentleman on the committee who are to follow me in opposition to the position I am taking, where at any time and under what circumstances have you found any evidence that Mr. Campbell received only a certain number of votes, and Mr. Cannon received 18,000?

I take it that the committee on elections, notwithstanding its mighty powers, notwithstanding the powers it may be willing to arrogate to itself, is as much the creature of statute in the taking of testimony as any justice of the peace in this broad land; that outside of the statute the committee cannot live, or move, or have its being. Now I turn to section 108 of the Revised Statutes of 1878, and I read:

Sec. 108. The party desiring to take a deposition under the provisions of this chapter shall give the opposite party notice, in writing, of the time and place, when and where the same will be taken, of the name of the witnesses to be examined and their places of residence, and of the name of an officer before whom the same will be taken. The notice shall be personally served upon the opposite party, or upon any agent or attorney authorized by him to take testimony or cross-examine witnesses in the matter of such contest, if, by the use of reasonable diligence, such personal service can be made; but if, by the use of such diligence, personal service cannot be made, the service may be made by leaving a duplicate of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays and the day of service. Testimony in rebuttal may be taken on five days' notice.

Now, I ask my friends who controvert my position on this question is there a line or a letter of that statute which is directory? Is it not in every line and letter mandatory? Are you not compelled to act within its scope? Can you do outside of it any legal act? I take it that the House has already answered this question at the present session in the case of the gentleman who contested the seat of my friend from South Carolina, [MR. AIKEN.] In that case the testimony was sufficient to convince any man that fraud and wrong had been done; and if that testimony stood in proper form, uncontradicted before this House to-day, the gentleman from South Carolina would be ousted. But for the simple reason that the evidence in that case had been taken before an officer not designated in the statute, the evidence was not considered and the contest was dismissed. This was done by a unanimous vote, not only of the committee but of this House. Not that fraud was not proven, not that the contestant had not made a fair case upon the evidence, but for the simple and single reason that the testimony had been taken before an officer not named in the statute. Now, if the testimony in this case was taken in any other way than that prescribed in the statute, can the committee consider it? I undertake to say (and I mean just what I say) that from the day the notice of contest was served upon Mr. Campbell up to the present time, Mr. Cannon has never issued a subpœna, has never taken a word or letter of testimony from any source. I make the assertion without fear of contradiction, that at no time was a subpœna ever issued on behalf of Mr. Cannon to take one word of testimony before any officer.

But I am informed that there was a certain tabulated statement which some one in the Territory certified to this House and the committee; that it was certified under the hand and seal of the secretary of that Territory. I deny it. I say this is absolutely not the case. I say this: that the evidence itself establishes the fact that long after this contest had been commenced, after a portion of the testimony had been taken as to whether he was a polygamist or not and as to whether he had ever been naturalized or not, Mr. Cannon then on his own motion, and without the knowledge or consent of the contestee, Mr. Campbell, received what purported to be a tabulated statement of the votes cast at that election, certified to by the Secretary of the Territory and brought here—not to the committee on elections; for I assert here and now that paper never was in the possession of this House, never was among the papers referred to the committee on elections, never found its way into the committee room until the 6th day of February 1882, more than two months after this House had been organized and was sitting here and hearing this case.

I say that it was never taken as testimony to be used before the Committee on Elections. It was brought here by Mr. Cannon for a very different purpose, and I wish to say now to my Democratic friends, you know, and the country knows, it was brought here for a very different purpose, and that *it* served that purpose well. It was submitted to a Democratic Clerk of this House, and in opposition to the law and in violation of the oath which he had taken, and against every statute on the statute-book which ought to have controlled his action in the matter, he judicially decided this matter, and placed the name of Mr. Cannon as a Delegate from the Territory of Utah on the roll of the House of Representatives. He judicially determined that this man Cannon was *entitled to the seat* as a Delegate from the Territory of Utah upon this floor. He assumed the functions of Congress. He assumed the functions of a court. In violation of his oath and in violation of the law he placed the name of Mr. Cannon upon the roll and gave him that position which enabled him to claim both his seat and his pay until after the organization of this House, when he was kept out by the majority upon this floor.

That, Mr. Speaker, was the purpose of having that tabulated statement, and that was the purpose for which it was used. It was never among the papers referred by the House to the committee, and never found its way into the hands of the committee until the 6th day of February, 1882, when it again appeared as evidence on the part of the contestant, and when it had been suggested that no evidence had been taken and the contest was abandoned. It was never taken as evidence under the statute, and you cannot consider it for any purpose whatever as a part of the history of this case.

It is said that you have this very undoubted authority, that you have here the fact that the vote cast for Mr. Cannon was some eighteen thousand, and the vote cast for Mr. Campbell was some two hundred. You have this upon the same undoubted authority that you have the other fact that Mr. Cannon is a polygamist. You have both those facts.

Mr. Speaker, let me say to the gentleman who urged this argument upon the authority, the undoubted authority, of Madam Rumor, but upan the authority of nobody else, these, as facts, come to us on the simple authority of Madam Rumor.

It is no evidence, Mr. Speaker, in this case. The contestee had a right to the notice required by law, he had a right to be present and cross-examine the witnesses, he had a right to say that the statement was not the best evidence and demand that investigation be made into the legality of every ballot cast as well as the qualifications of each elector. It cannot be used as evidence because it was not taken as the statute provides. Every argument made in favor of the acceptance of that statement is the merest begging of the question. The contestee had the right to demand an investigation into the legality of every ballot cast as well as the qualifications of each elector; and especially so when we find in evidence this strange law upon the statute-book of Utah, then and now in force which is not only in violation of the laws of Congress, but in violation of the Constitution of the United States, attempting as it does to enlarge the naturalization laws and confer not only the right of citizenship but the right of suffrage upon those whom the laws of Congress and the Constitution of the United States say shall not be admitted either to suffrage or citizenship. Let me read that law. It is the act of February 12, 1870, section 43, chapter 2, and reads as follows:

That every woman of the age of twenty-one years who has resided in the Territory six months next preceding any general election, born or naturalized in the United States or who is a wife or daughter of a native or naturalized citizen of the United States shall be entitled to vote at any election in this Territory.

Now, under this law two-thirds of it is admitted and the evidence clearly shows it, of the votes cast at that time were cast by persons who had been made electors under and by virtue of the Territorial law of Utah, and that alone. It is a Territorial law as I have already stated in violation of the laws of Congress and of the Constitution of the United States. It attempts to establish a basis in the Territory of Utah as to the rights of citizenship. It confers the right of suffrage only upon a class not entitled to the right of suffrage under the laws of the United States, but it attempts to establish in the Territory of Utah that they shall take their naturalization by inoculation, and not by the action of courts as prescribed in the laws.

I insist that whenever you come to this, when you have taken the matter out *of* the hands of *the* courts and put it into the hands of every man who has more wives than one to determine, and the more wives he can take and the more naturalized citizens he can thereby bring to the polls the more democratic votes you are sure to get in the Territory of Utah. That is the very way to get them. You have taken the power to naturalize citizens from the hands of the courts and have put it into the hands of this lustful class of men who have more than one wife, and the majority of them, and they would not be satisfied if they did not fifty just about the day of election. These fraudulent votes claim to control the election. The contestee has been denied the right of proving their illegality.

Now, sir, this is the question I say that is presented here in the case of Mr. Campbell. He challenges investigation of the question, and I say that he has had no opportunity of presenting the facts, the facts in his case, because you have positively denied him the right to do so. How many votes his opponent received that were unlawful and illegal there has been no opportunity *of showing*. It could only be determined by an investigation into *the facts*, and you have avoided and have prevented Mr. Campbell from securing an investigation to establish the facts. And it stands to-day exactly in this position, that Mr. Campbell asserts one fact which is denied upon the other hand. Will it be denied that Mr. Campbell was in a position *where* he could take no evidence until he was notified by the other party to proceed with it? It was his right and was his duty to wait until Mr. Cannon had gone on and taken his testimony, and notified him, so that he could be present to hear it and cross-examine the witnesses; and I repeat, that from that time to the present there has been no scintilla of evidence taken to establish the right of Mr. Campbell and no opportunity given him to present evidence before this Congress that would substantiate his claim. And I defy any man on this floor or anywhere to show that there has been.

Again, sir, I take it that we must go upon the supposition, in this case, at all events the presumption is that the officers of the Territory discharged their duty; and that presumption will be taken as true until the contrary appears. When I find the certificate showing that this certificate should be signed by the governor of the Territory and under the broad seal of the Territory, and when I find the certificate comes here complying with all of these conditions, then I claim that the party holding that certificate presents here a right which must be set aside by such an investigation as will establish *its* unlaw