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CONGRESSMAN ROBERTS' DEFENSE

The following is the complete text on demurrer in the Roberts case now pending before a special congressional committee, in its proceedings to unseat him:

STATEMENT OF THE CASE.

(1) The questions to be considered are the prima facia and final right of the member-elect from Utah to a seat in the House of Representatives, to which he was elected by a vote which gave him 5,665 plurality. It is a case in which there is no contest, and where it appears that the member-elect possesses all the qualifications prescribed by the Constitution; and there is no statute either in the State of Utah or of the United States, applicable to the case, which disqualifies the member from Utah.

(2) But protests have been filed against allowing the member from Utah taking his seat, alleging that he has been living in violation of a statute in Utah, which defines his alleged offense to be a misdemeanor, punishable by a fine of $300, or by imprisonment for six months in the county prison, or by both fine and imprisonment in the discretion of the court.

(3) The protestants come here with no court record of the fact of the crime, though it appears that ample opportunity existed so far as time is concerned and the ability to reach the member-elect from Utah through the courts of the State. In the absence of a court record establishing the alleged fact of misdemeanor, after trial by due process of law, the special House committe undertakes to establish the guilt of Roberts of the alleged misdemeanor by the examination of witnesses, to which procedings Roberts protests and demurs:

Having conceded the facts established by the record of the United States Federal court in and for the Third Judicial District of the (then) Territory of Utah, to-wit: Roberts pleaded guilty to a charge of a misdemeanor under the title of "unlawful cohabitation," in 1889; but having pleaded not guilty to all the other charges alleged against him in the copy of charges submitted by the House committee, Roberts denies the power of the House, or this committee, to try him for the alleged misdemeanor, and demurs to the proceedings of the committe, wherein it contemplates establishing by testimony either by witnesses personally examined, or by affidavit, the alleged guilt or innocence of the member from Utah of a misdemeanor, namely: polygamous living with alleged plural wives since 1889, and now.

The demurrer is based upon the contention that the committee has no jurisdiction or right to act as a court or jury, to ascertain the alleged guilt of Roberts in the way proposed, as appears from the following:

I.

That the proposed proceedings of this committee to ascertain the guilt or innocence of Roberts as to his having committed a misdeameanor in the State of Utah, viz.: Unlawful cohabitation, would be subversive of his personal rights as a citizen of the United States, guaranteed by the Constitution of the United States, to-wit:

(1) That no person shall be "deprived of life, liberty, or property without due process of law." (Art. V. Amendment U. S. Const.) * * *

(2) That "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed." (Art. VI, Amendment Const.)

As to the first right here alleged to be violated by the proposed proceedings of the House and this committee, the contention is that Roberts has vested property in the emoluments of his office for the full term for which he was elected; and it is here proposed to deprive him of that property without due process of law, and by a tribunal wholly unknown to usual judicial procedure, and is an invasion of the judicial branch of the government by the legislative branch.

As to the second right here alleged to be violated by the proposed proceedings of the committee, it is contended that by seeking to ascertain by examination of witnesses as in crminal proceedings as to whether or not Roberts has been guilty of a misdemeanor in the State of Utah, such proceedings are in effect a criminal prosecution, in which the accused is not to be tried by an impartial jury, or by a jury at all; nor is he to be tried either in the State or the district wherein the crime is alleged to have been committed; but, on the contrary, is to be tried outside of the State and the district wherein the crime is alleged to have been committed.

I quote from Paine:

"It is one of the chief merits of the American system that all the powers entrusted to government are divided into three great departments, and that the functions appropriate to the legislative, executive, and judicial departments, respectively, are invested in separate bodies of public servants. It is essential to the most successful, practical working of the system that the lines which separate these departments be broadly and clearly defined, and that each of them be restricted to the exercise of its own appropriate powers. In the main, the Constitution of the United States, on which are modeled the fundamental laws of the several States, has marked out, with great precision and in bold lines the allotment of the power to the legislative, executive, and judicial departments of the government. The constitutional provision that the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may, from time to time, establish, is a virtual declaration that no judicial power shall be exercised by Congress or either of its branches, except in the few cases therein particularly specified. An investigation, which is judicial in its character, and relates to matters wherein relief can only be had by judicial proceedings, involves the exercise of a power, which is conferred by the Constitution upon the judicial, and not upon the legislative departments of the government. The power exercised by the House of Representatives, under a resolution directing an inquiry into the transaction of certain dealers in real estate, based on the recital that insolvent debtors of the government were interested therein, is a judicial power, not conferred upon the House by the Constitution; and the House can not lawfully compel a witness to testify in such a case, or punish a refusal to testify by imprisonment for contempt. The order of the House, in such case, declaring the witness guilty of contempt and commanding his imprisonment, by the sergeant-at-arms, affords the latter no protection in an action for false imprisonment."

Paine on Elections, 188, Edition, pp. 886, 887, 888, commencing with paragraph 1056, and Kilburn vs Thompson, 103 U. S. 168.

The doctrine here stated, and based upon the decision of the Supreme Court of the United States in the case of Kilburn vs Thompson is emphasized by the fact that Kilburn was awarded a judgment of $100,000 damages against Thompson in this now celebrated action for infringement of his personal rights.

That the House of Representatives is not the final judge of its own powers and privileges is also established by the Supreme Court of the United States, in this case of Kilburn vs Thompson, and is thus stated by Paine:

"The House of Representatives is not the final judge of its own power and privileges, in such cases in which the rights and liberties of the citizens are concerned; but the legality of its action may be inquired into by the judicial department of the government. That House, in its action, is subject to the laws, in common with all other bodies, officers, and tribunals, within the commonwealth. Under our written Constitution, no branch of the government is supreme; and it is the province and duty of the judicial department to determine, in cases regularly brought before it, whether the powers of any branch of the government, even those exercised by the legislature in the enactment of laws, have been exercised in conformity with the Constitution. The House of Representatives has the power, under the Constitution, to imprison for contempt; but the power is limited to cases expressly provided for in the Constitution, and to cases where the power is necessarily implied from those constitutional functions and duties, to the performance of which it is essential." (Paine on Eections, 887, par. 1057.)

II.

Roberts wholly denies to the House of Representatives, or to its committee, the right or power to adjudge him guilty of the misdeamor charged, or any other crime, except upon the evidence of the record of a court of competent jurisdiction to prove the fact that guilt has been established after due process of law.

"It may be stated as a well-settled proposition that statutes and constitutional provisions making ineligible to office any person who has been guilty of crime or breach of trust, always presupposes that the fact of the commission of such a crime or breach of trust has been ascertained and adjudged by the judgment of a court of competent jurisdiction. Such a fact can only be established by trial and judgment in due course of law, in which the accused shall be entitled to a full and fair hearing." (McCrary on Elections, 4th Ed., par. 245.)

Paine, in his work on elections, in speaking of the act of July of 1862, which prescribed the oath of office, known as the "iron-clad oath," calls attention to the fact that it was objected to in the Senate on the ground that it prescribed, in violation of the Constitution, a new qualification for senators and representatives. He says:

"But the reasons urged in support of this enactment embraced no claim, or pretense, that Congress had any constitutional power to fix or alter the qualifications of senators or representatives, otherwise than as a punishment for crime after trial, conviction, and sentence according to law." (Paine's Elections, p. 104, par. 135.)

In further discussing this matter, in a footnote, the learned authority remarks:

"This decision is not an authority for the position that the House of Representatives, in the exercise of its power to judge of elections, returns, and qualifications of its members, may, by a mere majority vote, exclude a member-elect charged with, but not convicted, of crime. The doctrine of the case is that the House can not so exclude a member, except after conviction had, and judgment of disqualification actually rendered according to law." (Paine on Elections, 108; footnote.)

In further evidence of this contention I quote what Paine says of the Humphrey Marshall case:

"Senator Humphrey Marshall, of Kentucky, having been charged by two of the judges of the court of appeals of that State with the commission of fraud and perjury before his election, an investigation was requested by certain representatives of Kentucky, to which Mr. Marshall assented. But the committee were of the opinion that, in a case of that kind, no person could be held to answer for an infamous crime, unless on presentment, or indictment of a grand jury, and that, in all such prosecutions, the accused ought to be tried by an impartial jury of the State and district wherein the crime had been committed; that no sufficient reason had been shown why the accused had not been tried in Kentucky; that, until he was legally convicted, the principles of the Constitution and of the common law concurred in presuming that he was innocent; and that, as the Constitution did not give to the Senate jurisdiction of the case, the consent of the parties could not give it." (Paine on Elections, par. 1052.)

It may be contended that the present proceedings of the House committee are not to find if the member from Utah is disqualified by some express statute or constitutional provision, and therefore the authorities quoted above do not apply. The plain answer to such a contention would be that, if in a proceeding to ascertain if a person is ineligible to office under some disqualifying statute or constitutional provision, the fact of guilt must be established by trial and judgment of a court of competent jurisdiction in due course of law, then, how much more ought the doctrine to be adhered to in a proceeding where it is sought to establish the fact of some crime that is to be made a new and additional disqualification for office, not now fixed by any statute or constitutional provision.

REMOVAL OF DISABILITIES CREATED BY EDMUNDS LAW.

III.

Whatever disabilities may have attached to the member from Utah as to voting and holding office by reason of having pleaded guilty to the misdemeanor of unlawful cohabitation in the Territory of Utah in 1889, they were clearly removed from him by the proclamations of Presidents Harrison and Cleveland, issued respectively, January 4th, 1893, and September 25th, 1894.

In the absence of guilt established by a court record since that time, the accused must be presumed innocent; and it nowhere appears that Roberts was ever found guilty of violating the law since 1889. It should be remembered in this connection that plural wives in Utah had no legal status, and hence there was no process known to the law by which men could divest themselves of those relations which had been formed under the sanction of the "Mormon" Church. It was a status that could not be changed by any legal process; nor was there any way pointed out in the respective amnesty proclamations of Presidents Harrison and Cleveland by which men could reap the advantage of the amnesty granted, It was a condition to the amnesty proclamations, it is true, that there should be an observance of the law; and an absence of conviction for violating the law must be the accepted proof that the law was observed.

IV.

The misdemeanor charged against Roberts, viz.: Unlawful cohabitation, both under the Congressional enactment, at one time applicable to the Territory of Utah, and the statutes of the State of Utah, is defined as a misdemeanor; and it does not, and would not ,even if proven against him, constitute a disqualification for the office of representative for the reasons:

(1) That no law of the United States applicable to Utah or any of the States defines unlawful cohabitation to be a disqualification for the office of representative.

(2) That no constitutional provision makes the misdemeanor of unlawful cohabitation a disqualification for the office of representative.

(3) That if neither a United States law, nor the qualifications prescribed in the Constitution of the United States requires innocence from such misdemeanor of unlawful cohabitation as a qualification for the office of representative, such innocence is not, and can not, be made a qualification for said office at all, by the House or the committee; and can not be required in the case of the member from Utah.

(4) That neither the House of Representatives, nor this committee, has any power to prescribe or demand of the member from Utah, any qualification in addition to or different from those already prescribed in the Constitution of the United States. (Art. I, Sec. 2.)

The Edmunds law, passed in 1882 created and defined the crime of unlawful cohabitation, named it a misdemeanor, and in addition to the punishment of fine and imprisonment disqualified those guilty of it from voting and holding office; but this law was only applicable to Utah so long as it was a Territory. When Utah became a State, the law, together with the disqualifications for voting and holding office, ceased to be operative. Ex-Senator Edmunds conceded to be one of the ablest constitutional lawyers of our country, in a signed statement published in the New York Journal, January, 1899, says:

"The instant the State was admitted every act of Congress relating to its internal policy ceased to have any force whatever. The consequence is, that in point of law, the State of Utah has the same sovereign rights that any other State has."

Moreover, the particular disabilities relating to voting and office holding were removed by the Enabling Act under which Utah was admitted to Statehood. I quote from the Enabling Act as follows:

"Section 2. That all male citizens of the United States over the age of twenty-one years who have resided in said Territory for one year next prior to such election, are hereby authorized to vote for and choose delegates to form a convention in said Territory. Such delegates shall possess the qualifications of such electors. * * * delegates to form a convention in said Territory. Such delegates shall possess the qualifications of such electors. * * * The board of commissioners, known as the Utah Commission, is hereby authorized and required to cause a new and complete registration of voters of said Territory, to be made under the provisions of the laws of the United States and said Territory, except that the oath required for registration under said laws shall be so modified as to test the qualifications of the electors as prescribed in this act; such new registration to be made as nearly conformable with the provisions of such laws as may be. And such election for delegates shall be conducted, the returns made, the result ascertained, and the certificates of persons elected to such convention issued in the same manner as is prescribed by the laws of said Territory regulating elections therein of members of the legislature thereof."

"Sec. 20. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislature of said Territory or by Congress, are hereby repealed."

That it was the intention of Congress to remove the political disabilities of those citizens in Utah who had been disfranchised in that Territory under the operation of the anti-polygamy laws, further appears in this: That during the discussion of the Enabling Act in the House of Representatives, Mr. Wheeler, of Alabama, offered an amendment to the Enabling Act, which would have struck out the first part of section 2, which fixed the qualifications of voters, and would have substituted the following:

"Sec. 2. That all persons who are qualified by the laws of said Territory to vote for Representatives to the legislative assembly thereof, are hereby authorized to vote for and choose delegates to form a convention in said Territory, and the qualifications for delegates to such convention shall be such as by the laws of said Territory persons are required to possess to be eligible to the legislative assembly thereof." (Cong, Record, p. 201, 53d Congress, 2d Sess.)

This would have prohibited men who were polygamists from voting, as it would have made only those able to vote for representatives to the Territorial Legislature competent to vote for delegates to the constitutional convention, to meet and frame Utah's Constitution. But the whole amendment was rejected.

This action clearly shows that it was the intent of the national legislature to remove the political disabilities that had been imposed upon one class of the population of Utah, under the administration of the congressional laws, enacted against the practice of plural marriage.

The people of Utah being authorized by the Enabling Act of Congress to constitute a government for Utah, acted in their sovereign capacity, and as the people of a State, possessed the power to prescribe the qualifications of the electors thereof, subject only to the limitations contained in the 15th amendment to the Constitution of the United States. She, therefore, possessed the power to prescribe the qualifications of her electorate. And therefore, if the State of Utah did not see fit to continue the disqualifications prescribed by the Edmunds law as to voting and holding office, then those disqualifications did not continue and operate under statehood conditions, and hence all disabilities resulting from them formerly, were thereby removed.

In evidence of the right of the State to fix the qualifications of its electorate, McCrary says:

"It is unnecessary for the purpose of this work to determine whether the sovereignity of this country resides in the people of the United States as a nation, or in the people as divided into groups of States. It is sufficient to note that so far as the right to fix the qualifications of voters is concerned, the sovereignty is in the people of the respective States, by virtue of the provisions of the Federal Constitution, subject only to the limitations contained in the 15th amendment, that the right of the citizens of the United States to vote shall not be abridged on account of race, color or previous condition of servitude." (McCrary on Elections, par. 31, 4th Ed.)

That the State of Utah did not continue the disabilities created by the Edmunds laws is evident by the qualifications her Constitution prescribes for electors, which are as follows:

"Sec. 2. Every citizen of the United States, of the age of twenty-one years and upwards, who shall have been a citizen for ninety days, and shall have resided in the State or Territory one year, in the county four months, and in the precinct sixty days next preceding any election, shall be entitled to vote at such election, except as herein otherwise provided."

"Sec. 5. No person shall be deemed to be a qualified elector of this State, unless such person be a citizen of the United States.

"Sec. 5. No idiot, insane person, or person convicted of treason, or crime against the elective franchise, unless restored to civil rights, shall be permitted to vote at any election or be eligible to hold office in this State."

These are the only disqualifications prescribed.

Thus the disqualification for voting and holding office, created by the Edmunds law of 1882, and applicable to the citizens of Utah so long as it was a Territory, became inoperative, (1) Because removed by the Enabling Act; (2) Because not transferred and continued into the State by the Constitution which her people adopted. Hence the disqualifications for voting and holding office, which operated in the Territory of Utah, created by the Edmunds law, were removed from those under such disabilities (1) by the two presidential proclamations; (2) the Enabling Act; (3) by the adoption of the State Constitution; and either one of these acts was sufficient to remove the disqualifications referred to; and they operated upon Roberts as upon all those previously subject to such disqualifications.

V.

The misdemeanor of unlawful cohabitation is not a disqualification for the office of representative, and it was held by the House of Representatives in the Forty-third Congress, in the Cannon case, that even polygamy, a more grievous crime, was not a disqualification for either a delegate or representative.

I quote from that case the following:

"In a contest for the seat of a Territorial Delegate from Utah, the question arose whether polygamy could be made a disqualification for the office of Territorial Delegate, under the Constitution of the United States. The committee concluded that the constitutional provisions prescribing the qualifications of representatives, were applicable to Territorial delegates, and that those provisions did not permit the House, in the exercise of its power to judge of the elections, returns, and qualifications of its members, to make polygamy a disqualification either for representatives or delegates."

"In the Forty-third Congress the committee on elections were instructed by the House to investigate a charge made against the Delegate from the Territory of Utah, to report the result to the House and to recommend such action on the part of the House as should seem proper. They reported that the charge was established, and recommended the exclusion of the delegate. The majority were of the opinion that it would be impolitic and dangerous to expel a delegate, or representative, having the qualifications prescribed by the Constitution, on account of alleged crimes or immoral practices, unconnected with his official duties or obligations, and recommended the discharge of the committee from the further consideration of the resolution. The House by a vote of 20 yeas, nays not counted, refused to consider the report of the committee when submitted, and it was not afterwards considered." (Paine on Elections, par. 177, Maxwell v. Cannon, Cannon's case, Smith, 259. Smith, 182.

It may be contended, however, that in the Forty-seventh Congress Mr. Cannon was refused a seat, on the ground of being a polygamist, which he then admitted, and the seat of the delegate for the Territory of Utah was declared vacant. That occurred under the following state of facts: Mr. Cannon was a contestant for the seat, the governor's certificate having been given to one Campbell, although he had received but 1300 votes, as against Cannon receiving 18,000 (using round numbers). And the committee reporting the case declared Campbell not to be elected, and Cannon to be elected, but refused (except in the report of the minority) to say that he was entitled to the seat. The debates in the case occurred at various times in the House from early in December, 1881, until the 19th of April, 1882. Meantime the Edmunds law, creating and defining the offense of unlawful cohabitation, and making those proved guilty of it ineligible to vote or hold office in the Territory of Utah (the law taking effect on the 22nd day of March, 1882), was passed and its disqualifications for voting and holding office were made operative upon Mr. Cannon. A number of members declared their reason for voting to exclude Mr. Cannon to be the passage of the Edmunds law, that had been enacted pending the decision of the contest, and which they now believed applied directly to him the disqualifying provisions thereof. Others held that such disqualifications could be made to operate upon a delegate from a Territory, while they could not operate against a representative, for the reason that a delegate was a creature of the law which defined his qualifications, while a representative was protected by the specific qualifications prescribed in the Constitution of the United States, and which acted in exclusion of all others. A delegate is not a constitutional officer, while a representative is, and can not be affected by statutory law, which may operate upon a delegate, as to his qualifications.

VI.

In further contention that the misdemeanor of unlawful cohabitation, even if proven against Roberts, would not constitute a disqualification for the office of representative, it is here held that to make it a disqualification would be to exceed the power of the House, and, of course, of this committee.

The qualifications of representatives are fixed by a higher authority than the House of Representatives, viz.: The Constitution of the United States These are:

(1) He must be twenty-five years of age.

(2) He must be a citizen of the United States for seven years.

(3) He must be an inhabitant of the State from which he is chosen. (Constitution, Art. I, Sec. V.)

No other or additional qualifications can be prescribed. Ex-Senator George F. Edmunds, in a signed article published in the New York Journal, January, 1899, and later in a statement published by his authorization in the New York Herald of November 29th, 1899, is authority for the following:

"The Constitution fixes and describes the qualifications necessary for a member of the House of Representatives. I think the House has no constitutional right to add others, either affirmatively or negatively, and, therefore, I think that if Mr. Roberts was regularly elected, was of the requisite age, resided in the State of Utah, and is willing to take the oath prescribed by the Constitution, the House has no right to refuse to allow him to be sworn in."

—N. Y. Journal, January, 1899.

"It is more dangerous to the rights and liberties of the people for the House to set up standards of admission not prescribed by the Constitution, than to admit to be sworn any person whom the people of a State choose to elect."

Dated Philadelphia, Pa., November 28th, 1899.—N. Y. Herald, November, 1899.

To this respectable authority on constitutional questions is added the following from the very able and exhaustive report of the judiciary committee in relation to the testimony in the Credit Mobilier case, reported to the House in the Forty-second Congress, touching the question of the power of the House to add to or diminish from the qualifications of members fixed by the Constitution, under the plea that "every consideration of justice and sound policy would seem to require that the public interests be secured, and those chosen to be their guardian be free from pollution of such crimes, no matter at what time that pollution had attached." Discussing that claim the committee said:

"The House of Representatives has no constitutional power over such considerations of 'justice and sound policy,' as a qualification in representation." On the contrary, the Constitution has given this power to another and higher authority, to-wit: The constituency of the member. Every intendment of our form of government would seem to point to that. This is government of the people, which assumes that they are the best judges of the social, intellectual and moral qualifications of their representatives whom they are to choose, not anybody to choose for them, and we, therefore, find in the people's Constitution and frame of government that they have in the very first article, and second section, determined that, 'The House of Representatives shall be composed of members chosen every second year by the people of the States, not by representatives chosen for them, and that the will and caprice of members of Congress from other States, according to the notion of 'the necessities of self-preservation and self-purification,' which might suggest themselves to the reason or caprice of members from other States, in any process of 'purgation or purification,' which two-thirds of the members of either house may 'deem necessary'* to prevent bringing 'the body into contempt and disgrace.'

"Your committee are further emboldened to take this view of this very important constitutional question, because they find that in the same section it is provided what shall be the qualifications of a representative of the people, so chosen by the people themselves. On this it is solemnly enacted, unchanged during the life of the nation, that—

"'No person shall be a representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.'

"Your committe believe that there is no man, or body of men, who can add to or take away, 'one jot or tittle' of these qualifications. The enumeration of such specified qualifications, necessarily excludes every other. It is respectfully submitted that it is nowhere provided that the House of Representatives shall consist of such members as are left after the process of 'purgation and purification' shall have been exercised for the public safety, such as may be 'deemed necessary' by any majority of the House. The power itself seems to be too dangerous, the claim of power too exaggerated to be confided in any body of men, and, therefore, most wisely retained in the people themselves, by the express words of the Constitution.

"'The enumeration in the Constitution, of certain rights shall not be construed to deny or disparage others retained by the people.'

"'The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or the people.'" (IX and X amendments to Constitution.)

This report was signed by the following eminent parliamentarians and lawyers: John A. Bingham, B. F. Butler, Chas. A. Eldredge, J. W. Peters, L. D. Shoemaker and D. W. Voorhees.

VII.

The charge that Utah has broken her faith with the government in the matter of polygamy, which is supposed to justify the demand that Roberts be not seated, is untrue.

In the Enabling Act passed by Congress authorizing the people of Utah to form a State government it was expressly stipulated that the constitutional convention should "provide by ordinance irrevocable without the consent of the United States and the people of said State * * * that polygamous or plural marriages are foreever prohibited." That was the only demand made upon this subject by the people of the United States. Congress could be induced to go no further, though an effort was made to have it do so. When in the constitutional convention the representatives of the people of Utah dealt with this requirement they adopted the very language of the Enabling Act. In addition to this the convention also adopted so much of a former Territorial law as defined and provided for the punishment of polygamous marriages, and declared it to be in force in the State of Utah. This Territorial law exactly paralleled the enactments of Congress on the same subject. It defines polygamy in the same terms as the congressional enactments did, and provided the same penalties. It also defined unlawful cohabitation in the same terms as the acts of Congress. This offense is continuous living in polygamous relations after the illegal marriage relations have been formed, and in both the congressional and Territoria legislation was made a misdemeanor, whereas polygamy was made a felony. This law, I repeat, the convention cut in two, and made the part punishing polygamous marrying part of the Constitution, while the part of the law defining and punishing continuous living in polygamous relations was discarded. Why? Because there was nothing in the Enabling Act that demanded the disruption of those existing marriage relations which had been entered into under the sanction of the "Mormon" Church. It only required that "polygamous or plural marriages" should be prohibited for the future. When it was suggested to the gentleman who introduced the resolution making the above settlement, that the part of the law defining and punishing unlawful cohabitation should also be included in the Constitution, he replied in effect that those were conditions he was not aiming to meet; that the Enabling Act only required that polygamous marriages for the future should be prohibited, and that is all that was done. All this appears in the officially reported and published debates of the convention. (See Report of Constitutional Debates, pp. 1736-1749.) That was the settlement of this question. That is the compact between the United States and the people of Utah. Those were the terms, so far as polygamy was concerned, on which Utah was admitted into the Union. And I affirm positively that that compact has been kept on the part of the people of Utah. The people of Utah are not covenant breakers, as her enemies charge. There is no attempt made to repeal or annul the parts of the Constitution prohibiting polygamous or plural marriages. There is no desire to disrupt that compact with the United States.

The "Mormon" Church has not violated the compact and has no desire to annul it, but, on the contrary, the venerable head of the Church has officially avowed his determination to adhere to this settlement of the question.

The representative to Congress from Utah has not violated this compact, the assertion of his enemies to the contrary notwithstanding.

CONCLUSIONS.

From the foregoing established doctrines and rights of members of Congress it follows: That the proposed proceedings of this committee would be subversive of the rights of the member from Utah:

1. In that he is to be adjudged guilty of crime without due process of law. The proposed proceeding by this committee would deprive the member from Utah of the constitutional right to a trial by a court of competent jurisdiction, and by a jury of his peers, within the State and district where the crime is alleged to have been committed, and would deprive him of property and rights without due course of law.

2. That he is to be adjudged disqualified by disabilities created by enactments of Congress and applicable to the old Territory of Utah, but not applicable to the State of Utah, which disabilities have been removed. (a) By amnesties of two Presidents; (b) by the Enabling Act passed by Congress; (c) by the transition of Utah from a Territorial condition to that of Statehood.

3. It further appears that the crime alleged against the representative from Utah does not constitute a disqualification for a member of Congress, unless the House and its committee are prepared to assert their power and right to add to the qualifications prescribed by the Constitution of the United States.

The member from Utah therefore asks that the committe stop its present proceedings, and consider the prima facie right of the representative from Utah to be sworn in as a member of the House of Representatives of the Fifty-sixth Congress.

The member from Utah is prepared to submit his certificate of election to the committee, his certificate of citizenship, issued by a United States court of competent jurisdiction, and is ready to affirm under oath that he possesses all the qualifications prescribed by the Constitution for a representative, and is willing to take the oath of office prescribed by the Constitution.

As to the protests by certain sectarian ministers from Utah, Roberts holds that the committee ought not to consider them, for the reason that the affidavits presented to the committee by them bear dates as follows: Thos. J. Brandon, Feb. 13, 1899; Ray T. Brandon, Feb. 13, 1899; Luella P. Miles, Feb. 27, 1899; Mrs. Marie E. McDougal, May 27, 1899, all being dated several months prior to the departure of the representative from Utah for the East. For more than a year after the charges began to be made against him, the member from Utah was in and about Salt Lake all the time, and seven months after the Brandon affidavits were drawn up by A. T. Schroeder; and, therefore, said protestants had ample time to institute proceedings before the courts of Utah, which were, and are, open for prosecutions of the charges made. If these protestants have sufficient evidence they should have established the guilt of the member from Utah as to the misdemeanor charged, and come here with a court record establishing their charges; although the question would still be debatable as to whether the misdemeanor alleged, if proven, would be sufficient to bar him from the House; and on that subject the member from Utah has already expressed his belief and presented argument in this paper. The member from Utah again asks that he be allowed to take the oath of office.

Dec. 12, 1899.

B. H. Roberts

*That is, to fix a new qualification for representatives.

FATE OF CONGRESSMAN-ELECT ROBERTS IN THE HANDS OF THESE MEN.

First photograph of the congressional committee appointed to consider the case of Roberts, the Utah Representative-elect. The members, beginning at the left of the group are:—Mier, Ind.; De Armond, Missouri; Freer, West Va.; Tayler, Ohio; Morris, Minn.; Lanham, Texas; McPherson, Iowa; Littlefield, Me. Their report is eagerly awaited. It is expected to be made public in a few days.

ELECTRIC FLASHES.

William Waldorf Astor has subscribed £1,000 to the Buckinghamshire fund to equip the county's contingent of yeomanry.

Lord Salisbury presided at a meeting of the National Defense committee at London today.

Millioecker, the composer, is ill at Vienna from a paralytic stroke. His condition is critical.

The French government will submit to the chamber of deputies at the beginning of January a bill providing for the defense of the French coasts and colonies and to increase the strength of the fleet.

New York, Dec. 29.—In the Molineux poisoning case today John D. Adams of the Knickerbocker Athletic club was the chief witness. He said he was not a handwriting expert, but that he was familiar with the handwriting of Molineux. He said he was sure that the package was addressed by Molineux.

The Berlin Reichzanzeiger this afternoon publishes the following: The Lokalanzeiger continues in spite of the contardiction of the Wolff bureau to advertise itself with communications regarding the alleged contents of the Anglo-German treaty. We are authorized to declare that the statements in question are founded on impudent and clumsy invention.

The report that the Boer authorities have threatened to reduce the rations of the British prisoners at Pretoria in case Great Britain stops the entry of food supplies at Delagoa Bay, is not borne out by the official communications of United States consul Hollis at Pretoria. By direction of the state department Mr. Hollis is looking after British interests and in particular in seeing that the British prisoners are afforded every proper facility and personal attention.