t'onal to or different from those prescribed by the Constitution itself, it is obvious that this power would have been conferred either upon Congress, or upon the House alone, or upon the States.

In the history of our government it has never been claimed that the House of Representatives, acting alone, possessed the power to add to or change the qualifications of its members. The vain attempt made by Mr. Randolph, in the case of Barney *vs.* McCreery, in the Tenth Congress, to vindicate a claim of that kind in favor of the States signally failed, and has never been repeated in the House.

Mr Justice Story, in his discussion of the subject of the qualifications of Representatives in Congress, says that it would seem but fair reasoning, upon the plainest principles of interpretation, that when the Constitution established certain qualifications as necessary for office, it meant to exclude all others as prerequisites; and that from the very nature of such a provision the affirmation of these qualifications would seem to imply a negative of all others. And although it is certain that the letter of those constitutional provisions which relate to Representatives from the states does not apply exactly to the cases of Delegates from the Territories, still it is just as certain that their spirit does. A Delegate cannot be admitted who is not a citizen of the United States, simply because the spirit of the Constitution forbids it. The Constitution, applied to the case, so far as in the nature of the things it is applicable, forbids it. And this covers the whole ground. For precisely the same reasons Delegates cannot be admitted who are otherwise disqualified under the Constitution. For precisely the same reasons no qualifications or disqualifications can be prescribed other than those fixed by the Constitution itself, without a violation of the spirit of that instrument. Of course, the House may have the physical power to exclude a Delegate who has the qualifications prescribed in the Constitution for Representatives, just as it might have the physical power to exclude a Representative so qualified. But it has no such power warranted by the spirit of the Constitution. While in many respects the Delegate differs from the Representative, in this respect they are alike. While in many respects provisions of the Constitution relating to Representatives are not applicable to Delegates, in this respect they *are applicable*.

We search in vain in the act organizing the Territory of Utah, in the act providing for the election of a Delegate to Congress from that Territory, or in any other act of Congress, for any provision fixing the qualifications of the Delegate, or providing for disqualification on account of any cause whatever.

If it be assumed, for the sake of argument, that under the Constitution of the United States, Congress has the right to punish polygamy in the Territories, by declaring that persons duly convicted thereof shall be ineligible to office, yet Congress has done no such thing. By the act of July 1, 1862, it is provided that persons guilty of bigamy in the Territories shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, and by imprisonment for a term not exceeding five years. But there is no statute of the United States which makes ineligibility to office a part of the punishment for bigamy or polygamy committed in the Territories or elsewhere.

The precedents of the House are in accordance with this construction of the Constitution. There has been no precedent since the organization of the Government which would justify, any more than would the Constitution itself justify, the House acting as the judges of the election returns and qualifications of Mr. Cannon, in a decision to deprive him of his seat on the ground that he has violated the law prohibiting polygamy in the Territories of the United States.

The case of B.F. Whittemore, in the Forty-first Congress, is relied upon as an authority for the refusa to admit a representative elect on other grounds than mere constitutional disqualifications. But a critical examination of that case will show that the House only decided that a Representative who had by resignation escaped expulsion for an infamous crime from *that House* should not be re-admitted to the *same House*.

The case of Mr. Matteson, in the Thirty-fifth Congress, relied upon in argument before the committee, was a case arising, not under the clause of the Constitution which makes each House the judge of the election returns and qualification of its members, but under that clause which confers the power of expulsion.

The line of demarcation between these two great powers of the House, the power to judge of the election returns and qualifications of its members by a mere majority vote, and the power to expel its members by a two-thirds vote, is clear and well defined. That line is not to be obliterated. It would be necessary to preserve it, even though its obliteration might seem to threaten no disasters, even though its maintenance might promise no benefits to the House, to the people, or to the Constitution. For this barrier is raised by the Constitution itself.

The framers of the Constitution of the United States, in prescribing or fixing the qualifications of members of Congress, must be presumed to have been dealing with the question with reference to an obvious necessity for uniformity in the matter of the qualifications of members, and with a jealous desire to prevent, by the action of either House of Congress, the establishment of other or different qualifications of members.

It was appropriate and proper, in fact necessary, that the power should be given to each House to judge of the election returns and qualifications of its members, that is, to judge of *the constitutional* qualifications of its members.

The exercise of this power requires only a majority vote.

But the House possesses another power to decide who shall and who shall not hold seats in that body. It is altogether distinct, in origin and character, from that to which I have just referred. It is the power of expulsion, which requires a two-thirds vote for its exercise. It is conferred by the following clause of the Constitution:

> Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

This power of expulsion conferred by the Constitution on each House of Congress was necessary to enable each House to secure an efficient exercise of its powers, and its honor and dignity as a branch of the national legislature.

It was too dangerous a power to confer on either House without restriction, and hence it was expressly provided in the Constitution, that there must be a concurrence of two-thirds of the members to expel.

Under this power, guarded as it has been by the constitutional provision requiring a vote of two-thirds, there have been but a very few instances of expulsion since the organization of the government, and it would seem that a power so rarely exercised does not require the agency of a standing committee.

The cases involving its exercise have usually been referred to select committees.

The case of Mr. Benjamin G. Harris, of Maryland, in the Thirty-ninth Congress, may be cited to show that the House has not been inclined, even in so strong a case as that was, to regard a member duly elected by the people of his district as disqualified under the circumstances, even under proceedings looking to his expulsion.

Mr. Harris was a Representative in the Thirty-ninth Congress, his term commencing on the 4th of March, 1865.

On the 2nd of May, 1865, he was arraigned before a military commission, and convicted of violating the 56th Article of War, by harboring and protecting rebel soldiers, furnishing them with money, inciting them to continue in the rebel army and to make war on the United States, declaring his sympathy with the enemy and his opposition to the government of the United States.

On the 12th of May, 1865, he was found guilty, and sentenced as follows:

> And the court do therefore sentence the accused, Benjamin G. Harris, as follows: To be forever disqualified from holding any office or place of honor, trust, or profit under the United States, and to be imprisoned three years in the penitentiary at Albany, New York, or at such other penitentiary as the Secretary of War may designate.

On the 31st day of May, 1865, this sentence was approved and confirmed, and also remitted by President Johnson, and Mr. Harris was released from imprisonment. At the commencement of the session, in December, 1865, Mr. Harris, upon taking the iron-clad oath, was admitted to his seat in the House of Representatives.

On the 19th of December, 1865, a resolution reciting the fact of his conviction, and the fact that he expressed his regret that the assassination of President Lincoln came too late to be of any use to the rebels, and referring the matter to the Committee on Elections, with directions to inquire into the facts of the case, and to report such action as the committee should recommend, was adopted.

The committee never made any report, and the House never took any further action in the case.

On the 15th of May, 1856, Mr. Knowlton introduced a resolution referring to the homicide of Thomas Keating, at Willard's Hotel, on the 8th of the same month, by Mr. Herbert, a Representative from the State of California, and instructing the Committee on the Judiciary to take the case into consideration, with power to send for persons and papers, and to report what action the House should take in the premises.

The House refused to entertain the proposition. This all occurred at the first session of the 34th Congress. At the third session a petition was sent to the House signed by 2,232 citizens of California, declaring their belief that, in the murder of Keating, Mr. Herbert had committed an act entirely without justification, had disgraced his high position, and that he could no longer satisfactorily represent the will of his constituents in the House of Representatives, and asking that, in the event of his acquittal by the court, he should be expelled from the House.

This petition was referred to the Committee on Elections. On the 24th day of February, 1857, Mr. Colfax submitted the report of the committee. The committee, without making any recommendation, concluded their report in these words—

> Your committee, therefore, report the character of the petition, the statements embodied in it, and the number of its signers, that the House may determine what action under the circumstances they may deem just to all concerned.

The House took no action whatever in the case, and Mr. Herbert continued to be a member of the House until the expiration of the 34th Congress. He voted at the very last call of the yeas and nays on the 3rd day of March, 1857.

The cases which I have referred to, and others examined, have convinced me, first, that the House, in cases involving the election returns and qualifications of members, has heretofore rigidly and wisely adhered to the policy of declining to fix or of attempting to fix any other qualifications for membership in this House outside of those fixed by the Constitution.

Second. That the power to expel a member by a two-thirds vote is separate and distinct from, and independent of, the power to judge of the election returns and qualifications of members.

Third. That the failure of the committee in this case, after that committee has found that the sitting Delegate from Utah has been duly elected and returned, to report that he is entitled to his seat, is unauthorized in principle or by precedent, and dangerous, in so far as it tends to break down the distinction between the jurisdiction of the House in such a contest as the present one and the jurisdiction of the House by a two-thirds vote to expel a member from the House.

I therefore submit for the action of the House the following resolution, to be offered in lieu of the second resolution reported by the majority of the committee:

Resolved, That George Q. Cannon was duly elected and returned as Delegate from the Territory of Utah, and is entitled to a seat as a Delegate in the Forty-third Congress.

HORACE H. HARRISON.

LOST.

A Small yellow roan horse 3 years old, brande l W A on the left thigh. Any person giving information that will lead to his recovery will be suitably rewarded.

T. E. TAYLOR, this Office.

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