UTAH CONTESTED ELECTION CASE.

IN the United States House of Representatives on Wednesday April 19th, this case was taken up and following is the debate which we shall endeavor to publish in full:

Mr. Calkins. The House having decided to enter upon the consideration of the Utah contested election case, I now yield to my colleague on the committee on elections, the gentleman from Wisconsin, [Mr. Hazelton].

Mr. Hazelton. It may seem, Mr. Speaker, somewhat strange to this country, after the passage of such an act as that which struck down the political power of polygamy in the Territory of Utah, that this House should now occupy any further time in determining the question whether that institution shall maintain representation upon this floor. Nevertheless, the situation of the case, coming from the committee on elections, to which it was referred to ascertain and report the facts and the law, it becomes necessary that the case shall be grappled with and decided by this House—the sole arbiter of the whole question.

I assume, and I have the right to assume, Mr. Speaker, in view of the large vote which determined the question of political power under the so-called Edmunds bill, and which has received, as I understand, the signature of the President and become a law, that this House of Representatives, on both sides, by the measure and character of that vote will deny representation to Mr. Cannon, although he has received 18,000 votes, if they can find good cause for so doing. And I assume that every gentleman will act in good faith in the determination of the question now before the House—one of the most important in our congressional history. The committee disposes of the case so far as Mr. Campbell is concerned under the law which exists in almost every State of the Union, that a minority vote under the circumstances could not control as against a majority vote, which had to be counted and canvassed. Under the decisions of Wisconsin and other States of the Union, Mr. Campbell, therefore, is declared not to be elected, although he has the certificate of the Governor of the Territory of Utah.

In this contest the question was raised by Mr. Campbell, the contestee, that Mr. Cannon was not a citizen of the United States at the time of his election. The committee brushed that point away also and found, although there were some irregularities, while there was not a full and perfect record behind the certificate, although it was not clear upon the proof benind the certificate that his residence was such as was required by the law when he received his certificate of naturalization, yet under the decisions they held they could not attack that certificate collaterally, and acknowledged and conceded the question of citizenship stood upon the record in his favor, the court having so found and certified. This brought the whole case up to the question whether Mr. Cannon having received this number of votes and being a citizen under the law was disqualified on account of being a polygamist.

Now, sir, it is not the first time the question has been raised in this Congress. It has been raised before and gone to a committee by the vote of the House, but never before has it appeared to confront us fairly and squarely by being presented to the American representatives as a question of disqualification for the office of Territorial Delegate.

The majority of the committee believed, first, that in the decision of this question one important consideration entering into it was the difference between a Delegate on this floor and a Member of the House from one of the States holding his authority and power under the Constitution of the United States. We held as a majority that if the Delegate were a mere creature of the law, his office, not being a constitutional franchise, if his office was created by statute alone, at the will and by the sufferance of the House, then the whole question of determining whether he should go out or remain, whether he could be expelled or rejected, was a question within the control of a majority of this House of Representatives. That it could take no larger vote to expel or reject the Delegate than that required to enact or repeal the law creating the office of Delegate.

Our opponents on the other side held to the position before the committee, and I think in their report, that although a Deleagte he stands guarded by all that fortifies a member of Congress within the spirit and letter of the Constitution, that the same qualifications apply to him which apply to a member of Congress, that he can only be disqualified for the same reasons which disqualify a member of Congress. Upon all those points the majority of the committee in their report take issue with the minority.

The discussions which have taken place as to the tenure and character of the office of Delegate and of a member of Congress are an interesting portion of our legislative annals. They came up far back in the history of the nation, and before any of us were born. The question came up, Mr. Speaker, and was discussed and determined by a Congress composed of members many of whom had taken an active part in the formation of the Federal Constitution. It was considered and determined by some of the greatest constitutional lawyers and statesmen who adorn our national history. Among these I name James Madison, President of the United States, one of the strongest and foremost perhaps of all who helped to lay the foundation of our Republic; and it was determined, there and then, that a Delegate was a mere creature of the law, that he was a mere envoy or agent from the people of a Territory, coming here by the mere permission of Congress to take a seat in this House, but shorn of all the vital powers belonging to a Representative of a State.

And right here I will ask the Clerk to read from this case of James White, a Delegate from the Territory south of the Ohio River, away back in November 11, 1794. A committee of that Congress reported upon his right to take his seat as a Delegate upon this floor; and upon this question of his attributes or power under the Constitution and the difference between his technical character as a representative from a Territory and a member of Congress representing a State is so clearly set forth on page 91 of this book, being a compilation of contested election cases, that I ask the Clerk to read it.

The Clerk read as follows:

Mr. Madison said that in new cases there often arose a difficulty in applying old names to new things. The proper designation of Mr. White is to be found in the laws and rules of the Constitution. He is not a member of Congress, therefore, and so cannot be directed to take an oath, unless he chooses to take it voluntarily.

Mr. Murray moved that Mr. White should be required to take an oath.

Mr. W. Smith observed that the Constitution only required members and the Clerk to take the oath. The gentleman was not a member; it does not even appear for what number of years he was elected. In fact, he is no more than an envoy to Congress. Instead of being called a delegate to Congress, had he plainly been called an envoy the difficulty would have vanished. He is not a representative from, but an officer deputed by the people of the Western Territory. It is very improper to call on this gentleman to take such an oath, any more than any civil officer in the State of Pennsylvania. Mr. Smith did not consider him as coming even within the Post-Office law, (for franking letters,) he is not entitled to pay unless a law be passed to that end.

Mr. Giles agreed with the gentleman who spoke last as to the impropriety of demanding an oath of the gentleman.

Mr. Dayton was against requiring the oath. Call him what you will, said he, a member, a Delegate, or, if you please, a nondescript. It would be wrong to accept his oath even if he should offer it. He is not a member; he cannot vote, which is the essential part. It is said he can argue, and by that means influence the votes of the House. But so, also, a printer may be said to argue and influence when he comes to this House, takes notes, and prints them in the newspapers.

Mr. Boudinot said that as the House had set out on a wrong principle, it was natural that in their subsequent progress they should wander further and further from the point. But as the House had now given their decision, he acquiesced in it. It was, however, a strange kind of a thing to have a gentleman here arguing who was not bound by an oath.

Several other members spoke; and on the question, Shall the delegate take an oath as a member, it was decided in the negative—ayes 32, noes 42.—*See Philadelphia Gazette of 18th and 19th Nov., 1794.*

The report and resolution were then agreed to by the House, and Mr. White took his seat as a delegate. During the session a bill was passed allowing him pay and the privilege of franking letters as a member.

Mr. Hazelton. That shows that the first delegates admitted here from the Territories were not even required to take an oath of office; and Mr. White took his seat without taking an oath of office at all; and up to the time that the law was extended to the Territories outside of the territory embraced within the ordinance of 1787 the law and practice have never extended beyond what is implied in that decision.

As we acquired new territory by war and conquest, we codified our laws, so to speak, upon that subject, and provided, as we do in section 1862 of the Statutes, that—

Every Territory shall have the right to send a Delegate to the House of Representatives of the United States to serve during each Congress, who shall be elected by the voters of the Territory qualified to elect members of the legislative assembly thereof. The person having the greatest number of votes shall be declared by the governor duly elected, and a certificate shall be given accordingly. Every such delegate shall have a seat in the House of Representatives, with the right of debating, but not of voting.

Now, the question of citizenship—the qualifications of citizenship—enters in no way into the law which I have read. The question of age, of inhabitancy, none of the great qualifications which apply under the Constitution, of the United States to members of Congress, enter into this law at all, and it was not until some time after that Congress, in order to supply one of these conditions, adopted section 1906, providing that—

The Delegate to the House of Representatives from each of the Territories of Washington, Idaho, and Montana must be a citizen of the United States.

Before that the law was silent upon that point, and afterwards, if there is any law requiring that the Delegate from Utah Territory should even be a citizen of the United States, it is a law which has been passed subsequently to this; and whether such law exists or not I do not know. But taking these decisions and these statutes together, and taking the legislation as it appears upon our statute-books creating these Territorial Delegates, we find that the Delegate is, to all purposes, under every shape you may view it, simply the naked agent or envoy from the Territories of this Union, whose connection with their respective power may be cut off, terminated, or destroyed at our will. We are the power to fix the qualifications of the delegates from the Territories, not the Constitution. We are the power which creates his office, which creates him. The Constitution fixes our qualifications, because it fixes us as members representing the power of this Government.

Now, I was not surprised in our debate upon this Edmunds bill, the great act which struck down the political power of polygamy in the Territories, to hear my friend from Alabama, (Mr. Herbert,) and one or two others of the best lawyers on that side of the House, take the position that that law terminated the official existence of Mr. Cannon, or any other Delegate representing the same class of power as he would represent if seated upon this floor. That I understand to be the position assumed by some gentlemen upon that side. Now what does this section of that law provide?

Sec. 8. That no polygamist, bigamist, or any 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.

Now, Sir, let us apply that rule as argued here by my friend from Alabama, [Mr. Herbert,] and he must vote with us on this question as he argued; because he took that position honestly as one of the best lawyers of the South. Do you know that in the supreme court of the State of New Hampshire, where it is provided their judges shall hold office during good behavior, they have been struck down in the midst of their terms office twice or three times in the organization or reorganization of the courts of that State? They were compelled to forego their salaries; they were compelled to step out and seek employment elsewhere, while new men, at the dictation of the popular will took their places in a new court and upon a new organization under the law. Why? Because those courts were created by the statutes of the State of New Hampshire, and because they were the creatures of the will of that State, and they lived only so long as the people of that State in their legislative capacity were disposed to let them live; and they had to bow to the dictate of that sovereign will if it destroyed them, when it was indicated through their legislative enactments.

Now take this very case here, where Mr. Cannon says he has 18,000 votes. He is a Delegate under our law, as I stated, not under the Constitution; the creature of our will, naked in our hands, to be destroyed or lifted up as we choose. Under the whole theory of the law, and all the precedents of this Congress, where dose he stand to day under this great act, this bill which has already become an enactment of this Government, which says he shall not hold any office or place of public trust?

I am arguing that by a majority vote we made that law which strikes down polygamy like a potter's vessel, which sweeps away all the political power it can exercise in the Republic at our will, that law which goes out from us in all its viality and power, or the majority will of this body. Tell me that we cannot strike him down with the same power and the same majority. Tell me that he can stand under the Constitution, where he was never placed, and say, "you require a two-thirds vote to reject me or expel me!" I say the power is clear. I say he must stand or fall whenever we choose to put a qualification upon him or a disqualification upon him.

Some gentlemen may say why we have a general law; the law which I have read here, passed by Congress and approved by the President, which gives the people of Utah the right to a Delegate. Is there any power of law that can rob us of a sovereign power under the Constitution higher than that which says each House shall be the judge of the elections, returns, and qualifications of its own members? Can Congress pass a law that shall rob this House of that constitutional power, or impair it, or diminish it?

Mr. House. Does the gentleman hold that that clause of the Constitution applies to a Delegate.

Mr. Hazelton. I do not care whether it does or not.

Mr. House. I merely desired to know what the gentleman's position was.

Mr. Hazelton. What I say is this: That certain distinguished gentlemen who oppose me are occupying a position which I confront. What is it? Why, that Congress having passed this law that I have just read section 1862 of the Revised Statutes—

Every Territory shall have the right to send a Delegate to the House of Representatives, &c.

I am confronted by my opponents on this question with the position that this man Cannon can rest under that law of Congress, and that we being one body of that Congress, can impose no disqualification, can exercise no exclusive power to put him out or put him in because he can stand under the law as his protection. Now, I confront that proposition. It is not necessary for me to admit or deny anything in response to the question just put by the gentleman from Tennessee.

Mr. House. The Gentleman from Wisconsin will pardon me. I understood him to quote that clause of the Constitution as a barrier to this House to pass any law prescribing the qualifications of a Delegate from a Territory. Now, the question I put to the gentleman is a very plain one. Does the gentleman hold that that clause of the Constitution which gives Congress the right to judge of the election, the returns, and qualifications of its members applies to a Delegate from a Territory? I merely wish to get the gentleman's position without interrupting his argument.

Mr. Hazelton. I will give it. I understand the gentleman's point. That has been held to be so by parity of reasoning in certain cases. But my position is this—and I desire to take it and have it understood fully and clearly, as I entertain it myself: notwithstanding that clause of the Constitution gives us power over members, I hold, I will say to my friend from Tennessee, that in dealing with a Delegate we are not bound by it or controlled by it, but that without any regard to any qualifications put down in that, as a question of power on our part, he is absolutely within our control and at our will. Now, does the gentleman under stand my position?

Mr. House. I do. But I do not understand how the gentleman quotes that clause of the Constitution as a barrier.

Mr. Hazelton. Generally, I say; generally, that being a power given us, an exclusive power, we could not pass a law to take it away or to impair it or weaken it, because it is a distinct plenary constitutional power. I am arguing this branch of the case upon positions taken by those who oppose me; and when they insist that they stand upon and rest the case of Mr. Cannon upon this law, then I meet them in my own way upon those propositions. That is what I am saying.

Now, to me the power to deal with this question on the part of the American Congress is sufficiently clear. The case now comes up, and every man largely in his own judgment must decide the question. Some men may say that polygamy is no disqualification, and therefore may vote against these two resolutions which deny to both Campbell and Cannon the right to a seat here.

But I look back over the history of the past in connection with this subject. I know how the public mind stands in regard to it. I know how much this institution has confronted the civilization of this country since 1850, and since the day it first put its foot upon our soil, from the time it struck Ohio until it went through Illinois and Missouri, and until it made its fastnesses in the mountains, where it expected the Government of the United States would never come. If it were an institution loyal to our flag and to this Government, if it were an institution within Christian civilization, if it were any part of our strengh and life in its history, its growth, its education, in any thing, there might be some justification for raising the technical question, for making an argument to maintain its continuance as a representative power on this floor.

but I tell you it has been in open rebellion against this government ever since it planted its lustful feet on our territory. It defied the courts in Ohio. In Ohio it was in arms against the constituted authorities. In Illinois it built up a city of 12,000 people at Nauvoo, a rendezvous for adventurers and criminals and lustful persons. Every inch of its growth has been in defiance of law and order, of Christianity and of our government. It proceeded to such an extent that the authorities of Illinois armed themselves and drove it out So in Missouri, it proceeded to such an extent that the authorities of that State were compelled to drive it out, and nine of its apostles went out of that State under indictment for the basest crimes known to the law.

We have evidence from every department of this Government of its hostility to the nation. We have confronted it from 1851 onward. From the surveyor-General's Department, from the authorities of the Army, from our civil and Federal officers we have the information that they were driven from their places, and every one of them has placed upon record the character and hostility of this institution to our Government.

Away back in 1851 three Democratic judges were appointed to go to Utah. They never could administer justice in the face and eyes of this harlot. They never could take their seats as judges. The law was rtampled under foot and defied. I will give what these three Democratic Judges, Brandebury, Brocchus and Harris, state in their report to the President:

To enable the Government to understand more fully the unfortunate position of affairs in that Territory it will be necessary to explain the extraordinary religious organization existing there; its unlimited pretensions, influence, and power, and to enter into a disagreeable detail of facts, and the language and sentiments of the governor and others high in authority towards the Government people and officers of the United States.

We found upon our arrival that almost the entire population consisted of a people called Mormons; and the Mormon Church overshadowing and controlling the, opinions the actions, the property, and even the lives of its members; usurping and exercising the functions of legislation and the judicial business of the Territory; organizing and commanding the military; disposing of the public lands on its own terms; coining money, stamped "Holiness to the Lord," and forcing its circulation at a standard 15 or 20 per cent. above its real value; openly sanctioning and defending the practice of polygamy, or plurality of wives; exacting the tenth part of everything from its members, under the name of tithing, and enormous taxes from citizens not members; penetrating and supervising the social and business circles; and inculcating and requiring, as an article of religious faith, implicit obedience to the counsels of "the Church" as paramount to all the obligations of morality, society, allegiance, and of law.

Here is another feature of the institution to show its social impurity, to show how the family relations can be built up, to show what a magnificent institution it is for us to foster and encourage and make a part of our political and civil organization. I give you this from the democratic judges, said to be good men, but they could not live there very long:

The prominent men in the Church, whose example in all things it is the ambition of the more humble to imitate, have each many wives; some of them, we were credibly informed and believe, as many as twenty or thirty; and Brigham Young, the governor, even a greater number. Only a few days before we left the Territory—

Now mark this:

Only a few days before we left the Territory the governor was seen riding through the streets of the city in an omnibus with a large company of his wives, more than two-thirds of whom had infants in their arms. It is not uncommon to find two or more sisters married to the same man; and in one instance, at least, a mother and her two daughters are among the wives of a leading member of the Church.

This is the incestuous, polygamous, hell-born institution, the repre-