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OUR DELEGATE'S REPLY.

THE reply of Hon. George Q. Cannon to the protest of Allen G. Campbell, appears in full in this issue of the NEWS to the exclusion of the sermon which usually appears on this day. The document is a complete answer to all the allegations and attempted reasonings of the person who had the impertinence to demand a certificate of election for Delegate to Congress with only 1,357 votes against the Delegate's 18,658. An intelligent person has only to read Mr. Campbell's protest to perceive its utter folly and inconsistency, and on perusing Mr. Cannon's answer, to see that nothing is left of the Camphell manifesto.

Of course, Mr. Cannon has confined himself to direct replies to the protest. But a shorter way might have been taken if it had not been thought advisable to meet all the objections seriatim. Mr. Campbell's arguments on the power of the Governor and Secretary in canvassing the returns are all based on a repealed statute. The law quoted from was superseded by the Act of Feb 22,1878. But even supposing the law to be in force, or admitting that similar provisions to those in question exist in the statute now in force, there are special provisions concerning the election of Delegate in the Organic Act of the Territory, and in the United States laws concerning the Territories. The latter being the most recent enactment, we will quote it in preference to the former:

"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 in 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." — *Revised Statutes, sec.* 1862.

It will be seen from this that the Governor has no choice in the matter, no chance to exercise any discrimination, no opportunity for judicial powers. "He *shall* declare the person having the greatest number of votes duly elected, and "a certificate *shall* be given accordingly." Where is there any room for serious controversy, with the figures already *officially* declared—18,658 for George Q. Cannon, 1,357 for A. G. Campbell? The Governor cannot help himself; he must either issue the certificate to Mr. Cannon or break the law of the land and violate his oath of office. Our Delegate's answer is a splendid document, well worth careful perusal and preservation.

Since the above was placed in type we have learned that the Governor has decided to give the certificate to Mr. Campbell We have neither time nor space to make any extended comment. Indeed it is needless at present. Suffice to say that people of all classes and creeds condemn the action of the Governor as an outrage upon the expessed wishes of almost the entire community declared at the polls. We never gave Eli H. Murray credit for much brains, but we did not think he was so destitute of common sense, common judgment and common decency as this act has declared him to be. Henceforth he can command the respect of no honorable person, "Mormon" or "Liberal," Democrat or Republican. For the strongest partizans who have any pretence to honor and fairness, would scorn to commit so glaring an offence against law and duty, in favor of a political friend, and will denounce this proceeding, when it is clearly understood, as dastardly and contemptible, unworthy of any official with the least claim to the title of a gentleman.

There will be no excitement, however, on this question. It will come up in proper time in the House of Representatives, where its merits will be discussed, and the only difficulty in the case is that the Hon. George Q. Cannon will have to contest the seat instead of the person in the insignificant minority. We think that Governor Murray has put the first nail in his own official coffin.

THE GOVERNOR'S DECISION.

WE publish to-day the text of Governor Murray's decision in the protest case, giving to Allen G. Campbell the certificate of election for Delegate in Congress. It will be seen that the Governor professes to base his action on the ground that George Q. Cannon, who received 18,568 votes against Allen G. Campbell's 1,357 votes is not entitled to the certificate of election, because it does not appear to the satisfaction of the Governor that Mr. Cannon is a citizen of the United States; and further, that in consequence of Mr. Cannon's "living in polygamy," he cannot become naturalized because he is unable to take the oath that he is "well disposed towards the Government of the United States." The Governor virtually admits the validity of the votes cast, and raises no question but that of Mr. Cannon's citizenship.

There cannot be a plainer provision in law than that which defines the Governor's powers in reference to the election for Delegate. He is simply authorized to declare the "person" elected who has the greatest number of votes, and to give him a certificate of election. This the Governor is commanded to do, in a statute of the United States. He officially declares in his decision that George Q. Cannon received the greatest number of votes, yet he awards the certificate to the candidate with an insignificant minority. The law nowhere authorizes the Governor to sit in judgment upon the question of any person's citizenship. In this case he has assumed the functions of a Court and of the Congress of the United States. Will a certificate from the Governor establish a person's citizenship? Certainly not. Neither will his dictum act as proof af alienage. If he has not the right to naturalize, neither has he the the right to declare a person not naturalized.

The Governor is in no sense a judicial officer. He is the Executive. To some extent his office is legislative, because all laws passed by the Legislative Assembly must be approved by the Governor. But it is not judicial in the least degree whatever. We defy any person of any profession, legal or otherwise, to quote from the law a passage constituting the Governor a judicial officer, or empowering him to sit in judgment upon the question of citizenship. A Judge of the District Court has just as much right to exercise the duties of Governor as the Governor to usurp the functions of a Judge.

If George Q. Cannon is an unnaturalized alien as claimed, that is a matter to be determined according to the rules of evidence before a court of competent jurisdiction in a case properly presented. If no such case is tried, or in any event, Congress holds the power to judge of the qualifications of its members. It has not turned over that right to the Governor, and his action in the premises betrays gross assumption as well as unpardonable ignorance in such a dignitary, leaving aside the base and unworthy motives which prompted him to prostitute the authority vested in him to partizan purposes, and the indulgence of personal spite.

But even admitting that the citizenship of Mr. Cannon is a proper subject for judicial inquiry in the present instance, we maintain that sufficient evidence was adduced, by the Governor's own admission, to establish the fact that George Q. Cannon has been duly naturalized. The certificate of citizenship under the seal of the Court is not only given, but a certificate from the present Clerk of the Court that it is copied from a book received by him from his predecessor. The Governor cites the record of the minutes of the regular proceedings of the Court on the day when the naturalization took place, according to the signed and sealed certificate. And because the minutes do not contain an account of the naturalization, it is claimed that none took place.

The question involved in this case has been several times judicially decided. It was raised in New York, at the time when Supervisor Davenport attempted to exercise similar powers to those usurped by Governor Murray. And on the 15th of October, 1878, Judge Freedman, of the Superior Court, rendered a lengthy and elaborate decision, supported by copious extracts from judicial authorities, in which he ruled that the entry in the minutes of the Court was not essential, and that even if there were a defect in the record, in consequence of the ministerial act of the Clerk, it would not be fatal.

The applicants in this case showed under oath, that they had appeared in Court, were admitted to citizenship, and took and subscribed the oath of allegiance; that the Clerk issued to the applicants, under the seal of the Court a certificate that adjudication had taken place, and entered the name of each applicant in a book of index of naturalizations; and that the applicants had always believed and been advised that they by these proceedings were fully admitted to citizenship. The supervisor of elections claimed that no record of these naturalizations appeared on the minutes and that therefore they were void.

Judge Freedman showed that as the naturalization laws were passed by the Congress of the United States, the Courts in exercising the powers granted under those laws are to be deemed *quo ad hoc* Courts of the United States, and that the concurrence of State laws merely adds the sanction of the State to this delegation of power. That the laws of the United States do not prescribe for the entry of adjudication of citizenship in any book. That in the absence of statutory regulations, the extent and manner of keeping the record is left to the discretion of the court. That "the form of the judgment record showing the admission of an alien to citizenship, so far as no express provision is made by Act of Congress, is utterly immaterial." In the cases before him, it appeared that up to 1858, the minutes of the court contained a record of naturalization proceedings, but subsequently the practice of making an entry in the regular minute book was discontinued and merely an index book of naturalizations was kept. He held that this fully answered the purposes of the law, and says:

"Even, therefore, if a defect in the record existed in consequence of the omission of some ministerial act by the clerk, the United States Government, in the absence of a law declaring such defect fatal, could not afford to insist upon it. The United States are so largely indebted to immigration for their power, greatness and prosperity that it would be an act of folly to return to the illiberal policy of George III., who, in consequence thereof, stands charged in the Declaration of Independence with having endeavored to prevent the population of the States by obstructing the laws for the naturalization of foreigners and by refusing to pass others to encourage their immigration hither."

But the question of Mr. Cannon's naturalization has already been decided in his favor by a committee of the House, as he shows in his reply to the protest, and this being the proper body to adjudicate on the matter, the action of the Governor is simply ridiculous.

He further assumes that Mr. Cannon is "living in polygamy." No proof of this was adduced, and if it had been, that is no offense against the laws of the United States. There is no law of the land which makes that a crime. The legal offence is in the contract of marriage not in the cohabitation. And it has never been proven that Mr. Cannon has acted in violation of the law of 1862. The Governor quotes as a law, a provision passed by one House of Congress to the effect that "no person who is guilty of bigamy or polygamy shall be admitted as a Delegate." But this is not a law, it has not passed the Congress. And if it had, it would take a legal trial and conviction for the offence of bigamy or polygamy, to disqualify the Delegate; the dictum or opinion of a Governor on the subject is not worth the paper on which it is written.

The telegram from Washington concerning the opinion of men of both parties concerning the Governor's infamous act, is but the echo of that expressed by every person whose views we have heard in this city. We do not believe there is a lawyer, with the exception of Campbell's attorney, who will say that the Governor's course is legal, consistent or honorable. He will injure himself more than the gentleman whom he has attempted to defraud, and we can afford to leave him to the verdict of the country and the retribution of Eternal Justice.

THE GUBERNATORIAL FIAT.

It Declares That 1,357, is Greater Than 18,568.

Assumption of Judicial Powers.

A Self-Refuting Document.

On the 14th day of December, 1880, the Secretary of the Territory, in my presence, opened the returns received by mail, of an election for Delegate of the Territory of Utah in the Forty-seventh Congress, held on the Tuesday after the first Monday of November, of said year.

The returns show that George Q. Cannon received 18,568 votes, and Allen G. Campbell received 1,377 votes. At that time notice of protest by Allen G. Campbell, was given, which protest was afterwards filed, objecting to a certificate being issued to Mr. Cannon. Following is the protest:

[The protest was published in full in our weekly issue of Dec. 22, 1880.]

The answer of Mr. Cannon to the protest of Mr. Campbell was filed before me January 7, 1881, which answer is as follows:

To His Excellency Eli H. Murray, Governor of the Territory of Utah.

SIR—In reply to the communication of Allen G. Campbell, Esq., in which he protests against the issue of a certificate of election to me as Delegate of the Territory of Utah in the Forty-seventh Congress of the United States, and demands the issue of the certificate to himself, I respectfully submit the following statement:

The grounds on which Mr. Campbell bases his protest and demand are:

(1) That as canvassing officers the Governor and Secretary have power to "go behind the returns," and ascertain from extrinsic evidence the number of votes legally cast for each candidate.

(2) That there is no evidence tending to disprove his qualifications for the office of Delegate to Congress.

(3) That there is no evidence tending to disprove the qualifications of the 1,357 electors who voted for him.

(4) That I am an unnaturalized alien.

(5) That, being such, I am not eligible to the office of Delegate in Congress, and that my ineligibility resulting from alienage is aggravated by polygamy, which he thinks is incompatible with citizenship and inconsistent with an honest oath of allegiance to the Constitution of the United States.

(6) That all of the 18,568 votes cast for me at the late election are therefore void and are to be excluded from the canvass.

(7) That as a consequence the certificate of election is to be delivered by the canvassers to him, and not to me.

(8) That the females in the Territory who claimed the right to vote outnumbered all the votes polled at the late election.

(9) That it "must be taken for granted" that all votes cast by females were cast for me.

(10) That the territorial legislation which extends the right of suffrage to females is void.

(11) That it is therefore impossible to determine, without proof, that the 18,568 votes cast for me included more legal votes than the 1,357 votes cast for him.

(12) That the votes of the females have "vitiated the election."

With your Excellency's permission I will answer these several propositions in their order.

1. The process of reasoning by which Mr. Campbell reaches the conclusion that the Governor and Secretary, as canvassing officers, have power to "go behind the returns," and to ascertain from extrinsic proofs the number of votes cast for each candidate is the first to be considered. He refers to the following provisions of the Compiled Laws of Utah:

(23) Immediately upon receiving the electoral returns of any precinct, the county clerk and probate judge, or, in his absence, one of the selectmen, shall unseal the list and ballot box, and count and compare the votes with the names on the list, and make a brief abstract of the offices and names voted for, and the number of votes each person received: the ballot box shall then be returned and the votes and list preserved for reference in case the election of any person shall be contested.

(24) When all the returns and abstracts are made the clerk shall forthwith make a general abstract and post it up in his office, and forward to the Secretary of the Territory a certified copy of the names of the persons voted for, and the number of votes each has received for territorial offices, and furnish each person having the highest number of votes for county and precinct offices a certificate of his election.

(25) So soon as all the returns are received, the Secretary, in the presence of the Governor, shall unseal and examine them, and furnish to each person having the highest number of votes for any territorial office a certificate of election.

He thinks that because these statutory provisions do not, in express terms, require the canvassers to give the certificate to the person shown by the returns to have the highest number of legal votes, they by implication do require them to give it to the person who, whatever the returns may show, did in fact receive the highest number of legal votes; that this duty necessarily implies the power to employ suitable means to ascertain who received the highest number of legal votes; and that, therefore, the Governor and Secretary, as canvassers, have the right to resort to extraneous evidence to ascertain the real facts in this case. He seeks to fortify his conclusion by the following citation from page 52 of "Cushing's Law and Practice of Legislative Assemblies:"

There can be no doubt that in those branches wherein the law has marked out a definite line it is ministerial; but as regards the two material branches of deciding upon the capacity or incapacity of candidates, or upon the qualifications or disqualifications of electors, the subject requires some investigation; but if the returning officer be fully apprised of some notorious disqualification, whether of a candidate or an elector, such as their being minors or claiming in the right of property, which clearly does not entitle them to the privilege, he is so far a judicial officer as to prevent their voting or being returned. In judicial decisions of this country, when the point is adverted to, it seems to be considered that the functions of returning officers are chiefly judicial in their character.

I respectfully submit that each and every step in this reasoning is erroneous, and that the conclusion reached is absolutely destitute of warrant in law. The provisions of sections 23, 24 and 25 of the statutes of Utah confer upon the Governor and Secretary, as canvassing officers, no judicial power to "go behind the returns" for the purpose of ascertaining the number of votes cast for any candidate. It is made their duty to ascertain whom the returns show to have received the highest number of votes, and to give the certificate to him. The only judicial or *quasi* judicial power vested in them is to determine whether the papers before them purporting to be returns are returns made in substantial conformity to the law. If they decide that the papers are such returns, they must embrace their showing in the official canvass. If they decide that they are not such returns, they must exclude them from the canvass.

The precinct judges of elections in this Territory make no returns beyond the mere transmission to the county clerk of the sealed ballot-box and list of electors. They are not precinct canvassers. They do not return to the county clerks the number of votes cast for each candidate. They only return the ballots and the poll-lists. Upon the county clerks and probate judges or selectmen, is imposed the duty of canvassing the votes, in the first instance, by counting the ballots, and comparing their number with the number of names on the poll-lists, and preparing statements of the offices and names voted for, and the number of votes cast for each candidate. The votes and lists are not sent to the Secretary of the Territory, but remain in charge of the clerks. The law makes no provision for any inspection of the ballots or of the poll-lists by the Governor or Secretary before their canvass is completed and the certificates delivered to the successful candidates. It places nothing before the Governor and Secretary, except a certified copy of the names of the persons voted for and the number of votes cast for each. If the law requires them not merely to ascertain the number of votes shown by the clerk's returns to have been received by each candidate, but the number of votes shown by the ballots and poll-lists, and by extrinsic proof to have been legally cast for each candidate—that is to say, not merely to canvass the clerk's returns, but to canvass the votes themselves and determine their legality—then the law is an outrage, not only on the Governor and Secretary, who are compelled to make "bricks without straw," but on the candidates whose rights are to be adjudicated by officers from whom the law deliberately withholds the means essential to correct adjudications. This would be a most scandalous condition of the territorial law if it really existed. But such is not the law of Utah.

The question now under consideration has been adjudicated many times by judicial and legislative tribunals in the United States upon statutory provisions substantially like those embraced in sections 23, 24 and 25 of the "Laws of Utah." It has never been decided in favor of Mr. Campbell. Mr. McCrary in his "Laws of Elections," (sec. 82), correctly states the rule established by the concurrent authority of these