Senator Hopkins' Great Speech On The Smoot Case.

Following is the complete text of the speech of Senator Albert J. Hopkins of Illinois, in the celebrated case of Senator Reed Smoot of Utah, as delivered in the United States senate, Friday, Jan. 11:

The senate having under consideration the following resolution, reported by Mr. Burrows, from the committee on privileges and elections, on June 2, 1906:

Resolved, That Reed Smoot is not entitled to a seat in the senate as a senator from the State of Utah—

Mr. Hopkins said:

Mr. President: In determining the question whether Reed Smoot is entitled to a seat in the senate of the United States from the State of Utah, it is necessary, as it seems to me, to first learn what power, if any, the senate of the United States has over the State of Utah in the selection of the men whom that state sends to this body to represent her in all matters of legislation.

Can the senate fix the qualifications of the senators of any state in this Union?

Can this body arbitrarily determine the eligibility of its members from the different states?

Are there no constitutional or other limitations upon the senate in arriving at the eligibility of a United States senator from Utah who presents his credentials here under the seal of the state which he is authorized to represent in this legislative assembly?

The states, before the adoption of the federal Constitution, were independent sovereignties. That great instrument which now unites what would otherwise be 45 separate and independent sovereignties provides the qualifications of a senator from any one of these states. Paragraph 3, section 3, article I, of the Constitution reads as follows:

No person shall be a senator who shall not have attained to the age of 30 years and been nine years a citizen of the United States, and who shall not when elected be an inhabitant of that state from which he shall be chosen.

All who are familiar with the Madison papers containing debates on the federal Constitution will remember that that language was adopted after a most extended and learned debate in the constitutional convention of 1787. Some of the best legal minds in the convention were opposed to placing any qualifications in the Constitution regarding either representatives or senators. They proposed to leave it to the states to determine the qualification of the men whom they would send to either branch of Congress. Mr. Dickinson, in the course of the discussion, said that he was against any recitals of any qualifications in the Constitution; it was impossible to make a complete one, and a partial one would, by implication, tie up the hands of the legislature from supplying omissions. Mr. Wilson, of Pennsylvania, whose remains were recently removed from North Carolina to the state of Pennsylvani, after nearly a hundred years reposing in the soil of a foreign state, in the debate that resulted in the adoption of the language that I have just quoted from the Constitution, said:

And besides a partial enumeration of cases will disable the legislature from disqualifying odious and dangerous characters.

Mr. Madison, however, sometimes called "the Father of the Constitution," took a direct opposite view. He contended that the qualifications of United States senators should be stated in the instrument that created such officers, *and stated that to leave it to the legislature would vest an improper* and dangerous power in such a body. He held that "the qualifications of the elector and elected were fundamental articles in the republican government and ought to be fixed by the Constitution." It was his opinion, drawn from experiences of other countries and especially that of England, that that power, left in the hands of the state legislatures, might by degrees subvert the Constitution.

I call senators' attention to the debates in the constitutional convention to show that the language that was ultimately adopted was not expressed as we find it in the Constitution without due deliberation and careful thought on the part of the framers of that great instrument; and that the construction that they placed upon it was that the qualifications called for in the instrument itself negatived the idea that any other qualifications could be exacted either by the senate itself or by any one of the states.

Paragraph 1 of section 5 of article I reads as follows:

Each house shall be the judge of the election returns and qualifications of its own members, etc.

It has sometimes been contended that the language broadens the power of the senate in determining the eligibility of a member and enables it to fix whatever qualifications, in the judgment of the particular senate, shall be deemed proper and just. This construction, as it seems to me, is not sound when we come to examine carefully the language of section 5 of article I of the Constitution.

In section 2 of article I of the Constitution the qualifications of a senator are given and section 5 only goes to the extent of clothing the senate with the sole power of determining whether those qualifications have been complied with. In other words, section 5 of article I precludes the idea that a contestant for a seat in the United States senate could successfully claim before any of the courts of the country, either state or federal, that his successful competitor for the position of United States senator was not, for example, 30 years of age, or that he had not been nine years a citizen of the United States or that at the time that he was elected United States senator he was not an inhabitant of the state from which he was chosen.

Section 5 places the power entirely in the senate of the United States to determine whether those qualifications have been complied with; and whatever a court might say respecting any one of the questions above enumerated, the senate itself would not be hampered by any such decision, but could have these qualifications inquired into and itself determine whether the senator is eligible under those qualifications.

The Federalist has ever been regarded as entitled to great weight in determining the proper construction of the different sections and articles of the Constitution which are discussed in that great work. No. 60 of the Federalist, which was written by Alexander Hamilton, places the same construction upon the qualification of senators for which I here contend, and asserts that no other or different qualifications than those can be exacted. In speaking upon this subject, he said:

The truth is that there is no method of securing to the rich the preference apprehended but by prescribing qualifications of property, either for those who may elect or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the times, the places, the manner of elections, the qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution and are unalterable by the legislature.

Text writers and many of the courts of last resort of the several states have held to this construction. In the case of Thomas vs Owens (4 Md., p. 223) the court says:

Where a constitution defines the qualifications of an officer, it is not within the power of the legislature to change or superadd to it unless the power be expressly or by necessary implication given to it. It is a fair presumption that where the Constitution prescribed the qualification it intended to exclude all others. (Paschal's Annotated Constitution, second edition, p. 305, sec. 300.)

The Hon. John Randolph Tucker, for many years a member of Congress from the state of Virginia, and always regarded as a great authority on the Constitution, in a work of his which has been published since his death, called "Tucker on the Constitution," in speaking on this very topic, said:

Nor can the Congress nor the house change these qualifications. To the latter no such power was delegated, and the assumption of it would be dangerous as invading a right which belonged to the constituent body and not to the body of which the representative of such constituency was a member. (Tucker on the Constitution, p. 394.)

Mr. Justice Story is one of the first and greatest authorities on the Constitution of the United States. His works have been quoted in this country and in England as of the highest authority on the different questions that he discussed relating to the Constitution of the United States. In speaking of the qualifications for office, he said:

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 pre-requisites. From the very nature of such a provision the affirmation of these qualifications would seem to imply a negative of all others. (Story on the Constitution, sec. 625.)

Foster on the Constitution is a work that deservedly ranks well with all students of the Constitution. He says:

The principle that each house has the right to impose a qualification upon its membership which is not prescribed in the Constitution if established might be of great danger to the republic. It was on this excuse that the French directory procured an annulment of elections to the council of 500, and thus maintained themselves in power against the will of the people who gladly accepted the despotism of Napoleon as a relief. (Foster on the Constitution, p. 367.)

Indeed, Mr. President, I think I am justified in saying that every lawyer of standing and every student of constitutional history of any learning has admitted that neither the senate, Congress, nor a state can superadd other qualifications for a senator to those prescribed by the Constitution.

It has ever been held, both in and out of the senate, that the states could be trusted to send fit and proper men to this body. The Constitution fixed the age limit at a period where the senator would have experience and matured judgment. His citizenship was fixed at a period sufficiently long to thoroughly familiarize him with the institutions of our country, and the fact that he must be an inhabitant of the state from which he is chosen provided against any influence outside of the state limits in selecting other than a citizen of the state.

In the earlier days of the republic senators were called and regarded themselves as ambassadors from the states they represented in this body, and met here as such to confer respecting legislation that would result in benefit to their common country.

The 13 separate sovereign states that had recently gained their independence from England would any one of them have scorned the idea that senators whom they selected to represent them could have qualifications other than those prescribed by the Constitution, fixed by the legislative body to which they were elected and were to become a part. Virginia did not consult Massachusetts as to the character or fitness of her senators to represent the great state of Virginia in the first senate that assembled under the Constitution of the United States, and when Massachusetts came to select her representatives in this great body she did not consult South Carolina as to whether that state or the senate itself would be satisfied with the character and quality of men whom the old commonwealth of Massachusetts had designated to represent her in the first senate that assembled under the Constitution. They met, as I have already said, in the spirit that they were ambassadors from the state whose credentials they held, and while they legislated for the common good they never forgot in any of their deliberations the interests of the states that had honored them by selecting them as their senators.

The power that is given the senate under the Constitution is not to create senators, but to judge of their qualifications. The states create the senators. The qualifications to be judged are those, as I have already stated, prescribed in the Constitution itself. If the senate find those qualifications exist in the applicant for a seat in this body from any given state, then, under all precedents, such senator is entitled to take oath of office and take his place among the members of this great legislative body.

Senators, as such, are not civil officers of the federal government. It has been held ever since the adoption of our federal Constitution that senators are officers of the states. The federal government does not send them here to legislate for it; it has no power or authority, as such, to designate a single member of this body. It is utterly powerless to create the office of a United States senator, and it is equally powerless to require any one of the states of the republic to designate any particular individual as a senator from such state.

The federal republic is a nation of delegated powers, and among these powers, that are thus delegated by the several states to the federal government is not found anything relating to United States senators. The states alone send senators to this body to legislate for them and for the federal government. This doctrine, Mr. President, is not new; it was announced by this very body more than 100 years ago, in the case of William Blount, of Tennessee. The history of this case is familiar to many of the senators. He was a senator from the state of Tennessee from 1796 to July 8, 1799. During that period it was claimed that he engaged in treasonable correspondence with a foreign nation and was guilty of a high misdemeanor. Articles of impeachment were voted against him by the house of representatives and duly presented to the senate of the United States, and Mr. Blount was called upon to make answer thereto. He employed as his counsel Jared Ingersoll and Alexander J. Dallas, of Philadelphia, two of the most distinguished constitutional lawyers in the United States. They were men who were in the forefront of their profession and whose learning and ability would make them leaders of the bar of the United States at any period in its history. They had made a careful study of the Constitution of the United States, and when they presented Mr. Blount's defense in answer to the articles of impeachment presented by the house of representatives, they interposed in his behalf the following plea:

That although true it is that he, the said William Blount, was a senator of the United States from the state of Tennessee at the several periodss of impeachment referred to, yet that he, the said William Blount, is not now a senator and is not, nor was, at the several periods so as aforesaid referred to, an officer of the United States, nor is he, the said William Blount, in and by the said articles charged with having committed any crime or misdemeanor in the execution of any civil office held under the United States or with any misconduct in civil office or abuse of any public trust in the execution thereof.

This plea, Mr. President, was interposed to the articles of impeachment which charged him with this misdemeanor of the treasonable character that I have already referred to while he was a senator of the United States. His learned counsel by this plea raised the very point that I have briefly discussed—that as a senator of the United States from the state of Tennessee he was not an officer of the United States, and therefore that the senate had no jurisdiction to try his case.

He also interposed a further defense, as follows:

That the court of common law of a criminal jurisdiction of the state wherein the offenses in the said articles recited are said to have been committed, as well as those of the United States, are competent to the cognizance, prosecution, and punishment of the said crimes and misdemeanors if the same have been perpetrated, as is suggested and charged by the said articles, which, however, he utterly denies.

It will thus be seen, Mr. President, that in formulating his defense these eminent lawyers took the position that the senate of the United States had no jurisdiction to try him for the crime charged.

These defenses were argued at length by the learned counsel who represented Mr. Blount and were discussed by the senators themselves. The two propositions that were advanced by Mr. Dallas and argued at great length and sucessfully are as follows:

First. That only civil officers of the United States are impeachable and that the offense for which an impeachment lies must be committed in the execution of a public office.

Second. That a senator is not a civil officer, impeachable within the meaning of the Constitution, and that in the present instance no crime or misdemeanor is charged to have been committed by William Blount in the character of a senator.

I have not the time nor inclination on this occasion to follow at any length the arguments that were made pro and con upon the propositions raised by Mr. Ingersoll and Mr. Dallas, as stated by me here. It is sufficient to know that weeks passed, and after this full and elaborate argument, and the senate of the United States, sitting as a court of impeachment, had fully deliberated on the question, on the 11th of February, 1799, determined as follows:

On motion it was determined that—

The court is of the opinion that the matter alleged in the plea of defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment and that the said impeachment is dismissed.

Monday, Jan. 14. The court being opened, the parties attending and silence being proclaimed, judgment was pronounced by the vice president as follows:

"Gentlemen, managers of the house of representatives, and gentlemen of counsel for William Blount: The court, after having given the most mature and serious consideration to the question and to the full and able arguments urged on both sides, has come to the decision which I am now about to deliver.

"The court is of opinion that the matter alleged in the plea of the defendant is sufficient in law to show that this court ought not to hold jurisdiction of the said impeachment, and that the said impeachment is dismissed."

From that day to this it has never been seriously contended that a United States senator is a civil federal officer of a character that would enable the senate to impeach him for high crimes or misdemeanors for any act of his during his service as such senator.

A senator is amenable to the courts of the country for any crime the same as any other citizen; and, as was contended by Mr. Ingersoll and Mr. Dallas in the Blount impeachment case, the proper forum to try a senator for a crime or misdemeanor is in the state or federal courts.

That a state cannot add any qualifications other than those prescribed by the Constitution of the United States has been decided repeatedly by this body. One of the notable cases was that of Lyman Trumbull of Illinois, my predecessor in office. Mr. Trumbull was elected a senator from Illinois and took his seat in this body on the 4th day of March, 1855. A protest was filed by certain senators and representatives of the legislature of the state of Illinois against his election as a United States senator, and the question of his eligibility and his right to hold a seat in the senate of the United States was referred to the committee on privileges and elections of the senate.

The protestants in the case of Senator Trumbull alleged that he was elected a judge of the supreme court of Illinois in June, 1852, for a term of nine years; that he was duly commissioned and entered upon the discharge of his duties as such judge; that in May, 1853, he resigned this office to take effect July 4, 1853; and that on February 8, 1855, he was elected to the senate of the United States for the term beginning March 4, 1855.

The constitution of the state of Illinois at that time provided:

The judges of the supreme and circuit courts shall not be eligible to any office of public trust or profit in this state or the United States during the term for which they are elected, nor for one year thereafter; all votes for either of them for any elective office except that of judge of the supreme or circuit courts, given by the general assembly or by the people, shall be void.

Under this clause of the constitution the protestants insisted that Judge Trumbull was ineligible for the office of United States senator. This question was carefully considered by the senate, and after elaborate debate on the question as to whether the state of Illinois could superadd a qualification to that contained in the Constitution of the United States, it was determined by a vote of 35 to 8 that the state could not; and the resolution offered by Senator Crittenden, as follows—

Resolved, That Lyman Trumbull is entitled to a seat in this body as a senator elected by the legislature of the state of Illinois for the term of six years from the 4th of March, 1855—

was adopted by a vote of 35 to 8.

It is interesting to note, Mr. President, the men who voted in favor of seating Senator Trumbull under the conditions that I have briefly and imperfectly expressed. Those who voted in favor of the resolution that Senator Trumbull was entitled to a seat in this body are as follows:

Adams, Allen, Bell of Tennessee, Bright, Brown, Butler, Cass, Collamer, Crittenden, Dodge, Durkee, Evans, Fassenden, Fish, Foote, Foster, Geryer, Hale, Hamlin, Harlan, Houston, Hunter, James, Mallory, Mason, Pearse, Reid, Rusk, Sebastian, Seward, Sumner, Toucey, Wade, Wilson and Yulee.

The senate will note that some of the greatest lawyers of the age and some of the most distinguished statesmen whose lives grace the history of our country voted in favor of the proposition that Senator Trumbull was entitled to his seat. In the course of the debate on this resolution Senator Crittenden said:

We are to look to the Constitution of the United States for the whole frame of this government. It has created all the powers and all the instruments of this government. It has created the senate. Before this creation neither the state of Illinois as such nor any other state in the Union had any power to elect a senator. There was no such office to be filed by them as senator of the United States. Their agency was simply employed by the federal constitution. The agency of the legislatures of the several states was employed to elect senators who constitute this body. It is an all-important branch of the government. The designation of the power that was to elect, the designation of the persons qualified to be elected, all entered into the very essence of the subject. All this was to have its influence on this government. All and every single circumstance of this was to have its influence in connecting the state governments and the general government and in connecting them in such a way as to preserve that species of political relations between them which it was thought would operate most advantageously to all.

This was the view of the framers of the Constitution of the United States. It was a subject for them whether the legislature should elect senators, whether the people should elect them, or whether the governors of the several states should appoint them. All this was within the competency of the framers of the Constitution. Neither people nor governors nor legislatures had previously any power to elect or appoint a senator. There was no such officer; there was no such power. The whole was a new creation. The Constitution determines that the power to choose senators shall be in the legislatures of the several states. The power to elect senators was committed to the legislatures. Who shall they be, was the next question. The question was how to designate a senator by some prescribed qualification, so as to fix the class from which he should come. Shall he be a man who is required to possess any particular amount of fortune? Shall he be a man who must be subjected to some religious test? Of what age shall he be?

Were not all these points fairly presented to the framers of the Constitution of the United States? Were they not important questions to be acted upon and decided? They were framing the government. The Constitution of this body was an essential part of the government. That was to depend on the parties, or the condition of the parties, out of whom they would make this great council of the nation. Should he be a citizen? Might they select him anywhere? Should he be an inhabitant of his state? Might he be of any age?

All these subjects being considered, the Constitution of the United States decides upon the whole matter by providing that each senator shall be of the age of 30 years, shall have been at least nine years a citizen of the United States, and shall be an inhabitant of the state from which he is chosen.

Now, sir, does this not embrace the whole subject? Does it not regulate the whole system? According to the plain meaning of the federal Constitution every inhabitant of a state, 30 years of age, who has been nine years a citizen of the United States, is eligible to the office of senator. What more can be said about it? It is now supposed by those who contend that Mr. Trumbull is not entitled to his seat, that it is competent for a state, by its constitution—and I suppose that they would equally contend for any law which the legislature might from time to time pass—to superadd additional qualifications. The Constitution of the United States, they say, has only in part regulated the subject, and therefore it is no interference with that Constitution to make additional regulations. This, I think, it will be plain to all, is a mere sophism, when you come to consider it. If it was a power within the regulation of, and proper to be regulated by, the Constitution of the United States, and if that Constitution has qualified it, as I have stated, prescribing the age, prescribing the residence, prescribing the citizenship, was there anything more intended? If so, the framers of the Constitution would have said so. The very enumeration of these qualifications excludes the idea that they intended any other qualifications. That is the plain rule of ordinary construction; but, for a reason above all technical considerations, it is applicable here. The object of the federal Constitution was to have a body framed by a uniform rule throughout the United States, coming here to constitute this great council of the country—coming here by the agency of the same elective power, the State legislatures—coming here under the same requirements and with the same qualifications—and standing here upon a perfect and exact equality in all respects to represent the nation justly and equally, and with a sole regard to the common welfare of the republic.

This argument of Senator Crittenden has been held sufficient to forever put at rest the idea that a state can add any qualifications to that of a senator of the United States other than those prescribed in the Constitution of the United States, and since then men who have been disqualified under the constitutions of their states have been repeatedly elected to this body and admitted to a seat and a share in its deliberations without question.

My distinguished colleague, who has so long and so honorably represented Illinois in this body, when he first came here as a senator from Illinois, was laboring under this same alleged disqualification that was urged against Senator Trumbull, but his right to his place in the senate here was never questioned by the members of this body.

So, Mr. President, I think it is unnecessary for me to multiply cases demonstrating the fact that the individual states have no power to add any qualification to a senator other than that prescribed in the federal Constitution. It is equally clear, in my judgment, Mr. President, that this senate has no constitutional authority to inquire into the antecedents and the early career and character of a senator who comes here for admission with the credentials of his state.

The theory of the fathers of the Constitution was that the legislators of the state, who are directly amenable to the people of the state, would elect fit men to represent such state in the senate of the United States. It was not supposed by the framers of that great instrument that the senate of the United States would sit as a court of inquiry or an inquisition to investigate the career and character of any man whom a state might see fit to honor with a seat in this body.

It was left by the Constitution of the United States to each state to determine the character of the men whom they would prefer to represent them as United States senators. I am well aware, Mr. President, that there have been different views expressed on this question by senators in the discussion of the eligibility of senators who have applied here for admission to a seat in this body; but I make the assertion after a careful study of the cases that have been considered by the senate from the adoption of the Constitution of the United States to the present time, that no senator has ever been denied a seat in the senate of the United States because of any lapse in his career prior to his being selected by his state as such senator.

A notable instance is found in the so-called "Roach case." Senator Roach, as many of the senators who are now serving in this body will remember, presented his credentials as a senator from the state or North Dakota and asked for admission to represent that state as a United States senator in this body. After taking the oath of office it was discovered that in his earlier career he was connected with one of the banks in the city of Washington, in the District here, and, as such officer, embezzled quite a large sum of money, and that he was charged to be a fugitive from justice. The question was raised and elaborately argued as to whether that disqualified him from holding his seat in the senate as a senator from North Dakota. After elaborate discussion of this subject and an examination of the precedents covering the entire period of our national history, without any vote being taken upon the subject, Senator Roach was permitted to serve out his time as a United States senator in this body.

I think, Mr. President, that this example, so recently before us, has settled forever the question that the senate will not undertake to revise the judgment of a state in determining the character of a man whom the state shall elect at a United States senator. The state will content itself with what occurs while such senator is a member of this body. If the conduct of the senator is such as to lower the standard of the senate or to bring it into disgrace, or if the senator be guilty of any misdemeanor, the power exists under the Constitution of the United states to expel such a member.

Paragraph 2, section 5, article I of the Constitution of the United States reads as follows:

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.

Ample power is given in this provision of the Constitution to protest the high character of this great legislative body. While the senate, as I have shown, can not add qualifications to those prescribed in the Constitution for a senator from any state; and while the state itself can not superadd other qualifications; and while the senate itself, by a long line of precedents, has established the fact that the previous career and character of the senator must be determined by the state that sends the senator to this body, still after he becomes once a member he must deport himself in a manner consistent with the dignity and high character of the senate of the United States or he will become amenable to this provision of the Constitution which I have just read and which will enable the senate itself, if his conduct be such as to warrant it, to expel the member by a two-thirds vote.

In the case I have just cited from North Dakota, had the embezzlement charged to Senator Roach occurred during his term of service the senate would clearly have been warranted in expelling him as a member from this body.

Any disorderly behavior that tends to bring reflections upon the senate in any form or at any time while the senator is a member of the senate will be sufficient, in my judgment, to warrant the senate in taking the course prescribed by the Constitution in expelling a member.

The considerations which I have here presented, Mr. President, will indicate to the senate the limitations within which the senate itself can inquire into the question as to whether Reed Smoot is entitled to retain his seat in the senate of the United States.

It is conceded by the distinguished chairman of the committee on privileges and elections in the very able, and, indeed, I may say remarkable, speech which he made here the other day in support of his contention that Senator Reed Smoot is not entitled to a seat in the senate, that he possesses all of the qualifications spoken of in the Constitution itself—he is over 30 years of age, he has been more than nine years a resident of the United States, and he was a resident of the state of Utah at the time he was elected by the legislature of that state a senator of the United States.

It is also conceded, Mr. President, not only by the able chairman of this committee, but I think by all who are at all familiar with the case that was presented to the committee on privileges and elections, that Senator Reed Smoot is not a polygamist; that he has never married a plural wife, and has never practised polygamy; that he is a man in his personal relations as son, husband, father, and citizen above reproach; that in all of the relations of citizenship he has lived a singularly pure and upright life.

Why, then, should he be expelled from this body, disgraced and dishonored for life, a stigma placed upon his children, his own life wrecked and the happiness of his wife destroyed? He is a Christian gentleman, and his religious belief has taken him into the Church of Jesus Christ of Later-day Saints, commonly called "the Mormon Church."

I shall refer later in my remarks, Mr. President, to the arraignment of this Church by the distinguished senior senator from Michigan. It is my purpose now, however, to challenge the attention of the senate to charges that were originally made against Senator Smoot, that resulted in the investigation which has culminated in the resolution now pending before the senate respecting Senator Smoot's seat in the senate. There were two petitions presented to the senate, which were referred to the committee on privileges and elections, protesting against Reed Smoot retaining his seat in the senate of the United States. One was signed by Mr. Lelich. This protest charged that Reed Smoot is a polygamist and that, as an apostle of the Church of Jesus Christ of Latter-day Saints, commonly called the Mormon Church, he had taken an oath of such a nature and character as that he is thereby disqualified from taking the oath of office required of a United States senator. No person appeared before the committee on privileges and elections to support these charges. Judge Tayler and Mr. Carlisle, who conducted the case against Senator Smoot before the committee, disclaimed any connection with these charges, and I think I am safe in saying that both of these distinguished lawyers claimed that there was no truth in either of the charges made. They conceded before the committee that Senator Smoot is not a polygamist and never has been. It is also equally clear, Mr. President, that he has never taken an oath as apostle of his Church of a nature and character that disqualifies him from acting as United States senator.

I feel sure that neither the distinguished chairman of the committee on privileges and elections nor any of the people who sympathize with the position which he holds in this case will contend for a moment that there is an apostolic oath which has been taken by Senator Smoot which disqualifies him from discharging the duties of the high office of senator of the United States from the State of Utah.

The real charges that have been considered relate more particularly to the protest that was signed by W. M. Paden and a number of others, which charged in substance that he is a member of a self-perpetuated body of 15 men who constitute the ruling authorities of the Church, known as the "hierarchy;" that they claim supreme authority, divinely sanctioned, to shape the belief and control the conduct of the members of the Mormon Church, and that they encourage and believe in polygamy and the practise of polygamous cohabitation and countenance and connive at violations of the laws of the State of Utah and of the United States, and that as a member of the hierarchy Reed Smoot should be held guilty of any crime committed by any member of the hierarchy and should be held equally guilty with any of the violators of the laws of the State of Utah or of the United States by members of that self-perpetuating body.

I listened, Mr. President, with a great deal of interest to the eloquent denunciation of the crime of polygamy by Mr. Burrows, the senior senator from Michigan, in his speech here the other day, and I sympathize with him fully in his arraignment of polygamy and polygamous cohabitation. I think it is a relic of a barbarous age, and as such I denounce it. It is the destroyer of the ideal American home life and the corrupter of the morals of those who practise it.

I share also, Mr. President, in the condemnation which the senator launched against Brigham Young and other leaders of the Church who, in their day and generation, promulgated and practised this crime upon their followers. But, Mr. President, Brigham Young and the present head of the Mormon Church are not on trial before the senate of the United States. Brigham Young has long since passed from this life into another world and there, according to the beliefs of Protestants and Catholics alike, before a just Judge, will pay the full penalty for the crimes he committed while on earth. The present head of the Mormon Church is destined in the fullness of time to go before the same tribunal and to have his acts and deeds passed upon by the same impartial Judge.

Mr. Beveridge—Will the senator from Illinois permit me?

The Presiding officer (Mr. Kean in the chair). Does the senator from Illinois yield to the senator from Indiana?

Mr. Hopkins—I yield.

Mr. Beveridge—I have listened with profound interest to the unanswerable argument of the senator from Illinois to the effect that no senator is to be criticised or his title to be assailed by reason of something he may have done before his state elected him a member of this body. In that connection, not only has Brigham Young passed to his rest, not only is it conceded, in spite of the belief of the people, that Mr. Smoot is not a polygamist, but he never was one. So that not only does this offense of which he is popularly supposed to be guilty not attach to him now, but it never did attach to him.

Mr. Hopkins—The senator is correct.

Mr. Beveridge—I think it is worth while to call particular attention to that fact, because in the minds of the people of the country, I think everybody knows that Mr. Smoot is apparently being tried because he is a polygamist, whereas it is not only proved that he is not, but it is gladly admitted that he is not, and that he never has been.

Mr. Dubois—Mr. President——

The Presiding Officer—Does the senator from Illinois yield to the senator from Idaho?

Mr. Hopkins—Certainly.

Mr. Dubois—It is only for a moment. The protest against Reed Smoot is what he is being tried on. It is set forth thoroughly in the record. It is not in the minds of the people or of senators that he is being tried because he ever has been or is now a polygamist.

Mr. Beveridge—Will the senator from Illinois yield for a moment?

Mr. Hopkins—I yield.

Mr. Beveridge—It is pertinent in a debate of this kind to refer to what exists in the minds of the public—what the people have been led to believe. We, as a court, will of course try Senator Smoot upon the record. But it has been given out to the people in numberless methods that Mr. Smoot, a polygamist, is occupying a seat in the senate of the United States; that a violator of our laws in that particular is holding a seat in this body. That is entirely untrue, and from now on in this debate the American people ought to know what those who are against Mr. Smoot admit, but what is not popularly known—that he not only not now is, but never has been a polygamist, and, on the contrary, his home life is pure and perfect.

Mr. Hopkins—I recognize what the senator from Indiana says is true.

Mr. Scott—Mr. President——

The Presiding Officer—Does the senator from Illinois yield to the senator from West Virginia?

Mr. Hopkins—I do.

Mr. Scott—I wish to ask the senator from Illinois if it is not true that the Presbyterian church embraces in its creed, or its confession of faith, or whatever it may be called, the doctrine of infant damnation? If so, I should like to ask him whether all members of the Presbyterian church can be held accountable for that doctrine when many of them do not believe it?

Mr. Hopkins—I did not rise, Mr. President, either to praise or to condemn the Presbyterian church. I have very many dear friends who owe allegiance to that church and to its doctrines, and I know them to be good citizens wherever they live, and that they exercise a Christian influence where their influence has been exerted at all. I am not here for the purpose of discussing any other religious sect. We all know that the human race, from its earliest stages has developed through bloody wars in the name of religion, and it is not for me to speak of the history of any of the different churches, because I know that in the twentieth century they are all exerting a profound and beneficial influence upon mankind.

My purpose today will be to show to the senate and the people of this country that whatever crimes may have been committed in the earlier history of the Church in the name of Mormonism is not for us to condemn or condone here. We have only to consider the personnel of Reed Smoot and his relations to the Church since he became a member of this body. If it shall appear, Mr President, from a careful analysis of the testimony which has been taken by the committee on privileges and elections that Reed Smoot is guilty of the crimes charged against the Mormon Church by the eloquent and distinguished senator from Michigan in his speech, then I say we should all unite in expelling him from the senate.

If, however, Mr. President, it shall appear from a candid consideration of all the testimony which has been presented to the committee on privileges and elections that Reed Smoot stands forth guiltless of any offense punishable by law or any conduct unbecoming a Christian gentleman, then the mere fact that he is a member of the Mormon Church, or that he is an apostle in that Church, should not debar him from exercising the rights of a senator in this body, and should not deprive the State of Utah, which, under our Constitution, has the same rights and privileges accorded to any one of the original 13 states, from having a full representation in the United States senate.

I shall, Mr. President, before I close trace somewhat briefly the history of the Mormon Church and note the character and conduct of some of the men who have been prominently identified with that Church from its organization to the present time. But I shall not follow the example set by the senator from Michigan and declare against the Church and against Senator Smoot simply because I find that in some period of the history of the Church its leaders have been violators of law and it has taught doctrines that in this generation are condemned by all right-minded citizens. If this line of argument, which was so largely indulged in by the senator from Michigan, should have a controlling influence in the senate of the country, would a member of any of the churches, either Protestant or Catholic, be safe?

If we are to charge a member of a Christian church with all the crimes that have been committed in its name, where is the Christian gentleman in this body who would be safe in his seat?

It must be conceded, Mr. President that the Mormons are sincere and honest in their religious convictions. Senator Smoot, as an apostle in the Church has no control over the temporal or business affairs of the members of that Church. His business is to preach the gospel.

Senator Smoot is a Christian man. That he believes that God interests Himself in the affairs of men is no more than a belief that is professed by all Christian people. One of the earliest lessons that is taught in childhood by Christian parents is to inculcate the belief in the children that in their little troubles they should go to their closets and pray God for light and guidance, and that He will help them. It is this belief that God does take an interest in the affairs of men that has made the Christian church the power for good that it has been in the world. You take that doctrine away and you destroy in a large measure the beneficent influence that has been exerted upon mankind in all ages during the Christian era.

Many things have been done in the name of the Mormon Church in its earlier history which are condemned by all right-thinking men, not only outside of that Church, but in the Church as well. The Mormon people have become better educated, their spiritual vision has become clearer, and they now condemn as heartily as we do many acts that were regarded in the days of Brigham Young as in accordance with the word of God. This moral elevation and spiritual improvement, which has been noted in the Mormon Church in the last 20 years, is but a repetition in another form of what is found in the history of all of the various churches, both Protestant and Catholic.

Mr. President, we can see from the testimony that appears before the committee on privileges and elections that the Mormon Church is undergoing a radical change for the better.

Reed Smoot is an apostle of this higher and better Mormonism. He stands for the sacred things in the Church and against polygamy and all the kindred vices connected with that loathsome practise. In his position as a member of the Church, and as an apostle and preacher of the doctrines of the Church, he has done more to stamp out this foul blot upon the civilization of Utah and the other territories where polygamy has been practised than any thousand men outside of the Church.

I dissent in toto, Mr. President, from the conclusions reached by the senator from Michigan (Mr. Burrows) regarding the influence of the Mormon Church at the present time on the temporal affairs of its people and also on the conclusion that he sought to establish that polygamy is still a part of the religion and practise of the Mormon Church as such.

With the indulgence of the senate, I shall take a little time to trace the history of the Church and its relation to the government of the United States during the territorial history of Utah and what has been done since to destroy polygamy and polygamous cohabitation.

The founder of the Church, Joseph Smith, was killed in Hancock county Ill., in 1844. This was the culmination of a long series of troubles that had existed between the gentiles and the Mormons, in Missouri first, and later in Illinois. The leaders of the Church after the death of Smith, decided to abandon their home at Nauvoo, Ill., and seek a new place for the establishment of the Church and their homes, beyond the authority of the states and federal governments. Under the leadership of Brigham Young they traversed the great plains of the west, and never stopped in their onward march until they reached the Great Salt lake in Utah, then a part of the territory of the republic of Mexico. Here they pitched their tents and commenced to build in this wilderness their churches and their homes. This Mexican territory became a part of the United States under the treaty of Guadalupe-Hidalgo, and the Mormon people again became amenable to the laws of the American republic.

Brigham Young at this time was the recognized leader of the Mormon people. He had promulgated the doctrine of polygamy and claimed that the martyred Joseph Smith had received directly from God the authority for Mormons to marry plural wives and practise polygamous cohabitation.

After Utah became a part of the possessions of the United States it was organized into a territory, and in 1850 Brigham Young, then the husband of several wives, was made the governor of the territory. He was nominated by President Fillmore and his appointment was confirmed by the senate. In 1852, two years after this appointment, he publicly proclaimed polygamy as the doctrine of the Mormon Church and it was accepted and practised by his followers. In 1854, two years after he had *publicly proclaimed polygamy as the doctrine of the Mormon Church, he was again nominated by President Pierce for governor of the territory*, and again confirmed by the senate.

At the time that he was nominated by President Pierce and confirmed by the senate he was living with many plural wives, and many of his followers were living in polygamous cohabitation. No legislation was passed by Congress on this subject, and it seemed that no successful protest was made against the head of the Mormon Church being made governor of the territory and Indian agent to represent the government of the United States with the red men.

The first legislation on this subject was in 1862. In that year Congress passed "An act to punish and prevent the practise of polygamy in the territories of the United States and other places," etc.

The first section of that statute reads as follows:

That every person having a husband or a wife living who shall marry any other person, whether married or single in a territory of the United States, or other place over which the United States have exclusive jurisdiction, shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and upon conviction thereof shall be punished by a fine not exceeding $500 and by imprisonment for a term not exceeding five years: Provided, nevertheless, That this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living; nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court; nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage contract.

Senators will note from reading the statute that while it prohibited plural marriages and made the same bigamy, it did not punish or in any manner interfere with the continued cohabitation of those who had previously entered into the polygamous relations.

It was not until the 22d of March, 1882 under what is known as the Edmunds act, that polygamous cohabitation became punishable under the laws of the United States.

Sections 3 and 7 of the Edmunds act read as follows:

Sec. 3. That if any male person, in a territory or other place over which the United States has exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $300 or by imprisonment for not more than six months, or by both said punishments, in the discretion of the court.

Sec. 7. That the issue of bigamous or polygamous marriages, known as Mormon marriages, in cases in which such marriages have been solemnized according to the ceremonies of the Mormon sect, in any territory of the United States, and such issue shall have been born before the 1st day of January, A. D. 1883, are hereby legitimated.

The Edmunds act, so called, was taken by the leaders of the Church at that time as persecution, and they assumed the attitude of martyrs to their religion. Many prosecutions followed and many convictions were had. Prominent Mormons who were guilty of practising polygamy were driven out of the country into Canada and Mexico and foreign lands. The feeling among the Christian people of the republic was that not enough had been done to entirely crush out this foul and debasing practise, and hence in 1887 Congress enacted what has since been called the Edmunds-Tucker act, which changed the rules of evidence so as to make a lawful husband or wife of a person accused of bigamy, polygamy, etc., a competent