DESERET EVENING NEWS.

TRU AND IBERTY.

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UTAH CONTESTED ELECTION CASE.

(*Continued.*)

Mr. Calkins. I have fifteen minutes left, which I yield to the gentleman from Massachusetts, Mr. Ranney.

Cries of "vote!"

Mr. Oates said:

Mr. Speaker. The system of governments in the United States is, or ought to be, pre-eminently one of law. Every citizen's rights, however humble or exalted he may be, should in all cases be determined by the law, honestly and fairly applied. The question before the House is not one of morals, but of legal right. Approval or disapproval of polygamy is not involved. This House has given a very potential expression of its opinion upon that question in the law passed at this session for the suppression of polygamy.

There is no dispute about the facts. There appears from the reports of the committee to be no issue of fact. All admit that Cannon was elected. The first question then, to be settled is, was he eligible to the office when elected? No one, I believe, questions, and certainly the evidence does not controvert that fact. Has anything transpired since his election to render him ineligible or to deprive him of the right to his seat? It is contended by those who oppose seating him, that the recently enacted law of Congress, declaring among other things any person who is guilty of polygamous practices ineligible to a seat in this House, disqualifies him, and presents a legal impediment to Cannon's taking his seat here as a delegate from the Territory of Utah. It is a sound rule of interpretation of statutes that they shall operate only in future. It is competent, however, for the law making power to enact retro-pective laws or those which relate to or operate upon the past, provided they do not divest vested rights, or make that criminal which was innocent when performed prior to the enactment, and punishes the same. It was held by the Supreme Court of the United States in the case of Calder vs. Bull, in 3 Dallas, that any law whereby a conviction can be had upon less evidence even than the rules of evidence in existence at the time the alleged illegal act was performed required was *ex post facto* and void.

All writers on statutory and constitutional law lay down the rule broadly that no statute shall be construed to have a retrospective or retroactive operation unless the statute itself so declares. The recently enacted statute against polygamy, upon which the other side relies, does not declare that it shall so operate. It must therefore be construed as though the word "hereafter" was interpolated into each section thereof. It therefore follows as a logical consequence that Cannon is legally entitled to a seat on this floor as a Delegate from Utah. After he is seated, should charges be then brought against him of violating the recent enactment while sitting here as a delegate, and his guilt be established by proof, he might be legally expelled from this House, and I for one would vote for his expulsion in that event.

But Mr. Speaker, he will not be seated. It is a foregone conclusion that the temper exhibited upon the part of the majority of this House unmistakably indicates such a decision. I regret it for the reason that in my judgment the citizens, the legal voters of Utah will be thereby denied a great legal right. It is no answer to say that the Mormons are violators of the law of the land. Await their trial and conviction; or would you condemn American citizens without a hearing? We are in this case a judicial tribunal. My duty to my country is to advocate the fair and unprejudiced enforcement of the law, and I shall therefore vote to seat Mr. Cannon.

Mr. Ranney said:

Mr. Speaker: The committee were all, save one, agreed in this, that contestant was duly elected and returned and entitled to the certificate of election at the hands of the governor, instead of Mr. Campbell. It has been proved satisfactorily that he was a naturalized citizen, over twenty-one years of age, and for many years a resident of Utah. It is conceded that he therefore possessed all the qualifications prescribed by the acts of Congress and the statutes of Utah as a condition of eligibility. By an examination of these acts and statutes it will be seen that the organic acts passed by Congress (Revised Statute, sections 1860, 1862) provide that the qualifications of voters and of holding office shall be such as may be prescribed by the Legislative Assembly of each Territory, subject to certain restrictions as to citizenship and age; and that the statutes of Utah, approved by Congress, (Compiled Statutes of 1876, p. 87, 88,) have prescribed qualifications accordingly in conformity thereto; and that contestant in his person answered all these requirements of law.

Section 1862 provides in effect that "every such Delegate shall have a seat in the House of Representatives, with the right of debating but not of voting."

In this state of the facts and the then existing status it appeared to me that the right of contestant to a seat followed as a conclusion of law; and that the question of "final right" submitted to the committee was thus determined and their duty under the resolution of submission discharged.

It appeared, however, in the record that the contestant was a polygamist, and it was claimed and held by a majority of the committee that this was a disqualification and should exclude him from the seat as an unworthy person; while others, including myself, held that this was a fact affecting only the personal character of the contestant and furnishing only a ground for expulsion, in accordance with the practice of this House, and as was determined after full consideration and mature deliberation in the Forty-third Congress in the case of Maxwell vs. Cannon.

The case stood thus in its first aspect. Since the report was made, however, an act of Congress has been passed and approved by the Executive which expressly provides that a polygamist shall not be eligible for election to, or entitled to hold, any public office of trust, etc. And if this act applies to the present contest and disposes of it, the questions of law which divided the committee become of no consequence save as abstract principles or in so far as they may affect the validity and operation of the eighth section of this act in the future. I may be permitted to say, that so far as I am concerned I believe the new act does not apply to this case, and that Mr. Cannon, being a self confessed polygamist, must be denied his seat. As I felt bound by the statutes as they stood before, so I feel bound by the provisions of the new act, with this difference in feeling only—before, I obeyed the behests of duty alone; now, my pleasure and duty concur.

I do not propose to discuss the evils of polygamy. That discussion has been had and been exhausted; and we are all agreed upon that point. The sentiment of the country is against it, and should be. But I believe that the moral and religious people who feel so strongly about it, would not have asked this House to violate the statutes themselves in order to rebuke others for doing that thing. They are a law-loving and a law abiding people, I believe, and they with me, will rejoice at the change made in the law.

Can there be any serious question about the application and effect of the act referred to and approved March 23, 1882? It has taken effect now. It says in effect that a polygamist shall not be entitled to hold the office of Delegate. Contestant is not yet inducted into office, and stands as a petitioner before this House asking for a seat with no certificate entitling him to one, *prima facie* even, and we have only to deny his request. The act does not require any conviction for a criminal offense in order to work the disqualification provided; but the proof needs only to show that contestant practices or maintains the lawfulness of polygamy in order to make him out a polygamist, according to the ordinary meaning of that word as defined by Webster. The same state of things, confessed in the written admission of record, must be presumed to continue to this time in the absence of any proof to the contrary, according to a well settled rule of logic and of evidence, and the rule does no violence here because the polygamous relations admitted are of a permanent character. The admission was given as proof in the issue raised to be used for the purposes of this contest until ended, and an amendment of the law meanwhile so that polygamy becomes a disqualification instead of a cause of expulsion, cannot be properly held to diminish its effect as proof. All prior irregularity in the introduction of this issue into the contest may be waived and the previous proceedings now adopted by the House. I do not see how it can be justly contended that any vested rights of property are destroyed. For I take it to be well settled, or if not as sound law, that a public office is not properly but only a trust or privilege, and is subject to legislative control, unless some constitutional provision is in the way. Whether it would not have been more fair and wiser to allow a Delegate elected under the law as it stood then to serve out his term is not now an open question, as no such reservation or exception is incorporated in the act.

Contestant seems not to have been disposed to heed statutes of this class, for after the act of 1862, making polygamy a crime, he appears to have married his fourth wife in defiance of the same. So we can hardly be said to be harsh in not waiting to see whether he is disposed to yield to the law as amended. I grant that those who assent to the doctrine of the majority of the committee do not need this new statute, and may do as they please even now. So far as I am concerned, however, this disposes of the present contest, and I am ready to vote for the resolutions pending. But before doing so, I may be pardoned for saying that I dissent still, and if possible with more firmness of conviction than ever, from the views of the majority so far as they hold that Congress cannot by a statute define or prescribe the qualifications of Delegates, and that this House has power when that is done to disregard the same and fix them themselves, admitting or rejecting the elected in their discretion and for any reason deemed sufficient in every individual case.

And I may be pardoned for saying, with all respect for my honored associates, that I regard this doctrine as contravening all authority and precedent, unsound in principle and mischievous in practice.

Objection is made, or intimated, that the new act is *ex post facto*. But the objector must have forgotten that the inhibition against that class of legislation relates only to laws affecting crimes. It is said that statutes must be construed as prospective only in their operation, unless they are clearly designed to be retroactive. I admit the rule of law to be so. But the eighth section is prospective so far as it says that a polygamist, etc., "shall not be eligible for election," but when it says "or be entitled to hold," these four words bring the present case within that rule. If the Delegate was in his seat the words would have their prospective effect the same as if "hereafter" was in it. It is now a part of the hereafter since the act was passed. Under the act an occupant would be required to vacate his seat. Much more can we say that an applicant shall not be permitted to take a seat which he could not rightfully hold. Whether it be harsh to unseat a man who had been duly elected under a prior law the requirements of which he answered is not the question. That was an argument proper to be argued against the bill before it became a law. It was argued in the Senate and a vain attempt made to amend it in that regard on the expressed construction that otherwise it would exclude a Delegate already elected.

The whole policy of the act was to strike a blow upon the institution of polygamy, and that presently, on the theory that the evil was present and pressing, and that it was a case demanding an effectual and severe remedy. The subsequent sections of the act indicate an intention that incumbents of the office are to vacate at once. Hence the intention is plain that the act should take effect now. It is not necessarily by way of punishment and a pain or penalty, giving it the nature of a bill of attainder, as is urged, but only adds another disqualification, like saying that a Delegate should be a man of good moral character, and if not he must vacate his seat. It may be partly by way of rebuke, to a vicious institution, it is true, but may properly be regarded only as a safeguard for the good of the office and the Territories. Within the ordinary province of such legislation Congress is supreme in a case like this, and may exercise an arbitrary power if it wills. The whole argument made by our friends upon the other side against the doctrine of the majority of the committee is that Congress has power to fix qualifications, and that statutes passed for that purpose are binding on this House. And so far I agree with them. But, strange to say, when another statute has been passed in the same line of legislation, fixing another qualification, they proceed to attack that, and say they will not heed it, resorting to arguments which seem to me less tenable than the grounds assigned by the majority of the committee as an argument to get rid of the effect of the prior statute.

Every statute passed by constitutional authority is binding on this House and the courts as much as on the humblest citizen, as is admitted in the views of the chairman; and if the statutes fixing the qualifications of Delegates have the force of law, this House has no right to disregard them or any part of them. The power of Congress to erect Territorial governments and secure the right of representation by the creation of the office of Delegate, and providing that he shall have a seat in the House of Representatives, is not denied but conceded by the majority. And if this is conceded, I do not see why it does not follow, as surely as night follows day, that the general power conferred to create the office and to regulate the election of a Delegate embraces within its scope, as one of its natural and proper elements, an authority to fix the conditions of eligibility, such as citizenship, age and residence. They are part of the needful rules and regulations of the office as they were when fixed in the Constitution for full Members.

But if this concession is not accepted by the House, and any member is disposed, as strict constructionist or what not, to contend that Congress had no power under the Constitution to impose by statute the presence of a Delegate upon this House or any future House if they did not wish to receive him, whoever and whatever he might be, that is quite a different question; and if maintained it would lead to the result reached by a majority of my associates. This question, sir, is not new, and the committee could hardly find warrant for maintaining such a proposition. It was suggested and urged by Mr. Swift in the Third Congress, when James Madison was a member of the House, and voted down. It was involved in a contest for a seat by a Delegate in the Fourteenth Congress, when Daniel Webster was a member of the House, and the rights and position of a Delegate as a member or otherwise were discussed and found no favor. It appears that the celebrated ordinance of July 13, 1877, provided for a Delegate to Congress with the same rights as given now; that it was in force under the confederation when the Constitution was adopted; and one of the first things done in the Fifth Congress was to adapt it to the Constitution, (1 Stat., 60, ch. 8,) with no demur or pretense that its provisions conflicted with it in any respect. In the act of March 3, 1817, the office was further regulated, without any such claim being made, and made applicable to all present and all future acquired territories. The provisions of the said ordinance, and other ordinance relating to the Territory south of the Ohio River, the said statutes, and all others amendatory or supplementary, have been observed and kept to this day as securing rights and not as "persuasives" on this House.

In three cases of contested elections, which occurred in 1850 or thereabout, in the matter of Doty vs. Jones, Messervy, and Babbitt respectively, the whole subject was elaborately examined and considered in three several reports, written and presented by Mr. Strong, then a member of the committee on elections in this House, and since a distinguished and able judge, for so many years upon the bench of the United States Supreme Court, and now in honorable retirement; which said reports, as adopted, show that the right of a delegate to a seat rests upon the Constitution and laws of Congress, and not on any discretion of the House alone.

It is true that a distinguished member from my own State, E. R. Hoar, in the Forty-third Congress, in the case of Maxwell vs. Cannon, expressed himself as troubled in mind on the question, and raised a query on the subject by a pointed suggestion. But after the same had been answered in the discussion by other legal gentlemen he did not attempt to obtain his suggested position, and we are left to infer by his silence and the subsequent action of the House that his doubts were removed, or certainly that they got no lodgment in the minds of the members of the House very generally.

If extemporaneous interpretation, acquiescence, and long-continued practice for nearly a century, with an unvarying line of numerous and uniform precedents in election cases in this House, amount to anything as evidence upon the proper construction to be put upon the Constitution, we have them all here in a marked degree. They are very potent, and it will take a bold lawyer to gainsay the doctrines which they indicate.

But besides, and in addition to all these, we have decisions of the Supreme Court of the United States which lead to the same result in legal effect. It cannot now be denied that Congress has a supreme power over the Territories, both those which existed at the time when the Constitution was adopted and also those subsequently acquired. That power is conferred expressly by or inheres in the Constitution, and has no restriction save what wisdom and good faith impose and of which Congress itself is the sole judge. It is best stated in the opinion of Chief-Justice Waite in National Bank vs. County of Yankton, 101 United States Reports, 133. It must be apparent to all that unless the acts of Congress impose upon the House a reciprocal obligation to receive the Delegate and give him a seat, they can in nowise be said to secure to Territories the right of representation. The representative principle is embodied and inheres in the very theory of this Government, and to assert at this late day that it cannot be granted by Congress and secured by the people of the Territories in the limited and qualified form appearing in the original ordinance of July 13, 1787, and in all the organic acts, is to predicate what will or should get little credence or favor.

(*To be continued.*)

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A GOOD GIRL FOR GENERAL HOUSE work. Apply at this office.

WANTED.

A YOUNG MAN TO WORK ON A farm. Must understand taking care of and driving a team. House furnished. Married man preferred. Fair wages paid. Apply to John McDonald, 228 and 230 Main Street Salt Lake City. d1f

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THREE GIRLS. TWO FOR HOUSEHOLD work and one for nurse. Apply to Overland House. d154tf

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ON AND AFTER JUNE 1ST, THE UNdersigned will charge drayage at the following rates:

Double team, 50 cents per load.
Single team, 25 cents per load.
Extra distance, 25 cents extra for each load.

TAYLOR, ROMNEY & ARMSTRONG,
MASON & CO.,
R. SELLS,
SIERRA NEV. LUMBER ASSN. d155tf

NOTICE.

In the Probate Court of Tooele County, Territory of Utah.

LOVISA L. McBRIDE, vs. THOMAS McBRIDE. } SUMMONS IN DIVORCE.

The People of the Territory of Utah, to Thomas McBride, Greeting:

YOU ARE HEREBY SUMMONED TO appear in an action brought against you by the above named Lovisa L. McBride, Plaintiff, in the Probate Court of Tooele County, Utah Territory, and answer the complaint filed therein within ten days, (exclusive of the day of service) if served within this county, and if not within this county, but within the Third Judicial District of the Territory of Utah, within twenty days, otherwise within forty days, or judgment will be taken against you by default according to the prayer of said complaint.

This action is brought to obtain a Decree from this Court dissolving the marriage contract existing between this Plaintiff and you, and if you fail to appear and answer as by law provided, the Plaintiff will apply to this Court for the relief prayed for in her said complaint and costs of suit.

In witness whereof, I hereunto set my hand and seal of said Court in Tooele City, this 17th day of May, A. D., 1882.

[SEAL.] F. M. LYMAN,
Clerk of the Probate Court, Tooele County.
d 153 4t

A GRAND

COMPLIMENTARY

VOCAL AND INSTRUMENTAL

CONCERT!

To assist in emigrating the family relatives of Miss Nellie Lamph, from Newcastle Conference, England, will be given in the

Thirteenth Ward Assembly Rooms

—ON—

Wednesday Eve., May 24,

Upon which occasion

MISS NELLIE LAMPH

Will make her First Appearance in Salt Lake City, assisted by

Miss Agnes Olsen, Miss Nellie Druce, Miss Nervie Richards, Mr. J. J. Daynes, Mr. E. Beezley, Mr. W. E. Welbe, Mr. M. H. McAllister, Mr. H. G. Whitney, Mr. J. D. Spencer, the Azalea and Arion Quartette Clubs, etc.

ACCOMPANIST, - MR J. J. DAYNES.

COMMITTEE OF ARRANGEMENTS: Mr. G. F. Gibbs, Mr. D. C. Dunbar, Mr. W. D Owen.

ADMISSION:—Adults, 50cts., Children, 25cts.

☞ *Concert to Commence at 8 o'clock p.m.*

☞ Tickets may be had of any member of the Committee; also for sale at Messrs. Daynes & Coalter's Music Store, Mr. James Dwyer's Book Store, Mr. C. R. Savage's Art Bazar. For full particulars, see programmes.

COMMUNION

WINE!

—o—

Having purchased the Altar Wines made under the immediate supervision of the Rev. P. J. Kaiser in the vineyards of His Grace, Archbishop Alemany, at the Old Mission San Jose; also the Wines made for

ALTAR PURPOSES

Out of Col. Hooper's cellars at Sonoma, we herewith respectfully offer them to the clergy and others desiring an absolutely pure wine, made with the utmost care, and guaranteed of the vintages represented.

ARPAD HARASZTHY & CO.,
530 Washington St., San Francisco, Cal.

—o—

[*S. F. Monitor Aug. 25 1881.*]

The vital importance of having pure Altar wine for the celebration of the Holy Sacrifice of the Mass is a matter which always gives the greatest concern to the Rev. Clergy, who are also aware of the difficulty experienced in procuring really pure wine by those living in remote regions from grape-producing localities. This difficulty, however, has now been entirely overcome, and every priest throughout the Union can rely upon procuring really pure wine for altar use through the long-established and thoroughly reliable house of Arpad Haraszthy & Co., 530 Washington street, in this city, who have made arrangements with Rev. P. J. Kaiser to be the sole agent in this city for the sale of all the wines made at the extensive vineyards at the Old Mission, San Jose, as well as the altar wine made by Col. Hooper at Sonoma. The firm of Arpad Haraszthy & Co. guarantee the perfect purity of these altar wines and are prepared to ship them in portable packages, in any quantity desired, and so put up that they will retain all their freshness during consumption. We think the enterprise of the house of Arpad Haraszthy & Co. is worthy of being encouraged, and we hope the Rev Clergy throughout the Union will avail themselves of this excellent medium in order to secure for Divine service one of the most essential auxiliaries to its proper celebration.

—o—

REV. DEAR SIRS: Referring to our circular, we herewith annex copy of letter addressed to Rev. P. J. Kaiser by the Most Rev Archbishop Alemany of San Francisco, Cal

ARPAD HARASZTHY & CO.

—o—

ST. MARY'S CATHEDRAL,
625 California Street,
SAN FRANCISCO, July 19, 1881.

The bearer, REV. P. J. KAISER, having to spend some time in the East, for motives of health, may have occasion to speak to those desirous of procuring a genuine article of pure wine.

To all such I would say, that the wines made directly by himself or under his direction, are pure and genuine.

For some years he has had under his charge for me the Diocesan Vineyards of the Old Mission, San Jose, Cal. And these Vineyards he has quite renovated and brought to a state of considerable perfection; therefore I know the wines to be pure and genuine. I have given other letters to wine growers more or less commendatory, but none so strong as I would desire to make THIS, as in no other case did I have so good means of knowing.—And what I say for Father Kaiser's wines, I would say for his Olive Oil produced at the same place.

Very respectfully,
JOSEPH S. ALEMANY,
Archb. of San Francisco, Cal.

—o—

The wine is sold in original packages under seal, just as it leaves the vineyard. With such endorsement it may be relied upon for family and medical purposes. Family trade supplied by the bottle or cask, by

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WHOLESALE AND RETAIL,

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