be guilty under this law. Suppose he was to-day indicted for violation of this law, would his admission in 1881 that he was then a polygamist be any proof that he has been a polygamist under this law? Besides, here is the great fact that stares us all in the face, the universal presumption that every man obeys the law, that he violates no criminal law. You have to show it by proof if you make the charge that Mr. Cannon has violated the law. This is the law which gentlemn say he has violated, and this is the law which many of you gentlemen perhaps will base your vote upon against Mr. Cannon.

Now, I say that since the passage of the act of this session Mr. Cannon has not violated the law. It has not been shown that he is now living with two or more women. It has not been shown that since the passage of that law he has married any woman, he having a wife living at that time. No one of the elements that go to constitute the offense of polygamy has been proved in any manner.

Now, what is the presumption of law in such a case as this? On this point I want to read a single authority from one of the Missouri reports, (29 Mo., 259,) a case almost exactly in point. It relates to the principle of presumption of innocence. In this case a party had charged a man and woman with living in adultery. An action of slander was brought. It was proved that the woman admitted that she had been married in Germany before she claimed to have married the person she was then living with. In the court below this instruction had been given:

If the jury find from the evidence that the plaintiff, Margaret Klein, was married in Germany to another person than Leonard Klein, the plaintiff, then such relation is presumed to continue; and it devolves upon the plaintiffs to prove to the satisfaction of the jury that such marriage was legally terminated before the date of the marriage certificate, read in evidence, or they cannot recover.

Now, the Supreme Court of Missouri, to which the case was appealed, declared that such was not the law—upon what principle? Upon the principle I have just enunciated, that the presumption is every man obeys the law; that where a penal or prohibitory law is passed the presumption is that everybody obeys it until the contrary is shown. Besides, even if it be shown that a persen was at one time a violator of the law, there is the *locus penitentiæ*; there is the time for repentance; so that the presumption of innocence, charitably founded upon the experience of ages, and laid down in all the elementary books, prevails all the time until the contrary is shown. Here is the language of the supreme court of Missouri:

We think the first instruction which the court gave in this case at the instance of the defendants was erroneous. There was no presumption that a marriage, which was proved to have existed at one time in Germany, continued to exist here after positive proof of a second marriage *de facto* here. The presumption of law is that the conduct of parties is in conformity to law until the contrary is shown. That a fact continuous in its nature will be presumed to continue after its existence is once shown is a presumption which ought not to be allowed to overthrow another presumption of equal if not greater force in favor of innocence.

The court further says:

The presumption was that this marriage was a lawful one, and that the former marriage in Germany, if any such was established, had been dissolved.

I Read further from the language of the court:

There was not any evidence in this case, so far as the bill of exceptions shows, that the first husband of Mrs. Klein was still living; but if this had been established, we think she was still entitled to the benefit of the favorable presumption that the first marriage had been dissolved by a divorce, and that it was not incumbent on her, in this character of action and under the pleadings in this case, to produce a record of the judicial or legislative proceedings by which the divorce was effected.

Now apply that to this case. A year ago Mr. Cannon acknowledged that he was living with plural wives, which I have shown you was then in violation of no law of Congress whatever; I challenge any gentleman to show that at the time it was an offense against the law. Now you have passed a law making cohabitation with more than one woman and marrying more than one woman a crime. Why may it not charitably be presumed that Mr. Cannon, as a good citizen obeys the law as the rest of us do? That is the presumption of the law; and if so, how has it been shown that he has violated the law?

A good deal of newspaper comment and heresay testimony has been introduced here. I want to call attention to the fact that since the passage of this law the small remnant of polygamy which before existed in the Territory of Utah is fast disappearing. The polygamous relations of the parties are being broken up. The influence of this law is operating powerfully upon that people; for they now understand that if they live in violation of this law they are subject to fine and imprisonment. The presumption is that under the operations of this law polygamy will cease; that there will be no more violations of the law, and this presumption applies to Mr. Cannon's case.

But gentlemen say that this law operates against Mr. Cannon and excludes him. In what way? There are three sections applying here. The first section defines polygamy and makes it an offense; the third section declares cohabition an offense, and the eighth section, referring to those two sections, provides—

That no polygamist—

That is, no polygamist, as defined by this law; the first and third sections cannot refer to anything else; construing the whole statute together, this is the legal effect of the law and this is the language:

Section 8. That no polygamist, bigamist, or person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place or be eligible for election or appointment to or be entitled to hold any office or place of public trust, honor or emolument, in under, or for any such Territory or place, or under the United States.

All the other provisions defining polygamy use the word "hereafter;" that is, after the passage of the act; and it is incumbent upon any one making a charge to show that the person accused has violated the law since this act went into operation.

It is said—it has been said by nearly all the gentlemen who have preceded me—that Mr. Cannon comes here covered with crime, and for this reason we cannot admit him. This is the only topic which I shall have opportunity to consider in the time I have remaining. The proposition is that if a man is charged with an offense, it is the duty of this House when he makes his appearance here, to exclude him. Now I think it is a principle laid down in the books (and the precedents of the House are all in that direction) that although a person may be charged with crime, and even actually guilty, it is no consideration for the House upon his admission to a seat, under the Constitution and the laws. It may be said that this only applies to a member; but I think I have shown that the law and the constitutional provisions extend the same principle to a Delegate. But if the law does not apply the principle to a Delegate, then crime is no disqualification, because there is no law making it so, and you cannot exclude a Delegate upon that ground.

Now, all the precedents of this House say, and it is laid down in the books, that the only requirement resting upon a person applying for admission as a member here is to present his certificate, properly authenticated, to show that he has been elected; that when this is done you are bound to admit him. That is his *prima facie* case.

I want to call the attention of the House to what a committee has said in reference to this proposition that the allegation or fact of crime is no consideration for the House or for the Committe on Elections; that if it be true that Mr. Cannon is a polygamist, it is not a question to be considered by the Committee on Elections or by the House, but that after he has been admitted, if his presence does not comport with the dignity of the House, He may be expelled.

I read from a celebrated report in a recent case where it is held that bribery or other crime committed by the member-elect, and which did not affect or influence the result of his election, could in no sense be construed to render his election void. That was the report of the majority of the committee, that if a man was guilty of the crime of bribery, (and it certainly is as great a crime in law as polygamy,) it was no reason why he should be excluded from his seat. It is further stated in this report as follows:

That bribery by a candidate for elective office (in the absence of a statute making it a disqualification) does not disqualify to hold the office at the common law was held by the court of Queen's Bench in Regina vs. Thwaite (18 Eng. Law and Eq. Reports, 219, 221, in a proceeding in the nature of a *quo warranto* to try the title to an office where acts were shown which were by the court held to amount to bribery, but which did not affect votes enough to change the majority; and the respondent was therefore entitled to retain his seat as a member of the municipal council.

The same doctrine is held in Pennsylvania as to a sheriff, in Com. vs. Shaver (43 Watts and Sergeant, p. 338.)

The English rule laid down by Cushing in his excellent work, without giving either the origin or reason of the rule, is calculated to mislead persons in this country.

It is quite demonstrable that the rule owes its existence to disqualifying statutes of England, and can have no application to questions arising in the Congress of the United States under our present Constitution and laws.

* * * * * *

An examination of all the cases cited in Rogers, Douglas, and other English authorities, where a member of Parliament has been unseated for bribery, treating, etc., by himself or his agents, where the votes thus affected were less in number than his majority, will show that in every case the decision rests upon the special English statutes, with which we have nothing to do.

* * * * * *

In some of the States it is held that prior conviction of the disqualifying crime is necessary before such a rule can be applied by a legislative assembly. It is not admitted that either the organic act of a State or its Legislature can prescribe disqualifications of any kind for a member of the House of Representatives of the United States, but it may be proper to state here that the constitution of Minnesota (section 15, article 4) gives full power to the Legislature of that State to render ineligible to hold office any person guilty of crime, and that Legislature has not made bribery of voters a disqualification to hold office, but it has only made it a misdemeanor, punishable by fine and imprisonment in the county jail, (Statutes Minnesota, 1878, page 5, section 66.)

It may be observed that under no provision of the Constitution of the United States does crime committed by a member in his election disqualify him from taking and holding his seat.

The reason for the English rule wholly fails in the case of a member of the House of Representatives.

Justice Johnson, of the Supreme Court of the United States, in an early case, in speaking of distinctions between American and English legislative bodies, said:

"American legislative bodies have never possessed or pretended to the omnipotence which constitutes the leading feature in the legislative assembly of Great Britain, and which may have led occasionally to the exercise of caprice under the specious appearance of merited resentment."—6 Wheaton, 231.

In judging of the election of a member, the House deals alone with the question of the number of votes the member received, and if it appears that he has a majority of the votes cast, excluding all illegal and void votes cast, and a full and fair election has been held by which such majority has been obtained, or at least the majority would not have been affected by any unfairness or improper practices in the election, then the conclusion is irresistible that such member has been duly elected.

In judging of the returns of its members, the House deals with the formal returns, at least preliminarily, on which a member is expected to be admitted to a seat in the first instance.

In judging of the qualifications of a member, neither the question of election nor returns is involved. The qualifications of a member of the House of Representatives are fixed by the Constitution of the United States, article 1, section 2, as follows:

"No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen."

The Speaker. The gentleman's time has expired.

Mr. Moulton. I should like to have a few minutes longer.

Mr. Calkins. How much time does the gentleman require?

Mr. Moulton. About ten minutes.

Mr. Calkins. I move, by unanimous consent, the gentleman's time be extended ten minutes.

There being no objection, it was ordered accordingly.

Mr. Moulton. Now, Mr. Speaker, here is a report which says in the face of a charge of bribery against a party that it is no business of the committee to inquire into it or to consider it at all, but that the only question which can be considered is the number of votes which have been cast, and who has the highest number.

Mr. Springer. What case is that?

Mr. Moulton. It is the celebrated case of Donnelly vs. Weshburn; and I wish to read the names of those who signed the report. They are as follows: J. Warren Keifer, E. Overton, Jr., W. H. Calkins, John H. Camp, W. A. Field.

I understand this full and exhaustive report was drawn up by Judge Field, and subscribed by these distinguished jurists. They have said in the strongest language that this House has no right to inquire whether the applicant was guilty of bribery, whether he was a drunkard or not, whether he was an adulterer or polygamist, but that the only question which they have to inquire into is whether he received a majority of the legal votes cast, and came here under the provisions of the Constitution and the law.

It was upon that ground, Mr. Speaker, that the gentleman from Tennessee [Mr. Pettibone] said that if Mr. Cannon Came here as a member instead of a Delegate he would be bound to vote to admit him. I have already shown that the Constitution and laws apply precisely the same rule to a Delegate that they do to a member.

Now, the people who send a man here are better judges of the qualifications and ability and integrity of the man they send than this House possibly can be. Why? This House seems to exhibit a holy horror against any one who is a criminal or charged with an offense coming within its sacred precincts.

I say it is well known that murderers have sat in this House, that those guilty of bribery and convicted on the floor of this House have retained their seats. Herbert, of California, who killed a man in cold blood in this city, voted on the last roll call of the House, after it was known to everybody he had committed a cold-blooded murder. Matteson, of New York, who had accepted a bribe, and on an investigation by the House resigned his seat to prevent expulsion, was afterward elected and took his seat in this House, notwithstanding a resolution was offered that the question should be inquired into. The House gave it the go-by, and that notorious briber, who had disgraced this House, and who would have been excluded from it by a two-thirds vote if he had not resigned, was allowed to remain in your midst, and you were bound to receive him under the Constitution.

I say the only standard which can be set up here is the standard of the law, and that law fixes the same qualifications for a Delegate it does for a member. This House is bound by the law, and no such heresy ought to be permitted that one House of Congress can ignore the law made by a previous Congress and signed by the Executive.

There is another thing I should like to call the attention of the House to. It is a matter in which this whole question of polygamy as a qualification has been discussed. I will send it to the Clerk to be read. It is from the case of Maxwell vs. Cannon, decided in the Forty-third Congress, when the same question was made as to his polygamy. You had no holy horror of his polygamous relations then.

The Clerk will read what the committee say.

The Clerk read as follows:

"That George Q. Cannon is not qualified to represent said Territory, or to hold his seat in the Forty-third Congress, for the reason, as shown by the evidence, that he, on and before the day of election in August, 1872, was openly living and cohabiting with four women, as his wives, in Salt Lake City, in Utah Territory, and he is still living and cohabiting with them."

On the question of qualifications, and the effect of making the Constitution a part of the law by act of of Congress, the committe say:

"It being conceded that the contestee has these qualifications, one other inquiry only under this head remains, to wit: Does the same rule apply in considering the case of a Delegate as of a member of this House? The question seems not to have been raised heretofore. The act organizing the Territory of Utah, approved September 9, 1850, enacts that the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable. It was said on the argument, that the Constitution cannot be extended over the Territories by act of Congress, and the views of Mr. Webster were quoted in support of this position.

"We do not deem it necessary to consider that question, because it will not be denied that Congress had the power to make the Constitution a part of the statutory law of the Territory as much as any portion of the organic act thereof. For the purpose of this inquiry it makes no difference whether the Constitution is to be treated as constitutional or statutory law. If either, it is entitled to be considered in disposing of this case."

Upon this point there does not seem to have been any difference of opinion in the committee.

The committee in the same case, referring to the question of polygamy, says:

"The question raised in the specification of contestant's counsel, and above transcribed, is a grave one, and unquestionably demands the consideration of the House. This committee, while having no desire to shrink from its investigation, finds itself confronted with the question of jurisdiction under the order referring the case.

"The Committee on Elections was organized under, and pursuant to, article 1, section 5, of the Constitution, which declares: 'Each House shall be the judge of the elections, returns, and qualifications of its own members.' The first standing committee appointed by the House of Representatives was the Committee on Elections. It was chosen by ballot, on the 13th day of April, 1789; and from that time to this, in the vast multitude of cases considered by it, with a few unimportant exceptions, in which the point seems to have escaped notice, the range of its inquiry has been limited to the execution of the power conferred by the above provision of the Constitution.

"What are the qualifications here mentioned and referred to the Committee on Elections? Clearly, the constitutional qualifications, to-wit, that the claimant shall have attained the age of twenty-five years, been seven years a citizen of the United States, and shall be an inhabitant of the State in which he shall be chosen. The practice of the House has been so uniform, and seems so entirely in harmony with the letter of the Constitution, that the committee can but regard the jurisdictional question as a bar to the consideration of qualifications other than those above specified, mentioned in the notice of contest, and hereinbefore alluded to.

"We conclude that the question submitted to us, under the order of the House, come within the same principles of jurisdiction as if the contestee were a Member, instead of a Delegate."

The minority said:

"It is admitted in the report, and the fact has not been and is not denied that, Mr. Cannon possesses the constitutional qualifications, unless the qualifications of a Delegate in Congress from a Territory differ from the qualifications fixed by the Constitution for a member of the House. There can be no sufficient reason assigned for the position that the qualifications are any different. * * * The line of demarkation between these two great powers of the House, the power to judge of the elections, returns, and qualifications of its own members by a mere majority vote, and the power to expel its members by a two-thirds vote, is clear and well defined."

The "views" of the minority on the point were further expressed in these words:

"But a graver question than those we have considered is the question whether the House ought, as a matter of policy or to establish a precedent, to expel either a Delegate or Member on account of alleged crimes or immoral practices, unconnected with their duties or obligations as Members or Delegates, when the Member or Delegate possesses all the qualifications to entitle him to his seat.

"I we are to go into the question of the moral fitness of a member to occupy a seat in the House, where will the inquiry stop? What standard shall we fix in determining what is and what is not sufficient cause for expulsion? If a number of members engage in the practice of gaming for money or other valuable thing, or are accused of violating the marital vow by intimate association with four women, three of whom are not lawful wives, or are charged with any other offense, and a majority of the House, or even two-thirds, expel them, it may be the recognition of a dangerous power and policy. If exercised and adopted by one political party to accomplish partisan ends, it furnishes a precedent which it will be insisted justifies similar action by the opposite party when they have a majority or a two-thirds majority in the House; and thus the people are deprived of representation and their representatives, possessing the necessary qualifications are expelled for causes outside of the constitutional qualifications of members, or those which a Delegate must possess, so far as his qualifications are fixed by reason or analogy, or are drawn from the principles of our representative system of government.

It may be stated that the reports, both of the majority and minority, were made by republicans.

That is a precedent that covers the case now in this House in every particular. It was exhaustively discussed in the committee of the House, and was adopted by the House by an overwhelming majority, and it stands to-day as the rule and law of the House, unless it should be reversed.

The issue in that case was sharply made, and the rule established that Delegates from Territories are entitled to the benefit of the constitutional limitations as its qualifications, and that polygamy was not a disqualification.

Now, if the rule that has been established and practiced since the formation of the government as to qualification for members and delegates to the House is to be reversed and a different rule adopted, what standard shall it be?

This House may exclude a member on a charge of polygamy. The next House may exclude a person elected because he is a heretic or a Catholic or a Methodist, or because he has been charged by his opponent with adultery or some other offense.

We have associated with him for six years, eight or ten years upon terms of equality, and I am glad to see that my honored friend the gentleman from Indiana in his report says that he is a gentleman, and that he makes no aspersions upon his personal character or honor. A legislative body like this where the members are elected by the people, who are the sovereign in this country, should not set up any transcendental standard of moral qualifications to entitle one to a seat. If a high moral standard was a prerequsite to a seat here, but few might find admission. The people elect men to office for their supposed fitness and ability to take care of the people's interests. The question of immaculate virtue is not much considered. I think the law and the evidence is with Mr. Cannon and that he is entitled to his seat. It is for this House sitting as judges on his case to say on their oaths whether Mr. Cannon shall be seated here as a Delegate from the Territory of Utah, or whether he shall be excluded, and precedents, the Constitution, and the laws shall be violated and the people of Utah deprived of representation.

Mr. De Motte said:

Mr. Speaker, I have no disposition to trespass upon the time of the House to discuss generally the various phases of this contest. There are some points, however, which present themselves in such a way that I feel called upon to say something in regard to them.

This is no ordinary contest, for there is more involved in it than the abstract right of a person to a seat on this floor. While that is the technical question submitted to us, the real one is, Shall the institution of polygamy continue to have recognition in this House? There could be no doubt, I think, as to the action of this House if the question of the recognition of polygamy was being thrust suddenly upon us. If a body of people anywhere in the United States were by positive enactment of their own or by asking legislation by this body attempting to establish polygamy and give it the sanction and protection of the law, there would be but one voice everywhere. All Christendom would be aroused and the most positive and severe measures taken to throttle it at the beginning. There would be no one, even here, to secure for it a brief lease of life by dilatory motions and uncertain speeches. Like other evils of its class, it has crept stealthily upon us. Within the memory of a majority of the members of this House it was laughed at as the mere

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