decisions to be, that the canvassers "must receive and count the votes as shown by the returns, and *they cannot go behind the returns for any purpose*; and this necessarily implies that when a paper is presented as a return, and there is a question as to whether it is a return or not, they must decide that question from what appears upon the face of the paper itself."

Under statutory provisions similar to those of Utah, the Supreme Court of Missouri held that the powers of the canvassers were restricted to the determination of the result shown by the returns. The following is the provision of the Missouri statute:

> The Secretary of State, in the presence of the Governor, shall proceed to open the returns and to cast up the votes given for all candidates for any office, and shall give to the person having the highest number of votes for members of Congress from each district, certificates of election under his hand with the seal of the State affixed thereto.

In State vs. Steers, 44 Mo., 224, the court held:

> Here is no discretion given, no power to pass upon and adjudge whether votes are legal or illegal, but the simple ministerial duty to cast up and to award the certificate to the person having the highest number of votes.

The New York election law of April 17, 1822, provides that the inspector appointed for that purpose,

> Shall in person, deliver to the said clerk at the office, or to his deputy, or to the keeper of the said office, a true copy of the said statement of votes," and thereupon the board of canvassers "shall proceed to calculate and ascertain the whole number of votes which shall be given at such election in the said county for the several persons who shall be voted for as Governor, Lieutenant-Governor, Senators, and Representatives in the Congress of the United States, or so many of the said officers as shall be voted for, and shall set down in writing the names of the several candidates so voted for at any such election for any of the offices aforesaid, and the number of votes in words written at full length which shall be given for any such candidates at any such election in the said county, and shall certify the same to be a true copy of the votes given in said county.

In the case of the People *vs.* Van Slyck, 4 Cow., 323, which was decided in February, 1825, under the foregoing statutory provision, the court said:

> The duties of the canvassers are ministerial. They are required to attend at the clerk's office and calculate and ascertain the whole number of votes given at any election, and certify the same to be a true canvass. This is not a judicial act, but merely ministerial. They have no power to controvert the votes of the electors.

It is provided in section 25 of the Revised Statutes of Illinois (1856) that the clerk of the county commissioners' court, taking to his assistance two justices of the peace of his county,

> Shall proceed to open the returns and make abstracts of the votes in the following manner: * * * And it shall be the duty of the said clerk of the county commissioners court immediately to make out a certificate of election to each of the persons having the highest number of votes.

The case of The People *vs.* Head, 25 Ill., 327, the court held:

> This contest, under our statute, is an original proceeding instituted by the contestant for the purpose of trying the legality of the election, and not of the canvass. It goes behind the canvass and purges the election itself. The court, in trying it, is not confined to the poll-books as returned, but it can go behind these and inquire, by proof *dehors* whether the votes, or any of them, were illegal. But the canvassers have no right to do this. Theirs is a mere mechanical or, rather, arithmetical duty. They may probably judge whether the returns are in due form, but after that, they can only canvass the votes cast for the several candidates and declare the result.

Section 95, chapter 6, of the Revised Statutes of Wisconsin (1849) is in these words:

> Whenever it shall satisfactorily appear that any person has received a plurality of legal votes cast at any election for any office, the canvassers shall give to such person a certificate of election, notwithstanding the provisions of law may not have been fully complied with in noticing or conducting the election, or canvassing the returns of votes, so that the real will of the people may not be defeated by any informality.

Under this statute it was held by the Supreme Court of Wisconsin, in Attorney General *vs.* Barstow, 4 Wis., 775, as follows:

> Whether it would have been competent for the legislature, under the constitution which delegates all of the judicial power of the state to the courts of the state, to give to the board of state canvassers judicial authority to settle and adjudicate rights of this nature, it is not necessary to inquire. They have not given them any such power. Their duties are strictly ministerial. They are to add up and ascertain by calculation the number of votes given for any office. They have no discretion to hear and take proof as to frauds, even if morally certain that monstrous frauds have been perpetrated. The ninety-fifth section of this statute gives them no such power.

The Revised Statutes of Michigan for 1846 (p. 51) contains the following provision:

> The said board of canvassers, when formed as aforesaid, shall proceed to examine the statements received by the secretary of state of the votes given in the several counties, and make a statement of the whole number of votes given for the office of representative in each congressional district, which shall show the names of the persons to whom such votes shall have been given for such office, and the whole number of votes given to each. The said canvassers shall certify such statement to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been, by the greatest number of votes, duly elected to such offices, and make and subscribe on such statement a certificate of such determination, and deliver the same to the Secretary of State.

Under this statutory provision the Supreme Court of the State, in the case of The People vs. Van Cleve, 1 Mich., 336, said:

> In a republican government, where the exercise of official power is but a derivative from the people through the medium of the ballot, it would be a monstrous doctrine that would subject the public will and the public voice thus expressed to be defeated by either the ignorance or the corruption of a board of canvassers. The duties of these boards are simply ministerial. Their whole duty consists in ascertaining who are elected, and in preserving the evidences of such election.

It is provided on page 77 of the Revised Statutes of Maine for 1841, as follows:

> The returns from each town and plantation shall be delivered into the office of the clerk of county commissioners on or before the first day of the meeting of said commissioners next after the said month of September, to be by them opened and compared with the like returns from the several towns and plantations in such county or registry district, and the person having a majority of the votes shall be declared registrar of deeds for said county or registry district.

The supreme court of Maine, in Bacon *vs.* York County Commissioners, 26 Me., 498, a case which arose under this statute, held:

> The canvassers had no power to go beyond the returns of the selectmen and town clerks, and receive other evidence, and determine therefrom that the town-meeting was not properly called, and for that cause reject the votes of that town.

In O'Farrall *vs.* Colby, 2 Minn., 186, a case decided under similar statutory provisions, the court held:

> We cannot, therefore, resist the conclusion that the duties of the clerk of the board of supervisors in receiving and opening election returns, in canvassing and estimating the votes, and in giving certificates of election, are purely ministerial, and that no judicial or discretionary powers are conferred upon him or the board of canvassers, except, perhaps, so far as to determine whether the returns are spurious or genuine, or polled at established precincts, and in ascertaining from the returns themselves for whom the votes were intended.

The Supreme Court of Indiana, under a similar statute, in the case of Brower vs. O'Brien, 2 Carter, (Ind.,) 430, held:

> With regard to this point, it may be observed that the duties of both the board of canvassers and the clerk in making the statement are purely ministerial. It is not within their province to consider any questions relating to the validity of the election held, or of the votes received by the parties voted for. They are simply to cast up the votes given for each person, from the proper election documents, and to declare the persons who, upon the face of these documents, appear to have received the highest number of votes given, duly elected to the offices voted for.

The paragraph quoted from Mr. Cushing's work shows upon its face that the returning officer, who is said to be "so far a judicial officer, as to prevent their *voting* or being returned," is a judge of the election as well as a returning officer. If Mr. Cushing refers to mere canvassers, his statement, that in the judicial decisions of this country their functions are held to be chiefly judicial, is an inexcusable blunder.

2. Mr. Campbell's next proposition is, that there is no evidence tending to impeach his qualifications for the office of Delegate in Congress. That the returns present no such evidence, is probable; and if the returns on their face disclose nothing to impeach his qualifications, it is quite immaterial to inquire now whether Mr. Campbell is or is not eligible to the office which he seeks. The House of Representatives is the only tribunal empowered to adjudicate that question. If the Governor and Secretary find, from the returns, that he is elected, they must award the certificate to him, whatever proofs outside of the returns may or may not be attainable to impeach his eligibility before the House of Representatives. Such proofs cannot be used in this canvass.

3. The same answer is to be made to the assertion that there is no evidence tending to impeach the qualications of the 1,357 electors who voted for Mr. Campbell. Whatever evidence may exist on this point outside of the returns, it cannot be considered by the Governor or Secretary in this proceeding; it can only be considered by the House of Representatives of the United States.

4. Mr. Campbell's next assertion is that I am an unnaturalized foreigner. This presents a question of fact upon which the returns to be canvassed by the Governor and Secretary probably furnish no evidence beyond the presumption, to be drawn from those returns, that the electors performed their duty according to law, and, therefore, that the candidates for whom they voted have all the legal qualifications for office whatever they may be. If there be any proofs attainable tending to overthrow this presumption and to show that I am an unnaturalized foreigner, and therefore destitute of the necessary qualification of citizenship, it is obviously incompetent for the canvassing board to go behind the returns and consider such proofs. The only tribunal which has power to do so in this case is the House of Representatives of the United States.

The difference betwen the duties of the precinct election officers and those of the canvassers is very great. The precinct election officers are judges of election. In the first instance it devolves upon them to judge of the qualifications of electors in subordination to the provisions of law regulating their duties; but it never devolves upon any canvasser to judge of the qualifications of electors unless by virtue of express—and, I will add, most extraordinary and dangerous—statutory provisions. Only in a few exceptional cases have any such indefensible provisions been made by statute in the United States.

The House of Representatives is, by the Constitution, made the judge of the election, returns, and qualifications of its members. This power of the House does not exclude the power of the judges of election to act within their statutory authority as judges of the qualifications of electors; nor does it exclude the power of canvassers to act as judges of the returns presented to them to be canvassed, so far as to determine whether they are or are not returns substantially conforming to the law. But it does exclude the power of precinct officers to judge of the qualifications of candidates; and it excludes the power of canvassers to judge either of the qualifications of electors, or of the qualifications of candidates. It also confers upon the House the power to decide on all points, including the qualifications of electors and the legal sufficiency of the precinct returns."

I respectfully submit, therefore, that the Governor and Secretary have no power to go behind the returns to ascertain whether I am or am not an unnaturalized foreigner. This disposes of the point.

But then the fact is that on the the 7th day of December, 1854, by a judgment of a court of competent jurisdiction, I was duly naturalized according to law, as Mr. Campbell well knows.

In the case of Spratt *vs.* Spratt, 4 Pet., 393, Chief Justice Marshall said:

> The various acts upon the subject submit the decision of the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge upon both law and fact. This judgment is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry, and, like every other judgment, to be complete evidence of its own validity.

In Campbell *vs.* Gordon, 6 Cranch, 176, the Supreme Court of the United States held:

> It is true that this requisite [good moral character] to his admission is not stated in the certificate, but it is the opinion of this court that the court of Suffolk must have been satisfied as to the character of the applicant, or otherwise a certificate that the oath prescribed by law had been taken would not have been granted. The oath, when taken, confers upon him the rights of a citizen, and amounts to a judgment of the court of his admission to those rights. It is, therefore, the unanimous opinion of the court that William Currie was duly naturalized.

If, now, it were competent for the House itself, in a contested case, to reverse or vacate this judgment and to declare that I am an unnaturalized foreigner, it would not be competent for the Governor and Secretary, acting as canvassers, to do this. The notion that any jurisdiction to reverse or vacate that judgment and to declare that I am an unnaturalized foreigner, it would not be competent for the Governor and Secretary, acting as canvassers, to do this. The notion that any jurisdiction to reverse or vacate that judgment for mistake or fraud, or on any other grounds, is vested in the canvassing officers in this case, is too preposterous to admit of any comment from me. But in the case of Baskin *vs.* Cannon, in the 44th Congress, this precise objection to my eligibility was urged before the committee of elections of the House, and was overruled by the unanimous vote of the committee, on the ground that the judgment of the First District Court of Utah on this point was conclusive, and I retained my seat in the House.

Not only is there no legal ground for a question of my eligibility by the territorial canvassers, or even by the House of Representatives itself, based on the ground of alienage, but though such ineligibility could be a lawful ground of action by the committee or the House, it would not, as Mr. Campbell supposes, be aggravated by polygamy, if that could also be added as a factor in the adjudication. For, in the case of Maxwell vs. Cannon, in the Forty-third Congress, Smith's Digest, 188, it was unanimously held by the committee, with the concurrence of the House, that the only qualifications or disqualifications of Delegates were those prescribed by the Constitution for Representatives, and that polygamy was not a disqualification for a seat in the House of Representatives of the United States.

5. Mr. Campbell's fifth proposition is, that my alleged want of citizenship renders me ineligible to the office of Delegate in Congress. I concede, for the sake of argument, that an unnaturalized foreigner ought to be ineligible to the office of Delegate from Utah, just as he is ineligible to the office of Representative in Congress. I make this concession, not because I am certain that the proposition is founded in the Constitution or in the law, but because it seems to me to be founded in common sense. The Constitution provides neither for the qualifications of the office of Delegate in Congress nor for the office itself. The law acords to every Territory the right to send a Delegate to the House of Representatives of the United States. (Rev. Stats., sec. 1862.) It prescribes the qualification of citizenship for the Delegates from Washington, Idaho and Montana (Rev, Stats., sec 1906), but for the Delegates from no other Territory. Whether, in the face of the constitutional provisions that "the House shall be composed of members chosen every second year by the people of the several *States*" (art. 7, sec. 2); that "each House shall be the judge of the election, returns and qualifications of its members" (art. 7, sec. 5; and that "each house may determine the rules of its procedure" (art. 7, sec. 5), the law creating the office of Delegate would or would not have any validity as against a rule of the House excluding from the floor all Territorial Delegates, or any other persons not constitutional members or officers of the House, I admit, for the purpose of this argument, that so long as Delegates shall be received in conformity with the provisions of the statute, it will be within the power of the House, and also its duty, practically to recognize and enforce this qualification of citizenship, whether prescribed by law or not. But it is an insult to the Governor and Secretary to suggest that they are capable of such an unwarrantable invasion of the jurisdiction of the courts and of the House of Representatives as to attempt to incorporate as an element into their canvass in this case a decision adverse to my eligibility, based on a reversal or vacation of the judgment by which I was naturalized.

6, 7. The next two propositions of Mr. Campbell may be conveniently considered together. He asserts that by reason of my alleged ineligibility all the 18,568 votes cast for me at the late election are void and are to be excluded from the canvass, and that, as a consequence, the certificate of election is to be given to him, and not to me. I will cite, without discussion, the authorities by which the doctrine involved in these propositions has been repudiated as often as it has appeared in the Senate or in the House.

The case of Smith *vs.* Brown, 2 Bart. 395, is the leading case in the House of Representatives. It was reported from the committee on elections by the chairman, Mr. Dawes, on the 28th of January, 1868. His exhaustive discussion on the subject appears on pages 402–405 of the second volume of Bartlett's Contested Election Cases. He refers to the case of Ramsey *vs.* Smith, Clark and Hall, 23, argued by Mr. Madison in the House at the first session of the First Congress, and to the cases of Albert Gallatin in the Senate in 1793, Philip Barton Key in the House in 1807, John Bailey in the House in 1824, James Shields in the Senate in 1849, and John Young Brown in the House in 1859. He also reviews the English authorities, and the opinion expressed in Cushing's treatise, which is cited by Mr. Campbell, and he closes the discussion by declaring that "The law of the British Parliament in this particular has never been adopted in this country, and is wholly inapplicable to the system of government under which we live."

In the subsequent case of Zeigler *vs.* Rice, this precise question was decided as follows:

> Thus it will be seen that, according to the contestee's own statement, he had entered into an agreement to recruit for the rebel army; was on his way to carry out fully his understanding when he was captured, and claimed protection as a rebel officer when captured. The committee are well satisfied that the acts of the contestee were well understood by the voters of said district at the time the contestee was voted for, but do not agree with contestant that, as contestee was ineligible, the candidate who was eligible is entitled to the seat." (2 Bart., 884.)

The committee accordingly recommended a resolution unseating Mr. Rice and declaring the seat vacant; but the House refused even to evict Mr. Rice. On the contrary, by the adoption of a substitute for the committee's resolution, without a division, Mr. Rice was declared entitled to the seat. The proceedings may be found on page 5447, vol. 80, of the *Congressional Globe*.

In the Fortieth Congress, Simeon Corley, of South Carolina, Pierce M. B. Young and Nelson Tift, of Georgia, and Roderick R. Butler, of Tennessee, and in the Forty-first Congress, Francis E. Shober, of North Carolina, members of the House, were relieved of their disabilities long after their election, and yet, when so relieved, were admitted to their seats in the House. All were ineligible when chosen, but in neither case was the seat given to a competitor, nor the election even declared void.

In the case of Joseph C. Abbott, in the Senate, (Forty-second Congress), the doctrine now asserted by Mr. Campbell was fully considered, and was repudiated by the Senate. There has not been and probably will not be in this country another discussion of the subject so exhaustive as that which was had in this case. The English authorities were all presented, and very few, if any, American decisions, whether judicial or parliamentary, escaped the scrutiny of the Senators who submitted the report of the committee and the views of the minority, which are printed together in Senate Report No. 58, Forty-second Congress, second session.

In the case of Maxwell *vs.* Cannon, decided in the Forty-third Congress, the same question was raised, and the committee and House, without a division, rejected the doctrine now asserted by Mr. Campbell.

8. In reply to Mr. Campbell's assertion that the females in the Territory who claimed the right to vote outnumbered all the votes polled at the late election, I respectfully submit, in the first place, that this alleged fact probably does not appear on the face of the returns; and, in the next place, that if it be a fact capable of substantiation by extraneous proofs, and at the same time entitled to weight in any aspect of this case, the only tribunal invested with power to ascertain the fact and use it as a basis of judicial action is the House of Representatives of the United States.

9. Mr. Campbell asserts that it "must be taken for granted" that all votes cast by females were cast for me. On this point also Mr. Campbell is mistaken. If this is not shown by the returns, the canvassers can neither presume it nor permit Mr. Campbell to attempt to prove it before them by extrinsic evidence, nor can they consider the fact when so proven. If he shall contest my seat in the next Congress, and shall deem the mode in which the females voted material to any issue in the contest, he will learn that the House will not presume what he asserts on this point to be true, but will compel him to prove it.

10. Mr. Campbell asserts that the Territorial Legislature which extends the right of suffrage to females is void because "it attempts to confer the privilege by a special act on different and easier terms of qualification than those required by existing general laws applicable to the other sex, thus violating the rule of uniformity." If this assertion be true, it can have no bearing upon the action of the canvassers, who have no power to look beyond the returns for the purpose of ascertaining whether females voted, how many voted, or for whom they voted, but only upon the action of the House of Representatives in a contest or under a protest before that tribunal. It is not a necessity of my case, therefore, that I shall vindicate the "Act conferring upon women the elective franchise," approved February 12, 1870.

11. The next proposition of Mr. Campbell is, that it is, in view of the premises, impossible to determine, without proof, that the 18,568 votes cast for me included more legal votes than the 1,357 votes cast for him. This involves a singular mis-

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