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UTAH CONTESTED ELECTION CASE.

(Continued.)

Mr. Horr said:

Mr. Speaker: It is not my purpose to take up the time of the House with any general discussion of this question. I can state all I wish to say on the subject in a very few moments. I shall vote against seating Mr. Cannon as a Delegate from Utah, simply on the ground of ordinary common decency. He comes here before us and states unqualifiedly that he is living in open notorious violation of law. In direct violation of the solemn enactments of a former Congress, with a total disregard for the common usages of modern civilization, unmindful of all the pure and ennobling principles that should adorn the society of this country, he states that he is living with three or four different women and raising a family of children by each one of them. What more do members of this House wish to know of any man? For myself, after such an acknowledgement, I shall not bother my head about constitutional law. I shall puzzle my brains over no legal quibbles. It makes no difference to me whether the same law applies to Delegates that obtains as to Members or not, I simply won't vote to seat any man in this House as Member or Delegate, who thus comes and flaunts his soiled garments in our faces. It makes no difference to me that he comes trying to cover his shame under the guise of religion. The inspiration dodge is too thin to cover that kind of iniquity. Neither the bullet of the assassin nor the lust and lechery of the lascivious can be in that way hidden from the sunlight of day. The cry of religious toleration, of freedom of conscience, has no application in this case.

Let us suppose, to illustrate this matter, that some man should be elected a member of this House from some district, and the charge should be made against him in the press of the land that he is a murderer. When standing here at the bar of the House, suppose some member should object to his being sworn in and should confront him with the charge. And in reply he should say, "Yes; I kill people. I belong to a church that believes in killing and eating people. It has been my practice for some time past to murder and devour my neighbors. I know it is in violation of statute law, but my church has 'new light' on this subject. I know the Gentile world call us murderers, cannibals, but they do this on account of their lack of inspiration. It is one of the ways we have of worshiping." And you must not forget that there are tribes of men still living who slay and eat their fellow men simply as a religious ceremony. Now, is there a man here who would vote to seat such a monster? Would our Democratic friends, who are so noted for their constitutional convictions, commence their usual worn-out phrases on the much abused instrument in defense of that kind of religious liberty, the right to kill and eat one's neighbors. Of course not a man in the sound of my voice would do anything of the kind. Still, every argument used in favor of seating Mr. Cannon would apply with equal force in favor of seating that kind of a man. This plea for freedom of conscience, religious liberty, all this hue and cry, applies with just as much force to the one case as to the other.

Can any man afford to worry his brain or waste his time investigating and debating such a case? Far from it. Life is too short and time too precious to be thus wasted. Hence it is I say, Constitution or no Constitution, law or no law, I will never vote to seat such a man in this House. It seems to me an insult to ask that such a thing be done, and a waste of time to debate such a proposition.

If there has been any thing for which I have admired the average Democrats of the past, it is for their ability to swallow disagreeable doses, to gulph down without winking or blinking any mixture prepared and offered them by their leaders. I am just now watching with great interest to see if they drain this cup with smiling faces. You, gentlemen, can do so if you will; I utterly refuse to taste or even touch it. I too have an inspiration on this subject. After these election cases were taken up yesterday a communication clear and distinct, came to me, and I trust it came too from the skies. This is what it said: "In voting to seat or unseat members drop politics, and see that only such men receive your support as themselves received the majority of votes actually cast at the polls."

That closed the Campbell end of this controversy at once. The next celestial utterance was this: "Do not permit any man to cover up assassination, lust, or lechery under the plea of inspiration. That kind of affiatus never comes from above. Men who claim that it does are always frauds."

And thus ended with me the Cannon part of this case. Thus you see the gentleman from Utah and myself approach this subject from a common standpoint. We are both impelled by an outside force, have both received "new light." His inspiration leads him to violate law and live in a harem. Mine compels me to see to it that all such impostors are kept out of Congress. Neither of us believe in arguing the case, because we both admit that inspiration speaks with authority; that where it begins debate should stop. Hence he and I can have no quarrel, for surely, while he claims such immunity on account of the recent revelations made to himself and the "Latter-day Saints," he will permit me to be governed by this supernatural light that so surrounds and compasses me about. Of course to me it is gratifying to see that in this case reason and revelation, common sense and inspiration seem to run in such parallel lines. But to Mr. Cannon I have only to say, that having received this "new light," my conscience compels me to follow it. (Laughter and applause.

Mr. Moulton said:

Mr. Speaker, if I can have the attention of the House I shall be able I think to state in a very short time the views which I entertain. I shall confine myself exclusively to what I conceive to be the points in the case, and to the law and the Constitution that apply in this case. A very wide latitude has been indulged in by gentlemen who have preceded me in this discussion, some of them, as I think, not touching a single point that is really involved in this case. For instance, my friend from Pennsylvania [Mr. Beltshoover] and my friend from Wisconsin [Mr. Hazleton] occupied most of their time in discussing a proposition that has never been contended for by the minority of the committee, that is not contended for by me, and has been admitted by everybody for the last ninety years, that there is a difference between a Delegate from a Territory and a Representative from a State. No person, so far as I know, has ever denied that proposition. It is distinctly admitted in the minority report; and more than that, one of the main arguments of the minority upon which they rest their conclusions is the fact of that very distinction. Therefore I say those gentlemen have spent their time in elaborating a proposition which I shall not seek to controvert. I admit there is a difference between a Delegate and a Member of Congress; and I shall endeavor to show the application of the law in reference to this distinction.

Mr. Speaker, this case comes here precisely as every other election case comes, and it should be treated in the same way. It comes here under the law. By the order of the House it was referred to the Election Committee. That committee has made a report. Let me say further to gentlemen on both sides that this case is governed by the law and rules of evidence applicable to it, precisely in the same way as any other election case. Applying the rules of law to the facts in the case, as I hope to do, it seems to me that no lawyer can hesitate for a single moment as to the right of Mr. Cannon to a seat in this House.

My friend here from Michigan [Mr. Horr], say that he does not propose to trouble his brain about the Constitution or the laws. If it is only stated to him here, or he knows, that a man presenting himself for admission is a polygamist that settles the whole question with him, without reference to the Constitution or anything else.

On the other hand, my friend from Tennessee [Mr. Pettibone] makes the admission that if Mr. Cannon should come here as a Representative from a State, although covered all over with the infamy of polygamy, he would be bound to vote to admit him among us. There is the difference between the two gentlemen. The gentleman from Tennessee holds that he would be bound under the Constitution and laws to admit Mr. Cannon if he presented himself as a Representative from a State. I say, too, that he would be bound to admit him, as polygamy is no disqualification under the Constitution; and I hope to show that the same rule, the same law, is just as obligatory upon this House with reference to the rights of a Delegate as the rights of a member. If I succeed in showing this, I hope that my friend from Michigan will reconsider the declaration he has, I hope, too hastily made. I shall omit much that I had intended to say, because I do not desire to weary this House. I shall only discuss what I consider the legal points that are involved in the case.

Now, I wish to call the attention of the House to the fact that since the formation of this government—at least since the case of James White, in 1794—delegates have been seated on this floor, and in the language of Madison in that case, under the rules of the Constitution and the laws, and as a matter of absolute right. James Madison, then a member of Congress, and other distinguished men who had been in the convention that framed the Constitution under which we now live, all conceded, although there was then no law of Congress providing for the admission of a Territorial Delegate, that Mr. White had a right on this floor as much as any member, under the ordinance of 1787, passed prior to the adoption of our present Constitution, and obligatory at that time upon the Government by adoption. From that time to the present moment, whenever a delegate has presented himself at the bar of this House, there has never been a question about his right to a seat here under the law and under the Constitution as much as a member. The books before me are full of cases recognizing the absolute right of a Delegate to a seat. I will not refer to these numerous cases which so fully recognize the right of a Delegate to his seat upon this floor. These cases and precedents are predicated upon the great fact of right, the absolute right of a Delegate under the law to a seat.

Under the present law relating to Delegates from the Territories it is provided that the people of the Territories shall send delegates who shall have seats on this floor with the right to debate but not the right to vote. This law was passed by this House and the Senate and signed by the Executive. It is absolute in its operation. It confers a right which this House alone cannot curtail or limit in any way whatever, as I think I shall be able to show.

Allow me to say further in this connection that under the option of the law it is provided in various statutes of the Federal Government that Delegates shall be treated precisely the same as members in reference to every right except that of voting. It gives them the same salary. They take the same oath. The same law applies to both in reference to vacancies. So on through the catalogue of the rights of both members. The law that gives a member the right to be seated here applies equally to a Delegate from a Territory.

There is another proposition I wish to call to the attention of the House, and I ask the consideration of the distinguished chairman of the Committee on Elections the gentleman from Indiana, [Mr. Calkins,] to this point when he comes to the reply in the closing hour. It is this: Congress has passed a law by which the Constitution and the laws of the United States so far as they are applicable shall apply to the Territories. The law binds as much as any statute made by Congress under the Constitution. It has never been challenged till now, and has been executed and practiced upon, and especially as to qualifications as to Delegates for more than twenty-five years. It is important to be remembered in this connection that the Constitution is applicable to the Territories so far as it can be applied, because as I think important consequences follow from that fact.

Now I wish to call the attention of the House for a moment to the proposition which has been made by the majority of the committee in their report in this case to the House. I think they have totally misstated, as they have totally mistaken, the law. I can do it in a very few words. The ground is boldly taken by the majority of the committee that Congress cannot make a law binding upon the next House as to the qualifications of Delegates from Territories. I will refer to page eight of the report of my distinguished friend from Indiana [Mr. Calkins] for the purpose of criticising it and to give him a chance to make an explanation of it when he comes to reply.

The following are the exact words of the report:

He holds that it is incompetent for Congress and the Executive to impose on any future House the right of Delegates to seats with defined qualifications. That is to say, that when the several laws were passed giving the Territories the right to this limited representation, those laws were binding only on the Lower House, which permitted them to be, or made it possible for them to be passed, and were persuasive only to the House of future Congresses.

Let us analyze that. Here is a distinct denial on the part of the majority that Congress can pass a law defining any qualifications a member shall possess which shall bind the next House. That is the distinct proposition which is made here. In other words, although Congress may pass a valid and constitutional law fixing the qualifications of Delegates of Territories, requiring that they shall be seven years a citizen of the United States, twenty-five years old, and inhabitants of the Territories from which they come, and that if Congress passes such a law as that it is only binding upon the House that passes it. Let us test that and see where the logic of it carries us.

Here is the anti polygamy bill passed this session which we nearly all voted for. I did reluctantly, I confess. Here is a law that does fix the qualification of a Delegate of a Territory. It provides in so many words that no Delegate who is a polygamist, or cohabits with more than one woman, shall hold any office of profit or trust under the Government. I should like to ask my friend to explain to this House the effect of this anti-polygamy bill. Here is a law defining the qualifications of a Delegate, although negatively, precisely as the Constitution defines the qualification of members negatively; and I should like to ask my distinguished friend from Indiana, (Mr. Calkins), when he comes to close this debate whether he means to say that the law which we have all voted for providing that no polygamist shall take his seat among us only applies to this Congress and the present House, and the next House in the next Congress can disregard it and admit a polygamist. That certainly is the logic of this report, and there is no escape from it, and if that is the law the anti-polygamy bill is a farce and a failure.

That doctrine is a heresy, in my humble judgment. Congress can prescribe qualifications as to the Delegates, and can bind the House by such qualifications. It is competent for Congress to fix the qualications of Delegates from the Territories, they not being members under the Constitution, and to say who shall and who shall not be a Delegate and fix the qualifications; and when Congress has so said, it is not only binding upon this House, but it is binding upon every House that succeeds this until such law is repealed. That is the common sense of the thing and the law of the case, and it cannot by any possibility be otherwise.

Now, my friend in his report goes on further to amplify his words, as follows:

And with reference to the election of Delegates who (if they hold any office or franchise at all) can be nothing but agents representing the property and common territory of all the people; it operates only on the lower branch of Congress, for their election extends no right to them to interfere with the business of the Senate or to act as members thereof.

Now, under the Constitution, Congress can make all needful rules and regulations in relation to the Territories. It has been decided that Congress is the sole judge of this power. If this is so, why cannot Congress pass a law, if it deems necessary, defining the qualifications of Delegates as necessary and proper for the regulation of the Territories? This right and power has never before been questioned, and when Congress passes such a law it is binding on this House and every branch of the Government.

The view of the minority upon this question is this, that this House can impose qualifications upon Delegates. It can fix limitations with reference to Delegates, and when the House has made the qualifications that have been made by the passage of a general law already referred to, providing that the Constitution of the United States shall operate in all of the Territories so far as as applicable, that that act and by that law they did fix and establish qualifications and limitations and by that act they adopted the Constitution as a part of the statute law. Suppose they had put it in another form; suppose they had put it in this form, and had passed a statute adopting and restating the very language of the Constitution giving a Delegate the same qualifications that the Constitution requires for members of Congress, and that he must possess these qualifications before he could take his seat. I would like to have my friends upon the other side say whether that would not be a valid law passed by Congress and binding upon this House until repealed by an act of Congress. What is the reason it would not?

But, suppose we take the other view of the case, and admit for the sake of the argument that the Constitution is inapplicable, that it has no relevancy, and does not apply to the case, then what is the condition? Why, we are placed in this condition, that Congress has passed a law, as I have already stated, that the Territories shall have the right to send Delegates here to take their seats upon the floor. Now, if they have not prescribed any qualifications for the Delegates and the constitutional provision does not operate, what standard do you fix? Is the standard of qualification to be wholly arbitrary and at the caprice of each succeeding House? Now, does not this follow as a logical conclusion from the premises that where you have fixed no qualifications, no limitations, where you have not said who shall or who shall not hold the seat, or whether he shall be white or black, the people of the Territories are judges of the matter for themselves, and select the person whom they desire to send here to represent their interests? Congress specifies no qualification. Then the rights of the people as to the Delegate are absolute, and this has been the theory and practice for ninety years. The people have the right to stand upon the law; they have the right to rely upon what is "nominated in the bond." What rule will you apply when they are given the right to have a seat here, and come clothed with all of the power necessary to occupy it?

It seems to me that if you take the ground that the Constitution does not apply, then this consequence, as I have stated, necessarily follows that you have said to the people of that Territory, "You shall have the absolute right to send a Delegate here of your own selection, to take his seat under his oath of office, and you may exercise the right; but if the Delegate does not suit us we will not permit him to take his seat." I ask again, and I ask my friends upon the opposite side of the question to say, if they can, when this man comes holding such credentials as a Delegate, whether you can apply the constitutional provision to him as to qualifications that you apply to those who represent the people of the States? And why not apply the same rule? You say in answer, "He is outside of the Constitution; he is but the very agent of the Territory; he comes with just such powers as the law clothes him with, and no more or less." This we think no answer. The law could have fixed qualifications, but it did not, and therefore the presumption is that Congress did not intend to prescribe qualifications for Delegates.

(To be continued.)

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

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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

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