LOCAL AND OTHER MATTERS.

FROM MONDAY'S DAILY, MAY 4.

Accident.—A young man named James Gibson, of the 20th Ward, had his arm broken and his back injured yesterday, by being thrown from a horse.

Called.—We had a pleasant visit to-day from Miss Tennie C. Claflin, who is spending a short time in this city, accompanied by her mother. Her sister, Mrs. Woodhull, is expected to reach here in a few days, and will probably deliver a course of lectures. Miss Tennie is a writer, but does not take to the rostrum like her sister. Both ladies wield the pen for *Woodhull & Claflin's Weekly*.

Rape.—Yesterday evening deputy sheriff Florida brought a man to town who is accused of having committed an outrage upon a young woman named Lapish. It is rumored that the affair is considerably mixed, there being a good deal of talk about it being a "put up job," and about the accused not being the right man. The facts, however, will probably be elucidated at the examination. The crime was alleged to have been committed at Bingham Junction.

Meetings at Ogden.—The meetings held at Ogden on Saturday and yesterday were well attended and a fine spirit prevailed. Presidents Geo. A. Smith, D. H. Wells and Joseph Young, Elders Wilford Woodruff, John Taylor and Lorenzo Snow were present and addressed the people. A temporary organization of the United Order was effected, the people entering into the same with great unanimity and an excellent spirit.

Supreme Court.—The adjourned session of the October term of the Supreme Court met at the Court room, City Hall, at ten o'clock this morning, James B. McKean, C. J., and Associate Justices Emerson and Boreman on the bench.

There being no United States business to attend to, the Court was opened by the bailiff for the Territory, R. W. McAllister.

Judge Hemingray, a member of a committee appointed by the Salt Lake bar to present to the Court resolutions of respect to the memory of the late James Morris Carter, who died, in this City, Dec. 9th, 1873, read the resolutions previously presented in the District Court, and heretofore published. He then commented upon the life of the deceased and passed the highest encomiums on his character as a gentleman and a lawyer.

Judge Hemingray then moved for an adjournment of the Court, from respect to the memory of the departed member of the bar, and after Judge McKean had ordered that the resolutions be spread upon the minutes of the Court, an adjournment was made till to-morrow morning at ten o'clock.

Not Kate Bender.—The woman arrested in Morgan County for Kate Bender was brought to town last evening, but there is small indication of her being the notorious "Katie." She is short and not very fierce looking. She says she is originally from Smrland, Sweden, which is evidently true, for some Scandinavian gentlemen conversed with her to-day, and they say she speaks the Swedish language with the dialect peculiar to that part of the country mentioned by her. She states also that she lived lately in Evanston, Illinois, with a man named Gustavus Judson, who, she says, promised to marry her, but afterwards refused to do so, and the disappointment seems to have affected her mind somewhat. She asked for a New Testament and one was given to her. She says she walked all the way from Evanston, Illinois, and that she occasionally got food at houses on the way and at other times she carried what she wanted along with her. When speaking about Gustavus Judson refusing to marry her, she appeared to be much affected. She says she is willing to go back to Evanston to him.

Brought to Town.—The two men arrested in Box Elder County, a few days ago, by Sheriff Brown, of Weber County, for running off with the wife of a Chinaman, were brought to this city last evening, for examination, the outrage having been committed in this County.

One of the parties is "Bob" McCausland, who, it will be remembered, was convicted and sentenced to the penitentiary for horse stealing about two years since and subsequently pardoned by the Governor.

The old fellow was so disguised as to be scarcely recognizable. His hair and beard, heretofore a silvery grey, had been changed, by the aid of hair dye, to a jetty black, and the shabby clothes had been changed for a broadcloth suit. The name of the other man is Phillips.

It appears that McCausland and Phillips had been hired by a Chinaman to get the latter's wife from another Chinaman with whom she had eloped, and restore her to him. They got hold of the woman they kidnapped, at Sandy, and now it turns out that they got the wrong woman. They were running away with the wife of another man, not their employer.

Back from Kansas.—Officer B. Y. Hampton returned last evening from Topeka, Kansas, whither he had taken the supposed old man Bender. According to Mr. Hampton's account of the statements of parties who knew Bender, there can scarcely be room for a doubt about the old fellow captured here being the veritable murderer.

S. S. Peterson, of Independence, Montgomery Co., Kansas, a deputy U. S. Marshal and member of the Kansas State detective force, who pursued the Bender family as far as the lower part of Colorado, and there lost track of them, and who has been sent to various parts of the United States to identify parties who have been arrested for Bender, says that he is positive that the old fellow is Bender.

H. W. McLean, also of Independence, who rented the house to Bender in which the latter lived, and had seen the old man frequently when collecting rent from him, says he is the man. These two men, by request of Governor Osborne, met Mr. Hampton at the railroad depot at Topeka, and identified him there.

W. A. McKean, at present in jail at Topeka, for passing counterfeit money, said, before he saw the man arrested here, that if it was Bender he was minus one finger of the right hand, which was the case and he identified him immediately on seeing him. It appears that this McKean is a kind of an artist. He made a wood-cut of the Bender family, from memory, about two months after he last saw them, and the drawing of Bender resembles the old man arrested here to some extent.

Two men arrived at Topeka, from Labetta, one named Gurner and the other Deitz, with a letter from Col. York, to identify the old man. Gurner said it was old man Bender, but the other, Deitz, said he did not think it was he. The Kansas officers say that Deitz was suspected of being an accomplice of the Benders, and that the people came near stringing him up at the scene of the murders at the time they strung up another suspected Dutchman. Col. York has not seen the old man taken back yet, but says it is he from the portrait.

W. T. Hayes, traveling agent of the land department of the L. L. & G. Railroad, is certain it is Bender.

A Mr. Blanchard states that he knew Bender. He called at the latter's house on one occasion when he was trading in butter and eggs. Bender was very anxious for him to go into the house, and Kate beckoned him from the doorway, but he did not enter. He said that Bender put his hand on the edge of his wagon bed to look in and he saw that he was minus the little finger of the right hand.

Mr. Hampton says he was treated with great courtesy in Topeka. The Governor had no available funds to pay his expenses, but would send his sworn account to the county where the murders were committed, with a request that it be allowed. If the expenses be not allowed, the reward, $500, will not cover them. Col. York promised a reward, but he is out of funds.

Eleven bodies of the victims of the Bender fiends have been found, and it is said that between thirty and forty parties are missing in all, supposed to have been murdered by them. The reward has not yet been paid, and the Governor is afraid to send the old man to the neighborhood where the bloody deeds were committed, as it is probable, if he did, that the people would lynch him.

CONTESTED ELECTION,

TERRITORY OF UTAH.

Geo. R. Maxwell vs. Geo. Q. Cannon.

Argument of Halbert E. Paine, Counsel for Sitting Member.

(Before the Committee on Elections of the House of Representatives of the United States, Washington, D. C., 187s.)

Mr. Chairman and Gentlemen of the Committee:

The power of the House of Representatives to determine who shall or who shall not hold seats in that body embraces two branches wholly distinct both in character and origin. The first is conferred by that clause of the Constitution which provides that "each House shall be the judge of the election, returns, and qualifications of its members." The exercise of the power conferred by this provision of the Constitution requires only a majority vote, and has developed into one of the most important sections of the ordinary business of the House of Representatives. Its necessity, which was foreseen by the framers of the Constitution, was in fact experienced at the first meeting of the first Congress that assembled under our present form of government. The very first standing committee of the first House of Representatives was constituted to assist the House in the execution of this power. It was the Committee of Elections, and was chosen by ballot on the 13th day of April, 1789. The severity of the labors which have devolved upon that committee for many years shows how indispensable an element has been contributed to the constitution of the House by this provision of the organic law. This power to judge of the election, returns, and qualifications of its members has been exercised by the House of Representatives in hundreds of cases since the meeting of the first Congress. It has been exercised in more than eighty cases during the last ten years. Indeed, in ten years there have not been thirty days of exemption from the actual jurisdiction of contested-election cases in the House of Representatives.

But the House possesses another power to decide who shall and who shall not hold seats in that body. It is altogether distinct, in origin and character, from that to which I have just referred. It is the power of expulsion, which requires a two thirds vote for its exercise. It is conferred by the following clause of the Constitution—

"Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member."

Upon a careful examination of the Journals of the House, from the organization of the Government to the present time, I find no cases of expulsion, except those of J. B. Clarke, J. W. Reid, and H. C. Burnett, who, having joined the Confederate army, were expelled in 1861. There may have been other cases of actual expulsion which escaped my notice. The expulsion of O. B. Matteson from the 34th and of B. F. Whittemore from the 41st Congress was prevented by their resignation at the last moment before the vote was taken.

Obviously a power so rarely used does not require the agency of a regular standing committee. The cases involving its exercise have usually been referred to select committees.

The difference in character between the power to judge of the election, returns, and qualifications of members of the House and the power of expulsion is broad and marked. In the former case the House is absolutely restricted to three clearly-defined points of inquiry: First. Is the claimant of the seat duly returned? Second. Is he duly elected? Third. Does he possess all the qualifications for membership which are prescribed by or may be prescribed under the Constitution of the United States? And the jurisdiction of this committee over the pending controversy is limited to these three inquiries.

But the power of expulsion is wholly different. It touches no question of election returns or constitutional qualifications. The regularity of the returns, the validity of the election, and the constitutional qualifications of the representatives, are alike impotent defenses against the resolution of expulsion.

The questions, then, which you have to decide, gentlemen of the committee, are, I think, these, and these only: Which of the claimants, if either, has been duly elected? Which of the claimants has been duly returned? Does or does not the claimant who has been duly elected and returned possess all the qualifications prescribed or warranted by the Constitution? Your decision of these questions will exhaust all the jurisdiction conferred upon you by the House in this case. If, under the other constitutional provision, the House shall at any time entertain a proposition to expel the sitting member, that proposition will probably be referred, in accordance with the precedents, to a select committee. But if it shall be referred to you, then, and not till then, will the power and duty be yours, transcending the narrow limits of the inquiry into the election, returns and constitutional qualifications of the party concerned, to enter upon another and very different field of examination—an examination of the constitutional grounds for his expulsion.

In the pending case it is no part of my object or of my duty to consider what are or are not valid constitutional grounds for the expulsion of a member of the House of Representatives. Whatever allusion I may make to that subject will be strictly incidental to my argument upon the question of the election, returns, and qualifications of the respective claimants to the seat in controversy.

I propose at the outset to eliminate from this controversy the claim of the contestant himself to the seat in dispute. He was neither returned nor elected. He received only 1,942 votes, whereas the sitting member received 20,989 votes. The contestant received considerably less than one tenth of the number of votes which were cast for the sitting member. Whatever may be the rights or the fate of Mr. Cannon, General Maxwell has no semblance of a valied claim to the contested seat. Although nominally a contestant, his attitude in this case is, in truth, not essentially different from that which would be assumed by any other resident of the Territory of Utah who should see fit, for his own purposes, to question the right of Mr. Cannon to the seat which he now holds. The contestant's lawful qualifications for the office of Delegate from Utah are therefore not at all material to the pending controversy.

But the counsel for the contestant, being evidently in earnest, insists that if Mr. Cannon was ineligible to Congress, and the electors of Utah were, at the time of the election, advised of his ineligibility, then Mr. Maxwell, although he received only a minority of the votes, is entitled to the seat. And the counsel, referring to certain English parliamentary decisions, as also to certain American judicial authorities, relies mainly on the case of Wallace *v.* Simpson, reported on page 732 of Bartlett's second volume of Contested Election Cases. Overlooking well nigh a score of other cases decided by the House, he produces one—the only one which gives even a semblance of support to his position. But, gentlemen, this is not an open question, either in the House or in the Senate. If any questions have passed from the unstable realm of argument into the fixed domain of authority, this is one of those questions.

The case of Wallace *v.* Simpson, with all its peculiarities, is very far, indeed, from being an authority for the contestant in the pending controversy. The Committee of Elections was at that time subdivided into sub-committees of three members each, and each sub-committee reported directly to the House. The sub-committee who had charge of the case of Wallace *v.* Simpson consisted of Mr. Cessna, of Pennsylvania, Mr. Hale, of Maine, and Mr. Randall, of Pennsylvania, all members of the present House. The report was drawn and submitted by Mr. Cessna. And the doctrine and argument of the report, so far as this point is concerned, were opposed by Messrs. Hale and Randall, the other members of the sub-committee. On this point the report stated the individual opinion of Mr. Cessna, an opinion in which he stood alone.

On Friday, May 27, 1870, which was private bill day, Mr. Cessna, a few minutes after the reading of the Journal had been completed, called up the report, and without a word of debate secured the immediate adoption of the resolution awarding the seat to Mr. Wallace, and moved and carried the motion to reconsider and lay on the table. The attention of the house was not attracted to the proceeding until Mr. Wallace presented himself to receive the oath. Then commenced a scene of very great confusion. Mr. Randall indignantly repudiated that portion of the report upon which the counsel for the contestant relies in the case now before the committee. Mr. Dawes also repudiated it. So did Mr. Brooks, Mr. Burr, and others. No Representative defended it, except Mr. Cessna himself, who frankly stated the attitude of his colleagues on the committee.

These were Mr. Cessna's exact words, to be found on page 3863 of volume 79 of the *Congressional Globe*:

"There is one thing which, perhaps, I should have stated to the House, and which I state now. The report in this case is based upon three propositions. The first is this: that when one of two candidates is ineligible, the votes given for him are of no effect, and the other candidate is elected. I desire to state to the House that both of my colleagues on the committee (Mr. Hale and Mr. Randall) dissent from the first proposition contained in the report, and that so far as anybody is to be bound by that first proposition, there is no one to be bound by it but myself."

Mr. Hale of Maine, was absent from the House when this case was called up. His relation to the report can readily be ascertained.

Smarting under a sense of injustice, many Representatives were casting about for some parliamentary device by which the House might, notwithstanding the motion to reconsider had been laid on the table, yet have a fair vote on the question of the admission of Mr. Wallace. With what success, the following literal extract from the *Globe* will show:

"The SPEAKER. The chair has been appealed to, conversationally, by several gentlemen, to indicate some method by which a record can be made in this case. The chair would suggest that the simplest mode would be to allow the gentleman from Pennsylvania (Mr. Randall) to move to reconsider the vote by which the resolution of the Committee of Elections was adopted, and then the other gentleman from Pennsylvania (Mr. Cessna) could move to lay that motion to reconsider on the table.

"Mr. RANDALL. Then I will make that motion.

"The SPEAKER. It requires unanimous consent. Is there objection?

"Mr. CESSNA. I object.

"Mr. BROOKS, of New York. There is no possible thing to be done but to have this man sworn in?

"The SPEAKER. When the House has declared by a vote, whether *viva voce*, by tellers, or by yeas and nays, that a person is entitled to a seat here, and the motion to reconsider has been laid on the table, it is then as much the right of the member thus declared entitled to his seat to be sworn in as it is the right of the gentleman from New York (Mr. Brooks) to speak upon any question before the House.

"Mr. BROOKS, of New York. If he shall be sworn in, will it be as a member elected in South Carolina or a member elected by this House?

"The SPEAKER. The member from South Carolina will now present himself to be sworn in.

Mr. ALEXANDER S. Wallace then presented himself and took the oath of office prescribed by the act of Congress of July 2, 1862."

I respectfully ask the committee to read the debate in this case. It will be found on pages 3863—6 of volume 79 of the *Congressional Globe*, (41st Congress.)

Having thus shown that this case of Wallace *v.* Simpson does not sustain the doctrine of the counsel, I will now proceed to cite, without discussion, the American authorities by which that doctrine is not only overthrown but absolutely annihilated.

The case of Smith *v.* Brown (2 Bartlet, 395) is the leading case in the House of Representatives. It was reported from the Committee of Elections by the chairman, Mr. Dawes, on the 18th of January, 1868. His exhaustive discussion of the subject will be found on pages