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., 1874.)

(CONTINUED.)

After debate the house divided, and there appeared for expunging 115, against it 47. The resolution was accordingly expunged by the clerk. The following resolution was then adopted:

"That all the declarations, orders and resolutions of this House respecting the election of John Wilkes, Esq., for the county of Middlesex, as a void election, the due and legal election of Henry Lawes Luttrell, Esq., into Parliament for the said county, and the incapacity of John Wilkes, Esq., to be elected a member to serve in the said Parliament, be expunged from the journals of this House, as being subversive of the rights of the whole body of electors of this kingdom."

And the same were accordingly expunged at the table by the clerk.

On the 27th of February, 1857, Hon. Orsamus B. Matteson, a Representative in the 34th Congress from the State of New York, resigned his seat pending the following resolutions, reported by a committee of investigation:

"*Resolved*, That Orsamus B. Matteson, a member of this House from the State of New York, did incite parties deeply interested in the passage of a joint resolution for construing the Des Moines grant to have *here* and to *use* a large sum of money, and other valuable considerations, corruptly for the purpose of procuring the passage of said joint resolution through this House.

"*Resolved*, That Orsamus B. Matteson, in declaring that a large number of the members of this House had associated themselves together, and pledged themselves each to the other not to vote for any law or resolution granting money or lands unless they were paid for it, has falsely and wilfully assailed and defamed the character of this House, and has proved himself unworthy to be a member thereof.

"*Resolved*, That Orsamus B. Matteson, a member of the House from the State of New York, be, and he is hereby expelled therefrom."

The first and second resolutions were adopted; but Mr. Matteson having resigned his seat, the third was laid on the table.

Upon the organization of the House of Representatives on the 7th day of December, 1857, Mr. Matteson took his seat as a Representative in the 35th Congress. No question as to his election return or qualifications was referred to the Committee of Elections, or even raised in the House. But on the 15th day of January, 1858, the following resolutions were introduced:

"Whereas, at the last session of Congress, a select committee of this House reported the following resolutions, to wit: (the resolutions above quoted.)

"And whereas the first of said resolutions was adopted by the House of Representatives, on the 27th of February last, by a vote of 145 yeas to 17 nays; and the said second resolution was adopted by the House on the same day without division; and whereas, said Matteson had, prior to any vote being taken on the last resolution, resigned his seat in the House, and thus avoided the effect of the same; and whereas the said Matteson is a member of this House with the imputations conveyed by the passage of the first two of the foregoing resolutions still upon him, and without having been subsequently indorsed by his constituents; therefore,

"*Resolved*, That Orsamus B. Matteson, a member of this House from the State of New York, be and he is hereby expelled from this House."

This resolution was referred to a select committee, who reported back the resolutions with the following recommendation:

"*Resolved*, That it is inexpedient for this House to take any further action in regard to this resolution proposing to expel O. B. Matteson."

The case of Mr. Matteson in the 35th Congress was a case arising, not under the clause of the Constitution which makes each house the judge of the election, returns, and qualifications of its members, but under that clause which confers the power of expulsion. On the 22nd day of March, 1858, Mr. Seward, of Georgia, submitted the report of the select committee to the House. In this report the committee said that it was necessary at the outset to ascertain whether Mr. Matteson was constitutionally or legally disqualified for the office of Representative. They cited that section of the Constitution which provides that "no person shall be a Representative who shall not have attained the age of twenty-five years, and have 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." They said that it had not been claimed that Mr. Matteson was ineligible because wanting in either of the qualifications thus prescribed, or that any statutory disqualification attached to him, and that Mr. Matteson, being thus eligible, had been admitted to his seat in the House upon taking the usual oath of office; that the House was called upon to expel Mr. Matteson for causes alleged to have arisen not during the term of the 35th Congress. It seemed to the committee indisputable that Mr. Matteson's right to his seat was wholly unaffected by the proceedings which had taken place on the resolution for his expulsion in the 34th Congress. They held that the power of the House of Representatives of each Congress was ample and complete to punish its members for disorderly behavior, and for any misconduct inconsistent with the character of a Representative of which they might be guilty while members thereof; that this power was not left to uncertainty; that it was not necessary to invoke any inherent power as incident to legislative bodies; that no such power belonged to Congress, whatever might belong to the Legislatures of the States; that the powers and privileges of the House had been defined in the Constitution by the people; that the exercise of other powers would be a violation of their rights; that the expulsion of Mr. Matteson would be but the entering upon a fearful contest with the American people to deprive them of their rights and privileges; that the exercise of such a power by the House would be a flagrant usurpation of power never granted to that body, and would ultimately annihilate the power of the people in the choice of their Representatives; that it was a question of usurpation on the one side and American freedom upon the other. The committee reported (as I have already stated) that it was inexpedient for the House to take any further action in regard to the resolutions.

Mr. Curtis submitted his views, dissenting on some points from the report of the committee. Conceding the correctness of the decision of the House of Commons in Wilkes' case; and also that when a disability had been adjudged by the House, and the people, after publicity had been given to the judgment of the House, had again returned the member, the House would ordinarily take no further notice of disqualifications which a constituency was willing to tolerate; yet he thought that Mr. Matteson, after a fair trial *de novo* on the charges which had been preferred against him in the thirty-fourth Congress, ought to receive such punishment as the result of the trial should show to be right and proper in the case.

But the House sustained the report of the committee, and declined to take any further action on the resolutions for the expulsion of Mr. Matteson.

Benjamin G. Harris, of Maryland, was a Representative in the thirty-ninth Congress, his term of office commencing on the 4th day of March, 1865. On the 2d of May, 1865, he was arraigned, in the city of Washington, before a court-martial, of which Major General J. G. Foster was president, on a charge of violating the 56th article of war, on the 26th day of April, 1865, by harboring and protecting and furnishing with money and lodging two rebel soldiers, at Leonardtown, Maryland, and advising and inciting them to continue in the rebel army, and to make war upon the United States, and emphatically declaring his sympathy with the enemy, and his opposition to the Government of the United States in its efforts to suppress the rebellion. On the 12th day of May, 1865, he was found guilty, and the sentence of the court was in these words:

"And the court do therefore sentence the accused, Benjamin G. Harris, as follows: to be forever disqualified from holding any office or place of honor, trust, or profit under the United States, and to be imprisoned for three years in the penitentiary at Albany, New York, or at such other penitentiary as the Secretary of War may designate."

On the 31st day of May, 1865, this sentence was approved and confirmed, and also remitted by President Johnson, and Mr. Harris was released from imprisonment. At the commencement of the session, in December, 1865, Mr. Harris, upon taking the iron-clad oath, was admitted to his seat in the House of Representatives.

On the 19th day of December, 1865, Mr. Farnsworth introduced the following resolution—

"Whereas it is alleged that Benjamin G. Harris, a Representative in this House from the fifth district of the State of Maryland, was, in the month of May last, before a very respectable and intelligent court-martial, tried and by said court convicted upon charges and specifications, to wit, violation of the 56th article of war, by giving aid and comfort to the public enemy, and inciting them to continue to make war against the United States, declaring his sympathy with the enemy, and his opposition to the Government of the United States in its efforts to suppress the rebellion; and whereas it was proved at said trial (as is alleged) that the said Harris expressed his regret that the assassination of President Lincoln came too late to be of any use to the rebels, and at the same time declared that Jeff Davis was a great and good man; all of which acts, on the part of said Harris, are inconsistent with the oath he has taken as a member of this House; and whereas the said court-martial sentenced the said Harris (among other things) to be forever disqualified to hold any office of honor, trust, or profit under the United States, which sentence was approved by the President; therefore

"*Resolved*, That the Committee of Elections be directed to inquire into the facts of the case, and that they report the same to the house, together with such action as said committee shall recommend; and in making their investigations, said committee to have power to send for persons and papers."

This resolution was adopted. On the next day, December 20, on motion of Mr. Dawes, a resolution was adopted instructing the Secretary of War to communicate to the House a copy of the record, testimony, finding, sentence, and action of the President in the case. On the 5th of January, 1866, the Secretary of War complied fully with the requirements of the resolution by communicating to the House Executive Document No. 14 of the first session of the 39th Congress.

The Committee of Elections never made any report, and the House never took any further action in the case.

On the 15th of May, 1856, Mr. Knowlton introduced a resolution referring to the homicide of Thomas Keating at Willard's hotel, on the 8th of the same month, by Mr. Herbert, a Representative from the State of California, and instructing the Committee on the Judiciary to take the case into consideration, with power to send for persons and papers, and to report what action the House should take in the premises.

The House refused to entertain the proposition. This all occurred at the first session of the 34th Congress. At the third session a petition was sent to the House signed by 2,232 citizens of California, declaring their belief that in the murder of Keating Mr. Herbert had committed an act entirely without justification, had disgraced his high position, and that he could no longer satisfactorily represent the will of his constituents in the House of Representatives, and asking that, in the event of his acquittal by the court, he should be expelled from the House. This petition was referred to the Committee of Elections. On the 24th day of February, 1857, Mr. Colfax submitted the report of the committee. The committee, without making any recommendation, concluded their report in these words:

"Your committee, therefore, report the character of the petition, the statements embodied in it, and the number of its signers, that the House may determine what action under the circumstances they may deem just to all concerned."

The House took no action whatever in the case, and Mr. Herbert continued to be a member of the House until the expiration of the 34th Congress. He voted at the very last call of the yeas and nays on the 3d day of March, 1857.

Gentlemen of the committee, with a single observation I pass from these parliamentary precedents and from the question to which they relate to another branch of this case.

The line of demarkation between these two great powers of the House, the power to judge of the election returns and qualifications of its members by a mere majority vote, and the power to expel its members by a two-thirds vote is clear and well defined. That line is not to be obliterated. It would be necessary to preserve it, even though its obliteration might seem to threaten no disasters, even though its maintenance might promise no benefits to the House, to the people, or to the Constitution. For this barrier is raised by the Constitution itself. But the difficulties which would result from a practical regard of the distinction between these two powers are too obvious and too grave to be underrated or overlooked. Suppose that in time of great party heat the Committee of Elections, taking cognizance of facts which by the Constitution are made grounds of expulsion, but not grounds of ineligibility, should thereupon report against a sitting member's right to his seat, and the House itself should, by a bare majority of votes, sustain the report of the committee, and decide that the Representative concerned was not entitled to his seat. And suppose that the majority, disregarding the protest of the minority, and trampling down the Constitution, should thrust out, or attempt to thrust out, of the hall of the House such a Representative, without a two-thirds vote. If the majority should violently resist such an outrage, it would be, of course, a great calamity to the country. It might easily result in bloodshed, if not even in civil war. But, deplorable as this would be, the acquiescence of the minority in such an outrage would be a still more fatal calamity. It would be, in itself, the end of our republican government. Thenceforth the legislative rulers would be chosen no longer by the people but by themselves, and even the pretence of the right of representation would disappear.

The sitting member was lawfully elected and returned. He was elected by a majority so overwhelming that I feel reluctant to consume the time of this committee by replying to the attempt of the contestant's counsel to assail the character or reduce the number of his votes. The contestant offered evidence which tends to show that at three different polling places in the Territory of Utah the judges of election permitted minors and unnaturalized persons, males and females, to vote under the act of the Territorial Legislature, passed February 12th, 1870. He insists that this taints the polls at all the scores or hundreds of voting precincts in Utah. As I shall presently show, none of his depositions are admissible evidence in this case. But suppose them all to be admissible. Of all his witnesses, only five, C.D. Handy, on page 11, Jesse Buckner, on page 16, J. Leetham, on page 16, G. Wenceslaw, on page 34, and James Wood, on page 29, testify to any *knowledge* that minors or unnaturalized persons in fact voted at the election in controversy. All of these were in Salt Lake City, Provo City, or Beaver City, on the election day. Only two other witnesses, namely, M. V. Ashbrook and S. B. Moore, attempt to testify to anything like *knowledge* on this subject. Jesse Buckner, who was present at the polls in Provo City, testifies as follows, on page 16:

"In my opinion, illegal votes were cast, at that election; they were of unnaturalized voters; and children voted, to my knowledge, that were under age."

John Leetham, of Provo City, says, on page 16:

"I was present at the last delegate election. Votes were cast by foreigners not naturalized."

S. B. Moore, also of Provo City, swears, on page 17:

"I was present at the last delegate election; cannot swear that illegal votes were cast. In my opinion illegal votes were cast at the last delegate election. I saw a Danish woman go to the polls and ask the judge whom she should vote for, where to put her ticket, etc.; she wanted to vote the church ticket."

M. V. Ashbrook, also of Provo City, testifies, on page 15:

"I saw women vote. Do not know if they were all naturalized. At other elections I saw women vote that were not citizens:"

George Wenceslaw, of Beaver City, testifies, on page 34:

"The judge of the election at the polls objected to our challenge of voters on the side of George R. Maxwell. Moreover, women votes were not allowed at all to be challenged, on the ground, I suppose, he knew they were not citizens, and the judge received their votes."

The claim that this proof impeaches and destroys the three polls named is simply monstrous. There is no other testimony, whether loose or precise, as to facts or as to particular polling places. There are some sprawling expressions of opinion as to general practices scattered through the testimony, but they do not contain the slightest infinitessimal admixture of competent evidence applicable to this case. The contestant's demand that the returned and canvassed vote of all the precincts in the Territory shall be set aside, on account of proof which, whatever it amounts to, relates only to Salt Lake, Beaver and Provo precincts, is too preposterous for serious debate. If such a charge had been launched on such proof by anybody else than such a saint as the contestant against such a sinner as the sitting member, I should say that the contestant might as well attempt to prove that all the dogs in Utah were red dogs by making profert of only three of them, and those yellow pups, destined, presumably, to become red dogs on arriving at maturity.

[TO BE CONTINUED.]

LOCAL AND OTHER MATTERS.

FROM TUESDAY'S DAILY, JUNE 30.

Utah County Silk.—Reports from Utah County concerning the silk industry there are very promising. Those who are engaged in it feel greatly encouraged at the success of their efforts.

Number Thirteen.—No. 13, vol. 9, of the *Juvenile Instructor* is before us. Like its predecessors it is filled with instructive and entertaining reading matter, suited to all classes, but especially the young.

Bee Stealing.—Some miserable sneak or sneaks entered the lot of Sister Rich, 17th Ward, last night, and stole therefrom a hive containing a fine, full swarm of bees. It is to be hoped the thief or thieves will be discovered and taught to let other people's bees be. Some people never seem to be happy except when they are stealing.

Criminal Statistics.—During the present month of June the police of this City have made 101 arrests of persons for various crimes. Seventeen of these parties were discharged and the remainder, 84, were either punished according to the municipal laws, or were committed for trial in higher courts. This is rather a bad showing, indicating an increase of criminality on previous months.

Sharp Practice. — Yesterday a party, who used to be employed in one of the hotels of the City, called at one of the stores and ordered a quantity of goods in the name of the proprietors of the hotel establishment. He said he would carry the major portion of the articles away himself, and the others could be sent along with the bill. When the remainder of the goods were presented at the hotel, the storekeeper learned that the fellow had not been employed there for four months, and that when he left he collected a bill for