Utah Contested Election Report.

George R. Maxwell vs. George Q. Cannon—Contested Election Territory of Utah.

April 20, 1874—Ordered to be printed.

(CONTINUED.)

Mr Justice Story, in his discussion of the subject of the qualifications of Representatives in Congress, says that it would seem but fair reasoning, upon the plainest principles of interpretation, that when the Constitution established certain qualifications as necessary for office, it meant to exclude all others as prerequisites; and that from the very nature of such a provision the affirmation of these qualifications would seem to imply a negative of all others. And although it is certain that the letter of those constitutional provisions which relate to Representatives from the states does not apply exactly to the cases of Delegates from the Territories, still it is just as certain that their spirit does. A Delegate cannot be admitted who is not a citizen of the United States, simply because the spirit of the Constitution forbids it. The Constitution, applied to the case, so far as in the nature of the things it is applicable, forbids it. And this covers the whole ground. For precisely the same reasons Delegates cannot be admitted who are otherwise disqualified under the Constitution. For precisely the same reasons no qualifications or disqualifications can be prescribed other than those fixed by the Constitution itself, without a violation of the spirit of that instrument. Of course, the House may have the physical power to exclude a Delegate who has the qualifications prescribed in the Constitution for Representatives, just as it might have the physical power to exclude a Representative so qualified. But it has no such power warranted by the spirit of the Constitution. "While in many respects the Delegate differs from the Representative, in this respect they are alike. While in many respects provisions of the Constitution relating to Representatives are not applicable to Delegates, in this respect they *are applicable*.

We search in vain in the act organizing the Territory of Utah, in the act providing for the election of a Delegate to Congress from that Territory, or in any other act of Congress, for any provision fixing the qualifications of the Delegate, or providing for disqualification on account of any cause whatever.

If it be assumed, for the sake of argument, that under the Constitution of the United States, Congress has the right to punish polygamy in the Territories, by declaring that persons duly convicted thereof shall be ineligible to office, yet Congress has done no such thing. By the act of July 1, 1862, it is provided that persons guilty of bigamy in the Territories shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, and by imprisonment for a term not exceeding five years. But there is no statute of the United States which makes ineligibility to office a part of the punishment for bigamy or polygamy committed in the Territories or elsewhere.

The precedents of the House are in accordance with this construction of the Constitution. There has been no precedent since the organization of the Government which would justify, any more than would the Constitution itself justify, the House acting as the judges of the election returns and qualifications of Mr. Cannon, in a decision to deprive him of his seat on the ground that he has violated the law prohibiting polygamy in the Territories of the United States.

The case of B.F. Whittemore, in the Forty-first Congress, is relied upon as an authority for the refusal to admit a representative elect on other grounds than mere constitutional disqualifications. But a critical examination of that case will show that the House only decided that a Representative who had by resignation escaped expulsion for an infamous crime from *that House* should not be re-admitted to the *same House*.

The case of Mr. Matteson, in the Thirty-fifth Congress, relied upon in argument before the committee, was a case arising, not under the clause of the Constitution which makes each House the judge of the election returns and qualification of its members, but under that clause which confers the power of expulsion.

The line of demarcation 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.

The framers of the Constitution of the United States, in prescribing or fixing the qualifications of members of Congress, must be presumed to have been dealing with the question with reference to an obvious necessity for uniformity in the matter of the qualifications of members, and with a jealous desire to prevent, by the action of either House of Congress, the establishment of other or different qualifications of members.

It was appropriate and proper, in fact necessary, that the power should be given to each House to judge of the election returns and qualifications of its members, that is, to judge of *the constitutional* qualifications of its members.

The exercise of this power requires only a majority vote.

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.

This power of expulsion conferred by the Constitution on each House of Congress was necessary to enable each House to secure an efficient exercise of its powers, and its honor and dignity as a branch of the national legislature.

It was too dangerous a power to confer on either House without restriction, and hence it was expressly provided in the Constitution, that there must be a concurrence of two-thirds of the members to expel.

Under this power, guarded as it has been by the constitutional provision requiring a vote of two-thirds, there have been but a very few instances of expulsion since the organization of the government, and it would seem that a power so rarely exercised does not require the agency of a standing committee.

(TO BE CONTINUED.)

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3d " Jacob Weller.
4th " Thomas Jenkins.
5th & 6th, W. H. Hickenlooper.
7th " Wm. Thorn.
8th " E. F. Sheets.
9th " S. A. Woolley.
10th " A Speirs.
11th " Alex. McRae.
12th " L. W. Hardy.
13th " E. D. Woolley.
14th " Thomas Taylor.
15th " R. T. Burton.
16th " Frederick Kesler.
17th " Nathan Davis.
18th " L. D. Young.
19th " A. H. Raleigh.
20th " John Sharp.
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Brighton, A. H. Raleigh.
Big Cottonwood, B B Bitner.
Mill Creek, Reuben Miller.
South Cottonwood, J. S. Rawlins.
West Jordan, Archibald Gardner.
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Harmony, W. D. Pace.
Bellevue, J. H. Johnson.
[illegible]
Virgen, John Parker.
Rockville, C. N. Smith.
[illegible]
Kanab, Levi Stewart.
[illegible]
[illegible]
[illegible]

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[illegible]
[illegible]
[illegible]
Pine Valley, Wm. Snow.
[illegible]
Hebron, G. H. Crosby.

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