

Friday, May 8, 1874.

CONTESTED ELECTION,
TERRITORY OF UTAH.Geo. H. 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.)

To the act of July 2, 1862, which prescribed the oath of office known as the iron-clad oath, it was objected in the Senate that it virtually prescribed, in violation of the Constitution, a qualification for Senators and Representatives in Congress. But the reasons urged in support of this contention were not admitted to claim or pretend that Congress had any constitutional power to fix or alter the qualifications of Senators or Representatives, or that it was thus a punishment for crime after trial, conviction, and sentence according to law. The debate on this bill in the House of Representatives covers less than a column and a half of the Congressional Globe. It contains no allusion to this constitutional question. The bill having been reported by Mr. Wilson, chairman of the Committee on the Judiciary, Mr. Phelps, of Missouri, said: "I hope the gentleman from Iowa will permit this substitute to be printed. The point that strikes me in it is this: that it affords no opportunity for repentance. Men may have gone into the rebellion, and may have since returned to their allegiance, and yet it is proposed to render them forever ineligible to hold any office under the government of the United States."

It appears that this important bill was not even printed before it passed the House. It was, however, Mr. Wilson replied as follows—

"The substitute reported is not so severe as the original section embraced in the amendment offered by the gentleman from Tennessee. The substitute applies only to persons who have been engaged in the rebellion. That exception was not made in the section of the amendment offered by the gentleman from Tennessee. Now, sir, the sole object of this bill is to keep out of office under the government of the United States men who have taken up arms against the United States, and who have engaged in the rebellion. I do not believe in repentance coming to men of this kind, who have engaged in the rebellion. I believe we ought to legislate in some degree against this rebellion. We have not been able to pass any thorough confederation or emancipation act, or anything of the kind. This bill is very plain in its provisions, and for the purpose of determining whether the House is disposed to enact any measure which shall deal with these rebels as they should be dealt with, I demand the previous question on the third reading of the bill."

The bill was immediately passed. Mr. Trumbull, chairman of the Judiciary Committee of the Senate, took charge of the measure in that body. Senators Salisbury, Davis, and Carlisle raised the question whether the bill did not involve an unconstitutional attempt to prescribe the qualifications of members of Congress. The point was presented on the 13th of June, 1862, by Mr. Davis, in the form: He said that there were certain qualifications necessary to make a man eligible to a seat in the Senate or House of Representatives; that these qualifications could be enlarged by an act of Congress; could not be diminished by an act of Congress; that whenever any citizen came up to the constitutional rule and measure, he was entitled to a seat if he was elected according to the forms of the Constitution; and that Congress, by prescribing another oath for him to take, different from that which the Constitution prescribes, or by adding to the qualifications of a member of either House, could not place a single obstacle in the way of his taking his seat. Mr. Davis referred to repeated decisions of the two branches of the legislature imposing an oath against dealing with persons convicted of crime as a condition for admission to the legislature. Mr. Trumbull, in reply, said that a law of the State of New York, providing that persons convicted of crime should have no office in that State, had been adjudged constitutional by the courts. He said in mind the case of Barker vs. The People (3 Cowen, 688), to which I will presently call the attention of the committee. Mr. Salisbury stated that the constitution of Alabama prescribed the qualifications of attorneys at law in that State, and that an act of the legislature, providing that duellists should not practice as attorneys in the courts of that State, was adjudged unconstitutional and void. This was the substance of the whole argument on this point in the Senate.

Mr. Trumbull's real vindication of the measure was presented in the following words:

"Now, sir, having replied to these suggestions, which I think are altogether reasonable, I will state what I think the object of the bill is. It is to prevent persons who have been engaged in the rebellion from hereafter holding office as a condition for admission to the legislature. I think we had better pass such a bill as this. I know my friend from Kentucky, and I should hope my friend from Delaware does not want any persons to exercise official duties under this government who have voluntarily waged war against it. I never wish to see a person admitted as a senator, or a representative who has voluntarily taken up arms to fight against this government, and if I can prevent it, I will. No such man ever shall have a seat in this body, or in the other, or hold any office of honor, profit, or trust under this government."

It will be observed, that these considerations are substantially the same with those which have been urged in support of the measure by Mr. Wilson in the House of Representatives.

[TO BE CONTINUED.]

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And see. Try it for yourselves.
I will deliver it to any part of the city, or by car load to any part of Utah.
d113 2m C. R. JONES.

NOTICE.

U. S. LAND OFFICE,
Salt Lake City, U. T.,
April 28th, 1874.

COMPLAINT having been entered at this Office, by William B. Cole against Franklin Goodspeed, for abandonment of Homestead Entry, No. 118, dated May 4th, 1871, upon the northwest quarter, Section 28, Township 2 South, Range 1 East, in Salt Lake County, Utah Territory, with a view to the cancellation of said entry, the said Cole hereby summons said Goodspeed to appear at this Office, on the 15th day of May, 1874, at 10 o'clock a.m., to respond and furnish testimony concerning said alleged abandonment.

WILLET POTTERING,
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Salt Lake City and Utah Territory.

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A Business Directory of Ogden, Provo, Corinne, Alta, Brigham and Ogden;

An Official Directory of every County and Municipality in Utah.

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It is respectfully requested that every facility be extended to the canvassers for the general and business directory by furnishing them correct information as to names and residences.

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P.S.—We stamp every pair. None are genuine unless they have our name on them.

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