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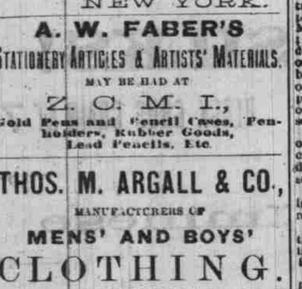

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UTAH CONTESTED ELECTION CASE.

(*Continued.*)

It is said—it has been said by nearly all the gentlemen who have preceded me—that Mr. Cannon comes here covered with crime, and for this reason we cannot admit him. This is the only topic which I shall have opportunity to consider in the time I have remaining. The proposition is that if a man is charged with an offense, it is the duty of this House when he makes his appearance here, to exclude him. Now I think it is a principle laid down in the books (and the precedents of the House are all in that direction) that although a person may be charged with crime, and even actually guilty, it is no consideration for the House upon his admission to a seat, under the Constitution and the laws. It may be said that this only applies to a member; but I think I have shown that the law and the constitutional provisions extend the same principle to a Delegate. But if the law does not apply the principle to a Delegate, then crime is no disqualification, because there is no law making it so, and you cannot exclude a Delegate upon that ground.

Now, all the precedents of this House say, and it is laid down in the books, that the only requirement resting upon a person applying for admission as a member here is to present his certificate, properly authenticated, to show that he has been elected; that when this is done you are bound to admit him. That is his *prima facie* case.

I want to call the attention of the House to what a committee has said in reference to this proposition that the allegation or fact of crime is no consideration for the House or for the Committe on Elections; that if it be true that Mr Cannon is a polygamist, it is not a question to be considered by the Committee on Elections or by the House, but that after he has been admitted, if his presence does not comport with the dignity of the House, He may be expelled.

I read from a celebrated report in a recent case where it is held that bribery or other crime committed by the member-elect, and which did not affect or influence the result of his election, could in no sense be construed to render his election void. That was the report of the majority of the committee, that if a man was guilty of the crime of bribery, (and it certainly is as great a crime in law as polygamy,) it was no reason why he should be excluded from his seat. It is further stated in this report as follows:

That bribery by a candidate for elective office (in the absence of a statute making it a disqualification) does not disqualify to hold the office at the common law was held by the court of Queen's Bench in Regina vs. Thwaites (3 Eng. Law and Eq. Reports, 219, 221, in a proceeding in the nature of a *quo warranto* to try the title to an office where acts were shown which were by the court held to amount to bribery, but which did not affect votes enough to change the majority; and the respondent was therefore entitled to retain his seat as a member of the municipal council.

The same doctrine is held in Pennsylvania as to a sheriff, in Com. vs. Shaver (43 Watts and Sergeant, p. 338.)

The English rule laid down by Cushing in his excellent work, without giving either the origin or reason of the rule, is calculated to mislead persons in this country.

It is quite demonstrable that the rule owes its existence to disqualifying statutes of England, and can have no application to questions arising in the Congress of the United States under our present Constitution and laws.

* * * * * * *

An examination of all the cases cited in Rogers, Douglas, and other English authorities, where a member of Parliament has been unseated for bribery, treating, etc., by himself or his agents, where the votes thus affected were less in number than his majority, will show that in every case the decision rests upon the special English statutes, with which we have nothing to do.

* * * * * * *

In some of the States it is held that prior conviction of the disqualifying crime is necessary before such a rule can be applied by a legislative assembly. It is not admitted that either the organic act of a State or its Legislature can prescribe disqualifications of any kind for a member of the House of Representatives of the United States, but it may be proper to state here that the constitution of Minnesota (section 15, article 4) gives full power to the Legislature of that State to render ineligible to hold office any person guilty of crime, and that Legislature has not made bribery of voters a disqualification to hold office, but it has only made it a misdemeanor, punishable by fine and imprisonment in the county jail, (Statutes Minnesota, 1878, page 5, section 98.)

It may be observed that under no provision of the Constitution of the United States does crime committed by a member in his election disqualify him from taking and holding his seat.

The reason for the English rule wholly fails in the case of a member of the House of Representatives.

Justice Johnson, of the Supreme Court of the United States, in an early case, in speaking of elections in Rhode Island, American and English legislative bodies, said:

"American legislative bodies have never possessed or pretended to the omnipotence which constitutes the leading feature in the legislative assembly of Great Britain, and which may have led occasionally to the exercise of control under the appearance of merited resentment."—3 Wheaton, 231.

In judging of the election of a member, the House deals alone with the question of the number of votes the member received, and if it appears that he has a majority of the votes cast, excluding all illegal and void votes cast, and a full and fair election has been held by which such majority has been obtained, that is all the majority would not have been affected by any unfairness or improper practices in the election, then the conclusion is irresistible that such member has been duly elected.

In judging of the qualifications of a member, the House deals with the formal returns, at least preliminarily, on which a member is expected to be admitted to a seat in the first instance.

In judging of the qualifications of a member, the question of election not returns is involved. The qualifications of a member of the House of Representatives are fixed by the Constitution of the United States, article 1, section 2, as follows:

"No person shall be a Representative who shall not have attained the age of twenty-five years, and 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."

The Speaker. The gentleman's time has expired.

Mr. Moulton. I should like to have a few minutes longer.

Mr. Calkins. How much time does the gentleman require?

Mr. Moulton. About ten minutes.

Mr. Calkins. I move, by unanimous consent, the gentleman's time be extended ten minutes.

There being no objection, it was ordered accordingly.

Mr. Moulton. Now, Mr. Speaker, here is a report which says in the face of a charge of bribery against a party that it is no business of the committee to inquire into it or to consider it at all, but that the only question which can be considered is the number of votes which have been cast, and who has the highest number.

Mr. Springer. What case is that?

Mr. Moulton. It is the celebrated case of Donnelly vs. Washburn; and I wish to read the names of those who signed the report. They are as follows: J. Warren Keifer, R. Overton, Jr., W. H. Calkins, John H. Camp, W. A. Field.

I understand this full and exhaustive report was drawn up by Judge Field, and subscribed by these distinguished jurists. They have said in the strongest language that this House has no right to inquire whether the applicant was guilty of bribery, whether he was a drunkard or not, whether he was an adulterer or polygamist, but that the only question which they have to inquire into is whether he received a majority of the legal votes cast, and came here under the provisions of the Constitution and the law.

It was upon that ground, Mr. Speaker, that the gentleman from Tennessee [Mr. Pettibone] said that if Mr. Cannon came here as a member instead of a Delegate he would be bound to vote to admit him. I have already shown that the Constitution and laws apply precisely the same rule to a Delegate that they do to a member.

Now, the people who send a man here are better judges of the qualifications and ability and integrity of the man they send than this House possibly can be. Why? This House seems to exhibit a holy horror against any one who is a criminal or charged with an offense coming within its sacred precincts.

I say it is well known that murderers have sat in this House, that those guilty of bribery and convicted on the floor of this House have retained their seats. Herbert, of California, who killed a man in cold blood in this city, voted on the last roll call of the House, after it was known to everybody he had committed a cold-blooded murder. Mattson, of New York, who had accepted a bribe, and on an investigation by the House resigned his seat to prevent expulsion, was afterward elected and took his seat in this House, notwithstanding a resolution was offered that the question should be inquired into. The House gave it the go-by, and that notorious briber, who had disgraced this House, and who would have been excluded from it by a two-thirds vote if he had not resigned, was allowed to remain in your midst, and you were bound to receive him under the Constitution.

I say the only standard which can be set up here is the standard of the law, and that law fixes the same qualifications for a Delegate it does for a member. This House is bound by the law, and no such heresy ought to be permitted that one House of Congress can ignore the law made by a previous Congress and signed by the Executive.

There is another thing I should like to call the attention of the House to. It is a matter in which this whole question of polygamy as a qualification has been discussed. I will send it to the Clerk to be read. It is from the case of Maxwell vs. Cannon, decided in the Forty-third Congress, when the same question was made as to his polygamy. You had no holy horror of his polygamous relations then.

The Clerk will read what the committee say.

The Clerk read as follows:

"That George Q. Cannon is not qualified to represent said Territory, or to hold his seat in the Forty-third Congress, for the reason, as shown by the evidence, that he, on and before the day of election in August, 1872, was openly living and cohabiting with four women, as his wives, in Salt Lake City, in Utah Territory, and he is still living and cohabiting with them."

On the question of qualifications, and the effect of making the Constitution a part of the law by act of of Congress, the committe say:

"It being conceded that the contestee has these qualifications, one other inquiry only under this head remains, to wit: Does the same rule apply in considering the case of a Delegate as of a member of this House? The question seems not to have been raised heretofore. The act organizing the Territory of Utah, approved September 9, 1850, enacts that the Constitution and laws of the United States are hereby extended over and declared to be in force in said Territory of Utah, so far as the same or any provision thereof may be applicable. It was said on the argument, that the Constitution cannot be extended over the Territories by act of Congress, and the views of Mr. Webster were quoted in support of this position.

"We do not deem it necessary to consider that question, because it will not be denied that Congress had the power to make the Constitution a part of the statutory law of the Territory as much as any portion of the organic act thereof. For the purpose of this inquiry it makes no difference whether the Constitution is to be treated as constitutional or statutory law. If either, it is entitled to be considered in disposing of this case."

Upon this point there does not seem to have been any difference of opinion in the committee.

The committee in the same case, referring to the question of polygamy, says:

"The question raised in the specification of contestant's counsel, and above transcribed, is a grave one, and unquestionably demands the consideration of the House. This committee, while having no desire to shrink from its investigation, finds itself confronted with the question of jurisdiction under the order referring the case.

"The Committee on Elections was organized under, and pursuant to, article 1, section 5, of the Constitution, which declares: 'Each House shall be the judge of the elections, returns, and qualifications of its own members.' The first standing committee appointed by the House of Representatives was the Committee on Elections. It was chosen by ballot, on the 13th day of April, 1789; and from that time to this, in the vast multitude of cases considered by it, with a few unimportant exceptions, (which the print seems to have escaped notice, the range of its inquiry has been limited to the execution of the power conferred by the above provision of the Constitution.

"What are the qualifications here mentioned and referred to the Committee on Elections? Clearly, the constitutional qualifications, to-wit, that the claimant shall have attained the age of twenty-five years, been seven years a citizen of the United States, and shall be an inhabitant of the State in which he shall be chosen. The practice of the House has been so uniform, and seems so entirely in harmony with the letter of the Constitution, that it would be useless to cite precedents. That any question as a bar to the consideration of qualifications other than those above specified, mentioned in the notice of contest, and hereinafter alluded to.

"We conclude that the question submitted to us, under the order of the House, come within the same principles of jurisdiction as if the contestee were a Member, instead of a Delegate."

The minority said:

"It is admitted in the report, and the fact has not been and is not denied that, Mr. Cannon possesses the constitutional qualifications, unless the qualifications of a Delegate in Congress from a Territory differ from the qualifications fixed by the Constitution for a member of the House. There can be no sufficient reason assigned for the position that the qualifications are any different.

* * * * * * *

The line of demarkation between these two great powers of the House, the power to judge of the elections, returns, and qualifications of its own members by a mere majority vote, and the power to expel its members by a two-thirds vote, is clear and well defined."

The "views" of the minority on the point were further expressed in these words:

"But a graver question than those we have considered is the question whether the House ought, as a matter of policy or to establish a precedent, to expel either a Delegate or Member on account of alleged crimes or immoral practices, unconnected with their duties or obligations as Members or Delegates, when the Member or Delegate possesses all the qualifications to entitle him to his seat.

"If we are to go into the question of the moral issues of a member to occupy a seat in the House, where will the inquiry stop? What standard shall we fix in determining what is and what is not sufficient cause for expulsion? If a number of members engage in the practice of gaming for money or other valuable thing, or are accused of violating the marital vow by intimate association with four women, three of whom are not lawful wives, or are charged with any other offense, and a majority of the House, or even two-thirds, expel them, it may be the recognition of a dangerous power and policy. If erected and adopted by one political party to accomplish partisan ends, it furnishes a precedent which it will be invited to follow similar action by the opposite party when they have a majority or a two-thirds majority in the House; and thus the people are deprived of representation and their representatives, possessing the necessary qualifications are expelled for causes outside of the constitutional qualifications of members, or those which a Delegate must possess, so far as his qualifications are fixed by statute or by analogy, or are drawn from the principles of our representative system of government.

It may be stated that the reports, both of the majority and minority, were made by republicans.

That is a precedent that covers the case now in this House in every particular. It was exhaustively discussed in the committee of the House, and was adopted by the House by an overwhelming majority, and it stands to-day as the rule and law of the House, unless it should be reversed.

The issue in that case was sharply made, and the rule established that Delegates from Territories are entitled to the benefit of the constitutional limitations as its qualifications, and that polygamy was not a disqualification.

Now, if the rule that has been established and practiced since the formation of the government as to qualification for members and delegates to the House is to be reversed and a different rule adopted, what standard shall it be?

This House may convict a member on a charge of polygamy. The next House may exclude a person elected because he is a Mormon or a Catholic or a Methodist, or because he has been charged by his opponent with adultery or some other offense.

We have associated with him for six years, eight or ten years upon terms of equality, and I am glad to see that my honored friend the gentleman from Indiana in his report says that he is a gentleman, and that he makes no aspersions upon his personal character or honor. A legislative body like this where the members are elected by the people, who are the sovereign in this country, should not set up any transcendental standard of moral qualifications to entitle one to a seat. If a high moral standard was a prerequisite to a seat here, but few might find admission. The people elect men to office for their supposed fitness and ability to take care of the people's interests. The question of immaculate virtue is not much considered. I think the law and the evidence is with Mr. Cannon and that he is entitled to his seat. It is for this House sitting as judges on his case to say on their oaths whether Mr. Cannon shall be seated here as a Delegate from the Territory of Utah, or whether he shall be excluded, and precedents, the Constitution, and the laws shall be violated and the people of Utah deprived of representation.

[*To be continued.*]

A "GENTILE" PROTEST.

MESA CITY,
Maricopa County,
Arizona Ty., May 6, '82.

Editor Deseret News:

I will, if you permit, trouble your columns with a short review of the famous or infamous, as you like it, circular, emanating from Christian gentlemen of your city.

The first and only paragraph of this brilliant epistle, which I intend to notice, reads as follows:

1. Out of a total population of 143,000 in Utah, about 110,000 are adherents of Mormonism. Of the anti-Mormon minority, only a small per cent. render us active aid in our endeavors to establish Christian homes in the place of the foul system of polygamy which prevails in Utah. Hence, we greatly feel the need of your sympathy, prayers and efforts.

That ten learned and dignified churchmen, all I presume well grounded in the mysteries of modern Christianity, should make such a lamentable and humiliating confession, as contained in the above paragraph, is indeed astonishing as well as a sad blow to their brethren of the east as well as being a convincing proof to infidels in general, that the mixed Christianity they seek to inculcate is not of such a nature as to command the respect of human minds. The confession must also be a serious drawback to Senator Edmunds and his ecclesiastical backers up, inasmuch as these ten worthy soul savers admit, that in various portions of the Union, and particularly in Utah, their deformed doctrines are unequal to stem the tide of Mormonism, or even gain the support or active aid of the various congregations over whom they preside.

The weeping, wailing and gnashing of teeth by these gospel worthies amounts to this and this alone: there is no money in combatting Mormonism or any doctrine as taught by the Savior and preached by His Apostles. Of one fact, however, the readers of that circular are put in possession, and that is that the congregations of the ten divines who signed it have the wisdom to see that their Mormon fellow citizens are morally, socially and physically their equal if not their superiors.

I would like to bring before the notice of your readers one of the clergymen whose name is appended to that document. The very Rev L. Scanlan, V. G., is either an Irishman by birth or the descendant of one. In any case, he must retain in his memory from actual observation, or still better, from Irish history, that no people on God's earth ever suffered more for conscience sake, than the inhabitants of the Green Isle, and that no race ever clung with greater fidelity and tenacity to the teachings of their church, through long years of bitter vindictive and powerful persecution, the recital of which alone, even at this distant day, will make their youngest descendants of American birth, give vent to bitter imprecations against the tyranny of those days. The very Reverend gentleman must also know, that persecution, instead of rooting out the faith of the Irishman, caused it to take deeper root, was strengthened, and spread out from continent to continent, until to-day it exceeds over six million souls in the United States alone; he must be still further aware of the fact that no race are more liberty loving, or more opposed to proscription in any form or shape than his compatriots.

Of these things the very Revd Father must be well aware; and for these reasons I and hundreds of others in this Territory, descendants of that persecuted race, feel sorrowed in seeing the name of an Irish Catholic divine associated with a flock of gospel tinkers, who would gloat with malignant glee over the burning and sacking of every Roman Catholic church in our broad domain.

Short indeed must be the memory of this gentleman, when he forgot in a moment of unworthy partisan heat the despotism of a penal code which assigned his ancestors and their descendants to a position worse than slaves, starvation, ignorance and if possible, extermination.

I blush for very shame that an Irish Priest, bearing a name, illustrious in Irish history, should so far forget the dignity of his high calling in vainly trying to trample under foot the liberty and freedom to worship God as they please, of citizens who have never in deed or in word offended the flag of their country. Had you very Revd. Father consulted the teachings of your Church or held in memory the moral precepts which you daily con over in your breviary, instead of allowing your name to appear at the bottom of such a document you would have turned away from its originators, and with uplifted hands have prayed for them in the words of your Redeemer when expiring on the cross, "Father, forgive them for they know not what they do."

T. S. R.

Correspondence.

SMITHVILLE, Pima P. O.,
Graham Co., Arizona,
May 7, 1882.

Editor Deseret News:

Three years ago, the 8th day of April last; our worthy bishop and colony arrived here on the Gila river, about 12 miles above Camp Thomas, on the south side of the river. Since that time we have opened one canal five miles long and one three miles long, also a third for town purposes about six miles long, which is expected to be completed some time this season, all of which will irrigate about four sections of land. Our small grain is in the boot. We expect an average yield this season. The place was started with about six families, at present there are about 50 families. Our meetings are well attended. We have an excellent Sunday School under the direction of Supt. A. P. Newell. There are enrolled 114 scholars with an average attendance of 93 in last March report. The day school is well attended, 98 pupils being enrolled with an average of 80 attendance, under the superintendence of Brother S. F. Wilson, Brother A. Cluff assistant. Our Relief Society is prospering under the presidency of Sister Mary L. Ransom. The Y. M. and Y. L. M. I. Associations are making fair progress, also the Primary, Sister Matilda Maxham president.

We celebrated the first day of May in behalf of the Sunday school under the direction of Supt. A. P. Newell and assistants.

There are some improvements worthy of notice, such as our new co-op. store building, which is completed and in good running order; also farming, fencing, etc., are making fair progress.

The general health of the people is good at present.

The Indians are peaceable, also the cowboys.

We have had one visit from the missionaries, A. F. McDonald and D. P. Kimball and company, which was thankfully received. We are all trying to live our religion.

Yours in the Gospel,
WM. J. RANSOM.

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530 Washington St., San Francisco, Cal.

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

The vital importance of having pure Altar wine for the celebration of the Holy Sacrifice of the Mass is a matter which always gives the greatest concern to the Rev. Clergy, who are also aware of the difficulty experienced in procuring really pure wine by those living in remote regions from grape-producing localities. This difficulty, however, has now been entirely overcome, and every priest throughout the Union can rely upon procuring really pure wine for altar use through the long-established and thoroughly reliable house of Arpad Haraszthy & Co., 530 Washington street, in this city, who have made arrangements with Rev P. J. Kaiser to be the sole agent in this city for the sale of all the wines made at the extensive vineyards at the Old Mission, San Jose, as well as the altar wine made by Col. Hooper at Sonoma. The firm of Arpad Haraszthy & Co. guarantee the perfect purity of these altar wines and are prepared to ship them in portable packages, in any quantity desired, and so put up that they will retain all their freshness during transmission. We think the enterprise of the house of Arpad Haraszthy & Co. is worthy of being encouraged, and we hope the Rev Clergy throughout the Union will avail themselves of this excellent medium in order to secure for Divine service one of the most essential auxiliaries to its proper celebration.

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

ARPAD HARASZTHY & CO.

ST. MARY'S CATHEDRAL,
639 California Street,
SAN FRANCISCO, July 19, 1881.

The bearer, Rev. P. J. Kaiser, having to spend some time in the East, for motives of health, may have occasion to speak to those desirous of procuring a genuine article of pure wine.

To all such I would say, that the wines made directly by himself or under his direction, are pure and genuine.

For some years he has had under his charge for me The Diocesan Vineyards of the Old Mission, San Jose, Cal. And these Vineyards he has quite reinvested and brought to a state of considerable perfection; therefore I know the wines to be pure and genuine. I have given other letters to wine growers more or less commendatory, but none so strong as I would desire to make THIS, as to no other case did I have so good means of knowing.—And what I say for Father Kaiser's wines, I would say for his Olive Oil produced at the same place.

Very respectfully,
JOSEPH S. ALEMANY,
Archb. of San Francisco, Cal.

The wine is sold in original packages under seal, just as it leaves the vineyard. With such endorsement it may be relied upon for family and medical purposes. Family trade supplied by the bottle or cask, by

GEO. A. MEEARS,

WHOLESALE AND RETAIL,

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GRIST MILLS,

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AND

STEAM ENGINES.

MORRISON

PLOWS,

Etc.

TENTS, PLOWS, MOWERS, TONGUES, HARROWS, SCRAPERS, LAWN MOWERS, WAGON TIMBER, VICTOR CANE MILLS, AMERICUS CIDER MILLS, ASSORTED SIZES BELLOWS, IRON BEAM RAILROAD PLOWS, SULKY AND WALKING PLOWS, HAZARD'S CELEBRATED POWDER,

BELTS, BELLS, SLEIGHS, REAPERS, HAMMERS, THRESHERS, FEED CUTTERS, PORTABLE FORGES, SULKY HAY RAKES, THE SMITH PURIFIER, IMPROVED HOWE SCALES, FULL SUPPLY PLOW POINTS, WESTERN WHEEL SCRAPERS, WOOD BEAM RAILROAD PLOWS

"EUREKA" SMUTTERS AND BRUSH MACHINES.

"ECONOMY" ERTEL'S PORTABLE HAY PRESSES.

COATES' LOCK LEVER SULKY HAY RAKE.

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I have handled the Case Plows for two years and said but little about them, as I desired to see them thoroughly tested before recommending them to the Public, I now say that their STEEL PLOWS are EQUAL TO ANY, and, in my opinion, their CHILLED PLOWS, SUPERIOR TO ANY.

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JOHN W. LOWEL Salt Lake & Ogden.