BREAD, BUTTER AND POETRY.

The girl engaged in moulding bread
Shall make some sweet-heart flutter,
With hope to get the dairy-maid
To make his bread and butter.

She may not play the game of croquet,
Or French and German stutter,
If well she knows the curd from whey,
And makes sweet bread and butter.

In meal and cream she's elbow deep,
And cannot stop to putter;
But says if he will sow and reap,
She'll make his bread and butter.

The dairy-maid, the farmer's wife,
Shall be the toast we utter;
Alone, man leads a crusty life,
Without good bread and butter.

Utah Contested Election Report.

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

April 30, 1874.—Laid on the table and ordered to be printed.

MR. GERRY W. HAZELTON, from the Committee on Elections, submitted the following

REPORT:

The Committee on Elections, to whom was referred the above-entitled case, having had the same under consideration, beg leave to submit the following report:

[We exclude the notice and answer of contestants, and give only the real report of the committee, and the Governor's certificate of election.—ED. NEWS.]

UNITED STATES OF AMERICA,
Territory of Utah, ss:

I, George L. Woods, governor of Utah Territory, do hereby certify that, at an election held in and for the Territory of Utah, on the 5th day of August, A. D. 1872, for Delegate to the House of Representatives of the United States, twenty-two thousand nine hundred and thirteen votes were cast, of which number George Q. Cannon received twenty thousand nine hundred and sixty-nine, and George R. Maxwell received one thousand nine hundred and forty-two; and that two votes were cast for other persons; and that the said George Q. Cannon, having received the greatest number of votes for said office, at said election, is by me hereby declared duly elected Delegate to the House of Representatives of the United States from the Territory of Utah, to the forty-third Congress.

In testimony whereof I have hereunto set my hand and caused the seal of the Territory of Utah to be affixed.

Done at Salt Lake City, Utah Territory, on this the 11th day of October, A.D. 1872.

GEORGE L. WOODS,
Governor of said Territory.

By the Governor:

GEORGE A. BLACK,
Secretary of said Territory.

At the opening of the present session the contestee, holding a certificate in the usual form of due election, presented himself at the bar of the House, and was permitted by the House, after argument, (see record of first day's proceedings,) to be sworn in and to take his seat as a Delegate from the Territory of Utah, without qualification or limitation.

The case comes before the committee like ordinary cases of contested elections, under a general order embracing several cases.

It was not claimed on the argument that Maxwell received a majority of the votes actually cast, although it was maintained that gross irregularities existed in the manner of conducting the election and making up the returns. The testimony tends to bear out this position as to some localities, but clearly fails to show that the contestant received a majority of the legal votes.

The case must therefore be considered upon the assumption that Cannon, the sitting member, received a majority of the suffrages of the Territory, and was duly returned.

This remits us to the consideration of the other question raised by the contestant, and stated in the brief of his counsel in the following words, to wit:

George Q. Cannon, the sitting Delegate, is not qualified to represent said Territory, or, to hold his seat in the Forty-third Congress, and for cause of disqualification we say it is shown by the evidence that he, at and before the day of the election, to wit, on the 5th day of August, 1872, was openly living and cohabiting with four women as his wives in Salt Lake City, in Utah Territory, and he is still so living and cohabiting with them.

And to the further consideration of the question whether in any event the contestant can be admitted to the seat he claims.

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." (See Manual, page 96.)

The first standing committe 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, in which the point seems to have escaped notice, the range of its inquiries 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 the committee can but regard the jurisdictional question as a bar to the consideration of qualifications other than those above specified, mentioned in the notice of contest and hereinbefore alluded to.

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 the House? This 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 purposes 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.

Now, while it would be entirely competent for Congress to prescribe qualifications for a Delegate in Congress entirely unlike those prescribed in the Constitution for members, it seems to us, in the absence of any such legislation, we may fairly and justly assume that by making the Constitution a part of the law of the Territory, Congress intended to indicate that the qualifications of the Delegate to be elected should be similar to those of a member. It would seem to be to that extent an instruction to the electors of the Territory, growing out of the analogies of the case.

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

This position, it will be observed, does not conflict with the right of the House to refer a preliminary inquiry to this committee as to the disqualification of a member or Delegate to be sworn in and take his seat prior to the oath being administered. In such case the reference is special, and the jurisdiction of the committee follows the order of the House.

The case of Samuel E. Smith against John Young Brown, in the Fortieth Congress, is in point. That case was referred to the Committee on Elections, before the contestee was sworn in, to ascertain and report whether he had committed any of the acts specified in the law of July 2, 1862, which he was required to swear he had not committed, before entering on the duties of a Representative.

It was a preliminary inquiry, made under a special order of the House, and might have been executed as properly by the Judiciary Committee or by a special committee. It did not relate in the remotest manner to the election returns, and qualifications of the claimant under the Constitution.

The contestee in this case having been sworn in and admitted to his seat, and his name officially entered upon the roll of Delegates, we think he can be reached only under the exercise of the power of expulsion, which it is competent for the House to set in motion by a special order of reference.

The other question, which relates to the rights of the contestant, we shall consider but briefly. The contestant insists upon his right to the seat as the minority candidate, in case the House shall ultimately determine to unseat or expel the sitting member.

The counsel for the contestant referred the committee to the case of A. S. Wallace *vs.* W. D. Simpson, in the forty-first Congress, in support of the claim of the contestant. A critical examination of the case will show that it cannot be considered as authority for the doctrine. We quote from the brief of contestee's counsel:

The sub-committee who had charge of the case of Wallace *vs* 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 proceedings 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 2nd, 1862."

Not only is this not an authority for the doctrine contended for, but the cases establishing the opposite doctrine are no numerous and uniform as to absolutely remove the question in this country from the realm of debate.

[The case of Smith vs. Brown (2 Bartlett, 395) is the leading case in the House of Representatives. It was reported from the Committe on Elections by the Chairman, Mr. Dawes, on the 28th of January, 1868. His exhaustive discussion of the subject will be found on pages 402—405 of the second volume of Bartlett's Contested-Election Cases. He refers to the case of Ramsey *vs.* Smith, (Clark & Hall, 23) argued by Mr. Madison at the first session of the First Congress; and to the cases of Albert Gallatin in the Senate in 1793, Phillip Barton Key in the House in 1807, John Bailey in the House in 1824, James Shields in the Senate in 1849, and John Young Brown in the House in 1859. He also reviews the British authorities and the opinion expressed in Cushing's Treatise. And he closes the discussion by declaring that "the law of the British Parliament in this particular has never been adopted in this country, and is wholly inapplicable to the system of government under which we live." I ask the committee to read so much of the report in this case as relates to the point now under consideration. It will be found on pages 402—405 of the second volume of Bartlett's Contested-Election Cases.

In the case of Zeigler *vs.* Rice, (2 Bartlett, 884,) *which is later than Wallace vs. Simpson*, the committee decided this precise point. I will give their conclusions in their own words, to be found on the 884th page of volume 2 of Bartlett's Contested-Election Cases.

"Thus it will be seen that, according to the contestee's own statement, he had entered into an agreement to recruit for the rebel army; was on his way to carry out fully his undertaking, when he was captured, and claimed protection as a rebel officer when captured. The committee are well satisfied that the acts of contestee were well understood by the voters of said district at the time contestee was voted for; *but do not agree with contestant that, as contestee was ineligible, the candidate who was eligible is entitled to the seat.*"

And they recommended a resolution unseating Mr. Rice, and declaring the seat vacant. But the House refused even to evict Mr. Rice. On the contrary, by the adoption of a substitute for the resolution, without a division, Mr. Rice was declared entitled to the seat.

The proceedings will be found on page 5447 of the 80th volume of the *Globe*.

In the Fortieth Congress, Simeon Corley, of South Carolina, P. M. B. Young, and Nelson Tift, of Georgia, and R. R. Butler, of Tennessee, and in the Forty-first Congress, Francis E. Shober, of North Carolina, members of the House, were relieved of their political disabilities long after their election; and yet, when so relieved, were admitted to their seats in the House. All were ineligible when elected, and yet in no case was the election treated as void.

In the case of Joseph C. Abbott, in the Senate of the forty-second Congress, the doctrine asserted by the counsel for the contestant was fully considered, and was repudiated by the Senate.

It is probable that there never was and never will be, in this country, another discussion of the subject so exhaustive as that which it received in this case. The English authorities were all presented, and very few, if any, of the American decisions, whether judicial or parliamentary, escaped the scrutiny of the Senators who submitted the majority and minority reports, which were printed together in the Senate Report No. 58 of the second session of the Forty-second Congress.

Your committee, therefore, recommend the adoption of the following resolutions:

Resolved, (1) That George R. Maxwell was not elected, and is not entitled to a seat in the House of Representatives of the Forty-third Congress as Delegate for the Territory of Utah.

Resolved, (2) That George Q. Cannon was elected and returned as a Delegate for the Territory of Utah to a seat in the Forty-third Congress.

Amendment Proposed to be Submitted by Mr. Gerry W. Hazleton to the Report of the Committee on Elections in the case of Maxwell vs. *Cannon.*

Whereas George R. Maxwell has prosecuted a contest against the sitting member, George Q. Cannon, now occupying a seat in the Forty-third Congress as Delegate for the Territory of Utah, charging, among other things, that the said Cannon is disqualified from holding, and is unworthy of, a seat on the floor of this House, for the reason that he was at the date of his election, to wit, on the 5th day of August, 1872, and prior thereto had been and still is, openly living and cohabiting with four women as his wives under the pretended sanction of a system of polygamy, which system he notoriously endorses and upholds, against the statute of the United States approved July 1, 1862, which declares the same to be a felony, to the great scandal and disgrace of the people and the Government of the United States, and in abuse of the privilege of representation accorded to said Territory of Utah, and that he has taken and never renounced an oath which is inconsistent with his duties and allegience to the said Government of the United States; and whereas the evidence in support of such charge has been brought to the official notice of the Committee on Elections: Therefore,

Resolved, That a committee be appointed, of the same number as the standing committees of the House, to inquire into the said charge, and report to the House as to the truthfulness thereof, and to recommend such action on the part of the House in the premises as shall seem meet and proper.

VIEWS OF THE MINORITY.

I dissent from the conclusions at which the majority of the committee have arrived. I agree fully with a majority of the committee that the proof shows that the contestant, George R. Maxwell, was not elected; and that, while there were undoubtedly, at some of the precincts or voting places in the Territory, frauds perpetrated and undue influences used by the political or partizan friends of the sitting Delegate, he received an overwhelming majority of the legal votes cast at the election, and was duly elected a Delegate from the Territory of Utah in the Forty-third Congress.

As the result of the investigation of the case, the majority of the committee report for the action of the House, and recommend the adoption of, a resolution declaring that the contestant, George R. Maxwell, is not entitled to a seat as a delegate, in which action I fully concur; and the majority also report for the action of the House, and recommend the adoption of, a resolution to the effect that George Q. Cannon was duly elected, but fail to go further, and declare that said Cannon is entitled to his seat as a delegate from the Territory of Utah.

To this view of the case taken by the majority, which induced the majority, after ascertaining that the sitting delegate, Cannon, was duly elected and returned, to stop short of recommending the adoption of a resolution declaring that he was entitled to the seat as the delegate representative of the people of the Territory of Utah, I cannot assent, for the following reasons:

The majority of the committee have failed and declined to report a resolution to the effect that Geo. Q. Cannon was entitled to the seat, upon the ground that he was disqualified by reason of the fact that he was the husband of more than one wife, and, as is assumed, guilty of a violation of the act of Congress which denounces a penalty of fine and imprisonment against any person in any of the Territories of the United States who practices bigamy or polygamy.

The committee, under and in pursuance of a long course of decisions of the House, had a plain duty to perform—that of ascertaining and reporting to the House which, if either, of the parties to this contest was elected and returned, and as to the qualifications of the party found to be so elected and returned.

If the committee found, as they did, that Mr. Cannon was duly elected and returned, and that he had the qualifications which the Constitution of the United States requires shall be possessed by members of the House, it follows logically that there was one other duty for the committee to perform, and that was to report a resolution declaring that he was entitled to the seat.

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 Constitution does not in express terms prescribe the qualifications of a Delegate in Congress. It *does* prescribe those of a member of the House of Representatives, and of course the constitutional provision on the subject is a limitation on the right or power of the House to annex or fix any other qualifications of a Representative in Congress, notwithstanding the Constitution has clothed each House of Congress with the power to judge of the election, returns, and qualification of its members.

The qualifications of Representatives in Congress are prescribed by the second section of the first article of the Constitution of the United States.

They are, first, that they shall have attained the age of thirty-five years; second, that they shall have been seven years citizens of the United States; and, third, that they shall, when elected, be inhabitants of those States in which they shall be chosen. No other qualifications are prescribed in the Constitution.

If the Constitution of the United States had vested anywhere the power to prescribe qualifications of Representatives in Congress addi