admitted to the House as a Representative *from* the State of Kentucky." This report was adopted by the House by a vote of 108 to 43. The minority report in the case made an argument against the action of the majority in almost the same words and on identically the same grounds that the minority of the Committee on Elections occupy in the case under consideration. It was argued that Mr. Brown had all the constitutional qualifications, and that Congress had no right to exact more; that in any event he had never been tried or convicted of treason, and unless convicted of the crime even treason was not disqualification. But Congress then laid down the rule above given, and never abrogated since, that in addition to the ordinary constitutional requirements, every man must be well disposed and loyal toward the Government before he can be admitted to Congress to aid in forming its policy and controlling its destinies.

The act of July 2, 1862, providing what is known as the iron-clad oath, added a new and marked qualification to those required of members of Congress prior to that time, and every member who has taken that oath since has submitted to the exaction of that additional qualification. The distinguished counsel who argued the case of Mr. Cannon before the Committee on Elections felt the force of this act, and the long-continued practice of Congress under it, and explained it as a war measure. He said:

> The grounds upon which this law was vindicated, although not stated with much care or precision, are nevertheless clearly enough disclosed by the debates. It was enacted as a war measure. The iron-clad oath was adopted as the countersign which should in time of war exclude domestic enemies from the civil administration of the government, in the same manner and for the same reason that the military countersign was employed to exclude those enemies from the military lines of the army. It was enacted as a measure of defense against an armed enemy in time of war, and was as necessary and as justifiable as any other war measure not specifically marked out in the text of the Constitution.

If Congress could, almost without challenge, provide and add such a distinct and imperative qualification, not for a Delegate, but for a member of Congress, in 1862, why may we *not* in 1882 ask a reasonable additional qualification for a Delegate from a Territory who does not come within the letter or spirit of the Constitution? The act of 1862 was a bold and radical assertion of the doctrine of self-preservation on the part of Congress to maintain its its integrity and the purity and loyalty of its counsels. The resolution recommended by the majority of the Committee on Elections only says to the people of Utah, You shall not abuse the privilege of representation which we allowed you on the floor of Congress, by sending as your Delegate a person who adheres to an *organization* that is hostile to the interests of free government and whose doctrines and practices are offensive to the masses of the moral people of the great nation we represent.

CONCLUSION.

The following is a summary of the reasons for my concurrence in the resolutions of the majority of the committee.

1. The history of the cession and organization of the Territory, which belonged to the Federal Government at the time of its formation, the history of the clause in the Constitution which relates to that Territory, and the Constitution itself, all show clearly that it was not contemplated or intended that Delegates which might be sent from said Territory, then immedietely under the Constitution, *should have the same qualifications* as members of Congress.

2. The Constitution does not extend over Utah except as a part of the statute law provided for that Territory by Congress, and there is therefore more reason for holding that the qualifications required for members of Congress by the Constitution do not extend to Delegates from that Territory than there is in relation to Delegates from territory immediately under the Constitution.

3. The Constitution not only does not provide that Delegates shall have the same qualifications as members of Congress, but no law, in almost a century of legislation on the subject, has so provided.

4. There is no reason why the qualification of Delegates should be the same as those of members of Congress. Their status and duties and powers are widely different, and their qualifications should be made to conform to those powers and duties, which in case of Delegates are purely of a local and business character.

5. The Territories can only be held and governed by Congress with one single purpose in view, which is to adapt and prepare them for admission as States of the Union. It will hardly be contended that Utah will ever be admitted as a State while polygamy dominates it, or that it is preparing it for admission as a State to hold out to its people the delusive doctrine that a polygamist is not disqualified as a member of Congress, and therefore that polygamy is no bar to the admission of Utah to the Union.

6. No law fixing the qualifications of delegates, passed by any former Congress would be binding on any subsequent House. Each House shall be the judge of the qualifications of its own members, and for a much stronger reason it should be the exclusive judge of the qualifications of the Delegates, which are its creatures, and which it admits as a matter of its own discretion.

7. Congress has held from 1862 down to this time that it has the right to prevent the admission of persons as members who are hostile to the government by excluding them on that ground, although they possess all the other qualifications required by the Constitution. With much more propriety and much less stretch of power Congress has the right to exclude a Delegate who is not well disposed toward the government, and who openly defies the law.

I submit this case with one word in reply to the distinguished gentleman from Tennessee, (MR. HOUSE,) who in so forcibly presenting the views of the minority yesterday declared that a decent respect for the opinions of mankind should constrain us to follow the precedents set by the last four Congresses and accord to Mr. Cannon his seat. The appeal was an unfortunate one. I maintain with great confidence that, under the law and the facts of this case, a decent respect for the opinions of makind overwhelmingly justify us in refusing to admit to this supreme legislative tribunal of this great Christian Republic one whose practices are offensive to our civilization, hostile to civil society, and fatal to the welfare of the State.

(Mr. Jones, of Texas, addressed the House. He withholds his remarks for revision.)

Mr. Jacobs. I shall not occupy the time of this House in the few minutes I propose to take in this discussion in considering those matters which I deem incidental and collateral; but I shall proceed in what I have to say to the consideration of the legal and constitutional principles which it seems to me ought to govern this House in the exercise of its sovereign and independent functions in deciding this question.

Mr. Speaker, the claim of the Territory of Utah to be represented upon this floor in the person of an avowed polygamist involves considerations and conditions altogether novel and peculiar. The framers of the Constitution, and the law of 1850 organizing this Territory, could not, in the nature of the case, anticipate and provide against the existence of an inherent and inveterate vice in the body-politic of the political community claiming representation. In all other cases the social and political structure of the Territory has been modeled in conformity with the principles of a republican form of government. And now the question is squarely presented as to the constitutional power and duty of Congress to refuse representation on this floor for any purpose to a political community, which is unrepublican in every such sense as would debar its admission as a State in the Federal Union.

Mr. Speaker, more than twenty years ago the Congress of the United States saw an inconsiderable religious sect planted on perhaps the most favored of all our Territories, and gathering by its missionaries its devotees from every quarter of the globe, until it has reached the proportions of a formidable theocracy pervaded and controlled by practices and principles irrepressibly at war with the genius of our institutions and the policy of free government.

After thirty years of ineffectual discussion and legislation, after the baby has become a giant and threatons the peace of the country, an aroused and alarmed Congress has at last put on the panoply of its power and declared its determination to exterminate this inveterate evil.

A measure has passed both Houses almost unchallenged which denies to the citizens of that Territory who practice polygamy the right to hold office or participate in the government under which they live, and that too, without judicial conviction or trial by jury.

The people of no Territory since the foundation of the government have ever had the elective franchise or the right of self-government except by the provisions of the treaty by which it was acquired or the grace of the national congress; and the people of this territory acquired none of these rights by the treaty of Guadalupe Hidalgo in 1848; so that when the Forty-Seventh Congress disfranchised the ruling class and deprived them of the elective franchise, it deprived them of no inherent or natural and no acquired right. No more does it when for the same cause it denies them admission to the Federal Union and their Delegate admission to a seat on the floor of this *House*.

The grasp of the Mormon Church upon the people of Utah has never been relaxed. In no such sense has a church ever ruled a state since the Lawgiver of Israel, through the thunders of Sinai and in the name of Jehovah, led the "chosen people" into the valley of the Jordan.

Mahomet poured his fanatic armies into every quarter of the eastern world and forced the nations at the point of the sword to acknowledge the prophet. But he transmitted his empire to the soldier and not to the priest. Whatever may be said of the influence of the Church of Rome in the courts and councils of Christendom, the fact still remains that the church has always been subordinated to the civil and military power.

It is reserved for the first republic of the world, here in this citadel of personal liberty, with a Constitution commanding the law-making power by "all needful rules and regulations" to see to it that republican practices and principles prevail upon every inch of American soil—it is reserved to us to tolerate within our borders an establishment of religion that not only enslaves the conscience, enfeebles and disarms the will, but dominates the civil power.

That the danger is such as justifies the exercise of this extraordinary power was not seriously denied. And still it is contended that this House, by reason of some legal fiction or other, is powerless to exclude from its floor the representative of a political community which Congress has asserted the power to disfranchise.

To the question as to whether this incongruity exists, I invite your attention.

Upon the question of *prima facie* title to the seat and the allenage of the claimant, my views, as expressed before the committee, are briefly as follows:

CERTIFICATE OF ELECTION ISSUED TO ALLEN G. CAMPBELL, DELEGATE TO THE 47TH CONGRESS.

United States of America,
Territory of Utah,
Executive Office, ss:

I, Eli H. Murray, governor of the Territory of Utah, do declare and certify that at a regular election for Delegate to the Forty-seventh Congress, held in said Territory, on the first Tuesday after the first Monday of November, A. D. 1880, returns whereof were opened in my presence by the Secretary of the Territory, Allen G. Campbell was the person, being a citizen of the United States, having the greatest number of votes, and was therefore duly elected as delegate from said Territory to said Congress, and I do give this certificate accordingly.

In testimony whereof I have hereunto set my hand and caused the great seal of the Territory to be affixed. Done at Salt Lake City this 8th day of January, A. D. 1881.

L. S.

ELI H. MURRAY,
Governor.

By the Governor:
ARTHUR L. THOMAS,
Secretary of Utah Territory.

So that this contest, so far as the *prima facie* case is concerned, may be resolved into the following propositions:

First. Is the governor's certificate such a muniment of title as confers the seat *prima facie* upon the contestant? McCrary, section 208, declares that "it is enough for a *prima facie* case if the certificate comes from the proper officer of the State, and clearly shows that the person claiming under it has been adjudged to be duly elected," etc. It is made conclusive of the *prima facie* title of the contestee, because it is a record. To be a record it must import absolute verity. It derives its authority from a single fact, and that fact is that the holder of the certificate received the highest number of votes. That fact may be omitted and the certificate still be valid. But when in addition to that fact the certifying officer couples with it the statement of another fact not necessary or germane to his determination, and upon both facts argumentatively (therefore) concludes that contestee was "duly elected," the document fails to import absolute verity, excites doubt, challenges controversy, and opens the door to investigation.

Second. The contestee having failed to make a *prima facie* title to the seat, and he being the only person bearing the certificate of the only officer competent for that purpose, it would seem to follow that the only remaining question is which of these two persons having the qualifications prescribed by the Constitution received the greatest number of votes at the election?

And here, at the threshold, it is objected that the contestant has failed to make any proof of the allegation, in his notice of contest contained, that he received the highest number of votes at such election within the time prescribed by law.

To which it may be replied that the notice of contest proceeded upon the assumption that the certificate of the governor conferred upon the contestee a *prima facie* title to the seat.

But if I am right in my first conclusion, and the contestee has by reason of his certificate no valid title whatever, then how can the burden of proof in the first instance be said to being upon the person who has named himself as a contestant? Both be destitute of a *primn facie* title, how do the parties differ so far as determining which has the affirmative in the contest?

But if the form the contest has taken is to be deemed to determine that, then we are brought to the question, is the admission contained on page 32 of the record sufficient to put the contestee to proof of the affirmative allegations of his answer? At all events the contestee seems to have so regarded it, when, upon notice of the contestant, he produced and examined witnesses before the notary to establish the alienage and polygamy of the contestant.

For this and other reasons stated by counsel upon the argument, and which it would be idle to recapitulate, I hold that the contestee held the affirmative in the introduction of proof before the notary; and not having asked to be relieved from his default, we are brought to the inquiry, was the contestant at the time of his election an alien? Upon this question I adopt the reasoning of the chairman, and hold that the judgment of naturalization cannot be attacked collaterally, and in conclusion, constrained as I am by my views of the principles of construction to hold that George Q. Cannon was at the time of the election a citizen of the United States, and received the greatest number of votes cast, I am, nevertheless, of the opinion that this committee should not recommend, and the House ought to refuse to admit, the said Cannon to a seat as a Delegate from the Territory of Utah, for the reason that, in defiance of the laws of Congress and the sense of mankind, he is living in open adultery with plural wives, and advocating the doctrines and practice of polygamy.

And so, seeking the shelter of no subterfuge or technicality, I stand on this proposition for the dignity and honor of the House.

And now that we have cut loose from and disposed of every preliminary question in the contestant's favor, we are brought face to face with the last and only ground upon which his claim to a seat can be rightfully rejected. And this issue upon which the report of the committee must, I think, stand or fall, is best formulated in the published declaration of the contestant himself, on page 60 of the record, and is as follows:

In the matter of George Q. Cannon. Contest of Allen G. Campbell's right to a seat in the House of Representatives of the Forty-seventh Congress of the United States, as Delegate from the Territory of Utah.

I, George Q. Cannon, contestant, protesting that the matter in this paper contained is not relevant to the issue, do admit that I am a member of the Church of Jesus Christ of Latter-day Saints, commonly called Mormons; that in accordance with the tenets of said Church I have taken plural wives, who now live with me, and have so lived with me for a number of years and borne me children. I also admit that in my public addresses as a teacher of my religion in Utah Territory I have defended said tennet of said Church as being, in my belief, a revelation from God.

GEO. Q. CANNON.

So that the very question for this House to determine is, "Are the matters in that paper contained relevant to the issue," and do they constitute a valid reason why George Q. Cannon, after having been duly elected a Delegate from the Territory of Utah, should be refused a seat in the American Congress? In other words, does the fact that he is a member of the "Church of Jesus Christ of Latter-day Saints," commonly called Mormons; that, in accordance with the tenets of such church, he has taken plural wives, who now live with him, and have so lived with him for a number of years, and borne him children; that in his public addresses as a teacher of that religion he has defended such tenets as being, in his belief, a revelation from God—are these facts relevant to the issue, and do they constitute a valid reason for his exclusion?

Let us pause right here to consider the objection raised before the committee, and by the gentleman from Tennessee yesterday, that inasmuch as it does not affirmatively appear by the terms of the admission that any of these wives were taken subsequent to the act of 1862, declaring polygamy a crime, that therefore the confession does not bring the contestant within the penalties prescribed by the act.

A technical reply to a technical objection is fair, and my answer is, that the contestant, having confessed the truth of the facts constituting the offence of polygamy under the act, is bound to plead the facts, which by way of avoidance, take the case out of the operation of the statute.

So that on the record made by himself he cannot now avail himself of that objection.

In the first place, I insist that the position taken by the chairman in the report of the majority is sound; that while the House of Representatives may not disregard any law which Congress has the constitutional right to pass, and that while Congress is competent to provide, under the Constitution, for legislative representation for the the Territories; that, nevertheless, Congress cannot bind the House by any law respecting the qualifications of a Delegate.

I cannot better state the position than to employ his language:

> It (Congress) cannot affix a qualification by law for a Delegate and bind any House except the one assenting thereto. The qualification of members is fixed by the Constitution. Hence they may not be added to or taken from by law. But as to Delegates, they are not constitutional officers. Their qualification depends entirely upon such a standard as the body to which they are attached may make. It is urged this means a legal qualification. This is admitted; but that legal qualification is remitted to the body to which the Delegate is attached, because it is the sole judge of that requisite. It is unfettered by constitutional restrictions, and cannot yield any part of this prerogative to the other branch of Congress or the Executive. If it could, the right to amend would follow, and the House might find itself in the awkward position of having the Senate fixing qualifications to Delegates, or the Executive vetoing laws fixing them, and by this means the power which by the Constitution resides alone in the House would be entirely abrogated.
>
> It is claimed that this is an autocratic power. This is admitted. All legislative bodies are autocratic in their powers, unless restricted by written constitutions. In this instance there is no restriction.
>
> It is contended that the act of Congress extending the Constitution and laws of the United States over the Territory of Utah, in all cases where they are applicable, extends the constitutional *privilege to* Delegates and clothes them with membership as constitutional officers of the House. We cannot assent to that view. The very language of the act itself only extends the Constitution and laws over the Territory in cases where they are applicable they cannot be applicable to the election of a Delegate: for, if they were, then Congress would have no authority to deprive a Delegate of the right to vote. To contend that the applicability of the Constitution in that respect extends to Delegates proves too much. It is clear, therefore, that that clause of the *Constitution relative to* the expulsion of a member by a two-thirds vote cannot apply to Delegates, because they hold no constitutional office. *It is* equally clear that the clause of the Constitution relative to elections, returns and qualifications of members has no applicability except by parity of reasoning; and we do not dissent from the view that, so far as the qualification of citizenship and other necessary qualifications (except as to age) are concerned, they extend to Delegates as well as to members. (Sec. 1,906 Revised Statutes, United States.) This is made so probably by the statute. Expressly so to all the Territories, except to Utah Territory, and inferentially to that Territory. It follows, as a logical sequence, that the House may at any time, by a majority vote, exclude from the limited membership which it now extends to Delegates from Territories any person whom it may judge to be unfit for any reason to hold a seat as a Delegate.

But, Mr. Speaker, I invite the attention of the House to another view of the legal aspects of the case under consideration. It must be conceded that if this House has lost its original, inherent and unlimited power under the Constitution to attach whatever conditions it deemed expedient to the admission of a Delegate from this Territory of Utah, it lost it by reason of the enactment of the provisions of the act of 1850 organizing that Territory. It will be observed that section 14 of that act, after providing the manner of the election of a Delegate, declares "the person having the greatest number of votes shall be declared by the governor to be duly elected, and a certificate thereof to be given accordingly." And there it stops.

Whether thus by omiting to provide, as provided by the general act

Concluded on page 270.