DESERET EVENING NEWS.

TRUTH AND LIBERTY.

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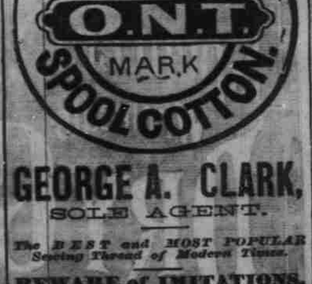

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UTAH CONTESTED ELECTION CASE.

(*Continued.*)

And so, Mr. Speaker, all along down the ages the human race has been marshalled in these two grand divisions. Asia, with polygamy on the one hand, after all its struggles and convulsions, to-day the same rigid, unchangeable, hopeless empire of force as in the dawn of the world. Europe and America, with monogamy on the other, through the ennobling influence of the Christian home and the irresistible devotion to country it engenders, mounting through centuries of persecution and slaughter and loss of all things to the possession of personal liberty and constitutional government.

God, in the march of His empire, has thundered his warning and planted His Cross in the sky. And if you will but listen reverently to these voices of the ages, you will retrace every backward step; take up your unused powers and proclaim to all the people, that in the judgment of this House it is "needful," yea, imperative, to the adoption and practice by this embryo State of republican principles; that so long as this Church rules this State and polygamy inspires its thought and dictates its action, so long as its accredited ambassador comes to us in the person of an avowed polygamist, a confessed violator of the law of congress, so long will this House refuse the Territory admission to the Federal Union and its agent admission to this floor.

I yield twenty minutes of my time to the gentleman from Tennessee, [Mr. Pettibone,] a member of the Committee on Elections.

Mr. Pettibone. Mr. Speaker, I happen to be a member of the Committee on Elections of this House. With other gentlemen I have prepared my views on this case and presented them to this House, and they have been printed. On yesterday my colleague, from Tennessee [Mr. House] chose to designate the language which I had used in the conclusion of my report as extraordinary. I will read what he said as the text of what I am about to say:

Several members of the Committee on Elections, of the majority side, have favored the House with written reports, undertaking to set forth their reasons for denying Cannon his seat. These reports seem to be characterized more by a feeling of passion and indignation than by that calm judicial tone which should pervade such opinions given to this House for their guidance. My colleague, [Mr. Pettibone,] in the conclusion of the report which he submits, uses this extraordinary language:

"My voice and vote, then, is for a resolution denying to George Q. Cannon a seat as a Delegate from Utah, because it is in gross violation of the dignity of the House, and would be an insult to the sovereignty of the nation to admit a self-admitted criminal violator of the laws of Congress to a seat in the body whereof we are members."

That statement of mine is challenged by my colleague from Tennessee. He informed us yesterday that Mr. Cannon was a Delegate and had a seat upon this floor in the Forty-fourth, Forty-fifth, and Forty-sixth Congresses; and that when the question was presented to those Congresses it was determined by them, and each time Mr. Cannon received his seat; and the fact that he is a confessed polygamist is denied emphatically by my colleague from Tennessee.

I will now turn to the record in the Forty-fourth Congress, to the answer which Mr. Cannon himself filed in reply the charges made against him. I find, among other things, the following by Mr. Cannon:

Ideny that I am now living with four wives—

Then comes a comma, and then another statement—

or that I am living or cohabiting with any wives in defiance or willful violation of the law of Congress of 1862, entitled "An act to prohibit polygamy in the Territories."

There were two things denied by Mr. Cannon. The first that he dedied was that he was then living with four wives. The charge of polygamy against him he explicitly, emphatically, and clearly denies. That is signed by George Q. Cannon himself.

Now, I beg this House to recollect that the act forbidding polygamy in the Territories was passed in 1862. George Q. Cannon, himself being the witness, was not guilty of polygamy in 1874. What does he say now? In the trial of this case before the committee on elections of this House, when his attention was challenged to this very matter, with the counsel upon both sides present, with the contestants upon both sides present, my colleague on the committee, the gentleman from Pennsylvania, [Mr. Beltzhoover,] called the attention of the committee and of counsel to the matter; and in the presence of Mr. Cannon it was admitted that what I shall now read was in his handwriting, and it was a part of the testimony submitted to the committee. Let us see what it is:

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—

Recollect, Mr. Speaker, that he was the contestant in this case—

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 tenet of said Church as being, in my belief, a revelation from God.

GEORGE Q. CANNON.

Now we find Mr. Cannon in 1872 denying that he had then violated the statute of 1862, when his case was contested in the Forty-fourth Congress by Mr. Maxwell. He now admits that he has taken plural wives, that he lives with them and they with him, and that they have borne him children.

It was in view of these facts, in view of the fact that in the Forty-fourth Congress he denied that he had violated the law that was passed twelve years before—I say it was in view of this, and in view of his solemn admission in this case now on trial, now up for final adjudication, that he was living in polygamy—that I said he was a self-confessed violator of the laws of Congress. I repeat here and now, that he either is a self-confessed violator of the laws of Congress, or words in the English language have no meaning.

Now, what is bigamy? I turn to Bouvier's Law Dictionary. I find there that bigamy—that is the crime, that is what is designated in the law. Polygamy is a generic term; bigamy is the legal term. Now, what is bigamy?

The willful contracting of a second marriage when the contracting party knows that the first is already subsisting.

I ask the attention of this House now to this definition, for it goes to the root and to the very meat of the matter:

The state of a man who has two wives, or of a woman who has two husbands, living at the same time.

Mr. Cannon says that that was not his condition in 1874, but he now admits solemnly that it is his present condition. The law was passed in 1862, and punishes the crime with fine and imprisonment.

What is bigamy at common law? I ask the attention of every lawyer here to this. In England this crime is punished by the statute of James First, chapter III, as a felony. When did James First come to the throne? History tells us in the year 1603. That was four years before the first white man set foot upon the soil of Virginia, and under the common law of England, in the colonies of England, in the United States, at common law bigamy has been a felony ever since 1603.

This man George Q. Cannon admits that he is a bigamist and polygamist, solemnly admits he has plural wives now living with him, and he is therefore a self-confessed felon, (using the language of the common law), a self-confessed violator of the laws of Congress.

Now then, Mr. Chairman, I grant, if Mr. Cannon, or a Delegate from any Territory, was a member of this House, I grant, for I can read the Constitution of my country, that only three conditions are laid down, only three qualification can be considered. What are they? Seven years a citizen of the United States, twenty-five years of age, and an inhabitant of the State from which he comes.

Is this man a member of this House? I concede to the fullest extent that if he is a member, or if any Delegate from any Territory can be considered as a member of Congress upon this floor, then, in the language of the Constitution of my country, I say we must admit Mr. Cannon. I make no subterfuge, I quibble not as to the law.

But, Mr. Speaker, what says the Constitution on this subject, that fundamental law which we are sworn to support? It is this:

The House of Representatives shall be composed of members chosen every second year by the people of the several States.

This is what your House is composed of. Now, there is an old law maxim which I learned as a law student, and which I have never heard denied by any lawyer, that the expression of one is the exclusion of the other.

My colleague (Mr. Houre) spoke yesterday of the Delegate from a Territory as being a member. It slipped also from the mouth of my friend from Texas, (Mr. Jones,) a good lawyer, as I am glad to acknowledge. Treat him as a member and then undoubtedly, gentlemen you have the argument, but I dare you in the face of the oath you have taken, I dare you in the face of the Constitution of the country, to say he is a member of this House. I know it is easy to fling epithets around here. I know it is easy to say I am beside myself. But, Mr. speaker, there was a man, and, Democrats, probably you know his name; he went under the name of James Madison while in the flesh, and was known as the father of the Constitution. Well, in the first case that ever came to this Congres, the case of Mr. White, who represented as a Delegate the people of the Southwest Territory, the question was determined once for all as to his status. Mr. Madison, what do you say? I am taken back to the year 1794, and I seem to see the venerable form of the father of the Constitution rising and teaching Democracy to you gentlemen on the other side of this House.

Let me read:

Mr. Madison said that in new cases there often arose a difficulty in applying old names to new things. The proper designation of Mr. White is to be found in the laws and rules of the Constitution. He is not a member of Congress, therefore, and so cannot be directed to take an oath unless he chooses to take it voluntarily.

So much for James Madison.

Now it may be well that I, Mr. Speaker, in my youth and juvenessence may not be right, but I find myself in eminently respectable company, and I say in regard to this matter as Byron said in his English Bards and Scotch Reviewers when it was said by the poet laureate he was not altogether correct—

Better to err with Pope than shine with Pye.

And better for me, Mr. Speaker, to err with James Madison than shine with my friend from Tennessee, [Mr. House] an eminently respectable representative of modern democracy. What power have we over this subject? I have before me a citation from Chief Justice Marshall. I am aware he did not know much law, but as he happens to be on my side I will quote him. Commenting on the provision of the Constitution that

Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other property of the United States;

Judge Marshall, in The American Insurance Company vs. Canter, 1 Peters, 511, declares: "In legislating for the Territories Congress exercises the combined powers of the general and of State government."

Is that true or false? I believe Marshall was correct. But I go further. I have in my law library a book entitled, "Cooley on Constitutional Limitations, and I find this among other things.

The people of a Territory, except as Congress shall provide therefor, are not of right entitled to participate in political authority until the Territory becomes a State.

I commend this to my friend from Texas.

What then? I have shown you passed a law in 1862 making bigamy or polygamy in any Territory a crime, a felony.

I say next that George Q. Cannon, solemnly denied in 1874—and I have looked in vain through the record for evidence to contradict him. Solemnly denies that he was a polygamist in 1874. I find in his own handwriting in this case he confesses now that he is a polygamist: And here he stands a self-confessed criminal violator of the law, a felon, if we may believe his own words out of his own mouth, and demands as a right the rights of other members, not Delegates, not envoys, not agents from a Territory not yet admitted into the Union, but the same rights of every member of Congress upon this floor as they are laid down and written with an iron pen in the Constitution of your and my country. Furthermore, Mr. Speaker, that being so, I have held that it is beneath the dignity of this House to admit upon this floor this self-confessed felon.

But I have another word to say, and I challenge the attention of the members of this House to the wording of the Constitution. Why was it that in making the Constitution our fathers said that no qualification shall be demanded save the qualifications of age, inhabitancy, and citizenship?

[Here the hammer fell.]

The Speaker. The gentleman's time has expired.

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

Mr. Jones, of Texas. I have ten minutes of my time remaining, and will yield five minutes to the gentleman from Tennessee.

Mr. Pettibone. Thank you, sir. I say why was it, in making the Constitution, our fathers established no qualifications save those of age, inhabitancy, and citizenship? Does not every lawyer here know that when the Constitution was adopted in 1789, that bigamy, that larceny, that murder, that all the felonies and all the common-law misdemeanors were then fully cognizable in the courts of the several States? This being so, Congress might well say—the constitutional convention might well say—we will leave the punishment of these offenses to the various forums of the different States. But when you come to the Territories, Congress, exercising the power of the State Legislature, as Judge Marshall says, shall take cognizance of them. Now, this is a different thing. A man may commit bigamy in Maryland, and murder in Tennessee, and larceny in Vermont, and those States will look to it. Why, sir, even in the ancient forum at Corinth, when Paul was brought before the Roman judge, Gallio said to the multitude if he, Paul, had committed any crime he would attend to it, but "if it be a question of words and names, and of your law, look ye to it."

Now this act of George Q. Cannon is in violation of the law of this Congress, and one word in this respect. Why do they say this is without precedent? I hold in my hands the reports of election cases in Massachusetts, and I see that as long ago as 1785 this question was adjudicated in that State. One, Jeremiah Larned had been elected to the Legislature of Massachussetts, but it turned out that he had violated a law that that Legislature had passed. And what was it? Why on election day he headed a riot for the purpose of preventing the collection of taxes. What did the fathers of that day do? They were not "idiots" Mr. Speaker. They were not men who were regardless of human rights even though they came from the State of Massachussetts; and they held that inasmuch as this man Larned had violated the law which they had passed, although it was only a question of assault and battery, he was unworthy to take a seat upon that floor and they kept him out.

Now, sir, I recognize the chivalry of gentlemen on the other side; but I would be ashamed to be silent if I stood alone on this floor on a question of right and constitutional obligation. But I say to the gentleman from Texas, and to the people of Utah, to whom he referred, and to the women who voted in that election for George Q. Cannon, that there is a state of affairs that demands correction by the strong iron hand of this Congress. Men and women throughout the land, voiceless thousands among them, tied up, bound down, kept under control by an ecclesiastical despotism, the like of which has not been seen this side of the Middle Ages, voiceless to-day, whisper to you and to me to stand by the action of the Committee on Elections and say to Mr. Cannon and to men like him, if you violate criminally the laws which the Congress of this nation has passed you are not worthy to have a seat upon the floor of this House. You shall not desecrate by your presence this temple of equal rights and constitutional freedom!

(*To be continued.*)

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

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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.

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