

THE EVENING NEWS.

Mondays, June 20, 1874.

CONTESTED ELECTION, TERRITORY OF UTAH.

Geo. R. Maxwell vs. Geo. D. Cannon
Attorney of Plaintiff
Attorney for Defendant
House of Representatives of the
Territory of Utah, Washington, D. C., 1874.

(CONTINUED.)

This resolution was adopted. On the next day, December 20, an motion of Mr. Dawson a resolution was adopted instructing the Secretary of War to communicate to the House a copy of the record, testimony, finding, sentence, and action of the President in the case. On the 5th of January, 1865, the Secretary of War complied fully with the requirements of the resolution by communicating the record, testimony, finding, sentence, and action of the President in the case. The Committee of Elections never made any report, and the House never took any further action in the case.

On the 15th of May, 1866, Mr. Knobell introduced a resolution referring the whole file of documents Keating at Willard's hotel, on the 5th of the same month, by Mr. Herbert, a Representative from the State of California, and instructing the Committee on the Judiciary to take the case into consideration, with power to send for persons and papers, and to report what action the House should take in the premises.

The House refused to entertain the proposition. This all occurred at the first session of the 34th Congress. At the third session a petition was sent to the House signed by 2,000 citizens of California, desiring their belief that in the judgment of Keating Mr. Herbert had committed an act entirely without justification, had disgraced his high position, and that he could no longer satisfactorily represent the will of his constituents in the House of Representatives and asking that, in the event of his trial before the court, he should be excluded from the House. This petition was referred to the Committee of Elections. On the 24th day of February, 1867, Mr. Colfax submitted the report of the committee. The committee, without making any recommendation, concluded their report in these words:

"Your committee, therefore, report the character of the petition, the statements embodied in it, and the number of its signers, that the House may determine what action, under the circumstances they may deem just to all concerned."

The House took no action whatever in the case, and Mr. Herbert continued to be a member of the House until the expiration of the 34th Congress. He voted at the very last call of the year and nays on the 3d day of March, 1857.

Gentlemen of the committee, with a single observation I pass from these parliamentary precedents and from the question to which they relate to another branch of this case.

The line of demarcation between these two great powers of the House, the power to judge of the election returns and qualifications of its members by a mere majority vote, and the right to expel its members by a two-thirds vote, is clear and well defined. That line is not to be obliterated. It would be necessary to preserve it, even though its obliteration might seem to threaten no disasters, even though its maintenance might provoke the anger of the House, to the people, or to the Constitution. For this barrier is raised by the Constitution itself. But the difficulties which would result from a practical regard of the distinction between these two powers are too obvious and too grave to be underrated or overlooked. Suppose that in time of great party heats, the Committee of Elections taking cognizance of facts which by the Constitution are made grounds of expulsion, but not grounds of ineligibility, should thereupon report against a sitting member's right to sit, and the House itself should, by a bare majority of votes, sustain the report of the committee, and decide that the Representative concerned was not entitled to his seat. And suppose that the majority, disregarding the protest of the minority, and trampling down the Constitution, should thrust out or situate him, notwithstanding the fact that less than half of the House such a Representative, without a two-thirds vote. If the majority should violently resist such an outrage, it would be, of course, a great calamity to the country. It might easily result in a civil war, if not even in civil war. But, deplorable as this would be, the success of the minority in such an outrage would be a still more fatal calamity. It would be, in fact, the end of our public life, government, and influences for good, as we have known them. They would be chosen no longer by the people but by themselves, and even the pretence of the right of representation would disappear.

(TO BE CONTINUED.)

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