### DESERET EVENING NEWS: THURSDAY, FEBRUARY 15, 1900.

CONSTITUTIONAL RIGHTS.

Speech of Hon. Chas. E. Littlefield on the Roberts Case, in the House of Representatives, Jan. 23, 1900.

## (Continued.)

ELEMENTARY AUTHORS.

examine briefly the elementary wrisumine briefly the elementary Wri-relied spen. They rely upon Bur-spon Political Science and Consti-law. The gentleman from M. Tayler) says that I suggested M. Tayler) says that I suggested Mr. Tayler) says that I suggested r. Burgess was not entitled to sideration as an authority. I emember ever having made any upon the distinguished gentlerites, what the distinguished who writes, what the distinguished been of the majority suggest, is "a ambitious work." Certainly the rity views contain no such reflec-rity views contain no such reflec-they say it "must be considered beaute on the subject of constiturity on the subject of constitu-

to note the fact, that Mr. Burgess, work on Political Science and initional Law, cites no authority very loose propositions that he down in an ex cathedra manner, is down in an ex construction on Public (waste no time on Throop on Public cers. He suggests no authority to can his text that relates to or is any way connected with the con-any way connected with the Conby way connected with the Con-tion of any provision in the Con-ion. Any member of the bar can be the work and see whether or of my suggestion is correct.

omercy suggests the extraordinary position that Congress can not, but one House can, add qualifications, does not, however, state it to be the but says he is "strongly of the sty, but says he is you will read what inform etc. If you will read what says the House does under this pow-says will be in doubt as to what he think on the element of qualifica-

ow, I wish to call attention to what Now, I wish to call attention to what Justice Miller says, and I think I rely upon what Mr. Justice Miller because I find in the report of the ority this splendid and significant finate of Justice Miller's character. a majority say: 'If a profound con-utional authority like Justice Miller Now, what did Justice Mayed.

tiller say? He said: Though it might be conceivable that

Not the House of Representatives, not senate, but "that Congress"-

might make some conditions or limitatins concerning the eligibility"

Now we are finding out from "pro and constitutional authority" what fications mean-

te eligibility of its members, it has been done and the constitutional cations alone regulate that sub-Miller on the Constitution, page

Mark that language!

He was a "profound constitutional 'and every lawyer in this sense recognizes it, and reveres the mory of that magnificent jurist. He s "it has not been done and the cononal qualifications alone regulate I submit to the indusand skill and care of the gentlemen part of the majority, that it ight have been well for them to have mined the chronology of that state t before they cited it as an authorwhethere the House, on the proposi-is that this act of 1882, known as the Liminds law, excluded the gentleman

Then was this lecture of this disse "it has not been done and the actutional qualifications alone regu-is that subject?" That lecture was shed jurist delivered in which ed in 1889 and 1890. This statute tathey now claim is a disqualification ns macted in 1882. It can not be said an Justice Miller did not know that the was any such legislation, because the reat Ramsay case (114 U. S.). the defines the status of polygamists s persons unlawfully cohabiting, was amounced in 1884, two years after this at was passed, and five years before Justice Miller said that "conditions or initations" had not been added. Jus-ies Miller took part in that decision a a member of the United States Surems Court. There is your authority. There is the jaig, who says, concerning the ele-ments of eligibility, "It might be conceivable that Congress might make some conditions and limitations," but the also says:

own opinion as to what the Constitution means, but asserts that he undertakes means, but asserts that he undertakened merely to give the statements of oth-ers." Here, in this year of our Lord 1900, in this debate, the profession and the courts are advised, that this great commentator on the Constitution, Justice Story, did not write a commentary upon that instrument, but simply narrated what somebody else said or sim-ply what some other man thought. He is "the Boswell of the Constitution"

[laughter] and no longer an authority. Well, now, I submit for the consider ation of my distinguished friend, that this is in the nature of a revelation to the courts, and the profession in the United States. I had occasion while I

was investigating this question, upon an allied proposition, to examine the opinion of the court carefully, in Kilbourne against Thompson, that case to which I have already alluded as es-tablishing the constitutional limitations tablishing the constitutional limitations of this House in the exercise of its power to commit for contempt, and I noticed that the counsel in his brief cited to the court twelve in-stances where this great, powerful body had, in the pienitude of its mighty power, committed for contempt. And I noticed that the counsel on the other side eited one Story, "the Bosweil of the Constitution" Constitution,

I also noticed, that when the justice of the Supreme Court came to write his opinion, he did not even so much as allude to the alleged precedents of this great body; but, being neither op-pressed nor impressed, by this new nallucination as to Mr. Story, inadvertently referred to him in terms of respect as an authority. [Applause and laugh-ter.] I do not imagine it is necessary for me, an humble member of the legal profession, to stand here to defend the memory of that distinguished man. May I submit for the consideration of the majority that long after all of us who shall take part in this debate, in our weak and feeble way, shall have been covered by the protecting mantle of oblivion, the magnificent intellect of Judge Story will continue to illumine the jurisprudence of this and other

lands? [Applause.] They quote what Mr. Bingham said about Mr. Story. I submit it is hardly a proper attack at the hands of men who wish to establish in a disinterested manner a proposition. John A. Bing-ham, of Ohio, if I remember aright-a gentleman from Ohio. This legal criticism of Justice Story seems to have originated in Ohio. This is from a speech of John A. Bingham, of Ohio. Speaking of Mr. Justice Story, he says:

"Gentlemen in this connection have referred to Story. I do not propose to read at any great length from him. I am not unmindful of the fact that this lamented man, so full of learning, often crowded into his pages so much of the text of others with whose writings he was familiar that a doubt often arises as to his true and certain meaning."

"This lamented man," how painful. Here seems to be the origin of this proposition, in Ohio [laughter], and when it was first started in Ohio, the. objection was that Judge Story would narrate what other great men had said, and you could not tell on that account where Judge Story undertook to say anything himself. The idea is now im-proved, and the objection is that he never gives his own opinion, simply narrates what other people said, and



ITS BENEFICIAL EFFECTS. GUISPILLE GAN FRANCISCO ULW, YORK

declaration in the preface of Story's works, upon which I suppose my distinguished friend determined, after hav. ing learned that John A. Bingham had ventured upon the ground, that he would eliminate Judge Story as a legal author. [Laughter.]

"My object will be sufficiently attained if I shall have succeeded in bringing before the reader the true view of its powers, maintained by its founders and riends and confirmed and illustrated by the actual practice of the government The expositions to be found in the work are less to be regarded as my own opinions than as those of the great minds which framed the Constitution or which have been found from time to time called upon to administer it. Upon subjects of government it has always appeared to me that metaphysical refinements are out of place.

I commend this closing sentence to my friends: "Metaphysical refinements are out of place,

The minority of your committee stand upon this provision of the Constitution precisely with Judge Story. They read it as it stands, plain and simple, clear and direct, as the fathers made and understood it, unimpaired by metaphysical refinement, furnishing a constitutional bulwark to the right, for which every true patriot would not only un-dergo imprisonment, but render up life We say that a right so precious itself.

to the front and faking up arms in the cause of the Boërs. I could not help but know that many of these were citcan not rightfully be frittered away by any "general-welfare" construction of this provision of the Constitution. izens of the United States. I also knew that many of them, in utter despair at Cooley certainly stands next in au thority to Story, and he says: the attitude of our own government, were taking the oath of allegiance to "Another rule of construction is that the Transvaal republic. When affairs had reached the state that my vice where the Constitution defines the circumstances under which a right may consul, Mr. Van Ameringen, closed up his business, took the oath of allegi-ance to the republic and went to the front, as a burgher, I thought the time had come when I should make a report be exercised, or a penalty imposed, the specification is an implied prohibition against legislative interference, to add to the condition, or to extend the penalty to other cases. On this ground it has been held by the supreme court of Maryland, that, where the Constitution defined the qualifications of an officer, it was not in the power of the legislaof these conditions. OPENED AMERICAN MAIL. "It was over four weeks from the time the war opened before I received a ture to change or superadd to them, unsingle mail dispatch from my governless the power to do was expressly ment or a personal letter. The mail for by necessary implication conferred by the Constitution." (Cooley's Constituthe Transvaal had all been stopped at Capetown by order of the high com-missioner. When this mail was finally forwarded to me, after Colonel Stowe, tional Limitations, page 78.) Cushing, as against his former statethe consul general at Capetown, had secured its release, I had the humilia-tion, as the representative of the Amerment, says: "The Constitution of the United States having prescribed the qualifications reican government, of sitting in my office in Pretoria and looking on envelquired of representatives in Congress, the principal of which is inhabitancy within the State in which they shall be opes bearing the official seal of the American government opened and offi-cially sealed with a sticker, notifying respectively chosen, leaving it to the States only to prescribe the time, place, me that the contents had been read by the censor at Durban. and manner of holding the election, it is a general principle that neither Conlooked up international law, but gress nor the States can impose any ad-ditional qualifications. It has therefore been held, in the first place, that it is failed to find anywhere that one military power can use its own discretion as to forwarding the official dispatches of a neutral government to its reprenot competent for Congress to prescribe any further qualifications, or to pass any law which shall operate as such." (Cushing on Law and Practice of Legissentative in a besleged country. "The mail service from Delagoa Bay to Europe was continually interrupted by the action of British men-of-war at lative Assemblies, second edition, p. 27, that port. The service was over two sec. 75.) weeks longer than by the west coast, and there were continued rumors that that port would be closed and commu-nication with the outside world entirely John Randolph Tucker, one of the lat-est writers on the Constitution, is explicit on this point; cut off. The cable service from the Transvaal was absolutely cut off. I "Nor can the Congress nor the House change these qualifications. To the lat-ter no such power was delegated, and was privately informed by the Belgian and German consuls at Pretoria that the assumption of it would be danger-ous, as invading a right which belonged their official cables in code to their governments had been refused by the cento the constituent body, and not to the body of which the representative of such constituency was a member." Tucker on the Constitution, 394. STOPPED OFFICAL TELEGRAMS. "I filed one cable in the interest of an "The principle that each House has the American in Pretoria, which was reright to Impose a qualification upon its membership which is not prescribed in fused absolutely by the censor at Dur-ban. This cable I sent to the flancee of a Mr. Nelson, an American business the Constitution, if established, might be of great danger to the Republic. It man in Pretoria. She was on her way to South Africa from Buffalo, N. Y., when the war broke out. According to was on this excuse that the French directory procured an annulment of elec-tions to the Council of Five Hundred. letter which Mr. Nelson received just and thus maintained themselves in before the war commenced she was power against the will of the people, who gladly accepted the despotism of Napoleon as a relief." Foster on the buying a trousseau in Europe. The ca-ble requested her to come to the east Constitution, page 367.) When I informed Mr. Nelson that "It is a fair presumption that where the Constitution prescribed the qualifi-cations it intended to exclude all others." Paschal's Annotated Constituthe cable had not been sent, his brother took the oath of allegiance to the republic and went to the front. But these are simply minor details. The misrep-resentations which had been going on tion, second edition, page 305, section before the war and after it opened were of such a serious nature and would require such detailed explana-tion that on the 6th of November I filed 'When the Constitution prescribed the qualifications for an office, the legisla-ture can not add others not therein prea cable to the department in code, stat-ing that I wished leave of absence in cribed." McCarry on Elections, section order to visit the States. (To be Continued.)

DEMAND WAR WITH ENGLAND.

Expression on Statement of Facts by Consul Macrum,

HOW BRITISH TREATED HIM

#### Opened Mail and Interfered with His Business as an American Official.

[Early Dispatches.]

Chicago, Feb. 14.-"War with England should be the policy of this government," said Governor Andrew D. Lee of South Dakota, "if the facts set forth in ex-consul Macrum's open letter issued to the American people are found to be orrect.

"This action of the British authori-ties at Durban in tampering with mail matter addressed to Mr. Macrum is damnable," the governor continued, "and an outrage against the rights of neutral powers. If the facts as stated in that letter are true, the American government instantly should call Great Britain to severe account. That may mean another war on our hands, h know, but war is preferable to national dishonor. The spectacle of an Ameri-can citizen, be he in private or public life, having to sit idly by and see his mail opened by an official of a foreign power, is too humiliating for my blood to stand?

Almost equally as radical comments were made by several of the leaders in the anti-trust conference, who were shown the dispatches from Washington tonight, setting forth the experiences of the ex-consul. All were emphatic in saying that the rights of citizens of neutral powers should be protected, and that England should be condemned strongly for her high-handed methods. CONSUL MACRUM'S STATEMENT. Washington, Feb. 1.-The following dgned statement was given out tonight by Charles E. Macrum, former United

States consul at Pretoria: "The situation in Pretoria was such that, first, as an official. I could not remain there while my government at home was apparently in the dark as to the exact conditions in South Africa. Secondly, as a man and citizen of the United States, I could not romain in Pretoria, sacrificing my own senterspect and that of the people of Prvtoria, while the government at home continued to leave me in the position of a British consul and not an Ameri-can consul. I want to say right here that there was not one single request made of me through the department of state looking to the care of British in-terests in Pretoria which I did not fulfill and report upon according to my orders. On the other hand, American interests in South Africa were in that condition which demanded that the de-partment of state should be cognizant of them.

"I issued the statement received from the state department that Americans must remain neutral. In the face of this Americans were continually going

"I set forth in this cable that my vice consul had enlisted in the Boer army; that a Mr, Atterbury, an Amer-ican, whom I had known very favorably for more than a year, could take charge of the office until my return. "In reply to this dispatch, which was forwarded without delay, I received from the department a reply advising me that my presence at Pretoria was important to public interests. On the 5th I telegraphed again acknowledging the receipt of the cable, advising the department that the situation was not critical; that Mr. Atterbury was com-petent; that my presence in America was important. "No reply was received and I wired again on the 11th, stating that no reply

again on the lith, stating that no reply had been received, and again urged a favorable reply. On the 14th of Novem-ber, I again wired the department, stating that I could not leave without permission; that I would forfeit my post if the reasons which I would make to the department did not prove satis-factors.

"This cable was delayed by the censo until the 2nd of December, when I had advices that it had just been forwarded. On the 18th of November I again filed a cable, stating that three of my cables had been unanswered, and stating that a substitute would act as consul during absence and requesting a reply. To this I received a reply immediately, which was a reiteration of the reply to my first cable.

RELIEVED TO COME HOME.

"Upon receipt of this reply, which was on the 20th of November, I immediately wrote to the department accept ing the refusal to grant my leave and stating in that letter that I would abide by the decision of the department and attempt to convey an intelligent idea for the department's guidance of the conditions there in mail dispatches. On the 4th of December I received a reply from the department to my cablegram of the 14th, which I had been informed two days previously had just been forwarded. It read as follows:

"You may come home. Put Atter-bury temporarily in charge. Department will send mail from here.' "This was signed 'Hay.' Thereupon

I cabled the department as follows:

'Sail 18th by Naples.' "This cablegram was sent on the 8th and in the meantime I prepared to go. A few days later I received a telegram from Mr. Hollis, consul at Delagoa bay, stating that he had been instructed to come to Pretoria to take charge my office during my absence and until a man could arrive from Washington. Mr. Hollis arrived on the 14th of De-cember and was thoroughly posted in the routine of the office and I intro-duced him to the heads of all govern-ment departments and to my consular olleagues "I left Pretoria the night of Dec. 16.

I went straight to Paris, notified the de. partment of my presence there while waiting for the American line boat to sail for New York. I arrived in Wash-ington on Monday, the 5th of February, and reported to Assistant Secretary Hill of the state department, who officially informed me that Secretary Hay's son had been appointed in my place and that he was on his way to Pretoria. "I appreciated the seriousness of the

conditions in South Africa to the extent that on my way to Washington, believ-ing that I was still the consul in Pretoria, I refused to make any statement that would in any way involve the department or embarrass it. My one ob-ject was to lay the information before the department as to the true state of affairs in South Africa. If the depart-ment thought these facts were of value sufficient to warrant the expense of the trip I had taken, I expected to be remunerated and return to Pretoria. ing the department to act as it saw fit upon the facts which I laid before it. KNEW OF NO SECRET ALLIANCE. "Instead of this, I find that Secretary Hay, whether acting upon the reports in the newspapers, or upon advice from the British government, or some other motive, I do not know, saw fit not to wait until I could present my reasons in person and has been a silent or conniving partner to discredit reports of my official acts. I come home to find an attempt has been made to tear down my personal reputation. I wish to state right here that when I accepted my post as consul I knew nothing of any secret alliance between America and Great Britain and that I had seen nothing in the regulations which made the consul of the American Republic subject to the whims and caprices of an English military censor at Durban. I came to America with a motive of which I am not ashamed. "There is not one soul who can point to a single official act of mine which departed from the strictest neutrality My confidential dispatches to the de-partment contained information which will show my sympathy for the republic, but which time will prove to be un-biased as to actual facts. "My acts as a public official are all recorded at the department. My acts now as a private man can in no way involve the public service and I simply make this statement in my own defense as against those which have come from the department, secretly and officially





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"It has not been done, and the consitutional qualifications alone regulate that subject."

An "it might be conceivable" is hardy the foundation for a change in the constitution. However, if Justice Milier is an authority, and if he knew stough at that time to state the law as It was, there is nothing for our friends to stand upon in relation to this Ed-munds Act. They can come back to their "general-welfare" propositionthat is, they have found something that the do not like in some man; hence indigibility. It is one thing today; it may be another thing tomorrow; but they have found what they want for this case; they now declare it, and they

Ww propose to impose it. That is all I have to say about the authorities relied upon by the majority. only two State courts and only three wilters, Burgess, Throop, and Pomeroy -Pomeroy, in fact, does not state it, because he states an entirely different toposition-only these can be re-ed upon. I leave out Cushing, as he Writes on both sides. We present to the House, on the other hand, every case we have been able to find in the courts. the case of People vs May (3 Mich.,

#### The court said

"We concede to the fullest extent that t is not the power of the judiciary or en the legislature to establish arbimay exclusions from office or annex lifications thereto when the constifution has not established such exclu-flors nor annexed such qualifications. But it is begging the question to as-sume that the act of construing the Constitution has that effect." (610.)

n Thomas vs Owens (4 Maryland, in) the court said:

Where a constitution defines the qualfeatiens of an officer, it is not within the power of the legislature to change or superadd to it, unless the power be given to it."

And in Page vs Hardin (8 Ben. Mon., 61) the court said:

"We think it entirely clear that so far is residence is to be regarded as a qual-faction for receiving or retaining office, the constitution of the subthe constitutional provision on the sub-ject covers the whole ground, and is a denial of power to the legislature to impose grouper to the legislature to impose greater restrictions."

In Black vs Trover (79 Va., 125) the court also said:

"Now, it is a well established rule of construction, as laid down by an emi-lett writer, that when the constitution defines the defines the qualifications for office, the specification is an implied prohibition exainst legislative interference to things and the specifications thus defined "

I call attention right here and now to the suggestion that Mr. Justice Story in suggestion that Mr. Justice Story is the first man upon whom we rely, and what our friends of the majority my about Judge Story? Judge Story happens in this instance to state the as faily, squarely, and distinctly, con-ury to the contention of the majority. What do they say? "First, that it is damissed in a very few words." They my, "Justice Story himself disclaims

unquestionably "the Bosis therefore well of the Constitution." Let me read what Justice Story said

on the provision under discussion, and let the House say whether in the language used he is undertaking to repeat what any other men have said. He was discussing this very provision. He says:

"It would seem but fair reasoning upon the plainest principles of interpretation, that when the Constitution established certain qualifications as necessary for office"

Now mark-

"It meant to exclude all others as prerequisites. From the very nature such a provision the affirmation of these qualifications would seem to imply negative of all others." Story on the Constitution, section 625. Who said that? Is that the report of

what somebody else said, of some con-stitutional sewing circle, or is that the sound learning of Justice Story? This was the utterance of a great lawyer, and no man ever was a great lawyer who undertook to claim for himself all knowledge and information and speak in a dogmatic, autocratic manner on a legal proposition. It may be that Judge Story had read what Madison had said it may be he had read what Hamilton had said, because his significant lan-

guage is in perfect harmony with what they did say. Attention has already been called to what they did say. Again Justice Story says:

"But as the qualification of members were thought to be less carefully defined

by the State constitutions, and more susceptible of uniformity than those of the electors, the subject was thought proper for regulation by the convention. It is observable that the positive qual-ifications are few and simple. They respect only age, citizenship, and inhabit-ancy." (Ibid., section 616.)

In another part of his great work Judge Story discusses negative expres-sions and the weight to be given them in interpreting the Constitution. The same Story that lays down those principles as to negative expressions, and bearing them in mind, makes the posi-

tive declarations about the specific pro-vision of the Constitution under discussion, just quoted. He declares that though negatively stated, they are "positive qualifications." What, then, from the history of the Constitution and the opinion of this commentator becomes of this ignis fatuus of a negative form of expression? The majority, however, still insist upon it. Is not their position well illustrated by the distich from the

reader?

Amidst the mists He thrusts his fists Against the posts, And still insists He sees the ghosts."

[Laughter.] I wish in passing to read, for the in-formation of the House, the modest

January Imports and Exports.

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Washington, 15 .- The monthly statement of imports and exports of the United States issued by the bureau of statistics shows that during January, 1200, the figures were as follows: Merchandise, imports, \$75,826,975, of which \$32,940,280 was free of duty. The gain over January, 1899, was about \$17,-500,000. Exports, \$117,620,930, a gain over January, 1899, of about \$2,000,000. Gold imports, \$1,988,272; decrease, \$4.-000.000; exports, \$5,691,290; increase, \$836,000

Silver imports, \$2,130,355; decrease, \$1,-000,000; exports, \$4,599,199; decrease, \$781,000 During the last seven months there was an increase in the importation of merchandise, as compared with the cor-

responding period in 1899, of \$119,459,524, responding period in 1859, of \$115,459,324, an increase in the exportation of mer-chandise of \$50,534,973; a decrease of \$42,053,711 in the importation of gold; an increase in the exports of gold of \$11,793,166; a decrease in the importa-tion of silver of \$824,444, and a decrease of \$3,638,920 in the exportation of sil-var

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(Signed) "CHARLES E. MACRUM." Killed by a Fall.

New York, Feb. 15.-John B. Oltman, a broker, was killed at the New York Athletic club early this morning by falling down the marble stairs leading to the main floor. When half-way down the stairs he slipped and fell, then slid down the remainder of the steps, his head striking each step and the blood. which flowed profusely, reddening the white marble. Mr. Oltman was picked up unconscious, and died soon afterward.

Bequest of Theodore Thomas.

Chicago, Feb. 15 .- Theodore Thomas, the famous conductor, has determined to make the Newberry library of Chicago heir to his invaluable collec-tion of music. When he resigns the baton, or in any other contingency, he has made provision that the library shall have the scores and manuscripts now in his home and the complete musical programs which mark the milestones in the history of music in the United States for the last forty-five vears.

Apart from hundreds of valuable scores preserved during Mr. Thomas' musical life, in this country, the most interesting part of the collection, ac-cording to Mr. Thomas himself, is the complete series of programs of concerts dating as far back as 1855. These programs show the evolution of music in the United States, and will be a treasure mine to the future historian of music in this country.

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