CONSTITUTIONAL RIGHTS.

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

(Concluded.)

Mr. Littlefield—I will be very glad to read it, if the gentleman will furnish it to me. There are a good many things I condemn in the corporation laws. We have a corporation law in Maine, but we stop at $10,000,000. You do not stop them anywhere. The only limitation that is placed upon them is the minimum. They shall not be incorporated for less than $1,000. You then go to anything below the stars. There is nothing but the gall of the men who organize the corporations to limit them. [Great laughter.]

Mr. Stewart of New Jersey—Is there any limitation in the Maine law

Mr. Littlefield—There is a limitation that they shall not go beyond $10,000,000.

Mr. Stewart of New Jersey—They could go on.

Mr. Littlefield—We stopped at that. Let me venture the statement that this has no point in relation to this case. That is a question between Maine and New Jersey.

Mr. Stewart of New Jersey—And New Jersey can take care of these corporations.

Mr. Littlefield—Just for a moment. Let me state that there was an effort in 1899 in the State of Maine to get a charter for the organization of the ice trust, with a capital of $60,000,000. They appeared before the committee on judiciary. Mr. Joseph H. Manley, who is one of the prominent members of the Republican party, was a member of that committee. The committee promptly turned it down because it was a trust. It went forthwith to New Jersey and got a charter. [Laughter.]

"THE COMPACT OF STATEHOOD."

Compact is synoymous with contract. The idea of a compact or contract is not predicable upon the relations that exist between the State and the general government. They do not stand in the position of contracting parties. The condition upon which Utah was to become a State was fully performed when she became a State. The Enabling Act authorized the President to determine when the condition was performed. He discharged that duty, found that the condition was complied with, and that condition no longer exists.

What did Congress require by the Enabling Act? Simply that "said convention shall provide by ordinance irrevocable," etc., and the convention did in terms what it was required to do. It was a condition upon the performance of which by the "convention" the admission of Utah depended. Its purpose accomplished, its office is gone, and as a condition it ceases to exist. No power was reserved in the Enabling Act, nor can any be found in the Constitution of the United States, authorizing Congress, not to say the House of Representatives alone, to discipline the people in or the State of Utah, because the crime of polygamy or unlawful cohabitation has not been exterminated in Utah. Where is the warrant to be found for the exercise of this disciplinary, supervisory power? This theory is apparently evolved for the purposes of this case, is entirely without precedent, and has not even the conjecture or dream of any writer to stand upon.

If it is suggested that the case of Texas vs White (7 Wallace, 700) lends aid or comfort to this idea, I respectfully submit, without stopping to analyze the case, that it is based upon other grounds, and while the term "compact" is mentioned but once, it is then mentioned for the purpose of showing that it was not a proper term to describe the relations existing between the State and the federal government. As the court said (page 726):

"When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpetual union and all the guaranties of republican government in the Union attached at once to the State. The act which consummated her admission into the Union was something more than a compact. It was the incorporation of a new member into the political body, and it was final. The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration or revocation except through revolution or through consent of the States."

I propose now for a few moments to take up the question as to whether this House is or is not without remedy in case Mr. Roberts has the oath administered to him in compliance with his full constitutional rights, though that proposition has no legitimate relation to the question which I have been discussing. His rights depend upon the Constitution, and they are to be so determined, irrespective of what the results may be. I do not know how others may feel in relation to their constituents, but I am ready to go back to my constituents in Maine and say I have acted conscientiously, upon my construction of the Constitution, regardless of the consequences.

At this point I will advert, to what, to my mind, is a significant circumstance in a kindred matter in the recent history of the House. During the sessions of the last House a distinguished gentleman whom the Republican party has delighted to honor, who now presides over the deliberations of this House with so much ease, grace, dignity, and ability, was chairman of the committee which was passing upon the rights of Gen. Wheeler, that gallant little hero of two wars, who by his heroic conduct in battle in the war of the rebellion, and later in the war against Spain, entwined around himself the heartstrings of the American people. (Applause.) A great well of sympathy welled up over the country, when it appeared that the gallant little general, who had left this House at the call of his country, came back and the question arose whether or not under the Constitution he could return to his seat as a member. I have no doubt the chairman of that committee could hear the mighty throb of the great American heart, pulsating with patriotic fervor, and could feel the surges of the wave of love and affection, which swept over the country, but what did he say? He made this sublime declaration as chairman of that committee:

"No mere patriotic sentiments should be permitted to override the plain language of the fundamental law."

EXPULSION.

It is claimed that the House has no right to expel Mr. Roberts. I cannot see how that fact, if it be a fact, has any legitimate tendency to establish the existence of a legal disqualification. I contend that this House has an undoubted right to expel him, even for conduct unrelated to him as a member. The majority say his conduct must be "inconsistent with his public trust and duty as such."

I will quote from the report of the committee, and see whether their findings of fact do, or not, indicate that the gentleman from Utah, from their standpoint, has been guilty of acts "inconsistent with his public trust and duty as such." I think I can satisfy the House, from what they say, that he is richly entitled to the application of the rule they establish, for expulsion.

They say that "no government can possibly exist in the face of such practices." Is that inconsistent "with his public trust and duty as such?"

They say he is in "open war against the law and institutions of his country and this Congress which he seeks to enter." Would that be inconsistent "with his public trust and duty as such?" If it is not, in heaven's name are they going to exclude him for it? If all these terrible things are not inconsistent "with his public trust and his duty as such," do they exclude him for them and yet he cannot be expelled?

They further say:

"You have solemnly enacted certain laws; you have crystalized into statute the will of the sovereign people. I bid defiance to your law. I will not recognize it. I here and now before your very eyes do the things you say I shall not do. I recognize a higher law than your man-made law—no law of yours can relieve me from the obligations which I thus take in defiance of your enactments. The only thing I promise not to do is to take a fourth wife.

"The case of a bribe taker, or of a burglar, or of a murderer is trivial, is a mere ripple on the surface of things, compared with this far-reaching, deep-rooted, audacious lawlessness."

I will ask this House in all candor, (I am assuming the committee have made their report judiciously, coolly, not hysterically,) is not that "inconsistent with his public trust and duty as such," or is it consistent with it? I have thought it is inconsistent with it.

Now, here again, they say:

"The acts of Roberts are essentially disloyal. They deny the sovereign; they repudiate the lawful government. Look at them from whatever point you will, they are subversive of government. They do not merely breed anarchy, they are anarchy. And this proposition is asserted not so much for reasons personal to the membership of the House, as because it goes to the very integrity of the House and the Republic as such."

Now, is that inconsistent "with his public trust and his duty as such?" If not, what would be? Looking at "them form whatever point you will," they say what? That "they are subversive of government." Can it be said, without being ridiculous, that when a man is in here whose acts are "subversive of the government" that that is not "inconsistent with his public trust and his duty as such?" "They are anarchy." Is that "consistent with his public trust?" I submit that if the acts of Roberts are such as is suggested, it seems to me that upon their standard there is ample justification for his expulsion. This spirit, called by them "from the vasty deep," fades away when their own charges are applied to the legal propositions as they state them. If we abjure fervor, and think coolly, the result is the same.

The power of expulsion is, however, unlimited, and not confined to acts related to the trust or duty of a member. They insist uopn the contrary in order to frighten the House into exclusion. To exclude, the majority read into the clause relating to qualifications new provisions. To narrow the right of expulsion they read new conditions into that section. I take both clauses as they stand. I neither add to, nor take from. This precise question has been determined but once in this country. The opinion of the court in that case, an authoritative construction of this clause of the Constitution, was written by Chief Justice Shaw, conceded to be one of the greatest judges that ever sat in any court, in any land, at any time.

The constitution of Massachusetts contained no provision authorizing the expulsion of a member of the house of representatives. Joseph Hiss was expelled by the house, upon the ground that his conduct on a committee at Lowell "was highly improper and disgraceful, both to himself and to this body of which he is a member." This was not disorderly conduct in the house, and it is significant that the facts that made it "improper and disgraceful" were not disclosed by the case.

Hiss, after his expulsion, was arrested at the instance of one of his creditors on mesne process and committed to jail. He brought a petition for habeas corpus on the ground that he was a member of the house of representatives and as such privileged from arrest. This raised the precise question of the legality of his expulsion, and, speaking through Chief Justice Shaw, the court, among other things, said:

"The question is whether the house of representatives have the power to expel a member."

After adverting to the fact that the constitution did not in terms authorize expulsion, he says:

"There is nothing to show that the framers of the constitution intended to withhold this power. It may have been given in other States, either ex majori cautela, or for the purpose of limiting it, by requiring a vote of more than a majority."

In the Constitution of the United States it was given evidently "for the purpose of limiting it," as a two-thirds vote is required.

Again:

"The power of expulsion is a necessary and incidental power to enable the house to perform its high functions, and is necessary to the safety of the State. It is a power of protection. A member may be physically, mentally, or morally wholly unfit; he may be inflicted with a contagious disease, or insane, or noisy, violent, disorderly, or in the habit of using profane, obscene, and abusive language. It is necessary to put extreme cases to test a principle.

"If the power exists, the house must necessarily be the sole judge of the exigency which may justify and require its exercise."

After having fully examined the law and practice of Parliament, he says:

"But there is another consideration, which seems to render it proper to look into the law and practice of Parliament, to some extent. I am strongly inclined to believe, as above intimated, that the power to commit and expel its members was not given to the house and senate, respectively, because it was regarded as inherent, incidental, and necessary, and must exist in every aggregate and deliberative body, in order to the exercise of its functions, and because without it such body would be powerless to accomplish the purposes of its constitution; and therefore any attempt to express or define it would impair rather than strengthen it. This being so, the practice and usage of other legislative bodies, exercising the same functions, under similar exigencies; and the reason and grounds, existing in the nature of things, upon which their rules and practice have been founded, may serve as an example and as some guide to the adoption of good rules when the exigencies arise under our constitution.

"But independently of parliamentary custom and usages, our legislative houses have the power to protect themselves by the punishment and expulsion of a member.

"It is urged that this court will inquire whether the petitioner has been tried. But if the house have jurisdiction for any cause to expel, and a court of justice finds that they have in fact expelled."

He then held their action was conclusive, and dismissed the petition. (Hiss vs Bartlett, 3 Gray, 468.)

It is instructive on this point to note that this paragraph of the Constitution, as originally drawn, read:

"Each House may determine the rules of its proceedings; may punish its members for disorderly behavior; and may expel a member."

Making three distinct clauses separated by semi-colons, eliminating the idea that the words "disorderly conduct" have any effect in limiting the power to expel, which appears in the clause immediately following.

This extract from the records of the debates in the Federal Convention shows clearly why the two-thirds provision was inserted in the expulsion clause:

"Mr. Madison observed that the right of expulsion (Article VI, section 6) was too important to be exercised by a bare majority of a quorum, and in emergencies of faction might be dangerously abused. He moved that 'with the concurrence of two-thirds' might be inserted between 'may' and 'expel.'

"Mr. Randolph and Mr. Mason approved the idea.

"Mr. Gouverneur Morris—This power may be safely trusted to a majority. A few men, from factious motives, may keep in a member who ought to be expelled.

"Mr. Carroll thought that the concurrence of two-thirds, at least, ought to be required.

"On the question requiring two-thirds in cases of expelling a member, ten States were in the affirmative; Pennsylvania divided."

Article VI, section 6, as thus amended, was then agreed to nem con. (Journal of Constitutional Convention (Madison), volume V, page 500.)

While I think this Hiss case establishes beyond successful controversy the power of expulsion as discretionary and unlimited, it is proper to note that no decided case or elementary writer militates against it. I give all that I have found on the question.

In discussing this question, the court, in State vs Jersey City (25 N. J. L., 539), said:

"The power vested in the two houses of Congress by the Constitution, Article I, section 5, paragraph 2, is in different phraseology; it is, that 'each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.' Under this power, the Senate, in 1797, expelled a member of that body for an offense not committed in his official character as a member, nor during a session of Congress, nor while the member was at the seat of government. (Blount's case, Story's Commentaries on the Constitution, chapter 12, paragraph 836.) But it is not clear that the power to expel is limited by the Constitution to the cause of disorderly behavior."

Evidently without having in mind the accurate use of the term "qualification," as used in the Constitution, the court, in State ex rel vs Gilmore (20 Kansas, 554), said:

"The Constitution declares (Article II, section 8) that 'Each house shall be judge of the elections, returns, and qualifications of its own members.' This is a grant of power, and constitutes each house the ultimate tribunal as to the qualifications of its own members. The two houses acting conjointly do not decide. Each house acts for itself and by itself; and from its decision there is no appeal, not even to the two houses. And this power is not exhausted when once it has been exercised and a member admitted to his seat. It is a continuous power, and runs through the entire term. At any time during the term of office each house is empowered to pass upon the present qualifications of its own members."

Story says:

"And as a member might be so lost to all sense of dignity and duty as to disgrace the House by the grossness of his conduct, or interrupt its deliberations by perpetual violence or clamor, the power to expel for very aggravated misconduct was also indispensable, not as a common, but as an ultimate redress for the grievance. But such a power, so summary and at the time so subversive of the rights of the people, it was foreseen, might be exerted for mere purposes of faction or party, to remove a patriot or to aid a corrupt measure; and it has, therefore, been wisely guarded by the restriction that there shall be a concurrence of two-thirds of the members to justify an expulsion. * * * *

"In July, 1797, William Blount was expelled from the Senate for 'a high misdemeanor, entirely inconsistent with his public trust and duty as a senator.' The offense charged against him was an attempt to seduce an American agent among the Indians from his duty, and to alienate the affections and confidence of the Indians from the public authorities of the United States, and a negotiation for services in behalf of the British government among the Indians. It was not a statutable offense, nor was it committed in his official character; nor was it committed during the session of Congress, nor at the seat of government. Yet, by an almost unanimous vote he was expelled from that body; and he was afterwards impeached (as has been already stated) for this, among other charges. It seems, therefore, to be settled by the Senate, upon full deliberation, that expulsion may be for any misdemeanor which, though not punishable by any statute, is inconsistent with the trust and duty of a senator." Story on the Constitution, volume 1, page 607.

Paschal states:

"It seems to be settled that a member may be expelled for any misdemeanor which, though not punishable by any statute, is inconsistent with the trust and duty of a member. (Blount's Case, 1 Story Const., paragraph 838; Smith's Case, 1 Hall's L. J., 459; Brook's Case, for assaulting Senator Sumner in the Senate Chamber for words spoken in debate.) It extends to all cases where the offense is such as in the judgment of the House unfits him for parliamentary duties. (Paschal's Annotated Constitution, page 87, paragraph 49.)

"It has not yet been precisely settled what must be the disorderly behavior to incur punishment, nor what kind of punishment is to be inflicted; but it can not be doubted that misbehavior out of the walls of the House or within them, when it is not in session, would fall within the meaning of the Constitution. Expulsion may, however, be founded on criminal conduct committed in any place, and either before or after conviction in a court of law. (Rawle on the Constitution, 2d ed., 47.)"

Cooley is specific:

"Each House has also power to punish members for disorderly behavior, and other contempts of its authority, as well as to expel a member for any cause which seems to the body to render it unfit that he continue to occupy one of its seats. This power is generally enumerated in the Constitution among those which the two Houses may exercise, but it need not be specified in that instrument, since it would exist whether expressly conferred or not. It is 'a necessary and incidental power to enable the House to perform its high functions, and it is necessary to the safety of the State. It is a power of protection.'

"'A member may be physically, mentally, or morally wholly unfit; he may be afflicted with a contagious disease, or insane, or noisy, violent, and disorderly, or in the habit of using profane, obscene, and abusive language.' And, 'independently of parliamentary customs and usages, our legislative houses may have the power to protect themselves by the punishment and expulsion of a member,' and the courts can not inquire into the justice of the decision, or even so much as examine the proceedings to see whether or not the proper opportunity for defense was furnished. (Cooley's Constitutional Limitations, pages 159, 160.)

"Since there has been repeated occasion to take steps against members of each House under each of these two clauses, and since the majority has never taken this standpoint, it may now be regarded as finally settled that that interpretation is correct which is the broader and at the same time, according to ordinary speech, unquestionably the more natural one. Both Houses of Congress must have been granted every power needed to guard themselves and their members against any impropriety on the part of a member and to preserve their dignity and reputation among the people. It is wholly for them to say what conduct they are to regard as dishonorable enough to require expulsion. An appeal from their decision lies only to the court of public opinion, a court which brings in its verdict at the elections. (Von Holst's Constitutional Law of the United States, 102.)

"The power of expulsion is unlimited, and the judgment of a two-thirds majority is final. (Pomeroy on Constitutional Law, page 139, 1895.)

"It seems necessary also to remark that a member may be expelled, or discharged from sitting as such, which is the same thing in milder terms, for many causes, for which the election could not be declared void. (Cushing, Law and Practice Legislative Assemblies, page 33, section 84.)

"The power to expel a member is naturally and even necessarily incidental to all aggregate, and especially all legislative bodies; which, wouthout such power, could not exist honorably, and fulfill the object of their creation. In England this power is sanctioned by continual usage, which, in part, constitutes the law of Parliament. (Ibid., page 251, section 625.)

"Blount was expelled from the Senate for an offense inconsistent with public duty, but it was not for a statutory offense, nor was it in his official character, nor during the session of Congress, nor at the seat of government. The vote of expulsion was 25 to 1.

"The motion to expel a member may be for disorderly behavior, or disobedience to the rules of the House in such aggravated form as to show his unfitness longer to remain in the House, and the case above cited, as well as the reason of the provision, would justify the expulsion of a member from the House where his treasonable and criminal misconduct would show his unfitness for the public trust and duty of a member of either House. But expulsion, which is an extreme punishment, denying to his constituency the right to be represented by him, can only be inflicted by the concurrence of two-thirds of the House, and not by a bare majority only. (Citing Story on the Constitution, section 837.) Tucker on the Constitution, page 429.

"It has since been held by the House of Representatives that a member duly elected could not be disqualified for a cause not named in the Constitution, such as immorality, and that the remedy in such a case, if any, was expulsion. The distinction between the right to refuse admission and the right of expulsion upon the same ground is important, since the former can be done by a majority of a quorum, whereas expulsion requires the vote of two-thirds. The question can not be said to have been authoritatively decided. Foster on the Constitution, page 367."

Mr. Foster's attention does not appear to have been directed to the case of Hiss vs Bartlett, as it is in point on his doubt if it relates to the power of expulsion, and he does not refer to it.

"Expulsion is generally reserved for offenses which render members unfit for a seat in Parliament and which, if not so punished, would bring discredit upon Parliament itself. Members have been expelled as being in open rebellion, as having been guilty of forgery or perjury or frauds and breaches of trust, of misappropriation of public money, of conspiracy to defraud, of corruption in the administration of justice, or in public office, or in the execution of their duties as members of the House, of conduct unbecoming the character of an officer or gentleman, and of contempts, libels, and other offenses committed against the House itself. (May's Parliamentary Practice, tenth edition, 1893, page 55.)"

These authorities clearly establish that conduct "inconsistent with the public trust and duty as such" or related to the duties of a member is not an indispensable element of the right to expel. "It is a power of protection." Protection of what? Certainly not the member expelled; necessarily the House, its dignity, character, "and reputation among the people." It seems difficult for some to appreciate the distinction between exclusion and expulsion.

Now I suppose it will be conceded that Sir Roundell Palmer (Lord Selborne), a distinguished advocate and counsel at the English bar, was a man of some ability. In the O'Donovan-Rossa debate, in 1870, he used this expression, very happily contrasting the power of expulsion with the right of exclusion:

"A man may be expelled from the house for certain offenses, though not legally disqualified."

Now, the gentleman from Ohio [Mr. Tayler] says that is "ridiculous and absurd," but I have no doubt that Sir Roundell Palmer will survive the suggestion. Palmer says that a man may be expelled from the house for certain offenses, "though not legally disqualified." And that is our proposition.

LEGISLATIVE PRECEDENT.

I examine the legislative precedents for a few moments, and then I shall be through.

The Marshall case, which is cited from the Senate as against the power to expel, was overruled by the Smith case, to which the report of the committee devotes two lines. The reason for this brief mention will clearly appear when that case is stated.

SMITH CASE.

John Quincy Adams made the report for the committee, which was unanimous. You will find it on page 720, Senate Election Cases. It states the law thus:

"By letter of the Constitution the power of expelling a member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two-thirds of the vote to give it effect."

And how near do you suppose the Senate, under that proposition, came to expelling Smith? The vote was just 19 to 10, lacking one vote of expulsion. That is a precedent cited on the other side. It is a precedent distinctly in our favor. The Senate squarely held that they had jurisdiction. In the Roach and Herbert cases, as cited by the majority, it was not even contended that the Senate or the House did not have the power to expel. In fact, the inference is that the power was conceded, but was not exercised.

MATTESON CASE.

The Matteson case, in my judgment, does not warrant any such inference. Matteson was charged with inciting parties to corrupt the House, and with slandering the House by charging that a large number of members had pledged themselves not to vote for measures granting money or lands unless they were paid for it. Upon these charges a resolution for his expulsion was pending in the Thirty-fourth Congress, and was about to be adopted, when he prevented further action by resigning. Meanwhile, and before the hearing by the committee, he had been elected to the Thirty-fifth Congress. In the Thirty-fifth Congress a resolution reciting these facts and declaring Matteson expelled was, after a long debate, referred to a committee, of which Mr. Seward, of Georgia, was chairman.

The debate discloses that the principal ground relied upon in opposition to the resolution was that proceedings for expulsion were analogous to a criminal prosecution at common law, and that Matteson, having in effect been punished by the Thirty-fourth Congress, could not properly be punished a second time for the same offense. In this respect the facts are not parallel to Mr. Roberts's case, as it appears that the offense with which he is charged is still continuing. The committee recommended the adoption of a resolution "that it is inexpedient to take further action in regard to Orasemus B. Matteson." The whole subject was afterwards laid on the table by a vote of 96 to 69, and this ended the action of the House.

Mr. Seward, in urging the adoption of the recommendation, incorrectly stated the action of the Senate in the Smith case in 1808. Smith was indicted for treason in Virginia, as an accomplice of Aaron Burr. Mr. Seward states:

"Mr. Adams made a report to the Senate setting forth the crime for which the party was arraigned; and when the vote was taken, there was not a sufficient number of members of the Senate voted in favor of jurisdiction over the cause, and the Senate refused a conviction on the charge. They acted upon the principle that the criminal courts had jurisdiction when either the Constitution or the laws of the United States were violated, because the facts established were clear, and the refusal to convict must turn upon the want of jurisdiction and power."

It was claimed in the Smith case that the Senate had no jurisdiction until after a conviction upon the indictment. The unanimous report of the committee, as heretofore stated, held otherwise.

There was no separate vote as to whether the Sneate had jurisdiction. The report recommended a resolution expelling Smith and failed, as I have stated, lacking only one of the necessary two-thirds.

When Mr. Seward stated that the "facts established were clear," and the case must have turned upon "want of jurisdiction and power," he presumed upon the lack of information on the part of the House, or himself was lacking in information, as the record discloses that the existence of the facts was bitterly contested, and page after page is devoted to their discussion, and a majority vote would have clearly been sufficient to determine the question of jurisdiction or power.

The Matteson case was in 1858. With the exception of a suggestion that a case had been decided in Massachusetts, the purport of which was not stated, no reference was made to the Hiss case, though it was published in 1857. Although the only decided case in the country, it does not appear to have been cited in any debate on this question.

BROOKS AND AMES CASES.

Brooks and Ames were charged with complicity in the Credit Mobilier frauds and with bribing members of Congress some five or six years before the session of Congress, when the resolution was pending, to expel them. Their case was referred to a sub-committee, and the sub-committee reported in favor of expulsion.

For the purpose of showing this House the amount of deliberation and examination upon which other Houses have acted when they have established precedents that are invoked here to control our action, I want to call your attention to the report of the judiciary committee, headed by Benjamin F. Butler, in that case. A resolution involving the question as to whether Colfax, then Vice-President, could be impeached for an offense committed before his election as Vice-President, was referred to the judiciary committee on the 20th day of February, 1873, and they reported back to the House on the 24th day of February, 1873.

That was only three days, at the outside, that this committee had in which to investigate, first, the question committed to them, the great constiutional proposition as to whether or not the Vice-President of the United States could be impeached for an offense committed before he took the office; second, the question as to whether or not the House had the right to exclude, and third, they went on to discuss the question as to whether, or not, the House had the power to expel, the last two questions never having been referred to them. In three days' time that committee undertook to thoroughly investigate, those three great constitutional propositions and report to the House.

Now, as a matter of interest, I want to show you what they said on this question of exclusion. The majority did not quote this from the report of that committee. They said:

"Your committee believe that there is no man or body of men who can add to or take away one jot or title of these qualifications. The enumeration of such specific qualifications necessarily excludes every other."

I submit that if this report of that committee is good authority to sustain their proposition that you have no power to expel, it is equally good authority on this proposition that you have no power to exclude, when they state it with a great deal more emphasis.

The value of an opinion depends upon the care exercised in its preparation. On this point of time Mr. Clarkson N. Potter made this suggestion, which is a part of his report:

"I dissent from the report, but I concur in the recommendation to discharge the committee, for want of time to make further investigation and for reasons expressed in views submitted herewith."

This is the report upon which they rely. The special committee, of which Poland, of Vermont, was chairman, held that the power of expulsion was unlimited. They said:

"The principal purpose of expulsion is not a punishment, but to remove a member whose character and conduct show that he is an unfit man to participate in the deliberations and decisions of the body and whose presence in it tends to bring the body into contempt and disgrace.

"Every consideration of justice and sound policy would seem to require that the public interests be secured, and those chosen to be their guardians be free from the pollution of high crimes, no matter at what time that pollution had attached.

"If two-thirds of the House shall see fit to expel a man because they do not like his political or religious principles, or without any reason at all, they have the power, and there is no remedy except by appeal to the people. Such exercise of the power would be wrongful and violative of the principles of the Constitution, but we see no encouragement of such wrong in the views we hold."

That report is signed by George W. McCrary. On the second day of the session the gentleman from Ohio [Mr. Tayler] read from Judge McCrary's work, with an air of authority, to halt this man at the bar of this House. I notice that this air has disappeared, and they say they do not quote his work "as being authoritative in itself." They have probably since learned his views on expulsion. If Judge McCrary was sufficient authority to justify challenging a member at the threshold, why is he not equally as good an authority for the proposition that this House has unlimited power of expulsion?

CANNON CASE.

The Cannon case is indefinite and uncertain and was affected by several independent considerations, and can not fairly be said to determine anything.

SCHUMAKER AND KING.

In this case not only did the minority of the judiciary, consisting of Scott Lord, W. M. Lawrence, George F. Hoar, and B. G. Caulfield, hold that—

"It will be seen that there are no words of limitation on the power to expel, which seems to have been left to the good sense and discretion of each house."

but George W. McCrary again, in a separate note, said:

"But where the charge is that a member of the House has received money to be used by him to corrupt legislation in Congress, for which offense no indictment has been found, I think the House may properly take jurisdiction, though the offenses charged were committed prior to his election."

In this case, the fact that everything for which the gentleman from Utah is to be excluded, now exists, and in a very aggravated form, by reason of its continuance, if the majority are correct, eliminates the element of past offense, and is a complete answer to the objection raised against expulsion.

It is proper to observe that the determinations of the courts and the opinions of eminent legal authors unexcelled in reputation and learning are entitled, upon these propositions, to great weight, as they are in every instance the result of careful, dispassionate, and disinterested research and sound reasoning, unaffected by considerations that must necessarily have been involved in legislative precedents. The two-thirds limitation upon the right to expel not only demonstrates the wisdom of the fathers, but illustrates the broad distinction between exclusion and expulsion.

A small partisan majority might render the desire to arbitrary exclude by a majority vote, in order to more securely intrench itself in power, irresistible. Hence its exercise is controlled by legal rules. In case of expulsion, when the requisite two-thirds can be had, the motive for the exercise of arbitrary power no longer exists, as two-thirds partisan majority is sufficient for every purpose. Hence expulsion has been safely left in the discretion of the House, and the safety of the members does not need the protection of legal rules.

It seems to me settled upon reason and authority that the power of the House to expel is unlimited, and that the legal propositions involved may be thus fairly summarized: The power of exclusion is a matter of law, to be exercised by a majority vote, in accordance with legal principles, and exists only where a member-elect lacks some of the qualifications required by the Constitution. The power of expulsion is made by the Constitution purely a matter of discretion, to be exercised by a two-thirds vote, fairly, intelligently, conscientiously, with a due regard to propriety and the honor and integrity of the House and the rights of the individual member. For the abuse of this discretion we are responsible only to our constituents, our consciences, and our God.

I believe that Mr. Roberts has the legal constitutional right to be sworn in as a member. The facts are such that I further believe the House, in the exercise of its discretion, is not only justified, but required, by every proper consideration involved, to expel him promptly after he becomes a member.

I address myself to the intelligence, judgment, and conscience of the House, not to its perjudices. Sympathies, prejudices, tendencies, opinions, and conditions may change; principles never. The Great Charter is our only guide. May the Constitution remain inviolate. [Great applause.]