

EVENING NEWS. PUBLISHED DAILY, SUNDAYS EXCEPTED, AT FOUR O'CLOCK. PRINTED AND PUBLISHED BY THE DESERET NEWS COMPANY. CHARLES W. PENROSE, EDITOR. Tuesday, Nov. 1, 1881.

THE CASE AGAINST DELE-GATE CANNON.

In the Third District Court on Monday Chief Justice Hunter rendered a decision in the Campbell-Cannon case as follows:

In the District Court, FOR THE THIRD JUDICIAL DISTRICT OF UTAH TERRITORY.

The United States on the Relation of Allen G. Campbell, Plaintiff, vs. George Q. Cannon, Defendant.

Complaint to annul a certificate held by defendant and used by him as a certificate of naturalization.

The demurrer of the defendant to the complaint filed in this action having been heretofore argued by counsel for the respective parties, and taken under advisement, and the Court having duly considered the same, and it appearing to the Court that the Attorney General of the United States should file complaint in behalf of the government in such cases, and that from the facts stated in the complaint, which are admitted by defendant's demurrer, that there is no record of defendant's naturalization, and that no proceeding for that purpose ever took place in court, and that the certificate held by defendant is a certificate of naturalization was obtained by fraud, and has been fraudulently used, and is void on its face in not professing to be a copy of a record, and not certifying a regular naturalization, and therefore that there is no sufficient cause shown for annulling it, it is ordered that the said demurrer be, and the same is hereby sustained, and that the complaint be, and is hereby, dismissed.

(Signed) JOHN A. HUNTER, Judge.

[L.S.] Attest: H. G. McMillan, Deputy Clerk.

That this decision may be properly understood and correctly valued, it will be necessary to make some explanations.

It is well known that Hon. George Q. Cannon was elected in November, 1880, as Delegate to Congress; that he received 18,568 votes, while his opponent, Mr. Campbell, received but 1,357 votes; that notwithstanding this, and the provision of United States law that "the person having the greatest number of votes shall be declared by the Governor duly elected," that functionary gave a certificate of election to Allen G. Campbell; that a copy of the returns certified by the Secretary was filed with the Clerk of the House of Representatives at Washington; that this being regarded as a valid certificate Mr. Cannon's name was entered upon the roll, and that news came of the payment to Mr. Cannon of the per diem as a member; that Mr. Campbell's attorneys, failing to get hold of this per diem, reported to be their expected fee for working up his wretched case, were exceedingly wrathful, and that they instituted proceedings to enjoin Mr. Cannon from receiving any money which might be paid to him as the Delegate from Utah.

On the 8th of June, 1881, the attorneys for Mr. Campbell, in company with the District Attorney, swore out a complaint, which after going over the oft-refuted statements about Mr. Cannon's lack of citizenship, asked the following:

1st. That the Court adjudge and decree that the said defendant George Q. Cannon is not a citizen of the United States and has not heretofore been or ever was naturalized according to law as such.

2d. That the certificate of naturalization or pretended naturalization now held by said Cannon dated December 7th, 1854 set forth in the complaint, be adjudged fraudulent and void and be annulled.

3rd. That the said George Q. Cannon be enjoined and commanded to desist and refrain from demanding, accepting or receiving from the Treasury of the United States through its disbursing officer, the Sergeant-at-Arms of the House of Representatives, or any other person, directly or otherwise, the salary and compensation pertaining to the office of Delegate to the 47th Congress for the Territory of Utah, pending this action, and until the final decree of the Court is made perpetual.

4th. For such other and further relief as the justice of the case may require, and for costs of this action.

P. T. VAN ZILE, U. S. Dist. Atty., and SOUTHERLAND & McBRIDE, Pliffs' Attys.

Without stopping to consider the fully of attempting to enjoin a man from receiving money tendered him as salary for an office to which he was elected, we have next to refer to the demurrer to the complaint, which was interposed by Mr. Cannon's attorney, as annexed:

In the District Court for the Third Judicial District of Utah.

United States ex. rel. Allen G. Campbell, Plaintiff, vs. George Q. Cannon, Defendant.

The defendant answers to the complaint and for cause of demurrer alleges:

1st. That the Court has no jurisdiction of the subject of the action.

2nd. That the plaintiff has no legal capacity to sue the cause of action mentioned in the said writ, but the action should have been brought in the name of the real party in interest, viz. Allen G. Campbell.

3d. That there is a misjoinder of parties plaintiff in this, that the complaint attempts to unite a cause of action in which the United States alone is a republic, in its own behalf is interested, and one in which Allen G. Campbell is alone interested.

4th. That several causes of action have been improperly joined, to-wit: A cause of action for annulling a certificate of naturalization, with a cause of action for enjoining defendant from exercising the functions of office of Delegate to Congress, and receiving pay therefor.

5th. That the complaint does not state facts sufficient to constitute a cause of action.

ARTHUR BROWN, Attorney for Deft.

TERRY OF UTAH, }
 Salt Lake City, } ss.

Arthur Brown, being duly sworn, says: I am the attorney of the defendant in this action. I know the matters contained in the foregoing demurrer. That it is not interposed

for delay merely, but in good faith, and I believe it to be well taken.

Subscribed and sworn to before me, this 16th day of June, 1881. O. J. AYER, Clerk. By H. G. McMillan, Deputy Clerk.

This having been argued pro and con, was taken under advisement by the Court, and the decision is given at the commencement of this article. It is a most remarkable document. The dismissal of the case is undoubtedly correct. It is evident that it had no legal leg to stand on.

It was simply a piece of vexatious litigation, exhibiting more than anything else that quality supposed to be needful to the legal profession, and vulgarly called sublimity "cheek."

The Judge may be quite correct in his opinion that at the proper person to file complaint in such case is the Attorney General of the United States. But he certainly is not correct, nor even truthful, in stating that "by defendant's demurrer" it is admitted that "there is no record of defendant's naturalization," that no proceedings for that purpose ever took place in court, etc., etc. The demurrer is copied in full in this article. Let the reader examine it and find, if he can, anything approaching to an admission of any of the allegations set forth in the complaint and declared by Judge Hunter to be in the demurrer. This declaration made by the Judge cannot be viewed in any other light than as a gross perversion of truth. The demurrer is here, let them be compared and then let any honest man decide how much truth there is in the latter. As a matter of fact it is absolutely untrue.

But lest it should be argued as a matter of law that the failure to deny the alleged facts of the complaint was a virtual or legal admission of their truth, we will briefly examine that side of the subject.

Supposing that either by tacit acknowledgment or actual statement, the facts alleged were admitted in the demurrer. Does not any one who understands anything of law or of ordinary debate, know that such admission would only be for the purpose of trying the main question, which was the dismissal of the suit for the reasons set forth.

If such admission had been made, it would have been simply for argument's sake. The proof of this is the fact that if the demurrer had been overruled the case would then have been tried on its merits. The admission in the demurrer could not be pleaded in the trial. The alleged facts would be open to denial, and would require just as much proof to substantiate them as if no such admission had been made or demurrer interposed.

In arguing a demurrer of this kind the sufficiency of the complaint is tacitly admitted because the point at issue is not to prove its truth or falsity, but to decide the questions raised in the demurrer. Points of law, not statements of fact, are involved. If the demurrer had been overruled, ten days would have been given under the law regulating such procedure to file an answer to the complaint, in which all the statements of fact could be denied.

Let us see what the authorities have to say on this question. In the case of The Commercial Bank of Manchester vs. H. S. Buckner, appealed from the circuit court of Louisiana to the Supreme Court of the United States, Justice Wayne, in rendering the decision, said:

"It was frequently urged in the argument by the counsel for complainant that the demurrer of the defendant was a confession of the facts alleged in the bill, and that, therefore, the circuit court had jurisdiction to give relief.

"Our view of that demurrer is different. It is only a confession of facts well pleaded, but in this bill none were so; the power of the court to give relief, and of the complainant to bring a suit, either at law or in equity for the original debt which they had proved in bankruptcy, having been mistaken." (20 Howard, page 314.)

That the facts in this case were not well pleaded is proven by the dismissal of the whole case, including both facts and legal propositions. In 1 Greenleaf on Evidence, Section 551, we find the following:

"But a demurrer in chancery does not admit the facts charged in the bill; for if it be overruled, the defendant may still answer. So it is as to a plea in chancery; to sue as well as demurrers, being merely hypothetical statements that supposing the facts to be as alleged, the defendant is not bound to answer."

Other authorities, notably 9 Barbour, page 301, might be cited showing that Judge Hunter not only makes assertions against the facts, but contrary to plain and simple principles of law.

We do not wish to enter into the question of motives. They are difficult to determine. We know that Judge Hunter is wrong in fact and law in this matter, that he has stated something which cannot be sustained by evidence or argument, but why he did it we will say little about. Whatever induced him to take such an indefensible stand, he has placed himself in an unenviable position, and will be the laughing stock of the bar and the judiciary wherever the case is known and understood.

The question that will most interest our readers is, how does the case stand now? It stands just where it did before the suit commenced. The case against him is dismissed. Our Delegate's name appears on the roll of the House. Should there be any contest in Congress, it will come before men who understand these legal points, and by whom all the shifts and subterfuges which have disgraced the attack upon him will be clearly perceived.

Attempts will be made to deceive the public by the wording of Judge Hunter's decision, but in Congress such deception will signify little, and the final effort, like every step taken in this shameful conspiracy to cheat Utah out of representation in Congress, will only exhibit the strength of our cause and the depths of chicanery, falsehood and infamy to which men will stoop when filled with animosity towards the "Mormons."

BY TELEGRAPH.

FROM WASHINGTON UNION TELEGRAPH LINE. AMERICAN. LATEST DISPATCHES.

Fatal Collision.

St. Louis, Mo., Nov. 1.—The collision of two freight trains on the Chicago & Alton Railroad, near Carlinville, last night, caused the death of Charles W. Payne, brakeman. Both engines are completely wrecked, also eight freight cars are totally destroyed and many badly damaged. Loss, about \$40,000.

Marine Police.

SAN FRANCISCO, Cal., Nov. 1.—A Victoria dispatch says: The United States revenue cutter Richard French has just arrived from Alaskan waters, where she has been engaged during the season in breaking up ice, and has returned with a full cargo of seal blubber, and a few seals.

Decision on the Railroad Fight at Reno.

Examination of participants in the fight at the late election on the Nevada and Oregon railroad at Reno, in which Scoville, secretary of the road was killed, and others wounded, is concluded. The court discharged Messrs. Moore, Coffin and Wheeler, and held Jas. McMechan to answer for change of venue. The case against Messrs. Cogan and Fowler are ordered to appear to-day.

Trimming the Tariff.

NEW YORK, Nov. 1.—The Times prints an interview with representative men interested in the national tariff, and the alterations to be made on the 30th and 31st instants. The gathering promises to be large and influential. Assurances have been received from various branches of industry that interest in increasing and decreasing duties will be sent from iron, steel, copper and brass manufacturers, wool, woolen goods, paper makers, etc., etc. The various parties of the country, from Maine to Michigan, the Times says, editorially, that one of the principal motives which appears to guide business men in their support of the tariff commission is a desire to get at and correct the anomalies and inconsistencies of the tariff, but, says the Times, if the general interests of the country are to be considered, the only revision which can do any real good will be in a gradual but certain and considerable reduction, and that is not the purpose of those who advocate the commission.

Baldwin the Bank Robber.

The World comments thus on the Newark Bank fraud: The law which has been found sufficient to imprison the directors of the Glasgow Bank and general applauses, does not seem sufficient in this country to induce any penalties on anybody except upon Baldwin himself, liable for embezzlement, the extreme penalty for which is imprisonment for 10 years. Nothing can be done with the directors unless they were actively and not passively concerned in the robbery.

\$350,000 Fire.

Mayer & Bachman's brewery, Staten Island, was completely destroyed by fire to-day. The loss on the stock, including 3,000 tons of ice, 700 bushels of malt, 8,000 barrels of beer, is over \$180,000; and on buildings, machinery, and fixtures, \$200,000 more. Mayer intends rebuilding at once.

Blaine on the Cabinet.

The Herald's Washington special says: Blaine has expressed freely in very recent conversation, his views as to the next cabinet. For himself he will retire in December. The cabinet, he says, will be Grant from top to bottom after January 1st. He thinks Frelinghuysen will be Secretary of State. Judge Folger was recommended by Grant and Conkling to Garfield for Secretary of the Treasury last winter. The business arrangements of James in New York will probably make a vacancy in the Postmaster-Generalship after January 1st, and an undoubted stalwart will be appointed in his place. As to whether Lincoln will go out, Blaine did not express himself. It is reported here on good authority that Grant is urging Gen. Banks for the Navy Department. It is known that Blaine is anxious for the nomination of Grant's intimacy with him has been marked. He was Banks' guest during his recent visit to Washington. The recent nomination of Frank Hatton, a particularly stalwart Grant man, to be First Assistant Postmaster General is regarded as significant. He has charge of the appointment of officers, and practically controls the appointment of all postmasters under those of the first class.

No Failures Anticipated.

No failures are expected on account of the failure of the Mechanics National Bank of Newark.

British Bullion for Confederate Bonds.

WASHINGTON, Nov. 1.—There have been several applications at the Treasury Department recently by persons to make contracts to collect for government the balance remaining in the Bank of England to the credit of the defunct Confederate States. Agar, of Washington, had a contract of this kind made with Secretary Sherman. This contract expired last September, and Agar failed to get the money. It is said that this money was deposited in some peculiar manner and controlled by five trustees, and that Jeff Davis and Judah P. Benjamin are two of these trustees. It is with the hope of getting this money that the English capitalists are buying Confederate bonds and that Benjamin has been retained by these capitalists for that purpose; and he thinks he can recover from the United States on payment of Confederate bonds. Solicitor Raynor of the Treasury intends to call the Government's attention to the fact with a view to recovering for the United States.

The Public Debt.

The debt statement issued to-day shows an increase of the public debt during the month of \$18,321,458; cash in Treasury, \$40,999,971; gold certificates, \$527,520; silver certificates, \$58,327,570; certificates deposit outstanding, \$8,370,000; refunding certificates, \$598,060; fractional currency outstanding, \$7,093,152; cash balance available to-day, \$4,438,443.

James' Successor.

It is reported that Postmaster General James will be succeeded by O. I. Filley, of St. Louis, January 1st.

Fire.

CINCINNATI, Nov. 1.—The Ohio and Mississippi grain elevator was burned to-night. Loss \$75,000.

A Hanging Hangman.

LEXINGTON, Ky., Nov. 1.—Sanders, in jail for wife-beating, hanged himself.

Mailed by Carbine Act.

A colored woman here poured carbolic acid down a child's throat killing it.

Shot.

LOUISVILLE, Ky., Nov. 1.—In a street fight with hoodlums, officer Harlow was dangerously shot.

Murderous Man.

St. Louis, Mo., Nov. 1.—By a falling bar full of pig iron, in the Vulcan Steel Works, to-night, two men were horribly and fatally mangled.

In the same works, to-night, Hugh Hogan was covered with molten iron which was upset on him from a ladle. He will die.

Lynchings.

LITTLE ROCK, Ark., Nov. 1.—Charles Jones, an escaped convict, near attempting to rape a white lady near Spadra, last week, was arrested, and this afternoon a mob of 100 men at Spadra captured and tried him, and in 20 minutes hung him to a tree.

Another Bank Theft.

DETROIT, Nov. 1.—Wm. L. Gibson, cashier of the Citizens National Bank of Flint, in 1879, has been arraigned for stealing \$17,000.

A sanguinary butcher.

CINCINNATI, Nov. 1.—Valentine Heske, a butcher, tried to kill his wife, but probably failed, and then severed his own windpipe with a knife and is likely to die.

FOREIGN.

French Militia.

LONDON, Nov. 1.—The police at St. Petersburg arrested three Frenchmen, in which Scoville, secretary of the road was killed, and others wounded, is concluded. The court discharged Messrs. Moore, Coffin and Wheeler, and held Jas. McMechan to answer for change of venue. The case against Messrs. Cogan and Fowler are ordered to appear to-day.

Suspended Convoy.

Father Conway, of Skreen, County of Sligo, Ireland, was suspended for advanced Lind League views. The people of the parish pulled up the doors and windows of the chapel, and declare that no priest but Conway shall officiate therein.

Bank closed.

To-day being the semi-annual meeting of the Bank of England, the Bank and Stock Exchange are closed.

Gladstone's Resignation.

The Standard says, "We have the best of reasons for the belief that Gladstone contemplates resigning the Chancellorship of the Government shortly, and in favor of the belief that he meditates retiring altogether from official life.

Judgment given.

MONTREAL, Nov. 1.—Judge Johnston to-day gave judgment in court review against Wm. Duckett, for sitting and voting in the local house of assembly and in the House of Commons, and that he is not qualified. The judgment is for \$75,000, \$2,000 for every day the defendant held the seat. Duckett was declared insolvent and not owner of the goods he claimed. This judgment is the first in Canada under the new electoral act.

DIED.

At Coville, Summit County, Utah, Oct. 25th, 1881, ELIZABETH SHAW FLETCHER, wife of Samuel Fletcher. She was born July 29th, 1814, was the daughter of Alexander and Elizabeth Shaw, formerly of Bishop's Bridge, near Glasgow, Scotland. She emigrated to Utah with her mother and family in July 1858. She died in full faith in the gospel, and leaves a husband and four children to mourn her loss.

Also on the 25th day of October, 1881, WILLIAM FLETCHER, son of the above deceased, died at Coville, Utah. He was born July 29th, 1858, and died in full faith in the gospel, and leaves a wife and four children to mourn her loss.

SALT LAKE THEATRE.

ONE NIGHT ONLY!

THURSDAY EVE, NOV. 3rd.

OVERWHELMING SUCCESS EVERYWHERE.

Positively ONE NIGHT ONLY, of the World's Greatest

PIANIST!

JOSEFFY!

JOSEFFY!

JOSEFFY!

New and Attractive Programme!

PRICES OF ADMISSION: Parquet, \$1.00; First Circle, 75c; Second Circle, 50c; Reserved Seats, 25c. Extra.

Box Plan at D. O. Calder's Music Store, Monday and Tuesday for sale of reserved seats for subscribers. Box Office will be open on Wednesday, Nov. 3rd, doors open at 7.30. Concert at 8.

THEATRE.

"That's My Regular Business."

TWO Nights and Matinee!

FRIDAY and SATURDAY, NOV. 4th & 5th

The Great German-American dialect Comedy,

MAX FERRMANN

UNCLE ISAAC!

ARRANGED BY MR. JAMES H. MEAD'S New York Company, in the Great Representative Hebrew Play of that name.

Box Office open Thursday, November 3rd, at 10 a. m., for the sale of seats.

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I have the only Good Supply of

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in UTAH, Constantly in Stock.

7x7 and 7x9

WEDGE TENTS,

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WALL TENTS.

All Wall Tents are made of 10 oz. Duck, Triple Sewed, Ropes Sewed in Eaves, Two Extra Long Guy Ropes from Top of Ridge Pole, Front and Rear, and all complete with Poles and Pins.

"COLUMBUS"

GRADING PLOWS

Which Contractors say are worth double any other.

Send for Circular.

Bottles my Usual Supply of

Plows, Wagons,

Barb Wire,

Wagon Stock,

And Other Goods, I have a Large Supply of

SPRING WAGONS

AND

BUGGIES,

Which I will Sell for the next 30 days, Cheaper than ever before, to close them out before Winter.

STRAYED OR STOLEN.

A Red and white speckled crumpled horned milk cow, she is about 9 years old, and is branded. She was last seen near Agricultural Park. Any person giving information to Angus M. Cannon, 3rd Ward, that will lead to her recovery, will be rewarded.

NOTICE TO TAX-PAYERS!

COLLECTION OFFICE, COUNTY COURT HOUSE, Salt Lake City, Nov. 1st, 1881.

THE TAX-PAYERS OF SALT LAKE COUNTY, please take notice, that on the 1st day of October, have become delinquent, and unless the same are paid immediately at my Office, will be collected with costs as provided for by law.

J. W. LOWELL, Collector of Salt Lake County.

WALKER BROS.

WALKER BROS.

WALKER BROS.

WALKER BROS.

WALKER BROS.

WALKER BROS.

Z. C. McMillan,

INVITES A PUBLIC INSPECTION OF THEIR

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OF