

CONSTITUTIONAL RIGHTS.

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

(Continued.)

ELEMENTARY AUTHORS.

I examine briefly the elementary writers upon Political Science and Constitutional Law. The gentleman from Ohio (Mr. Taylor) says that he is not entitled to the name of an authority. I do not remember ever having made any such claim. The distinguished gentleman who writes, what the distinguished man whom the majority suggest, is a position which I must be considered as occupying. They say it "must be considered as an authority on the subject of constitutional law."

I do not state the fact that Mr. Burgess, in his work on Political Science and Constitutional Law, cites no authority upon the very same propositions that he states in an ex cathedra manner. I say down to me on Throp on Public Officers. He suggests no authority to support his text that relates to or is in any way connected with the Constitution. Any provision in the Constitution which the majority of the bar can maintain. The work and see whether or not the suggestion is correct.

My suggestion is correct. The majority suggests the extraordinary proposition that Congress can not, but that one House can add qualifications. It does not, however, state it to be the case, but he is "strongly of the opinion" etc. If you will read the Constitution, you will find that the House does under this power. You will be in doubt as to what the element of qualification is. I wish to call attention to what Mr. Justice Miller says, and I think I can rely upon what Mr. Justice Miller says, because I find in the report of the majority of the splendid and significant majority of Justice Miller's character. He says: "If a profound constitutional authority like Justice Miller had believed." Now, what did Justice Miller say? He said:

"Though it might be conceivable that the House of Representatives, not the Senate, but that Congress might make some conditions or limitations concerning the eligibility."

Now we are finding out from "profound constitutional authority" what the eligibility of its members, it has been done and the constitutional qualifications alone regulate that subject. Miller on the Constitution, page 30.

Mark that language! He was a "profound constitutional authority" and every lawyer in this country recognizes it, and reveres the memory of that magnificent jurist. He says it has not been done and the constitutional qualifications alone regulate that subject. I submit to the industry and skill and care of the gentlemen of the part of the majority, that it might have been well for them to have examined the chronology of the reports before the House, on the proposed act of 1852, known as the Edmunds law, excluded the gentleman from the Club.

That was this lecture of this distinguished jurist delivered in which he says it has not been done and the constitutional qualifications alone regulate that subject. That lecture was delivered in 1859 and 1859. This statute they now claim is a disqualification enacted in 1852. It can not be said that Justice Miller did not know that there was any such legislation, because in great Ramsey case (114 U. S.), which defines the status of polygamists as persons unlawfully cohabiting, was enacted in 1854, two years after this act was passed, and five years before Justice Miller said that "conditions or limitations" had not been added. Justice Miller took part in that case as a member of the United States Supreme Court.

There is your authority. There is the judge, who says, concerning the elements of eligibility, "It might be conceivable that Congress might make some conditions and limitations," but who also says:

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

As "it might be conceivable" is hardly the foundation for a change in the Constitution. However, if Justice Miller is an authority, and if he knew enough at that time to state the law as it was, there is nothing for our majority to stand upon in relation to this Edmunds Act. They can come back to their "general-welfare" proposition—that is, they have found something that is not like in some man, states, indignity. It is one thing today; it may be another thing tomorrow; but they have found what they want for the case; they now declare it, and they 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 writers, Burgess, Throp, and Pomeroy. Pomeroy, in fact, does not state it, because he states an entirely different proposition—only these can be relied 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. In the case of People vs May (3 Mich., 25).

The court said: "We concede to the fullest extent that it is not the power of the judiciary or even the legislature to establish arbitrary exclusions from office or annex conditions thereto when the constitution has not established such exclusions or annexed such qualifications. But it is begging the question to assume that the act of constraining the Constitution has that effect." (610)

In Thomas vs Owens (4 Maryland, 23) the court said: "Where a constitution defines the qualifications of an officer, it is not within the power of the legislature to change or amend it, unless the power be expressly or by necessary implication given to it."

And in Page vs Hardin (8 Ben. Mon., 60) the court said:

"We think it entirely clear that so far as residence is to be regarded as a qualification for receiving or retaining office, the constitutional provision on the subject covers the whole ground, and is a denial of power 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 eminent writer, that when the constitution defines the qualifications for office, the specification is an implied prohibition of any legislative interference to change or add to the qualifications thus defined."

I call attention right here and now to the suggestion that Mr. Justice Story is the first man upon whom we rely, and what our friends of the majority happen to say Judge Story? Judge Story says in this instance to state the law as it really is, and distinctly, contrary to the view of the majority. It is dismissed in a very few lines. They say, "Justice Story himself disclaims

explicitly in his works that he gave his own view as to what the Constitution means, but asserts that he undertakes merely to give the statements of others." Here, in this year of our Lord 1900, in this debate, the profession and the courts are advised, that the great commentator on the Constitution, Justice Story, did not write a commentary upon that instrument, but simply narrated what somebody else said or simply what some other man thought. He is "the Boswell of the Constitution" (laughter) and no longer an authority.

Well, now, I submit for the consideration 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 establishing 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 stated to the court twelve powerful instances where this great, powerful body had, in the plenitude of its mighty power, committed for contempt. And I noticed that the counsel on the other side cited one Story, "The Boswell of the Constitution."

I do not imagine it is necessary for me, a humble member of the legal profession, to stand here to defend as the illustrious friend of the majority. 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. Bingham, of Ohio, if I remember aright—a gentleman from Ohio. This is the opinion 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 to you a great length from him. I am not unimpaired by the fact that this is a long 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," who painful. Here seems to be the origin of this proposition, in Ohio (laughter), and there it 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 impressed upon the majority that he never gives his own opinion, simply narrates what other people said, and is therefore unquestionably "the Boswell 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 of such a provision the affirmative of the qualifications seem to imply a negative of all others." Story on the Constitution, section 625.

Who said that? Is that the report of what somebody else said, of some constitutional 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 language 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 qualifications are few and simple. They respect only age, citizenship, and inhabitancy." (Ibid., section 616.)

In another part of his great work Judge Story discusses negative expressions 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 positive declarations about the specific provision 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 lists Against the posts, And still insists He sees the ghosts."

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



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declaration in the preface of Story's works, upon which I suppose my distinguished friend determined, after having learned that John A. Bingham had ventured upon the ground, that he would eliminate Judge Story as a legal authority. [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 friends and confirmed by the 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 and 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, unimpairing by metaphysical refinement, furnishing a constitutional bulwark to the right, for which every true patriot would not only undergo imprisonment, but render up life itself. We say that a right so precious can not rightfully be frittered away by any "general-welfare" construction of this provision of the Constitution. Cooley certainly stands text in authority to Story, and he says:

"Another rule of construction is that where the Constitution defines the circumstances under which a right may 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 legislature to change or superadd to them, unless the power to do was expressly or by necessary implication conferred by the Constitution." (Cooley's Constitutional Limitations, page 78.)

Cushing, as against his former statement, says: "The Constitution of the United States have prescribed the qualifications required of representatives in Congress, the principal of which is inhabitancy within the State in which they are respectively chosen, leaving it to the States only to prescribe the time, place, and manner of holding the election, it is a general principle that neither Congress nor the States can impose any change these qualifications. To the latter no such power was delegated, and the assumption of it would be dangerous, as invading a right which belonged to the constituent body, and not to the body of which the representative of such constituency was a member." Tucker on the Constitution, 394.

"The principle that each House has the right to impose a qualification upon its membership which is not prescribed in the Constitution, if established, might be of great danger to the Republic. It was on this excuse that the French directory procured an annulment of elections on the 10th of Five Hundred, which maintained themselves in power against the will of the people, who gladly accepted the despotism of Napoleon as a relief." Foster on the Constitution, page 367.

"It is a fair presumption that where the Constitution prescribed the qualifications it intended to exclude all others." Paschal's Annotated Constitution, second edition, page 305, section 368.

"When the Constitution prescribed the qualifications for an office, the legislature can not add others not therein prescribed." McCarty on Elections, section 312.

(To be Continued.)

January Imports and Exports.

Washington, 15.—The monthly statement of imports and exports of the United States issued by the bureau of statistics shows that during January, 1900, the figures were as follows: Merchandise, imports, \$75,829,975, of which \$22,940,280 was free of duty. The gain over January, 1899, was about \$17,600,000. Exports, \$117,620,920, a gain over January, 1899, of about \$2,000,000. Gold imports, \$1,988,272; decrease, \$4,000,000; exports, \$5,691,290; increase, \$38,000. Silver imports, \$2,120,355; decrease, \$1,600,000; exports, \$4,590,139; decrease, \$751,000. During the last seven months there was an increase in the importation of merchandise, as compared with the corresponding period in 1899, of \$18,459,524, an increase in the exportation of merchandise of \$50,524,973; a decrease of \$42,023,711 in the importation of gold; an increase in the exports of gold of \$1,730,168; a decrease in the importation of silver of \$284,444, and a decrease of \$2,638,920 in the exportation of silver.

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 correct."

"The action of the British authorities 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. I know, but war is preferable to national dishonor. The spectacle of an American 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."

Claims 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 experience of the ex-consul. As was emphatically stated to the front and 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 signed 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 remain in Pretoria, sacrificing my own respect and that of the people of Pretoria, while the government at home continued to leave me in the position of a British consul and not an American consul. I want to say right here that there was not one single request made of me through the department of looking to the care of British interests 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 department 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 the British government, or some other party, had taken it upon themselves to take the Transvaal republic. When affairs had reached the state that my vice consul, Mr. Van Ameringen, closed up his business, took the oath of allegiance to the Transvaal and went to the front, as a burgher, I thought the time had come when I should make a report of these conditions. OPENED AMERICAN MAIL.

"It was over four weeks from the time the war opened before I received a single mail dispatch from my government. The mail for the Transvaal had all been stopped at Capetown by order of the high commissioner. When this mail was finally forwarded to me, after Colonel Stowe, the consul general in London, had been notified of its release, I had the humiliation, as the representative of the American government, of sitting in my office in Pretoria and looking on envelopes bearing the official seal of the American government opened and officially sealed with a sticker, notifying me that the contents had been read by the censor at Durban."

"I looked upon international law, but failed to find anywhere that one military power can use its own discretion in forwarding the official dispatches of a neutral government to its representative in a besieged country. "The mail service from Delagoa Bay to Europe was completely interrupted by the release of British men-of-war at that port. The service was over two weeks longer than by the west coast, and there were continued rumors that that port would be closed and communication with the outside world entirely cut off. The cable service from the Transvaal was absolutely cut off. I was privately informed by the Belgian and German consuls at Pretoria that their official cables in code to their governments had been refused by the censor. STOPPED OFFICIAL TELEGRAMS.

"I filed one cable in the interest of an American in Pretoria, which was refused absolutely by the censor at Durban. This cable I sent to the fiancée of a Mr. Nelson, an American business man in Pretoria. She was on her way to South Africa from Buffalo, N. Y., when the war broke out. According to a letter which Mr. Nelson received just before the war commenced, she was buying a trousseau in Europe. The cable requested her to come to the east coast."

"When I informed Mr. Nelson that the 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 misrepresentations which had been going on before the war and after it opened were of such a serious nature and would require such detailed explanation that on the 6th of November I filed a cable to the department in code, stating that I wished leave of absence in order to visit the States.

"I set forth in this cable that my vice consul had enlisted in the Boer army; that a Mr. Atterbury, an American, 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, and the 8th I telegraphed again acknowledging the receipt of the cable, advising the department that the situation was not critical; that Mr. Atterbury was competent; that my presence in America was important. "No reply was received and I wired again on the 11th, stating that no reply had been received, and again urged a favorable reply. On the 14th of November, 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 satisfactory."

"This cable was delayed by the censor until the 2nd of December, when I had advised 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 be named 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 accepting 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 24th 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: Put Atterbury temporarily in charge. Department will send mail from here."

"This was signed 'Hay.' Thereupon I cabled the department as follows: 'Sail 15th by Naples.' "This cablegram was sent on the 15th 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 of my office during my absence and under no circumstances could arrive from Washington. Mr. Hollis arrived on the 14th of December and was thoroughly posted in the routine of the office and I introduced him to the heads of all government departments and to my consular colleagues."

"I left Pretoria the night of Dec. 15. I went straight to Paris, notified the department of my presence there while waiting for the American line boat to sail for New York. I arrived in Washington 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, believing that I was still the consul in Pretoria, I refused to make any statement that would in any way involve the department or myself. My one object was to lay the information before the department as to the true state of affairs in South Africa. If the department thought these facts were of value sufficient to warrant the expense of the department to return to Pretoria, leaving 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 me 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 department contained information which will show my sympathy for the republic, but which time will prove to be unbiased 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 against those which have come from the department, secretly and officially. (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. Request of Theodore Thomas.

Chicago, Feb. 15.—Theodore Thomas, the famous conductor, has determined to make the Newberry library of Chicago her to his invaluable collection of music. When he resigns the baton, or in an 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 years. Apart from hundreds of valuable scores preserved during Mr. Thomas' musical life, in this country, the most interesting part of the collection, according 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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