Before Territorial Canvassers, Utah Territory.

ALLEN G. CAMPBELL

vs.

GEORGE Q. CANNON.

REPLY OF GEORGE Q. CANNON TO PROTEST FILED BY ALLEN G. CAMPBELL.

Thomas McGill & Co., Law Printers, Washington, D. C

To his Excellency ELI H. MURRAY,
Governor of the Territory of Utah.

SIR: In reply to the communication of Allen G. Campbell, Esq., in which he protests against the issue of a certificate of election to me as delegate of the Territory of Utah in the Forty-seventh Congress of the United States, and demands the issue of the certificate to himself, I respectfully submit the following statement:

The grounds on which Mr. Campbell bases his protest and demand are:

(1) That as canvassing officers the Governor and Secretary have power to "go behind the returns," and ascertain from extrinsic evidence the number of votes legally cast for each candidate.

(2) That there is no evidence tending to disprove his qualifications for the office of delegate in Congress.

(3) That there is no evidence tending to disprove the qualifications of the 1,357 electors who voted for him.

(4) That I am an unnaturalized alien.

(5) That, being such, I am not eligible to the office of delegate in Congress, and that my ineligibility resulting from alienage is aggravated by polygamy, which he thinks is incompatible with citizenship and inconsistent with an honest oath of allegiance to the Constitution of the United States.

(6) That all of the 18,568 votes cast for me at the late election are therefore void and are to be excluded from the canvass.

(7) That as a consequence the certificate of election is to be delivered by the canvassers to him, and not to me.

(8) That the females in the Territory who claimed the right to vote outnumbered all the votes polled at the late election.

(9) That it "must be taken for granted" that all votes cast by females were cast for me.

(10) That the territorial legislation which extends the right of suffrage to females is void.

(11) That it is therefore impossible to determine, without proof, that the 18,568 votes cast for me included more legal votes than the 1,357 votes cast for him.

(12) That the votes of the females have "vitiated the election."

With your excellency's permission I will answer these several propositions in their order.

1. The process of reasoning by which Mr. Campbell reaches the conclusion that the Governor and Secretary, as canvassing officers, have power to "go behind the returns," and to ascertain from extrinsic proofs the number of votes cast for each candidate is first to be considered. He refers to the following provisions of the "Compiled Laws of Utah":

(23) "Immediately upon receiving the electoral returns of any precinct, the county clerk and probate judge, or, in his absence, one of the selectmen, shall unseal the list and ballot-box, and count and compare the votes with the names on the list, and make a brief abstract of the offices and names voted for, and the number of votes each person received; the ballot-box shall then be returned and the votes and list preserved for reference in case the election of any person shall be contested.

(24) When all the returns and abstracts are made the clerk shall forthwith make a general abstract and post it up in his office, and forward to the Secretary of the Territory a certified copy of the names of the persons voted for, and the number of votes each has received for territorial offices, and furnish each person having the highest number of votes for county and precinct offices a certificate of his election.

(25) So soon as all the returns are received, the Secretary, in the presence of the Governor, shall unseal and examine them, and furnish to each person having the highest number of votes for any territorial office a certificate of election."

He thinks that because these statutory provisions do not, in express terms, require the canvassers to give the certificate to the person shown by the returns to have the highest number of legal votes, they by implication do require them to give it to the person who, whatever the returns may show, did in fact receive the highest number of legal votes; that this duty necessarily implies the power to employ suitable means to ascertain who received the highest number of legal votes; and that, therefore, the Governor and Secretary, as canvassers, have the right to resort to extraneous evidence to ascertain the real facts in this case. He seeks to fortify his conclusion by the following citation from page 52 of "Cushing's Law and Practice of Legislative Assemblies":

"There can be no doubt that in those branches wherein the law has marked out a definite line it is ministerial; but as regards the two material branches of deciding upon the capacity or incapacity of candidates, or upon the qualifications or disqualifications of electors, the subject requires some investigation; but if the returning officer be fully apprised of some notorious disqualification, whether of a candidate or of an elector, such as their being minors or claiming in the right of property, which clearly does not entitle them to the privilege, he is so far a judicial officer as to prevent their voting or being returned. In judicial decisions of this country, when the point is adverted to, it seems to be considered that the functions of returning officers are chiefly judicial in their character."

I respectfully submit that each and every step in this reasoning is erroneous, and that the conclusion reached is absolutely destitute of warrant in law. The provisions of sections 23, 24, and 25 of the statutes of Utah confer upon the Governor and Secretary, as canvassing officers, no judicial power to "go behind the returns" for the purpose of ascertaining the number of votes cast for any candidate. It is made their duty to ascertain whom the returns show to have received the highest number of votes, and to give the certificate to him. The only judicial or *quasi*-judicial

power vested in them is to determine whether the papers before them purporting to be returns are returns made in substantial conformity to the law. If they decide that the papers are such returns, they must embrace their showing in the official canvass. If they decide that they are not such returns, they must exclude them from the canvass.

The precinct judges of elections in this Territory make no returns beyond the mere transmission to the county clerk of the sealed ballot-box and list of electors. They are not precinct canvassers. They do not return to the county clerks the number of votes cast for each candidate. They only return the ballots and the poll-lists. Upon the county clerks and probate judges, or selectmen, is imposed the duty of canvassing the votes, in the first instance, by counting the ballots, and comparing their number with the number of names on the poll-lists, and preparing statements of the offices and names voted for, and the number of votes cast for each candidate. The votes and lists are not sent to the Secretary of the Territory, but remain in charge of the clerks. The law makes no provision for any inspection of the ballots or of the poll-lists by the Governor or Secretary before their canvass is completed and the certificates delivered to the successful candidates. It places nothing before the Governor and Secretary except a certified copy of the names of the persons voted for and the number of votes cast for each. If the law requires them not merely to ascertain the number of votes shown by the clerk's returns to have been received by each candidate, but the number of votes shown by the ballots and poll-lists, and by extrinsic proof, to have been legally cast for each candidate—that is to say, not merely to canvass the clerk's returns, but to canvass the votes themselves and determine their legality—then the law is an outrage, not only on the Governor and Secretary, who are compelled to make "bricks without straw," but on the candidates whose rights are to be adjudicated by officers from whom the law delib-

erately withholds the means essential to correct adjudications. This would be a most scandalous condition of the territorial law if it really existed. But such is not the law of Utah.

The question now under consideration has been adjudicated many times by judicial and legislative tribunals in the United States, upon statutory provisions substantially like those embraced in sections 23, 24, and 25 of the "Laws of Utah." It has never been decided in favor of Mr. Campbell. Mr. McCrary, in his Law of Elections (section 82), correctly states the rule established by the concurrent authority of these decisions to be, that the canvassers "must receive and count the votes as shown by the returns, and *they cannot go behind the returns for any purpose;* and this necessarily implies that when a paper is presented as a return, and there is a question as to whether it is a return or not, they must decide that question from what appears upon the face of the paper itself."

Under statutory provisions similar to those of Utah, the Supreme Court of Missouri held that the powers of the canvassers were restricted to the determination of the result shown by the returns. The following is the provision of the Missouri statute:

"The Secretary of State, in the presence of the Governor, shall proceed to open the returns and to cast up the votes given for all candidates for any office, and shall give to the person having the highest number of votes for members of Congress from each district, certificates of election under his hand with the seal of the State affixed thereto."

In State *v.* Steers, 44 Mo., 224, the court held:

"Here is no discretion given, no power to pass upon and adjudge whether votes are legal or illegal, but the simple ministerial duty to cast up and to award the certificate to the person having the highest number of votes."

The New York election law of April 17, 1822, provides that the inspector appointed for that purpose

"Shall, in person, deliver to the said clerk at the office, or

to his deputy, or to the keeper of the said office, a true copy of the said statement of votes," and thereupon the board of canvassers "shall proceed to calculate and ascertain the whole number of votes which shall be given at such election in the said county for the several persons who shall be voted for as Governor, Lieutenant-Governor, Senators, and Representatives in the Congress of the United States, or so many of the said officers as shall be voted for, and shall set down in writing the names of the several candidates so voted for at any such election for any of the offices aforesaid, and the number of votes in words written at full length which shall be given for any such candidates at any such election in the said county, and shall certify the same to be a true copy of the votes given in said county."

In the case of The People *v.* Van Slyck, 4 Cow., 323, which was decided in February, 1825, under the foregoing statutory provision, the court said:

"The duties of the canvassers are ministerial. They are required to attend at the clerk's office and calculate and ascertain the whole number of votes given at any election, and certify the same to be a true canvass. This is not a judicial act, but merely ministerial. They have no power to controvert the votes of the electors."

It is provided in section 25 of the Revised Statutes of Illinois (1856) that the clerk of the County Commissioners' Court, taking to his assistance two justices of the peace of his county,

"Shall proceed to open the returns and make abstracts of the votes in the following manner: * * * And it shall be the duty of the said clerk of the County Commissioners' Court immediately to make out a certificate of election to each of the persons having the highest number of votes."

In the case of The People *v.* Head, 25 Ill., 327, the court held:

"This contest, under our statute, is an original proceeding instituted by the contestant for the purpose of trying the legality of the election, and not of the canvass. It goes behind the canvass and purges the election itself. The court, in trying it, is not confined to the poll-books as returned, but it can go behind these and inquire, by proof

dehors, whether the votes, or any of them, were illegal. But the canvassers have no right to do this. Theirs is a mere mechanical or, rather, arithmetical duty. They may probably judge whether the returns are in due form, but, after that, they can only canvass the votes cast for the several candidates and declare the result."

Section 95, chapter 6, of the Revised Statutes of Wisconsin (1849) is in these words:

"Whenever it shall satisfactorily appear that any person has received a plurality of the legal votes cast at any election for any office, the canvassers shall give to such person a certificate of election, notwithstanding the provisions of law may not have been fully complied with in noticing or conducting the election, or canvassing the returns of votes, so that the real will of the people may not be defeated by any informality."

Under this statute it was held by the Supreme Court of Wisconsin, in Attorney-General *v.* Barstow, 4 Wis., 775, as follows:

"Whether it would have been competent for the Legislature, under the Constitution which delegates all of the judicial power of the State to the courts of the State, to give to the board of State canvassers judicial authority to settle and adjudicate rights of this nature, it is not necessary to inquire. They have not given them any such power. Their duties are strictly ministerial. They are to add up and ascertain by calculation the number of votes given for any office. They have no discretion to hear and take proof as to frauds, even if morally certain that monstrous frauds have been perpetrated. The ninety-fifth section of this statute gives them no such power."

The Revised Statutes of Michigan for 1846 (p. 51) contain the following provision:

"The said board of canvassers, when formed as aforesaid, shall proceed to examine the statements received by the Secretary of State of the votes given in the several counties, and make a statement of the whole number of votes given for the office of Representative in each congressional district, which shall show the names of the persons to whom such votes shall have been given for said office, and the whole number of votes given to each. The

said canvassers shall certify such statement to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been, by the greatest number of votes, duly elected to such offices, and make and subscribe on such statement a certificate of such determination, and deliver the same to the Secretary of State."

Under this statutory provision the Supreme Court of the State, in the case of The People *v.* Van Cleve, 1 Mich., 336, said:

"In a republican government, where the exercise of official power is but a derivative from the people through the medium of the ballot, it would be a monstrous doctrine that would subject the public will and the public voice thus expressed to be defeated by either the ignorance or the corruption of a board of canvassers. The duties of these boards are simply ministerial. Their whole duty consists in ascertaining who are elected, and in preserving the evidences of such election."

It is provided on page 77 of the Revised Statutes of Maine for 1841 as follows:

"The returns from each town and plantation shall be delivered into the office of the clerk of the county commissioners on or before the first day of the meeting of said commissioners next after the said month of September, to be by them opened and compared with the like returns from the several towns and plantations in such county or registry district, and the person having a majority of the votes shall be declared registrar of deeds for said county or registry district."

The Supreme Court of Maine, in Bacon *v.* York County Commissioners, 26 Me., 498, a case which arose under this statute, held:

"The canvassers had no power to go beyond the returns of the selectmen and town clerks, and receive other evidence, and determine therefrom that the town-meeting was not properly called, and for that cause reject the votes of that town."

In O'Ferrall *v.* Colby, 2 Minn., 186, a case decided under similar statutory provisions, the court held:

"We cannot, therefore, resist the conclusion that the

duties of the clerk of the board of supervisors in receiving and opening election returns, in canvassing and estimating the votes, and in giving certificates of election, are purely ministerial, and that no judicial or discretionary powers are conferred upon him or the board of canvassers, except, perhaps, so far as to determine whether the returns are spurious or genuine, or polled at established precincts, and in ascertaining from the returns themselves for whom the votes were intended."

The Supreme Court of Indiana, under a similar statute, in the case of Brower *v.* O'Brien, 2 Carter, (Ind.,) 430, held:

"With regard to this point, it may be observed that the duties of both the board of canvassers and the clerk in making the statement are purely ministerial. It is not within their province to consider any questions relating to the validity of the election held or of the votes received by the parties voted for. They are simply to cast up the votes given for each person, from the proper election documents, and to declare the persons who, upon the face of these documents, appear to have received the highest number of votes given, duly elected to the offices voted for."

The paragraph quoted from Mr. Cushing's work shows upon its face that the returning officer, who is said to be "so far a judicial officer as to prevent their *voting* or being returned," is a judge of the election as well as a returning officer. If Mr. Cushing refers to mere canvassers, his statement, that in the judicial decisions of this country their functions are held to be chiefly judicial, is an inexcusable blunder.

2. Mr. Campbell's next proposition is, that there is no evidence tending to impeach his qualifications for the office of delegate in Congress. That the returns present no such evidence, is probable; and if the returns on their face disclose nothing to impeach his qualifications, it is quite immaterial to inquire now whether Mr. Campbell is or is not eligible to the office which he seeks. The House of Representatives is the only tribunal empowered to adjudicate that question. If the Governor and Secretary find, from the returns, that he is elected, they must

award the certificate to him, whatever proofs outside of the returns may or may not be attainable to impeach his eligibility before the House of Representatives. Such proofs cannot be used in this canvass.

3. The same answer is to be made to the assertion that there is no evidence tending to impeach the qualifications of the 1,357 electors who voted for Mr. Campbell. Whatever evidence may exist on this point outside of the returns, it cannot be considered by the Governor or Secretary in this proceeding; it can only be considered by the House of Representatives of the United States.

4. Mr. Campbell's next assertion is, that I am an unnaturalized foreigner. This presents a question of fact upon which the returns to be canvassed by the Governor and Secretary probably furnish no evidence beyond the presumption, to be drawn from those returns, that the electors performed their duty according to law, and, therefore, that the candidates for whom they voted have all the legal qualifications for office, whatever they may be. If there be any proofs attainable tending to overthrow this presumption and to show that I am an unnaturalized foreigner, and therefore destitute of the necessary qualification of citizenship, it is obviously incompetent for the canvassing board to go behind the returns and consider such proofs. The only tribunal which has power to do so in this case is the House of Representatives of the United States.

The difference between the duties of the precinct election officers and those of the canvassers is very great. The precinct election officers are judges of election. In the first instance it devolves upon them to judge of the qualifications of electors, in subordination to the provisions of law regulating their duties; but it never devolves upon any canvasser to judge of the qualifications of electors unless by virtue of express—and, I will add, most extraordinary and dangerous—statutory provisions. Only in a few exceptional cases have any such indefensible provisions been made by statute in the United States.

The House of Representatives is, by the Constitution, made the judge of the election, returns, and qualifications of its members. This power of the House does not exclude the power of the judges of election to act within their statutory authority as judges of the qualifications of electors; nor does it exclude the power of canvassers to act as judges of the returns presented to them to be canvassed, so far as to determine whether they are or are not returns substantially conforming to the law. But it does exclude the power of precinct officers to judge of the qualifications of candidates; and it excludes the power of canvassers to judge either of the qualifications of electors, or of the qualifications of candidates. It also confers upon the House the power to decide on all points, including the qualifications of electors and the legal sufficiency of the precinct returns.

I respectfully submit, therefore, that the Governor and Secretary have no power to go behind the returns to ascertain whether I am or am not an unnaturalized foreigner. This disposes of the point.

But then the fact is that on the 7th day of December, 1854, by a judgment of a court of competent jurisdiction, I was duly naturalized according to law, as Mr. Campbell well knows.

In the case of Spratt *v.* Spratt, 4 Pet., 393, Chief Justice Marshall said:

"The various acts upon the subject submit the decision of the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge upon both law and fact. This judgment is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry, and, like every other judgment, to be complete evidence of its own validity."

In Campbell *v.* Gordon, 6 Cranch, 176, the Supreme Court of the United States held:

"It is true that this requisite [good moral character] to his admission is not stated in the certificate; but it is the opinion of this court that the court of Suffolk must have

been satisfied as to the character of the applicant, or otherwise a certificate that the oath prescribed by law had been taken would not have been granted. The oath, when taken, confers upon him the rights of a citizen, and amounts to a judgment of the court of his admission to those rights. It is, therefore, the unanimous opinion of the court that William Currie was duly naturalized."

If, now, it were competent for the House itself, in a contested case, to reverse or vacate this judgment and to declare that I am an unnaturalized foreigner, it would not be competent for the Governor and Secretary, acting as canvassers, to do this. The notion that any jurisdiction to reverse or vacate that judgment for mistake or fraud, or on any other grounds, is vested in the canvassing officers in this case, is too preposterous to admit of any comment from me. But in the case of Baskin *v.* Cannon, in the 44th Congress, this precise objection to my eligibility was urged before the Committee of Elections of the House, and was overruled by the unanimous vote of the committee, on the ground that the judgment of the First District Court of Utah on this point was conclusive, and I retained my seat in the House.

Not only is there no legal ground for a question of my eligibility by the territorial canvassers, or even by the House of Representatives itself, based on the ground of alienage, but though such ineligibility could be a lawful ground of action by the committee or the House, it would not, as Mr. Campbell supposes, be aggravated by polygamy, if that could also be added as a factor in the adjudication. For, in the case of Maxwell *v.* Cannon, in the Forty-third Congress, Smith's Digest, 188, it was unanimously held by the committee, with the concurrence of the House, that the only qualifications or disqualifications of delegates were those prescribed by the Constitution for Representatives, and that polygamy was not a disqualification for a seat in the House of Representatives of the United States.

5. Mr. Campbell's fifth proposition is, that my alleged

want of citizenship renders me ineligible to the office of delegate in Congress. I concede, for the sake of the argument, that an unnaturalized foreigner ought to be ineligible to the office of delegate from Utah, just as he is ineligible to the office of representative in Congress. I make this concession, not because I am certain that the proposition is founded in the Constitution or in the law, but because it seems to me to be founded in common sense. The Constitution provides neither for the qualifications of the office of delegate in Congress nor for the office itself. The law accords to every Territory the right to send a delegate to the House of Representatives of the United States. (Rev. Stats., sec. 1862.) It prescribes the qualification of citizenship for the delegates from Washington, Idaho, and Montana, (Rev. Stats., sec. 1906,) but for the delegates from no other Territory. Whether, in the face of the constitutional provisions that "the House shall be composed of members chosen every second year by the people of the several *States*"; (art. 7, sec. 2;) that "each House shall be the judge of the election, returns, and qualifications of its members"; (art. 7, sec. 5;) and that "each House may determine the rules of its procedure," (art. 7, sec. 5,) the law creating the office of delegate would or would not have any validity as against a rule of the House excluding from the floor all territorial delegates, or any other persons not constitutional members or officers of the House, I admit, for the purposes of this argument, that so long as delegates shall be received in conformity with the provisions of the statute, it will be within the power of the House, and also its duty, practically to recognize and enforce this qualification of citizenship, whether prescribed by law or not. But it is an insult to the Governor and Secretary to suggest that they are capable of such an unwarrantable invasion of the jurisdiction of the courts and of the House of Representatives as to attempt to incorporate as an element into their canvass in this case a decision adverse to my eligibility, based on a

reversal or vacation of the judgment by which I was naturalized.

6, 7. The next two propositions of Mr. Campbell may be conveniently considered together. He asserts that by reason of my alleged ineligibility all the 18,568 votes cast for me at the late election are void and are to be excluded from the canvass, and that, as a consequence, the certificate of election is to be given to him, and not to me. I will cite, without discussion, the authorities by which the doctrine involved in these propositions has been repudiated as often as it has appeared in the Senate or in the House.

The case of Smith *v.* Brown, 2 Bart., 395, is the leading case in the House of Representatives. It was reported from the Committee on Elections by the chairman, Mr. Dawes, on the 28th of January, 1868. His exhaustive discussion of the subject appears on pages 402–405 of the second volume of Bartlett's Contested Election Cases. He refers to the case of Ramsey *v.* Smith, Clark & Hall, 23, argued by Mr. Madison in the House at the first session of the First Congress, and to the cases of Albert Gallatin in the Senate in 1793, Philip Barton Key in the House in 1807, John Bailey in the House in 1824, James Shields in the Senate in 1849, and John Young Brown in the House in 1859. He also reviews the English authorities, and the opinion expressed in Cushing's treatise, which is cited by Mr. Campbell, and he closes the discussion by declaring that "The law of the British Parliament in this particular has never been adopted in this country, and is wholly inapplicable to the system of government under which we live."

In the subsequent case of Zeigler *v.* Rice this precise question was decided as follows:

"Thus it will be seen that, according to the contestee's own statement, he had entered into an agreement to recruit for the rebel army; was on his way to carry out fully his understanding when he was captured, and claimed protection as a rebel officer when captured. The Committee are well satisfied that the acts of the contestee were well un-

derstood by the voters of said district at the time the contestee was voted for, but do not agree with contestant that, as contestee was ineligible, the candidate who was eligible is entitled to the seat." (2 Bart., 884.)

The committee accordingly recommended a resolution unseating Mr. Rice and declaring the seat vacant; but the House refused even to evict Mr. Rice. On the contrary, by the adoption of a substitute for the committee's resolution, without a division, Mr. Rice was declared entitled to the seat. The proceedings may be found on page 5447, vol. 80, of the Congressional Globe.

In the Fortieth Congress Simeon Corley of South Carolina, Pierce M. B. Young and Nelson Tift of Georgia, and Roderick R. Butler of Tennessee, and in the Forty-first Congress Francis E. Shober of North Carolina, members of the House, were relieved of their disabilities long after their election, and yet, when so relieved, were admitted to their seats in the House. All were ineligible when chosen, but in neither case was the seat given to a competitor, nor the election even declared void.

In the case of Joseph C. Abbott, in the Senate (Forty-second Congress), the doctrine now asserted by Mr. Campbell was fully considered, and was repudiated by the Senate. There has not been and probably will not be in this country another discussion of the subject so exhaustive as that which was had in this case. The English authorities were all presented, and very few, if any, American decisions, whether judicial or parliamentary, escaped the scrutiny of the Senators who submitted the report of the committee and the views of the minority, which are printed together in Senate Report No. 58, Forty-second Congress, second session.

In the case of Maxwell *v.* Cannon, decided in the Forty-third Congress, the same question was raised, and the Committee and House, without a division, rejected the doctrine now asserted by Mr. Campbell.

8. In reply to Mr. Campbell's assertion that the females in the Territory who claimed the right to vote outnumbered all the votes polled at the late election, I respectfully submit, in the first place, that this alleged fact probably does not appear on the face of the returns; and, in the next place, that if it be a fact capable of substantiation by extraneous proofs, and at the same time entitled to weight in any aspect of this case, the only tribunal invested with power to ascertain the fact and use it as a basis of judicial action is the House of Representatives of the United States.

9. Mr. Campbell asserts that it "must be taken for granted" that all votes cast by females were cast for me. On this point also Mr. Campbell is mistaken. If this is not shown by the returns, the canvassers can neither presume it nor permit Mr. Campbell to attempt to prove it before them by extrinsic evidence, nor can they consider the fact when so proven. If he shall contest my seat in the next Congress, and shall deem the mode in which the females voted material to any issue in the contest, he will learn that the House will not presume what he asserts on this point to be true, but will compel him to prove it.

10. Mr. Campbell asserts that the territorial legislation which extends the right of suffrage to females is void because "it attempts to confer the privilege by a special act on different and easier terms of qualification than those required by existing general laws applicable to the other sex, thus violating the rule of uniformity." If this assertion be true, it can have no bearing upon the action of the canvassers, who have no power to look beyond the returns for the purpose of ascertaining whether females voted, how many voted, or for whom they voted, but only upon the action of the House of Representatives in a contest or under a protest before that tribunal. It is not a necessity of my case, therefore, that I shall vindicate the "act conferring upon women the elective franchise," approved February 12, 1870.

11. The next proposition of Mr. Campbell is, that it is, in view of the premises, impossible to determine, without proof, that the 18,568 votes cast for me included more legal votes than the 1,357 votes cast for him. This involves a singular misconception of the effect of these returns and of the relation sustained to them by the Governor and Secretary as canvassing officers. Mr. Campbell asserts the presumption to be that the votes returned for me were illegal votes, and that they are not to be canvassed for me in the absence of affirmative proof *dehors* the returns showing that they were in fact legal votes. The absurdity of this assertion is not even mitigated by a concession that the same presumption arises as to votes cast for him. The rule does not, in his judgment, "work both ways." The truth, however, on this point is very manifest. The presumption is that all votes shown by returns, legal in form, to have been cast for him or for me were so cast, and were lawfully cast. This presumption is not conclusive on the House in a contest duly prosecuted. It may be overcome by extrinsic proof. But it is conclusive on the canvassing officers, and cannot before them be overcome by proofs outside of the returns if the returns are regular and legal.

12. Mr. Campbell's last point is that the votes of the women have "vitiated the election by rendering it impossible to determine without proof that the pretended majority for Mr. Campbell does not consist of such votes." This is a most remarkable view of the law to be entertained by an aspirant to a seat in Congress. No board of canvassers can ever be absolutely certain that the majority of any candidate does not consist of illegal votes, without extrinsic proof which is not merely presumptive but absolutely conclusive. But the absence of such conclusive proof does not make the election void. It is an impossibility that any county returns should furnish conclusive proof of the legality of any votes. The proof which these returns afford is

not conclusive but presumptive. Upon this presumptive proof the canvassers must act. They can resort to no other. It is for them conclusive. They must award the credentials to the candidate shown by the returns to have been elected. In the House the case is different. The House may in a case of contest or of protest inquire into and pass upon the title to the seat; but even in the House the credentials will be presumptive evidence of title, and will be decisive of the case unless overcome by counter proof. The House itself will not in the absence of a contest require conclusive proof. And in a contested case a proponderance of proof will be decisive whether the proof be or be not conclusive.

If the House in a contested case shall find that of my 18,568 votes 17,212 were illegal, whether cast by women or by men, and that of Mr. Campbell's 1,357 none were illegal, the election will not be rendered void, but the seat will be awarded to Mr. Campbell. But if the House shall not find that so many illegal votes were cast for me, it will confirm my title to the seat, whatever assertions Mr. Campbell may see fit to make in impeachment of that title. Of the question presented in this branch of Mr. Campbell's protest, the Governor and Secretary, as canvassers, obviously have no shadow of jurisdiction.

Having answered all the propositions upon which Mr. Campbell bases his protest against an award of the certificate of election to me, and his demand of an award of the certificate of election to himself, I respectfully submit that a returned majority of 17,211 votes, in a total vote of 19,925, gives me a title to the credentials which cannot be overridden by the Governor under any of the pretexts suggested by Mr. Campbell, without the grossest violation of law and of official duty.

Geo. D. Hanna

WASHINGTON, D. C., *December* 30, 1880.