CASE OF BRIGHAM H. ROBERTS, OF UTAH.

January 20, 1900.—Referred to the House Calendar and ordered to be printed.

Mr. Tayler of Ohio, from the Special Committee on the case of Brigham H. Roberts, submitted the following

REPORT.

[To accompany H. Res. 107.]

Mr. Tayler of Ohio, from the Special Committee on the case of Brigham H. Roberts, Representative-elect from the State of Utah, presented the following

REPORT.

Your committee, appointed December 5, 1899, in pursuance of the following resolution—

Whereas it is charged that Brigham H. Roberts, a Representative-elect to the Fifty-sixth Congress from the State of Utah, is ineligible to a seat in the House of Representatives; and

Whereas such charge is made through a member of this House, on his responsibility as such member and on the basis, as he asserts, of public records, affidavits, and papers evincing such ineligibility:

Resolved, That the question of the prima facie right of Brigham H. Roberts to be sworn in as a Representative from the State of Utah in the Fifty-sixth Congress, as well as of his final right to a seat therein as such Representative, be referred to a special committee of nine members of the House, to be appointed by the Speaker; and until such committee shall report upon and the House decide such question and right the said Brigham H. Roberts shall not be sworn in or be permitted to occupy a seat in this House; and said committee shall have power to send for persons and papers and examine witnesses on oath in relation to the subject-matter of this resolution—

submit the following report:

The committee met shortly after its appointment, and in Mr. Roberts's presence discussed the plan and scope of its inquiry. Mr. Roberts submitted certain motions and supported them by argument, questioning the jurisdiction of the committee and its right to report against his prima facie right to a seat in the House of Representatives. The determination of these questions was postponed by the committee, to be taken up in the general consideration of the case.

Subsequently certain witnesses appeared before the committee and were examined under oath, in the presence of Mr. Roberts and by him cross-examined, relating to the charge that he was a polygamist. This testimony has been printed and is at the disposal of the members of the House.

The committee fully heard Mr. Roberts and gave him opportunity to testify if he so desired, which he declared he did not wish to do,
We present now the statutory declarations where disqualifications have been imposed.

Section 21 of the act of April 30, 1790, is as follows:

That if any person shall, directly or indirectly, give any sum or sums of money, or any other bribe, present, or reward, or any promise, contract, obligation, or security, for the payment or delivery of any money, present, or reward, or any other thing, to obtain or procure the opinion, judgment, or decree of any judge or judges of the United States, in any suit, controversy, matter, or cause depending before him or them, and shall be thereof convicted, and so forth, shall be confined and imprisoned, at the discretion of the court, and shall forever be disqualified to hold any office of honor, trust, or profit under the United States.

Section 5499, which was passed in 1791, provides—

That every judge of the United States who in any wise accepts or receives any sum of money or other bribe, etc., shall be fined and imprisoned, and shall be forever disqualified to hold any office of honor, trust, or profit under the United States.

Is a member of Congress an officer?

Before citing other acts of Congress, it is proper to discuss the question as to whether a member of Congress is an officer within the meaning of the statute.

If a member of Congress is not an officer, if the qualifications of a member of Congress are only those named in the Constitution, then, of course, the makers of the Constitution meant that nobody could be made ineligible for Congress, either by law or by the act of either body, even though laws passed immediately after the adoption of the Constitution made him ineligible for all other positions under the Government.

Now, upon that proposition we make these observations, as to the meaning of the word "office."

First. Undoubtedly under the Constitution, in one or two instances, the word office does not include Representative in Congress, as, for example, the last paragraph of section 8, article 1:

No person holding any office under the United States shall be a member of either House during his continuance in office.

In that case the words "holding any office" means an office other than a member, but the context is absolutely unmistakable, and no person is in danger of assuming, even if a member of Congress hold an office, that it meant to say that no member of Congress shall be eligible to be a member of Congress.

In the second place, the provision in the last paragraph of section 3, of article 2, relating to the duties of the President, that he shall commission all the officers of the United States, does not mean that he is to commission members of Congress, but he is himself an officer, and he does not commission himself, nor does he commission the Vice-President, who is also an officer under the United States.

So also paragraph 2, section 1, article 2:

But no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

There the distinction is made "No Senator or Representative, or person holding an office of trust."