largely depends, should be intelligent and virtuous. The man entrusted with the high, difficult and sacred duties of an American citizen should be informed and enlightened. He should have sufficient intelligence to discriminate right from wrong in political matters, and should possess a feeling of moral obligation sufficient to cause him to adopt the right. In the law quoted Congress expressed an intention to admit to citizenship aliens of good moral character, attached to the principles of liberty and justice contained in the Constitution and desirous of the public good, and to exclude aliens who live immoral lives and disregard moral principles, who are in favor of despotism, and are indifferent to or opposed to those institutions upon which the welfare of all depends; they intended to exclude the immoral, those who are opposed to the principles of liberty and justice, or are in favor of anarchy and confusion. No alien who is not willing to support the Constitution and all laws pursuant to it should be admitted to citizenship. No one should be admitted who has not sufficient intelligence to understand the principles of the government which may rest in part on his will. It does not appear to the satisfaction of the court that the applicant understands the principles of the government of the United States or its institutions sufficiently to become a citizen. The application is denied.

We concur: Judd, justice; T. J. Anderson, associate justice; Henderson, associate justice.

ILLEGALLY IMPRISONED.

The application of Peter Barton, for a writ of *habeas corpus*, was argued before the Supreme Court June 6, Judge Powers appearing for the petitioner, and Mr. Hiles for the government.

Judge Powers made an elaborate argument on the questions at issue. His propositions were that when the applicant pleaded guilty to unlawful cohabitation, it was a conviction; that it made no difference whether or not judgment was passed upon him; that the court had no jurisdiction to arraign him a second time for the same offense; that it was the duty of the court to have informed him that he had the right to plead a former conviction in bar of the proceedings in the second instance; that the provision that a person shall not be twice put in jeopardy for the same offense was a constitutional provision, and could not be waived by the defense, nor set aside by the court. In support of his position, the Judge read largely from authorities, clearly sustaining the views of the case which he held. As the opinion of the Supreme Court of the United States had said in the Nielsen case, there was also "an excess of authority by the court" in this case. Where the court had no power to try him, the Supreme Court said "the court is bound to release him." In this case it was a constitutional immunity of the defendant that was violated, and the judgment must be set aside. The court having no jurisdiction to try and determine the charge of adultery, the defendant could not by any waiver confer jurisdiction; the proceedings were void from the beginning. It is a monstrous doctrine to say that by neglect or ignorance of the defendant the court can obtain a power which the law does not give it. The fact that sentence was passed immediately, when the law says it should not be done within six hours, was of itself sufficient reason for ordering his release from custody. In this case the defendant was being wrongfully and unjustly deprived of his liberty, and it was the imperative duty of the court, for its own honor, to hasten to remedy its error.

Mr. Hiles followed, opposing the granting of the writ, which he claimed was not the proper process by which to obtain the release of the petitioner. Much of the argument which followed was so incoherent that it is not possible to give its substance in a synopsis. Mr. Hiles declared that the record of conviction for unlawful cohabitation could not be considered by the court. As to the proposition that six hours had not elapsed between conviction and passing judgment, as the law requires, he said that action of the court was a mere irregularity, and could not be received on *habeas corpus*. If Barton had pleaded a former conviction, he might have availed himself of the writ he asks for, but he did not. He never gave the court below an opportunity to pass upon the question of his former conviction. In the record of this particular case there was no showing of a former conviction, and it could not be shown by means of the writ asked for.

Judge Powers, in his closing remarks, said that the Supreme Court of the United States had said unlawful cohabitation was continuous to the date of the finding of the indictment, and a second indictment within that period was illegal, and a writ of *habeas corpus* would release a person held by the second indictment. There was no effort to contradict the record, but the record itself is relied upon, and shows the illegality of the proceedings in the adultery case. The United States Supreme Court had said that these offenses could not be segregated in any way, yet the district attorney did this, and still persisted in his course by holding a man in illegal confinement, and endeavoring to maintain himself by mere quibbles. This man, who applies for release, is being unlawfully held, and to deny him the plain justice to which he was entitled was a course that the court could not follow. It had not been necessary to prove a former conviction; the law said he could not be convicted; therefore the entire judgment was void, and upon *habeas corpus* proceedings he must be released. The district attorney here admits that this man is unlawfully imprisoned, yet by quibbles he still continues to deprive a citizen of his constitutional rights. The court in arraigning Barton on the second charge was acting without authority, and the judgment of fifteen months' imprisonment was void. It cannot be that we have yet reached a point in America when we will keep men in prison on a mere technicality. There are half a dozen cases dependent on this; they are unlawfully held, and we come here asking the court to give us justice. I ask your honors to well consider the case of holding a man on a void judgment. Your honors will have to consider it. There is no dodging the issue. We must know whether this man can be held in prison in violation of the law and the Constitution.

The case was submitted and taken under advisement.

A RELIGIOUS TEST.

During the last few days before the close of registration the applications for admission to citizenship in the Third District far exceeded in number those of any other like period. On June 4 there were thirty-five person admitted by Judge Henderson, and the record of next morning's session shows twenty-six admitted, with more than that number who were to come in the afternoon. Of those in attendance June 5, there were many who are understood to be "Liberals," therefore the "Liberal" party managers, Judge Powers, Commissioner Pierce, A. L. Williams and others were exceedingly active, using every endeavor to rush their men in.

As an instance, while Judge Henderson was examining applicants, H. S. Laney came up in a rush and asked that a gentleman for whom he was to be a witness be given precedence over a number of others who had come before him. The reason he gave for this request was that the man "had left his work," entirely ignoring the fact that those he was crowding back were in precisely the same predicament. The adamantine cheek thus displayed took the good natured judge so by surprise that he told him to go ahead. It was discovered, however, that the applicant had left his first papers at home, and he could not be sworn in without producing them.

Shortly after the naturalization of citizens commenced that morning, Peter Ellis, a "Mormon," was called. He passed Judge Henderson's examination as to his qualifications, and was about to be sworn, when one R. D. Winters interposed by asking if Mr. Ellis was a "Mormon." To this the reply was in the affirmative. "Do you believe the doctrines of 'Mormonism' to be true?" was the next question. Mr. Ellis replied that he did; this was followed by "Do you believe polygamy to be morally wrong?" To this Mr. Ellis' reply was "No, sir," and it was made the basis of the rejection of his application.

Hugo Peterson was next in order. After the usual questions, and also an examination as to his present belief in polygamy, the judge asked, "Did you believe in it once?"