the Territory should extend to all rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of that Act. It has been repeatedly declared that the power given by the above grant was extremely broad. It will not be denied that determining who shall be electors, and upon what terms and conditions the right or privilege of suffrage shall be exercised is a rightful subject of legislation. In fact the Organic Act made this a duty of the newly organized Territory in order to carry out and effectuate the purpose for which it was organized. The question then is, is the Act under consideration contrary to the express words or intent of the grant of power? If in the Act of 1870 the right is limited to citizens of the United States, it is not contrary to the express words in the grant of power, for the only express limitation is contained in the *proviso*, and that is to citizens of the United States.

It is contended that the sentence "but the qualifications of voters and of holding office at all subsequent elections shall be such as shall be prescribed by the Legislative Assembly," refers back to the first part of the section, and restricts the Legislative Assembly to fixing the qualifications of the class there mentioned, namely, "male inhabitants." As by the XV amendment to the Constitution the words "free white" must be considered as stricken out, this seems to me a strained and forced construction, and that we could with equal propriety say that the restriction extended to those who were residents of the Territory at the time of the passage of the Organic Act. The Congress fixed the qualifications of the electors for the first election, and these were that they should be males, citizens of the United States, over 21 years of age and residents of the Territory. After that election and until the Legislative Assembly acted, no person in the Territory had a right to vote, and the Legislature was left free and untrammeled to determine who should vote and under what conditions that privilege should be exercised, provided it was conferred upon citizens of the United States only.

The word "qualifications" in this connection must be given its usual and natural signification, as used by law writers. In State Constitutions and statutes, as well as among the law writers and in judicial decisions it is used with reference to the elective franchise, to distinguish the class, as well as to point out the personal requirements of the individual voters.

For the Legislative Assembly to confer the elective franchise upon females is not, in my opinion, the exercise of a power contrary to the express words or intent of the Organic Act, but it is entirely within the grant of power conferred by that act.

It is further contended that the Territorial Act is contrary to the terms and intent of sections 1859 and 1860 of the Revised Statutes of the United States, passed in 1874, and found among the provisions applicable to all the Territories, and which provisions take the place of the Organic Act.

If this objection shall, upon examination, be found to be true, of course the Territorial Act must give way, because the acts of Congress, as far as the Territories are concerned, are supreme and paramount.

The sections referred to are as follows:

"Section 1859. Every male citizen above the age of 21, including persons who have legally declared their intention to become citizens in any Territory hereafter organized, and who are actual residents of the Territory at the time of the organization thereof, shall be entitled to vote at the first election in such Territory and to hold any office therein; subject, nevertheless, to the limitations specified in the next section.

"Section 1860. At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the Legislative Assembly of each Territory; subject, nevertheless, to the following restrictions on the power of the Legislative Assembly, namely:

"First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of 21 years, and by those above that age who have declared on oath, before a competent court of record their intention to become such, and have taken an oath to support the Constitution and government of the United States.

"Second. There shall be no denial of the elective franchise or of holding office to a citizen on account of race, color, or previous condition of servitude."

The third and fourth subdivisions refer to officers, soldiers, and seamen of the army and navy, and are not necessary to recite here.

If I understand the objection of counsel for the defendants it is that there are no limitations in the latter section, to which the expression, "Subject, nevertheless, to the following limitations specified in the next section," in the former section could refer, and that it did and must refer to *male* citizens in that section.

In section 1859 Congress fixes the qualifications of all voters in Territories *thereafter* to be organized, for the first election only, and with the limitations in the following section, all possessing these qualifications are entitled to vote. And because Congress specifies who shall compose the first electors, the word "limitations" is very properly used in referring to the provisions of the next section. The first limitation in that section is upon those who have declared their intention to become citizens, and the right to vote at the first election is limited to those of that class, who, in addition to the oath required by law to be taken upon a declaration of intention, should take an additional "oath to support the Constitution and Government of the United States," and does not include those who have simply declared their intention or taken out their first papers without taking the additional oath of allegiance.

The voters at the first election are further limited in the third and fourth subdivisions of section 1860. But it seems to me that a complete answer to the criticisms of counsel may be found in the fact that section 1859 applies only to Territories which should thereafter be organized, and consequently does not apply to this Territory. Section 1860 contains a grant of power only as is therein stated and by the reservation of a general *revising power.*

I find nothing in this section which prohibits the Territorial Assembly from conferring the elective franchise upon females who are citizens of the United States. Neither do I find anything in Section 1859 which shows an intention on the part of Congress to confine the right to vote in Territories already organized, to male citizens.

It is further claimed, that if the Territorial Assembly possessed the power to confer the elective franchise upon women, the act passed for that purpose *fails* to do so for several reasons.

One objection is, that the act of 1870 confers the right to vote upon females, upon different terms than that applied to males, in that the latter are required to be taxpayers while the former are not. Even if this should be found to be the fact I cannot think that this would invalidate the law.

The Legislative Assembly proposed to confer this privilege upon a new class, not heretofore enjoying it, and in the absence of any inhibition to the contrary in the laws of Congress, I think they were at liberty to do it upon such terms and conditions as to them might seem reasonable and just, so far at least as no constitutional or organic rights of the males in the premises are restricted or abridged.

I think it would have been competent for the Territorial Assembly to have enacted that all female citizens of the United States over the age of 21 years, who could read and write in the English language, should vote, although this educational qualification is not required of the males.

It is asked, what words of the Territorial Act of 1859, fixing the qualifications of male voters, are repealed by the Act of 1870. I do not know that any particular words or any set of words are repealed by the Act of 1870, but I do know that whatever words there are in the Act of 1859 which are restrictive, confining the right to vote upon males only, are so modified and controlled by the Act of 1870 that the right to vote is no longer confined to male citizens.

It is further claimed that the Act is void because it attempts to confer this right upon those who are not citizens, and are not twenty-one years of age, and without restrictions in regard to residence. A mere reading of the Act shows that it is confined to females who are twenty-one years of age and who have been resident in the Territory six months.

It is further claimed that the use of the words, "or who is the wife, widow, or daughter of a native born or naturalized citizen of the United States," is an attempt to confer the privilege upon those who, by the laws of the United States, were not entitled to it; and that the previous words, "born or naturalized in the United States," includes all, who could by any possibility exercise the right; that is, it includes all who are citizens of the United States. The Legislative Assembly could not confer the right to vote upon any one not a citizen. In construing this act we must apply to it the same rule that we would in construing any act of the Legislature, or the act of any Legislature, and not start out with the presumption that they attempted or intended to do what they were prohibited from doing.

Strictly speaking, naturalization is the act of placing an alien in the position, or investing him with the rights, of a natural born citizen. In the ordinary use of the word we refer to this act which results in citizenship as something done by the individual in court, and in conformity with the law upon the subject of naturalization. The law which makes a foreign born woman a citizen by the fact of her marriage is not found among the laws upon *the subject of naturalization.* Having used the words, "born or naturalized in the United States," it might be claimed, with some show of reason, that it excluded all those who were not native born, or had not themselves appeared in Court and been naturalized in accordance with the laws upon the subject; hence they use these words so as to include all of this class. The wife of every citizen *is a citizen, by virtue of the fact* of marriage, without reference to her residence, provided she belongs to that class of people who could be *lawfully naturalized.*

The "wife, widow, or daughter," mentioned in the Act, who are granted the elective franchise, are those who within the intent and meaning of the statute are citizens *of the United States. The act does* not attempt to confer the right upon those who are not citizens.

The demurrer to the petition is over ruled and a peremptory writ is ordered.

P. H. EMMERSON, Judge.