pected of any crime, because he will not take a prescribed oath in which he is required to swear that he will not violate certain laws? Was there ever anything more preposterous proposed? But the gentleman may say the right of suffrage is not expressly secured by the Constitution of the United States to white men. Then I reply to him, in the language of the New York court of appeals, "as a right expressly secured by the constitution it may be taken from convicted criminals when the Legislature in their plenary power over crimes deem such deprivation a necessary punishment. To say this is to say in substance that the right in question may be forfeited by crimes when the Legislature so direct." But could the Legislature inflict a punishment like this upon innocent men who will not swear that they never will be guilty of an offense which the Legislature may create?

The Supreme Court of the United States, in the Cummings case, declared of the provisions of the constitution of Missouri, which disfranchised those who would not swear that they had not been guilty of certain things—

The clauses in question subvert the presumption of innocence and alter the rules of evidence, which heretofore, under universally recognized principles of common law, have been supposed to be fundamental and unchangeable. They assume that the parties are guilty; they call upon the parties to establish their innocence; and they declare that such innocence can be shown only in one way—by an inquisition in the form of an expurgatory oath into the conscience of the parties.

How much more reprehensible are the provisions of section 25 of the bill under consideration. By this the citizen who will not swear that he is not going to violate a law, by his refusal is, *ipso facto*, subjected to a severe penalty—total disfranchisement and disqualification. Could anything be more monstrous?

The supreme court of New York, in Gotchens vs. Matheson (58 Barbour, 152), said:

Citizenship of the United States is an important right and the privileges conferred by it are important privileges, dearly prized by the American people. An act that provides for a forfeiture thereof imposes a penalty and comes within the provisions of the Constitution in regard to bills of attainder.

The gentleman from Virginia, standing in his place in this House on the 13th of March, 1882, declared of the eighth and ninth sections of the bill then under consideration:

I should be false to my sworn duty to support and defend the Constitution of the United States if I voted for a bill which not only violates the Constitution, but makes a precedent of evil omen to the liberties of the people. I cannot consent to eradicate one vice by an act of usurpation of power which might involve results of greater magnitude and importance to the happiness of the present and future generations of this great Union.

I forbear—

He said further—

to dwell upon the dangerous powers vested in the oligarchy to be constituted by the ninth section. Given a board, which is to regulate suffrage, to hold elections, to make returns thereof, and all this without appeal, and there will be no difficulty in reaching the conclusion that for the time being 140,000 citizens of the United States will be subject to an autocratic oligarchy as absolute in its authority and capable of achieving as much unhappiness for its subjects by the plunder of their property, the deprivation of their liberties, and the violation of their constitutional rights, as ever existed among any people in ancient or modern times.

That bill which the gentleman thus denounced became a law March 22d, 1882, the provisions of the eighth and ninth sections being unchanged. By the terms of the twenty-fourth section of the bill now under consideration the ninth section of the act of March 22d, 1882, is continued in force.

Yes, Mr. Speaker, that "board" which the gentleman so eloquently denounced "as an autocratic oligarchy as absolute in its authority and capable of achieving as much unhappiness for its subjects by the plunder of their property, the deprivation of their liberties, and the violation of their constitutional rights as ever existed among any people in ancient or modern times," is by this bill to be continued in full force and effect. And that, too, notwithstanding the gentleman knows that the Territorial Assembly of Utah at its last session passed a bill meeting in every possible way the requirements of the act of March 22d, 1882, but which was causelessly vetoed by the then governor of the Territory.

I know it has been claimed that the Supreme Court of the United States, in Murphy et al. vs. Ramsey et al. (114 U. S., 15), has affirmed the power of Congress to prescribe a test oath such as was provided by the eighth section of the act of March 22d, 1882; but I insist that that judgment of the Supreme Court does not meet the issue raised by the proposed legislation contained in section 25 of this bill.

The eighth section of the act of March 22d, 1882, only applied to bigamists, polygamists, or those guilty of unlawful cohabitation. It required all the ingenuity of the Supreme Court to get around the decision of that court in the Cummings case to escape the logic of the opinions in a half dozen cases decided by the highest courts of Pennsylvania, New York, Alabama, Georgia, and Kentucky. I refer to Huber vs. Reily (3 P. F. Smith, 142); Gotchens vs. Matheson (58 Barbour, 152); Barker vs. The People (3 Cowen, 686); In the Matter of Dorsey (7 Porter, 293); Campbell vs. The People of Georgia (11 Ga., 353); Gaines vs. Buford (1 Dana, 510).

The Supreme Court of the United States recognized the hopelessness of answering the logic of these famous cases. If it admitted that the disfranchisement prescribed in the eighth section of the act of March 22d, 1882, was imposed as a punishment, it knew it would be open to two objections, either one of which would be fatal. Accordingly a majority of the court, ignoring the point that it in effect was a bill of pains and penalties directed against a class merely, held that "it is not open to the objections that it is an *ex post facto* law." Referring to the eighth section the court says:

It does not seek in this section, and by the penalty of disfranchisement, to operate as a punishment upon any offense at all. The crime of bigamy or polygamy consists in entering into a bigamous or polygamous marriage, and is complete when the relation begins. That of actual cohabitation with more than one woman is defined, and the punishment prescribed in the third section. The disfranchisement operates upon the existing state, and condition of the person, and not upon a past offense. It is, therefore, not retrospective. He alone is deprived of his vote who, when he offers to register, is then actually cohabiting with more than one woman. Disfranchisement is not prescribed as a penalty for being guilty of the crime and offense of bigamy or polygamy, for, as has been said, that offense consists in the fact of unlawful marriage and a prosecution against the offender is barred by the lapse of three years by section 1,044 of the Revised Statutes. Continuing to live in that state afterwards is not an offense, although cohabitation with more than one woman is. But as one may be living in a bigamous or polygamous state without cohabiting with more than one woman, he is in that sense a bigamist or a polygamist, and yet guilty of no criminal offense. So that, in respect to those disqualifications of a voter under the act of March 22d, 1882, the objection is not well taken that represents the inquiry into the fact by the officers of registration as an unlawful mode of prosecution for crime.

In respect to the fact of actual cohabitation with more than one woman, the objection is equally groundless, for the inquiry into the facts so far as the registration officers are authorized to make it, or the judges of election, on challenge of the right of the voter if registered, are required to determine it is not, in view of its character as a crime, nor for the purpose of punishment, but for the sole purpose of determining, as in the case of every other condition attached to the right of suffrage, the qualification of one who alleges his right to vote. It is precisely similar to an inquiry into the fact of nativity, of age, or of any other status made necessary by law as a condition of the elective franchise. It would be quite competent for the sovereign power to declare that no one but a married person shall be entitled to vote; and in that event the election officers would be authorized to determine for that occasion, in case of question in any instance, upon the fact of marriage as a continuing status. There is no greater objection, in point of law, to a similar inquiry for the like purpose into the fact of a subsisting and continuing bigamous or polygamous relation, when it is made, as by the statute under consideration, a disqualification to vote.

Observe the inconsistentency of the court as well as the inexactness of the language employed to convey its meaning. It says that the law "does not seek in this section, and by the penalty of disfranchisement, to operate as a punishment upon any offense at all." What the writer was trying to say was that "disfranchisement" in its imposition in this instance was not as a "punishment" for crime, but the habit of using legal phraseology was so strong upon him that he could not escape self-condemnation out of his own mouth. "Penalty," according to Webster, means "penal retribution;" "punishment for crime or offense;" "the suffering in person or property which is annexed by law or judicial decision to the commission of a crime, offense or trespass."

Therefore "the penalty of disfranchisement" is a punishment, and to argue that it can be inflicted and not "operate as a punishment upon any offense at all" is self-stultifying. But let us analyze the whole paragraph quoted above. The court admits that disfranchisement cannot be inflicted as a penalty by the Legislature without a trial. Its attempt to prove that a bigamist is not disfranchised for that offense, or for unlawful cohabitation, is disingenuous. Of course "the crime of bigamy or polygamy" is committed by "entering into a bigamous or polygamous marriage," but "disfranchisement," although it "operates upon the existing state and condition of the person," is none the less "a punishment" for that offense even if prosecution therefor "is barred by section 1044 of the Revised Statutes." To claim that "disfranchisement is not prescribed as a penalty for being guilty of the crime and offense of bigamy or polygamy," but is imposed as a punishment for continuing in a bigamous or polygamous state, which is made an offense, is to describe exactly "a penal retribution," which the Constitution of the United States declares shall not be inflicted "without due process of law."

To admit that while "one may be living in a bigamous or polygamous state without cohabitation with more than one woman, he is in that sense a bigamist or a polygamist and yet guilty of no criminal offense," and still insist that "the objection is not well taken that represents the inquiry into the fact by the officers of registration as an unlawful mode of prosecution for crime," is simply begging the question. What is the purpose of the inquiry? To ascertain if the person is living in a bigamous or polygamous state without being guilty of a criminal offense? No! The object is to find out whether he is guilty of an offense which subjects him to the penalty of disfranchisement. To do this what is the mode? An expurgatory oath? Yes! Who are to do this? The officers of registration, who, in the language of the New York court of appeals, "are not authorized to do so. They can determine who are citizens, but they can not adjudge and declare, as an original adjudication, that the plaintiff's citizenship has been forfeited by the commission of an offense." (Gotchens vs. Mathewson, 58 Barbour, 152.)

Unlawful cohabitation is an offense punishable by fine and imprisonment; nevertheless the Supreme Court says that "the inquiry into the fact, so far as the registration officers are authorized to make it, or the judges of election, on challenge of the right of the voter, if registered, are required to determine it, is not in view of its character as a crime, nor for the purpose of punishment, but for the sole purpose of determining, as in the case of every other condition attached to the right of suffrage, the qualification of one who alleges his right to vote." But how far "in the case of every other condition attached to the right of suffrage" are the registration officer, or judges of election competent to inquire? "They may determine," says the supreme court of Pennsylvania, "many things, such as the age and residence of the person offering to vote, whether he has paid taxes, and whether, if born an alien, he has a certificate of naturalization; * * * but whether he has been guilty of a criminal offense and has, as a consequence, forfeited his right, is an inquiry of a different character." (Huber *vs.* Riley, 3 P. F. Smith, 142.) The utmost extent to which they can go, says the supreme court of New York, is to receive as evidence, the adjudication by a court of competent jurisdiction "that the plaintiff's citizenship has been forfeited by the commission of an offense." (Gotchens *vs.* Mathewson, 58 Barbour, 152.)

And the reasons for this are threefold. First, because both in the United States and in England it has invariably been held that an election officer is "neither a judge nor anything like a judge." Second, because "citizenship of the United States is an important right, and the privileges conferred by it are important privileges, dearly prized by the American people. An act that provides for the forfeiture thereof, imposes a penalty, and comes within the provisions of the Constitution in regard to bills of attainder. (Ibid.) Third, because "if this were not so, if that which can not be accomplished by means looking directly to the end can be accomplished by indirect means, the inhibition may be evaded at pleasure. No kind of oppression can be named against which the framers of the Constitution intended to guard which may not be effected." (Cummings *vs.* The State of Missouri, 4 Walg. 372.)

Having wabbled into this untenable position it is not surprising that the court should assert that "it would be quite competent for the sovereign power to declare that no one but a married person shall be entitled to vote." It might with equal accuracy have said that the sovereign power could prescribe the height, in feet and inches, of the persons entitled to vote, as well as the color and cut of their hair.

Mr. Speaker, waiving, for argument sake, the question of the righteousness and soundness of the law and reasoning of this decision of the Supreme Court of the United States, do not the provisions of section 25 of the bill now under consideration go way beyond what the court says Congress may lawfully do? It is not content with fixing a "status" for the voter by requiring him to "register himself by his full name, with his age, place of business, his status, whether single or married, and if married, the name of his lawful wife," but says he "shall take and subscribe an oath," wherein he must swear, among other things, not only that he does not mean to commit certain offenses, but that "he will not, directly or indirectly, aid, abet, counsel, or advise any other person to commit the same."

There have been test oaths prescribed in this country before; but never, I believe, what might be termed *in futuro* test oaths, which men who were neither accused nor suspected of crime were required to take as a prerequisite to being qualified to vote. If it is forbidden by the Constitution to prescribe an oath as to the past actions of a man who has not been convicted of any crime, thereby disfranchising him as a penalty for not taking the oath, how much more must it be unconstitutional to require him, under the pain and penalty of disqualification, to swear that he does not intend to commit an offense, or aid, abet, advise, or counsel, directly or indirectly, others "to commit the same?"

Mr. Speaker, in the language of the gentleman from Virginia, "I believe the most precious assurance for American liberty and the most essential guarantee of American civilization is the Constitution of the United States. To destroy any evil by unconstitutional methods is to cure a disease by a poison which disturbs the vital functions of the body politic and injects into it a principle most difficult to be extirpated, and creates a precedent whose influence must be injurious and may be fatal to the life of constitutional government."

But, Mr. Speaker, this test oath is by no means the only undemocratic and un-American feature of this bill. It provides for the emasculation of the present Territorial government. It deprives the people of the right to elect one branch of their Legislative Assembly, and provides for a legislative council of thirteen members who are to be appointed by the President and confirmed by the Senate. And this, too, in the face of the fact that the governor of the Territory has by the organic act an absolute veto power. What possible excuse for the addition of autocratic oligarchic powers?

But this is not all. The people are deprived of the last vestige of local self-government by conferring upon the governor the power to appoint every county, municipal, and precinct officer, except judges and selectmen of the county, and probate courts, who are to be appointed by the President of the United States, by and with the advice and consent of the Senate.

The gentleman from Virginia has experienced a wonderful change of heart since 1882. Then he denounced as atrocious the proposition to confer upon a "board"—"an autocratic oligarchy"—power that would enable them to plunder the people of their property, to deprive them of their liberties, and to violate their constitutional rights. Now he not only is in favor of continuing this "autocratic oligarchy" with all its powers unimpaired, but he wants to impose upon the people alien local officers—those who assess their property and collect the taxes—as well as every other vestige of local self-government.

Mr. Speaker, can it be that such a precedent as this is to be set by the Congress of the United States? Sir, I take it that there is not a member of this House who will contend that Congress can with impunity disregard that right of local-community self-government which lies at the basis of all free representative governments. It has been well remarked, "That it is a principle of institutional law, peculiar to the race from which we sprang, and without it no free government ever has been, or ever can be, maintained. From the time Tacitus remarked this feature of the common law of primitive Germany it has been the well-spring of the free institutions which distinguish the governments of the races springing from the liberty-loving and liberty-maintaining Teutonic tribes. Whenever our English ancestors, from any combination of circumstances, temporarily lost sight of or were deprived of the right of local-community self-government, they invariably became the victims of oppressive power exerted by the tyranny of one or of many.

Our forefathers were wisely tenacious of this principle of community government. All the reasons which they gave in justification of their revolt against British tyranny were bottomed on this fundamental right. It was in a town meeting, the embodiment of the idea of local-community self-government and a venerable survival of an archaic institution that determined and systematic resistance to the encroachments of King and Parliament was first organized. Otis, Old Man Eloquent, and John Adams, of glorious memory, thundered in the former, but plain yeoman Sam Adams, the man of the town meeting, with his committee of correspondence, solidified New England and prepared the way for united action by the thirteen colonies.

You have the power to deprive one hundred and fifty thousand people in the Territory of Utah of this sacred right of local-community self-government; but remember precedents, like curses, come back to plague their inventors. It is not so many years since the representatives of the people of thirteen States of this Union were shut out of both Houses of Congress and kept out until State governments were reconstructed in order, as Judge Black declared, to "maintain the worst men in the highest offices, throw the reins loose on the neck of rapacity, make leprous fraud adored."

Place thieves
And give them title, knee and approbation
With Senators on the bench.

Mr. Speaker, I can not undertake to point out and comment upon all the monstrous features of this bill. I would not presume to trespass so long upon the time and patience of the House. I trust, however, you will bear with me while I briefly refer to two other of its provisions.

Section 14 annuls the law incorporating the Church of Jesus Christ of Latter-day Saints, so far as the same has any legal validity, and also annuls the corporation of the association called the "Perpetual Emigrating Fund Company" and dissolves said corporation.

The argument made by the majority of the Judiciary Committee in favor of these provisions of the bill and the reasoning of gentlemen in support thereof on the floor of this House, are both ingenious and disingenious. Certain premises are laid down, and the whole fabric built thereon stands upon a false foundation.

The acts incorporating the Church of Jesus Christ of Latter-day Saints and the Perpetual Emigrating Fund Company were within the legislative power conferred upon the Territorial Assembly of Utah by the organic act. They were as much within its power as the incorporation of any other companies or associations. They were "rightful subjects of legislation, consistent with the Constitution of the United States and the provisions of the organic act." Congress, it is true, reserved the right to disapprove, and if it exercised this power, the Acts of the Legislative Assembly disapproved were null and of no effect. But the Supreme Court of the United States (in the Miners' Bank *vs.* The State of Iowa, 19 Curtis, 1) declared that until Congress did disapprove of the acts of Territorial Assemblies they were valid. It held moreover, in the same case, that a corporation owing its existence to an incorporating act passed by a Territorial Assembly was a valid one. It follows, therefore, a corporation thus created would become vested with certain rights. If it was given the right to acquire and hold property and manage it for its own use or benefit, or for the use and benefit of others, those rights became vested rights. You can not interfere with those vested rights any more than the Legislature of New Hampshire could with the vested rights of Dartmouth College.

If there is any law well settled in this country I take it that it is the law in regard to vested rights. When Congress came to legislate upon the subject of polygamy in 1862, the original bill contained a clause repealing, or annulling *in toto*, the act of the Legislative Assembly incorporating the Church of Jesus Christ of Latter-day Saints, but the Congress did not dare go that far. It expressly declared that in the future no religious organization, association, or society should acquire property to a greater amount than $50,000; but it did not interfere with the property already held by such organization, association or society. It did not, because it could not without violating the well-settled law of the land in regard to vested rights.

I will not consume your time by arguing this subject in all its details and ramifications. This is done fully and far better than I could hope to do it by the minority of the Judiciary Committee in their report to the House. It is so thoroughly and perfectly demonstrated there that Congress has not the power to do what this bill proposes to do in the fourteenth, fifteenth and sixteenth sections that it would be a mere waste of time on my part to add one word further. If you will not "believe on such authority and such reasoning you would not believe though one rose from the dead" to warn you against this contemplated wrong. For like reasons I have not deemed it necessary to touch upon other outrageous features of this bill, which have been so ably discussed in the minority report.

As is shown by that report, section 2 "invades the personal rights, attacks and overthrows the personal security of the citizen." It is not only indefensible legislation, but it is useless. To-day the arrest of persons wanted as witnesses without previous service by a subpœna is the course of procedure in Utah. There is no warrant of law for it. The only effect of this proposed legislation by Congress is to give a semblance of right to what has been, and is being, done by making it lawful in the future.

The sixth section of the bill is useless because no such laws as are therein denounced exist in the statute books of Utah.

In the majority report, in speaking of the annulment of the laws incorporating the Mormon Church, this language is used—

The organic act expressly provides that all laws passed by the Territorial Legislature "shall be submitted to the Congress of the United States, and if disapproved shall be null and of no effect."

This power whenever exercised makes the original law null—not only hereafter, but "of no effect." If disapproval only nullifies its effect for the future no force will be given to the last words.

Section 7 of the bill annuls certain laws conferring jurisdiction on the probate courts of Utah. Are we to infer that this disapproval by Congress of these laws not only annuls them for the future, but makes them "of no effect" so far as the past is concerned? If this is the effect, as the majority argues, in regard to the laws incorporating the Church and the Perpetual Emigrating Fund Company, then it must follow, according to their reasoning, that whatever has been done in the past by the probate courts was illegal, null, and "of no effect." This is contrary to the law laid down by the Supreme Court of the United States in the Miners' Bank vs. The State of Iowa, already referred to, but I suppose the court will promptly reverse itself when it has the opportunity, on the dictum of the distinguished lawyers who subscribe to this later doctrine.

Mr. Speaker, may I venture to appeal to this House to consider well before it commits itself to the monstrous propositions contained in this bill. I know too well the influences which are operating to drive this proposed legislation through Congress. I realize how the very air has been made pregnant with the baseless calumnies, the slanders, the innumerable and unmitigated falsehoods, ceaselessly concocted and persistently disseminated. Religious bigotry and intolerance are arrayed against my people. Political necessity, cant, hypocrisy, and all kindred Pecksniffianism join in the hue and cry. The platform, the pulpit, the press, are mighty engines for the manufacture of public sentiment. Their batteries are directed constantly and with full force upon the Mormons. I know that it is probably well-nigh impossible for any man in public life to even protest against a measure, no matter how monstrous, how unconstitutional, that is aimed at Mormonism.

Daily, almost hourly, we are told that it is the evil of polygamy that leaves us friendless. "Rid yourselves of that stigma," is the advice of those who admit the wrongfulness, the danger, of such legislation as is now proposed, "and fair play and justice will