tained. The appellants electing to stand upon their answer, the Court below granted the peremptory mandamus, and thereupon appellants brought the case to this Court.

The right to the mandamus must clearly appear. Under the former practice the alternative writ was regarded as the foundation of all subsequent proceedings in the case, and resembled, in this respect, the declaration in an ordinary action at common law. It was necessery that upon its face a clear right to the mandamus be shown, and the material facts on which the applicant relied be strictly set forth, so that they may be admitted or traversed by the return.

Great strictness is requisite in this respect.

(High's Extraordinary Legal Pleadings, sec. 537-538.(

By tacit consent the affidavit has been treated as the complaint and the first pleading in this case. This is in accordance with the rule as laid down in California, and also recognized by this Court in a former case.

(People vs. Supervisors, 27 Cal. 665, Chamberlain vs. Warburton, 1 Utah 267).

The affidavit, as a complaint, therefore, is to be treated as the alternative writ formerly was. It is a well settled rule that a demurrer reaches back to the first fault committed by either party; and on demurrer to the return or answer, it is therefore competent for the defendant to avail himself of any material defect in the complaint or affidavit.

(High's Extraordinary Remedies, §493). State vs. McArthur, 23 Wis. 427. Gould's Pl. Ch. 9, Sec. 36. 1 Noah's Pl., 4th Ed., p. 260. People vs. Booth, 32 N. Y. 327).

And if the answer be obnoxious to a demurrer, yet if the complaint is defective in substance, judgment is properly given for defendant. (Id., §493.)

When, therefore, the demurrer in this case is interposed to the answer, this demurrer reaches back to the complaint or affidavit; and it is claimed that the affidavit is defective in substance.

1st. The complaint (the affidavit) does not allege or show that it was the duty of the appellants to do the various things which it is asked that they may be compelled to do. The simple allegation that the appellants, after demand, refused to do certain things "as required by law," is not sufficient. What law is referred to? Some statute of the United States or of the Territory? Or does it refer to the common law? The allegation should be definite, and the law should be designated. And I do not think that a simple designation even of the law would be sufficient, unless sufficient was alleged, aside from this, to sustain the Relator's case. (High's Ex. Rem., §536-538.) The affidavit should have contained all of the facts which go to constitute the duty and which induce the obligation on the part of the defendant to perform the act sought to be performed. (Id., §536.)

In this case now before us, the affidavit contains none of the facts going to show that it is the duty of appellants to do the things which they are now asking the court to compel them to do. It does not even refer to any statute. And it cannot be claimed that the mandamus should be granted in anticipation of a supposed omission of duty. An actual omission of duty must be shown. (High, Ex. Rem. 12, and cases cited there; Id., §39 and 41.) For this failure therefore, the ground for a mandamus does not appear.

2d. But if it be assumed that enough is alleged as to the duty of the appellants in the premises, by the simple recital "as required by law," and the law refers to "an act providing for the registration of voters," etc., "approved 22d February, 1878," we then must consider whether that be a valid law, as that is one of the points raised and passed upon in this case.

The registration act referred to provides that the assessor "shall ascertain upon what ground such person claims to be a voter, and he shall require each person entitled to vote and desiring to be registered to take and subscribe in substance the following oath or affirmation:

Territory of Utah, } ss
County of ——. }

I, ——, being first duly sworn, depose and say, that I am over 21 years of age, and have resided in the Territory of Utah for six months, and in the precinct of —— one month next preceding the date hereof, and (if a male) am a "native" or "naturalized" (as the case may be) citizen of the United States, and a tax-payer in this Territory, (or if a female) I am "native born" or "naturalized," or the "wife," "widow" or "daughter" (as the case may be) of a native born or naturalized citizen of the United States; and the same section further provides that "upon the receipt of such affidavit, the Assessor, as aforesaid, shall place the name of such voter upon the Registration List of the voters of the county." (Sec. 1.)

This statute requires that each person entitled to vote and desiring to be registered, shall take this oath. If his or her name be not upon the registry list, his or her "ballot shall be rejected." (Sec. 13.) It avails a party nothing that he is "entitled to vote," he will not be allowed to vote unless he be registered, and will not be allowed to register unless he take that oath. His right, and the right of every citizen to be registered and to vote depends upon his taking the oath. Every part of that Registration Act is pivoted on the oath. If the oath falls, the whole Registration Act falls; for there is no provision made for any registration that does not depend upon that oath.

The question then for consideration is whether the oath be valid or not?

Our "Organic Act"—our charter—provides that citizens alone can vote. (Sec. 5 of the Organic Act.) If this provision has since been modified by United States Statute (U. S. R. S. § 1860) giving the Legislature power to allow aliens to vote upon declaring their intention to become citizens, the principle is not changed in regard to the oath; for our Legislature has not availed itself of this modification and has never passed any act allowing aliens to vote upon "declaring their intentions" to become citizens.

The Legislature can have no power to do that which the laws of Congress say the Legislature shall not do. There might be sometime a disagreement as to what the Legislature might do when the matter was not by law of Congress forbidden; but there can be no possible disagreement when the power is in express words denied to the Legislature. The law of Congress is our Constitution in the matter. The Revised Statutes of the United States (Sec 1860) provides that the Legislatures of the Territories may fix the qualifications of voters, "subject, nevertheless, to the following restrictions upon the power of the Legislative Assembly, namely," &c., and the first restriction is that the right of suffrage shall be confined to citizens and those who have declared their intention to become such. This is in effect a constitutional prohibition upon the Legislature, and if the Legislature attempt to extend the right of suffrage beyond these named limits their action is nugatory. The Legislatures, as I have said, have not availed themselves of the power to extend the right of suffrage to "those who have declared their intentions" to become citizens. Therefore, no person, male or female, can vote in this Territory, unless such person be a citizen. The conclusion is, to my mind, irresistable, and I can see no possible way to avoid it.

The territorial statute prescribing the qualifications of voters, uses language to which that of the oath in the Registration law exactly corresponds. The assessor then, in ascertaining who are "entitled to vote," looks to the statute, and the language of the statute and that of the registration oath being the same, it follows that the persons possessing the qualifications specified in the oath and who will take the oath, will be allowed to register and to vote.

The oath excludes all male persons from voting who are not "native born" or "naturalized," yet it allows female persons to register and vote who are neither "native born" nor "naturalized." The evident intention was to evade or ignore the law of Congress. If this were not the purpose, why not stop with the words "native born or naturalized" when referring to female persons, as was done when the language referred to male persons?

The daughter of a naturalized citizen is not made a citizen by her father's naturalization, any more than a son, unless she was under 21 years of age at the time of her father's naturalization; and yet this Territorial statute and oath allow her to be registered and to vote. She has no more right to that privilege than a son, and the Legislature had no authority to grant it to either. This cannot be deemed an unimportant matter, when we remember that two-thirds, or nearly so, of the population of this Territory, according to the last census, were of foreign birth or the children of parents who were of foreign birth.

This act, without any restrictions or limitations, allows the wives of citizens to vote; yet all wives of citizens are not citizens.

The Revised Statute of the United States (Sec. 1994) says: "Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen."

Could a woman who has been a resident of this country less than five years be "lawfully naturalized?" If not, then the fact of her being a wife, will not make her a citizen. I am not unmindful of the limitation made in Kelly vs. Owen (7 Wall, 496,) whereby the restrictive clause in the last section referred to, as it then stood, only limited the application to free white women. In that case the limitation hung upon the words, "under existing laws," and those words have been left out of the later statute. And not only so, but the limitation has also been expressly negatived by Sec. 2169 of the United States Revised Statutes, which provides that the naturalization laws shall apply to persons of African birth or descent. If the hook upon which the court in that case hung its exception or qualification, has been stricken out and also expressly negatived by statute, and yet the clause, shorn of those qualifying words, "under existing laws," be allowed to stand and be embodied in the revision of the laws, we must conclude that there was some other matter sought to be reached, other than of the applicant being a free white woman. In the case referred to, (Kelly vs. Owen,) the parties to the action had all been residents of this country five years, and hence no question on that point did or could arise. The ruling there simply resolves itself into this, that all the parties being of five years residence, then and in that case the only restriction was that of color. An examination of the decision will fully bear out this view.

In the case of Minor vs. Happersett, (21 Wall, 162,) the Supreme Court of the United States dwell at considerable length upon the subject of native born women being citizens, and refers to the fact that the Government has also made provision for alien women to become citizens. It refers to the same section as above given to show this; and there is nothing whatever in the opinion in that case not in harmony with the view I have given of the section.

The conclusion to my mind is that no married woman of foreign birth can be allowed to vote in this Territory by reason of such marriage, until she has been a resident of this country for five years, the time required for naturalization of males, otherwise the law would not be uniform, and would be unjust and inequitable, and in violation of the United States Statutes — our Constitution in such cases. Congress never contemplated such inequality.

The registration act referred to allows "widows" of citizens to vote, when all widows are not citizens, for the same reason that all "wives" cannot be such. As to the citizenship itself of widows, there is this exception—that if their husbands had declared their intentions to become citizens, then the widows would be citizens "upon taking the oaths prescribed by law." (Rev. St. of U. S.; Sec. 2168.) But this exception does not apply here, for the reason that a "widow" does not have to swear that she is a citizen, nor show that she has taken the "prescribed oath."

The registration oath not only allows "wives," "widows" and "daughters" to vote, who are not citizens, but it, on the other hand, excludes men from voting who are citizens. A male person of foreign birth who, when his father was naturalized was under twenty-one years of age, is by the act excluded from voting unless he be naturalized himself. It requires all male persons to be native born or naturalized in order to vote, notwithstanding it allows female persons to vote without being either naturalized or native-born.

This Territorial act not only confines the male voters to those who are native-born or naturalized, but it also imposes an additional burden upon them that is not imposed upon the female voters. The male voters are required to be tax-payers. Such a discrimination is unjust and unreasonable. The Court, in the majority opinion, so holds, but says the oath is nugatory only to that extent. The court, as I think, has no right or authority for doing this. It is not an analagous instance to that of a statute which contains various grants, not dependent upon each other, part of which might be stricken out and the residue stand, and in giving of those stricken out, the Legislature had transcended its authority. But it might be more analagous to a grant based upon several conditions, all of which are to be complied with before the grant accrues. Here several things have to be sworn to before the party applying will be allowed to register and vote, and there is no authority to register such person if any one of those things specified are left out. Therefore, if he cannot swear to every one of the matters required by the oath, he is excluded from registration and voting. His right to vote being based upon an oath of specific provisions, the court cannot say that he cannot be registered and vote by taking part of that oath. The oath, as given and as a whole, must be taken. If one of its provisions falls, that which remains is not the oath required for registration. And any attempt by the court to change the oath and authorize a different one, is, in my judgment, simply legislating.

But, I have, I think, shown the oath in question is not defective in merely one particular. There are defects in almost every branch of it—defects that are incurable by this or any other court. The branch applying to "wives" is thus defective, also that applying to "widows," also that applying to "daughters," and that applying to male persons.

A registration act founded upon an oath so bristling with unjust discriminations, ought not to stand. An election carried on under it is a fraud upon the rights of the people.

One able text writer says that "all regulations of the elective franchise, must be reasonable, uniform and impartial." (Cooley's Const. Lim. p. 602). A statute that is not so is utterly void. (Monroe vs. Collins, 17 Ohio St. R. 665).

The statutes of the United States stand as our constitution in this matter. The oath and registration act being in direct violation of the statutes of the United States, are unconstitutional, null and void. They are not only void for the reason stated, but also because they are against the plain and obvious principles of common right and common reason. Whenever any law is calculated to operate against these principles, it is null and void. (Wilkinson vs. Leland, 2 Peters; 657; Terrett vs. Taylor, 9 Cranch 43, Cooley's Const. Lim. p. 166 n. 11).

That this oath is against common right and common reason, is manifest to every one.

There are two or three minor points upon which I am unable to unite with the majority of the court, but it is not necessary to note them.

Natural Result of Too Much Lawyer in Our Legislature.

The other day it was necessary for Mr. Pinder to go into court as a witness. Mr. Pinder knows the nature of an oath, and he isn't a man who would perjure himself for the biggest and best farm in Michigan. Mr. Pinder was ordered to stand up, raise his right hand and swear that he would tell the truth, the whole truth, and nothing but the truth. Then he sat down and a lawyer began:

"Mr. Pinder, you saw this affair, did you?"

"I did."

"Well, state to the jury what took place."

"Well, I was sitting in the house, and my wife suddenly called—"

"Never mind your wife, Mr. Pinder," interrupted the lawyer.

"Why, sir, my wife called to—"

"Never mind your wife, I say! I want to know what you know."

Mr. Pinder had been sworn to tell the truth and the whole truth, but right at the outset the lawyer wouldn't let him do either one. Then he began:

"I was sitting in my house when ——"

"I don't want to know what happened in your house. A fight took place in the street, and if you were on the spot I want to know it."

"Well, I heard a loud talking, and——"

"I want to know if you saw the defendant strike the plaintiff," interrupted the lawyer.

Mr. Pinder had sworn to tell all about it in a truthful manner, but he was now ordered to leave out more than half of "the whole truth" and begin where it suited the lawyer.

"When I crossed the street a woman said——"

"I don't care what a woman said, sir," shouted the lawyer.

What that woman said should have been told, according to the oath taken, but the lawyer wouldn't have it.

"Well, I saw two men fighting—the plaintiff and defendant here," observed Mr. Pinder.

"Do you swear that these were the men?"

Mr. Pinder had sworn to tell "the truth, the whole truth, and nothing but the truth," and the lawyer turned right about and hinted that he might not have seen the men he swore he saw.

"These were the two men," he answered.

"And you saw the blows struck?"

"I did."

"Now we claim that not a single blow passed!" shouted the lawyer.

He was defending a man with a black eye and a busted nose, who had been arrested while fighting, and Mr. Pinder had seen the fight, and yet he claimed that Pinder didn't see a blow struck.

"I heard——"

"No matter what you heard."

Mr. Pinder had heard plaintiff dare defendant to strike him, and he had sworn to tell the truth, yet the lawyer had forced him into perjury. He wouldn't let him tell the whole truth—nor even half of it.

"Did you see blows passed?" resumed the lawyer.

"I did."

"And you saw the plaintiff strike the defendant first?"

"No, sir; the defendant struck first."

"What! do you know what you are swearing to. Didn't you just take an oath to tell the truth in this case?"

"I did."

"And now are you trying to mislead the jury by suppressing part of the truth—by telling what you wish to and suppressing what you don't."

"No, sir. Just as I heard—"

"You heard! We don't want to know what you heard!"

Mr. Pinder didn't want to suppress anything, but he was forced to; he wanted to tell all about it, but they wouldn't let him; he wanted to tell the whole truth, but they wouldn't have it. They made him perjure himself while swearing to tell the truth, the whole truth, and nothing but the truth.—*Detroit Free Press.*

NOTICE.

In the Probate Court in and for Salt Lake County, Territory of Utah.

ANN BLACKWOOD, Plaintiff,
against
JOSEPH BLACKWOOD, Defendant.

The People of the Territory of Utah,
To Joseph Blackwood, Defendant,
Greeting:

YOU are hereby summoned to appear in an action brought against you by the above named Ann Blackwood, plaintiff, in the Probate Court in and for the County of Salt Lake and Territory of Utah, and answer the complaint filed therein within ten days (exclusive of the day of service) after the service on you of this summons — if served within this county, and if not within this county, but within the Third Judicial District of the Territory of Utah, within twenty days; otherwise within forty days.

This action is brought to obtain a decree dissolving the bonds of matrimony existing between you and said plaintiff, and if you fail to appear or answer, plaintiff will apply to this court for the relief prayed for in her said complaint, and cost of suit.

SEAL.

In witness whereof, I hereunto set my hand and seal of said Court, in Salt Lake City, this 1st day of February, A.D. 1879.

D. BOCKHOLT,
Clerk Probate Court, Salt Lake County, U.T.

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