Continued from page 553.

to extend the right of franchise to any other class of persons except those named and defined by Congress. But the section prescribing the qualifications of voters had several exceptions to it, which instead of weakening the argument in favor of woman suffrage, strengthened it. It would not be denied, he said, outside of any act of Congress, that women born in the United States, or legally naturalized through their parents having been naturalized before they became of age, were as much citizens of the United States as men; this was an admitted fact, having been tested in Charleston as early as 1832. Then what were the exceptions? That as to all subsequent elections "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 an oath before a competent court of record their intention to become such, etc."

Also, "There shall be no denial of the elective franchise or of holding office to a citizen, etc."

When Congress legislated upon this subject, and it having already declared by express enactment that women, as described, were as much citizens of the United States as men were. Why then should they not have the elective franchise extended to them? Was it to be supposed that Congress in legislating upon this subject, having the act of 1855 view, together with the decisions of the courts since that time, that if they intended to confine the elective franchise only to male citizens that that body would not have said so in so many words? Exceptions always point to the rule, as for instance: if it were provided that all men over six feet high should not vote, it was clearly inferred that all under that measurement might do so. One of the exceptions prescribed by Congress was, that the Legislature should not enfranchise persons under 21 years of age; another was that they should not enfranchise aliens or any person who had not declared his intentions; and in this the exceptions pointed to the rule. He held that the grant of power was ample, and that the right of franchise was a rightful subject of legislation, one, in fact, that Congress was legislating on at the time; and they say that as to all subsequent elections the qualifications of voters shall be prescribed by the legislature subject to the exceptions; that is to say, they should not confer the franchise on any one except he or she be a citizen or had declared his or her intention to become a citizen. It appeared to counsel that upon a fair construction of the Organic Act to all the Territories, that Congress meant only to limit them on points on which it had, in express language, limited them—the exceptions then pointing to the rule.

It was a grave thing, Mr. Merritt said, for the judiciary without good and sufficient cause, to undertake to declare void a solemn act of the Legislature, and especially an act in which the rights of mankind are involved. It must be acknowledged a most wise and prudential act of the Fathers of our country, in framing the Constitution of the nation, to make it an inherent principle in American polity in all the States, that the legislative branch and the judicial branch should be separate and distinct. And, therefore, aside from the merits and the importance of this case, he maintained that it should be for no slight cause that the Judiciary should take upon itself to declare null and void an act passed in all good faith by the Legislative branch of the government; that before such a step were taken the clearest and best of reasons should be adduced, defining, without the shadow of a doubt, that the law-makers had gone beyond their power in the premises; and that if there appeared in the minds of the Bench a reasonable doubt, in considering this matter, that doubt should be given to the upholding of the act and not otherwise, and nothing but an overwhelming force of argument should move the Court to declare against the act; and he did not hesitate to say, that it took the most ingenious argument on the part of the most learned counsel, using the keenest and most accute logic, to show that there was the semblance of an infraction of power by the Legislature in conferring this right on women.

If, therefore, the counsel were right in his proposition, that Congress intended and did confer upon the Legislature the right to regulate the qualifications of voters at all subsequent elections to the first election after the organization of the Territory, then he would proceed to the second branch of the case.

In proceeding with this branch of the argument counsel referred to the decision of the Supreme Court of the United States in the Englebrecht case, also the United States *versus* Snow, which went to show that the powers granted the Legislature were ample to legislate on this subject; and this being conceded the question was, had that body used it in a rightful manner in thus bestowing the right of franchise on women? To sustain this point counsel read from Dwarris on Statutes, pages 144-5, on the construction of statutes, applying the rule there in contained to the statute of 1859, and argued as to whether they were *para materia* upon the same subject, which he claimed was the case on the right to vote. To meet the argument of opposing counsel claiming the act to be void because the burdens imposed on taxpayers were not uniform, Mr. Merrit quoted from the decision of the Supreme Court of this Territory, in the case of Lyman *versus* Martin, page 144, delivered by Judge Emerson, which went to show that because one portion or part of a statute might be defective, that did not necessarily invalidate the whole. And in connection with this he read from a Statute of Jan. 21, 1859, Statutes of Utah, defining the qualifications of male and those of female voters.

Showing that Woman's Suffrage had been directly ratified by the Supreme Court and the Congress of the United States, he referred the Court to the decision in the Englebrecht case, also the Edmund's law prescribing the qualifications of female voters.

Mr. Merritt showed (1) that Congress had conferred the power. (2) The Legislature had exercised that power rightfully. (3) That Congress had ratified the suffrage extended to women. (4) By Legislative enactment the act of the Legislature had been approved, and the right extended exercised for twelve years.

Judge Harkness continued the argument for the People's Party, contending, at the outset that the *act of 1870 was in itself perfectly* valid. In States, the power of the Legislature to prescribe qualification was unlimited, except in cases where the United States Constitution and State constitution provided to the contrary. And in territories, the power was limited only by the United States Constitution and acts of Congress. Congress left it to the states. All the authorities were agreed upon this point. In Utah, there was no limitation affecting the question. It had been the policy of Congress to leave the territories to self-government, the result being that the power of a Territorial Legislature may be *greater* than that of a state, which is limited by its own constitution The right to vote, counsel contended, is not a natural right, but a statute privilege. All the cases required equality of right in different classes, and uniformity of qualification, must be decided under constitutional limitations, and in their absence, different classes might be made, with different qualification. Some might be citizens of the United States, others not Ages might differ; length of residence might differ; taxpaying; property qualification; color; education; voters might vote out of the state. The learned counsel quoted authorities upon this point and continued to say that all this resulted from its being a statute right, and the people, through their representatives, might regulate their government in this respect, and say a few or many might vote, just as they might confer judicial power on one man. The entire popular assembly is not required to elect officers any more than to discharge the duties of the offices. In support of this proposition counsel quoted from the Wyoming Organic Act, and then remarked that the XIV and XV Amendments to the Constitution showed that discriminations could be made, unless restrained The expression in 2nd Utah, p. 145, that the qualifications must be uniform, reasonable and impartial if it is meant in all classes, is without authority, except under constitutional limitations. The act is not invalid because it does not require women to be taxpayers, or because it conflicts with any law concerining citizenship. The qualifications of male voters were fixed by chap. 34, 1859, p. 68, Territorial Statutes, in substance as follows: "free," "white," "male citizens over 21 years," "six months' residence." No person except a taxpayer was deemed a resident. But in 1868 the words "free" and "white" were stricken out. He supposed that was done in order to conform to the XIV Amendment. In 1870 the Legislature conferred the elective franchise upon women; in effect only added the word 'woman" to the prior act, and the qualifications are the same as males. except it does not require taxpaying. It repealed all acts in conflict with it. If qualifications may be made, the act is valid, and both acts stand. If qualifications must be uniform, as was contended by the other side, then the tax-paying clause, as to male voters, is in conflict and it is that which must fail. But the act conflicts with no law of Congress. The *wife* is herself a citizen, if married to a citizen, without reference to five years residence. The *widow* of a deceased citizen is also a citizen. The *daughter* of a native citizen is a citizen. The *daughter* of a naturalized citizen is a citizen, if her father was naturalized before she became 21 years of age. Two possible cases might come under the letter of the act, but not within its spirit or meaning. A *widow* or, *wife*, foreign born, who is an Indian, or belonging to a race, none of whom can be naturalized; and a *daughter* foreign born, who was over 21 when her father was naturalized. Statutes cover subjects by general description, and because possible cases may come within the words, and yet the statute not apply to them, the act is not therefore invalid, or inoperative. The act of 1878 prescribes no qualification for voters, but only an oath for registration, and if the taxpaying qualification for males is invalid, that part of the oath is not obligatory. Neither was the act in conflict with Sec. 5, organic Act, or Sec. 1860, Revised Statutes. The latter seems to be the last and takes the place of the other. The word "qualifications" clearly relates to the kind of persons who may vote. Congress said, at the first election the qualifications shall be—free, white, male, 21 years of age, resident. It treated each of these words as qualifications. If they are not qualifications, no legislature could change them and they became constitutional qualifications, and the remainder of the act is nonsense. The *proviso*, however, shows they are qualifications; and the limit of power in one or more respects, shows the intention to grant it in all others. Sec. 1860 and its exceptions, show this more clearly. Congress has only said who shall vote at the "first election." Its direction ends there. The power, then, to provide who shall vote at subsequent elections is not only expressly given to the Legislature, but if not given, it would be a "proper subject of legislation" under the general grant of power. The act has also been ratified by Congress by 12 years acquiescence; it had also been ratified by clear implication in the 8th sec. of the Edmunds Act, wherein it was specified that certain persons shall not be allowed to vote, thereby implying indirectly that certain other persons may vote. Taking the act as a whole, counsel concluded as follows: First—In the absence of constitutional or congressional limitation; the Legislature may prescribe different qualifications for different classes of voters, and this has been the unform practice. Second—If the first position is not sustained the act is still valid, but the taxpaying clause in the male qualifications is repealed and invalid Third—The act conflicts with no law of Congress regarding citizenship, unless special and rare cases not within the spirit of the act, may be found (a thing wholly uncertain) and then the act would only be invalid as to such cases. Fourth — The act is not in conflict with section 5, Organic Act, or section 1860 Revised Statutes, but in harmony with them; 5th, The act has been ratified, both by the acquiesence of Congress and by its legislative act.

Mr. Brown made the concluding argument in behalf of the People. He desired to call the attention of the court to one or two points that struck him should be considered in this case. Here was a law on the statute book of the Territory of Utah. Their honors were the judges of that Territory sworn to administer its laws—to give them full force and effect. This law was to be administered by them as a valid law, in the same manner and with the same force that any State law would be by its judges, until it was shown that there is something in the Constitution of the United States, or in the Organic law, or the power that created this law which rendered it void. Mr. Brown then took up the various points maintained by Judge Sutherland, rebutting them in a vigorous argument. After which,

Judge McBride made the concluding argument in the case. He contended that it was never the intention of Cnngress to confer the right of suffrage upon women, and that being the case the act in question, notwithstanding it had been twelve years on the statute books, was void. It was true that in the eighth section of the Edmunds Act a reference was made to the right of women to vote; but that, he contended, in no way ratified the act of 1870. A thing that was void and never had any existence could not be made good by lapse of time. Such a thing would be new as a proposition of law and new as a proposition of physics. But it was not true in any sense, for this statute was without authority. When the Edmunds Act was pending in the Senate—believing in his own mind that it might be claimed, as it had in this case, that the eighth section of the Edmund's law was, in a manner, a recognition of the act of 1870—he saw both Senator Windom and Senator Edmunds on the subject, both of whom said that it could not be construed into being a ratification of the act.

The argument was concluded at 5.40 p.m., and the Court adjourned until 2 p.m. to-day.

THE TEST CASE.

CHIEF JUSTICE HUNTER'S DECISION.

THE WOMAN SUFFRAGE ACT VALID IN EVERY PARTICULAR.

AT 2 o'clock, this afternoon, a decision was rendered in the Third District Court, in the case brought to test the validity of the Utah Statute conferring upon women the elective franchise. The attorneys on both sides were in Court, and a large number of persons interested in the case were present.

Following, in full, is the

OPINION OF CHIEF JUSTICE HUNTER.

In the matter of the application of Florence Westcott, *for the writ* of mandamus, directed to William Showell, deputy registrar of voters of the First Precinct of Salt Lake City, County of Salt Lake and Territory of Utah.

The applicant, Florence L. Westcott, asks for the writ of mandamus, and presents her affidavit, in which she sets forth, that she is a female citizen of the United States; native born, and over twenty-one years of age; that she is the wife of Edward Westcott, who is a native born citizen of the United States, that she is a resident of the First Precinct of Salt Lake City, Salt Lake County and Territory of Utah; that she has resided over two years in said county, and more than six months last past in said First Precinct; that on the 11th day of September, A. D., 1882, pursuant to the notice of William Showell, the deputy registrar of voters in and for said First Precinct, duly commissioned, qualified and acting as such registration officer in and *for said* precinct, and then and there before him she offered to register as a voter according to law, and offered to take the oath prescribed by the Statute of Utah applicable to women or female voters, and also the oath prescribed by the Commissioners of Election for the Territory of Utah; and offered to prove that she possessed all the qualifications required by the act conferring upon women the elective franchise passed by the Governor and Legislative Assembly of the Territory of Utah, approved February 12th, 1870; and that she was not disqualiged by reason of anything in the acts of Congress referring to elections and electors in this Territory passed and approved March 22, 1882. She further in said affidavit states that she possessed all the qualifications required under the Territorial act aforesaid; and that she did no act or acts contrary to the provisions of said congressional act or any act of Congress; that she did at the time and place aforesaid demand of and from the said William Showell that the oath be administered to her and said proofs taken, and that said registration officer should enter her name on the list of persons qualified to vote at elections in said Precinct.

That said William Showell as such deputy and registration officer, then and there refused to administer said oath and refused to receive said proof, and refused to register her name as a voter on the ground, as he alleged, that there is no valid authority authorizing women to vote, and that there is no valid authority for the registering of women as voters in this Territory. She further swears that by said action of said registration officer she will be deprived of the right to vote conferred upon her by the Statutes of Utah, unless the said registration officer be compelled by the Court to administer said oath and take said proofs.

Upon the filing of this affidavit in the clerk's office an alternative Writ of Mandamus was issued in the usual form, and the case set down to be heard on the 14th day of September, A. D., 1882, at one o'clock p. m. At which time the case was called for argument, Sutherland and McBride appearing as counsel for the respondent, and S. J. Jonasson, Samuel Merritt, Arthur Brown and Judge Harkness for the applicant.

Sutherland and McBride attorneys for respondent, filed a motion to quash the writ on the grounds:

1st. The facts stated in the affidavits and writ are not sufficient to authorize the writ in this.

2d. The said applicant to be registered as a voter is not and was not on the day mentioned a lawful voter, because she is and was a woman, and such person cannot exercise the elective franchise except by a direct violation of the laws of the *United States.*

The only question submitted to the Court, and upon which arguments were heard, was as to the validity or constitutionality of the act passed by the Governor and Legislative Assembly of the Territory of Utah approved February 12, 1870.

I do not deem it necessary in this case to enter into the discussion of the questions which have been so often discussed as to be almost threadbare, involving the powers of the Congress of the United States over the Territories of the United States and will assume that as to all things pertaining to this Territory such power is supreme. The division of the Territory of the United States into different parcels, defining its boundaries and limits, and giving to each particular parcel a name, is the usual mode adopted by *Congress in setting up a district* which in common parlance has come to be known by the distinctive term Territory. At the time of such setting apart, the Congress of the United States has usually enacted in the form of a statute, a code of laws termed an Organic Act, which includes in its provisions the granting of certain powers to the people residing within the prescribed territorial limits. The powers thus granted are for the purpose enabling the people residing in the Territory to form some kind of government for their governance and protection. It is well understood that all such powers, so long as the territorial existence continues, are delegated powers, emenating from the sovereign power, and subject to be recalled, limited or enlarged. Whatever power which is thus granted, subject only to the power of the Congress to recall limit or enlarge is supreme; and so far as the internal regulation of the affairs of a Territory is concerned, confers upon the people within the Territory a governmental existence.

In accordance with this usual custom, the Congress of the United States, on the 9th of September, 1850, passed an act to establish a Territorial Government for Utah. Prior to this enactment no distinctive parcel of the domain of the Government was known as the territory of Utsh. When that enactment was passed it came into existence. Its boundaries were established and the form of its government under the Constitution and laws of the United States was marked out, and the power of entering into the business of forming a territorial government was conferred upon the people therein.

The executive power and authority was vested in a Governor who was to be appointed by the President of the United States. A Secretary was to be appointed in like manner. The Legislative power and authority was vested in a Governor and a Legislative Assembly.

Section four of this Organic Act provided the way and means of electing the members of the Legislative Assembly. By this section it is provided that previous to the first election, the Governor should cause a census or enumeration of the inhabitants of the several counties