of property legally acquired under the ordinance heretofore mentioned, nor with the right "to worship God according to the dictates of conscience, but to only annul all acts and laws which establish, maintain, protect or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremony, consecration or other contrivances."

By the organic act approved September 9, 1850, relating especially to Utah, Congress conferred upon the territorial legislature the right to legislate upon "all rightful subjects of legislation," but reserved to itself the right to disapprove and thereby annul. Congress being the supreme legislative authority over the Territories, it would have this right of disapproval and to annul any Territorial law, whether it was reserved or not. (National Bank vs. County of Yankton, 101, U. S., 129).

If, therefore, the territorial statute above quoted or that part of it which provides that illegitimate children inherit from their father was disapproved and amended by the anti polygamy act, above quoted, then the petitioner's claim was properly denied and this question is solved by determining the character of the territorial act.

Is it an act or "part of an act" which establishes, maintains, shields or countenances polygamy?

In determining the character and meaning of a legislative act, the surrounding circumstances existing at the time of its passage, as shown by contemperaneous history, should be considered. Fudlich, in his work on the interpretation of statutes, sec. 9, thus states the rule:

"The interpreter, in order to understand the subject matter and the scope and object of the enactment, must, in Cope's words, ascertain what was the mischief or defects for which the law had not provided, that is, he must call to his aid all those external or historical facts which are necessary for that purpose and which led to the enactment. He must refer to the history of the times to ascertain the reason for and the meaning of the provisions of the statute and to the general state of opinion, public, judicial and legislative at the time of the enactment. * * * For this purpose, the court, in interpreting the statute will take judicial notice of contemporaneous history, or other authentic works of writing."

In determining the meaning and effect of this statute, therefore, we are to consider that at the time the statute was passed the territory had but recently been settled and organized; that it was inhabited almost exclusively by people who believed in polygamy and plurality of wives and families, as a part of their religious faith, and that its practice was common among them; that the legislative bodies elected by these people sought to support, shield, maintain and countenance it. The result of polygamy as a practice would be what would be known to the law as illegitimate children; indeed that would be its fruit; there was no provision of law by which these illegitimate children or their mothers could inherit from the father. This was the unquestioned condition of this Territory when this statute was enacted, and in view of it I have no doubt it was intended to and did tend to support, maintain and countenance polygamy. Imagine a woman approached with a proposition of polygamy under such circumstances, no public sentiment against it to deter or hinder, the anxious inquiry would be as to the legal status and rights of herself and children—by this statute they were provided for but it is contended that it would deter men from entering into polygamy and would tend to create a sentiment against it on the part of legal wives, but this would not be so as to people who believe in it. It cannot be doubted that if polygamy was right, this could be a proper provision and its advocates must so regard it. It is further contended that the provisions of a territorial statute in favor of illegitimate children is a proper measure for the protection of an unfortunate and innocent class of persons, and that the act of Congress should not be construed to prevent it; and that it was not the intention of Congress, to go beyond the guilty parties in imposing penalties or inflicting punishments. This view has been urged most eloquently and with great ability by the learned counsel for the appellants. It must be understood that Congress was legislating against polygamy as an institution, that it intended to disapprove of all that tended to establish, support, countenance or maintain it; it sought to lessen and prevent illegitimate children by breaking up and destroying the system that supplied and produced them. In monogamous communities, as is well understood, the invariable moral sentiment makes a plain distinction between the "ill begotten" and the "lawful born," and however much we may pity and sympathize with the innocent sufferers from this sentiment, it must be acknowledged that its existence is one of the potent factors in preventing social and sexual irregularities. Congress has recognized the potency of denying to illegitimate children the rights of legitimacy and inheritance as a means of breaking up and discouraging polygamy. In the acts of 1882 and 1887 (22, stat. at large, 31, 24, stat. at large, 637) it is provided that illegitimate children begotten thereafter shall not inherit. And so emphatic is the language of the latter act that it may well be doubted whether testamentary provision can be made for them. On the argument it was contended that the law of 1882 supra provided that illegitimate children begotten thereafter should not inherit, and this would have been unnecessary if Congress had, as contended, in 1862, annulled the territorial act, and this is claimed as evidence that Congress did not so construe the law of 1882, but it will be seen that the act of 1882 legitimates polygamous children begotten before its passage. If, under the territorial law, they already inherited "in like manner" as legitimate children, this would have been unnecessary. To my mind, all this is only evidence that Congress intended to legislate upon all these subjects for itself primarily, and without reference to the territorial enactments, except to disapprove and annul all acts or parts of acts thereof which tend to encourage or countenance polygamy. It is contended Congress did not intend to annul this territorial provision and did not regard it as one of the acts that countenanced and protected polygamy, because it has at least twice made similar provisions, but the acts referred to only legitimate children, born before and within a short period after the passage of the act. The objection of extending the provision to children born within a few months after the act, placing them on an equality with those born before, is too obvious to require mention. Substantially, these acts only legitimate children begotten prior to their passage and publication. It is a concession in favor of illegitimates then begotten, and as before stated, this is coupled with a provision denying the right of inheritance to those begotten thereafter. The territorial act, on the contrary, establishes a continuing rule that runs with the future. In this respect there is the same difference between the territorial and federal acts that there would be between a pardon granted for a past offense and a commission to go forth and commit an offense in the future with impunity. I am of the opinion that the territorial act was disapproved and annulled by the anti-polygamy act above referred to, and that the judgment appealed from should be affirmed.

Zane, C. J. concurs.

THE DISSENTING OPINION.

Territory of Utah, in Supreme Court.

In the matter of the estate of George Handley, deceased.

Opinion by Blackburn, judge.

I am compelled to dissent from the opinion of the court.

The facts are not in dispute, but are as stated. The only question is, Was the law such in 1874, when the decedent died, that an illegitimate or polygamous child was entitled to share in his father's estate? By the law of 1852 of the Territory of Utah illegitimate children inherit in like manner from the father whether acknowledged by him or not, provided it shall be made to the satisfaction of the court that he was the father of such illegitimate child or children.

In like manner (referring to other portions of the act) means, as legitimate children. There is no question made, nor could any be successfully made, that the right of illegitimate children is a rightful subject of legislation. Therefore, if this law was in force at the time, in 1874, when the decedent died, there can be no doubt that the appellant was entitled to a share of his father's estate.

It was in force, so far as any act of the Territorial Legislature at that