without due process of law, or to deprive him of the equal protection of the laws. That provision was enacted to secure to every citizen in the United States the same rights that all other citizens enjoy, and what we are now contending for rests upon the same principle that was announced by this Court in the Sinking Fund cases (99 U. S., 718), and has been announced in other cases, to-wit: that although the Constitution only prohibited the States from enacting laws impairing the obligation of contracts, yet that principle was fundamental, and the power to make laws impairing the obligation of contracts no more existed in contracts than in the States. And so here; while the language of this constitutional provision is that no State shall make any law to abridge the privileges of any citizen, or deprive him of life, liberty, or property, without due process of law, or deny him the equal protection of the laws, such legislation being fundamentally wrong, Congress cannot pass such a law, neither can the legislature of any Territory, which derives all its power to legislate from Congress.

Passing now from this preliminary consideration, we are brought to the question whether or not these portions of the Idaho statute which are under consideration are an abridgment of the privileges of the citizen, or deny to him the equal protection of the laws. In other words, is it competent for the legislature of Idaho to enact that a man shall not vote or hold office who belongs to the Mormon Church, which, it is averred in this indictment, teaches, as a duty resulting from membership, the doctrine of bigamy and polygamy? It is important to keep in mind, in this connection, that there is no statute in Idaho that makes, or attempts to make, it an offense to belong to the Mormon Church, or to any church that teaches such doctrines; and we have, therefore, here presented a case where the party was required to make oath that he did not belong to such a church, and, upon failure to take such oath, he was prohibited from holding office or voting at an election. If he has not committed bigamy or polygamy, no matter to what church he belongs, or whether he belongs to any church, of course he cannot be punished for that offense. If he belongs to a church, the Mormon Church, he has not thereby committed any offense, because membership in such church has not been made an offense. So that, in no aspect of the case, can he be regarded as having committed any offense for which he can in any way be punished. But the deprivation of the right to vote or hold office is, under these circumstances, a punishment, because it deprives a man of one of the most important rights recognized as appertaining to a citizen in a government by the people, and because it casts an odium, and places a brand upon him by stigmatizing him as being unworthy to participate in the government to which he must render obedience, and therefore it comes within the declaration of this Court in the Cummings case (4 Wall., 320), where the Court says: "The deprivation of any rights, civil or political, previously enjoyed, may be punishment, the circumstances attending and the causes of the deprivation determining this fact."

Without his having committed any offense against the law, this legislation singles him out and refuses him a high privilege because of membership in a particular church; such discrimination is a denial of the equal protection of the laws.

Congress recognized this principle in the so-called Edmunds Act, 22 Statutes, 30, and after disfranchising all bigamists and polygamists, provided in the ninth section of the act that no person otherwise eligible to vote should be excluded from the polls "on account of any opinion such person may entertain on the subject of bigamy or polygamy."

So we say that the act of Idaho is an illegal discrimination against a certain class of citizens and in violation of the fourteenth article of amendments, as that article has been construed by this court.

Numerous decisions of the Supreme Court of the United States are here cited and quotations given from them showing, in the language of the court, that the object of this amendment was "to secure equal rights to all persons" and "to leave no room for the play and action of purely personal and arbitrary power." The brief continues:

These extracts show how far-reaching is this 14th article of amendment. It prohibits discrimination on account of color, on account of race. It strikes down all attempts to exercise purely personal and arbitrary power. It secures equal rights to all persons. It will not permit the State or any agency of the State to do anything which discriminates in favor of one citizen, or class of citizens, as against another citizen or class of citizens. And it inevitably follows as a result of this that it equally prohibits any discrimination by the State in favor of one religious sect against another. It is broad enough and comprehensive enough to protect every right of the citizen, civil, political and religious, against any assault thereon by the State, and to secure to every citizen immunity from restraints not placed upon all others, and this having become a fundamental principle of the government, it is a prohibition not merely upon a State, but equally a prohibition upon Congress and upon the Territorial legislatures.

But in addition to this, and as bearing more directly upon another clause of this amendment, we cite the language of this court:

"The right of suffrage, when granted, will be protected. He who has it can only be deprived of it by due process of law."

Miner v. Happersett, 21 Wall., 176.

On this subject, Judge Jeremiah S. Black said:

"The right of suffrage is part of a voter's property. Its value is inestimable, because it is the right preservative of all other rights. You cannot deprive him of it without due process of law."

Quotations are then made from the writings of Daniel Webster and Alexander Hamilton to show that disfranchisement, disqualification and punishment by acts of the legislature are dangerous and contradictory to the principles of true liberty.

THE RIGHT TO PRESCRIBE QUALIFICATIONS FOR VOTERS.

But it may be said that a State or a Territory has a right to prescribe the qualifications of voters and, as a general proposition this is not controverted by us, but that right is not an unlimited one. It must be exercised within the provisions of the Constitution. It must be a reasonable exercise of power and not such legislation as will deprive the citizen of any rights or privileges that are guaranteed to him by the Constitution of the United States.

No precedent can be found that is precisely applicable to this case, since it is the first time, in the history of the government, that an act of the character now being considered has been enacted by the legislature of a Territory.

As to a State, it may be conceded, as a general proposition, that it has the right to fix such qualifications, but, while it is not necessary to this case to settle or determine how far a State may go in this direction, as the power of the State in this regard may be claimed to have some bearing on the case, we do not concede, but deny, that a State has unlimited power to prescribe the qualifications of its voters.

Religious liberty, as we have already seen, is now classed among the "absolute rights of individuals" (2 Kent Com., 34), or "among the first of civil rights" (Cooley on Torts, 33), and, since a citizen of the United States, although he may be, and of necessity is, a citizen also of a State, the latter, in the exercise of its right to fix the qualifications of voters, cannot prescribe a religious test without striking down this right which, by the Constitution, is guaranteed to the citizen.

The State could not make as a test for holding office that a man should or should not be a Catholic, or a Methodist, or a Presbyterian, or that he should not believe in baptism by immersion or sprinkling, or be a member of a particular church because of its doctrines, for the reason that the Constitution, which was made for all the people of all the nation, was intended to secure to them all the free exercise of religion; and, therefore, it cannot be permitted to a State to abridge or impair this constitutional right of the free exercise of religion, by admonishing the citizen that if he does exercise it he shall not enjoy the privileges of voting or holding office.

To permit this would be to permit the States to reduce our boasted religious liberty to a mere idea—a shadow without substance—for the citizens, while citizens of the United States, are, at the same time, citizens of the States, and if the latter