time was concerned, for it had not been repealed or changed by that body.

But the contention of the respondents is that it was annulled by the act of Congress of 1862, found in 1 C. L. of Utah, p. 108. Sec. 2, which annuls the act of the Territory of Utah incorporating the Church of Jesus Christ of Latter-day Saints, and all other acts or parts of acts heretofore passed by said Legislative Assembly of the Territory of Utah, which establish, support, maintain, shield or countenance polygamy—and the section closes by providing that the purpose of this act shall be only to annul all acts and laws and parts of laws which establish, maintain or countenance the practice of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical sacraments, ceremonies, consecrations or other contrivances.

It is contended that act of Congress annuls the act of the legislature of Utah giving the right to illegitimate children to share in the father's estate, because such right of inheritance supports, maintains and encourages polygamy.

The purpose of the act of Congress of 1862 was to define and punish polygamy and to annul all laws of the Territory in any way making it legal or giving it countenance and support. Nothing is said in the act of Congress in reference to the rights of illegitimate children, and if that subject was in the mind of Congres it would have been expressed and not left in doubt or uncertainty. Courts do not favor the repeal of laws by implication and laws are never interpreted to repeal former laws, unless the two are so repugnant that they cannot both be administered and allowed to stand.

U. S. vs. 67, Packages, 17, How, 85.

Red Rock vs. Henry, 106, U. S., 596.

Ex Parte Cross Dog, 109, U. S., 556.

Chew Heong vs. United States, 112, U. S., 536.

And certainly the same course of interpretation applies with equal if not more force to the annulling of laws. The law of the Territory was before the Congress, and how much easier it would have been to annul the Territorial act by name, if it had intended that, than to have left its annulling to judicial interpretation by a sweeping clause that reads more like the rounding up of sentences in a stump speech than a solemn act of the highest legislature of the nation. This law of inheritance was before Congress, and if the meaning is to be given to these general words claimed, it clearly abdicated its functions and left to the courts to make and annul laws by judicial interpretation. It cannot be supposed Congress intended any such thing. Courts are like man and sometimes not overburdened with wisdom. and it would be, if such a thing can be supposed, a most dangerous exercise of legislative authority to frame laws so as to leave to judicial interpretation their enlargement and annulling. Where the law would begin and when it would end, would be left to conjecture and uncertainty. The law is uncertain enough interpreted as best it may be by the courts, and if the interpretation contended for was given, conjecture and uncertainty would be vastly increased. It is always to be presumed that the legislature, when it entertains an intention, will express it, and that in clear and explicit terms. (Potter Devaris 219.)

If this Territorial law is annulled a right is taken away and all such laws are in the nature of a penalty and are strict laws, and are not to be extended by intendment.

Another course of construction in such statute is that where general words follow the enumeration of particular cases, such general words are held to apply to cases of the same kind as particularly mentioned. For example, an act of Parliament provided whoever stole sheep or other cattle should be deprived of the benefit of clergy—and the courts held that other cattle only meant sheep." (Potter Devaris, page 220 to 229.)

The words of the acts of Congress that it is claimed annul the act of the Utah legislature, and which "establish, support, maintain, shield or countenance polygamy," etc. Afterwards there are words of explanation, but words of explanation cannot enlarge the meaning of the words they are intended to explain. These words are to be interpreted according to their common or ordinary meaning.

Allowing illegitimate children to inherit from their fathers does not establish polygamy, does not support it; does not maintain it; does not shield it; does not countenance it. For it is consistent with the severest punishment of polygamy and its entire overthrow that illegitimate children should inherit from their fathers.

Therefore I do not think it repeals or annuls the act of the Territorial legislature giving to illegitimate children the right to inherit. I am strengthened in this opinion by the act of Congress of 1882 called the Edmunds Act. Section 7 of that act shows that it was not the intention of Congress to disinherit polygamous children, for it says all polygamous children born before the first day of January, 1883, shall be legitimate, making it clear that in the mind of Congress, nothing was intended by the act of 1862 to disinherit polygamous children. The act of the Legislature of Utah says nothing about polygamous children; it only says illegitimate children. But the act of Congress goes further and says polygamous children shall be legitimate. If, therefore, the territorial law, by inference, encouraged and countenanced polygamy, much more did the law of Congress—and that idea cannot be entertained for one moment.

Again, the act of Congress of 1887, in the 11th section, provides that no illegitimate children shall hereafter inherit from their parents, and annuls all laws of the territory in reference thereto, but continues the power to inherit to all children born within twelve months after the passage of this act; so that if allowing illegitimate children to inherit from their fathers encourages polygamy, Congress is guilty of fostering that institution. For the period of gestation is nine months; that leaves three months for men to beget illegitimate children, and encourages polygamy for that length of time.

But does, in the nature of things, the permission of illegitimate children to inherit of their fathers encourage or countenance polygamy? If so, how? It would certainly increase the hostility of the lawful wife to polygamy and the opposition of her children. for it would lessen their inheritance; and it would not increase the man's passions, or his love of lechery and dissoluteness. It only takes from the illegitimate the stain of bastardy, and places it on a plane where it will not be an outcast without recognized relationship or family.

Looking over these statutes and remembering the condition of things in the Territory of Utah at that time, I am forced to the opinion that the act of Congress of 1862 did not annul the act of the legislature of Utah of 1852, allowing illegitimate children to inherit. It certainly did not in terms, and cannot be made to only by an interpretation that amounts to judicial legislation.

Why should Congress leave to the courts to hunt out the laws of the Territory it intended to annul, when the laws of the Territory were before it? Whose duty was it to point out the laws that maintain and encourage polygamy? The Congress or the courts? If Congress pointed them out, the question was definitely settled. If left to the courts, uncertainty would arise, and differences of interpretation would invariably occur, and the administration of the law would be rendered uncertain. These remarks only show that it could not have been the intention of the Congress to leave to judicial acumen the finding of those laws of the Territory that might be thought to maintain and encourage polygamy.

It is said, however, that that part of the law which allows the mother of illegitimate children to inherit clearly encourages polygamy—that question is not in this case—and if courts decide the questions before them they will be busy enough. But it may be remarked that it does not follow that because the mothers of illegitimate children are allowed to inherit, encourages polygamy, that the inheritance of their children would and does encourage that vile practice. The Congress may have had the allowance of mothers of illegitimate children to inherit when it used the expression—parts of laws; I do not think it follows that Congress. when it passed the law of 1862, had in mind the right of illegitimate children to inherit from their fathers, as encouraging and supporting polygamy, because it was well known at that time that it was extensively practiced in Utah Territory.

The right of illegitimate children to inherit from their fathers has