presentative government. How far the theory has failed in practice, under changed conditions, will be adverted to in the sequel.

Finally, under the Territorial law, both males and females, who took and subscribed the oath of electoral qualifications prescribed by it, became entitled to be registered and to vote.

Female suffrage rested, perhaps solely, on the oath prescribed. So far as I am advised there was no other statutory warrant for it. The condition of electoral qualifications specified in the oath as to males were, that they should be adults residents, citizens and taxpayers, as to female, the same conditions obtained, except that they were required to be taxpayers' or citizens in the cases where they were the wives or daughters of citizens.

Another important consequence follows the oath. It opened the registry and the polls, alike to polygamous and monogamous men and women, and thus indirectly sanctioned polygamy and fortified it by an electorate whose members were thus approximately doubled.

CONGRESS INTERFERES.

To cut off this consequence and polygamy also, Congress, after long forbearance, proceeded legislatively on two different and distinct lines—one penal, the other civil. Proceeding penally, a succession of laws were enacted, the first being the act of July 8, 1862, the Morrill law, next the Edmunds law, last, the Edmunds-Tucker law of March 3, 1887.

[Here are inserted sections from each of these laws.]

Proceeding on the line of civil legislation, Congress has imposed divers conditions affecting the right of suffrage, eligibility for jury service, to hold office, and, withal, has substituted Federal for Territorial agents in the conduct of elections in the Territory and their prerequisites. On this line the twenty-fourth section of the Edmunds Tucker law, saving the then existing conditions of age, residence and citizenship, in order to registration, adds numerous other conditions operating as civil disabilities, and incorporates the whole in the oath of eligibility it prescribes.

Concerning election agencies, the ninth section of the Edmunds law provides "That all the registration and election offices of every description in the Territory of Utah are hereby declared vacant, and each and every duty relating to the registration of voters, the conduct of elections, the receiving or rejection of votes, and the canvassing and returning of the same, and issuing of certificates or other evidences of election in said Territory shall be performed under the existing laws of the United States and of said Territory, by proper persons who shall be appointed to execute such offices and perform such duties by a board of five persons, to be appointed by the President, by and with the consent of the Senate, provided, that such board shall not exclude any person otherwise eligible to vote from the polls on account of any opinion such person may entertain on the subject of bigamy or polygamy, nor shall they refuse to count any such vote on account of the opinion of the person on that subject."

Under this section the Board of Commission has, from time to time, appointed officers to succeed to the functions and titles of their predecessors under the Territorial law, namely, registrars of voters, judges of elections and canvassers of the election returns, and, as the Territorial law, as has been remarked, combines with this section in forming the election system of the Territory, it is needful to consult each in determining the validity of any act of the Commission or of its appointees.

Recurring to the first section of the Morrill law and to the eighth section of the Edmunds law, it falls in the order of the discussion to state that grave questions of constitutional law have been raised upon each. First, whether it was competent to Congress to penally inhibit plural marriages inasmuch as some of the Mormons, at least, hold such marriages to be a tenet of their religion? Second, whether it was competent to Congress to abolish or abridge, as to such persons, the right of suffrage as they had theretofore enjoyed it under the law?

The first question came before the Supreme Court of the United States. The court, in considering it, among other things, said: "In our opinion, the statute is within the power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories or other places over which the United States have control. This being so, the only question which remains is whether those who make polygamy a part of their religion are excepted from the operation of the statute. If they are, then those who do not make polygamy a part of their religious belief may be found guilty and punished, while those who do must be acquitted and go free. This would be introducing a new element into criminal law. Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinion, they may with practices. So here, as a law for the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrine of religious belief superior to the laws of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances."—98, U. S. p. 98, *et sequitur*.

The second question came before the same court in 1884, in the case of Murphy vs. Ramsey and others. In considering it the court had occasion to note the distinction between criminal penalties and civil disabilities; also, to recognize the natural as well as the legal capacity of a polygamist to cease to be one. Among other things, the court said: "The counsel for the appellant in argument seems to question the constitutional power of Congress to pass the act—so far as it abridges the right of electors in this territory under previous laws. But that question, we think, is no longer open to discussion. It has passed the stage of controversy into final judgment.

Upon this construction, the statute is not open to the objection that it is an *ex post facto* law. It does not seek in this section (8) and by the penalty of disfranchisement, to operate as a punishment upon any offense at all.

"It is not, therefore, because the person has committed the offense of bigamy at some previous time in violation of some existing statute, and as an additional punishment for its commission that he is disfranchised by the act of March 22. 1882; nor because he is guilty of the offense as defined and punished by the terms of that act; but because having at some time entered into a bigamous or polygamous relation by marriage with a second or third wife while the first was living, he still maintains it, and has not dissolved it, although for the time being he restricts actual cohabitation to one.

"The disfranchisement operates on the existing state and condition of the person and not upon a past offense. It is therefore not retrospective. He alone is deprived of his vote when he offers to register, is the actually cohabiting with more than one woman. Disfranchisement is not prescribed as a penalty for being guilty of the crime and offense of polygamy; for, as has been said, that offense consists in the fact of unlawful marriage and the prosecution against the offender is barred by the lapse of three years.

"The words 'bigamist' and 'polygamist' evidently are not used in the sense of describing those who entertain the opinion that bigamy and polygamy ought to be tolerated as a practice not incompatible with the good order of society, the welfare of the race, and a true code of morality, if such there be, because in the proviso of the ninth section of the act it is expressly declared that no person shall be excluded from the polls, or be denied his vote, on account of any opinion on the subject."
114 U. S. P. 162, *et sequitur*.

Following the authority of Murphy vs. Ramsey and others, Chief Justice Zane, as Justice of the District Court, held at Salt Lake City, said, in the cause of the United States vs. Bennett, that "the law did not apply to those who went into polygamy before there was a law against it, but to those who were actually in the relationship. A man must actually have a plurality of wives to be a polygamist. The fact of cohabitation is not a feature in determining the meaning of the term. A man ceases to be a polygamist when he fully and finally terminates the relationship. The way to accomplish that is not pointed out." Can the relationship exist when the parties have not only ceased to cohabit, but have separated in good faith? That is, does it exist because of the former relationship? To maintain a relationship requires some act of the mind to continue the condition. The Supreme Court holds to the idea that there must be a recognition. The question of good faith will be for the jury to determine. The section regarding amnesty or pardon does not seem to have any connection with the question. The parties may obtain amnesty and yet continue the polygamous relation.

The conclusions to be drawn from the provisions of the statutes quoted and from their authoritative exposition and application by the courts, seem to be

First—That disfranchisement is no part of the penalty annexed to any sexual offense committed in violation of those provisions.