and districts of the Territory to be taken, and the first election should be held at such time and places, and be conducted in such manner as the Governor should appoint and direct. * * * And the persons thus elected to the Legislative Assembly should meet at such place and on such day as the Governor should appoint: but *thereafter*, the time and place and manner of holding and conducting all elections by the people * * * * should be prescribed by law enacted by the Territorial Legislature. The means there being provided, for holding a first election, Congress by Section 5, of the Organic Act, provided who should be entitled to vote at that election, and enacted "that every *free, white male inhabitant* above the age of twenty-one years, who shall have been a resident of said Territory at the time of the passage of this Act (September 9, 1850) shall be entitled to vote at the first election."

By this provision then, at this first election, any inhabitant, and this whether he be a citizen of the United States or not, being a free, white male above the age of twenty-one years, who shall have been a resident in the Territory, September 9, 1850, was a voter. So far as that election was concerned the qualifications of one to be a voter thereat were two in number, viz.:

First—A *free, white*, male inhabitant, above the age of twenty-one years.

Second—He must have been a a resident of the Territory at the time of the passage of the Organic Act, September 9th, 1850.

Persons having these prerequisite qualifications became voters, and by their votes elected a Legislative Assembly, and that Legislative Assembly was the one which by the provisions of section 4 of the Organic Act was to meet at such place and on such day as the Governor should appoint. When it was so elected, and did so meet, then it had the power to prescribe by law the time, place and manner of holding and conducting all elections by the people. Section 5 of the Organic Act provides, after fixing the qualifications of the voters at said first election, "that the qualifications of voters * * * at all subsequent elections shall be such as shall be prescribed by the Legislative Assembly. Provided that the right of suffrage and of holding office shall be exercised only by citizens of the United States including those recognized as citizens by the treaty with the Republic of Mexico concluded February 2nd, 1848."

The function of the voter who was to vote at the first election having been fully performed when he voted at that election, he thereafter ceased to be a voter at any subsequent election, and could only be qualified as a voter when he showed himself possessed of the prerequisites required by the Legislative Assembly.

Subsequent to the enactment of the Organic Act above referred to and in 1874, the Congress of the United States enacted sections 1859 and 1860. Until the enactment of these two sections the Organic Act of Utah remained in force and the qualifications of voters at all elections after the first election were as prescribed by the Legislative Assembly of that Territory.

Section 1859, having relation only to the qualifications of electors at the time of a first election held on the organization of a Territory can have no bearing so far as Utah is concerned, for at the date of its enactment Utah had had her first election, and was an organized Territory.

Sec. 1860 is as follows:

"At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters * * shall be such as may be prescribed by the Legislative Assembly of each Territory, subject nevertheless to the following restrictions on the power of the Legislative Assembly, namely:

"First. The right of suffrage and of "holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath before a competent court of record, their intention to become such, and have taken an oath to support the Constitution of the United States."

The effect of this section is plain, and limits the Legislative Assemblies of all the Territories in the power to confer the elective franchise, to persons who are citizens of the United States above the age of twenty-one years, and to persons who not being native born or naturalized citizens are above the age of twenty-one years, who have declared on oath before a competent court of record their intention to become citizens and have taken an oath to support the Constitution of the United States. It is thus made clear that the power to confer the elective franchise is conferred by the sovereign power upon the Legislative Assembly of this Territory, limited in its exercise as provided by the first restrictive clause of section 1860, Revised Statutes. This section became the law in 1874, and since then has been in operation.

Section 5 of the Organic Act provided that at the first elecoion the voter should be a *free, male white inhabitant* Sec. 1859 Revised Statutes provided that at the first election the voter should be a *male citizen* above the age of 21 years. Sec. 3 of the act of the Utah Legislative Assembly approved January 21, 1859, provided that a voter must be a *male citizen* of the United States.

The first two, as we have seen, only fixes the qualifications for a voter at the first election.

It nowhere appears in all the legislation had upon the subject that Congress, except in fixing the qualifications of a voter at the time of the organization of a Territory, has limited or attempted to limit the power of the Legislative Assemblies of the Territories to the male qualification. Pursuing the grant of a power to confer the right of suffrage as given by section 1860, it has been undoubtedly left to the Legislative Assemblies of the Territories to say if or not they will confer upon males and females, or upon either, the right of suffrage.

The Utah Legislative Assembly, by the Act of January 21. 1859, conferred the right of suffrage only upon a male cititizen of the United States over twenty-one years of age who had been a constant resident in the Territory during the six months next preceding an election and who was a taxpayer.

With the ample power conferred by Congress upon the Legislative Assemblies of the Territories in determining the qualification of voters, it is certain it was within the power of the Utah Legislature to enact the law of January, 1859. I think it may clearly be assumed that so far as the qualificaiions of an elector are concerned, it was the intention of Congress, subject to the restrictions of Sec. 1860, to leave the Territories as free as are the independent States.

By the Act of January, 21, 1859, a class of voters was made, and their qualifications were determined. When the Act was passed, the Legislature without doubt intended to confine the right of suffrage to males, and as long as that Act continued to be the law of the Territory, only males could vote. But the Utah Legislature passed an "Act entitled an act conferring upon women the elective franchise," which was approved February 12, 1870, which is as follows:

"That every woman of the age of 21 years who has resided in this Territory six months next preceding any general or special election, born or naturalized in the United States; or who is the wife, widow or daughter of a native born or naturalized citizen of the United States, shall be entitled to vote at any election in this Territory."

This Act, if standing by itself, and if there was no doubt of power on the part of the Legislative Assembly to confer the right of suffrage would confer upon the class of persons named in it, that right. It is undoubtedly true that a woman of the age of 21 years, who is native born, or who has been naturalized, is a citizen of the United States, and it is further undoubtedly true that the wife or widow of a naturalized citizen is a citizen of the United States. And it is further true that a daughter of a native born citizen of the United States is a citizen, and that the daughter of a naturalized citizen, is a citizen of the United States, if at the time of the naturalization of her parent, she was under the age of twenty-one years. To entitle a woman to vote under this law she would have to be of the age of twenty-one years, and have been a resident in this Territory six months next preceding any general or special election. And this whether she be a single woman, married woman, widow or daughter.

The conflict between the contending parties in this case, arises because of the difference of opinion upon these these two Acts of the Utah Legislature.

The Respondent claiming that the Act conferring the right of auffrage upon women is unconstitutional, and because it does not impose upon a woman the duty of proving that she is a citizen, or that she is a tax - payer, thus making, as is claimed, a more favored class of voters. I do not think such is a legal construction of the act. The Legislature was dealing with the subject of suffrage—who should be voters. It had already legislated upon that subject, and had restricted the class of voters to males. Its intention was no doubt to make another class, to take from the males who had under the act of 1859 the exclusive privilege, and confer a like privilege upon females. The two laws must be construed together. If they can be both made to harmonize, it is plainly the duty of the Court to sustain them both. Courts are called upon to construe, *not to* make laws, and when the Legislature gravely enacts a law, if that law is attacked the Courts must, with an equal degree of gravity scrutinize it in all its phases, and should be careful not to declare it unconstitutional, unless it is plainly so. In my opinion these two laws taken in conjunction with the defined powers conferred by Congress can be made to stand togethor. The act of 1859 is full and complete, it has *no constitutional defects, and that of 1870* can be and should be treated as only an enlargement of the privileges to the citizens of the Territory. Whilst there may be want of uniformity in the two acts, there is no deprivation of any right. The male voter still retains his old rights. There is no abridging of his privileges. Another class of citizens are brought forward by the act of 1870 and constituted voters. Each exercises in the same way the right of suffrage, and each are make voters by the respective laws.

The motion to quash the writ is denied, and the respondent is ordered to enter thename of the applicant on the list.

There are as I understand other cases, involving the same question presented in this one, and as it was agreed in the argument that this should be a test case, the proper orders in these cases will be made conformably to this holding.

Exceptions noted by the respondents.