THE CIVIL RIGHTS ACT VOID

DECLARED UNCONSTITUTIONAL BY THE SUPREME COURT.

AN IMPORTANT DECISION FROM WHICH ONLY ONE JUSTICE DISSENTS—A FLORIDA ELECTION CASE—MOTIONS AND ORDERS.

WASHINGTON, Oct. 15.—The most important decision rendered by the Supreme Court of the United States to-day was that in the five cases commonly known as the civil rights cases, which were submitted to the court on printed arguments about a year ago The titles of these cases and the States from which they come are as follows: No. 1, The United States vs. Murray Stanley, from the Circuit Court for the District of Kansas; No. 2, The United States vs. Michael Ryan, from the Circuit Court for the District of California; No. 3, The United States vs. Samuel Nichols, from the Circuit Court for the Western District of Missouri; No. 26, The United States against Samuel D. Singleton, from the Circuit Court for the Southern District of New-York; and No. 28, Richard A. Robinson and wife against the Memphis and Charleston Railroad Company, frm the Circuit Court for the District of Tennessee. These cases were all based on the first and second sections of the Civil Rights act of 1875, and were respectively prosecutions under that act for not admitting ce tain colored persons to equal accommodations and privileges in inns or hotels, in railroad cars, and in theatres. The defense set up in every case was the alleged unconstitutionality of the law. The first and second sections of the act, which were the parts directly in controversy, are as follows:

SECTION 1. That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land and water, theatres and other places of public amusement, subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

The second section provides that any person who violates the first section shall be liable to forfeit $500 for each offense, to be recovered in a civil action, and also to a penalty of from $500 to $1,000 fine or imprisonment of from 30 days to a year, to be enforced in a criminal prosecution. Exclusive jurisdiction is given to the District and Circuit Courts of the United States in cases arising under the law. The rights and privileges claimed by and denied to the colored persons in these cases were full and equal accommodations in hotels, in ladies' cars on railway trains, and in the dress circle in theatres. The court, in a long and carefully prepared opinion by Justice Bradley, held:

I. That Congress had no constitutional authority to pass the sections in question under either the thirteenth or fourteenth amendment to the Constitution.

II. That the fourteenth amendment is prohibitory upon the State only, and that the legislation authorized to be adopted by Congress for enforcing that amendment is not direct legislation on the matters respecting which the States are prohibited from making or enforcing certain laws or doing certain acts, but is corrective legislation, necessary or proper for counteracting and redressing the effect of such laws or acts; that in forbidding the States, for example, to deprive any person of life, liberty, or property without due process of law, and giving Congress power to inforce the prohibition, it was not intended to give Congress power to provide due process of law for the protection of life, liberty, and property, (which would embrace almost all subjects of legislation,) but to provide modes of redress for counteracting the operation and effect of State laws obnoxious to the prohibition.

III. That the thirteenth amendment gave no power to Congress to pass the sections referred to, because that amendment relates to slavery and involuntary servitude, which it abolishes, and gives Congress power to pass laws for its enforcement; that this power only extends to the subject matter of the amendment itself, namely: slavery and involuntary servitude, and the necessary incidents and consequences of those conditions; that it has nothing to do with different races or colors, but only refer to slavery—the legal equality of different races and classes of citizens being provided for in the fourteenth amendment, which prohibits the States from doing anything to interfere with such equality; that it is no infringement of the thirteenth amendment to refuse to any person the equal accommodations and privileges of an inn or a place of public entertainment however it may be violative of his legal rights; that it imposes upon him no badge of slavery or involuntary servitude which imply some sort of subjection of one person to another and the incapacity incident thereto, such as inability to hold properto, to make contracts, to be parties in court, &c., and that the original Civil Rights act, which abolished these incapacities, might be supported by the thirteenth amendment, it does not therefore follow that the act of 1875 can be supported by it.

IV. That this decision affects only the validity of the law in the States, and not in the Territories or the District of Columbia, where the legislative power of Congress is unlimited, and it does not undertake to decide what Congress might or might not do under the power to regulate commerce with foreign nations and among the several States, the law not being drawn with any such view.

V. That, therefore, it is the opinion of the court that the first and second sections of the act of Congress of March 1, 1875, entitled "An act to protect all citizens in their civil and legal rights, are unconstitutional and void, and judgment should be rendered upon the indictments accordingly.

At the conclusion of the reading of Justice Bradley's opinion, which occupied more then an hour, Justice Harlan said that under ordinary circumstances and in an ordinary case he should hesitate to set up his individual opinion in opposition to that of his eight colleagues, but in view of what he thought the people of this country wished to accomplish, what they tried to accomplish, and what they believed they had accomplished by means of this legislation, he must express his dissent from the opinion of the court. He had not had time since hearing that opinion to prepare a statement of the ground of his dissent, but he should prepare and file one as soon as possible, and in the meantime desired to put upon record this expression of his individual judgment.

Another interesting case involving war legislation was alse decided by the court, namely, the case of the United States vs. Edward T. Gale and William S. Gibson, which was brought here on a certificate of division from the Circuit Court for the District of Florida. This was a suit against the Supervisor and Clerk of Election District No. 8, in Marion County, Fla., on the occasion of the election of a Congressional Representative in 1878. The indictment charged the defendants with misconduct as election officers in stuffing the ballot-box with fraudulent tickets and abstracting tickets which had been voted. The defense was that sections 5,512 and 5,515 of the Revised Statutes, upon which the indictment was based, and section 820, under which was chosen the Grand Jury by which the indictment was found, were unconstitutional and void. The court disposes of the first part of the defense very briefly, by saying that the question of the validity of sections 5,512 and 5,515 has already been decided in the cases of Siebold and Clarke, (100 U. S. 371, 399,) and was determined in favor of their validity. Section 830, upon which the second part of the defense was based, contains a statement of causes for the disqualification and challenge of grand and petit jurors in the courts of the United States, as follows: "Without duress and coercion to have taken up arms or to have joined any insurrection or rebellion against the United States; to have adhered to any insurrection or rebellion, giving it aid and comfort," &c. In empanelling the Grand Jury which found the indictment against the defendants, four persons, otherwise competent, were excluded from the panel for the causes mentioned in this section. The Court, after a review of the circumstances as shown by the record, declines to decide whether section 820 is valid or not, for the reason that the objection to the constitution of the grand jury under that section was not raised in due time. The Court, however, gives a brief history of this law, excluding from juries persons who took part in the late insurrection, and comments upon it, as follows: "It may be proper to call attention to the singular position of this section, (section 820.) It was originally enacted as section 1 of the act passed June 17, 1862, entitled, 'An act defining different causes of challenge, and prescribing an additional oath for grand and petit jurors in United States courts.' (12 Stat. 430.) At that time (1862) it was no doubt a very proper and necessary law, but after the rehabilitation of the insurgent States, the proclamation of a general amnesty, and the adoption of the fourteenth amendment guaranteeing equal rights to all citizens of the United States, there would have been no just reason for the continuance of the law, especially as by far the largest portion of citizens in the States lately in rebellion would be disqualified under it. Accordingly, by the fifth section of the act commonly called the Enforcement act, passed April 20, 1871, (Stat. 15.) Congress, after providing that in prosecutions under that act no person should be a Grand or petit juror who should, in the judgment of the court, be in complicity with any combination or conspiracy punishable by the provisions thereof, repealed the said first section of the act of 1862, and the law remained in this state until the adoption of the Revised Statutes. For some unexplained reason the revisers imported the section back again into the Revised Statutes. (as section 820,) although it had not been in force for more than two years. It is probable that the fact of its repeal was overlooked by Congress when the revision was adopted, and it is to be hoped that their attention will be called to it." The questions certified by the court below are answered by this court as follows: "It is the opinion of this court, and it so decides, that the question whether sections 5,512 and 5,515 of the Revised Statutes of the United States are repugnant to, and in violation of the Constitution of the United States, should be answered in the negative; that the question as to the validity of section 820 of the said Revised Statues is unnecessary to be decided, inasmuch as the objection to the constitution of the Grand Jury under that section was not raised in due time; and that the remaining questions, namely: Whether judgment of this court could be rendered against the defendants on an indictment found by a Grand Jury empaneled and sworn under the sections aforesaid, and whether the indictment aforesaid charges any offenses for which judgment could be rendered against the defendants in this court under the Constitution and Laws of the United States, should be answered in the affirmative. Opinion by Justice Bradley.

The other business transacted by the court to-day was as follows: No. 892—A. U. Wyman, Treasurer of the United States, plaintiff in error, vs. The United States ex rel. E. P. Halstead, Administrator, &c.—Motion granted and case assigned for argument on first Monday in November at the foot of the call. No. 879—Lazarus Scharff et al., plaintiffs in error, vs. James and Albert Levy.—Motion to advance granted. No. 970—Austin Smith vs. Samuel C. Greenhow.—Motion to advance granted. Nos. 969, 971, and 972—Thomas Poindexter, William L. White, and Samuel S. Carter against Samuel C. Greenhow; motion to advance denied. The four cases last named are the new tax coupon cases from Virginia. The court advanced the first one because it involves the question of State or Federal jurisdiction. The other three present merely the question whether a Virginia tax collector has a legal right to seize personal property for taxes after having refused to take coupons in payment. In denying the motion to advance there three cases the court said: "The State of Virginia is not in either of the cases a party, and the execution of the revenue laws has neither been enjoined nor stayed. A tax collector has been sued for alleged wrongs done to several plaintiffs while he was engaged in the collection of taxes due the State, but he is not in any way restrained from the general discharge of his official duties. The questions involved may be of public importance, but that does not necessarily entitle the parties to a hearing in preference to others. Practically every case that is advanced postpones another that has been on the docket three years awaiting its turn in the regular call. Under these circumstances the court deems it its duty not to take up a case out of its order except for imperative reasons." Nos. 672 and 1,047—H. G. C. Paulsen and Gottfried Bachmann against the Chesapeake and Ohio Railway Company et al.; motion to advance denied.

No. 9—(*The legal tender case.*)—*Augustus J. Juillard vs. Thomas S. Greenman.*—Motion to amend pleadings denied.—"It is conceded," the court says, "that the pleadings on which the case was tried below are correctly copied in the transcript.—Motion now is to amend these pleadings so as to make them more definite and certain. This we cannot do, because it requires the exercise of original jurisdiction. Cases here must be heard on the record sent up from below.

No. 204—*The United States, plaintiff, vs. James Hamilton.*—On certificate of division of opinion between the Judges of the Circuit Court of the United States for the Middle District of Tennesse. Dismissed for want of jurisdiction. Opinion by Justice Bradley.

No. 601—*James S. Philpot, appellant, vs. Antonio Philppi et al.*—Motion to dismiss submitted.

No. 45.—*The Indiana Southern Railroad Company appellant, vs. The Liverpool and London and Globe Insurance Company*; No. 46.—*William H. Guion, appellant, vs. The Liverpool and London and Globe Insurance Company.* Argued for the appellee and submitted for the appellant.

No. 47—*C. A. Arthur, Collector, &c., plaintiff in error, vs. Henry Pastor et al.*—Argued.

No. 48—*Bernard Arnson, et al., plaintiffs in error vs. Thomas Murphy, Collector &c.*—Argued for plaintiffs in error and submitted for defendant in error.

No. 1148—*Robert C. Hewitt, Appellant, vs. Lewis S. Talbert, et al.*—Appeal from Supreme Court of the District of Columbia. On motion of Mr. W. F. Mattingly, docketed and dismissed, with costs.

No. 949—*J. N. Evans, Plaintiff in Error, vs. Samuel Brown*—Motion to dismiss or affirm submitted.

No. 1118—*The Winthrop Iron Company et al., Appellants, vs. Arthur B. Meeker et al.*—Motion to dismiss submitted.

No. 7—*Original, ex parte. In the matter of The Commonwealth of Pennsylvania, petitioner.*—Argued by H. G. Ward and M. P. Henry for the petitioner. Court did not desire to hear counsel for respondent. This is an interesting pilotage case from the United States District Court for the Eastern District of Pennsylvania. The facts, as stated by the Attorney-General of Pennsylvania, are as follows: The State of Pennsylvania, by the act of June 8, 1881, directs that every vessel which is not spoken by a pilot outside of a stright line drawn between the Capes of the Delaware shall be exempt from the duty of taking a pilot on her voyage inward to the port of Philadelphia, and the vessel as well as her master, owner, agent, or consignee shall be exempt from the duty of paying pilotage or half pilotage, or any penalty whatsoever, in case of her neglect or refusal so to do." The purpose of this act was to secure a vigilant service. The State of Delaware, by the act of April 5, 1881, compels every vessel, except such as are solely coal-laden, "passing in or out of the Delaware Bay by the way of Cape Henlopen" to receive a pilot. The vessel in this case did pass in by the way of Cape Henlopen, and was spoken by a Delaware pilot after she had entered the capes. By a law of Pennsylvania, to one of whose ports she was bound, she was free from pilotage; by that of Delaware she became liable to pay full pilotage. The Delaware rates are higher for the service refused than the Pennsylvania rates for the same service rendered. The District Court of the United States for the Eastern District of Pennsylvania has enacted a decree against the vessel for the rates provided in the Delaware act, and thus has exercised its admiralty jurisdiction to enforce the laws of Delaware over the port of Philadelphia. The effect of the decision is to allow a State lying near the sea, whose whole interest in the pilotage laws is the support of her pilots, to override all legislation of Pennsylvania, (whose interest lies in encouraging commerce,) exempting vessels from pilotage. The State of Pennsylvania, regarding the Delaware legislation as invalid, seeks to prevent the enforcement of this decree by the writ of prohibition. Counsel for the respondent, on the other hand, maintain that Delaware has the same right to pass laws regulating pilots and pilotage that Pennsylvania has, and her legislation upon this subject extends equally with the legislation of Pennsylvania over the bay and river.

At the end of the reading of opinions this afternoon the Chief-Justice announced that, inasmuch as the litigants in the important tax case of the County of San Mateo against the Southern Pacific Railroad have stipulated that the further consideration of the cause may be postponed until certain other causes are disposed of, it will be restored to its original place on the docket, to await the further action of the court. Adjourned.

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