CHAPTER 5 DOCUMENTS

The Reconstructions Amendments

Amendment XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly Convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Amendment XV

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have the power to enforce this article by appropriate legislation.

Syllabus of Supreme Court Decisions

Dred Scott v. Sandford, 60 U.S. 393 (1857)

Syllabus (Legal Information Institute of Cornell University)

Argued: February 11-14, December 15-18, 1856 – Decided: March 6, 1857

I

1. Upon a writ of error to a Circuit Court of the United States, the transcript of the record of all the proceedings in the case is brought before the court, and is open to inspection and revision.

2. When a plea to the jurisdiction, in abatement, is overruled by the court upon demurrer, and the defendant pleads in bar, and upon these pleas the final judgment of the court is in his favor -- if the plaintiff brings a writ of error, the judgment of the court upon the plea in abatement is before this court, although it was in favor of the plaintiff -- and if the court erred in overruling it, the judgment must be reversed, and a mandate issued to the Circuit Court to dismiss the case for want of jurisdiction.

3. In the Circuit Courts of the United States, the record must show that the case is one in which, by the Constitution and laws of the United States, the court had jurisdiction -- and if this does not appear, and the judgment must be reversed by this court -- and the parties cannot be consent waive the objection to the jurisdiction of the Circuit Court.

4. A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a "citizen" within the meaning of the Constitution of the United States.

5. When the Constitution was adopted, they were not regarded in any of the States as members of the community which constituted the State, and were not numbered among its "people or citizens." Consequently, the special rights and immunities guarantied to citizens do not apply to them. And not being "citizens" within the meaning of the Constitution, they are not entitled to sue in that character in a court of the United States, and the Circuit Court has not jurisdiction in such a suit.

6. The only two clauses in the Constitution which point to this race treat them as persons whom it was morally lawfully to deal in as articles of property and to hold as slaves.

7. Since the adoption of the Constitution of the United States, no State can by any subsequent law make a foreigner or any other description of persons citizens of [p394] the United States, nor entitle them to the rights and privileges secured to citizens by that instrument.

8. A State, by its laws passed since the adoption of the Constitution, may put a foreigner or any other description of persons upon a footing with its own citizens as to all the rights and privileges enjoyed by them within its dominion and by its laws. But that will not make him a citizen of the United States, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State.

9. The change in public opinion and feeling in relation to the African race which has taken place since the adoption of the Constitution cannot change its construction and meaning, and it must be construed and administered now according to its true meaning and intention when it was formed and adopted.

10. The plaintiff having admitted, by his demurrer to the plea in abatement, that his ancestors were imported from Africa and sold as slaves, he is not a citizen of the State of Missouri according to the Constitution of the United States, and was not entitled to sue in that character in the Circuit Court.

11. This being the case, the judgment of the court below in favor of the plaintiff on the plea in abatement was erroneous.

II

1. But if the plea in abatement is not brought up by this writ of error, the objection to the citizenship of the plaintiff is still apparent on the record, as he himself, in making out his case, states that he is of African descent, was born a slave, and claims that he and his family became entitled to freedom by being taken by their owner to reside in a Territory where slavery is prohibited by act of Congress, and that, in addition to this claim, he himself became entitled to freedom by being taken to Rock Island, in the State of Illinois, and being free when he was brought back to Missouri, he was, by the laws of that State, a citizen.

2. If, therefore, the facts he states do not give him or his family a right to freedom, the plaintiff is still a slave, and not entitled to sue as a "citizen," and the judgment of the Circuit Court was erroneous on that ground also, without any reference to the plea in abatement.

3. The Circuit Court can give no judgment for plaintiff or defendant in a case where it has not jurisdiction, no matter whether there be a plea in abatement or not. And unless it appears upon the face of the record, when brought here by writ of error, that the Circuit Court had jurisdiction, the judgment must be reversed.

The case of *Capron v. Van Noorden,* 2 Cranch 126, examined, and the principles thereby decided reaffirmed.

4. When the record, as brought here by writ of error, does not show that the Circuit Court had jurisdiction, this court has jurisdiction to review and correct the error like any other error in the court below. It does not and cannot dismiss the case for want of jurisdiction here, for that would leave the erroneous judgment of the court below in full force, and the party injured without remedy. But it must reverse the judgment and, as in any other case of reversal, send a mandate to the Circuit Court to conform its judgment to the opinion of this court.

5. The difference of the jurisdiction in this court in the cases of writs of error to State courts and to Circuit Courts of the United States pointed out, and the mistakes made as to the jurisdiction of this court in the latter case by confounding it with its limited jurisdiction in the former.

6. If the court reverses a judgment upon the ground that it appears by a particular part of the record that the Circuit Court had not jurisdiction, it does not take away the jurisdiction of this court to examine into and correct, by a reversal of the judgment, any other errors, either as to the jurisdiction or any other matter, where it appears from other parts of the record that the Circuit Court had fallen into error. On the contrary, it is the daily and familiar practice of this court to reverse on several grounds where more than one error appears to have been committed. And the error of a Circuit Court in its jurisdiction [p395] stands on the same ground, and is to be treated in the same manner as any other error upon whish its judgment is founded.

7. The decision, therefore, that the judgment of the Circuit Court upon the plea in abatement is erroneous is no reason why the alleged error apparent in the exception should not also be examined, and the judgment reversed on that ground also, if it discloses a want of jurisdiction in the Circuit Court.

8. It is often the duty of this court, after having decided that a particular decision of the Circuit Court was erroneous, to examine into other alleged errors and to correct them if they are found to exist. And this has been uniformly done by this court when the questions are in any degree connected with the controversy and the silence of the court might create doubts which would lead to further useless litigation.

III

1. The facts upon which the plaintiff relies did not give him his freedom and make him a citizen of Missouri.

2. The clause in the Constitution authorizing Congress to make all needful rules and regulations for the government of the territory and other property of the United States applies only to territory within the chartered limits of some one of the States when they were colonies of Great Britain, and which was surrendered by the British Government to the

former Confederation of the States in the treaty of peace. It does not apply to territory acquired by the present Federal Government by treaty or conquest from a foreign nation.

3. The United States, under the present Constitution, cannot acquire territory to be held as a colony, to be governed at its will and pleasure. But it may acquire territory which, at the time, has not a population that fits it to become a State, and may govern it as a Territory until it has a population which, in the judgment of Congress, entitled it to be admitted as a State of the Union.

4. During the time it remains a Territory, Congress may legislate over it within the scope of its constitutional powers in relation to citizens of the United States, and may establish a Territorial Government, and the form of the local Government must be regulated by the discretion of Congress, but with powers not exceeding those which Congress itself, by the Constitution, is authorized to exercise over citizens of the United States in respect to the rights of persons or rights of property.

IV

1. The territory thus acquired is acquired by the people of the United States for their common and equal benefit through their agent and trustee, the Federal Government. Congress can exercise no power over the rights of persons or property of a citizen in the Territory which is prohibited by the Constitution. The Government and the citizen, whenever the Territory is open to settlement, both enter it with their respective rights defined and limited by the Constitution.

2. Congress have no right to prohibit the citizens of any particular State or States from taking up their home there while it permits citizens of other States to do so. Nor has it a right to give privileges to one class of citizens which it refuses to another. The territory is acquired for their equal and common benefit, and if open to any, it must be open to all upon equal and the same terms.

3. Every citizen has a right to take with him into the Territory any article of property which the Constitution of the United States recognises as property.

4. The Constitution of the United States recognises slaves as property, and pledges the Federal Government to protect it. And Congress cannot exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind.

5. The act of Congress, therefore, prohibiting a citizen of the United States from [p396] taking with him his slaves when he removes to the Territory in question to reside is an exercise of authority over private property which is not warranted by the Constitution, and the removal of the plaintiff by his owner to that Territory gave him no title to freedom.

V

1. The plaintiff himself acquired no title to freedom by being taken by his owner to Rock Island, in Illinois, and brought back to Missouri. This court has heretofore decided that the *status* or condition of a person of African descent depended on the laws of the State in which he resided.

2. It has been settled by the decisions of the highest court in Missouri that, by the laws of that State, a slave does not become entitled to his freedom where the owner takes him to reside in a State where slavery is not permitted and afterwards brings him back to Missouri.

Conclusion. It follows that it is apparent upon the record that the court below erred in its judgment on the plea in abatement, and also erred in giving judgment for the defendant, when the exception shows that the plaintiff was not a citizen of the United States. And the Circuit Court had no jurisdiction, either in the cases stated in the plea in abatement or in the one stated in the exception, its judgment in favor of the defendant is erroneous, and must be reversed.

This case was brought up, by writ of error, from the Circuit Court of the United States for the district of Missouri.

It was an action of trespass *vi et armis* instituted in the Circuit Court by Scott against Sandford.

Prior to the institution of the present suit, an action was brought by Scott for his freedom in the Circuit Court of St. Louis county (State court), where there was a verdict and judgment in his favor. On a writ of error to the Supreme Court of the State, the judgment below was reversed and the case remanded to the Circuit Court, where it was continued to await the decision of the case now in question.

The declaration of Scott contained three counts: one, that Sandford had assaulted the plaintiff; one, that he had assaulted Harriet Scott, his wife; and one, that he had assaulted Eliza Scott and Lizzie Scott, his children.

Sandford appeared, and filed the following plea:

DRED SCOTT)
v.) Plea to the Jurisdiction of the Court.
JOHN F. A. SANDFORD)

APRIL TERM, 1854.

And the said John F. A. Sandford, in his own proper person, comes and says that this court ought not to have or take further cognizance of the action aforesaid, because he says that said cause of action and each and every of them (if any such have accrued to the said Dred Scott) accrued to the said Dred Scott out of the jurisdiction of this court, and exclusively within the jurisdiction of the courts of the State of Missouri, for that, to-wit: the said plaintiff, Dred Scott, is not a citizen of the State of Missouri, as alleged in his declaration, because [p397] he is a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves, and this the said Sandford is ready to verify. Wherefore, he prays judgment whether this court can or will take further cognizance of the action aforesaid.

JOHN F. A. SANDFORD

To this plea there was a demurrer in the usual form, which was argued in April, 1854, when the court gave judgment that the demurrer should be sustained.

In May, 1854, the defendant, in pursuance of an agreement between counsel, and with the leave of the court, pleaded in bar of the action:

1. Not guilty.

2. That the plaintiff was a negro slave, the lawful property of the defendant, and, as such, the defendant gently laid his hands upon him, and thereby had only restrained him, as the defendant had a right to do.

3. That with respect to the wife and daughters of the plaintiff, in the second and third counts of the declaration mentioned, the defendant had, as to them, only acted in the same manner and in virtue of the same legal right.

In the first of these pleas, the plaintiff joined issue, and to the second and third filed replications alleging that the defendant, of his own wrong and without the cause in his second and third pleas alleged, committed the trespasses, &c.

The counsel then filed the following agreed statement of facts, *viz:*

In the year 1834, the plaintiff was a negro slave belonging to Dr. Emerson, who was a surgeon in the army of the United States. I n that year, 1834, said Dr. Emerson took the plaintiff from the State of Missouri to the military post at Rock Island, in the State of Illinois, and held him there as a slave until the month of April or May, 1836. At the time last mentioned, said Dr. Emerson removed the plaintiff from said military post at Rock Island to the military post at Fort Snelling, situate on the west bank of the Mississippi river, in the Territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude of thirty-six degrees thirty minutes north, and north of the State of Missouri. Said Dr. Emerson held the plaintiff in slavery at said Fort Snelling, from said last-mentioned date until the year 1838.

In the year 1835, Harriet, who is named in the second count of the plaintiff's declaration, was the negro slave of Major Taliaferro, who belonged to the army of the United States. [p398] In that year, 1835, said Major Taliaferro took said Harriet to said Fort Snelling, a military post, situated as hereinbefore stated, and kept her there as a slave until the year 1836, and then sold and delivered her as a slave at said Fort Snelling unto the said Dr. Emerson hereinbefore named. Said Dr. Emerson held said Harriet in slavery at said Fort Snelling until the year 1838.

In the year 1836, the plaintiff and said Harriet at said Fort Snelling, with the consent of said Dr. Emerson, who then claimed to be their master and owner, intermarried, and took each other for husband and wife. Eliza and Lizzie, named in the third count of the plaintiff's declaration, are the fruit of that marriage. Eliza is about fourteen years old, and was born on board the steamboat *Gipsey,* north of the north line of the State of Missouri, and upon the river Mississippi. Lizzie is about seven years old, and was born in the State of Missouri, at the military post called Jefferson Barracks.

In the year 1838, said Dr. Emerson removed the plaintiff and said Harriet and their said daughter Eliza from said Fort Snelling to the State of Missouri, where they have ever since resided.

Before the commencement of this suit, said Dr. Emerson sold and conveyed the plaintiff, said Harriet, Eliza, and Lizzie, to the defendant, as slaves, and the defendant has ever since claimed to hold them and each of them as slaves.

At the times mentioned in the plaintiff's declaration, the defendant, claiming to be owner as aforesaid, laid his hands upon said plaintiff, Harriet, Eliza, and Lizzie, and imprisoned them, doing in this respect, however, no more than what he might lawfully do if they were of right his slaves at such times.

Further proof may be given on the trial for either party.

It is agreed that Dred Scott brought suit for his freedom in the Circuit Court of St. Louis county; that there was a verdict and judgment in his favor; that, on a writ of error to the Supreme Court, the judgment below was reversed, and the same remanded to the Circuit Court, where it has been continued to await the decision of this case.

In May, 1854, the cause went before a jury, who found the following verdict, *viz:*

As to the first issue joined in this case, we of the jury find the defendant not guilty; and as to the issue secondly above joined, we of the jury find that before and at the time when, &c., in the first count mentioned, the said Dred Scott was a negro slave, the lawful property of the defendant; and as to the issue thirdly above joined, we, the jury, find that before and at the time when, &c., in the second and third counts mentioned, the said Harriet, wife of [p399] said Dred Scott, and Eliza and Lizzie, the daughters of the said Dred Scott, were negro slaves, the lawful property of the defendant.

Whereupon, the court gave judgment for the defendant.

After an ineffectual motion for a new trial, the plaintiff filed the following bill of exceptions.

On the trial of this cause by the jury, the plaintiff, to maintain the issues on his part, read to the jury the following agreed statement of facts, (*see* agreement above.) No further testimony was given to the jury by either party. Thereupon the plaintiff moved the court to give to the jury the following instruction, *viz:*

"That, upon the facts agreed to by the parties, they ought to find for the plaintiff. The court refused to give such instruction to the jury, and the plaintiff, to such refusal, then and there duly excepted."

The court then gave the following instruction to the jury, on motion of the defendant:
The jury are instructed, that upon the facts in this case, the law is with the defendant.
The plaintiff excepted to this instruction.

Upon these exceptions, the case came up to this court.

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0060_0393_ZS.html> [verified May 30, 2012].)

Ex parte Merryman, 17 F. Cas. 144 (1861)

Circuit Court, D. Maryland.
April Term, 1861.

Syllabus (Touro College Law Center)

1. On the 25th May 1861, the petitioner, a citizen of Baltimore county, in the state of Maryland, was arrested by a military force, acting under orders of a majorgeneral of the United States army, commanding in the state of Pennsylvania, and committed to the custody of the general commanding Fort McHenry, within the district of Maryland; on the 26th May 1861, a writ of habeas corpus was issued by the chief justice of the United States, sitting at chambers, directed to the commandant of the fort, commanding him to produce the body of the petitioner before the chief justice, in Baltimore city, on the 27th day of May 1861; on the lastmentioned day, the writ was returned served, and the officer to whom it was directed declined to produce the petitioner, giving as his excuse the following reasons: 1. That the petitioner was arrested by the orders of the majorgeneral commanding in Pennsylvania, upon the charge of treason, in being 'publicly associated with and holding a commission as lieutenant in a company having in their possession arms belonging to the United States, and avowing his purpose of armed hostility against the government.' 2. That he (the officer having the petitioner in custody) was duly authorized by the president of the United States, in such cases, to suspend the writ of habeas corpus for the public safety. Held, that the petitioner was entitled to be set at liberty and discharged immediately from confinement, upon the grounds following: 1. That the president, under the constitution of the United States, cannot suspend the privilege of the writ of habeas corpus, nor authorize a military officer to do it. 2. That a military officer has no right to arrest and detain a person not subject to the rules and articles of war, for an offence against the law of the United States, except in aid of the judicial authority, and subject to its control; and if the party be arrested by the military, it is the duty of the officer to deliver him over immediately to the civil authority, to be dealt with according to law. [Approved in Re Kemp, 16 Wis. 367.]

2. Under the constitution of the United States, congress is the only power which can authorize the suspension of the privilege of the writ. [Cited in Ex parte Field, Case No. 4,761; McCall v. McDowell, Id. 8,673.]

(The complete document can be found in <http://tlc-patch.tourolaw.edu/patch/Merryman/> [verified May 30, 2012].)

Ex parte Milligan, 71 U.S. 2 (1866)

Syllabus (Legal Information Institute of Cornell University)

Argued: March 5-9, 12-13, 1866 – Decided: April 3, 1886

1. Circuit Courts, as well as the judges thereof, are authorized, by the fourteenth section of the Judiciary Act, to issue the writ of habeas corpus for the purpose of inquiring into the cause of commitment, and they have [p3] jurisdiction, except in cases where the privilege of the writ

is suspended, to hear and determine the question whether the party is entitled to be discharged.

2. The usual course of proceeding is for the court, on the application of the prisoner for a writ of habeas corpus, to issue the writ, and, on its return, to hear and dispose of the case; but where the cause of imprisonment is fully shown by the petition, the court may, without issuing the writ, consider and determine whether, upon the facts presented in the petition, the prisoner, if brought before the court, would be discharged.

3. When the Circuit Court renders a final judgment refusing to discharge the prisoner, he may bring the case here by writ of error, and, if the judges of the Circuit Court, being opposed in opinion, can render no judgment, he may have the point upon which the disagreement happens certified to this tribunal.

4. A petition for a writ of habeas corpus, duly presented, is the institution of a cause on behalf of the petitioner, and the allowance or refusal of the process, as well as the subsequent disposition of the prisoner is matter of law, and not of discretion.

5. A person arrested after the passage of the act of March 3d, 1863, "relating to habeas corpus and regulating judicial proceedings in certain cases," and under the authority of said act, was entitled to his discharge if not indicted or presented by the grand jury convened at the first subsequent term of the Circuit or District Court of the United States for the District.

6. The omission to furnish a list of the persons arrested to the judges of the Circuit or District Court as provided in the said act did not impair the right of said person, if not indicted or presented, to his discharge.

7. Military commissions organized during the late civil war, in a State not invaded and not engaged in rebellion, in which the Federal courts were open, and in the proper and unobstructed exercise of their judicial functions, had no jurisdiction to try, convict, or sentence for any criminal offence, a citizen who was neither a resident of a rebellious State nor a prisoner of war, nor a person in the military or naval service. And Congress could not invest them with any such power.

8. The guaranty of trial by jury contained in the Constitution was intended for a state of war, as well as a state of peace, and is equally binding upon rulers and people at all times and under all circumstances.

9. The Federal authority having been unopposed in the State of Indiana, and the Federal courts open for the trial of offences and the redress of grievances, the usages of war could not, under the Constitution, afford any sanction for the trial there of a citizen in civil life not connected with the military or naval service, by a military tribunal, for any offence whatever.

10. Cases arising in the land or naval forces, or in the militia in time of war or public danger, are excepted from the necessity of presentment or indictment by a grand jury, and the right of trial by jury in such cases is subject to the same exception. [p4]

11. Neither the President nor Congress nor the Judiciary can disturb any one of the safeguards of civil liberty incorporated into the Constitution except so far as the right is given to suspend in certain cases the privilege of the writ of habeas corpus.

12. A citizen not connected with the military service and a resident in a State where the courts are open and in the proper exercise or their jurisdiction cannot, even when the privilege of the writ of habeas corpus is suspended, be tried, convicted, or sentenced otherwise than by the ordinary courts of law.

13. Suspension of the privilege of the writ of habeas corpus does not suspend the writ itself. The writ issues as a matter of course, and, on its return, the court decides whether the applicant is denied the right of proceeding any further.

14. A person who is a resident of a loyal State, where he was arrested, who was never resident in any State engaged in rebellion, nor connected with the military or naval service, cannot be regarded as a prisoner of war.

This case came before the court upon a certificate of division from the judges of the Circuit Court for Indiana, on a petition for discharge from unlawful imprisonment.

The case was thus:

An act of Congress -- the Judiciary Act of 1789, [n1] section 14 -- enacts that the Circuit Courts of the United States

Shall have power to issue writs of habeas corpus. And that either of the justices of the Supreme Court, as well as judges of the District Court, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment. *Provided,*

&c.

Another act -- that of March 3d, 1863, [n2] "relating to habeas corpus, and regulating judicial proceedings in certain cases" -- an act passed in the midst of the Rebellion -- makes various provisions in regard to the subject of it.

The first section authorizes the suspension, during the Rebellion, of the writ of habeas corpus, throughout the United States, by the President.

Two following sections limited the authority in certain respects. [p5]

The second section required that lists of all persons, being citizens of States in which the administration of the laws had continued unimpaired in the Federal courts, who were then held, or might thereafter be held, as prisoners of the United States, under the authority of the President, otherwise than as prisoners of war, should be furnished by the Secretary of State and Secretary of War to the judges of the Circuit and District Courts. These lists were to contain the names of all persons, residing within their respective jurisdictions, charged with violation of national law. And it was required, in cases where the grand jury in attendance upon any of these courts should terminate its session without proceeding by indictment or otherwise against any prisoner named in the list, that *the judge* of the court should forthwith make an order that such prisoner, desiring a discharge, should be brought before him or the court to be discharged, on entering into recognizance, if required, to keep the peace and for good behavior, or to appear, as the court might direct, to be further dealt with according to law. Every officer of the United States having custody of such prisoners was required to obey and execute *the judge's* order, under penalty, for refusal or delay, of fine and imprisonment.

The third section enacts, in case lists of persons other than prisoners of war then held in confinement or thereafter arrested, should not be furnished within twenty days after the passage of the act, or, in cases of subsequent arrest, within twenty days after the time of arrest, that any citizen, after the termination of a session of the grand jury without indictment or presentment, might, by petition alleging the facts and verified by oath, obtain *the judge's* order of discharge in favor of any person so imprisoned, on the terms and conditions prescribed in the second section.

This act made it the duty of the District Attorney of the United States to attend examinations on petitions for discharge.

By proclamation, [n3] dated the 15th September following, [p6] the President, reciting this statute, suspended the privilege of the writ in the cases where, by his authority, military, naval, and civil officers of the United States

hold persons in their custody either as prisoners of war, spies, or aiders and abettors of the enemy, . . . or belonging to the land or naval force of the United States, or otherwise amenable to military law, or the rules and articles of war, or the rules or regulations prescribed for the military or naval services, by authority of the President, or for resisting a draft, or for any other offence against the military or naval service.

With both these statutes and this proclamation in force, Lamdin P. Milligan, a citizen of the United States, and a resident and citizen of the State of Indiana, was arrested on the 5th day of October, 1864, at his home in the said State, by the order of Brevet Major-General Hovey, military commandant of the District of Indiana, and by the same authority confined in a military prison at or near Indianapolis, the capital of the State. On the 21st day of the same month, he was placed on trial before a "military commission," convened at Indianapolis, by order of the said General, upon the following charges, preferred by Major Burnett, Judge Advocate of the Northwestern Military Department, namely:

1. "Conspiracy against the Government of the United States;"

2. "Affording aid and comfort to rebels against the authority of the United States;"

3. "Inciting insurrection;"

4. "Disloyal practices;" and

5. "Violation of the laws of war."

Under each of these charges, there were various specifications. The substance of them was joining and aiding, at different times between October, 1863, and August, 1864, a secret society known as the Order of American Knights or Sons of Liberty, for the purpose of overthrowing the Government and duly constituted authorities of the United States; holding communication with the enemy; conspiring to seize munitions of war stored in the arsenals; to liberate [p7] prisoners of war, &c.; resisting the draft, &c.; . . .

at a period of war and armed rebellion against the authority of the United States, at or near Indianapolis [and various other places specified] in Indiana, a State within the military lines of the army of the United States and the theatre of military operations, and which had been and was constantly threatened to be invaded by the enemy.

These were amplified and stated with various circumstances.

An objection by him to the authority of the commission to try him being overruled, Milligan was found guilty on all the charges, and sentenced to suffer death by hanging, and this sentence, having been approved, he was ordered to be executed on Friday, the 19th of May, 1865.

On the 10th of that same May, 1865, Milligan filed his petition in the Circuit Court of the United States for the District of Indiana, by which, or by the documents appended to which as exhibits, the above facts appeared. These exhibits consisted of the order for the commission; the charges and specifications; the findings and sentence of the court, with a statement of the fact that the sentence was approved by the President of the United States, who directed that it should "be carried into execution without delay;" all "by order of the Secretary of War."

The petition set forth the additional fact that, while the petitioner was held and detained, as already mentioned, in military custody (and more than twenty days after his arrest), a grand jury of the Circuit Court of the United States for the District of Indiana was convened at Indianapolis, his said place of confinement, and duly empaneled, charged, and sworn for said district, held its sittings, and finally adjourned without having found any bill of indictment, or made any presentment whatever against him. That at no time had he been in the military service of the United States, or in any way connected with the land or naval force, or the militia in actual service; nor within the limits of any State whose citizens were engaged in rebellion against the United States, at any time during the war, but, during all the time aforesaid, and for twenty years last past, he had been an [p8] inhabitant, resident, and citizen of Indiana. And so that it had been

wholly out of his power to have acquired belligerent rights or to have placed himself in such relation to the government as to have enabled him to violate the laws of war.

The record, in stating who appeared in the Circuit Court, ran thus:

Be it remembered, that on the 10th day of May, A.D. 1865, in the court aforesaid, before the judges aforesaid, comes Jonathan W. Gorden, Esq., of counsel for said Milligan, and files here, in open court, the petition of said Milligan, to be discharged . . . At the same time comes John Hanna, Esquire, the attorney prosecuting the pleas of the United States in this behalf. And thereupon, by agreement, this application is submitted to the court, and day is given, &c.

The prayer of the petition was that, under the already mentioned act of Congress of March 3d, 1863, the petitioner might be brought before the court and either turned over to the proper civil tribunal to be proceeded with according to the law of the land or discharged from custody altogether.

At the hearing of the petition in the Circuit Court, the opinions of the judges were opposed upon the following questions:

I. On the facts stated in the petition and exhibits, ought a writ of habeas corpus to be issued according to the prayer of said petitioner?

II. On the facts stated in the petition and exhibits, ought the said Milligan to be discharged from custody as in said petition prayed?

III. Whether, upon the facts stated in the petition and exhibits, the military commission had jurisdiction legally to try and sentence said Milligan in manner and form, as in said petition and exhibit is stated?

And these questions were certified to this court under the provisions of the act of Congress of April 29th, 1802, [n4] an act [p9] which provides

that whenever any question shall occur before a Circuit Court upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen shall, during the same term, upon the request of *either party* or their counsel, be stated under the direction of the judges and certified under the seal of the court to the Supreme Court, at their next session to be held thereafter, and shall by the said court be *finally* decided, and the decision of the Supreme Court and their order in the premises shall be remitted to the Circuit Court and be there entered of record, and shall have effect according to the nature of the said judgment and order; *Provided,* That nothing herein contained shall prevent the cause from proceeding if, in the opinion of the court, further proceedings can be had without prejudice to the merits.

The three several questions above mentioned were argued at the last term. And along with them, an additional question raised in this court, namely:

IV. A question of jurisdiction, as -- 1. Whether the Circuit Court had jurisdiction to hear the case there presented? -- 2. Whether the case sent up here by certificate of division was so sent up in conformity with the intention of the act of 1802? in other words, whether this court had jurisdiction of the questions raised by the certificate? [p107]

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0071_0002_ZS.html> [verified May 30, 2012].)

Texas v. White, 74 U.S. 700 (1869)

Syllabus (Legal Information Institute of Cornell University)

Argued: February 5, 8-9, 1869 – Decided: April 12, 1869

1. The word "State" describes sometimes a people or community of individuals united more or less closely in political relations, inhabiting temporarily or permanently the same country; often it denotes only the country, or territorial region, inhabited by such a community; not unfrequently, it is applied to the government under which the people live; at other times, it represents the combined idea of people, territory, and government.

2. In the Constitution, the term "State" most frequently expresses the combined idea, just noticed, of people, territory, and government. A State, in the ordinary sense of the

Constitution, is a political community of free citizens, occupying a territory of defined boundaries and organised under a government sanctioned and limited by a written constitution, and established by the consent of the governed.

3. But the term is also used to express the idea of a people or political community, as distinguished from the government. In this sense, it is used in the clause which provides that the United States shall guarantee to every State in the Union a republican form of government, and shall protect each of them against invasion.

4. The Union of the States never was a purely artificial and arbitrary relation. It began among the Colonies, and grew out of common origin, mutual sympathies, kindred principles, similar interests, and geographical relations. It was confirmed and strengthened by the necessities of war, and received definite form and character and sanction from the Articles of Confederation. By these, the Union was solemnly declared to "be perpetual." And, when these Articles were found to be inadequate to the exigencies of the country, the Constitution was ordained "to form a more perfect Union."

5. But the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. On the contrary, it may be not unreasonably said that the preservation of the States and the maintenance of their governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union composed of indestructible States.

6. When Texas became one of the United States, she entered into an indissoluble relation. The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration or revocation, except through revolution or through consent of the States.

7. Considered as transactions under the Constitution, the ordinance of secession, adopted by the convention, and ratified by a majority of the citizens of Texas, and all the acts of her legislature intended to give [p701] effect to that ordinance, were absolutely null. They were utterly without operation in law. The State did not cease to be a State, nor her citizens to be citizens of the Union.

8. But in order to the exercise, by a State, of the right to sue in this court, there needs to be a State government, competent to represent the State in its relations with the National government, so far at least as the institution and prosecution of a suit is concerned.

9. While Texas was controlled by a government hostile to the United States, and in affiliation with a hostile confederation, waging war upon the United States, no suit instituted in her name could be maintained in this court. It was necessary that the government and the people of the State should be restored to peaceful relations to the United States, under the constitution before such a suit could be prosecuted.

10. Authority to suppress rebellion is found in the power to suppress insurrection and carry on war, and authority to provide for the restoration of State governments, under the Constitution, when subverted and overthrown, is derived from the obligation of the United States to guarantee to every State in the Union a republican form of government. The latter, indeed, in the case of a rebellion which involves the government of a State, and, for the time,

excludes the National authority from its limits, seems to be a necessary complement to the other.

11. When slavery was abolished, the new freemen necessarily became part of the people, and the people still constituted the State, for States, like individuals, retain their identity, though changed, to some extent, in their constituent elements. And it was the State, thus constituted, which was now entitled to the benefit of the constitutional guaranty

12. In the exercise of the power conferred by the guaranty clause, as in the exercise of every other constitutional power, a discretion in the choice of means is necessarily allowed. It is essential only that the means must be necessary and proper for carrying into execution the power conferred, through the restoration of the State to its constitutional relations, under a republican form of government, and that no acts be done, and no authority exerted, which is either prohibited or unsanctioned by the Constitution.

13. So long as the war continued, it cannot be denied that the President might institute temporary government within insurgent districts, occupied by the National forces, or take provisional measures, in any State, for the restoration of State government faithful to the Union, employing, however, in such efforts, only such means and agents as were authorized by constitutional laws. But the power to carry into effect the clause of guaranty is primarily a legislative power, and resides in Congress, though necessarily limited to cases where the rightful government is subverted by revolutionary violence, or in imminent danger of being overthrown by an opposing government, set up by force within the State.

14. The several executives of Texas, partially, at least, reorganized under [p702] the authority of the President and of Congress, having sanctioned this suit, the necessary conclusion is that it was instituted and is prosecuted by competent authority.

15. Public property of a State, alienated during rebellion by an usurping State government for the purpose of carrying on war against the United States, may be reclaimed by a restored State government, organized in allegiance to the Union, for the benefit of the State.

16. Exact definitions, within which the acts of a State government, organized in hostility to the Constitution and government of the United States, must be treated as valid or invalid need not be attempted. It may be said, however, that acts necessary to peace and good order among citizens, such, for example, as acts sanctioning and protecting marriage and the domestic relations, governing the course of descents regulating the conveyance and transfer of property, real and personal, and providing remedies for injuries to person and estate, and other similar acts, which would be valid if emanating from a lawful government, must be regarded in general as valid when proceeding from an actual, though unlawful, government, and that acts in furtherance or support of rebellion against the United States, or intended to defeat the just rights of citizens, and other acts of like nature, must, in general, be regarded as invalid and void.

17. Purchasers of United States bonds issued payable to the State of Texas or bearer, alienated during rebellion by the insurgent government, and acquired after the date at which the bonds became redeemable, are affected with notice of defect of title in the seller.

The Constitution ordains that the judicial power of the United States shall extend to certain cases, and among them

to controversies between a State and citizens of another State; . . . and between a State, or the citizens thereof, and foreign States, citizens or subjects.

It ordains further, that in cases in which "a State" shall be a party, the Supreme Court shall have original jurisdiction.

With these provisions in force as fundamental law, Texas, entitling herself "the State of Texas, one of the United States of America," filed, on the 15th of February, 1867, an original bill against different persons; White and Chiles, one Hardenberg, a certain firm, Birch, Murray & Co., and some others, [n1] citizens of New York and other States; praying [p703] an injunction against their asking or receiving payment from the United States of certain bonds of the Federal government, known as Texan indemnity bonds; and that the bonds might be delivered up to the complainant, and for other and further relief.

The case was this:

In 1851, the United States issued its bonds -- five thousand bonds for $1,000 each, and numbered successively from No. 1 to No. 5,000, and thus making the sum of $5,000,000 -- to the State of Texas, in arrangement of certain boundary claims made by that State. The bonds, which were dated January 1st, 1851, were coupon bonds, payable, by their terms, to the State of Texas or bearer, with interest at 5 percent semi-annually, and "*redeemable after* the 31st day of December, 1864." Each bond contained a statement on its face that the debt was authorized by act of Congress, and was "*transferable on delivery,*" and to each were attached six-month coupons, extending to December 31, 1864. [n2]

In pursuance of an act of the legislature of Texas, the controller of public accounts of the State was authorized to go to Washington, and to receive there the bonds; the statute making it his duty to deposit them, when received, in the treasury of the State of Texas, to be disposed of "*as may be provided by law;*" and enacting further, that no bond, issued as aforesaid and payable to bearer, should be "available in the hands of any holder until the same shall have been indorsed, *in the city of Austin, by the governor of the State of Texas*."

Most of the bonds were indorsed and sold according to law, and paid on presentation by the United States prior to 1860. A part of them, however, -- appropriated by act of legislature as a school fund -- were still in the treasury of Texas, in January, 1861, when the late Southern rebellion broke out.

The part which Texas took in that event, and the position [p704] in which the close of it left her, are necessary to be here adverted to.

At the time of that outbreak, Texas was confessedly one of the United States of America, having a State constitution in accordance with that of the United States and represented by senators and representatives in the Congress at Washington. In January, 1861, a call for a convention of the people of the State was issued, signed by sixty-one individuals. The call was without authority, and revolutionary. Under it, delegates were elected from some sections of the State, whilst in others no vote was taken. These delegates assembled in State convention, and, on the 1st of February, 1861, the convention adopted an ordinance

to dissolve the union between the State of Texas and the other States, united under the compact styled "the Constitution of the United States of America."

The ordinance contained a provision requiring it to be submitted to the people of Texas, for ratification or rejection by the qualified voters thereof, on the 23d of February, 1861. The legislature of the State, convened in extra session, on the 22d of January, 1861, passed an act ratifying the election of the delegates, chosen in the irregular manner above mentioned, to the convention. The ordinance of secession submitted to the people was adopted by a vote of 34,794 against 11,235. The convention, which had adjourned immediately on passing the ordinance, reassembled. On the 4th of March, 1861, it declared that the ordinance of secession had been ratified by the people, and that Texas had withdrawn from the union of the States under the Federal Constitution. It also passed a resolution requiring the officers of the State government to take an oath to support the provisional government of the Confederate States, and providing, that if

any officer refused to take such oath, in the manner and within the time prescribed, his office should be deemed vacant, and the same filled as though he were dead.

On the 16th of March, the convention passed an ordinance declaring that, whereas the governor and the secretary of state had refused or omitted to take the oath prescribed, their offices were vacant; that [p705] the lieutenant-governor should exercise the authority and perform the duties appertaining to the office of governor, and that the deposed officers should deliver to their successors in office the great seal of the State, and all papers, archives, and property in their possession belonging or appertaining to the State. The convention further assumed to exercise and administer the political power and authority of the State.

Thus was established the rebel government of Texas.

The senators and representatives of the State in Congress now withdrew from that body at Washington. Delegates were sent to the Congress of the so-called Confederate States at Montgomery, Alabama, and electors for a president and vice-president of these States appointed. War having become necessary to complete the purposed destruction by the South of the Federal government, Texas joined the other Southern States, and made war upon the United States, whose authority was now recognized in no manner within her borders. The oath of allegiance of all persons exercising public functions was to both the State of Texas, and to the Confederate States of America, and no officer of any kind representing the United States was within the limits of the State except military officers, who had been made prisoners. Such was and had been for several months the condition of things in the beginning of 1862.

On the 11th of January, of that year, the legislature of the usurping government of Texas passed an act -- "to provide arms and ammunition, and for the manufacture of arms and ordnance for the military defences of the State." And by it created a "military board," to carry out the purpose indicated in the title. Under the authority of this act, military forces were organized.

On the same day, the legislature passed a further act, entitled "*An act to provide funds for military purposes,*" and therein directed the board, which it had previously organized,
to dispose of any bonds and coupons which may be in the treasury on any account, and use such funds or their proceeds for the defence of the State;

and passed an additional act *repealing the act* [p706] *which made an indorsement of the bonds by the governor of Texas necessary to make them available in the hands of the holder.*

Under these acts, the military board, on the 12th January, 1865, a date at which the success of the Federal arms seemed probable, agreed to sell to White & Chiles one hundred and thirty-five of these bonds, then in the treasury of Texas, and seventy-six others deposited with certain bankers in England, in payment for which White & Chiles were to deliver to the board a large quantity of cotton cards and medicines. The former bonds were delivered to White & Chiles on the 15th March following, *none of them being indorsed by any governor of Texas*.

It appeared that, in February, 1862, after the rebellion had broken out, it was made known to the Secretary of the Treasury of the United States, in writing, by the Hon. G. W. Paschal, of Texas, who had remained constant to the Union, that an effort would be made by the rebel authorities of Texas to use the bonds remaining in the treasury in aid of the rebellion, and that they could be identified, because all that had been circulated before the war were indorsed by different governors of Texas. The Secretary of the Treasury acted on this information, and refused in general to pay bonds that had not been indorsed. On the 4th of October, 1865, Mr. Paschal, as agent of the State of Texas, caused to appear in the money report and editorial of the New York Herald, a notice of the transaction between the rebel government of Texas and White & Chiles, and a statement that the treasury of the United States would not pay the bonds transferred to them by such usurping government. On the 10th October, 1865, the provisional governor of the State published in the New York Tribune, a "*Caution to the Public,*" in which he recited that the rebel government of Texas had, under a pretended contract, transferred to White & Chiles "one hundred and thirty-five United States Texan indemnity bonds, issued January 1, 1851, payable in fourteen years, of the denomination of $1,000 each, and coupons attached thereto to the amount of $1,287.50, amounting in the aggregate, bonds and coupons, to the sum of $156,287.50." [p707] His caution did not specify, however, any particular bonds by number. The caution went on to say that the transfer was a conspiracy between the rebel governor and White & Chiles to rob the State treasury, that White & Chiles had never paid the State one farthing, that they had fled the State, and that these facts had been made known to the Secretary of the Treasury of the United States. And

a protest was filed with him by Mr. Paschal, agent of the State of Texas, against the payment of the said bonds and coupons unless presented for payment by proper authority.

The substance of this notice, it was testified, was published in money articles of many of the various newspapers of about that date, and that financial men in New York and other places spoke to Mr. Paschal, who had caused it to be inserted in the Tribune, about it. It was testified also, that after the commencement of the suit, White & Chiles said that they had seen it.

The rebel forces being disbanded on the 25th May, 1865, and the civil officers of the usurping government of Texas having fled from the country, the President, on the 17th June, 1865, issued his proclamation appointing Mr. A. J. Hamilton, provisional governor of the State; and directing the formation by the people of a State government in Texas.

Under the provisional government thus established, the people proceeded to make a constitution, and reconstruct their State government.

But much question arose as to what was thus done, and the State was not acknowledged by the Congress of the United States as being reconstructed. On the contrary, Congress passed, in March, 1867, three certain acts known as the Reconstruction Acts. By the first of these, reciting that no legal State governments or adequate protection for life or property then

existed in the rebel States of Texas, and nine other States named, and that it was necessary that peace and good order should be enforced in them until loyal and republican State governments could be legally established, Congress divided the States named into five *military districts* (Texas with Louisiana being the fifth), and made it the duty [p708] of the President to assign to each an officer of the army, and to detail a sufficient military force to enable him to perform his duties and enforce authority within his district. The act made it the duty of this officer to protect all persons in their rights, to suppress insurrection, disorder, violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals, *either through the local civil tribunals or through military commissions,* which the act authorized. It provided, further, that when the people of any one of these States had formed a constitution in conformity with that of the United States, framed in a way which the statute went on to specify, and when the State had adopted a certain article of amendment named, to the Constitution of the United States, and when such article should have become a part of the Constitution of the United States, then that the States respectively should be declared entitled to representation in Congress, and the preceding part of the act become inoperative, and that, until they were so admitted, any civil governments which might exist in them should be deemed provisional only, and subject to the paramount authority of the United States, at any time to abolish, modify, control, or supersede them.

A State convention of 1866 passed an ordinance looking to the recovery of these bonds, and, by act of October of that year, the governor of Texas was authorized to take such steps as he might deem best for the interests of the State in the matter, either to recover the bonds or to compromise with holders. Under this act, the governor appointed an agent of the State to look after the matter.

It was in this state of things, with the State government organized in the manner and with the status above mentioned, that this present bill was directed by this agent to be filed.

The bill was filed by Mr. R. T. Merrick and others, solicitors in this court, on behalf of the State, without precedent written warrant of attorney. But a letter from J. W. Throckmorton, elected governor under the constitution of 1866, ratified their act, and authorized them to prosecute [p709] the suit. Mr. Paschal, who now appeared with the other counsel, in behalf of the State, had been appointed by Governor Hamilton to represent the State, and Mr. Pease, a subsequent governor, appointed by General Sheridan, commander under the reconstruction acts, renewed this appointment.

The bill set forth the issue and delivery of the bonds to the State, the fact that they were seized by a combination of persons in armed hostility to the government of the United States, sold by an organization styled the military board, to White & Chiles, for the purpose of aiding the overthrow of the Federal government; that White & Chiles had not performed what they agreed to do. It then set forth that they had transferred such and such numbers, specifying them, to Hardenberg, and such and such others to Birch, Murray & Co., &c.; that these transfers were not in good faith, but were with express notice on the part of the transferees of the manner in which the bonds had been obtained by White & Chiles; that the bonds were overdue at the time of the transfer; and that they had never been indorsed by any governor of Texas. The bill interrogated the defendants about all these particulars; requiring them to answer on oath, and, as already mentioned, it prayed an injunction against their asking, or receiving payment from the United States, that the bonds might be delivered to the State of Texas, and for other and further relief.

As respected White & Chiles, who had now largely parted with the bonds, the case rested much upon what precedes, and their own answers.

The answer of CHILES, declaring that he had none of the bonds in his possession, set forth:

1. That there was no sufficient authority shown to prosecute the suit in the name of Texas.

2. That Texas by her rebellious courses had so far changed her *status,* as one of the United States, as to be disqualified from suing in this court.

3. That whether the government of Texas, during the term in question, was one *de jure* or *de facto,* it had authorized the [p710] military board to act for it, and that the State was estopped from denying its acts.

4. That no indorsement of the bonds was necessary, they having been negotiable paper.

5. That the articles which White & Chiles had agreed to give the State, were destroyed *in transitu* by disbanded troops who infested Texas, and that the loss of the articles was unavoidable.

The answer of WHITE went over some of the same ground with that of Chiles. He admitted, however,

that he was informed and believed that, in all cases where any of the bonds were disposed of by him, it was known to the parties purchasing for themselves, or as agents for others, *that there was some embarrassment in obtaining payment of said bonds at the treasury of the United States, arising out of the title of this respondent and his co-defendant Chiles.*

As respected HARDENBERG, the case seemed much thus:

In the beginning of November, 1866, after the date of the notices given through Mr. Paschal, one Hennessey, residing in New York, and carrying on an importing and commission business, then sold to Hardenberg thirty of these bonds, originally given to White and Chiles; and which thirty, a correspondent of his, long known to him, in Tennessee, had sent to him for sale. Hardenberg bought them "at the rate of 1.20 for the dollar on their face," and paid for them. Hennessey had

heard from somebody that there was some difficulty about the bonds' being paid at the treasury, but did not remember whether he heard that before or after the sale.

Hardenberg also bought others of these bonds near the same time, at 1.15 percent, under circumstances thus testified to by Mr. C. T. Lewis, a lawyer of New York:

In conversation with Mr. Hardenberg, I had learned that he was interested in the Texas indemnity bonds, and meditated purchasing same. I was informed in Wall Street that such bonds were offered for sale by Kimball & Co., at a certain price, which price I cannot now recollect. I informed Mr. Hardenberg of this fact, and he requested me to secure the bonds for him at [p711] that price. I went to C. H. Kimball & Co, and told them to send the bonds to Mr. Hardenberg's office and get a check for them, which I understand they did. *I remember expressing to Mr. Hardenberg the opinion that these bonds, being on their face negotiable*

by delivery, and payable in gold, must, at no distant day, be redeemed according to their tenor, and were, therefore, a good purchase at the price at which they were offered.

My impression is that, before this negotiation, I had read a paragraph in some New York newspaper stating that the payment of the whole issue of the Texas indemnity bonds was suspended until the history of a certain portion of the issue, supposed to have been negotiated for the benefit of the rebel service, should be understood. I am not at all certain whether I read this publication before or after the date of the transaction. *If the publication was made before this transaction, I had probably read the article before the purchase was made.* My impression is that it was a paragraph in a money article, but I attributed no great importance to it. I acted in this matter simply as the friend of Mr. Hardenberg, and received no commission for my services. I am a lawyer by profession, and not a broker.

Kimball & Co. (the brokers thus above referred to by Mr. Lewis), testified that they had received the bonds thus sold, from a firm which they named, "in perfect good faith, and sold them in like good faith, as we would any other lot of bonds received from a reputable house." It appeared, however, that, in sending the bonds to Kimball & Co. for sale, the firm had requested that they might not be known in the transaction.

Hardenberg's own account of the matter, as declared by his answer, was thus:

That he was a merchant in the city of New York; that he purchased the bonds held by him in open market in said city; that the parties from whom he purchased the same were responsible persons, residing and doing business in said city; that he purchased of McKim, Brothers & Co., bankers in good standing in Wall Street, one bond at 1.15 percent, on the 6th of November, 1866, when gold was at the rate of $1.47 1/4, and declining; that when he purchased the same, he made no inquiries of [p712] McKim, Brothers & Co., but took the bonds on his own observation of their plain tenor and effect at what he conceived to be a good bargain; that afterwards, and before the payment of said bonds and coupons by the Secretary of the Treasury, and at the request of the Comptroller, Hon. R. W. Tayler, he made inquiry of said firm of McKim, Brothers & Co., and they informed him that said bonds and coupons had been sent to them to be sold by the First National Bank of Wilmington, North Carolina; that he purchased on the 8th of November, 1866, thirty of said bonds, amounting to the sum of $32,475, of J. S. Hennessey, 29 Warren Street, New York City, doing business as a commission merchant, who informed him that, in the way of business, they were sent him by Hugh Douglas, of Nashville, Tennessee; that he paid at the rate of 120 cents at a time, to-wit, the 8th of November, 1866, when gold was selling at 146 and declining; that the three other bonds were purchased by him on the 8th of November, 1866, of C. H. Kimball & Co., 30 Broad Street, brokers in good standing, who informed him, on inquiry afterwards, that said bonds were handed them to be sold by a banking house in New York of the highest respectability, who owned the same, but whose names were not given, as the said firm informed him they could "see no reason for divulging private transactions," and that he paid for last-mentioned bonds at the rate of 120 cents, on said 8th day of November, 1866, when gold was selling at 146 and declining.

Further answering, he saith that he had no knowledge at the time of said purchase that the bonds were obtained from the State of Texas, or were claimed by the said State; that he acted on information obtained from the public report of the Secretary of the Treasury, showing that a large portion of similar bonds had been redeemed, and upon his own judgment of the nature of the obligation expressed by the bonds themselves, and upon his own faith in the full redemption of said bonds, and he averred that he had no knowledge of the contract referred

to in the bill of complaint, nor of the interest or relation of White & Chiles, nor of any connection which they had with said complainant, or said bonds, nor of the law of the State of Texas requiring indorsement.

The answer of White mentioned, in regard to Hardenberg's bonds, that they were sold by his (White's) broker; [p713] that he, White, had no knowledge of the name of the real purchaser, who, however, paid 115 percent for them;

that, at the time of the sale, his (White's) broker informed him that the purchaser, or the person acting for the purchaser, did not want any introduction to the respondent, and required no history of the bonds proposed to be sold; that he only desired that they should come to him through the hands of a loyal person who had never been identified with the rebellion.

Another matter, important possibly in reference to the relief asked by the bill, and to the exact decree [n3] made, should, perhaps, be mentioned about these bonds of Hardenberg.

The answer of Hardenberg stated, that,

on the 16th of February, 1867, the Secretary of the Treasury ordered the payment to the respondent of all said bonds and coupons, and the same were paid on that day.

This was literally true, and the books of the treasury showed these bonds as among the redeemed bonds, and showed nothing else. As a matter of fact, it appeared that the agents of Texas, on the one hand, urging the government not to pay the bonds, and the holders, on the other, pressing for payment -- it being insisted by these last that the United States had no right to withhold the money, and thus deprive the holder of the bonds of interest -- the Controller of the Treasury, Mr. Tayler, made a report, on the 29th of January, 1867, to the Secretary of the Treasury in which he mentioned that it seemed to be agreed by the agents of the State that her case depended on her ability to show a want of good faith on the part of the holders of bonds, and that he had stated to the agents that, as considerable delay had already been incurred, he would, unless during the succeeding week they took proper legal steps against the holders, feel it his duty to pay such bonds as were unimpeached in title in the holders' hands. He accordingly recommended to the secretary payment of Hardenberg's and of some others. The agents, on the same day that the controller made his report, [p714] and after he had written most of it, informed him that they would take legal proceedings on behalf of the State, and were informed in turn that the report would be made on that day, and would embrace Hardenberg's bonds. Two days afterwards, a personal action was commenced in the name of the State of Texas against Mr. McCulloch, the then Secretary of the Treasury, for the detention of the bonds of Hardenberg and others. This action was dismissed February 19th. On the 15th of the same February, the present bill was filed. On the 16th of the month, the personal suit against the secretary having at the time, as already above stated, been withdrawn, and *no process under the present bill having then, nor until the 27th following, been served on Hardenberg,* Mr. Tayler, Controller of the Treasury, and one Cox, the agent of Hardenberg, entered into an arrangement by which it was agreed that this agent should deposit with Mr. Tayler government notes known as "seven-thirties," equivalent in value to the bonds and coupons held by Hardenberg, to be held by Mr. Tayler

as indemnity for Mr. McCulloch, against any personal damage, loss, and expense in which he may be involved by reason of the payment of the bonds.

The seven-thirties were then delivered to Mr. Tayler, and a check in coin for the amount of the bonds and interest was delivered to Hardenberg's agent. The seven-thirties were subsequently converted into the bonds called "five-twenties," and these remained in the hands of Mr. Tayler, being registered in his name as trustee. The books of the treasury showed nothing in relation to this trust, nor, as already said, anything more or other than that the bonds were paid to Hardenberg or his agent.

Next, as respected the bonds of BIRCH, MURRAY & Co. It seemed in regard to these, that, prior to July, 1855, Chiles, wanting money, applied to this firm, who lent him $5,000 on a deposit of twelve of the bonds. The whole of the twelve were taken to the treasury department. The department at first declined to pay them, but finally did pay [p715] four of them (amounting with the coupons to $4,900) upon the ground urged by the firm that it had lent the $5,000 to Chiles on the hypothecation of the bonds and coupons without knowledge of the claim of the State of Texas, and because the firm was urged to be, and was apparently, a holder in good faith, and for value, the other bonds, eight in number, remaining in the treasury, and not paid to the firm, because of the alleged claim of the State of Texas, and of the allegation that the same had come into the possession of said White and Chiles improperly, and without consideration.

The difficulty now was less perhaps about the four bonds than about these eight, whose further history was thus presented by the answer of Birch, one of the firm, to the bill. He said in this answer, and after mentioning his getting with difficulty the payment of the four bonds:

That afterwards, and during the year 1866, Chiles called upon him with the printed report of the First Comptroller of the Treasury, Hon. R. W. Tayler, from which it appeared that the department would, in all reasonable probability, redeem all said bonds; and requested further advances on said eight remaining bonds, and that the firm thereupon advanced said Chiles, upon the said eight bonds, from time to time, the sum of $4,185.25, all of which was due and unpaid. That he made the said advances as well upon the representations of said Chiles that he was the *bona fide* holder of said bonds and coupons, as upon his own observation and knowledge of their legal tenor and effect; and of his faith in the redemption thereof by the government of the United States.

The answer said further, that:

At the time of the advances first made, the firm had no knowledge of the contract referred to in the bill, nor of the interest or connection of said White & Chiles with the complainant, nor of the law of the State of Texas referred to in the bill passed December 16, 1851; and that the bonds were taken in good faith.

It appeared further, in regard to the whole of these bonds, [p716] that, in June, 1865, Chiles, wanting to borrow money of one Barret, and he, Barret, knowing Mr. Hamilton, just then appointed provisional governor, but not yet installed into office, nor apparently as yet having the impressions which he afterwards, by his caution, made public, went to him, supposing him well acquainted with the nature of these bonds, and sought his opinion as to their value, and as to whether they would be paid. Barret's testimony proceeded:

He advised me to accept the proposition of Chiles, and gave it as his opinion that the government would have to pay the bonds. I afterwards had several conversations with him on the subject, in all of which he gave the same opinion. Afterwards (I cant't remember the exact time), Mr. Chiles applied to Birch, Murray & Co. for a loan of money, proposing to give some

bonds as collateral security, and, at his request, I went to Birch, Murray & Co. and informed them of my conversations with Governor Hamilton, and of his opinion as expressed to me. They then seemed willing to make a loan on the security offered. In order to give them further assurance that I was not mistaken in my report of Governor Hamilton's opinion verbally expressed, I obtained from him a letter [letter produced]. It reads thus:

NEW YORK, June 25th, 1865.

HON. J. R. BARRET.

DEAR SIR: In reply to your question about Texas indemnity bonds issued by the U.S., I can assure you that they are perfectly good, and the gov't will certainly pay them to the holders.

Yours truly,

A. J. HAMILTON

The witness

mentioned the conversations had with Governor Hamilton, and also spoke of the letter, and sometimes read it to various parties, some of whom were dealing in these bonds,

and, as he stated, had "reason to believe that Governor Hamilton's opinion in regard to the bonds became pretty generally known among dealers in such paper." The witness, however, did not know Mr. Hardenberg.

The questions, therefore, were:

1. A minor preliminary one: the question presented by Chiles's answer as to whether sufficient authority was shown [p717] for the prosecution of the suit in the name and in behalf of Texas.

2. A great and principal one: a question of jurisdiction, *viz.,* whether Texas, at the time of the bill filed or now, was one of the United States of America, and so competent to file an original bill here.

3. Assuming that she was, a question whether the respective defendants, any, all, or who of them, were proper subjects for the injunction prayed, as holding the bonds without sufficient title, and herein -- and more particularly as respected Hardenberg, and Birch, Murray & Co. -- a question of negotiable paper, and the extent to which holders, asserting themselves holders *bona fide* and for value, of paper payable "to bearer," held it discharged of precedent equities.

4. A question as to the effect of the payments, at the treasury, of the bonds of Hardenberg and of the four bonds of Birch, Murray & Co.

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0074_0700_ZO.html> [verified May 30, 2012].)

Slaughter-House Cases, 83 U.S. 36 (1873)

Syllabus (Legal Information Institute of Cornell University)

Argued: February 3-5, 1873 – Decided: April 14, 1873

1. The legislature of Louisiana, on the 8th of March, 1869, passed an act granting to a corporation, created by it, the exclusive right, for twenty-five years, to have and maintain slaughterhouses, landings for cattle, and yards for inclosing cattle intended for sale or slaughter within the parishes of Orleans, Jefferson, and St. Bernard, in that State (a territory which, it was said -- *see infra,* p. 85 -- contained 1154 square miles, including the city of New Orleans, and a population of between two and three hundred thousand people), and prohibiting all other persons from building, keeping, or having slaughterhouses, landings for cattle, and yards for cattle intended for sale or slaughter, within those limits, and requiring that all cattle and other animals intended for sale or slaughter in that district, should be brought to the yards and slaughterhouses of the corporation, and authorizing the corporation to exact certain prescribed fees for the use of its wharves and for each animal landed, and certain prescribed fees for each animal slaughtered, besides the head, feet, gore, and entrails, except of swine. *Held,* that this grant of exclusive right or privilege, guarded by proper limitation of the prices to be charged, and imposing the duty of providing ample conveniences, with permission to all owners of stock to land, and of all [p37] butchers to slaughter at those places, was a police regulation for the health and comfort of the people (the statute locating them where health and comfort required), within the power of the state legislatures, unaffected by the Constitution of the United States previous to the adoption of the thirteenth and fourteenth articles of amendment.

2. The Parliament of Great Britain and the State legislatures of this country have always exercised the power of granting exclusive rights when they were necessary and proper to effectuate a purpose which had in view the public good, and the power here exercised is of that class, and has, until now, never been denied.

Such power is not forbidden by the thirteenth article of amendment and by the first section of the fourteenth article. An examination of the history of the causes which led to the adoption of those amendments and of the amendments themselves demonstrates that the main purpose of all the three last amendments was the freedom of the African race, the security and perpetuation of that freedom, and their protection from the oppressions of the white men who had formerly held them in slavery.

3. In giving construction to any of those articles, it is necessary to keep this main purpose steadily in view, though the letter and spirit of those articles must apply to all cases coming within their purview, whether the party concerned be of African descent or not.

While the thirteenth article of amendment was intended primarily to abolish African slavery, it equally forbids Mexican peonage or the Chinese coolie trade when they amount to slavery or involuntary servitude, and the use of the word "servitude" is intended to prohibit all forms of involuntary slavery of whatever class or name.

The first clause of the fourteenth article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship

of the States, and it recognizes the distinction between citizenship of a State and citizenship of the United States by those definitions.

The second clause protects from the hostile legislation of the States the privileges and immunities of *citizens of the United States,* as distinguished from the privileges and immunities of citizens of the States.

These latter, as defined by Justice Washington in *Corfield v. Coryell,* and by this court in *Ward v. Maryland,* embrace generally those fundamental civil rights for the security and establishment of which organized society is instituted, and they remain, with certain exceptions mentioned in the Federal Constitution, under the care of the State governments, and of this class are those set up by plaintiffs.

4. The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and treaties made in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the Thirteenth amendment.

It is not necessary to inquire here into the full force of the clause forbidding a State to enforce any law which deprives a person of life, liberty, [p38] or property without due process of law, for that phrase has been often the subject of judicial construction, and is, under no admissible view of it, applicable to the present case.

5. The clause which forbids a State to deny to any person the equal protection of the laws was clearly intended to prevent the hostile discrimination against the negro race so familiar in the States where he had been a slave, and, for this purpose, the clause confers ample power in Congress to secure his rights and his equality before the law.

The three cases -- the parties to which, as plaintiff and defendants in error, are given specifically as a subtitle, at the head of this report, but which are reported together also under the general name which, in common parlance, they had acquired -- grew out of an act of the legislature of the State of Louisiana, entitled

An act to protect the health of the City of New Orleans, to locate the stock landings and slaughterhouses, and to incorporate "The Crescent City Live-Stock Landing and Slaughter-House Company,"

which was approved on the 8th of March, 1869, and went into operation on the 1st of June following, and the three cases were argued together.

The act was as follows:

SECTION 1. *Be it enacted, &c.,* That from and after the first day of June, A.D. 1869, it shall not be lawful to land, keep, or slaughter any cattle, beeves, calves, sheep, swine, or other animals, or to have, keep, or establish any stock-landing, yards, pens, slaughterhouses, or abattoirs at any point or place within the city of New Orleans, *or the parishes of Orleans, Jefferson, and St. Bernard,* or at any point or place on the east bank of the Mississippi River within the corporate limits of the city of New Orleans, or at any point on the west bank of the Mississippi River above the present depot of the New Orleans, Opelousas, and Great Western Railroad Company, *except* that the "Crescent City Stock Landing and Slaughter-House Company" may establish *themselves* at any point or place as hereinafter provided. Any

person or persons, or corporation or company carrying on any business or doing any act in contravention of this act, or landing, slaughtering or keeping any animal or animals in violation of this act, shall be liable to a fine of $250 for each and [p39] every violation, the same to be recoverable, with costs of suit, before any court of competent jurisdiction.

The second section of the act created one Sauger and sixteen other person named, a corporation, with the usual privileges of a corporation, and including power to appoint officers and fix their compensation and term of office, to fix the amount of the capital stock of the corporation and the number of shares thereof.

The act then went on:

SECTION 3. *Be it further enacted, &c.,* That said company or corporation is hereby authorized to establish and erect at its own expense, at any point or place on the east bank of the Mississippi River within the parish of St. Bernard, or in the corporate limits of the city of New Orleans, below the United States Barracks, or at any point or place on the west bank of the Mississippi River below the present depot of the New Orleans, Opelousas, and Great Western Railroad Company, wharves, stables, sheds, yards, and buildings necessary to land, stable, shelter, protect, and preserve all kinds of horses, mules, cattle, and other animals, and from and after the time such buildings, yards, &c., are ready and complete for business, and notice thereof is given in the official journal of the State, the said Crescent City Live-Stock Landing and Slaughter-House Company shall have *the sole and exclusive privilege of conducting and carrying on the livestock landing and slaughterhouse business within the limits and privileges granted by the provisions of this act,* and cattle and other animals destined for sale or slaughter in the city of New Orleans, or its environs, shall be landed at the livestock landings and yards of said company, and shall be yarded, sheltered, and protected, if necessary, by said company or corporation, and said company or corporation shall be entitled to have and receive for each steamship landing at the wharves of the said company or corporation, $10; for each steamboat or other watercraft, $5, and for each horse, mule, bull ox, or cow landed at their wharves, for each and every day kept, 10 cents; for each and every hog, calf, sheep, or goat, for each and every day kept, 5 cents, all without including the feed, and said company or corporation shall be entitled to keep and detain each and all of said animals until said charges are fully paid. But [p40] if the charges of landing, keeping, and feeding any of the aforesaid animals shall not be paid by the owners thereof after fifteen days of their being landed and placed in the custody of the said company or corporation, then the said company or corporation, in order to reimburse themselves for charges and expenses incurred, shall have power, by resorting to judicial proceedings, to advertise said animals for sale by auction, in any two newspapers published in the city of New Orleans, for five days, and after the expiration of said five days, the said company or corporation may proceed to sell by auction, as advertised, the said animals, and the proceeds of such sales shall be taken by the said company or corporation and applied to the payment of the charges and expenses aforesaid, and other additional costs, and the balance, if any, remaining from such sales, shall be bold to the credit of and paid to the order or receipt of the owner of said animals. Any person or persons, firm or corporation violating any of the provisions of this act, or interfering with the privileges herein granted, or landing, yarding, or keeping any animals in violation of the provisions of this act, or to the injury of said company or corporation, shall be liable to a fine or penalty of $250, to be recovered with costs of suit before any court of competent jurisdiction.

The company shall, before the first of June, 1869, build and complete A GRAND SLAUGHTERHOUSE of sufficient capacity to accommodate all butchers, and in which to

slaughter 500 animals per day; also a sufficient number of sheds and stables shall be erected before the date aforementioned to accommodate all the stock received at this port, all of which to be accomplished before the date fixed for the removal of the stock landing, as provided in the first section of this act, under penalty of forfeiture of their charter.

SECTION 4. *Be it further enacted, &c.,* That the said company or corporation is hereby authorized to erect, at its own expense, one or more landing places for livestock, as aforesaid, at any points or places consistent with the provisions of this act, and to have and enjoy from the completion thereof, and after the first day of June, A.D. 1869, *the exclusive privilege of having landed at their wharves or landing places all animals intended for sale or slaughter in the parishes of Orleans and Jefferson,* and are hereby also authorized (in connection) to erect at its own expense one or more slaughterhouses, at any points or places [p41] consistent with the provisions of this act, and to have and enjoy, from the completion thereof, and after the first day of June, A.D. 1869, *the exclusive privilege of having slaughtered therein all animals the meat of which is destined for sale in the parishes of Orleans and Jefferson.*

SECTION 5. *Be it further enacted, &c.,* That whenever said slaughterhouses and accessory buildings shall be completed and thrown open for the use of the public, said company or corporation shall immediately give public notice for thirty days, in the official journal of the State, and within said thirty days' notice, and within, from and after the first day of June, A.D. 1869, *all other stock landings and slaughterhouses within the parishes of Orleans, Jefferson, and St. Bernard shall be closed, and it will no longer be lawful to slaughter cattle, hogs, calves, sheep, or goats, the meat of which is determined for sale within the parishes aforesaid, under a penalty of $100, for each end every offence, recoverable, with costs of suit, before any court if competent jurisdiction; that all animals to be slaughtered, the meat whereof is determined for sale in the parishes of Orleans or Jefferson, must be slaughtered in the slaughtehouses erected by the said company or corporation,* and upon a refusal of said company or corporation to allow any animal or animals to be slaughtered after the same has been certified by the inspector, as hereinafter provided, to be fit for human food, the said company or corporation shall be subject to a fine in each case of $250, recoverable, with costs of suit, before any court of competent jurisdiction; said fines and penalties to be paid over to the auditor of public accounts, which sum or sums shall be credited to the educational fund.

SECTION 6. *Be it further enacted, &c.,* That the governor of the State of Louisiana shall appoint a competent person, clothed with police powers, to act as inspector of all stock that is to be slaughtered, and whose duty it will be to examine closely all animals intended to be slaughtered, to ascertain whether they are sound and fit for human food or not, and if sound and fit for human food, to furnish a certificate stating that fact to the owners of the animals inspected, and without said certificate no animals can be slaughtered for sale in the slaughterhouses of said company or corporation. The owner of said animals so inspected to pay the inspector 10 cents for each and every animal so inspected, one-half of which fee the said inspector shall retain for his services, and the other half of said fee shall be [p42] paid over to the auditor of public accounts, said payment to be made quarterly. Said inspector shall give a good and sufficient bond to the State, in the sum of $5,000, with sureties subject to the approval of the governor of the State of Louisiana, for the faithful performance of his duties. Said inspector shall be fined for dereliction of duty $50 for each neglect. Said inspector may appoint as many deputies as may be necessary. The half of the fees collected as provided above, and paid over to the auditor of public accounts, shall be placed to the credit of the educational fund.

SECTION 7. *Be it further enacted, &c.,* That all persons slaughtering or causing to be slaughtered cattle or other animals in said slaughterhouses shall pay to the said company or corporation the following rates or perquisites, viz.: for all beeves, $1 each; for all hogs and calves, 50 cents each; for all sheep, goats, and lambs, 30 cents each, and the said company or corporation shall be entitled to the head, feet, gore, and entrails of all animals excepting hogs, entering the slaughterhouses and killed therein, it being understood that the heart and liver are not considered as a part of the gore and entrails, and that the said heart and liver of all animals slaughtered in the slaughterhouses of the said company or corporation shall belong, in all cases, to the owners of the animals slaughtered.

SECTION 8. *Be it .further enacted, &c.,* That all the fines and penalties incurred for violations of this act shall be recoverable in a civil suit before any court of competent jurisdiction, said suit to be brought and prosecuted by said company or corporation in all cases where the privileges granted to the said company or corporation by the provisions of this act are violated or interfered with; that one-half of all the fines and penalties recovered by the said company or corporation [*sic* in copy -- REP.] in consideration of their prosecuting the violation of this act, and the other half shall be paid over to the auditor of public accounts, to the credit of the educational fund.

SECTION 9. *Be it further enacted, &c.,* That said Crescent City Livestock Landing and Slaughter-House Company shall have the right to construct a railroad from their buildings to the limits of the city of New Orleans, and shall have the right to run cars thereon, drawn by horses or other locomotive power, as they may see fit; said railroad to be built on either of the public roads running along the levee on each side of the Mississippi [p43] River. The said company or corporation shall also have the right to establish such steam ferries as they may see fit to run on the Mississippi River between their buildings and any points or places on either side of said river.

SECTION 10. *Be it further enacted, &c.,* That at the expiration of twenty-five years from and after the passage of this act, the privileges herein granted shall expire.

The parish of Orleans containing (as was said [n1]) an area of 150 square miles, the parish of Jefferson of 384, and the parish of St. Bernard of 620, the three parishes together 1154 square miles, and they having between two and three hundred thousand people resident therein, and, prior to the passage of the act above quoted, about 1,000 persons employed daily in the business of procuring, preparing, and selling animal food, the passage of the act necessarily produced great feeling. Some hundreds of suits were brought on the one side or on the other; the butchers, not included in the "monopoly" as it was called, acting sometimes in combinations, in corporations, and companies and sometimes by themselves, the same counsel, however, apparently representing pretty much all of them. The ground of the opposition to the slaughterhouse company's pretensions, so far as any cases were finally passed on in this court, was that the act of the Louisiana legislature made a monopoly and was a violation of the most important provisions of the thirteenth and fourteenth Articles of Amendment to the Constitution of the United States. The language relied on of these articles is thus:

AMENDMENT XIII

either slavery nor *involuntary servitude* except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, nor any place subject to their jurisdiction.

AMENDMENT XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, *are citizens of the United States* and of the State wherein they reside. [p44]

No State shall make or enforce any law which shall abridge the *privileges or immunities of citizens of the United States,* nor shall any State deprive any person of life, *liberty, or property,* without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The Supreme Court of Louisiana decided in favor of the company, and five of the cases came into this court under the 25th section of the Judiciary Act in December, 1870, where they were the subject of a preliminary motion by the plaintiffs in error for an order in the nature of a supersedeas. After this, that is to say, in March, 1871, a compromise was sought to be effected, and certain parties professing, apparently, to act in a representative way in behalf of the opponents to the company, referring to a compromise that they assumed had been effected, agreed to discontinue "all writs of error concerning the said company, now pending in the Supreme Court of the United States;" stipulating further "that their agreement should be sufficient authority for any attorney to appear and move for the dismissal of all said suits." Some of the cases were thus confessedly dismissed. But the three of which the names are given as a subtitle at the head of this report were, by certain of the butchers, asserted not to have been dismissed. And Messrs. M. H. Carpenter, J. S. Black, and T. J. Durant, in behalf of the new corporation, having moved to dismiss them also as embraced in the agreement, affidavits were filed on the one side and on the other; the affidavits of the butchers opposed to the "monopoly" affirming that they were plaintiffs in error in these three cases, and that they never consented to what had been done, and that no proper authority had been given to do it. This matter was directed to be heard with the merits. The case being advanced was first heard on these, January 11th, 1872; Mr. Justice Nelson being indisposed and not in his seat. Being ordered for reargument, it was heard again February 3d, 4th, and 5th, 1873. [p57]

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0083_0036_ZO.html> [verified May 30, 2012].)

Civil Rights Cases, 109 U.S. 3 (1883)

Syllabus (Legal Information Institute of Cornell University)

Argued: – Decided: October 16, 1883

1. The 1st and 2d sections of the Civil Rights Act passed March 1st, 1876, are unconstitutional enactments as applied to the several States, not being authorized either by the XIIIth or XIVth Amendments of the Constitution

2. The XIVth Amendment is prohibitory upon the States only, and the legislation authorized to be adopted by Congress for enforcing it 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 such as may be necessary or proper for counteracting and redressing the effect of such laws or acts. [p4]

The XIIIth Amendment relates only to slavery and involuntary servitude (which it abolishes), and, although, by its reflex action, it establishes universal freedom in the United States, and Congress may probably pass laws directly enforcing its provisions, yet such legislative power extends only to the subject of slavery and its incidents, and the denial of equal accommodations in inns, public conveyances, and places of public amusement (which is forbidden by the sections in question), imposes no badge of slavery or involuntary servitude upon the party but at most, infringes rights which are protected from State aggression by the XIVth Amendment.

4. Whether the accommodations and privileges sought to be protected by the 1st and 2d sections of the Civil Rights Act are or are not rights constitutionally demandable, and if they are, in what form they are to be protected, is not now decided.

5. Nor is it decided whether the law, as it stands, is operative in the Territories and District of Columbia, the decision only relating to its validity as applied to the States.

6. Nor is it decided whether Congress, under the commercial power, may or may not pass a law securing to all persons equal accommodations on lines of public conveyance between two or more States.

These cases were all founded on the first and second sections of the Act of Congress known as the Civil Rights Act, passed March 1st, 1875, entitled "An Act to protect all citizens in their civil and legal rights." 18 Stat. 335. Two of the cases, those against Stanley and Nichols, were indictments for denying to persons of color the accommodations and privileges of an inn or hotel; two of them, those against Ryan and Singleton, were, one on information, the other an indictment, for denying to individuals the privileges and accommodations of a theatre, the information against Ryan being for refusing a colored person a seat in the dress circle of Maguire's theatre in San Francisco, and the indictment against Singleton was for denying to another person, whose color was not stated, the full enjoyment of the accommodations of the theatre known as the Grand Opera House in New York,

said denial not being made for any reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude.

The case of Robinson and wife against the Memphis & Charleston R.R. Company was an action brought in the Circuit Court of the United States for the Western District of Tennessee to recover the penalty of five hundred dollars [p5] given by the second section of the act, and the gravamen was the refusal by the conductor of the railroad company to allow the wife to ride in the ladies' car, for the reason, as stated in one of the counts, that she was a person of African descent. The jury rendered a verdict for the defendants in this case upon the merits, under a charge of the court to which a bill of exceptions was taken by the plaintiffs. The case was tried on the assumption by both parties of the validity of the act of Congress, and the principal point made by the exceptions was that the judge allowed evidence to go to the jury tending to show that the conductor had reason to suspect that the plaintiff, the wife, was an improper person because she was in company with a young man whom he supposed to be a white man, and, on that account, inferred that there was some improper connection between them, and the judge charged the jury, in substance, that, if this was the conductor's *bona fide* reason for excluding the woman from the car, they might take it into consideration on the

question of the liability of the company. The case was brought here by writ of error at the suit of the plaintiffs. The cases of Stanley, Nichols, and Singleton came up on certificates of division of opinion between the judges below as to the constitutionality of the first and second sections of the act referred to, and the case of Ryan on a writ of error to the judgment of the Circuit Court for the District of California sustaining a demurrer to the information.

The Stanley, Ryan, Nichols, and Singleton cases were submitted together by the solicitor general at the last term of court, on the 7th day of November, 1882. There were no appearances, and no briefs filed for the defendants.

The Robinson case was submitted on the briefs at the last term, on the 9th day of arch, 1883. [p8]

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0109_0003_ZS.html> [verified May 30, 2012].)

Plessy v. Ferguson, 163 U.S. 537 (1896)

Syllabus (Legal Information Institute of Cornell University)

Argued: April 18, 1896 --- Decided: May 18, 1896

The statute of Louisiana, acts of 1890, c. 111, requiring railway companies carrying passengers in their coaches in that State, to provide equal, but separate, accommodations for the white and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition so as to secure separate accommodations; and providing that no person shall be permitted to occupy seats in coaches other than the ones assigned to them, on account [p538] of the race they belong to; and requiring the officer of the passenger train to assign each passenger to the coach or compartment assigned for the race to which he or she belong; and imposing fines or imprisonment upon passengers insisting on going into a coach or compartment other than the one set aide for the race to which he or she belongs; and conferring upon officers of the train power to refuse to carry on the train passengers refusing to occupy the coach or compartment assigned to them, and exempting the railway company from liability for such refusal, are not in conflict with the provisions either of the Thirteenth Amendment or of the Fourteenth Amendment to the Constitution of the United States.

This was a petition for writs of prohibition and certiorari, originally filed in the Supreme Court of the State by Plessy, the plaintiff in error, against the Hon. John H. Ferguson, judge of the criminal District Court for the parish of Orleans, and setting forth in substance the following facts:

That petitioner was a citizen of the United States and a resident of the State of Louisiana, of mixed descent, in the proportion of seven eighths Caucasian and one eighth African blood; that the mixture of colored blood was not discernible in him, and that he was entitled to every recognition, right, privilege and immunity secured to the citizens of the United States of the white race by its Constitution and laws; that, on June 7, 1892, he engaged and paid for a first

class passage on the East Louisiana Railway from New Orleans to Covington, in the same State, and thereupon entered a passenger train, and took possession of a vacant seat in a coach where passengers of the white race were accommodated; that such railroad company was incorporated by the laws of Louisiana as a common carrier, and was not authorized to distinguish between citizens according to their race. But, notwithstanding this, petitioner was required by the conductor, under penalty of ejection from said train and imprisonment, to vacate said coach and occupy another seat in a coach assigned by said company for persons not of the white race, and for no other reason than that petitioner was of the colored race; that, upon petitioner's refusal to comply with such order, he was, with the aid of a police officer, forcibly ejected from said coach and hurried off to and imprisoned in the parish jail of [p539] New Orleans, and there held to answer a charge made by such officer to the effect that he was guilty of having criminally violated an act of the General Assembly of the State, approved July 10, 1890, in such case made and provided.

That petitioner was subsequently brought before the recorder of the city for preliminary examination and committed for trial to the criminal District Court for the parish of Orleans, where an information was filed against him in the matter above set forth, for a violation of the above act, which act the petitioner affirmed to be null and void, because in conflict with the Constitution of the United States; that petitioner interposed a plea to such information based upon the unconstitutionality of the act of the General Assembly, to which the district attorney, on behalf of the State, filed a demurrer; that, upon issue being joined upon such demurrer and plea, the court sustained the demurrer, overruled the plea, and ordered petitioner to plead over to the facts set forth in the information, and that, unless the judge of the said court be enjoined by a writ of prohibition from further proceeding in such case, the court will proceed to fine and sentence petitioner to imprisonment, and thus deprive him of his constitutional rights set forth in his said plea, notwithstanding the unconstitutionality of the act under which he was being prosecuted; that no appeal lay from such sentence, and petitioner was without relief or remedy except by writs of prohibition and certiorari. Copies of the information and other proceedings in the criminal District Court were annexed to the petition as an exhibit.

Upon the filing of this petition, an order was issued upon the respondent to show cause why a writ of prohibition should not issue and be made perpetual, and a further order that the record of the proceedings had in the criminal cause be certified and transmitted to the Supreme Court.

To this order the respondent made answer, transmitting a certified copy of the proceedings, asserting the constitutionality of the law, and averring that, instead of pleading or admitting that he belonged to the colored race, the said Plessy declined and refused, either by pleading or otherwise, to admit [p540] that he was in any sense or in any proportion a colored man.

The case coming on for a hearing before the Supreme Court, that court was of opinion that the law under which the prosecution was had was constitutional, and denied the relief prayed for by the petitioner. *Ex parte Plessy,* 45 La.Ann. 80. Whereupon petitioner prayed for a writ of error from this court, which was allowed by the Chief Justice of the Supreme Court of Louisiana.

(The complete document can be found in <http://www.law.cornell.edu/supct/html/historics/USSC_CR_0163_0537_ZS.html> [verified May 30, 2012].)