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Supreme Court of the United States.

December Term, 1871.

THE BUTCHERS' BENEVOLENT ASSOCIATION OF NEW ORLEANS, PLAINTIFFS IN ERROR,
vs.
THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY. } *No.* 60.

PAUL ESTEBEN ET AL., PLAINTIFFS IN ERROR,
vs.
THE STATE OF LOUISIANA, EX REL. S. BELDEN, ATTORNEY-GENERAL. } *No.* 61.

THE BUTCHERS' BENEVOLENT ASSOCIATION OF NEW ORLEANS, PLAINTIFFS IN ERROR,
vs.
THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY. } *No.* 62.

Brief of Counsel of State of Louisiana, and of Crescent City Live Stock Landing and Slaughter House Company, Defendants in Error.

These three cases were argued together orally and in print, in January, 1872, and on the 15th April, the court ordered them to be reargued at the next term, without calling attention to any special points arising from the consideration of the questions involved in the matters at issue.

In March, 1869, the legislature of Louisiana passed an act entitled "An act to protect the health of the city of New Orleans, to locate the stock landings and slaughter-houses, and to incorporate the Crescent City Live-Stock Landing and Slaughter-house Company."

See acts of Louisiana of 1869, p. 170.

The objects expressed in the title of the act are all of the highest importance to the welfare of the people of the State; they are, beyond all possibility of dispute, matters entirely within State control; such as State legislatures act on every day; such, in short, as are necessary to the very existence of the State.

None of these objects have been surrendered to the United States by the Federal Constitution, and so far as the purposes aimed at are concerned, the Federal judiciary has no more authority to interfere with them than with similar measures adopted in any European State.

If any of the means employed by the Louisiana legislature to carry into effect these purposes are such as have been surrendered to the exclusive control of the United States; or are such as in their operation conflict with any title, right, privilege, or immunity of any citizen or person, guaranteed by the Federal Constitution, then the act of the Louisiana legislature is, so far forth, null and void.

Accordingly the plaintiffs in error contend that it appears on the face of the record that they claimed a right, privilege, and title under the Constitution of the United States, and especially under the fourteenth amendment thereof, *to labor in their vocation as butchers, and to carry on the trade of the live-stock landing and slaughter-house business*, on equal terms with other citizens of the United States, wherever and wheresoever the said business was allowed under the laws of the State or of the United States.

See Rec., p. 44.

Let us admit, then, as the plaintiffs in error say, that at the date of the passage of the act complained of, they were, 1st, butchers; 2d, live-stock-landing owners; 3d, slaughter-house keepers, and were at that time laboring in their vocations as such.

To what extent does the law interfere with them?

1. As butchers the plaintiffs in error may be either persons who slaughter animals for food, or who sell the flesh of the slaughtered animals.

In the latter sense the act of the Louisiana legislature does not interfere with the right of plaintiffs in error to labor in their vocation at all, nor does it seek in any way to regulate the exercise of that right. Every butcher can labor in his vocation of selling meat since the act just as he could before its adoption.

And with regard to the butchers who slaughter animals for market, the act does not seek to deny to any citizen or person the right, privilege, or title to labor in such a vocation; the act has no such design or effect; it provides only for regulating the mode in which such vocation shall be exercised. It is this. Every person wishing to slaughter an animal to be used as human food must produce it for inspection to the officer of the State appointed for the purpose of such inspection, whose duty it is to examine closely and ascertain whether such animal be fit for human food, and if found so to furnish a certificate, without which no animal can be slaughtered. The fee for this to the owner is ten cents.

See section 6th of the Louisiana act, p. 172.

This will be recognized without difficulty as a wise and salutary regulation, eminently advantageous to the health and welfare of the people, and not in the slightest degree in conflict with any rights protected by the fourteenth amendment to the United States Constitution.

The owner of the animal passed by the health inspector may then slaughter it for the market; he may do this either with his own hands, or by those of his own servants. The act of the legislature does not compel the owner of the animal to employ any State agent or corporation servant to slaughter the animal. All the act does is to say where it must be slaughtered.

The act provides for the erection of a grand slaughter-house of sufficient capacity *to accommodate all butchers.*

Section 3d of the act, p. 171, near the foot.

In this and other desiguated slaughter-houses all animals must be slaughtered, the meat of which is destined for sale.

See page 172 of the acts, section 4 of the act, at the end of the section.

The language of the fifth section is, "that all animals to be slaughtered, the meat whereof is determined (destined) for sale in the parishes of Orleans and Jefferson, must be slaughtered in the slaughter-houses erected by 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 to be fit for human food, the said company shall be subject to a fine," &c. (Page 172.)

The seventh section of the act declares "*that all persons slaughtering or causing to be slaughtered* cattle or other animals in said slaughter-house, shall pay," &c., proceeding to fix a tariff of small charges.

The quotations suffice to show the correctness of what was asserted above, that every butcher may slaughter his own cattle, and that his right to labor in his vocation is not taken away.

The other sections of the act relate to "the trade of the live-stock landing and slaughter-house business," which, in

the two parishes named, is forbidden to all persons except the corporation created by the act.

Here, then, we have, let us admit the fact, an exclusive privilege, which the plaintiffs in error call a monoply.

Much of the brief of the counsel of plaintiffs in error and much of his argument has been devoted to historical and romantic illustrations of the evils of monopolies. What is said of them as they figure in Great Britain is not strictly applicable to the case before us. The monopolies complained of by the Parliament in the times of Elizabeth and James were granted by those sovereigns by virtue of the prerogative they claimed for the crown; but it never was deemed that Parliament itself could not grant a monopoly and exclusive privilege.

The privileges granted by the sovereigns of England were of an odious and oppressive character, given to individuals against the interest of the public; but monopolies, even when a grant from the crown, if given for the public benefit, were not contrary to common law.

Parliament, moreover, has constantly granted to individuals and private corporations monopolies for the public benefit, such, for instance, as those given to the London Dock Companies.

See Allnutt *vs.* Inglis, 12 East., 527.

Our bonded-warehouse system is of the same principle.

Indeed, there can be nothing better known to the court that the legislative power does constantly, and with undoubted right, grant exclusive privileges to corporations, by which the latter make a profit certainly, but which are intended for the public benefit.

Now, who is to decide whether the public interest is promoted or not? Clearly, the legislative department only. It is not a judiciary question at all, but purely political.

The sole question, then, for this court is whether the State of Louisiana in granting this monopoly has deprived the plaintiffs in error of any right, privilege, or title guaranteed by the Constitution of the United States.

The plaintiffs in error maintain that the monopoly deprives them of rights which they aver to be guaranteed by the fourteenth amendment.

The first section of this amendment, which is the only part relied on, reads:

"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."

It was considered proper by Congress on the suppression of the rebellion that new guards should be provided for the future peace and tranquillity of the country, and to effect this it was thought important to confer on the blacks the privileges enjoyed by the whites.

On the 9th April, 1866, Congress passed the act entitled "An act to protect all persons in the United States in their civil rights, and furnish the means of their vindication."

See 14 U. S. Statutes at Large, p. 27.

The same Congress, on the 16th June, 1866, passed the "Joint resolution proposing a fourteenth amendment to the Constitution of the United States."

14 Statutes, p. 358.

These two acts explain one another. They both have the same object in view. It was doubted whether the constitutional power of Congress extended to some of the

matters embraced in the first section of April 9, hence the resolutions proposing constitutional amendment, which was designed to do nothing more than embody what the law had enacted, its adoption being rendered certain by the condition of accepting it being placed upon the States then recently in insurrection, by the reconstruction act of March 5, 1867.

See 14 U. S. Stat. at Large, p. 429, sec. 5.

The act and the amendment have no other meaning than to place the blacks on a footing of political and civil equality with the whites. A mischief existed, flowing from old relations, and to remedy that mischief was the design of the legislation of the time.

On this subject Judge Cooley said: "It was not within the power of the States before the adoption of the fourteenth amendment to deprive citizens of the equal protection of the laws; but there was a servile class not thus shielded, and when these were made freemen, there were some who disputed their claim to citizenship, and some State laws were in force which established discrimination against them. To settle these doubts, and preclude all such laws, the fourteenth amendment was adopted, and the same securities which one citizen may demand all others are now entitled to."

See Treatise on the Constitutional Limitations which rest upon the Legislative Power of the States. Boston, 1871, p. *397.

These views of Judge Cooley are expressed in the same chapter from which the author of the brief filed for plaintiffs in error in this case (page 30) makes a quotation, designed to induce the reader to infer that Cooley had no such views as that which he has expressly laid down in the passage above quoted.

But it is insisted the fourteenth amendment goes further.

Mr. Justice Bradley had this matter before him on an application for an injunction in June, 1870, and he is reported to have employed, in giving judgment on the application, the following language, in which he takes the opposite view to that announced by Judge Cooley:

"It is possible that those who framed the article were not themselves aware of the far-reaching character of its terms. They may have had in mind but one particular phase of social and political wrong which they desired to redress. Yet if the amendment, as framed and expressed, does in fact bear a broader meaning, and does extend its protecting shield over those who were never thought of when it was conceived and put in form, and does reach such social evils which were never before prohibited by constitutional enactment, it is to be presumed that the American people, in giving it their imprimatur, understood what they were doing, and meant to decree what has in fact been done."

This is the theory of the construction adopted by the counsel of plaintiffs in error, who contend that Congress and the States, who had at that time nothing more in mind than to confer equality of rights on the blacks, nevertheless went far beyond that, and have employed language which confers upon this court a jurisdiction over every case there can be imagined in every court of every State in the Union.

There is adopted in the civil code of Louisiana, article 18, a rule of construction which embodies a principle of universal reasoning. It is this: "The most universal and effectual way of discovering the true meaning of a law, when its expressions are dubious, is by considering the reason and spirit of it, or the cause which induced the legislature to enact it."

The same rule is adopted in the common law courts.

See Dwarris on Statutes, p. *694.

"In the exposition of a statute, then, the leading clue to the construction to be made is the intention of the legislator, and that may be discovered from different signs. As a primary rule it is to be collected from the words; when the words are not explicit, it is to be gathered *from the occasion and necessity which moved the legislature to enact it.*"

The occasion which gave rise to the fourteenth amendment is but too well known; its sufferings and triumphs are fresh in the memories of all.

Many millions of persons of African descent had been declared free by military proclamations and by constitutional amendment; their condition, as well as that of all of the same race throughout the country emancipated in former years, has been fixed by constitutional clauses, which nothing less than constitutional amendments could alter. That condition was the same in 1867 as it was in 1776.

"It is difficult at this day to realize the state of public opinion in relation to that unfortunate race which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

"They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as

an axiom in morals as well as in politics, which no one thought of disputing or supposed to be open to dispute, and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion."

See 19 Howard, p. 407.

Hence a free negro of African race was not a citizen within the meaning of the Constititution. "He could not become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights and privileges and immunities guaranteed by that instrument to the citizen."

19 Howard, p. 403.

To confer upon the disinherited people the rights, privileges, and immunities they never had possessed was the sole purpose of, as it was the sole necessity for, amending the Constitution.

In 1867 the conscience of the people, rendered sensitive by the influences of a milder civilization, was roused to action by the necessities of the political situation to which the nation had been brought by the force of the rebellion. Here arose the necessity which caused the legislature to act. While justice demanded equality of rights, policy was disposed to listen to its voice.

The occasion and the necessity, then, for the adoption of the fourteenth amendment was the constitutional status of the people of African descent, and if there had been no such people in the country, no such amendment would have been proposed. It was adopted for them. The contemporaneous discussions and debates at the time of the amendment show that no other object was in view, nor can it be made to embrace any other without sacrificing its spirit.

As the Constitution of the United States previous to 1867 prohibited any State from making one of African descent a citizen of the United States, and as to such alone the prohibition applied, the language of the amendment, however broad, applies to such only, and when it says that *all* persons born or naturalized in the United States are citizens of the United States and of the State wherein they reside, it can mean by all only the people of African descent, because all other people were already citizens of the United States, and beyond the scope of a constitutional amendment. It is a form of expression usual in the language of the Constitution, where people of African descent are always spoken of in similar terms.

"The migration of such persons as any of the States," &c.

Art. 1, sec. 9, § 1.

"No person held to service or labor in one State," &c.

Art. 4, sec. 2, § 3.

"By adding to the whole number of free persons three-fifths of all other persons."

Art. 1, sec. 2, § 3.

The "privileges and immunities" spoken of in the fourteenth amendment was such as "citizens" enjoyed under the Constitution. Whatever these were, they cannot now be abridged by State legislation.

The closing portion of the first section of the fourteenth amendment can have no meaning except as to persons of African descent, for in no State were any *citizens* ever subjected to any of the injuries, outrages, and disabilities denounced by the amendment.

Was it ever held before 1867 that the "privileges and immunities" of citizens were abridged, or their lives, lib-

erty, or property subject to deprivation, or was any person ever supposed to be deprived of the equal protection of the laws by an act to promote the public health of a city, or by an act designating the locality in which a particular pursuit should alone be carried on or by, or which gave a chartered company exclusive privileges? For if so, then the Louisiana act is unconstitutional; but if not, this court cannot interfere.

In accordance with the Art. 114 of the constitution of Louisiana, the act in question expresses its object distinctly in its title.

See Acts of La., 1869, p. 170.

All the provisions of this act are such as have over and over again been pronounced by this court as in pursuance of powers reserved to the State, antecedent to the fourteenth amendment; they have already been quoted and commented upon in the prior discussion of the cause, and some of them are here now noted for reference, without comment.

Act of May 27, 1799, 1 Stat. at Large, p. 474.

Act of February 25, 1799, 1 Stat. at Large, p. 619.

Prigg *vs.* Pennsylvania, 16 Peters, p. 625.

City of New York *vs.* Milner, 11 Peters, p. 133 and 139.

Passenger Cases, 7 Howard, p. 414.

Owner of Brig James Gray *vs.* Owner of Ship John Fraser, 21 Howard, p. 187.

Gibbons *vs.* Ogden, 9 Wheaton, p. 205.

Brown *vs.* The State of Maryland, 12 Wheaton, p. 444, top.

The foregoing laws and decisions cover all the powers exercised by the Louisiana statute in question.

It is scarcely necessary to quote authority to show that

a State may do, by a corporation, whatever itself has a right to do, but reference is asked to—

Brisco *vs.* Bank of Kentucky.

McCulloch *vs.* The State of Maryland, 4 Wheaton, p. 317.

And the court will please renew reference to the following cases which show that the State may retain for itself or confer on certain persons exclusive privileges, if in the judgment of the legislature, which is conclusive, the public good requires it.

Binghamton Bridge, 3 Wallace, p. 52.

Boston & L. R. Railroad Co. *vs.* Salem & L. R. R. Co., 2 Gray, 2.

Costar *vs.* Brush, 25 Wendell, 628.

Veazie *vs.* Moore, 14 Howard, 568.

As the act would then beyond all controversy have been adjudged constitutional before the fourteenth amendment, the question remains to be treated as to how that amendment has affected the Louisiana legislature.

It is contended that the exclusive privileges granted to the Slaughter-house Company by the act are an abridgement of "the privileges and immunities" of the plaintiffs in error as "citizens of the United States, because they have a natural right to keep stock-landings and slaughter-houses, and this act forbids them to do so within certain limits, and that this act deprives them of property without due process of law," &c.

Natural rights, whatever they may be elsewhere, are, in a court of law, only such as the law recognizes and protects. "Right itself in civil society is that which any man is entitled to have, or to do, or to require from others, *within the limits prescribed by law.*"

Kent's Com., Lecture XXIV, vol. 2, p. 1.

Now, it is a matter beyond investigation here that the slaughter-house act was really adopted in good faith by the Louisiana legislature to enforce its inspection laws, and to promote the health of its capital city, and that a corporation was necessary to carry out these purposes. All these are matters beyond controversy.

If, by the exclusive privileges granted to the company, some natural rights in others are abridged, that abridgement results from the supremacy of the public welfare over individual interests.

Hence, if the fourteenth amendment forbids such legislation, it annuls all that is past, and prohibits all such in future.

It would be difficult to make a list, so numerous would be the instances; we may state canal charters, turnpike charters, bridge charters, railroad charters, gaslight company charters, and all others where, in consideration of public benefits derived, exclusive rights are conferred. We may further allude to acts for regulating the manufacture and storage of nitro-glycerine, gunpowder, petroleum, and other dangerous substances; laws regulating lotteries and gift enterprises, fairs, markets, tanneries, and others of a like nature; laws regulating the labor in factories—as to the hours of work, age, and sex of the operatives; laws imposing licenses and taxes on trades, occupations, and professions; laws forbidding labor on the first day of the week; laws for the expropriation of private property to public use, and the numerous exclusive privileges enjoyed by political corporations.

All these must fall if this constitutional amendment means to constitute individual rights absolutely superior to the public welfare of the States in matters not political, and not touching the relation of the individual to the Government in his character of "citizen" of the United States.

The fourteenth amendment has no effect to confer any privileges and immunities which citizens of the United States did not enjoy before its adoption. It was designed to abrogate and render null all laws existing or which might be devised in the future making a distinction between white men and black as to privileges and immunities; and to show that the meaning is only such as those words conveyed in the past, they did not even confer the right of suffrage. To define accurately the words privileges and immunities, so as to embrace all the rights to be protected, would be impossible, but it is most manifest the design of the amendment was limited to the investiture of blacks with all the rights and immunities of whites, whatever these may be, and to protect them in their lives, liberties, and properties just as whites are protected. That is all that was and is necessary. To extend the interpretation of the amendment to the length which the plaintiffs in error demand would break down the whole system of confederated State government, centralize the beautiful and harmonious system we enjoy into a consolidated and unlimited government, and render the Constitution of the United States, now the object of our love and veneration, as odious and insupportable as its enemies would wish to make it.

The judgment of the supreme court of Louisiana ought to be confirmed.

Respectfully submitted.

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