The Supreme Court of the United States.

THE BUTCHERS' BENEVOLENT ASSOCIATION

versus [TWO CASES.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY.

WM. FAGAN ET AL.

versus

THE STATE OF LOUISIANA.

Supplemental Brief and Points of Plaintiffs in Error.

These cases present facts that are similar, and the questions for examination in each case are identical.

The plaintiffs are engaged in carrying on the business of importing, keeping, preparing for sale in the markets of New Orleans, and the parishes of Orleans, St. Bernard, and Jefferson, animal food. In June, 1869, they were materially interrupted in their employments by an act passed in that year for the incorporation of the defendants in the two cases first mentioned, and which act forms the basis of the proceedings in the third case. There were six cases determined in the courts of Louisiana, and were brought by writ of error to this Court. They were determined upon the admission of the facts in the pleadings, which raised the question of the validity of the statute under the Constitution of the State and of the United States.

The decision of the Supreme Court of Louisiana is that the charter granted to the defendants was a lawful exercise of legislative power; that the defendants are entitled to all of the rights, privileges, franchises, and immunities comprised within

the terms of the act; that all persons are bound by it, and the defendants are enjoined from purchasing a parcel of land below the United States Barracks, and in the parishes of Orleans and St. Bernard, or from building any of the structures designated in the act, or to invade the monopoly of the defendants.

The defendants are confirmed in their sole and exclusive right to conduct and carry on a business that had been before lawful, and which the plaintiffs had carried on previously to the act, for the term of twenty-five years, under the conditions of the grant.

It will be conceded, that these conditions must be such, that no privilege or immunity of an American citizen shall be abridged; that no man shall be deprived of life, liberty or property, thereby; and that the equal protection due to every person in the State shall not be denied.

The Constitution of the United States speaks to the State in the imperative. The State shall not make or enforce a law, nor pass a law, that shall work evil to any in the manner and in the particulars set forth. The dominion of the legislative power of any State is abridged by the people of the States within all of the legislative domain described in the article of the Constitution. This domain is no longer within the dominion of the State. The Congress is empowered to enforce the article. The Government of the United States necessarily acquires a dominion over the State corresponding to the duty it has to perform.

The question for examination is, does the act of the Legislature infringe the limits of the jurisdiction which the Constitution has withdrawn from its rightful authority?

I.

The act is described to be an act of police, which the State has adopted to promote salubrity, security, and public order. That these interests are under the exclusive guardianship of the State, and no law of the United States, nor authority of the United States, can legally interfere with its discretionary control. But, this argument cannot be true, unless it be ascertained that no article or clause of the Constitution of the United States has been violated by the conditions of the act of the

State Legislature. Laws of police, as well as other laws—nay, the State Constitution itself—is only valid under the limitations imposed by the Constitution of the United States.

So, the inquiry is, whether the privileges, immnnities, life, liberty, property, or title of the plaintiffs to equal protection, have been infringed. If they have been, the act acquires no strength by being denominated as being, or because the act really is, to operate as a police act.

The passenger acts of Massachusetts and New York were police acts. The acts to prevent free men of color who were employed on vessels from coming ashore, or going at large, were police acts.

Passenger cases, 7 H., 283.

Sinnot vs. Davenport, 22 H., 244.

1 Sprague R. 88, 258.

II.

The plaintiffs claim an interest, a privilege, a property, in their labor, and the faculty of applying that labor in useful occupations; of which they cannot be deprived for the profit or gain of other persons or corporations.

These claims were recognized in the American customs and habitudes, and were assumed as valid in written law and judicial decisions, and in all the intercourse of society.

The thirteenth amendment to the Constitution of the United States approved these customs and habitudes as normal and rightful, by prohibiting institutions and relations which were contrary to them, and Congress, in its legislation to enforce that amendment, adopts their existence as the basis of their action.

TURGOT, in the edict of 1776, by which the industry of France was emancipated from the restraints and monopolies of trades corporations, guilds, and companies, sets forth the natural, constitutional and legal principles applicable to this subject.

The edict declares that "God, in creating man with necessities, has compelled him to resort to labor, and has made the right to labor the first, most sacred, and imprescriptible right of man. It ordains, therefore, that those arbitrary institutions which prevent the indigent from living by work, which extin-

guish emulation and industry, and render useless the talents of those who do not belong to a corporation or company; which load industry with a tax onerous to the subject, without benefit to the State; which, finally, by the facility which they afford to combinations of the rich to force the poor to submit to their will, and to create conditions that enhance the price of the most necessary articles of subsistence, be abrogated." Therefore, every person was authorized to exercise his art, trade, or profession; aud the privileges of corporations, guilds, and trading companies, to the contrary, were abolished.

The State is commanded neither to make nor to enforce any law that deprives, or even abridges, any citizen of his enjoyjoyment of his privileges or immunities. To limit him in the choice of a trade, to deprive him of a business he has pursued, and to give to others the sole and exclusive right to follow that trade or to prosecute that business, violates this Constitution.

The emancipating edict of Turgot, and the enslaving act of the Louisiana Legislature, in different ways, manifest the aim of the amendment to the Constitution. The spirit of the edict pervades the amendment, and it was framed to suppress all institutions of the kind. The Louisiana statute creates a corporation having all the odious features of those suppressed by the edict.

III.

The title to labor freely was declared by the National Assembly in 1791, and the freedom of choice of professions, arts, or trades, has been maintained since that date as the law of France.

In reference to the trade of preparing animal food for market, and providing for and securing animals, each commune in France may regulate these, to maintain salubrity, security, and order. These regulations embrace the inspection of the meat; an abundant supply for the public want; the convenience of selling; the preservation of cleanliness in abattoirs; and the prevention of accidents by the roaming of the animals. But it is a fundamental condition that the freedom of men to engage

in trade shall not be violated, and no monopoly be created in the sale or disposition of the supply.

6 Dall. Jur. Gen., p. 327, No. 20.

27 Ibid., p. 720, No. 209.

20 Ibid., p. 19, No. 54–5.

IV.

The consequences of a monopoly, according to Lord Coke, are the increase of the price of the commodity, the deterioration of its quality, and the impoverishment of traders and consumers.

Monopolies restrain industry, promote idleness, are oppressive to consumers, and are contrary to the common and statute law, and violate common right.

3 Co. Inst., 181; 11 Co. Rer. 86

The King could not grant a charter, nor an allowance to particular persons for the buying, selling, making, working, or using of anything which would operate as a restraint of trade, or the application of industry.

Adjudged cases show the King cannot grant that a corporation shall use a trade at a particular place, exclusively of those not free of the corporation; nor that only one hundred persons shall have the sole buying and selling of goods imported into Ireland; nor that the grantee should have the sole privilege of making of ordnance during war; nor can a corporation grant a monopoly for private gain, under the guise of a police regulation.

3 Co. Inst., 181; 2 Atk., 484.

1 Rolle 4, 364; 2 Rolle, 113; God. 125, 254.

3 Mod., 126; Willes, 384; Conyn dig. trade, D.

1 Bur., 12; 3 Bur., 1847; 1 P. W., 184.

In some of the reported cases, by-laws in restraint of trade were supported because of special customs. By the municipal reform act, all of these trades companies and restraints upon freedom were abolished.

Grant on Corp., 83.

6 Q. B., 383.

The principle of the British law is declared by Erle in his work on Trades Unions. Ch. 1.

The contest upon the subject of monopolies we have detailed.

Judicial decisions have been cited and the writings of publicists quoted to prove the inequality, injustice, violation of private and individual right, and denial of the protection which each member of the body politic ought to have. "The property which every man has in his own labor," says Adam Smith, "as it is the original foundation of all other property, so it is the most sacred and inviolable. The patrimony of the poor man lies in the strength and dexterity of his own hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most sacred property. It is a manifest encroachment upon the just liberty both of the workman and of those who might be disposed to employ him. As it hinders the one from working at what he thinks proper, so it hinders the others from employing whom they think proper."

Smith's Wealth of Nations, b. 1, ch. X, part 2.

V.

Guarded as the States have been by written constitutions, with bills of rights, it is not surprising that we find but few cases of the direct interference with the rights of labor and equality of right, either in the legislative enactments or in the jurisprudence of the country.

The principles to which we have referred are accepted as fundamental, and have been applied to cases when they have occurred.

The courts of Connecticut, Illinois, New York, Massachusetts, Tennessee and Maine have pronounced opinions which support the doctrine we maintain.

25 Coun. R., 19; 45 Ill., 90; 7 Paige, ch. R., 261; 13 Allen Mass. R., 370; 2 Yerger, 554; 3 Grenl., 326; Cooley Const. Lim., ch. 11, p. 393–4.

VI.

The terms privileges and immunities were applied in the Roman law to describe classes of rights. They comprised those special endowments or benefits to some, which were made by the legislator, and which were not shared by all (privelegium affirmativum), or in those exemptions (immunitas, privelegium

negativum), from duties or services to which others were subjected. These privileges and immunities were rights.

Lindley's Jur., §30, 31-2, 3. Ap. note to §31.

These are akin to charters, private statutes, and patents.

Mackeldey Roman Law, §188-9.

With this general meaning they are used in modern legislation and jurisprudence.

The separate estates of the realm in Great Britain—Lords, clergy, and people—have their rights and immunities. Under charters and customs, cities and classes of subjects have the same.

In the Colonial discussions, we find a claim for the rights, privileges and immunities of Englishmen for the Colonial population. In the Congress of 1776, we find a resolution inviting desertion from the British army, and promising the deserter protection in his religion, and that he should be invested with the rights, privileges and immunities of natives, as established by law. The terms are found in the fourth of the Articles of Confederation, and the second section of the fourth article of the Constitution of the United States; and evidently apply not to political, but civil rights. These rights are protection to life, personal freedom, property, religion, reputation; and, in the Treaty of Paris of 1803, providing for the cession of Louisiana, the United States promise to grant the natives of that territory the rights, advantages and immunities of citizens.

Perneoli vs. Mun, 3 How., 589.

Canter vs. American In. Co., 1 Peters, 511, 542.

The States of the Union are political organizations, with powers to accomplish ends of government. By the fourteenth amendment, these governments are particularly bound to accomplish the same ends as the Government of the United States, in reference to all citizens of the United States, alike; and in some sort under supervision and control. No citizen of the United States may be abridged in his privileges or immunities; he must be secured from arbitrary legislation over life, liberty, and property; he must not be denied equal protection under the law. These fundamental conditions being assured, he may acquire the means of subsistence, and have the advan-

tage of the union or division, or free application of industry, to ennoble his nature, promote progress in his art, trade, or profession, and improve the moral and material state of himself, and of his posterity. Thus union, justice, domestic tranquillity and liberty may be attained for the existing generation, and their posterity.

4 Wash. C. C. Rep., 380; 18 H., 71, 591.

3 H. and McH. M'd R., 535, 552; 14 Ala. Rep., 627.

Cooley on Lim., 16, 17, 392–3, 4; 3 Story on Con., 625.

VII.

The authorities we have cited show that labor is a doom, and if submitted to with fidelity, secures a blessing to the human family. The obligation to labor being imperious, confers a right to labor, which right is property; and it cannot be withdrawn or destroyed by arbitrary legislation without a violation of natural right. This right is a social right, and constitutions have been made to secure it from invasion. No State of the American Union can deprive a man of his title by arbitrary edict; and arbitrary institutions, to limit, depress, impair, or to take away this right, cannot be created nor maintained. No protection can be extended to such institutions, for the reason that they, in their constitution and nature, take away the equal protection due to those who are not members of them.

The act No. 118 allows the company it establishes to carry on exclusively the business of preparing animal food for market, and for keeping animals for sale, within a large district, for three parishes. The company can land them at their docks or wharves; keep them in their yards or stables; and prepare them in their slaughter house for market, or exhibit them for sale in their stables.

Any other citizen must, under a penalty, use the docks, wharves, yards, slaughter house of the company, and none other. The company may purchase, for these purposes, any land in that district. No other person may have, use, or bargain for land for the same purpose. The Delery plantation is now used for all of these purposes by the company, they being owners. The injunction upon Cavaroc restrained him from

selling, and the other defendants from using, that plantation for such purposes. No butcher can exercise his art except at the place designated by the company, and at a price not determined by himself. It is not the butcher alone who is affected. The entire community are restrained in the same manner. The labor of some, the property of all, in those parishes, is restricted to the company by this enactment. The rights, privileges and immunities of the citizen have been diminished and impaired, that this corporation shall have a monopoly.

Respectfully submitted:

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