In the Supreme Court of the United States.

OCTOBER TERM, 1879.

No. 26. UNITED STATES *v.* MURRAY STANLEY.
No. 37. UNITED STATES *v.* MICHAEL RYAN.
No. 105. UNITED STATES *v.* SAMUEL NICHOLS.

CIVIL RIGHTS CASES.

BRIEF FOR THE UNITED STATES.

The first and last of the above-entitled causes are indictments for denying to colored men the accommodations of an inn.

No. 37 is an *information* against Ryan for depriving a colored man of the right to a seat in the parquet of a theater in San Francisco.

Though the main question of the constitutionality of the civil rights act approved March 1, 1875, is the same in these three cases, which are therefore submitted together, the court below divided upon the question whether the indictment in the first case stated an offense, and a demurrer to the information was sustained in the second; so the first indictment and the information against Ryan must be here printed in full. In the last case the division of the court below presents only the question of the constitutionality of the statute aforesaid so that indictment will not be reprinted.

No. 26. UNITED STATES *v.* MURRAY STANLEY.

STATEMENT.

At the term of the district court of the United States of America in and for the said district of Kansas, begun and held at Topeka, in said district, on the 10th day of April, in the year of our Lord one thousand eight hundred and seventy-six, the grand jurors of the United States of America, duly empaneled, sworn, and charged to inquire of offenses committed within the district of Kansas, upon their oaths do find and present that one Murray Stanley, late of the district of Kansas aforesaid, on the tenth day of October, in the year of our Lord one thousand eight hundred and seventy-five, at the district of Kansas aforesaid, and within the jurisdiction of this court, being then and there in charge and having management and control of a certain inn, did then and there unlawfully deny to one Bird Gee, then and there a citizen of the State of Kansas and of the United States of America, full and equal enjoyment of the accommodations, advantages, facilities, and privileges of said inn by then and there denying to said Bird Gee the privileges of then and there partaking of a meal, to wit, of a supper, at the table of said inn, for such purpose then and there provided, he, the said Murray Stanley, having then and there so as aforesaid denied to said Bird Gee the aforesaid full and equal enjoyment of the accommodations, advantages, facilities, and privileges of said inn, for the reason that he, the said Bird Gee, was then and there a person of color and of the African race, and for no other reason whatever, contrary to the act of Congress in such case made and provided, and against the peace and dignity of the United States of America. (Record, 1, 2, and 3, 4.)

The foregoing indictment was demurred to; and, upon argument of the demurrer, the judges were divided in opinion upon these questions:

1. "Does the indictment state an offense punishable

by the laws of the United States, or cognizable by the Federal courts"?

2. "Is the act of Congress entitled 'An act to protect all citizens in their civil and legal rights,' approved March 1, 1875, constitutional"?

That statute is prefaced with a preamble, and reads as follows:

Whereas it is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt with full costs; and shall also, for every such offense, be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than five

hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, That all persons may elect to sue for the penalty aforesaid, or to proceed under their rights at common law and by State statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this proviso shall not apply to criminal proceedings, either under this act or the criminal law of any State: *And provided further*, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively.

SEC. 3. That the district and circuit courts of the United States shall have, exclusively of the courts of the several States, cognizance of all crimes and offenses against, and violations of, the provisions of this act; and actions for the penalty given by the preceding section may be prosecuted in the Territorial, district, or circuit courts of the United States wherever the defendant may be found, without regard to the other party; and the district attorneys, marshals, and deputy marshals of the United States, and commissioners appointed by the circuit and Territorial courts of the United States, with powers of arresting and imprisoning or bailing offenders against the laws of the United States, are hereby specially authorized and required to institute proceedings against every person who shall violate the provisions of this act, and cause him to be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States or Territorial court as by law has cognizance of the offense, except in respect of the right of action accruing to the person aggrieved; and such district attorneys shall cause such proceedings to be prosecuted to their termination as in other cases: *Provided*, That nothing contained in this section shall be construed to deny or defeat any right of civil action accruing to any person whatever by reason of this act or otherwise; and any district attorney who shall willfully fail to institute and prosecute the proceedings herein required, shall,

for every such offense, forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered by an action of debt, with full costs, and shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not less than one thousand nor more than five thousand dollars: *And provided further*, That a judgment for the penalty in favor of the party aggrieved against any such district attorney, or a judgment upon an indictment against any such district attorney, shall be a bar to either prosecution respectively.

SEC. 4. That no citizen possessing all other qualifications which are or may be prescribed by law, shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars.

SEC. 5. That all cases arising under the provisions of this act in the courts of the United States shall be receivable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are now provided by law for the review of other causes in said court. (18 Stats., 335 to 337.)

No. 37. UNITED STATES *v.* MICHAEL RYAN.

STATEMENT.

This was an information in the circuit court of the United States, ninth circuit, district of California, in the form following:

Be it remembered that on this 12th day of February, A. D. 1876, comes into court, in his own proper person,

Walter Van Dyke, esq., United States attorney for the aforesaid district of California, and in the name and on the behalf of the United States gives the said court to understand and be informed that on the 4th day of January, A. D. 1876, at the city and county of San Francisco, State of California, and within the district aforesaid, and within the jurisdiction of this court, Michael Ryan, then and there being, did then and there wilfully, knowingly, and unlawfully, deny to a citizen of the United States the full and equal enjoyment of the advantages, accommodations, facilities, and privileges of a public theatre, such denial being for reasons by law not applicable to citizens of every race and color, to wit, the said Michael Ryan, on said day, at said city and county, did knowingly, wilfully, and unlawfully deny to George M. Tyler, a citizen of the United States, the full enjoyment of the accommodations, advantages, facilities, and privileges of Maguire's new theatre, situate on Bush street between Montgomery and Kearney, being on the southerly side of said Bush street, in the city and county of San Francisco, State of California, aforesaid, the same being a place of public amusement, as follows, to wit, that is to say, on the said 4th day of January, A. D. 1876, the said George M. Tyler did purchase a certain ticket of admission to said theatre of the ticket-seller or authorized agent of said theatre, for the sum of one dollar, which sum said Tyler duly paid to said agent, to wit, said ticket-seller, a certain printed ticket of admission to the said theatre, and to the part thereof known and designated as the dress-circle or parquette, and orchestra seats, which said dress-circle, otherwise known as the parquette, and said orchestra seats, did possess superior and better advantages, facilities, and privileges to any other portion of said theatre; which said ticket did purport to admit, and did entitle said George M. Tyler to admission to the said portion of said theatre known and designated "the dress-circle," otherwise called the "parquette," and to that portion of the said theatre known and designated the "orchestra" seats.

And on said fourth day of January, A. D. one thou-

sand eight hundred and seventy-six, in the evening of said day, and about or between the hours of seven and eight o'clock p. m., while the doors of said theatre were open for the purpose of admitting the public to, and about the time of the hour of the commencement of the performance in said theatre, said George M. Tyler, then and there being a citizen of the United States, and under the jurisdiction thereof, did then and there present said ticket in his own person to said Michael Ryan, who was the doorkeeper to admit persons with tickets, and ticket-taker of said theatre, standing at the proper entrance thereof, and did, upon said ticket, ask and demand admission to said theatre, and to the part and portion thereof designated as the dress-circle, otherwise called the parquette, and the orchestra-seats thereof; and thereupon said Michael Ryan, then and there being as aforesaid, did then and there wilfully, knowingly, wrongfully, and unlawfully, by force and arms, deny to said George M. Tyler, as aforesaid, admission to said theatre, or to any part thereof, and did then and there deny as aforesaid, to said George M. Tyler, the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of the said theatre, said denial and refusal not being for reasons applicable by law to citizens of every race and color, and regardless of any previous condition of servitude; that said refusal and denial as aforesaid was solely and entirely on account of and for the reason that said George M. Tyler was and is of the African or negro race, being what is commonly known and called a colored man, and not a white man. That said George M. Tyler was then and now is a person of the African or negro race, being what is known and commonly called a colored man.

And so the said attorney of the United States, in the name and behalf of the United States, gives the said court to understand and be informed that said Michael Ryan did then and there as aforesaid, on said day, in the manner aforesaid, commit the crime of unlawfully denying and refusing to a citizen of the United States the full enjoyment of the accommodations, advantages,

facilities, and privileges of a theatre (the same being a public place of amusement), for reason not by law applicable to citizens of every race and color, regardless of any condition of previous servitude, contrary to the form of the statutes of the United States of America in such case made and provided, and against the peace and dignity of the people thereof. (Record, 4.)

A demurrer was filed to this information, together with a motion to dismiss it. (Record, 4, 5.)

The court sustained the demurrer and ordered the information to be dismissed. (Record, 5.)

ASSIGNMENT OF ERROR.

The United States assign for error the sustaining of the demurrer and the dismissal of the information.

No. 105. UNITED STATES *v.* SAMUEL NICHOLS.

A demurrer was filed to the indictment in this case; "and the demurrer to the indictment herein coming on now to be heard, and the judges of this court being divided in opinion on the point of the validity under the Constitution of the United States of the statute under which said indictment is drawn, * * * it is ordered on the request of said parties that said point be certified under the seal of the court to the Supreme Court of the United States," &c. (Record, 6.)

BRIEF.

As no informalities have been pointed out in the indictment and information, we shall confine this brief to the main question, common to the three cases, of the constitutionality of the statute upon which they are founded.

Inns are provided for the accommodation of travelers; for those passing from place to place. They are essential instrumentalities of commerce (especially as now carried on by "drummers"), which it was the province of the United States to regulate even prior to the recent amendments to the Constitution.

The relation of innkeepers to the State differs from that of a man engaged in the more common avocations of life. The former is required to furnish the accommodations of his inn to all well-behaved comers who are prepared to pay the customary regular price.

This business and that of conducting a theatre are carried on under a license from the State, through the intermediate agency of municipal authority, which is part of the machinery of the State, being delegated to this extent with the power of the State. This is because the business to be carried on is quasi public in its nature, and for the general accommodation of the people.

For this reason Congress has the right to prohibit any discrimination against persons applying for admission to an inn or theatre based upon race, color, or previous condition of servitude.

The early amendments to the Constitution were added further to limit the Federal power. The last three, the result of bitter, costly experience, were intended to en-

large that power. Such enlargement must necessarily be pro tanto a diminution of, or an encroachment upon, the power previously exercised by the State. These amendments also interfered, for the first time, with the relation borne by the citizen to his State, and with those institutions and regulations of a (so called) domestic character.

This innovation was not so dangerous to liberty as many theorists imagine. Both State and National Governments are mere machinery by which the individuals composing the nation secure life, liberty, rights, and privileges. From time to time, as experience demonstrates the necessity or expediency of so doing, the people may change the mutual adjustment, or even the essential character, of this machinery to accomplish the desired purpose.

It was thought that the lately emancipated portion of our fellow-citizens could more safely depend for the security of their newly acquired rights upon the government which conferred them than upon that which had so long denied them. It may be remarked, in passing, that the greatest freedom is only attainable through the agencies and operation of the Federal Government. In one State, discriminations are made on account of religion; in another, upon the acquisition of land or other property; in a third, upon the basis of color; and in another, by reason of Mongolian birth. It is in Federal legislation and in the action of Federal courts alone that these discriminations are wholly disregarded.

Equality before the law, then, is the privilege of American citizenship, conferred by the national Constitution; therefore, to be protected by national legislation.

(16 Wall., 79; United States *v.* Reese, 92 U. S., 214, 217, where the court say that appropriate legislation "may be raised to meet the necessities of the particular right to be protected.")

The exclusion complained of in the causes at bar were because of the race and recent servile condition of the persons excluded. The law forbidding such exclusion, for such motive, is "appropriate to efface the existence of any consequence or residuum of slavery." (Hon. F. T. Frelinghuysen in debate on this bill; vol. 2, Cong. Rec., pt. 4, first session Forty-third Congress, p. 3453, end of first column.) At the bottom of the same page he cites the Slaughter-House cases as holding "that freedom from discrimination is one of the rights of United States citizenship."

What the United States had the right to give, it necessarily has the right and duty to preserve and protect.

We cannot proceed against or deal with the States to procure needed legislation; nor compel action by the grand juries of a State. We must necessarily prosecute directly those offenders who deny, on account of race or color, that equality which the Constitution guarantees.

The fourteenth amendment made native-born colored men citizens of the State in which they were resident. Their State citizenship originated in the national Constitution. Therefore Congress may legislate to compel the concession to them of such rights, whatever they may be, as are conceded to other citizens of the State, without dictating what those privileges may be; except that, in discharge of the duty imposed by other articles of the Constitution, the Federal Government must see

that there is no denial of liberty, nor such legislation as will deprive the State of its republican form of government. The fundamental right to liberty, and to participate in the choice of rulers, and to be equal to every other citizen in the enjoyment of lawful privileges, is secured to the colored man by recent amendments. As Mr. Edmunds remarked, these amendments did not mean to leave the Constitution just as it was before; so "that every man, woman, and child in a State shall have whatever rights the laws of that State choose to give every man, woman, and child in that State." (Cong. Rec., vol. 2, pt. 5, Forty-third Congress, first session, page 4172, second column.)

Power to *enforce* by appropriate legislation these constitutional amendments, giving liberty and equality, does not mean simply to re-enact their prohibitions. It means to legislate as to those particular matters and things in which equality is denied.

Their meaning and purpose must be gathered from "the history of the times." (Slaughter-House cases, 16 Wall., 67, 68.)

Upon that same page first cited (67) the court say that, "in the construction of those articles" they have only considered them as applicable to the case then in hand, which did not involve the rights of colored citizens; to which these amendments, as the court say, in the succeeding pages of that report, particularly relate.

In the enumeration of privileges by Judge Washington, in Corfield *v.* Coryell (4 Wash., 380, 381), quoted in the Slaughter-House cases, he speaks only of the rights of citizens of *States*, because that was the only question before him. The enumeration, however, is of those privileges belonging to the citizen of any free, well-consti-

tuted, republican State—and not as peculiar to those forming the American Union. Therefore they belong to citizens of the United States, as such, as well as to citizens of the several States, as such citizens.

The distinction noted by Mr. Justice Bradley (16 Wall., 117, bottom), that Judge Washington was speaking of the privileges of citizens *in* a State, not of citizens *of* a State, is peculiarly pertinent here.

It is purely accidental and immaterial that the several persons denied access to inn or theatre in the cases now pending were residents of the States in which the offences were committed. Their right to equal accommodations would have been the same had the travellers been citizens of New York or of this District, temporarily in Missouri or Kansas. This suggestion shows that the right secured by the legislation in question accrues to one as a citizen of the United States, and not as the citizen of a State.

As noticed by Mr. Justice Field, in his opinion in the Slaughter-House cases, the fourteenth amendment "was adopted to obviate objections which had been raised and pressed with great force to the validity of the civil-rights act," &c. (16 Wall., 93, near bottom.)

Upon a subsequent page he says: "This act, it is true, was passed before the fourteenth amendment was adopted, as I have already said, to obviate objections to the act; or, speaking more accurately, I should say, to obviate objections to legislation *of a similar character*, extending the protection of the national government over the common rights of all citizens of the United States. Accordingly, after its ratification, Congress re-enacted the act, under the belief that, whatever doubts may have

previously existed of its validity, they were removed by the amendment." (16 Wall., 96, 97.)

The correctness of this statement will be seen by reading the debate upon the proposition to submit that amendment for adoption. Though the language of legislators in debate cannot be used to control the legal effect of the phraseology employed, as to any single clause or sentence, the universal acquiescence of all the speakers as to the general scope and purpose of an act may be read, as part of the history of the times, to determine the meaning to be attached to the words employed—the sense in which they are used, and the force to be given them.

The first civil-rights act was passed April 9, 1866. (14 Stats., 27–30.) Though not identical in phraseology with that above printed, not containing this provision as to inns, &c., it is "of a similar coaracter". The debates upon the passage of that bill will be found in volume 70 of the Congressional Globe, for the first session of the Thirty-ninth Congress, pp. 1160–1833. Doubts were then expressed as to the constitutionality of that measure, which Mr. Bingham, of Ohio, and others, thought should be remedied by further amendment of the Constitution. (*Ib.*, 1291.)

Upon the 8th of May, 1866, the proposed fourteenth amendment was first discussed in the House of Representatives. (71 Cong. Globe, 2459, *et seq.*) Hon. Mr. Boyer said: "The first section embodies the principle of the civil-rights bill. * * * The fifth and last section of the amendment empowers Congress to enforce by appropriate legislation the provisions of the article." (*Id.*, 2467.) Mr. Broomall said that, while he did not

agree with those who thought the civil-rights act unconstitutional, "yet it is not with that certainty of being right which would justify me in refusing to place the law *unmistakably* in the Constitution." (*Id.*, 2498.) Other declarations to the same effect can easily be found in the report of the House proceedings.

Similar expressions are found in the Senate debate: *e. g.*, Mr. Doolittle said: "The celebrated civil-rights bill, which was the forerunner of this constitutional amendment, *and to give validity to which this constitutional amendment is brought forward*," &c. (*Id.*, 2896.)

It would be strange if language avowedly chosen to effect a desired object, and deemed apt for that purpose by a large majority, if not by everybody, in each house of Congress, should now be held by the court not such as to accomplish the end contemplated. The intent of the legislator would not then be the law.

The case brought up in debate against the enactment of the existing law, under the fourteenth amendment, was the Slaughter-House case. It seems as if, but for that case, the sole opposition to this measure would have been directed to the question of expediency and not of constitutionality. Yet that case was decided upon issues entirely outside of any which those now submitted present. It involved only the determination of the proper limits of the *police power* of the State. Every member of the court held that *if* the law of Louisiana, giving to one corporation certain rights as to the landing and slaughter of cattle for the markets of New Orleans and adjacent parishes, was an exercise of police power *merely*, it was valid. Upon the question of its being such an exercise of police power, the court divided; a bare majority held it was within that power and the minority that it exceeded that power, or was not an exercise of it. All agreed, too, if it were not an exercise of that power,' the law was invalid.

No question of police power arises in the present cases, or under the legislation upon which these cases are based. Leaving out that element, and the opinion of every member of the court in the Slaughter-House case sustains the validity of this act.

In the course of a speech in the Senate by Mr. Stockton against the bill he alluded to the opinion in that case, and Mr. Morton interrupted him with this question: "I ask him if Judge Miller did not say in the same opinion that whatever rights and obligations were conferred or created by the fourteenth amendment belonged to citizenship of the United States as such, and were under the control and guardianship of Congress?" To which Mr. Stockton replied that he had no doubt that such language was used, though he had not the volume of reports by him to determine it. (Vol. 2 Cong. Rec., Pt. 5, first session Forty-third Congress, p. 4147.)

At the close of Senator Stockton's speech, Mr. Howe, of Wisconsin, took the floor, and said:

I admit that when the Constitution was framed originally, there was committed to the Government of the United States no power to do the things we propose to do in this bill. I admit when that Constitution was framed its makers committed the status and condition of individual citizens to the control of the States within which they lived. What they pleased to do with the individual, that they did. There was a malign power reserved to the government of every State to deprive any one or any number of its citizens of every the commonest rights of the commonest man, and they did it. The time was when every State did it. The time is, thank God, when no State can do it. That malign power no longer exists in any government in this land acknowledging the supremacy of the Constitution of the United States. The Constitution has been changed. Some prerogatives have been withdrawn from the States; some new faculties or powers have been given to the Government of the United States. Three whole chapters have been added to the organic law. One of them, I say in

the face of the country, as well as in the face of the Senate, was made on purpose to transfer the control of citizens to the Government of the United States; and if Congress does not possess to-day the power to snatch from the oppression of unequal laws every colored citizen of the United States, it is not because the people did not mean to clothe us with that power; but it is unmistakably because the draughtsman who framed the fourteenth amendment did not know enough to construct a clause which would give us that power. 2 Cong. Rec., Pt. 5, first session, Forty-third Congress, p. 4147, May 22, 1874.)

In the progress of his speech, as reported upon the next page of the Congressional Record, the same gentleman thus referred to the citation of the Slaughter-House case by the opponents of the bill:

And yet we are told that that very point has been already decided. We are told that the Supreme Court of the United States have declared in advance that we have not authority to pass this bill. That is a mistake, in my judgment. The Supreme Court of the United States never have told me any such thing. I stand here to deny that they have ever said any such thing. * * * The only point which the court asserted was that a statute passed by the State of Louisiana was not in contravention of the fourteenth amendment. That act made no discrimination between a white man and a black man. It made, I think, broad discrimination between the rights of white men—a discrimination which, upon my soul, I believe the fourteenth amendment condemns—but not a syllable of discrimination between the two colors. The court undertook to say that it was but an exercise of the ordinary police powers, which belonged to every State before the fourteenth amendment was adopted, and were not taken from the States by the fourteenth amendment, and then the court went on—or the judge who delivered the opinion of the court goes on—to defend that conclusion, entering upon an

argument to prove that such an act did not contravene that one clause of the fourteenth amendment which declares that no State shall impair the privileges and immunities of citizens of the United States. (*Id.*, 4148, second column.)

In closing the Senatorial debate upon the bill, just before the vote was taken, February 27, 1875, Mr. Edmunds, of Vermont, said:

The Constitution of the United States, as was stated in an opinion of the Supreme Court once by an eminent Democratic judge, is a bill of rights for the *people* of all the States, and no State has a right to say you invade her rights when under this Constitution and according to it you have protected a right of her citizens against class prejudice, against caste prejudice, against sectarian prejudice, against the ten thousand things which in special communities may from time to time arise to disturb the peace and good order of the community. That is all which this bill undertakes to do. Now let us see what this bill is.

The first section of it simply provides that all persons shall be entitled to certain common rights in public places, in the streets if they were in—they are not in, but that illustrates it—that no State shall have a right, and no person shall have a right, to interrupt the common use by citizens of the United States of the streets of a town or city. Where is the authority for that, Senators ask; where is the authority for saying that a State shall not have a right to pass a law which shall declare that all citizens of the German race shall go upon the right-hand side of the streets, and all citizens of the French race shall go upon the left, and so on; and that all people of a particular religion shall only occupy a particular quarter of the town, and all the people of another religion another side? Is it possible, with a national constitution which creates fundamentally a national citizenship, that anybody can say a State has a right to make laws of that kind? I should be

amazed to hear it stated. If that can be stated, then I should be glad to know what there is in being a citizen of the United States that is worth a man's time to devote himself to defend for a single instant.

What is it to be a citizen of the United States, if, being that, a citizen cannot be protected in those fundamental privileges and immunities which inhere in the very nature of citizenship? And there is the fault into which my honorable friends on the other side have fallen in arguing this constitutional question. The question is not whether citizens of a particular character, either as to color or religion or race, shall exercise certain functions; but the question is the other way. It is that no citizen shall be deprived of whatever belongs to him in his character as a citizen; and what belongs to a man in his character as a citizen has been long in a great many respects well understood. There was the old Constitution, the fourth article, you remember, which said that citizens of each State should be entitled to the privileges and immunities of citizens of the several States. What did that mean? That has received a judicial interpretation.

By common consent of all parties, before this gravest question arising out of the rebellion and the war had been forced upon us, the courts had held, with universal acceptance, I believe, that there did belong to citizens certain inherent rights which could not be denied to them; and that you could not, under the Constitution of the United States, either through State or other authority, set up distinctions which interfered with these fundamental privileges. Perfectly consistent with that, as everybody knows, you may say that in order to fulfill a certain function in the State, or to hold a certain office, all citizens alike must conform to certain qualifications. * * * The only thing that the Constitution says is that there shall never be a distinction in respect to the rights which belong to a citizen in his inherent character as such. Now, what are those rights? Common rights, as the common lawyers used to say; common rights, as the courts of the United States have said,

under the fourth article. Among those may be enumerated—it may be that you cannot make a precise definition, but you can always tell, when you name an instance, whether it falls within or without it—the right to go peaceably in the public streets, the right to enjoy the same privileges and immunities, without qualification and distinction upon arbitrary reasons, that exists in favor of all others. That is what it is. Then apply it to this bill, and what have you? You say it shall not be competent for any person, either under the authority of a State or without it, to exclude from modes of public travel persons on the ground that they have come from Germany, like my distinguished friend behind me, or that they have come from Ireland, as some other Senators here may have come, or that their descent is traced from Ham, Shem, or Japhet. And yet Senators seem to be greatly alarmed when this simple proposition of common right inherent in everybody is put into a statute-book, which carries out a constitution which declares that every privilege and every immunity of an American citizen shall be sacred and protected by the power of the nation. That is all there is to it; and those, therefore, who go fishing and talking dialectics about attorneys and about slaughter-house cases and police regulations find themselves entirely wide of the mark.

The real thing, Mr. President, is that there lies in this Constitution, just as in Magna Charta, and in the bills of rights of all the States, a series of declarations that the rights of citizens shall not be invaded. These bills of rights do not say that A or B or C or any class shall hold an office or be a witness or a juryman, or walk the streets. They only say that these common rights, which belong necessarily to all men alike, shall not be invaded on the pretense that a man is of a particular race or a particular religion.

At this point the designated time for taking the vote upon the bill arrived. (Vol. 3 Cong. Rec., Part 3, second session Forty-third Congress, page 1870.)

It is thought unnecessary to try to add anything to what was said in support of the law in question.

CHARLES DEVENS,
Attorney-General.
EDWIN B. SMITH,
Assistant Attorney-General.