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CIVIL RIGHTS.

Speech of Hon. O. P. Morton, of Indiana, in the United States Senate, on Thursday, May 21, 1874.

The Senate having under consideration the bill (Senate bill No. 1) supplementary to an act entitled "An act to protect all citizens of the United States in their civil rights, and to furnish the means for their vindication," passed April 9, 1871, Mr. Morton said:

Mr. President—I have very little to say upon this bill. What I have to say is upon the question of the power of Congress to pass it.

The Senator from Ohio [Mr. Thurman] yesterday declared this bill to be grossly unconstitutional. He said that the fifth section of the fourteenth amendment, giving to Congress the power to enforce the amendment by appropriate legislation, conveyed to Congress no power that did not already exist. I think that part of his discussion was unprofitable. It is not necessary to inquire whether this power existed before or in the absence of this fifth section of the amendment; it is enough for us to find it there, to find the amendment declaring in express terms that Congress shall have power by appropriate legislation to enforce the amendment. Who shall be the judge of what is the appropriate legislation? Congress only. It is not for the courts to judge and determine whether the legislation is appropriate. If it tends toward the end had in view in the constitution, it is not for the courts to say that other and better means might have been adopted, because Congress is made to judge of the character of the means to be employed in the enforcement of the amendment.

The next point made by the Senator was that all that Congress could do was to take such steps as would prepare a case arising under any State law infringing this amendment for decision by the courts of the United States. That of course was assuming the very thing to be proved. He said that the prohibition in the amendment was not against individuals, but it was against States; that no State shall make or enforce any law abridging the franchises of citizens of the United States, and no State shall deny to any person the equal protection of the laws; and therefore that we could adopt no remedy, no law to inforce this amendment which operated upon individuals.

Now, Mr. President, we can not operate upon the States as such. If a State law violates this amendment we can not arrest the State; we can not punish the State as such. With the State we can do nothing; but we can operate, and must operate, if at all, upon individuals. At the beginning of the war we were told by Mr. Buchanan and by other distinguished statesmen that we could not coerce a State to remain in the Union. We said, "Very well; we will try to coerce all the individuals in that State, and that will answer the same purpose." We can not arrest or punish a State for the violation of this amendment, but we can punish any person who undertakes to violate the amendment under the cover of a State law. We take from any official, from any person who undertakes under cover of State authority, or under any pretense, to violate the right of any person under this amendment, all protection and cover of the State law and say to him, "That is no defense. you must stand upon your right."

What else is there left to us in the enforcement of these amendments? We pass a law by which it is a penal offense to take from any person any right guaranteed or secured by either of these three amendments. That person comes in and pleads a State law. We say, "That is unconstitutional; the State had no right to pass that law; you can not defend yourself under that law; you must take notice that that law is invalid, and we shall punish you as though that law never existed;" and that is the whole of it.

The theory of our government is that it acts upon individuals, and not upon the States or upon corporations; and in this respect it differs from the old Confederation, which was weak and defective in this, that it lacked the power to coerce individuals, but acted through the original thirteen States or colonies. The whole theory of our government goes upon the idea that it acts directly upon the individual, and holds him responsible to the government of the United States for the violation of any right created, guaranteed, or secured by that government.

Now, Mr. President, I desire to consider very briefly the fourteenth amendment:

"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."

I propose to consider the last clause of this section first:

"Nor deny to any person within its jurisdiction the equal protection of the laws."

What is meant by the "equal protection of the laws?" Does it mean simply that every person shall be entitled to protection against an assault and battery or against personal violence, and stop there? It has no such limited meaning as that. The meaning is just the same as if it read: "Every person shall be entitled to the equal benefit and protection of the laws." When it says "no person shall be denied the equal protection of the laws," it is exactly equivalent to saying that all persons shall be entitled to the equal protection of the laws. The word "protection" there is used in that sense. Law is made for protection; the protection of person, the protection of property, the definition and protection of civil and political rights. The whole body of the law is for protection in some form—the definition and protection of the rights of person and property; and when the fourteenth amendment declares that every person shall be entitled to the equal protection of the laws it means to the equal benefit of the laws of the land. It forbids all discriminations of every character against any class of persons, being citizens of the United States.

In this sense, Mr. President, the Supreme Court refers to this amendment in the decision read from the Senator from Ohio; and I beg leave to call the attention of the Senate (for I think the whole argument is in a nutshell) to what the Supreme Court have said in regard to this very clause. I read from the slaughterhouse case (16 Wallace). The court quotes this clause:

"Nor shall any State deny to any person within its jurisdiction the equal protection of the laws."

Then the court go on and say:

"In the light of the history of these amendments, and the pervading purpose of them, which we have already discussed, it is not difficult to give a meaning to this clause. The existence of laws in the States where the newly emancipated negroes resided, which discriminated with gross injustice and hardship against them as a class, was the evil to be remedied by this clause, and by it such laws are forbidden.

"If, however, the States did not conform their laws to its requirements, then by the fifth section of the article of amendment Congress was authorized to enforce it by suitable legislation. We doubt very much whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview of this provision. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other. But as it is a State that is to be dealt with, and not alone the validity of its laws, we may safely leave that matter until Congress shall have exercised its power, or some case of State oppression, by denial of equal justice in its courts, shall have claimed a decision at our hands."

There is an express definition of it. It is not simply confined to protection of the person against assault and battery or violence, but protection against all unjust discriminations against the negroes as a class. Whether that shall pertain to personal safety or safety of property, or the equal enjoyment of rights, or the equal enjoyment of public institutions, makes no sort of difference. Every discrimination against the negro as a class is denying to them the equal protection of the laws. For example, if a State should pass a law forbidding to negroes the right to bring suits in court, to sue for debts, to prosecute for offenses against them or their families, forbidding them to act as witnesses, these things would be denying to them the equal protection of the laws. If the colored man has no right to bring a suit in court for the collection of a debt, a thing that does not pertain, perhaps, to his personal safety at all, yet it is denying to him the equal benefit, the equal protection of the laws.

Mr. Merrimon—I desire to ask the Senator from Indiana a question or two before he departs from the branch of the subject which he is now discussing. Do I understand the Senator to say that a citizen of the United States as a citizen of the United States, and by virtue of his rights under the constitution of the United States, has a right to attend a public theatre, that he has a right to be buried in a graveyard, that he has a right to attend a particular class of schools? Does he derive that right from his citizenship as a citizen of the United States, or from his citizenship as a citizen of the State?

Mr. Morton—I can answer that question, I think, in the course of the general argument that I shall make, without turning aside from the particular point that I have in view. I will endeavor to answer the Senator's question before I get through.

Mr. Merrimon—I will put another question, with the Senator's permission, before I take my seat. Suppose that a State shall see proper, as a matter of police regulation, to provide that females shall be educated in one school and males shall be educated in another school—do I understand the honorable Senator from Indiana to say that a State would not have power to make such a police regulation, and that the federal government, if a State should undertake to exercise such power, could upset it.

Mr. Morton—No, sir; I do not mean to say that. I will tell the Senator what I do mean to say in regard to schools; but I will first conclude the point that I was on, that this phrase, "nor shall any State deny to any person within its jurisdiction the equal protection of the laws," denies to any State the power to make a discrimination against any class of men as a class. It denies the power to exclude negroes from courts of justice because they are negroes; it denies the power to exclude them from schools because they are negroes; because that would be a gross discrimination, in the language of the Supreme Court. The question of separating males and females into different schools does not come within the principle at all. The great object of the fourteenth amendment was to establish the equality of races, equality before the law. The separation of the sexes, putting male children into one school and females into another, does not violate that principle, provided it extends to all races. This amendment was intended to destroy caste, to put all races upon an equality. There is the point.

Mr. Merrimon—Suppose the Chinese were here?

Mr. Morton—The power of the States to establish different grades of schools and different courts and to give to each court separate and distinct jurisdiction remains just as it was, with this difference, that the power to discriminate between races is taken away. The States are not bound to establish common schools; but if the States do establish common schools to be supported at public expense, they can not exclude the children of any race from those schools. They must be open to the children of all races upon precisely the same terms. They may say if they please—perhaps that is an extreme case—that none but male children shall attend; but they must be the males of all races. I will not go that far, but the law may say that no child shall attend a common school, if you please, over sixteen years of age.

Mr. Merrimon—Why do you use the word "races?"

Mr. Morton—I think it is very apparent that that is what is meant, and the Supreme Court have expressly said so. It is *res adjudicata*, so far as the court is concerned. I have already read to my friend what the Supreme Court say upon that point.

Mr. Merrimon—The point I make is this, the constitution does not say anything about "race" except in certain respects. It provides expressly that there shall be no discrimination on account of race or color as to the matter of voting; it does that in terms; but there is no such expression touching distinctions as to race in any other respect whatsoever.

Mr. Morton—The constitution in effect does say so. It says that no person shall be denied the equal protection of the laws; and if common schools are established and the children of colored men are excluded from those schools, I ask my friend—and he can not deny it for a moment—if they are not denied the equal protection of the laws?

Mr. Merrimon—I say they are not, if like provision is made for the education of colored children that is made for white children. And now with the Senator's permission I will put another question. Suppose the Chinese were to become very prevalent in the State of California, as they are likely to do, and the State of California should desire to make a system of schools for the Chinese and a system for the natives. Will the Senator contend that in that case it is not competent for the State of California to do that? Or suppose that a portion of the population of any State should be Indians, will the Senator contend that in such a case the State would not have power to provide one class of schools for the Indians and another for the white people, making their rights equal in reference to schools except as to the distinction on account of color and race?

Mr. Morton—If I understand the scope of the Senator's question he now admits, in effect, as did the Senator from Ohio yesterday, that if the State law excludes the colored children from the schools entirely, that is a violation of the fourteenth amendment.

Mr. Merrimon—I admit that with all its force. But the point I make is this; that it is competent for the State to make a distinction on account of race or color if it shall make the same provision for the black race that it makes for the white race, and it is as much in the power of the State as to provide that females shall be placed in one class of schools and males in another.

Mr. Morton—When the Senator concedes that the exclusion of colored children from schools is a violation of the fourteenth amendment, it occurs to me that he has conceded all that we can ask. The argument of the Senator from Ohio is gone. The Senator then does concede the ground that the fourteenth amendment was intended to destroy all inequality among races to make all equal before the law.

Mr. Merrimon—I do not concede that. The constitutional provision to which the Senator refers is intended to destroy all inequalities, and the possibility of inequality, between the races on account of race or color in so far as it pertains to voting, no further. There is no provision in any of the amendments to the constitution that looks to the abrogation of any other distinction that a State may see proper to establish.

Mr. Morton—That statement of my friend I think withdraws the statement that he made awhile ago.

Mr. Merrimon—I think not. I say that the State Legislature can not pass a law providing that white children should be educated, and that colored children should not be, because that would deny the equal protection of the laws. But when it affords the same provision, the same measure, the same character for the colored race that it afforded for the white race, there is no more discrimination against one race than there is against the other; and, therefore, it is competent for the Legislature to do it, there being no restriction on such a power in the constitution of the United States.

Mr. Morton—My friend's argument then comes to this, that under the fourteenth amendment the State must make equal provision for the children of both races, and if there be any inequality in the benefits, then it is a violation of the fourteenth amendment. It brings him down to the possibility of making separate and distinct schools precisely equal in point of benefit.

Mr. President, to go on with the general argument, the common school is a public institution, as much so as a court of justice. It is supported at public expense; it is regulated by law; it is organized and conducted for the highest possible considerations. It is in every sense a public institution, and the benefit of that must be extended to the children of both races or the constitution is violated. As I said before, the States are left free to establish common schools or not; but if they do establish them at public expense they must extend their benefits equally and in common to the children of all races; and so with regard to courts. The States are not bound to establish courts, but if they do they must extend the benefit of those courts to people of all colors and all races. This is the great purpose, the spirit and the body of the fourteenth amendment.

It is hardly necessary to protract the argument. If it be conceded now, as it must be on all hands, that colored children can not be denied the benefit of common schools without a violation of the fourteenth amendment, and that Congress has the power to enforce that amendment by such legislation as in the judgment of Congress and not of the courts is suitable and proper for that purpose, then the argument is at an end, and there is no necessity for prosecuting it one minute further.

The fourteenth amendment declares that no State shall make or enforce any law which shall abridge the franchises of citizens of the United States. Now, sir, what are the franchises of citizens? The Senator from Ohio yesterday entered into a long and labored argument to prove that there were franchises belonging to citizens of the United States as such and to citizens of the State as such; that the United States could enforce and protect those that belonged to citizens of the United States as such, but that the States are left free and untrammeled to enforce or not those that belong to the citizens of the States as States. I do not dissent from his argument. I take the position upon which he places himself. He admits, as the Supreme Court says in the slaughterhouse cases, that Congress has the power to protect all citizens in the enjoyment of their franchises as citizens of the United States. What are those franchises? The right of a citizen of one State to go into another State and there to enjoy all the privileges and immunities of citizens of that State upon equal terms, is one of the highest franchises that belong to any man as a citizen of the United States.

Mr. Merrimon—Just at that point I beg to renew the question I propounded a while ago, and which seems to me directly in point. Has a man by virtue of his right as a citizen of the United States a right to go to a public theatre?

Mr. Morton—I should think he had.

Mr. Merrimon—By virtue of his rights as a citizen of the United States?

Mr. Morton—Yes, sir.

Mr. Merrimon—I do not want to disturb my honorable friend, but suppose this case. Suppose a State should prohibit theatres absolutely, then would a citizen of another State have the right to go there and establish a theatre?

Mr. Morton—A theatre is a place of public amusement, licensed by law, carried on under the regulations according to which theatres or such places are generally conducted, and it is a place to which any decent, respectable, well-dressed person has a right to be admitted; and any discrimination against him on account of his color on the part of the State where that theatre is located is a discrimination which that State is not allowed to make. So in regard to traveling in the stage-coach or upon the cars. If a State is at liberty to exclude a colored man from the cars on account of his color, in traveling, then it has the power to make an odious discrimination because of race, the very thing that the fourteenth amendment intended to stamp out.

Mr. Merrion—Why did it not say so? The constitution says the States shall not make discrimination as to the matter of voting, but does not say so as to anything else. I ask my honorable friend what provision in the constitution of the United States he relies on to sustain his position in reference to theaters?

Mr. Morton—It was well understood in the adoption of the fourteenth amendment that it was not intended to extend to or cover the right of suffrage. My friend, I think, will remember very readily by reference to the next section that the right of suffrage was not included in the fourteenth amendment. I will now read that section to show that that by intendment and by expression was left to the control of the States just as it had been before:

"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 each State."

The original constitution expressly recognized the right and power of the States to control the question of suffrage. This section of the fourteenth amendment recognizes the continuance of that right in the States and provides certain consequences to follow where the States exclude any class from the right of suffrage, that they shall not be counted in the ratio of representation. In other words, it was well understood that the fourteenth amendment was intended to secure equality in civil rights, but not in political rights.

Mr. Merrimon—I ask my friend, then, wherefore the provision in reference to voting, and in reference to voting alone—"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?"

Mr. Morton—I have just stated that the original constitution recognizes expressly the rights of the States to control the question of suffrage. The fourteenth amendment recognizes it and regulates it. Then we come to the fifteenth amendment. That was found to be necessary. I shall read as a more particular answer to the Senator's question from the decision of the Supreme Court in the slaughterhouse cases, directly. The fifteenth amendment does not provide that any colored man shall have the right to vote; it makes no such provision; but it says that no man shall be denied the right of suffrage because of his color. In other words, the States may still prescribe a property qualification on the right of suffrage; the States may say that no man shall have the right to vote unless he has five hundred dollars' worth of property, or that no man shall have the right to vote unless he is twenty-five years of age, or, as they do in Massachusetts, that no man shall have the right to vote unless he can read and write. The States may still say that; but these conditions must be made applicable to men of all colors. There is the point.

What the fifteenth amendment says is that the conditions or restrictions upon suffrage, whatever that may be, must be equally applicable to all races. The State of North Carolina has a right now to provide in her constitution that no man shall have the right to vote unless he has $1000 worth of property, but it can not confine that to the colored race or the white race; it must be equally applicable to all. In other words, whatever may be the conditions of suffrage, either liberal or illiberal, it must not be made to depend upon color, and that is the whole of the fifteenth amendment.

Mr. Merrimon—The point I make, and which my honorable friend does not get up to it seems to me, is this: While there is this constitutional restriction as to the matter of voting, there is no restriction in the constitution touching any other matter whatsoever. For example, there is no restriction that prohibits the States from passing a law providing that colored people shall be educated in one school and white people in another; that women shall go to a theater and that men shall not, or that men shall go and that women shall not, if a State shall in its wisdom see proper to do that. There is no restriction on that power by any provision in the constitution of the United States. That is the point I make; and if the Senator says there is, I shall be obliged to him if he will point out the clanse of the constitution that does it.

Mr. Morton—The constitution must of necessity employ general terms. All constitutions must. They can not specify particular cases. The substance and the body of the fourteenth amendment is that it establishes the equality of the races before the law, and in the language of the Supreme Court prevents any State from making any odious discrimination against any class of people. It was not necessary that the constitution should mention the theatre, or should mention the railroad car, or should mention the common school. It lays down the broad and general proposition that men of all races must be placed upon the same level of equality in the emjoyment of civil rights. The States have all the powers left them that they had before; they may make all the conditions of suffrage, make all the conditions in regard to travel, make all the conditions in regard to the courts that they ever could, with one single limitation, that these conditions shall not depend upon the question of race or color, and that is the whole of it.

Mr. Saulsbury—Will my friend allow me to ask him a question?

Mr. Morton—Yes, sir.

Mr. Saulsbury—If that is the true purport and meaning of the fourteenth amendment to the constitution as to the rights of the colored people in the theatre, in the inn, in public conveyances, and in common schools and everywhere else, I ask the honorable Senator wherefore the necessity for the passage of the bill now under consideration? If the right is secured by the constitution, any law that enforces that right can be tested in the courts and pronounced unconstitutional: and is not, therefore, the bill before the Senate unnecessary?

Mr. Morton—I will answer my friend. Rights are of no avail unless they are enforced. It is of no advantage to me theoretically to have a right which I can not enforce, which I can not secure the enjoyment of, my neighbor to the contrary notwithstanding. Now, a State may pass a law forbidding a colored man to go into the cars—I am supposing this case in answer to my friend's question. That law, if carried into the Supreme Court of the United States, would be held to be unconstitutional in the absence of this act. But that is not a thing perhaps which the party injured could do. That is a very imperfect form of remedy, simply to give the right of appeal from the State courts to the courts of the United States. That was not what was meant by this amendment. The framers of the amendment—and I know something about it—understood that a law passed by a State in contravention of it would be void, and the Supreme Court of the United States would so decide; but they did not intend the victim to that roundabout and costly remedy. They intended to make it a penal offense for any man to violate the rights of another, so that if he did it he should do so at his peril. The State law could not cover him and protect him. The point made by my friend from Delaware is that if the rights of a citizen under the fourteenth amendment are violated he can take an appeal, and the State law authorizing that violation will be declared to be unconstitutional. True; but the perpetrator goes unpunished. He incurs no penalty. He may commit gross fraud, violence and wrong at the time, but he does it with perfect impunity. The crime presents no terrors, no retribution to him. I ask what kind of protection that gives? Oh, no! Rights are protected by penal enactments, by punishing the violator of them. A State makes a law. Under cover of that law one man violates the rights of another. To simply have the law declared void is no vindication of the right. That is no punishment to the wrong-doer, and all we say is that no law made by a State in violation of this amendment shall protect the criminal from punishment. And that is the only efficient and successful enjoyment of these amendments that the people can have. That was precisely what was intended at the time the fourteenth amendment was adopted, and the discussion will show it. And so in regard to the fifteenth amendment, in which I took a part; and so in regard to the thirteenth amendment. It was intended at the time—and the debates will show it—to make a violation of these amendments a personal and criminal offense, and to punish the violator, because that is the only successful vindication of right. the only successful enforcement of the amendments that can be had. I think I have answered my friend from Delaware.

I said that in answer to the question of my friend from North Carolina I would read from the decision of the Supreme Court, and I do this not to inform him, because he is familiar with the decision, but to show the purpose of these amendments by the current history of their adoption. I ask the Secretary to read, commencing at the top of page seventy of sixteen Wallace and reading to the marked passage on page seventy-one. Before the Secretary reads it I will state that the fourteenth amendment was called into existence, as stated by the Supreme Court, by the fact that in 1865 and 1866 some of the State governments organized by President Johnson passed laws making odious discriminations against the rights of the colored people in various respects; and to protect them against these discriminations in regard to occupations, in regard to public conveyances, in regard to various things, the fourteenth amendment was adopted. It is so stated by the Supreme Court. After that had been adopted it was then believed by the same men who had called into existence the fourteenth amendment that this race still were not protected and never could be sufficiently protected until they were invested with the right of suffrage, and that belief called into existence the fifteenth amendment, connected with the other conviction also that they were entitled to the right of suffrage the same as white peopie, and that color should make no possible difference in the existence of this great right. Now I ask the Secretary to read what I have marked.

The Chief Clerk read as follows:

"The process of restoring to their proper relations with the federal government and with the States those which had sided with the rebellion, undertaken under the proclamation of President Johnson in 1865 and before the assembling of Congress, developed the fact that, notwithstanding the formal recognition by those States of the abolition of slavery, the condition of the slave race would, without further protection of the federal government, be almost as bad as it was before. Among the first acts of legislation adopted by several of the States in the legislative bodies which claimed to be in their normal relations with the federal government were laws which imposed upon the colored race onerous disabilities and burdens, and curtailed their rights in the pursuit of life, liberty and property to such an extent that their freedom was of little value, while they had lost the protection which they had received from their former owners from motives both of interest and humanity.

"They were in some States forbidden to appear in the towns in any other character than menial servants. They were required to reside on and cultivate the soil without the right to purchase or own it. They were excluded from many occupations of gain and were not permitted to give testimony in the courts in any case where a white man was a party. It was said that their lives were at the mercy of bad men, either because the laws for their protection were insufficient or were not enforced.

"These circumstances, whatever of falsehood or misconception may have been mingled with their presentation, forced upon the statesmen who had conducted the federal government in safety through the crisis of the rebellion, and who supposed that by the thirteenth article of amendment they had secured the result of their labors, the conviction that something more was necessary in the way of constitutional protection to the unfortunate race who had suffered so much. They accordingly passed through Congress the proposition of the fourteenth amendment, and they declined to treat as restored to their full participation in the government of the United States which had been in insurrection until they ratified that article by a formal vote of their legislative bodies."

Mr. Morton—That shows that the very history and purpose that called the fourteenth amendment into existence was to protect the colored race from all unjust discrimination in the law, of whatsoever kind.

The Senator from Ohio said yesterday that these rights, the right to the school and other rights, belonged to the colored people as citizens of the State, and were not franchises belonging to them as citizens of the United States. It so happens that the Supreme Court has passed upon that very point, and has decided that all the rights guaranteed and secured by the fourteenth amendment belong to the people not as citizens of a State, but as citizens of the United States. That covers, I believe, the last point I intended to refer to. I now ask the Secretary to read, commencing with the last paragraph on page seventy nine of the same volume, down to where I have marked with pencil on page eighty.

The chief clerk read as follows:

"Another privilege of a citizen of the United States is to demand the care and protection of the federal government over his life, liberty and property when on the high seas or within the jurisdiction of a foreign government. Of this there can be no doubt, nor that the right depends upon his character as a citizen of the United States. The right to peaceably assemble and petition for redress of grievances, the privilege of the right of habeas corpus are rights of the citizen guaranteed by the federal constitution. The right to use the navigable waters of the United States, however they may penetrate the territory of the several States, all rights secured to our citizens by treaties with foreign nations are dependent upon citizenship of the United States, and not citizenship of a State. One of these privileges is conferred by the very article under consideration. It is that a citizen of the United States can of his own volition become a citizen of any State of the Union by a bona fide residence therein, with the same rights as other citizens of that State. To these may be added the rights secured by the thirteenth and fifteenth articles of amendment, and by the other clause of the fourteenth next to be considered."

Mr. Morton—I simply refer to that to show that the Supreme Court here expressly declares that the rights secured by the thirteenth, fourteenth and fifteenth amendments belong to citizens of the United States as such, and not simply to them as citizens of a State; and inasmuch as they belong to them as citizens of the United States, and not merely as citizens of a State they are, from the other part of the decision, placed expressly under the protection of Congress.

Mr. Merrimon—May I say a word?

Mr. Morton—Yes, sir.

Mr. Merrimom—What I understand the court to say is this: That if I should go to the State of Indiana I should have exactly the same rights and the same measure of those rights that any citizen of Indiana to-day has; and therefore if the laws of Indiana should provide that the colored children in that State shall be educated in one class of schools and the white children in another class of schools, I would have no right, being a white citizen, to send my children to a colored school; I could only send my children to a white school. Therefore, if the State of Indiana should provide that no public theatre should be kept open there, I should have no right to go there and establish one; I should have to abide by the rights established by the laws of the State of Indiana under the constitution of the United States. That is what I mean, and that is what I say.

Mr. Morton—I suggest to my friend that this is not the precise point. My point was that whatever rights were secured by the thirteenth, fourteenth and fifteenth amendments had been by the court declared to be franchises of citizens of the United States as such, without regard to the States, and they expressly say so. After enumerating the franchises of citizens of the United States, they then say:

"To these may be added the rights secured by the thirteenth and fifteenth articles of amendment and the other clause of the fourteenth next to be considered."

And the one next to be considered is the very one I have been considering.

Mr. Merrimon—What are they?

Mr. Morton—I think I have gone over that whole question. I will make just one remark in conclusion, that in my judgment the very highest franchise that belongs to any citizen of the United States as such is the right to go into any State and there to have the equal enjoyment of every public institution, whether it be the court, whether it be the school, or whether it be the public conveyance, or whether it be any other public institution for pleasure, business, or enjoyment, created or regulated by law.

Mr. Merrimon—Does my friend deny the right of the States to make police regulation?

Mr. Morton—No, sir. The States have the same right they always had to make police regulations, with this single difference, that whatever regulations they may make must operate equally upon men of all colors coming within the same conditions. That is the answer.

LAWS OF THE STATE OF LOUISIANA

PUBLISHED BY AUTHORITY.

No. 155.

AN ACT

To provide for the revision and correction of the lists of registered voters of the State; the appointment of the various officers therefor, and to prescribe the duties, powers and compensation of the same; to prescribe certain duties for the sextons of the cemeteries of New Orleans; to prescribe the penalties for the violation of this law, and to provide for a new registration of the qualified voters of the State.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened, That the Governor, by and with the advice and consent of the Senate, shall, upon the passage of this act, and every two years thereafter, appoint a person to be known as State registrar of voters, who shall hold his office for two years from the date of his appointment.

SEC. 2. Be it further enacted, etc., That the said State registrar of voters, before entering upon the duties of his office, shall take and subscribe to the oath required for State officers, and give bond, with good and solvent security, to the Governor of the State, in the sum of ten thousand dollars, for the faithful performance of the duties of his office.

SEC. 3. Be it further enacted, etc., That the salary of the State registrar of voters shall be three thousand dollars per annum, payable monthly out of the State treasury upon his own warrant. He shall have one chief clerk, who shall, in the absence or disability to perform his duties of the State registrar of voters, exercise all his functions and discharge all his duties for the time being, and shall receive a salary of fifteen hundred dollars per annum, payable monthly out of the State treasury upon his own warrant approved by the State registrar of voters. The State registrar of voters shall have one assistant clerk, who shall receive a compensation of twelve hundred dollars per annum, payable monthly upon his own warrant approved by the State registrar of voters.

SEC. 4. Be it further enacted, etc., That the State registrar of voters shall keep his office open every day in the year, Sundays and legal holidays excepted, until further provided. The State registrar of voters shall, with the approval of the Governor, rent a suitable office in the city of New Orleans, at a rate not to exceed one hundred and fifty dollars per month, payable monthly out of the State treasury, upon the warrant of the State registrar of voters, approved by the Governor. The State registrar of voters shall rent or hire such offices in the city of New Orleans as may be necessary for the registration of the qualified voters of the parish of Orleans, of which he shall give due notice to the Administrator of Public Accounts of the city of New Orleans; all accounts for rents herein provided for shall be made in detail, giving the time occupied and the amount of rent per month, which account shall be certified under oath by the State registrar of voters as true and correct, and the Administrator of Public Accounts of the city of New Orleans, upon presentation of any such account, shall issue his warrant upon the Administrator of Finance, payable out of the first funds that may come into the treasury.

SEC. 5. Be it further enacted, etc., That it shall be the duty of the sexton of each cemetery of the parish of Orleans to deliver, on or before the fifth day of each month, at the office of the State registrar of voters a list of the names, ages and late residences of all males over twenty-one years of age who have been interred in their respective cemeteries during the preceding month, and in the event of any such sexton failing or neglecting so to do he shall be liable to a fine of seventy-five dollars, to be recovered before any court of competent jurisdiction, for the benefit of the Charity Hospital; and it shall be the duty of the State registrar of voters to prosecute any sexton failing to comply with the provisions of this section.

SEC. 6. Be it further enacted, etc., That it shall be the duty of the State registrar of voters to erase from the list of registered voters the names of all persons reported by the sextons of the several cemetaries of the parish of Orleans as deceased, and the names of any persons who shall be proven in the manner hereinafter established to have been fraudulently registered in said parish.

SEC. 7. Be it further enacted, etc., That it shall be the duty of the State registrar of voters to cause to be furnished for each parish, at the expense of the State, all books, blanks, papers, stationery, etc., as may be necessary to enable the supervisors of registration to properly perform their duties in conducting the registration and elections in a proper and uniform manner; all accounts for books, blanks, stationery, etc., so furnished, shall be paid upon presentation of the warrant of the State registrar of voters, approved by the Governor, out of such specific appropriation as may be made therefor, by the State treasurer.

SEC. 8. Be it further enacted, etc., That it shall be the duty of the State registrar of voters to submit to the General Assembly each year, within ten days after the commencement of its session, a full and detailed report of the work of registration for the past year, showing the number registered, the number of native and foreign born, how many sign their names, and such other particulars as may be desirable for the information of the General Assembly, and to this end it shall be the duty of all supervisors and assistant supervisors of registration to make and furnish to the State registrar of voters such reports, returns and statistical information as he may deem necessary and require from them, and they shall not receive any compensation until they shall have complied with the provisions of this section.

SEC. 9. Be it further enacted, etc., That upon the passage of this act the registry books for the parish of Orleans shall be deposited in the office of the State registrar of voters, and the registry books for each of the other parishes in the State shall be deposited in the office of the clerk of the district court of the parish, and said clerk shall deliver the books to the person who may be appointed supervisor of registration for the parish, when so requested; and during the time said registration books shall remain in the custody of said clerk he shall be responsible for their safe keeping, and shall not permit the name of any person to be added to, or erased from, the lists of said registered voters, under a penalty of five hundred dollars for each offense, recoverable before any court of competent jurisdiction, one-half to go to the informer, and the other half to the school fund of the parish.

SEC. 10. Be it further enacted, etc., That the Governor shall, within two months previous to any general election, appoint in each parish of the State except the parish of Orleans, one supervisor of registration, who shall hold his office for one year from the date of his appointment. The clerk of the court shall deliver to such supervisor of registration the books received by him from the last supervisor of registration.

SEC. 11. Be it further enacted, etc., That it shall be the duty of the supervisor of registration of each of the parishes of the State appointed as aforesaid to cause to be registered every qualified elector in their respective parishes without expense to the elector. Said supervisors are hereby authorized and required to go from place to place, besides keeping the necessary offices and to render every facility to the qualified electors, and to take care that all who are qualified to vote shall be registered. All expenses for the rent of registration offices in each parish under the provisions of this section shall be paid by the treasurer of each parish upon the warrant of the supervisor of registration of the parish, and the expenses of transportation within the parish for the supervisor of registration, his clerks, books, stationery, etc, shall be paid by the parish treasurer upon presentation of a specific account, sworn to by the supervisor of registration.

SEC. 12. Be it further enacted, etc., That sixty days previous to any general election the Governor shall appoint one assistant supervisor of registration for each ward in the city of New Orleans, one for the part of the parish of Jefferson on the left bank of the Mississippi, and one for the remaining part of the said parish on the right bank of the Mississippi river. The term of office of such assistant supervisors of registration shall not continue beyond ten days after any general election. Such assistant supervisors shall have generally the same powers and perform the same duties as are herein prescribed for supervisors of registration, and shall perform such other duties as are hereinafter prescribed.

SEC. 13. Be it further enacted, etc., That the officers appointed under this act, before entering upon their respective duties, shall severally make and subscribe an oath before a justice of the peace or some other officer duly authorized to administer oaths or affirmations, that they will perform their duties with fidelity, and will, to the best of their ability, maintain and protect the rights of all qualified electors within their respective election precincts, and will expose all attempts and combinations that may come to their notice to procure the fraudulent registering of persons who are not qualified electors within their respective precincts, or to procure a fraudulent vote to be polled at the succeeding election, and they shall also each take the oath of office and eligibility prescribed for State officers, one copy of said oath or affirmation shall be deposited in the office of the Secretary of State and a duplicate thereof filed in the office of the State registrar of voters; provided, that no supervisor of registration appointed under this act and no clerk of such supervisor of registration shall be eligible for any office at any election when said officers officiate.

SEC. 14. Be it further enacted, etc., That the supervisor of registration for each parish shall open his office on the last Monday in August before each general election. The assistant supervisors of registration in the parishes of Orleans and Jefferson shall open their offices in their respective wards or localities on the last Monday in August before each general election, at such places as the State supervisor of registration may designate; said offices shall be kept open to all persons claiming to be registered or qualified electors until the ninth day before any general election, each supervisor and assistant supervisor of registration shall attend at his office for the purpose of registering qualified voters, from seven o'clock A. M. until one o'clock P. M., and from two o'clock until seven o'clock P. M. each day from the time fixed by law for the opening until the close thereof.

SEC. 15. Be it further enacted, etc., That each supervisor of registration and assistant supervisor of registration shall receive as compensation five dollars per day for each day he shall discharge the duties of his office, from the time he shall open his office until the time he shall complete his statement of election. Each supervisor and assistant supervisor of registration shall make out a specific account for his compensation, sworn to and subscribed by him, to which shall be appended an authenticated copy of his appointment; said account shall be examined and if correct approved by the State registrar of voters and the Governor, and the treasurer of each parish, and in the parish of Orleans the Administrator of Finance shall pay the same in cash upon presentation; provided that no supervisor of registration shall receive any compensation for his services until he has complied with all the provisions of this act.

SEC. 16. Be it further enacted, etc., That each supervisor and assistant supervisor of registration shall have two clerks, who shall each receive three and one-half dollars per day for the time they are actually employed, not to exceed the length of time for which the supervisor or assistant supervisor of registration for the parish or ward may receive pay, to be paid in the same manner as is provided for the payment of supervisors and assistant supervisors of registration by this act.

SEC. 17. Be it further enacted, etc., That any supervisor or assistant supervisor of registration who shall swear to a false account shall be deemed guilty of perjury, and upon conviction thereof shall be subject to all the pains and penalties by law provided for perjury.

SEC. 18. Be it further enacted, etc., That before each and every parish, city, town or ward election, other than the general election, the supervisor of registration, for the parish in which such election shall be held, shall open his office for the purpose of revising the list of registered voters, by adding thereto the names of all qualified electors who may have become such since the last revision of the registration, and by striking therefrom the names of all persons who may have ceased to be qualified electors of such parish; and such registration shall be conducted in the same manner, and subject to the same provisions as are herein laid down for registration before the general election, except as to the time. In the city of New Orleans the offices of registration shall be open fifty days, commencing sixty days before any such election. In each parish, except the parish of Orleans, the offices of registration shall be open, commencing twenty days before such election. All offices of registration shall close nine days before any election. The supervisors of registration in each parish shall give notice by publication to all voters, who desire to be registered to come forward and cause the same to be done, which notice, giving the hour and place of appearing, may be published in a newspaper in the parish, if there be one printed, and shall be posted at as many public places in the parish as is reasonably practicable, and in New Orleans to be continuously published in English in at least two daily newspapers, and in one each in the French and German language. All accounts for such printing shall be paid in the same manner and at the same rates as are provided for the publication of the laws of the State, upon the approval of the State registrar of voters.

SEC. 19. Be it further enacted, etc., That the respective supervisors and assistant supervisors of registration shall each have the power to administer oaths to any person claiming the right to be registered, or in regard to any other matter or thing required to be done or inquired into by any of said officers under this act, and any willful false swearing by any person in relation to any matter, or thing concerning which they shall be interrogated by any of said officers shall be punished as perjury.

SEC. 20. Be it further enacted, etc., That every person of foreign birth claiming a right to be registered shall, in addition to the proof of residence, prove that he has been naturalized, conformably to the laws of the United States and as evidence thereof he shall produce a certificate of naturalization under the seal of the court in which naturalization took place, duly attested by the clerk of said court, in his own proper hand writing, and shall prove by the oath of two qualified electors of the election precinct that he is the person named in the said certificate, and the person to whom it was issued, and shall further answer upon oath to the satisfaction of the supervisor or assistant supervisor of registration before whom the said certificate may be produced, when and where he was born and when and where he obtained the certificate, and from whom; and the said certificate shall not be evidence that the person presenting it is a naturalized citizen unless his answers be consistent with the facts certified and the proof of his identity be satisfactory to the supervisor or assistant supervisor of registration, and upon such proof being made to the satisfaction of the supervisor or assistant supervisor of registration, but not otherwise, he shall register the name of the claimant on the registration book, and shall stamp or write on the said certificate of naturalization the word "registered," with the number and precinct of the ward or parish and the date of registry and add thereto his official signature.

SEC. 21. Be it further enacted, etc., That the supervisor of registration for each parish shall carefully examine the registration books, and if, upon due inquiry and investigation, he shall find the name or names of any person or persons therein not entitled to vote in his parish at the next election, he shall strike the name of every such person therefrom by drawing a line in red ink through the same; that the name of no person shall be stricken from the registration books in his absence, except upon the testimony of at least two respectable citizens, qualified electors of the parish, whose names appear upon the said registration books, to be given under oath or affirmation, that such person is not a resident of the precinct or parish, or is otherwise disqualified by law from voting at said election; and the said supervisor of registration shall also examine and revise the books of registration of his parish or ward of the city of New Orleans, and shall strike therefrom the names of all persons who are not residing in the parish or precinct on the ninth day before the election, and the names remaining on said books of registration, as corrected by the supervisor of registration and assistant supervisor of registration, as aforesaid, shall constitute the registry of citizens qualified to vote in the said parish or ward at the next election.

SEC. 22. Be it further enacted, etc., That the said book of registration shall be the only evidence that persons whose names are found therein have resided for ten days immediately preceding the said election in the said parish or ward.

SEC. 23. Be it further enacted, etc., That the registration of the voters of this State shall be closed nine days previous to any election; and it shall be the duty of the supervior of registration, in every parish in this State, to make out and furnish certified copies, written or printed, of the lists of the registered voters to the commissioners of election of each precinct or polling place, to be used at the election or elections to be held therein, and failure of the supervisor or assistant supervisor of registration to furnish such copies of the list of registered voters before the hour of opening the polls, shall subject such delinquent supervisors or assistant supervisors of registration to a fine of not less than one hundred, nor more than five hundred dollars, to be recovered for the use of the parish in which the failure to perform the duty occurred, to be sued for in the name of the parish; and it shall be the duty of the district attorney pro tempore of such parish to institute any suit, whenever any such delinquency shall be brought to his knowledge by any commissioner of the election, or when it is known to himself.

SEC. 24. Be it further enacted, etc., That the supervisor of registration of each parish shall keep his office, except in the parish of Orleans, at the courthouse of the parish, and may establish such places for the registration of voters other than the courthouse, not less than three or more than twelve, as may be necessary to enable electors to register with as little inconvenience as