RAILROAD TAXATION.

THE GREAT CASE IN THE SUPPEME COURT.

COUNTY OF SAN MATEO, CAL., VS. SOUTHERN PACIFIC RAILROAD COMPANY.

The great railroad tax case now before the Supreme Court of the United States is attracting such wide attention and involves such important questions as to deserve full statement and careful study. Briefly, it is to be settled whether men who form a partnership or corporation lose the right they would have if they continued to do business individually;—and specially whether they can be taxed on their debts as on what they own, while if doing business separately they could not be taxed on their debts. The alleged conflict between the Kearney Constitution of California and the Constitution of the United States is also involved. The whole case is set forth in the able opinion of Judge Field given below. It is on appeal from this decision that the case comes now before the full bench of the Supreme Court in Washington.

ORIGIN OF THE CASE.

The county of San Mateo, Cal., brought action under a state statute to recover State and county taxes claimed to be due from the Southern Pacific Railroad Company. It was agreed that if the first separate defence set up in the company's answer should be held good, judgment final should go for the defendant, otherwise for the plaintiff. The main points in that defence were that all the company's property was assessed, no exemption being made of a mortgage securing indebtedness, that the company had no opportunity to apply for relief and that in general the assessment and taxation were unconstitutional. The case was argued before Justice Field and Judge Sawyer, August 21-29, 1882, and the opinions were read in the Circuit Court at San Francisco on September 25. The Court held that the assessment on which the taxes were levied was invalid and void and that final judgment must go for the company.

FULL TEXT OF JUSTICE FIELD'S OPINION.

By the Court: Field, Circuit Justice.—This action is brought to recover of the Southern Pacific Railroad Company, a corporation formed under the laws of California, certain State and county taxes levied upon its property for the fiscal year of 1881 and 1882, alleged to be due to the plaintiff, with 5 per cent added for their non-payment, and interest. It was commenced in one of the Superior courts of the State, and, on application of the defendant, was removed to this Court.

The railroad company, besides a general denial of the allegations of the complaint, sets up as a special answer to the action that in the assessment of its property, according to which the taxes claimed were levied, an unlawful and unjust discrimination was made between its property and the property of individuals to its disadvantage, subjecting it to an unequal share of the public burdens, and that it was not afforded an opportunity of being heard respecting the assessment, and that such discrimination was made and proceeding had under the provisions of the Constitution of California, adopted in 1879, which clause that respect are in conflict with the fourteenth amendment of the Constitution of the United States.

By the Constitution of California, all property in the State, not exempt under the laws of the United States, is, with certain exceptions, to be taxed in proportion to its value, to be ascertained as prescribed by law; but in the ascertainment of its value as a basis for taxation, a distinction is made between the property owned by individuals and that owned by railroad corporations. By the twelfth article, "a mortgage, deed of trust, or other obligation by which a debt is secured, is treated, for the purposes of assessment and taxation, as an interest in the property affected thereby," and, "except as to railroad and other quasi public corporations," the value of the property affected, less the value of the security, is to be assessed and taxed to its owner, and the value of the security is to be assessed and taxed to its holder (Sec. 4.) But by the same article "the franchise, roadway, roadbed, rails and rolling-stock of all railroads operated in more than one county" are to be assessed at their actual value, and apportioned to the counties, cities and districts in which the roads are located in proportion to the number of miles of railway laid therein. No deduction from this value is allowed for any mortgages on the property.

By the Constitution there is also a different system of assessment provided for "the franchise, roadway, roadbed, rails and rolling-stock" of railroads operated in more than one county from that provided for the assessment of other property. The assessment of other property is to be made in the county, city or district in which it is situated in the manner prescribed by law; and the supervisors of each county constitute a Board of Equalization of the taxable property of the county, and must act upon prescribed rules of notice to its owners. A State Board of Equalization is also created by the Constitution to equalize the valuation of the property of the several counties, so that equality may be preserved between the taxpayers of the different localities, and its action in this respect must likewise be upon prescribed rules of notice.

The assessment of the franchise, roadway, road-bed, rails and rolling-stock of railroads operated in more than one county in the State is to be made by this State Board. And in making it, the Board is not required to give any notice to the owners, nor is any provision made for affording them an opportunity to be heard respecting the valuation of their property. The tenth section of the article which confers this power of assessment has been held by the supreme Court of the State to be self-executing, requiring no legislation for its enforcement.

The defendant, as already stated, is a corporation formed under the laws of the State, and operates a railroad through several counties. The entire length of its road in the State is a little over 711 miles, of which twenty-five miles and one-tenth of a mile pass through the county of San Mateo. Its principal place of business is at San Francisco. Its stockholders are and always have been citizens of the United States, some of whom are residents of this State and some of other States. Previously to January 1, 1881, it was indebted to different citizens of the United States, many of them residents of this state, in large sums advanced to construct and equip the road; and to secure this indebtedness it executed, prior to that date, a mortgage upon its road, its franchise and its rolling-stock and appurtenances, and also upon a large number of tracts of land situated in different counties. The indebtedness secured exceeds $3,000 a mile of the road, no part of which, except the accruing interest, has been paid; the whole remains a valid and subsisting obligation of the company.

In the fiscal year of 1881 and 1882 the State Board of Equalization assessed the franchise, roadway, road-bed, rails and rolling-stock of the defendant at $11,739,915—that is, at the rate of $16,509 per mile—and apportioned to the county of San Mateo, $414,150. Upon the amount thus apportioned the taxes were levied, for which the present action is brought. In the assessment no deduction was allowed for the mortgage, but the property was assessed as its entire value independently of the mortgage. Nor was any notice given to the company by the Board of its action, nor was any opportunity allowed the company to be heard respecting the assessment. These facts stand admitted by the demurrer, and the validity of the defence rests upon the application of the law to them.

THE CONTENTION.

The railroad company contends that the taxes are invalid and void on two grounds: 1st, because the assessment, according to which they were levied, was made in pursuance of the discriminating provisions of the State Constitution, in the enforcement of which the company was not allowed any deduction from the valuation of its property for the mortgage thereon, and was thus subjected to an unjust proportion of the public burdens, and denied the equal protection of the laws guaranteed by the fourteenth amendment of the Federal Constitution; and, 2d, because the assessment was made in pursuance of provisions of the State Constitution, which gave no notice to the company, nor afforded it any opportunity to be heard respecting the value of the property, or for the correction of any errors of the Board, thus depriving it of its property without due process of law guaranteed by that amendment.

The plaintiff on the other hand contends:

1st. That the power of taxation possessed by the State is unlimited except by the Constitution of the United States, and that its exercise cannot be assailed in a Federal Court either for the hardship or injustice of the tax levied;

2d. That the classification of property for taxation, and the apportionment of the taxes according to such classification, are not forbidden by the Constitution of the United States; and that within such classification the property of the railroad company and the apportionment of taxes to it are to be placed;

3d. That the fourteenth amendment of the Constitution of the United States was adopted to protect the newly made citizens of the African race in their freedom, and should not be extended beyond that purpose;

4th. That corporations are not persons within the meaning of that amendment;

5th. That the statute fixing the sessions of the State Board of Equalization and requiring a statement in writing from the defendant of the amount and value of its property, afforded all the notice and hearing essential to the validity of the assessment made; and

6th. That the provisions of article 13 of the Constitution as to the taxation of railroad property are to be treated as conditions upon the continued existence of railroad corporations.

We do not state the positions of the several counsel, who argued the case, in their precise language, for they were presented in various forms, but we give their substance and purport.

When corporations sue in the tribunals of the Nation they are entitled to have the same justice meted out to them which is meted to the humblest citizen. There cannot be one law for them and another law for others.

The questions thus presented for our determination are of the greatest magnitude and importance. The answer to them concerns not merely the railroad corporations of this State, but all corporations, other than municipal, within the United States. It is of the highest interest to them all to know whether their property is subject to the same rules of assessment and taxation to which the property of individuals is subject, or whether it can be separated and distinguished from that of individuals and made liable to such different burdens in the way of taxation as the State may choose to impose. The questions have been argued with great ability and learning by distinguished counsel on both sides, and they have received from the Court the most patient and thoughtful examination. Indeed, their examination has been accompanied with a painful anxiety to reach a right conclusion, aware as the Court is of the opinion prevailing throughout the community—that the railroad corporations of the State, by means of their great wealth and the numbers in their employ, have become so powerful as to be disturbing influences in the administration of the laws; an opinion which will be materially strengthened by a decision temporarily relieving any one of them from its just proportion of the public burdens. That consideration, however, cannot be allowed to affect the judgment of the Court. Whatever acts may be imputed, justly or unjustly, to the corporations, they are entitled, when they enter the tribunals of the Nation, to have the same justice meted out to them which is meted out to the humblest citizen. There cannot be one law for them and another law for others.

The fourteenth amendment of the Constitution, in declaring that no State shall deny to any person within its jurisdiction the equal protection of the laws, creates a limitation upon the exercise of all the powers of the State which can touch the individual or his property, including among them that of taxation.

It is undoubtedly true that the power of taxation possessed by the State may be exercised upon any subject within her jurisdiction, and to any extent, not prohibited by the Constitution of the United States. As stated by the Supreme Court, "it may touch property in every shape, in its natural condition, in its manufactured form, and in its various transactions. And the amount of the taxation may be determined by the value of the property, or its use, or its capacity, or its productiveness. It may touch business in the almost infinite forms in which it is conducted in professions, in commerce, in manufactures, and in transportation. Unless restrained by provisions of the Federal Constitution, the power of the State as to the mode, form and extent of taxation is unlimited, where the subjects to which it applies are within her jurisdiction." (state tax on foreign-held bonds, 15 Wall, 319.)

It is also undoubtedly true that the hardship and injustice of a tax levied by the State, considered with reference to its amount, are not subjects of Federal cognizance. Whether a tax upon property subject to taxation be 1 per cent of its value or 10 per cent or 20 or more, is a mere matter of State discretion—a question of policy and not of power. So we often find in the reports language to the effect that the State's power of taxation is without limitation—language which may be correct when applied to the special facts of the cases in which it is used, but which should always be read with a reservation that the exercise of the power does not conflict with any of the inhibitions of the Federal Constitution.

TAXING POWER OF THE STATES.

There are in the very nature of the Federal Government and the powers with which it is clothed, many prohibitions upon the taxing power of the States. Within the sphere of its action the Government is supreme, and no impediment to the free and full exercise of its powers is permissible. The State cannot, therefore, place any restrictions upon the agencies of the Federal Government; it might otherwise embarrass and even defeat the operations of that Government. It was long ago said by Chief Justice Marshall that the power to tax involves the power to destroy; and that there would be a manifest repugnance in allowing one Government to control the constitutional measures of another Government in respect to which the latter is declared to be supreme. When, therefore, Congress had created a bank of the United States as an agency in the management of the finances of the Government, it was held that the States were inhibited from taxing the institution. "If the States," said that great Judge, "may tax one instrument employed by the Government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax the powers of the Custom House; they may tax judicial process; they may tax all the means employed by the Government to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their Government dependent upon the States." (McCulloch vs. Maryland, 4 Wheat., 432.)

For like reasons the public securities of the United States are exempt from taxation by the States except so far as such taxation is permitted by Congress. A tax imposed by the city of Charleston upon all personal estate in its limits, including among other things stock of the United States, was therefore adjudged to be invalid. The Court said that the tax was upon a contract between the Government and individuals, and therefore operates directly upon the power to borrow money on the credit of the United States; that if the right to impose it existed in the States it was a right which in its nature acknowledged no limits and might be exercised to an extent which would seriously embarrass the Government. Its existence was therefore held inconsistent with the supremacy of the Government in the exercise of its granted powers. (Weston vs. Charleston, 2 Peters, 449.)

Other illustrations might be given of implied inhibitions of the Federal Constitution to taxation by the States. The powers of the General Government cannot be interfered with, or their exercise embarrassed, by any respect by such taxation; as has often been held with respect to attempted taxation on goods imported while retaining the character of imports in unbroken packages, and on goods in transit from one State to another. The power to regulate commerce, foreign and interstate, cannot be thus trammeled by State action. (Brown vs. Maryland, 12 Wheat., 434; Welton vs. Missouri, 10 Otto, 275; Weller vs. Virginia, 13 Otto, 344.)

So with the express prohibitions upon the States contained in the Federal Constitution; they apply equally to taxation and to any other action of the State. They cannot be evaded under the plea that the State possesses the unrestricted power to tax. Where, for example, a State has stipulated for a valid consideration to exempt certain property from taxation, such have been repeatedly held that she can not tax; the stipulation cannot subsequently be withdrawn and the property subjected to taxation. The provision which secures the inviolability of contracts against State legislation stands as a perpetual interdict against the imposition of the charge. It is to no purpose in such case to speak of the power of taxation as an attribute of State sovereignty, which cannot be surrendered; that sovereignty, wherever its extent, must be exerted in subordination to the prohibition of the Constitution, which is the supreme law of the land. Many of the attributes of sovereignty, which the States would possess if independent political communities, have been in like manner surrendered to the Federal Government, such as its power to declare war, to make peace, to enter into treaties of alliance, and to regulate commerce with foreign nations. The question in all cases presented to a Federal Court, where complaint is made of a tax levied by the States, is whether there is any inhibition, express or implied, in the Constitution of the United States, upon the imposition of the tax. If **there be, it is the duty of the Court** to enforce the inhibition, it matters not whom the decision may affect nor how great and irresponsible the power of the State may be independently of such prohibition.

The fourteenth amendment of the Constitution, in declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws, creates a limitation upon the exercise of all the powers of the State which can touch the individual or his property, including among them that of taxation. Whatever the State may do, it cannot deprive any one within its jurisdiction of the equal protection of the laws. And by equal protection of the laws is meant equal security under them to every one on similar terms, in his life, his liberty, his property, and in the pursuit of happiness. It implies not only accessibility by him, on the same terms with others, to the courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also an exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances.

Equal protection is impossible under a system of laws where arbitrary and unequal taxation is permissible. The fourteenth amendment forbids unequal exactions in every form and under any pretence, and, of course, forbids unequal taxation, or it is in that form that oppressive burdens are usually laid.

Unequal exactions in every form, or under any pretence, are absolutely forbidden; and of course unequal taxation, for it is in that form that oppressive burdens are usually laid. It is not possible to conceive of equal protection under any system of laws where arbitrary and unequal taxation is permissible; where different persons may be taxed on their property of the same kind, similarly situated, at different rates; where, for instance, one may be taxed at 1 per cent on the value of his property, another at 2 or 5 per cent, or where one may be thus taxed according to his color, because he is white, or black, or brown, or yellow, or according to any other rule than that of a fixed rate proportionate to the value of his property.

In the Constitution of several States a provision is found requiring "equality and uniformity" in the taxation of property, and this is held to mean that taxes must be levied according to some fixed rate or rule of apportionment, so that all persons shall pay the like amount upon similar kinds of property of the same value. As was justly said by one of the judges of the Supreme Court of Michigan: "To compel individuals to contribute money or property to the use of the public without reference to any common ratio, and without requiring the sum paid by one piece or kind of property, or by one person, to bear any relation whatever to that paid by another, is to levy a forced contribution, not a tax, duty or deposit, within the sense of those terms as applied to the exercise of powers by any enlightened or responsible government." (Woodbridge vs. the City of Detroit, 8 Mich., 301; Burroughs on Taxation, chap. 5.) Absolute equality and uniformity may not be attainable in practice, but an approximation to them is possible, and any plain departure from the rule will defeat the tax.

OPERATION OF THE FOURTEENTH AMENDMENT.

What is called for under a constitutional provision requiring equality and uniformity in the taxation of property must be equally called for by the fourteenth amendment. The forced contribution from one which would follow taxation of his property without reference to a common ratio would be inconsistent with the equal protection which the amendment requires the State to extend to every person within its jurisdiction.

The application of the amendment to taxation has been recognized by the legislation of Congress. Soon after the adoption of the Constitutional amendment abolishing slavery and involuntary servitude, measures were proposed to give practical freedom to the emancipated race, which resulted in the passage of the Civil Rights act. This act gave citizenship to persons of that race, and then declared that citizens of the United States of every race and color, without regard to any previous condition of slavery, or involuntary servitude, should have the same right in every State and Territory to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, own and convey real and personal property and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and should be subject to like punishments, pains and penalties and to none other. After the adoption of the fourteenth amendment, Congress re-enacted this act, and to the clause, that all persons within the jurisdiction of the United States should enjoy the same rights as white citizens and be subject only to like punishments, pains and penalties, it added, and subject only to like "taxes, licenses and exactions of every kind and to no other." (R. S. Sec. 1977.)

The adjudications as to the meaning of the rule of equality and uniformity to be observed in taxation may, therefore, be properly referred to in construing the requirement of the fourteenth amendment where it is invoked with respect to burdens imposed by taxation. In Lexington vs. McQuillan's Heirs, the Supreme Court of Kentucky said that the Legislature of the State had no constitutional authority to exact from one citizen the entire revenue of the commonwealth, and that though the distinction between constitutional taxation and the taking of private property for public use by legislation might not be definable with perfect precision it was clearly of the opinion that whenever the property of a citizen was taken from him by the sovereign will and appropriated without his consent to the benefit of the public, the exaction could not be considered a tax unless similar contributions were made by the public itself, or rather exacted by the same public will from such constituent members of the same community as are of the same kind of property; and that though there may be a discrimination on the subjects of taxation, still persons of the same class, and property of the same kind, must generally be subjected alike to the same common burden. (9 Dana, 513.)

In State vs. Township of Readington, the Supreme Court of New-Jersey said: "Taxation operates upon a community, or class in a community, according to some rule of apportionment. When the amount levied upon individuals is determined without regard to the amount or value exacted from any other individual or classes of individuals, the power exercised is not that of taxation, but of eminent domain. A tax upon the persons or property of A. B. and C. individually, whether designated by name or in any other way, which is in excess of an equal apportionment among the persons, or property of the class of persons, or kind of property subject to the taxation, is, to the extent of such excess, the taking of private property for a public use without compensation. The process is one of confiscation, and not of taxation." (36 N. J. Law, 70.)

Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation.

As the foundation of all just and equal taxation is the assessment of the property taxed, that is the ascertainment of its value, in order that the tax may be estimated according to some ratio to the value, uniformity of taxation necessarily requires uniformity in the mode of assessment, as well as in the rate of taxation, or to quote the language of the Supreme Court of Ohio expressing the same thought: "Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation." (Exchange Bank of Columbus vs. Hines, 3 Ohio St. Rep. 1.)

The scheme of taxation prescribed by the Constitution of California for the property of railroad companies exhibits a flagrant departure from the rule of equality and uniformity so essential to equality in the distribution of the burdens of government.

If we now look at the scheme of taxation prescribed by the Constitution of California for the property of railroad companies, we shall perceive that it exhibits a flagrant departure from the rule of equality and uniformity so essential to equality in the distribution of the burdens of government. Whenever an individual holds property encumbered with a mortgage he is assessed at its value, after deducting from it the amount of the mortgage. If a railroad company holds property, subject to a mortgage, it is assessed at its full value, without any deduction for the mortgage; that is, as though the property was unencumbered. The inequality and discriminating character of the procedure will be apparent by an illustration given by counsel. Suppose a private person owns a farm which is valued at $100,000, and is encumbered with a mortgage amounting to $80,000; he is, in that case, assessed at $20,000; if the rate of taxation is 2 per cent he would pay $400 taxes. If a railroad corporation owns an adjoining tract worth $100,000, which is also encumbered by a mortgage for $80,000, it would be assessed for $100,000, and be required to pay $2,000 taxes, or five times as much as the private person. There is here discrimination too palpable and gross to be questioned, and such is the nature of the discrimination made against the Southern Pacific Railroad Company in the taxation of its property. Nothing can be clearer than that the rule of equality and uniformity is thus entirely disregarded.

The case of People vs. Weaver (10 Otto, 539), decided by the Supreme Court, respecting the taxation of shares of the National banks, may be cited in this connection. Without the permission of Congress, the shares of these banks could not be taxed by the States. Congress gave the permission on condition that the taxation should not be at a greater rate than is assessed on other moneyed capital in the hands of individual citizens of the State, and that the shares owned by non-residents of the State should be taxed at the place where the bank is located. (R. S. Sec. 5,219.) In the case cited, the Court held, with regard to such taxation, 1st, that the prohibition imposed by Congress against discrimination had reference to the entire process of assessment, and included the valuation of the shares as well as the rate of percentage charged; 2d, that a statute of New-York, which established a mode of assessment by which such shares were valued higher in proportion to their real value than other moneyed capital, was in conflict with the prohibition, although the same percentage on such value was levied; and, 3d, that a statute which permitted a party to deduct his debts from the valuation of his personal property, except so much as consisted in these shares, taxed the shares at a greater rate than other moneyed capital. The assessment laws held to be a discrimination against shares of National Banks in the taxation system of New-York is shorter to what we hold to be a discrimination against railroad corporations in the taxation system of California.

In the case of the National Bank vs. Britton, decided at the last term of the Supreme Court, the doctrine of the Weaver case was affirmed; and it was held that the taxation of shares in the National Banks under the revenue laws of Indiana without permitting the shareholder to deduct from their assessed value the amount of his bona fide indebtedness, which was allowed in the case of other investments of moneyed capital, was a discrimination against the act of Congress, and illegal.

CLASSIFICATION NO ANSWER.

It is no answer to this discrimination to say that property in the State may be divided into classes, and different rates apportioned to different classes. Undoubtedly property may be classified for purposes of taxation. Real property may be subjected to one rate of taxation; personal property to another and a higher rate. Property in particular districts may be taxed for local purposes, whilst property elsewhere may be exempt. Taxation on business in the form of licenses may also vary according to the calling or occupation licensed, and the extent of business transacted; but even then there must be uniformity of charges with respect to the same calling or occupation in the same locality. It is, however, only with the taxation of property that we are concerned in this case, and the whole object of classifying property is that each class may be subjected to a special rate of taxation. There is no difference in the rate prescribed by the law of the State for the property of railroad corporations and the rate prescribed for the property of individuals. There is only one rate for all property. The fact is, therefore, in case presented for the application of the doctrine of classification. The discrimination complained of arises from the different rule adopted in ascertaining the value of the property of railroad corporations as a basis for taxation, not from any different rate of taxation when the value is established. In all taxes upon property, whatever its form or nature, the property is taken as representing a pecuniary value, as standing for so much money invested. The tax is the rate per centum of this pecuniary value. The value being ascertained the law fixes the rate. The ground of complaint here is that the law requires a higher value to be placed upon the defendant's property than upon the property of individuals similarly encumbered, or rather requires the assessor of the defendant's property in estimating its value to disregard and set aside certain elements materially affecting its amount, which are to be considered in estimating the value of the property of individuals. It is not classifying property to make this distinction in determining its value. It is not classifying property to provide that the property of certain parties which has a mortgage upon it shall be assessed at its value after deducting the mortgage, and that the property of other parties, also having a mortgage upon it, shall be taxed at its value without any deduction. That is not providing for a different rate of taxation for different kinds of property, but for unequal taxation according to the character of the owner.

Private corporations are persons within the meaning of the first Section of the fourteenth Amendment, and are entitled, so far as their property is concerned, to the equal protection of the laws.

In the defendant, being a corporation, a person within the meaning of the fourteenth amendment, so as to be entitled when respect to property, to the equal protection of the laws. For the argument on behalf of the plaintiff and the Attorney-General of the State, take the negative of this question, and assert with much earnestness that the amendment applies, and was intended to apply, only to the newly made citizens of the African race, and should be limited to their protection.

It is undoubtedly true that the amendment had its origin in a purpose to secure to these newly made citizens the full enjoyment of their freedom. When the amendment abolishing slavery and involuntary servitude was adopted, there were men in Congress who believed that it was intended to make every one born within the United States as freeman, and as such to give to him the right to pursue his happiness in the ordinary callings of life, subject to no restraint except such as affect others, and to enjoy equally with them the fruits of his labor. They therefore proposed the Civil Rights bill, and secured its passage, the substantial provisions of which we have stated. Notwithstanding this expression of the National Legislature as to the purpose of the Amendment, the newly made citizens were subjected in several of the States to various disabilities and burdens, and curtailed of their rights to such an extent that their freedom became of little value. To quote from the opinion of Mr. Justice Miller, speaking for the Court in the Slaughter House cases, "they were in some States forbidden to appear in the towns in any other character than as 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 hire, 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 inefficient or were not enforced." (2 Wall, 70.) There was probably much exaggeration in what was reported of their treatment, but the statements made produced a profound impression upon Congress. The validity of the Civil Rights Act was also called in question, and in some instances was adjudged by State Courts to be invalid. Reports also prevailed that loyal men of the South were treated with exceptional harshness and that men from the North seeking residence there were met with marked hostility and aversion. It is not surprising that such was the fact, for notwithstanding the fiery courage and martial spirit of her people, their battalions had gone down before the forces of the Union. With the sound of the tread of the victorious army still ringing in their ears; with the desolations of war all around them, and the sudden rupture of their social relations by the emancipation of their former slaves, it would have been a miracle if bitterness toward their recent foes had not lingered in their hearts, and been exhibited in their conduct. A proud and brave people feel more keenly than others the sting of defeat. Undoubtedly much misconception and falsehood mingled with the statements made respecting their action; nevertheless, they led to the introduction into Congress of the proposition for the Fourteenth Amendment. The discussion which followed indicated that the purpose of its framers and advocates was to obviate objections to legislation similar to that contained in the first section of the Civil Rights Act, and to prevent for the future the possibility of any discriminating and hostile State legislation against anyone.

Mr. Stephens, of the House of Representatives, in presenting the proposition, after stating the provisions of the first section, said: "I can hardly believe that any person can be found who will not admit that every one of these provisions is just. They are all asserted in some form or other in our Declaration or organic law. But the Constitution limits only the action of Congress, and is not a limitation on the States. This Amendment supplies that defect, and allows Congress to correct the unjust legislation of the States so far, *that the law which operates upon one man shall operate equally upon all.*" Mr. Garfield, then also a member of the House, in reply to an objection that the first section of the Amendment was in substance the Civil Rights bill, which Congress had passed over the President's veto, and that by voting to so amend the Constitution as to put the bill into it, was to admit that the bill was unconstitutional, said: "We propose to lift that great and good law above the reach of political strife, beyond the reach of plots and machinations of any party, and fix it in the serene sky, in the eternal firmament of the Constitution, where no storm of passion can shake it and no cloud can obscure it. For this reason, and not because I believe the Civil Rights bill unconstitutional, I am glad to see that first section here."

APPLICATION OF THE AMENDMENT.

Though the occasion of the amendment was the supposed denial of rights in some States to newly made citizens of the African race, and the supposed hostility to Union men, the generality of the language used extends the protection of its provisions to persons of every race and condition against discriminating and hostile action of any kind by the State. The effect of the Amendment, in preserving free institutions and preventing harsh and oppressive legislation by any State, can hardly be overstated. When burdens are placed upon particular classes or individuals, while the majority of the people are exempted, little heed may be paid to the complaints of those affected. Oppression thus becomes possible and lasting. But a burdensome law operating equally upon all will soon create a movement for its repeal. With the Amendment enforced a bad or an oppressive State law will not long be left on any statute book.

The argument that a limitation must be given to the scope of this amendment because of the circumstances of its origin is without force. Seeing how possible it was for the States to oppress without relief from the Federal Government, the framers of the Amendment placed in the Constitution an interdict which makes oppression by them of any kind under the form of law impossible.

The amendment prohibiting slavery and involuntary servitude, except as a punishment for crime, had its origin in the previous existence of African slavery. But the generality of its language makes its prohibition apply to slavery of white men as well as that of black men; it applies also to serfage, vassalage, villenage, peonage and every other form of compulsory labor to minister to the pleasure, caprice, vanity or power of others.

The provision of the Constitution prohibiting legislation by States impairing the obligation of contracts had its origin in the existence of tender laws, appraisement laws, stay laws and installment laws passed by the States soon after the Revolution, when their finances were embarrassed and their people were overwhelmed with debts. These laws, according to Story, prostrated all private credit and all private morals, and led to the adoption of the prohibition mentioned, by which such legislation was forever prevented. But in its construction the provision has not been limited to mere commercial contracts. In the Dartmouth College case it was urged that the charter of the college was not a contract contemplated by the Constitution, because no valuable consideration passed to the King as an equivalent for the grant, and that contracts merely voluntary were not within the prohibition. But Chief-Justice Marshall, after showing that the charter was a contract upon a valuable consideration, said: "It is more than possible that the preservation of rights of this description was not particularly in view of the framers of the Constitution when the clause under consideration was introduced into that instrument. It is probable that interferences of more frequent recurrence, to which the temptation was stronger, and of which the mischief was more extensive, constituted the great motive for imposing this restriction on the State Legislatures. But although a particular and a rare case may not in itself be of sufficient magnitude to induce a rule, yet it must be governed by the rule when established, unless some plain and strong reason for excluding it can be given"; and again: "The case being within the words of the rule must be within its operation likewise, unless there be something in the literal construction so obviously absurd or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the Constitution in making it an exception." (4 Wheat. 644.)

Following that authority, we cannot adopt the narrow view for which counsel contend, and limit the application of the prohibition of the Fourteenth Amendment to legislation touching members of the enfranchised race. It has a much broader operation. It does not, indeed, place any limit upon the subjects in reference to which the States may legislate. It does not interfere with their police power. Upon every matter upon which, previously to its adoption, they could act, they may still act. They can legislate now, as they always could, to promote the health, good order and peace of the community, to develop their resources, increase their industries and advance their prosperity; but it does require that in all such legislation, hostile and partial discrimination against any class or person shall be avoided: that the States shall impose no greater burdens upon anyone than upon the rest of the community under like circumstances, nor deprive anyone of rights which others similarly situated are allowed to enjoy. It forbids the State to lay its hand more heavily upon one than upon another, under like conditions. It stands in the Constitution as a perpetual shield against all unequal and partial legislation by the States and the injustice which follows from it, whether directed against the most humble or the most powerful; against the despised laborer from China, or the proud master of millions.

RESTRAINTS ON THE GENERAL GOVERNMENT AND ON THE STATES.

The adoption of the Federal Constitution met, as all know, with most determined opposition from a large class, who believed that the exercise of the powers delegated to the General Government would cripple and embarrass the administration of local affairs by the States. The dread of centralization disturbed the minds of some of the patriotic and greatest statesmen of the day. This feeling continued after the adoption of the Constitution, and finally led to the first ten amendments. The popularity of the new government was spared; the States afforded security to the people, and were the special objects of attachment. They enjoyed under the state laws protection in their property, in their homes and in their business. They felt a natural distrust of a power wielded by officers not selected by themselves. They apprehended that the rights which they enjoyed might be encroached upon if not destroyed. So the amendments proposed contained limitations upon the powers of Congress; many of which were, indeed, unnecessary but were adopted in order to prevent "misconception or abuse of the powers of the General Government." They declared, among other things, that certain liberties should not be abridged, such as the free exercise of religion, the freedom of speech and of the press; that certain rights should not be taken away, such as the right of the people to be secure, in their persons, houses, papers and effects, against unreasonable searches and seizures; that certain securities against wanton prosecution for public offences should not be withdrawn, such as that no person should be held to answer for a felony, except upon the presentment or an indictment of a grand jury; that in all prosecutions, the accused should have the benefit of a speedy trial; should be informed of the nature and cause of the accusation; should be confronted with the witnesses against him; should have compulsory process for obtaining witnesses, and the assistance of counsel; that the enumeration in the Constitution of certain rights should not be construed to deny or disparage others retained by the people; and that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, were reserved to the States, respectively, or to the people. These were all restraints upon the General Government. Had the population of the United States continued as sparse as when the Constitution was formed and the means of more rapid intercourse between the States had not been invented, it is possible that further amendments to the Constitution would not have been demanded. But the immense development of the resources of the country, the great increase of population, the constant intercourse between the States by steamboat, railway and telegraph changed the business and commercial relations of the States to each other and led the people of one portion to seek a closer union and to desire a greater authority to be exercised by the central Government, whilst the peculiar institutions of one other section and the different industries they developed led its people to desire to limit rather than to strengthen the central authority. Differences of opinion in matters of internal policy and the estrangement engendered by controversies growing out of the existence of slavery in some of the States ultimately culminated in civil war, when then saw that danger was to be apprehended in a direction opposite to that which led to the original amendments. Restraints upon the power and action of the States were therefore suggested, and to impose them and to abolish slavery, the great cause of the civil conflict, the new amendments—the Thirteenth, Fourteenth and Fifteenth—were adopted. "While, therefore," to quote the language of the admirable writer and eminent jurist, Mr. Justice Cooley, "the first amendments were for the purpose of keeping the central power within certain limits, at a time when the tendency to centralization was alarming to many persons, the last were adopted to impose new restraints on State sovereignty, at a time when State powers had nearly succeeded in destroying the National sovereignty. Of these amendments, it may be safely affirmed, that the first ten took from the Union no power it ought ever to have exercised, and that the last three required of the States the surrender of no power which any free government should ever employ." It would be, therefore, to defeat the great purpose of the late amendments, if to any of them we should give the narrow construction for which counsel contend.

Private Corporations formed under the General Laws of California consist of aggregations of individuals. To deny to such corporations the equal protection of the law is to deny the protection to the natural persons composing such corporations.

Private corporations are its true artificial persons, but with the exception of a sole corporation, with which we are not concerned, they consist of aggregations of individuals united for some legitimate business. In this State they are formed under general laws, and the Civil Code provides that they "may be formed for any purpose for which individuals may lawfully associate themselves." Any five or more persons may by voluntary association form themselves into a corporation. And as a matter of fact nearly all enterprises in this State requiring for their execution an expenditure of large capital are undertaken by corporations. They engage in commerce, they build and sail ships; they cover our navigable streams with steamers; they construct houses; they bring the products of earth and sea to market; they grade our streets; dig our sewers; and light our buildings; they open and work mines; they carry water into our cities; they build railroads and cross mountains and deserts with them; they erect churches, colleges, lyceums and theatres; they set up manufactories and keep the spindle and shuttle in motion; they establish banks for savings; they insure against accident on land and sea; they give policies on life; they make the money exchanges of the world; they publish newspapers and books, and send news by lightning across the continent and under the ocean. Indeed there is nothing which is lawful to be done to feed and clothe our people, to beautify and adorn their dwellings, to relieve the sick, to help the needy, and to enrich and ennoble humanity, which is not to a great extent done through the instrumentalities of corporations. There are over five hundred corporations in this State; there are fifty thousand in the United States, and the aggregate value of their property is several thousand millions. It would be a most singular result, if a constitutional provision intended for the protection of every person against partial and discriminating legislation by the States should cease to exert such protection the moment the person becomes a member of a corporation. We cannot accept any such conclusion. On the contrary, we think that it is well established by numerous adjudications of the Supreme Court of the United States and of the several States, that whenever a provision of the Constitution, or of a law, guarantees to persons the enjoyment of property, or affords to them means for its protection, or prohibits legislation affecting it, the benefits of the provision extend to corporations, and that the Courts will always look beyond the name of the artificial being to the individuals whom it represents.

ILLUSTRATIONS OF THE DOCTRINE.

The case of the Society for the Propagation of the Gospel in Foreign Parts vs. the Town of New-Haven, reported in the 8th of Wheaton, furnishes an apt illustration of this doctrine. The Virginia article of the treaty of peace with Great Britain of 1783 provided that there should be "no future confiscations made or any prosecutions commenced against any person or persons for or by reason of the part which he or they may have taken in the present war, and that no person shall on that account suffer any future loss or damage either in his person, liberty or property." An English corporation claimed the benefit of this article with reference to certain lands in Vermont granted to it before the Revolution, and which the Legislature of that State had undertaken to give to the town in which they were situated. It was contended that the treaty only applied to natural persons; that it did not embrace corporations, because they were not persons who could take part in the war, or could be considered British subjects, but the position was held to be untenable. The Court, speaking through Mr. Justice Washington, said that the argument proceeded upon an incorrect view of the subject, and referred to the case of the United States vs. Devaux (5 Cranch, 86) to show that the Court, when necessary, will look beyond the name of a corporation to reach and protect those whom it represents.

The Constitution, in defining the judicial power of the United States, declares that it shall extend to "controversies between citizens of different States," and in the case referred to by Mr Justice Washington the question arose whether a corporation composed of citizens of one State could sue in the Circuit Court of the United States a citizen of another State; and it was held that it could. In deciding the question, the Court, speaking through Chief Justice Marshall, said: "However true the fact may be that the tribunals of the State will administer justice as impartially as those of the Nation to parties of every description, it is not less true that the Constitution itself either entertains apprehension on this subject or views with such indulgence the possible fears and apprehensions of suitors, that it has established National tribunals for the decision of controversies between aliens and citizens, or between citizens of different States. Aliens or citizens of different States are not less susceptible of these apprehensions, nor can they be supposed to be less the objects of constitutional provision because they are allowed to sue by a corporate name. The name, indeed, cannot be an alien or a citizen, but the persons whom it represents may be the one or the other, and the controversy is, in fact and in law, between those persons suing in their corporate character, by their corporate names, for a corporate right, and the individual against whom the suit may be instituted. Substantially and essentially the parties in such a case, when the members of the corporation are aliens or citizens of a different State from the opposite party, come within the spirit and terms of the jurisdiction conferred by the Constitution on the National tribunals.