Supplementary Material

Chapter 5: The Jacksonian Era—Individual Rights/Guns/Persons of Color and the Right to Bear Arms

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State v. Newson, 27 N.C. 250 (1844)

Elijah Newsom, a free person of color, was indicted in Cumberland County, North Carolina, for carrying a shotgun without having obtained a license from the county court. The 1840 statute Newsome violated required "any negro, mulatto, or free person of color" to obtain a license from the county court within a year of "wearing, keeping, or carrying" various weapons. The jury convicted Newsom, but the trial judge arrested the judgment. The judge claimed that the statute violated the right to bear arms protected by the Second Amendment and several provisions of the Constitution of North Carolina. The state appealed that decision to the North Carolina Supreme Court.

Judge Frederick Nash upheld the law and the conviction. His unanimous opinion first dismissed the Second Amendment as inapplicable to state laws. Nash then concluded that free persons of color either were not state citizens entitled by right to bear arms or that banning free persons of color from bearing arms was a constitutional means for preserving the public peace. How did Nash reach those conclusions? Suppose you were Newsom's attorney. What arguments would you make to southern justices before the Civil War when defending the right of a free person of color to bear arms?

JUDGE NASH

. . . [I]t has been urged, that the act . . . is unconstitutional, being in violation of the [Second Amendment], and also of the 3d and 17th articles of the Bill of Rights of this State. We do not agree to the correctness of either of these objections. The Constitution of the United States was ordained and established by the people of the United States, for their own government, and not for that of the different States. The limitations of power, contained in it and expressed in general terms, are necessarily confined to the General Government. It is now the settled construction of that instrument, that no limitation upon the power of government extends to, or embraces the different States, unless they are mentioned, or it is expressed to be so intended. *Barron v. Baltimore* [1833]. . . In the 2d article of the amended Constitution, the States are neither mentioned nor referred to. It is therefore only restrictive of the powers of the Federal Government. Nor do we perceive that the act . . . is in violation of . . . our Bill of Rights. . . .

. . . The act . . . is one of police regulation. It does not deprive the free man of color of the right to carry arms about his person, but subjects it to the control of the County Court, giving them the power to say, in the exercise of a sound discretion, who, of this class of persons, shall have a right to the license, or whether any shall. This brings us to the consideration of the 17th article of the Bill of Rights. We cannot see that the act . . . is in conflict with it. That article declares "that the people have a right to bear arms for the defense of the State." The defendant is not indicted for carrying arms in defense of the State, nor does the act . . . prohibit him from so doing. Its only object is to preserve the peace and safety of the community from being disturbed by an indiscriminate use, on ordinary occasions, by free men of color, of fire arms or other arms of an offensive character. Self preservation is the first law of nations, as it is of individuals. And, while we acknowledge the solemn obligations to obey the constitution, as well in spirit as in letter, we at the same time hold, that nothing should be interpolated into that instrument, which the people did not will. We are not at liberty to give an artificial and constrained interpretation to the language used, beyond its ordinary, popular and obvious meaning. Before, and at the time our constitution was framed, there was among us this class of people, and they were subjected to various disabilities, from which the white population was exempt. It is impossible to suppose, that the framers of

the Bill of Rights did not have an eye to the existing state of things, and did not act with a full knowledge of the mixed population, for whom they were legislating. They must have felt the absolute necessity of the existence of a power somewhere, to adopt such rules and regulations, as the safety of the community might, from time to time, require. "Constitutions are not themes for ingenious speculations, but fundamental laws, ordained for practical purposes." . . . We must, therefore, regard it as a principle, settled by the highest authority, the organic law of the country, that the free people of color cannot be considered as citizens, in the largest sense of the term, or, if they are, they occupy such a position in society, as justifies the legislature in adopting a course of policy in its acts peculiar to them; so that they do not violate those great principles of justice, which ought to lie at the foundation of all laws. . . . We are therefore of opinion, there was error in rendering judgment against the State.

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