Supplementary Material

Chapter 7: The Republican Era—Criminal Justice/Due Process and Habeas Corpus/Removal

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Commonwealth of Virginia v. Rives, 100 U.S. 313 (1879)

Burwell Reynolds and Lee Reynolds were African-American teenagers who were indicted for murder by local authorities in Virginia. Before trial, each requested that one-third of their jury be persons of color. Their petition also pointed out that no African-American had ever served on a jury in Patrick County, here their trial was to take place. When that motion was overruled by the trial court, both Burwell and Lee Reynolds asked that their trial be removed to the local federal district court. They supported this motion by citing a federal law which permitted removal from federal to state courts "when any civil suit or prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States." That motion was denied. After a series of trials and appeals, one of the Reynolds was convicted while another trial ended with a hung jury (the published opinions do not indicate which of the Reynolds was convicted). At this point, Federal District Judge Alexander Rives issued a writ of habeas corpus, ordering Virginia to release both Burwell and Lee Reynolds into federal custody. Virginia appealed to the Supreme Court, asking the judges to issue a writ of mandamus ordering Judge Rives to return Burwell and Lee Reynolds to state custody on the ground that judicial refusals to seat African-American jurors did not violate the Fourteenth Amendment and that the federal law did not permit removal even if the Reynolds had a legitimate constitutional claim.

The Supreme Court unanimously reversed Judge Rives on the removal issue, but by a 7–2 vote agreed with the Reynolds that race discrimination by judges selecting juries violated the equal protection clause of the Fourteenth Amendment. Why did the judicial majority maintain that the Reynolds were making a claim of constitutional right? Why did the justices nevertheless think removal was not the appropriate means for making that claim of constitutional right? How did the court believe that right should be vindicated? What do you believe are the practical consequences of the different choice of venue for vindicating constitutional rights?

JUSTICE STRONG delivered the opinion of the court.

. . . Sect. 641 of the Revised Statutes provides for a removal "when any civil suit or prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States." . . .

Was the case of Lee and Burwell Reynolds such a one? Before examining their petition for removal, it is necessary to understand clearly the scope and meaning of this act of Congress. It rests upon the Fourteenth Amendment of the Constitution and the legislation to enforce its provisions. That amendment declares that 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. . . .

The provisions of the Fourteenth Amendment of the Constitution we have quoted all have reference to State action exclusively, and not to any action of private individuals. . . . Sect. 641 was also intended for their protection against State action, and against that alone.

. . . Removal of cases from State courts into courts of the United States has been an acknowledged mode of protecting rights ever since the foundation of the government. Its constitutionality has never been seriously doubted. But it is still a question whether the remedy of removal of cases from State courts into the courts of the United States, given by sect. 641, applies to all cases in which equal protection of the laws may be denied to a defendant. And clearly it does not. The constitutional amendment is broader than the provisions of that section. The statute authorizes a removal of the case only before trial, not after a trial has commenced. It does not, therefore, embrace many cases in which a colored man's right may be denied. It does not embrace a case in which a right may be denied by judicial action during the trial, or by discrimination against him in the sentence, or in the mode of executing the sentence. But the violation of the constitutional provisions, when made by the judicial tribunals of a State, may be, and generally will be, after the trial has commenced. It is then, during or after the trial, that denials of a defendant's right by judicial tribunals occur. Not often until then. Nor can the defendant know until then that the equal protection of the laws will not be extended to him. Certainly until then he cannot affirm that it is denied, or that he cannot enforce it, in the judicial tribunals.

It is obvious, therefore, that to such a case—that is, a judicial infraction of the constitutional inhibitions, after trial or final hearing has commenced—sect. 641 has no applicability. It was not intended to reach such cases. It left them to the revisory power of the higher courts of the State, and ultimately to the review of this court. We do not say that Congress could not have authorized the removal of such a case into the Federal courts at any stage of its proceeding, whenever a ruling should be made in it denying the equal protection of the laws to the defendant. Upon that subject it is unnecessary to affirm any thing. It is sufficient to say now that sect. 641 does not.

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. . . If, as was alleged in the argument, . . . the officer to whom was intrusted the selection of the persons from whom the juries for the indictment and trial of the petitioners were drawn, disregarding the statute of the State, confined his selection to white persons, and refused to select any persons of the colored race, solely because of their color, his action was a gross violation of the spirit of the State's laws, as well as of the act of Congress of March 1, 1875, which prohibits and punishes such discrimination. He made himself liable to punishment at the instance of the State and under the laws of the United States. In one sense, indeed, his act was the act of the State, and was prohibited by the constitutional amendment. But inasmuch as it was a criminal misuse of the State law, it cannot be said to have been such a "denial or disability to enforce *in the judicial tribunals of the State*" the rights of colored men, as is contemplated by the removal act. . . . [W]hen a subordinate officer of the State, in violation of State law, undertakes to deprive an accused party of a right which the statute law accords to him, as in the case at bar, it can hardly be said that he is denied, or cannot enforce, "in the judicial tribunals of the State" the rights which belong to him. In such a case it ought to be presumed the court will redress the wrong. If the accused is deprived of the right, the final and practical denial will be in the judicial tribunal which tries the case, after the trial has commenced. . . .

The assertions in the petition for removal, that the grand jury by which the petitioners were indicted, as well as the jury summoned to try them, were composed wholly of the white race, and that their race had never been allowed to serve as jurors in the county of Patrick in any case in which a colored man was interested, fall short of showing that any civil right was denied, or that there had been any discrimination against the defendants because of their color or race. The facts may have been as stated, and yet the jury which indicted them, and the panel summoned to try them, may have been impartially selected.

. . . It *is* a right to which every colored man is entitled, that, in the selection of jurors to pass upon his life, liberty, or property, there shall be no exclusion of his race, and no discrimination against them because of their color. But this is a different thing from the right which it is asserted was denied to the petitioners by the State court, viz. a right to have the jury composed in part of colored men. A mixed jury in a particular case is not essential to the equal protection of the laws, and the right to it is not given by

any law of Virginia, or by any Federal statute. It is not, therefore, guaranteed by the Fourteenth Amendment, or within the purview of sect. 641.

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Separate opinion of JUSTICE FIELD, in which JUSTICE CLIFFORD concurred.

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By this enactment it appears that, in order to obtain a removal of a prosecution from a State to a Federal court,-except where it is against a public officer or other person for certain trespasses or conduct not material to consider in this connection,—the petition of the accused must show a denial of, or an inability to enforce in the tribunals of the State, or of that part of the State where the prosecution is pending, some right secured to him by the law providing for the equal rights of citizens or persons within the jurisdiction of the United States. But how must the denial of a right under such a law, or the accused's inability to enforce it in the judicial tribunals of the State, be made to appear? So far as the accused is concerned, the law requires him to state and verify the facts, and from them the court will determine whether such denial or inability exists. His naked averment of such denial or inability can hardly be deemed sufficient; if it were so, few prosecutions would be retained in a State court for insufficient allegations when the accused imagined he would gain by the removal. . . . There must be such a presentation of facts as to lead the court to the conclusion that the averments of the accused are well founded. There are many ways in which a person may be denied his rights, or be unable to enforce them in the tribunals of a State. The denial or inability may arise from direct legislation, depriving him of their enjoyment or the means of their enforcement, or discriminating against him or the class, sect, or race to which he belongs. And it may arise from popular prejudices, passions, or excitement, biasing the minds of jurors and judges. Religious animosities, political controversies, antagonisms of race, and a multitude of other causes will always operate, in a greater or less degree, as impediments to the full enjoyment and enforcement of civil rights. We cannot think that the act of Congress contemplated a denial of, or an inability to enforce, one's rights from these latter and similar causes, and intended to authorize a removal of a prosecution by reason of them from a State to a Federal court. Some of these causes have always existed in some localities in every State, and the remedy for them has been found in a change of the place of trial to other localities where like impediments to impartial action of the tribunals did not exist. The Civil Rights Act, to which reference is made in the section in question, was only intended to secure to the colored race the same rights and privileges as are enjoyed by white persons: it was not designed to relieve them from those obstacles in the enjoyment of their rights to which all other persons are subject, and which grow out of popular prejudices and passions.

The denial of rights or the inability to enforce them, to which the section refers, is, in my opinion, such as arises from legislative action of the State, as, for example, an act excluding colored persons from being witnesses, making contracts, acquiring property, and the like. With respect to obstacles to the enjoyment of rights arising from other causes, persons of the colored race must take their chances of removing or providing against them with the rest of the community.

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From the return of the district judge it would seem that in his judgment the presence of persons of the colored race on the jury is essential to secure to them the "equal protection of the laws"; but how this conclusion is reached is not apparent, except upon the general theory that such protection can only be afforded to parties when persons of the class to which they belong are allowed to sit on their juries. The correctness of this theory is contradicted by every day's experience. Women are not allowed to sit on juries; are they thereby denied the equal protection of the laws? Foreigners resident in the country are not permitted to act as jurors, yet they are protected in their rights equally with citizens. Persons over sixty years of age in Virginia are disqualified as jurors, yet no one will pretend that they do not enjoy the equal protection of the laws. If when a colored person is indicted for a criminal offence it is essential, to secure to him the equal protection of the laws, that persons of his race should be on the jury by which he is tried, it would seem that the presence of such persons on the bench should be equally essential where the court consists of more than one judge; and that if it should consist of only a single judge, such protection would

be impossible. To such an absurd result does the doctrine lead, which the Circuit Court announced as controlling its action.

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. . . Murder is not an offence against the United States, except when committed on an American vessel on the high seas, or in some port or haven without the jurisdiction of the State, or in the District of Columbia, or in the Territories, or at other places where the national government has exclusive jurisdiction. The offence within the limits of a State, except where jurisdiction has been ceded to the United States, is as much beyond the jurisdiction of these courts as though it had been committed on another continent. The prosecution of the offence in such a case does not, therefore, arise under the Constitution and laws of the United States; and the act of Congress which attempts to give the Federal courts jurisdiction of it is, to my mind, a clear infraction of the Constitution. . . .

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Undoubtedly, if in the progress of a criminal prosecution, as well as in the progress of a civil action, a question arise as to any matter under the Constitution and laws of the United States, upon which the defendant may claim protection, or any benefit in the case, the decision thereon may be reviewed by the Federal judiciary, which can examine the case so far, and so far only, as to determine the correctness of the ruling. If the decision be erroneous in that respect, it may be reversed and a new trial had. Provision for such revision was made in the twenty-fifth section of the Judiciary Act of 1789, and is retained in the Revised Statutes. That great act was penned by Oliver Ellsworth, a member of the convention which framed the Constitution, and one of the early chief justices of this court. It may be said to reflect the views of the founders of the Republic as to the proper relations between the Federal and State courts. It gives to the Federal courts the ultimate decision of Federal questions, without infringing upon the dignity and independence of the State courts. By it harmony between them is secured, the rights of both Federal and State governments maintained, and every privilege and immunity which the accused could assert under either can be enforced.