

Mistake in the Syllabus

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Author's Note:

This is the companion to my series of articles on the *Slaughterhouse Cases* and Citizenship under the Constitution of the United States. Entitled "Mistake in the Syllabus" it shows a mistake in the Syllabus to the *Slaughterhouse Cases* with a footnote to the *Slaughterhouse Cases* opinion itself.

There are four articles in this series. They are "Slaughterhouse Cases, Two Citizens," "Slaughterhouse Cases, Up Close," "Two Citizens Under The Constitution," and "Privileges and Immunities of a Citizen of the several States."



Below is a copy of the Syllabus (pages 36 thru 38) to the *Slaughterhouse Cases*. The author has discovered a mistake in the Syllabus at page 37.

Specifically it states:

"The first clause of the fourteenth article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship of the States, and it recognizes the distinction between citizenship of a State and citizenship of the United States by those definitions."

It should read:

"The first clause of the fourteenth article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship of a State, and it recognizes the distinction between citizenship of a State and citizenship of the United States by those definitions."

The mistake is revealed when you read from page 73 of the *Slaughterhouse Cases* opinion.

There it states:

“To remove this difficulty primarily, and to establish clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States and also citizenship of a State, the first clause of the first section was framed.”

To see a copy of the *Slaughterhouse Cases* with this part of the Syllabus [at Justia.com (beta) US Supreme Court Center] go to this address: <http://supreme.justia.com/us/83/36/case.html> .

83 U.S. 36

21 L.Ed. 394

16 Wall. 36

SLAUGHTER-HOUSE CASES. THE BUTCHERS' BENEVOLENT ASSOCIATION OF NEW ORLEANS v. THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY. PAUL ESTEBEN, L. RUCH, J. P. ROUEDE, W. MAYLIE, S. FIRMBERG, B. BEAUBAY, WILLIAM FAGAN, J. D. BRODERICK, N. SEIBEL, M. LANNES, J. GITZINGER, J. P. AYCOCK, D. VERGES, THE LIVE-STOCK DEALERS' AND BUTCHERS' ASSOCIATION OF NEW ORLEANS, AND CHARLES CAVAROC v. THE STATE OF LOUISIANA, *ex rel.* S. BELDEN, ATTORNEY-GENERAL. THE BUTCHERS' BENEVOLENT ASSOCIATION OF NEW ORLEANS v. THE CRESCENT CITY LIVE-STOCK LANDING AND SLAUGHTER-HOUSE COMPANY.

December Term, 1872

[Syllabus from pages 36-38]

ERROR to the Supreme Court of Louisiana.

1. The legislature of Louisiana, on the 8th of March, 1869, passed an act granting to a corporation, created by it, the exclusive right, for twenty-five years, to have and maintain slaughterhouses, landings for cattle, and yards for inclosing cattle intended for sale or slaughter within the parishes of Orleans, Jefferson, and St. Bernard, in that State (a territory which, it was said -- see *infra*, p. 85 -- contained 1154 square miles, including the city of New Orleans, and a population of between two and three hundred thousand people), and prohibiting all other persons from building, keeping, or having slaughterhouses, landings for cattle, and yards for cattle intended for sale or slaughter, within those limits, and requiring that all cattle and other animals intended for sale or slaughter in that district, should be brought to the yards and slaughterhouses of the corporation, and authorizing the corporation to exact certain prescribed fees for the use of its wharves and for each animal landed, and certain prescribed fees for each animal slaughtered, besides the head, feet, gore, and entrails, except of swine. Held, that this grant of exclusive right or privilege, guarded by proper limitation of the prices to be charged, and imposing the duty of providing ample conveniences, with permission to all owners of stock to land, and of all [page 37] butchers to slaughter at those places, was a police regulation for the health and comfort of the people (the statute locating them where health and comfort required), within the power of the state legislatures, unaffected by the Constitution of the United States previous to the adoption of the thirteenth and fourteenth articles of amendment.

2. The Parliament of Great Britain and the State legislatures of this country have always exercised the power of granting exclusive rights when they were necessary and proper to effectuate a purpose which had in view the public good, and the power here exercised is of that class, and has, until now, never been denied.

Such power is not forbidden by the thirteenth article of amendment and by the first section of the fourteenth article. An examination of the history of the causes which led to the adoption of those amendments and of the amendments themselves demonstrates that the main purpose of all the three last amendments was the freedom of the African race, the security and perpetuation of that freedom, and their protection from the oppressions of the white men who had formerly held them in slavery.

3. In giving construction to any of those articles, it is necessary to keep this main purpose steadily in view, though the letter and spirit of those articles must apply to all cases coming within their purview, whether the party concerned be of African descent or not.

While the thirteenth article of amendment was intended primarily to abolish African slavery, it equally forbids Mexican peonage or the Chinese coolie trade when they amount to slavery or involuntary servitude, and the use of the word "servitude" is intended to prohibit all forms of involuntary slavery of whatever class or name.

The first clause of the fourteenth article was primarily intended to confer citizenship on the negro race, and secondly to give definitions of citizenship of the United States and citizenship of ~~the States~~ [should be “a State”] (See **Footnote**), and it recognizes the distinction between citizenship of a State and citizenship of the United States by those definitions. (emphasis mine)

The second clause protects from the hostile legislation of the States the privileges and immunities of citizens of the United States, as distinguished from the privileges and immunities of citizens of the States. (emphasis mine)

These latter, as defined by Justice Washington in *Corfield v. Coryell*, and by this court in *Ward v. Maryland*, embrace generally those fundamental civil rights for the security and establishment of which organized society is instituted, and they remain, with certain exceptions mentioned in the Federal Constitution, under the care of the State governments, and of this class are those set up by plaintiffs. (emphasis mine)

4. The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and treaties made in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the Thirteenth amendment.

It is not necessary to inquire here into the full force of the clause forbidding a State to enforce any law which deprives a person of life, liberty, [page 38] or property without due process of law, for that phrase has been often the subject of judicial construction, and is, under no admissible view of it, applicable to the present case.

5. The clause which forbids a State to deny to any person the equal protection of the laws was clearly intended to prevent the hostile discrimination against the negro race so familiar in the States where he had been a slave, and, for this purpose, the clause confers ample power in Congress to secure his rights and his equality before the law.

The three cases—the parties to which as plaintiffs and defendants in error, are given specifically as a sub-title, at the head of this report, but which are reported together also under the general name which, in common parlance, they had acquired—grew out of an act of the legislature of the State of Louisiana, entitled: 'An act to protect the health of the City of New Orleans, to locate the stock landings and slaughter-houses, and to incorporate 'The Crescent City Live-Stock Landing and Slaughter-House Company,' which was approved on the 8th of March, 1869, and went into operation on the 1st of June following; and the three cases were argued together.

Footnote: On Page 73 of the *Slaughterhouse Cases*, it states:

“To remove this difficulty primarily, and to establish clear and comprehensive definition of citizenship which should declare what should constitute citizenship of the United States and also citizenship of a State, the first clause of the first section was framed.”

This can be also seen in the following from the work, “The History of the Supreme Court of the United States” at pages 458 thru 459, wherein the author, Hampton Lawrence Carson, writes:

“. . . that the first clause of the Fourteenth Amendment was primarily intended to confer citizenship on the Negro race, and secondly to give a definition of citizenship of the United (page 459) States and citizenship of the State; that it recognized a distinction between them, and that the second clause protected from the hostile legislation of the States the privileges and immunities of the citizens of the United States, as distinguished from the privileges and immunities of the citizens of the States.”

Source: *The History of the Supreme Court of the United States, Vol. II*; Hampton Lawrence Carson; © 1902, Hampton L. Carson; Philadelphia, P.W. Ziegler and Company, Publisher.

(To see online go to the following link, click on “view page images”: if necessary, and then scroll to page 458:

http://books.google.com/books?pg=RA1-PA640&lpg=RA1-PA640&dq=Slaughterhouse+Cases,+Reporter,+vol+83,+Wallace&sig=ZmuCfYCKCCsozRe_EBsE846rmMU&ct=result&id=J949AAAIAAJ&ots=jJudAS4Hqz&output=image#PPA831,M1)

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