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Constitutional Law - Denial of the Equal Protection of the Laws - Exclusion of Negroes from Juries

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time the false checks are delivered to the depositor or notice is given him that they are ready for delivery,[41] rather than from the time the forgery is discovered or the time when the depositor demands payment.[42]

The modern tendency of Louisiana courts is to maintain that the object of a statute is sufficiently indicated by its title when such title directs attention to the general subject so that all persons in interest are placed upon notice to make inquiry into the statute itself.[43] In keeping with this tendency, the court in the instant case properly held Act 163 of 1934[44] to be constitutional. The court was also correct in holding that checks, on which both the payee's indorsement and the drawer's signature were forged, are within the intendment of Act 163 of 1934. Such statutes are logically applicable to those instruments which are void at their inception regardless of whether the indorsement of the payee is subsequently forged or not.[45] The result is in complete accord with sound commercial policy.

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CONSTITUTIONAL LAW—DENIAL OF THE EQUAL PROTECTION OF THE LAWS—EXCLUSION OF NEGROES FROM JURIES—Defendant, a negro, based a motion to quash an indictment for murder on an alleged denial of the equal protection of the laws by a systematic exclusion of negroes from the jury venire box because of their race or color. The trial judge ordered a new petit jury panel; but he refused to quash the indictment on the ground that the constitutional rights of the defendant were not affected since the mere presentment of an indictment is not evidence of guilt. On appeal,

41. Intimidation by a drunkard husband may incline the courts to be lenient toward a wife for her delay in notification and to allow her to recover against the drawee bank even though the period of limitations has run. Samples v. Milton County Bank, 34 Ga. App. 248, 129 S.E. 170 (1925). However, where the wife failed to give notice of forgeries for more than 60 days after her husband abandoned her and for more than three years after the forgeries occurred, a Georgia court very properly held that such laches rendered the defense of duress unavailable. Ponsell v. Citizens' & Southern Bank, 35 Ga. App. 460, 133 S.E. 351 (1926).

42. California Vegetable Union v. Crocker Nat. Bank, 37 Cal. App. 743, 174 Pac. 920 (1918).

43. State v. Thrift Oil & Gas Co., 162 La. 165, 110 So. 188 (1926); State v. Terrell, 181 La. 974, 160 So. 781 (1935).

44. Dart's Stats. (Supp. 1938) § 675.1.

45. See Uniform Negotiable Instruments Law, § 124, La. Act 64 of 1904, § 124 [Dart's Stats. (1932) § 914].

the Louisiana Supreme Court[1] asserted: (1) that the indictment should have been quashed if negroes possessing the necessary qualifications were sytematically excluded from grand jury service, but (2) that the burden was on the accused to prove such illegal discrimination and that on the evidence presented he had failed to discharge it. After granting certiorari, the United States Supreme Court re-examined the evidence[2] and *held* that there was an unlawful exclusion of negroes from jury service, reversing the decision of the Louisiana Court. *Pierre v. State of Louisiana,* 59 S.Ct. 536, 83 L.Ed. 540 (1939).

The doctrine is well settled that there is a denial of the equal protection of the laws[3] whenever a state, in the selection of either grand or petit jurors, discriminates against negroes solely because of their race or color.[4] That there shall be no exclusion of his race *as such,*[5] in the selection of jurors to pass upon his life, liberty or property, is a right to which every negro is entitled. However, his right is limited to a requirement that there be no discrimination in the selection of jurors; he has no right to have the jury composed in part of colored men.[6] In other words, a colored or a mixed jury is not essential to the equal protection of the laws. These principles being fixed, the problem is in their practical application; and courts have differed widely as to what facts, when proved, will make a showing of unlawful discrimination. Many have held that a long continued absence of the names of negroes from the jury lists, where there is a large negro population, makes out a prima facie case of discrimination,[7] and the burden is then on the prosecution to rebut this presumption. On the other hand, a number of courts, including those of Louisiana, have required more positive proof of discrimination.[8] In cases of this type, the

1. State v. Pierre, 189 La. 764, 180 So. 630 (1938).

2. On the right of the United States Supreme Court to review facts see: Creswill v. Grand Lodge K. of P., 225 U.S. 246, 32 S.Ct. 822, 56 L.Ed. 1074 (1912); Fiske v. Kansas, 274 U.S. 380, 47 S.Ct. 655, 71 L.Ed. 1108 (1927); Norris v. Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L.Ed. 1074 (1935).

3. U.S. Const. Amend. XIV.

4. Strauder v. West Virginia, 100 U.S. 303, 25 L.Ed. 664 (1880); Virginia v. Rives, 100 U.S. 313, 25 L.Ed. 667 (1880); Neal v. Delaware, 103 U.S. 370, 26 L.Ed. 567 (1881); Martin v. Texas, 200 U.S. 316, 26 S.Ct. 338, 50 L.Ed. 497 (1906).

However, the systematic exclusion of negroes from jury service does not constitute an invasion of the constitutional rights of a white person. State v. Dierlamm, 189 La. 544, 180 So. 135 (1938).

5. Virginia v. Rives, 100 U.S. 313, 25 L.Ed. 667 (1880).

6. Idem.

7. Neal v. Delaware, 103 U.S. 370, 26 L.Ed. 567 (1881); Collins v. State, 60 S.W. 42 (Tex. Crim. App. 1900); State v. Frazier, 104 W.Va. 480, 140 S.E. 324 (1927).

8. State v. Joseph, 45 La. Ann. 903, 12 So. 934 (1893); State v. Murray, 47

United States Supreme Court has often seen fit to re-examine the evidence and on several occasions has reversed the state decisions purely on the fact issue.[9]

It is obvious that the determination of fact issues in cases of this nature depends directly upon the laws relative to the selection of jurors in the particular state. Alabama, the state in which the famous *Scotsboro* case arose,[10] places upon its jury officials the positive duty to inquire into the qualifications of every male citizen of voting age and to place the names of all qualified persons on the jury list.[11] Under such a statute, if discrimination exists proof of it is a fairly simple matter and may be made by simply showing that the number of negroes on the venire is disproportionately small and that there are other qualified negroes in the county. However, in Louisiana, broader powers are vested in the jury commission[12] and the problem is much more difficult. The commissioners are directed not merely to list the names of all persons qualified to serve but also to *select,* from those qualified, three hundred names for the general venire box.[13] It is their duty to select competent persons who, in their opinion, are best qualified.[14] Under this kind of statute, evidence of discrimination against a particular prospective juror should be required to support a charge of exclusion because of race.[15]

La. Ann. 1424, 17 So. 832 (1895); State v. Baptiste, 105 La. 661, 30 So. 147 (1901); State v. West, 116 La. 626, 40 So. 920 (1906); State v. Turner, 133 La. 555, 63 So. 169 (1913); Haynes v. State, 71 Fla. 585, 72 So. 180 (1916); Whitney v. State, 59 S.W. 895 (Tex. Crim. App. 1900); State v. Cook, 81 W.Va. 686, 95 S.E. 792 (1918).

9. Norris v. Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L.Ed. 1074 (1935), and cases cited therein.

10. Norris v. Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L.Ed. 1074 (1935).

11. Ala. Code Ann. (Michie, 1928) § 8603.

12. Art. 173, La. Code Crim. Proc. of 1928.

13. Art. 179, La. Code Crim. Proc. of 1928. The Commission must themselves make the selection and cannot delegate that duty to any other person. State v. Newhouse, 29 La. Ann. 824 (1877); State v. Taylor, 43 La. Ann. 1131, 10 So. 203 (1891); State v. Clavery, 43 La. Ann. 1133, 10 So. 203 (1891). However, the venire will not be set aside merely because the commissioners placed names of persons in the general venire box upon the suggestion of an outsider. State v. Sheppard, 115 La. 942, 40 So. 363 (1906).

14. State v. Guirlando, 152 La. 570, 93 So. 796 (1922). The law does not prescribe from which sources the commissioners shall draw their knowledge of the qualifications of jurors. State v. Foster, 32 La. Ann. 34 (1880); State v. Mangrum, 35 La. Ann. 619 (1883); State v. Chase, 37 La. Ann. 165 (1885); State v. Green, 43 La. Ann. 402, 9 So. 42 (1891).

15. Although no standard is set, the Louisiana Supreme Court has intimated that there should be a fair proportion of negroes on the jury list. See State v. Pierre, 189 La. 764, 774-775, 180 So. 630, 633 (1938).

The fact that no names of women were placed in the jury box will not sustain a charge of discrimination in the absence of proof that any woman had filed an application with the clerk for jury duty and that this fact had

In the instant case, the United States Supreme Court found discrimination upon evidence which seems less convincing than that which was before it in the *Scotsboro* case under the Alabama statute. In the latter case, the evidence showed a "long-continued, unvarying, and wholesale exclusion of negroes from jury service. . . ."[16] Although a large number of negroes were qualified for jury service, the preliminary drafts of the jury lists had the distinguishing abbreviation "col." after the names of negroes and none of these names ever appeared on the final draft; no negro had ever served on a jury. In view of the Alabama jury law the only reasonable conclusion was that negroes were excluded because of their race and color. In the principal case no such convincing facts appear. At least four negroes were on the general jury lists and at least one negro was selected for petit jury service at the very same time that the grand jury, which was sought to be quashed, was selected. In view of the large number of qualified whites, the Louisiana Supreme Court felt that four negroes out of three hundred prospective jurors was a fair proportion and that there had been no discrimination. The Louisiana Court pointed out that since the commissioners were white men it was to be expected that they would select other white men, not because of discrimination against negroes, but because they would be better acquainted with the qualifications of the white men.[17]

Under the Louisiana type of statute the burden of proving discrimination is on the defendant,[18] yet the United States Supreme Court emphasized the fact that the State offered no evidence to rebut that offered by the defendant.[19] However, it should not be assumed that the prosecution could obtain no evidence, for it undoubtedly felt, as did the Louisiana Supreme Court, that the defendant had failed to discharge his burden. The United States Supreme Court simply disagreed with the Louisiana Supreme Court as to what the evidence proved.

The instant case raises a doubt which makes a potential Supreme Court case of every negro conviction in Louisiana. Since the State offered no evidence, the case affords no reliable criteria

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been made known to the jury commission. State v. Davis, 154 La. 295, 97 So. 449 (1923).

16. Norris v. Alabama, 294 U.S. 587, 597, 55 S.Ct. 579, 79 L.Ed. 1074 (1935).

17. State v. Pierre, 189 La. 764, 775, 180 So. 630, 633 (1938).

18. State v. Baptiste, 105 La. 661, 30 So. 147 (1901); State v. Turner, 133 La. 555, 63 So. 169 (1913). See also Bush v. Kentucky, 107 U.S. 110, 1 S.Ct. 625, 27 L.Ed. 354 (1883); Martin v. Texas, 200 U.S. 316, 26 S.Ct. 338, 50 L.Ed. 497 (1906).

19. Pierre v. State, 59 S.Ct. 536, 537, 540, 83 L.Ed. 540 (1939).

upon which to base predictions as to the United States Supreme Court's attitude in the future. Many questions remain unanswered: Must the same ratio between qualified whites and qualified negroes be maintained throughout the process of jury selection? If so, what becomes of the rule that a mixed jury is not essential to the equal protection of the laws? Is the Louisiana jury law, as generally administered, unconstitutional? Must the jury commissioners search out the entire population for qualified negro jurors? What will the Court do when confronted with positive evidence that negroes were considered but that the white men selected were, in the opinion of the Commission, better qualified? It is obvious that, even though the laws are administered fairly, in some instances only a few negroes will be selected for jury service. Under such circumstances, how can the State rebut whatever evidence the defendant might introduce in his attempt to show discrimination?

The only positive evidence in the record showed that there are no more than seventy-five or one hundred qualified potential negro jurors in the parish.[20] This testimony was impliedly discounted by the United States Supreme Court when they relied almost exclusively upon the report of the Bureau of the Census for 1930.[21] According to the census figures, 70 per cent of the negroes above ten years of age were literate; but these figures do not take into account the fact that in Louisiana women are not called for jury service,[22] nor do they show how many of the literate negroes were under the age of twenty-one and hence not available. Does the use of the census figures in the instant case indicate that in the future the proportion of negroes on the jury venire must be based upon the percentage of negroes (including those under voting age) among the total literate population?

It is probable that in the future the procès verbal[23] of the drawing by the jury commissioners will be made more complete; for, having great evidentiary value, it could be used by the State to rebut charges of discrimination. It has been the practice to include in the procès verbal only a statement of the acts of the Com-

20. State v. Pierre, 189 La. 764, 773-774, 180 So. 630, 632-633 (1938).

21. Pierre v. State, 59 S.Ct. 536, 539, 83 L.Ed. 540 (1939).

22. La. Const. of 1921, Art. VII, § 41 provides: ". . . no woman shall be drawn for jury service unless she shall have previously filed with the clerk of the District Court a written declaration of her desire to be subject to such service." As a matter of fact, women are never called. State v. Pierre, 189 La. 764, 774, 180 So. 630, 633 (1938).

23. Art. 188, La. Code Crim. Proc. of 1928.

mission, but in order to avoid the pitfalls occasioned by the instant decision it should contain a complete record of the proceedings showing why each individual was selected or rejected.[24]

W. J. B.

CONSTITUTIONAL LAW—INTERGOVERNMENTAL IMMUNITY FROM TAXATION—STATE INCOME TAX ON SALARY OF EMPLOYEE OF FEDERAL INSTRUMENTALITY—The relator paid under protest a state income tax on his salary earned as an attorney for the Home Owners' Loan Corporation which is an instrumentality of the federal government. He thereupon sued for refund of the tax on the familiar ground that state taxation of the salary of a federal employee is unconstitutional. The state court allowed the refund, but on certiorari to the Supreme Court of the United States it was *held,* that the tax was constitutional. *Graves v. New York ex rel. O'Keefe,* 59 S.Ct. 595, 83 L.Ed. 577 (1939).

The Court pointed out that since the United States is a government of delegated powers all its acts in the exercise of such powers are governmental. Therefore, the inquiry as to whether action is governmental or proprietary has no application to the federal government. Moreover, taxation of the salaries paid to officers or employees, whether of the state or nation, is merely the normal incident of the organization within the same territory of two governments and does not place an unconstitutional burden on either.

The present decision, together with that rendered in *Helvering v. Gerhardt,*[1] apparently completes the destruction of the reciprocal immunity of state and federal officers and employees from non-discriminatory income taxes on their salaries.[2] The flat ruling that the burden placed upon the government by such a tax is remote, speculative and uncertain[3] obliterated any distinction

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24. State v. Green, 43 La. Ann. 402, 9 So. 42 (1891); State v. Love, 106 La. 658, 31 So. 289 (1902); State v. Gremillion, 137 La. 291, 68 So. 615 (1915).

1. 304 U.S. 405, 58 S.Ct. 969, 82 L.Ed. 1427 (1938), noted in (1938) 1 LOUISIANA LAW REVIEW 224.

2. The very recent case of O'Malley v. Woodrough, 6 U.S. Law Week 1356 (1939), by holding that the salary of a federal judge was subject to the federal income tax, gave added impetus to the trend which favors making all income subject to non-discriminatory taxation. In reaching its decision the court expressly overruled Miles v. Graham, 268 U.S. 501, 45 S.Ct. 601, 69 L.Ed. 1067 (1925) and apparently destroyed the force of the famous decision of Evans v. Gore, 253 U.S. 245, 40 S.Ct. 550, 64 L.Ed. 887 (1920).

3. Helvering v. Gerhardt, 304 U.S. 405, 58 S.Ct. 969, 82 L.Ed. 1427 (1938), noted in (1938) 1 LOUISIANA LAW REVIEW 224.