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W. P. CANADAY, Proprietor.

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We will not publish communications unless parties forward their names, so that we may know who to hold responsible, if statements made are not correct.

A free ballot and a fair count, with local self-government and anti-prohibition, with equal rights to all men, will be the watchword in 1882 by the anti-Bourbon Democracy.

Hon. George Z. French proposes to commence the manufacture of lime for farming purposes. He has the material on his plantation near Rocky Point, and we learn he can make superior lime to that which is sold in this market. Mr. F. is a very enterprising gentleman, and will succeed at the business if any one can.

Should Congress pass the re-apportionment act before the 1st of April, and give North Carolina nine Congressmen, then Gov. Jarvis we suppose will call the state Legislature together to redistrict the state before the next election. It looks very much as if the old North State will be allowed, under the new apportionment, nine instead of eight Representatives, as now.

Congress convenes to-morrow, and there is every indication that the session will be a very important one. The Democratic party have controlled the last three (44th, 45th and 46th) Congresses, and have blocked business just six years. Now the Republican party must take hold where they left off the 3d day of March, 1875, and go on giving the country wholesome and progressive legislation which will make the nation prosperous and happy.

There are plenty of Democrats who are anxious to become the Mahone of North Carolina. One class havn't got the sand, a second lack the character. But there is another, who will at the proper time take the lead, and with a platform in favor of a free ballot, a fair count, local self-government and anti-prohibition will carry the state by forty thousand majority. The Democratic Bourbons need not be in a hurry about the men who are to lead in this movement, they will be found, and men "worthy of their steel," too.

COLORED JURORS.

For a long time the treatment of the colored people in the courts of the state has been so outrageous that the colored people themselves, and their friends, made up their minds to take some action in the matter. Some two weeks ago the editor of this paper consulted Colonel D. K. McRae, one of the most distinguished attorneys and statesmen in North Carolina, concerning the matter, and to-day we publish his legal opinion. And it will be seen,

1st. That the colored citizens are entitled to be treated the same in regard to serving on juries as the white men.

2d. That the county commissioners have committed perjury in not placing the names of colored men, who were qualified, on the jury list.

3d. The county commissioners have violated the United States law, and are liable to indictment and punishment in the Circuit Court of the United States.

4th. That it is the duty of the U. S. District Attorneys to prosecute these officials (County Commissioners) for refusing to do their duty by the colored people.

Col. McRae quotes from the acts of Congress and decisions of the United States Supreme Court direct, the highest law making power, and the highest court in the land, which is conclusive; and there can be no doubt of the right of the colored citizens to the same rights before the courts that the white enjoy.

Now, should the commissioners neglect or refuse to do justice by the colored people, then we hope they will be interviewed by Judge Hugh L. Bond, who understands how to deal with violaters of law.

We hope that every one will read Col. McRae's opinion. It will certainly be to the advantage of county commissioners to do so.

MINISTERS HURLBUT AND KILPATRICK.

There seems to be a war between our Ministers at Peru and Chili. minister Hurlburt of Peru, says the United States (his government) will not allow a war of conquest on the part of Chili against the nation of Peru. While Minister Kilpatrick, who represents us at Chili, says that Minister Hurlbut don't know anything about it, and is exceeding his instructions. We suppose that Minister Blaine will come in very soon, and recall them both, for their actions have already disgraced the government they were sent to South America to represent. And we shall be very much surprised if President Arthur don't dismiss them at once.

The next Virginia Senate will seat two colored members and the House eleven. Things are looking up for the colored man again in the south.—*Atlanta Republican.*

POPULAR EDUCATION.

Senator Vance must have had the weighty and sententious saying of Bacon, that knowledge is power, in his mind, when he advised the colored people not to lay too much stress upon the acquisition of knowledge. For we all know the views of the Senator and his following in the country in regard to the colored people; that they should be rendered docile and submissive as laborers for the "superior Caucassian," and that all their efforts to improve their condition and advance along the road of progress should receive the gentle but firm resistance of the Senator and his friends. But it is a matter of great gratification that the number of these selfish yet short-sighted obstructionists is steadily growing smaller, and that it is fast becoming a general opinion that the more educational facilities are multiplied for the colored people the more will be the improvement of the white people. The earth does move, said the philosopher, under his breath, when facing the tortures of the Holy Roman inquisition, and notwithstanding the relentless exertions of the Senator and his friends, for the past sixteen years, it is now an admitted fact that the prosperity of our colored fellow-citizens is inseparably connected with the welfare of the whole country.

Among some of the efforts of these brakes upon the wheels of progress, may be noticed the avidity with which their newspapers seized upon some statistics given to the public by Mr. R. G. White, of New York, about a year ago, upon the relations of crime and education. The conclusion of Mr. White was arrived at by comparing the records of crime and education in those states where the latter was highest and lowest. It may be easily recollected how the advocates of ignorance rolled the delicious morsel that the most criminals were reported from those states where the illiteracy was least. The widow told the great Dr. Johnson, during their courtship, in response to his information that he had an uncle hanged, that though no uncle of hers had been hanged, she had no doubt that she had many who deserved to be. While in those states in which education is rifest, criminals are most generally brought to justice, in other countries crime is far less frequently detected. Another argument is the number of divorces in educated communities, compared with divorces in those relatively ignorant. This proves nothing unless it is certain that the divorces are all that can or ought to be had. Speaking from a knowledge of North Carolina, there are many couples who can be, and probably would be, happier if divorced, than actually have the conjugal tie lawfully dissolved.

It seems monstrous to the darkness of the period of the fifth century of our era to have to defend popular education. Yet the attitude of its stealthy, but uncompromising enemies, has driven its friends to expose the falacies which they artfully spread before the public. There is a Constitutional provision which has existed for thirteen years, that there shall be in every district of the state a public school, maintained for four months in the year, at which the youth of the state between six and twenty-one years shall have free instruction. This has been evaded in fully two-thirds of the Democratic counties of the state. Last winter the legislature enacted that whenever the funds assigned by law shall be insufficient to keep up schools four months, the County Commissioners shall supplement the fund by the levy of a special tax. As the Constitution has been nullified, it is not surprising accordingly to find that the statute is contemptuously set aside by these same Democratic Commissioners. The Constitution gives the legislature power to compel the attendance of children upon the public or other schools. Yet it is a notorious fact that in most of the rural communities a large portion of the children never receive any instruction. The excuses for non attendance are generally frivolous, but sometimes the distance to be walked by these little creatures to a public school is too great. There are many school districts in the state whose most central location is fully four miles from some of the pupils residing in them. The selection of school committeemen is devolved by law upon the County Commissioners. How they perform this delicate responsibility may be inferred from the fact that they appoint persons who cannot read printed language.

Deficient as the school law is, its administration, as above pointed out, is a failure. That this is so must have been expected. Indeed it is difficult to escape the conviction that it was so intended. It will continue to be so until the not distant future places our public schools into the hands of those whose convictions are in favor of popular education, and who will give the problem the support of zealous, philosophic and enlarged minds.

Lynching seems to be very popular now in the whole country, and is a very great remedy for crime. What a pity Guiteau hadn't been prescribed for in that way. We wouldn't have had the disgraceful scene that has been going on in the District Court at Washington for the past three weeks.

If you want to be well advised, subscribe for the Post.

WILMINGTON, N. C., Nov. 25, 1881.

COL. W. P. CANADAY:

DEAR SIR:—Your application to me for my professional opinion upon certain questions submitted, has been received, with your proffer of such compensation as I shall deem reasonable, and as I see no reason why I should not comply with your application, I have attempted to do so, and herewith furnish you with the result of my labor.

I understand your questions to be these:

I. Whether in the selection of jury lists the County Commissioners can rightfully select all whites, and altogether exclude colored men from such service.

You say the fact exists that in many counties of the state colored men are so excluded, that in such counties there are never any other than white jurors; although there are in such counties a large population of colored people, and many colored citizens qualified for the service.

II. Whether the Federal Constitution and laws of the United States as to such matters are not in force and to be obeyed by the state officers of North Carolina.

III. Whether such officers are not amenable and in what way and forum, for any disobedience of the provisions of the U. S. Constitution and laws in this regard.

IV. If other injurious consequences to the general public will not flow from this official disregard of the national legislation.

The questions are of the utmost importance, but not difficult, for each and all of them have been closed by judicial decision in the Court of the highest authority in the nation.

In so far as the Constitution of the United States has touched the questions immediately, the provisions will be found in the three late amendments, 13th, 14th, 15th. These and the legislation in pursuance thereof, cover the whole matter.

By the 13th, slavery and involuntary servitude except for crime, after conviction, within the United States or any place subject to their jurisdiction, are prohibited. This prohibition covers every form of "serfage, vassalage, peonage villeinage or other compulsory service," whereby one person might be made subject to another.

The language though prohibitory is of positive, affirmative action and effect, conferring the blessed boon of freedom upon all alike; and rendering to every one within the domain of the nation, the right to be a freeman: unless by his own criminal act, of which he shall have been duly convicted he shall forfeit this privilege and immunity.

The 14th amendment creates, or recognizes, or denes a citizenship of the United States, and of the states, co-ordinate in a native or naturalized inhabitant, and brings thereby this dual relation of the person to two sovereignties, more effectually within the fold of the national protection, by broadening its organic powers beyond the ancient limits, and strengthening them beyond the ancient vigor. It does all this by ordaining that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States; and of the state wherein they reside." It prohibits to a state "to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: It forbids a state to deprive any person of life, liberty or property without due process of law, and declares that no state shall deny to any person the equal protection of the laws.

The 15th contains a self prohibition, as well as one to the states, in declaring that the "right of citizens of the United States to vote, shall not be denied or abridged by the United States or by any state, on account of race, color or previous condition of servitude." So that by no agency of the United States in any of its departments; nor of the states in theirs, can this right of suffrage implied in the above prohibition be abridged because of race or color, so long as the Constitution of the United States remains unaltered. Neither Congress nor legislature can distinctively deny or impair it.

Whatever may have been thought by many, of the circumstances under which, and the methods by which, these amendments were adopted, they have passed into judgment, and become like the whole organic law, of which they are components, the supreme law of the land.

North Carolina has ratified them, and moulded her legislation upon them.

With them in force she has asserted the paramount allegiance of her citizens "to the Constitution and government of the United States, and that no law or ordinance of the state in contravention thereof, can have any binding force." Constitution of North Carolina, art. 1 sec. 5.

And notwithstanding the presence of these amendments in the National Constitution, she declares in here that she will "ever remain a member of the American Union, and that the people thereof are part of the American nation. Meaning thereby I suppose, that she will continue to be a member of the United States, and that her people are a portion of the people thereof. Ibid. art. 1 sec. 3.

When it is remembered that these amendments are the direct act of the people for the people, we cannot wonder at the sincere and cordial manifestation exhibited in the above citation from the state Constitution. Emphatic at least, if not gushing. Early in the History of these Amendments were their primary object and purpose judicially ascertained. In the "Slaughter House cases," the Supreme Court of the United States said: "No one can fail to be impressed with the one pervading purpose found in all the amendments, lying at the foundation of each, and without which none of them would have been suggested. We mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freeman and citizen from the oppressions of those, who had formerly exercised unlimited dominion over them. 16 Wallace 71.

And in a later case the same Court speaking of that clause in the 14th Amendment, which declares that a state shall not "deny to any person within its jurisdiction the equal protection of the laws." Enquires, "What is this but declaring, that the law in the states *shall be the same*, for the black as for the white, that all persons, whether colored or white *shall stand equal* before the laws of the states, and in regard to the colored race, for whose protection the amendments were primarily designed, that *no discrimination* shall be made against them by law, because of their color. Strauder vs. West Va., 10 Otto 307.

To such an extent was the colored race the object of the amendments, that the Court "very much doubted, whether any action of a state, not directed by way of discrimination against the negroes as a class will ever be held to come within the purview of these provisions. 16 Wallace 81.

North Carolina has not by any statute or ordinance authorized, sanctioned, encouraged or allowed any discrimination obnoxious to these amendments. And her judicial decisions have been in keeping with her legislation for she accepts and respects the decisions of the Supreme Court of the United States as authority in all matters of which it has the ultimate cognizance. See opinion by Ruffin J. in Oldham vs. First National Bank of Wilmington, just delivered.

The legislation of the state charges the "County Commissioners" with the selection of the jury lists, only prescribing that they are to be chosen from the tax returns of the preceding year, of those who have paid their taxes, and are freeholders of good moral character and of sufficient intelligence, and they are charged annually to scrutinize the lists and diligently enquire whether *any person qualified* to be jurors are omitted. Battle's Revisal C. C. P. chapter 3 sections 229 A. and D.

Whatever is therefore done by her subordinate agents which discriminates against a class is in contravention of her laws.

With these preliminary observations, histories and citations in view, I proceed to answer your questions.

1st. While the 14th amendment nowhere expresses any right in a colored man to sit on a jury in a state Court, nor any right of colored citizens to be tried by their own race in part or in whole, or to have his cause if civil so tried; it clearly implies an immunity or right, most valuable to the colored race, the right to be exempt from unfriendly legislation or action against them on account of race or color, such as discriminations implying inferiority in civil society, whereby the security of their enjoyment of the right, which others enjoy is lessened, and if the state were to pass a law by her legislature restricting the selection of juries to white persons, it would be void because unconstitutional.

And if she by her legislative department cannot make such discrimination, no more can she by her judicial, and still less can any of her agents acting judicially or ministerially, do so by a misuse of her authority.

In exparte Virginia, Mr. Justice Strong delivering the opinion of the court said: "A state acts by its legislative, executive or judicial authorities, it can act in no other way. The constitutional provisions therefore must mean that no agency of the state, or of the officers or agents by whom its powers are executed shall deny to any person with in its jurisdiction the equal protection of the laws," and, "whoever by virtue of public position under a state government denies to one, or a class, the equal protection of the laws violates the constitutional inhibition. This must be; or the constitutional prohibition has no meaning."

The colored people, therefore, parties to trials, involving their lives, liberty or property, have a right to claim, and will be protected in the claim, that in the selection of jurors who are to pass upon their rights, there shall be no exclusion of their race, and no discrimination against them because of their color; and the county commissioners cannot altogether exclude colored citizens without hazarding the presumption that it is because of race and color.

II. Your second question is answered in the declarations which I have already quoted from the state Constitution. That the United State Constitution in all its parts and the laws of Congress in pursuance thereof have binding force on the state officials is emphasized in the fact, that as to very many of them and among them the county commissioners, they are required to take the oath to support this Constitution as a qualification to hold the office.

III. There can be no doubt that a personal responsibility attaches to any officer of the state who commits an infraction of these provisions of the National Constitution, and they are liable to indictment and fine in the District or Circuit Court of the United States.

The three amendments have not been left to be self-executing, appropriate legislation has been had for their enforcement.

By the act of Congress of 1st March, 1875, 18 stat. pt. 3-336, it is provided substantially that no citizen who possesses other qualification (that is in North Carolina, who is of moral character and sufficiently intelligent and has paid his taxes), shall be disqualified as a juror on account of race or color, and any officer charged with the duty of selecting or summoning jurors who shall exclude or fail to summon any citizen for the cause aforesaid, shall on conviction be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars.

A case arising under this act has already been before the Supreme Court of the United States and its constitutionality has been adjudicated, and its construction defined.

A Judge of a county court of Virginia charged with the selection of juries for service in the court of Pittsylvania county, was indicted in the District Court of the United States for excluding and failing to select colored citizens to serve as jurors, because of their race and color. Being arrested, and in custody he presented a petition to the Supreme Court at Washington for habeas corpus, and certiorari, and on the hearing alleged that the District Court had no jurisdiction of the matter charged against him, that the indictment laid no accusation of a punishable offence, and that his imprisonment was unwarranted by the Constitution of the United States, or any law passed in pursuance thereof, and was in violation of his rights, and those of the state of Virginia: and the state petitioned also, setting up that she was deprived of her judicial officer, and both the petitions prayed his discharge.

The Supreme Court held,

1st. That the act of the 1st March, 1875, is constitutional.

2d. That no agency of the state in any of its departments shall violate the amendments 13th, 14th, above recited, or the acts of Congress intended to enforce their provisions.

3d. That they, the amendments, were intended to secure equal rights to all persons and that Congress was vested with power to enforce them by appropriate legislation acting on the persons who are the agents of the state.

4th. That such officer as is charged with the selection of juries in so acting, acts ministerially, and although he derives his authority from the state, is bound to obey the Constitution and laws of the United States. Ex parte va. 10 Otto 340.

It follows that if the county commissioners who are charged to make the jury lists, fail to place the names of colored citizens on the lists and exclude them therefrom on account of race or color, that they are amenable to indictment under this act of Congress, in either the District or Circuit Court of the United States, and to be fined on conviction, not more than $5,000.

What will be regarded as evidence of the motive for such exclusion, may be inferred from the language of Justice Harlan in Neal va. Delaware. He says: "The showing thus made * * * that no colored citizen has ever been summoned as a juror in the courts of the state * * * presents a prima facie case of denial by the officers charged with the selection of juries, of that equality of protection which has been secured by the Constitution and laws of the United States."

Public officers might well contemplate with anxiety that conviction and fine await upon a presumption, arising from habitual omission alone, for a prima facie case is one sufficient till disproved. State vs Patton, 5 Ired. 180-84.

Besides this such action is a violation of the spirit of the state laws, which may be punished at the instance of the state for one act may be an offence against both governments. Moore vs. Illinois 14 How 13.

It is manifest that injurious consequences to the general public must flow out of this disregard of official duty.

So long as this state of things continues, the revisory jurisdiction of the federal courts over state prosecutions is invited, and must follow, and if there be aught in the attenuated idea of state rights, remaining for preservation, it should be the maintenance in the state tribunals of absolute and ultimate control of criminal prosecutions, for offences against the state. But this cannot be, and ought not to be, if the state through her agents couples with the administration of her laws a violation of the supreme law of the Republic.—For I doubt not that on indictments and trials of colored men in these counties where these executions occur, this action of the commissioners opens occasion for writs of error from the Supreme Court of the United States.

Besides the act of 1st March, 1875, Congress has further enacted that within the jurisdiction of the United States all persons shall have the same right in every state to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceeding for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains penalties, taxes, licenses and exactions of every kind and no other. U. S. Rev. Stat. secta. 1797-98.

The object and effect of these statutes are to place the colored race as to their civil rights on the same plane with the whites, to prescribe an exact equality of right and responsibility for all citizens alike, and to enforce the prohibition of the 14th amendment that no state shall deny to any person the equal protection of the laws.

As a further method of protection and enforcement Congress passed the act found in sec. 641, allowing the removal of civil suits or prosecutions to the federal courts, when for any cause a person is denied, or cannot enforce in the state tribunals any rights secured to him by any law providing for the equal civil rights of citizens of the United States. The constitutionality of these acts has been recognized. Tennessee vs. Davis, 10 Otto 259.

In this case the court took occasion to approve our case of the State vs. Hoskins, and draw from Justice Reade's opinion much both of reasoning and citation.

The Legislature of West Virginia had by enactment limited the selection of jurors to the *white* males. One Strander being accused of felony in one of her courts petitioned for removal under 641, because of the exclusion of his race on account of their color under the legislative statute.

And the Supreme Court held the statute void and section 641 constitutional, and that by the latter the removal into the federal courts was authorized and the prosecution put and end to in the state courts. Strander vs. West Virginia, 10 Otto 303.

In Virginia the legislation in this matter, like our own, has been in conformity with the National Constitution, but certain of her judicial officers had in selecting juries excluded colored citizens altogether and constantly.

Two negroes being indicted for murder in Patrick county, filed their petition for removal to the federal court under 641, because of the action of the Judge charged with the selection of the juries, and the case went to the Supreme Court of the United States.

It was held that section 641 did not apply to that case, because by the terms of the act it was directed to a denial of the right to equal protection of the law, or inability to enforce them resulting from the Constitution or law of a state, and inasmuch as in Virginia the Constitution and laws authorized no such exclusion, removal was not the proper remedy. Virginia vs. Rives, 10 Otto 319.

But the court also held that the constitutional provision is broader than those of section 641, and that if any act when subordinate agents of the state either executive or judicial, criminally misuse the state law to deny the equal protection of the laws, which the United States Constitution enjoins, and that this action will be exerted in the Supreme Court of the United States by a writ of error to the state court, over whose judgment it will assume supervision. Virginia vs Rives, 10 Otto 319.

Accordingly one Neal being indicted for a capital felony and on trial in the court of Oyer and Terminer of Newcastle county, Delaware, petitioned to remove his cause to the federal court, for the reason that by the law of Delaware, and by the action of her officers, jurors were selected wholly of whites, and colored men were altogether excluded on account of their color: and that the panel of grand jurors who found the bill had been so constituted. The petition was denied, and the trial proceeded with. This prisoner then moved to quash the panel and the indictment, because the levy court in selecting persons to serve on the grand jury had excluded all colored men because of their race or color. This motion was refused and exception taken, the trial proceeded to conviction and judgment of death against the prisoner.

On a writ of error to the court of Oyer and Terminer of Newcastle, the Supreme Court of the United States held,

1st. That the Constitution and laws of Delaware did not contravene those of the United States in the matter before the court, and therefore there was no error in denying the petition of the prisoner to remove his cause.

2d. That the exclusion of the colored men, because of their race or color, by the jury Commissioners, though without authority from the state laws, was a violation of the prisoners rights under the Constitution and laws of the United States which the trial court should have redressed.

3d. That the remedy for such error in the state court is to be found in the reviewing power of the Supreme Court of the United States.

Mr. Justice Harlan, speaking for the court said: "The action of these officers (the jury commissioners) in the premises is to be deemed the act of the state and the refusal of the state court to redress the wrong by them committed was a denial of a right secured to the prisoner by the Constitution and laws of the United States."

The judgment of the court of Oyer and Terminer of the state of Delaware was reversed, with directions to set aside the verdict as also the order denying the motion to quash. Neal vs. Delaware, 13th Otto 370, 397-98.

It is thus seen that by the action of those state officers the ultimate control of criminal prosecutions in the state court is surrendered to the revisory action of the federal tribunals, and the general government becomes the practical protector of the rights of the citizen, which the state ought jealously to guard.

Nor is this the worst evil to grow out of the action of the county officials. It entails upon the counties the inconvenience of delay in the administration of justice, and heavy expense incident to the transfer of cases into the federal courts, and unless ended it will assuredly bring about much more rigorous and stringent enforcement measures than we have yet been obliged to submit to at the hands of Congress.

I am, very respectfully,

Your obedient servant,

D. K. McRAE.