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Case Note, *Chandler v. Neff*

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Porto Rico and Hawaii to enact similar statutes. Congress also enacted such a statute for the District of Columbia and these statutes were shown to be operating successfully. The National Conference on Weights and Measures, the Department of Agriculture and the Department of Commerce endorsed the principle of prohibition of excess weights in bread, and the *Bakers' Weekly* supported the law.¹⁶ It is apparent from this that many men who were in better positions to know the bread trade than the members of the Supreme Court of the United States, believed the Nebraska bread law to be a reasonable and efficacious measure for the protection of the public against fraud in sales of bread. Laws with such support are not likely to unduly impose upon protesting minorities.

Not the least among the advantages in the Holmes-Brandeis theory over others, is that it permits wider economic and sociological experimentation among the states by giving them more latitude in trying out and developing their own schemes for reform.

GEORGE W. GOBLE.

CONSTITUTIONAL LAW—FOURTEENTH AND FIFTEENTH AMENDMENTS—EXCLUSION OF NEGROES FROM DEMOCRATIC PRIMARY ELECTIONS IN TEXAS.—[U. S.] In *Chandler v. Neff*¹ the local federal court upholds a recent Texas statute² which makes negroes ineligible to participate in any Democratic party primary election held in Texas. In 1905 Texas passed a very elaborate law regulating the making of nominations for public office and requiring them to be made in primary elections by all parties that polled at least 100,000 votes in the last general election. Smaller parties were optionally allowed to nominate by conventions, but the requirements for voting at both primary elections and at the convention primaries were rigidly prescribed.³ The act of 1923, cited above, was passed as an amendment to this general primary law, and was attacked in the federal district court by a bill for an injunction against its enforcement by various state officials. On the authority of *Giles v. Harris*⁴ the court dismissed the bill on the ground that courts of equity will not enforce political rights by injunction, but, on account of its importance, went on to discuss the question on its merits.

It had previously been decided in Texas, following the weight of American authority, that a 'primary election' was not an 'election' within the meaning of the state constitution prescribing qualifications for electors;⁵ and the court cited *Newberry v. United States*⁶ as giving a similar meaning to 'election' in art. I, sec. IV of the federal Constitution. It was then assumed that the Fourteenth and Fifteenth Amendments applied only to the same kind of an 'elec-

16. See the notes to Mr. Justice Brandeis's dissent.

1. (1924 W. D. Tex. San Antonio D.) 298 Fed. 515.

2. Texas Gen. Laws 1923 2d Called Sess. c. 32 sec. 1—Texas Rev. Civil Sts. art. 3093a.

3. Texas Rev. Civil Sts. 1913 arts. 3084-3174.

4. (1903) 189 U. S. 475.

5. *Koy v. Schneider* (1920) 110 Tex. 369, elaborately collecting and discussing the authorities.

6. (1921) 256 U. S. 232.

tion'—the final choice of an officer by the duly qualified electors—and therefore did not limit state control of 'primary elections.'

It will be noted that these assumptions are far from obvious. The Fifteenth Amendment does not use the word 'election' at all. It forbids the denial to citizens of the United States of the 'right to vote' on account of race, etc. It may be urged with a good deal of force that an 'election' technically refers only to the choice of officials, and hence would not include voting upon local option propositions or municipal bond issues, for instance.⁷ In *Willis v. Kalmbach*⁸ it was even suggested that the Fifteenth Amendment was intended to secure only the right of citizens to vote for the classes of officers enumerated in the Fourteenth Amendment, section 2 (presidential electors, members of Congress, state executive and judicial officers, and members of state legislatures); but this has been authoritatively denied in *Myers v. Anderson*,⁹ a case of the election of municipal officers. The 'right to vote' may well be a wider term than the right to vote at an 'election,' and so include, for instance, local option submissions to the voters, and still not include voting in party primaries, even when regulated by the state. And, of course, the Fourteenth Amendment, section 1, in its due process and equality clauses, is not limited to 'elections' or even to 'voting'; and it is quite possible that it applies to political as well as civil rights.¹⁰

A party, being a voluntary association, may consist, at least with the consent of the state, of persons more or less numerous than the electorate and possessed of less or greater qualifications than the electorate, at least if such qualifications have the assent of the party; e. g., women were allowed to vote in party primaries in some states before they were fully enfranchised.¹¹ A party may lawfully have for its object, unless forbidden by statute, the election of candidates of a certain race or religion only, however opposed such objects may be in general or in particular cases to the tenets of good citizenship or of wise public policy. And it may, of course, voluntarily confine its official membership to those who believe in its views, or who belong to the favored race or religion. Now, when parties are regulated by law, may the state, if it chooses, enforce for a party the same rule or rules of membership that the party itself adopts, not as necessarily indicating approval of their wisdom or propriety, but as a recognition of their existence in fact in and for that party? It seems difficult to deny this, provided only that the state does not

7. See *Willis v. Kalmbach* (1909) 109 Va. 475; *State ex rel. Birchmore v. State Bd. of Canvassers* (1907) 78 S. C. 461, annotated in 14 L. R. A. (N. S.) 850.

8. See note 7.

9. (1915) 238 U. S. 368. The Nineteenth Amendment, in language similar to the Fifteenth, has been held to entitle women to vote at municipal bond issue elections. (1921) *State v. Marsh* 106 Neb. 760; (1922) *Stephens v. School Dist.* 153 Ga. 690.

10. *Strauder v. West Virginia* (1880) 100 U. S. 303 (cf., the dissent of Field, J.—rejected by the court—in *ex parte Virginia* (1880) 100 U. S. 339, 367-8); *Pope v. Williams* (1904) 193 U. S. 621, 634; *Yick Wo v. Hopkins* (1886) 118 U. S. 356, 370.

11. *Koy v. Schneider* (1920) 110 Tex. 369.

hamper the free expression of contrary views by other parties. A law forbidding negroes to vote in any party primary, or in the primary of any party which desired their membership, would probably violate if not the Fifteenth then the Fourteenth Amendment as a deprivation of liberty and equality without due process; but if the Democratic party in Texas desires to be a white party only, it seems not unconstitutional, whether wise or not, for the state to recognize this as an attribute of that party.

A more doubtful statute was one of Arkansas which forbade the issuing of any license to sell liquor in any town or city unless (1) a majority of the votes cast in the county was for licensing, and (2) a majority of the adult white inhabitants of a town or city therein signed a petition to the county court for said license. The court was not bound to grant such petition, and anyone, including negroes, might appear and object to its granting. This was upheld in *McClure v. Topf*,¹² on the ground it did not concern voting and so did not violate the Fifteenth Amendment, but merely imposed a condition upon the liquor traffic which could be absolutely prohibited if the state desired. But the statute made it possible for whites to secure governmental sanction of liquor selling by a procedure denied altogether to negroes, and might well have been held a denial of the equal protection of the laws. This has been held in several cases where statutes purported to allow white citizens of a municipality alone to vote taxes upon the property of its white inhabitants for the support of white schools, the colored schools being similarly supported by taxes imposed by negro voters upon the property of the colored inhabitants. This was held bad as producing a grossly unfair distribution of school tax money between the children of the two races.¹³

JAMES PARKER HALL.

ILLINOIS CASES

APPEAL AND ERROR — CHANCERY — FINDINGS OF MASTER IN CHANCERY.—In *Chicago Title & Trust Company v. Central Trust Company*¹ this language appears:

“ . . . We have recognized the law as settled by this court in numerous decisions that we will not disturb the findings of the master and the court below in a case of this kind, involving an accounting and consideration of numerous items in the accounting, unless such items are shown to be manifestly against the weight of the evidence. This court has plainly stated in *Williams v. Lindblom*, 163 Ill. 346, that the findings of fact of a master are conclusive in such a case unless a clear mistake or fraud are shown.”

12. (1914) 112 Ark. 342, followed in *Wade v. Horner* (1914) 115 Ark. 250.

13. *Claybrook v. Owensboro* (1883 D. C. Ky.) 16 Fed. 297; *Puitt v. Commissioners* (1886) 94 N. C. 709. Contra: *Crosby v. Mayfield* (1909) 133 Ky. 215.

1. (1924) 312 Ill. 396 at page 518.