

Constitutional Law: Invalidity of Negro Suffrage Restriction in Primary Elections

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An owner of land is not required, in order to prevent a trespasser from acquiring title thereto, to explore beneath the surface or to ascertain at his peril whether or not an encroachment eighty or 100 feet above the surface does or does not overhang his property. There may be cases, of course, as eaves of buildings and the like, where possession is open and notorious and the rule applies, but cases of that kind have no application to the facts here.

A point at issue was whether sections 330.02, 330.08, and 330.09 of the Wisconsin Statutes state the maximum exclusive limits of possession to give title by adverse holding. They state nothing with reference to openness and notoriety of the adverse possession. Herein the Supreme Court reaffirmed the old rule that the possession must be *open and notorious* to be adverse, and decided that the evidence presented did not fulfill the requisites of good adverse possession.

The briefs of the parties and those in the Ogden case, *supra*, cover the Wisconsin cases on the points at issue and collateral questions. They set forth cases illustrating the facts necessary to show good adverse possession of similar structures, and cases where the facts have been held to be insufficient.

H. W. I.

Constitutional Law: Invalidity of Negro Suffrage Restriction in Primary Elections.—Another effort of one of our sister states of the south to curb the influence of the negro has been thwarted by the Supreme Court of United States.

Texas, in 1923, passed a statute by the words of which "in no event shall a negro be eligible to participate in a Democratic party primary election held in the state of Texas," etc. In the instant case *Nixon v. Herndon*,¹ the defendants were members of an election board, and the plaintiff was a negro, otherwise a qualified voter, who was denied the right to vote at the Democratic party primary election in 1924. The defendants' refusal was on the strength of the statute above quoted. Plaintiff contested the constitutionality of the statute as a direct infringement of his rights under the fourteenth and fifteenth amendments. The court gave no extended opinion in sustaining plaintiff's contention; rather, it declared in unequivocal terms that "it seems hard to imagine a more direct and obvious infringement of the fourteenth amendment" as it was a direct discrimination against the negro by denying him the equal protection of the law. Satisfied that the fourteenth amendment standing alone was sufficient to declare the statute unconstitutional, the contention that the fifteenth amendment was violated was not considered.

The result reached is one which may well be indorsed by one desirous of a just interpretation of our constitution and its amendments. The case, however, brings to mind the question: Upon what theory did the legislature of the state of Texas hope that the enactment would be upheld? The statute, as may be noted, was not couched in such a manner as to effect an illegal discrimination without such discrimination being evident on its face.² Again it could hardly have been anticipated that

¹ 47 Sup. Court Rep. Advance sheet, Mar. 15, 1927, page 446.

² For contrast, see 189 U.S. 475.

all the negroes would have regarded the prohibition with indifference. Should the legislature have contemplated that denying the right to participate in a primary election would not be denying the equal protection of the law, whereas denying participation in a final election would be, I fear it was sadly disillusioned, for the Supreme Court before determining the constitutionality of the statute, in one sweeping statement, declared that "if defendants' conduct was a wrong to the plaintiff, the same reasons that allow a recovery for denying plaintiff a right to vote at a final election allow it for denying a vote at a primary election that may determine the final result."

The legislature may have felt certain that the enactment would be justly condemned, but passed it nevertheless with a sinister purpose that the negroes might be barred from the primary election of 1924. It would hardly seem credible that a state legislature would harbor such an intent; yet if the legislature of Texas did entertain such an intent, its attitude should meet the hearty contempt of all true Americans, regardless of how urgent it may have felt the need.

All in all, it may be deemed an unfortunate circumstance that the court was called upon to determine the constitutionality of such a statute. It was *prima facie* unconstitutional and yet the court was obligated to give it a determination. Justice Holmes in his opinion did not so much as infer a cause for reproaching the legislature of Texas for the enactment passed by them. To my mind, however, a well timed reproach would have been justified, if not expedient.

C. W. W.

Corporations: Failure to File Annual Reports: Dissolution: Forfeiture of Corporate Rights.—The "legal entity" theory of a corporation has always been a fascinating legal fiction. If one would be consistent and strictly logical the results that would flow from straight-laced deductions are startling. Fortunately, the courts have realized that the fiction of separate entity is but a means to establish an end—not an end in itself.

More specifically, while a corporation may be regarded as a distinct entity for most purposes, the thought will not be permitted to go beyond its legitimate end; the fiction will not be allowed to be made the conduit of fraud. The principal is illustrated in case of *West P. Realty Co. v. Porth*.¹

The facts there were as follows: The plaintiff was incorporated in the year 1905 as a Wisconsin corporation for the purpose of dealing in real estate. Subsequent to the organization it did considerable business, buying and selling real property. During the years 1913, 1914, and 1915 it incurred obligations for which it executed its notes and secured said notes by mortgages on its property. The defendant, Porth, became the owner of the notes and the security by assignment. Upon default in payment in 1921 to 1924 the defendant foreclosed, obtained deficiency judgments and became the buyers of the mortgaged premises.

¹ 212 N.W. 651 (Wis.).