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## DAMAGES FOR DELAY IN TRANSMITTING MESSAGES.

In *Lucas v. Western Union Telegraph Company* decided in the Iowa Court of Appeals and reported in 109 N. W. 191, the defendant was sued to recover profits claimed to have been lost in a real estate transaction because of defendant's negligence in failing to deliver a telegram. Although the court does not hold directly that such profits might be recovered, certainly its opinion permits of such an inference. The question is not a new one and has been decided frequently before, but unfortunately, the decisions are not harmonious.

As to the amount of damages recoverable in general for the breach of a contract, the rule is that the offending party shall be liable only for such damages as the parties may be supposed to have contemplated would follow its violation. *Leonard v. New York, Buffalo and Albany Telegraph Company,* 41 N. Y. 544; *Curtin v. Western Union Telegraph Company,* 36 N. Y. Supp. 111. This general rule is well recognized, but in its application to damages in these cases the courts have found difficulty. While telegraph companies and common carriers are analogous in some respects it is generally held that the former are not absolute insurers of the proper transmissions of a message. *N. Y. and W. Printing Telegraph Company v. Dryburg,* 35 Pa. 398, as to whether their liability is or is not that of a common carrier it is important to decide. If telegraph companies are to be considered as common carriers, their liability is that of an insurer, and logically, they should be required to make full indemnity for actual loss sustained. In the case of

*Parkes v. The Alta Cal. Telegraph Company*, 13 Cal. 422, decided about 1860, the defendant was held liable for damages resulting from the loss of an attachment because of its failure to deliver a message promptly. The court in this case expressly held the telegraph company to be a common carrier. On the other hand, the case of *De Rutte v. The N. Y. and Albany and Buffalo Telegraph Company*, 1 Daly 547, decided about 1866, held that telegraph companies are not common carriers, but they should be held to a stricter accountability than mere bailees, and any delay or error should be presumed to have been due to their negligence.

In the principal case, the Court of Appeals in an opinion by Ladd, Judge, says: "If because of unreasonable delay in the acceptance, the contract was not completed, then it was for the jury to say whether the defendant was negligent in transmitting the message, and owing to this plaintiff lost the benefit of entering into the contract." The inference is, the defendant is liable for the amount lost in the transaction if the jury finds that it resulted from the negligence of the defendant company. It is this rule of damages, we think, as apparently laid down in the opinion that is open to criticism. The tendency of the courts at present seems to limit the liability of the telegraph company to the cost of the message unless the message itself may be presumed to fairly appraise the company of its importance and the damages which might ensue from their failure to deliver accurately and promptly. For failure to deliver a cipher message correctly the authorities are almost universal in holding that nominal damages only may be recovered, because such message does not appraise the company of its importance, so we think the rule would be the same in the case of any message which do not inform the defendant of the nature of the transaction involved. There are many cases holding this application of the rule of damages as the correct one. *Primrose v. The Western Union Telegraph Co.*, 154 U. S. 1; *Western Union Telegraph Co. v. Coggin*, 68 Fed. 137; *Candee v. Western Union Telegraph Co.*, 34 Wis. 471; *Merrill v. Western Union Telegraph Co.*, 78 Maine, 97.

With the rule of damages allowing such as may have been reasonably contemplated by the parties from a breach of their contract, it seems with all deference to the Ohio Court of Appeals, that the question to be submitted to the jury is, whether or not the telegram sent could be presumed to fairly appraise the company of its significance and the damage that a non-delivery would cause. A telegraph company could not reasonably be supposed to render itself liable for large damages at the ordinary rate of transmission especially when they have no knowledge of what would be the result of their failure to deliver. It is conceded that a telegraph company in all cases may defend their failure to deliver because of an act of God and may avail themselves of such defenses as common carriers have. True, there are many cases in accord with the view laid down by the Ohio courts. But it is plain that this application of the rule carried to its logical extreme, must necessarily work great injustice to the telegraph companies and render them liable to amounts far beyond what their rates of transmission would warrant.

INCREASE OF CAPITAL STOCK OF A CORPORATION—PRIMARY RIGHT OF AN ORIGINAL STOCKHOLDER TO PURCHASE NEW STOCK.

In the case of *Stokes v. Continental Trust Co.,* decided in the New York Court of Appeals on November 13th, 1906, a question was decided which will certainly bear much discussion.

In that case, Stokes, the appellant, was the owner of 221 shares of the original stock of the Trust Company, out of a total of 5,000 shares at par value of $100 each.

It was not questioned that the company was exceedingly prosperous and that it was unnecessary to issue any more stock except as it might be for the best interest of the stockholders. Blair & Company, a firm of private bankers, said to be representing Marshall Field and others, proposed to the directors of the Trust Company that the number of shares be increased from the original number of 5,000 shares to 10,000 shares; the capital from $500,000 to $1,000,000; and that *all* the addition—5,000 shares—be sold to Blair & Company at $450 per share, with the condition that the buyers be allowed to name ten of the twenty-one trustees to be chosen at the next meeting. The bonus offered was, therefore, $350 on each share. The proposition was accepted by the directors and a special meeting duly warned and called and, by a vote of 4,197 shares of the original stock, the deal was put through. Stokes, the appellant, knew the object of the meeting, attended it and agreed to the increase of stock—but objected to the sale to Blair & Company. He then demanded the right to buy as many of the new shares as his holding of the original shares bore proportion to the whole number. The directors agreed to take his proposition under consideration and later the entire new issue was sold to Blair & Company at the agreed price—$450 per share. At the time of the sale the book value of the stock was $309.69 per share; the market value $550, and at the time of the first trial the price had risen to $700 per share.

Stokes sued for damages for the failure to deliver the stock according to his offer—221 shares at $100 each. The trial court awarded him the difference between the market value and par value on the day of the sale, $450 for each share to which he was entitled. The Appellate Division reversed the decision, allowing him no damages, and the Court of Appeals modified the former holding, allowing him the difference between the price set by the directors in the sale to Blair & Company—$450—and the market value of the day of the sale which was $550, a difference of $100 per share.

It was decided, with little contention, that the appellant had the legal right to subscribe for and take the same number of shares of the new stock that he held of the old, as the new issue corresponded exactly with the original issue in number of shares. The text-books and reported cases show a few cases to the contrary, but a careful reading of these cases show that the holding is correct at common law—the cases cited involving generally the construction of statutes. Now comes a rather anomalous holding. From the facts it appears that the rapid increase in the value of the shares was directly attributable to the offer of Blair & Company, who were the

representatives of Marshall Field & Company, and other strong interests, and that this offer was noised about the financial circles. Appellant was willing to have the stock increased—though there was no other reason for the increase than this offer—and, though it does not clearly so appear, also agreed that if 221 shares were sold to him (appellant) at par, the balance might be sold to Blair & Company, or any one else. Judge Vann, in the majority opinion, held that the company had an undisputed right to place a price of $450 each on the shares and that, even if the appellant had the right which he claimed to buy the shares, he must pay—not the par value—but the price set by the company. It is to be regretted that this point was not gone into more fully. No case sustaining the holding is cited and a search of the authorities seems to hold the other way. In a carefully written dissenting opinion, Judge Haight holds, and with apparent correctness, that the appellant cannot, in the same breath, consent to an increase of stock in acceptance of Blair & Company's offer and also demand that he (appellant) be allowed to cut down the allotment to Blair & Company, thereby reaping the benefit of an advance admittedly due to the knowledge of the public that Blair & Company were to acquire the stock and interest their strong financial backing in appellant's corporation.

The case decides that the offer by Stokes of the par value was sufficient to bind the corporation to deliver to him the shares—not, however, at par—but at $450 each, and that no new offer at the increased price was necessary.

It is rather difficult to see just how this conclusion was arrived at, except on the principle that the company was absolutely bound to sell appellant the new shares, and this brings us back to the original question of the corporation's right to jump the price from $100 to $450 to appellant, an original stockholder. Of course, to hold that it was a price fixed independently by the directors is to lose sight of the fact that it was arbitrarily reckoned in response to the offer of Blair & Company. The case of *Gray v. Portland Bank,* 3 Mass. 364, holds, that on a refusal of a corporation to sell to a stockholder (original) his proportionate amount of the increase of stock, the measure of damages is the excess of the market value above par. This case is generally cited as authority and also seems to hold that the stockholder's right to subscribe for the increase at par is absolute. No American case, decided on common law principles, squarely overrules this holding, but it is a well-known fact that, at the present day, in some jurisdictions by statute and in others in deference to public opinion, an advance is usually charged to original stockholders on an increase of such stock. This applies particularly to public service companies, on the principle that the profits should accrue to the corporation itself, thus affording opportunity for improvements to the plant and equipment and a betterment of the service to the public, rather than be withdrawn from the corporation directly to the shareholder's private profit. As a matter of law, however, the decision of this case seems to be an attempt to set up a new rule based on the *bona fides* of the participants and the apparent equity of the individual case. The Trial Court, Appellate Divis-

ion and Court of Appeals all differed in their judgments and in the conclusions of law leading thereto. Evidently, action by the legislature is necessary to determine just what the law is on this point in New York state.

RIGHT OF EMPLOYER TO MAKE EMPLOYMENT CONDITIONAL UPON EMPLOYEE NOT JOINING LABOR ORGANIZATION.

During the last decade there has been much legislation affecting liberty of contract, such as statutes limiting hours of labor, prescribing conditions of employment, etc. The decisions of the courts as to the constitutionality of legislation of this nature seem to present much confusion and conflict of authority.

In the case of *People v. Marcus (N. Y.)*, 77 N. E. 1073, a provision of the New York Penal Code making it a misdemeanor for an employer to coerce or compel employees to enter into an agreement not to join a labor organization as a condition to securing or retaining employment, was declared unconstitutional by the New York Court of Appeals, as contrary to the constitutional provisions against depriving a person of rights and privileges, except "by the law of the land," or of "life, liberty or property without due process of law." This decision, in favor of the employer's freedom of contract, is treated as substantially settled by previous holdings that such contracts are not against public policy, citing *National Protective Asso. v. Cumming,* 170 N. Y. 315; and *Jacobs v. Cohen,* 183 N. Y. 207; and the court declares briefly, that restraints on personal liberty are limited to those which affect "the safety, health, and moral or general welfare of the public."

Similar statutes have been declared unconstitutional in other states on the same ground, and also because violative of the constitutional provision against class legislation; 29 L. R. A. (Mo.) 257; 52 L. R. A. (Ill.) 283; 58 L. R. A. (Wis.) 748; 66 L. R. A. (Kas.) 185; but in all the cases, including the New York case, the courts do not discuss at any length the question whether the restraint does affect the "moral and general welfare of the public," merely deciding in effect that it does not.

The power of the legislature to determine questions of public policy is perhaps universally admitted by the courts; and the difficulty of ascertaining whether or not there has been a valid exercise of the police power arises only when such exercise contravenes some constitutional provision. A review of the authorities on this point, and as to the exclusive power of the legislature to determine questions of public policy, seems to establish the following propositions:

The propriety of the exercise of the police power, *within constitutional limits,* is purely a matter of legislative discretion, with which the courts cannot interfere. *People v. King,* 110 N. Y. 418. But when such statute exceeds constitutional limits, then it is for the courts to decide whether it has such a reasonable connection with the public welfare as to appear upon inspection to be adapted to that end, for it cannot invade the rights of persons and property under

the guise of the police regulation, when it is not such in fact. *Viemeister v. White*, 179 N. Y. 235.

Legislative powers, the exercise of which can only be justified on the ground of the police power, and are otherwise unconstitutional, can be such only as are absolutely required for the safety, comfort or necessities of the public, and which the framers of the Constitution, as men of ordinary prudence, cannot be supposed to have intended to prohibit, despite the language of the prohibition. *People v. Jackson, etc.*, 9 Mich. 285. But it is the province of the court finally to determine, in case of conflict of the police power and the Constitution, whether there has been a valid exercise of the police power, and whether the power of the state to legislate, or the right of the individual to freedom of contract, shall prevail.

Were this right of review by the courts to be denied, where constitutional guaranties are involved; should the legislature be the sole judge of what the public welfare meant, they could prescribe what the people should eat and drink, and what political, moral and religious creeds they should believe in, all for the public good. But this is not the case, for over the people of the state hangs the shield of written constitutions, which are the supreme law, which our legislators are sworn to support, which grant a restricted legislative power, within which the legislators must limit their action for the public welfare, and whose barriers they cannot overleap under any pretext of supposed safety of the people; for along with our written constitutions we have a judiciary, created by them a co-ordinate department of the government, whose duty it is, as the appropriate means of securing to the people safety from legislative oppression, to annul all legislative action without the pale of those instruments. This duty of the judicial department, in this country, was demonstrated by Chief Justice Marshall, in *Marbury v. Madison*, 1 Cranch 137, and has since been recognized as settled American law. *Beebe v. The State*, 6 Ind. 507-508. In case of conflict, the temporary will of the people contained in the law, must yield to the paramount will of the people contained in the Constitution. *Beebe v. State*, 6 Ind. 527.

### STEAMSHIP TICKETS—CONDITIONS LIMITING LIABILITY.

There has been considerable conflict in the New York courts upon the question of carriers limiting their liability. Cases may be cited favoring nearly every possible attitude toward this subject.

The case of *Tewes v. North German Lloyd Steamship Co.*, reported in 73 N. E. 864, is of interest as tending to fix the New York rule. Here there was loss of baggage through negligence of carrier, a steamship company. The ticket of passage contained conditions limiting the company's liability for the loss or injury to or delay in delivery of baggage to an amount not exceeding $50. Nothing was said in reference to negligence of the carrier. The passenger did not notice the conditions or have his attention especially called to them. The court held, that a ticket for an ocean voyage is a contract, that the fact that the conditions on the ticket were

not brought especially to the notice of the passenger would not relieve him from the enforcement of those conditions by the company. This view was based on *Steers v. Liverpool N. Y. & P. S. S. Co.*, 57 N. Y. I. and *Wheeler v. Oceanic Steam Nav. Co.*, 72 Hun. 5.

Johnson, C., in his opinion in the Steers case, says: "Looking to the course of business the court may take notice that engagement for voyage across the ocean is a matter of more deliberation and attention than buying a railroad ticket or taking an express company's receipt for baggage or for freight." This attitude seems to be strongly fixed in New York by being practically reiterated in *Wheeler v. Oceanic Steam Nav. Co.* and now in *Tewes v. North German Lloyd S.S. Co.* The same spirit is evident in the other question in the Tewes case, where the divided court held that conditions in a ticket (granting notice to passengers) were sufficient to limit carrier's liability to the amount specified even though loss of baggage occurred through ordinary negligence on part of carrier. Cullen, C. J., and Haight, J., dissenting. The amount to which liability is limited is construed as an agreed valuation and thereby the passenger is estopped from recovering full value in case of loss. Not that the company is relieved from liability for its negligence, but that the passenger has, by his acceptance of the ticket, limited his right to recover. *Magnin v. Dinsmore*, 75 N. Y. 410. In the present case Justice Haight dissented, maintaining that such ticket stipulations only operated to relieve the carrier from its strict common law liability and not from its obligation to exercise proper care as a bailee. *Rathburne v. N. Y. N. H. & R. Co.*, 140 N. Y. 48. The gist of the dissent is well expressed in the words of Gray, J.: "The rule is firmly established in this state that a common carrier may contract for immunity from its negligence or that of its agents, but that to accomplish that object the contract must not be left to presumption from its language. Considerations based upon public policy and the nature of the carrier's undertaking influence the application of the rule and forbid its operation except where the carrier's immunity from the consequences of negligence is read in the agreement *ipsissimis verbis*." *Kenny v. N. Y. C. & H. R. Co.*, 125 N. Y. 422.

The Federal courts and most state courts generally favor protecting the passenger, who is always more or less at the mercy of the carrier. *R. R. Co. v. Lockwood*, 17 Wall. 357. In two recent cases decided by Federal courts in New York it was held that a passenger cannot be held to conditions on a ticket of passage where his attention had not been called to such conditions and he had no knowledge of them. *The Minnetonka*, 146 Fed. 509; *Weinberger v. Compagnie Generale Atlantique*, 146 Fed. 516. The U. S. Supreme Court does not seem to draw the distinction betweeen railroad and steamship tickets. Limited liability stipulations are treated as in the nature of subterfuges on the part of the carrier and are jealously scrutinized. Chief Justice Fuller says in *The Majestic*, 166 U. S. 375, "We quite agree with Lord O'Hagan in *Henderson v. Stevens* that when a company desires to impose special and most stringent terms upon its customers, in exoneration of its own liability there

is nothing unreasonable in requiring that those terms shall be distinctly declared and deliberately accepted."

TRANSFER TAX; ASSESSMENT OF SHARES OF STOCK IN A CORPORATION ORGANIZED UNDER THE LAWS OF TWO STATES.

In appraising the value of shares of stock to ascertain the amount of tax to be imposed under the New York transfer tax law, an interesting question was presented to the Court of Appeals of that state in the case of *Charles P. Cooley, et al. as executors v. The Comptroller,* 78 N. E. 939. The law provides for a tax upon the transfer by will or intestate law of any property or interest therein over a certain value when the decedent is a non-resident of the state at the time of his death. In this case the decedent was a resident of Connecticut. He transferred by will shares of stock in the Boston and Albany Railroad Company, a consolidated corporation organized under the laws of both New York and Massachusetts. The question presented to the court was whether in making the assessment the state of New York should recognize the full value of the shares held by the decedent, or whether it should limit the tax to a portion of the total value upon the theory that the company holds its property in Massachusetts at least under its incorporation in that state.

It would seem by an examination of former decisions rendered by the New York courts that a conclusion could be reached without much difficulty. Though this precise question had not previously been presented, yet in the late case, *In re Palmer's Estate,* 76 N. E. 13, it was said by Judge Gray that a share of capital stock represents the distinct interest which its holder has in the corporation. That his right to participate in the distribution of the net earnings of the corporation as a going concern or in its assets upon dissolution, is proportionate to the number of shares which he holds; these evidence the extent of his proprietary interest and their assessment for taxation purposes must be upon that interest regarded as an entity and is unapportionable with reference to the *situs* of the corporate properties. Adding to this opinion of Judge Gray the fact that a consolidated corporation organized under two or more states, by seeking the aid of the laws of New York and being incorporated thereunder, is considered a domestic corporation therein (*Matter of Sage, et al.,* 70 N. Y. 220), it would seem that the same result must follow in the assessment of this present tax as where shares are held in a corporation incorporate alone under the laws of New York and holding property outside the state. *In re Bronson,* 150 N. Y. 1. The court, however, adopted a contrary doctrine which seems to be based upon the equitable view that otherwise stockholders would be subjected to hardship. It is pointed out that if New York levied a tax assessed upon the full value of the shares, the other states of incorporation might do the same, resulting in double taxation. Such taxation courts should avoid whenever it is possible within reason to do so and all presumptions are against its imposition. *Tennessee v. Whitworth,* 117 N. S. 129. "The law of

taxation is to be construed strictly against the state in favor of the taxpayer as represented by the executor of the estate. *Matter of Fayerweather,* 143 N. Y. 114."

This is undoubtedly true, but we respectfully submit that the learned court has seemed to lose sight of the particular law by virtue of which this assessment is made and the construction of which is called for by this decision. The history of legislation upon this subject in New York and elsewhere shows a desire to remedy the fact that as a general rule the great bulk of personal property escapes taxation during the life of the owner since, from its very nature it can be readily concealed. And it was in regard to a message to the legislature by the chief executive of that state calling for some additional tax law to remedy this evil that the first of a series of acts was passed of which the present is the culmination. (Opinion by Judge Vance in *Bronson's Case,* 150 N. Y. 1). Among other provisions the law now in force provides for the tax of the transfer by will of property within the state as above stated, the word property being afterward defined to include "all property or interest therein whether situated within or without this state." (Laws of 1898, Chapter 88, Section 242.) Thus plainly intending to make the tax as sweeping in its results as possible.

Since, therefore, the state has complete power to tax the transfer of stock as property at its true value when such shares are held in corporations organized under its laws regardless of where their property is situated (*Plummer v. Coler,* 178 U. S. 115), it would seem that such was the plain and undoubted intention of the legislature in the present instance. And this being the case, the presumption against the possibility of double taxation is rebutted. If such a construction will operate harshly upon certain individuals the remedy is not with the courts but rather with the legislature for a change in the enactment.

There is no case to our knowledge which has decided this identical question. The New York court considers *Moody v. Shaw,* 173 Mass. 375, and says that the opinion in that case does not seem to warrant a construction to the effect that such a transfer of shares as here under consideration would be taxed according to their full value. There the corporation involved was also the Boston and Albany Railroad. It is true that this precise point did not arise and the opinion is very short. But a careful consideration of that case leads one to draw the inference that in that state the transfer of such shares of stock for the purpose of taxation, would be assessed as shares in any domestic corporation regardless of the situation of the corporate property and incorporation elsewhere.

### THE JURISDICTION OF THE FEDERAL COURTS IN CASES OF CONSPIRACY AGAINST PERSONS OF AFRICAN DESCENT.

On October 24, 1906, the Supreme Court of the United States, filed an opinion in the case of *Hodges v. United States,* 203 U. S. 1, which can hardly fail to be of universal interest especially in the southern sections of the country. In that case the court, in an

opinion remarkable for its brevity, held, Harlan and Day, JJ., *dissenting*, that the Federal Courts have no jurisdiction under the 13th Amendment or sections 1978, 1979, 5508, 5510, Revised Statutes, of a charge of conspiracy made and carried out in a state to prevent citizens of African decent, because of their race and color, from making or carrying out contracts and agreements to labor.

That the Federal Courts had jurisdiction of actions of this class previous to the three *post bellum* amendments to the Constitution, can hardly be contended. With the exception of a very few restrictions such as the prohibition against *ex post facto* laws, bills of attainder, etc., the entire control over the privileges and immunities of the citizens was vested exclusively in the state legislatures. *Carfield v. Coryell*, 4 Wash. Cir. Ct., 371, 381. The Federal Government is one of enumerated powers. *10th Amendment to the Constitution.* The 13th and 14th are universally conceded to be restraints on state action and are not intended to furnish redress for the invasion of individual rights. *United States v. Harris*, 1906 U. S. 313. The state alone has sovereignty and jurisdiction to protect personal liberty against lawless violence on the part of individuals. *Cooley's Const. Lim. 706.* Unless, therefore, the 13th Amendment gives the Federal Courts jurisdiction over crimes of the character charged in *Hodges v. The United States*, it would seem that, of necessity, the remedy must be sought through the state courts subject to supervision by writs of error in proper cases. The question then resolves itself into a determination of the scope of the 13th Amendment.

The national government has power, whether expressly given or not, to secure and protect rights conferred or guaranteed by the Constitution. *United States v. Reese*, 92 U. S. 214. Every right created by, arising under, or dependent upon, the Constitution of the United States may be protected and enforced by Congress in such manner as Congress may, is its discretion, deem best adapted to the objects sought. *Logan v. United States*, 144 U. S. 293. Can it be correctly said, however, that a conspiracy to prevent citizens of African decent, because of their race and color, from making or carrying out contracts and agreements to labor is the deprivation of a right created by, or dependent upon, the 13th Amendment? Or in other words does such a conspiracy in its effect virtually amount to slavery and involuntary servitude? The solution of this question appears to be the point of dissension among the judges in this case.

Pomeroy in his work on *Municipal Law*, 660 p. 383, defines slavery as a status implying perpetual servitude to the master or owner upon whom it confers the complete control and dominion over the labor, acquisitions and person of the slave. Whether this definition is sufficiently comprehensive or not, we do not attempt to say. At any rate, it is sufficient for our purpose. While the inciting cause of the 13th Amendment was the emancipation of the colored race, yet it was not an attempt to commit that race to the care of the nation. It reaches every race and equally

forbids Mexican peonage and the Chinese coolie trade when they amount to involtary servitude. *Slaughterhouse Case*, 16 Wall. 36. It must be borne in mind, however, that Congress did not assume under theauthority given by the 13th Amendment to adjust what may be called the social rights of men in the community; but only to declare and vindicate those fundamental rights which appertain to the essence of citizenship and the enjoyment or deprivation of which constitute the essential distinction between freedom and slavery. *Civil Rights Cases*, 109 U. S. 22.

The rights of citizens to pursue and follow any of the ordinary vocations of life are not created by the Constitution, but are among the inherent and inalienable rights of men. *Butcher's Union v. Crescent City Co.*, 111 U. S. 757; *Civil Right Cases*, 109 U. S. 3, 13. In the case of *Logan v. United States*, 144 U. S. 203, 293 the court held that the right to work at a given occupation, or particular calling, free from injury or interference by individual citizens was not a right guaranteed by the Constitution. Where a state has been guilty of no violation of the 13th, 14th or 15th Amendments no power is conferred on Congress to punish private individuals who, acting without any authority from the state, and it may be defiance of law, invade the rights of the citizen protected by such amendments. *Le Grand v. United States*, 12 Fed. 577. Unless the state denies to persons of the colored race the equal protection of the laws, Congress has no power to pass laws for the punishment of ordinary crimes and offences against them. *United States v. Cruikshank et al.*, 1 Wood 308.

We fail to see therefore, how under circumstances such as these where the state has been guilty of no unjust discrimination against her colored citizens, but on the contrary is ready and willing to enforce the law and protect them in the exercise of their fundamental rights as citizens. the Federal Courts have any right to assume jurisdiction simply because the persons wronged happen to be of the African race. To hold otherwise would be in fact granting them privileges not secured to the white citizens who gave them their freedom and to invest the Federal Courts with jurisdiction over practically the whole category of crimes when the victim happened to be a negro. Such a result was clearly not intended by the adoption of the 13th Amendment of the Constitution.