

THE FEDERAL REPORTER

WITH KEY-NUMBER ANNOTATIONS

VOLUME 182
PERMANENT EDITION

CASES ARGUED AND DETERMINED IN THE

CIRCUIT COURTS OF APPEALS AND CIRCUIT AND DISTRICT COURTS OF THE UNITED STATES

WITH TABLE OF CASES IN WHICH REHEARINGS HAVE BEEN
GRANTED OR DENIED

AND
TABLE OF STATUTES CONSTRUED

DECEMBER, 1910—JANUARY, 1911

ST. PAUL
WEST PUBLISHING CO.
1911

general power in a corporation to issue stock contrary to express statutory provisions of the state giving it life. It assumes its life and maintains its existence under and in obedience to such laws. I cannot assume any "general" or "special" power other than so guaranteed and vested in it by such laws.

The demurrer to the bill will be overruled.

ANDERSON v. MYERS et al. HOWARD v. SAME. BROWN v. SAME.

(Circuit Court, D. Maryland. October 23, 1910.)

1. ELECTIONS (§ 12*)—CITIZENS—RIGHT TO VOTE—PERSONS OF COLOR.

Acts Md. 1908, c. 525, prescribing the qualifications of voters at municipal elections in the city of Annapolis, declares that the register shall register all male citizens of 21 years or over having resided in the city for one year, not convicted of a crime and assessed on the city tax books for at least \$500, also all duly naturalized citizens of 21 years of age, all citizens who, prior to January 1, 1868, were entitled to vote in Maryland or any other state at a state election, and all lawful male descendants of any person who, prior to January 1, 1868, was entitled to vote in Maryland or in any other state of the United States at a state election, provided that no person not coming within one of the enumerated classes should be registered as a legal voter in the city or be qualified to vote at any municipal election held therein. Held that, though such act did not provide a race or color disqualification in terms, it nevertheless effectually disfranchised and discriminated against negroes, and was therefore unconstitutional as violating Const. U. S. Amend. 15.

[Ed. Note.—For other cases, see Elections, Cent. Dig. § 8; Dec. Dig. § 12.*]

2. ELECTIONS (§ 104*)—NEGROES—DISFRANCHISEMENT—LIABILITY OF ELECTION OFFICERS.

Where the registers of election of the city of Annapolis refused to register plaintiffs, who were negroes, and who were otherwise qualified voters, because they did not fulfill the qualifications of voters prescribed by Acts Md. 1908, c. 525, which act was unconstitutional in so far as it effected negro disfranchisement, plaintiffs were entitled to recover damages against defendants under Act Cong. April 20, 1871, c. 22, 17 Stat. 13 (Rev. St. § 1979; U. S. Comp. St. 1901, p. 1262), providing that every person who under color of any statute subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceedings for redress, nor were complainants required to allege that defendants in refusing to register plaintiffs acted willfully or maliciously.

[Ed. Note.—For other cases, see Elections, Cent. Dig. § 102; Dec. Dig. § 104.*]

3. ELECTIONS (§ 12*)—CIVIL RIGHTS—RIGHT TO VOTE—NEGROES.

Const. U. S. Amend. 15, denying to the state the right to deprive any person of the right to vote on account of race, color, or previous condition of servitude, is not limited to congressional elections, but applies as well to the right to vote at state or municipal elections given by the state.

[Ed. Note.—For other cases, see Elections, Cent. Dig. § 8; Dec. Dig. § 12.*]

4. STATUTES (§ 64*)—PARTIAL INVALIDITY.

Because Acts Md. 1908, c. 525, providing the qualifications of voters in municipal elections in the city of Annapolis, is invalid, as violating Const. U. S. Amend. 15, in so far as it is effective to prevent negroes from being registered and voting, does not render the law invalid in toto.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. § 59; Dec. Dig. § 64.*]

5. CONSTITUTIONAL LAW (§ 10*)—RIGHT TO VOTE—CONSTITUTIONAL AMENDMENT—POWER OF UNITED STATES.

Const. U. S. Amend. 15, forbidding discrimination on account of race or color, though construed as forbidding discrimination at state and municipal elections, does not render it objectionable in that, if so construed, it is beyond the power of the United States to so amend it.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 2-7; Dec. Dig. § 10.*]

Actions by John B. Anderson, William H. Howard, and Robert Brown against Charles E. Myers and A. Claude Kalmay for refusal to register complainants as qualified voters. On demurrer to plaintiffs' declarations. Overruled.

J. Wirt Randall, Edgar H. Gans, Edwin G. Baetjer, and Charles J. Bonaparte, for plaintiffs.

Wm. L. Rawls, Ridgely P. Melvin, and William L. Marbury, for defendants.

MORRIS, District Judge. The questions of law which are now before this court for its ruling have been raised by the defendants' demurrers to the declarations filed in three actions at law. They are suits for damages against the defendants, Myers and Kalmay, who were two of the registers upon whom, together with a third register, one Clarence M. Jones, was imposed the duty of registering the qualified voters at a special registration held in the city of Annapolis in the month of June, 1909. By the votes of the two registers who are defendants, the plaintiffs were denied registration; and in consequence their votes were refused by the judges of election for the reason that they were not entitled to vote because their names did not appear among the registered voters of the city of Annapolis.

The plaintiffs allege that they are natives of Maryland and lifelong residents therein who have been heretofore voters and continuously registered voters in Maryland. They allege that in obedience to the law of Maryland enacted at the January session (Acts 1908, c. 525), they were denied registration by the defendants, although in other respects they were legally qualified, solely because they were negroes and were discriminated against solely on that account; that the defendants as registers denied the plaintiffs registration, against the protest of the third registrar, wrongfully, illegally, and oppressively, and thus prevented the plaintiffs from voting at subsequent elections in the city of Annapolis.

The declarations allege that the action of said defendants as registers was in accordance with the said act of the Legislature of Maryland (chapter 525, Acts 1908), providing for the qualification of voters in municipal elections in the city of Annapolis, and providing for

the registration of said voters. By said act of 1908, the registers were directed to register: (1) All male citizens of Annapolis of 21 years or over who had resided therein over one year, who had never been convicted of any infamous crime, and who were taxpayers assessed on the city tax books for at least \$500; (2) all duly naturalized citizens; (3) all male children of naturalized citizens of 21 years of age; (4) all citizens who, prior to January 1, 1868, were entitled to vote in the state of Maryland or any other state of the United States at a state election; and (5) all lawful male descendants of any person who, prior to January 1, 1868, was entitled to vote in Maryland or in any other state of the United States at a state election. And enacted that no person not coming within one of the enumerated classes should be registered as a legal voter of the city of Annapolis or be qualified to vote at any municipal election held in said city.

The several declarations then allege that so much of said act of Maryland as refuses registration and consequently the right to vote at municipal elections in the city of Annapolis to all persons or their descendants who were not entitled to vote in Maryland prior to January 1, 1868, is contrary to the Constitution and laws of the United States, and more especially to the fifteenth amendment to the Constitution and to the act of Congress approved May 31, 1870 (Act May 31, 1870, c. 114, 16 Stat. 140) constituting section 2004 of the United States Revised Statutes (U. S. Comp. St. 1901, p. 1272), in so far as the said clause of said law of Maryland of 1908 affects or professes or attempts to affect the right to vote of any citizen of the United States by reason of the race, color, or previous condition of servitude of himself or any ancestors of his.

The plaintiff Anderson alleges that he is a citizen of the United States, born in Anne Arundel county, Md., in 1834; that prior to January 1, 1868, he would have been entitled to vote at any election in Anne Arundel county but for the word "white" in the Constitution of Maryland then in force, restricting the right to vote to "white" citizens, by which restriction, being of the negro race and black color, and by reason of no other cause whatsoever, he was, prior to January 1, 1868, excluded from voting at municipal elections in the city of Annapolis.

The plaintiffs Howard and Brown allege substantially that their father and grandfather, respectively, would have been entitled to vote in Maryland except for the word "white" in the Maryland Constitution which was in force prior to January 1, 1868; that they have heretofore voted at municipal elections and were denied registration by the defendants acting as registers by reason of the provision of the Maryland law of 1908 solely and avowedly on account of their race and color. That is to say, because, in the case of Anderson, he could not on account of his race and color have voted prior to January 1, 1868; and, in the cases of Howard and Brown, because their father and grandfather, respectively, could not on account of race and color have so voted.

The plaintiffs all allege that in all other respects, except their race and color, the plaintiffs met all the requirements of the law entitling them to registration.