

Holmes. Five other justices as follows concurred: Chief Justice Taft, and Associate Justices Brandeis, Butler, Van Devanter and McKenna. A dissenting opinion was rendered by Mr. Justice McReynolds in which Associate Justice Sutherland concurred. The decision was thus six to two.

After reciting the facts admitted by the demurrer, the majority opinion goes on as follows to outline the facts and the law:

"According to the affidavits of two white men and the colored witnesses on whose testimony the petitioners were convicted, produced by the petitioners since the last decision of the (Arkansas State) Supreme Court hereafter mentioned, the Committee (of Seven) made good their promise by calling colored witnesses and having them whipped and tortured until they would say what they wanted, among them being the two relied on to prove the petitioners' guilt. However that may be, a grand jury of white men was organized on October 27th, with one of the Committee of Seven, and it is alleged, with many of those organized to fight the blacks, upon it, and on the morning of the 29th the indictment was returned. On November 3rd, the petitioners were brought into Court, informed that a certain lawyer was appointed their counsel and were placed on trial before a white jury—blacks being systematically excluded from both grand and petit juries. The Court was crowded with a throng that threatened the most dangerous consequences to anyone interfering with the desired result. The counsel did not venture to demand delay or a change of venue, to challenge a jurymen or to ask for separate trials. He had had no preliminary consultation with the accused, called no witnesses for the defense although they could have been produced, and did not put the defendants on the stand. The trial lasted about three-quarters of an hour and in less than five minutes the jury brought in a verdict of guilty of murder in the first degree. According to the allegations and affidavits there never was a chance for the petitioners to be acquitted; no jurymen could have voted for an acquittal and continued to live in Phillips County and if any prisoner by any chance had been acquitted by a jury he could not have escaped the mob

"We shall not say more concerning the corrective process afforded to the petitioners than that it does not seem to us sufficient to allow a Judge of the United States to escape the duty of examining the facts for himself when if true as alleged they make the trial absolutely void. We have confined the statement to facts admitted by the demurrer. We will not say that they cannot be met, but it appears to us unavoidable that the District Judge should find whether the facts alleged are true and whether they can be explained so far as to leave the state proceedings undisturbed.

"Order reversed. The case to stand for hearing before the District Court."

This is what the decision means. The Federal District Judge in Arkansas, in sustaining the demurrer of the State of Arkansas, ruled that the five defendants had no legal remedy. The United States Supreme Court decision reverses that decree and the case is sent back to him to hear the facts. If he finds that the facts are as alleged in the petition, he will grant the writ of *habeas corpus*, and that will mean the defendants are improperly held by the keeper of the penitentiary, must be brought before the court, and there discharged on the ground that they are not held by any legal process. Under the constitution no man can be deprived of life or property without due process of law, and the Supreme Court has held that upon the facts alleged in the petition, if they are true, (in filing a demurrer to these facts, the State of Arkansas does not deny they are true) these defendants are deprived of their liberty without due process of law. It is therefore highly probable that these men who have been under sentence of death since November 3, 1919, will soon be free.

For a minute, let us go back to the cases of Ed Ware and the other five men whose cases were appealed to the Arkansas State Supreme Court after they too were sentenced to death by the Phillips County Circuit Court on November 3, 1919. It will be remembered that the State Supreme Court reversed the lower court and ordered the men to be retried. They were again placed on trial in the Phillips County Court and again convicted and sentenced to death. Again an appeal was made by the N. A. A. C. P. lawyers to the State Supreme Court, and a second time their conviction was reversed by the higher court, this time on the ground that Negroes had been deliberately excluded from the jury in contravention of the Fourteenth Amendment and the Civil Rights Act of 1875. The men were ordered tried a third time by the Phillips County Court.

This second reversal took place on December 6, 1920. Although the attorneys for the men have been ready for trial each time the cases were set, on every occasion the State of Arkansas asked postponement. It has been evident that the State was disinclined to risk further discredit through a

third reversal, and was waiting until the United States Supreme Court had rendered its decision in the other block of cases. Now that the decision has been rendered, it is quite possible that the State of Arkansas will allow the cases of Ed Ware and the five men to go by default under the statute of limitations which requires release of men who have been awaiting retrial for two years and who have not been tried through unreadiness on the part of the State.

In similar fashion will the cases of the sixty-seven men sentenced to long prison terms be affected. Writs of *habeas corpus* are now being prepared to obtain their release. When this is done, all of the seventy-nine men will be freed, and the biggest case of its kind ever known will have been completed.

Why are these cases so important? Is it simply that twelve innocent men might be saved from death and sixty-seven other men might be released from unjust confinement in prison? By no means. It is, of course, humane and necessary that such struggles to prevent legal murder be waged. But there are two reasons far more important why these cases and their successful conclusion affect the lives and destinies of every colored man and woman in the United States and particularly those who live in the farming sections of the South. It affects with equal force white tenant farmers of that same region.

The first of these reasons is this. If the deliberately manufactured charge which was spread by news despatches throughout the country that these colored men had formed an organization "to massacre white people" had gone unchallenged, Negroes could have been butchered and murdered like wild beasts in all parts of the South and the slaughter justified by the tale that they "had formed an organization to kill white folks just like those Negroes did in Phillips County, Arkansas, in 1919." *That lie has been exploded for all time!*

The second reason is even more important. This decision opens up the entire question of economic exploitation of colored and white farmers alike under the share-cropping and tenant-farming systems of the South. According to Dr. Albert Bushnell Hart of Harvard University, the Negro forms two-fifths of the population of the South but produces three-fifths of the

wealth. Negro farmers enter into contracts with landowners in all the cotton states through which an equitable division of the crops produced is guaranteed. Under the terrorization which rules the South through mob-law, these Negro farmers are seldom given itemized accountings, are seldom allowed to know the price at which the crops they raised are sold by the landlords, are forced to accept the landlord's figures for supplies received, and dare not question the honesty of the accounting. Bills for supplies are padded, prices received through the sale of crops are whatever the landlord chooses to tell his tenants. In such manner the Negro usually finds himself deeper and deeper in debt every year regardless of how little he used in supplies or how high the price of cotton or corn.

Under the system no Negro is allowed to leave a plantation as long as he remains in debt. Thus, the landlord cannot only take by force and intimidation all of the crop but he can assure his labor supply for the coming year. It was against such a system as this that the colored men in Phillips County, Ark., organized. They knew that any individual Negro who dared dispute the figures given him by his landlord was liable to be classed as a "bad" Negro and lynched if he became too insistent in his demands for an honest settlement. They had learned through bitter experience and through conditions unbelievable to men and women who live in more enlightened sections of the United States, a lesson of organization which many colored people in other parts of the country have not yet learned.

In the final analysis, lynching and mob violence, disfranchisement, unequal distribution of school funds, the Ku Klux Klan and all other forms of racial prejudice are for one great purpose—that of keeping the Negro in the position where he is economically exploitable. A blow so powerful at the fundamental form of exploitation—the share-cropping system through which Negroes are robbed annually of millions of dollars—is the most effective attack on the whole system of race prejudice that could be struck. The Supreme Court decision in these notable cases thus becomes one of the milestones in the Negro's fight for justice—an achievement that is as important as any event since the signing of the Emancipation Proclamation.