

JURORS AND THE CIVIL RIGHTS BILL.

Our whole difficulty with the Civil Rights Bill passed by the Senate last week refers to the question of its constitutionality. While we heartily approve of the end sought to be gained, and as heartily believe that every state should secure this end within its own limits by appropriate legislation, we are, nevertheless, unable to find in the Constitution of the United States the authority under which Congress can pass such a bill. Favoring the end aimed at, we regret the necessity of objecting to the means. As we understand the Constitution, the bill proposes that Congress shall do what in nearly every particular lies outside of its jurisdiction and what should be done by the states.

Take, for example, the jury section of the bill, the only one of which we now propose to speak. It reads as follows:

"Sec. 4. That no citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified for service as grand or petit juror in any court of the United States, or of any state, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid shall be deemed guilty of a misdemeanor and be fined not more than \$1,000.

There can be no question as to the constitutional right of Congress to enact such a law in reference to the organization and regulation of United States courts. Has it also the right to extend the law to courts created and organized under state laws? We think not, any more than it has the right to regulate the organization of state legislatures.

The only ground upon which the claim of such a right can be based is the language of the Fourteenth Amendment, which says that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws"; and which also says that "Congress shall have power to enforce by appropriate legislation the provisions of this article." Unless this language sustains the jury legislation in respect to state courts proposed in this bill it is not sustained at all by the Constitution of the United States. There is no pretense of any other ground upon which to rest it.

Is it, then, true that the right to serve as a juror in state courts is one of those "privileges or immunities of citizens of the United States" which the Fourteenth Amendment says shall not be abridged by state legislation? Is the jury right—not the right of trial by jury, but the right to be a juror—one of these privileges? To our understanding it is clear that mere citizenship, whether that of a state or of the United States, does not of itself carry with it the right to be a juror under either jurisdiction, any more than it carries with it the right to be a governor or a congressman. A juror is for the time being a public officer, appointed under qualifications specified by law and in a way designated by law, to perform a public service in the administration of justice. The law makes him a part of its judicial machinery. His service is none the less official because temporary. He is as really an officer of law for the time being as the sheriff or the judge on the bench. He is legally appointed to the service, and when he enters the jury-box put under oath. His service

is, moreover, compulsory in respect to him. Being duly appointed according to law, he must serve, unless excused, or suffer a penalty.

Now we can easily understand the doctrine of jury duty imposed by law; but we cannot so readily understand the doctrine of a jury right in the sense of a fundamental right necessarily attached to citizenship. There is no such right in this country and there never has been. All the states from time immemorial have provided for the selection of jurors from the body of citizens, just as they have provided for the selection of constables and sheriffs from the same body. They have, in their discretion, designated such qualifications of age, sex, property, intelligence, and character as to exclude from the jury service large classes of citizens, and, indeed, limit it to a small class as compared with the whole. They have proceeded upon the theory that the service is not an inherent right of citizenship at all, but simply a duty imposed on those selected in conformity with law to perform it. In limiting this jury duty to a comparatively small class, have they abridged those great privileges or immunities which are the common attributes of all citizenship? Is there anything in the usage or law of this country to sustain the idea that the jury service is one of these privileges or immunities? Nothing whatever; and, hence, the Fourteenth Amendment has nothing to do with the jury question, and especially does not bestow upon Congress the power to interfere with the discretion of the states in determining this question. It is a question for each state to settle for itself according to its own ideas of justice and public policy.

The laws of this state, for example, exclude females from the jury-box, and also all persons who are under twenty-one and above sixty years of age. They also exclude all persons who have not a certain property qualification, and equally those who are not "of fair character, of approved integrity, of sound judgment, and well informed." In some states persons not able to read and write are disqualified for the jury service. All these persons, however, are citizens; and the Fourteenth Amendment guarantees to every one of them all "the privileges or immunities of citizens of the United States." Has Congress then the right to say that no citizen, having all other qualifications, shall be disqualified for jury service in a state court on account of sex, or of age, or for the want of a certain amount of property? Just as much right as it has to enact the jury feature of this bill, and no more. That is to say, it has no such right at all.

The point we make is not that colored citizens as such should be excluded from the jury-list or as such included. The states in their jury laws should ignore the question of race or color altogether, and the United States should do the same thing. This, however, has nothing to do with the question whether Congress has the constitutional right to restrict the discretion of the states on this subject. The theory of this bill in respect to jurors in state courts, as in respect to most of the items contained in it, involves such a latitudinarian interpretation of the powers of Congress as would, if carried out and applied to other matters to which it is equally relevant, oust the whole jurisdiction of the states and consolidate all powers finally in the General Government. The argument of those who opposed it in the Senate was answered by votes, and not by argument. The Republican party is drifting in the direction of an unconstitutional centralism; and those will ultimately prove its best friends who resist this tendency. The error, though different from the exploded doctrine of secession, is no less an error, no less false to the Constitution, and no less dangerous to the best interests of the people. Mr. Justice Swayne has well said: "The authority of the National Government is limited, though supreme in the sphere of its operations." "It is one wholly of delegated powers, and . . . whenever an act of that government is challenged a grant of power must be shown or the act is void." The safety of the whole people, including colored as well as white men, is best promoted by confining Congress rigidly to this principle. Any departure therefrom is a common peril.