THE RIGHT OF THE PEOPLE TO ESTABLISH FORMS OF GOVERNMENT: MR. HALLETT'S ARGUMENT IN THE RHODE ISLAND CAUSES, BEFORE THE SUPREME COURT OF THE UNITED STATES, JANUARY, 1848

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Trieste

MR. HALLETT'S ARGUMENT.

Present—Chief Justice TANEY, and Justices WAYNE, MCLEAN, NELSON, WOODBURY, and GRIER. Justices CATRON and DANIEL were unable to sit in the cause, being confined by sickness, and Judge MCKINLEY was not present.

For the Plaintiffs, NATHAN CLIFFORD, Attorney General of the United States, and B. F. HALLETT.

For the Defendants, DANIEL WEBSTER, JOHN WHIPPLE, and ALFRED BOSWORTH.

It being arranged that the two causes should be argued together, Mr. HALLETT opened for the Plaintiffs.

MAY IT PLEASE YOUR HONORS—

The first of these causes comes before this Court by writ of error to the Circuit Court of the United States for the District of Rhode Island, upon a judgment pro forma against the plaintiff in error.

The second is sent up from the same Court upon a certificate of division of opinion between the two Judges.

Both causes involve similar questions and principles, and therefore may with great propriety be argued together, the distinction between them being, that in the first the distinct issue raised is the validity of the People's Constitution, which the plaintiff claims was in force in Rhode Island; and in the second the question is definitely raised as to the force and validity of Martial Law, under which the defendants justify their acts of trespass.

If the new constitution, and laws under it, were in force in Rhode Island, and the old Charter Government rightfully superseded thereby, then the justification of the defendants fails in both cases. If, on the other hand, that constitution was not in force, but the Charter Legislature was in fact the law-making power, yet, if they had not the power to declare Martial Law in the manner they did, or if the act itself, and the proceedings under it, were illegal or defective, or if the defendants have failed to show their authority as subordinates, then also the defence in both cases, but especially in the latter, fails.

The first is an action for trespass to the property of the plaintiff, Martin Luther; the second is an action for trespass to the person of the plaintiff, Rachael Luther.

The facts which appear upon the record, and are to be taken as fully proved, are these:—

In June, 1842, Martin Luther was living in the town of Warren, in the State of Rhode Island, in his own house, (which was also occupied by his mother, Rachael Luther,) and had lived there for nearly forty years. On the 29th of June, in the night time, the defendants, Luther M. Borden, Stephen Johnson, William L. Brown, John H. Munroe, William B. Snell, James Gardner, and John Kelly, are charged with breaking into the plaintiff's

welling house, they being armed with muskets and other dangerous weapons, and in a menacing manner breaking and tearing down the doors, glasses, windows, and furniture, and otherwise defacing and injuring the house.

They are also charged, in the second suit, with a personal trespass upon the plaintiff, Mrs. Luther, an elderly lady of some eighty years of age, by forcibly, in the night time, breaking into her chamber, in which she was sleeping with her maid servant, driving them from their beds in their night clothes, and with bayonets pointed to the breast and body of the plaintiff and her servant, menacing and threatening to stab and kill them, if they did not disclose where Martin Luther was, and detaining them in their night dress, and not permitting them to dress for more than an hour, to their great terror and alarm.

These trespasses are obviously of a highly aggravated character; a midnight invasion of the rights of domicile, and an outrage upon personal security, under circumstances that would call for the highest exemplary damages. The parties in both suits, by these violent proceedings of armed men against them, were compelled to leave the State, in which they could find no protection from law, and became citizens of the State of Massachusetts. It was vain for them to have sought redress in the State Courts of Rhode Island. Hence this was precisely the case for a resort to the Courts of the United States, contemplated by the framers of the Constitution, in order to lift the questions that might arise between citizens of different States above the partial influences of the local tribunals. And therefore this Court has decided, in the United States vs. Judge Peters, [2 Cond. Rep., 202,] and in numerous other cases, that "it remains the duty of the Courts of the United States to decide all cases brought before them by citizens of one State against citizens of different States, where a State is not necessarily a defendant. And again this Court say [in Elliot vs. Piersol, 1 Pet., 340,] that where a Court has jurisdiction, it has the right to decide every question which occurs in the case." "And in a case so brought to this Court on error to the Circuit Court below, this Court *will consider the whole case*, and will decide on the facts appearing upon the record." [Sergeant's Con. Law, 43; 3 Cranch, 174; 9 Wheaton, 733.]

It is under this constitutional rule of its jurisdiction and its duties, that the plaintiffs in the two causes now in hearing ask the interposition and the interpretation of this Court of the last and the highest appeal in matter of law.

They became citizens of Massachusetts, and as such commenced suits against the defendants in the Circuit Court for the District of Rhode Island.

Thus was the history of persecution between Massachusetts and Rhode Island reversed. Two hundred years before, Roger Williams had fled from Massachusetts to find protection against the persecution of *Church* Law; and now Rhode Island drove her citizens back to Massachusetts, to seek redress for outrages committed under the guise of *Martial* Law.

In the Circuit Court below, the defendants set up *a plea in justification*. They admitted that they had committed the trespasses complained of, doing no more damage than they affirm was necessary; but they say they were justified in law, because they were enrolled in a company of infantry, in the town of Warren, under the command of John T. Child, duly appointed and legally qualified to act in that capacity; and that, by order of said military commander, they broke and entered the said dwelling house of the plaintiff in error, in order to arrest and take the said plaintiff, which they aver it was lawful for them to do.

And further the defendants say, that at the time of the alleged trespass, large numbers of men assembled in arms in different parts of said State, made and levied war upon said State, and were attempting the overthrow of the government of said State by military force. That the Legislature of said State, duly and legally chosen and constituted, according to the provisions of the charter or fundamental law, and the ancient and long established usages of said State, and in the exercise of the legislative powers conferred on them by said charter and usages, did enact and establish Martial Law over said State; and that under such authority, and by order of a military commander duly appointed by such authority, the defendants committed the alleged trespass.

To the several pleas of the defendants the plaintiff replied *de sua injuria*, thus denying the truth of the defendants' plea, which issue was joined, and upon this issue came up the question of the validity of the Charter Government, and the acts thereof, under which the defendants justified, and of the new constitution and frame of government adopted by the people of Rhode Island, called the People's Constitution, and the acts and doings of the Legislature under the same.

Thus far the pleadings in both cases are alike; but at this point, with the permission of the Court, I shall leave for future consideration the subject of Martial Law, and proceed to the argument, upon the record in the case of Martin Luther.

In reply to the justification which the defendants set up, under the authority of the Charter Governor and Legislature, the plaintiff contended that the old charter form of government, and the acts of the Legislature under which the defendants justified, were, at the time of such trespass, superseded and abolished by a new form of government, and invalid so far as repugnant to the same; which new form of government was then in force as the funda-

mental law of the State; and that the Legislature chosen by the people, and acting under the said new form of government, and the military and other officers appointed by law, under such legislative power, constituted the actual government of said State; and that acts done under any assumed authority, in opposition to said constitution and laws so established, were unlawful and void.

The question, therefore, was directly between two forms of government, both claiming to be in force at the same time; and upon the construction of law, as to which of these forms of government was in legal existence at the time, depended the issue, whether the defendants had acted under law, or against all law.

Both parties agreed that up to May, 1842, the old charter government of Rhode Island was rightfully in existence. But the plaintiff maintained that it was then superseded by the new government then organized under the People's Constitution, which had been adopted Jan. 12, 1842, to take full effect in the following May.

It followed that if the charter government then ceased, neither the Martial Law, under which the defendants justify the attempt to break into his house and seize Mr. Luther, nor the military commission and the military orders of their commander, were of any avail.

Plainly, then, the rights of the parties in this cause can only be decided by deciding that issue *distinctly* and *directly*; and in the judgment of the plaintiffs' counsel, and I may add of the learned Judge since deceased, who framed the instructions upon the record, that issue was intended to be brought, and is brought before this Court in such form that it must be met, and must be passed upon in the indispensable exercise of the ordinary judicial functions of this high tribunal.

I do not say this, may it please your honors, as if there were or could be any doubt that this is the issue here, or that this elevated tribunal will meet it as decidedly and calmly as if it involved the simple question of title to a piece of land, instead of the people's title to their great right of self-government.

But I am not without apprehension that the very eminent counsel employed on the other side will aim to get round the issue, rather than to meet it, and will labor rather to withdraw the cause from your honors than to permit it to be decided on its merits.

They cannot and will not deny the jurisdiction over the whole cause, but their brief clearly indicates that they intend to treat it as a political and not a judicial question, and therefore, though within the jurisdiction, nevertheless not within the rule of decision.

I apprehend, however, that it will be found impracticable to evade the true issue raised upon the record in that form, and that no ingenuity of counsel can satisfy this Court or the common mind, that if the pretended Legislature that enacted Martial Law, and the pretended military officers who held commissions and acted under it, were in fact and law no Legislature and no officers, there can be any possible justification of breaking into the plaintiff's house, under an utterly void authority.

And I trust, with respectful deference, that however reluctant this Court may be to decide incidentally between the validity of the two governments in Rhode Island, both claiming to be the true one, that nevertheless they will hold, as was held by Chief Justice Marshall, in the much more delicate and exciting case of the imprisoned missionaries, in Worcester vs. the State of Georgia, that the law "imposes on this Court the duty of exercising jurisdiction in this case, and this duty, however unpleasant, cannot be avoided."

And to the same point, in Owen vs. Hall, [9 Peters, 607,] this Court say "the Supreme Court of the United States is called upon, in the exercise of its appellate jurisdiction, constantly to take notice of and administer the jurisprudence of all the States."

What was the jurisprudence of Rhode Island to govern this case, is the precise question, and no matter whether it be a statute law or a fundamental law. "The Supreme Court may decide all cases between individuals, citizens of different States, and these cases in some form or other involve every kind of State power and sovereignty." [9th Dane's Ab. Appendix, 52.]

Strange then would it be, if this Court can construe State constitutions, as in the case of Groves vs. Slaughter, [15 Peters, 450,] and the like, and cannot inquire whether they exist, have been changed, or are in force as the supreme law for the time covered by the matter in issue to be determined.

This would be to allow conclusions to be drawn, but to deny the power of the Court to inquire whether the premises exist.

The issue here is, what was the subsisting form of government in Rhode Island, to cover the trespass.

Such being the issue, there must be some way of proving which form of government, (when under both conflicting laws are passed,) was in force at the time; in other words, to show what is the law to govern the case.

Ordinarily the Court will take notice, judicially, of the constitution and laws of a State. But this is only where their existence is not denied, and their repeal or nullity is not affirmed.

When this is disputed, it must be determined like any other issue of law and fact. In every case of the adoption of a new constitution by a State, which is constantly occurring,

there must be a point of time when the old government expires and the new takes effect; and whenever this becomes matter of doubt or denial before the Court, or whether in fact the new form superseded the old, the Court must determine that issue, before they can decide the case.

The plaintiff, therefore, in this cause, proceeded to prove that the justification of the defendants under the old government was unavailing, because that government was superseded by a new constitution and an Executive and Legislature chosen under it.

Possibly he may have offered to prove more than was absolutely necessary; but the question is, was what he offered to prove sufficient to establish the legal fact of the superseding of the old by the new frame of government in Rhode Island.

It all depends on this, because there is and can be no controversy, that if in fact the People's Constitution was the law of Rhode Island in June, 1842, the defendants totally fail in their justification.

To prove that it was in force, the plaintiff proceeded to put in evidence before the Court below, all the preliminary steps which led to the adoption of the People's Constitution and its adoption the 12th of January, 1842, by an actual majority of all the white male adult inhabitants of Rhode Island, then living in the State, and also by a majority of the whole number of the resident legal voters or landholders, who held the right to vote under the charter government. He also showed that there was no existing provision in the then existing frame of government in Rhode Island for calling a Convention to make a constitution, or for amending the frame of government. In short, the proof went to establish the fact that every form usual or proper to be observed, or that ever had been observed, in framing a constitution in a State of this Union, by a clear majority of the people and of the legal voters, had been observed, in all respects, with the single exception that the old Legislature of Rhode Island, which was chosen by a minority of landholders, who refused to extend suffrage to any person but a landholder, would not and did not pass an act requesting or permitting the people to elect delegates to a Convention to make a constitution; and refused, after the constitution was adopted, and a new government established under it, to surrender the old government to the new organization, but held out against it, and by the promised aid of all the military and naval forces of the United States, at the command of President Tyler, finally succeeded in putting down the new government by force, or rather prevented the Legislature reassembling, and successfully resisted the execution of its laws.

Upon this state of facts, the counsel for the plaintiff requested the Circuit Court for Rhode Island (composed of Judges Story and Pitman,) to instruct the jury "that the constitution and frame of government so adopted and established was and thereby became the supreme law of the State of Rhode Island, and was in full force and effect as such, when the trespass was committed by the defendants. That a majority of the free white male citizens of Rhode Island, of twenty-one years and upwards, in the exercise of the sovereignty of the people, through the forms and in the manner set forth in the evidence, (and especially in the absence of any provision for amending, altering, reforming, or changing the old frame of government,) had the right to *reassume the powers of government*, and establish a written constitution and frame of a republican form of government; and that having so exercised such right, the pre-existing charter government, and the authority and assumed laws, under which the defendants claimed to have acted, became null and void, and were no justification of the trespass committed by the defendants."

This was the plaintiffs' reply to the excuse set up by the defendants, and if admitted by the Court, it left them without justification.

On the other hand, the defendants offered to prove the existence of the charter government from 1663, when granted by Charles the Second; its modification by acts of the Legislature after the American Revolution; and its continuance, notwithstanding the acts of the people in framing a written constitution, as before set forth. They also offered to show that the Charter Assembly, on the 25th of June, 1842, passed an act establishing Martial Law, as follows:—

"*Be it enacted, &c.* The State of Rhode Island and Providence Plantations is hereby placed under Martial Law, and the same is declared to be in full force until otherwise ordered by the General Assembly, or suspended by proclamation of his Excellency the Governor of the State."

They also offered to prove that the defendants, being members of a military company in the town of Warren, under the command of John T. Child, were ordered by him to arrest the plaintiff, Martin Luther, who was supposed to be concealed in his dwelling house, and in pursuance of that order, they broke into the house and searched the same.

The question of justification under the pleadings was the issue that was made up between the parties. There was no trial by jury, and no argument on either side, (in the case of Martin Luther,) but upon the suggestion of the late Mr. Justice Story, it was resolved into

matter of law, "and the Court *pro forma*, and upon the understanding of the parties to carry up the rulings and exception of the said Court to the Supreme Court of the United States refused to give the instructions asked for by the plaintiff, or to admit in evidence the facts offered to be proved by the plaintiff, but did admit the testimony offered to be proved by the defendants, and did rule that the government and laws, under which they assume in their plea to have acted, were in full force and effect as the frame of government and laws of the State of Rhode Island, and did constitute a justification of the acts of the defendants, as set forth in their pleas."

The instructions were so given and refused, in order that the questions involved in the cause might be originally presented in full bench here, with no one of the Justices having previously adjudicated upon them; and this issue is now here, in the nature of an appeal upon the matters of fact and law set forth in the record, the facts offered to be proved by the plaintiffs being taken and admitted, in this hearing, as fully proved.

Thus, may it please your honors, in its ordinary aspect, this cause is merely an action of trespass in common form between citizens of two different States brought in the Circuit Court for Rhode Island, and rightfully before this Court by writ of error. The parties being citizens of different States upon the record, the jurisdiction cannot be questioned under the constitutional powers of this Court.

Upon this statement of the issue, therefore, we contend that it will become indispensable (as it seems to us,) for this Court, in order to determine this case, to decide, incidentally to the merits, whether the People's Constitution was in force in Rhode Island as the fundamental law of the State; and hence the importance of this cause, as presenting, in fact, a judicial test, before the highest tribunal in the land, whether the theory of American free government for the States of this Union is available to the people in practice; in short, whether the basis of popular sovereignty is a living principle, or a theory, always restrained in practice by the will of the law-making power, and therefore subject and not sovereign.

In this view of the aspect of this cause, it becomes necessary to go back to fundamental principles, to determine which was the existing form of government, which was the Legislature, and what were the laws in force at the time of the trespass. This is apparent from the fact that by the pleadings the defendants admit they have committed a trespass, but justify their acts under the authority derived from the Charter Assembly and the commissions and orders of military commanders, deriving their sole power from that source.

Now, in May, 1842, a Legislature, chosen by the people, under the People's Constitution, were in actual session, enacting laws with all the forms of a constitutional government, and after transacting the business, they had adjourned, to meet again in July.

In June, 1842, the body calling itself the General Assembly of Rhode Island, chosen, as we contend, unlawfully, after the adoption of the People's Constitution, and after the election of general officers and members of the Legislature under that constitution, held a session, as if it were still the law-making power of the State; and on the 25th of June enacted Martial Law; and on the same day commissioned John T. Child as a military officer—by whose order to break into the plaintiff's house, the defendants justify that act.

Here are two conflicting powers that could not lawfully co-exist, and either the People's Constitution and government, and the Legislature chosen under it, were all unlawful, and in fact *violence* against the old government, or if the people had any right to make a constitution, without the consent of the Landholder's Legislature, then the charter government was superseded, and Martial Law and the commission of John T. Child were null; and in fact the whole authority under which the defendants justify was insurrectionary void, and constitutes no excuse for a violation of the right of the plaintiff to be protected in his property and person against seizures and searches, except under warrant issued by a lawful magistrate.

Here, then, are two bodies of men, both claiming to have been, at the same time, the law-making power of a State. An act passed by one of them is repealed by the other, and this act is called in question in a suit in the Courts of the United States; citizens of that State and a citizen of another State.

This is precisely the issue over which the Constitution gives jurisdiction to the Courts of the United States, to wit: in all "controversies between citizens of different States."

How can it be tried, except by trying the validity of the assumed law and authority which the defendants set up as their justification, and which the plaintiff denies?

How can that validity be tried, without tracing back the law to the assumed law-making power, and that power to the source from whence it derived its authority? In short, it cannot be decided which law was valid, without finding, first, who made the alleged law, and second, whether it was a lawful subsisting Legislature.

The plaintiff sues for a trespass.

The defendants, admitting the trespass, justify under certain acts of the Charter Assembly of Rhode Island, and the commissions and orders of military commanders, deriving their powers from that source. The plaintiff avers that this power and these acts were supersed-

ed and repealed by paramount authority, and were therefore void. The question is, which is valid and which must yield. And so far it is a conflict of authority upon the judicial construction of the power to pass such acts and issue such commissions and orders and their force and effect upon the parties on the record.

This is the general scope of the inquiry in the argument, but it is after all only determining what is the law to govern this particular case. The plaintiff has suffered injury, for which the law gives redress. The defendants admit the damage, but deny the injury, on the ground that the common law, under which he claims redress, was set aside, in this particular case, by other and paramount authority.

We deny his intervening law or authority, and the matter resolves itself into the construction of the law upon the facts presented on both sides. Which was and which was not the law? And however general and broad may be the principles, and whether a conflict as to the fundamental law or a statute law, the case is exclusively one between citizens of two States, to be settled by the laws of the State in which the action was brought, in deciding which this Court incidentally is to say what were the laws of that State governing this case, and who had the power of making the law, and giving the license claimed by the defendants.

I have been thus particular in stating the issue, and the points of decision it involves, because in the defendants' abstract of the case it is assumed, and will doubtless be argued, "that the Courts of the United States can recognize no other *government* in the States *of this* Union, except the one represented in and recognized by the Congress of the United States;" and hence it is to be inferred that this Court can only recognize the old charter government of Rhode Island.

If this proposition of the defendants can have any meaning, it must be intended that the judicial power, in its decisions, must follow the political power; a maxim which no lawyer will deny.

But this maxim of public law relates only to the functions of the general government in its intercourse with foreign governments, and in the exercise of the treaty-making power, by the forms of recognition of independent States, and the establishment of boundaries and diplomatic relations.

Numerous and uniform decisions of this Court (which will hereafter be cited,) settle this point.

It is without precedent and without meaning, if attempted to be applied to the relations of a State to the Federal Government, under the Constitution.

The Executive power can neither recognize nor repudiate, can neither make nor unmake a State of this Union. The President cannot enforce the laws of a State, nor determine what are or what are not the laws of such State. He can only execute the laws of the United States, within the several States.

And in respect to the relations of Congress to the sovereignty of a State, as a member of the Confederacy, it has but a single function to exercise, under the Constitution, namely, "new States may be admitted by Congress into this Union."

When a State is in the Union, as were the original States that framed the Constitution, or is admitted by Congress, the whole political power is exhausted.

There is the State and there it remains, with no power in Congress to exclude it from the Union or to question its existence as a State, and with no authority to pass upon its form of government, or to approve or condemn any changes of that frame of government, which may be altered at will, in the exercise of the power of inherent sovereignty, in determining what shall be the local institutions and the organic law of such State; provided that they are not repugnant to the Constitution of the United States. And even that is to be determined, not by the political power of Congress, but by the judicial power of the Supreme Court, whenever the question of repugnancy arises in a case for its decision.

The State, therefore, once a State, is always a State, whatever may be its changes in the frame of government, provided the form of government be republican. This is the only possible limitation. "The United States shall guarantee to each State in this Union a republican form of government."

But even this, it has been argued, is an unoccupied power, because Congress has prescribed no form of law under which and by whom it is to be exercised. It may well be considered as a power which executes itself, but whether it be so or not, it is conclusive for the purposes of this case, to show that the change of the government of a State is no change of the State, in its federal relations.

When this objection touching the power of guarantee was urged against the adoption of the Constitution by its opponents, as sanctioning an interference by Congress with State rights, in respect to their local institutions and organic forms, Mr. Hamilton said, in the 21st No. of the Federalist:—

"The inordinate pride of State importance has suggested to some minds an objection to the principle of a guarantee in the Federal Government, as involving an officious interfer-

ence in the domestic concerns of the members. A scruple of this kind would deprive us of one of the principal advantages to be expected from union; and can only flow from a misapprehension of the nature of the provision itself. It would be no impediment to reforms of the State Constitutions by a majority of the people in a legal and peaceable mode. This right would remain undiminished." [P. 78, Ed. of 1845.]

To the same point, Mr. Madison, in No. 43 of the Federalist, says (p. 75) : –

"The authority extends no farther than to a guarantee of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the States, they are guaranteed by the Federal Constitution. Whenever the States may choose to substitute *other republican forms*, they have a right to do so, and to claim the federal guarantee for the latter."

How, then, is Congress to "*recognize* the existence of a *government* in the States of this Union," which the defendants lay down with seeming gravity, as if it were a proposition to be argued?

The only test they propose of such recognition is "the government represented in the Congress of the United States."

The answer is, that the State, and not the government merely, (that is, the old or new frame of government,) is represented in Congress. That body can judge of the election and return of its members, and if there were two sets of members chosen, it might determine under which form they were legally elected. But this would determine nothing judicially. If it did, the House might admit under one authority, and the Senate under another, and thus there would be two governments in the same State, recognized by Congress (as far as the two Houses can act at all,) at the same time!

Another and manifest absurdity is involved in this crude proposition of the defendants. If the people of a State had changed their constitution and frame of government, just after the election of Senators and Representatives, that constitution could not take effect, until two or six years after its adoption, when new members should be chosen under it, and be *recognized* by Congress. Hence, if there be anything in the defendants' proposition, the Supreme Court of the United States could not recognize the existence of the new government, and the laws under it, until members of Congress had been returned and admitted!

Upon this theory, New York is in part now out of the Union, by the change of her government in 1846, and Rhode Island has scarcely got into it, and for a season at least was an alien, until her Senators and Representatives were all chosen under her existing constitution of 1843, and admitted to their seats.

I then submit the preliminary proposition, that upon the pleadings and the record of this case, the Court cannot determine the issue, whether a trespass was or was not committed, without first deciding what were the constitution and frame of government in force in Rhode Island at the time.

And with this view, and under the permission of the Court, I shall proceed to open this cause upon the broad basis of this argument, in its full force and extent, covering the whole ground of *rightful changes of government by the people of the States of this Union.*

These preliminary suggestions embrace within the issue three general propositions.

1. That the assumed authority, legislative and military, and the acts and orders under which defendants justify, are invalid and insufficient.

2. That the issue was properly before the Court below, and it is necessary for this Court to pass upon it, in order to determine the rights of the parties on the record in this cause.

3. That it is a judicial power, and not a political power, which the Court is called upon to exercise in applying the rule of decision that is to govern this case.

The burden of proof is on the defendants to show their justification, but the plaintiff, doubtless, must show, at least, so far as to set aside the authority of the defendant's plea, that the new government had superseded the old form.

I propose, therefore, to maintain, in the argument, the following points, which were ruled against the plaintiff, merely formally, in the Court below.

1. That the People's Constitution was in force in Rhode Island in June, 1842.
2. That the Legislature chosen under it was the law-making power.
3. That consequently, the pre-existing Charter Government was superceded; and
4. That the plaintiff need show such change of government only so far as the justification the defendants set up, under the first, is concerned.

In order to sustain these propositions, we must first establish the great basis upon which alone they can rest in the American system of government, viz. :—

1. That the majority of the people, or of the legal voters of a State, have a right to establish a written constitution.