SUFFRAGE CONFERRED BY THE FOURTEENTH AMENDMENT. WOMAN'S SUFFRAGE IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, IN GENERAL TEAM, OCTOBER, 1871

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Suffrage Conferred by the Fourteenth Amendment. Woman's Suffrage in the Supreme Court of the district of Columbia, in general team, October, 1871 by J. O. Clephane

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SUFFRAGE CONFERRED BY THE FOURTEENTH AMENDMENT.

Woman's Suffrage

IN THE

Supreme Court of the District of Columbia,

IN GENERAL TERM, OCTOBER, 1871.

Sara J. Spencer vs. The Board of Registration,

AND

Sarah E. Webster vs. The Judges of Election.

ARGUMENT

OF THE

COUNSEL FOR THE PLAINTIFFS.

WITH THE OPINIONS OF THE COURT.

REPORTED BY J. O. CLEPHANE.

WASHINGTON, D. C.:
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ARGUMENT OF MR. RIDDLE.

May it please the Court: Although my learned friend, Mr. Cook, who appears for the defense, is the demurrant, it has been arranged that in the argument we shall be regarded as having the affirmative. And, at my own request, I am to open it, and shall bring fully to the notice of the court the matter which I wish to submit for its consideration.

In doing this, my purpose is, without comment upon the gravity of the case, and avoiding everything like speech-making, to deal with the cases in their purely legal aspects. Nor do I mean to step from the line of dry argument—the narrow stoney way of the law.

These plaintiffs, describing themselves as women, claim to be citizens of the United States, and of this District, with the right of the elective franchise, which they attempted to exercise at the election of April 20, last past, and were prevented. They say, that as registration was a prerequisite of the right to vote, they tendered themselves in due form, and demanded it, under the second section of the act of May 31, 1870, (16th U. S. Stats., 140.) That is the "act to enforce the right of citizens of the United States to vote," &c., and authorizes a suit for refusing registration.

They say, that being refused registration, they tendered their votes to the proper inspectors of said election, with proof of their attempt to register, citizenship, &c., as authorized by the third section of said act, and their votes were refused; and, thereupon, Spencer brings her suit under said second section, against the registering officers, and Webster her's under the third section, which authorizes it, for rejecting her vote. The questions in both cases are identical and presented together.

To the declarations the defendants demur, and thereby raise the only questions we desire to have adjudicated.

The defendants, by their demurrer, admit all the allega-

tions of the plaintiffs, severally, but say, that as they are women they are not entitled to vote in the District of Columbia. That the seventh section of the organic act, the Constitution of the District, provides, "That all *male citizens*," &c., "shall be entitled to vote," &c., and that this word *male* excludes women, of course.

To this the plaintiffs reply, that the language of the statute does exclude women, but they say that in the presence of the first section of the Fourteenth Amendment, which confers the elective franchise upon "all persons," this word "male" is as if unwritten, and that the statute, constitutionally, reads, "That all citizens shall be entitled to vote."

For we contend, your honors, that although the Congress "has exclusive legislation in all cases over this District," it can legislate only, as could the States, from which it was taken. It must legislate in accordance with American ideas, and can exercise no power not granted by the Constitution; and that that instrument certainly confers no power to limit the right of suffrage. And so we are at issue.

The language of the Fourteenth Amendment is:

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

Our labor is to determine the meaning of these words as they stand. You observe that the controlling word is "citizens." What does it mean? It is a mere matter of the definition of a word, and thus the field is seemingly narrowed to the smallest limits. All we have to do, apparently, is to consult the dictionaries and bring into court common usage.

I wish it might be so decided; and so it could, if these plaintiffs were not women, or were not seeking some elementary rights of human beings. We know that whenever they or their claims of rights are involved, words mean nothing. No matter how broad a principle is, no matter how comprehensively it may be stated, the moment a woman claims its benefit she is told that she is a woman, that she is not meant,

and that ends the argument. And so I must go below words to things. These twin dragons of prejudice and proscription must be thrust by, and the foundations under the ground on which they stand must be examined. We will go back to the genesis of things, and see, if we may, how, when, and where women were walled out from the scope and spirit of the great original laws—laws that protect the rights of "all persons."

We are told, that to construe "citizens" so as to embrace the right of suffrage, and thus thrust it upon woman, and thrust her into government and politics, is a war against nature; it is upsetting the primal foundations of society, and supplanting the preordained order of things. I may not here discuss the moral and social, not even the political aspect of these questions; but when I must contend for the ordinary use of a word, and so claim a right, and when that right is to enure to a woman, I may show, if I can, that it would confer no new right upon her, that the right was always her's, and thus prove that the word was used in its ordinary sense.

For if it should really appear that my use of the word did violate natural law and contravene natural right, that would be a strong argument to show that it was not used in that sense.

I.

Then, as the first proposition of my brief, I contend, *that under our system the right to vote is a natural right.*

Obviously, government is of right or it is an usurpation. If of right, it sprang from some right older than itself; and this older right must have existed in persons, (people,) in each and all alike, male and female. And having this right, they used it to form for themselves a government. Of course, this supposes that all joined in and consented to the government, having the power to dissent; for to just the extent that a government got itself agoing without the free consent of its people, it is without right. The right of self-government,

and from that springs our right to govern others, is a natural right. This is the primary idea of American politics and the foundation of our Government. This was formulated in the second clause of our great declaration, and no man has dared to deny it.

Take up the latest edition of the American Constitutions, open to the first in the volume—"All power is inherent in the people," says Maine. And this is repeated and re-echoed by the thirty-three or four States which follow. If this power is inherent in the people, it must inhere in each and all alike.

This right of government, natural and inherent, is merely the motive power of the various governmental machines of the different States, so framed and adjusted that it, or some part of it, propels them. No one of them is a perpetual motion, creating and utilizing the power, they merely provide the means of its employment.

Of course no power does or can exist anywhere to create and confer the right of self-government, nor is, nor can that right be conferred as a grace or favor, nor can its exercise be denied to any one without wrong.

The means authorized for its exercise is the ballot, and the times and circumstances under which that may be employed is properly a matter to be agreed upon by the people, and no complaint can be made when its use is permitted to all.

It follows, then, if the right of government is a natural right, and to be exercised alone by the ballot, that the right to vote is a natural right. This never has and never can be successfully controverted.

Look again into this book of Constitutions. Not only do they declare the right of government inherent in the people, but they explicitly show that in the absence of obstacles the people, and all of them, would exercise the right practically, and hence nearly all use terms of careful exclusion.

This is the formula: "White male citizens, of the age of twenty-one years, being inhabitants," &c. (Here Mr. R. read from the Constitutions, showing the uniformity of the words, or their equivalents, from nearly all of the Constitutions.)

The court thus sees this language was used by the most careful and scrupulous design. Having declared that all power is inherent in the people, words had to be used to limit its exercise or all would vote, and the word *white* was employed to exclude colored persons, and the word "male" for the manly pupose of excluding women.

I will now, with the permission of the court, read from the highest American authority upon our politico-constitutional questions, partly in support of my proposition that the right to vote is a natural right, and also to show that the assumed claim of one part of the people to exclude another from all share in the Government has the most doubtful and shadowy foundation in right, and to an American it needs no evidence to show that a portion of the people thus excluded are in a state of vassalage, in which no American ever did, or ever will, develope and grow to their just proportions.

I read from Story on the Constitution, volume 1st, commencing at—

SEC. 578. The most strenuous advocate for universal suffrage has never yet contended that the right should be absolutely universal. No one has ever been sufficiently visionary to hold that all persons of every age, degree, and character, should be entitled to vote in all elections of all public officers. Idiots, infants, minors, and persons insane or utterly imbecile, have been, without scruple, denied the right as not having the sound judgment and discretion fit for its exercise. In many countries, persons guilty of crimes have also been denied the right as a personal punishment, or as a security to society. In most countries, females, whether married or single, have been purposely excluded from voting, as interfering with sound policy and the harmony of social life. * * * *
And yet it would be extremely difficult, upon any mere theoretical reasoning, to establish any satisfactory principle upon which the one-half of every society has thus been systematically excluded by the other half from all right of participating in government, which would not at the same time apply to and justify many other exclusions. If it be said that all men have a natural, equal, and inalienable right to vote, because they are all born free and equal; that they all have common rights and interests entitled to protection, and, therefore, have an equal right to decide, either personally or by their chosen representatives, upon the laws and regulations which shall control, measure, and sustain those rights and interests; that they cannot be compelled to surrender, except by their free consent, what by the bounty and order of Providence belongs to them in common with all their race. What is there in these considerations which is not equally applicable to females, as free, intelligent, moral, responsible beings, entitled to equal rights, and interests, and protection, and having a vital stake in all