

BOOK REVIEWS

The Fourteenth Amendment and the States. A Study of the Operation of the Restraint Clauses of Section One of the Fourteenth Amendment to the Constitution of the United States. By Charles Wallace Collins, of the Alabama Bar. Little, Brown & Company. 1912. pp. 220.

The author has realized that the time has come when, without party or sectional prejudice, the Fourteenth Amendment of the Federal Constitution should be subjected to a critical and scientific examination, to determine how far it has fulfilled the ideals of its supporters; whether its effect upon our governmental system has been good or evil; what the present tendencies of litigation under it are, and whither these tendencies will carry us in the future.

In a carefully prepared series of studies—one of which, at least, has appeared in this JOURNAL—the author has given his conclusions upon these questions in a very clear, logical and interesting way. As he says, he has not worked these separate studies into a logical unity, and some repetition results. We quite agree with him that a reiteration of many of the salient features of his work will not be amiss.

The author has not exaggerated the importance of his topic, and the path of his conclusions meets that of the supporters of the project most unfortunately termed "The Recall of Judicial Decisions". Mr. W. L. Ransom, whose recent book on "Majority Rule and the Judiciary", enthusiastically extols the virtues of this doctrine, commends it because thereby projected reforms within a State may be secured against intervention by *its* judiciary under the "due process" clause of the State or of the Federal Constitution. Mr. Collins sees in the present trend of litigation under the Amendment, an attempt, mainly on the part of corporations, to seek Federal protection against regulatory legislation on the part of the States. Mr. Collins' underlying purpose is to indicate the dangers and evils of Federal intervention where the "due process" and "equal protection" clauses of the Amendment are invoked to thwart, by restraint or annulment of legislation, social and economic reforms within the States.

Mr. Collins does not refer to the case of the *Noble State Bank v. Haskell*, 219 U. S., 104. Probably it had not been decided when he wrote. That decision indicated the present attitude of the Court with respect to State legislation, challenged as in violation of paragraph 1 of the Amendment. An Act creating a Depositor's Guaranty Fund was upheld, and Mr. Justice Holmes said: "In answering that question (as to due process of law) we must be cautious about pressing the broad words of the Fourteenth Amendment to a dryly logical extreme." It must now be an extreme case which the Court will deem to warrant intervention. But it may not always be so.

The Amendment was part of the Reconstruction program. It was adopted without the aid of a single Democratic vote, either in Congress or in the State legislatures. It was a Radical Republican measure.

Its ostensible, and in the minds of many, only purpose was to protect the negro against his State—to guarantee him in his newly given freedom. Yet of the 604 opinions of the Supreme Court involving the Amendment from 1868 to 1911, only 28 dealt with the negro question, and the result of these did but little to aid the race.

In the *Slaughter House Cases*, 16 Wall., 361, the first under the Amendment to reach the Supreme Court, Mr. Justice Miller said: "We doubt very much whether any action of a State, not directed by way of discrimination against the negroes as a class or on account of their race, will ever be held to come within the purview of this provision." That momentous case settled many things, but the above prediction has not been fulfilled.

The Court has often discountenanced the attempts to secure the reversal of State action, in matters of purely local concern, but in vain.

The author shows that of late years corporations have more and more frequently invoked the protection of the Amendment to secure delays and to defeat State regulation and control. He says: "The Fourteenth Amendment was not adopted to protect the corporations from State reforms". It was intended for the

protection of the individual from oppression, and now we hear the criticism that it is operating "to shield the oppressor of the people". Throughout the period covered by his study, in 55 of the 604 cases involving the Amendment there has been Federal intervention in restraint of State action, but of these only six related to the negro race. In 155 of these 604 cases there were dissenting opinions, including almost all of the really important cases. In more than one-half of the total number of cases a corporation was a party, though down to 1896 this was true in but 58 cases. Since then, the number of such cases has greatly increased. The author has come to this conclusion: "The Amendment has, in a way unforeseen by its framers, become gradually intertwined with the great economic problems which vex the country to-day. It is not the negro, but accumulated and organized capital, which now looks to the Fourteenth Amendment for protection from State activity."

Mr. Collins suggests that the Amendment might be practically annulled by Congress under its power to limit the appellate jurisdiction of the Supreme Court of the United States and to prohibit inferior Federal Courts from enjoining State action. He does not recommend quite such radical measures as these, but would limit the writ of error to cases where the decision of the State Court is not unanimous, and further suggests that Congress might well require the unanimous opinion of the Supreme Court as a condition to the reversal of State action.

All of the above topics, and many more, are set forth with a trained lawyer's power of statement and analysis, and with the aid of abstracts of cases, charts and statistics, and so interestingly as to appeal to every student of our history, legal, political or economic, whether lawyer or layman.

G. D. W.