Negro Suffrage.

We are indebted to the "Carlisle Republican" for the following opinion of the Supreme Court on this interesting question of Constitutional law. The question arose upon a writ of error to the judgement of the Common Pleas of Luzerne county, in an action by William Fogg, a negro, against Hiram Hobbs, inspector, and others, for refusing his vote. The plaintiff recovered in the Court below; and it will be seen that the Supreme Court have reversed the judgmen. The case was argued at Sunbury, and the opinion of the Court delivered by Chief Justice Gibson.

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OPINION OF THE COURT.

This record raises a second time, the only question on a phrase in the Constitution, which has occurred since its adoption; and however paatizans may have disputed the wisdom of its provisions, no man has disputed the clearness and precision of its phraseology. We have often been called upon to enforce its limitations of legislative power; but the business of interpretation was incidental, and the difficulty was not in the diction, but in the uncertainty of the act to which it was to be applied. I have said, a question on the meaning of a phrase has arisen a second time. It would be more accurate to say the *same* question has arisen the second time.—About the year 1795, as I have it from Jas. Gibson, Esquire, of the Philadelphia Bar, the very point before us was ruled by the High Court of Errors and Appeals, against the right of Negro Suffrage. Mr. Gibson declined an invitation to be concerned in the argument, and therefore has no memorandum of the cause to direct us to the record. I have had the office searched for it; but the papers had fallen into such disorder as to preclude a hope of its discovery. Most of them were imperfect, and many were lost or misplaced. But Mr. Gibson's remembrace of the decision is perfect and entitled to full confidence. That the case was not reported, is probably owing to the fact that the judges gave no reason; and the omision is the more to be regretted as a report of it would have put the question at rest and prevented much unpleasant excitement. Still the judgment is not the less authoritative as a precedent. Standing as the court of last resort, the tribunal bore the same relation to this court, that the Supreme Court does to the Common Pleas; and as its authority could not be questioned then, it can not be questioned now. The point therefore is not open to discussion on original grounds.

But the omission of the judges, renders it proper to show that their decision was founded in the true principles of the Constitution. In the first section of the third article, it is declared that "in elections by the citizens, every FREEMAN of the age of twenty-one years, having resided in the State two years before the election, and having within that time paid a state or county tax," shall enjoy the rights of an elector.—Now the argument of those who assert the claim of the coloured population, is that a negro is a man; and when not held to involuntary service, that he is free: consequently that he is a freeman; and if a freeman in the common acceptation of the term, then a freeman in every acceptation of it. This pithy and syllogistic sentence comprises the whole argument which, however elaborated, perpetually gets back to the point from which it started. The fallacy of it, is its assumption that the term freedom signifies nothing but exemption from involuntary service; and that it has not a legal signification more specific. The freedom of a municipal corporation, or body politic, implies fellow-ship and participation of corporate rights; but an inhabitant of an incorporated place, who is neither servant nor slave, though bound by its laws, may be no freeman in respect of its government. It has indeed been affirmed by text writers, that habitance and paying scot and lot, gives an incidental right to corporate freedom; but the courts have refused to acknowledge it even when the charter seemed to imply it; and, when not derived from prescription or grant, it has been deemed a qualification merely, and not a title. (Wilcox, chap. 3, pl. 456.) Let it not be said that the legal meaning of the word freeman, is peculiar to British corporations, and that we have it not in the charters and constitutions of Pennsylvania. The laws agreed upon in England in May, 1682, used the word in this specific sense, and even furnish a definition of it. "Every inhabitant of the said province that is or shall be a purchaser of one hundred acres of land or upwards, his heirs and assigns; and every peson who shall have paid his passage and shall have taken up one hundred acres of land at a penny an acre, and have cultivated ten acres thereof; and every person that has been a servant or bondsman and is free by his service, that shall have taken up his fifty acres of land, and shall have cultivated twenty thereof; and every inhabitant, artificer, or other resident in the said province that pays scot and lot to the government; *shall be deemed and accounted* A FREEMAN *of said province*; and every such person shall be capable of electing or being elected representatives of the people in provincial council or general assembly of the said province." Now why this minute and elaborate detail? Had it been intended that all but servants and slaves should be *freemen* to every intent, it had easier and more natural to say so. But it was not intended. It was foreseen that there would be inhabitants, neither planters nor taxable, who, though free as the winds, might be unsafe depositories of popular power; and the design was to admit no man to the freedom of the province who had not a stake in it. That the clause which relates to freedom by service, was not intended for manumitted slaves, is evident from the fact that there were none; and it regarded not slavery, but limited servitude expired by efflux of time. At that time, certainly, the case of a manumitted slave, or of his freeborn progeny, was not contemplated as one to be provided for on the founder's scheme of policy. I have quoted the passage, however, to show that the word freeman was applied in a peculiar sense to the political compact of our ancestors, resting, like a corporation, on a charter from the crown; and exactly as it was applied to bodies politic at home. In entire consonance it was declared in the Act of Union, given at Chester in the same year, that strangers and foreigners holding land "according to the law of a freeman," and promising obedience to the proprietary as well as allegiance to the crown, "shall be held and reputed freemen of the province and counties aforesaid"—and it was further declared that when a foreigner 'shall make his request to the governor of the province *for the aforesaid freedom*, the same person shall be *admitted* on the conditions herein expressed, paying twenty shillings sterling and no more"—modes of expression peculiarly appropriate to corporate fellowship. The word in the same sense pervades the Charter of Privileges, the Act of Settlement, and the Act of Naturalization, in the preamble to the last of which, it was said that some of the inhabitants were "foreigners and not freemen according to the acceptation of the laws of England." It held its place also in the legislative style of enactment down to the adoption of the present Constitution; after which, the words "by and with the advice and consent of the freemen," were left out and the present style substituted. Thus till the instant when the phrase on which the question turns, was penned, the term freeman had a peculiar and specific sense, being used like the term citizen which supplanted it, to denote one who had a voice in public affairs. The citizens were denominated freemen even in the constitution of 1776—and under the present Constitution, the word, though dropped in the style, was used in legislative acts convertibly with electors, so late at the year 1798 when it grew into disuse. In an act passed the fourth of April in that year for the establishment of certain election districts, it was for the first time, used indiscriminately with that word; since when, it has been entirely disused. Now it will not be pretended that the legislature meant to have it inferred that every one not a freeman within the perview should be deemed a slave; and how can a convergent intent be collected from the same word in the Constitution, that every one not a slave is to be accounted an elector? Except for the word citizen which stands in the context also as a term of qualification, and affirmance of these propositions would extend the right of suffrage to aliens; and to admit of any exception to the argument, its force being derived from the supposed universality of the term, would destroy it. Once concede that there may be a freeman in one sense of it, who is not so in another, and the whole ground is surrendered. In what sense then must the Convention of 1790 be supposed to have used the term? Questionless in that which it had acquired by use in public acts and legal proceedings, for the reason that a dubious statute is to be expounded by usage. "The meaning of things spoken and written, must be as hath been constantly received." (Vaugh 160.)—On this principle, it is difficult to discover how the word freeman, as used in previous public acts, could have been meant to comprehend a coloured race. As well might it be supposed that the declaration of universal and unalienable freedom in both our Constitutions, was meant to comprehend it. Nothing was ever more comprehensively predicated, and a practical enforcement of it would have liberated every slave in the State; yet mitigated slavery long continued to exist among us in derogation of it. Rules of interpretation demand a strictly verbal construction of but a penal statute; and a constitution is to be construed still more liberally than even a remedial one, because a convention legislating for masses, can do little more than mark an outline of fundamental principles, leaving the interior gyrations and details to be filled up by ordinary legislation. "Conventions intended to regulate the conduct of nations," said Chief Justice Tilghman in the Farmers' Bank v. Smith, 3 Sergt. and Rawl. 69, "are not to be constucted like articles of agreement at the common law. It is of little importance to the public whether a tract of land belongs to A or B. In deciding these titles, strict rules of construction may be adhered to—and it is best they should be adhered to.

But in addition to interpretation from usage, this antecedent legislation furnishes other proofs that no coloured race was party to our social compact. As was justly remarked by President Fox in the matter of the late contested election, our ancestors settled the province as a community of white men; and the blacks were introduced into it as a race of slaves—whence an unconquerable prejudice of caste which has come down to our day, insomuch that a suspicion of taint still has the unjust effect of sinking the subject of it below the common level. Consistently with this prejudice, is it to be credited that parity of rank would be allowed to such a race? Let the question be answered by the statue of 1726 which denominated it an idle and a slothful people; which directed the magistrates to bind out free negroes for laziness or vagrancy; which forbade them to harbor Indian or mulatto slaves on pain of punishment by fine, or to deal with negro slaves on pain of stripes; which annexed to the interdict of marriage with a white, the penalty of reduction to slavery; which punished them for tipling with stripes, and even a negro. If freemen, in political sense, were subjects of these cruel and degrading oppressions, what must have been the lot of their brethren in bondage. It is also true that degrading conditions were sometimes assigned by whitemen, but never as members of a caste. Insolvent debtors, to indicate the worst of them, were compelled to make satisfaction by servitude; but that was borrowed from a kindred and still less rational principle of the common law. This act of 1726, however, remained in force till it was repealed by the emancipating act of 1780; and it is irrational to believe that the progress of liberal sentiments was so rapid in the next ten years as to produce a determination in the convention of 1790, to raise this depressed race to the level of the white one. If such were its purpose, it is strange that the word chosen to effect it, should have been the very one chosen by the convention of 1776 to designate a white elector. "Every *freeman*," it is said Chap. II, Sect. VI, "of the full age of twenty one years, having resided in this state for the space of one whole year the day of election, and paid taxes during that time, shall enjoy the rights of an elector." Now if the word freemen were not potent enough to admit a free negro to suffrage under the first constitution, it is difficult to discern a degree of magic in the intervening plan of emancipation, sufficient to give it adequate potency, in the apprehension of the convention under the second.

The only thing in the history of the convention, which casts a doubt upon the intent, is the fact that the word white was prefixed to the word freemen in the report of the committee, and subsequently struck out—probably because it was thought superfluous, or still more probably because it was feared that respectable men of dark complexion would often be insulted at the polls by objection to their colour. I have heard it said that Mr. Gallatin sustained his motion to strike out on the latter ground. Whatever the motive, disseverance is insufficient to warp the interpretation of a word of such settled and determinate meaning as the one which remained. A legislative body speaks to the judicary only through its final act, and expresses its will in the words of it; and though their meaning may be influenced by the sense in which they have usually been applied to intrinsic matters, we cannot receive an explanation of them from what has been moved or said in debate. The place of a judge is his forum—not the legislative hall. Were he even disposed to pry into the motives of the members, it would be impossible for him to ascertain them; and in attempting to discover the ground on which the conclusion was attained, it is not probable that a member of the majority could indicate any that was common to all.

I have thought it fair to treat the question as it stands affected by our own municipal regulations without illustration from those of other states were the condition of the race has been still less favoured. Yet it is proper to say that the second section of the fourth article of the Federal Constitution, presents an obstacle to the political freedom of the negro, which seems to be insuperable. It is to be remembered that citizenship as well as freedom, is a constitutional qualification; and how it could be conferred so as to overbear the laws imposing countless disabilities on him in other states, is a problem of difficult solution. In this aspect the question becomes one, not of intention, but of power; and of power so doubtful as to forbid the exercise of it. Every man must lament the necessity of these disabilities; but slavery is to be dealt with by those whose existence depends on the skill with which it is treated. Considerations of mere humanity however belong to a class with which, as judges, we have not to do; and interpreting the constitution in the spirit of our own institutions, we are bound to pronounce that men of colour are destitude of title to the elective franchise. Their blood, however, may become so diluted in sucessive descent as to loose its distinctive character; and then both policy and justice require that previous disabilities should cease. By the amended constitution of North Carolina, no free negro, mulatto, or free persons of mixed blood, descended from negro ancestors to the fourth generation inclusive, *though one ancestor of each generation may have been a white person*, shall vote for members of the legislature. I regret to say, no similar regulation for practicle purposes, has been attempted here; in consequence of which every case of disputed colour must be determined by no particular rule but by the discretion of the judges, and thus a great constitutional right, even under the proposed amendments of the constitution, will be left the sport of caprice. In conclusion, we are of opinion the court erred in directing that the plaintiff could have his action against the defendant for the rejection of his vote.

Judgment reversed.

ADDRESS
TO THE PEOPLE OF PENNSYLVANIA.

FELLOW CITIZENS:

The Convention which assembled by your direction to reform the Constitution of this State was elected and organized under unfavorable circumstances. The friends of reform had much to contend with; and for a long time could make but little progress, with great discouragement in the convention and throughout the state. Our officers, committees and preliminary steps were so uncongenial with dispassionate proceedings to improve the frame of government, that a general opinion prevailed that the convention must end in abortion and discredit; which apprehension was so generally and discredit; which apprehension was so generally and often disingenuously disseminated, particularly by the public press, that a settled belief in some measure still exists that little or nothing could be, or has been done. The derangement of the currency, stagnation of business and excited state of party feeling in both state and federal politics combined to render the time and circumstances of our meeting extreme inauspicious, and many of the sincerest friends of republicanism almost despaired of success in any attempt to improve its institutions by such reforms as we have never doubted are required by a large majority and the welfare of the people of Pennsylvania. Reform was supposed to be in a minority of the convention and repeated movements were tried by some of its opponents claiming and seeming to be a conservative majority, to frustrate the whole design of our convention. By the aid of some of the more liberal of that apparent majority, however with generous and elightened constancy from first to last sustaining certain reforms, and by the help of public sentiment, we have the satisfaction to assure you that great amendments have been at last carried by large majorities, to be submitted to the people for their action upon them. Patience perseverance and free and candid discussion during three protracted sessions of more thanhalf a year's exclusive devotion to the great objects confided to us, under all the disadvantages alluded to, have enabled us to close our labors with extensive and fundamental reforms, for some of which nearly all the members of the convention at last voted. Almost every member of a body, which throughout its deliberations has shown no disposition for rash, inconsiderate unnecessary, or even numerous changes, has sanctioned finally the position we have uniformly occupied, that the constitution of 1790 may be improved without endangering its advantages, some errors corrected, abuses inseparable from the practical operations of government removed, fresh vigor given to the virtue of Democracy, and the legitimate sovereignty of a free people, replenished and reinforced.

We shall not attempt fellow citizens, in this short address to explain to you in detail the reforms submitted for your sanction.—They should and no doubt will be particularly examined by you before you act upon them. But following summary will show how thoroughgoing, yet as we trust, how valuable and satisfactory they must prove to every lover the utmost freedom that is consistent with a government of law.

The political year is to begin in January; the principle of rotation in short terms of offices is applied by allowing the chief magistrate but two terms of thee years each in succession, the senatorial terms is reduced three years; the power of the legislature to grant Banking corporations and ptivileges is abridged and regulated; and it is deprived of all power to authorise either corporations or individuals to take private property for public use without compensation first paid or secured. The legislative power over marriages is likewise diminished, and there is constitutional provision against duelling.

The Governor's patronage is nearly all taken away, and for the most part restored to the immediate action of the people by electing those officers hitherto appointed by the Governor; whose appointment of even judicial officers is to be checked by the Senate, sitting with open doors on each nominations. The legislature moreover may direct the mode of appointing all officers which is not fixed by the constitution; and removed from office remains as heretofore.

All life officers are abolished; Judges of the Supreme court to be commissioned for fifteen years, Presidents of the common Pleas and other Law Judges for ten, and Associate Judges, of the Peace and Aldermen for five years, if they so long behave themselves well.

The disagreeable duty of carrying out the adopted principle by which Judges are to be hereafter commissioned for limited terms is to be enforced by a scale of gradual removal, by which all the personal forbearance that is consistent with constitutional arrangement is carefully attended to.

Justice of the peace and Alderman, are to be elegible in wards, boroughs and townships at the Constable's election, in such numbers as the Legislature may direct. Prothonotaries and clerks of courts, Registers and Records are to be elected for three years by the people of each county, and Clerks of the Supreme Court, to be appointed by that court for three years, if such Prothonotaries, Clerks, Registers and Recorders so long behave themselves well. But one person instead of two is to be chosen Sheriff.

The right of suffrage is extended to all white freemen, twenty one years old, one year resident in this state, having within two years paid a tax assessed within ten days before the election, and resided ten days immediately preceding it in the district, white freemen, between twenty one and twenty two years old, having resided a year in the state, may vote without paying any tax or being the sons of qualified voters.

These are, we conceive, great improvements. They extend the right of suffrage considerably beyond its present allowance, and they put an end to the claim of those who are not entitled to political equality with white freemen. Without impairing the necessarily great power of legislation, these reforms limit and regulate it so as to curb one of the greatest evils that has usurped the public sovereignty. While abolishing all officers for life, they preserve the independence of the judiciary, without its much complained of irresponsibility. They strip the Governor of that odious patronage which convulsed the state. They give back to the people the choice of their country officers & immediate magistracy. And throughout the whole of the amendments proposed, the sovereignty of the people is rendered a reality in practice, as it is a principle proclaimed in all the bills of rights of every free government. At the same time, civil and religious liberty, personal security freedom of speech and of the press, all vested interests, together with every immunity of republican well-being are preserved as heretofore asserted in the old bill of rights.

Finally, the amended constitution contains within itself the vital principle of further amendment, by authorizing both houses of two successive Legislatures, with the approbation of the people at an intervening election, once in five years, to add to their constitution whatever other amendments experience may require; so that the frame of government, without over-hasty action; commotion expense or inconvenience may at all times be deliperately improved, as the good sense of the community may determine.

All things considered, we flatter ourselves fellow citizens, that much desirable and salutary reform has been effected, as far as the convention is concerned. It was but a committee of the whole people, preparing by their instruction such measures as it rests with them to act upon finally. It was thought best to take your judgment upon the whole as a unit, on the day of the general annual elections, when more than at any special election, the whole people of Pennsylvania may, and probably will, vote on this important subject.

As citizens of Pennsylvania; as Americans, as freemen; as republicans, and as reformers of existing abuses, we are willing to abide your will, fellow citizens, on the principles of good government thus submitted to the people.

Philadelphia: 22d February, 1838.

C. J. Ingersoll,	*Henry Scheetz,*
Charles Brown,	*H. Gold Rogers,*
Joel K. Mann,	*James Clarke,*
Tobias Sellers,	*Ephraim Banks,*
A. M. Read,	*Geo. H. Keim,*
G. W. Woodward,	*J. R. Donnell,*
John J. McCahen.	*David Lyons,*
Andrew Bedford,	*William High*
Jno. Ritter,	*Wm. L. Miller,*
John Fuller,	*Wm. Curll,*
David Gilmore,	*Geo. Smith,*
Thomas Weaver,	*Thomas Taggart.*
Christian Myers,	*R. M. Grain,*
Wm. Smyth;	*D. Nevin,*
Jacob Krebs,	*Jacob Dillinger,*
Alex. Magee,	*Jos. Fry, jr.*
Benj. Martin.	*George Shilleto,*
William Gearhart,	*John Cummin,*
Geo. T. Crawford,	*John Foulkrod;*
L. L. Bigelow,	*Abm. Helfenstein,*
John A. Gamble;	*Jabez Hyde,*
Saml. O. Bonham,	*William Brown,*
Jacob Stickel,	*Hiram Payne,*
Mark Darrah,	*Thomas Hastings,*
Virgil Greneil,	*Pierce Butler,*
Wm. Overfield,	*Robt. Fleming,*
James Kennedy,	*Ezra S. Hayhurst,*
Thos S. Bell,	*Jno. B. Sterigere,*
John V. Barclay,	*Jas. Donagan,*
Joseph M. Doran,	*Geo. W. Riter,*
R. G. White,	*Thomas Earle.*

By the extinction of all licenses to Gambling Houses in France, that government loses six millions of francs per annum.

Wheat Flour is selling in New York at $8. At Cleveland, Ohio, it is selling at $6 a barrel.

The debt incurred by the state of Ohio in prosecuting her public works is upwards of $11,000,000.

The Legislature of Maine has passed a law exempting from attachment the pew of an insolvent debtor.

Some one asked a lad how he happened to be so small for his age? He replied—"Father always keeps me so busy I hav't time to grow!"

A cotemporary editor makes the following just remark.—Thousands have learned this important truth by their ruin—a few, a very few, by their success:—"Newspaper enterprise and newspaper property are peculiar and *sui generis*. Like a poet, a newspaper EDITOR must be born such or he will never succeed."

A REMEDY.—A person choaked with a Potato will find instant relief, it is said, by swallowing a Pumpkin.