

"WE DENY THE WRIT."

The Decision of the United States Supreme Court in the Anarchist Case.

No Federal Question Involved, and the Court Unanimous in This Opinion.

How the News Was Received by the Condemned Men in the Chicago Jail.

WASHINGTON, Nov. 3. The Supreme Court of the United States yesterday denied the motion for a writ of error in the anarchist cases. The decision was delivered by Chief Justice Waite and was that of the full bench. It occupied thirty-seven minutes in rapid reading. When the voices entered the room Justices Miller and Waite, who deeply deplored the trial and the voice of the latter trembled for some minutes after he began reading. At times he repeatedly faltered and, going back, re-read whole sentences. The faces of the other seven Justices were turned to the floor during nearly the entire time of the delivery. Occasionally Justice Waite took his eyes from the paper, looked the audience in the face, and gave emphasis to points in the decision which interested him in his intention and showed what had guided the court in reaching its conclusion. Following is the text of the opinion:

When, as in this case, application is made to us on the suggestion of one of our number to whom a similar application has been previously addressed for the allowance of a writ of error to the highest court of a State, under Section 709 of the Revised Statutes, it is our duty to ascertain not only whether any question reviewable here was made and decided in the proper court below, but whether it is of a character to justify the bringing of the judgment here for re-examination.

In our opinion the writ ought not to be allowed by the court if it appears from the face of the record that the decision of the Federal question which is complained of was so plainly right as not to require argument; and especially if it is in accordance with our own well-considered judgments in similar cases. That is in effect what was done in Twitchell vs. The Commonwealth, 7 Wall, 323, when the writ was refused because the question raised by the record was "a long-ago subject of discussion, although if they had been in the opinion of the court 'open' it would have been allowed. When under Section 5 of our Rule 6 a motion to affirm is united with a motion to dismiss, for want of jurisdiction, the practice has been to grant the motion to affirm when the question on which our jurisdiction depends was so manifestly decided that the case ought not to be held for further argument. Arrowsmith vs. Harrington, 11 United States, 191, 195; Church vs. Kelsey, 12 United States,

The propriety of adopting a similar rule upon motions in open court for the allowance of a writ is apparent, for certainly we would not be justified as a court in sending out a writ to bring up for review a judgment of the highest court of a State, when it is apparent on the face of the record that it would be our duty to grant a motion to affirm as soon as it was made in proper form.

In the present case we have had the benefit of argument in support of the application, and, while we do not deem it their duty to go fully into the merits of the questions involved, they have shown us distinctly what the decisions were of which they complain and how the questions arose. In this way we are able to determine, as a court in session, whether the errors alleged are such as to justify us in bringing the case here for review.

We proceed, then, to consider what the questions are in which, if it exists at all, our jurisdiction depends.

The particular provisions of the Constitution of the United States on which counsel rely are found in Arts. IV., V., VI., and XIV. of the amendments, as follows:

Art. IV. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures shall not be violated.

Art. V. No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law.

Art. VI. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.

Art. XIV. 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.

The first ten articles of amendment were not intended to limit the powers of the State governments in respect to their own citizens, but to operate on the National Government alone, was decided more than a half century ago, and that decision has been steadily adhered to since. Barron vs. Baltimore, 7 Peters, 243, 247; Livingston vs. Moore, 469, 552; Fox vs. Ohio, 5 How, 410, 434; Smith vs. Peters, 18 How, 71, 76; Withers vs. Buckley, 30 How, 84, 91; Pervier vs. The Commonwealth, 7 Wall, 475, 476; Twitchell vs. The Commonwealth, 7 How, 321, 325; and Murray, 5 Wall, 274, 278; Edwards vs. Elliott, 21 Wall, 529, 530; Walker vs. Sanvinet, 92 United States, 90; United States vs. Cruikshank, 92 United States, 542, 552; Pearson vs. Yewall, 95 United States, 294, 296; Davidson vs. New Orleans, 95 United States, 97, 101; Kelly vs. Pittsburgh, 104 United States, 79; Preiser vs. Illinois, 116 United States, 252, 255.

It was contended, however, in argument that though originally the ten amendments were adopted as limitations on Federal power, yet in so far as they secure and recognize fundamental rights, common law rights of the man, they make them privileges and immunities of the man as a citizen of the United States, and can not now be abridged by a State under the fourteenth amendment.

In other words, while the ten amendments as limitations on power only apply to the Federal Government, not to the States, yet in so far as they declare and recognize fundamental rights, common law rights of the man, they make them privileges and immunities of the man as a citizen of the United States, and can not now be abridged by a State under the fourteenth amendment.

In this case, while the ten amendments as limitations on power only apply to the Federal Government, not to the States, yet in so far as they declare and recognize fundamental rights, common law rights of the man, they make them privileges and immunities of the man as a citizen of the United States, and can not now be abridged by a State under the fourteenth amendment.

It is also contended that the provisions of the fourteenth amendment, which declares that no State shall deprive "any person of life, liberty, or property without due process of law," imply that every person charged with crime in a State shall be tried by an impartial jury, and that shall not be compelled to testify against himself. The objections are in two parts: (1) that a statute of this State as construed by the court deprived the petitioners of a trial by an impartial jury, and (2) that Spies was compelled to give evidence against himself. Before considering whether the Constitution of the United States has the effect which is claimed, it is proper to inquire whether the Federal questions relied on in fact arise on the face of this record.

THE QUESTION ON THE ILLINOIS STATUTE.

On the 1st of July of that year the objection is that the trial court, acting under this statute, and in accordance with its requirements, compelled the petitioners, against their will, to submit to a trial by a jury that was not impartial, and thus deprived them of one of the fundamental rights which they had as citizens of the United States under the National Constitution; and that the sentence of the court is carried into effect in that they are deprived of their lives "without due process of law." In Hopt vs. Utah, 120 United States, 130, it was decided by this court that where a challenge by defendant in a criminal action to a jury for bias, actual or implied, is disallowed, and the juror is thereupon peremptorily challenged by the defendant and excused, and an impartial and competent juror is obtained in his place, no injury is done the defendant if, until the jury is completed, he has other peremptory challenges which he may use; and so in Hayes vs. Missouri, 120 United States, 71, it was said, "The right to challenge the right to sit on a trial, or to obtain a juror . . . is obtained in the constitutional right of the accused is maintained." Of the correctness of these rulings we entertain no doubt. We are therefore confined in this case to the rulings on the challenges to the jurors who actually sat at the trial. Of these there were

but two—Theodore Denker, the third juror who was sworn, and H. T. Sanford, the last who was called and sworn after all the peremptory challenges of the defendants had been exhausted. At the trial the court construed the statute to mean that "although a juror called for the trial may be excused for cause, or based upon rumor or upon newspaper statement, but has expressed no opinion as to the truth of the newspaper statement, he is still qualified as a juror if he states that he can fairly and impartially render a verdict thereon in accordance with the law and the evidence, and the Court shall be satisfied of the truth of such statement. It is not a test question whether a juror will have the opinion which he has, but the question is whether his opinion will be changed by the evidence, but whether his verdict will be based only upon the account which may have been given by witnesses under oath.

Interpreted in this way the statute is not materially different from that of the Territory of Utah, which we had under consideration in Hopt vs. Utah, Supra, and to which we then gave effect. As that was a Territorial statute passed by a Territorial Legislature for the government of a Territory over which the United States has exclusive jurisdiction, it came directly within the operation of Article 6 of the amendments, which guaranteed to Hopt a trial by impartial jury. Webster vs. Reid, 111 How, 487, 490. No one at that time suggested a doubt of the constitutionality of the statute, and it was regarded, both in the Territorial courts and here, as furnishing the proper rule to be observed by a Territorial court in impaneling an impartial jury in a criminal case.

Indeed, the rule of the statute of Illinois, as it was construed by the trial court, is not materially different from that which has been adopted by the courts in many cases without legislative action. Commonwealth vs. Webster, 5 Cushing, 295; Holt vs. The People, 13 Michigan, 224; State vs. Fox, 1 Dutcher, 565; Ostrander vs. The Commonwealth, 3 Leigh, 780; State vs. Ellington, 7 Wendell, 61; Smith vs. Eames, 3 Soam, 81. See also an elaborate note to this last case in 36 A. M. dec. 521, where a very large number of authorities on this section are cited. Without pursuing this subject further it is sufficient to say that we agree entirely with the Supreme Court of Illinois in the opinion that the statute on its face as construed by the trial court is not repugnant to Section 9 of Article 2 of the constitution of that State, which guarantees to the accused party in every criminal prosecution a speedy trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

As this is substantially the provision of the Constitution of the United States, on which the petitioners now rely, it follows that even if they do not agree to the operation and effect of the Constitution, as is the case, the trial court is not to the objection which is made against it.

Mrs. Parsons brought her two children with her, and they were allowed to go behind the bars and play with their father. Parsons is far from overawed by his approaching fate. On being asked how he felt he replied: "I feel pretty well, but I am not afraid." His brother Jonathan Parsons, who served in the government 1776. He was the original of the term "Brother Jonathan," and was a likely man in his day. An older, by the way, and Jonathan, was his brother, and was scarcely able to support himself in his grief.

Mrs. Schwab talked long and earnestly with her husband. Her face was flushed with excitement, and to all attempts at a conversation by the other visitors she turned a deaf ear.

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Just before Spies' cell was unlocked to release him for a brief hour and a half he coolly lighted a cigar, and as he stepped from his cell to the floor below looked the picture of a contented gentleman going out for a stroll. He never held his head higher nor smiled more benevolently. In the cage stood the aged and sorrowing mother of Spies, accompanied by his two brothers, Jonathan and Henry. Mrs. Spies was dressed in deep mourning, and was scarcely able to support herself in her grief.

Lingg's girl was the next to arrive. She cried continually. Lingg, on the other hand, was the happiest man in the prison. He wore his usual tailoring and necktie, and laughed and chatted with his visitors, who replied to his salutes with tears in their eyes.

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