OPINION

OF

THE HON. JOHN FOX,

PRESIDENT JUDGE OF THE JUDICIAL DISTRICT COMPOSED OF THE COUNTIES OF BUCKS AND MONTGOMERY,

AGAINST THE

EXERCISE OF NEGRO SUFFRAGE

IN PENNSYLVANIA.

ALSO:

THE VOTE OF THE MEMBERS

OF THE

PENNSYLVANIA CONVENTION,

ON THE MOTION OF MR. MARTIN, TO INSERT THE WORD "WHITE," AS ONE OF THE PROPOSED AMENDMENTS TO THE CONSTITUTION.

HARRISBURG:

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1838.

NEGRO SUFFRAGE.

Opinion of the Court of Quarter Sessions of Bucks County, delivered by Judge Fox, 28*th December*, 1837, *in the matter of the contested election of Abraham Fretz, returned as elected Commissioner of Bucks county.*

This case is brought before the court, upon the complaint and petition in writing, of thirty and more, of the freemen of the county of Bucks, who state: "That on the 2d Tuesday of October, A. D. "1837, the freemen of Bucks county assembled at the polls in the "different election districts of said county, to elect three members "of the State Legislature, one County Commissioner, one Director "of the Poor, and one Auditor. And elections were held at said time, "and various persons were voted for to fill the respective offices. "That agreeably to law, the return judges of said election, from each "district in the county, assembled at the county court house, on the "next Friday succeeding said election, when, on summing up the "votes polled at the respective districts, it appeared that for Com- "missioner, Abraham Fretz had 3286 votes, and for the same office, "Jacob Kachline had 3261 votes; and for the office of Auditor, Rich- "ard Moore had 3302 votes, and for the same office, Dr. F. L. Bod- "der had 3300. That your petitioners believe that said election was "undue, and the said Abraham Fretz and Richard Moore were un- "duly returned as highest in vote for the respective offices aforesaid, "inasmuch as between 30 and 40 votes were received from, and polled "*by Negroes* at said election, who, it is believed, had no legal right "to vote, the said 30 or 40 being a greater number than the apparent "majorities of the said Abraham Fretz over the said Jacob Kach- "line, and the said Richard Moore over the said Dr. F. L. Bodder, "and which, if deducted from said Fretz and Moore, would place "said Kachline and Bodder in the majority. They therefore pray "the court to adopt such rules and measures as will bring the ques- "tion of the validity of such election, in respect to said Commis- "sioner and Auditor, before you, that the merits of the same may "be proceeded upon, and that you may decide finally upon them, "according to the laws of this Commonwealth."

This complaint is accompanied by the affidavit of two of the said freemen, who swear, "that the facts contained in the above petition are just and true, to the best of their knowledge and belief."

This brings the case within the provisions of the act of assembly

passed 19th March, 1824, (Purdon's Digest, 329—Pamphlet laws 53,) which provides as follows:

"The returns of the election of county Commissioner, Auditor, and all other county officers elected by the freemen of any county, for contesting whose election provision has not heretofore been made by law, shall be subject to the inquiry, determination and judgment of the Court of general Quarter sessions of the peace of the proper county, upon the complaint, in writing, of thirty or more of the freemen of the said county of undue election, or return of any such officer, two of whom shall take and subscribe, an oath or affirmation, before a judge, alderman, or justice of the peace, in the county wherein they reside, accompanying such petition, stating that the facts therein set forth are true to the best of their knowledge and belief; and the said court shall, in judging concerning such election, proceed upon the merits thereof, and shall determine finally, concerning the same, according to the laws of this Commonwealth."

Upon this complaint, it was the duty of the court to enquire, determine, and judge, of the returns of the election complained of. The first step, naturally, in all cases of complaint, is to give notice to the parties interested, that they may appear, and take such measures in their defence, as they may think proper.

This was done. Abraham Fretz, the person returned, was cited to appear on the first day of the last term.

Upon that day he appeared in court, and filed in writing, an answer as follows:—"And now to wit, this 12th day of December, A. D. 1837, comes Abraham Fretz, into a court of quarter sessions of Bucks county, and in answer to the citation annexed, saith that he verily believes it is not true, that the election named in the said citation was undue, nor that the said Abraham Fretz therein named, was unduly returned as highest in vote for the office of Commissioner—but that the respondent was duly and legally elected to said office."

ABRAHAM FRETZ.

The complaint substantially is, that the said Fretz is unduly returned highest in vote for the office of county commissioner, inasmuch as between 30 and 40 votes were given *by Negroes*, who had no right to vote, and that this number is greater than the majority which the said Fretz had over Jacob Kachline.

The first question that arose upon it, was, did it shew such a case, as authorised the court to proceed under the act of Assembly. If it did not, the complaint must be dismissed. If it did, then the court must take the means necessary to carry out the provision of the law.

In order to determine this, it was necessary first to decide, whether negroes have the right of suffrage. If they have, then the complainants do not show even a *prima facie* case, and their complaint must fall to the ground. If they have not, then the complaint is well founded *upon its face*, and the court will take the means necessary to ascertain the facts. This is the obvious and natural course. It would have been folly to have gone into, perhaps, a tedious and expensive examination to ascertain whether negro votes were received, until it was first determined whether, if the fact were so, it would affect

the return of the election. The court therefore at their last session, determined that that question should be first settled, and assigned this day for the hearing.

The question which presents itself for decision now is, whether negroes in Pennsylvania have the right of suffrage. This is a most important question, the decision of which may affect the power, the interest and the safety of every man in the community. But if the negro has the right to vote *by the law of the land*, it must be awarded to him. If, however, he has no such right by law, then to suffer him to vote is an injury to every duly qualified elector. Whether he has such right, must depend upon the true construction of the 1st section of the 3d article of the constitution of Pennsylvania, which is as follows:—"In elections *by the citizens*, every *freeman* of the age of twenty-one years, having resided in the state two years next before the election, and within that time paid a state or county tax, which shall have been assessed at least six months before the election, shall enjoy the rights of an elector."

Are negroes included within these terms, that is, is a negro a *citizen*, and a *freeman*, within the meaning of this clause of the constitution?

To determine this we must inquire, what was the political condition of the negro in Pennsylvania, at the adoption of the present constitution. In order to do this, satisfactorily, we must resort to the original charters from King Charles the second to Wm. Penn, and from Wm. Penn to the people. Also to the early history and laws of the Province, and to all our constitutions.

William Penn purchased the province of Pennsylvania from the British King. He associated with him in England a number of persons, who consented to emigrate with him to the Province, upon certain fundamental principles being agreed upon. Among these, that there should be a general assembly, to be *elected by freemen*, and *the trial by jury*. After this, to wit, on the 28th October, 1701, Wm. Penn promulgated a constitution for the Province, called a "Charter of Privileges." This charter provides, among other things, as follows:—"For the well governing of this Province and Territories, there shall be an assembly *chosen by* THE FREEMEN thereof, to consist of four persons out of each county, &c. who shall have power to choose a speaker, &c., and shall have *all other powers & privileges of an Assembly, according to the rights and privileges of* THE FREE BORN SUBJECTS OF ENGLAND, *and* AS IS USUAL, *in any of the King's plantations in America.*"

It was under these charters that our ancestors setted this province. *They were a community of white men exclusively*—an English colony. But almost simultaneous with the settlement of the province, NEGRO SLAVERY was introduced into it, as it previously had been into all the British colonies in America. We find traces of it in the laws, so early as 1693, and in 1705, four years after the charter of privileges, we have "An act for the trial of negroes," (Galloway's Province laws, page 45.) In this law the word *negro* manifestly implies *a slave*, and probably at that day, all negroes in Pennsyl-

vania were slaves. This act commences as follows: "Whereas, some difficulties have arisen within this province about the manner of trial and punishment of negroes, committing murder, burglary, &c., and other heinous enormities, and capital offences. For the remedy thereof, and for the speedy trial and punishment of such negro or negroes, offending as aforesaid, Be it enacted, &c." The law then goes on to provide that two Justices of the Peace, with six *freeholders*, to be summoned by the Justices, shall hold a court for the trial of any negroes charged with the said offences, with full power to convict or acquit them; and, in case of conviction the said Justices and freeholders "shall issue their warrant to the sheriff" FOR THE EXECUTION OF "SUCH NEGRO OR NEGROES;" and further by the same act, "If ANY *negro* shall presume to carry any gun, sword, fowling piece, club, or any other arms or weapons whatever, without his master's special license, he shall be whipped with twenty lashes on his bare back." And further by the same act, if more than four negroes meet in company, they shall be publicly whipped "*at the discretion of one Justice of the Peace* not exceeding thirty-nine lashes."

This law, it must be remembered, was passed only four years after the charter of privileges under the government of Willliam Penn. It is therefore impossible to believe that the wretched negro could have been supposed to have any immunities, either under the charter from the king, or the charter of privileges.

In the year 1725, seven years after the death of William Penn, and while the province was still under the proprietory government, a law was passed called "An act for the better regulation of negroes within this province." (Province laws, 143.)The first section provides that the Justices and freeholders who sentence a negro *to be executed, shall value the negro that his master may be paid.*

The third section is as follows: "And whereas, it is found by experience, that FREE NEGROES are an idle, slothful people, and often prove burthensome to the neighborhood, and afford ill example to other negroes, therefore be it enacted, &c." The act then provides that no negro shall be set free without security given, that he shall not become chargeable.

The fourth section provides "That if any FREE NEGRO, fit and able to work, shall neglect so to do, and loiter and mispend his or her time, or wander from place to place, any two magistrates are empowered and requested to bind out such [FREE] NEGRO from year to year."

The fifth section provides, "That no FREE NEGRO, or MULATTO, shall harbor or entertain any negro, Indian, or mulatto slave, under penalty of five shillings an hour; and if any FREE NEGRO OR MULATTO, shall deal with any negro, or other slaves, he may be publicly whipped with twenty one lashes." And, by the sixth section, if any FREE NEGRO OR MULATTO be unable to pay his fine, the Justice of the Peace may order satisfaction BY SERVITUDE.

The eighth section provides, that if any FREE *negro* shall intermarry with a white, such [free] negro *shall become a slave during life.*

The ninth section says:—"Whereas a good regulation and suitable

management of negroes, is very much conducive to the safety and peace, as well as to the advantage of those countries which are possessed of any number of them, Therefore, if *any* negro is found tippling or drinking, in or near any house where strong liquors are sold, or be absent from his master's house after nine o'clock at night, he shall be whipped on his bare back with ten lashes."

It cannot be supposed, that, even in the common acceptation of the word, these miserable slaves (whether slave in name or in fact, or called FREE NEGROES,) were *freemen* under the charters of the king, or the charter of privileges. They, manifestly, had no rights under these charters. Although *free negroes*, and men that were free from the control of any private master, yet they were an inferior and degraded animal, and political slaves of the actual government. The whites were governed by one set of laws, made by themselves, and the negroes by another, and a most severe code, made by their white superiors. There was no equality in their political or social condition. The trial by jury protected the white man charged with crime, while a negro charged with the very *same offence* could be hung by the summary judgment and sentence of two magistrates and six freeholders. It is thus plain that a *free negro* was not a *freeman* as it was understood by the provincial law-makers, William Penn and his associates.

Such was the condition of the free negroes in Pennsylvania at the revolution. In consequence of that event, the constitution of 1776 was adopted, and we will now examine whether that instrument elevated the negro in political rank.

That constitution provides that "every *freeman* of the age of 21 years having resided, &c." shall enjoy the right of an elector; and recites "that all men are born equally free and independent," and "have certain unalienable rights, among which are enjoying and defending life and liberty," but nevertheless, the institution of *negro slavery* still continued—the children of slaves *were born slaves*, and the severe code for their government still existed. The conclusion is irresistible, that *negroes* bond or free, were not considered by the framers of this constitution, as being *born free*, or as having any inalienable rights. Besides, the *freemen* of the commonwealth were directed, "to be trained and armed in its defence," and the trial by jury was secured to all the parties to that instrument, both of which were inconsistent with the laws in force for the government of negroes. The convention of 1776, in making a frame of Government, acted as if no such beings as negroes were in existence. They were a degraded race, who were supposed to have no interest in the government, whatever it might be.

The constitution of 1776, then, did not comprehend, *free negroes among freemen*, who were to enjoy the rights of an elector, but left them as they found them, an abject and degraded race.

In 1780, however, the Legislature passed "an act for the gradual abolition of slavery." The most important provisions of that act are, that no negro born after its passage shall be a slave for life, and that negroes and mulattoes shall be tried in the same manner

as other inhabitants of the state. It also repealed the laws above cited for the government of negroes, *but it gave them no political rights.*

The Legislature could not give the negro political power. They could not bring within the words of the constitution a class of men not contemplated by the convention which framed it. This act, therefore, merely relieved the negro from the oppression of certain severe laws, and provided that their offspring should not be slaves for life. The act, so far as it went to abolish slavery, could have no greater effect than the manumission by the authority of their masters would have had. Either would make them *free negroes*, but neither could make them *freemen*, in the sense in which that term was used by the constitution of 1776. The act of 1780 relieved the negro from some of the burthens imposed upon him, but it left him still in his inferior condition, for the same power which took off the burthen, *might impose it again at pleasure.* This power to govern them might be exercised at any moment by their political superiors, in any manner they might deem fitting. The same legislature which repealed the laws for their government, had power to repeal the repealing law, and thus have revived the original laws against them.

Thus matters stood at the adoption of the present constitution in 1790. Although relieved from oppressive laws, the negro remained in his inferior and degraded condition. Even Pennsylvania still continued to be a slave-holding state, inasmuch as all who were slaves for life in 1780 continued to be so; and all children, born of slave parents were slaves till the age of 28. Certainly then there was no equality in their condition with the whites, who made them bond or free at their own pleasure. It must also be taken into the account, that the constitution of the United States had just been ratified by thirteen states, EIGHT of which were slave-holding states, and only five non-slave holding states, and even in these, slavery had been but very recently and partially abolished.

That the negro race was then, and still is, a degraded caste, and inferior in rank to the white, cannot, I think, be doubted. What white man would not feel himself insulted by a serious imputation that he was a negro, and who, having believed himself to be of the white race, if he should be found to be strongly tainted with black blood, would not feel and experience, that he had fallen greatly in the social scale? What white parent, if he had any affection for them, could contemplate without deep grief and mortification the probable social condition of his mulatto children? Into what depth of degradation would a white female previously in the elevated ranks of life, sink, who should dare to brave public feeling so far as to marry a negro? "In most of the United States," says Chancellor Kent in his commentaries, "there is a distinction, in respect to politi-"cal privileges, between free white persons and free colored persons "of African blood; and in no part of the country do the latter, in "point of fact, participate equally, with the whites, in the exercise of "civil and political rights. The African race are essentially a *de-*"*graded caste of inferior rank and condition in society.* Marria-

"ges between them and the whites are forbidden in some of the states, "and when not absolutely contrary to law, they are revolting, and "regarded as an offence against public decorum. In Illinois, (a free "state) by a law of 1829, marriages between whites and negroes "or mulattoes are declared void, and the persons are liable to be "whipped, fined and imprisoned." In Massachusetts, although it was declared that slavery was abolished by the revolution yet it is held that a marriage between a white person and a negro or mulatto is *absolutely void.* In Ohio, a few years since, a law was passed expelling from the state, the whole body of its black population.

Then are FREE *negroes* embraced within the terms of the present constitution so as to have the right to vote? The words which declare who shall be electors, are, "In elections *by the citizens*, every "*freeman* of the age of 21 years, &c. "shall enjoy the rights of an "*elector.*" This is the same as the constitution of 1776, except that in the present constitution, the clause commences with the words "*In elections by the citizens,*"

If the word *citizen* gives the negro the the right to vote, then also *it gives him the right to be voted for,* and exercise the office of governor, senator, or any other office, because to be a *citizen,* (with residence,) is all the qualification required by the constitution. This clause of itself, makes this result sufficiently plain. But besides, all those parts of the constitution, which mention the election of the officers of government, provide that they shall be *citizens* and chosen *by the citizens.*

Who are citizens within the meaning of the constitution? The people, and their successors of the same caste, who established it. The people, in whom according to the declaration of rights, 2d sec. article, "*all* power is inherent," and by whose authority, "all free governments are founded," and "for whose peace, safety and happiness they are instituted." The *sovereign* people, in whom, collectively, is vested all political power, and who individually are component parts of the sovereign authority, and are equal to each other in all rights, powers, immunities and privileges. "WE THE PEOPLE," commences the constitution of the commonwealth of Pennsylvania, "ordain and establish this constitution for its government."

Is it possible that an inferior and degraded race were called in to take part in these high functions? That they composed a part of the *sovereign authority,* and suddenly were elevated from their abject condition, to be individually the equal in power and privileges, of the white man, who immediately before was immeasurably his superior in all these respects? Can it be conceived that, circumstanced as they were, that convention contemplated that a negro, in any possible case, should hold offices of the highest dignity in the commonwealth? Yet certainly they might, if they were intended to be comprehended in the term *citizen.*

But further, *of the term citizen.* The framers of the constitution of Pennsylvania in making that instrument, manifestly, had in view the constitution of the United States. They adhered to it as

closely as the difference of circumstances would admit. That constitution went into operation in March, 1789, and the convention of Pennsylvania met on the 24th of November in the same year. It needs but a slight comparison to be satisfied, that the constitution of the United States served as a model for that of Pennsylvania. In *addition* to this, it is to be remarked, that Judge James Wilson, who had been a delegate from Pennsylvania in the United States Convention, was a member of the Pennsylvania Convention, and one of the committee appointed by the latter, which reported the original draught of the constitution. Judge Wilson was eminent as a lawyer, and an energetic and active member of both conventions. From these facts the inference is irresistible, that every important word, used by the framers of the constitution of the United States, was used in the same sense by those who framed that of Pennsylvania.

What then is the sense in which the word 'People' and the word 'Citizen' is used in the constitution of the United States? It must be kept in mind that of the thirteen states who adopted that constitution, EIGHT, to wit, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, were slave holding states at the time of its passage in the convention, and only FIVE, to wit, Massachusetts, New Hampshire, Connecticut, Rhode Island, and Pennsylvania had done any thing to abolish slavery. A decided majority of the states then were slave-holding states, and the vote upon all questions in the convention was by states.

The constitution commences, "WE THE PEOPLE of the United States," for the general purposes mentioned, "do ordain and establish this constitution for the United States of America."

The second section of the fourth article is as follows:

"OF CITIZENS."

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Is it possible to conceive that a body of men, composed as that convention was, would have contemplated that a negro was his equal in rights and privileges? That the same being who, in his state, was either a legal slave, and for many purposes not considered even a person, but a mere chattel, and if called free, the victim of severe laws made by his white masters for their own safety, at the expense of his liberty and happiness, should in the general government, be his equal in political power? Could any one of the slave-holding states have supposed that they were making a compact, by which a free negro of another state would have the right to pass into a slave holding state, and there be entitled to all the privileges and immunities of a citizen of that state? It appears to me that the very statement of these questions carries with it a decided negative.

But again, by an amendment to the constitution, adopted in 1789 it is provided that "the right of *the People* to keep and bear arms shall not be infringed."

This, if there were nothing else, would be conclusive to show that negroes were not included in the term *People*, because bearing arms, has, at all times—in every slave-holding state, been considered

inconsistent with the condition of the free negro in such state, and severe laws have always existed to prevent it. Therefore, when it is provided that the *People* shall bear arms, &c., it follows, that free negroes are not included in that term.

The determination of the people of the U. S. to exclude negroes from citizenship may be also strongly inferred from the fact, that the first naturalization law which was passed on the 26th March, 1790, only one year after the adoption of the constitution, confines, as do all the other naturalization laws, the right to become a citizen to FREE WHITE PERSONS.

For all these reasons I think it is clear, that the framers of the constitution of the United States did not intend to include negroes either in the term People or Citizen. I am confirmed in this opinion by that of the court of appeals in Kentucky. In the case of Amy vs. Smith, 1 Little, 333, they decide directly that *free negroes* and mulattoes are not such citizens as were contemplated by the article of the United States constitution.

These terms in the constitution of the United States and of the state, being used in relation to the same subject matter, about the same time, by a portion of the same people, must it seems to me, necessarily, receive the same construction. And, as negroes are plainly not included in them in the constitution of the United States, it follows that they are not included in them in the constitution of Pennsylvania.

The words "People" and "Citizen," however, in both constitutions were, probably borrowed from the Roman Republic. The people of Rome were sovereign, and the *good* citizen of Rome, that is he who resided in Rome, was enrolled as such, and capable of dignities, was individually a part of the actual sovereignty. There is, therefore, strong analogy to each other in the meaning of these terms, as existing in the ancient Republic, and as I conceive they are used in our constitution. There were citizens of Rome of several grades—some without the right of suffrage, and some (Freedmen) could be raised to no office of honor. A negro in Pennsylvania may, perhaps, be considered as a citizen of inferior grade, incapable of political power or dignities, but equal *in civil rights* to the white race. "The manumitted slaves in the United States," says the writer of the Article Freedmen in the Encyclopedia Americana "have this disadvantage in comparison with the Freedmen among the ancients, that their color continually recalls their former condition, and connects them with the remainder of the same race in servitude, while it produces a marked distinction between them and their former masters. *This has prevented them from being admitted to the full rights of citizens of the United States.*"

The authority of the Declaration of Independence has sometimes been urged in support of the perfect equality of the negro with the white race—"all men" says that instrument, "are created equal; they are endowed by their creator with certain inalienable rights; among these are life, liberty, and the pursuit of happiness." But the weight of this authority, in its application to the negro, may be duly

estimated when we consider *that all the states whose delegates made that declaration were slave holding states.* That no negro, born within any one of them, (Pennsylvania included) was born the equal of his white master, but all, without exception, whether slaves or free negroes, were the subjects of unequal and severe laws. *They* had no inalienable rights but were the creatures of their master's will.

A practice under a law, immediately after its passage, is always evidence of what the law is. From the best information I have been able to obtain, no negro has ever voted in the city or county of Philapelphia, where there were probably more negroes than in all the rest of the state. In the majority of the counties they have not been suffered to vote, and the practice to permit them to do so any where, grew up long after the adoption of the constitution. It no doubt arose from a misconception of the term *freeman*, as used in the constitution; the term was considered simply as opposed to *slave*, and the argument was, that as a negro was *free*, therefore he was a *freeman*, and consequently enabled to vote. Even if this were correct it could not avail, because they must be *citizens* as well as freemen, and a free negro, as I have already shown, by the laws as they stood at the adoption of the constitution, was a very different being from a citizen.

We find the word *freeman* applied to electors in the charters of Charles the second to Wm. Penn, in all the charters, and agreements, and concessions of Wm. Penn, and in all our constitutions, and laws relative to bearing arms down to the present day. Surely then, unless there be some plain reason for a change, it must be deemed to have the same meaning in the constitution of 1790. as it had in all these constitutions and laws which preceded it. I have already shown that in none of these could the term include a *free negro* and that is sufcient to determine the present question.

But, I presume, that the word freeman is used in the constitution, and in the previous charters, in the common law sense of one who has certain privileges in a corporate town or state. This is apparent I think, from "An act for naturalization" passed in 1700, Appendix Province laws, 15, which recites as follows: "Since some of the people that live therein, (Pennsylvania) and are likely to come thereinto, are foreigners, and *not freemen according to the acceptation of the laws of England.*" The act then provides that upon certain proceedings had, the said foreigners shall be "naturalized," and "have and enjoy to them and their heirs *the same rights and immunities of and unto the privileges of this government, as fully and amply as any of the King's natural born subjects.*" This then, as recognized at that early day, was what made *the freeman* of Pennsylvania, having the rights and immunities and privileges of the government," as at common law: the *freeman* was he who had all the privileges and immunities of the body politic to which he belonged.

"The *freeman* of the Commonwealth," says the constitution of 1790, "shall be armed and disciplined for defence." Now this is a positive constitutional provision, and has, from the adoption of the constitution, been carried into effect by Militia laws for arming the

white population; but negroes have been directly excluded by the use of the word "white" to designate those subject to its provisions. If negroes were considered as freemen, why were they not included in these laws? If they were embraced by the constitution, then the several legislatures, from its adoption to this time, have violated it by making a partial law, when it was required to make a general one. I therefore think this early and continued legislative construction of this part of the constitution, strong evidence of its true meaning.

Besides, the true policy of Pennsylvania at the adoption of the constitution, certainly was to hold the negro population entirely under the control of the government. She was bounded by five slave holding states. Powerful and hostile Indian tribes pressed upon the north-western frontier, and were in the occupation of a part of her territory. The abolition of slavery within her own borders was still an almost solitary and not long tried experiment. The new general government was but just established, and what would be the result of the actual condition of public affairs, no man could foresee. The time was very unpropitious, and it would have been most unwise in the people of that day, to have raised into political equality with themselves, a race of men who might become hostile, and whose hostility, if connected with that of others of the same race, might be most extensively injurious, if not fatal.

I have thus come to the conclusion, that the people of Pennsylvania, who framed the present constitution were a political community of white men exclusively, and that colored persons of the African blood, were not contemplated by that constitution. That the latter have not, and never had, any *chartered* or constitutional rights, but have always been, and still are, subject to such laws as the sovereign power may make for their government. That power may elevate the negro, if it deem fitting to equality in political power with itself. Whether it would be wise so to do is not a matter of consideration now. It is enough for us that they have not yet done so. The constitution of 1790, left them as it found them under that of 1776.

But, (that my opinion of their rights may not be misunderstood,) although *political* power is not the birth right of the negro in Pennsylvania, yet his *civil rights*, as distinguished from political, are by the law, precisely the same as those of the white man. This equality is absolute, practical, and efficient. If he is injured, he has the same legal remedy, and if he injures another he is subject but to the same penalty, as any other person. He is protected in the enjoyment of his life and liberty, and pursuit of happiness, by the same laws which govern the white race. It is true he is still subject to the power of the legislature, who may, and if circumstances should ever demand it, probably will, place such restraints upon him as the safety of the people may require. Whether the elevation of the negro to *political* equality with the white race, would conduce to the safety or happiness of either, is not a question now for decision.

For the reasons given, the Court are of opinion that a negro in Pennsylvania HAS NOT THE RIGHT OF SUFFRAGE, and therefore they will now take the means necessary to ascertain the truth of the facts alleged in the complaint.

PENNSYLVANIA CONVENTION.

NEGRO SUFFRAGE—and vote on Mr. Martin's motion to insert the word "WHITE" as one of the proposed amendments to the Constitution.

YEAS, in *favor* of the amendment, and *opposed* to negro suffrage :

Mr. Banks	Mr. Fry	Mr. Miller
Barclay	Fuller	Nevin
Barndollar	Gamble	Overfield
Bedford	Gearhart	Payne
Bigelow	Gilmore	Pollock
Bonham	Grennell	Purviance
Brown, of Northa.	Harris	Read
Brown, of Phila.	Hastings	Riter
Chambers	Hayhurst	Ritter
Clapp	Helffenstein	Rogers
Clarke, of Indiana	Henderson of Dau.	Russell
Cleavinger	High	Seager
Cline	Hopkinson	Scheetz
Crain	Houpt	Sellers
Crawford	Hyde	Seltzer
Crum	Ingersoll	Shellito
Cummin	Keim	Smith, of Colum.
Curll	Kennedy	Smyth, of Centre
Darragh	Krebs	Snively
Dillinger	Lyons	Sterigere
Donagan	Magee	Stickel
Donnell	Mann	Sturdevant
Doran	Martin	Taggart
Dunlop	M'Cahen	Weaver
Fleming	Meredith	Woodward—77.
Foulkrod	Merrill	

NAYS—*opposed* to the amendment and in *favor* of negro suffrage :

Mr. Agnew	Mr. Clarke, of Beaver	Mr. Denny
Ayers	Clark, of Dauphin	Dickey
Baldwin	Coates	Dickerson
Biddle	Cochran	Earle
Carey	Cox	Farrelly
Chandler, Chester	Craig	Forward
Chandler, Phila.	Cunningham	Hays
Chauncey	Darlington	Heister

NAYS.

Mr. Jenks	Mr. Merkel	Mr. Sill
Kerr	Montgomery	Thomas
Konigmacher	Pennypacker	Todd
Maclay	Porter, Lancaster	Weidman
M'Call	Reigart	White
M'Dowell	Scott	Young
M'Sherry	Serrill	Sergeant,Pr't. 45.

ABSENT—Messrs. Barnitz, Bell, Brown, of Lancaster, Butler, Cope, Henderson, of Allegheny, Long, Myers, Porter, of Northampton, Royer, Stevens.