

Case No. 15,712. UNITED STATES V. MALL ET AL.  
[5 Am. Law Rev. 752.]

Circuit Court, S. D. Alabama.

1871.

CONSTITUTIONAL LAW—THE ENFORCEMENT ACT.

[Indictment against John Mall, Jr., and others.]

In this case it was held on demurrer that the words “any right or privilege granted or secured to” any citizen in the act of May 31, 1870, § 6 [16 Stat 141], include the rights of peaceably assembling and of free speech, on the ground that as congress is prohibited to abridge these rights by the first amendment, and as the states are by the fourteenth (no state shall abridge the privilege, &c., of citizens), they may fairly be said to be secured by the constitution. The constitutionality of the act is also affirmed by a somewhat obscure course of reasoning. One position is taken which, though doubtful, and often strenuously denied, we do think has something in it,—that a state may deny the equal protection of its laws not only by positive hostile legislation, but also by concerted judicial or executive inaction or discrimination when the laws upon the statute book are unobjectionable in form.