

## UNITED STATES v. HALL et al.

(District Court, W. D. Pennsylvania. December 17, 1892.)

No. 10.

## 1. WITNESSES IN CRIMINAL CASES.—COMPETENCY.—CONVICTION OF CRIME.—STATE STATUTES.

The provision of Rev. St. § 858, that the laws of the state in which the court is held shall be the rule of decision as to the competency of witnesses in the federal courts "in trials at common law and in equity and admiralty," does not apply to criminal cases, and, in the absence of special provision by congress, the competency of witnesses is to be determined by the law of the state as it existed when the judiciary act of 1789 was passed, regardless of any subsequent state legislation. *U. S. v. Reid*, 12 How. 363, and *Logan v. U. S.*, 12 Sup. Ct. Rep. 617, 144 U. S. 302, followed.

## 2. SAME.—EFFECT OF PARDON.

On a criminal trial in the federal courts of Pennsylvania, a person who has been convicted and sentenced in the courts of that state for murder is incompetent to testify except when his disability has been removed by a pardon.

## 3. SAME.—LEGISLATIVE PARDONS.

Act Pa. March 31, 1860, (Purd. Dig. p. 469, pl. 357,) provides that when any person convicted of a felony, or misdemeanor punishable with imprisonment at labor, has endured his punishment, the punishment so endured shall have the like effect and consequences as a pardon by the governor. *Held*, that this was a legislative pardon, and operated to remove the disability in the same manner as a pardon by the executive, and therefore enabled such persons to testify in criminal trials in the federal courts.

At Law. Indictment of Michael Coleman, Thomas Hughes, and M. C. Hall for breaking and robbing post offices. On motion for new trial and in arrest of judgment. Overruled.

Walter Lyon, U. S. Atty.

W. J. Breene, for defendants.

BUFFINGTON, District Judge. This is a motion for a new trial, and the reason alleged is the admission of the witness M. C. Hall to testify, against the objection of the other defendants. Michael Coleman, Thomas Hughes, and M. C. Hall, the witness, were jointly indicted under section 5478, Rev. St., for breaking into and robbing a number of post offices. When the case was called for trial, Hall, who had previously confessed to the government officers his own guilt and that of his codefendants, entered a plea of guilty. The other defendants pleaded not guilty. Hall, being called as a witness by the government, the defendants made objection to him as being incompetent. To support their objection they exhibit to the court a record of Hall's conviction, in the court of oyer and terminer of Allegheny county, Pa., of the crime of murder in the second degree. In pursuance thereof he was sentenced to 12 years' imprisonment, which sentence he had served. The objection was overruled. Hall was allowed to testify, and the defendants were found guilty. The question is again raised on motion for new trial.

The questions bearing on Hall's competency may be briefly stated in the position taken by counsel. It is contended by defendants' counsel (1) that in criminal trials in the United States courts in Penn-

sylvania the law of that state, as it existed at the passage of the judiciary act of 1789 in reference to the admission of evidence, must govern; and (2) that Hall, having been convicted of and sentenced for the crime of murder, which is an infamous one, would not have been a competent witness in Pennsylvania in 1789, and is therefore now incompetent.

On behalf of the government it is alleged (1) that while the conviction and sentence of Hall in the state court of Pennsylvania, as stated, might have rendered him incompetent in all the courts of that state, yet it cannot have that effect in the United States courts; (2) that the crime of murder in the second degree is statutory in Pennsylvania, and did not exist until the act of 1794, that consequently it could not have rendered a man incompetent in 1789, for it did not exist, and no conviction could be had for its commission; and (3) that, Hall having served his term of imprisonment, this, under the act of March 31, 1860, § 181, amounts to, and is, a pardon, and he is therefore competent.

The first position of defendants' counsel, viz., that the criterion in the admission of evidence is the law as it existed in 1789, is well taken. Section 858, Rev. St., after certain provisions not here pertinent, provides:

"In all other respects the laws of the states in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law and in equity and admiralty."

At first view it might seem this included criminal cases, but the contrary has been decided. In *U. S. v. Reid*, 12 How. 363, the witness, Clemens, was rejected in 1851 in a criminal trial in the circuit court as being incompetent under the law as it existed in Virginia in 1789, although an act passed in 1849 made him competent. This ruling was affirmed by the supreme court; Chief Justice Taney (speaking of section 34 of the act of September 24, 1789, of which section 858, quoted above, is a substantial re-enactment) saying:

"The language of this section cannot, upon any fair construction, be extended beyond civil cases at common law, as contradistinguished from suits in equity. So far as concerns rights of property, it is the only rule that could be adopted by the courts of the United States, and the only one that congress had the power to establish; and the section above quoted was merely intended to confer on the courts of the United States the jurisdiction necessary to enable them to administer the laws of the states. But it could not be supposed, without very plain words to show it, that congress intended to give to the states the power of prescribing the rules of evidence in trials for offenses against the United States, for this construction would in effect place the criminal jurisprudence of one sovereignty under the control of another." "The law by which, in the opinion of this court, the admissibility of testimony in criminal cases must be determined, is the law of the state as it was when the courts of the United States were established by the judiciary act of 1789."

This doctrine was followed in the late case of *Logan v. U. S.*, 144 U. S. 302, 12 Sup. Ct. Rep. 617, where Mr. Justice Gray, after a full discussion of the question, says:

"For the reasons above stated, the provision of section 858 of the Revised Statutes that 'the laws of the states in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United

States in trials at common law and in equity and admiralty, has no application to criminal trials; and therefore the competency of witnesses in criminal trials in the courts of the United States held within the state of Texas is not governed by a statute of the state which was first enacted in 1858, but, except as far as congress has made specific provisions upon the subject, is governed by the common law, which, as has been seen, was the law of Texas before the passage of that statute, and at the time of the admission of Texas into the Union as a state."

There is no doubt that a person convicted of and sentenced for murder, it being an infamous crime, would have been incompetent as a witness in the courts of Pennsylvania in 1789. Conceding, for the purposes of this case, that a conviction and sentence for murder in the second degree would have the same effect, the question then arises, is not Hall a competent witness by virtue of the 181st section of the act of March 31, 1860, (Purd. Dig. p. 469, pl. 357?) The section is as follows:

"Where any person hath been, or shall be, convicted of any felony not punishable with death, or any misdemeanor punishable with imprisonment at labor, and hath endured, or shall endure, the punishment to which such offender hath been, or shall be, adjudged for the same, the punishment so endured shall have the like effects and consequences as a pardon by the governor, as to the felony or misdemeanor whereof such person was so convicted."

As to the effect of a pardon in restoring competency there is no doubt. It has always been so held in Pennsylvania, (see *Hoffman v. Coster*, 2 Whart. 468, and *Miller, Wit.* pp. 18, 19,) and in the courts of the United States, (see *Boyd v. U. S.*, 142 U. S. 450, 12 Sup. Ct. Rep. 292, and *Logan v. U. S.*, 144 U. S. 303, 12 Sup. Ct. Rep. 617.) But is this act in effect a pardon, or is it an enabling statute, passed since 1789, and which comes within the spirit of the court's prohibition in *U. S. v. Reid*, supra, where it was said: "But no law of a state made since 1789 can affect the mode of proceeding or the rules of evidence in criminal cases?" We are of opinion the latter is not the true construction of the statute. It is true, it indirectly changes the incompetency of many persons, but this follows from the scope of the application of the act, and not from the change of any rule or principle of evidence. The released criminal, who, without being mentioned by name, is pardoned by its comprehensive terms, and thereby made competent, is made so in no different way than he would be were he pardoned by name by the executive. While pardons are usually granted by the executive, the pardoning power by no means is confined to that branch of government. In England pardons by act of parliament were not infrequent, and they are placed on a higher level than the king's. Blackstone (volume 4, p. 401) says:

"A pardon by act of parliament is more beneficial than by king's charter, for a man is not bound to plead it, but the court must, ex officio, take notice of it."

—Which words were quoted with approval by Chief Justice Marshall in *U. S. v. Wilson*, 7 Pet. 162, where he says:

"The reason why a court must, ex officio, take notice of a pardon by act of parliament is that it is considered as a public law, having the same effect on the case as if the general law punishing the offense had been repealed or annulled."

From the very nature of government, it requires no reasoning to prove the self-evident proposition that in Pennsylvania the power of pardon was vested in the legislative branch by the inherent power of the supreme law-making power, and in the executive by constitutional provision. The grant of this power to the executive was no limitation on the right of the power granting it to exercise it also. Because this legislative power of pardon was dormant, so far as this case is concerned, until 1860, when the act in question was passed, does not stamp it as being of the nature which Justice Taney alluded to. The right of pardon by executive and legislative branches, with all the well-understood consequences, including restored competency, existed in Pennsylvania in 1789, when congress adopted the then rules of evidence as the criterion for future criminal trials. It must have had in mind the possibility of pardon by either branch, and the effect thereof. The subsequent exercise of that right by the legislative branch was obviously as proper as by the executive, and a legislative pardon of Hall by special act of assembly (prior to the constitution of 1874) would have restored his competency. Such being the effect if Hall were pardoned by name by the executive, there is no different effect where he is pardoned by description of a class of offenders. Pardons are granted to individual criminals by name; amnesty to classes of offenders or communities. They differ, not in kind, but solely in the number they severally affect. We are of opinion, therefore, that the act of 1860, quoted above, was a legislative pardon or act of general amnesty. It is true it does not take effect until after the imprisonment has been served, but that makes it none the less a pardon or its effects different. See *Logan v. U. S.*, supra. That such is the case—that it was passed as a general pardon, and intended to supply the place of the numerous pardons the governor was called on to issue to restore the competency of convicted persons—is evidenced by the report of the commissioners of the Penal Code, who, in reporting to the legislature for passage the section quoted, said:

"This section is new; it is founded on the principle that, if the offender has fully suffered the punishment inflicted by law upon his crimes, he should be restored to society without any further legal taint. \* \* \* In effect, the object of this statute is at present attained through the pardon of the governor, which is continually invoked to restore such persons to their competency as witnesses, after they have fulfilled the sentence of the law."

This citation shows the act was passed as a substitute for individual pardons, to supply their place, and to make that which had been before a matter of individual grace one of general right.

Regarding this act as a legislative pardon,—that it has the same effect as an executive pardon to Hall by name,—we are of opinion his competency is restored, and his testimony was rightly received. The view we have taken renders it needless to discuss the first and second positions taken by the government, as noted. The motion for a new trial is overruled, and the defendants directed to be brought up for sentence.

## UNITED STATES v. PATRICK et al.

(Circuit Court, M. D. Tennessee. December 3, 1892.)

No. 2,855.

## CIVIL RIGHTS—CONSPIRACY—INDICTMENT.

An indictment under Rev. St. §§ 5508, 5509, for conspiracy to "injure, oppress, threaten, or intimidate any citizen" in the free exercise of any right or privilege secured by the constitution or laws of the United States, must aver that the persons conspired against were citizens, and it is insufficient merely to allege that they were officers conspired against in the discharge of their official duties.

At Law. Indictment of A. J. Patrick, Morgan Petty, and James Epps, under Rev. St. §§ 5508, 5509, providing a punishment for any persons who conspire to intimidate, etc., any citizen in the free exercise of his rights under the constitution and laws of the United States, or who, in carrying out such a conspiracy, commit any felony or misdemeanor. On demurrer to the indictment. Sustained.

John Ruhm, U. S. Atty.

J. H. Holman and Lamb &amp; Tillman, for defendants.

KEY, District Judge. "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen," etc., (Rev. St. § 5508,) and "if, in violating the provisions of the preceding section, any felony or misdemeanor be committed, they shall be punished for the same with such punishment as the laws of the state provide." Id. § 5509. The indictment in this case does not allege any conspiracy against the rights of Spurrier, Mather, and Cardwell, etc., as citizens, but as officers. It does not aver that they were citizens of the state or of the United States. Admitting that the sections referred to may apply to officers in the discharge of their official duties, it cannot be admitted that they do so unless such officers are citizens, and it seems to me that citizenship should be averred. The case of Logan v. U. S., 144 U. S. 263, 12 Sup. Ct. Rep. 617, does not sustain a contrary view. The indictment in that case alleged that the persons conspired against were citizens of the United States. Logan v. U. S., supra, 144 U. S. 265, 282, 12 Sup. Ct. Rep. 618, 622. The demurrer is sustained.

## TUBMAN v. WASON MANUF'G CO.

(Circuit Court, D. Massachusetts. January 3, 1892.)

No. 2,471.

## 1. PATENTS FOR INVENTIONS—LIMITATION OF CLAIM—PRIOR ART.

Letters patent No. 192,014, issued June 12, 1877, to George S. Roberts for an improvement in railway cars, consisting of bay windows integral with the sides of the car, and not projecting beyond the general line thereof, must, in view of the prior state of the art, be restricted to the specific structure described therein.

## 2. SAME—INFRINGEMENT.

The shape of the bay windows of the patent being represented by lines oblique to the sides of the car, and meeting at an obtuse angle, the patent