



Instruction to the Jury by the Court in the Case of United States vs Susan B. Anthony



Parent Category: [Susan Anthony Trial \(1873\) \(/anthony\)](#)

The Court addressed the Jury as follows:

Gentlemen of the Jury:

I have given this case such consideration as I have been able to, and, that there might be no no misapprehension about my views, I have made a brief statement in writing.

The defendant is indicted under the act of Congress of 1870, for having voted for Representatives of Congress in November, 1872. Among other things, that Act makes it an offence for any person knowingly to vote for such Representatives without having a right to vote. It is charged that the dependant thus voted, she not having a right to vote because she is a woman. The defendant insists that she has a right to vote; that the provision of the Constitution of this State limiting the right to vote to persons of the male sex is in violation of the 14th Amendment of the Constitution of the United States, and is void. The 13th, 14th and 15th Amendments were designed mainly for the protection of the newly emancipated negroes, but full effect must nevertheless be given to the language employed. The 13th Amendment provided that neither slavery nor involuntary servitude should longer exist in the United States. If honestly received and fairly applied, this provision would have been enough to guard the rights of the colored race. In some States it was attempted to be evaded by enactments cruel and oppressive in their nature, as that colored persons were forbidden to appear in the towns except in a menial capacity; that they should reside on and cultivate the soil without being allowed to own it; that they were not permitted to give testimony in cases

where a white man was a party. They were excluded from performing particular kinds of business, profitable and reputable, and they were denied the right of suffrage. To meet the difficulties arising from this state of things, the 14th and 15th Amendments were enacted.

The 14th Amendment created and defined citizenship of the United States. It had long been contended, and had been held by many learned authorities, and had never been judicially decided to the contrary, that there was no such thing as a citizen of the United States, except as that condition arose from citizenship of some State. No mode existed, it was said, of obtaining a citizenship of the United States except by first becoming a citizen of some State. This question is now at rest. The 14th Amendment defines and declares who should be citizens of the United States, to wit: "All persons born or naturalized in the United States and subject to the jurisdiction thereof." The latter qualification was intended to exclude the children of foreign representatives and the like. With this qualification every person born in the United States or naturalized is declared to be a citizen of the United States, and of the State wherein he resides. After creating and defining citizenship of the United States, the Amendment provides that no State shall make or enforce any law which shall abridge the privileges or immunities of a citizen of the United States. This clause is intended to be a protection, not to all our rights, but to our rights as citizens of the United States only; that is, the rights existing or belonging to that condition or capacity. The words "or citizen of a State," used in the previous paragraph are carefully omitted here. In article 4, paragraph 2, of the Constitution of the United States it had been already provided in this language, viz: "the citizens of each State shall be entitled to all the privileges and immunities of the citizens in the several States." The rights of citizens of the States and of citizens of the United States are each guarded by these different provisions. That these rights were separate and distinct, was held in the Slaughter House Cases recently decided by the United States Supreme Court at Washington. The rights of citizens of the State, as such, are not under consideration in the 14th Amendment. They stand as they did before the adoption of the 14th Amendment, and are fully guaranteed by other provisions. The rights of citizens of the States have been the subject of judicial decision on more than one occasion. *Corfield* agt. *Coryell*, 4 Wash.; *C. C. R.*, 371. *Ward* agt. *Maryland*; 12 Wall., 430. *Paul* agt. *Virginia*, 8 Wall., 140.

These are the fundamental privileges and immunities belonging of right to the citizens of all free governments, such as the right to life and liberty; the right to acquire and possess property, to transact business, to pursue happiness in his own manner, subject to such restraint and the Government may adjudge to be necessary for the general good. In *Cromwell* agt. *Nevada*, 6 Wallace, 36, is found a statement of some of the rights of a citizen of the United States, viz: "To come to the seat of the Government to assert any claim he may have upon the Government, to transact any business he may have with it; to seek its protection; to

share its offices; to engage in administering its functions. He has the right of free access to its seaports through which all operations of foreign commerce are conducted, to the sub-treasuries, land offices, and courts of justice in the several States." Another privilege of a citizen of the United States, says Miller, Justice, in the "Slaughter House" cases, is to demand the care and protection of the Federal Government over his life, liberty and property when on the high seas or within the jurisdiction of a foreign government. The right to assemble and petition for a redress of grievances, the privilege of the writ of habeas corpus, he says, are rights of the citizen guaranteed by the Federal Constitution.

The right of voting, or the privilege of voting, is a right or privilege arising under the Constitution of the State, and not of the United States. The qualifications are different in the different States. Citizenship, age, sex, residence, are variously required in the different States, or may be so. If the right belongs to any particular person, it is because such person is entitled to it by the laws of the State where he offers to exercise it, and not because of citizenship of the United States. If the State of New York should provide that no person should vote until he had reached the age of 31 years, or after he had reached the age of 50, or that no person having gray hair, or who had not the use of all his limbs, should be entitled to vote, I do not see how it could be held to be a violation of any right derived or held under the Constitution of the United States. We might say that such regulations were unjust, tyrannical, unfit for the regulation of an intelligent State; but if rights of a citizen are thereby violated, they are of that fundamental class derived from his position as a citizen of the State, and not those limited rights belonging to him as a citizen of the United States, and such was the decision in *Corfield agt. Coryell*. (Supra.) The United States rights appertaining to this subject are those first under article 1, paragraph 2, of the United States Constitution, which provides that electors of Representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State Legislature, and second, under the 15th Amendment, which provides that the right of a citizen of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude. If the Legislature of the State of New York should require a higher qualification in a voter for a representative in Congress than is required for a voter for a Member of Assembly, this would, I conceive, be a violation of a right belonging to one as a citizen of the United States. That right is in relation to a Federal subject or interest, and is guaranteed by the Federal Constitution. The inability of a State to abridge the right of voting on account of race, color, or previous condition of servitude, arises from a Federal guaranty. Its violation would be the denial of a Federal right—that is a right belonging to the claimant as a citizen of the United States.

This right, however, exists by virtue of the 15th Amendment. If the 15th Amendment had contained the word "sex," the argument of the defendant would have been potent. She would have said, an attempt by a State to deny the right to vote because one is of a particular sex, is expressly prohibited by that Amendment. The amendment, however, does not contain that word. It is limited to race, color, or previous condition of servitude. The Legislature of the State of New York has seen fit to say, that the franchise of voting shall be limited to the male sex. In saying this, there is, in my judgment, no violation of the letter or of the spirit of the 14th or of the 15th Amendment. This view is assumed in the second section of the 14th Amendment, which enacts that if the right to vote for Federal officers is denied by any state to any of the male inhabitants of such State, except for crime, the basis of representation of such State shall be reduced in proportion specified. Not only does this section assume that the right of male inhabitants to vote was the especial object of its protection, but it assumes and admits the right of a State, notwithstanding the existence of that clause under which the defendant claims to the contrary, to deny to classes or portions of the male inhabitants the right to vote which is allowed to other male inhabitants. The regulation of the suffrage is thereby conceded to the States as a State's right. The case of Myra Bradwell, decided at a recent term of the Supreme Court of the United States, sustains both the positions above put forth, viz: First, that the rights referred to in the 14th Amendment are those belonging to a person as a citizen of the United States and not character of a State, and second, that a right of the character here involved is not one connected with citizenship of the United States. Mrs. Bradwell made application to be admitted to practice as an attorney and counsellor at law, in the Courts of Illinois. Her application was denied, and upon appeal to the Supreme Court of the United States, it was there held that to give jurisdiction under the 14th Amendment, the claim must be of a right pertaining to citizenship of the United States, and that the claim made by her did not come within that class of cases. Mr. Justice Bradley and Mr. Justice Field held that a woman was not entitled to a license to practice law. It does not appear that the other Judges passed upon that question.

The 14th Amendment gives no right to a woman to vote, and the voting by Miss Anthony was in violation of the law.

If she believed she had a right to vote, and voted in reliance upon that belief, does that relieve her from the penalty? It is argued that the knowledge referred to in the act relates to her knowledge of the illegality of the act, and not to the act of voting; for it is said that she must know that she voted. Two principles apply here: First, ignorance of the law excuses no one; second, every person is presumed to understand and to intend the necessary effects of his own acts. Miss Anthony knew that she was a woman, and that the constitution of this State prohibits her from voting. She intended to violate that provision-intended to test it, perhaps,

but certainly intended to violate it. The necessary effect of her act was of violate it, and this side is presumed to have intended. There was no ignorance of any fact, but all the facts being known, she undertook to settle a principle in her own person. She takes the risk, and she cannot escape the consequences. It is said, and authorities are cited to sustain the position, that there can be no crime unless there is a culpable intent; to render one criminally responsible a vicious will must be present. A commits a trespass on the land of B, and B, thinking and believing that he has a right to shoot an intruder on his premises, kills A on the spot. Does B's misapprehension of his rights justify his act? Would a Judge be justified in charging the jury that if satisfied that B supposed he had a right to shoot A he was justified, and they should find a verdict of not guilty? No Judge would made such a charge. To constitute a crime, it is true, that there must be a criminal intent, but it is equally true that knowledge of the facts of the case is always held to supply this intent. An intentional killing bears with it evidence of malice in law. Whoever, without justifiable cause, intentionally kills his neighbor, is guilty of a crime. The principle is the same in the case before us, and in all criminal cases. The precise question now before me has been several times decided, viz.: that one illegally voting was bound and was assumed to know the law, and that a belief that he had a right to vote gave no defense, if there was no mistake of fact. (Hamilton against The People, 57th of Barbour, p. 625; State against Boyet, 10th of Iredell, p. 336; State against Hart, 6th Jones, 389; McGuire against State, 7 Humphrey, 54; 15th of Iowa reports, 404.) No system of criminal jurisprudence can be sustained upon any other principle. Assuming that Miss Anthony believed she had a right to vote, that fact constitutes no defense if in truth she had not the right. She voluntarily gave a vote which was illegal, and thus is subject to the penalty of the law.

Upon this evidence I suppose there is no question for the jury and that the jury should be directed to find a verdict of guilty.

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OTHER RESOURCES

- [The Trial of Susan B. Anthony: An Account \(/anthony/444-home\)](/anthony/444-home)
- [The Trial of Susan Anthony: Chronology \(/anthony/445-chronology\)](/anthony/445-chronology)

- [Susan B. Anthony: A Biography \(/anthony/440-biography\)](#)
- [Letters & Diary Entries of Susan B. Anthony Concerning Her Casting a Vote in the 1872 Federal Election \(/anthony/441-voteletters\)](#)
- [Address of Susan B. Anthony \(/anthony/438-anthonyaddress\)](#)
- [Trial Record in the Case of United States vs Susan B. Anthony on the Charge of Illegal Voting \(June 17-18, 1873\) \(/anthony/435-trialrecord\)](#)
- [Susan B. Anthony's Petition to Congress \(January 12, 1874\) \(/anthony/437-petition\)](#)
- [Minor v Happersett \(Supreme Court decision holding that the 14th Amendment does not give the right to vote to women\) \(/anthony/446-minorvhapp\)](#)
- [Order of Ratification of the 19th Amendment \(/anthony/439-order\)](#)
- [Women's Suffrage: The Cartoonists' View \(/anthony/436-cartoon\)](#)
- [The Trial of Susan B. Anthony and the Campaign for Women's Suffrage: Selected Images \(/anthony/442-images\)](#)
- [The Trial of Susan B. Anthony: Links and Bibliography \(/anthony/443-bibliography\)](#)

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