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MEMO:

Supreme Court Cases that struck down Congressional Acts during the period after the Civil War in the late Nineteenth Century.

When the Civil War ended in 1865, there were numerous Supreme Court decisions that struck down Congressional Acts of Congress leading up to the Twentieth Century. They would test the relationship between the Judiciary and Legislative branches regarding interpretations and application of Constitutional provisions

Taney Court (March 15, 1836 --- December 5, 1864)

An important decision was handed down during the period of the Taney Court (March 15, 1836 – December 5, 1864) that would have a profound affect on American history. The name of the case of Scott v. Sanford, 60 U.S.. 393, (1857. With Scott v. Sanford, 60 U.S.. 393, (1857), the judicial process during the later Nineteenth Century initiated change in regard to Congressional Acts. Dred Scott was a slave who was owned by Dr. Emerson. Scott was Dr. Emerson's lawful property in Missouri and he carried his Missouri title with him. Id. at 308. The question at issue in Scott was whether Congress has the power to annul that title. Id. at 308. Scott, the petitioner, was a slave who brought an action in federal court against his owner. The Court stated that the petitioner was not a citizen of Missouri. He was not permitted to be a citizen because of his slave status, and no state had the authority to grant him citizenship. The Court held that Scott did not gain his freedom by entering the free state of Illinois. Id. at 452. The reasoning was that the laws of one state could not grant Scott's freedom. The Court vacated and dismissed the judgment against respondent because the court did not have jurisdiction over Scott's complaint.

Chase Court (December 6, 1864 – January 20, 1874)

In Gordon v. United States, 69 U.S. 561, (1865) an appeal was dismissed for want of jurisdiction. Gordon was an administrator of Fisher who presented a petition in the Court of Claims of the United States, for damages done to him by troops of the United States Government, in the War of 1812 with Great Britain. The Court of Claims decided against him, and he appealed to this court. The appeal is taken from the act of March 3, 1863, entitled "An Act to amend the Act to establish a court for the investigation of claims against the United States. At issue, was whether the Court had jurisdiction. Id. at 699. The Court stated that its powers were strictly judicial and it was not authorized to exercise any other. The Court noted that it was authorized under sections 7, 14 of the act of March 3, 1863, 14 Stat.9 to certify its opinion to the Secretary of the Treasury. The Secretary of the Treasury is to insert his estimates, and Congress agrees to it by an appropriation it will be paid. The Court pointed out that the real ultimate judicial power would be exercised by the legislative department (Remember Citation). The Court dismissed the appeal and ruled in favor of the United States.

Ex Parte Garland 71 U.S. 333. (1867), an attorney, who participated in the Confederate government, wanted to continue his practice as a counselor of the United States Supreme Court. He produced a pardon from the President of the United States for his all of his actions associated

with the Confederate government. The petitioner wanted to continue his practice without taking the oath required by the act of January 24th, 1865. He based his request on two arguments: 1) That the act of January 24th, 1865, so far as it affected his status in the court, was unconstitutional and void; and 2) That, if the act were constitutional, he was released from compliance with its provisions by the pardon of the President. The Court found that the pardon was a full pardon for all acts committed. *Id.* at 381. The Court held that the petitioner was free from all penalties associated with treason. *Id.* at 381. The Court further held that it is not within the constitutional power of Congress to inflict punishment beyond the reach of executive clemency. *Id.* at 381. The oath prescribed by the act for attorney was rescinded. *Id.* at 381.

In *Reichart v. Felps*, 73 U.S. 160, (1868), an ejectment action occurred. After the Revolutionary War, the State of Virginia was claiming the Northwest Territory as part of it. This area is now the State of Illinois. Virginia relinquished its claim to the United States on the condition that French and Canadian inhabitants have their title confirmed. The governor of the Northwest Territory on February 12, 1799 issued a document, a form of land patent that was given to Jarrot. The title was confirmed and became vested in a man named Felps. As the years passed, an opposing title came into existence. On February 12, 1812, an act of Congress was passed, that authorized a board of commissioners to revise and reexamine the confirmations made by the governor of the Northwestern Territory. The defendant's claim was rejected and his land was brought to public sale. *Id.* at 160. The plaintiff bought the land at public sale and claimed title under federal land patents. He brought an unsuccessful ejectment action against the defendant. The Court held that the governor's patent was evidence that the land was reserved from sale. *Id.* at 165. The Court also held that Congress was bound to regard the public treaties, and it had no power to organize a board of revisions to nullify titles confirmed in previous years by the authorized agents of the government. *Id.* at 166. The Court subsequently affirmed the lower courts judgment.

The Alicia, 74 U.S. 571, (1869) involved a ship and her cargo. A decree of condemnation was entered in the District Court in Florida for the condemnation of the *Alicia* and her cargo, for violation of the blockade. An appeal was made to the Circuit Court and was subsequently transferred to the United States Supreme Court. The Court held that the application and order for transfer made by the thirteenth section of the act of June 30, 1864, 13 Stat. at Large, 311, inadvertently gave to it a jurisdiction withheld by the United States Constitution because the Court could only exercise appellate jurisdiction in prize cases. *Id.* at 571. The motion to make an order to docket was denied and the appeal was dismissed. The case was certified to the Circuit Court for information.

In *Hepburn v. Griswold*, 75 U.S. 603, (1870), at issue was whether Congress has power to make notes issued under its authority a legal tender in payment of debts, which, when contracted, were payable by law in gold and silver coins. *Id.* at 610. This is pursuant to the Act of Congress of February 25, 1862. Mrs. Hepburn made a promissory note and promised to pay Henry Griswold on February 20, 1862 eleven thousand two hundred and fifty dollars. When the note was made the United States did not have notes. After the note was made the Act was passed that made United States notes a legal tender in payment of debts. An action was brought by the payee to collect on the promissory note. The defendants wanted to satisfy the notes through United States notes. The payee stated that he couldn't accept the notes because the debt was contracted before the effective date of the Act. The lower court found in favor of the payee and the defendant appealed. The Court held that the payee was not bound to receive from the defendants the currency tendered to him in payment of their note made before the passage of the

act of February 25, 1862. Id. at 626. The Court concluded that the Act was inconsistent with the spirit of the Constitution, that it is prohibited by the Constitution, and that it was not really calculated to carry into effect any express power vested in Congress. Id. at 625.

The Justices v. Murray, 76 U.S. 274, (1869) involved a lawsuit brought for assault and battery and false imprisonment against Murray (U.S. Marshal) and Buckley (Deputy) in the Supreme Court of the Third District of New York. A judgment was rendered in favor for the party bringing the lawsuit and against the U.S. Marshal. Murray (U.S. Marshal) wanted to remove the case to federal court pursuant to the fifth section of an Act of Congress passed in 1863 entitled, "An act relating to Habeas Corpus, and regulating proceedings in certain cases." Id. at 274. The Act stated that a civil or criminal suit brought in state court to be removed, after judgment, to a federal circuit court where the action could be tried again. The federal court, in regard to the U.S. Marshal, gave a judgment of alternative and preemptory mandamus against the state court. The Circuit Courts decision was reversed. The Court held that pursuant to the 5th section of the act of Congress, March 3, 1863, entitled "An act relating to habeas corpus, and regulating proceedings in certain cases," as provides for the removal of a judgment in a State Court, and which the cause was tried by a jury, to the Circuit Court of the United States for a retrial on the facts and law, is not in pursuance of the Constitution, and is void. Id. at 282.

In United States v. Dewitt, 76 U.S. 41, (1869) the question before the court was: Has Congress power, under the Constitution, to prohibit trade within the limits of a State? Dewitt was indicted for the sale of oil made of petroleum in Detroit Michigan. It was alleged that the sale was in violation or evasion of any tax imposed on the property sold. The sale was made allegedly contrary to law. The act violated was § 29 of the Act of Congress (Act), 14 Stat. 484 (1867). The Court held that the facts charged against the defendant did not constitute an offense and the act had no constitutional operation. Id. at 45. The Court stated that Congress did not have authority to prohibit trade within the states. Id. at 45. The act was thus seen as not a valid operation of constitutional law. United States v. Klein, 80 U.S. 128, (1872) dealt with an issue during the Civil War regarding the proceeds from the sale of cotton. There was a motion by Mr. Ackerman, Attorney General, in behalf of the United States to appeal a judgment from the Court of Claims, with a mandate that there be a dismissal for want of jurisdiction as required by law. Id. at 128. V. F. Wilson died in 1865, and his administrator, Klein, filed a petition in the Court of Claims dealing with Wilson's ownership of cotton that he abandoned to the treasury agents of the United States. The United States later sold the cotton and put the proceeds into the Treasury of the United States. The petitioner sought to obtain the proceeds. At the end of the Civil War, V.F. Wilson took an oath which would afford him a pardon and the restoration of his property pursuant to a congressional provision. Involved in this case was the appropriation act of July 12th, 1870 (16 Stat. at Large, 235), which stated that pardons would not have an affect on claims against the United States. The Court stated that Congress had inadvertently passed the limit which separates the legislative from the judicial power. Id. at 147. The Court also concluded the provision denied the Court appellate jurisdiction and impaired the executive authority to grant pardons. Id. at 148.

Waite Court (January 21, 1874 --- July 19, 1888)

In the Slaughter-House Cases, 83 U.S. 36, (1873), butchers in the city of New Orleans brought an action arguing that a state statute was unconstitutional because it violated Thirteenth and Fourteenth Amendment of the Constitution. The statute was to protect the health of the residents of New Orleans by forbidding the slaughtering animals for food within city limits. It

gave the city sole control of slaughtering animals. The butchers (plaintiffs) argued that this created a monopoly and deprived them the right of exercising their trade. The lower court found in favor of the company. The Court affirmed the judgment stating that the state of Louisiana had the right to exercise its police power to determine where the slaughtering could take place and that the laws of the Constitution do not apply. *Id.* at 82.

The next case, *United States v. Reese et al.*, 92 U.S. 214, (1876), took place in Kentucky regarding four counts under sects. 3 and 4 of the act of May 31, 1870 against two of the inspectors of a municipal election. *Id.* at 215. The inspectors refused to receive and count at an election the vote of William Garner, a citizen of the United States of African descent. *Id.* at 215. The election inspectors claimed that they did not violate the Fifteenth Amendment or the act. The circuit court did not impose a punishment. The Court held that Congress did not provide “appropriate legislation” for the punishment of the offence charged in the indictment, and the Circuit court was correct in their judgment. *Id.* at 221. In *United States v. Fox*, 95 U.S. 670 (1878), the question at issue was whether engaging in a transaction that was not a crime when committed could be subsequently converted into one by being involved in bankruptcy proceedings. *Id.* at 670. The defendant had filed for bankruptcy and in March of 1876 was indicted for alleged offences against the United States. The indictment charged the defendant with having within three months, previous to the bankruptcy proceedings, purchased and credited goods from several New York City Merchants under the pretence that he was carrying on a business in the ordinary course of trade as a manufacturer. He was selling these goods to make a profit. The defendant was convicted of violating U.S. Rev. Stat. § 5132. The Court answered the question presented in the negative. The Court held that an act committed within a State, whether for good or bad purpose, or whether with honest or a criminal intent, cannot be made an offence against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States. *Id.* at 672.

The Trade-Mark Cases: *United States v. Steffens*; *United States v. Wittemann*; *United States v. Johnson.*, 100 U.S. 82, (1879) dealt with the counterfeiting of trade-marks and the sale of dealing in of counterfeiting trade-mark goods. Defendants wanted their convictions reviewed under what was known as the trademark legislation of Congress (Act), U.S. Rev. Stat. ch. 2, tit. 60, §§ 4937- 4947. They contended that Congress lacked the power to pass such legislation. The United States Supreme Court discussed the common law history behind trademarks and Congress' power under the Commerce Clause and found that the statute was unconstitutional. Under the Commerce Clause, Congress was authorized to regulate commerce among the states, with foreign nations, and with Indian tribes. The court concluded that the remedy provided by the Act was not confined to the case of a trademark used in foreign or inter-state commerce; thus, the Act was unconstitutional. *Id.* at 97. In *United States v. Harris*, 106 U.S. 629, (1883) the U.S. Rev. Stat. § 5519 was violated when an individual died while in the custody of the defendants. The court reviewed several provisions of the Constitution and reached its determination that § 5519 was unconstitutional. The Court stated that applying already established principles that it was clear that the legislation at issue could not be sustained by reference to the Thirteenth Amendment. *Id.* at 642

The Court also pointed to language in the Slaughter-House Cases to support its conclusion.

The *Civil Rights Cases*, 109 U.S. 3, (1883) involved the first and second sections of the Act of Congress, known as the Civil Rights Act, passed March 1, 1875, entitled “An Act to protect all citizens in their civil and legal rights.” 18 Stat. 335. Two of the cases, against Stanley and Nichols, were indictments for denying people of color access to public facilities. The next

two, those against Ryan and Singleton, were on information. The indictment was for denying individuals the privileges and accommodations of a theatre. The case involving Robinson and his wife dealt with railway travel and the denial of Robinson's wife of riding in the ladies car. The constitutionality of the article at issue in the Civil Rights Act was questioned. The Court held that the sections were unconstitutional because they invoked individual action, which was a state action and not federal. (CITE) The Court stated that no authority for the passage of the act can be found in the Thirteenth or Fourteenth Amendment of the Constitution. Id. at 25.

In Boyd v. United States, 116 U.S. 616, (1886) the federal government had seized a shipment of plate glass pursuant to the Act of June 22, 1874, 18 Stat. 186, § 12 (1874) from a collector, E.A. Boyd & Sons. The collector was compelled to provide an invoice in regard to the shipment under § 5 of the Act. Id. at 619. He argued against the constitutionality and validity of the invoice. The Court agreed and held that the Act was unconstitutional thus void and violated the Fifth Amendment. Id. at 638. Baldwin v. Franks, 120 U.S. 678, (1887) involved a prisoner who challenge an order from a Circuit Court denying his application for a writ of habeas corpus after he was arrested by a United States Marshal for the District of California for conspiring to deprive Chinese aliens "of the equal protection of the law and equal privileges and immunities under the laws." At issue was the constitutionality of section 5519, Rev. Stat., in regard to the punishment of conspiracy. The Court stated that section 5519 could not be sustained in whole or in part in its operation within a state, unless United States v. Harris is overruled, and the Court saw no occasion to do this. Id. at 689. The Court concluded that the actions by the prisoner did not constitute an offense because the Chinese aliens were not "citizens" under the meaning of section 5508. Id. at 690. The prisoner's actions were not forcible actions against the United States as a government as required by section 5336. Id. at 692. The prisoner's conspiracy was for the ill-treatment of the aliens, not for stopping the government in the execution of its policies to prevent it. The Court reversed the lower courts judgment and remanded the case. Id. at 694.

In Callan v. Wilson, 127 U.S. 540, (1888) there was an appeal from the Supreme Court of the District of Columbia upon a writ of habeas corpus. The writ was for the discharge of appellant from the custody of a U.S. Marshal. It was filed by the United States in the Police Court of the District. Appellant and a musicians' organization fined members of the organization for certain infractions. They refused to pay and when appellant attempted to prevent them from working as musicians and he was later charged with conspiracy. Id. The petitioner, along with other individuals, was charged with the crime of conspiracy and was found guilty. He had to pay a fine of twenty-five dollars or suffer prison time. Petitioner refused to pay the fine and was continued to be held in prison. He argued that he was restrained of his liberty in violation of the Constitution in regard to the Sixth Amendment. The Court held that the appellant had a right to a jury trial, as stipulated by the Sixth Amendment, and he was denied that right. Id. at 557. The Court reversed the appellant conviction and ordered the appellant release. Id. at 557.

Monongahela Navigation Company v. United States, 148 U.S. 312, (1893) provided a question for the amount of compensation from condemnation proceedings. On December 1, 1888, condemnation proceedings were commenced in the Circuit Court of the United States for the Western District of Pennsylvania. The government passed a congressional act, 21 Stat. 468, 471, c. 136 giving funds for the improvement of river passage in West Virginia and Pennsylvania. This included the purchase of a lock and dam from the Navigation Company. Negotiations failed between the government and the Navigation Company leading to condemnation proceedings. The lower court evaluated the lock and dam, but did not look at the Navigation

Company's business of collecting tolls. The Supreme Court reversed and remanded the case because the Navigation Company rightfully owned the lock and dam and could collect tolls from it. Id. at 345. The Court also concluded that the right of the national government to regulate commerce, condemn, and appropriate the lock and dam is subject to limitations imposed by the Fifth Amendment, which states that property shall not be taken for public uses without just compensation. Id. at 345. The Court viewed this just compensation as the payment of the collecting of tolls. Id. at 345.

Fuller Court (July 20, 1888 --- December 11, 1910)

In Pollock v. Farmers' Loan and Trust Company, 157 U.S. 429, (1895), a citizen of Massachusetts appealed a circuit court decision entering judgment for the defendant company. Pollock, a stockholder of defendant Trust Company, sought a decree restraining the company from voluntarily complying with the income tax act of August 15, 1894, which wanted to collect taxes on the rents or income of real estate and upon municipal bonds. The circuit court did not enjoin the company and entered a decree in favor of defendant. The Court reversed the decree and held that so far as the income tax act levied a tax on the rents or income of real estate, it was a direct tax in violation of the apportionment requirement of the Constitution and was invalid. Id. at 608. The Court therefore considered the act to be unconstitutional.

Wong Wing v. United States, 163 U.S. 228, (1896) involved Chinese aliens who were said to be in the United States unlawfully. On July 15, 1892 Wong Wing and others were brought before a commissioner of the Circuit Court of the United States for the Eastern District of Michigan by a warrant stating that they were unlawfully within the United States. The commissioner found that they were unlawfully within the United States and not entitled to remain in the country. They were sentenced to hard labor and imprisoned at the Detroit house of corrections for a period of six days and then were to be removed to China. Applying principles from the Fifth and Sixth Amendment, the Court reversed the judgment and held that it must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by those amendments, and that even aliens shall not be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, nor deprived of life, liberty or property without due process of law. Id. at 238. In Kirby v. United States, 174 U.S. 47, (1899), the plaintiff in error, Kirby, was indicted in the District Court of the United States for the Southern Division of the District of South Dakota under the act of Congress of March 3, 1875, c. 144, entitled "An act to punish certain larcenies, and the receivers of stolen goods," 18 Stat. 479. Id. at 47. The only evidence showing theft from the United States was a record of conviction of those found guilty of theft. The court reversed the indictment, holding that the indictment was in violation of Kirby's Sixth Amendment right to confront witnesses against him because Kirby was confronted only with the record of another criminal prosecution, and there was no connection to him. Id. at 56. The evidence in that case was not given in his presence.

Finally In Jones v. Meehan, 175 U.S. 1, (1899), a bill in equity was filed in the Circuit Court of the United States for the District of Minnesota, by Patrick Meehan and James Meehan, citizens of Wisconsin, against Ray Jones, a citizen of Minnesota. Id. at 2. The bill was to quiet title in a strip of land along the westerly shore of the Red Lake River, in the county of Polk and State of Minnesota. Each party derived title from a treaty made at the Old Crossing of Red Lake River in the State of Minnesota, on October 2, 1863, between the United States and the Chippewa Indians. Id. at 3. When the chief of the Chippewas died, his eldest son succeeded him. He then leased the land to both parties. The Meehan's (Plaintiff's) sued to quiet title to the land,

and the Circuit Court found in their favor. *Id.* at 8. The Court affirmed and held that the strip of land had been granted by the United States to the elder chief Moose Dung by the treaty itself, and having descended, upon, his death, by the laws, customs and usages of the tribe, to his eldest son and successor as chief, Moose Dung the younger passed by the lease that was executed by the latter in 1891 to the plaintiffs for the term of that lease. *Id.* at 32. There rights could not be divested by Congress or the Executive Departments. The Court stated that the Congressional resolution of 1894 and the subsequent proceedings in the Department of the Interior were to be ineffective upon the rights of the plaintiffs. *Id.* at 32.