

blacks shall be expressly summoned as jurors, nor do they make a *venire* unlawful simply because it is made up of whites. The list is to be fairly prepared without reference to color. It may comprise whites or blacks exclusively, or a mixture of both. But when either is purposely excluded on account of color, both the spirit and the letter of the law are violated. Of course, in the Virginia cases it will be claimed among other things that there has been no exclusion of black jurors on account of their color. But this is a question of fact to be determined by circumstances. And Judge RIVES very properly suggested to the Grand Jury, whether in counties where the negroes formed a large proportion, in some cases a majority, of the population, and where the prejudice against color is strong, the fact that a black juror was a *rara avis* was not sufficient to create the presumption that an unlawful distinction had been made against the colored race.

Doubtless, the question will be raised by Virginia whether the claim to sit on a jury in a State court is a civil right, privilege, or immunity of a citizen of the United States within the meaning of the fourteenth amendment, and whether the acts of Congress, especially that of 1875, are constitutional so far as they were intended to regulate this matter. Judge RIVES evidently had little doubt as to the meaning of the law on this point, and interpreting it as he did, his duty was clear to take the course which he adopted. It is a question whether the matter has now been brought before the Supreme Court of the United States in such a way as to give that tribunal jurisdiction. Indeed, the Chief-Justice has already hinted his doubts on this point. But no difficulty of this kind will arise should the case come up in the regular order of appeal, and there is little doubt that this course will be taken if the proceedings already begun shall fail to give the Supreme Court jurisdiction. Hence it is likely that the highest judicial tribunal of the country will soon determine one of the most important questions of constitutional law that has arisen since the war.

THE VIRGINIA CIVIL RIGHTS CASES.

In November, 1877, BURWELL REYNOLDS and LEE REYNOLDS, two negroes, were indicted in Patrick County, Va., for the murder of AARON C. SHELTON, a white man. When they were arraigned for trial, it appeared that the list of persons from whom the jury was to be selected was made up exclusively of white men. Their counsel thereupon moved that some colored citizens be included in the list, in order that the accused might be tried by a jury selected from those from whom their own race and color were not excluded. This motion was denied by the court, and one of the prisoners—they claiming separate trials—was tried by a jury of white men impaneled from a *venire* of white men. He was found guilty, and sentenced to the penitentiary for fifteen years. A motion for a new trial on the ground that the verdict was against the evidence having been overruled, the case was carried to the Supreme Court of Appeals. The decision of the court below was reversed, and a new trial ordered. In October, 1878, the accused was again tried and convicted by a jury chosen, against his petition and protest, from white men exclusively. A motion to set aside this verdict was also overruled, and a sentence of eighteen years' imprisonment was passed. The prisoner, by his counsel, setting forth that he had been denied the right of trial by a jury selected without distinction as to race or color, petitioned the United States District Court held by Judge RIVES for the removal of his case to that court, in accordance with the act of Congress providing for such removal whenever any person is denied or cannot enforce in a State court "any right secured to him in any law providing for the equal rights of all citizens." This petition was granted, and thereupon the Federal court took and the State court lost jurisdiction of the case.

Notwithstanding Judge RIVES was a Virginian and a former Judge of the State Court of Appeals, resolutions were soon introduced in the General Assembly of Virginia and passed by one, if not both houses, denouncing his action as an unwarranted usurpation of judicial power, and a flagrant invasion of State rights. It was a saying of RUFUS CHOATE that there were three courses open to a man who was beaten in a lawsuit: to acquiesce, appeal, or go down to the tavern and "cuss" the Judge. The Commonwealth of Virginia might have taken either of the first two with safety and dignity, but it chose the last. This proceeding, however, did not have the effect of intimidating Judge RIVES in the discharge of what he conceived to be his sworn duty. He proceeded to instruct the Grand Jury to indict every county Judge who was found to be purposely excluding negroes from the jury lists. "The fact," he said, "that colored men are seldom seen on Virginia juries raises the presumption that they are, on account of race or color, left off the list of names furnished to Sheriffs by Corporation and County Judges from which to draw juries." In accordance with these instructions, indictments were promptly found against Judges in a number of counties. The General Assembly, doubtless, realizing the futility and folly of "cussing the Judge," now left the subject with the Attorney-General, where it properly belongs, and that officer has brought the matter before the Supreme Court of the United States on petition for writs of *habeas corpus* and *certiorari*.

The action of Judge RIVES was taken pursuant to the fourteenth amendment to the Federal Constitution and the laws passed by Congress to give effect to it. The jury laws of Virginia make no discrimination on account of race or color, and hence they are not repugnant to any law of the United States. The County Judge is required to prepare a list of persons to serve as jurors, and he may use a certain discretion as to their qualifications. But that discretion is not unlimited, and cannot be exercised to reject on account of color a person who is otherwise qualified as a juror. There is no doubt that such rejection, or a systematic and designed refusal to select jurors on account of their color, is a violation of the Constitution and laws of Virginia not less than those of the United States. But it is only when the latter are violated that a Federal court can take cognizance of the alleged wrong. Neither the national nor the State laws require that