BROWN v. NEW JERSEY.

20 S. Ct. 77 (1899) | Cited 69 times | Supreme Court | November 20, 1899

MR. JUSTICE BREWER, after making the above statement of the case, delivered the opinion of the court.

That the statutory provisions for a struck jury are not in conflict with the constitution of New Jersey is for this court foreclosed by the decision of the highest court of the State. Louisiana v. Pilsbury, 105 U.S. 278, 294; Hallinger v. Davis, 146 U.S. 314, 319; Forsyth v. Hammond, 166 U.S. 506.

The first ten amendments to the Federal Constitution contain no restrictions on the powers of the State, but were intended to operate solely on Federal Government. Barron v. Baltimore, 7 Pet. 243; Fox v. Ohio, 5 How. 410; Twitchell v. Commonwealth, 7 Wall. 321; United States v. Cruikshank, 92 U.S. 542, 552; Spies v. Illinois, 123 U.S. 131; In re Sawyer, 124 U.S. 200, 219; Eilenbecker v. District Court of Plymouth County, 134 U.S. 31; Davis v. Texas, 139 U.S. 651; McElvaine v. Brush, 142 U.S. 155; Thorington v. Montgomery, 147 U.S. 490; Miller v. Texas, 153 U.S. 535.

The State has full control over the procedure in its courts, both in civil and criminal cases, subject only to the qualification that such procedure must not work a denial of fundamental rights or conflict with specific and applicable provisions of the Federal Constitution. Ex parte Reggel, 114 U.S. 642; Iowa Central Railway v. Iowa, 160 U.S. 389; Chicago, Burlington & Quincy Railroad v. Chicago, 166 U.S. 226. "The Fourteenth Amendment does not profess to secure to all persons in the United States the benefit of the same laws and the same remedies. Great diversities in these respects may exist in two States separated only by an imaginary line. On one side of this line there may be a right of trial by jury, and on the other side no such right. Each State prescribes its own modes of judicial proceeding." Missouri v. Lewis, 101 U.S. 22, 31.

The State is not tied down by any provision of the Federal Constitution to the practice and procedure which existed at the common law. Subject to the limitations heretofore named it may avail itself of the wisdom gathered by the experience of the century to make such cnanges as may be necessary. For instance, while at the common law an indictment by the grand jury was an essential preliminary to trial for felony, it is within the power of a State to abolish the grand jury entirely and proceed by information. Hurtado v. California, 110 U.S. 516.

In providing for a trial by a struck jury, empanelled in accordance with the provisions of the New Jersey statute, no fundamental right of the defendant is trespassed upon. The manner of selection is one calculated to secure an impartial jury, and the purpose of criminal procedure is not to enable the defendant to select jurors, but to secure an impartial jury. "The accused cannot complain if he is still

tried by an impartial jury. He can demand nothing more. Northern Pacific Railroad v. Herbert, 116 U.S. 642. The right to challenge is the right to reject, not to select a juror. If from those who remain an impartial jury is obtained, the constitutional right of the accused is maintained." Hayes v. Missouri, 120 U.S. 68, 71.

Due process and equal protection of the laws are guaranteed by the Fourteenth Amendment, and this amendment operates to restrict the powers of the State, and if trial by a struck jury conflicts with either of these specific provisions it cannot be sustained. A perfectly satisfactory definition of due process may perhaps not be easily stated. In Hurtado v. California, 110 U.S. 516, 537, Mr. Justice Matthews, after reviewing previous declarations, said: "It follows that any legal proceeding enforced by public authority, whether sanctioned by age and custom or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law." In Leeper v. Texas, 139 U.S. 462, 468, Chief Justice Fuller declared "that law in its regular course of administration through courts of justice is due process, and when secured by the law of the State the constitutional requirement is satisfied. " Within any and all definitions trial by a struck jury in the manner prescribed must, when authorized by a statute, valid under the constitution of the State, be adjudged due process. A struck jury was not unknown to the common law, though, as urged by counsel for plaintiff in error, it may never have been resorted to in trials for murder. But if appropriate for and used in criminal trials for certain offences, it could hardly be deemed essentially bad when applied to other offences. It gives the defendant a reasonable opportunity to ascertain the qualifications of proposed jurors, and to protect himself against any supposed prejudices in the mind of any particular individual called as a juror. Whether better or not than any other method, it is certainly a fair and reasonable way of securing an impartial jury, was provided for by the laws of the State, and that is all that due process in this respect requires.

It is said that the equal protection of the laws was denied because the defendant was not given the same number of peremptory challenges that he would have had in a trial before an ordinary jury. In the latter case he would have been entitled under the statute to twenty peremptory challenges, but when a struck jury is ordered he is given only five.

But that a State may make different arrangements for trials under different circumstances of even the same class of offences, has been already settled by this court. Thus, in Missouri v. Lewis, 101 U.S. 22, in certain parts of the State an appeal was given from a final judgment of a trial court to the Supreme Court of the State, while in other parts this was denied; and it was held that a State might establish one system of law in one portion of its territory and a different system in another, and that in so doing there was no violation of the Fourteenth Amendment. So, in Hayes v. Missouri, 120 U.S. 68, it appeared that a certain number of peremptory challenges was allowed in cities of over 100,000 inhabitants, while a less number was permitted in other portions of the State. It was held that that was no denial of the equal protection of the laws, the court saying, page 71: "The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited

either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

It is true that here there is no territorial distribution, but in all cases in which a struck jury is ordered the same number of challenges is permitted, as similarly in all cases in which the trial is by an ordinary jury. Either party, State or defendant, may apply for a struck jury, and the matter is one which is determined by the court in the exercise of a sound discretion. There is no mere arbitrary power in this respect, any more than in the granting or refusing of a continuance. The fact that in one case the plaintiff or defendant is awarded a continuance and in another is refused does not make in either a denial of the equal protection of the laws. That in any given case the discretion of the court in awarding a trial by a struck jury was improperly exercised may perhaps present a matter for consideration on appeal, but it amounts to nothing more.

Perceiving no error in the record, the judgment is

Affirmed.

MR. JUSTICE HARLAN concurred in the result.