THE FAILURE OF CIVIL RIGHTS 1875-1883 AND ITS REPERCUSSIONS

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The Civil Rights Act of 1875, which entitled United States citizens of every race and color to "full and equal" enjoyment of inns, public conveyances, theaters, and other places of public amusement, and provided that citizens possessing all other qualifications prescribed by law could not be disqualified from service on grand or petit juries in any state or federal court,[1] climaxed the efforts of Radical Republicans to stem constriction of Negroes. Subjected to delaying tactics and increasing resistance both inside and outside of Congress to "special" legislation for Negroes, a modified version of Senator Charles Sumner's 1870 bill became law. But it was almost immediately cast under a shadow of questionable constitutionality which was to plague it for the duration of its life. Despite its passage, the Negro's civil rights were still precarious. White and Negro newspapers and several Negro conventions made clear the extent of discrimination and segregation.[2]

Because it was a law, some judges and officials felt compelled to enforce it out of an obligation to the maintenance of "law and order." Because violators were fined, some officials and owners complied, if only to grant Negroes equivalent accommodations. In general, though, the law was disregarded with impunity. The guarantee of civil rights in public accommodations was a practical failure.[3]

In regard to the selection of jurors, although charges of racial discrimination were heard more often in the South than in the North, the evidence suggests,[4] that the Mason Dixon line was more symbolic than real. Perhaps the rarity

[1] 18 U.S. Stat. 336.

[2] Valerie Weaver, "The Civil Rights Act of 1875," M.A. thesis, University of California at Berkeley, 12-21.

[3] *Ibid.*, 23-39.

[4] *Ibid.*, 40-49.

of Negro jurors was best illustrated by the exuberance with which Negroes greeted the selection of a member of their race. It was an event to be duly and prominently recorded in Negro newspapers,[5] after which Negroes might crowd the court room to watch the proceedings.[6] That the right of jury service was guaranteed in several of the state civil rights acts passed after 1883 also suggests a previous dispostion within these northern states to ignore the Negro during the process of jury selection.

Not surprisingly, the Negro was early forced to revise his expectations about implementation of the Civil Rights Act. The courts failed to give it constitutional sanction or so narrowly interpreted it as to defeat its purpose. On the advice of United States attorneys anxious to avoid handling their cases, Negroes usually preferred to take civil action. With the uncertainty of a positive verdict, and the cost of court litigation, the number of cases sharply decreased.

But the sharp decline in cases might also be explained by the preoccupation of federal officials with securing a Supreme Court ruling on the Act's constitutionality.[7] The five cases involved in the Supreme Court decision of 1883 had already reached the Court by 1880. Despite the number and diversity of these cases, however, the Court delayed its ruling. This caused mounting anxiety and slowed down decisions in the lower courts. Requests for information poured into the Attorney General's office, while activity in the area of civil rights was suspended. In 1879, for example, a judge in Indiana took a civil rights case under advisement because of the "impending decision by the Supreme Court."[8] This unnecessary and interminable delay encouraged disregard for the law by the public and by state and federal officials[9] and discouraged Negroes from going to court on matters supposedly protected by the Civil Rights Act of 1875.

Finally, on October 15, 1883, the Court, in a four to one

[5] Washington *Bee*, December 29, 1883; passim.

[6] New York *Times*, September 7, 1880.

[7] John Hope Franklin, "The Enforcement of the Civil Rights Act of 1875," 20. Paper read before the American Historical Association, December 29, 1964. Mimeographed copy.

[8] *Ibid.*, 22.

[9] *Ibid.*, 26.

decision, ruled that the public accommodation sections of the Civil Rights Act of 1875 were unconstitutional, authorized neither by the Thirteenth nor Fourteenth Amendments.[10] It was clearly Justice Bradley's opinion, and not the ringing dissent of Justice Harlan, that accorded with public sentiment. Most whites, in fact, received the decision as "a matter of course."[11] Although some Republicans and abolitionists criticized the decision,[12] these protests constituted little more than a whimper. The "very large majority" of Republicans,[13] although claiming to support equal rights for Negroes, felt little or no regret. Prejudice simply could not be legislated against.[14] Failure to enforce the Civil Rights Act had confirmed this impression all too vividly.

In the South, Republicans and Democrats alike hailed the decision, and declared that the Civil Rights Act had only hindered Negro progress and Negro-white relations.[15] But the practical effect of the decision was to remove one of the few remaining restraints on southern discriminatory practices. Uncertainty regarding the constitutionality of the Civil Rights Act, although not enhancing the Negro's position, at the very least had tended to maintain the status quo. In the wake of the Court ruling, however, and against the background of a growing Negrophobia, the South began to institutionalize its "Jim Crow" practices. In 1885, the Tennessee legislature, in defining rights on public transportation and limits on places of public resort, held that nothing in the act "shall be construed as interfering with existing rights" for separate accommodations for Negroes and whites.[16] Between

[10] Civil Rights Cases, 109 U.S. 3.

[11] Philadelphia *Times*, n.d., as quoted in Arkansas *Weekly Mansion*, November 10, 1883; *Nation*, XXXVII (1883), 326.

[12] Detroit *Plaindealer*, n.d., and Springfield Ohio *Review*, n.d., as quoted in Arkansas *Weekly Mansion*, November 3, 1883; *Evening Post*, October 16, 1883, as quoted in *Nation*, XXXVII (1883), 326.

[13] New York *Tribune*, n.d., as quoted in Arkansas *Weekly Mansion*, November 10, 1883.

[14] *Harper's Weekly*, XXVII (1883), 674.

[15] New York *Times*, October 18, 1883; Arkansas *Weekly Mansion*, November 10, 1883; Arkansas *Democrat*, n.d., as quoted in Arkansas *Weekly Mansion*, November 3, 1883; Galveston *News*, n.d., as quoted in Arkansas *Weekly Mansion*, November 17, 1883.

[16] *Acts of Tennessee, 1885*, 124-25.

1887 and 1891 Florida, Mississippi, Texas, Louisiana, Alabama, Kentucky, Arkansas, and Georgia passed laws segregating Negroes and whites in public transportation.[17] Although the Missouri legislature did not pass "Jim Crow" legislation, the state Supreme Court upheld in 1892 the right of segregation in general "in the absence of any statute to the contrary. . . "[18] Maryland also had no "Jim Crow" law but in a case in 1885 in a United State District Court, the presiding judge ruled that separate but equal accommodation in transportation was a reasonable regulation because of the demand of the "great majority" of the white travelers.[19] A second case in 1889 confirmed this opinion. In Delaware the law of 1875 which authorized proprietors of inns, hotels, taverns, restaurants, and other places of public entertainment and amusement to refuse accommodations to "offensive" persons remained in effect. In 1890, nine years before passage of its "Jim Crow" laws, the Supreme Court of North Carolina ruled that those who were "so objectionable to patrons of the house on account of the race to which they belong" could be excluded or segregated from certain portions of the inn.[20] From the innumerable cases and incidents available, it is clear that Negroes faced an acceleration of segregation and discrimination in every southern state.

"Almost with one accord," the Negro press denounced the Supreme Court decision of 1883.[21] The Boston *Hub,* for example, charged that the Court had deliberately cast the power of the judiciary against equal rights.[22] If states rather than the federal government had the power to control who was to enjoy the privileges of citizenship, another Negro newspaper declared, then "our government is a farce, and a snare, and the sooner it is overthrown and an empire estab-

[17] Gilbert Stephenson, *Race Distinctions in American Law* (New York, 1910), 216.

[18] Younger *v.* Judah, 19 S.W. 109.

[19] McGuinn *v.* Forbes, 37 Fed. Rep. 639.

[20] The State *v.* Steele, 106 N.C. 766, 782.

[21] Washington *Bee,* November 10, 1883; Arkansas *Weekly Mansion,* November 3, 1883.

[22] Boston *Hub,* n.d., as quoted in Arkansas *Weekly Mansion,* November 3, 1883.

lished upon its ruins, the better.''[23] To the New York *Globe,* the decision reaffirmed the ''infamous decision of infamous Chief Justice Taney that a 'black man has no rights that a white is bound to respect.' ''[24] Other Negro newspapers called it a ''rude and sudden'' awakening,[25] morally the ''heaviest blow'' the Negroes had yet received.[26] Voices of disapproval rang, too, from Negro churches[27] and public meetings in numerous cities.[28]

Although the overwhelming majority of Negroes vehemently denounced the decision, some thought it ''wise.''[29] Both the Dred Scott decision and that of 1883 were ''right,'' argued an Arkansas Negro newspaper, because they were ''in keeping with public opinion which is in all cases the supreme law of the land.''[30] The Civil Rights Act and other ''special legislation'' retarded Negro-white relations because they grouped all Negroes into one class, preventing whites from respecting colored men ''of distinction.''[31]

Although Negroes generally united to oppose the Supreme Court decision, they were sharply divided as to what to do about it. Disappointed by this decision and aware of the generally deteriorating position of the Negro in the United States, many conceded that special legislation was of little avail. The only safeguard was acquisition of knowledge, money, and property.[32] Although critical of Bradley and the

[23] Louisville *Bulletin,* n.d., as quoted in Arkansas *Weekly Mansion,* November 3, 1883.

[24] New York *Globe,* n.d., as quoted in Arkansas *Weekly Mansion,* November 3, 1883.

[25] Chicago *Conservator,* n.d., as quoted in Arkansas *Weekly Mansion,* November 3, 1883.

[26] *The Standard,* n.d., as quoted in *People's Advocate* (Washington, D.C.) October 27, 1883. Passim.

[27] Arkansas *Weekly Mansion,* October 27, 1883; New York *Times,* October 26, November 8, 1883.

[28] *People's Advocate,* October 27, 1883; San Francisco *Call,* October 23, 1883; Cleveland *Gazette,* December 1, 1883.

[29] New York *Times,* May 1, 1883; Arkansas *Weekly Mansion,* November 10, December 15, 1883.

[30] Arkansas *Weekly Mansion,* November 10, 1883.

[31] *Ibid.,* October 27, 1883; also see November 10, December 15, 1883.

[32] Florida *News,* n.d., as quoted in Arkansas *Weekly Mansion,* November 17, 1883.

Court, they felt solution lay outside of political agitation.[33] Thus it was that many Negro newspapers and leaders advised heir people no longer to center attention on civil rights agitation, but to concentrate on gaining money, property, education, and increased moral standing.[34] The *People's Advocate,* for example, suggested that Negroes "strike at the root" of the problem and change the moral sentiment of whites by increasing Negro wealth and morality through patronizing and building up Negro establishments.[35]

But what was the Negro to do *while* he accumulated wealth and knowledge? And how were second class citizens to attain self-improvement?[36] Attempts were first made to encourage passage of a new, constitutional civil rights act. Petitions and resolutions to that effect were sent to Congress and President Chester Arthur. These attempts failed. With the Court decision, the President's passivity, and insufficient support in Congress, Negroes now turned to agitation for state legislation modeled on that of the Civil Rights Act of 1875.[37]

Eighteen states passed or amended civil rights acts: California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Washington, and Wisconsin.[38] Modeled in large part on the Civil Rights Act of 1875, each of the state acts included public amusements, and most of them also applied to public conveyances, (except California) inns, (except Connecticut and Pennsylvania) and theaters, (except Connecticut, Kansas, New Jersey, Rhode Island, and Wisconsin). Although the state acts generally followed the pattern established in 1875,

[33] Paris *Laborer* (Texas), n.d., as quoted in Arkansas *Weekly Mansion,* November 17, 1883.

[34] Arkansas *Weekly Mansion,* October 27, November 17, December 1, 1883; *People's Advocate,* November 17, 1883; Cleveland *Gazette,* August 16, 1884; New York *Times,* January 2, 1886.

[35] *People's Advocate,* July 12, 1879.

[36] Cleveland *Gazette,* December 1, 1883; *Sentinel* (Trenton), August 28, 1883.

[37] Arkansas *Weekly Mansion,* October 27, November 10, 1883; New York *Times,* December 31, 1883; Washington *Bee,* November 24, 1883.

[38] See Appendix A.

they tended to become long lists of enumerated places where racial discrimination was prohibited.

Several of the state civil rights acts had unique features. In California, for example, the law of 1893 provided that anyone over twenty-one with a ticket could not be refused entrance into an opera house, theater, melodeon, museum, circus, caravan, race course, fair, or any other place of public amusement or entertainment.[39] Because proprietors avoided compliance with the intent of the law by refusing to sell tickets to Negroes, the law was amended in 1897 to proscribe such activities. Two states—Kansas and Rhode Island—stipulated that the law apply to "licensed" places of public entertainment, amusement, and inns.[40] Several states also had special legislation prohibiting racial discrimination by life insurance companies in cost of premiums and rates charged, and in requirements for rebates or discounts.[41] Nine states, including Maine and New Hampshire, prohibited discrimination in advertising.[42]

Under the state civil rights laws Negroes had relatively more protection than under the Civil Rights Act of 1875, because the constitutional question, when raised,[43] was answered affirmatively. Moreover, Negroes had some political power, and these states generally included a number of whites who were willing to concede something to Negro equality. Despite these positive aspects, however, there remained the essential question of how much people wanted to pay for Negro equality. The paradox was best reflected in the divergence between the expressed sentiments of broad legislation and the practical application of such sentiment. Ohio provides an excellent illustration of this point.

After the Supreme Court decision of 1883, approximately

[39] *Laws of California,* 1893, 220.

[40] The Kansas law qualified places of public entertainment, amusement, and inns with "licenced." The Rhode Island law qualified places of public amusement and inns with "licensed." See *Laws of Kansas,* 1874, Chapter 49 1, 2; *Acts, Resolves, Reports of Rhode Island,* 1884-1885, 171-72.

[41] *Laws of Connecticut,* 1887, 69L; *Laws of Massachusetts,* 1884, 194; *Laws of Michigan,* 1893, 60; *Public Laws of New Jersey,* 1902, 441; *Laws of New York,* 1891, 288; *Laws of Ohio,* 1889, 163.

[42] Colorado, Illinois, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, and Pennsylvania.

[43] Baylies *v.* Curry, 128 Ill. 287; People *v.* King, 42 Hun. 186.

two hundred equal rights leagues sprang up in Ohio.[44] Among their demands were the repeal of penal laws against miscegination, racially integrated schools, removal of the word "white" from the state constitution, and a state civil rights law. The Negro State Convention of December 26, 1883, supporting these leagues, petitioned the Ohio legislature for a civil rights bill,[45] and efforts were made at every level to encourage its passage.

Of no small significance in a state where neither party appeared to have a monopoly was the Negroes' voting strength of 25,000.[46] Both Republicans and Democrats were conscious of these voters and vied for credit in supporting a civil rights bill, but Democrats apparently hoped that it would not pass. On January 8, 1884 Republican Representative William Mathews introduced a civil rights bill patterned after the 1875 Act. In the debate that followed, Democrats called it "nonsense" and a Republican manuever to discredit the Democratic party. Negroes neither needed such legislation, they argued, nor wanted it.[47] And yet Democrats hesitated to show open opposition to the bill lest they antagonize the Negro electorate. In a voice vote Republicans solidly backed the bill while the Democrats were divided, but when forced to go on record Democrats voted for the bill, hoping and expecting that it would die in committee.[48] Such was not the case. The Democratic Senate passed the bill, but in the House a Republican Representative introduced an amendment to include eating houses and restaurants. After some debate it was defeated by a strictly party vote of thirty-seven to fifty-five. The bill was then passed unanimously in its original form.[49]

Almost immediately the inefficacy of the general terms of the bill and the practical sentiments of the white community revealed themselves. Within one month there were enough incidents in restaurants, eating houses, and barbershops to

[44] Cleveland *Gazette,* March 1, 1884.

[45] *Ibid.,* January 12, 1884.

[46] *Ibid.,* March 15, 1884; *Ibid.,* n.d., as quoted in Washington *Bee,* February 16, 1884.

[47] Cleveland *Gazette,* January 12, 1884.

[48] *Ibid.*

[49] *Ibid.,* February 9, 1884; *Laws of Ohio,* 1884, 15.

require passage of a new law which specifically enumerated these places.[50] Passage of a new enlarged act was, in fact, imperative because Negroes could be relatively certain of a court victory only if the discrimination took place in one of the enumerated places. In one case, where a restaurant denied service to a Negro in 1898, the Ohio Circuit Court awarded the Negro plaintiff fifty dollars.[51] But one year later, in a case involving two Negroes who were sold drinks at double the price, the Supreme Court of Ohio held that saloons were not meant to be included in the phrase "other places of public accommodation."[52]

Court troubles did not end here. Ohio, like California, Connecticut, Illinois, Indiana, Massachusetts, Michigan, and Rhode Island, initially provided penalities that did not exceed a specified amount.[53] When Negroes went to court and won, the tendency was to award an insultingly low amount in damages. Ohio's law stipulated that violators pay up to $100 to the person aggrieved, *or* be deemed guilty of a misdemeanor. Racial discrimination in roller rinks, for example, resulted in cases where one Negro plaintiff was awarded one cent and another fifty cents. In a third case each plaintiff was awarded fifteen dollars.[54] Verdicts of this nature were not only financially unsuccessful for Negroes who had to pay legal fees out of the fines awarded, but a mockery of the law and an insult to Negroes.[55] Yet such practices must have been common because not only Ohio, but Colorado, Connecticut, Massachusetts, Minnesota, and New York, in subsequent civil rights laws, had to set a base on the fines awarded.[56] Nebraska changed her law from a base of ten dollars in 1885 to a base of twenty-five dollars in 1893. Wisconsin's token law, which was not revised, penalized violators with a fine of not more than $100 or confinement in prison for not over six

[50] *Laws of Ohio*, 1884, 90.

[51] De Veaux *v.* Clemmons, 17 Ohio Cir. Ct. Rep. 33.

[52] Kellar *v.* Koerber, 55 N.E. 1002.

[53] See Appendix B in original.

[54] Cleveland *Gazette*, January 31, April 18, May 2, 1885.

[55] For an exception, where a Negro was awarded twenty-five dollars and costs, see *Ibid.*, May 2, 1884.

[56] See Appendix B in original.

months, *or* made them liable to pay the person aggrieved not less than five dollars and costs.

Outside the courts discriminatory practices in Ohio changed little, in spite of the civil rights legislation. In Cincinnati, for example, the barbershops ignored the law and refused to serve Negroes.[57] Roller rinks throughout the state indicated the same refusal to comply with the law. During a roller skating craze which lasted from 1882 through 1885, Negroes constantly met rebuffs. In several cities rinks skirted the issue by having special nights for Negroes, while refusing them admission during the rest of the week.[58] One rink gave up its charter to avoid a suit, while another refused Negroes who did not have "invitations." Often rink managers simply talked Negroes out of staying. While some Negroes brought suit, or were admitted because the proprietor feared prosecution, others went to exclusively colored rinks to avoid trouble.[59]

In Ohio, then, Negro voting power helped to secure a civil rights bill, but the law only protected Negroes in the places enumerated, and in the face of white prejudice the failure to place a lower limit on fines until 1894 prevented effective enforcement of the law. And despite the law, segregation persisted in such enumerated places as barbershops with little abatement.

In the seventeen other states which passed civil rights laws, a similar situation existed, both in the public's attitude and in court interpretation. As had been true under the Civil Rights Act of 1875, local traditions prevailed, and these accorded Negroes a place of inferiority. Although Northerners came to accept integration on public conveyances, recreational facilities proved to be a different matter. State legislation had initially included "places of public amusement," but there is some question as to the willingness of whites to comply. This was indicated by the need to enumerate specific places of amusement in subsequent legislation.

[57] Cleveland *Gazette*, June 14, 1884, February 28, 1885.

[58] *Ibid.*, April 1, 11, 25, 1885; Pittsburgh *Leader*, n.d., as quoted in *Ibid.*, March 28, 1885.

[59] *Ibid.*, June 7, 14, 1884; December 20, 27, 1884; January 24, 1885; February 14, 21, 1885; June 13, 1885.

After rejection from concerts, music halls, skating rinks, and bicycle rinks, Negroes lobbied to get these specific places of amusement added to the law to ensure their rights and to gain legal protection. Yet Negroes in many cases still were not welcomed. In New York, for example, a plaintiff won a case in which the white patrons had insulted and taunted him. When he still refused to leave, employees and patrons had assailed him, kicking and beating him as they dragged him out.[60] In Boston Negroes found that they were neither welcomed nor admitted at two skating rinks despite the law.[61] As such cases multiplied in other states, most Negroes avoided marring their evening outings and attended places that solely accommodated Negroes.

White Americans seemed least willing to integrate places of public accommodation. Initially twelve of the eighteen states would not even pay lip service to Negro equality in this area and left the phrase "other places of public accommodation" out of their laws. Conflict and litigation were most frequent in this area. As Negroes entered restaurants, eating houses, cafes, chop houses, lunch counters, ice cream parlors, soda fountains, barbershops, and hotels, they found that both the public and the law were unwilling to consider these places under the phrase "places of public accommodation." Even if such places were enumerated in the law, practice superseded theory. Proprietors, fearing the loss of white customers, took their chances with the law and refused admittance to Negroes. Hotel proprietors, for example, excluded Negroes throughout the North because they were "offensive to the classes upon whose favor [a hotel proprietor] must rely for his living."[62] The Fisk Jubilee Singers were refused accommodations with or without protection of the law in city after city. In Troy and Albany, New York they had to stay in private homes. Some of their "worst experiences" were in Washington, D.C. In Illinois they were finally accepted at one hotel but screened off from the other guests. In Ohio they suffered "gross indignities;" New Jersey was termed

[60] Cremore *v.* Huber, 45 N.Y. Supp. 947.

[61] Cleveland *Gazette*, February 7, 1885.

[62] New York *Times*, December 25, 1885.

"worse than the South;" and similar instances could be multiplied "almost without number."[63]

Although many Negroes did not press charges, several cases did reach the courts. As had been true in Ohio, the tendency in the courts was to uphold the plaintiff only if the place of discrimination was specifically mentioned in the state's law. In the courts of Illinois,[64] Minnesota,[65] New York,[66] Iowa,[67] and Connecticut,[68] Negro plaintiffs lost cases because the places of discrimination—a soda fountain in Illinois, a saloon in Minnesota, a boot black stand in New York, a boarding house and a merchant's booth at a "Pure Foods Show" Iowa, and a barbershop in Connecticut—were not enumerated in the state's civil rights act.

Occasionally Negroes lost in spite of the inclusion of the place of discrimination in the law. In Iowa a Negro lost his case against a skating rink because the rink had no license and therefore was not governed by state or city police powers.[69] Another lost his case against a barbershop because the indictment should have alleged not only refusal to grant equal accommodations, but absence of any good reason to exclude the Negro. The indictment, according to the state Supreme Court, alleged a conclusion rather than a fact.[70] In a case of discrimination by a Nebraska barbershop, the Negro lost his case because he did not allege or prove his citizenship in the indictment.[71] The title of the Nebraska civil rights act stipulated "all citizens" but the body of the act referred to "all persons." The state Supreme Court held that portion of the act broader than the title and therefore null and void.

Despite these three cases, when Negroes brought charges against places included within the act, the tendency was to uphold the law and award the plaintiffs. In cases of this

[63] *Ibid.*, December 24, 1885.

[64] Cecil *v.* Green, 43 N.E. 1105.

[65] Rhone *v.* Loomis, 77 N.W. 31.

[66] Burks *v.* Bosso, 73 N.E. 58.

[67] Humburd *v.* Crawford, 105 N.W. 330; Brown *v.* Bell, 123 N.W. 231.

[68] Faulkner *v.* Solazzi, 79 Conn. 541.

[69] Bowlin *v.* Lyon, 67 Iowa 536.

[70] State *v.* Hall, 72 Iowa 525.

[71] Messenger *v.* State, 25 Neb. 674.

nature in Illinois,[72] Indiana,[73] Michigan,[74] New York,[75] and Wisconsin,[76] Negroes won their suits against a theater, an inn, a restaurant, a concert hall, and a public eating house, respectively. Significantly, in the Indiana, Illinois, and Michigan cases each judge held that separate but equal accommodations would not satisfy the law.

In two cases in New York Negroes even won when the place was not specified in the law. Thus a Court of Sessions, the state Supreme Court and the Court of Appeals decided for the plaintiff is a suit against a skating rink, holding that such a place was within the meaning of "other places of public amusement."[77] In the case of a restaurant's discriminating against a Negro, the defense held that the restaurant was not included in the term "inn" in the state's civil rights act. The court rejected the defense's argument, defining "inn" as a place that furnishes food and lodging, and therefore encompassing a restaurant which served only food.[78]

The evidence indicates, then, that the state civil rights acts were somewhat more effective than the Civil Rights Act of 1875. Absence of the constitutional question which had plagued the 1875 Act helped, but removal of that question usually revealed that people had only used it in the first instance to avoid compliance with the law. Without the shield of the constitutional question to hide their true feelings, people's prejudices were only more obvious.

Negro voting strength enhanced passage of state legislation, and helped in amending the laws, but noting power could do little towards enforcing the laws. As had been true under the national act, public officials, backed by public sentiment, did little to encourage enforcement. Governors and mayors made no statements in support of the legislation, and legislators in only one instance passed a resolution condemning discriminatory pratices.[79] Negroes were left to fight

[72] Bayliss *v.* Curry, 128 Ill. 287.
[73] Fuchey *v.* Bagleson, 43 N.E. 146.
[74] Ferguson *v.* Gies, 46 N.W. 718.
[75] Cremore *v.* Huber et al, 45 N.Y. Supp. 947.
[76] Bryan *v.* Adler, 72 N.W. 368.
[77] People *v.* King, 42 Hun. 186.
[78] Kopper *v.* Willis, 9 Daly 460.
[79] *Acts and Resolves of Massachusetts*, 1896, 659-60.

the battle alone.

When Negroes did institute proceedings, they found that legal protection was severly hampered by strict judicial construction. Applying the legal ruling of *ejusdem generis,* the general references to "other places" of public accommodation, entertainment, and amusement became meaningless. Moreover, it was soon evident that a decision in one state did not necessarily set a precedent in another. Judgments like the Messenger *v.* State case in Nebraska tended to be applicable to only the case in question. In a roller skating rink case in New York,[80] the verdict was the opposite of a case in Iowa.[81] In cases against saloons, the courts reached the same verdict by different reasoning. In Minnesota the court refused to accept saloons as within the phrase "others places of public amusement," because existence of racial prejudice made it unwise to allow Negroes to enter white saloons where "passions were inflamed by liquor."[82] In Ohio the same verdict was reached because it would have been in violation of the legislature's attempt to regulate liquor traffic.[83]

Not only was it insulting to fail to receive proper compensation under the law, but because of the expense involved in taking court action, many Negroes were financially restricted from bringing suit in cases they felt they could win. The low costs of violation also tended to lessen the efforts of proprietors to abide by the law. Knowing they were risking a possible suit which would mean only minimal loss, proprietors refused admittance to Negroes in order to retain white patrons. In a sense, the cost of possible fines was nothing more than a registration fee for discriminatory pratices.

Negroes also sought equal treatment through the Interstate Commerce Act[84] which was passed on February 4, 1887. But within the first two years of its passage, the Commission held in three cases that there was no "undue prejudice or unjust preference" by separation of the races as

[80] People *v.* King, 1886, 42 Hun. 186.
[81] Bowlin *v.* Lyon, 67 Iowa 536.
[82] Rhone *v.* Loomis, 77 N.W. 31.
[83] Kellar *v.* Koerber, 61 Ohio 388.
[84] 24 U.S. Stat. 379.

long as accommodations were equivalent.[85]

Thus, neither the Civil Rights Act of 1875, the state civil rights acts nor the Interstate Commerce Act had any measurable effect on the discriminatory practices of whites in public accommodations, amusement, conveyances, or in the choosing of juries. Nevertheless, the importance of legal sanctions should not be overlooked. The failure lay not so much in the law as in the men who failed to enforce it. Against the background of a rapprochement between the North and the South, growing disinterest in the worn-out phrase of "Negro equality," and the nation-wide belief in racial superiority, the reluctance of officials to enforce the law becomes more comprehensible. Certainly the courts were only reflecting the trend of states rights over federal control, and the Supreme Court was consistent in its narrow interpretation of the Fourteenth Amendment. However, the duty of such officials as the Attorney General is presumably enforcement of the law. Officials and judges alike were permitting their duties to be influenced by the prejudices of the time rather than upholding their obligations to enforcement of legislation. They seemed to overlook the fact that the intent of the law was not to change prejudice but to prevent its manifestation in interference with the legal rights of Negroes.

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[85] *Interstate Commerce Reports*, I, 719-22, Heard *v.* Georgia R.R. Co.; II, 392, 508 Heard *v.* Georgia R.R. Co.; I, 292, 638, Council *v.* Western and Atlantic R.R. Co.