CHAPTER VI

RESULTS TO THE NEGRO RACE

We may now consider what phases of the negro race question have become related to the operation of the Fourteenth Amendment since its adoption in 1868. In so doing it is well to bear in mind two facts: First, that the negro race has increased in numbers during the last forty years from nearly five\(^1\) to about ten millions, and that the social complexity of the Afro-Teutonic situation has become intensified rather than diminished. Second, that litigation under the Fourteenth Amendment has steadily increased until within recent years it has engaged the attention of the Supreme Court of the United States more than has any other part of the Constitution, with the possible exception of the Interstate Commerce clause.

An analysis of the foregoing data reveals the fact that the negro race question has been presented to the Supreme Court under this Amendment in only eight different aspects, of varying degrees of importance. They may be stated as follows:—

(1) The power of Congress to initiate under the Amendment direct and positive legislation in behalf of

\(^1\) The negro population by the census of 1870 was 4,880,009; by the census of 1910 it was 9,828,294.

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the negro as such. This had been attempted under the Enforcement Act of May 30, 1870, the Ku Klux Act of April 20, 1871, and the Civil Rights Act of February 27, 1875. This point was three times presented to the Supreme Court: once in 1875,\(^1\) once in 1883,\(^2\) and once as late as 1906.\(^3\)

(2) The validity of a deed executed by a negro in Georgia in 1854, when by virtue of a Georgia statute of 1818–1819 negroes could not hold real property in that State. No Federal question was presented.\(^4\)

(3) *Habeas corpus* proceedings to prevent the return by extradition of a negro from the State of Missouri to the State of Mississippi on the ground of probable race discrimination at the forthcoming trial in the latter State.\(^5\)

(4) Two unsuccessful attacks by the same party on the suffrage clauses of the Constitution of Alabama of 1901. The Fifteenth Amendment was the predominant issue.\(^6\)

(5) The power of a State to impose a severer penalty in the case of adultery between negroes and whites than for the same crime between members of the same race.\(^7\)

Code of Alabama, 1880, Section 4189.

\(^1\) U. S. v. Cruikshank, 92 U. S. 542.
\(^2\) The Civil Rights Cases, 109 U. S. 3.
\(^3\) Hodges v. U. S., 203 U. S. 1.
\(^4\) Beatty v. Benton, 135 U. S. 244.
\(^6\) Giles v. Harris, 189 U. S. 475; Giles v. Teasley, 193 U. S. 146.
\(^7\) Pace v. Alabama, 106 U. S. 583.