(258 U. S. 130)

LESER et al. v. GARNETT et al.

(Argued Jan. 24, 25, 1922. Decided Feb. 27, 1922.)

No. 553.

1. Constitutional law ⟸10—Subject-matter of Nineteenth Amendment held proper for amendment.

The Nineteenth Amendment, prohibiting denial of suffrage on account of sex, which is, in character and phraseology, similar to the Fifteenth Amendment, which has never been questioned, is not an amendment which, because of its character, is beyond the power of amendment conferred by the federal Constitution.

2. Constitutional law ⟸10—Ratification of amendment by states is federal function not subject to control.

The ratification of a proposed amendment to the United States Constitution by the legislators of a state is a federal function derived from the federal Constitution, and transcends any limitations sought to be imposed by the people of a state.

3. Constitutional law ⟸10 — Proclamation amendment had been ratified is conclusive on the courts.

Official notices to the Secretary of State, duly authenticated, that the Legislatures of the states had ratified a proposed amendment, was conclusive upon him, and his proclamation to the effect that the required number of states had ratified the amendment is conclusive on the courts, so that the validity of the ratifications by the Legislatures cannot be questioned in the courts.

In Error to the Court of Appeals of the State of Maryland and on Petition for a Writ of Certiorari.

Suit by Oscar Leser and others against J. Mercer Garnett and others, begun in a court of Maryland. A judgment dismissing the petition was affirmed by the Court of Appeals of the state (114 Atl. 840), and petitioners bring error and certiorari. Writ of error dismissed, and judgment affirmed on certiorari.

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*Messrs. Thomas F. Cadwalader and Wm. L. Marbury, both of Baltimore, Md., for plaintiffs in error.

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*Mr. G. M. Brady, of Baltimore, Md., for defendants in error Caroline Roberts and others.

Mr. Alexander Armstrong, of Baltimore, Md., for other defendants in error.

Mr. Justice BRANDEIS delivered the opinion of the Court.

On October 12, 1920, Cecilia Streett Waters and Mary D. Randolph, citizens of Maryland, applied for and were granted registration as qualified voters in Baltimore City. To have their names stricken from the list Oscar Leser and others brought this suit in the court of common pleas. The only ground of disqualification alleged was that the applicants for registration were women, whereas the Constitution of Maryland limits the suffrage to men. Ratification of the proposed

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amendment to the federal *Constitution, now known as the Nineteenth, 41 Stat. 362, had been proclaimed on August 26, 1920, 41 Stat. 1823, pursuant to Revised Statutes, § 205 (Comp. St. § 303). The Legislature of Maryland had refused to ratify it. The petitioners contended, on several grounds, that the amendment had not become part of the federal Constitution. The trial court overruled the contentions and dismissed the petition. Its judgment was affirmed by the Court of Appeals of the state (Md.) 114 Atl. 840; and the case comes here on writ of error. That writ must be dismissed; but the petition for a writ of certiorari, also duly filed, is granted. The laws of Maryland authorize such a suit by a qualified voter against the board of registry. Whether the Nineteenth Amendment has become part of the federal Constitution is the question presented for decision.

[1] The first contention is that the power of amendment conferred by the federal Constitution and sought to be exercised does not extend to this amendment because of its character. The argument is that so great an addition to the electorate, if made without the state's consent, destroys its autonomy as a political body. This amendment is in character and phraseology precisely similar to the Fifteenth. For each the same method of adoption was pursued. One cannot be valid and the other invalid. That the Fifteenth is valid, although rejected by six states, including Maryland, has been recognized and acted on for half a century. See United States v. Reese, 92 U. S. 214, 23 L. Ed. 563; Neale v. Delaware, 103 U. S. 370, 26 L. Ed. 567; Guinn v. United States, 238 U. S. 347, 35 Sup. Ct. 926, 59 L. Ed. 1340, L. R. A. 1916A, 1124; Myers v. Anderson, 238 U. S. 368, 35 Sup. Ct. 932, 59 L. Ed. 1349. The suggestion that the Fifteenth was incorporated in the Constitution, not in accordance with law, but practically as a war measure which has been validated by acquiescence, cannot be entertained.

[2] The second contention is that in the Constitutions of several of the 36 states

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named in the proclamation *of the Secretary of State there are provisions which render inoperative the alleged ratifications by their Legislatures. The argument is that by reason of these specific provisions the Legislatures were without power to ratify. But the function of a state Legislature in ratifying a proposed amendment to the federal Constitution, like the function of Congress in proposing the amendment, is a federal function

derived from the federal Constitution; and it transcends any limitations sought to be imposed by the people of a state. Hawke v. Smith, No. 1, 253 U. S. 221, 40 Sup. Ct. 495, 64 L. Ed. 871, 10 A. L. R. 1504; Hawke v. Smith, No. 2, 253 U. S. 231, 40 Sup. Ct. 498, 64 L. Ed. 877; National Prohibition Cases, 253 U. S. 350, 386, 40 Sup. Ct. 486, 588, 64 L. Ed. 946.

[3] The remaining contention is that the ratifying resolutions of Tennessee and of West Virginia are inoperative, because adopted in violation of the rules of legislative procedure prevailing in the respective states. The question raised may have been rendered immaterial by the fact that since the proclamation the Legislatures of two other states —Connecticut and Vermont—have adopted resolutions of ratification. But a broader answer should be given to the contention. The proclamation by the Secretary certified that from official documents on file in the Department of State it appeared that the proposed amendment was ratified by the Legislatures of 36 states, and that it "has become valid to all intents and purposes as a part of the Constitution of the United States." As the Legislatures of Tennessee and of West Virginia had power to adopt the resolutions of ratification, official notice to the Secretary, duly authenticated, that they had done so, was conclusive upon him, and, being certified to by his proclamation, is conclusive upon the courts. The rule declared in Field v. Clark, 143 U. S. 649, 669–673, 12 Sup. Ct. 495, 36 L. Ed. 294, is applicable here. See, also Harwood v. Wentworth, 162 U. S. 547, 562, 16 Sup. Ct. 890, 40 L. Ed. 1069.

Affirmed.

(258 U. S. 40)

JONES v. UNITED STATES.

(Argued and Submitted Jan. 20, 1922. Decided Feb. 27, 1922.)

No. 103.

1. Public lands ⟸123—Fact fraud would have been ineffective except for mistake of law does not bar recovery by the United States.

The right of the United States to recover the value of lands procured from it by defendant's fraud is not defeated by the fact that the affidavits of residence procured by defendant's fraud, which falsely stated the entryman had resided upon the lands for the length of time considered necessary by the land office officials, on their face showed the residence was insufficient under a correct interpretation of the law.

2. Public lands ⟸123—Evidence of perjury as to residence held competent in suit to recover value, though insufficient to authorize issue of patent.

In a suit to recover the value of lands procured from the government by means of defendant's fraud, perjury in the affidavits as to the residence of the entryman was a fact to be considered with other elements of fraud, though the affidavits themselves were insufficient to entitle the entryman to a patent, especially where the declaration of residence as stated therein satisfied what every one then thought were the requirements of the law.

3. Public lands ⟸123—Evidence held to sustain finding of fraud in procuring patent for entryman.

Evidence *held* to warrant the jury in finding fraud by the defendant in procuring former soldiers to file homestead entries upon public lands with the purpose of acquiring such lands himself, so as to entitle the government to recover from defendant the value of the lands it was thereby induced to patent to others.

4. Evidence ⟸135(1)—Evidence of fraud with reference to other entries held admissible in court's discretion.

In an action to recover the value of public lands procured from the government through defendant's fraud, evidence of similar arrangements between defendant and other entrymen to file on similar lands was admissible in the court's discretion if it did not regard such evidence as too remote or as raising too lengthy or complex collateral issues.

5. Evidence ⟸543(3)—Opinion evidence as to value of timber tracts held admissible.

In determining the value of government lands procured by fraud, where it appeared the land was timber land, and there had been no sales of similar lands in that township, it was not beyond the discretion of the court to permit timber experts to testify as to the current rates in adjoining townships, and defendant cannot complain of such evidence, especially where the value as found by the jury was very near that set by defendant.

6. Damages ⟸208(9)—Interest a question for jury in tort cases.

The usual rule in tort cases is to leave the question of interest to the jury.

7. Public lands ⟸123—Instruction to allow interest in tort action held not reversible error.

Since the discretion of the jury as to allowance of interest in tort cases does not mean a right to gratify a whim or personal fancy, and there would seem to be the same reason for allowing interest for depriving an owner of property of an ascertainable value as where there has been a misappropriation of money, an instruction by the court, which at least had a right to express his opinion as to the allowance of interest, to allow such interest upon the value of timber lands procured from the government through defendant's fraud, was not reversible error.

In Error to the United States Circuit Court of Appeals for the Ninth Circuit.

Action by the United States against Willard N. Jones to recover the value of lands procured from the United States through defendant's fraud. A judgment for the