

unlawful discriminations against citizens of the United States, while exercising the elective franchise, on account of their race.

That is, here is a penal statute evidently including wrongful exclusions from voting, made on account of race, but *also* including more than this, and the question was whether the courts could inflict a penalty under an act which was broader in its terms than the Constitution authorized, although the Constitution authorized a statute covering the very act of exclusion on account of race, then and there being prosecuted.

The court held that no such construction could be placed upon the statute, the court (p. 221) saying :

"We are therefore directly called upon to decide whether a penal statute enacted by Congress with its limited powers, which is in general language broad enough to cover wrongful acts without as well as within the Constitutional jurisdiction, *can be limited by judicial construction* so as to make it operate *only* on that which Congress may rightfully prohibit and punish.

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"The question, then, to be determined, is whether we can *introduce words* of limitation into a penal statute so as to make it specific, when, as expressed, it is general only.

"It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who should be set at large. This would, to some extent, substitute the judicial for the legislative department of the Government.

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"To limit this statute in the manner now asked for *would be to make a new law, not to enforce an old one.* This is no part of our duty.

"We must therefore decide that Congress has not as yet provided by 'appropriate legislation' for the punishment of the offense charged in the indictment, and that the circuit court properly sustained the demurrers, and gave judgment for the defendants."