

deny a fair opportunity to repel it violates the due process clause of the 14th amendment.

See also *Bailey v. Alabama*, 219 U.S. 219, 233 et seq., 31 S. Ct. 145, 55 L. Ed. 191.

A statute creating a presumption that is arbitrary, or that operates to deny a fair opportunity to repel it, violates the due process clause of Constitution amendment 14, since legislative fiat may not take place of fact in judicial determination of issues involving life, liberty, or property (*Western & A. R. Co. v. Henderson*, 279 U.S. 639, 49 S. Ct. 445(3)).

Legislation providing that proof of fact shall constitute prima facie evidence of main fact in issue satisfies requirements of due process of law when the relation between the fact found and presumption is clear and direct and is not conclusive (*Adler v. Board of Education*, 72 S. Ct. 380(16), 342 U.S. 485).

The presumption there involved was upheld because it was—
not conclusive but arises only in a hearing where the person against whom it may arise has full opportunity to rebut it (342 U.S. at p. 495).

It is suggested that—

maybe * * * a State is entitled to less protection because it is not a person under the 14th amendment * * *

and perhaps the due process clause of the 14th amendment does not apply to a State.

This suggestion overlooks the fact that a "person or persons" are the defendants in an action under 1971(c). It is those "persons" to whom the Attorney General will transmit the "supplementary decree" proposed to be issued under the amendatory act, it is those persons—election officials—who are subject to prosecution for contempt.

During the questioning of Judge Walsh by Representative Willis, he was asked:

Then this voting referee, however, would have a right to protect, according to the pattern of the bill, not only persons named in the original action, but anybody in the area who feels that he is the victim of the pattern?

The answer was:

Yes, sir, anybody who is a member of the same race (record, p. 48).

The bill, H.R. 10035, does not confine the reception by the voting referees of "applications" to those of the same race as those for whom the original suit was brought.

Page 2, lines 5 and 6, empowers these voting referees—

to receive applications from any person claiming such deprivation as to the right to register * * *.

"Applications" for what? For what do the applicants apply? Was the fact that what these "applicants" will be seeking is a registration certificate designedly omitted?

Perhaps the drafters of the bill gagged at the idea of so patently converting a Federal court into a registration board.

At page 50 of the hearings, Mr. Willis asked Judge Walsh if he was familiar with the jurisprudence that under clause (b) of rule 53, the adverse party could insist upon a showing that an exceptional situation existed before a master could be appointed. Judge Walsh replied:

Yes, sir, and that was because he would have to pay one-half of the cost of the master, whereas here no one is going to pay the cost of the master except the Government.