

GREENE v. McELROY.

CLARK, J., dissenting.

one is in point.* In fact, I cannot find a single case in support of the Court's position. Even a suit for damages on the ground of interference with private contracts does not lie against the Government. The Congress specifically exempted such suits from the Tort Claims Act. 28 U. S. C. § 2680 (h). But the action today may have the effect of by-passing that exemption since Greene will now claim, as has Vitarelli, see *Vitarelli v. Seaton*, 359 U. S. 535 (1959), reimbursement for his loss of wages. See *Taylor v. McElroy*, *post*, p. 702. This will date back to 1953. His salary at that time was \$18,000 a year.

In holding that the Fifth Amendment protects Greene the Court ignores the basic consideration in the case, namely, that no person, save the President, has a constitutional right to access to governmental secrets. Even though such access is necessary for one to keep a job

* *Dent v. West Virginia*, 129 U. S. 114 (1889), held that a West Virginia statute did not deprive one previously practicing medicine of his rights without due process by requiring him to obtain a license under the Act. *Schwartz v. Board of Bar Examiners*, 353 U. S. 232 (1957), likewise a license case, did not pass upon the "right" or "privilege" to practice law, merely holding that on the facts the refusal to permit Schwartz to take the examination was "invidiously discriminatory." In *Peters v. Hobby*, 349 U. S. 331 (1955), the Court simply held the action taken violated the Executive Order involved. The concurring opinion, DOUGLAS, J., p. 350, went further but alone on the question of "right." The Court did not discuss that question, much less pass upon it. *Slochower v. Board of Education*, 350 U. S. 551 (1956), held that the summary dismissal without further evidence by New York of a school teacher because he had pleaded the Fifth Amendment before a United States Senate Committee violated due process. The case merely touched on the "right" to plead the Fifth Amendment, not to "property" rights. *Truax v. Raich*, 239 U. S. 33 (1915); *Allegier v. Louisiana*, 165 U. S. 578 (1897); and *Powell v. Pennsylvania*, 127 U. S. 678 (1888), were equal protection cases wherein discrimination was claimed. Greene alleges no discrimination.