

205 U. S.

Syllabus.

mere error, inasmuch as the ruling involved the denial of a right secured by statute under the Constitution.

This conclusion is fatal to the order and warrant of removal and requires a reversal of the judgment below and the discharge of appellant.

*Final order reversed and cause remanded with directions to discharge appellant from custody under the order and warrant of removal without prejudice to a renewal of the application to remove.*

MR. JUSTICE HARLAN dissented.

MR. JUSTICE MOODY took no part in the disposition of the case.

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KESSLER v. TREAT, UNITED STATES MARSHAL.<sup>1</sup>

MORGAN v. SAME.

CARPENTER v. SAME.

WHITTLE v. SAME.

WILCOX v. SAME.

BRADEN v. SAME.

ROYSTER v. SAME.

SMITH v. SAME.

BURROUGHS v. SAME.

McDOWELL v. SAME.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE EASTERN DISTRICT OF VIRGINIA.

Nos. 370, 371, 372, 373, 374, 375, 376, 377, 378, 379. Argued December 3, 4, 1906.—  
Decided March 4, 1907.

Decided on authority of *Tinsley v. Treat*, ante, p. 20.

<sup>1</sup> Argued simultaneously with *Tinsley v. Treat*, ante, p. 20; for counsel and abstracts of arguments see ante, pp. 21 et seq.

MR. CHIEF JUSTICE FULLER: The same decrees will be entered in each of these cases as in the foregoing.

MR. JUSTICE HARLAN dissented.

MR. JUSTICE MOODY took no part.

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### HALTER *v.* NEBRASKA.

ERROR TO THE SUPREME COURT OF THE STATE OF NEBRASKA.

No. 174. Submitted January 23, 1907.—Decided March 4, 1907.

A long established and steadily adhered to principle of constitutional construction precludes a judicial tribunal from holding a legislative enactment, Federal or state, unconstitutional and void unless it is manifestly so.

Except as restrained by its own fundamental law, or by the supreme law of the land, a State possesses all legislative power consistent with a republican form of government; and it may by legislation provide not only for the health, morals and safety of its people, but for the common good as involved in their well-being, peace, happiness and prosperity. There are matters which, by congressional legislation, may be brought within the exclusive control of the National Government but over which in the absence of such legislation the State may exert some control in the interest of its own people; and although the National flag of the United States is the emblem of National sovereignty and a congressional enactment in regard to its use might supersede state legislation in regard thereto, until Congress does act, a State has power to prohibit the use of the National flag for advertising purposes within its jurisdiction. The privileges of citizenship and the rights inhering in personal liberty are subject in their enjoyment to such reasonable restraints as may be required for the public good; and no one has a right of property to use the Nation's emblem for individual purposes.

A State may consistently make a classification among its people based on some reasonable ground which bears a just and proper relation to the classification and is not arbitrary.

The statute of Nebraska preventing and punishing the desecration of the flag of the United States and prohibiting the sale of articles upon which there is a representation of the flag for advertising purposes is not un-