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| *Disqualifying the testimony of racialized parties and witnesses was not new to the procedure codes. The following laws from midwestern states with large free black populations would be echoed in adaptations of the Field Code.* | |
| OH1807-0001 | That no black or mulatto person or persons, shall hereafter be permitted to be sworn or give evidence in any court of record, or elsewhere in this state, in any cause depending, or matter of controversy, where either party to the same is a white person, or in any prosecution, which shall be instituted in behalf of this state, against any white person. |
| IA1839-0780 | A negro, mulatto, or Indian, shall not be a witness in any court or in any case against a white person. |
| IN1843-6330 | No negro, mulatto or Indian, shall be a witness, except in pleas of the state against negroes, mulattoes, or Indians, and in civil causes where negroes, mulattoes, or Indians alone are parties: every person other than a negro having one-fourth part of negro blood or more, or any one of whose grandfathers or grandmothers shall have been a negro, shall be deemed an incompetent witness, within the provisions of this article. |
| *Racial qualifications were introduced to the Field Code tradition in California, first in Elisha Crosby’s draft of 1850, then in Stephen J. Field’s draft of 1851. Many western states would copy Stephen Field’s provision.* | |
| CA1850-3270 | 306. No black, or mulatto person, or Indian, shall be permitted to give evidence in any action to which a white person is a party, in any Court of this State. Every person who shall have one eighth part or more of negro blood, shall be deemed a mulatto; and every person who shall have one half Indian blood, shall be deemed an Indian. |
| CA1851-4380 | 394. The following persons shall not be witnesses:  lst. Those who are of unsound mind at the time of their production for examination;  2d. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly: and;  3d. Indians, or persons having one fourth or more of Indian blood, in an action or proceeding to which a white person is a party: 4th. Negroes, or persons having one half or more Negro blood, in an action or proceeding to which a white person is a party. |
| CA1868-3990 | 394. The following persons shall not he witnesses: First. Those who are of unsound mind at the time of their production for examination. Second. Children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. Third. Mongolians, Chinese, or Indians, or persons having one-half or more of Indian blood, in an action or proceeding wherein a white person is a party. Fourth. Persons against whom judgment has been rendered upon a conviction for a felony, unless pardoned by the governor, or such judgment has been reversed on appeal. |
| OR1854-3380 | 6. The following persons shall not be competent to testify: 1. Those who are of unsound mind, or intoxicated at the time of their production for examination; 2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; 3. Negroes, mulattoes and Indians, or persons one half or more of Indian blood, in an action or proceeding to which a white person is a party. |
| WA1855-3150 | 293. The following persons shall not be competent to testify: 1st. Those who are of unsound mind, or intoxicated at the time of their production for examination. 2d. Children under ten years of age, who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating -them truly. 3d. Indians, or persons having more than one half Indian blood, in an action or proceeding to which a white person is a party. |
| UT1859-2440 | 215. The following persons shall not be competent to testify: 1. Those who are of unsound mind or intoxicated at the time of their production for examination. 2. Children under ten years of age, who appear to be incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly. Negroes, mulattos, and Indians, or persons having one fourth of negro or Indian blood, in an action or proceeding to which a white person is a party, but shall not be disqualified from testifying against another. |
| NV1861-3800 | 342. The following persons shall not be witnesses: First. Those who are of unsound mind at the time of their production for examination. Second. Children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. Third. Indians, or persons having one half or more of Indian blood, and negroes, or persons having one half or more of negro blood, in an action or proceeding to which a white person is a party. Fourth. Persons against whom judgment as been rendered upon a conviction for a felony, unless pardoned by the governor, or such judgment has been reversed on appeal. |
| ID1864-3910 | 352. The following persons shall not be witnesses: First. Those who are of unsound mind at the time of their production for examination. Second. Children under ten years of age, who, in the opinion of the court, appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly. Third. Chinamen or persons having one-half or more of China blood; Indians, or persons having one-half or more of Indian blood, and negroes, or persons having one-half or more of negro blood, in an action or proceeding to which a white person is a party. Fourth. Persons against whom judgment has been rendered upon a conviction or felony, unless pardoned by the governor, or such judgment has been reversed on appeal. |
| AZ1865-3970 | 396. The following persons shall not be witnesses: 1. Those who are of unsound mind at the time of their production for examination. 2. Children under ten years of age, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly; and, 3. Indiana or persons having one-half or more of Indian blood, in an action or proceeding to which a white person is a party. 4. Negroes, or persons having one-half or more negro blood, in an action or, proceeding to which a white person is a party. |
| *Kentucky differed from other code states by making no distinction between incompetency (an absolute bar) and privilege (which might be waived). Kentucky also maintained a strict disqualification of parties and interested witnesses while other Field Code states made parties at least partially competent to stand examination.* | |
| KY1851-6150 | 568. The following persons shall be incompetent to testify: 1. Persons convicted of a capital offense, or of perjury, subornation of perjury; burglary, robbery, larceny, receiving stolen goods, forgery, or counterfeiting. 2. Infants under the age of ten years, and over that age, if incapable of understanding the obligation of an oath. 3. Persons who are of unsound mind at the time of being produced as witnesses. 4. Husband and wife, for or against each other, or concerning any communication made by one to the other, during the marriage, whether called as a witness while that relation subsisted or afterwards. 5. An attorney, concerning any communication made to him by his client in that relation, or his advice thereon, without the client’s consent. 6. Persons interested in an issue, in behalf of themselves, and parties to an issue, in behalf of themselves or those united with them in the issue. 7. Negroes, mulattoes, or Indians, in any action or proceeding where a white person, in his own right, or as representative of a white person, is a party, except in actions brought to recover a penalty or forfeiture for a violation of law, against a negro, mulatto, or Indian. |
| MT1865-3520 | 320. The following persons shall be incompetent to testify: First, Persons who are of an unsound mind at the time of their production for examination. Second, Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined or of relating them truly, but the court in its discretion may allow such children to testify, and the facts herein enumerated shall go to their credibility. Third, Husband or wife for or against each other, or concerning any communication made by one to the other during the marriage, whether called as a witness while that relation existed or afterwards. Fourth, An attorney concerning any communication made to him by his client in that relation, or his advice thereon, without the client’s consent. Fifth, A clergyman or priest concerning any confession made to him, in his professional character, in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession. Sixth, A negro, Indian, or Chinaman, where the parties to the action are white persons, but if the parties to an action or either of the parties is an Indian, negro, or Chinaman, a negro may be introduced as a witness against such negro, an Indian against such Indian, or a Chinaman against such Chinaman. A negro within the meaning of this act is a person having one-eighth or more of negro blood, an Indian is a person having one-half or more of Indian blood, and a Chinaman is a person having one-half or more Chinese blood. |
| *Iowa’s Code began by defining competency purely in terms of understanding the legal oath, and in the same section it barred racialized testimony (even if racialized actors could understand the oath). Wyoming followed the same tack, but softened the racial bar by adopting the same standard used for children: only those adjudged incapable of perceiving and relating facts were barred from testifying.* | |
| IA1851-8890 | 2388. Every human being of sufficient capacity to understand the obligation of an oath is a competent witness in all cases both civil and criminal except as herein otherwise declared. But an indian, a negro, a mulatto or black person shall not be allowed to give testimony in any cause wherein a white person is a party. |
| NE1855-8890 | 2388. Every human being of sufficient capacity to understand the obligation of an oath is a competent witness in all cases both civil and criminal except as herein otherwise declared. But an indian, a negro, a mulatto or black person shall not be allowed to give testimony in any cause wherein a white person is a party. |
| WY1870-3400 | 325. Every human being of sufficient capacity to understand the obligations of an oath, is a competent witness in all cases, civil and criminal, except as otherwise herein declared. The following persons shall be incompetent to testify: First, Persons of unsound mind at the time of their production. Second, Indians and negroes who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them intelligently and truly. Third Husband and wife, concerning any communication made by one to the other during the marriage, whether called as a witness while that relation exists or afterwards. Fourth, An attorney, concerning any communication made to him by his client in that relation or his advice thereon, without the client’s consent in open court or in writing produced in court. Fifth, A clergyman or priest, concerning any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession. |
| *States that did not borrow Field’s Evidence Code nevertheless borrowed prohibitions of racialized testimony. Two distinct strands emerge in legislation from the Deep South as well as the Upper South and Midwest.* | |
| MS1848-5430 | All negroes, mulattoes, Indians, and all persons of mixed blood, descended from negro or Indian ancestors, to the third generation, inclusive, though one ancestor of each generation may have been a white person, shall be incapable in law, to be witnesses in any case whatsoever, except for and against each other. |
| AL1852-1470 | 2276. Negroes, mulattoes, Indians, and all persons of mixed blood, descended from negro or Indian ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person, whether bond or e, must not be Witnesses in any cause, civil or criminal, except for or against each other. |
| TN1858-12180 | 3808. A negro, mulatto, Indian, or person of mixed blood, descended from negro or Indian ancestors, to the third generation inclusive, though one ancestor of each generation may have been a white person, whether bond or free, is incapable of being a witness in any cause, civil or criminal, except for or against each other. |
| DC1857-7110 | A negro shall be a competent witness for or against a negro in any criminal proceeding, and shall be a competent witness in any civil case to which only negroes are parties, but not in any other case. |
| VA1860-7350 | A negro or indian shall he a competent witness in a case of the commonwealth for or against a negro or indian, or in a civil ease to which only negroes or indians are parties, but not in any other case. |
| IL1866-3570 | A negro, mulatto or Indian shall not be a witness in any court, or in any case, against a white person. Any person having one-fourth part negro blood shall be adjudged a mulatto. |