chase, lease, sell and convey property, as is enjoyed by white citizens."[16] But the Court could not see that the refusal of accommodations at an inn or a place of public amusement, without any sanction or support from any state law, could inflict upon such person any manner of servitude or form of slavery, as those terms were commonly understood. "It would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make. . . ."[17]

Then, in *Hodges v. United States*,[18] the Court set aside the convictions of three men for conspiring to drive several African-Americans from their employment in a lumber mill. The Thirteenth Amendment operated to abolish, and to authorize Congress to legislate to enforce abolition of, conditions of enforced compulsory service of one to another, and no attempt to analogize a private impairment of freedom to a disability of slavery would suffice to give the Federal Government jurisdiction over what was constitutionally a matter of state remedial law.

Hodges was overruled by the Court in a far-reaching decision that concluded that the 1866 congressional enactment,[19] far from simply conferring on all persons the *capacity* to buy and sell property, also prohibited private denials of the right through refusals to deal,[20] and that this statute was fully supportable by the Thirteenth Amendment. "Surely Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation. Nor can we say that the determination Congress has made is an irrational one. . . . Just as the Black Codes, enacted after the Civil War to restrict the free exercise of those rights, were substitutes for the slave system, so the exclusion of Negroes from white communities became a substitute for the Black Codes. And when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery. . . . At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white

---

[16] *Civil Rights Cases*, 109 U.S. 3, 22 (1883).

[17] 109 U.S. at 24.

[18] 203 U.S. 1 (1906), *overruled by* Jones v. Alfred H. Mayer Co., 392 U.S. 409, 441 n.78 (1968).

[19] Ch. 31, 14 Stat. 27 (1866). The portion at issue is now 42 U.S.C. § 1982.

[20] Jones v. Alfred H. Mayer Co., 392 U.S. 409, 420–37 (1968). Justices Harlan and White dissented from the Court's interpretation of the statute. Id. at 449. Chief Justice Burger joined their dissent in Sullivan v. Little Hunting Park, 396 U.S. 229, 241 (1969). The 1968 Civil Rights Act forbidding discrimination in housing on the basis of race was enacted a brief time before the Court's decision. Pub. L. No. 90–284, 82 Stat. 81, 42 U.S.C. § 3601–31.