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Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 493.

JACKSON W. GILES, APPELLANT,

against

E. JEFF HARRIS ET AL., BOARD OF REGISTRARS, MONTGOMERY COUNTY, ALABAMA, APPELLEES.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

The appellant, who is a negro, filed a bill in equity in the United States circuit court for the middle district of Alabama, alleging that the suffrage provisions of the new constitution of Alabama which went into effect November 28, 1901, were obnoxious and repugnant to the fourteenth and fifteenth amendments to the Constitution of the United States in their intent and purpose and in their language and meaning, as well as by their operation and administration, and, in effect as well as in fact, deprived him and his race of the equal protection of the law and of their right to vote for no other reason than their race and color and previous condition of servitude.

And that the said appellees, who were charged with the administration of said suffrage provisions, had refused to register appellant and issue to him a certificate of qualification as an elector in the State of Alabama for no other reason than his race and color, and had also refused to register more than five thousand (5,000) colored persons in Montgomery county, Alabama, who were qualified under the law of the State of Alabama and of the United States, for no other reason than their race and color, and that by such acts on the part of said appellees the appellant and his race were about to be deprived of their right to vote for State and Federal offices in the election to take place on November 4, 1902, for no other reason than their race and color and previous condition of servitude, while all the white men in the State of Alabama were registered and given certificates of qualification and will be allowed to vote in said coming election, and prayed that said suffrage provisions of the new constitution of Alabama be declared null and void, and that said appellees be enjoined from enforcing the same or from doing any act in the premises which would deprive appellant and his race of their right to vote in said approaching election on account of their race and color and previous condition of servitude.

That said appellees demurred to said bill, setting up the want of jurisdiction of the court and the want of equity in the bill and other grounds, and that when the same came on to hearing said court sustained the demurrer and dismissed the bill on the ground of want of jurisdiction and want of equity, and certified the question of jurisdiction to this court under the act of March 3, 1891.

SPECIFICATION OF ERRORS.

FIRST. The court erred in sustaining the demurrer and dismissing the bill when the bill alleged facts showing that the suffrage provisions of the constitution of Alabama under and by virtue of which the appellees were appointed and acting were in direct contravention of the fourteenth and fifteenth amendments to the Constitution of the United States in their purpose and language and in the way and manner in which they were carried out and administered by the appellees and all the other boards of registrars in the State of Alabama.

SECOND. Because the court erred in sustaining the demurrer and dismissing the bill on the ground that it was not such a case of which a court of equity could take cognizance when the bill alleged that appellant was threatened with irreparable wrong, and was about to be deprived of the equal protection of the law and of his right to vote because of his race and color, in contravention of the guarantees of the fourteenth and fifteenth amendments to the Constitution of the United States.

THIRD. Because the court erred in sustaining the demurrer and dismissing the bill on the ground of the want of jurisdiction to grant the relief prayed for.

ARGUMENT.

The facts alleged in the bill of complaint having been admitted by the demurrer, the only question presented for the court's consideration is, does the bill contain sufficient allegations of matters of fact to raise a Federal question, and, if so, whether the trial court under the law had the power and authority to grant the relief prayed for. We contend that the suffrage provisions of the constitution of Alabama are not only unconstitutional and void, but, in view of the object and purpose of calling the constitutional convention of Alabama, expressed in the opening speech of its president, Hon. John B. Knox, shown in "Exhibit A," and in view of the bitter speeches delivered on the floor of the convention, wholly directed against the negroes of Alabama and the fifteenth amendment to the Constitution of the United States, shown in "Exhibit C," and the published reports of the proceedings of the registrars throughout the State of Alabama, showing the manner of the administration of the suffrage provisions of the constitution of Alabama, shown in "Exhibit B," a more high-handed and flagrant case of the nullification of the fourteenth and fifteenth amendments to the Constitution of the United States and repudiation of their solemn guarantees to the negroes of America can never be presented to the courts of the country.

We call the court's attention to the tabulated census report (Record, page 8), which indicates the suppression of the negro majorities in more than twenty (20) counties of Alabama, and the fact that the convention was wholly composed of white men, so that the court may understand fully the

meaning of the speeches in the convention, in which it is openly declared that the negro majorities in the State of Alabama had been overcome by fraud and intimidation for twenty years, and that the provisions of the new constitution were to take the place of fraudulent methods and intimidation in the government of that Commonwealth.

If the suffrage provisions of the constitution of Alabama bore equally upon the whites and blacks alike, no matter what the standard of property or education required might be, no cause of complaint would be urged here against them; but they sought to restrict the suffrage of the blacks without depriving a single white man of his right to vote.

Our contention is, that while the fourteenth and fifteenth amendments do not confer the right of suffrage upon the negro, they contain a solemn guarantee of this nation that no State shall give any preference in this particular to the white citizens over the blacks, or deny the negroes the right to vote, or hinder them in the exercise of the same, because of their race and color and previous condition of servitude, and that it is clearly within the equity jurisdiction of the courts of the United States to enforce this solemn guarantee. In support of our contention we submit the following *propositions and points of argument:*

I.

Section 1979 of the Revised Statutes of the United States, which was brought forward from the act of April 20, 1871, entitled "An act to enforce the provisions of the fourteenth amendment to the Constitution of the United States, and for other purposes," provides "that every person who under color of any statute, ordinance, regulation, custom, or usage of

any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or the immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress," and manifestly confers jurisdiction upon courts of equity to grant relief against the threatened deprivation of rights guaranteed under the fourteenth and fifteenth amendments. (See section 629, Revised Statutes of the United States, clause 16.)

Holt *vs.* Indiana Manufacturing Co., 176 U. S., 68.

II.

This is not a suit brought to enforce a political right, but a civil right guaranteed by the Constitution of the United States. Nor is it sought in this action to control the exercise of any political functions of the State of Alabama, since no State has the right, nor has its officers the right, to deprive any person of the equal protection of the law, or of his right to vote, on account of his race and color or previous condition of servitude.

United States *vs.* Reese, 92 U. S., 214.

Mills *vs.* Green, 69th Federal Rep., 852.

United States *vs.* Cruikshank, 92 U. S., 542.

III.

The courts of law are without power to give that efficacious and specific redress in the matter of the enforcement and protection of the rights guaranteed under the fifteenth amendment, because it would be absurd to argue that any

money damage, however large, could in the least degree compensate a negro in Alabama for the deprivation of his right to vote on account of his race and color. Such a deprivation by constitutional enactment, on such a ground, means infinitely more to him than to a white man, when, under ordinary circumstances and for once, a white man may be refused the exercise of that right, and brings him back to the sad conditions of the past, when he had no rights under the Constitution of the United States which a white man was bound to respect. To the negro, if the guarantees of the fourteenth and fifteenth amendments are stricken from under him, under the pretense of the want of jurisdiction in the courts of the United States to enforce them, he has only one other guarantee between him and actual slavery; that is the one contained in the thirteenth amendment. What reason would he have to hope for protection under that one, should the Southern States by similar methods undertake to deprive him of its guarantee?

Moreover, it is perfectly plain that the suffrage provisions of the new constitution of Alabama were skillfully and artfully drawn, not only to evade the fourteenth and fifteenth amendments to the Constitution of the United States, but to elude and escape the power and detection of the courts. This is shown in the temporary plan, where the officers chosen to administer which are made to go out of office at the end of 1902, before any decision can be had in the courts of last resort, and in providing no officers to administer and enforce the permanent plan, which is to go into effect the first day of January, 1903, and in the pretended right of appeal given in section 186.

Therefore we submit that a court of equity, exercising its

remedial principles of specific redress, with its ability to look through forms at the substance and its power to detect and expose fraud and conspiracy and cunning and chicanery, can alone grant that relief without which there would be no relief in a case like this. Equity alone has the power to anticipate and prevent a threatened injury where the damage would be insufficient or the wrong irreparable.

Ex parte Lennon, 166 U. S., 548.

Vicksburg Water Works Co. *vs.* Vicksburg, 185 U. S., 65.

IV.

If the court agree with me that the circuit courts of the United States, sitting in equity, have jurisdiction to enforce and protect the civil rights of a citizen guaranteed by the fourteenth and fifteenth amendments, then we further contend that this court is not confined to the decision of the question of jurisdiction alone, but should also decide the further question of whether or not the suffrage provisions of the constitution of Alabama are in contravention of the fourteenth and fifteenth articles of the Constitution of the United States.

In our opinion, the act of March 3, 1891, section 5, while it gives the circuit court the right to certify the jurisdiction alone to the Supreme Court, does not give the circuit court the right by such certification to cut the Supreme Court off from considering other questions which could properly come up on appeal from the circuit court. Under said section 5 any case in which the constitution or law of a State is claimed to be in contravention of the Constitution of

the United States must come directly to the Supreme Court from the circuit court without any certification from the circuit court. And why should the circuit court be allowed to prevent such a case from being considered and passed upon by this court by simply certifying the question of jurisdiction? The question of the constitutionality of a State constitution was the principal matter presented to the circuit court for decision, and the bill of complaint being dismissed on demurrer, an appeal from that ruling brings the whole case before this court for decision, notwithstanding the certification of the question of jurisdiction by the circuit court.

The language of Mr. Justice Lamar in MacLish *vs.* Roff, 141 U. S., 661, seems to be perfectly pertinent here. He says: "From the very foundation of our judicial system, the object and policy of acts of Congress in relation to appeals and writs of error have been to save the expense and delays of repeated appeals in the same suit, and to have the whole case and every matter in controversy decided in a single appeal."

Horner *vs.* United States, 143 U. S., 578.
Holder *vs.* Aultman, Miller & Co., 169 U. S., 81.
Scott *vs.* Donald, 165 U. S., 58.
Penn. Mut. Life Ins. Co. *vs.* Austin, 168 U. S., 685.
Whitten *vs.* Tomlinson, 160 U. S., 231.

V.

Conceding, for the sake of the argument, that this court is confined to the question of jurisdiction alone, and is without the power, on this appeal, of considering any other questions involved in the record, then we submit that it is wholly im-

possible for the court to separate the question of jurisdiction in this case from the question of whether or not the suffrage provisions of the constitution of Alabama are in contravention of the fourteenth and fifteenth amendments to the Constitution of the United States. Indeed, the two questions are one and inseparable. If the suffrage provisions do not contravene the fourteenth and fifteenth amendments, manifestly there can be no jurisdiction in the United States circuit court; whereas if they do contravene the Constitution of the United States, then arises the question of the power of the circuit court to grant the relief.

VI.

We submit that section 180 of article 8 of the constitution of Alabama, known and administered as the temporary plan, contravenes the fourteenth and fifteenth amendments to the Constitution of the United States, in its purpose, in its language and meaning, and in the way and manner in which it has been carried out and administered by the authorities in the State of Alabama. The opening address of the presiding officer of the constitutional convention, the Hon. John B. Knox, clearly and frankly states that the purpose of calling the convention and the work which the convention was called to accomplish was to disfranchise the negroes of Alabama without disfranchising a single white man (Record, page 15).

The speech of the chairman of the committee on suffrage and elections, Judge Coleman, in support of the majority report, and, indeed, all the speeches set out in "Exhibit C" to the bill, clearly show and frankly admit that the sole

purpose the convention had in view in framing the provisions on suffrage and elections was to invent a scheme by which to disfranchise the negroes without disfranchising a single white man in Alabama (Record, pages 35–399).

We submit that subdivisions 1 and 2 of section 180, fixing qualifications upon persons who served in the war of 1812, and in the war with Mexico and with the Indians, and in the land or naval forces of the Confederate States, and their descendants, discriminate against the negroes of Alabama, for the reason that it was impossible, owing to their previous condition of servitude, for them to attain to such qualifications (Record, page 3).

We further submit that subdivision three (3) is too general, and really describes no qualifications, but simply invests the registrars with unlimited and arbitrary power (Record, page 3).

But conceding, for the sake of the argument, that our contention is wrong as to the language and meaning of these subdivisions, still we insist that the administration of said section by all the boards of registrars in the State of Alabama, as shown in the bill and admitted by the demurrer, makes this section unconstitutional and void, because the registrars refused to register qualified negroes for no other reason than their race and color, and required the negroes to produce the testimony of white men as to their qualifications and character, and refused to accept the testimony of colored men, while all white men were registered upon their application without further proof of qualifications than the oath of the applicant (Record, page 11).

Ah Kow *vs.* Neunan, 5th Sawyer, 560.
Yick Wo *vs.* Hopkins, 118th U. S., 356.
Davies *vs.* McKeeby, 5th Nevada, 369.

VII.

We submit that section 181 of the constitution of Alabama, known as the permanent plan, contravenes the fourteenth and fifteenth amendments to the Constitution of the United States, in its purpose and object and in its language and meaning, and therefore should be declared null and void and should not be allowed to be enforced. We refer again to the speeches delivered upon the floor of the convention to show that the purpose in framing this section, in connection with the others on suffrage and elections, was to invent a scheme to evade and avoid the fifteenth amendment to the Constitution of the United States.

The section is also utterly unreasonable and void, in that it provides that no person can become qualified unless his place of residence shall remain unchanged (Record, page 3). It fails to state from what period, whether from the making of the constitution or from the time it went into effect, or from the time the permanent plan goes into effect, that the place of residence must remain unchanged. So that it is impossible to tell from the language of the section at what period an elector must become fixed and stationary in his place of residence in Alabama in order to qualify under this section. Neither does the section explain what is meant by a change of one's place of residence under its provisions. It seems that a proper definition of the qualifications for citizenship would require that this section explain what is meant by a change of the place of residence of an elector, whether from the ward or the precinct, or the county or the State. The registrars could easily hold under this section

that a citizen moving from one house to another on the same street, or across the street in the same ward, had changed his place of residence and is therefore disqualified.

But, conceding that the foregoing argument is untenable as to this section, we still maintain that it is clearly made unconstitutional and void in the manner of the administration of the temporary plan by the registrars in allowing all white men in the State of Alabama to qualify under the temporary plan, and at the same time refusing to allow nearly all negroes to qualify under the same for no other reason than their race and color, and telling them to come back after the 1st of January, 1903, which is admitted by the demurrer. The State of Alabama, through the registrars, has thus compelled the negroes to look to the permanent plan alone for their qualifications to become electors, which makes the law special class legislation from its inception intended to operate against the negroes of Alabama alone.

Jew Ho *vs.* Williamson, 103 Fed. Rep., 10.

Yick Wo *vs.* Hopkins, 118th U. S., 356.

VIII.

The bill contains the following allegations as to section 186 of article 8 of the Alabama constitution, which are admitted by the demurrer and which we now urge as a proposition, to wit: Your orator further shows that section 186 of the suffrage article of the new constitution of Alabama is obnoxious and repugnant to the fourteenth and fifteenth amendments to the Constitution of the United States, in this: that the board of registrars are given absolute and unlimited power and are clothed with the discretion of judicial officers

solely for the purpose of placing the said boards beyond the process of the courts, and of more effectually denying, abridging, and hindering your orator in his right to qualify as an elector, and to vote in the State of Alabama, on the ground of his race and color and previous condition of servitude; and further because the right of appeal pretended to be given by said section from the decision of said registrars to the circuit courts of the State of Alabama, to be tried before a jury, as therein prescribed, is a mere pretext and a fraud, and was not meant to give any real remedy to your orator and his race when refused registration, because at the time said section was enacted and for a long time prior thereto and at the present time the juries in all the trial courts of Alabama were composed and are composed exclusively of white men, and negroes were and are excluded from service on any juries in the trial courts of Alabama for no other reason than their race and color, although otherwise qualified for such service, and the makers of said constitution knew that an appeal to said courts from the decision of the registrars would result in the same denial of constitutional rights, and that your orator and his race would meet the same prejudice exhibited against them by the boards of registrars, and that said section is also a part of the scheme to deny and abridge the right of your orator to vote in the State of Alabama and the right of his race to vote on account of their race and color and previous condition of servitude (Record, page 10).

Carter *vs.* Texas, 177th U. S., 442.

Ah Kow *vs.* Neunan, 5th Sawyer, 560.

Yick Wo *vs.* Hopkins, 118th U. S., 356.

IX.

This court will take judicial knowledge of the fact that the negroes constitute the majority of the laboring element in the State of Alabama, and we submit that section 188 of article 8 of the present constitution of Alabama was especially aimed at the negroes of Alabama in providing that "from and after the first day of January, 1903, any applicant for registration may be required to state under oath, to be administered by the registrars or by any person placed by law to administer oaths, where he lived during the five years next preceding the time at which he applies to register, and the name or names by which he was known during that period, and the name of his employer or employers, if any, during such period. Any applicant for registration who refuses to state such facts, or any of them, shall not be entitled to register, and any person so offering to register who wilfully makes a false statement in regard to such matters, or any of them, shall be guilty of perjury, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than five years" (Record, page 8).

X.

We submit that all of the sections of the suffrage article of the constitution of Alabama constitute one entire scheme on the part of the State of Alabama to evade the fourteenth and fifteenth amendments to the Constitution of the United States, and to discriminate against and disfranchise the negroes of the State of Alabama on account of their race and

color and previous condition of servitude, and all of them should be declared null and void.

CONCLUSION.

This court will take judicial knowledge of the facts of history, which show the negro's faithfulness as a slave, and his patriotism and loyalty to the interests and welfare of this country whenever imperiled, since the time of the Revolution, which, we submit, entitle him to fair and just treatment at the hands of those who administer the law. And this court must know that the honor of this nation is bound to suffer in the estimation of the world if its solemn constitutional guarantees made to the negro shortly after the late civil war, when his conspicuous service in behalf of the Union was fresh in the minds of the American people, are allowed to go unenforced, and to become a dead letter in a well-established case like this.

WILFORD H. SMITH,
Attorney for Appellant.