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Supreme Court of the United States

OCTOBER TERM, 1902. No. 483.

JACKSON W. GILES, Appellant,

v.

E. JEFF HARRIS, WILLIAM A. GUNTER, JR., and CHARLES B. TEASLEY, Board of Registrars of Montgomery County, Alabama.

Brief for Appellees, by W. A. Gunter, on Motion to Dismiss the Appeal and on the Merits.

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MOTION TO DISMISS APPEAL.

Come the Appellees by their attorney of record, W. A. Gunter, and move the Court to dismiss the appeal in this case, because there is no longer any controversy pending in which relief can be given to appellant. The record in this case shows that appellees are no longer Registrars, and that the events have long since transpired which the bill sought to prevent.—Record, 3 and 14.

W. A. Gunter

Attorney for Appellees.

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No objection is made to the appellant's statement of the case. The appellant, a negro, filed his bill alleging that the suffrage provisions of the Constitution of Alabama, were void under the fourteenth and fifteenth amendments of the Constitution of the United States, by depriving him and his race of the equal protection of the law, and their right to vote, for no other reason than their race and color and previous condition of servitude. And that appellees, the registrars of persons to be admitted as electors, refused to register him, and issue the usual certificate of qualification for no other reason than his race and color, and had refused to register many other colored persons of Montgomery county, who were qualified, for no other reason than their race and color; and that by such acts appellant and his race

were about to be deprived of their rights to vote for State and Federal offices in the election of November, 1902, and praying that the said suffrage provisions be declared null and void, and that appellees be enjoined from enforcing the same in the approaching election, on account of their race and color and previous condition of servitude.

The bill being demurred to, was dismissed, the court placing its decision on the ground of want of jurisdiction. There were five grounds of demurrer assigned, but they all practically deny the jurisdiction of the court to entertain such a bill, and we agree with the appellant that the court should not dispose of the demurrer adversely to the appellee without ruling on all the grounds to which the decree of dismissal might be referred and be sustained.

ARGUMENT.

I.

Besides the motion to dismiss, argued below, two questions arise in this appeal, both involving the jurisdiction of the court. The first is, whether the Constitution of the court admits of the cognizance of cases of this class, involving "the assertion and protection of political rights;" the second is, whether, conceding the first question, such a case is made out as authorizes the exercise of equitable jurisdiction. It is important, for obvious reasons, that the latter question, if possible, be authoritatively settled, and therefore, we discuss it in the first instance. The duty and responsibility of prescribing the qualification of State electors, who must select the incumbents of political offices, rests entirely with the State government, with the exception

of the restraints imposed by the fifteenth amendment of the Constitution of the United States.

That provision does not pretend to extend any right, or give any privilege, but by negation provides that the right to vote "shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

United States v. Reese, 92 U. S. 214.

It is thus plain that the State is at perfect liberty to deny or abridge the right to vote *ad libitum*, provided it touches no question of race, color or previous condition of servitude.

Looking at the provisions of the Constitution of Alabama brought into question on this appeal, they can and do challenge the closest scrutiny. Leaving out of consideration the parts relating to foreigners as not involved, these provisions are as follows:

Sec. 177. "Every male citizen of this State who is a citizen of the United States shall be an elector, and shall be entitled to vote at any election by the people."

Sec. 178. "To entitle a person to vote at any election by the people, he shall have resided in the State at least two years, and in the precinct or ward three months, and shall have been duly registered as an elector, and shall have paid all poll taxes due from him for the year 1901, and each subsequent year." (Then follows a provision as to change of residence.)

Sec. 180. "The following male citizens who are citizens of the United States, twenty-one years old, who, if their place of residence shall remain unchanged, will have at the date of the next general election, the quali-

fications as to residence, prescribed in section 178 of this Constitution, and who are not disqualified under section 182 of this Constitution shall, upon application, be entitled to register as electors prior to the twentieth day of December, nineteen hundred and two, namely:"

First. (This section gives the privilege to all persons who served in the land or naval forces in any war of the United States or in the confederate forces, or those of the State of Alabama during the civil war.)

Second. (This section extends the right to existing persons who are descendants of those mentioned in first section.)

Third. "All persons who are of good character, and who understand the duties and obligations of citizenship under a republican form of government."

181. "After the first of January, nineteen hundred and three, the following persons, and no others, who if their place of residence shall remain unchanged, will have at the date of the next general election, the qualification as to residence prescribed in section 178 of this article, shall be qualified to register as electors; provided, they shall not be disqualified under section 182 of this constitution."

"First. Those who can read and write any article of the Constitution of the United States in the English language, and who are physically unable to work; and those who can read and write any article of the Constitution of the United States in the English language, and who have worked or been regularly engaged in some lawful employment, business or occupation, trade or calling for the greater part of the twelve months next preceding the time they offer to register; and those who

are unable to read and write, if such inability is due solely to physical disability; or,

Second. The owner in good faith in his own right, or the husband of a woman who is the owner in good faith, in her own right, of forty acres of land situated in this State, upon which they reside; or the owner in good faith, in his own right, or the husband of any woman who is the owner in good faith, in her own right, of real estate situated in this State, assessed for taxation at the value of three hundred dollars or more, or the owner in good faith, or the husband of a woman who is the owner in good faith, in her own right, of personal property in this State assessed for taxation at three hundred dollars or more; provided, that the taxes due upon such real or personal property for the year next preceding the year in which he offers to register shall have been paid, unless the assessment shall have been legally contested and is undetermined."

182. (This provision disqualifies persons convicted of certain crimes.)

It is thus seen that the State gave the right to register as an elector prior to January, 1903, to three classes of male citizens of the State and United States having a certain age and qualification as to residence, viz:

First, soldiers and sailors. Second, their descendants. Third, all citizens of good character understanding the duties and obligations of citizenship. It cannot be said, that giving the privilege to soldiers and sailors and their descendants was a *denial* or *abridgment* of the right to vote on account of color, race or previous condition of servitude.

These provisions might, and did, in fact, include many citizens of dark color, many of the negro race, and many

who had been slaves. The objection, then, if any can be made, must rest on the third provision extending the privilege to all persons of good character understanding the duties and obligations of citizenship. It is evident that there can be no valid objection to the terms of this clause.

The electors in a republic are but the trustees for the preservation and advancement of the social condition protected by the government. They directly or indirectly fill every department of that government. They elect those who legislate, those who administer the laws, and those who act as judges.

It is idle to expect that representatives will be much superior to those who elect them. It is, therefore, a mere truism to assert that good government must eventually rest upon the quality and competency of the electors.

No government exists that does not recognize this principle, and following it prescribe some qualification for electors. Whether such qualifications are wise or not, in any particular case, may be, and has often been, a subject of debate. But the right to prescribe them according to the will of the legislative power of the State, exists in absolute form under the single limitation of the Fifteenth Amendment of the Constitution of the United States, that the denial of the right to vote shall not be based on race, color or previous condition of servitude.

And it is impossible to say that there is any such denial in this provision. It is clear that persons of the negro race may have in the highest degree good characters, and understand the duties and obligations of citi-

zenship under a republican government, and thus that they are not excluded.

On the other hand, it is equally obvious that white persons are liable to be excluded as not possessing these qualifications. Therefore, the clause is unobjectionable in its terms.

Williams v. Mississippi, 170 U. S., 213.

If it is "both the right and duty of the legislative body, the supreme power of the State or municipality, to prescribe and determine," "for the safety and comfort of the people" rules and regulations for the slaughter of cattle, and the supply of food and, in so doing, to be able to confer exclusive privileges in the way of monopoly for profit, it is beyond doubt that it is both its right and duty to provide for the security of life, liberty and property, by restricting the elective franchise, which comprehends no element of profit, to persons competent to fill by their choice judiciously the offices of State.

Such power is but the expression of the natural right of self preservation, and the restriction of the Constitution of the United States upon its unlimited exercise, by the supreme power and wisdom of the States, must, by rule and reason, be strictly construed and thus limited to the letter of the law. If the negroes from any cause are generally deficient in the qualities necessary to qualify them as electors, and if these defects render them dangerous controllers of governmental affairs, which a wide and sad experience throughout the South has demonstrated to be the case, and if the supreme power in the State is unable to deny or abridge the right to vote on account of race, color or previous condition of servitude, it is both the right and duty of this supreme power, which is the substituted executive and

representative of the natural impulse of self-preservation, in the expressive language of the Supreme Court of Mississippi, within the limits of permissible action to sweep the field of expedients to obstruct the exercise of suffrage by such race.

Ratcliff v. Beale, 20 So. Rep., 865;
Williams v. Mississippi, 170 U. S., 222.

Doing this, the Constitution of Alabama applies, it is admitted, a test which will exclude with many whites, the mass of the negro population from the privilege of voting.

Certainly the Constitution of the United States cannot be construed into denying the right of a state to prohibit criminals and ignorant persons of bad character from electing its officers and legislators. This, however, must be done to hold the requirement under discussion to be objectionable.

It is insisted, however, that this law was passed with the intent to exclude the negro only, and the speeches of members of the Convention are referred to, to give color to the act.

The intent of a legislative act can only be gathered from its language. The Convention is responsible only for its collective acts embodied in laws, and not at all for the views of individual members.

Fletcher v. Peck, 6 Cranch, 87.
Dodge v. Wolsey, 18 How., 371.
United States v. Des Moines, etc., 142 U. S., 545.
1 Notes to U. S. Rep., 305.

It is again insisted that the administration of the law makes it unconstitutional as being leveled exclusively against the negro race.

The State Convention is responsible only for the administration authorized by the language of the Constitution itself. "The operation of the Constitution and laws is not limited by their language and effects to one race. They reach weak and vicious white men as well as weak and vicious black men, and whatever is sinister in their intention, if anything, can be prevented by both races by the exertion of that duty" common to every citizen, which builds up character, and strives to comprehend the duties of citizenship.—Williams v. Mississippi, 170 U. S., 222. If there be bad administration unauthorized by the law itself, it cannot be corrected by an impeachment of the law, but by an appeal to the courts for the redress of the particular wrong, which, being for the protection of a political right under a State law, would not be within the cognizance of a Court of Equity of the United States.—Green v. Mills, 69 Fed., 852, and authorities there cited.

The bad administration cannot, as in the case of Yick Wo v. Hopkins, 118 U. S., 356, be traced to the law and thus involve its overthrow. In that case there was by the objectionable ordinance, an absolute and unqualified discretion "without reason and without responsibility" vested in the supervisors, to grant or withhold a license to conduct the particular business, while here the provisions of the Constitution confer a power to be judicially exercised, as to the qualifications as to character and capacity of the applicant upon a consideration of all the circumstances of each case, subject to an appeal to the courts. The doctrine of that case, therefore, sustains, rather than defeats the constitutional provisions in question; for the ordinance in 118 U. S., *supra*, was held to be void "on its face," because it authorized a vicious administration, while here the language cannot be tortured into any warrant for conduct against

constitutional rights.—Williams v. Mississippi, 170 U. S., 223–4.

When bad administration is unwarranted by any fair interpretation of the language of the constitutional provision which is impeached, the objection to the law itself is untenable, and whatever wrong may be perpetrated must be remedied without calling in question the right of the supreme power of the State to pass laws which in themselves are not obnoxious to the negations of the Federal Constitution.

But it is insisted that the provision "is too general and really describes no qualifications, but simply invests the registrars with unlimited and arbitrary power."

This, however, is without foundation. Good character is a collective fact founded on behavior and is constantly in issue in criminal cases, and proof of it is a prerequisite to naturalization by foreigners. The provision in question is substantially a copy of the statute of the United States, regulating the qualifications of foreigners who may be naturalized.—Rev. Stat., § 2165.

We have already seen that there is no "arbitrary power" as in the case of Yick Wo v. Hopkins, 118 U. S., 356, but a judicial investigation and determination upon the circumstances of each particular case.

It is next insisted that the permanent plan of registration shown in section 181, which provides for a property or educational qualification, is unconstitutional because it provides that no person shall become qualified unless his place of residence shall remain unchanged and because it is made unconstitutional and void by the manner of the administration of the temporary plan.

As to the objection to the residence feature, it is suffi-

cient to say that it is no abridgment or denial of the right to vote, founded on race, color or previous condition of servitude, and, therefore, though it may be open to criticism in other respects, is beyond the reach of this case. And in reference to the alleged unconstitutionality arising from the bad administration of the temporary plan, we have seen that such administration could not affect the temporary plan itself, and *a fortiori* could not affect a distinct and independent clause relating exclusively to a period subsequent to the filing of the bill and the grievances complained of.

II.

A Court of Equity has no jurisdiction of the subject matter involved in this case.

The object of this suit is to restrain the operations of the State government for the assertion and vindication of a political right to be an elector. This is not within the province of equity jurisprudence which, as is said by Chief Justice Fuller in Green v. Mills, 69 Fed., 852, "It is well settled is conversant only with matters of property and the maintenance of civil rights. The court has no jurisdiction in matters of a political nature, nor to interfere with the duties of any department, unless under special circumstances, and when necessary to the protection of rights of property. Neither the legislative nor the executive department, said Chief Justice Chase in Mississippi v. Johnson, (4 Wall., 475) "can be restrained in its action by the judicial department though the acts of both, when performed, were in proper cases, subject to its cognizance." "The office and jurisdiction of a Court of Equity," said Mr. Justice Gray, in *re* Sawyer (124 U. S., 200), "unless enlarged by express statute, are limited to the protection of rights of prop-

erty." To assume jurisdiction to control the exercise of political powers, or to protect the purely political rights of individuals, would be to invade the domain of the other departments of government or the counts of common law."

Green v. Mills, 69 Fed., 852, and authorities there cited.

The case of Fletcher v. Tuttle, 151 Ill., 41; 37 N. E., 683, contains a full discussion of this question and defines political and civil rights. The court says: "As defined by Anderson, a civil right is "a right accorded to every member of a district, community or nation," while a political right is a "right exercisable in the administration of government." Says Bouvier: "Political rights consist in the power to participate, directly or indirectly, in the establishment or management of the government. These political rights are fixed by the Constitution. Every citizen has the right of voting for public officers, and of being elected. These are political rights which the humblest citizen possesses. Civil rights are those which have no relation to the establishment, support and management of the government. They consist in the power of acquiring and enjoying property, or exercising the paternal and marital powers and the like. It will be observed that every one, unless deprived of them by sentence of civil death, is in the enjoyment of the civil rights, which is not the case with political rights, for an alien, for example, has no political right, although in the full enjoyment of the civil rights."

It is plain that the right to be admitted to registration as an elector, which is sought to be enforced in this case, is purely political and therefore beyond the jurisdiction of a court of equity.

If there is such a right in any particular case which is denied, it is supposed that the remedies at law are ample for redress, and, certainly, it is wholly beyond the province of a court of equity by its decrees to interfere with the ordinary operations of government as is here proposed.

It is therefore unnecessary to further follow the particulars of the bill in this case calling in question the validity of the Constitution of Alabama.

III.

In the next place the appeal should be dismissed because it is impossible for the appellate court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief.

The defendants below have long since ceased to be officers (Record, p. 3), the events which the bill sought to prevent have all transpired, and the relief prayed, viz: that defendants be enjoined from carrying out and enforcing the provisions of sections 180, 183, 184 and 186 of Article 8 of the Constitution, and from making, using or filing with the election officers any registration books not containing the name of orator, and that they be restrained from withholding from orator and others of his race who applied for registration prior to August first, 1902, certificates of registration, and from otherwise doing or performing any act in the premises which in effect will deprive orator and his race of the right to vote in the election to take place in November, 1902, (see prayer of bill, Record 14) it is impossible for the court to grant, even if the bill was well filed in a proper case in the first instance.

The similar case of Mills v. Green, 159 U. S., 651, is directly in point and reviews the authorities bearing on it. In that case the appeal was dismissed and it seems that such should be the order in the case at bar.

Atty. for Appelees.