Supreme Court of the United States.

No. 493.—October Term, 1902.

Jackson W. Giles, Appellant,
vs.
E. Jeff Harris, William A. Gunter, Jr., and Charles B. Teasley, Board of Registrars of Montgomery County, Alabama.

Appeal from the Circuit Court of the United States for the Middle District of Alabama.

[April 27, 1903.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a bill in equity brought by a colored man, on behalf of himself "and on behalf of more than five thousand negroes, citizens of the county of Montgomery, Alabama, similarly situated and circumstanced as himself," against the board of registrars of that county. The prayer of the bill is in substance that the defendants may be required to enroll upon the voting lists the name of the plaintiff and of all other qualified members of his race who applied for registration before August 1, 1902, and were refused, and that certain sections of the constitution of Alabama, viz., sections 180, 181, 183, 184, 185, 186, 187 and 188 of article 8, may be declared contrary to the Fourteenth and Fifteenth Amendments of the Constitution of the United States, and void.

The allegations of the bill may be summed up as follows. The plaintiff is subject to none of the disqualifications set forth in the constitution of Alabama and is entitled to vote—entitled, as the bill plainly means, under the constitution as it is. He applied in March, 1902, for registration as a voter, and was refused arbitrarily on the ground of his color, together with large numbers of other duly qualified negroes, while all white men were registered. The same thing was done all over the State. Under section 187 of article 8 of the Alabama constitution persons registered before January 1, 1903, remain electors for life unless they become disqualified by certain crimes, &c., while after that date severer tests come into play which would exclude, perhaps, a large part of the black race. Therefore, by the refusal, the plaintiff and the other negroes excluded were deprived not only of their vote at an election which has taken place since the bill was filed, but of the permanent advantage incident to registration before 1903. The white men generally are registered for good under the easy test and the black men are likely to be kept out in the future as in the past. This refusal to register the blacks was part of a gen-

eral scheme to disfranchise them, to which the defendants and the State itself, according to the bill, were parties. The defendants accepted their office for the purpose of carrying out the scheme. The part taken by the State, that is, by the white population which framed the constitution, consisted in shaping that instrument so as to give opportunity and effect to the wholesale fraud which has been practised.

The bill sets forth the material sections of the State constitution, the general plan of which, leaving out details, is as follows: By § 178 of Article 8, to entitle a person to vote he must have resided in the State at least two years, in the county one year and in the precinct or ward three months, immediately preceding the election, have paid his poll taxes and have been duly registered as an elector. By § 182, idiots, insane persons and those convicted of certain crimes are disqualified. Subject to the foregoing, by § 180, before 1903 the following male citizens of the State, who are citizens of the United States, were entitled to register, viz: First. All who had served honorably in the enumerated wars of the United States, including those on either side in the "war between the States." Second. All lawful descendants of persons who served honorably in the enumerated wars or in the war of the Revolution. Third. "All persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government." As we have said, according to the allegations of the bill this part of the constitution, as practically administered and as intended to be administered, let in all whites and kept out a large part, if not all, of the blacks, and those who were let in retained their right to vote after 1903, when tests might be too severe for many of the whites as well as the blacks went into effect. By § 181, after January 1, 1903, only the following persons are entitled to register: First. Those who can read and write any article of the Constitution of the United States in the English language, and who either are physically unable to work or have been regularly engaged in some lawful business for the greater part of the last twelve months, and those who are unable to read and write solely because physically disabled. Second. Owners or husbands of owners of forty acres of land in the State, upon which they reside, and owners or husbands of owners of real or personal estate in the State assessed for taxation at three hundred dollars or more, if the taxes have been paid unless under contest. By § 183, only persons qualified as electors can take part in any method of party action. By § 184, persons not registered are disqualified from voting. By § 185, an elector whose vote is challenged shall be required to swear that the matter of the challenge is untrue before his vote shall be received. By § 186, the legislature is to provide for registration after January 1, 1903, the qualifications and oath of the registrars are prescribed, the duties of registrars before that date are laid down, and an appeal is given to the county court and Supreme Court if

registration is denied. There are further executive details in § 187, together with the above mentioned continuance of the effect of registration before January 1, 1903. By § 188, after the last mentioned date applicants for registration may be examined under oath as to where they have lived for the last five years, the names by which they have been known, and the names of their employers. This, in brief, is the system which the plaintiff asks to have declared void.

Perhaps it should be added to the foregoing statement that the bill was filed in September, 1902, and alleged the plaintiff's desire to vote at an election coming off in November. This election has gone by, so that it is impossible to give specific relief with regard to that. But we are not prepared to dismiss the bill or the appeal on that ground, because to be enabled to cast a vote in that election is not, as in *Mills* v. *Green*, 159 U. S. 651, 657, the whole object of the bill. It is not even the principal object of the relief sought by the plaintiff. The principal object of that is to obtain the permanent advantages of registration as of a date before 1903.

The certificate of the circuit judge raises the single question of the jurisdiction of the court. The plaintiff contends that this jurisdiction is given expressly by Rev. Stat. § 629, cl. 16, coupled with Rev. Stat. § 1979, which provides that every person who, under color of a State "statute, ordinance, regulation, custom or usage," "subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights, privileges or 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."

We assume, as was assumed in *Holt* v. *Indiana Manufacturing Co.*, 176 U. S. 68, 72, that § 1979 has not been repealed, and that jurisdiction to enforce its provisions has not been taken away by any later act. But it is suggested that the Circuit Court was right in its ruling that it had no jurisdiction as a court of the United States, because the bill did not aver threatened damage to an amount exceeding two thousand dollars. It is true that by the act of August 13, 1888, c. 866, § 1, 25 Stat. 433, 434, the Circuit Courts are given cognizance of suits of a civil nature, at common law or in equity, arising under the Constitution or laws of the United States, in which the matter in dispute exceeds the sum or value of two thousand dollars. We have recognized, too, that the deprivation of a man's political and social rights properly may be alleged to involve damage to that amount, capable of estimation in money. *Wiley* v. *Sinkler*, 179 U. S. 57; *Swafford* v. *Templeton*, 185 U. S. 487. But, assuming that the allegation should have been made in a case like this, the objection to its omission was not raised in the Circuit Court, and as it could have been remedied by amendment, we think it unavailing. The certificate was made *alio intuitu*. There is no pecuniary limit on appeals to this court

under section 5 of the act of 1891, c. 517; 26 Stat. 826, 828, *The Paquete Habana*, 175 U. S. 677, 683, and we do not feel called upon to send the case back to the Circuit Court in order that it might permit the amendment. In *Mills* v. *Green*, 159 U. S. 651; *S. C.*, 69 Fed. Rep. 852, no notice was taken of the absence of an allegation of value in a case like this.

We assume further, for the purposes of decision, that § 1979 extends to a deprivation of rights under color of a State constitution, although it might be argued with some force that the enumeration of "statute, ordinance, regulation, custom or usage," purposely is confined to inferior sources of law. On these assumptions we are not prepared to say that an action at law could not be maintained on the facts alleged in the bill. Therefore we are not prepared to say that the decree should be affirmed on the ground that the subject-matter is wholly beyond the jurisdiction of the Circuit Court. *Smith* v. *McKay*, 161 U. S. 355, 358, 359.

Although the certificate relates only to the jurisdiction of that court as a court of the United States, yet, as the ground of the bill is that the constitution of Alabama is in contravention of the Constitution of the United States, the appeal opens the whole case under the act of 1891, c. 517, § 5, (26 Stat. 827.) The plaintiff had the right to appeal directly to this court. The certificate was unnecessary to found the jurisdiction of this court, and could not narrow it. As the case properly is here we proceed to consider the substance of the complaint.

It seems to us impossible to grant the equitable relief which is asked. It will be observed in the first place that the language of § 1979 does not extend the sphere of equitable jurisdiction in respect of what shall be held an appropriate subject matter for that kind of relief. The words are "shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." They allow a suit in equity only when that is the proper proceeding for redress, and they refer to existing standards to determine what is a proper proceeding. The traditional limits of proceedings in equity have not embraced a remedy for political wrongs. *Green* v. *Mills*, 69 Fed. Rep. 852. But we cannot forget that we are dealing with a new and extraordinary situation, and we are unwilling to stop short of the final considerations which seem to us to dispose of the case.

The difficulties which we cannot overcome are two, and the first is this: The plaintiff alleges that the whole registration scheme of the Alabama constitution is a fraud upon the Constitution of the United States, and asks us to declare it void. But of course he could not maintain a bill for a mere declaration in the air. He does not try to do so, but asks to be registered as a party qualified under the void instrument. If then we accept the conclusion which it is the chief purpose of the bill to maintain,

how can we make the Court a party to the unlawful scheme by accepting it and adding another voter to its fraudulent lists? If a white man came here on the same general allegations, admitting his sympathy with the plan, but alleging some special prejudice that had kept him off the list, we hardly should think it necessary to meet him with a reasoned answer. But the relief cannot be varied because we think that in the future the particular plaintiff is likely to try to overthrow the scheme. If we accept the plaintiff's allegations for the purposes of his case, he cannot complain. We must accept or reject them. It is impossible simply to shut our eyes, put the plaintiff on the lists, be they honest or fraudulent, and leave the determination of the fundamental question for the future. If we have an opinion that the bill is right on its face, or if we are undecided, we are not at liberty to assume it to be wrong for the purposes of decision. It seems to us that unless we are prepared to say that it is wrong, that all its principal allegations are immaterial and that the registration plan of the Alabama constitution is valid, we cannot order the plaintiff's name to be registered. It is not an answer to say that if all the blacks who are qualified according to the letter of the instrument were registered, the fraud would be cured. In the first place, there is no probability that any way now is open by which more than a few could be registered, but if all could be the difficulty would not be overcome. If the sections of the constitution concerning registration were illegal in their inception, it would be a new doctrine in constitutional law that the original invalidity could be cured by an administration which defeated their intent. We express no opinion as to the alleged fact of their unconstitutionality beyond saying that we are not willing to assume that they are valid, in the face of the allegations and main object of the bill, for the purpose of granting the relief which it was necessary to pray in order that that object should be secured.

The other difficulty is of a different sort, and strikingly reinforces the argument that equity cannot undertake now, any more than it has in the past, to enforce political rights, and also the suggestion that State constitutions were not left unmentioned in § 1979 by accident. In determining whether a court of equity can take jurisdiction, one of the first questions is what it can do to enforce any order that it may make. This is alleged to be the conspiracy of a State, although the State is not and could not be made a party to the bill. *Hans* v. *Louisiana*, 134 U. S. 1. The Circuit Court has no constitutional power to control its action by any direct means. And if we leave the State out of consideration, the court has as little practical power to deal with the people of the State in a body. The bill imports that the great mass of the white population intends to keep the blacks from voting. To meet such an intent something more than ordering the plaintiff's name to be inscribed upon the lists of 1902 will be needed. If

the conspiracy and the intent exist, a name on a piece of paper will not defeat them. Unless we are prepared to supervise the voting in that State by officers of the court, it seems to us that all that the plaintiff could get from equity would be an empty form. Apart from damages to the individual, relief from a great political wrong, if done, as alleged, by the people of a State and the State itself, must be given by them or by the legislative and political department of the government of the United States.

Decree affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.