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Filed Mar. 7, 1893.

IN ERROR TO THE

# Supreme Court of the United States

FROM THE

# Supreme Court of Mississippi.

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## HENRY WILLIAMS

vs.

## THE STATE OF MISSISSIPPI.

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**BRIEF OF PLAINTIFF IN ERROR.**

CORNELIUS J. JONES,
*Attorney for Plaintiff in Error.*

HAYWORTH PUBLISHING HOUSE, 518 9TH ST. N. W. WASH. D. C.

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### STATEMENT OF FACTS.

At June term 1896 of the Circuit Court of Washington County, Mississippi, the accused was indicted by a grand jury, composed entirely of white men, upon the charge of murder. He filed a motion to quash the indictment when arraigned for plea, (See Rec. p. 2.) This motion was overruled and exception reserved, (See Rec. p. 9). Whereupon accused filed his petition for removal of the trial to the Federal District Court (See Rec. p. 9); this petition being overruled exception was reserved; (See Rec. p. 14 and 15), also special bill of exceptions. The accused was tried under said indictment before a petit jury composed entirely of white men, and convicted, whereupon he moved for a new trial, (Rec. p. 37). This motion was denied and excepted to (See Rec. p. 38). The trial court then pronounced the death penalty, (Rec. p. 36 and 37). Due course of appeal to the State Supreme Court was taken, and all the exceptions reserved were assigned thereto as error. On the 26th day of October, 1896, the

Supreme Court rendered a decision affirming the judgment, (p. 39 of Rec.) And thereupon pronounced judgment for execution, (p. 44 of Rec.) Whereupon accused prayed grant of the writ of error (See Rec. p, 45,) and hence the case is here for ultimate review.

## ASSIGNMENTS OF ERROR.

1. The trial court erred in denying motion to quash the indictment, and petition for removal.

2. The trial court erred in denying motion for new trial, and pronouncing death penalty under the verdict.

3. The Supreme Court erred in affirming the judgment of the trial court.

## AUTHORITIES CITED.

White vs. Texas, 7 Wall.
16 Wall. 67.
50 Con. 133. 45 Am. Rep. 236.
Neal vs. Delaware 103 U. S. 370.
16 Pet. 536, 13 Wall 646.
1st Wood U. S. 463, and particularly on page 471.
26 Ark. Penn. vs Tillison p. 576 and further page 586.
Cooley's Const. Sim. 6th Ed. p. 44.
7 Wall. 700. 109 U. S. 3.
118 U. S. 136. Yick Woo vs. Hopkins.
20th So. Rep. p. 865.

## ARGUMENT.

The Court will observe that there are several material propositions advanced by the plaintiff in error in this case. These propositions are urged, both in the motion to quash the indictment and the petition for removal. The first, is the criticism offered with respect to the Constitution of 1890, and the statutes regulating the suffrage provisions thereof, in this: That the present Constitution by its terms, materially changed and altered the qualifications for electors, as prescribed by the Constitution of 1869. That the present organic law ordained that there should be a registration of electors preparatory to an election to be held throughout the state in November, 1891, for members of the state legislature, and general county officers of the several counties. That at this election, by virtue of the enforcement of the recent Con-

stitution, especially its suffrage provisions, sections 240, 241, 242, 243, 244, such enforcement of said laws abridged and denied suffrage to 190,000 citizens of the United States, who had exercised suffrage under the requirements of the Constitution of 1869. That the legislature which was elected at the election of 1891, at which this 190,000 voters were denied suffrage by reason of enforcement of these recent organic provisions, assembled in 1892, and enacted the statutory provisions under the organic provisions and in enforcement thereof.

That by the enforcement of these provisions, the negro citizens of the State to the number of 190,000 were by the administrative officers of the several counties denied the right to register and become qualified voters; and that in the county of Washington, the enforcement of these laws, organic and statute, entirely excluded the plaintiff's race from the selection of the grand jury which presented the indictment upon which he was about to be, and ultimately was convicted. It is further presented by the motion to quash, that under the laws of the State, one is required to be a registered voter, before he is eligible to jury service, and a denial of registration to the negroes of the State, and of the county of Washington, by virtue of the terms, and enforcement thereof by the administrative officers of the several counties of the State, and particularly Washington county, discriminated against the race of the accused, who is a negro; and that these several sections of the Constitution of 1890, and the statutes enacted thereunder, were so enacted by the framers of the Constitution, with the intent to disfranchise the negro voters of the State, on account of their race, color, and previous condition of servitude, which conditions being that of slavery, to which the negro race of the State and their ancestors were formerly subjected in the State of Mississippi.

Now the contention here is, that the 14th amendment to the Federal Constitution provides that when any state shall abridge or deny the right to vote to male citizens of the United States over 21 years of age, not having participated in rebellion against the Federal Government, nor convicted of other crimes, at elections in the State, at which presidential electors, members of Congress, of the State Legislature, and Executive or Judicial officers are to be voted for, such State shall have its representative in Congress reduced, in

proportion which such member so denied this right, at any elections mentioned, bear to the whole number of inhabitants in such State. The further contention here is, that as Mississippi enacted the present constitution, and enforced at the legislative election of 1891, and that at this election 190,000 citizens of the United States, who had voted under the suffrage requirements of the Constitution of 1869, and that the legislature so elected enacted the Statutes of 1892, prescribing the method of registration of electors, and the requirements and mode of selection of jurors, and these together with the Constitutional restrictions mentioned, resulted in the entire exclusion of the race of the accused from the body of voters of the State and thereby from the grand jury of the county which indicted him, and the petit jury which was summoned to try him under the indictment, and that as the State of Mississippi has not had its representative in Congress reduced, in proportion which said 190,000 voters so denied suffrage at this legislative election of 1891, bear to the whole number of inhabitants of the State; and the enforcement of these laws without complying with the stipulated condition as prescribed by the Federal Constitution in consequence thereof is illegal, void and in contraventive of the 14th Amendment of the Federal Constitution. The next proposition is, that as it is charged and proven, that these laws were enacted by the framers thereof, with the purpose and intent to discriminate against the negro voters of the State because of their race, color, and previous condition of servitude, and their enforcement has so resulted, the laws are thereby void and obnoxious to the Federal Constitution; and the accused being tried thereby, and his race improperly excluded from the jury which presented him, as well as the jury which convicted him, he was thereby denied that equal protection of the laws of the State to which he was entitled by the express terms of the Federal Constitution.

The further proposition is that the Constitution of 1890, by its express terms, provide for a change of the suffrage requirements from those prescribed by the Constitution of 1869; and that the enforcement of the present Constitution, results in the denial of suffrage to 190,000 citizens of the United States, who were eligible to elective franchise, under the Constitution of 1869; and that this change of the suffrage requirements,

with the result as proven, is in violation of the Act of Congress approved February 20, 1870, which act was for the restoration of the State of Mississippi to represention in the Congress of the United States. This act provided for the readmission of Mississippi to representation in Congress, upon the fundamental condition, that the suffrage requirements as stipulated in the Constitution of 1869, which was then approved by Congress, should never be altered or changed so as to deprive anyone of the right to vote at any election, who would be eligible to vote at such election under the Constitution then recognized; and it is confidently advanced, that in the face of this Federal Statute, the State could not enforce the suffrage provisions of the Constitution of 1890 for the reasons stated; and as the accused was indicted and tried by the grand and petit jury of Washington county, under the enforcement of these laws, and such enforcement, resulted in the entire exclusion of members of his race therefrom, he was denied equal protection of the laws, and was discriminated against, because of his race, color, and previous condition of servitude. The petition for removal contained materially the same charges alleged in the motion to quash, and will doubtless be considered together, by the court.

Section 241 of Constitution of 1890 prescribes the qualifications for electors; that residence in the State for two years, one year in the precinct of the applicant must by effected; that he is 21 years or over of age, having paid all taxes legally due of him for 2 years prior to 1st day of February of the year he offers to vote. Not having been convicted of theft, arson, rape, receiving money or goods under false pretenses, bigamy, embezzlement.

Section 242 of the Constitution provides the mode of registration. That the legislature shall provide by law for registration of all persons entitled to vote at any election, and that all persons offering to register shall take the oath; that they are not disqualified for voting by reason of any of the crimes named in the Constitution of this State; that they will truly answer all questions propounded to them concerning their antecedents so far as they relate to the applicants right to vote, and also as to their residence before their citizenship in the district in which such application for registration is made. The court readily sees the scheme. If

the applicant swears, as he must do, that he is not disqualified by reason of the crimes specified, and that he has effected the required residence, what right has he to answer all questions which may be propounded to him concerning his antecedents. Or what right has the applicant to be sworn to answer all questions as to his former residence? Sec. 244 of Constitution requires that the applicant for registration after January, 1892, shall be able to read any section of the Constitution, or he shall be able to understand the same (being any section of the organic law), or give a reasonable interpretation thereof. Now we submit that these provisions vests in the administrative officers the full power, under section 242, to ask all sorts of vain impertinent questions, and it is with that officer to say whether the questions relate to the applicant's right to vote; this officer can reject whomsoever he choses, and register whomsoever he choses, for he is vested by the Constitution with that power. Under section 244, it is left with the administrative officer to determine whether the applicant reads, understands, or interprets the section of the Constitution designated. The officer is the sole judge of the examination of the applicant, and even though the applicant be qualified, it is left with this officer to so determine; and the said officer can reject him registration.

The charge that the franchise provisions of the present Constitution were enacted, with the intent on part of the framers, that the enforcement thereof should obstruct the exercise of suffrage by the negro race, is a fact, placed beyond dispute. The fact has been judicially affirmed by the Supreme Court of Mississippi.

Southern Reporter, Sage 865, Ratliff Sheriff vs. Beal, 74 M—p.

With reference to this opinion: We have a Constitutional provision fixing the poll tax per capita for males under 60 years of age and over 21 years at $2.00; but compulsory process to effect payment thereof is prohibited. The legislature at the 1892 session enacted a section of the code of 1892 declaring all property of a delinquent tax payer exempt from seizure and sale for such taxes. In the winter of 1896–7, the Attorney General of Mississippi rendered an opinion declaring, that for delinquent poll tax any and all property of the delinquent

was subject to seizure and sale for the payment thereof.

In order to test the correctness of this opinion, the sheriff of Hinds County seized certain personal property belonging to one Beal, a delinquent poll-tax payer, (and advertised the same for sale).

The attorneys for Beal sued out the writ of injunction, which was granted by the very able Chancellor for the Hinds County Chancery Court. The writ was granted upon the grounds, that the payment of poll tax was intended by the framers of the present Constitution to be left optional with the delinquent as to whether he paid it or not; that all property should be exempt from seizure for such delinquent tax.

The Attorney-General represented the sheriff, who in time moved the dissolution of the writ. At the hearing, the Chanlor denied the motion to dissolve, and perpetuated the restraint. The Sheriff appealed from the decree perpetuating the restraint, and thus the case was carried to the State Supreme Court. The court was required to examine into the whole purpose, and intent of the members of the Constitutional Convention, and their purpose for enacting the provisions touching the question of franchise. The court deliberated quite awhile, and evidently made a most exhaustive research of the whole history of that convention, gathered from the speeches, debates, and various proceedings upon the journal; and the conclusion reached by the court, based upon information, obtained from the most reliable sources, is announced in the following language: "Within the field of permissable action under the limitations imposed by the Federal Constitution, the convention swept the field of expedients, to obstruct the exercise of suffrage by the negro race." Going further the court said, speaking of the negro race:

"By reason of its previous condition of servitude and dependencies, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character, which clearly distinguished it as a race from the whites. A patient, docile people; but careless, landless, migratory within narrow limits, without forethought; and its criminal members given to furtive offenses, rather than the robust crimes of the whites. Restrained by the Federal Constitution from discriminating against the *negro race*, the convention discriminates against its characteristics, and the offenses to which its

criminal members are prone." That honorable court clearly puts at rest for all time to come any question as to the purpose of the framers of the present Constitution of Mississippi. It is seen that the court alleged a reason.

Why the convention discriminated against the negro race, because it was the negro race, which is, that its previous condition of servitude caused it to acquire, or accentuate certain peculiarities of habit, of temperament, and of character; and, politically, these characteristics produce the distinguishing lines between it and the white race.

Further, the court reasons: That because of the condition arising from the previous servitude of the negro race, a result is obtained which the court saw fit to denominate as "a patient, docile, people, but careless, landless, migratory, within narrow limits, without forethought." The court says, that the convention adopted the constitution to discriminate against the negro race in the exercise of suffrage, but prohibited by the Federal Constitution; the intention does not and dare not appear upon the face of the law, the same end was accomplished by discriminating against the characteristics of the negro race, as the court says. We need not take up the valuable time of this honorable court to cite authorities, that that construction given the State statute or constitution is binding on even this court; the Mississippi Supreme Court has said plainly, the object which the convention had in enacting the franchise provisions of the constitution; the plaintiff alleges that that object has been accomplished and thereby his race was and is discriminated against in the exercise of suffrage. And the fact that one must be eligible to suffrage before he can be selected as a juror, and the negro race excluded entirely from the exercise of suffrage, works that denial, and discrimination prohibited by the express terms of the Federal Constitution. This court declared in any number of cases just the office of the Fourteenth Amendment, and what, and to whom its protecting provisions were enacted to protect.

16 Wall., 67.
50 Con., 133; 45 Am. Rep., 236.
Neal vs. Delaware, 103 U. S., 370; 16 Pet., 536.

We now ask attention to the opinion rendered in this case

by the State Supreme Court of Mississippi, page 39 record.

It will be seen that the opinion is quite exhaustive; but it will be observed that that honorable court flatly declined to pass upon the vital points tendered in the motion to quash, and for removal. It can not be said that the court did not recognize the fact that the Federal questions were seriously urged by the accused. The court keenly observed the purpose of the motion to quash the indictment, as shown from use of the following language: "The purpose of the motion seems to have been primarily to assail the validity of all the laws passed since the adoption of our present Constitution, and of the Constitution itself, on the ground that said Constitution and laws are obnoxious to the 14 Amendments to the Constitution of the United States."

We contend that if that were the purpose of the motion, and the court so clearly recognized it as such, the accused was entitled to a declaration from that court, upon the soundness of the charge—yet the court refused to say—and dismissed the consideration of the motion and petition for removal by use of the following language, page 40, Rec.:

"At this point in the investigation, it is sufficient to say, that we have no power to investigate or decide upon the private individual purposes of those who framed the Constitution, the political or social complexion of the body of the Convention, and have no concern with the representation of the State in Congress." This is the terse dismissal of a question which lies at the bottom of the privileges declared by the amendment, and invoked by a poor citizen for whose protection these very provisions were enacted by the people; and even though they are swept from his grasp by pernicious state agencies, he addresses his grievances to the court in a formal manner. Yet the highest court in the State, declares it can not decide the question; while according to the highest authority, it was the duty of the court to pass upon the Constitutional question assailed by the accused. And it was a bold discrimination against the accused, by that high court itself, to so withhold its decision upon such vital questions affecting the life of the accused.

Cooley's Const. lim. 6th Ed., page 44.

"The power of the people to amend or revise their Con-

stitutions is limited by the Constitution of the United States in the following particulars:

1st. It must not abolish a republican form of government, since such act would be revoluntionary in its character, and would call for and demand direct intervention on part of the Government of the United States.

2nd. It must not provide for titles of nobility or assume to violate the obligations of any contract, or attaint persons of crimes, or provide *ex post facto* laws for the punishment of acts by the courts which were innocent when committed, or contain any other provision, which *in effect*, amount to the exercise of any power, *expressly* or *impliedly* prohibited to the States by the Constitution of the Union. For while such provisions would not call for the direct and forcible intervention of the Government of the Union, it would be the duty of the courts, both State and National, to refuse to enforce them and to declare them altogether invalid, as much when enacted by the people in their primary capacity, as makers of the fundamental law, as when enacted in form of statutes through the delegated power of their legislatures. Subject to the foregoing principles and limitations, each State must judge for itself what provisions shall be inserted in its Constitution; how the powers of government shall be apportioned in order to their proper exercise; what protection shall be thrown around the person and property of the citizen; and to what extent private rights shall be required to yield to the general good." 7 Wall., 700; Barry, 15 Wall., 610; 30 Am. Law Review, 894.

At the bottom of page 40, of the Record, in the opinion of the State Supreme Court, it says: "We have searched the record in vain to discover any averment that the officers of the State charged with the duty of selecting jurors, in any manner, exercised the power devolved upon them to the prejudice of the appellant by excluding from the jury lists members of the race to which he belongs." This court will see that the accused states in his motion to quash and petition for removal, that the enforcement of these laws obstructs his race from registration; and that of itself prevents any of the negroes from being on the lists of jurors; for they must be registered first before they are eligible to jury service. The first paragraph on page 12, of the Record, shows distinctly that the averment was made in the petition for removal, both against

the laws and the acts of the officers in enforcement thereof. For if we had alleged that the negroes were excluded from the regular jury lists, that would have committed us to the proposition that we were duly registered, and of itself would have estopped us in the averment that the negroes were denied registration upon the ground of their race and color; while our principal reliance is in the charge, that the scheme of the framers of the constitution was to obstruct the suffrage of the negroes in the State by working their denial of registration and thus effect the denial to vote, as the former is a prerequisite to the latter, as a voter, as well as to be a juror.

It will be seen that the State Supreme Court sustained the trial court in this case, upon the pleadings in the case of Gibson vs. State, 162 U. S.

The accused in the Gibson case did not assail the validity of the State laws. In the case at bar, the State Court itself recognizes that the motion assails the validity of the State laws upon grounds there alleged; and the court refused to face the responsibility of deciding the question, but sought another State of case not analogous to the one at issue, and affirmed the trial court.

20 So. Rep., page 865.

This opinion of the Mississippi Supreme Court has judicially declared that the present Constitution and statutes, as enforced, have changed the franchise provisions of the Constitution of 1869, and that that change was effected for the purpose of "obstructing the exercise of suffrage by the negro race." It is indisputably proven that the desired result has been accomplished, and 190,000 negroes of the State, citizens of the United States, have been thus stricken from the body of suffrage in the State. Then when this court takes judicial notice that the act of Congress, approved February 20, 1870, by which Mississippi was readmitted to representation in Congress, expressly prohibited the State from changing the suffrage qualifications of the Constitution of 1869, which was then approved by Congress, and that that act is still in force; was in force at the time the present Constitution and laws were adopted, and still unrepealed; and that it is by

virtue of the enforcement of these recent laws the accused was denied equal justice, and discriminated against by the exclusion of his race from the jury which indicted him, and the jury which convicted him, all on account of the race and color and previous condition of servitude thereof, we confidently insist that the violation of the Federal Constitution and laws by the State is so very pronounced that this court must so declare. It is true, the State asserts, in 69 Miss., and page 83 of the Convention Journal, that Congress had no right to have enacted such a law; that Congress had no such jurisdiction nor right to attempt to legislate on that subject; to prove the authority Congress had in the premises.

This court has repeatedly held that Congress alone has jurisdiction over the subject of readmission of the rebel States, to representation in Congress, and held that the acts of Congress was the supreme law in the premises.

7 Wall., White vs. Texas.

1st Wood, U. S. 463. Marsh *et al* vs. Baroughs *et al*—and on 471, the Court says:

"They contend that the Constitution of 1868 has all the force and effect of an act of Congress, and, that therefore is not obnoxious to that clause of the Constitution of the United States which declares that no State shall pass any law impairing the obligation of the contracts; that the Constitution of 1868, has the force and effect of an act of Congress; they insist, because it was adopted under the reconstruction acts under military supervision and not by the free consent and express will of the people of Georgia, and because, after its adoption by the convention, it was revised by Congress, and certain parts were struck out, or, at least Congress made it a condition of admission that they should be struck off and that the legislature should ratify the 14th Amendment to the Constitution of the United States, and that this was in effect, an approval and adoption by Congress of the parts not excepted to."

"I can not concur in this view. What was the precise status of Georgia after the war, and before its readmission into the Union; with all the normal relations of a State, will, perhaps, never be defined to the satisfaction of all. But that

some sort of rehabilitation was necessary in order that Georgia might occupy her old position in the Union; that the adoption of a new Constitution was one of the necessary things to be done, and that an act of the national authority, admitting Georgia to the representation and status of a State in harmonious relations with the Union, was also a necessary thing to be done, seem to be propositions that can hardly admit of doubt. This conceded, how can it be said that the adoption of the Constitution of 1868 was not the act of the people of Georgia? The courts can not do otherwise than regard it as such. This is a political question in which the courts must follow the action of the political department of the Government. To adopt any other course would be to introduce the greatest confusion."

26 Ark. Penn. *vs.* Tillison.

Quoted from page 576. "It now becomes a pertinent inquiry: Has Congress decided upon the validity of the State government attempted to be established in this State by members of the Constitutional Convention of 1861? If it has, then we are bound by our oaths and the Constitution of the United States, as construed by the Supreme Court, to recognize the action of Congress as final. By the provisions of the act of Congress passed March 2nd, 1867, to provide for the more efficient government of the rebel States, it is declared that no legal State government exists in the State of Arkansas. At the time of this declaration there was a kind of provisional government existing in the State, subject to and under the control of the military power of the United States Government. The government that had been in existence previous to the establishment of the provisional government, disappeared like the morning dew before the rays of a genial sun."

"The mere introduction of Federal troops into the States of Ohio, Indiana or Illinois, made no change in the officers of those States' government; nor did the Governors and Judges of those States flee at the approach of the emblem of American liberty," etc. Page 584, 26 Ark. "The government inaugurated under the provisions of the constitution of 1864, was provisional, and Congress of the United States never

recognized it in any other light. It sprang into existence under the fostering care of the military arm of the Government of the United States, and but for its protection, the miasma of treason then floating in the political atmosphere, would have sent it to an early grave, instead of poisoning its life blood as it afterwards did. In 1867 Congress in looking over the States lately in rebellion found the provisional government in a languishing and dying condition: The miasma arising from the debris of the rebellion, had slowly but surely done its work. The legislative and judicial departments of the government were again filled by the same men, who less than six years before, had been instrumental in destroying the political existence of the State. Who, like so many Upas trees, were exuding into the atmosphere around the executive, a poison that was fast paralyzing all his efforts to make a loyal State of Arkansas. When Congress beheld this state of affairs, under that clause of the constitution requiring the United States to guarantee each State a republican form of government, it commenced the work of reconstruction." 63 N. Car., 140.

The record shows that the accused sufficiently proved every allegation in the motion to quash, and for removal. The trial court regarded the pleading as raising a *prima facia* case, and the State Supreme Court distinctly asserted that the proof by affidavits was ample, consistent with the law and practice in the State Courts; this is observed from the language of that court in its opinion, page 44 of Rec. "We have dealt with the case, upon the assumption that the facts set out in the motion are true. No objection was made in the court below because the proof was made by affidavits instead of by witnesses; and it is common practice in our courts, in the absence of objection, to hear affidavits on motions." Now we contend that if the facts alleged in the motion to quash, are true, which is admitted by the State Supreme Court, then this court is bound to assume that the facts are true; and we have it admitted that the present laws of the State, were enacted and enforced with the express intent to "obstruct the exercise of suffrage by the negro race." That by virtue of enforcement of these laws 190,000 colored electors, hitherto eligible to suffrage, were denied suffrage at the legislative election in the State held in November, 1891, and the rep-

resentation of the State in Congress was not, and is not reduced as provided in the 14th Amendment. It is also admitted to be true, that the present Constitution was enacted by the late convention with the intent to deny elective franchise to the colored race on account of race, color, and previous condition of servitude. Now we submit to the court that it makes no difference if the State Court did uphold the statutes pleaded in the motion, if the facts charged against the Constitution and statutes are true (which are admitted to be so by the State Supreme Court,) the enforcement of the terms thereof is a violation of the Federal Constitution, because the statutes so upheld were enacted under the void Constitution.

Yick Woo vs. Hopkins, 118 U. S. 136.

There was a certain municipal ordinance enacted by the authorities of the city of San Francisco, California, providing that all persons were prohibited from operating the laundry business within the city limits in frame buildings without grant of a permit from the Board of Supervisors. The Board of Supervisors was vested with a discretion in the matter of issuing such permit; and refused to grant any such permit to any of the China race, even though they complied with all the requirements necessary thereto; and for violation of this ordinance a certain penalty was prescribed. Yick Woo, a Chinaman, was arrested, tried, and convicted, and imprisoned for violating this ordinance. He appealed his case through the State courts regularly, and ultimately reached this court upon writ of error. This court held that the ordinance was in conflict with the provisions of the Federal Constitution, because it permitted by its terms, a discretion which could be used by the administrative authorities, to the discrimination of a class of persons, and the proof being that it was used to the discrimination of the China race; while the law did not disclose any obnoxious provisions upon its face. Yet the administration thereof, as permitted by its terms, could and had been applied to the end prohibited by the Federal Constitution, and therefore void.

Then when we prove, as here shown to be admitted by appellee, that the State laws have been administered with

more rigor upon the negro citizens of the United States within the jurisdiction of Mississippi than upon the white citizens, and that thereby 190,000 of the negro race heretofore eligible to and enjoying suffrage are denied suffrage; and that this discrimination is made against that race because of its race, color, and previous condition of servitude, we must insist that the end prohibited by the letter as well as spirit of the Federal Constitution has been effected. The defendant in error defiantly boasts of the fact that her laws appear fair upon the face thereof. This fact is shown from the language of the very able brief of the learned Attorney-General, pages 6–7 of brief, to wit:

"We respectfully submit, that upon close inspection of those provisions of the Constitution of Mississippi challenged by the plaintiff in error, nothing can be found, not a line or word, which in any manner whatever discriminates against any citizen because of his race, color, or previous condition; and the same can be as confidently asserted of those provisions of the code of Mississippi complained of by plaintiff in error."

Further, as seen on page 7 (brief), the learned counsel says: "There is nothing in either (meaning the organic or statute laws), which, because of race, color or previous condition, disqualifies any citizen of the State from voting at any election in the State, or from sitting on the juries, or from as fully enjoying every right, benefit, and privilege which any other citizen can," etc. This is what is said in praise of the State provisions by the able counsel as to the face of her laws: But the plaintiff has proven that the laws provide an unreasonable discretion to be vested in the registrar of each county, to be exercised whenever one applies for registration; that this discretion was provided in the organic law by the framers for the purpose and intent that the enforcement thereof by the registrar in each county of the State, would effect the obstruction of suffrage to the negro race; that the enforcement of this law as provided, though apparently fair upon its face; has resulted in the denial of suffrage, as intended by the framers, and that this result was reached by administration of the said laws by its agents, with more rigor upon the negro applicants for registration than the whites; and because of this enforcement of the laws the plaintiff challenges the validity thereof as being in contravention of the Federal Constitution;

because the apparently fair law provides upon its face and permits by its terms the discretion complained of as having been enacted for the purpose complained of; and this proposition relied upon by the plaintiff in error, is fully justified by the doctrine announced by this court in Yick Woo vs. Hopkins, sheriff, 118 U. S., where, among other things, the court declared: "Though the law itself be fair on its face, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

The court will bear in mind that from the language of the 14th Amendment the sovereign people meant to secure the whole people against the deprivation of the rights therein conferred; and doubtless had an eye to the possibility of a State enacting laws apparently fair upon the face thereof, yet permit from the terms thereof the denial of such privileges by the administration of such laws; for the amendment forbids, not only the enactment of discriminating laws, but the enforcement of any State law which will by such enforcement, work the deprivation prohibited. If this was not their purpose, why should any reference be made against the enforcement of any such laws, as well as the enactment thereof? Verily the people meant to secure these rights to the people, and threw around them every protection so as to meet every conceivable scheme on part of the States to deny them, by enacting laws fair upon the face thereof, yet so framed, that their enforcement will permit the evil prohibited by the people, as expressed in this amendment.

Yet in the face of this amendment, and the act of Congress approved February 20, 1870. Mississippi, in 1890, disputed the right Congress had to enact that law with the terms stated as a condition subsequent to be observed by her people; and boldly renounced any binding farce thereof. The accused had no other way open to him to envoke the protection guaranteed him except to formally challenge the validity of the laws under which he was about to be, and was tried and condemned to die. And as a result he asks this court to secure him in the right to be accorded a fair trial for the offense charged. This

branch of the general Government is the duly constituted agent of the people to execute their decree. The spirit therof as well as the letter. The principles invoked in this cause are as firm as our great government. This is no technicality, but an appeal to the judiciary of the country that the vindication of the Federal Constitution and laws should be most emphatic for its generosity and unswerving constancy.

CORNELIUS J. JONES,
*Attorney for Plaintiff in Error.*