No. 531.
Petition for Rehearing.

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IN THE

Supreme Court of the United States,

APPLICATION FOR REHEARING

IN THE CASE OF

HENRY WILLIAMS

No. 531. VS.

THE STATE OF MISSISSIPPI.

CORNELIUS J. JONES,
Attorney for Plaintiff.

HAYWORTH PUBLISHING HOUSE, WASHINGTON, D. C.

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Now comes the plaintiff in error in this cause and respectfully petitions the Court that the judgment of affirmance rendered by this Court be set aside, and a rehearing therein granted.

Your petitioner would state, that this honorable Court stated in the opinion rendered herein, (page 8 of the opinion, second paragraph) "nor is there any sufficient allegation of an evil and discriminating administration of them," (the laws page 6 of the opinion) the Court said: "The *only* allegation is by granting a discretion to the said officers as mentioned in the several sections of the Constitution, the use of which discretion can be and has been used by said officers in the said Washington County to the end here complained of, to wit: the abridgment of the elective franchise of the colored voters of Washington County; that such citizens are denied the right to be selected as jurors to serve in the Circuit and other courts of the county, and that this denial to them of the right to equal protection, and benefit of the laws of the State of Mississippi, is on account of their race, resulting from the

exercise of the discretion partial to the white citizens, is in accordance with, and the intent of the framers of the present Constitution of the State." And this charge being the only one considered by the Court, thus causing the Court to characterize the averments quoted, as wholly insufficient to charge the administrative officers with having exercised the discretion so invested in them, to the discrimination of the colored race. Plaintiff alleges, that if he is given a rehearing of this cause, he will be able to show the Court that the allegation mentioned in the opinion as the *only* allegation, though overlooked by the Court, is not the *only* allegation. But that he will show of Record, which the Court inadvertently overlooked, that the plaintiff's motion further charged, (26th line, page 5 of Record to line 34) that "it is the enforcement of all these laws, for the reasons aforesaid, that the defendant has been by this proceeding deprived of the immunity prescribed by the letter and spirit of the Federal Constitution, 14th Amendment thereof; and the enforcement of the State Constitution and Statutes aforesaid, and the discretion purposely provided therein to be exercised by certain officers therein mentioned, abridges the right of defendant, and the rights of 190,000 negroes of the State, citizens of the United States to vote." Petitioner will be able to establish the further averments in the motion (at line 31, of page 6 of Record, to line 35,) "that the said laws were so framed and enacted as complained of for the specific purpose of depriving the majority of citizens and electors of the State of the full free and impartial enjoyment of the right of elective franchise because of their previous condition of servitude," etc.

Petitioner will further show that the following further averment is of Record, (in petition for removal, line 30, page 10 of Record, to line 41,) "the use of which discretion can be, has been, and is being used by certain officers of the county and State to the end designed and intended by the makers of the said laws at the time of said enactment thereof, and as here complained of, to wit: abridgment of election franchise of the colored voters of the State and county aforesaid, thereby denying to the colored citizens of the State and county aforesaid, the opportunity of being impartially listed and se-

lected to serve as jurors in the Circuit and other courts of the county. That this denial to them of equal protection of the laws of the State of Mississippi is on account of their race and color, and the said discretion is not used with equal rigor against the white applicants for registration and voting, by the officers of the law." It will be shown of Record, (second line from bottom of page 11 to 6th line, page 12 of Record,) the further averment "that by the virtue of the exercise of such discretion as provided in the Constitution and Statutes aforesaid, which discretion is to be exercised by certain officers therein named, was purposely provided in the organic law, "that other than the use of said discretionary power by said officers, with the intent aforesaid, said colored citizens would satisfy the other requirements even of the new Constitution of 1890 and Statutes enacted thereunder." (Line 7, page 12 to line 10.) "The accused is by force of the laws and acts of the officers in the enforcement, thereof, deprived of that equal protection of the laws of the State to which he is entitled under the 14th Amendment to the Federal Constitution." The Record shows that in petition for removal plaintiff further averred; (page 13, line 43–46,) "that the enforcement of said laws in said manner, and for said purposes did result in abridgment of the right of suffrage to a majority of the voters of the State, to the number aforesaid, all being citizens of the United States," and further averred; "And relator cannot enforce his rights to a full, fair, legal trial in said State Courts." Petitioner states that as these further allegations are apparent upon the face of the record, that they will establish that degree of sufficiency which the Court held was wanting in the only allegation quoted in the opinion. Petitioner further states, that the State Courts considered the allegations of the pleadings touching Constitutionality of the State Constitution, and affirmatively held that according to the common practice in the State Courts, the averment and proof supporting the pleadings were considered ample, and dealt therewith upon the assumption that they were true. But the State Supreme Court held that it had no jurisdiction over the questions touching the Constitutional challenges of the accused, that is, it had no concern therewith. The

Court did not elect, between the Constitutional challenges and the charges, with respect to the Statutes as to the method of selecting jurors, and affirmed the case upon the construction of the State Statute upon such election, but the Court assigned a reason for not dealing with the former, being, that it (the Court) had no jurisdiction over the question presented. But the sufficiency and proof as to the averments were positively admitted by that Court, and the judgment of affirmance of this Court will be inconsistent with the practice of the State Courts and reverse that judgment, upon a matter which was never put in issue in the State Courts, but under the admitted local practice, the said matters were certified here as true by the highest Court in the State; and this Court will not reopen matters which are admitted by all parties below.

The Court has doubtless been misled, (possibly by the opinion of the State Supreme Court,) and decided this case upon another erroneous conception of a fact, (page 7 of opinion.) This Court stated that it gathered from plaintiff's motion that the election officers were vested with certain discretion in making up lists of jurors, and that this discretion can be, and has been exercised against the colored race; and that the State Supreme Court decided that jurors are not selected with reference to any lists furnished by such election officers. Relator avers that this Court is (honestly) in error as to such statement in the motion. The lists of jurors under the then existing law, was taken from the registration roll of the county by the Board of Supervisors; and certified to the circuit clerk of the county, who, by law, is the registrar of the county, and this officer is charged with the duty of preparing the jury box with the names so certified. Now as the law requires that these names should be taken from the registration book of voters, instead of from the registration roll, and the further fact that the managers of election should be the judges of qualifications of voters offering to vote, even though they are duly registered, the plaintiff stated that, as the law provided no method by which a list of such persons passed upon by the election managers were to be obtained, (the election managers being sole judge of qualifications of voters) the list

taken from the registration roll simply, was not the character of roll contemplated by the terms of the statute providing for selection of jurors. And this is quite a different light in which plaintiff's statement should be considered.

Relator calls attention to another misapprehension, which doubtless influenced the Court. The Court asserted in the opinion, that the duty of voluntary payment of taxes, would be one of the means of preventing the attainment of any sinister result by administration of the laws as alleged to have been intended. Petitioner avers that, that section of the Code of 1892, which makes payment of taxes a pre-requisite to registration as an elector, has been declared void by the State Supreme Court and by the just administration and, enforcement of the laws, tax payment shall not be exacted as a condition to registration. Plaintiff avers that the County registrar is the chief jury Commissioner of Washington County; and the record shows charges against all the administrative officers, and particularly the registrar who exercises the discretion vested in him to the discrimination of the negroes, and partiality to the white citizens: that is the white men where admitted registration, and made eligible to jury service, while the colored race were denied the same even though its members complied with the terms of the present Constitution and statutes all which will be found of record. Petitioner avers, that this application is not made for the purpose of hindrance or delay, but upon the fact that there were overlooked by the Court, certain material matters, a careful review of which must, in the light of the vast number of authorities conduct the court to a different judgement. Therefore relator prays that he may be heard by the Court, and allowed an opportunity to tender authorities which will show that judgement should be reversed,

Respectfully submitted,

CORNELIUS J. JONES,

Attorney for Plaintiff in error.

DISTRICT OF COLUMBIA,
WASHINGTON CITY.

This day personally appeared before me, the undersigned, acknowledging officer in and for said District and City, C. J. Jones, attorney for Henry Williams in the case No, 531, filed in Supreme Court of the United States, who being first duly sworn deposes and says that he prepared the forgoing petition for rehearing, and that the facts therein stated are true and correct as stated to the best of his information, knowledge and belief.

C. J. JONES,

Sworn to and subscribed this the 12th day of May, 1898.

EDWARD P. BURKET,
Notary Public.

[SEAL]