SUPREME COURT OF UNITED STATES

Nixon

Vs.

Herndon et al.

No. 117.

Argued and Submitted Jan. 4, 1927.

Decided March 7, 1927.

Messrs. Louis Marshall, of New York City, F. C.

Knollenberg, of El Paso, Tex., A. B. Spingarn, of New York City, R. J. Channell, of El Paso, Tex., Moorfield Storey, of Boston, Mass., and James A. Cobb, of Washington, D. C., for plaintiff in error.

Messrs. Claude Pollard and D. A. Simmons, both of Austin, Tex., for defendants in error.

[Argument of Counsel from pages 537-538 intentionally omitted]

Mr. Justice HOLMES delivered the opinion of the Court.

This is an action against the Judges of Elections for refusing to permit the plaintiff to vote at a primary election in Texas. It lays the damages at five thousand dollars. The petition alleges that the plaintiff is a negro, a citizen of the United States and of Texas and a resident of El Paso, and in every way qualified to vote, as set forth in detail, except that the statute to be mentioned interferes with his right; that on July 26, 1924, a primary election was held at El Paso for the nomination of candidates for a senator and representatives in Congress and State and other offices, upon the Democratic ticket; that the plaintiff, being a member of the Democratic party, sought to vote but was denied the right by defendants; that the denial was based upon a statute of Texas enacted in May, 1923 (Acts 38th Leg. 2d Called Sess. (1923) c. 32, § 1 (Vernon's Ann. Civ. St. 1925, art.

3107)), and designated article 3093a, by the words of which 'in no event shall a negro be eligible to participate in a Democratic party primary election held in the State of Texas,' etc., and that this statute is contrary to the Fourteenth and Fifteenth Amendments to the Constitution of the United States. The defendants moved to dismiss upon the ground that the subject-matter of the suit was political and not within the jurisdiction of the Court and that no violation of the Amendments was shown. The suit was dismissed and a writ of error was taken directly to this Court. Here no argument was made on behalf of the defendants but a brief was allowed to be filed by the Attorney General of the State.

The objection that the subject-matter of the suit is political is little more than a play upon words. Of course the petition concerns political action but it alleges and seeks to recover for private damage. That private damage may be caused by such political action and may be recovered for in suit at law hardly has been doubted for over two hundred years, since Ashby v. White, [1790] EngR 55; 2 Ld. Raym. 938, 3 Ld. Raym. 320, and has been recognized by this Court. Wiley v. Sinkler, [1900] USSC 179; 179 U. S. 58, 64, 65[1900] USSC 179; , 21 S. Ct. 17, 45 L. Ed. 84; Giles v. Harris, 189 U. S. 475, 485, 23 S. Ct. 639, 47 L. Ed. 909. See also Judicial Code, § 24(11), (12), (14); Act of March 3, 1911, c. 231; 36 Stat. 1087, 1092 (Comp. St. § 991). If the defendants' conduct was a wrong to the plaintiff the same reasons that allow a recovery for denying the plaintiff a vote at a final election allow it for denying a vote at the primary election that may determine the final result.

The important question is whether the statute can be sustained. But although we state it as a question the answer does not seem to us open to a doubt. We find it unnecessary to consider the Fifteenth Amendment, because it seems to us hard to imagine a more direct and obvious infringement of the Fourteenth. That Amendment, while it applies to all, was passed, as we know, with a special intent to protect the blacks from discrimination against them. Slaughter House Cases[1872] USSC 142; , 16 Wall. 36, 21 L. Ed. 394; Strauder v. West Virginia, [1879] USSC 165; 100 U. S. 303, 25 L. Ed. 664. That Amendment 'not only gave citizenship and the privileges of citizenship to persons of color, but it denied to any State the power to withhold from them the equal protection of the laws. * * * What is this but declaring that the law in the States shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color?' Quoted from the last case in Buchanan v. Warley, [1916] USSC 116; 245 U. S. 60, 77[1916] USSC 116; , 38 S. Ct. 16, 19 [1916] USSC 116; (62 L. Ed. 149, L. R. A. 1918C, 210, Ann. Cas. 1918A, 1201). See Yick Wo v. Hopkins, [1886] USSC 197; 118 U. S. 356, 374[1886] USSC 197; , 6 S. Ct. 1064, 30 L. Ed. 220. The statute of Texas in the teeth of the prohibitions referred to assumes to forbid negroes to take part in a primary election the importance of which we have indicated, discriminating against them by the distinction of color alone. States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case.

Judgment reversed.