

NO. 63915

R. R. GROVEY
PLAINTIFF

VS

ALBERT TOWNSEND
DEFENDANT

IN JUSTICE COURT

PRECINCT NO. 1

POSITION NO. 2

HARRIS COUNTY, TEXAS

TO THE HONORABLE JUSTICE OF SAID COURT:

NOW COMES R. R. Grovey, plaintiff in the above entitled and numbered cause, and moves the court to set aside the judgment of the court rendered herein on September 24, 1934, which judgment sustained the general demurrer of the defendant to plaintiff's petition and dismissed plaintiff's cause of action and gave judgment for the defendant, and to grant plaintiff a new trial for the following reasons, towit:

I

Because said judgment of the court denies the plaintiff the equal protection of the laws and the due process of law as guaranteed to plaintiff by the 14th Amendment to the Constitution of the United States.

II

Because said judgment of the court denies and/or abridges plaintiff's right to vote as guaranteed to him by the 15th Amendment to the Constitution of the United States.

III

Because said judgment of the court is in violation of the rights, privileges, and immunities guaranteed to plaintiff

by the 14th and 15th Amendments to the Constitution of the United States.

IV

Because said judgment of the court is contrary to the law and the facts as disclosed by the record in this cause.

V

Because the court erred in holding that plaintiff did not have the legal right to cast an absentee ballot in the statutory primary election involved in this case, and in failing to hold that plaintiff did have such legal right to cast an absentee ballot in the statutory primary election involved in this case.

VI

Because the court erred in holding that plaintiff's petition did not state a cause of action against the defendant and in failing to hold that the petition of plaintiff did state a cause of action against the defendant.

VII

Because the court erred in holding that plaintiff was not entitled to recover damages from the defendant for depriving plaintiff of his legal right to cast an absentee ballot in said election and in failing to hold that plaintiff was entitled to recover damages against the defendant for such deprivation.

VIII

Because the court erred in holding that the resolution of the State Democratic Convention of Texas, adopted May 24, 1932 and quoted on page 7 of plaintiff's petition, was effectual

to deprive plaintiff of his legal right to cast an absentee ballot in such election and in failing to hold that said resolution was without legal force and effect to thus deprive plaintiff of his legal right to cast an absentee ballot in the said election.

IX

Because the court erred in holding that the instructions given the defendant by the County Democratic Executive Committee of Harris County, Texas, and mentioned on page 7 of plaintiff's petition, were a valid justification for defendant's depriving plaintiff of his legal right to cast an absentee ballot in said election, and in failing to hold that said instructions were ineffectual and invalid for said purpose.

X

Because the court erred in holding that the classification "race and color" was not entitled to the same protection of the laws of the State of Texas as given to the classifications of "former political views or affiliations" and "membership or non-membership in organizations other than the political party" as guaranteed by Article 3107 of the Revised Civil Statutes of Texas, and as upheld by the Supreme Court of the State of Texas in the case of Love v. Wilcox, 119 Texas, 256, 28 S. W. (2nd) 515, and in failing to hold that plaintiff was entitled under the 14th and 15th Amendments to the Constitution of the United States to such protection of the laws of the State of Texas.

XI

Because the court erred in holding that Sections 2 and 27 of the Bill of Rights (Article 1) of the Constitution of the State of Texas, as quoted on page nine of plaintiff's petition, and as interpreted by the Supreme Court of Texas in the case of Bell et al v. Hill et al, Motion No. 11520,

decided July 20, 1934, but not yet officially reported, were not unconstitutional as being in violation of the 14th and 15th Amendments to the Constitution of the United States, and in failing to hold that said sections were unconstitutional.

XII

Because the court erred in holding that the State of Texas had not, by a consistent course of statutory enactments and judicial decisions denied to qualified Negro voters in the State of Texas their legal right to vote as guaranteed and protected by the 14th and 15th Amendments to the Constitution of the United States, and in failing to hold that the State of Texas by a consistent course of statutory enactments and judicial decisions had denied all qualified Negro voters of their right to vote, or abridged the same.

XIII

Because the court erred in holding that the State Democratic Convention of Texas had and has power by virtue of its being, to say who may and who may not be members of the Democratic Party and in failing to hold that said convention had no such power or authority.

XIV

Because the court erred in holding that Albert Townsend, defendant in this case, was not and is not a state officer of the state of Texas in conducting absentee voting under Article 2956 of the Revised Civil Statutes of Texas and in failing to hold that said defendant was and is such officer of the State of Texas in conducting such absentee voting.

XV

Because the court erred in holding that the State Democratic Convention of Texas and the County Democratic Executive Committee of Harris County, Texas, and all other officials conducting statutory primary elections required to be held by Articles 3101 and 3102 of the Revised Civil Statutes of Texas were not and are not state officers or agencies within the meaning of the 14th and 14th Amendments to the Constitution of the United States, and in failing to hold that said convention and committee and officials were and are such state officers or agencies.

XVI

Because the court erred in holding that the statutory primary election involved in this case was not such an election, the right to vote in which is protected and guaranteed against denial or abridgment by the 15th Amendment to the Constitution of the United States, and in failing to hold that said statutory primary election was such an election.

WHEREFORE, R. R. Grovey, plaintiff, prays the court that the judgment of the court rendered herein on September 24, 1934 be set aside and that plaintiff be granted a new trial herein.

R. R. Grovey *R. R. Grovey*
PLAINTIFF
J. Alston Atkins *J. Alston Atkins*
A. S. Wells *A. S. Wells*
Carter Wesley *Carter Wesley*
ATTORNEYS FOR PLAINTIFF

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority on this day personally appeared R. R. GROVEY, who having been first duly sworn on oath states that he is the plaintiff in the above and foregoing motion for a new trial, that he has read the same, and that the matters and things therein stated are true and correct.

SUBSCRIBED AND SWORN TO before me this 24th day of September, A. D. 1934.



R. R. Grovey *R. R. Grovey*
B. L. Montgomery *B. L. Montgomery*
NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, TEXAS

NO. 63915

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(5)

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VS.

ALBERT TOWNSEND
DEFENDANT

MOTION FOR A
NEW TRIAL

J. Alston Atkins
A. S. Wells
Carter Wesley
ATTORNEYS
409 Smith St.
Houston, Texas

FILED

SEP 25 1934

CAMPBELL R. OVERSTREET,
J. P. PREC. 1, HARRIS CO. TEX.