W. G. BELL ET AL,

Relators,

vs No. 11520

FRED G. HILL, COUNTY CLERK OF JEFFERSON COUNTY, TEXAS, ET AL,

Respondents.

W. G. Bell and E. L. Jones, Jr., qualified voters and citizens of Jefferson County, presented to us on July 19, 1934, a motion for leave to file a petition for mandamus and other relief against the Governor, the Attorney General, the State Democratic Executive Committee and its members, the members of the Jefferson County Democratic Executive Committee, and the various election officers of Jefferson County. The members of the respondent committee are named, and the list of respondents embrace approximately 200 names.

The motion for leave to file is accompanied by the petition for mandamus and an elaborate and able argument on the law question involved. The petition shows that the realtors are Negroes, and its object is to invoke the jurisdiction of this Court requiring the respondents to permit the relators to vote in the Democratic primaries of this State, the first of which is to be held July 28, 1934.

The relators allege that the Democratic Party is an organized political party, and is the predominant one in the State of Texas. They also say:

"Plaintiffs further allege that they are members of the Democratic party and voted as such for the candidates of said party at the general election held in November, 1932, whereat the President of the United States and federal, state, county and precinct officers were elected, to the offices now held by them respectively. That plaintiffs are adherents to the tenents of the Democratic Party and stand ready and willing to take any oath or pledge required of Democratics or to do anything else they are legally required to do under the laws of the State of Texas and or the United States in order to demonstrate their adherence to the Democratic Party, and that they desire to vote in said primary election to be held on July 28, 1934, all of which information the plaintiffs have conveyed to the defendants who refuse to allow them to vote in the Democratic primary, and plaintiffs allege that the refusal aforesaid of defendants to permit them to vote in the Democratic primaries aforesaid is predicated solely upon the fact that the plaintiffs are Negroes."

The petition states in substance, in part, that the respondents are denying, or will deny, the relators the right to vote, because of a resolution passed by the State Convention of the Democratic Party in Texas on May 24, 1932, which reads:

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"Be it Resolved, that all white citizens of the State of Texas who are qualified to vote under the Constitution and laws of Texas shall be eligible for membership in the party, and as such eligible for participation in the primaries."

This resolution was passed by the Democratic Convention which met at Houston for the purpose of electing delegates to the National Convention of the Democratic Party. It is alleged that the convention met by virtue of Art. 3167, R. S., which, in so far as a State Convention is concerned, provides:

"Any political party desiring to elect delegates to a national convention, shall hold a State convention at such place as may be designated by the State executive committee of said party, on the fourth Tuesday in May, 1928, and every four years thereafter. Said convention shall be composed of delegates duly elected by the voters of said political party in the several counties of the State at primary conventions to be held on the first Saturday in May, 1928, and every four years thereafter."

In order that we may understand the question involved in this case, it is essential that we clearly comprehend the nature of a political party, such as the Democratic Party. First of all, it is a <u>voluntary association</u>, an association formed of the free will and unrestrained choice of those who compose it. No man is compelled by law to become a member of a political party; or, after having become such, to remain a member. He may join such a party for whatever reason seems good to him, and may quit the party for any reason, good, bad, or indifferent, or without cause. A political party is the creation of free men, acting according to their own wisdom, and in no sense whatever the creation of any department of the government. Political parties have existed in this country under some form under all systems of government when the people were accorded any political rights. It may be said that they originated in the United States with the adoption of the Federal Constitution in 1787. 49 Corpus Juris. p. 1075, sec. 15; Waples vs. Marrast, 108 Texas, 511; Koy vs. Schneider, 110 Texas, 369; Davis vs. Hambrick, 58 S. W. (Ky), 779; Schafer vs Whipple, 55 Pac. (Colo), 180; People vs Emerson, 62 A.L.R. (Ill.), 912. Corpus Juris in the section cited has collated various definitions to form its text, and plainly sustains the conclusion stated by us, that a political party is a voluntary organization or association, the outgrowth of free, individual action, and not a permissive organization under some statute. Corpus Juris declares:

"In the absence of a statutory definition, resort is had to the generally accepted meaning of the term, which has been defined as an association of voters believing in certain principles of government, formed to urge the adoption and execution of such principles in governmental

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affairs through officers of like belief; a body of men associated for the purpose of furnishing and maintaining the prevalence of certain political principles or beliefs in the public policies of the government; a body of men united for promoting, by their joint endeavor, a national interest upon some particular principle in which they are all agreed; a body of people or society contending for antagonistic or rival opinions or policies in a community or society, especially one of the opposing political organizations striving for supremacy in a state; a company or number of persons ranged on one side or united in opinion or design in opposition to others in the community; a number of persons united in opinion or action, as distinguished from or opposite to the rest of a community or association, especially one of the parts unto which a people is divided on questions of public policy; those who favor, or are united to promote, certain views or opinions; a voluntary association for political purposes; a voluntary association of electors, having an organization and committee, and having distinctive opinions on some or all of the leading political questions of controversy in the state, and attempting through its organization to elect officers of its own party, faith, and make its political principles the policy of the government. Where statutes define what shall constitute a political party in certain instances, an organization or combination of electors may qualify as a political party in local matters, and yet constitute part of another political party on national issues, or a political party for some purposes may not be such for other purposes. And a collection of voters may constitute a political party for local purposes without ever having cooperated in politics before. But a mere fraction of an established party will not constitute a distinct political party. Political parties have existed in some form under all systems of government where the people were accorded any political rights. They originated in this country with the adoption of the federal constitution in 1787. In a republican form of government they are a necessity. They result from the voluntary association of electors, and do not exist by operation of law. The element of time is not essential to the formation of a legal party; it may spring into existence from the exigencies of a particular election, and with no intention of continuing after the exigency has passed. Nor can the number of voters that must unite in order to form a legal party be prescribed by law without violating one of the fundamental theories of popular government, although many states, in regulating the nomination of candidates by political parties, define a political party to be a political organization or combination of electors which has cast a certain percentage of the votes cast at some particular election. To what extent the rights of organized political parties should be regulated by law is a matter of public polity to be determined by the legislative department--a matter which does not concern the courts. In the absence of legislative enactment, a political party is governed by its own usages and establishes its own rules. Certain powers are inherent in it regardless of statutes. A political party is the judge of the election and qualification of its members. And the determination of who shall represent it as its nominees is controlled by the action of the party itself." (Italics ours)

In the case of Waples vs. Marrast, supra, this Court in an opinion by Chief Justice Phillips, quoted with approval by Justice Greenwood in Key vs. Schneider, cited above, declared:

"A political party is nothing more or less than a body of men associated for the purpose of furnishing and maintaining the prevalence of certain political principles or beliefs in the public policies of the government. As rivals for popular favor they strive at the general elections for the control of the agencies of the government as the means of providing a course for the government in accord with their political principles and the administration of those agencies by their own adherents. According to the soundness of their principles and the wisdom of their policies they serve a great purpose in the life of a government. But the fact remains that the objects of political organizations are intimate to those who compose them. They do not concern the general public. They directly interest, both in their conduct and in their success, only so much of the public as are comprised in their membership, and then only as members of the particular organization. They perform no governmental function. They constitute no governmental agency. The purpose of their primary elections is merely to enable them to furnish their nominees as candidates for the

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