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"Clerk"

Filed Sept 23rd 1891
Geo. Seehelck,
By B. A. Inarici
Dep.

No. 3091

In the Supreme Court
OF THE
STATE OF CALIFORNIA.

Ellen R. Van Valkenburg

Plaintiff and Appellant,

V.

Albert Brown

Defendant and Respondent.

TRANSCRIPT ON APPEAL.

ALBERT HAGAN, ATTORNEY FOR APPELLANT.

SENTINEL Print, Santa Cruz.

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IN THE
District Court,
OF THE
THIRD JUDICIAL DISTRICT,
OF THE
STATE OF CALIFORNIA,
IN AND FOR THE
County of Santa Cruz.

ELLEN RAND VAN VALKENBURGH,
PLAINTIFF,
AGAINST
ALBERT BROWN,
DEFENDANT.

Complaint.

Ellen Rand Van Valkenburgh, being first duly
sworn on oath, deposes and says: 1

I.

That she is a white female resident and citizen of the United States, and of the State of California, over the age of twenty-one years, and that she is now and has been for more than one year last past continuously a resident of the State of California and of the County of Santa Cruz, and that she was born within the limits and jurisdiction of the United States.

2

II.

That Albert Brown is now and was on the 21st day of July, A. D. 1871, the duly qualified and acting County Clerk of said County of Santa Cruz in said State, and as such Clerk, it is made the bounden duty of said Albert Brown, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled, an Act "To provide for the registration of the citizens of this State, and for the enrollment of all the legal voters thereof, and for the prevention and punishment of frauds affecting the elective franchise," approved March 19th, 1866, and all acts amendatory thereof, and by virtue of the 14th Amendment of the Constitution of the United States, to enter and register in the Great Register of said County, every inhabitant, person, and citizen, who by virtue of the qualifications prescribed in the Constitution of the United States and in the State of California is a qualified elector and legal voter of said county.

4

III.

That affiant, on the 21st day of July, A. D. 1871, appeared in person before the said Albert Brown, County Clerk as aforesaid, in the Clerk's office of said county, between the hours of 10 o'clock, A. M., and 4 o'clock, P. M., of said day, and then and there demanded of said Albert Brown that he register this affiant and enter affiant's name upon the Great Register of said County, as required by law, and enroll said affiant as a voter of said county, all of which the said Albert Brown then and there refused to do and perform, and still refuses to do or perform any of said acts.

5

IV.

Wherefore affiant prays the judgment of this Court that an order of mandamus do issue herein, requiring and ordering said Albert Brown, County Clerk aforesaid, to register affiant upon the proper Register Book of said County, or that he do show good cause before this Court, upon some day certain, why he does not perform the said act.

6

ELLEN R. VAN VALKENBURGH.

Sworn to and subscribed to before me this the 21st day of July, A. D. 1871.

ALBERT BROWN, County Clerk
said Santa Cruz County.

Endorsed: Filed July 21st, 1871.

ALBERT BROWN, Clerk. 7

Answer.

[Title of Court and Cause.]

Now comes the above named Defendant, Albert Brown, in his own proper person, and shows to this Court the reasons and cause why he refused to register the said Plaintiff upon the Great Register of the County of Santa Cruz, to be as follows, viz.:

Defendant admits that the Plaintiff is a white female resident and citizen of the United States and of the State of California, and is of the age mentioned in said application, and has resided in California as she has therein stated. Defendant further admits that he is now and was on the 21st day of July, A. D. 1871, the duly qualified and acting County Clerk of said County of Santa Cruz, and as such Clerk it is made his bounden duty, under and by virtue of the provisions of an Act of the Legislature of the State of California, entitled an Act "to provide for the registration of the citizens of this State, and for the enrollment of all the legal voters thereof, and for the prevention and punishment of frauds affecting the elective franchise," approved March 19th, 1866, and all acts amendatory thereof, to enter upon the Great Register of said County all proper applicants. But said Defendant avers that he is informed that under and by virtue of the Fourteenth Amendment of the Constitution of the United States, it is not made his duty to enter and register in the Great Register of said County any female citizen of the United States residing in the State of California

and in the County of Santa Cruz as a qualified elector and legal voter of said County.

Defendant further admits that Plaintiff did on the 21st day of July, A. D. 1871, appear in person before him in the Clerk's office of said County between the hours of 10 o'clock, A. M., and 4 o'clock, P. M., and demanded that he register her, and enter her name upon the Great Register of said County, and enroll her as a voter of said County, which said Defendant refused and still refuses to do.

Said Defendant alleges and affirms that by provision of Sec. 2 of the said Act, approved March 30th, 1868, entitled an Act to amend an Act to provide for the registration of the citizens of this State and for the enrollment of all the legal voters thereof, and for the prevention and punishment of frauds affecting the elective franchise, approved March 19th, 1866, it is only made the duty of the Defendant, as County Clerk of Santa Cruz County, to register, on application, or on the return of the Assessor, every inhabitant of his County, who by virtue of the citizenship, lawful age, and other qualifications prescribed by the Constitution of the State of California, is, or may be within six months, a qualified elector and legal voter of said State of California.

Defendant further alleges, that, under and by virtue of Sec. 1 of Article 2 of the Constitution of the State of California, the right of suffrage is only granted to every white male citizen of the United States and every white male citizen of Mexico who shall have elected to have become a citizen of

the United States, under the treaty of peace, exchanged and ratified at Queretaro on the 30th day of May, A. D. 1848, of the age of 21 years, who shall have been a resident of the State six months next preceding the election, etc.

14 Defendant further alleges that the said Plaintiff is not a male citizen of the United States, and is not, under and by virtue of the said Registry Act and the Constitution of the State of California, entitled to be placed upon the Great Register of the County of Santa Cruz, or enrolled as a legal voter in the County of Santa Cruz and State of California.

Wherefore Defendant asks that the prayer of the said Plaintiff for an order of mandamus as prayed for in her application herein may be denied, and that he may have his costs.

ALBERT BROWN.

STATE OF CALIFORNIA, }
COUNTY OF SANTA CRUZ. } ss.

15 Albert Brown being duly sworn according to law, deposes and says that he is the Defendant in the above entitled action, and that the foregoing answer is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

Sworn to and subscribed }
before me this 14th day of } ALBERT BROWN.
August, A. D. 1871. }

Endorsed : Filed August 14th, 1871

16 ALBERT BROWN, Clerk.

Bill of Exceptions.

[Title of Court and Cause.]

Be it remembered that on this, the 16th day of August, the said cause came on regularly for trial, and the same was duly argued by Albert Hagan for Plaintiff, and Defendant submitting his cause upon the answer herein, and the Court, being fully advised, orders that the application herein be denied, to which ruling Plaintiff excepts; and Plaintiff asks that the foregoing be settled and signed as a true bill of exceptions herein, which is done accordingly. 17

S. B. McKEE,
District Judge.

Endorsed : Filed August 16th, 1871.

A. BROWN, Clerk.
By D. J. HASLAM, Deputy.

Statement on Appeal.

18

[Title of Court and Cause.]

For a statement on appeal to the Supreme Court of said State from the order and judgment herein made and entered on the 16th day of August, 1871, denying the application of Plaintiff for a mandamus. The Plaintiff comes now and files the following, to wit: The said cause came on for trial upon the issues herein made by the pleadings of Plaintiff and Defendant, and the cause was duly 19

submitted upon the complaint and affidavit of Plaintiff and answer thereto of Defendant, and the facts set forth in Plaintiff's affidavit and complaint herein being fully admitted to be true, the said cause was duly argued by the said attorneys and submitted to the Court, and the Court made an order herein on the 16th day of August, 1871, as follows, to wit:

20 Ellen R. Van Valkenburgh } Third District Court in
vs. } and for the County of
Albert Brown. } Santa Cruz, California.

This cause on application for Writ of Mandate, now coming on to be heard, Albert Hagan Esq. appearing for Petitioner and A. Heath Esq. appearing upon the part of Albert Brown, and the same being argued and submitted, and the Court being now fully advised, denies the application, to which ruling of the Court the Plaintiff, by her attorney, excepts, and thereupon the judgment was rendered herein as follows:

21

Judgment.

[Title of Court and Cause.]

This application for Writ of Mandate having come on regularly for hearing at the August term, A. D. 1871, Albert Hagan, Esq., appearing for Petitioner and Albert Heath, Esq., for Defendant. Now the Court, having heard the proofs and argu-
22 ments of the Petitioner, and the proofs and argu-

ments of the Defendant, and being fully advised of the law and facts, denies the application of Plaintiff for a Writ of Mandate against the Defendant, and orders the petition to be dismissed with costs.

Witness, Hon. S. B. McKEE,
District Judge.

Attest,
ALBERT BROWN, Clerk. }

To which ruling and order of the Court Plaintiff then and there, by her attorney, excepted, and Plaintiff refers to the complaint and affidavit, and 23 the answer and Bill of exceptions herein, as part of this statement, and within 20 days from said order and judgment the Plaintiff made and filed this Statement herein, and as errors of law herein. The Plaintiff will rely upon the following, upon her appeal, to wit:

1st. The Court erred in holding that Plaintiff was not a citizen of the United States and of the State of California, and was not a qualified elector in said County and State.

2d. Plaintiff claims that she was and is a citizen 24 of the United States, and of said State, under and by virtue of the 14th Amendment to the Constitution of the United States, and is entitled to the elective franchise as a qualified elector in said County and State, the Constitution and Statutes of said State to the contrary notwithstanding.

3d. That the refusal of the Defendant to enter the name of Plaintiff upon the Great Register of said County was an abridgement and total denial of the right of Plaintiff to full and free exercise 25

of the privilege of the ballot.

4th. That the Plaintiff, being a citizen of the United States, is entitled to the privilege of voting within the limits of the State within which she resides.

August 20th, 1871. } ALBERT HAGAN,
Attorney for Plaintiff.

We certify that the foregoing is a full and correct statement on appeal herein, and we agree to the same as true, and waive any further statement.

26 ALBERT HAGAN,
Attorney for Plaintiff.
ALBERT HEATH,
Attorney for Defendant.

Endorsed: Filed September 1st, 1871,
ALBERT BROWN, Clerk.

Stipulation.

27 [Title of Court and Cause.]

It is hereby stipulated and certified that the foregoing papers and statement on appeal have been agreed upon by us, the attorneys of the respective parties to the above entitled action, and that the same are full, true and correct; and it is further stipulated that said papers and statement shall constitute exclusively the transcript on appeal herein.

28 And it is further certified and stipulated that the appeal herein has been perfected by the filing

and service of the requisite notice of appeal, and the filing of an undertaking within the time and in the form and manner prescribed by law.

Dated, September 2d, 1871.

ALBERT HAGAN,
Attorney for Plaintiff.
ALBERT HEATH,
Attorney for Defendant.

[11]

and service of the respective parties of appeal and
the filing of an undertaking within the time and
in the form and manner prescribed by law.
Dated September 25, 1877.

ALBERT HAGAN,
Attorney for Plaintiff.
ALBERT HEATH,
Attorney for Defendant.

It is hereby stipulated and agreed that the parties
to the within appeal have agreed to waive the
costs of the appeal and to pay the same out of their
own pockets.

ALBERT HAGAN,
Attorney for Plaintiff.
ALBERT HEATH,
Attorney for Defendant.

Filed September 25, 1877.
ALBERT HAGAN,
Attorney for Plaintiff.

Stipulation.

It is hereby stipulated and agreed that the parties
to the within appeal have agreed to waive the
costs of the appeal and to pay the same out of their
own pockets. It is further stipulated and agreed
that the parties to the within appeal have agreed
to pay the costs of the appeal and to pay the same
out of their own pockets. It is further stipulated
and agreed that the parties to the within appeal
have agreed to pay the costs of the appeal and to
pay the same out of their own pockets.

And it is further stipulated and agreed that the
parties to the within appeal have agreed to pay the
costs of the appeal and to pay the same out of their
own pockets.

State of California
County of San Diego

Service upon Defendant
of a true Copy of the within Examiners
Transcript on Appeal is hereby admitted
Ex accepted at this County Ex State of one -
said, this the 20th day of Sept 1887,
any other or further service is hereby
waived -

Albert Heath
Atty for Deft -

