

John C. Gorman, John R. O'Neil, Wm. W. White, and Handy Lockhart, male inhabitants of the City of Raleigh, and qualified voters BONA FIDE resident therein—who sue in behalf of themselves, and all the other qualified voters BONA FIDE resident therein, who may elect to unite as Plaintiffs in this suit,—Plaintiffs,

AGAINST

Basil C. Manly, acting Mayor of the City of Raleigh; James McKee, John Armstrong, H. J. Hammill, J. J. Nowell, W. H. Martin, Stewart Ellison, P. F. Pescud, Jr., John C. Blake, Wm. C. Stronach, Robert H. Bradley, J. C. R. Little, Henry C. Jones, James H. Jones, James H. Harris, P. C. Fleming, John R. Williams, and R. H. Jones, now exercising the rights, powers and duties, heretofore prescribed by law, for the Board of Commissioners of the City of Raleigh; J. J. Christophers, J. J. Litchford, Graham Haywood, M. B. Barbee, R. S. Perry, J. W. Marcom, A. C. Sanders, E. A. Carver, J. J. Nowell, Jackson Alston, J. J. Lewis, P. J. Brown, Celdon Hutchings, W. C. Lassiter, Alexis Long, T. J. Belvin, James Bonner, D. C. Murray, J. R. Whitaker, J. J. Sawyer, Joseph A. Harris, J. D. Pullen, S. M. Rigsbee, and M. V. B. Gilbert,—Defendants.

COMPLAINT.

The Plaintiffs above named complaining of the Defendants, allege:

I. That by a public act of the General Assembly of North Carolina, ratified on the 31st day of September, A. D., 1792, entitled, "An act to confirm the proceedings of the Commissioners appointed under an act at the last General Assembly, entitled an act to carry into effect the Ordinance of the convention held at Hillsboro, July, 1788, entitled, an Ordinance for establishing a place for holding the future meetings of the General Assembly, and the place of residence of the chief officers of the State," the corporate limits of the City of Raleigh were defined, with the several streets and public squares therein, and the names thereof respectively, and also the 276 lots embraced in said city, with the respective numbers of each; and the plan of said city was ordered to be recorded forthwith, in the office of Secretary of State—which was accordingly done, and the same is here referred to for greater certainty.

II. That by a private Act of the said General Assembly, ratified on the 3d day of February, A. D. 1857, entitled "An Act to Revise and Consolidate the Charter of the City of Raleigh," the then corporate limits of said City, were extended one-fourth of a mile in every direction around said City, north, south, east, and west, and the boundary lines thereof were run parallel with the old boundary lines, until the same should intersect at each corner; and the inhabitants of said City were made and continued as theretofore they had been, a municipal corporation, by the name and style of "THE CITY OF RALEIGH."

III. That by the Act last aforesaid, the said City was divided into three wards, denominated respectively, Middle, Eastern, and Western; each of which extended across the City, from the northern to the southern limits thereof; the Middle Ward embracing all that part of the City which lies between a line running through the middle of Wilmington street, and the extension thereof, on the East, and a line running through the middle of Salisbury street and the extension thereof, on the West; the Eastern Ward embracing all that part of the City, which lies east of the Middle Ward; and the Western Ward embracing all that part of the City, which lies west of the Middle Ward.

IV. That under and by virtue of the Act last aforesaid, and the following private Acts, of the said General Assembly, to-wit: An Act entitled "An Act to amend the charter of the City of Raleigh," ratified 28th of January, A. D. 1863; an Act entitled "An Act to amend the charter of the City of Raleigh, ratified February 3d, 1857, and January 28th, 1863," ratified 23d day of February, A. D. 1871; an Act entitled "An Act to amend an Act entitled an Act to amend the charter of the City of Raleigh, ratified 23d February, 1871," ratified 11th day of February, A. D. 1874; and an Act entitled "An Act concerning the City of Raleigh," ratified 16th of February, A. D. 1875—the inhabitants of the City of Raleigh have hitherto continued, and now are, a municipal corporation, created, organized, and existing, under and by virtue of said Acts.

V. That under and by virtue of all the said private acts, most of the judicial and executive power and authority, confided to said municipal corporation is intrusted to the Mayor, and so much of the legislative authority is intrusted to him, as arises from his right to preside at all meetings of the Board of Commissioners, and to give the casting vote, whenever there is an equal division upon any question, or, in the election of any officer by the said Board.

VI. That under and by virtue of all the said private Acts, except that one which was ratified on the 16th of February, A. D. 1875, the rest of the legislative power and authority confided to said municipal corporation is intrusted to a Board of Commissioners, consisting of nine persons; but by the said Act, ratified 16th of February, A. D. 1875, it is attempted to divest said legislative authority, and all other authority with which they are invested, out of a Board of nine Commissioners constituted as aforesaid, and to vest the same in a Board of Aldermen, constituted in the manner provided in said Act, and consisting of seventeen persons, elected and qualified in the manner provided therein; and these Plaintiffs, being so advised, aver, that said Act of 16th of February, A. D. 1875, in so far forth as it purports to divert said power and authority, out of a Board of nine Commissioners constituted as aforesaid, and to vest the same in a Board of seventeen Aldermen, constituted, elected, and qualified as provided in said Act, is invalid, and repugnant to the Constitution of North Carolina.

VII. That under and by virtue of all the said private Acts, except that one which was ratified on the 16th of February, A. D. 1875, and of the Constitution and public laws of the State, all the male inhabitants of the City of Raleigh who are citizens of the United States, twenty-one years of age or upwards, and who shall have resided in the State of North Carolina twelve months, and in the County of Wake, City of Raleigh, and in any one of the three aforesaid wards of said City in which they may offer to vote, thirty days, preceding the election, have the right, on the first Monday in May, A. D. 1876, to vote for a Mayor of said City, and to elect by a majority of their votes, any qualified voter of said City as Mayor, for the term of one year, from the day and date last aforesaid, and until his successor may be qualified; and the said qualified voters of the City of Raleigh have also the right to have registration had of the qualified voters of the said several wards of the said City, in accordance with law, as a preliminary to said election, and to enable them to participate therein—and that a reasonable time before the day of said election shall be afforded them, within which they may register, especially as by said Acts the registration books are required to be closed ten days before the day of election; and these Plaintiffs, being so advised, aver, that so much of said Act of 16th of February, A. D. 1875, as purports in any manner to deprive the qualified voters of the City of Raleigh, of the whole, or any, or any part of any, of the rights claimed for them in this VII section of this Complaint, is invalid and repugnant to the Constitution of North Carolina.

VIII. That under and by virtue of all the said private Acts, except that one which was ratified on the 16th day of February, A. D. 1875, and of the Constitution and public laws of the State, all the male inhabitants of the City of Raleigh who are citizens of the United States, twenty-one years of age or upwards, and who shall have resided in the State of North Carolina twelve months, and in County of Wake, City of Raleigh, and in any one of the three wards of said City in which they may offer to vote, thirty days

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preceding the election, have the right, on the first Monday in May, A. D. 1876, to vote for nine Commissioners of said City: that is to say, those resident in the Middle Ward to vote for three Commissioners—those resident in the Eastern Ward to vote for three Commissioners—and those resident in the Western Ward to vote for three Commissioners; and to elect by a majority of their votes in each Ward, any three qualified voters in said Ward, Commissioners, and so constitute a Board of 9 Commissioners, to hold their office, from the day and date last aforesaid, for the term of one year, and until their successors may be qualified; and the said qualified voters of the City of Raleigh have also the right to have registration had of the qualified voters of the said several Wards of the said City, in accordance with law, as a preliminary to said election, and to enable them to participate therein—and that a reasonable time before the day of said election shall be afforded them, within which they may register, especially as by said Acts the registration books are required to be closed ten days before the day of election; and these Plaintiffs, being so advised, aver, that so much and such parts of said Act of 16th of February, A. D. 1875, as purport in any manner to deprive the qualified voters of the City of Raleigh, of the whole, or any, or any part of any, of the rights claimed for them in this VIII section of this Complaint, are invalid, and repugnant to the Constitution of North Carolina.

IX. That the Defendant Basil O. Manly, is the acting Mayor of the City of Raleigh, exercising and claiming the right to exercise, the functions of that office, under and by virtue of an appointment thereto, by the body of men named and specified in section X of this complaint.

X. That the Defendants James McKee, John Armstrong, H. J. Hammill, J. J. Nowell, W. H. Martin, Stewart Ellison, P. F. Pescud, Jr., John C. Blake, Wm. C. Stronach, Robert H. Bradley, J. O. R. Little, Henry C. Jones, James H. Jones, James H. Harris, Peter C. Fleming, John R. Williams, and R. H. Jones, are now exercising the rights, powers and duties heretofore prescribed by law, for the Board of Commissioners of the City of Raleigh,—under the name and style of the Board of Aldermen of said city—exercising and claiming the right to exercise, the functions of the said Board of Commissioners, under and by virtue of their election respectively, as Aldermen, at an irregular and voidable, if not void, election held in the City of Raleigh, on the first Monday in May, A. D. 1875, in pursuance of the provisions of the aforesaid act, ratified 16th of February, A. D. 1875, entitled, "An act concerning the City of Raleigh"—a copy of which act is herewith filed as an exhibit, and made part of this complaint.

XI. That by the aforesaid act, ratified 23rd of February, A. D. 1871, it is provided, that registration shall be had of the voters of the several Wards—that a copy of the registration of each Ward shall be furnished the poll holders—that no person shall be allowed to vote unless his name be found thereon—that the registration shall be closed ten days before the election, and after the closing of the same no person shall be allowed to register—that the election for Mayor and Commissioners of the City of Raleigh shall be held on the first Monday in May in each and every year—and it is made the duty of the Mayor, within a reasonable time before the day fixed for closing the registration books, to appoint suitable persons to act as Registrars in the several Wards of the City.

XII. That by the several acts specified and described in the IV section of this complaint, by their titles, and the dates of their ratification, (excepting the act ratified 16th of February, A. D. 1875), and a public act of the General Assembly, ratified 21st of December, A. D. 1868, entitled, "An act in relation to municipal elections," it is provided, that in all elections, the polls shall be opened in the several Wards of the City, at any point in the Eastern and Western Wards that may be designated by the Board of Commissioners, and at the Court House in the Middle Ward—that each voter shall vote in the Ward in which he shall be registered—that there shall, annually on the first Monday in May in each year, be elected a Mayor and nine Commissioners, the Mayor to be elected by the qualified voters of said city, and of the Commissioners, three shall be chosen for the Middle Ward, three for the Eastern, and three for the Western, by the voters therein—and for the purpose of electing said officers, it is made the duty of the Board of Commissioners of the City of Raleigh, a reasonable time before the date of election, to designate the points in the Eastern and Western Ward, where the polls shall be opened, and, at least twenty days before the election, to appoint three inspectors for each Ward, who shall be qualified voters, and shall give ten days' notice of the election by public advertisement; and in case of the absence of any inspector on the day of election, it is made the duty of the Board of Commissioners forthwith to supply his place.

XIII. That the number of qualified voters within the City of Raleigh, who registered as a preliminary to the city election of May, 1874, as appears from the registration books of that year, was 1,604; and the number who registered as a preliminary to the city election of May, 1875, held under the Act of 16th of February, A. D. 1875, as appears from the registration books of that year, was 1,602; and there are even more qualified voters of the City of Raleigh than the numbers last specified, who are entitled to register and vote in the city election, which ought to be held on the first Monday—being the first day—of May, A. D. 1876; and none of them have the right to vote without registration, or to register after the 20th or 21st of April, A. D. 1876.

XIV. That the Defendant, Basil O. Manly, acting Mayor of the City of Raleigh—and the Defendants, James McKee and the others, above named, constituting the *de facto* Board of Aldermen of said City, and actually exercising the rights, powers, and authority, conferred by law upon the Board of Commissioners of said City—not only claim title to their respective offices, under and by virtue of the aforesaid Act of 16th of February, A. D. 1875, but further claim, that said Act and every part thereof is valid and consistent with the Constitution of the State, and that by the provisions thereof, the qualified voters of the City of Raleigh have lost their right to hold an election for a Mayor and nine Commissioners, on the first Monday of May, A. D. 1876, in the manner, and under the regulations, hereinbefore in their behalf claimed for them; and although the day of said city election is so near at hand, the said Basil O. Manly as acting Mayor of the City of Raleigh, has hitherto neglected and refused, and, as Plaintiffs are informed and believe, now intends, and will continue to neglect and refuse, to appoint three registrars, one for the Middle, one for the Eastern, and one for the Western, Wards of the City of Raleigh, to make a registration of the qualified voters in each of said Wards respectively, to enable said voters to hold an election in accordance with law, of a Mayor and nine Commissioners of the City of Raleigh, in the manner, and under the regulations, hereinbefore in this Complaint indicated, on the first Monday in May, A. D. 1876; and the said James McKee and the other sixteen Defendants above specified, now exercising the rights, powers, and authority, conferred by law upon the Board of Commissioners of the City of Raleigh, have hitherto neglected and refused, and as the Plaintiffs are informed and believe, now intend, and will continue to neglect and refuse, to designate any points in the Eastern and Western Wards, where the polls may be opened for said election—and to appoint three inspectors for each Ward, to give notice of said election by public advertisement, and to direct, conduct, and preside over the same.

XV. That by the first section of the aforesaid Act of 16th of February, A. D. 1875, it was attempted to divide the City of Raleigh into five wards, therein defined and limited, and denominated respectively the

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1st, 2d, 3d, 4th and 5th wards; by the second section, to provide for an annual election on the first Monday in May in each year, of seventeen Aldermen, three for each of said wards, except the *third* ward, which was to have five, the Aldermen of each ward to be elected by the qualified voters therein; by the third section, to provide that the Board of Commissioners of Wake county should annually at or before their meeting in March of each year, select a Registrar of voters for each of said five wards; by the 6th section, to provide that the Board of Commissioners of Wake county should annually at or before their meeting in April of each year, appoint four judges or inspectors of election, for each of said wards, to open the polls and superintend the same, for the municipal election, to be held on the first Monday in May next succeeding; and by the 4th section of said act it was provided, that the registrars so selected by the Board of Commissioners of Wake county, after being furnished with registration books, should open the same, and register therein, the names of all persons applying for registration, and entitled to register and vote in that Ward, for which each Registrar was respectively appointed—" And if any applicant for registration should not disclose the place of his residence in his Ward, his wilful failure to do so, should be *prima facie* evidence, that he was not entitled to register in such Ward; and that any person offering to register, might be required to take and subscribe on oath, that he was a citizen of North Carolina, and had resided in the City of Raleigh ninety days, and in the Ward for which he offered to register, thirty days next preceding that date, or was otherwise entitled to register, and that his place of residence was at — in said Ward; and that if any person should wilfully swear falsely in said affidavit, he should be deemed guilty of a misdemeanor, and, on conviction, should be sentenced to pay a fine of \$100, and to be imprisoned sixty days in the county jail"; and by the 7th section of said act it was provided, that—" All electors who had resided in the City of Raleigh ninety days, and in the Ward for which they offered to register thirty days, next preceding the day of election, should be entitled to register thereunder"; and by the 8th section of said act it was provided, that—" No person whose name had not been duly registered should be allowed to vote—and any one offering to vote might be challenged at the polls, and if the judges of election should sustain the challenge, such person's ballot should not be received"; and by the 17th section of said act it was provided, that—" Whenever, under the provisions of the act, any question was to be decided by the judges of election, and such judges could not decide the same because of a tie vote, the Registrar should give the casting vote"; and by the 12th section of said act it was provided, that—" The Board of Aldermen at their first meeting after each annual election, should choose some person, not one of their own number, to be Mayor of said City, to hold his office until his successor should qualify, who should preside at the meetings of the Board of Aldermen, and have the rights and powers, and perform all the duties heretofore prescribed by law for such officers"—all which will more fully and at large appear, by reference to said act itself, a copy of which is herewith filed as an exhibit, and has already been made part of this complaint.

XVI. That in the division of the City of Raleigh into five Wards, as defined by the 1st section of said act of 16th of Feby., 1875, there is an omission of part of the territory lying within the corporate limits of said city, which part is allotted to no Ward, and no provision is made for the registration or voting, of those qualified voters of the city who reside therein; the part of the city so excluded is bounded by the Eastern boundary of the City on the East, by a line running through the middle of Martin street East and West, and the extension thereof on the South, by a line running through the middle of East street North and South on the West, and by a line running through the middle of Jones street East and West and the extension thereof on the North—and is thickly populated, and about — qualified voters have their residence therein.

XVII. That according to the registration for the municipal election of May 1875, the number of qualified voters in each of the five Wards defined by the 1st section of said act of 16th of February, A. D. 1875, was as follows: in the 1st Ward 280, of whom 216 were white and 64 colored; in the 2nd Ward 332, of whom 130 were white and 202 colored; in the 3rd Ward 181, of whom 157 were white and 24 colored; in the 4th Ward 268, of whom 47 were white and 221 colored; in the 5th Ward, 541, of whom 299 were white and 242 colored; and, as Plaintiffs are informed and believe, there is no material alteration in the number of qualified voters in each Ward, and the relative proportion of white and colored voters in each Ward, and in the relative proportion of the number of qualified voters in each Ward, to the number of qualified voters in each of the other Wards, since said registration was had; there may be, and Plaintiffs believe that there is, some increase in the number of qualified voters of the City, since said registration, but Plaintiffs on information and belief aver, that the relative number in each Ward now remain about the same as they were when said registration was had.

XVIII. That The Board of Commissioners of Wake county, at their meeting in the month of March, A. D. 1876, at the Court House of Wake county, with the connivance, concurrence, and consent, of the said Basil C. Manly, acting Mayor of the City of Raleigh, and of the said James McKee, and the sixteen other Defendants heretofore alleged to be now exercising the rights, powers, and authority, confided by law to The Board of Commissioners of the City of Raleigh, and with the intent upon the part of the said Board of Commissioners of Wake county, the said acting Mayor, and the said acting Board of Commissioners of the City of Raleigh, that a municipal election should be held on the first Monday in May, A. D. 1876, for the officers, and under the provisions and regulations, specifically named and set out in the aforesaid Act of 16th of February, A. D. 1875; and that no municipal election should be held by the qualified voters of the City of Raleigh, on said first Monday in May, A. D. 1876, for the officers, and under the provisions and regulations, named and prescribed by the Constitution of the State, and the laws of North Carolina, which govern and control such election—did nominate and appoint the following Registrars, and the following Inspectors of Election, for the five Wards of said City, defined in said Act of 16th February, A. D. 1875, that is to say, one Registrar, and four Inspectors of Election, for each of said Wards—to make registration of the electors qualified according to said Act, in their respective Wards—and to open polls in their respective Wards, for the election of seventeen Aldermen, (three in each of said Wards, except the 3d Ward, which is to elect five Aldermen,) by the voters so qualified; and in all respects to conduct said municipal election, under the provisions and regulations, contained in said Act of 16th of February, A. D. 1875: for the 1st Ward the Defendant, J. J. Christophers, Registrar, and the Defendants, J. J. Litchford, Graham Haywood, M. B. Barbee, and R. S. Perry, Inspectors; for the 2d Ward, the Defendant, J. W. Marcom, Registrar, and the Defendants, A. C. Sanders, E. A. Carver, J. J. Nowell, and Jackson Alston, Inspectors; for the 3d Ward, the Defendant, J. J. Lewis, Registrar, and the Defendants, P. J. Brown, W. C. Lassiter, Celedon Hutchings, and Alexis Long, Inspectors; for the 4th Ward, the Defendant, T. J. Belvin, Registrar, and the Defendants, James Bonner, D. C. Murray, J. E. Whitaker, and J. J. Sawyer, Inspectors; for the 5th Ward, the Defendant, Joseph A. Harris, Registrar, and the Defendants, J. D. Pullen, S. M. Rigsbee, and M. V. B. Gilbert, and the Plaintiff, John C. Gorman, Inspectors. And the said Board of Commissioners of Wake county designated Upchurch's Shop as the place of

Said territory is not held by construction of law to be part of the City of Raleigh.

registration in the 1st Ward—Jenkins' Shop as the place in the 2d—the Court House as the place in the 3d—the Gas House as the place in the 4th—and A. L. Moore's Store as the place in the 5th.

XIX. That the Plaintiff, John O. Gorman, has declined to act as Inspector under said appointment, but, as Plaintiffs are informed and believe, it is the intention of the other persons above enumerated, to accept their appointments, as Registrars and Inspectors respectively, and to make registration of electors, and hold a municipal election, for the City of Raleigh, on the said first Monday in May, A. D. 1876, under and in pursuance of the provisions of said Act, of 16th of February, A. D. 1875.

XX. That the Plaintiffs are all male inhabitants of the City of Raleigh, and citizens of the United States, upwards of twenty-one years of age, and on the first Monday in May, A. D. 1876, will have resided in the State of North Carolina more than twelve months, and in the County of Wake and City of Raleigh, and in the Wards of said City in which they respectively propose to vote on that day, more than thirty days—that is to say, the Plaintiffs, John O. Gorman and John R. O'Neil, for more than thirty days in the Western Ward; and the Plaintiffs, William W. White and Handy Lockhart, for more than thirty days in the Eastern Ward; and are, therefore, qualified voters within the corporate limits of the City of Raleigh, and they institute this action in behalf of themselves, and all the other qualified voters within said City, who may elect to participate therein as Plaintiffs, to compel the aforesaid acting Mayor, and acting Board of Commissioners, to appoint Registrars and Inspectors of Election, so that a municipal election may be held by the qualified voters within said City, for a Mayor and nine Commissioners, on the first Monday in May, A. D. 1876, in accordance with the Constitution and laws of the State; and to enjoin the aforesaid persons, Defendants, who have been nominated and appointed respectively Registrars and Inspectors of Election, by the Board of Commissioners of Wake county as aforesaid, from in any manner interfering with said municipal election, and from attempting to register voters, and hold a municipal election for seventeen Aldermen, on the first Monday in May, A. D. 1876, or on any other day, in accordance with the provisions and regulations of the aforesaid Act of 16th of February, A. D. 1875, or in any other manner whatsoever.

XXI. And these Plaintiffs, being so advised, in behalf of themselves, and the other qualified voters *bona fide* resident within the City of Raleigh, aver, that the said act of 16th of February, A. D. 1875, and so much and such parts thereof as are hereinafter specified are invalid and repugnant to the Constitution of the State—and that any municipal election for the City of Raleigh, which may be held thereunder, for the Aldermen therein directed to be elected, in accordance with the provisions and regulations therein contained, will be irregular and voidable, and absolutely void:

1st. Because, by said act, the right to elect the Mayor of the City of Raleigh is taken away from the majority of qualified voters therein, in whom it is vested by the Constitution and laws of the State, and is bestowed upon the majority of a Board of seventeen Aldermen, who are to be elected in the manner, and under the regulations, prescribed by said act:

2nd. Because by said act, both the right to register and the right to vote, is taken away from all the qualified voters within said City, who reside within that part of the corporate territory which lies between the Eastern boundary of the City on the East, Martin street and its extension on the South, East street on the West, and Jones street and its extension on the North—the same not being included in any of the Wards of the City as defined by said act:

3rd. Because, by said act, the whole municipal authority and power is vested in a Board of seventeen Aldermen, and all the qualified voters *bona fide* resident within the city, who have not resided therein for ninety days next preceding the election, or who have not resided in the Ward for which they offer to vote for thirty days next preceding the election, or who decline to state to the Registrar, and make affidavit before him of their specific place of residence within the Ward in which they offer to register, are deprived of the right of voting for any of said Aldermen:

4th. Because, by said act, the Inspectors holding the polls for the election of Aldermen, are authorized to exclude any qualified voter from casting his ballot in said election, upon a bare challenge, without any evidence of his disqualification, and notwithstanding he be ready to make, and does make, affidavit to his qualification in due form by law.

5th. Because, by said act, arbitrarily, and without reason, the power is given to about 181 voters, qualified in the manner provided in the act, by a majority of their vote to elect five members of the aforesaid Board of Aldermen—while to about 280 voters so qualified in the 1st Ward—332 so qualified in the 2nd Ward—268 so qualified in the 4th Ward—and 541 so qualified in the 5th Ward—the power is given to the majority of the voters in each of said Wards to elect only three members of the aforesaid Board of Aldermen:

6th. Because, by said act, the population resident in the 3rd and 4th Wards, and represented by about 449 qualified voters, have the right to elect eight Aldermen on said Board, while the population resident in the 5th Ward, and represented by about 541 qualified voters, have the right to elect only three Aldermen on said Board.

7th. Because, the act creates a representative legislative body, consisting of seventeen Aldermen, and by its division of the corporate territory into the five Wards therein defined, and the appointment of the right to elect these Aldermen among them, in the manner therein provided,—in view of the population contained within each Ward, as disclosed by this complaint—arbitrarily violates the fundamental principle of the State Constitution—that representation shall be apportioned to the popular vote as near as may be, and that every voter shall have an equal weight in electing public officers, and in the government of the State, and of the subordinate municipality to which he belongs.

XXII. And these Plaintiffs, being so advised, aver, in behalf of themselves, and all the other qualified voters resident within the City of Raleigh, that the said act is also repugnant to the constitution of the United States: because, in its application to the qualified voters of the City of Raleigh,—consisting of the relative proportion of white and colored voters in the whole city, and in each of said five Wards herein before set out in detail—its effect is, to abridge the right of the colored citizens of the United States, who are otherwise qualified voters, to vote, on account of their race, color, and previous condition of servitude.

Wherefore the Plaintiffs in behalf of themselves, and the other qualified voters *bona fide* resident within the City of Raleigh, pray judgment:

1st. That a peremptory Mandamus issue to the Defendant, Basil C. Manly, acting Mayor of the City of Raleigh, requiring him forthwith to appoint three Registrars, one for the Middle Ward, one for the Eastern Ward, and one for the Western Ward of said City, as said Wards are defined by the Act of 3d of February, A. D. 1857—by whom the qualified voters of said City, *bona fide* resident within their respective Wards, may be duly registered according to law, at least ten days before the 1st day of May, A. D. 1876.

2d. That a peremptory Mandamus issue to the Defendants, James McKee, John Armstrong, H. J. Hammill, J. J. Nowell, W. H. Martin, Stewart Ellison, P. F. Pescud, Jr., John O. Blake, W. O. Stronach, R. H. Bradley, J. C. R. Little, Henry O. Jones, James H. Jones, James H. Harris, John R. Williams, P. C. Fleming and R. H. Jones, now exercising the rights, powers, and authority of the Board of Commissioners of the City of Raleigh, requiring them, and each, and every, and all of them, as such Board of Commissioners, forthwith, to designate the points within said Eastern and Western Wards of the City of Raleigh, where polls shall be opened for a municipal election on said 1st day of May, A. D. 1876, for a Mayor of said City, and three Commissioners for each of said Wards:

And further requiring them, and each, and every, and all of them, as such Board of Commissioners—at least twenty days before said 1st day of May, A. D. 1876, to elect and appoint nine Inspectors of Election—three to preside over the polls to be opened on that day in the said Eastern Ward, and three to preside over the polls to be opened on that day in the said Western Ward,—to hold a municipal election for the City of Raleigh on said 1st day of May, A. D. 1876, for a Mayor of said City, and nine Commissioners thereof—to be conducted in the manner, and under the regulations, prescribed by the Constitution and laws of this State, and by the private Acts of the General Assembly, constituting the charter of the City of Raleigh, which were enacted and ratified previous to the 16th day of February, A. D. 1875.

3d. That the Defendants, J. J. Christophers, J. J. Litchford, Graham Haywood, M. V. Barbee, R. S. Perry, J. W. Marcom, A. C. Sanders, E. A. Carver, J. J. Nowell, Jackson Alston, J. J. Lewis, P. J. Brown, Celdon Hutchings, W. O. Lassiter, Alexis Long, T. J. Belvin, James Bonner, D. C. Murray, J. R. Whitaker, J. J. Sawyer, Joseph A. Harris, J. D. Pullen, S. M. Rigsbee, and M. V. B. Gilbert, and each, and every, and all of them, be strictly enjoined from, in any manner intermeddling or interfering with, the registration of qualified voters by the Registrars appointed by said Mayor, in pursuance of the prayer of this Complaint—or with the opening of the polls, or the conduct of the said election, by the Inspectors of Election appointed by said acting Board of Commissioners of the City of Raleigh, in pursuance of the prayer of this Complaint:

And that they, and each, and every, and all of them, be further commanded and strictly enjoined, that they do absolutely and entirely refrain, and abstain, and desist from, taking any steps whatever, to facilitate an election for seventeen Aldermen of the City of Raleigh, under the provisions of the Act of 16th of February, A. D. 1875, or under any other authority whatsoever, by reason of their appointment by The Board of Commissioners of Wake county, or by any other person or persons whomsoever, whether natural person or persons, or body or bodies corporate.

4th. And for such other and further relief as they may be entitled to by reason of the case made by their Complaint.

5th. And for costs.

HAYWOOD, BADGER, TOURGEE & PURNELL,

Attorneys for Plaintiffs.

NORTH CAROLINA, }
WAKE COUNTY. } ss.

John C. Gorman, John R. O'Neil, William W. White, and Handy Lockhart, the Plaintiffs above named, being severally sworn, say each for himself, that the foregoing complaint is true to their own knowledge, except the matters therein stated on information and belief, and as to those matters, they believe the same to be true.

JOHN C. GORMAN,
JOHN R. O'NEIL,
W. W. WHITE,
HANDY LOCKHART.

Sworn and subscribed before me this 25th day of March, A. D. 1876.

J. N. BUNTING,

Clerk of the Superior Court of Wake County.

To the Defendants named in the foregoing Complaint:

SIRS—Take notice, that, in behalf of the Plaintiffs, Ed. Graham Haywood is the person upon whom, and the office of said Haywood, on Fayetteville street, in the City of Raleigh, is the place where, service of pleadings and notices in this action is to be made.

J. C. GORMAN,
JNO. R. O'NEIL,
W. W. WHITE,
HANDY LOCKHART,
Plaintiffs.

EXHIBIT ACCOMPANYING COMPLAINT, AND REFERRED TO THEREIN—BEING ACT
RATIFIED 16TH FEBRUARY, A. D. 1875.

SECTION 1. *The General Assembly of North Carolina do enact,* That the City of Raleigh shall be divided into five Wards, denominated the 1st, 2nd, 3rd, 4th and 5th Wards. The 1st Ward shall be bounded as follows: Beginning at the intersection of Davie and Wilmington streets, thence East with the central line of Davie street to its intersection with Bloodworth street, thence along the line of Bloodworth street to Martin street, thence east along the central line of Martin street to East street, thence North with the central line of East street to its intersection with Jones street, thence East with the central line of Jones street to the City line, thence with the line of the City North and West to Wilmington street, and South with the central line of Wilmington street to the beginning. The 2nd Ward shall be bounded as follows: Beginning at the intersection of Davie and Wilmington streets, thence with the boundaries of the 1st Ward East with Davie street, North with Bloodworth

street, East with Martin street, to the City line, thence with the boundaries of the City South and West to the Fayetteville road, thence northwardly up the centre of said road to the centre of South street, thence east with South street to its intersection with Wilmington street, thence North with the central line of Wilmington street to the beginning. The 3rd Ward shall be bounded as follows: Beginning at the intersection of South and Wilmington streets, thence North with central line of Wilmington street to the City line, thence West with City line to centre of Salisbury street, thence with the central line of Salisbury street, South, to South street, thence East with the central line of South street to the beginning. The 4th Ward shall be bounded as follows: Beginning at the intersection of Davie and Salisbury streets, thence West with the central line of Davie street to Harrington street, thence North with the central line of Harrington street to Hargett street, thence West with central line of Hargett street to the R. & G. R. R. Track, thence Northward along central line of said track to its intersection with Hillsboro street, thence West with central line of Hillsboro street to City line, thence with the City boundaries South and East to the Fayetteville road, thence with the centre of said road to South street, thence West with central line of South street to its intersection with Salisbury street, thence North with central line of Salisbury street to the beginning. The 5th Ward shall be bounded as follows: Beginning at the intersection of Davie and Salisbury sts, thence with the boundaries of the 4th Ward, with central line of Davie st. to Harrington st, thence North to Hargett st., thence West with central line of Hargett st., to the Raleigh & Gaston Railroad Track, thence Northward along the central line of said track to Hillsboro street, thence west to the City limits, thence with the City boundaries North and East to Salisbury street, thence down Salisbury street to the beginning.

SEC. 2. There shall, annually, on the first Monday in May, in each year, be elected seventeen (17) Aldermen for said City, who shall hold their offices until their successors are qualified, three of whom shall be chosen for each Ward, except the 3rd Ward, and the 3rd Ward shall choose five. Such Aldermen shall be residents of the Ward for which they are chosen, and shall be elected by the qualified voters of such Ward.

SEC. 3. The Board of Commissioners for Wake county shall select, at or before their meeting in March, 1875, and annually thereafter, a Registrar of voters for each of the five Wards of the City of Raleigh, and shall cause publication thereof to be made, at the Court-House door, and notice to be served on such persons by the Sheriff, and shall give ten days public notice of a Registration of voters in and for said Wards, specifying time and place and name of Registrars.

SEC. 4. Said Registrars shall be furnished, by the said County Commissioners, with Registration books, and it shall be the duty of said Registrars, appointed for the year 1875, and thereafter, to open their books at such places in the City of Raleigh as may be designated by the said Commissioners, on or before the last Monday in March in such year, and to register therein the names of all persons applying for Registration, and entitled to Register and vote in that Ward, for which such Registrar has been appointed, keeping the names of white voters separate and apart from those of colored voters, and designating on the Registration books, opposite the name of each person registering, the place of his residence in his Ward. And if any applicant for registration shall not disclose the place of his residence in his Ward, his willful failure so to do shall be prima facie evidence that he is not entitled to Register in such Ward. Any person offering to Register may be required to take and subscribe an oath, that he is a citizen of North Carolina, and has resided in the City of Raleigh ninety days, and in the Ward for which he offers to Register for thirty days next preceding that date, or is otherwise entitled to Register, and that his place of residence is at —, in such Ward; and if any person shall willfully swear falsely in such affidavit, he shall be deemed guilty of a misdemeanor, and on conviction shall be sentenced to pay a fine of \$100. and to be imprisoned sixty days in the County jail: *Provided*, That after the first Registration shall have been made by virtue hereof, a new Registration shall not be annually had, but a revision of the Registration book shall be made ten days prior to each succeeding election to be held for said City, agreeably to the provisions of sec. 8, chapter 52, Bat. Rev.

SEC. 5. The Registration books shall be closed ten days before day of election, and after the same are closed, no person shall be allowed to Register, but the Registrar shall, on application before said books are closed, Register all persons not then qualified to vote in his Ward who will become so qualified on or before the day of election. Immediately after said books are closed, they shall be deposited in the office of the Sheriff of Wake county, and citizens desiring, may inspect them.

SEC. 6. The Board of Commissioners of Wake county, at or before their meeting in April, 1875, and annually thereafter, shall appoint four judges or inspectors of election for each of the several Wards of the City of Raleigh to open the polls and superintend the same for the Municipal election to be held on the 1st Monday in May next succeeding, and the polls shall be opened at such places in the wards respectively as said Commissioners shall designate. Such election shall be held as near as may be agreeable to the provisions of sections 11, 14, 15, 19 and 20 of chap. 52, R. S.; and the Registrars and the Judges of election, whose appointments are herein provided for, shall have authority to administer oaths, and shall have all the powers of such officers appointed under the title of "General Assembly" of Battle's Revisal.

SEC. 7. All electors who have resided in the City of Raleigh ninety days, and fix the Ward for which they offer to Register thirty days next preceding the election, shall be entitled to register hereunder.

SEC. 8. The polls shall be opened, on the day of election, from 7 a. m. to sunset of the same day. No person whose name has not been duly registered shall be allowed to vote; and any one offering to vote may be challenged at the polls, and if the judges of election shall sustain the challenge, such person's ballot shall not be received. Ballots shall be on white paper and without device. The Aldermen for each Ward shall be voted for on one ballot.

SEC. 9. After the ballots are counted, they shall be carefully preserved, and shall be, together with the poll-lists, which shall be signed by the Judges of the election, and the Registration books, delivered to the Register of Deeds for Wake county for preservation.

SEC. 10. If, among the persons voted for in any Ward, there should be any two or more having an equal number of votes, and either would be elected but for the equal vote, the Registrar and Inspectors shall decide the election between such persons. As soon as the result of the election in any Ward is determined, two certificates thereof shall be made under the hand of the Registrar and Inspectors, setting forth in writing and in words, the number of votes each candidate received, one of which certificates they shall deliver to the Sheriff of Wake county, who shall at once make proclamation thereof at the Court-House door, and the other they shall deliver to the Mayor of the City of Raleigh. The Registrar and Inspectors shall also furnish to each person chosen an Alderman in their Ward a certificate of his election.

SEC. 11. That on the Tuesday succeeding the day of such election, the Aldermen elected thereat shall qualify by taking the oath of office prescribed for Commissioners in an act entitled "An Act to Incorporate the City of Raleigh," ratified on the 10th day of March, 1866; and when organized, shall succeed to and have all the rights, powers and duties heretofore prescribed by law for the Board of Commissioners of the City of Raleigh.

SEC. 12. That the Board of Aldermen, at their first meeting after each annual election, shall choose some person, not one of their own number, to be Mayor of said City, to hold his office until his successors shall qualify, who shall preside at the meeting of the Board of Aldermen, and have the rights and powers, and perform all the duties heretofore prescribed by law for such officers. For misconduct in office, the Mayor may be removed from his office by a vote of three-fifths of the entire number Board of Aldermen; and upon such office becoming vacant from any cause, the Board of Aldermen shall fill the same for the unexpired time.

SEC. 31. That the Board of Aldermen may choose some one of their number, or other suitable person, to be Auditor of the City, whose salary shall not be more than two hundred dollars per annum. No claim against the

City shall be paid until it shall have been audited by such officer. He shall make monthly reports of such claims audited by him to the Board of Aldermen, and shall perform such other duties as the Board may order. The Board of Aldermen may, in its discretion, abolish the office of Commissioner of the Sinking Fund, and make suitable provision for the payment and management of the City debt. That the Board shall fund the present debt of the City by issuing bonds payable in 20 and 30 years at 6 per centum per annum, interest with coupons payable semi-annually, receivable for taxes or other indebtedness to the City. And the Board shall contract no debt of any kind unless the money is in the Treasury for its payment, except for the necessary expenses of the City government, until the taxes for the payment thereof can be collected.

Sec. 14. So much of any act as provides for the election in the City of Raleigh of a Board of Commissioners is hereby repealed, to take effect on the qualification of the Aldermen herein provided for.

Sec. 15. That all elections held by virtue of this act shall be held under the supervision of the Sheriff of Wake county, who shall attend the polls, and by his deputies preserve order.

Sec. 16. That the Mayor of the said City of Raleigh, while acting as such, is hereby constituted an official court, with all the jurisdiction and powers in criminal offences occurring within the limits of said city, which now or may hereafter be given by law to justices of peace, and shall also have jurisdiction to hear and determine all misdemeanors, consisting of a violation of the ordinances of said city. The proceedings in said court shall be the same as are now or hereafter shall be prescribed for courts of justices of the peace, and in all cases there shall be a right of appeal to the Superior Court of Wake County. And that in all cases when a defendant may be adjudged to be imprisoned by the said Special Court, it shall be competent for said court to adjudge also that the said defendant work during the period of his confinement in the public streets, or other public works of said city.

Sec. 17. Whenever, under the provisions of this act, any question is to be decided by the judges of election, and such judges cannot decide the same because of the tie vote, the Registrar shall give the casting vote.

Sec. 18. This act shall be in force from and after its ratification,
Ratified the 16th day of February, A. D. 1876.

NOTICE

To Basil O. Manly, acting Mayor of the City of Raleigh, James McKee, John Armstrong, H. J. Hammill, J. J. Nowell, W. H. Martin, Stewart Ellison, P. F. Pescud, Jr., John C. Blake, Wm. O. Stronach, Robert H. Bradley, J. O. B. Little, Henry C. Jones, James H. Jones, James H. Harris, P. O. Fleming, John R. Williams, and R. H. Jones, now exercising the rights, powers and duties, hereinbefore prescribed by law, for the Board of Commissioners of the City of Raleigh—Defendants: } March 25th, 1876.

SIRS—Take notice, that on Wednesday, the 5th day of April, A. D. 1876, at 11 o'clock, A. M., or so soon thereafter as his Honor may be prepared to hear the same, before the Hon. Sam'l W. Watts, Judge of the 6th Judicial District, at Chambers, at the Court House in the City of Raleigh, we shall move for Writs of Mandamus as prayed in the foregoing complaint accompanying this notice.

J. C. GORMAN,
JNO. R. O'NEIL,
W. W. WHITE,
HANDY LOCKHART,

Plaintiffs.

NOTICE

To J. J. Christophers, J. J. Litchford, Graham Haywood, M. B. Barbee, R. S. Perry, J. W. Marcom, A. C. Sanders, E. A. Carver, J. J. Nowell, Jackson Alston, J. J. Lewis, P. J. Brown, Celedon Hutchings, W. O. Lassiter, Alexis Long, T. J. Belvin, James Bonner, D. C. Murray, J. B. Whitaker, J. J. Sawyer, Joseph A. Harris, J. D. Pullen, S. M. Rigsbee, and M. V. B. Gilbert—Defendants: } March 25th, 1876.

SIRS---Take notice, that on Wednesday, the 5th day of April, A. D. 1876, at 11 o'clock, A. M., or so soon thereafter as his Honor may be prepared to hear the same, before the Hon. Samuel W. Watts, Judge of the 6th Judicial District, at Chambers, at the Court House in the City of Raleigh, upon the foregoing and accompanying complaint as an affidavit, we shall move for orders of injunction as prayed in said complaint.

J. C. GORMAN,
JNO. R. O'NEIL,
W. W. WHITE,
HANDY LOCKHART,

Plaintiffs.

JOHN C. GORMAN AND OTHERS, IN
BEHALF OF THEMSELVES AND THE
OTHER QUALIFIED VOTERS OF THE
CITY OF RALEIGH, PLAINTIFFS,

Against

BASIL C. MANLY, ACTING MAYOR OF
THE CITY OF RALEIGH, AND OTHERS,
DEFENDANTS.

COMPLAINT.

Filed 25th March, 1876.

HAYWOOD, TOURGE, BADGER & FURNELL,
Attorneys for Plaintiffs.

CHAUTAQUA COUNTY NY HISTORICAL SOCIETY 2013