

Glenn v. Culbreth
GEORGE M. GLENN et al. v. E. E. CULBRETH et al. GEORGE M.
GLENN et al. v. E. E. CULBRETH et al.

197 N.C. 675
Supreme Court of North Carolina
Decided November 13 1929

197 N.C. 678W. F. Evans for plaintiffs.

Clifton Beckwith and William B. Jones for defendants.

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11 The law provided for the regular city election on the first Monday in May, 1927. It was conceded in the oral argument that the election was held and the defendants, commissioners, were elected. The injury complained of has thus become accomplished and completed. Hence, the appeal presents, in its final analysis, only a moot or abstract question. The uniform rule adopted by this Court is to the general effect that such questions will not be considered. Wikel v. Board of Commissioners, 120 N. C., 451, 27 S. E., 117; Pickler v. Board of Education, 149 N. C., 221, 62 S. E., 902; Little v. Lenoir, 151 N. C., 415, 66 S. E., 337; Wallace v. Wilkesboro, 151 N. C., 614, 66 S. E., 657; Moore v. Monument Co., 166 N. C., 211, 81 S. E., 170. Furthermore, if the registration is declared to be void, such ruling, under the circumstances of the case, would, in effect, be equivalent to an action to try title to office. This cannot be done by mandamus. Ellison v. Raleigh, 89 N. C., 125; Markham v. Simpson, 175 N. C., 135, 95 S. E., 106; Johnston v. Board of Elections, 172 N. C., 162, 90 S. E., 143.

12 There is no allegation or finding of fact by the trial judge as to the number of qualified voters or as to the number placed upon the registration books by means of the methods complained of; nor is there allegation or finding that persons so registered were not qualified voters of the city of Raleigh, and that the irregularities complained of would have affected the result of the election. Hill v. Skinner, 169 N. C., 405, 86 S. E., 351. The fact that a person was registered by a third person with whom the registrar had left the book does not necessarily work a 197 N.C. 679 disqualification (Quinn v. Lattimore, 120 N. C., 426, 26 S. E., 638); nor does a failure to administer an oath to voters applying for registration result in a forfeiture of the right to vote. This principle was declared in Gibson v. Commissioners, 163 N. C., 510, 79 S. E., 976, as follows: "A constitutional or statutory provision that no one shall be entitled to register without first taking an oath to support the Constitution of the State and that of the United States is directed to the registrars, and to them alone; and if they, through inadvertence, register a qualified voter, who is entitled to register and vote without administering the prescribed oath to him, he cannot be deprived of his right to vote through this negligence of the officers."

13 The trial judge, after hearing the matter upon its merits, found as a fact that the election was properly called, registrars duly appointed, proper books for the registration of voters provided, and that the officers

have “done all other things required of them by law.” There was evidence to support this finding.

¶14 Moreover, the plaintiff had an adequate remedy at law. The charter of the city of Raleigh, Article Till, provides that every person who shall vote in the city primary “shall be subject to the challenge made by any resident of the city of Raleigh under such rules as may be prescribed by the board of commissioners, and such challenge shall be passed upon by the judges of elections and registrars,” etc. The general election law provides the same remedy in C. S., 5972.

¶15 Upon the whole record, we are of the opinion that the judgment rendered must be upheld.

¶16 Affirmed.