this court jurisdiction on a writ of error; but in giving judgment for the plaintiff below, for any sum at all, the court necessarily passed upon a defence of the defendant, set up by way of answer in the nature of a counter-claim, insisting upon an equitable right to a conveyance of the land, out of which it was alleged the rent issued, and the value of which was in excess of the limit required for the jurisdiction of the court. The effect of the judgment was to adjust the legal and equitable claims of the parties to the subject of the suit, which was, not merely the amount of the rent claimed, but the title of the respective parties to the land. On that ground alone the jurisdiction of the court was upheld.

*Gray* v. *Blanchard*, 97 U. S. 564, and *Tintsman* v. *National Bank*, 100 id. 6, are instances of the strict application of the rule limiting the jurisdiction to the amount actually in dispute in the suit; of which a similar example is found in *Parker* v. *Morrill*, *ante*, p. 1, decided at the present term.

Indeed, so strictly has it been applied, that, in cases where, although the entire matter in dispute in the suit exceeds in value the jurisdictional limit, nevertheless, if there are several and separate interests in that sum, belonging to distinct parties, and constituting distinct causes of action, although actually united in one suit and growing out of the same transaction, the jurisdiction of the court has been constantly denied. We have had occasion to repeat and apply this principle in several cases at the present term. *Ex parte Baltimore & Ohio Railroad Co.*, *Schwed* v. *Smith*, *Farmers' Loan & Trust Co.* v. *Waterman*, *Adams* v. *Crittenden*, *ante*, pp. 5, 188, 265, 576. In some of these cases, the value of the matter in dispute, actually determined against the party invoking our appellate jurisdiction, actually was largely in excess of its limit, and yet its exercise was forbidden, because it was divided into distinct claims, no one of which was sufficient of itself to entitle either party to an appeal, although the decision in one was necessarily the same in all, because rendered upon precisely the same state of facts. *Russell* v. *Stansell*, 105 U. S. 303.

To entertain jurisdiction in the present case would be, in our opinion, to unsettle the principle of construction by which, in all the cases referred to, this court has been guided. The writ of error is accordingly

*Dismissed for want of jurisdiction.*



NOTE. — *Plainview* v. *Marshall*, error to the same court, was submitted at the same time and by the counsel who argued the preceding case. MR. JUSTICE MATTHEWS, who delivered the opinion of the court, remarked, that the two cases did not differ in any material respect, the value of the matter in dispute in each being less than $5,000. For the same reasons the writ of error in this case was

*Dismissed.*

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## PACE v. ALABAMA.

Section 4189 of the Code of Alabama, prohibiting a white person and a negro from living with each other in adultery or fornication, is not in conflict with the Constitution of the United States, although it prescribes penalties more severe than those to which the parties would be subject, were they of the same race and color.

ERROR to the Supreme Court of the State of Alabama.

Section 4184 of the Code of Alabama provides that "if any man and woman live together in adultery or fornication, each of them must, on the first conviction of the offence, be fined not less than one hundred dollars, and may also be imprisoned in the county jail or sentenced to hard labor for the county for not more than six months. On the second conviction for the offence, with the same person, the offender must be fined not less than three hundred dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not more than twelve months; and for a third or any subsequent conviction with the same person, must be imprisoned in the penitentiary, or sentenced to hard labor for the county for two years."

Section 4189 of the same code declares that "if any white person and any negro, or the descendant of any negro to the third generation, inclusive, though one ancestor of each generation was a white person, intermarry or live in adultery or fornication with each other, each of them must, on conviction, be imprisoned in the penitentiary or sentenced to hard labor for the county for not less than two nor more than seven years."

In November, 1881, Tony Pace, a negro man, and Mary J. Cox, a white woman, were indicted, under sect. 4189, in a Circuit Court of Alabama, for living together in a state of adultery or fornication, and were tried, convicted, and sentenced, each to two years' imprisonment in the State penitentiary. On appeal to the Supreme Court of the State the judgment was affirmed, and he brought the case here on writ of error, insisting that the act under which he was indicted and convicted is in conflict with the concluding clause of the first section of the Fourteenth Amendment of the Constitution, which declares that no State shall "deny to any person the equal protection of the laws."

*Mr. John R. Tompkins* for the plaintiff in error.

*Mr. Henry C. Tompkins*, Attorney-General of Alabama, *contra.*

MR. JUSTICE FIELD delivered the opinion of the court, and after stating the case as above, proceeded as follows: —

The counsel of the plaintiff in error compares sects. 4184 and 4189 of the Code of Alabama, and assuming that the latter relates to the same offence as the former, and prescribes a greater punishment for it, because one of the parties is a negro, or of negro descent, claims that a discrimination is made against the colored person in the punishment designated, which conflicts with the clause of the Fourteenth Amendment prohibiting a State from denying to any person within its jurisdiction the equal protection of the laws.

The counsel is undoubtedly correct in his view of the purpose of the clause of the amendment in question, that it was to prevent hostile and discriminating State legislation against any person or class of persons. Equality of protection under the laws implies not only accessibility by each one, whatever his race, on the same terms with others to the courts of the country for the security of his person and property, but that in the administration of criminal justice he shall not be subjected, for the same offence, to any greater or different punishment. Such was the view of Congress in the enactment of the Civil Rights Act of May 31, 1870, c. 114, after the adoption of the amendment. That act, after providing that all persons within



the jurisdiction of the United States shall have the same right, in every State and Territory, to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens, declares, in sect. 16, that they "shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and none other, any law, statute, ordinance, regulation, or custom to the contrary notwithstanding."

The defect in the argument of counsel consists in his assumption that any discrimination is made by the laws of Alabama in the punishment provided for the offence for which the plaintiff in error was indicted when committed by a person of the African race and when committed by a white person. The two sections of the code cited are entirely consistent. The one prescribes, generally, a punishment for an offence committed between persons of different sexes; the other prescribes a punishment for an offence which can only be committed where the two sexes are of different races. There is in neither section any discrimination against either race. Sect. 4184 equally includes the offence when the persons of the two sexes are both white and when they are both black. Sect. 4189 applies the same punishment to both offenders, the white and the black. Indeed, the offence against which this latter section is aimed cannot be committed without involving the persons of both races in the same punishment. Whatever discrimination is made in the punishment prescribed in the two sections is directed against the offence designated and not against the person of any particular color or race. The punishment of each offending person, whether white or black, is the same.

*Judgment affirmed.*