"SEEKIING THE FRUITS OF THEIR LABORS": THE STORY OF JOHNSON V. MCADOO, THE FIRST MAJOR REPARATIONS CASE

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I. INTRODUCTION

In his groundbreaking article *The Case for Reparations*, author Ta-Nehisi Coates points out that while the ranks of those advocating for reparations have evolved over the years, the response from opponents (and indeed, the country at large) has remained "virtually the same."[1] Before even reaching the debate over what a reparations scheme might look like or what it might entail, opponents of reparations have consistently responded with a familiar refrain: why didn't those seeking reparations come forward sooner? Beyond public debate, modern courts have regularly shut down reparations suits by invoking statutes of limitations, and occasionally doctrines like laches. Whether the plaintiffs' theories of recovery relied upon the Freedman's Bureau "40 acres and a mule" guarantee,[2] analogies to Native Americans' reparations claims,[3] the Civil Liberties Act that compensated Japanese American internment victims,[4] or simply years of enslavement resulting in unjust enrichment,[5] in every instance

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[1] Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631.

[2] Berry v. U.S., 1994 WL 374537 at 3 (N.D. Cal. 1994).

[3] Cato v. U.S., 70 F.3d 1103 (9th Cir. 1995).

[4] Obadele v. U.S., 52 Fed. Cl. 432 (Fed. Cl. 2002), aff'd per curiam, 61 Fed. App'x 705 (Fed. Cir. 2003).

[5] *In re* Afr. Am. Slave Descendants Litig., 471 F.3d 754, 763 (7th Cir. 2006).

modern American courts have rejected these claims based on (among other rationales) a lack of timeliness. Even when victims and descendants of victims of the 1921 Tulsa Race Massacre argued that equitable tolling principles should apply in light of the "conspiracy of silence," that prevented earlier legal efforts at redress, the Tenth Circuit—taking "no great comfort"—concluded otherwise.[6]

In essence, modern opponents of reparations and even, to a certain extent, judges ruling against modern day reparations suits, have bemoaned the failure of African Americans to take legal action in the years following emancipation, enfranchisement, and the passage of the Fourteenth Amendment. These arguments, however, ignore more than the harsh realities of racial violence and Jim Crow laws—they ignore historical fact. In reality, during the decades after the Civil War, a robust grass roots movement seeking pensions for former slaves (a form of reparation) gained such momentum that it spawned a lawsuit that went all the way to the United States Supreme Court, *Johnson v. McAdoo*.[7] In that case, one of the preeminent Black litigators in the country eschewed oratory about the horrors of slavery and instead made a compelling legal argument based on the over $68 million in cotton taxes (worth over $1.7 billion in today's dollars) collected by the U.S. Treasury between 1862 and 1868.[8]

This article will discuss *Johnson v. McAdoo*, the first large scale reparations lawsuit. As this article shows, even its status as the first such lawsuit brought on behalf of formerly enslaved persons who were merely "seeking the fruit of their labor" did not prevent those opposing it from sounding the now-familiar litany of defenses like limitations, laches, and governmental immunity. In addition, the lawsuit's proponents, activist Callie House and lawyer Cornelius J. Jones, endured a campaign of harassment and trumped-up criminal prosecutions by the U.S. government. As *Johnson v. McAdoo* illustrates, victory at the legislative level and in the courts will not suffice for reparations opponents. Discrediting those calling for reparations through personal attacks and criminal prosecution worked over a century ago, with both House and Jones convicted of mail fraud in the wake of the Supreme Court's decision. As *Johnson v. McAdoo* instructed as far back as 1917, the struggle for reparations will always

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[6] Alexander v. Okla., 382 F.3d 1206 (10th Cir. 2004).
[7] Johnson v. McAdoo, 244 U.S. 643 (1917).
[8] Johnson v. McAdoo, 45 App. D.C. 440, 440-41 (1916).

be more than a battle waged in legislative chambers and in courtrooms, but one fought for the hearts and minds of the public as well.

II. SETTING THE STAGE

While *Johnson v. McAdoo* represented the first major reparations case on the federal level, it was not the first reparations lawsuit. On February 14, 1783, an elderly woman named Belinda submitted a petition to the Massachusetts legislature seeking an annual pension for herself and her daughter Prine, an invalid.[9] The pension was sought from the estate of Belinda and Prine's former owner, Isaac Royall—one of the leading slaveowners in Massachusetts before fleeing to England in 1775. Royall's estate had been confiscated because of his loyalist ties, and two dozen of his former slaves were freed. The penniless and elderly Belinda needed more than manumission after decades enslaved, she demanded compensation. The petition movingly traces Belinda's life from capture by slavers at age 12, through the horrors of the Middle Passage, and through her decades of abuse as one of Royall's slaves. Reasoning that his wealth had been "augmented by her servitude," her petition sought an allowance from Royall's estate.[10] Belinda's impassioned petition was successful, and she was granted an annual pension.[11]

There were other individual suits as well, particularly after the Civil War. In 1878, Henrietta Wood received a $2,500 verdict in Cincinnati, Ohio after suing her former enslaver, Zebulon Ward.[12] Born into slavery in Kentucky approximately sixty years before, Wood had been emancipated in 1848 only to be kidnapped five years later by Ward, who sold her. Wood wound up enslaved on a Texas plantation until after the Civil War. Wood returned to Cincinnati in 1869 and sued Ward in 1870. While her eight-year sojourn through the legal system netted her only a fraction of what she had sought, Wood's victory "remains the largest known sum ever granted by a U.S. court in

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[9] Roy E. Finkenbine, *Belinda's Petition: Reparations for Slavery in Revolutionary Massachusetts*, 64 WM. & MARY Q. 95, 95–104 (Jan. 2007).
[10] *Id.* at 98.
[11] *Id.* at 103.
[12] *See generally,* W. CALEB MCDANIEL, SWEET TASTE OF LIBERTY: A TRUE STORY OF SLAVERY AND RESTITUTION (2019).

restitution for slavery."[13] It had deep personal meaning for Wood as well; her son Arthur Simms, who had been in court with his mother, used part of the monies awarded to attend what would eventually become Northwestern University School of Law. In 1889, he became one of its first African American graduates.[14]

Yet, while a few sporadic individual legal efforts took place, the harsh realities of life for ex-slaves mandated the need for action on a grander scale. By 1899, roughly 21 percent of the Black population nationally had been born into slavery.[15] Left without financial resources, property, or education, and without any compensation, many former slaves were relegated to sharecropping or tenant farming, an arrangement aimed at keeping them economically subservient and tied to land owned by former slaveholders. As Carter G. Woodson would describe it in the 1930s, "The poverty which afflicted them for a generation after Emancipation held them down to the lowest order of society, nominally free but economically enslaved."[16]

As the 19th century drew to a close, the idea of pursuing pensions for ex-slaves began to gain momentum. Aging veterans of the Civil War were being compensated for their years of service; why shouldn't former slaves be paid for years of forced unpaid labor? The first ex-slave pension bill (H.R. 11119) was introduced by Rep. William Connell of Nebraska in 1890.[17] Ex-slave pension organizations began to appear, including: the National Ex-Slave Pension Club Association of the United States; the Ex-Slave Petitioners' Assembly; the Great National Ex-Slave Union; the Ex-Slave Pension Association; the Ex-Slave Department Industrial Association of America; and various others.[18] The most influential of these was the National Ex-Slave Mutual Relief, Bounty and Pension

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[13] W. Caleb McDaniel, *In 1870, Henrietta Wood Sued for Reparations – And Won*, SMITHSONIAN MAG. (Sept. 2019), https://www.smithsonianmag.com/history/henrietta-wood-sued-reparations-won-180972845.

[14] *Id.*

[15] Mary F. Berry, *Reparations for Freedmen: 1890—1916: Fraudulent Practices or Justice Deferred?*, 57 J. NEGRO HIST. 219, 219–30 (July 1972).

[16] CARTER G. WOODSON, THE MIS-EDUCATION OF THE NEGRO (The Associated Publishers, 1933).

[17] Miranda Booker Perry, *No Pensions for Ex-Slaves: How Federal Agencies Suppressed Freedpeople*, NAT'L ARCHIVES (Summer 2010), https://www.archives.gov/publications/prologue/2010/summer/slave-pension.html.

[18] *Id.*; *see generally* Adjoa A. Aiyetoro & Adrienne D. Davis, *Historic and Modern Social Movements for Reparations: The National Coalition of Blacks for Reparations in America (N'COBRA) and Its Antecedents*, 16 TEX. WESLEYAN L. REV. 687 (2010).

Association of the United States of America (MRB&PA).[19] Chartered on August 7, 1897, the MRB&PA sought to lobby Congress for the passage of ex-slave pension legislation as well as to serve as a mutual aid society helping the sick and disabled with medical expenses and paying for burial expenses.[20]

Headquartered in Nashville, Tennessee, the association grew both in membership (at its peak, the group claimed membership of more than 300,000) and in organization.[21] It established a charter, adopted a constitution and bylaws, held annual conventions, and had a network of local chapters throughout the South and Midwest. The organization advocated for a sliding scale of benefits payments: ex-slaves aged 70 and above would receive an initial payment of $500 and $15 monthly payments for life; those aged 60–69 years would receive $300 and $12 monthly payments; ex-slaves who were 50–59 years of age would receive $100 and $8 monthly payments; and those under 50 would receive a $4 per month pension.[22]

The association's two most notable leaders were its general manager and national promoter, a minister named Isaiah Dickerson, and its assistant secretary (and later national promoter) Callie House. House, a widow and mother of five, was an ex-slave who worked as a laundress.[23] As the MRB&PA grew, both House and Dickerson would be targeted by multiple U.S. government agencies, including the Bureau of Pensions, the Post Office, and the Department of Justice. The commissioner of pensions, for example, blamed activists like House and Dickerson for arousing false hopes in the Black community for "reparations for historical wrongs to be followed by inevitable disappointment, and probably distrust of the dominant race and of the Government."[24] Acting under the unfounded suspicion that the association's officers were misrepresenting themselves as government officials, and raising money under false pretense through their circulars and mailings, the three government agencies sought to build a fraud case against the MRB&PA's leaders. Using sweeping antifraud

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[19] *See generally,* MARY FRANCES BERRY, MY FACE IS BLACK IS TRUE: CALLIE HOUSE AND THE STRUGGLE FOR EX-SLAVE REPARATIONS (2005); Walter B. Hill, Jr., *The Ex-Slave Pension Movement: Some Historical and Genealogical Notes*, 59 NEGRO HIST. BULL. 7, 7–11 (Oct.–Dec. 1996).

[20] *Id.*

[21] *Id.*

[22] Perry, *supra* note 17, at 6.

[23] BERRY, *supra* note 19.

[24] Perry, *supra* note 17, at 7.

powers, the Post Office issued a fraud order against the association on September 20, 1899; naming House, Dickerson, and other officers, the order enabled the Post Office to intercept the MRB&PA's mail and return it to senders marked "Fraudulent."[25]

For approximately twenty years, as the pension bills that were submitted to Congress languished, the government conducted its campaign against House, Dickerson, and their organization, clearly perceiving them as threats. Pension Bureau Inspector W.L. Reid, for instance, felt that the ex-slave pension movement was "setting the Negroes wild," and opined that "If this continues, the government will have some very serious questions to settle in connection with the control of the race."[26] The Nashville postmaster, A. Wills, complained to Acting Assistant Attorney General Harrison Barrett that House was "defiant in her actions, and seems to think that the negroes have the right to do what they please in this country."[27]

While not all of those who advocated for the cause of reparations for former slaves had noble intentions, it seems clear that when it came to House and her association, the campaign mounted against them was, as historian Mary Frances Berry has observed, "the selective use of government power."[28] Moreover, the targeting of House and her colleagues was committed while ignoring similar efforts by white pension proponents and while declining to prosecute local pension swindlers. In 1901, Dickerson was found guilty of "swindling" by a local court in Atlanta, Georgia. Although the conviction was overturned later that year by the Georgia Supreme Court, the Bureau of Pensions launched a new investigation of Dickerson in 1902.[29] The hounding continued until Dickerson died in 1909.[30]

House continued to travel the country and was essentially the public face of the movement—a role she had been playing even before Dickerson's death. Viewed through a modern lens, it seems clear that the government's vendetta was not rooted in the fear that the ex-slave pension movement would actually succeed in enacting a pension law. Instead, it was based on a fear of black organizing itself, and what it

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[25] *Id.* at 7–8.
[26] BERRY, *supra* note 19, at 83.
[27] *Id.* at 124.
[28] *Id.*
[29] Perry, *supra* note 17, at 8.
[30] *Id.* at 9.

could lead to. At its peak, the association swelled to nearly 300,000 dues-paying members, and it claimed that more than 600,000 former slaves had signed its petitions supporting pension bills.[31] Even though the bills failed to garner legislative support, the Post Office, Pension Bureau, and Department of Justice never relented in their efforts, choking off the Association's ability to fundraise by intercepting its mail and by ordering local post offices to deny payment on money orders made payable to the Association or its officers. Despite a First Amendment right to organize and to petition the government, House and her colleagues were subjected to surveillance, harassment, investigation for fraud, and of course prosecution.

House herself was arrested in 1916. In an indictment that identified no victims of her supposed mail fraud, House was accused of sending misleading circulars through the mail, guaranteeing pensions to members of the Association, and profiting from the movement.[32] Despite evidence that could most charitably be described as groundless, House was convicted of mail fraud after a three-day trial in September 1917 before an all-white, all-male jury.[33] The judge, Edward T. Sanford (who would later serve as a justice on the U.S. Supreme Court), sentenced Callie House to a year in the Missouri State Prison in Jefferson City, Missouri. House's last month was commuted, and she was released in August 1918.[34]

The MRB&PA and its leaders were harassed and prosecuted despite their movement's lack of legislative success. Imagine if the NAACP and its leadership had been subjected to similar treatment, despite the repeated failures of the anti-lynching bills for which it advocated? But if the halls of Congress would not provide the battleground Callie House and her Association sought, the courthouse just might.

III. ENTER CORNELIUS JONES

To litigate a national suit for reparations, House and the Association needed a nationally prominent lawyer experienced in taking causes important to the Black community to the highest level. That made for a short list, at the top of which was Cornelius J. Jones,

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[31] Aiyetoro & Davis, *supra* note 18, at 14.
[32] BERRY, *supra* note 19, at 191.
[33] *Id.* at 203.
[34] *Id.* at 212.

one of the few Black lawyers not only admitted to practice before the United States Supreme Court, but who had also actually argued before the Court. On April 13, 1896, the same day that the Supreme Court heard argument in *Plessy v. Ferguson*, now infamous for its approval of the "separate but equal" doctrine—the Supreme Court also decided two companion cases: *Gibson v. Mississippi* and *Smith v. Mississippi*.[35] Both cases involved Black defendants, both involved claims arising out of the disfranchisement of Black voters occurring under the notorious Mississippi Constitution of 1890, and both were argued by Black attorneys (only the second and third cases ever to be argued by Black lawyers before the Court). Cornelius J. Jones was primarily responsible for both cases, and argued the *Gibson* case (he enlisted local Washington, D.C. attorney Emanuel Molyneaux Hewlett to argue the *Smith* case). *Gibson* resulted in a decision that excluding Blacks from grand juries violated the Fourteenth Amendment. Not only did *Gibson* result in Justice Harlan's famous pronouncement that "the Constitution of the United States, in its present form, forbids so far as civil and political rights are concerned, discrimination . . . against any citizen because of his race," Harlan's opinion specifically referred to Jones and Hewlett when he noted that the points made had been "so forcibly presented by [*Gibson*'s] counsel, who are of the same race."[36] This may be the only Supreme Court opinion ever referring to the color of the attorneys arguing the case.

Cornelius J. Jones was an extraordinary individual, and, surprisingly, has been largely overlooked by much of the scholarship discussing the legal history of the reparations movement.[37] Born into slavery in Vicksburg, Mississippi on August 13, 1858, Jones obtained an education at Freedman's Bureau schools established after the Civil War.[38] In 1878, he graduated from the recently-founded Alcorn State University in Claiborne County, Mississippi.[39] After a stint working as

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[35] Plessy v. Ferguson, 163 U.S. 537 (1896); Gibson v. Mississippi, 162 U.S. 565 (1896); Smith v. Mississippi, 162 U.S. 592 (1896).

[36] *Gibson*, 162 U.S. at 565.

[37] Jones is not mentioned in most scholarly treatments of reparations, even those that adopt a historical perspective. *See, e.g.*, Julian Kunnie, *Justice Never Too Late: The Historical Background to Current Reparations Movements Among Africans and African Americans*, 103 J. AFR. AM. HIST. 44 (Winter/Spring 2018). Even in the few that contain brief discussions of the Johnson v. McAdoo case, Jones is not mentioned while Callie House is credited as the driving force behind the case. *See, e.g.*, Aiyetoro & Davis, *supra* note 18.

[38] R. VOLNEY RISER, DEFYING DISFRANCHISEMENT: BLACK VOTING RIGHTS ACTIVISM IN THE JIM CROW SOUTH, 1890–1915, 36–37 (2010).

[39] *Id.*

a cottonseed purchasing agent, Jones became a teacher and by 1885 was serving as the principal at a school in Mayersville, Mississippi.[40] He soon set his sights on a legal career, and began "reading the law" as was the custom during a time in which attendance at a law school was still something of a rarity for both white and Black lawyers. On January 28, 1888, Jones was admitted to the bar after an examination by a panel of three white lawyers in which he displayed "a fine knowledge of the law."[41]

Jones was also active politically, and in 1888 was elected to the Mississippi legislature (one of only six Blacks out of the 160 members).[42] He spoke out boldly against the disfranchising effects of the state's 1890 Constitution, and paid the price: that term would be his only one. Before 1890, Blacks constituted a majority of registered voters in Mississippi; by 1892, there were 68,127 white registered voters compared to only 8,615 Black registered voters.[43] Although Jones ran for a congressional seat in 1896 in a largely Black district, he lost a disputed election and he lost again in contesting the election results before Congress.[44] He ran and lost again in 1898, again contested the result, and this time his election challenge died in committee.[45] Jones never ran again.

Political disappointment aside, Cornelius Jones built a reputation as one of the few "go to" Black Supreme Court advocates by the early 20th century. Besides *Gibson* and *Smith*, he also argued *Williams v. Mississippi*, in 1898 attacking the exclusion of Black jurors and the disfranchising effect of Mississippi's poll tax.[46] In 1900, Jones sought leave to file *Bell v. Mississippi* as an original suit in the Supreme Court against the state of Mississippi over the cruel and unusual punishment of the state's convict labor system. The Supreme Court, however, denied such leave.[47] Although Jones would not return to the Court until the *Johnson v. McAdoo* case, he remained a

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[40] *School Entertainment*, VICKSBURG HERALD, June 3, 1885, at p.1.

[41] VICKSBURG EVENING POST, Jan. 30, 1888, p.4.

[42] MICHAEL PERMAN, STRUGGLE FOR MASTERY: DISFRANCHISEMENT IN THE SOUTH 1888–1908, 73 (2001).

[43] VERNON WHARTON, THE NEGRO IN MISSISSIPPI, 1865–1890, 215 (1947).

[44] Contested Election Case of Cornelius J. Jones v. T.C. Catchings from the Third Congressional District of Mississippi, 55th Congress (1897).

[45] Contested Election Case of Cornelius J. Jones v. Thos. C. Catchings from the Third Congressional District of Mississippi, 56th Congress (1899).

[46] Williams v. Miss., 170 U.S. 213 (1898).

[47] Bell v. Miss., 177 U.S. 693 (1900) (order denying motion for leave).

nationally prominent figure in the Black community, dividing his time between his adopted home state of Oklahoma and Washington, D.C.

In taking on the reparations representation, Jones realized that the failure of legislative efforts to have Congress appropriate funds for ex-slave pensions called for a change in strategy. He determined that there was a greater likelihood of success in going after funds that the government already held, and he found that in the cotton tax. Jones researched an obscure tax on cotton enacted by Congress as part of the broader wartime tax on commodities in 1862.[48] Congress had amended the 2 ½ cents per pound tax in 1864 and 1866 (increasing it to 3 cents per pound), before repealing it altogether in 1868. The 1866 Act, unlike its predecessor legislation that earmarked the funds for payment of war debts, designated no specific purpose for the money. Although the cotton tax could not be collected during the Civil War, it had produced more than $68 million in revenue for the federal government between 1866 and 1868, a part of which was apparently for cotton produced during the war.[49]

Southern senators had periodically introduced bills seeking to return these funds to former slaveholders, but none were successful. The tax had been challenged in federal court in Tennessee in 1867. In this case, *Farrington v. Saunders*, the court apparently held for the challenger in an unpublished order. In 1871, that ruling was affirmed by the Supreme Court in another unpublished order.[50] In a considerably better known case 24 years later, *Pollock v. Farmers Loan & Trust*, the Supreme Court struck down the original federal income tax as violating the constitutional prohibition on non-proportional direct taxes.[51] Both the result in *Pollock* and its reasoning strengthened the argument that the cotton tax had been unconstitutional.[52]

So the money—the equivalent of more than $1.7 billion today—was still sitting untouched in the United States Treasury. Jones was careful to verify this before filing suit. In May 1915, he wrote to Secretary of the Treasury William G. McAdoo, inquiring about the cotton tax revenue. Jones received a reply from Assistant Secretary

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[48] 12 Stat. 465 (1862); 13 Stat. 15 (1864); 14 Stat. 98 (1866); 15 Stat. 34 (1868).

[49] *See* Certain Taxes Collected in 1866, 1867, and 1868; Hearings on H.J. Res. 166, before the House Committee on Ways and Means, 70th Cong. 2d Sess. 10 (1929).

[50] *Id.*

[51] Pollock v. Farmers Loan & Tr., 157 U.S. 429 (1895).

[52] *Id.*

William S. Malburn.[53] Malburn confirmed that more than $68 million was in the Treasury's possession as proceeds from the tax, and also mentioned the *Farrington v. Saunders* case, incorrectly stating that the constitutionality of the tax had been upheld.[54] He also maintained that "though bills for a refund of the cotton tax have been introduced in Congress from time to time, no legislation has been enacted; and the subject is one within the jurisdiction of Congress."[55]

IV. *JOHNSON V. MCADOO* IN THE COURTS

Having verified that there was indeed money being held by the Treasury, on July 13, 1915, Jones proceeded with filing a complaint on behalf of four named plaintiffs, all of whom had been enslaved: H.N. Johnson, C.B. Williams, Rebecca Bowers, and Minnie Thompson, as well as on behalf of "a multiplicity of persons similarly situated."[56] The defendant was William McAdoo, Secretary of the Treasury. The case was filed in the Supreme Court of the District of Columbia, which then functioned as the local trial court. Jones' co-counsel on the case was his old colleague from the *Gibson* and *Smith* cases twenty years earlier, Emanuel Hewlett, who was well-connected in Washington circles and who had been a long-serving justice of the peace in Washington, D.C. (making him one of only a handful of African Americans to have served as judicial officers). Hewlett's involvement was short-lived, however; he soon withdrew from the case, which was ultimately litigated based on an October 26, 1915 amended complaint bearing only Jones' signature.[57]

The complaint itself reflected an equitable lien theory of recovery, a conscious choice by Jones. He deliberately avoided asserting a broad claim to reparations, or for all Black Americans. Jones also avoided specific references to Reconstruction and any alleged promises made by the Freedman's Bureau, just as he avoided references to the horrors of slavery or the degradation of Jim Crow. Jones also deliberately refrained from references to the rights of Blacks

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[53] Both Jones' letter and Malburn's reply were published in various newspapers around the country. *See, e.g.*, Cornelius J. Jones, *America Must Redeem Her National Pledge of "Sacred Honor"—Called to the Bar of Her Own Courts for an Accounting*, WASH. BEE (Oct. 23, 1915).

[54] *Id.*

[55] *Id.*

[56] Complaint, Johnson v. McAdoo, 45 App. D.C. 440 (1915).

[57] Amended Complaint, Johnson v. McAdoo, 45 App. D.C. 440 (Oct. 26, 1915).

under the Constitution, understanding that by 1915, the civil rights victories won during Reconstruction, including the Fourteenth Amendment, were now being used to defend corporations.[58]

Jones also anticipated that the doctrine of sovereign immunity—the principle that the government cannot be sued without its consent—would likely be invoked as a defense, and so he did not sue the U.S. government. Although McAdoo was the putative defendant, Jones also understood that a suit seeking to direct an official to take a certain action was tantamount to a suit against the government. Accordingly, the equitable lien theory Jones advanced was that although the Treasury was holding the tax revenue, it was in fact a lien on cotton that the plaintiffs had been compelled to produce as slaves, and so the ex-slaves always had the right to the funds—the "fruits of their labors." Even though this was a right that could not be exercised during their enslavement, Jones argued, it did not diminish the right itself. The suit maintained that the $68,072,388.99 was not only "not a legitimate asset of the United States government," it was "but a small fraction of the total valuation of the cotton produced by these plaintiffs."[59] Since it was "all which is available of the specific fruit from the specific subject of the toil of these plaintiffs," however, it would have to do.[60] And because the labor that led to this fruit was the result not of a negotiated contract but of "force and coercion," the court had equitable authority to disburse it.[61]

Under this equitable lien theory, Jones argued, the money was in the Treasury secretary's possession only for custodial purposes, much like the Treasury held Native American monies (payable under specific treaties) in trust. And if the cotton tax itself had been unconstitutional, Jones said, then the funds had been illegally collected by the government and properly belonged to the former slaves.[62]

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[58] *Id.*; *see, e.g.*, the *Civil Rights Cases*, 109 U.S. 3 (1883). In many ways, Jones' strategy anticipated the legal rationale that would later be employed in a series of suits against German corporations on behalf of Holocaust victims seeking the profits they obtained through the use of slave labor. *See* Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424 (D. N.J. 1999); MICHAEL J. BAZYLER, HOLOCAUST JUSTICE: THE BATTLE FOR RESTITUTION IN AMERICA'S COURTS (2003).

[59] *Id.*

[60] *Id.*; *see also* Brief for Appellants, Johnson v. McAdoo, 45 App. D.C. 440 (1916) (No. 2918) at 3.

[61] *Id.*

[62] *Id.*

Reaction to the suit was predictable. The mainstream white media pointed to expectations that governmental immunity would result in the case being thrown out.[63] Among the Black press, even those that had traditionally been critical of Callie House and the ex-slave pension movement still commented favorably on the suit. One of the most influential Black newspapers, the *Chicago Defender*, displayed a markedly evenhanded approach, reporting on Secretary McAdoo's denunciation of the suit in one issue under the headline "Cotton Tax Suit Has No Merit" and then running Jones' reply in the next issue ("Cotton Tax Suit Has Merit").[64] And despite the Malburn letter prior to suit, Secretary McAdoo actually wrote to Jones and denied that there was a "fund of $68,000,000 or any sum in the Treasury of the United States for ex-slaves, or those who worked in the cotton fields of the South."[65]

Anticipating a long and costly legal battle, Jones circulated information about the suit to potential claimants and asked for support. While Callie House and the Association sought support from local chapters and the general public, Jones issued a letter asking Blacks to contribute $1.75 each, explaining that ex-slaves would share in the proceeds of the suit if successful.[66] It would prove fateful, as federal officials convinced that the reparations movement was a fraudulent scam would later use Jones' efforts as a basis for criminal charges.

As Secretary McAdoo predicted, the Supreme Court of the District of Columbia dismissed the suit on December 10, 1915. Jones appealed to the D.C. Circuit Court of Appeals, reiterating his equitable lien theory. His brief abandoned the sterile argument of his complaint at the trial court, however, and included oratorical flourishes such as quoting the Declaration of Independence and Abraham Lincoln. In less flowery passages, Jones tried to focus on the unconstitutionality of the 1862 Cotton Tax Act, and that the monies collected under this "void law" represented the fruit of "unpaid-for labor" subject to an equitable lien in the plaintiffs' favor.[67] Not surprisingly, McAdoo as appellee focused on the sovereign immunity defense, proclaiming "suit is against the United States." The D.C. Circuit agreed, affirming in a brief

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[63] *See, e.g.*, WASH. POST, July 14, 1915, at p. 14; TOPEKA (KANSAS) PLAINDEALER, July 23. 1915, at p.1.

[64] CHI. DEFENDER, July 24, 1915, at p.1.

[65] WASH. POST, Oct. 17, 1915, at p.1.

[66] *The Cotton Tax*, WASH. BEE, Nov. 13, 1915.

[67] Brief for Appellants, *Johnson*, 45 App. D.C. 440 (No. 2918).

opinion.[68] While the court acknowledged McAdoo's status as "merely [the] custodian" of the $68 million at issue, the "real defendant . . . is the United States."[69] Noting that the case had "other apparent weaknesses," the court nevertheless grounded its decision to affirm on "the fact that the United States cannot be made a party to this suit without its consent."[70]

Jones appealed to the U.S. Supreme Court. The government's appellate brief merely quoted the Court of Appeals' opinion and didn't deign to offer additional argument. Jones' brief argued that while McAdoo possessed the $68 million, "he has no legitimate claim nor personal interest in the money, but is a mere custodian thereof in the nature of bailee."[71] The brief continued with the argument that "if it is shown that the constitution of the United States has been violated in the enforcement of a void law, resulting in the accumulation of this fund, then the money is illegitimately acquired."[72] Concluding that "the government can not acquire any interest in property illegally acquired," Jones argued that "as bailee, the secretary holds legal (but not official) custody thereof, subject to judicial determination regarding its status."[73]

The U.S. Supreme Court summarily affirmed, without opinion, on May 7, 1917.[74] But although the reparations lawsuit was finished, Cornelius Jones' troubles were far from over. As the suit had been working its way through the courts, Jones' efforts to drum up support had placed him in the crosshairs of the federal government. On November 20, 1915, the day after the trial court in Washington dismissed the complaint in *Johnson v. McAdoo*, Jones was arrested in Memphis on a federal charge of mail fraud stemming from his fundraising efforts from potential cotton tax claimants.[75] The case was paper-thin, however; fraud requires proof of a false statement or representation, and there was no evidence that Jones had lied to or misled anyone. Jones promised nothing more than the chance to share in any recovery if the suit was successful. Moreover, with the case still

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[68] Johnson v. McAdoo, 45 App. D.C. 440 (1916).
[69] *Id.*
[70] *Id.*
[71] Brief of Appellants, Johnson v. McAdoo, 45 App. D.C. 440 (No. 897).
[72] *Id.*
[73] *Id.*
[74] Johnson v. McAdoo, 244 U.S. 643 (1917).
[75] VICKSBURG HERALD, Nov. 21, 1915, p.X; FORT WORTH STAR-TELEGRAM, Nov. 21, 1915, at p.23.

ongoing, it would be hard to make a case for fraud, especially since a favorable outcome would eviscerate any grounds for fraud.

On May 26, 1916, six months after his initial arrest, Jones was indicted by a grand jury.[76] On September 28, 1916, Jones was arrested for a second time in Memphis.[77] On January 16, 1917, shortly after the D.C. Circuit affirmed the dismissal of *Johnson v. McAdoo* but while the appeal to the U.S. Supreme Court was pending, Jones' criminal trial began in Memphis.[78] ~~But~~ In mid-trial, the federal prosecutors suddenly dropped the case. Although no reason was formally given, one Memphis newspaper speculated that the dismissal was due to the presiding judge's discomfort with having the case move forward before a final ruling from the U.S. Supreme Court.[79]

After the Supreme Court decided *Johnson v. McAdoo* on May 17, 1917 and following Callie House's mail fraud conviction four months later, the government renewed its vendetta against Jones. On December 10, 1917, Jones was again indicted for mail fraud.[80] His trial didn't start until nearly a year later, on December 2, 1918. Despite a guilty finding by the jury, the judge set aside the verdict on the grounds of insufficient evidence. Jones was a free man.[81]

V. AFTERMATH AND CONCLUSION

Although the first major reparations case had been lost, Cornelius Jones' fight for reparations did not end at the Supreme Court. He continued to advocate for a legislative framework for reparations, addressing a fourth annual convention of cotton tax claimants in Muskogee, Oklahoma on August 30–31, 1919.[82] That same year, Jones files a memorial with Congress on behalf of cotton tax claimants, seeking "authority to try their claims in [the] Court of Claims."[83] In 1920, he traveled to Washington, D.C. three times to support a pending bill that would permit suit by the cotton tax claimants. Jones even purchased a building to house the cotton tax

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[76] MEMPHIS COMMERCIAL APPEAL, May 27, 1916, at p.8.
[77] MEMPHIS COMMERCIAL APPEAL, Sept. 29, 1916, at p.8.
[78] MEMPHIS COMMERCIAL APPEAL, Jan. 17, 1917, at p.9.
[79] MEMPHIS COMMERCIAL APPEAL, Jan. 18, 1917, at p.8.
[80] MEMPHIS COMMERCIAL APPEAL, Dec. 11, 1917, at p.8.
[81] MEMPHIS COMMERCIAL APPEAL, Dec. 4, 1918, at p.8.
[82] MUSKOGEE DAILY PHOENIX, Aug. 28, 1919, at p.4.
[83] H.J., 66th Cong. (1919).

claimants' organization, as well as a separate residence for himself.[84] As the Roaring Twenties came to a close, Jones weighed in on certain resolutions that had been introduced in Congress that would have authorized suits to recover the cotton tax proceeds—suits that would have been permitted if brought not on behalf of ex-slaves, but by states on behalf of the original taxpayers. If the original taxpayers could not be located to return the funds, then the proceeds would escheat to the states themselves.

On January 4, 1929, the House Ways and Means Committee held a hearing on a resolution that would authorize the Supreme Court to hear any state-filed suits. The Committee hearing record is replete with discussion of the cotton tax, arguments over its constitutionality, and other issues—but no discussion at all about the claims of the formerly enslaved persons who had labored to produce the cotton.[85] Jones filed what he described as a "brief" in support of the ex-slave claimants, arguing that any cause of action properly belonged to the ex-slaves and their heirs rather than the states. The brief stated that it "will be outrageous to authorize the states to sue for money which they had nothing in the world to do with as a State in face of persistent claims being made" by the former slaves.[86] Ultimately, the House took no action on the resolution, and neither the states nor any ex-slaves were ever authorized to sue for the return of the cotton tax proceeds.

Cornelius Jones died in Muskogee, Oklahoma on March 23, 1931. His landmark Supreme Court advocacy against racial injustice and his championing of reparations were largely forgotten. There were no laudatory obituaries or flowery memorials, and even one of the leading Black newspapers of the day simply noted in its "Oklahoma News" column that Jones was "a prominent figure among the citizens of Muskogee and the state at large."[87] Even among the scholarly writings that discuss his other Supreme Court battles, no mention is made of *Johnson v. McAdoo*.[88] And among reparations scholars, Cornelius Jones receives scant attention.[89]

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[84] WASH. BEE, Oct. 16, 1920, at p.1.

[85] Certain Taxes Collected in 1866, 1867, and 1868, Hearings Before the House Comm. on Ways and Means, 70th Cong. (1929).

[86] *Id.*

[87] CHI. DEFENDER, Mar. 28, 1931, at p.20.

[88] *See, e.g.*, RISER, *supra* note 38; LAWRENCE GOLDSTONE, ON ACCOUNT OF RACE: THE SUPREME COURT, WHITE SUPREMACY, AND THE RAVAGING OF AFRICAN AMERICAN VOTING RIGHTS, 175–90 (2020).

[89] Kunnie, *Supra* note 37.

At rallies to gather support for the cotton tax lawsuit, Jones sold copies of a song he had composed to help the cause. Entitled, "Voices from the Tomb of the Slaves," its first stanza sums up the mission behind the *Johnson v. McAdoo* lawsuit:

> Do you hear those voices calling
> From their lone and musty graves
> Urging us to note the toiling
> Of the poor neglected slaves?[90]

Reparations, it has been noted, "are restitutional in nature, thus, they are focused on removing from the defendant the spoils of his unjust enrichment."[91] Jones' equitable lien strategy in *Johnson v. McAdoo* identified a specific source of funds directly tied to Black enslaved labor and focused on it, rather than on the horrors of slavery and the rhetoric of racial injustice—essentially opting to forego the issue of defendant misconduct. Although litigation pursued nearly a century later would opt for a different approach, they would prove no more successful than *Johnson v. McAdoo*, which remains the only reparations case to reach the U.S. Supreme Court. It, and its architects Callie House and Cornelius J. Jones, deserve to be remembered by those in today's reparations movement.

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[90] BERRY, *supra* note 19, at 185–86.

[91] Christian Lutz, *The Death Knell Tolls for Reparations in* In re African-American Slave Descendants *Litigation*, 3 SEVENTH CIR. REV. 532, 555 (2008).