

that they are Not Guilty and for good and for evils they put themselves upon the Country and the Solicitor for the State, on his behalf doth the like

WHEREFORE, the prisoners at the Bar are remanded to the Custody of the Sheriff of Durham County.

It appearing to the Court before the arraignment of the prisoners, that Bill Sawyer, one of the defendants, is without counsel, and is unable to provide counsel, it is therefore, ordered that W. T. Towe, a reputable attorney at law, be assigned by the Court as attorney for said Bill Sawyer.

State
vs
Clyde Ferrell, A. G.
Ferguson and Bill Sawyer.

WRIT OF VENIRE FACIAS

TO THE SHERIFF OF DURHAM COUNTY-GREETINGS:-

The Grand Jury, at this term of Court, having returned a True Bill charging the defendants, Clyde Ferrell, A. G. Ferguson and Bill Sawyer, each with the Capital offense of Murder in the First Degree and each of said defendants having been arraigned in open court and having entered a plea of Not Guilty and the Court deeming it necessary to a fair and impartial trial to each of said prisoners, that there be a Special Venire of fifty (50) freeholders ordered for the trial of said defendants;

You are therefore, hereby ordered to summons fifty (50) freeholders of your County of good character, to appear before the undersigned Judge of the Superior Court, in the Court Room, in Durham at 9:30 o'clock A. M. on the 30th day of March, 1933, to be sworn and examined as to their fitness to serve as Jurors in the above entitled case and to be respectively accepted or released under the direction of the Court, as they are called in open Court and have you this writ returned to the Clerk of the Court on the 30th day of March 1933, with the names of the Jurors summonsed.

HEREIN FAIL NOT

This the 28th day of March 1933.

M. V. Barnhill

Thomas R. Hocutt
vs
Thomas J. Wilson, Jr.,
4 Dean of Admissions and
Registrar, and the Uni-
versity of North Caro-
lina,

Judgment

This is and action in which the plaintiff seeks a writ of mandamus requiring the defendants to admit the plaintiff to the University of North Carolina as a

March 28th. 1933

in the Department of Pharmacy or Pharmacy School. Notice was issued to defendants because why said writ should not issue, and this cause came on for hearing upon said writ before the undersigned at the Court House in Durham, North Carolina, on Friday, March 24th, 1933. The hearing not having been completed at adjournment Saturday, March 25th, the matter was continued by consent for further hearing and final Judgment at the Court House in Durham, North Carolina, Tuesday, March 28th, 1933.

When the cause was called for hearing, the defendant demurred to the writ and moved to dismiss the same for reason that the writ of mandamus is not the proper remedy for the relief of the alleged grievance of the plaintiff and asked the rule upon said motion to be held in abeyance pending the hearing of evidence.

An issue of fact having been raised by the pleadings, trial by jury was voluntarily waived by plaintiff and defendants, and it was agreed that the Court should determine the issues of fact as well as the questions of law without the aid of a jury.

The cause was heard as upon the following issues:

1. Did the plaintiff make due application to the University of North Carolina for entrance therein as a student in the Pharmacy School?
2. If so, did the plaintiff comply with the rules and regulations in respect to such application, exhibiting the necessary evidence of scholastic qualifications, and comply with the requirements in respect to free tuition, as alleged?
3. Was his admission to the University declined on the sole ground that he was a person of African Descent?
4. Has the plaintiff established a clear legal right to admission to the University as a student in the Pharmacy School as alleged?

In order that the matter may be determined in such manner that all parties may be reviewed, the Court determines the issues of facts and likewise the questions of law raised thereon and the questions of law raised by defendants demurrer and motion to dismiss.

In the first place, it is necessary to note that the plaintiff prays the writ of mandamus requiring the defendants to admit the plaintiff into the University of North Carolina as a candidate for the B. S. Degree in Pharmacy and not that the Registrar and other proper officials of the University be required to consider and act upon his application in good faith without regard to the fact that he is a person of African Descent. It is of the opinion that as the plaintiff is seeking to endorse an alleged person of a public character, the writ of mandamus is not the proper remedy for the relief of his alleged grievance, but that if said writ of mandamus is the proper relief, the writ should be directed against the defendants as prayed in the complaint rather than to admit the plaintiff into the University as a student, but it would be necessary to require the Dean of Admissions and Registrar to act in good faith upon said application without regard to the fact that he is a person of African descent.

The Court is therefore, of the opinion that the defendants are entitled to have their motion to dismiss granted, first for the reason that the writ of mandamus is not the proper remedy, the plaintiff has not sought to use it in proper manner in his prayer for relief.

In order to determine the other questions involved, and for that purpose assuming that the writ of mandamus is the proper remedy, the Court, for the purpose of determining the essential facts, answers the first issue, Yes; the second issue, No; the third issue, Yes; and the Fourth issue, No. In addition thereto the Court finds as a fact that the application has never been in good faith considered for the purpose of determining the qualifications of the plaintiff and whether he had complied with the rules and regulations of the University Governing admissions thereto without regard to the fact that he was a person of African descent. It is, therefore, by the Court

ORDERED, CONSIDERED AND ADJUDGED THAT the application for a writ of mandamus as prayed in the complaint be and the same is hereby denied. It appearing to the Court that the writ of mandamus is the sole remedy sought by the plaintiff, it is further ordered, CONSIDERED AND ADJUDGED that this action be and the same is hereby dismissed from the docket at the cost of the plaintiff and his surety upon his personal bond.

The duty of the University of North Carolina to admit persons of African descent as students in the professional schools or departments of said University so that the State fails to provide equal opportunity for training is said professions in the State supported negro schools of the State, when and if such persons of African descent comply with the rules and regulations governing admissions to the University, is not to be determined or sought to be determined by this judgment.

This the 28th day of March 1933.

WHEREUPON, the Court takes a recess at 5:45 o'clock until tomorrow morning at 9 o'clock.

W. U. Bouldin
Judge Presiding.

IN THE SUPERIOR COURT, BEFORE THE CLERK.

Thomas R. Hocutt
vs
Thomas J. Wilson and
the University of North
Carolina.

Entries of Appeal

To the judgment herein which appears of record the plaintiff excepts and appeals to the Supreme Court. Notice of appeal in open court. Further notice waived. Appeal bond fixed at \$100.00. By consent the plaintiff is allowed sixty (60) days which to file and serve case on appeal and the defendants are allowed sixty (60) days thereafter to serve counter case or exceptions.

M. V. Barnhill
Judge

North Carolina Joint
Stock Land Bank of Durham
vs
J. Y. Monk and wife Reide
Lang Monk.

Judgment

This cause coming on for hearing and being heard before Honorable W. H. Clerk of Superior Court of Durham County, and it appearing to the Court that all matters in issue have been heretofore adjusted between plaintiff and defendant by agree-

IT IS NOW, THEREFORE, on motion of J. S. Patterson, Attorney for the plaintiff, ordered, adjudged and decreed that the plaintiff take nothing by this action and said cause be and the same is hereby dismissed as of non-suit and the costs of said action be and the same is hereby taxed against the plaintiff.

Jas. R. Stone
Ass't Clerk Superior Court.

Approved by-

J. S. Patterson
Attorney for Plaintiff.

J. R. Martin
Attorney for Defendants.