

March 28th. 1933

This is [an] 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 student in the Department of Pharmacy or Pharmacy School. Notice was issued to defendants to show cause why said writ should not issue, and this cause came on for hearing upon said notice 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 Judgement at the Court House in Durham, North Carolina, Tuesday, March 28th, 1933.

When the cause was called for hearing, the defendant demurred to the complaint and moved to dismiss the same for reason that the writ of mandamus is not the proper remedy for the relieve of the alleged grievance of the plaintiff and asked the ruling on 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 expressly waived by plaintiff and defendants, and it was agreed that the Court should hear and 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 De[s]cent?
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 questions may be reviewed, the Court determines the issues of facts and likewise the questions of law raised thereon and the questions of law raised b[y] defendants demurrer and motion to dismiss.

In the first place, it is necessary to note that the plaintiff prays for a 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. The Court i[s] of the opinion that as the plaintiff is seeking to endorse an- alleged personal right, not 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, then that it could-not be directed against the defendants as prayed in the complaint requiring them to admit the plaintiff into the University as a student, but it would be necessary only 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 this 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 finding 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 said application has never been in good faith considered for the [pur]poses 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 prosecution bond.

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

This the 28th day of March 1933.