

In The  
UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT  
No. 19,475

U. S. COURT OF APPEALS

FILED

JUN 12 1962

EDWARD W. WADSWORTH  
CLERK

JAMES H. MEREDITH, on behalf of himself  
and others similarly situated,

Appellant,

-v.-

CHARLES DICKSON FAIR, President of the  
Board of Trustees of the State  
Institutions of Higher Learning,  
et al.,

Appellees.

**MOTION FOR INJUNCTION IN AID OF THIS COURT'S JURISDICTION**

The appellant, James H. Meredith, by his undersigned attorneys, moves this Court for an order pursuant to the provisions of Title 28, United States Code, §1651, enjoining Paul G. Alexander, attorney for Hinds County, Mississippi, his agents, employees, successors, and all persons in active concert and participation with him, from proceeding with a criminal action instituted by Paul G. Alexander by a general affidavit sworn to before Homer Edgworth, a Justice of the Peace for Hinds County, Mississippi, Justice District No. 5, in which the affiant alleges that the appellant, on or about February 2, 1960, is

Hinds County, Mississippi, knowingly procured his registration as a qualified elector of Hinds County when he did not, in fact, reside in Hinds County but was a resident of Attalla County, Mississippi, in violation of §3218 of the Mississippi Code of 1942, Annotated, and, as grounds therefor, shows the following:

1. The question whether appellant knowingly procured his registration as a qualified elector of Hinds County, Mississippi when he did not, in fact, reside in Hinds County, Mississippi but was a resident of Attalla County, Mississippi, is a question involved in the appeal presently pending before this Court.

2. On December 13, 1961, the United States District Court, Southern District of Mississippi, Mize, J., rendered an opinion on appellant's motion for preliminary injunction. In that opinion, the District Court erroneously stated that appellant "contends and alleges that he is a citizen of Attalla County, Mississippi" (R. Vol. 2, p. 217). The complaint filed by appellant in this case alleges that he is "an adult Negro citizen of the United States and of the State of Mississippi, presently residing in Jackson, Mississippi" (R. Vol. 1, pp. 3-6). The District Court, therefore, erroneously found as a fact from all of the testimony that appellant was and is now a citizen of Attalla County, Mississippi (R. Vol. 2, p. 219).

3. In its opinion of December 13, 1961, the District Court also found as a fact that "after he (appellant) entered Jackson State College in Jackson, Mississippi he registered in Hinds County, Mississippi and that when he registered in Hinds County, Mississippi he swore falsely that he was a citizen of Hinds County, Mississippi and that this was knowingly done for the purpose of obtaining a registration. He admitted that

he knew he was not a citizen of Hinds County, but that he knew he was a citizen of Attalla County, and finally, on cross examination, he admitted that he knew he was swearing falsely when he swore to the Registrar of Voters in Hinds County, Mississippi that he was a citizen of that county. He stated that he had always claimed Attalla County as his domicile and still claims it as his domicile. As a result of his false swearing the records show that he was registered as a voter in Jackson, Hinds County, Mississippi (R. Vol. 2, pp. 218-219).

4. It is apparently on the basis of the foregoing findings and conclusions of the District Court that the criminal proceeding referred to herein has been instituted by the attorney for Hinds County.

5. The Deputy Clerk of Hinds County, Mississippi, J. R. McLeod, who registered the appellant as a voter in Hinds County testified, without equivocation, that the appellant was qualified to vote in Hinds County (R. Vol. 2, Plaintiffs's Exh. 16, pp. 352-353). This is a fact apparently being ignored by the Hinds County attorney who has brought the criminal proceeding against appellant before this Court has finally had an opportunity to review the facts concerning appellant's registration as a voter.

6. On the appeal in this case presently pending before this Court, appellees contended that appellant was not denied admission to the University on account of his race and color, but for several reasons, among which is that appellant falsely secured his registration in Hinds County when he was, in fact, a resident of Attalla County.

7. In response to a question put to appellees' counsel by Judge Brown on the argument, appellees' counsel contended

that the appellant's statements on his application to register amounted to perjury (See pp. 66-73 of the transcription of the oral argument on April 20, 1962).

8. On the hearing of his motion for preliminary injunction in this case, appellant sought to establish that he was a bona fide resident of the State of Mississippi seeking bona fide admission to the State's University. In this connection he testified that he was born in Attalla County, Mississippi, attended school there through the eleventh grade, returned there to visit his parents during his nine year Air Force career, purchased property there, returned there when discharged from the Air Force in July, 1960, and then came to Jackson which is in the Hinds County, in September 1960, enrolled in Jackson State College there in September 1960 and in February 1961 registered as a voter in Jackson (R. Vol. 1, Pl. Exh. 16, pp. 12, 37, 61, 64, 74-76, 78-79).

9. The cross examination of this appellant began with his testimony concerning his registration as a voter in Hinds County. As the cross examination indicates (R. Vol. I, Pl. Exh. 16, pp. 79-86), the cross examiner and the appellant were both confused about the date on which appellant applied to register. The appellant first testified on direct examination (pp. 78-79) that he registered February 1961, and as his registration affidavit indicates (Pl. Exh. 29), the date of registration was February 2, 1961. However, on the face of the application the appellant mistakenly put, at the very top, as the date of application, February 2, 1960 (Pl. Exh. 29).

10. On cross examination the appellant and the attorney for appellee, Mr. Shands, were likewise confused as to the certificate which appellant took from his pocket while on the witness stand as evidence that he had registered to vote (Pl. Exh. 29). Mr. Shands kept referring to the document as the application for registration (Pl. Exh. 29) which neither the appellant nor the

attorney had in his possession at that hearing (R. Vol. 1, Pl. Exh. 16, pp. 140-141). This led to endless confusion. For example, at one point Mr. Shands' question was:

"Q. All right. But you know it to be true, so we are not asking him about something he is not acquainted with. Now, James, on that document didn't you state under oath that on September 12, 1960, that this oath was made in Hinds County on February 2, 1961, didn't you state that since September 12, 1960, you had been a resident of Hinds County, Mississippi?"

And at another points:

"Q. You didn't say so. James, I want you to reconsider that answer, because I do not want to take advantage of you in any way. I want you to reconsider it, and after reconsideration tell me whether you did or did not, according to your best recollection, make oath on February 2, 1961 that since September 12, 1960, you had been a resident of Hinds County, Mississippi."

The document which the appellant took from his pocket was a poll tax exemption certificate which the appellant testified he had not read (R. Vol. I, Pl. Exh. 16, p. 161) and which was filled out by the Deputy Clerk (R. Vol. I, Pl. Exh. 16, p. 161) and signed by Meredith. This document bore the following oath:

"State of Mississippi, County of Hinds,  
Jackson, Mississippi.

Personally appeared before me the Circuit Clerk of said County James H. Meredith, 1129 Maple Street, who states on oath that he is a resident of, and is entitled to vote in, the 16th Precinct of said County, and that he is not liable

for poll tax on account of being in the Armed Services of the United States and has not had opportunity to pay poll tax." (Pl. Exh. 23)

11. Holding this document, appellant was asked the following:

"Q. Let's get back to the question I asked you. Were you living and residing in Jackson, Mississippi on February 2, 1960?

A. No, sir.

Q. Did anybody tell you what you had to do in order to qualify to register?

A. Yes, sir, and I told him that I had been in the service. I told him that I had never lived in Hinds County. I told him I had always lived in Attalla County.

Q. Why did you go up there to register?

A. Because I was going to Jackson State College and wanted to register and vote in Hinds County, as the voting place most convenient and closest. That's why.

Q. How many poll taxes have you paid?

A. None.

Q. Did you know that you swore, made an oath to that application?

A. You mean when I signed it?

Q. Yes. When you registered.

A. I don't know if I signed it -- Well, yes, sir, I see it on here now. I just saw that.

Q. Yes, you remember now that you swore that the contents of that application were true, didn't you?

A. I saw that on there when I --

Q. I'm asking you.

A. Yes, sir.

Q. You did do that, didn't you?

A. Yes, sir.

Q. At a time when you knew it was untrue. Now, you either knew it as true or untrue.

A. Maybe I did, but the circumstances was such --

Q. I didn't ask you that. At the time you took that oath you knew it was untrue?

A. I explained to him my situation. I explained it to him thoroughly, that I was a permanent citizen of Attalla County. I explained that to him. I explained I had never lived in Hinds County prior to coming to school there. That is when he went on to tell me about anybody could register to vote in his court, and I didn't have much to say in that clerk's office when I registered to vote.

Q. My question is, James, you knew it was untrue?

A. Yes, sir.

Q. When you made the oath?

A. Yes, sir, I know what I told him. Now, he figured out whether or not he was going to give me this clip.

Q. I didn't ask you that. Now, James, let's talk a little bit about Attalla County. You swore -- If you swore that you had been a resident of Hinds County for one year prior to February 2, 1901, then when were you ever a resident of Attalla County?

A. All of the time. And if you're talking about the applications, the recommendations, only people in Kosciusko knew me and had known me for two years.

Q. I want to know how you were in Japan on February 2, 1960 and got to then be a resident of Hinds County, Mississippi?

A. I explained my whole situation to the man when I went up to register to vote, and he gave me this exemption that he says that all military people get, and that is about all I know about this voting situation other than what I told you.

Q. And I want you to reflect now and see if there is anything else you want to say about that.

A. No, sir." (R. Vol. I, Pl. Exh. 16, pp. 84-86)

12. As this testimony indicates, appellant was led to believe on this hearing that he had falsely sworn that he had been a resident of Hinds County for one year prior to February 2, 1961.

13. However, as the appellant's application for registration shows (Pl. Exh. 29), the appellant did not make any false statement on his application for registration. He stated in answer to Question 10 on that application that his residence in Hinds County began September 1960, which is the crucial fact bearing on appellant's right to register as a voter in Hinds County on February 1, 1961, the District Court has properly found that appellant, although in the Air Force for nine years, was a resident of Mississippi.

14. The Deputy Clerk who registered Meredith testified he was qualified to vote (as he swore in his poll tax exemption certificate, Pl. Exh. 28) since "... he had moved into Hinds County in time to have been qualified to have voted in the [sic] since he moved in prior to the general election in 1960.



is Tuesday after the first Monday in November, and on that basis is the way I registered him." (R. Vol. II, Pl. Exh. 16, pp. 138, 352-353).

15. The proceeding in the Justice of the Peace Court is a direct and purposeful interference with the jurisdiction of this Court to determine the issues arising from appellant's registration, since the District Court found the facts regarding appellant's residence in Hinds County contrary to appellant, and undertakes to decide an issue which is to be decided by this Court on this appeal.

16. The proceeding in the Justice of the Peace Court has been purposefully undertaken to defeat any admission order which this Court might enter in this case. The proceeding in the Justice of the Peace Court, unless enjoined by this Court, will result in irreparable injury to the appellant by interfering with or making it impossible for appellant to enter the University of Mississippi if his admission should be ordered by this Court and if the appellant should be convicted by the Justice of the Peace Court of the offense charged. The issuance of an injunction would prevent an irreparable injury to the appellant and would not result in any irreparable injury to Paul G. Alexander or the State of Mississippi or the University of Mississippi.

17. The proceeding in the Justice of the Peace Court is taken for the purpose of punishing the appellant for bringing this action to secure his admission to the University of Mississippi. Prior to appellant's application for admission to the University of Mississippi, two other Negroes have apparently sought to gain admission to state institutions of higher learning in Mississippi limited to white students. In or about 1935 or 1936 one Clennon King sought admission to the University of Mississippi. He was arrested by state authorities and placed in a

mental institution. He was subsequently released when the State's own doctor testified that he was not mentally ill. In or about 1955 or 1956 one Clyde Kennard sought admission to Mississippi Southern University. He was subsequently convicted of being an accessory before the fact in the burglary of a bag of chicken feed worth less than \$25.00 and has been sentenced to 7 years in the State Penitentiary. The appellant is the only other Negro whose application for admission to the University received any publicity. On the trial of this case it developed that another Negro, Charles Dubra, had apparently applied for admission to the law school, but no one other than the applicant and the University officials was aware of this fact.

WHEREFORE, appellant prays that this Court will issue an injunction: 1) enjoining Paul G. Alexander, as County Attorney of Hinds County, Mississippi, and all other persons in active concert and participation with him, his agents, employees and successors, from continuing to prosecute the criminal proceeding instituted on May 28, 1962, in the Justice of the Peace Court of Hinds County, Justice District No. 5, or any other Court in the State of Mississippi, until this Court has finally determined the instant appeal, and 2) enjoining Paul G. Alexander and all other persons in active concert and participation with him and all appellees in this case and all other officials and individuals of the State of Mississippi from taking any other punitive action or instituting or causing to be instituted any punitive action against the appellant for having brought the instant action.

**Of Counsel**

**Norman C. Amherst**

A true copy

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JUN 13 1962