IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 19475

"Filed July 18, 1962
at 9:10 am
Ben F. Cameron
US Circuit Judge"

JAMES HOWARD MEREDITH, on behalf of Himself and Others similarly situated,

Appellant,

V.

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

Appellees.

MOTION OF APPELLEES FOR STAY OF THE EXECUTION AND ENFORCEMENT OF THE MANDATE ISSUED IN THIS CAUSE PENDING APPLICATION FOR WRIT OF CERTIORARI

Come now the Appellees, Charles Dickson Fair, et al, and respectfully move for the entrance of an order under Section 2101(f) of Title 28 U.S.C., staying the execution and enforcement of the mandate issued in this cause pursuant to the opinion by a panel of the United States Court of Appeals for the Fifth Circuit, comprised of U. S. Circuit Judges John R. Brown and John Minor Wisdom (United States District Judge Dozier A. DeVane, a member of said panel, dissenting) on the 25th day of June, 1962, and in support of said motion would show the following grounds:

I.

The authority for any single Judge of this Circuit to act upon this stay is found under the terms and provisions of Section 2101(f) of Title 28, U.S.C., as well as under the broad and inherent powers possessed by this Court over its

ous processes so as not to produce hardships and to do substantial justice.

2.

Appellant, James H. Meredith, applied for admission to the University of Mississippi as an undergraduate transfer student. His application was denied. No other applications were shown to have been made to and denied by any other school or schools.

3.

The Appellant immediately filed suit in the United States District Court for the Southern District of Mississippi on behalf of himself and other negro students similarly situated, for declaratrey and injunctive relief via temporary restraining order, preliminary injunction and permanent injunction. In this suit he sought to have himself declared eligible to be admitted to the University of Mississippi, and to enjoin the alleged policy, practice, custom and usage of the State of Mississippi of allegedly limiting the admission to the University of Mississippi solely to members of the white race.

4.

The Temporary Restraining Order was denied and hearing on the preliminary injunction was commenced. Appellants filed their answer denying that there was any policy, practice, custom or usage of the State of Mississippi of restricting admission to the University of Mississippi to any particular race or color, and affirmatively avering that the Appellant's application for admission was denied on the grounds that he was not so qualified and that the Appellant was not entitled to any declaratory or injunctive relief. Appellant's qualification to seek class relief was also denied.

The hearing on the preliminary injunction was proceeded with to its final termination. The United States District Court for the Southern District of Mississippi issued its opinion and order denying Appellant's Motion for Preliminary Injunction. The Opinion of the District Court found, among other matters, that as a matter of law and fact that there was no policy, practice, custom or usage of denying negroes admission to the University of Mississippi; that the Appellant's application had been denied in good faith for lack of qualifications and had not been denied because of race or color. The court further found that the Appellant admitted 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. A copy of the Opinion of the District Court is attached hereto as Exhibit (A).

6.

On appeal from this order (Exhibit A) this court refused to reverse the lower court's action. The matter was returned to the District Court for an expeditious hearing on the merits of the Permanent Injunction. A copy of said opinion of this court is attached hereto as Exhibit (B).

7.

After the hearing on the merits of the permanent injunction, the District Court entered its opinion holding that there was no policy, practice, usage or custom by the State of Mississippi of restricting admission to the University of Mississippi because of race or color at the time of its opinion or at the time of the rejection of Plaintiff's (Appellant's) application. The court refused to issue the permanent injunction

since the Appellant had not met the burden of proving that Appellees had applied any policy, practice, custom or usage of the State of Mississippi to Appellant so as to produce an unconstitutional discrimination. Evidence was again introduced at this final hearing on the merits indicating Appellant's falsification of voter registration and poll tax exemption forms, and to show his false representations to signers of certificates as to his good moral character, psychiatric problems experienced by Appellant in the Air Force and his concealment of these problems from the University on his student health forms. The Court refused to make any findings of fact or even consider any other ground for denial of the Applicant's application which occurred or was discovered after the application was denied. A copy of said opinion is attached hereto as Exhibit (C).

8.

The Appellant applied for an immediate mandatory injunction pending appeal from the ruling of the District Court on the merits, but such application was denied by this court.

9.

The appeal on the merits of the lawsuit came on for hearing before this Court. This Honorable Circuit Court of Appeals sitting through two judges of a three judge panel, with one judge dissenting, filed its opinion, reversing the District Court's Opinion, Findings of Facts and Conclusions of Law. A copy of said opinion with the dissent of Judge [illegible] is attached hereto as Exhibit (D). The mandate, issued pursuant to the said majority Opinion, should be stayed to permit Appellees to petition the Supreme Court of the United States for a writ of certiorari for the reasons set forth in the remaining paragraphs. Should said Mandate not be so stayed, irreparable injury and injustice to these Appellees would result as shown in the remaining paragraphs hereof.

The decree of this Honorable Court, it is respectfully submitted, transcends the constitutional and statutory powers vested in this Court as an appellate court under Title 28, U.S.C., Sections 1291 - 1294, inclusive, in that such decree goes beyond the findings of the District Court, which District Court is constitutionally and statuterily possessed of original jurisdiction to hear and determine the facts in this matter. The only jurisdictional powers possessed by this court are to review findings of fact made by the District Court and this power does not extend to the making of findings of fact for or in place of said District Court. If other or different facts should have been studied and findings made thereon by the District Court then the cause should have been reversed and remanded with directions to said fact finding court to make findings of fact on the conflicting issues presented to but not ruled on by said District Court.

Contrary to the jurisdictional limitations imposed by statute upon this Honorable Court, the said majority opinion purports to do and does act originally upon facts not considered or determined by the lower Court in reaching its opinion, to-wit, all facts which would or could affect the exercise of legal discretion by the Chancellor and Registrar of the University of Mississippi with regard to their actions on the application of Appellant, James H. Meredith, subsequently to the date said application was originally denied.

11.

There has been and can be under the mandate of this court no hearing, held in this cause to determine whether or not the facts contained in said record are all of the facts known to the defendant Registrar, Robert B. Ellis, as regards his action on the application of the Appellant, James H. Meredith, but the mandate of this Court requires the issuance

of an injunction enjoining the Appellees and other officials connected with the University of Mississippi to do and perform and refrain from doing and performing acts and actions with regard to admission as a student of the said James H. Meredith without competent proof or evidence of the present scholastic standing, attitude, or other factors of eligibility for admission.

12.

Although the record in this cause is devoid of any proof whatsoever as to the existence of or members of a class which Appellant purports to represent or that Appellant has been requested to represent such class the mandate nevertheless directs the issuance of an injunction demanding and requiring acts and actions by Appellees as to such unknown and unproven "class". Although this spurious class action is considered a permissive joinder device--in effect an invitation to join in this action--not one other person alleging or purporting to be a member of such class has sought at any time in the proceedings to join herein.

13.

The University of Mississippi, as all other institutions of higher learning in the State of Mississippi, is maintained for the education of the youth of this state and nation and not for the purpose of enabling men with "missions", (as the opinion of this court found Appellant to be) to advance their social theories or dissipate their psychoses or neuroses. The Appellant does not seek an education and is a manifestly improper applicant to such an educational institution. His admission there for his "missionary" and non-educational purposes could and would be certainly calculated to cause irreparable harm and injury to the educational environment to the detriment of the institution and its many students. A balance of equities requires the stay of this mandate until the Supreme

WHEREFORE, premises considered, your Appellees respectfully pray that the execution and enforcement of the Mandate issued by the United States Court of Appeals for the Fifth Circuit on the 17th day of July, 1962, be stayed for a reasonable time to enable the Appellees to obtain a Writ of Certiorari from the Supreme Court of the United States.

Appellees pray for general relief.

Respectfully submitted,

CHARLES DICKSON FAIR, ET AL, APPELLEES

BY JOE T. PATTERSON, ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

DUGAS SHANDS, ASSISTANT ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

PETER M. STOCKETT, JR., SPECIAL ASSISTANT ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

CHARLES CLARK, SPECIAL ASSISTANT ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI

BY: /s/ Charles Clark

Charles Clark, Special Assistant Attorney General of the State of Mississippi

Address of Each:

New State Capitol Building
Jackson, Mississippi

AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF LAUDERDALE

Personally appeared before me, a Notary Public in and for the aforesaid State and County, the within named Charles Clark, who, after being duly sworn, states on oath that the matters, facts and things stated in the foregoing Motion of Appellees for Stay of the Execution of the Enforcement of the Mandate issued in This Cause Pending Application for Writ of Certiorari are true and correct as therein stated.

/s/ Charles Clark
Charles Clark

Sworn to and subscribed before me, this the 17th day of July, 1962.

/s/ Claire Barr
Notary Public

My Commission Expires:

_____

CERTIFICATE OF SERVICE

I, Charles Clark, Special Assistant Attorney General of the State of Mississippi, one of the attorneys of record for Appellees, do hereby certify that I have this day served the foregoing Motion for Stay upon R. Jess Brown and Constance Baker Motley by mailing true copies to their best known office addresses in accordance with the Federal Rules of Civil Procedure.

THIS the 18th day of July, 1962.

/s/ Charles Clark
Charles Clark, Special Assistant Attorney General of the State of Mississippi

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

JUN -

EDWARD W. WADSWORTH
CLERK

NO. 19475

JAMES H. MEREDITH,

versus

CHARLES DICKSON FAIR, et al

MOTION THAT MANDATE ISSUE FORTHWITH

1. On June 25, 1962 this Court decided the above entitled case holding that appellant is entitled to be admitted to the University of Mississippi.

2. A summer term of said University commences on July 12, 1962 and appellant desires to commence attendance at the University at the commencement of said term.

3. If the mandate of this court is issued in the normal course of events it will be difficult if not impossible for appellant to commence attendance at this University for the forthcoming summer term.

4. Wherefore, appellant respectfully prays that the mandate of this court issue forthwith so that proceedings below can be taken in time to permit such attendance.

DENIED BY DIRECTION OF JUDGE WISDOM

EWW

Respectfully submitted

Constance Baker Motley
Jack Greenberg
R. Jess Brown

I hereby certify that a copy of the above motion has been mailed by air mail special delivery to the Honorable Joe T. Patterson at his office, State Capitol, Jackson, Mississippi, by depositing same in the United States mails postpaid this date.

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

JAMES HOWARD MEREDITH, on behalf of himself and others similarly situated — APPELLANT

versus

CHARLES DICKSON FAIR, president of the Board of Trustees of State Institutions of Higher Learning, et al. — APPELLEE

No. 19475

ON CONSIDERATION OF THE APPLICATION of the Appellees in the above numbered and entitled cause for a stay of the execution and enforcement of the mandate of this court therein, to enable appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the execution and enforcement of the mandate of this court in said cause be, and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that this stay shall be vacated ~~the clerk shall issue the mandate~~ upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

DONE AT Meridian, Mississippi, this 18th day of July, 1962.

/s/ [illegible]
United States Circuit Judge

FOR THE FIFTH CIRCUIT

NO. 19475

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.

ORDER VACATING STAY, RECALLING MANDATE, AND ISSUING NEW MANDATE FORTHWITH

Before BROWN and WISDOM, Circuit Judges, and DeVANE, District Judge.

PER CURIAM:

In this case time is now of the quintessence. Time has been of the essence since January 1961 when James Meredith, in the middle of his junior year at Jackson State College (for Negroes), applied for admission to the University of Mississippi.

This Court heard three appeals of the case. In its opinion on the last appeal we concluded:

> ". . . [F]rom the moment the defendants discovered Meredith was a Negro they engaged in a carefully calculated campaign of delay, harassment, and masterly inactivity. It was a defense designed to discourage and to defeat by evasive tactics which would have been a credit to Quintus Fabius Maximus. . . . We see no valid, non-discriminatory reason for the University's not accepting Meredith. Instead, we see a well-defined pattern of delays and frustrations, part of a Fabian policy of worrying the enemy into defeat while time worked for the defenders."

Chronology highlights this case. June 25, 1962, this Court reversed the district court and remanded the case with instructions that the district court grant the injunction prayed for in the complaint.

Rule 41 of the Fifth Circuit, in part, reads:

> "Mandate shall issue at any time after twenty-one days from the date of the decision, unless an application for rehearing has been granted or is pending. If such application is denied the mandate will be stayed for a further period of ten days. No further stay will be granted unless applied for within the delay given above. A mandate once issued will not be recalled except by the court and to prevent injustice."

During the twenty-one day period the defendants did not apply to this Court for a rehearing or for a stay of mandate. July 1? the mandate went down. Bright and early July 18, the attorney for the defendant presented to the Clerk for filing an order staying "the execution and enforcement of the mandate". The order, dated July 18 at Meridian, Mississippi, was signed by the Honorable Ben F. Cameron, United States Circuit Judge. Judge Cameron was not a member of the Court which heard any of Meredith's appeals. The Court which determined the cause was composed of Circuit Judges Brown and Wisdom and District Judge DeVane, sitting by designation. July 19 the Clerk, acting under instructions from this Court, telegraphed the parties through their counsel, requesting that they exchange and file, within five days, "statements of their positions with memorandum briefs for or against the granting of any stays, including the vacating of the stay entered by Judge Cameron, the issuance by this Court of injunctions pending further appeal, or other appropriate action". The Court has now received and considered the statements and their supporting briefs.

It is unnecessary to decide whether a judge who is not a member of the Court determining the cause is not "a judge of the court ordering the judgment or decree" within the meaning of 28 U.S.C.A. §2101(f). See Application of Cheesman, 1954, 75 Cal. S. Ct. 85, 4 L. Ed. 2d 645.

without deciding, that Judge Cameron is indeed a judge of "the court rendering the judgment", we hold that the court determining the cause has inherent power to review the action of a single judge, whether or not the single judge is a member of the panel. Rosenberg v. United States, 1953, 346 U. S. 273, 73 S. Ct. 1152, 97 L. Ed. 1607, reconsideration denied, 346 U. S. 324, 73 S. Ct. 1171, 97 L. Ed. 1634, reconsideration denied, 346 U. S. 324, 73 S.Ct. 1178, 97 L. Ed. 1654. A contrary position would allow a judge in the minority, were he a member of the panel deciding the case, to frustrate the mandate of the majority. And, it it unthinkable that a judge who was not a member of the panel should be allowed to frustrate the mandate of the Court.

All of the members of this Court agree that when a mandate has been issued, it is logically and legally too late to stay it. Unless the Court should recall, the mandate, the Court's control over the judgment below comes to an end after the mandate has been issued. That is the plain meaning of Rule 32. The authorities fully support the rule. Omaha Electric Light & Power Co. v. City of Omaha, 216 Fed. 848, setting aside on rehearing decree in 179 Fed. 455, which aff'd 172 Fed. 494, appeal dismissed 230 U. S. 123, 57 L. Ed. 1419, 33 S. Ct. 974; In re Nevada-Utah Mines & Smelters Corp., 204 Fed. 992, denying rehearing 202 Fed. 126. For this reason the purported stay should be vacated and set aside.

Judge Brown and Judge Wisdom are also of the opinion that even if the residual control of an appellate court over an issued mandate were broad enough to support a stay in exceptional cases, might have here the stay order should be vacated and set aside on the ground that it was improvidently granted.

necessity of a sitting judge to study the record, to hear the argument, to discuss the facts and the law in the judges' conference on the case.

This is not a Cheesman case. It is not a Rosenbery case. It is not a matter of life or death to the University of Mississippi. Texas University, the University of Georgia, Louisiana State University, the University of Virginia, other Southern universities are not shriveling away because of the admission of Negroes. There was no emergency requiring prompt action by a single judge. There was, however, apparently studied action by the applicants' attorney to avoid asking the Court for a rehearing or for a stay.

In the matter of stays, this Court is not at all in the position of the Supreme Court. The Supreme Court is the final arbiter of the ultimate answer to any question sought to be preserved by a stay. Courts of Appeal, on the other hand, have disciplined themselves to take a restricted view of the propriety of issuing stays. When time is of the essence to the successful party in the Court of Appeals a stay should be predicated upon a doubtful question of law unresolved by earlier court decisions and there should be a reasonable likelihood of the Supreme Court finally deciding in favor of the applicant for a stay. See Rule 32 of the Rules of the Fifth Circuit Court of Appeals. As recently as October 26, 1961, the Fifth Circuit Court, with only Judge Hutcheson absent, rendered the following order:

> "Stays of Mandates of the Court after the denial of a motion for rehearing are to be cautiously granted to avoid situations such as where the applicant was the losing party in the trial court and there has been no grant of supersedeas.

Chief Justice Taft, in Magnum Import Co. v. Coty, 1923, 262 U. S. 159, 164, 43 S. Ct. 531, 67 L. Ed. 922, established guidelines

"The petition should, in the first instance, be made to the circuit court of appeals, which, with its complete knowledge of the cases, may, with full consideration, promptly pass on it. That court is in a position to judge, first, whether the case is one likely, under our practice, to be taken up by us on certiorari; and second, whether the balance of convenience requires a suspension of its decree and a withholding of its mandate. It involves no disrespect to this court for the circuit court of appeals to refuse to withhold its mandate or to suspend the operation of its judgment or decree pending application for certiorari to us. If it thinks a question involved should be ruled upon by this court, it may certify it. If it does not certify, it may still consider that the case is one in which a certiorari may properly issue, and may, in its discretion, facilitate the application by withholding the mandate or suspending its decree. This is a matter, however, wholly within its discretion. If it refuses, this court requires an extraordinary showing before it will grant a stay of the decree below pending the application for a certiorari, and even after it has granted a certiorari, it requires a clear case and a decided balance of convenience before it will grant such stay."

In United States v. Louisiana, 1960, 364 U. S. 500, 81 S.Ct. 260, 5 L.Ed.2d 285 the Supreme Court was requested to grant a stay of a three judge court decision which nullified a series of Louisiana laws aimed at maintaining a state-wide policy of school segregation. In denying the request for a stay, pending appeal, the Supreme Court ruled, "The scope of these enactments and the basis on which they were found in conflict with the Constitution of the United States are not matters of doubt." Similarly, in Evans v. Ennis, 1960, 364 U. S. 802, 81 S.Ct. 27, 5 L.Ed.2d 36, the Supreme Court denied a stay of a decision by the Court of Appeals for the Third Circuit holding a grade a year plan of desegregation unlawful in the State of Delaware. Evans v. Ennis, 1960, 3 Cir., 281 F.2d 385. On the same day, the Supreme Court denied a stay in a school segregation case from Houston, Texas; Houston Independent School District v. Ross, 1960, 364 U. S. 803, 81 S. Ct. 27, 5 L.Ed.2d 36, [illegible]

applying its own grade a year plan. Houston Independent School District v. Ross, 1960, 5 Cir., 282 F.2d 95. See also Orleans Parish School Board v. Bush and Davis v. Williams, 1960, 364 U. S. 803, 81 S.Ct. 17, 5 L.Ed.2d 35. In Lucy v. Adams, 1955, 350 U. S. 1, 76 S.Ct. 33, 100 L.Ed. 3, the Supreme Court vacated a stay granted by a District Court of its order directing the admission of the first two Negroes to the University of Alabama pending appeal to the Fifth Circuit. The court there held that where the rights are personal and present and where the stay issue is coextensive with that on the merits, the stay should be denied. See also, Cooper v. Aaron, 1958, 358 U.S. at 27, 78 S.Ct. 1397, 3 L.Ed.2d 1. The Supreme Court also refused to reverse the action of Chief Judge Tuttle of the Fifth Circuit when he vacated a stay granted, by the District Court, pending appeal, in the University of Georgia case. Danner v. Holmes, 1961, 364 U.S. 939, 81 S.Ct. 311, 5 L.Ed.2d 371. In this case Judge Tuttle stressed the fact that it was unlikely that this Court would reverse the District Court's decision in a case in which there had been a trial on a motion for preliminary injunction and a final hearing on the merits where all the facts aired in a lengthy trial and the judge made lengthy and careful findings of fact. See also, Hawkins v. Board of Control, 1958, 5 Cir., 253 F.2d 752, where this Court issued its mandate forthwith when the District Court delayed further adjudication of Hawkins' right to enter the University of Florida after nine years of litigation through the state court. In Tureaud v. Board of Supervisors of L.S.U., 1953, 346 U. S. 881, the Supreme Court stayed this Court's reversal of the District Court's injunction order ordering the admission of a Negro student to L.S.U. As a result of the Supreme Court's stay pending certiorari, the injunction order of

the University of Louisiana.

The defendants have an absolute right to apply for a writ of certiorari -- regardless of whether the mandate is stayed or issued. Denial of a stay is a minor inconvenience to the defendants. But to allow a stay might would subject the successful litigant, Meredith, to the injustice of additional delays. Partly to avoid such a possibility, and to bring the case to a prompt ending after a full trial on the merits, this Court denied a preliminary injunction. Unfortunately, the wording of the mandate, "that an injunction issue as prayed for in the complaint" was so loose as to defeat the intentions of the Court. Accordingly, the mandate must be clarified by being recalled and amended.

There is no doubt as to the power of the court to recall its mandate. Thus, in Wichita Royalty Co. v. City Nat. Bank of Wichita Falls, 5 Cir., 1938, 97 F.2d 249, the Fifth Circuit held: "[The Court has the] power to recall the mandate and rehear the case, though too late under our rules regularly to do so." The opinion was written by Judges Sibley, Holmes, and Hutcheson. In that case the term at which judgment was rendered had not closed. It had not in this case. However, "the power exists to recall the mandate and set aside the judgment even after the expiration of the term during which the judgment became final, but a court of appeals in the exercise of that power usually is guided by its own applicable rules, such as a requirement that good cause must be shown in order for a mandate to be recalled." 14 Cyclopedia of Federal Procedure, §69.14. See Hines v. Royal Indemnity Co., 6 Cir., 253 F.2d 111. See also Judge Holmes's opinion for this Court in Sun Oil Co. v. Harford, 5 Cir., 1942, 130 F.2d 10.

this Court be recalled and amended by making explicit the meaning that was implicit in this Court's conclusions as expressed throughout its opinion in this cause, dated June 25, 1962. To this end, the order will now read as follows:

The case is reversed and remanded with directions to the District Court forthwith to grant all relief prayed for by the plaintiff and to issue forthwith a permanent injunction against each and all of the defendants-appellees, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, as well as any and all persons having knowledge of the decree, enjoining and compelling each and all of them to admit the plaintiff-appellant, James H. Meredith, to the University of Mississippi under his applications heretofore filed, which are declared by us to be continuing applications. Such injunction shall in terms prevent and prohibit said defendants-appellees, or any of the classes of persons referred to from excluding the plaintiff-appellant from admission to continued attendance at the University of Mississippi. Pending such time as the District Court has issued and enforced the orders herein required and until such time as there has been full and actual compliance in good faith with each and all of said orders by the actual admission of plaintiff-appellant to, and the continued attendance thereafter at the University of Mississippi, this Court herewith issues its own preliminary injunction enjoining and compelling each and all of said parties to admit plaintiff-appellant to, and allow his continual

further prohibiting and preventing said parties or any other of them from excluding said plaintiff-appellant from attendance to and continued attendance thereafter on the same basis as other students at the University of Mississippi.

Judge Cameron's stay order dated July 16 is forthwith vacated and set aside. The mandate in this cause is forthwith recalled and amended as set forth herein. This Court's preliminary injunction against the defendants-appellees is forthwith issued.

JUDGE DEVANE concurs in the result.

A true copy
Robert W. WAINWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By Clara K. Jarnagin
Deputy

JUL 27 1962

October Term, 1961.

No. 19,675

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

Appellant,

versus

CHARLES DICKSON FAIR, President of the Board of Trustees of the State Institutions of Higher Learning, Et Al.,

Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

Before BROWN and WISDOM, Circuit Judges, and DeVANE, District Judge.

J U D G M E N T

"After due consideration of the statements of position and memorandum briefs requested by the Court for or against the granting of any stays, including the vacating of the stay entered by Judge Cameron herein, the issuance by this Court of injunctions pending further appeal, or other appropriate action",

It is now forthwith ordered that the mandate and judgment of this Court be recalled and amended by making explicit the meaning that was implicit in this Court's conclusions as expressed throughout its opinion in this cause, dated June 25, 1962. To this end, the order will now read as follows:

> The case is reversed and remanded with directions to the District Court forthwith to grant all relief prayed for by the plaintiff and to issue forthwith a permanent injunction against each and all of the defendants-appellees, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, as well as any and all persons having knowledge of the decree, enjoining and compelling each and all of them to admit the plaintiff-appellant, James H. Meredith, to the University of Mississippi under his applications heretofore filed, which are declared by us to be continuing applications. Such injunction shall in terms prevent and prohibit said defendants-appellees, or any of the classes of persons referred to from excluding the plaintiff-appellant from admission to continued attendance at the University of Mississippi.

"DeVane, District Judge, concurs in the result."

July 27, 1962.

Issued: JUL 27 1962

A true copy
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By Clara P. Jasmine
Deputy

New Orleans, Louisiana

United States Court of Appeals for the Fifth Circuit

October Term, 1961.

No. 19,675

D. C. Docket No. 3130 Civil (Jackson Division)

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

Appellant,

versus

CHARLES DICKSON FAIR, President of the Board of Trustees of the State Institutions of Higher Learning, Et Al.,

Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

Before BROWN and WISDOM, Circuit Judges, and DeVANE, District Judge.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and after due consideration of the statements of position and memorandum briefs requested by the Court for or against the granting of any stays, including the vacating of the stay entered by Judge Cameron on July 18, 1962, the issuance by this Court of injunctions pending further appeal, or other appropriate action,

It is now forthwith ordered that the judgment of this Court issued as and for the mandate on July 17, 1962, be recalled and amended by making explicit the meaning that was implicit in this Court's conclusions as expressed throughout its opinion in this cause, dated June 25, 1962. To this end, the order will now read as follows:

> The case is reversed and remanded with directions to the District Court forthwith to grant all relief prayed for by the plaintiff and to issue forthwith a permanent injunction against each and all of the defendants-appellees, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, as well as any and all persons having knowledge of the decree, enjoining and compelling each and all of them to admit the plaintiff-appellant, James H. Meredith, to the University of Mississippi upon his applications heretofore filed, which are declared by us to be continuing applications. Such injunction shall in terms prevent and prohibit said defendants-appellees, or any of the classes of persons referred to from excluding the plaintiff-appellant from admission to continued attendance at the University of Mississippi.

"DeVane, District Judge, concurs in the result."

July 27, 1962.

Issued:

Recoverable Costs:

Appeals, Fifth Circ.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

U. S. COURT OF APPEALS
FILED
JUL 28 1962
EDWARD W. WADSWORTH
CLERK

NO. 19,475

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.

This Court on July 26, 1962 entered its opinion and judgment forthwith (1) vacating a stay issued herein by Judge Ben F. Cameron, July 18, 1962, (2) recalling its mandate issued herein July 17, 1962, (3) amending and reissuing its mandate, for the purpose of preventing an injustice, by ordering the District Court to issue forthwith an injunction against the defendants-appellees ordering the immediate admission of the plaintiff-appellant, James H. Meredith, to the University of Mississippi, (4) which opinion and judgment includes an order of injunction by this Court against the defendants-appellees herein.

Now therefore, the following injunctive order is issued:

O R D E R

Pending such time as the District Court has issued and enforced the orders herein required and until such time as there has been full and actual compliance in good faith with each and all of said orders by the actual admission of plaintiff-appellant to, and the continued attendance thereafter at the University of Mississippi on the same basis as other students who attend the University, the defendants, their servants, agents, employees, successors and assigns, and all persons acting

having knowledge of the decree are expressly:

(1) Ordered to admit the plaintiff, James H. Meredith, to the University of Mississippi, on the same basis as other students at the University, under his applications heretofore filed, which are declared to be continuing applications, such admission to be immediate or, because of the second summer session having started, such admission to be in September, at Meredith's option, and without further registration,

(2) Prohibited from any act of discrimination relating to Meredith's admission and continued attendance, and is

(3) Ordered promptly to evaluate and approve Meredith's credits without discrimination and on a reasonable basis in keeping with the standards applicable to transfers to the University of Mississippi.

In aid of this Court's jurisdiction and in order to preserve the effectiveness of its judgment, this Court entered a preliminary injunction on June 12, 1962. The injunction was against Paul G. Alexander, Attorney for Hinds County, Mississippi, his agent, employees, successors, and all persons in active concert and participation with him and all persons who received notice of the issuance of the order, restraining and enjoining each and all of them from proceeding with the criminal action instituted against James H. Meredith in the Justice of the Peace Court of Hinds County, Justice District No. 5, or any other court of the State of Mississippi, charging that Meredith knowingly secured his registration as a voter in Hinds County but was a resident of Attala County, Mississippi. In further aid of this Court's jurisdiction and in order to preserve the continued effectiveness of its judgment and orders, the said preliminary injunction is continued against the same parties and all other parties having knowledge of this decree pending the final action of the United States Supreme Court if and when the defendants-appellees should apply for a writ of certiorari or for any other appropriate action in this cause by the United States Supreme Court.

It is further ordered that a copy of this order be served upon the defendants-appellees, through their attorneys, and upon Paul G. Alexander, County Attorney for Hinds County, Mississippi, and Joseph T. Patterson, Attorney General for the State of Mississippi.

Entered at New Orleans, Louisiana
this 28th day of July, 1962.

United States Circuit Judge.

United States Circuit Judge.

United States District Judge.

Hon. Ben F. Cameron
U. S. Circuit Judge

BEFORE HONORABLE BEN F. CAMERON, JUDGE OF THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

IN RE: CAUSE #19475 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JAMES HOWARD MEREDITH, on behalf of Himself and Others similarly situated,

Appellant,

V.

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

s/ R E White

Appellees.

A judgment was entered herein by the United States Court of Appeals for the Fifth Circuit on July 17, 1962, which judgment was and is subject to review by the Supreme Court on writ of certiorari and a certified copy of said judgment was, in conformity with the order of this Court dated February 15, 1958 (Page 44 of the Rules of this Court), transmitted as the mandate of this Court to the United States District Court for the Southern District of Mississippi, Jackson Division, and was received by said District Court on July 18, 1962. Before said mandate had been executed or enforced, the execution and enforcement thereof was, on July 18, 1962, stayed by the undersigned Judge of said Court of Appeals acting under authority vested in him by the Constitution and laws of the United States (cf. 28 U.S.C.A. Sec. 2101 and Rules 38 and 36 of the Supreme Court) and said stay was and is valid and in full force and effect.

It now appearing that a panel of said Court of Appeals has by its order and judgment of July 27, 1962 attempted to set aside said stay of mandate and to conduct further proceedings in this cause in violation and contravention thereof and has entered a judgment and order which have

as such to said District Court; and that such proceedings were and are void and beyond the jurisdiction of said panel and in violation of said stay of July 18, 1962, and it appearing that the judgment and order of said Court dated July 27, 1962 are subject to review by the Supreme Court on writ of certiorari;

IT IS ORDERED that the execution and enforcement of the "Judgment" dated July 27, 1962, issued as and for the mandate of said Court on the same date and the "Order Vacating Stay, Recalling Mandate and Issuing New Mandate Forthwith" dated the same date be and the same are hereby stayed for a period of thirty days from the date of this Order; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this Order there shall be filed with the Clerk of this Court the Certificate of the Clerk of the Supreme Court that Certiorari Petition and record have been filed. It is further ordered that this stay shall be vacated upon the filing of a copy of an Order of the Supreme Court denying the Writ, or upon the expiration of thirty days from the date of this Order, unless the above mentioned Certificate shall be filed with the Clerk of this Court within that time.

IT IS FURTHER ORDERED that the stay granted by the undersigned on the 18th day of July, 1962, be and the same is hereby extended until the expiration of thirty days from and after the date of this Order to enable Appellees to file with the Clerk of the Fifth Circuit Court of Appeals, the Certificate of the Clerk of the Supreme Court of the United States that the Certiorari Petition and certified record required under the rules of said Supreme Court have been filed therein. Said stay, under the terms of the Order granted by the undersigned on the 18th day of July, 1962, is to continue in force until the final disposition of the case by the said Supreme Court if said Petition and record are filed within said thirty day period.

DONE AT MERIDIAN, MISSISSIPPI this 25 day of July, 1962.

BEFORE HONORABLE BEN F. CAMERON, JUDGE OF THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

IN RE: CAUSE # 19475 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JAMES HOWARD MEREDITH, on behalf of Himself and Others similarly situated,

Appellant,

V.

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

Appellees.

Charles D. Fair and others have moved the undersigned for the entry of an order amending the stay order issued by the undersigned on the 28th day of July, 1962, pursuant to 28 U. S. Code Section 2101(f), and it appearing from said verified motion that the United States Court of Appeals for the Fifth Circuit acted on the 28th day of July, 1962, to issue an amended or substitute order for and in place of an order stayed by the undersigned on the 28th day of July, 1962, and it further appearing that said motion is well-taken and should be granted;

IT IS THEREFORE ORDERED that the stay executed by me on July 28th be and it is extended to cover said amended or substistute order and that the execution and enforcement of the order dated the 28th day of July, 1962 by a Panel of the United States Court of Appeals for the Fifth Circuit, styled No. 19475, James H. Meredith, on behalf of himself and others similarly situated, Appellant, vs. Charles Dickson Fair, President of the Board of

Trustees of the State Institutions of Higher Learning, et al, Appellees, which was issued for and as the mandate of said Court of Appeals on the same date, should be, and the same is hereby, stayed for a period of thirty (30) days from and after the 28th day of July, 1962; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty (30) days from the 28th day of July, 1962, there shall be filed with the Clerk of the Court of Appeals for the Fifth Circuit the Certificate of the Clerk of the Supreme Court that Certiorari Petition and record have been filed. IT IS FURTHER ORDERED that this stay shall be vacated upon the filing of a copy of the order of the Supreme Court denying the writ, or upon the expiration of thirty (30) days from and after the 28th day of July, 1962, unless the above mentioned Certificate shall be filed with the Clerk of said Court of Appeals within that time.

DONE at Meridian, Mississippi, this 31st day of JULY, 1962.

/s/ BEN F. CAMERON
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 19,475

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

Appellant,

vs.

CHARLES DICKSON FAIR, President of the Board of Trustees of the State Institutions of Higher Learning, Et Al.,

Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

(AUGUST 4, 1962)

Before BROWN and WISDOM, Circuit Judges, and DEVANE, District Judge.

PER CURIAM:

On July 27, 1962 this Court entered its opinion and orders vacating the order entered by Judge Cameron on July 18, 1962 which stayed our judgments of July 17, 1962. Thereafter, on July 28, 1962, Judge Cameron entered a second order staying all orders of July 27, 1962 (as well as those of July 17, 1962). Subsequently, he entered a third stay order on July 31, 1962.

While it might appear to be unnecessary to enter any further orders, the Court now enters this order to make certain that the record is kept straight.

For the reasons pointed out in our opinion orders of July 27, 1962, the stay or stays granted by Judge Cameron on July 28 and July 31, 1962 were unauthorized, erroneous and improvident and each of them is hereby vacated and set

aside forthwith. All of our orders of July 17th, July 27th and this date, therefore continue in full force and effect and require full and immediate obedience and compliance.

A true copy
Test: Edward W. Wadsworth
EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

AUG 4 1962

Dan. H. Cameron
U.S. Circuit Judge

BEFORE HONORABLE DAN F. CAMERON, JUDGE OF THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

IN RE: CAUSE #19,475 IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JAMES HOWARD MEREDITH, on behalf of Himself and Others similarly situated,

Appellant,

V.

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

Appellees.

ORDER

This cause came on to be heard on the motion of Charles D. Fair, et al, for an order extending the stay orders previously granted by me to encompass and include a document rendered by the United States Court of Appeals for the Fifth Circuit on the 4th day of August, 1962, and to stay the execution and enforcement of Orders, Judgments and Mandates of said Court previously stayed by Orders entered by me pursuant to Title 28, U. S. Code, Section 2101(f); and it appearing to me as a Judge of said Court that said document rendered August 4, 1962, is in direct conflict with the considered, appropriate and statutory stay orders entered by me on July 18, 1962, July 28, 1962, and July 31, 1962, and it further appearing that each and all of the Orders, Judgments and Mandates previously stayed by me on said dates were Judgments, Orders

and Mandates of the United States Court of Appeals for the Fifth Circuit, which could be reviewed by the Supreme Court of the United States on Writ of Certiorari within the meaning of the provisions of Title 28, U. S. Code, Section 2101(f).

It further appearing that the document dated the 4th day of August, 1962, is similarly a judgment or decree which may be reviewed by said Supreme Court of the United States within the meaning of said statute;

IT IS, THEREFORE, ORDERED that the said statutory stay orders previously granted by me should be and the same are hereby extended to encompass and include the document rendered by the United States Court of Appeals for the Fifth Circuit on the 4th day of August, 1962, and pursuant to the authority vested in me by Title 28, U. S. Code, Section 2101(f), the execution and enforcement of said document rendered on the 4th day of August, 1962, and the Orders, the Judgments and the Mandates of said United States Court of Appeals for the Fifth Circuit issued, entered, or rendered on July 17, 1962, July 27, 1962, and July 28, 1962, previously stayed by me, should be and the same are hereby stayed for a period of thirty (30) days from and after July 28, 1962; the stay to continue in full force until the final disposition of the case by the Supreme Court of the United States, provided that within thirty (30) days from the 28th day of July, 1962, there shall be filed with the Clerk of the Fifth Circuit Court of Appeals the Certificate of the Clerk of the Supreme Court of the United States that Certiorari Petition and Record have been filed. IT IS FURTHER ORDERED that this stay shall be vacated upon the filing

of a copy of an Order of said Supreme Court of the United States denying the Writ of Certiorari or upon the expiration of thirty (30) days from and after the 28th day of July, 1962, unless the above mentioned Certificate shall be filed with the Clerk of said Fifth Circuit Court of Appeals within said time.

DONE AT Meridian, Mississippi, this 6 day of August, 1962.

Dan T. Cameron

UNITED STATES CIRCUIT JUDGE

A TRUE COPY, I HEREBY CERTIFY.
LORYCE E. WHARTON, CLERK
BY:

S/ J. Speights

J. Speights, Dep. Clerk