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IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DIVISION
OF THE WESTERN DISTRICT OF MISSOURI

Lucile Bluford,
Plaintiff,
vs.
S. W. Canada,
Defendant.

Civil Action No. 42

ANSWER

Now comes defendant and for answer to the amended second count of the complaint (the first count of the original complaint having heretofore been dismissed by order of court), defendant states:

First Defense

The amended second count of the complaint (hereinafter for convenience referred to in this answer as "the complaint") fails to state a claim against defendant upon which relief can be granted.

Second Defense

Defendant denies that at any of the times referred to in the complaint he was or still is the "officer" of the University of Missouri responsible for and in complete charge of all details of registration and admission of students to any department of the University; and admits the other allegations in paragraph A1 of the complaint.

Defendant denies the allegations in paragraph A2 of the complaint.

Defendant denies that in January, 1939, and ever since, plaintiff was or is fully qualified, other than schol-

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astically, for registration and admission to the University of Missouri for graduate work in journalism; denies that plaintiff needed or still needs, desired or still desires the graduate work in journalism offered by the state in the University of Missouri, or the substantial equivalent thereof, for the purpose of increasing her efficiency in newspaper work, her service to the people of the state, and her earnings; and admits the other allegations of paragraph A3 of the complaint.

Defendant denies that in January, 1939, plaintiff duly applied to defendant for admission to the University of Missouri for graduate work in journalism; denies that he accepted her qualifications and directed her to call at his office on the campus of the University of Missouri for a permit to register for admission to the University for such work for the second semester of the academic year 1938-1939. Defendant admits that plaintiff presented herself to defendant

at his office on or about January 30, 1939, and requested him to issue her a permit to register in the University of Missouri for graduate work in journalism; denies that defendant was then and there in duty bound to comply with her said request; admits that acting under state law and policy and the rules and regulations adopted by the Board of Curators of the University of Missouri pursuant thereto, defendant did refuse to issue plaintiff a permit to register in the University of Missouri, but denies that this refusal was illegal or was solely because plaintiff is a negro. Defendant denies all of the other allegations in paragraph A4 of the complaint.

Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment that "Lincoln University has never offered and still does not offer graduate work in journalism." Defendant denies that the curators, officers and faculty of Lincoln University were advised of the defendant's refusal to issue plaintiff a permit to register

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In the University of Missouri for graduate work in journalism. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averment that pursuant to the duty imposed on the curators of Lincoln University by the Taylor Act (Missouri Laws 1939, p. 685) said curators beginning June, 1939, began considering the possibility of offering graduate work in journalism at Lincoln University, and of the averment that in July, 1939, said curators allocated funds for instruction in journalism, but not graduate instruction in journalism, and proceeded to purchase certain equipment for the teaching of printing. Defendant denies that in September, 1939, prior to the opening of Lincoln University's fall term and in ample time for the curators of Lincoln University to have provided for graduate work in journalism at the opening of said fall term, plaintiff applied to Lincoln University for graduate work in journalism; denies that plaintiff ever made any such application, or any application of any kind, to Lincoln University at any time; denies that an application on any day in September, 1939, would have afforded ample or reasonable time for the curators of Lincoln University to have provided for graduate work in journalism at the opening of the fall term of Lincoln University; denies that the curators of Lincoln University were without power and resources to provide graduate work in journalism; denies that said curators decided Lincoln University was not in position to offer graduate work in journalism; denies that said curators refused and failed to offer such work; denies that on January 16, 1940, said curators "voted to strive to inaugurate such work by February, 1941"; and denies that Lincoln University and the curators thereof have never had, did not at the times mentioned in the complaint and do not now have the faculty, plant, money in hand or appropriated, or other resources or facilities to offer graduate work in journalism. Defendant

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admits all other allegations of paragraph A5 of the complaint.

Defendant admits that on or about September 14, 1939, plaintiff again presented herself to defendant at his office on the campus of the University of Missouri in Columbia, Missouri, and

requested defendant to issue to her a permit to register in the university for graduate work in journalism for the first semester of the academic year 1939-1940; and that defendant acting under state law and the rules and regulations adopted by the Board of Curators of the University of Missouri pursuant thereto did refuse to issue to plaintiff a permit to register in the University of Missouri. Defendant denies that plaintiff made this request "absent graduate work in journalism at Lincoln University substantially equal to that offered in the University of Missouri"; denies that plaintiff was eligible in all lawful respects for registration and admission to the University of Missouri for graduate work in journalism, on or about September 14, 1939, or at any other time; denies that plaintiff's act in presenting herself to defendant and requesting permit to register was proper or in accordance with law; denies that plaintiff was prepared and ready to "meet the lawful uniform requirements governing registration and admission to the University of Missouri for graduate work in journalism"; denies that defendant was then and there in duty bound to comply with plaintiff's request; denies that defendant at any of said times knew that the curators of Lincoln University had not and did not offer either graduate or undergraduate work in journalism; and denies that defendant's refusal to issue plaintiff a permit to register was illegal, or was solely because plaintiff is a negro. Defendant denies all other allegations in paragraph A6 of the complaint.

Defendant denies each and every allegation contained in paragraphs A7 and A8 of the complaint.

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Third Defense

At all the times referred to in the complaint defendant did not and does not now owe plaintiff any duty to issue to her a permit to register in the University of Missouri, or to admit and register plaintiff as a student in the University of Missouri. Under the applicable and controlling laws of Missouri the plaintiff had and has no right to be registered or admitted as a student in the University of Missouri, and has no right of action against defendant, whether or not she ever made application to Lincoln University for graduate work in journalism. The Board of Curators of Lincoln University is the state agency solely and exclusively charged with the duty to furnish graduate work in journalism to qualified negro residents of Missouri. At the times when plaintiff requested of defendant a permit to register in the University of Missouri, the laws of Missouri imposed the mandatory duty on the Board of Curators of Lincoln University to furnish graduate work in journalism in Lincoln University, up to the standard available at the University of Missouri, upon request therefor by any qualified negro resident of Missouri. The duty to furnish negroes with graduate work in journalism was not and could not be shifted to the University of Missouri by any alleged failure of Lincoln University to furnish it or to comply with plaintiff's alleged application, if she had ever made one. By the creation and maintenance of Lincoln University, by the mandatory duty imposed on the Board of Curators of Lincoln University by law as aforesaid, and by ample appropriations of money which the General Assembly had made to enable said curators to perform their duty under said law, the State of Missouri had and has made other and proper provision for the higher education, within the state, of negro residents of the state elsewhere than at the University of Missouri; and all

qualified negro residents of the State of

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Missouri, including plaintiff (if she was or is in fact qualified), were and are afforded equal protection of the laws, and equal opportunity with that accorded to white residents of the state at the University of Missouri for receiving graduate work in journalism. Therefore, defendant's refusal to issue to plaintiff a permit to register in the University of Missouri constituted no violation of the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and no violation of Section 41 of Title 8 of the United States Code; and plaintiff's rights, privileges and immunities secured by the Constitution and laws of the United States did not include the right to register or be admitted as a student in the University of Missouri. Therefore defendant by refusing to issue to plaintiff a permit to register as a student in the University of Missouri did not subject her to the deprivation of any rights, privileges or immunities secured by the Constitution and laws of the United States.

Fourth Defense

At all times referred to in the complaint defendant was and he is now a mere subordinate employee of the Board of Curators of the University of Missouri. The government of the University of Missouri was and is vested in said board, not in defendant. Defendant's duties are merely those prescribed by the board. He had and has no power to make rules or to establish policy, and his duty was and is merely to obey rules and regulations of the Board of Curators. Said rules and regulations, in effect at all times mentioned in the complaint, were and are binding upon defendant, were and are in accordance with the law and policy of the state requiring separation of the white and negro races for purposes of higher education, and provided that negroes should not be admitted or permitted to register as students in the University of Missouri. In refusing to issue

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to plaintiff a permit to register as a student in the University of Missouri, defendant acted in accordance with said rules and regulations, as it was his duty to do. Said rules and regulations excluding negroes from the University of Missouri, in view of other and proper provision for higher education of negroes within the state, were and are in harmony with the equal protection clause of the Fourteenth Amendment of the Constitution of the United States and with Section 41 of Title 8 United States Code. Defendant in obeying said rules and regulations therefore did not subject plaintiff to the deprivation of any rights, privileges or immunities secured by the Constitution and laws of the United States.

Fifth Defense

The refusal by defendant to issue to plaintiff a permit to register as a student in the University of Missouri did not, in and of itself, deprive plaintiff of her alleged right to enroll as a

student and receive graduate instruction in journalism in the University of Missouri. The issuance of a permit to register is but one step in the procedure of enrolling and becoming a student in said university. Even if defendant had issued to plaintiff a permit to register, such permit alone would not have had the effect to enroll plaintiff, or to have entitled plaintiff to receive graduate instruction in journalism, in the University of Missouri. Therefore defendant's refusal to issue plaintiff a permit to register did not cause plaintiff's alleged damage.

Sixth Defense

To subject defendant to pecuniary liability herein would be opposed to public policy. In refusing plaintiff a

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permit to register, defendant acted in good faith, in accordance with his duty and authority as an employee of the Board of Curators of the University of Missouri and in the execution of rules and regulations of his superiors fair and lawful on their face. Defendant is therefore immune from the alleged liability herein, as a matter of public policy.

Seventh Defense

Plaintiff's request for a permit to register in the University of Missouri, the institution by plaintiff of this suit and the institution of a mandamus suit by this same plaintiff against this same defendant (instituted in the Circuit Court of Boone County, Missouri, and recently decided against plaintiff by said court) were not in good faith, and the prosecution of this suit is not in good faith, on the plaintiff's part.

About eight years before plaintiff first requested a permit to register in the University of Missouri, plaintiff was graduated at the University of Kansas after completing a course in journalism. Upon her graduation she became a newspaper woman. At the time of her aforesaid request for permit to register in the University of Missouri, and for some years before that, she held and still holds a remunerative position as managing editor of the Kansas City Call. By her university education and practical newspaper experience she had already received such education and training in journalism as to render it unnecessary from her standpoint and a waste of her time and salary, to give up her occupation and return to the classroom to take a graduate course in journalism; and she had no real intention of doing any such thing. At the time plaintiff made said request she did not actually intend to take graduate instruction in the University of Missouri; she only intended,

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if admitted, to attend classes for a few days and then return to her regular occupation as managing editor of the Kansas City Call.

Plaintiff made her said request for a permit to register in the University of Missouri, instituted said suits and is prosecuting this suit, solely as part and in furtherance of a conspiracy

between plaintiff and officials and counsel of the National Association for the Advancement of Colored People, and for the ulterior, indirect and wrongful purpose of attempting to aid said Association in its campaign, to break down the policy of the State of Missouri, and other states, requiring separation of the white and negro races for purposes of higher education. Plaintiff is and for years has been an active and militant member of the aforesaid association. During all that time said association has been and is systematically engaged in bringing test suits in various states to break down the state policy of race separation in higher education — which suits have been and are systematically brought in the names of negroes ostensibly claiming to desire instruction in various branches of higher education. The present suit and the mandamus suit aforesaid are suits of that type, and both were brought in the name of plaintiff as nominal plaintiff at the instance of said association, as part of the conspiracy and campaign aforesaid, for the purpose aforesaid.

Said association and plaintiff have never been and are not now actually interested in having Lincoln University offer graduate work in journalism; and are actually opposed to that being done. As part of the campaign and conspiracy aforesaid plaintiff, during the 1939 session of the General Assembly, in collaboration with said association vigorously opposed the enactment of the Taylor Bill (a bill to amend Section 9618, R.S. 1929 by imposing on the curators of Lincoln University a

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mandatory duty, instead of mere discretionary power, to equalize its curriculum and standard of education with those at the University of Missouri); and following the enactment of said bill plaintiff as managing editor of the Kansas City Call wrote and caused to be written and published in said newspaper numerous articles severely condemning and criticizing the efforts of the Board of Curators of Lincoln University to expand the curriculum of said university so as to afford the same courses of study with the same standard of instruction as in the University of Missouri — all of which acts were prompted by an actual desire on the part of plaintiff and said association to cause Lincoln University to fail to equalize its curriculum and standard of education with those at the University of Missouri.

Plaintiff's request for permission to register in the University of Missouri, and the institution of said two suits aforesaid, and the prosecution of this suit, have been and are further prompted by the desire of plaintiff and said association to obtain newspaper publicity advertising the aforesaid campaign, which they deem desirable and in furtherance of the aforesaid campaign of said association.

Instead of defendant's rejection of plaintiff's request for a permit to register in the University of Missouri injuring plaintiff in any way, it actually was the occasion for rejoicing and the exchange of congratulations between plaintiff and said association, and as paving the way for the institution of this suit and the aforesaid mandamus suit.

For all these reasons, the institution and prosecution of this suit is not in good faith, and is an abuse of the process of this court.

EIGHT DEFENSE

The above mentioned mandamus suit was filed by this plaintiff against this defendant in the Circuit Court of Boone County, Missouri on October 13, 1939; and said suit involved the same parties and the same issues here involved; and on May 31, 1940 said Circuit Court rendered judgment therein against plaintiff; and said judgment is a former adjudication against plaintiff of all the issues involved in this case.

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rendered in favor of defendant and that defendant recover of plaintiff his costs herein.

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DEMAND FOR JURY TRIAL

In accordance with Rule 38 defendant hereby demands a trial by jury of any issue in the foregoing cause triable of right by a jury.

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FILED

JUN 19 1940

A. L. ARNOLD, Clerk.

By Edna D. Morris

Deputy

HOGSETT, MURRAY, TRIPPE, DEPPING & HOUTS
LAWYERS

KANSAS CITY. MO.