

NORTH CAROLINA,

IN THE SUPERIOR COURT

Buncombe County

*Sylvia Gibland, Willie Gibland
Thos. Gibland, Elsie Gibland, James
Gibland, and Maggie Gibland
by their next friend Robert Gibland*

Against

SUMMONS FOR RELIEF

*County Board of Education
of Buncombe County
School Committee of
Asheville Township*

The State of North Carolina,

To the Sheriff of Buncombe County—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON

*County Board of Education
of Buncombe County and School Committee of
Asheville Township*

the Defendant *S* above, if *they* be found within your County, to be and appear before the Judge of our Superior Court, at a Court to be held for the County of Buncombe, at the Court House in Asheville, North Carolina, on the *18th* Monday before the *1st* day of *October* 1905.

and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said County, within the first three days of said term, and let the said Defendant *S* take notice that if *they* fail to answer to the said complaint within the time required by law, the Plaintiff will apply to the Court for relief demanded in the complaint.

Herein fail not, and of this summons make due return.

Given under my hand and seal of said Court, this *26th* day of *Sept* 190*5*.

Summons \$1.00

Bond .60

docket .25

\$1.85

Paid by Plff.

Merous Erwin

Clerk of the Superior Court of Buncombe County.

Per

D. C.

(over)

NORTH CAROLINA,

IN THE SUPERIOR COURT

Buncombe County

*Sylvia Hilliard, Nellie Hilliard
Ethel Hilliard and Essie
Hilliard, James Hilliard and
Maggie Hilliard, et al. by their
next friend Robert Hilliard*

SUMMONS FOR RELIEF

*County Board of Education of
Buncombe County and School
Committee of Avery Creek
Township*

The State of North Carolina,

To the Sheriff of Buncombe County—Greeting:

YOU ARE HEREBY COMMANDED TO SUMMON *County Board of Edu-
cation of Buncombe County and School
Committee of Avery Creek Township*

the Defendant *A* above, if *they* be found within your County, to be and appear before the Judge of
our Superior Court, at a Court to be held for the County of Buncombe, at the Court House in Asheville,
North Carolina, on the *12* ~~Monday~~ *of October 1905* Monday of

and answer the complaint which will be deposited in the office of the Clerk of the Superior Court of said
County, within the first three days of said term, and let the said Defendant *take* notice that if *they*
fail to answer to the said complaint within the time required by law, the Plaintiff will apply to the Court
for relief demanded in the complaint.

Herein fail not, and of this summons make due return.

Given under my hand and seal of said Court, this *26* day of *Sept* 190 *5*

James M. Hilliard
Clerk of the Superior Court of Buncombe County.

Per *D. C.*

State of North Carolina, Superior Court.

Runcombe County.

Sylvia Gilliland, Nellie Gilliland,)
Ether Gilliland and Elsie Gilliland,)
Fannie Gilliland and Maggie Gilliland,)
minors, by their next friend,)
Robert Gilliland,)

Plaintiffs,)

Complainant.

Against

County Board of Education of Runcombe)
County, and School Committee of Averys)
Creek Township, in Runcombe County,)
Defendants.

Section. The plaintiffs, Sylvia Gilliland, Nellie Gilliland, Ether Gilliland and Elsie Gilliland, Fannie Gilliland and Maggie Gilliland, minors, by their next friend, Robert Gilliland, complain of the defendants, allege:-

I.

That the plaintiffs, Sylvia Gilliland, Nellie Gilliland, Ether Gilliland and Elsie Gilliland, are citizens and residents of the County of Runcombe, Averys Creek Township, State of North Carolina, and are all minors of the following ages, to-wit:- Sylvia Gilliland, 13 years of age, Nellie Gilliland, 15 years of age, Ether Gilliland, 14 years of age, and Elsie Gilliland, 12 years of age; Maggie Gilliland aged 9 years and Fannie Gilliland aged 7 years; that said children reside at the home of their father, Robert Gilliland (their next friend in this action), in said Averys Creek Township.

II.

Said Robert Gilliland, father of said infant

plaintiffs heretofore named, is a citizen, resident, property owner and tax-payer of said Avenys Creek Township, in said Buncombe County and State of North Carolina.

III. That, as plaintiffs, Sylvia Gilliland, Nellie Gilliland, Ethel Gilliland and Elsie Gilliland, Maggie Gilliland and Fannie Gilliland, instituting this action by their next friend, Robert Gilliland, are advised, believe and so allege, it is provided by the organic law of the State of North Carolina, viz:- in the Constitution of said State of North Carolina by Article One, Section Twenty Seven thereof, that "the people have the right to the privilege of education, and it is the duty of the State to guard and maintain that right", and by Article IX, Section One thereof, that "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged", and by Article IX, Section Two thereof, that "The General Assembly, at its first Session under this Constitution, shall provide by taxation and otherwise, for a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty one years. And the children of the white race and the children of the colored race shall be taught in separate public schools; but there shall be no discrimination in favor of, or to the prejudice of either race", all of which said provisions the said plaintiffs hereby expressly invoke and plead in their behalf and in aid of each of them.

IV.

That the plaintiffs, Sylvia Gilliland, Nellie Gilliland, Ethel Gilliland, Elsie Gilliland and Maggie Gilliland and Fannie Gilliland, and each and every of them, are children of the State of North Carolina between the ages of six and twenty one years, and eligible to the public schools of

said State, and particularly eligible and assignable to the public schools of Averys Creek Township in Buncombe County, in said State; and that each and every of them are white children and children of the white race and eligible and assignable to the public school in Averys Creek Township, Buncombe County, North Carolina, for white children and children of the white race; and that none of said children have any negro blood in their veins, as they are informed and believe.

V. That during the months of August and September, 1905, there was being taught a public school for white children of the white race, in compliance with the public school laws of the State of North Carolina, in Averys Creek Township, Buncombe County, North Carolina, under the authority and direction of the defendants the "County Board of Education of Buncombe County", and "School Committee of Averys Creek Township", in School District No. 1, of which Township and School District plaintiffs and each of them, were residents, children of school age, and willing, anxious and ready to attend said public school for white children.

VI. That on or about the first Monday in August, 1905, at the opening of said public school in Averys Creek Township for white children, the plaintiffs entered and attended said public school for one week, at the expiration of which time they were excluded from further attendance upon said school by the defendants, the "School Committee of Averys Creek Township" and "County Board of Education of Buncombe County", unreasonably and unlawfully, and in violation of Article XX, Section Two of the Constitution of North Carolina, and in violation of the statutes enacted and now in force by the Legislature of said State of North Carolina, and especially in violation of Section 22, Chapter 485 of the Public Laws of

North Carolina, enacted at the Session of the Legislature of 1908.

VII.

That said public school for white children in Averys Creek Township from which plaintiffs were so wrongfully and unlawfully excluded, as aforesaid, was and is the only public school in said Averys Creek Township, Buncombe County, to which they were and are eligible to attend.

VIII.

That neither the said Sylva Gililand, Nellie Gililand, Ethel Gililand nor Elsie Gililand, nor Maggie Gililand nor Fannie Gililand, the plaintiffs herein, was expelled or excluded from said public school for violation of any of the rules of discipline of the teacher or school.

IX.

That said plaintiffs, Sylva Gililand, Nellie Gililand, Ethel Gililand and Elsie Gililand, and each of them, through their parents and friends, have protested against such expulsion, and demanded admittance to said public school from which they were so wrongfully and unlawfully excluded, as aforesaid, but said defendants have refused and still refuse said request; and said plaintiffs are ready and willing now to attend said school.

X.

That said defendant, "County Board of Education of Buncombe County", is a body corporate, and so constituted under the laws of North Carolina.

Wherefore, the plaintiffs, Sylva Gililand, Nellie Gililand, Ethel Gililand and Elsie Gililand, Maggie Gililand and Fannie Gililand, and each of them, by and through their next friend, Robert Gililand, prays that the WRIT OF MANDAMUS issue and be granted by this Honorable Court against the defendants "County Board of Education of Buncombe County".

8

(Page 5.)

and "School Committee of Averys Creek Township", commanding, requiring and compelling them, or either of them, to admit said plaintiffs, just named as pupils in said public school for white children of the white race in Averys Creek Township, School District No. _____; and for all such other and further relief as to the Court may seem just, and for costs of this action.

Stevens and Anderson,
Attorneys for Plaintiffs.

State of North Carolina,
Buncombe County.

_____, being first duly sworn, deposes and says that he is one of the plaintiffs in above action, and the next friend of the infant plaintiffs; that he has heard read the foregoing complaint and knows the contents thereof; that the facts therein stated as of his own knowledge are true, except as to those facts stated therein on information and belief, and as to such facts he believes them to be true.

(Signed) Robert Gilliland.

Sworn to and subscribed before me this September 27, 1905.
(Signed) M. Erwin, C.S.O.

9

North Carolina, In the Superior Court,
State of North Carolina
Buncombe County Superior Court
Buncombe County School District No. 1

To Clerk Superior Court Buncombe County:-

Wm. W. Graham, respectfully petitioning, this Honorable
Court, alleges and prays as follows:

That Sylvia Gilliland, Nellie Gilliland, Ether Gilliland and
Elsie Gilliland, Fannie Gilliland and Maggie Gilliland are
minors under twenty one years of age, without guardian; that as
petitioner is advised and believes said minors have a good
cause of action against the County Board of Education of Bun-
combe County, and School Committee of Averys Creek Township, on
account of being excluded from the public white school in said
township, that Robert Gilliland, their father, is a suitable
and proper person to act as their next friend in said action.

Wherefore petitioner prays that Robert Gilliland be ap-
pointed next friend to represent said minors in said action.

That they are informed and believe the allegations
contained in the first paragraph of said complaint are true.

Second, That they are informed and believe that the al-
legations contained in the second paragraph of said complaint

Upon reading the foregoing application, it is ordered that
Robert Gilliland be, and he is hereby appointed next friend
of Sylvia Gilliland, Nellie Gilliland, Ether Gilliland and Elsie
Gilliland, minors, in the suit set forth in this petition, and
the fourth paragraph of said complaint as alleged that the
to prosecute said action in their behalf.

This September 26, 1905.

Wm. W. Graham, Agent

Marcus Erwin,

each and every of them are children of the State of North

Clerk Superior Court.

Carolina, between the ages of six and twenty one years, and

eligible to the public schools of said State, is true, and

the remainder of the allegations contained in said paragraph

are untrue.

Fourth, That they are informed and believe that the al-
legations contained in the fifth paragraph of said complaint
are true.

North Carolina, In the Superior Court.
Buncombe County.

Sylva Gililand, Nellie Gililand,)
Ether Gililand, Elsie Gililand,)
Mamie Gililand and Fannie Gililand,)
minors by their next friend, Robert)
Gililand, Plaintiffs,)

Against

) A N S W E R .

County Board of Education of Buncombe)
County, and School Committee of Averages)
Creek Township, in Buncombe County,)
Defendants.)

The defendants above named answering the complaint herein say:

First, That they are informed and believe the allegations contained in the first paragraph of said complaint are true.

Second, That they are informed and believe that the allegations contained in the second paragraph of said complaint are true.

Third, That they are informed and believe that so much of the fourth paragraph of said complaint as alleges "That the plaintiffs Sylva Gililand, Nellie Gililand, Ether Gililand and Elsie Gililand Mamie Gililand and Fannie Gililand, and each and every of them are children of the State of North Carolina, between the ages of six and twenty one years, and eligible to the public schools of said State", is true, and the remainder of the allegations contained in said paragraph are untrue.

Fourth, That they are informed and believe that the allegations contained in the fifth paragraph of said complaint are true.

Fifth, in answer to the sixth and seventh paragraphs of said complaint the defendants say that they admit that the plaintiffs named in said paragraph, for a period of one week attended the public school for white children in Averys Creek Township in said County, during the month of August, 1905, and that the said plaintiffs were there- afterwards excluded from said school, but the defendants deny that such exclusion was wrongful or unlawful and in violation of the Constitution of North Carolina; that they are informed and believe that the plaintiffs are not children of the white race, but are mixed, having in them and in their ancestors a certain amount of negro blood, the exact proportion of which is unknown to the defendants, and that said children were excluded from said school solely and only on the ground that they were not children of the white race.

WHEREFORE the defendants demand judgement, that they go hence without day and recover their costs.

(Signed) Martin

Attorney for Defendants.

North Carolina.
Buncombe County.

A. C. Reynolds, being duly sworn says that he is a Secretary of the County Board of Education of Buncombe County, one of the defendants; that he has read the foregoing answer and knows what it contains, and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, as to those matters he believes it to be true.

(Signed) A. C. Reynolds

Sworn to and subscribed before me this the 12 day of October, 1905.

(Signed Marcus Erwin GSC
per J.B. Cain DC

1.

State of North Carolina. Superior Court.
Buncombe County.

X
Sylvia Gilliland, Nellie Gilliland,
Ether Gilliland, Elsie Gilliland and
Fannie Gilliland, minors, by their
next friend, Robert Gilliland,

Plaintiffs,

Versus

Amended Complaint.

County Board of Education of Buncombe
County, and School Committee of
Averys Creek Township, in Buncombe
County, North Carolina,

Defendants.

X

X

The plaintiffs above named, by leave of the Court, amending their
original complaint filed herein, allege:-

I.

That the State of North Carolina, as plaintiffs are advised and believe
have ~~established~~ ^{Constitutional Provision for} a general public school system to which public schools
all children of the proper age and otherwise eligible are admitted
free of charge; that under said system there is established a separ-
ate school for children of the negro or African race and a separate
school for the children of the Anglo-Saxon, Caucasian or white race,
and a separate school in the County of Robeson for Croatan Indians and
certain descendants of the Croatan Indians of mixed blood; and that,
as plaintiffs are advised and believe and so aver the establishment,
maintenance and use of said public schools separating the children of
the negro ^{and} African race from the children of the Anglo-Saxon,
Caucasian or white race, and the separation of the Croatan Indians and
certain ^{of their} descendants of mixed blood is right, constitutional and lawful.

2.

II.

That the defendants, County Board of Education of Buncombe County, and School Committee of Averys Creek Township, in Buncombe County, North Carolina, and each of them, are duly constituted agents of the State of North Carolina, and political subdivisions within said State, for the purpose of maintaining and administering the system of public education; and that the acts of said agents in the administration of their said offices is the act of the State in contemplation of law, as plaintiffs are advised and believe.

III.

That the plaintiffs and each of them are citizens and residents of the United States and of the State of North Carolina.

IV.

That by and under the provisions of the Constitution of the United States, Article Fourteen, Section 1, ~~known as the Fourteenth Amend-~~ment, it is provided and prescribed as follows:-

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"; and that the said defendants, and each of them, by their said act in expelling and excluding the plaintiffs, and each of them from said public school, as set forth in the original complaint, acting for the State of North Carolina as its agents in their official capacity aforesaid, denied to the plaintiffs and each of them the equal protection of the laws, and also abridged thereby their privileges and immunities as citizens of the United States, in that they are white children of the white race within the purview and meaning of Article LX Section two (2) of the Constitution of North Carolina, and therefore were equally entitled with other white children of Averys Creek Township to continue to attend said public school

3.

attend and receive a public school education in said white public school; and further, in that they were excluded from said public school by the defendants without due process of law, any statute of the State of North Carolina to the contrary notwithstanding.

V.

That, as plaintiffs are advised and believe Section TWENTY TWO (22) of Chapter 436, Public Laws of North Carolina, 1903, is in violation of the Constitution of North Carolina and the Constitution of the United States, unreasonable, against public policy and void.

Wherefore, the plaintiffs pray the writ of mandamus issue, as prayed for in the original complaint, for the costs of this action and such other and further relief as to the court may seem just.

Henry Anderson
Loose Croez

Robert Gililani, being duly sworn, says, that he is one of the plaintiffs in above entitled action, as next friend of his co-plaintiffs, and has heard read the foregoing amended complaint; that the facts therein set forth as of his own knowledge are true, except as to matters therein stated upon information and belief, and as to such matters he believes them to be true.

Sworn to and subscribed before me this the _____ day of November, 1905.

Sylvia Gililand et al)
vs.)
County Board of Education of) ORDER
Buncombe County, et al.)

It is ordered by the Court that said action be transferred to the civil issue docket for the trial of the issues raised by the pleadings before a jury and said cause is set down and fixed for trial on the second Monday of the next term of this Court.

Judge Presiding.

Sylvia Gililand et al

)

vs.

) ISSUE.

Board of Education of Buncombe County et al

)

Are the ~~the~~ infant plaintiffs entitled to admission
into the White Schools of Buncombe County?

Answer: Yes.

State of North Carolina,) Superior Court.

Buncombe County.)

Sylva Gililand and others

vs.

County Board of Education of Buncombe
County and School Committee of Averys
Creek Township.

Judgment

This cause coming on to be heard, and the jury
having answered ~~the~~ issue in favor of the plaintiffs:-

It is therefore adjudged that the plaintiffs have
the relief demanded in the complaint, and that a writ of
mandamus issue as prayed for in the complaint, and that
the Clerk of this Court issue said writ against defendants,
and that the plaintiffs have and recover of the defendants
the costs of this action.

(Signed) T. A. McNeill,

Judge Presiding.

State of North Carolina,) Superior Court.
North Carolina, County.) In Superior Court
Buncombe County.

Silva Gilland et. al. vs. Board of Education et. al.

NOTICE

Board of Education et. al. *Of appeal*

To the plaintiffs in the above entitled action, and Locke
Craig and Stevens and Anderson, Attorneys for the Plaintiffs:

You will please take notice that the defendants appeal
from the judgment entered and rendered in the above entitled
cause at the December Term, 1905 of the Superior Court of
Buncombe County, to the Supreme Court of North Carolina.

Said appeal is based upon the ground that the judgment en-
tered and rendered in said cause is contrary to the law and the
evidence.

And further for the reason that the judge who tried said
case committed a reversible error in the admission and rejec-
tion of evidence and in giving the special prayers for instruc-
tions asked by the plaintiff in his instructions to the jury
generally, in which errors will be pointed out particularly in
the case on appeal to be hereinafter stated and served in this
case.

Further, error was committed in the rendition and enter-
ing of judgment which appears of record in said case.

This 10th day of January 1906.

J. Frazier Glenn and J. D. Murphy
Attys for Defendants.

Filed 1/10/06.

Marcus Erwin Clerk

North Carolina
Buncombe County

In Superior Court

Silva Gilliland et. al.

vs.

Exceptions to Judgment

County Board of Education et. al.

The defendants object and except to the rendition of and entering of the judgment in the above entitled cause rendered at the December Term 1906, of the Superior Court of Buncombe County,

1st: That said judgment should not have been rendered and entered because the same is contrary to the law and evidence

2nd: That the judge committed error in the admission and rejection of evidence during the progress of the trial of said cause in the Superior Court.

3rd: Because the judge committed error in his instructions generally to the jury, which errors will be pointed out in particularity in the case on appeal to be hereinafter served in this case.

4th: Because the judge committed error in giving certain special instructions asked for by the plaintiff.

5th: Because the judge committed error in signing the judgment which appears in the record, which errors consisted both ~~in~~ in form and the substance of the judgment.

This the 10th day of January 1906.

J. Frazier and J. D. Murphy Attys for
Defendants.

Filed 1/10/06.

Marcus Erwin Clerk Superior
Court.

2.

Endorsed on the back of said paper is the following:

Silvia Gilliland et. al.

vs.

County Board of Education et. al.

Exceptions to judgment

ORIGINAL

Received January 10th 1906

Served by reading the within
exceptions to judgment to Locke
Craig.

J. H. Reed Sheriff

Per. T. E. Wilson D. S.

State of North Carolina

Buncombe County

Sylvan Gilliland et. al.

vs.

Board of Education of Buncombe

County et. al.

*Appellants
Statement of case*

Mandamus .
In Buncombe Superior Court.
November Term, 1905.

This was a civil action tried at the November Term, 1905 of the Superior Court of Buncombe County, before T. A. McNeill Judge presiding and a jury.

1st Exception.

At the trial the plaintiffs offered in evidence ~~the~~ the deposition of William Whitesides.

One of the questions and the answer thereto, in said deposition was as follows:-

"Q. Do you remember whether Jeffery Graham voted, and if so, state when and where? "

"A. There was nothing said against his voting, and I think he always voted."

In apt time this question and any answer thereto were objected to by the defendants. The objection was overruled and the answer read to the jury, over the objection of the defendants and the defendants excepted.

2.

2nd Exception.

Among other things His Honor charged the Jury as follows:

" But if you do not so find, or if you find ^{that} though of mixed blood or descent, yet that Jeffery Graham had no negro blood in his veins, you will answer the issue "yes " .

The appellants except to the above and insist that the same was error and erroneous.

3.

3rd Exception.

His Honor at the request of the plaintiffs gave the following special instructions:- " If you find that the plaintiff and their ancestors, have not heretofore associated with negroes but have associated with white people on terms of ^{social} equality and that their ancestors went to the white schools, claiming to be of Portuguese descent, this evidence must be considered in arriving at a conclusion as to what race they belonged, and you should consider in this connection, the declarations of Jeffery Graham that he was of Portuguese descent. "

To the giving of this special instruction by his Honor the appellants except, and insist that the same is error.

24-

State of North Carolina.
Gilliland et. al.
Buncombe County.

vs.

Agreement as to case

Sylvia Gilliland, Nellie Gilliland,
Board of Education of Buncombe County and others' Gilliland,
Mamie Gilliland and Fannie Gilliland,
miners, by their next friend
Exception 1, is correctly stated but it is understood that
appellees may have sent up as part of "case" any evidence they
may designate as bearing thereon as contained in official
stenographers notes. Education of Buncombe
County, and School Committee of Avery
Creek Township, in Buncombe County.
Exception 2, correctly states a clause in His Honors
charge, but it is agreed that the appellees may have inserted
the whole of his Honors charge bearing on this view of the
case, beginning with the words, "upon that part of the charge"
and ending with part quoted in said exception.
on the 11th day of November, 1936, at 11 o'clock A.M., at the
residence of Mary Tabor, in Avery Creek Township, Buncombe
County, North Carolina, the plaintiffs being represented by
Stevens & Anderson, their attorneys, and the defendants being
represented by
Brazier, Glenn, Tucker &
Murphy Attys for Appellants.

It is further agreed that entire charge be sent up as part
of "case".
This case is agreed upon without prejudice to either party
as to time of service of appellants written notice of appeal,
all stipulations of counsel to be sent up as part of "case".
The case on appeal to be made up in accordance with this
agreement.

A. My name is Mary Tabor, age 84 years, residence
Avery Creek, N.C., occupation, farm and house work.
their veins, it came from their great grandfather, Jeoffery
Graham.
A. Health not good.

Stevens & Anderson and Loce Craig

Wks for appeal

Deposition of Mary Taber

State of North Carolina,
Buncombe County.

Sylva Gililand, Nellie Gililand,)
Ether Gililand, Elsie Gililand,)
Mamie Gililand and Fannine Gililand,)
minors, by their next friend,)
Robert Gililand,)

Plaintiffs.

) DEPOSITIONS.

versus)

County Board of Education of Buncombe)
County, and School Committee of Averys)
Creek Township, in Buncombe County,)

Defendants.)

Pursuant to the annexed commission to me directed,
I, Joel Ingram, Commissioner, under the authority thereof,
on the 11th day of November, 1905, at 11 o'clock A.M., at the
residence of Mary Taber, in Averys Creek Township, Buncombe
County, North Carolina, the plaintiffs being represented by
Stevens & Anderson, their attorneys, and the defendants be-
ing represented by _____, pro-
ceeded to take the depositions of Mary Taber and _____

_____, who being first duly sworn to speak the
truth between the said plaintiffs and defendants, depose and
say, as follows (the deposition of Mary Taber being as follows

Mary Taber was examined by J. B. Anderson, of counsel
for plaintiffs as follows:

1. What is your name, age, residence and occupation?

A.-My name is Mary Taber, age 84 years, residence b. 1821
Averys Creek, N.C., occupation, farm and house work.

2. Please state the present condition of your health
and eyesight?

A.-Health not good. Eyesight almost gone.

3. Please state whether you are physically able to go to Asheville and attend court as a witness in the above case, and if not able, state your reasons?

A.-Not able to go to Asheville to attend Court.
Not able to stand the conveyance there.

4. State the names of your father and mother?

A.-Jeffers Grayhem is my father Frances Grayhem is my mother.

5. State whether your parents are living, and if not state when they died, and their ages at the respective dates of their deaths.

A.-They are dead. Dont know how long they have been dead. I believe father 77 years old when he died, but I am not sure.

6. If your father or mother ever stated to you to what race of people you and they belonged, please state what they or either of them said, giving the time and place if you can recollect?

A.-I heard father and mother in conversation with Grandmother Estes say that we was of the Portugese descent, when I was about twelve years old at the home of my father.

7. In what church did your father belong or of what church was he a member?

A.-Methodist Episcopal Church.

8. Have your people always attended the same church with the white people?

A.-Yes.

9. How have you and your people been recognized in your community?

A.-As same as other white people.

10. Did your father visit the white people and if so how was he treated by them?

A.-He visited the white people and was respected as a white man.

11. How have you been treated in your community, as a white woman or a colored woman?

A.-As a white woman.

(Mary Tabor, page 3.)

12. Do you remember your grandfather Graham?

A.-I do not. I have heard my father speak often of him.

13. Have you visited and eaten at the homes of the white people of your community. If so, who?

A.-I have. Jason Walker, Moses Cochran and J. R. Lances, James Hunter, Wm. C. Berry and many others. I have eaten at the table of all these people.

14. Have you ever attended any quiltings or corn shuckings in your neighborhood, if so please state who invited you and all the circumstances?

A.-Yes a good while back I was invited by Mrs. Joseph Lance and many others.

15. What church have you attended or belonged to during your residence in Averys Creek Township?

A.-I first joined the Methodist Church at Averys Creek and being dissatisfied with the mode of baptism joined the Baptist Church in Cherokee County N. C. and move my membership to Averys Creek Baptist Church.

16. Was that church attended by the white or colored race?

A.-White people. J. R. Lane, C. J. Lane, Moses Cochran, Aaron Bishop.

17. Give the names of other persons who attended that church

A.-J. R. Lane, C. J. Lane, Mose Cochran, Aaron Bishop.

18. Who was Nancy Graham or Grimes?

A.-My father's sister. I have seen her.

19. Who was John Graham?

A.-My father's brother. Never seen him.

20. Where did they live?

A.-In Wilkes County, N. C.

21. Have your people attended the white schools and white churches?

A.-Yes.

22. When did this trouble over your people attending the white schools arise?

A.-I do not remeber when.

174

23. Was Jeffry or Jefferson Graham very dark?

A. -- About my complexion, but redder.

24. What was the color of his hair and was it kinky?

A. -- Black, soft and a little curly, but not kinky.

25. What is the reputation in the family as to what race you belong to?

A. -- Portugese.

(Sgd.) Mary ^{her} X Tabor
mark

DEPOSITION OF HARRIET RUTH.

1. What is your name, age, residence and occupation:

Answer: Harriet Ruth. Was born in 1882. I live in Henderson County, N.C. Occupation a housekeeper.

2. Please state the present condition of your health and eyesight.

Answer: My health is good except rheumatism. My eyesight is good.

3. Please state whether you are able physically to go to Asheville and attend court as a witness in the above case and if not able state your reasons.

Answer: I am not able to stand conveyance.

4. Did you know Jeffery Graham?

Answer: I have known him ever since I could remember.

5. What was his complexion?

Answer: He was tolerably dark.

6. Did he, Jeffery Graham, have any appearance of having negro blood in him?

Answer: He did not resemble the negro.

7. Did you ever hear him say to what race he belonged?

Answer: I have heard him tell my father he was a portuguese.

8. Did you know Miles Graham?

Answer: I note him when I seen him.

9. What was his complexion?

Answer: He was not very dark.

10. Did he have any appearance of having negro blood in his veins?

Answer: He did not have any appearance of the negro. He had black curly hair, not kinky.

11. What is the general reputation in the family as to what race it belonged?

Answer: Portugese.

12. Did the Graham family attend church with the white people?

Answer: Yes.

13. Did they attend school with the white people?

Answer: All the first generation went to school with the white people. There was never any trouble in their attending school.

14. How were they recognized in their community?

A.: As white people.

15. Did they visit and were they visited by the white people?

A.: They visited and was visited by the white race.

16. Did they eat and sleep with white people?

A.: Yes they did.

(Harriet Ruth, page 2.)

17. Were they leaders in the church at Averys Creek with the white people?

A.- Yes they were.

18. Did or did not the preachers make Jeffry Graham's home their general stopping place?

A.- I think they did.

19. Did you ever hear James Graham conduct prayer service at Averys Creek Church?

A.- I have.

her
(Sgd.) HarriettX Ruth
mark

The foregoing deposition of Mary Tabor and Harriett Ruth was sworn to and subscribed before me at the time and place mentioned above.

This the 11 day of November, 1905.

(Sgd.) Joel Ingram

Commissioner

Deposition of William Whitesides

State of North Carolina, In the Superior Court.
Buncombe County.

Sylva Gililand, Nellie Gililand,)
Ether Gililand, Elsie Gililand,)
Mamie Gililand, and Fannie Gililand,)
minors, by their next friend,)
Robert Gililand,)

Plaintiffs.

County Board of Education of)
Buncombe County, and School Committee
of Averys Creek Township, in Buncombe
County,)

Defendants.)

Pursuant to the annexed commission to me directed, I,
E. C. Monteth, Commissioner, under the authority thereof,
on the 17th day of November, 1905 at the residence of William
Whitesides in Swain County, North Carolina, the plaintiffs
being represented by John B. Anderson, of counsel for
plaintiffs, and the defendants not represented, proceeded to
take the deposition of William Whitesides, who being first
duly sworn to speak the truth between the said plaintiffs and
defendants, deposes and says:--

1. What is your age, name, residence and occupation.

A. My name is William Whitesides, age, 72 years,
residence Swain County, Fomeys Creek, occupation, farmer.

2. How long have you resided in Swain County?

A. Thirty five or forty years.

3. Where did you reside previous to moving to Swain?

If you ever resided in Buncombe County, so state and at what
time?

(Wm. Whitesides, page 2.)

A.-I moved from Macon County to Swain. I lived in Buncombe County from the time I was ten years old until I was 14 years old.

4. Did you ever know Jeffrey Graham of Buncombe County, and if so state when and where you knew him and for what length of time?

A.-I knew Jeffrey Graham who lived about six miles South of Asheville from about 1840 to 1844 and was a neighbor to him for four years and knew him for several years afterwards.

5. If you ever had any conversation with him in reference to the race of people to which he belonged or from which he descended, please state the facts fully?

A.-I heard him say that he belonged to the Portugese Race.

6. Do you remember whether Jeffrey Graham voted, and if so state when and where.

A.-There was nothing said against his voting and I think he always voted.

7. From your knowledge of Jeffrey Graham, in your opinion to what race did he belong?

A.-I believe he is a member of the Portugese Race. I have seen numbers of Portugese and he looks like a Portugese.

8. State any other facts you may know about Jeffrey Graham or any other member of his family.

A.-He was dark complected. About the color of Jim Evans, but was not any darker.

9. What was the color of his hair and was it kinky?

A.-His hair was black and straight and he usually wore his hair long.

10. What church did they attend?

A.-I do not know what church they attended but they did not attend church with the negroes.

11. What school did the Graham children attend, the white schools or the black schools?

A.-They attended school with the white people when they attended at all.

12. How were they recognized, as white people or negroes?

A.-They were recognized as white people.

13. Did they visit the white people.

A.-Yes.

14. Did they eat and sleep with the white people?

A.-They would eat and sleep with the white. One of the girls stayed at my house or my father's house and she was treated as one of the family.

15. Was anything ever said about the family being crossed with the negro in those days?

A.-Nothing was ever said about them being negroes, but they were said to be Portuguese.

16. Did any member of the family have kinky hair?

A.-Not that I know of.

17. What was your profession when you were a young man?

A.-I was a school teacher and farmer.

18. How were these people recognized in their community, as white or black?

A.-They were recognized as white people and they said they were Portuguese and the wife of Jeffry was a fair woman, not dark skinned.

19. What was their moral character?

A.-It was good. They were honest, straightforward people.

Attest: E. C. Monteith

(Sgd.) William X Whiteside
mark

The foregoing deposition of William Whiteside was sworn to and subscribed before me at the time and place mentioned above.

(Sgd.) E. C. Monteith

Commissioner.

This November 17, 1905.

Sworn to and subscribed before me
(Notarial) This the 17th day of Nov 1905
(SEAL) (Sgd.) E.C. Monteith
Notary Public
Swain Co N.C.

Notice waived and opened by consent subject to all objections and exceptions

Nov 23 1905

(Sgd.) Stevens & Anderson
Attys for Pliffs
J C Martin Atty

164 27

Buncombe

COUNTY--In the Superior Court.

Julia Greene and ex

Plaintiff

Against

Board of Education
of Buncombe Co ex

Defendant

This 10 day of Jan 1896

Whereas, On the day of 189

And Whereas, The appellant intend to appeal from said judgment to the Supreme Court:

Now, Therefore, We, Board of Education of Buncombe Co, of the County of

Buncombe

, and J. V. Johnston

of

of UNDERTAKE, pursuant to the Statute, that the said appellant

shall pay all costs and damages that may be awarded against on such appeal, not exceeding twenty five hundred dollars.

Board of Education
Buncombe Co

Witness:

J. V. Johnston

JUSTIFICATION OF SURETIES.

Buncombe

COUNTY--Sct.

J. V. Johnston

, and

and above named, being severally duly sworn, say, each for himself, that he is a resident of the State of North Carolina, and worth double the sum specified in the above undertaking, over all his debts and liabilities, and exclusive of property exempt from execution.

Sworn and subscribed before me this 10th day of

Jan

1896

Marcus Brown
Clerk Superior Court.

J. V. Johnston

State of North Carolina.

Buncombe County.

Sylvia Gilliland and others :

-vs-

The County Board of Education :

of Buncombe County and others. :

TO LOCKE CRAIG, ESQ., AND MESSRS. STEVENS & ANDERSON,
ATTORNEYS FOR THE PLAINTIFFS IN THE ABOVE ENTITLED ACTION.

YOU ARE HEREBY NOTIFIED that the defendants will
make a motion before the Supreme Court of North Carolina,
at Raleigh, on Tuesday, May 15, 1906, at 10:00 o'clock
A. M., or as soon thereafter as the Court can hear the same,
to grant a new trial in the above entitled cause, now
pending in said Court on appeal, upon the ground of newly
discovered evidence and testimony.

We herewith hand you a copy of the affidavit of
A. C. Reynolds, Superintendent of Public Instruction of
Buncombe County, and copies of the affidavits of William
Greenlee, Hardin Mallery, Harriet Burton, ^{W. M. Johnston} Swann Greenlee,
M. M. Orr and Leland Martin. The evidence upon which a
new trial will be asked in the Supreme Court appears in the
copies of the affidavits handed you herewith.

This the 5th day of May, 1906.

J. F. Jones
Locke Craig
Attorneys for defendants in above
entitled action.

STATE OF NORTH CAROLINA.

BUNCOMBE COUNTY.

Sylvia Gilliam^L et al.,

vs.

The County Board of Education
of Buncombe County.

A F F I D A V I T.

J. A. C. Reynolds being duly sworn
says I reside in Buncombe County, North Carolina, and hold
the office of Supt. of Public Schools
of Buncombe County, N. C.
I held said office at the time of the trial of the above men-
tioned case in the Superior Court of Buncombe County, North
Carolina, and for some time prior thereto. I was present
at the trial of said case and was in consultation with the
counsel for the defendant s before said trial, and aided in
the preperation of the facts in the case and looking up
witnesses; that the defendants used due diligence in the
preperation of said case for trial, and introduced before
the jury all of the evidence which they were able to get;
that the family known as Grimes or Graham have lived mainly
in Averys Creek Township in Buncombe County; that I was
informed up to the trial all of the older members of said
family who lived in this County resided in Averys Creek
Township.

The school committee of Averys Creek Township were
present at the trial and gave all the information and
assistance that they could; that all of the older citizens

who were supposed to know anything about the history and lineage of the Grimes family were seen and talked to by some one in behalf of the defendants before the trial and as many of them as could be gotten to the Court were brought as witnesses; the defendants got all the testimony ^{of} they could find and made inquiries extending over a number of days prior to the trial and pending the trial; that after said trial was over and the defendants had lost the case before the jury a number of persons volunteered information about the case which the defendants knew nothing of at the time of the trial; that the defendants knew nothing of the testimony set forth in the affidavit of either Leland Martin, ^{William Greenlee} Margaret Orr, [^] Harriet Burton or Hardin Mallery or Swann Greenlee at the time of the trial; that the defendants had heard of the testimony which W. W. Johnson would give and endeavored to get him to Court, but it was reported to the defendants by reliable parties that he was too sick to attend Court, and hence his testimony could not be obtained.

A. C. Reynolds

Subscribed and sworn to before me this the 5 day of May 1906.

Spencer Brown
Notary Public.
Charles W. Brown

North Carolina,
Buncombe County.

-----X
Sylva Gilliland, et al,
--against--
The Board of Education of
Buncombe County, et al.
-----X

A F F I D A V I T.

Be it known that on this the 27th day of January,
A. D. 1906 before me George H. Wright, a Notary Public
of the County of Buncombe, North Carolina, duly commissioned
and sworn, and by law authorized to administer oaths and
affirmations, personally appeared William Greenlee of the
said County and State, and who being duly sworn did depose
and say, that he is a colored man about seventy-five (75)
years of age, and that he knew Jeffrey Grimes and Louis
Grimes well. That Jeffrey Grimes was very dark, darker
than Jane Patton, who he was reputed to have married, who
was also the mother of Felix Grimes colored (a negro); knew
Felix Grimes and his mother well; also knew that they claimed
to be related to Jeffrey Grimes. The said Felix called the
son of Jeffrey and Jane Patton, Jeffrey's reputed wife.
That the said Jeffrey and Louis are brothers.

The deponent further stated that Jeffrey and Louis
frequently passed Mr. Tidille Patton on the French Broad
River where he (deponent) lived. The said Jeffrey Grimes
and Louis Grimes were looked upon and always said to be free
negroes. The deponent further stated that he knew Keener
Grimes, a tailor in Asheville, who married a servant of
Dr. Hardy by the name of Matilda Forney, a negro; that

92

Columbus grimes, another son of Louis, a nephew of Jeffrey grimes, lived with a free negro woman by the name of Aunt Sooky Baird. And the deponent further saith that he never heard Jeffrey grimes nor Louis Grimes claim to be Portuguese, or claim to be white, or tried to associate with white people. That they looked like negroes, and that they were always looked upon as a family of free negroes. The deponent further saith that he never heard them give any other name or called by any other name than Grimes.

And further the deponent saith not.

Witness

William ^{his} Greenlee (seal)
maka

E. R. Glenn.

In testimony whereoff I have hereunto set my hand and affixed my Notarial seal this the day and year first above written.

Geo. H. Wright.
Notary Public.

My commission expires
Dec. 7th, 1907.

Sylva Gilliland, et al,
--against--
The Board of Education of
Buncombe County, et al.

Be it known that on this the 27th day of January, A. D. 1906 before me George H. Wright, a Notary Public of the County of Buncombe, North Carolina, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Col. Leland Martin (white) of the said County and State, and who being duly sworn did depose and say, that he is a white man past eighty (80) years of age, was born and reared twelve (12) miles from Wilkesboro, N. C., and that he never lived out of the County of Wilkes more than seven (7) years altogether. The deponent further saith that from his earliest recollection there has been a family or connection of free negroes by the name of Grimes living in and around Wilkesboro. The deponent further saith that he never heard or knew of any one by the name of Grimes, or by any other name claimed to be Portuguese, or of Portuguese descent being or living in the County of Wilkes, and that he knew the inhabitants of said County well.

Leland M. Smith (Seal)

E. R. Glenn,

In testimony whereof I have hereunto set my hand
and affixed my Notarial Seal this the day and year first
above written.

Geo. H. Knight
Notary Public.

My commission expires
Dec. 7th, 1907.

State of North Carolina
Buncombe County

Avery's Creek Township

W W Johnston being duly sworn
deposes and says that he is 78 years
old and was born and raised within
6 miles of Avery's Creek post office.
That he has frequently heard his father and
several other old men say that a negro
by the name of Grimms bought his freedom
who married a white woman who gave
birth to Jeffrey Grimms or Graham and
he Jeffrey Grimms or Graham married
Jemima Castrick and that he heard Jeffrey
Graham or Grimms say that his father
bought his freedom and that Jeffrey
Grimms or Graham after working
for his father ~~about~~ 40 years ago
and W W Johnston further says that
Jeffrey Grimms or Graham was black
and kinky headed and was
known as a free negro and would
have him called portugus

This I declare 1904

W W Johnston
Sworn to and subscribed before
me this 14th day of December 1904
J. T. Leachetter J. T.

North Carolina,
Buncombe County.

-----X
Sylva Gilliland, et al, :
--against-- : AFFIDAVIT.
the Board of Education of :
Buncombe County, et al. :
-----X

Be it known that on this the 27th day of January, A. D. 1906 before me George H. Wright, a Notary Public of the County of Buncombe, North Carolina, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Swan Greenlee (colored) of the said County and State, and who being by me duly sworn did depose and say that he is a colored man about sixty-five (65) years of age, and that when he was a boy he knew Jeffrey Grimes and Louis Grimes, his brother, who were called free negroes. That he never heard anyone intimate that they were Portuguese or white; that he worked in a blacksmith shop a great deal with Milas ~~Grimes~~ Grimes, a son of Jeffrey, said Milas being a brother of Theodore Grimes. That he never heard the said Milas Grimes claim to be either Portuguese or white, but that he was always looked upon and treated as a negro man. The deponent further states that M. Grimes had staid all night at his house several times.

The deponent further states that he knew Keener grimes, son of Louis Grimes, the said Louis being a brother of Jeffrey. That the said Keener married a negro girl belonging to Dr. Ged Hardy by the name of Matilda Forney;

and that he lived with her for a number of years.

And the deponent further states that he knew Columbus Grimes, another son of Louis; that he took up and ~~w~~ lived with an old free negro woman called Aunt Sooky Baird. And he further states that he never knew of the Grimes being called Grahams until recently, and that he never heard Milas Grimes, who had worked in a shop with the deponent called Graham, and when speaking to him or by him to any other person that he was always called Grimes.

And further the deponent saith not.

Witness.

Swan ^{his} Grimes (Seal)
mark)

Chas. N. Lane,

In testimony whereof I have hereunto set my hand and affixed my Notarial Seal this the day and year first above written.

Geo. H. Wright
Notary Public.

My Commission expires

Dec. 7th, 1907.

44

North Carolina,
Buncombe County.

Silva Gilliland et al. §

v. §

Board of Education of §

Buncombe County et al. §

Affidavit.

BE IT KNOWN that on the 29th day of January, 1906, before me, Geo. H. Wright, a Notary Public for the County of Buncombe, North Carolina, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Mrs. Margaret Orr, of said County and State, and who being by me duly sworn, did depose and say:-

That she is a white woman, 70 years of age, and lived in the same neighborhood that Jeffrey and Louis Grimes lived in, and that she knew them well from her infancy up to their death. That she was well acquainted with Louis, the brother of Jeffrey Grimes, who lived close to where her Mother lived. All the other people said that they were free negroes. Both Jeffrey and Louis Grimes were dark and looked like negroes, and were looked upon and treated as negroes by the white people.

The deponent further sayeth that, Jeffrey and Louis married women, who while being of a sunburnt color, were reputed to be white. They were not allowed to marry in North Carolina, the men being negroes and the women that they married white women, so they went to South Carolina to get married.

The deponent further sayeth that, Jeffrey and Louis Grimes never associated with the white people on the terms of equality. That Louis not being a property owner worked for wages at different places, and was some times allowed the privilege of eating with the white people, but there were those who would not permit him to eat at the same table, he being a negro.

The deponent further sayeth that, she knew their families, and that she knew Felix Grimes, who said he was a son of Jeffrey Grimes, a brother of Theodore Grimes. And that Felix claimed to be a negro.

That Felix worked for her a great deal.

The deponent further sayeth that, she never heard any of them called Graham until after the war, they were always called Grimes. That she never heard them(Grimes) call them-selves, nor any one else call them Graham during Jeffrey and Louis Grimes life-time.. And further to the deponent sayeth not.

M. M. O'G

Witness:-

Deponent.

In testimony whereof I have hereunto set my hand and affixed my Notarial Seal, this the 29th day of January, 1906 .

Geo. H. Wright
Notary Public.

My Commission expires December 7th, 1907.

North Carolina.

Buncombe County.

Silva Gilliland et als. :
v. :
Board of Education of : Affidavit.
Buncombe County et al. :

BE IT KNOWN that on this the 25th day of January, 1906, before me, Geo. H. Wright, a Notary Public for the County of Buncombe, North Carolina, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Harriet Burton, of said County and State, and who being by me duly sworn, did depose and say:-

That she is a colored woman between 70 and 80 years of age, that her maiden name was Harriet Grimes and that she is a daughter of Felix Grimes, a colored man (negro), now dead. That the said Felix Grimes was the son of Je~~X~~ffrey Grimes, and that his mother was Jennie Patton, the first wife of said Je~~X~~ffrey Grimes and a slave at the time of her marriage to him; that both Je~~X~~ffrey and Jennie Grimes were colored persons (negroes), but that the said Je~~X~~ffrey Grimes was the darker of the two, he being even darker than the deponent herself.

The deponent further sayeth that, after living with Jennie, his first wife, for several years, the said Jeffrey Grimes, at a date which the said deponent is unable to remember, left his said wife and at some later date, which said deponent is also unable to remember, was married to a woman named Estridge, her first name and her color being unknown to the deponent. That to them several children were born among whom were Theodore Grimes, sometimes called Theodore Graham, and James Grimes, the latter being now dead.

The deponent sayeth that she has visited at the home

(2)

of said Theodore Grimes and been recognized by him as the child of his half brother, Felix Grimes; that the said Felix Grimes and the said Theodore Grimes visited each other in their homes and recognized and spoke of each other as half brothers; and that the said Jeffrey Grimes recognized the deponent as his grandchild and treated her as such, holding her on his knees and playing with her many times.

The deponent further sayeth that the said James Grimes, the said Felix Grimes and herself were of practically the same color and that the family resemblance between them was very strong.

The deponent further sayeth that she never heard her father, Felix Grimes, or her grandfather, Jeffrey Grimes, or her uncle, Theodore Grimes, call themselves Graham when speaking to each other or of each other to other persons, but that they always spoke of themselves by the name of Grimes; and that deponent never heard them, or any of them, declare that they were of Portugese descent, prior to 1865, but that they considered themselves and were generally known as belonging to the negro race. And further the deponent sayeth not.

Witness

J. I. Dalton

Harriet ^{her} (x) Buntin
mark

In testimony whereof I have hereunto set my hand and affixed my Notarial seal, this the day and year first above written.

Ger. H. Wright
Notary Public.

My commission expires December 7th, 1907.

52

North Carolina,
Buncombe County.

Sylva Gilliland, et al,
--against--
The Board of Education of
Buncombe County, et al.

A F F I D A V I T.

Be it known that on this the 27th day of January,
A. D. 1906 before me George H. Wright, a Notary Public of
the County of Buncombe, North Carolina, duly commissioned
and sworn, and by law authorized to administer oaths and
affirmations, personally appeared Hardin Mallery of the
said County and State, and who being duly sworn did depose
and say, that he is a colored man about seventy-seven (77)
years old, and that he knew Keener grimes, sometimes called
"Dock"; didn't know whose son he was. Keener or "Dock was
a tailor in Asheville, and married a colored girl belong-
ing to Dr. Hardy by the name of Matilda Forney. The depo-
nent further saith that he knew Kenner well, and was at
Dr. Hardy's often when Kenner was there, as he also had a
wife at the same time. Dock left his wife but still worked
in Asheville at his trade. That the deponent further saith
that he knew ^{Columbus} ~~Kenner~~ Grimes, who married or lived with an
old free negro woman called Aunt Sooky Baird, and that he
does not know what became of them.

The deponent further saith that he knew Jeffrey
Grimes; that he was very dark, looked like a negro, (any-
body knows he was not a white man). The deponent further
says that he is 77 years old, "old enough to know them

Grimes". That he never heard any of them claim to be Portuguese or to try to associate with white people; that they held themselves as colored people. The deponent further saith that he knew Felix Grimes and Aunt Jane Patton, his mother; that Felix grimes claimed to be a son of Jeffrey Grimes, and that Aunt Jane Patton was reputed to be the first wife of Jeffrey grimes, and that jeffrey and Louis Grimes were brothers.

And further the deponent saith not.

Witness.

Hardin ^{his} Mallery (seal)
mark

E. R. Glenn

In testimony whereof I have hereunto set my hand and affixed my Notarial Seal this the day and year first above written.

Geo. H. Wright
Notary Public.

My commission expires
Dec. 7th, 1907.

(over)

5-4 [455]

State of North Carolina,

Buncombe County,

Sylva Gilliland et al. :

VS :

The Board of Education of:

Buncombe County et al. :

Personally appeared before me, J.B. Cain, Deputy Clerk of the Superior Court of Buncombe County, who being first duly sworn, deposes and says, that the appellees in this case, and the relatives and ancestors of said appellee, who were ~~summoned~~ ^{suppoenaed} as witnesses in the above entitled case, ~~refused~~ ^{did not} to prove their attendance and collect the cost as witnesses in the above entitled cause.

Witness my hand and Notarial Seal, this the eleventh day of May, A.D., 1906.

J.B. Cain Deputy Clerk
John B. Anderson
Notary Public.

State of North Carolina.

Buncombe County.

Sylvia Gilliland and others :

-vs- :

The County Board of Education :

of Buncombe County and others. :

TO LOCKE CRAIG, ESQ., AND MESSRS. STEVENS & ANDERSON,
ATTORNEYS FOR THE PLAINTIFFS IN THE ABOVE ENTITLED ACTION.'

YOU ARE HEREBY NOTIFIED that the defendants will
make a motion before the Supreme Court of North Carolina,
at Raleigh, on Tuesday, May 15, 1906, at 10:00 o'clock
A. M., or as soon thereafter as the Court can hear the same,
to grant a new trial in the above entitled cause, now
pending in said Court on appeal, upon the ground of newly
discovered evidence and testimony.

We herewith hand you a copy of the affidavits of
A. C. Reynolds, Superintendent of Public Instruction of
Buncombe County, and copies of the affidavits of William
Greenlee, Hardin Mallery, Harriet Burton, Swann Greenlee,
M.M. Orr and Leland Martin. The evidence upon which a
new trial will be asked in the Supreme Court appears in the
copies of the affidavits handed you herewith.

This the 5th day of May, 1906.

J. Francis Glenn
Lucker Murphy
Attorneys for defendants in above
entitled action.

who were supposed to know anything about the history and lineage of the Grimes family were seen and talked to by some one in behalf of the defendants before the trial and as many of them as could be gotten to the Court were brought as witnesses; the defendants got all the testimony ^{of} they could find and made inquiries extending over a number of days prior to the trial and pending the trial; that after said trial was over and the defendants had lost the case before the jury a number of persons volunteered information about the case which the defendants knew nothing of at the time of the trial; that the defendants knew nothing of the testimony set forth in the affidavit of either Leland Martin, ^{William Greenlee} Margaret Orr, Harriet Burton or Hardin Mallery or Swann Greenlee at the time of the trial; that the defendants had heard of the testimony which W. W. Johnson would give and endeavored to get him to Court, but it was reported to the defendants by reliable parties that he was too sick to attend Court, and hence his testimony could not be obtained.

A C Reynolds

Subscribed and sworn to before me this the 5th day of May 1906.

James E. Green
Notary Public.
John S. Green

NORTH CAROLINA
BUNCOMBE COUNTY.

Sylva Gilliland et al.
vs.
The Board of Education of
Buncombe County, et al.

P
:
:
:
:
:

A F F I D A V I T .

BE IT KNOWN that on this the 25th day of January 1906,
before me, Geo. H. Wright, a Notary Public for the County of Buncombe
North Carolina, duly commissioned and sworn, and by law authorized
to administer oaths and affirmations, personally appeared Harriet
Burton, of said County and State, and who being by me duly sworn
did depose and say:-

That she is a colored woman between 70 and 80 years of
age, and that her maiden name was Harriet Grimes, and that she is
the daughter of Felix Grimes, a colored man (negro) now dead. That
the said Felix Grimes was the son of Jeffrey Grimes, and that his
mother was Jennie Patton, the first wife of said Jeffrey Grimes,
and a slave at the time of her marriage to him; that both Jeffrey
and Jennie Grimes were colored persons (negress), but that the
said Jeffrey Grimes was the darker of the two, he being even darker
than the deponent herself.

The deponent further saith that, after living with Jennie,
his first wife, for several years, the said Jeffrey Grimes at a
date which the deponent is unable to remember, left his said wife,
and at some later date, which said deponent is also unable to re-
member, was married to a woman named Estridge, her first name and
color being unknown to the deponent. That to them several children

were born, among them were Theodore Grimes, sometimes called Theodore Graham, and James Grimes, the latter being now dead.

X The deponent says that she has visited at the home of said Theodore Grimes and been recognized by him as the child of his half brother, Felix Grimes; that the said Felix Grimes and the said Theodore Grimes visited each other in their homes and recognized and spoke of each other as half brothers; and that the said Jeffrey Grimes recognized the deponent as his grandchild and treated her such, holding her on his knees and playing with her many times.

The deponent further saith that the said James Grimes, the said Felix Grimes and herself were of practically the same color and that the family resemblance between them was very strong.

X The deponent further saith that she never heard her father Felix Grimes, or her grandfather Jeffrey Grimes, or her Uncle, Theodore Grimes, call themselves Graham when speaking to each other to other persons, but they always spoke of themselves by the name of Grimes; that the deponent never heard them or any of them declare that they were of Portuguese descent, prior to 1865, but that they considered themselves and were generally known as belonging to the negro race. And further the deponent saith not. Witness.

J.L. Dalton

her
Harriet (X) Burton
mark

I IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my Notarial seal, this the day and year first above written.

Notary Seal

Geo. H. Wright
Notary Public

My commission expires
Dec. 7th 1907.

NORTH CAROLINA
BUNCOMBE COUNTY?

Sylva Gilliland, et al

--against--

The Board of Education of
Buncombe County, et al.

A F F I D A V I T .

Be it known that on this the 27th day of January, A.D. 1906 before me George H. Wright, a Notary Public of Buncombe County, North Carolina, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Hardin Mallery of the said County and State, and who being duly sworn did depose and say, that he is a colored man about seventy-seven (77) years old, and that he knew Keener Grimes, sometimes called "Dock" didn't know whose son he was. Keener or "Dock" was a tailor in Asheville, and married a colored girl belonging to Dr. Hardy by the name of Matilda Forney. The deponent further saith that he knew Keener well, and was at Dr. Hardy's often when Keener was there, as he also had a wife there at the same time. Dock left his wife but still worked at Asheville at his trade. That the deponent further saith that he knew Columbus Grimes, who married or lived with an old free negro woman called Aunt Socky Baird, and that he does not know what became of them.

The deponent further saith that he knew Jeffrey Grimes; that he was very dark, looked like a negro, (anybody knows he was not a white man) The deponent further says that he is 77 years old "old enough to know them Grimes" That he never heard any of them claim to be Portuguese or try to associate with white people, that they held themselves as colored people. The deponent further saith

that he knew Felix Grimes and Aunt Jane Patton, his mother; that Felix Grimes claimed to be a son of Jeffrey Grimes, and that Aunt Jane Patton was reputed to be the first wife of Jeffrey Grimes, and that Jeffrey and Louis Grimes were brothers.

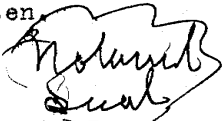
And further the deponent saith not.

his
Hardin (X) Mallery (SEAL)
mark

Witness.

E.R. Glenn

IN TESTIMONY WHEREOF I have hereunto set my hand and ~~seal~~
affixed my Notarial Seal this the day and year first above writ-
ten.



Geo. H. Wright
Notary Public

My commission expires

Dec. 7th 1907.

NORTH CAROLINA
COUNTY OF BUNCOMBE.

Sylva Gilliland et al

--against--

The Board of Education of

Buncombe County, et al.

:
:
:
:
:
:
:

A F F I D A V I T .

BE IT KNOWN that on the 29th day of January 1906, before me, Geo. H. Wright, a Notary Public for the County of Buncombe, North Carolina, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Mrs. Margaret Orr of said County and State, and who being by me duly sworn, did depose and say:-

That she is a white woman, 70 years of age, and lived in the neighborhood that Jeffrey and Louis Grimes lived in, and that she knew them well from her infancy up to their death. That she was well acquainted with Louis, the brother of Jeffrey Grimes, who lived close to where her mother lived. All the old people said that they were free negroes, and they were looked upon and treated as negroes by the white people.

The deponent further saith that, Jeffrey Grimes and Louis Grimes married women, who while being of sunburnt color, were reputed to be white. They were not allowed to marry in North Carolina, the men being negroes, and the women that they married, being white women, so they went to South Carolina ~~and~~ to get married.

The deponent further saith that, Jeffrey and Louis Grimes never associated with white people on the terms of equality. That Louis not being a property owner, worked for wages at different places, and was sometimes allowed the privilege of eating with the

white people, but there were those who would not permit him to eat at the same table, he being a negro.

The deponent further saith that she knew their families, and that she knew Felix Grimes, ~~who said he was the son of Felix Grimes, a brother of Theodore Grimes.~~ And that Felix Grimes claimed to be a negro. That Felix Grimes worked for her a great deal.

The deponent further saith that she never heard any of them called Graham until after the war, they were always called Grimes. That she never heard them (Grimes) call themselves nor any one else call them Graham during Jeffrey's and Louis Grimes life-time.

And further the deponent saith not.

M.M.Orr

DEPONENT.

WITNESS.

IN TESTIMONY WHEREOF I have hereunto set my hand and ~~seal~~ affixed my Notarial Seal, this the 29th day of January 1906.

Notarial Seal

Geo.H.Wright.

Notary Public

My Commission expires

December 7th 1907.

NORTH CAROLINA
BUNCOMBE COUNTY.

| | | |
|---------------------------|---|------------|
| Sylva Gilliland, et al | : | |
| --against-- | : | AFFIDAVIT? |
| The Board of Education of | : | |
| Buncombe County, et al. | : | |

Be it known that on this the 27th day of January A.D. 1906 before me Geo. H. Wright, a Notary Public of the County of Buncombe, North Carolina, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Swan Greenlee (colored) of the said County and State, and who being by me duly sworn did depose and say ~~xx~~ that he is a colored man about sixty-five years of age, and that when he was a boy he knew Jeffrey Grimes and Louis Grimes, his brother, who were called free negroes. That he never heard anyone intimate that they were Portuguese or white, that he worked in a blacksmith shop a great deal with Milas Grimes, a son of Jeffrey, said Milas being a brother of Theodore Grimes. That he never hears the said Milas Grimes claim to be either Portuguese or white, but that he was always looked upon and treated as a negro man. The deponent further states that M. Grimes had staid all night at his house several times.

The deponent further states that he knew Keener Grimes, son of Louis Grimes, the said Louis Grimes being a brother of Jeffrey. That the said Keener married a negro girl belonging to Dr. Ged Hardy, by the name of Matilday Forney, and that he lived with her for a number of years.

And the deponent further states that he knew Columbus Grimes, another son of Louis; that he took up with and lived with an old free negro woman called Aunt Sooky Baird.

And he further states that he never knew of the Grimes being called Grahams until recently, and that he never heard Milas Grimes, who had worked in the shop with the deponent called Graham and when ~~was~~ speaking to him or by him to any other person, that ~~the~~ he was always called Grimes.

And further the deponent saith not.

Swan (X) Greenlee (seal)
His mark

Witness.

Chas. F. Hare

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my Notarial seal this the day and year first above written.

Notary Seal

Geo. H. Wright
Notary Public

My commission expires

Dec. 7th 1907.

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE.

Avery's Creek township.

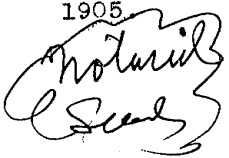
W.W. Johnston being duly sworn deposes and says that he is 78 years of age and was born and raised within six miles of Avery's Creek post office; that he has frequently heard his father and several other old men say that a negro by the name of Grimes bought his freedom, who married a white woman who gave birth to Jeffrey Grimes or Graham, and he Jeffrey Grimes or Graham, married Fannie Eastrick and that he heard Jeffrey Graham or Grimes say that his father bought his freedom, and that Jeffrey Grimes or Graham after worked for his father about 60 years ago, and W.W. Johnston further says that Jeffrey Grimes or Graham was black and kinky headed and was known as a free negro and never called heard him called a Portuguese.

This December 4th 1905:

W.W. Johnston

Sworn to and subscribed before
me this the 4th day of December

1905



Z.T. Leadbetter
Notary Public

NORTH CAROLINA
BUNCOMBE COUNTY.

Sylva Gilliland et al :
--against -- :
The Board of Education of :
Buncombe County, et al . :

A F F I D A V I T :

Be it known that on this the 27th day of January A.D/1906 before, me George H. Wright, a Notary Public of the County of Buncombe, North Carolina, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared Col. Leland Martin (white) of the said County and State, and who being by me duly sworn did depose and say, that he is a white man past eighty (80) years of age, was born and reared twelve miles from Wilkesboro N.C. and that he never lived out of the County of Wilkes more than seven years altogether. The deponent further saith that from his earliest recollection there has been a family or connection of free negroes by the name of Grimes living in and around Wilkesboro. The deponent further saith that he never heard or knew of any one by the name of Grimes, or by any other name claim to be Portuguese or of Portuguese descent, being or living in the County of Wilkes, and that he knew the inhabitants of the said County well.

And further the deponent saith not.

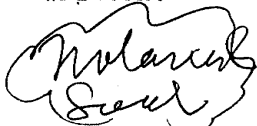
Leland Martin (SEAL)

Witness.

E. R. Glenn

i

IN TESTIMONY WHEREOF I have hereunto set my hand and
affixed my ~~Notary~~ Notarial seal, this the day and year first above
written.

A handwritten signature in cursive script, appearing to read "Geo. H. Wright", enclosed within a cloud-like or circular border.

Geo. H. Wright
Notary Public

My commission expires

Dec. 7th 1907.

NORTH CAROLINA
BUNCOMBE COUNTY.

Sylva Gilliland, et al
--against--
The Board of Education of
Buncombe County, et al.

A F F I D A V I T .

Be it known that on this the 27th day of January A.D. 1906 before me George H. Wright, a Notary Public of the County of Buncombe, North Carolina, duly commissioned and sworn, and by law authorized to administer oaths and affirmations, personally appeared William Greenlee of the said County and State, and who being ^{did} duly sworn, depose and say, that he is a colored man about ~~seven-~~ ^{seventy-} five years of age, and that he knew Jeffrey Grimes and Louis Grimes well. That Jeffery Grimes was very dark, darker than Jane Patton, who he was reputed to have married, who was also the mother of Felix Grimes colored (a negro); knew Felix Grimes and his mother well; also knew that they claimed to be related to Jeffrey Grimes. The said Felix called the son of Jeffrey and Jane Patton, Jeffrey's reputed wife. That the said Jeffrey and Louis were brothers.

The deponent further stated that Jeffrey and Louis frequently passed Mr. Tidille Patton on the French Broad River, where he, deponent, lived. The said Jeffrey Grimes and Louis Grimes were looked upon and always said to be free negroes. The deponent further stated that he knew Keener Grimes, a tailor in Asheville, who married a servant of Dr. Hardy by the name of Matilda Forney,

a negro; that Columbus Grimes, another son of Louis, a nephew of Jeffrey Grimes, lived with a free negro woman by the name of Aunt Socky Baird. And the deponent further saith that he never heard Jeffrey Grimes nor Louis Grimes claim to be Portuguese, or claim to be white or tried to associate with white people. That they looked like negroes, and that they were always looked upon as a family of free negroes. The deponent further saith that he never heard them give any other name or called by any other name than Grimes.

And further the deponent saith not.

his
William (X) Greenlee (SEAL)
mark

Witness.

E.R. Glenn.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my notarial seal, this the the day and year first above written.



Geo. H. Wright
Notary Public

My Commission expires
Dec. 7th 1907

North Carolina.

Buncombe County.

Sylva Gilliland and others :

vs :

The county Board of Education :

and others. :

Personally appeared before me Theodore Graham, who being duly sworn deposes and says that Nancy Grimes or Graham is the woman mentioned in the certificate attached to this affidavit, and that she is his aunt, his father's sister, and lived in Wilkes County; and as he has been informed and believes was apprenticed to one Martha Parlier in Wilkes County. And as he is informed and believes had other brothers and sisters apprenticed in same county.

Theodore Graham

SWORN to and subscribed to before me this the
9th day of May, 1906.

G. A. Thomas
NOTARY PUBLIC.

State of North Carolina.

County of Buncombe.

Sylva Gilliland and others :

-vs- :

AFFIDAVIT.

The Board of Education of :

Buncombe County and others. :

Sylva Gilliland

THIS IS TO CERTIFY that on the 7th day of May, 1906, before me, John B. Anderson, a Notary Public for the County of Buncombe and State of North Carolina, duly commissioned and sworn and authorized to administer oaths and affirmations, personally appeared Maria Grimes of the said County and State, who being first duly sworn, deposes and says:

That she is the daughter of Felix Grimes; that her father was an illegitimate child; and that Jeffrey Graham was his reputed father. The deponent further says that she has heard her father say repeatedly that he was an illegitimate child, and the son of Jeffrey Graham. Deponent further says that her mother, Rebecca Grimes, has always told her that her father, Felix Graham, was an illegitimate child; and that has always been the reputation in the community. Deponent further says that her grandmother, the mother of Felix Graham, was a colored woman, and that her reputed grandfather, Jeffrey Graham, the father of Felix Graham was a white man.

Sworn to and subscribed before Maria Grimes

SWORN to and subscribed before me this the

7th day of May, 1906.

John B. Anderson
Notary Public.

State of North Carolina,
Buncombe County.

Sylva Gilliland et al. :

VS. :

AFFIDAVIT. :

The Board of Education of
Buncombe County et al. :

THIS IS TO CERTIFY, that on the 8th day of May, 1906,
before me, John B. Andersen, a Notary Public for the County of
Buncombe and State of North Carolina, duly commissioned and
sworn and authorized to administer oaths and affirmations,
personally appeared Major W.W. Rollins of the said County and S
State, who being first duly sworn deposes and says:

That he lived in Avery, s Creek township prior to 1854
and is now 67 years old and that he knew Jeffrey Graham
and was well acquainted with him and his family and that to the
best of his knowledge Jeffrey Graham was never married but
as he ever heard of
once, and that he married a white woman and was never married to
a negro.

The deponent further says that he has seen the wife of
Jeffrey Graham and knows her to be a white woman.

W.W. Rollins

Sworn to and subscribed before me, this the ____ day
of May, 1906.

Notary Public.

North Carolina.

Buncombe County.

Sylva Gilliland and others :

vs :

AFFIDAVIT.

The County Board of Education:

and others. :

I, Theodore Graham, being duly sworn, do say in answer to the affidavit herein filed by the defendants:

I am the son of Jeffrey Graham, and the grandfather of the plaintiffs, and was on the 5th day of December last 72 years of age.

It is alleged by the defendants that the plaintiffs, my grandchildren, have a strain of negro blood in their veins derived from my father, Jeffrey Graham. Jeffrey Graham died in 1855. I have been informed and have always believed that he came to Buncombe County and located on French Broad River when he was quite a young man, and that he lived in that community all of his life. He certainly lived in that community from the time of my recollection until the time of his death. He was sometimes called Graham and sometimes Grimes, but he always wrote his name Graham. I most positively affirm that he always associated on terms of equality with white people, and that he never was treated as a Negro by anybody, so far as I know or have ever heard. He was for many years a prominent member of the Methodist church. He always took a prominent part in church work; always associated on terms of equality

with church members. The minister of that church generally stopped at our house. My father, Jeffrey Graham married a white woman, by the name of Fannie Eastridge. I have always been informed and believe that he was married in the State of North Carolina, and never heard until the above mentioned affidavits were filed by the defendants that he ever went to the State of South Carolina to get married. I do not believe that that statement is the truth.

I have never heard until it was alleged in the above mentioned affidavits that my father was ever married but once, and I do not believe the statement in said affidavit that his first wife was a colored woman; such statement is absolutely false to the best of my knowledge and belief. No such statement was ever made so far as I know prior to the filing of this affidavit, and no such tradition has ever existed in our family.

My father, Jeffrey Graham, had four sons, James R. Milus Washington, Thomas Jefferson and Theodore. My brothers all lived in this county, and so far as I know none of them ever associated with Negroes, but on the contrary always associated with white people on terms of equality. I have lived on the waters of the Upper French Broad River in the community where I now reside all of my life. I most solemnly affirm that I never on any occasion or at any time associated with Negroes, nor have I associated with any people other than white people, and with them I have always associated on terms of equality.

I was married on the 9th day of March, 1865 to Caroline Wells, a white woman.

At the beginning of the war in 1861 I went to the war as a white man. I did not go as a volunteer but I was conscripted as a white man, and I served in the war faithfully and to the best of my ability until I was honorably discharged.

The statement in the affidavit of the Negrow woman Harriet Burton to the effect that she has visited my home is absolutely false. I do not know Harriet Burton nor has she ever visited my house; nor have I ever recognized her as any relation of mine.

Keener Grimes mentioned in the affidavit of Hardin Mallery was reputed to be a cousin of mine. He married a white woman by the name of Rebecca Price, and I have never heard that he married a colored woman until I read it in the affidavit above mentioned. I do not believe it to be true.

Columbus Grimes or Graham ~~mentioned~~ mentioned in that affidavit is also a cousin of mine, and he married a sister of the wife of Keener--a woman by the name of Elizabeth Price. After their marriage they went to Texas or some Western State, and I do not believe that the said Columbus ever married a colored woman as stated in said affidavit.

I never hard heard it stated before that he did.

This suit was instituted on the ____ day of ____ 1905, and before its institution every patron but one of the school of the District in which my grandchildren lived petitioned to the County Board of Education that they were willing and anxious that my grandchildren attend that school; the teacher of that school, a white lady of culture and education, said that she was entirely willing and anxious that they should attend. The only patron who did not sign this petition is a brother of my wife, a man whom I have taken care of for many years free of charge. He ate and slept at my house until he agitated this controversy for the purpose of preventing my grandchildren and his own nephews and nieces from attending the public school in Avery's Creek township.

The trial of this case in the Superior Court of Buncombe County attracted great attention. It was spoken of conspicuously time and time again in the Asheville papers, and in one issue of the New York World there was a long article giving a history of the family and the contentions of the parties. This was published before the trial. The whole community knew of the trial and I may say this whole County. A large number of the prominent citizens of my community were witnesses, some for the plaintiffs and some for the defendants. Their testimony is in the record, and speaks for itself and I earnestly ask the Court to read it carefully.

I have not taken part in this suit for my own good, but for the good of my descendants. A few of the people in the community have on different occasions ~~insinuated~~ insinuated that I and my descendants were mixed with the Negro blood. This has always been painful to me, and I believe it to be unjust. I undertook this law suit to clear from my posterity a cloud which has rested on me through my whole life. My children occupy respectable positions in the communities in which they live. One of them is a pastor of a white Baptist church in the County of Madison. Another is the superintendent of a white Baptist Sunday School in Madison County. They have all, so far as I know, been always treated as white people. My married daughters have married white men, and my sons have married white women.

I am the author of this law suit, and have furnished the money to carry it on. As I undertook it I determined to spare nothing so far as my limited means may permit in bringing it to a successful termination. Thus far I and my boys have spent the sum of about \$500.00 in the employment of counsel and otherwise. I am a poor man. My property is worth about \$1,000.00. It has been accumulated by hard work during a life time of 70 years in a rugged country. It has taken one-half of my earnings thus far to maintain this suit, and I earnestly ask the Court not to set the verdict ~~and~~ of the jury aside on the testimony of irresponsible Negroes, whom I do not know.

After the verdict of the jury was rendered, as I am informed and believe, one of my attorneys, Mr. Locke Craig, went to Mr. J. C. Martin, an attorney for the defendants, and the Chairman of the County Board of Education and told him that it was not my intention, nor was it the intention of my daughter or her children, to send my grandchildren to any school unless the patrons of that school were perfectly willing for them to go. I say now that it is not my intention, nor has it ever been my intention to send them to any school, unless it was agreeable to the patrons of that school. I would do this out of consideration for my grandchildren if for nothing else.

It was stated at the trial that the defendants would not appeal from the judgment of the Superior Court, and I had no idea that there would be an appeal, but notwithstanding this fact, as some antagonism had been gotten up on account of this suit, I advised my daughter the wife of Robert Gilliland, the mother of the plaintiffs, to remove from that neighborhood to another county, and in accordance with my advice and the advice of my counsel my daughter and her husband with the children, who are the plaintiffs in this case, have left that community and are now living in the County of Henderson. This was done in order to avoid all trouble and unpleasant and unfriendly feelings. I thought that the controversy had ended.

The jury that rendered this verdict was composed of prominent and intelligent men, and several of them were among the leading men of Buncombe County. The following is a list of the jury: F. A. Brown, W. P. Warren, J. R. Lanning, W. T. Porter, T. J. Dillingham, G. D. Allison, Foster Stevens, C. S. King, J. A. Davis, T. B. Duckett, C. W. Brown, J. C. Curtis. Notwithstanding the verdict of the jury and the removal of the plaintiffs from the County of Buncombe on several occasions false and libelous articles have been printed in the newspapers in Asheville. One was printed in February, I believe it was, in the Asheville Gazette, covering more than one entire page of that paper. I am informed and believe that the County Board of Education is not prosecuting this appeal; that the members of that Board announce themselves as satisfied with the result.

All of the witnesses who testified in the Superior Court were kind enough to give me, as the record shows, a good character. I have always tried to demand myself as an honorable man, and never to create friction in the community in which I lived, and I believe that I never have.

Two of my brothers also went to the Confederate Army and went as white men in white companies. My sisters' son, Dan Evans, went to the Confederate Army as a white soldier, and I call the attention of the Court to the testimony of Joel Ingram a Confederate Soldier, and one of the most prominent citizens of Buncombe County. He testified ~~that~~ he and others, that Dan Evans was treated as a white soldier by the people in which he enlisted, under Capt. Thad Bryson.

I have always paid my taxes as a white man. I have voted as a white man. Have been always registered as a white man, and have always been listed for taxation as a white man, and as I verily believe so was my father, Jeffrey Graham. It has always been the tradition in our family and I have always contended that we were of Portugese descent, and it has, according to the testimony of Major Rollins and other old citizens, who were acquainted in that community, been the tradition in that community. My father and I have associated on terms of equality with some of the leading white people of Buncombe County and I call the attention of the court to the evidence sustaining me in this assertion in the record, and especially to the fact that my father and I associated with the Alexanders, Moores and others, and that I myself went to school with Mr. B. J. Alexander, one of the most respected citizens of Buncombe County, and belonging to one of the most prominent families in this section.

As before stated I am over 72 years of age. I realize that my ~~status~~ status is fixed, and that the result of no law suit could affect it. I have never attempted to thrust myself or my descendants into any unwelcome associations, and never expect to do so, and the sole purpose of this suit was to relieve my grandchildren from an imputation under which they have so unjustly suffered.

SWORN to and subscribed before me this the
9th day of May, 1906.

Theodore Graham
G. A. Thomas

Notary Public.

NORTH CAROLINA.

SUPERIOR COURT.

BUNCOMBE COUNTY.

Silva Gilliland et al/)

vs.)

A G R E E M E N T.

County Board of Education et al.)

)

)

In the above entitled cause it is hereby agreed by and
^{between} counsel for the plaintiffs and the defendants that the
defendants shall ^{have} until the 10th, day of January 1906, to serve
notice of appeal, and file exceptions to the judgement
rendered in the above entitled cause at the last term of the
Court and that in case such notice of appeal is served they
are to have twenty days thereafter to make out and serve ^{statement of}
case on appeal, and the plaintiffs are to have thirty days
after the service on them of defendants statement on appeal
to make out and serve a counter case or exceptions thereto

This the 2, day of December, 1905.

Quinn & Henderson

Attorneys for Plaintiffs.

Tucker Murphy
Attorneys for defendants.

State of North Carolina

In Supreme Court, May 15, 1906.

Sylvia Gilleland

et. al.

v.

Board of Education of

Buncombe County et. al.

*Motion for new trial
for newly discovered
evidence*

*Filed
May 15 1906
J. F. Glenn
Tucker & Murphy*

The defendants move, in the Supreme Court, for a new trial upon the ground of newly discovered evidence as set out in the affidavits of A. C. Reynolds, William Greenlee, Leland Martin, W. W. Johnston, Swann Greenlee, M. M. Orr, Harriet Burton, and Harden Mallory, appearing (by mistake of printer) on pages 27-37 inclusive of printed record.

J. F. Glenn,

Tucker & Murphy,

Attorneys for Defendants, Appellees.

Gilliland
v
Board of Education } Motion.

The plaintiffs appellants move
to dismiss this appeal on
the ground that the notice
of appeal was not given
within the time required by
law nor within the time
agreed upon

Anderson

being

Attys for appellants

Sylvia Gilleland et al
For their next friend,
Robert Gilleland
v.
The Board of Education of
Buncombe
&
The School Committee.

)
) From Buncombe.
)
)
)
)
)

Civil action, tried before J. A. McNeil, Judge, and a jury,
at Nov. Term, 1905, of the Superior Court of Buncombe County.

Plaintiffs, children, within the school age, resident within
Avery's Creek Township, Buncombe County, on August 1, 1905, entered,
as pupils, the school established in said township, in pursuance
of law, for children of the white race. They attended said school
for one week, when they were excluded therefrom by defendants, who
have since continued to refuse them admittance to said school after
demand duly made by plaintiffs.

Defendants admit that the plaintiffs are within the school age
and resident within said township and assignable to the schools
established therein and admit further that they have excluded the
plaintiffs from the schools of said township established for the
white race, and claim the right so to exclude plaintiffs on the
ground that they are not children of the white race, but are of
mixed blood, having a certain amount of negro blood; and the cause
was made to depend, and did depend on that single question, whether
plaintiffs were children of the white race pure and unmixed with
any negro blood.

The form of the issue is as follows:

Are plaintiffs entitled to admission into the white schools
of Buncombe County?

Under the charge of the Court, the jury rendered a verdict on
the issue in favor of plaintiffs.

Judgment on the verdict, and defendants excepted and appealed.

Hoke, J. (After stating the case.)

While the principle involved in this issue is one of supreme importance, not only to the parties litigant, but to the entire cpmmonwealth, the questions as presented to us in the case on appeal are very much restricted in their scope and import, and are ~~not~~ without ^{serious} ~~some~~ difficulty.

The constitution and statutes of North Carolina require that the children of the white race and the children of the colored race must be taught in separate public schools. ~~This embodies the best thought and fixed purpose of an entire people and is determined upon as the only condition in which these two races can live in the same country and preserve and develop the best qualities of each.~~

In obedience to ~~the~~ requirement, the defendants have established separate public schools for the two races in Avery Creek Township.

It is conceded that the plaintiffs are children within the school age, resident in that township, assignable to the public schools therein, and that if they are children of the white race, a substantial right has been unlawfully denied them by defendants, ^{properly} enforceable by mandamus.

The issue is, in form, determinative of the controversy and such as enabled the parties to present every phase of the evidence relevant to the question involved.

After a very full investigation, the jury have answered the issue in plaintiffs' favor, and if this answer has been given after a trial free from error, the verdict must and should be an end of the matter.

The claim and allegations of defendants placed the mixture of negro blood in Jeffrey Graham (now dead) a great grandfather of plaintiffs, who lived in Buncombe County about forty or ~~fifty~~ ^{forty five} years ago.

In the deposition of William Whitesides, offered by plaintiffs as evidence tending to show that their ancestor, Jeffrey Graham,

was of pure white blood, the witness stated that he lived as a neighbor to Jeffrey Graham for four years about forty or forty-four years ago, and the following question and answer was assigned for error:

Q. "Do you remember whether Jeffrey Graham voted ? and if so, state when and where."

A. "There was nothing said against his voting, and I think he always voted."

that
It is well established in questions of race ancestry, general or common reputation is received under certain ~~circumstances~~ *conditions*, and the principle applies here.

Wiggins on Evidence Dec 1605 - p 1954
Bryan vs Walter Adams 20 Dec 480
Daughm vs Phebe 7 Term 384
None Adams vs Wiggins 22 Dec 368

And it is not alone by oral expression that ^{this} reputation is ^{evidence of and} established. The manner in which a man is received and treated by his neighbors and the community generally may give as convincing evidence of their opinion and attitude concerning him as if it was declared *in speech*.

At the time spoken of by the witness, colored people were not allowed to vote under the constitution and laws of the State, and the fact that the ancestor was permitted to vote openly and without any objection is most pertinent in establishing the general reputation and opinion that said ancestor was qualified under the laws to do so.

Defendants do not insist on this position, but rest the objection on the fact that this is simply an opinion of the witness.

We do not think, however, that this is a correct interpretation of the question and answer.

A witness who undertakes to testify to objective facts and qualifies his testimony by using the terms, "I think," or "I have an impression," &c.; if the witness has had no physical observation of the facts *has made no note* ~~but~~ is merely stating to the Court and jury his mental

inference or deduction; this, as a rule is incompetent. But if the witness has had opportunity to note relevant facts himself and did observe and note them, and simply qualifies his testimony in this way because his impression or memory is more or less indistinct, this, while in the form of opinion, is really the statement of a fact and will be so received.

Greenleaf, 16 Ed., Sec. ~~430~~ 430 (2)

And so it is here. The witness was a neighbor of Jeffrey Graham for four years or more and speaks from his own observation. He is giving to the jury the impressions of things he saw and noted and not an inference or deduction from things he had not seen; and the evidence, we think, was properly received.

Again, it is urged for defendants that there was error in his Honor's charge duly pointed out by exception as follows:

"If you find that the plaintiffs and their ancestors have not heretofore associated with negroes, but have associated with white people on terms of social equality, and that their ancestors went to white schools, claiming to be of Portugeses descent, this evidence must be considered in arriving at a conclusion as to what race they belonged, and you should consider in this connection, the declaration of Jeffrey Graham that he was of Portugese descent." The error insisted upon here being that his Honor, in effect, declared as a fact, that Jeffrey ^{Graham} had made said declarations, and this, defendants contend, is in violation of the statute which prohibits a Judge from expressing an opinion as to whether a relevant fact is or is not sufficiently proved. Revisal 1905, Sec. 535. But we do not think the charge is open to this criticism.

We have held in State v. Exum, that "the charge to the jury must be considered as a whole in the same connected way in which it was given, and upon the presumption that the jury did not overlook any portion of it. If, when so considered, it presents the law fairly and clearly to the jury, it will afford no ground for reversing the judgment though some of the expressions, when standing alone, might be regarded as erroneous."

Citing Thompson on Trials, Sec. 2407.

There was testimony in behalf of both plaintiffs and defendants as to declarations of Jeffrey Graham and others as to the status, race, &c. of plaintiffs' ancestors, and his Honor, in a previous portion of his charge, in referring to this testimony, had said:

"You will also take into consideration and estimate the evidence tending to show declarations of persons on both sides as to the status, color, and association of plaintiffs' ancestors &c."

Taking the charge as a whole, we think that this correct instruction should, by fair interpretation, be annexed to and qualify the second reference to these declarations, and the jury could only have understood that the existence or non-existence of such declarations was left for them to determine.

We find no error in the trial, and the judgment is affirmed.

While the defendants have, no doubt, acted throughout from a conscientious purpose to do their full duty in the premises, and while the exigencies of the case may have made it desirable and perhaps necessary to ~~have~~ ^{bring} the matter before a jury for decision, we deem it not improper to say that we have examined the record in which the entire testimony is set out, and are of opinion that the jury have rendered a righteous verdict and that the truth of the matter has been established.

No error.

SUPREME COURT OF NORTH CAROLINA; Feb. term, 1906. * 518, Buncombe.

Sylvia Gilliam et al, for their next friend Robert Gilliam,

against Board of Education and School Committee of Buncombe Co.
appellant

Civil action tried before McNeill, J. and a jury at November term, 1905 of Buncombe Superior Court. The plaintiffs, children within the school age, resident in Avery's Creek Township, Buncombe County, on August 1, 1905 entered, as pupils, the school established in said township, in pursuance of law, for children of the white race. They attended the school for one week, when they were excluded therefrom by the defendants, who have since continued to refuse them admittance to the school, after demand duly made by the plaintiffs. The defendants admit that the plaintiffs are within the school age and resident within said township and assignable to the schools established therein, and admit further that they have excluded them from the schools of said township established for the white race, and claim the right so to exclude them on the ground that the plaintiffs are not children of the white race, but are of mixed blood, having a certain amount of negro blood. The cause was made to depend and did depend on that single question whether the plaintiffs were children of the white race pure and unmixed with any negro blood. The form of the issue is as follows: "Are the plaintiffs entitled to admission in the white schools of Buncombe County?" Under the charge of the court the jury rendered a verdict in favor of the plaintiffs; judgment on the verdict and the defendant excepted and appealed.

J. B. Anderson and Locke Craig for plaintiff appellee;
Tucker & Murphy and J. Prazier Glenn for defendant appellant.

HOKE, J., after stating the case:- While the principle involved in this issue is one of supreme importance, not only to the parties litigant but to the entire commonwealth, the questions as presented to us in the case on appeal are very much restricted in their scope and import, and are without serious difficulty.

The Constitution and statutes of North Carolina require that the children of the white race and the children of the colored race must be taught in separate public schools. In obedience to this requirement, the defendants have established separate public schools for the two races in Avery's Creek Township. It is conceded that the plaintiffs are children within the

school age, resident in that township, assignable to the public schools therein, and that if they are children of the white race, a substantial right has been unlawfully denied them by defendants, properly enforceable by mandamus.

The issue is, in form, determinative of the controversy and such as enabled the parties to present every phase of the evidence relevant to the question involved. After a very full investigation the jury have answered the issue in plaintiff's favor and if this answer has been given after a trial free from error, the verdict must and should be an end of the matter.

The claim and allegations of defendants placed the mixture of negro blood in Jeffrey Graham (now dead) a great grandfather of plaintiffs, who lived in Buncombe County about forty or forty four years ago. In the deposition of William Whitesides, offered by plaintiffs as evidence tending to show that their ancestor, Jeffrey Graham, was of pure white blood, the witness stated that he lived as a neighbor to Jeffrey Graham four years about forty or forty-four years ago, and the following question and answer were assigned for error: Q. "Do you remember whether Jeffrey Graham voted, and if so state when and where?" A. "There was nothing said against his voting and I think he always voted." It is well established that in questions of ancestry, general or common reputation is received under certain conditions and the principle applies here. Wigmore on Evidence, Sec. 1606 p. 1954; Bryan v. Walton, 20 Ga. 480; Vaughan v. Phebe, 7 Tenn. 384; Nave v. Williams, 22 Ind. 368. And it is not alone by oral expression that this reputation is evidenced and established. The manner in which a man is received and treated by his neighbors and the community generally may give as convincing evidence of their opinion and attitude concerning him as if it was declared in speech. At the time spoken of by the witness colored people were not allowed to vote under the constitution and laws of this State, and the fact that the ancestor was permitted to vote openly and without any objection is most pertinent in establishing the general reputation and opinion that said ancestor was qualified under the laws to do so.

Defendants do not insist on this position, but rest the objection on the fact that this is simply an opinion of the witness. We do not think however that this is a correct interpretation of the question and answer.

A witness who undertakes to testify to objective facts and qualifies his testimony by using the terms, "I think," or "I have an impression" etc. if the witness has had no physical observation or has made no note of the facts but is merely stating to the court and jury his mental inference or deduction; this, as a rule is incompetent. But if the witness has had opportunity to note relevant facts himself and did observe and note them, and simply qualifies his ~~memory~~ testimony in this way because his impression or memory is more or less indistinct, this, while in the form of opinion, is really the statement of a fact and will be so received. Greenleaf Ev. (16 Ed.) Sec. 480 (1). And so it is here. The witness was a neighbor of Jeffrey Graham for four years or more and speaks from his own observation. He is giving to the jury the impressions of things he saw and noted, and not an inference or deduction from things he had not seen, and the evidence was properly received.

Again, it is urged for the defendants that there was error in the judge's charge duly pointed out by exception, as follows: "If you find that the plaintiffs and their ancestors have not heretofore associated with negroes but have associated with white people on terms of social equality, and that their ancestors went to white schools, claiming to be of Portuguese descent, this evidence must be considered in arriving at a conclusion as to what race they belonged, and you should consider in this connection the declaration of Jeffrey Graham that he was of Portuguese descent." The error insisted upon here being that the judge in effect declared as a fact that Jeffrey Graham had made said declarations, and this, the defendants contend, is in violation of the statute which prohibits a judge from expressing an opinion as to whether a relevant fact is or is not sufficiently proved. Revisal Sec. 535. But we do not think that the charge is open to this criticism.

We have held in State v. Exum,¹³⁸ W. C. 1079 that the charge to the jury must be considered as a whole in the same connected way in which it was given, and upon the presumption that the jury did not overlook any portion of it. If, when so considered, it presents the law fairly and clearly to the jury, it will afford no ground for reversing the judgment though some of

the expressions, when standing alone, might be regarded as erroneous. "

citing Thompson on Trials Sec. 2407.

There was testimony in behalf of both plaintiffs and defendants as to declarations of Jeffrey Graham and others in regard to the status, race etc of the plaintiffs' ancestors, and his honor, in a previous portion of his charge in referring to this testimony, had said: "You will also take into consideration and estimate the evidence tending to show declarations of persons on both sides as to the status, color, and association of the plaintiffs' ancestors". Taking the charge as a whole, we think that this correct instruction should, by fair interpretation, be annexed to and qualify the second reference to these declarations, and the jury could only have understood that the existence or non-existence of such declarations + was left for them to determine. We find no error in the trial and the judgment is affirmed.

While the defendants have no doubt acted throughout from a conscientious purpose to do their full duty in the premises, and while the exigencies of the case may have made it desirable and perhaps necessary to bring the matter before a jury for decision, we deem it not improper to say that we have examined the record~~x~~ in which the entire testimony is set out, and are of opinion that the jury have rendered a righteous verdict and that the truth of the matter has been established.

NO ERROR.

IN BUNCOMBE SUPERIOR COURT, NOVEMBER TERM 1905.

SYLVA GILLILAND et al

VS.

BOARD OF EDUCATION.

ROBERT GILLILAND, sworn for the plaintiffs, testified:-

Q. What is your name? A. Robert Gilliland.

Q. Where do you live?

A. In Buncombe County, in Avery's Creek Township.

Q. How long have you lived there?

A. Most of the time during my life.

Q. Who is your father? A. ~~xxxx~~ Allen Gilliland.

Q. Who is your mother?

A. She was Betsey Suttles.

Q. Whom did you marry?

A. Theodore Graham's daughter.

Q. Who are your children?

A. Sylva, Nellie, Ethel, Elsie, Maggie and Fannie ~~xxxxxx~~
Gilliland.

Q. Are your children the plaintiffs in this case? A. Yes.

Q. Are you a white man?

A. I suppose so; never was counted anything else.

Q. Are your mother and father white? A. Yes.

Q. They associate with white people?

A. Yes.

Q. What is the age of * Sylva? A. Sixteen.

Q. What is the age of Ethel? A. Fourteen.

Q. Elsie? A. Eleven, as well as I remember.

Q. Maggie? A. Nine years.

Q. And Fannie? A. Seven or eight.

Q. What kind of people do your family associate with as

56

(2)

to race? A. White people.

Q. Have they always associated with white people? A. Yes

~~Yes~~ Have they ever associated with negroes?

A. Not that I ever knowed of.

(At this point,
Counsel for plaintiffs requested the
plaintiffs to stand up)

Q. Are those your children?

A. Yes.

Counsel for plaintiffs introduce the plaintiffs
in evidence for the inspection of the jury.

CROSS-EXAMINATION.

Q. You say you were raised in this county?

A. Yes, I was raised in this county. I have lived in
Avery's Creek Township for twenty-five years, but have
lived in Buncombe all my life.

Q. Did you ever hear anything in your family of Jeffery
Grimes or Jeffery Graham? A. Yes.

Q. What akin was he to your wife?

A. My wife's grand father.

Q. Did you ever see him? A. I never did.

Q. Did you ever know his brother Lewis Grimes or Lewis
Graham? A. No sir, I never did.

Q. Lewis Grimes or Graham was your wife's great uncle?

A. I suppose so.

Q. Did you ever hear in your family of Felix Graham or
Felix Grimes?

A. He was not personally recognized as one of the re-
lations; not in that way.

Q. You spoke of associating up there, I ask you if there
are in Avery's Creek Township, in the immediate neighbor-
hood in which you have lived or in which your wife has

(3)

lived any pure negroes at all?

A. One or two I suppose. There are none right close in that neighborhood.

Q. So all the neighbors of the Grimses or Grahams were white people and there are no negroes in that immediate community?

A. There are no negroes in that immediate settlement, that is right up on Avery's Creek

Q. Who is your wife's father? A. Therodore graham.

Q. Is he in the Court Room now?

A. Yes.

Q. Point him out to the jury.

(At this point Theodore Graham stood up.)

Q. Do you know anything about how Theodore Graham has registered on the Registration Books of Avery,s Creek Township for the last twenty-five years?

A. Yes, he registers and votes.

Q. I ask you if he has not registered and voted as a colored man? A. No sir.

Q. You know he has been so classified on the registration books of that township?

A. Not that I ever heard of.

Q. Did you live in that community when Mr Ducker taught school there?

A. No sir, not right in that neighborhood when he taught.

Q. Did your children go to school to Mr Ducker?

A. I don't think they did.

Q. I ask you if your children went to the white schools in that community?

A. Yes, my children went to the white schools.

Q. Haven't your children attended a school not recogniz-

3-8

(4)

ed as a white school?

A. They never attended any school that I know of except white schools.

Q. Didn't they have a separate school for the Grimes generation?

A. Yes, I went to the school myself, but as to whether it was recognized as a colored school, I don't know.

Q. As a matter of fact the generations of those children, those Grimes children, have not gone to the regular white schools for twenty years?

A. Oh yes, I sent my children to the white schools.

Q. What teacher did you send them to?

A. Miss McLain, that is the public school.

Q. Was that in Avery's Creek Township?

A. No sir.

Q. I ask you if in the township there, where your children lived, they ever attended a white public school for the District in which you live.

A. No sir; only for a ^{short} ~~short~~ while .

Q. They have been excluded upon the very ground that they have been excluded in this instance, in the public school district in which you live?

A. They never have been excluded at the public school but one time by the Committee, except this one time.

Q. They never offered to go?

A. Yes, the teacher excluded them but the Committee never did.

Q. That power of the teacher, exercised at that time was exercised and not resisted at the time? A. No sir.

Q. When was that that the teacher did exclude them?

A. Three years ago.

Q. Who was the teacher?

369

A. I can't call her given name, but it was Charlie Johnson's daughter.

Q. Was it Miss Maggie Johnson? A. I believe so.

Q. Before that who had taught in that community, do you recall any teacher's name?

A. I can't say that I remember the teacher's names at all.

Q. Where were you living when Mr Ducker taught there?

A. I think I was living on Swannanoa.

Q. You know that Mr Ducker taught there and that Miss Maggie Johnson taught there, do you recall the names of any other teachers that taught there?

A. Hattie Johnson taught there one school I believe. Except her, I don't remember any other.

Q. Where were you living when Mr Bob Shipman taught there? A. I can't tell you, but I know when he taught school.

Q. And he taught a separate school for the Grimes family?

A. Yes.

Q. And your children went to him? A. No sir.

Q. Wasn't that a colored school that Bob Shipman taught?

A. No sir, I never heard that it was.

Q. You never heard that it was a colored school taught for that family?

A. No sir, never heard in my life that it was a colored school.

Q. How many children went? A. I can't tell you. From twelve to fourteen when I went.

Q. How many children that had Grimes blood in them?

A. I can't tell you that there are any except mine in Avery's Creek Township that are of school age.

Q. Don't you know that when Mr Venable was Superintendent-

60

(s)

ent for this County that there was a special school up there for those children?

A. There was a school up there; I don't know what kind.

Q. Did your children go to it? A. No sir.

Q. Did your immediate kin's children, their cousins, go to it? A. I suppose so.

Q. Don't you know that there was a Special School for those children affected by this Graham blood?

A. I suppose so.

Q. You were not living in that community at that time?

A. A part of the time I was and part of the time I was not.

Q. At any rate your children did not go to that school?

A. No sir.

Q. You say you were raised in that immediate community, who was your father and mother?

A. Betty Suttles was my mother .

Q. Without desiring to ask you an embarrassing question, isn't it a fact that some of your people , your mother or some of your family, objected to your marrying into this family?

A. I never heard of it in my life.

Q. I ask you, when this controversy arose , if the present Board of Education did not offer to comply with the sentiment that has existed there for a number of years, and gave a separate school for these Graham children?

A. Not in a direct manner.

Q. Did they do it in an indirect manner?

61 A. I was offered \$25.00 or \$40.00 to go in there and teach my children, or to let them go in after the school hours, at this same school where they were excluded from.

(7)

Q. I ask you again if you recollect any of the teachers names that taught at those special schools there, you know that Mr Ducker and Mr Shipman taught ?

A. Yes , and Mr Graham there taught a school there himself, and I went to him and learned to write.

Q. That was separate from the white schools-- that was in this school you have been talking about?

A. If it was any colored school I never heard about it.

Q. Do you recollect anybody else? A. No sir.

Q. Did Mr Morris teach a school of that kind there?

A. Not that I ever knowed of.

RE-DIRECT-EXAMINATION

By Mr Stevens: Q. Did any negroes attend this school you have been talking about? A. No sir.

Q. Were any of the teachers negroes? A. No sir.

Q. The men who taught there, were they white men? A. Yes.

RE-CROSS-EXAMINATION

Q. Have you ever investigated the reports of any of those schools to see that they were marked as colored schools?

A. No sir, I don't know anything about that.

RE DIRECT EXAMINATION

Q. You say you attended this school that Mr Murphy spoke of when Mr Graham taught it? A. Yes.

Q. Did any other children attend that school besides the Graham families?

A. Yes, my sister attended it.

Q. Did any other children attend this school up there?

A. Not that I remember.

Q. I will refresh your recollection and ask you if some of the Harwoods didn't attend it?

62

(8)

A. Yes, I believe they did.

Q. How many attended it of the Earwoods?

A. Two I believe.

Q. I ask you if that ~~was~~ was not a white school?

A. Yes, I thought so.

Q. There were no mulattoes or negroes attending that school? A. No sir.

Q. Would you have attended a negro school?

A. I don't think so.

Q. But in Avery's Creek Township no negroes went to that school then? A. No sir.

Q. Did your children attend the Sunday schools with white children? A. Yes.

Q. How long did they attend the white Sunday schools in Avery's Creek Township? A. All their lives.

Q. Where is that Sunday school?

A. Right where they were excluded from.

Q. What name does that Church go by?

A. It is not a Church, it is a school, they call it "Scrubby."

Q. Did any white people attend that Sunday school at that school? A. Yes.

Q. Name some of the white children that attended that Sunday school? A. Mr Jim Lance's children.

Q. Who is Superintendent of that Sunday school?

A. Mr Jim Lance.

Q. Is he still Superintendent of that Sunday school?

A. Yes, the last time I was there he was Superintendent.

Q. What other children besides Mr Jim Lance's children go to that Sunday school?

A. Mr Baker's children, Mr Jim Gillilands and Mr Burton's children I believe.

Q. Did white people eat at your house? A. Yes.

Q. At your table? A. Yes.

Q. Did you eat at white people's table in Avery's Creek Township? A. Yes.

Q. Please name the white people whose tables you have eaten at?

A. I have eaten at Mr Zack Ledbetter's house.

Q. At the table with him? A. Yes.

(Defendants admit that this witness is a white man.)

Q. Where has your wife eaten?

A. At pretty much all the houses in the neighborhood.

Q. Where, name some of the persons?

A. Mr Zack Ledbetter, Mr Jim Gillman, and Mr Paul Cochran's.

Q. Did they attend any social functions in that neighborhood, such as corn shuckings and quiltings?

A. Yes, when there are any socials going on they go with all the other people.

Q. Where did you live when your children were attending school on Swannanoa?

A. About Bee tree.

Q. Which school did they attend there?

A. The Bee Tree public school.

Q. Was any question raised there?

A. I never heard tell of it, if there was.

Q. You lived in that District then? A. Yes.

DORA GRAHAM, sworn for the plaintiffs testified:-

Q. What is your name? A. Dora graham.

Q. Where is your home?

A. At Marshall, in Madison County.

Q. Who is your father? A. Tom Graham.

Q. Who is his father? A. Theodore Graham.

Q. Where are you going to school? A. In Asheville.

Q. At what school? A. The Home Industrial School.

Q. Are you a pupil there now? A. Yes.

Q. How long have you been attending that school?

A. About three months.

Q. Did you ever associate with anybody but white people?

A. No sir.

Q. Theodore graham stand up-- is that your grand father?

A. Yes.

Q. Do you ever visit your people's folks on Avery's Creek?

A. Yes.

Q. Who did they associate with on Avery's Creek?

A. They associated with white people.

MRS ROBERT GILLILAND, sworn for plaintiffs, testified:-

Q. Whose daughter are you? A. Theodore graham's.

Q. How old are you? A. Thirty-seven the 22nd of last October.

Q. How many children have you? A. Nine.

Q. Those six children that are the plaintiffs in this case, are they your children? A. Yes.

Q. With what race do you associate on Avery's Creek?

A. With the white race.

68-

(11)

Q. State whether you have ever associated with negroes?

A. I never did.

Q. You recognize negroes when you see them? A Yes.

Q. Negroes are recognized up there on Avery's Creek as everywhere else?

A. Yes, people know all about negroes as a general thing.

Q. State whether the white people up there associate with the negroes? A. No sir, no more than they do anywhere else.

Q. What kind of people do you associate with on Avery's Creek? A. With the white people altogether.

Q. What kind of good people--

A. I am visited by both kinds, what I call good people and what I call bad people, that is they come and go as our neighbors.

Q. I mean this, do you associate with them on terms of equality or inequality?

A. On terms of equality with my neighbors; there are no negroes that live in the settlement.

Q. To whose school are your children accustomed to go?

A. I sent my children to the school at Bee Tree on Swanmanoa, they went one term and a portion of another term five years ago. I then sent them to the Avery's Creek school this last term and they went a week, two of them, and then the teacher sent them home.

Q. State with whom you and your children, and all your father's connection have associated.

Defendants object to this question and to any answer that may be elicited thereby, on the ground that the question to be determined is as to whether plaintiffs have negro blood in them to the remotest degree, and

association does not tend to prove anything. OBJECTION
OVERRULED AND THE DEFENDANT EXCEPTS.

A. With white people.

Q. On what kind of terms have you associated?

A. On neighborly terms, just as any other neighbors as-
sociate.

Q. What did you do showing your association?

A. I have eaten with nearly every family in reach of me;
so has my children and so has my father's people. If we
go to our neighbors, they take us to their tables with
them, and if they come to our home we take them to the
table and they eat with us.

CROSS EXAMINATION

Q. You are the mother of these children? A Yes.

BEULAH H. GRAHAM, sworn for plaintiffs, testified:-

Q. Where do you live? A. At Hickory, N. C.

Q. What is your business there?

A. I am in the telephone business.

Q. What do you do there?

A. I am in charge of the telephones.

Q. How long have you been in that business there?

A. Since the 18th of May.

Q. Who is your father? A. Mr Tom Graham.

Q. Who was his father? A. Milus Graham.

Q. How was Milus Graham related to Theodore Graham?

A. His was his brother.

Q. Where were you born? A. On Avery's Creek.

Q. How long did you live on Avery's Creek?

A. About eleven or twelve years.

Q. How many brothers have you?

A. I believe I have five brothers.

Q. I ask you if that is a correct photograph of your brothers? A. Yes.

Q. Where are your brothers?

A. The oldest one is in Washington City.

Q. What does he do in Washington City?

A. He is with the Telephone Company there, on the trucks, or wagons.

Q. Where is the other? A. At Morton, North Carolina.

Q. And the other? A. He is here and has been with the Swannanoa Laundry.

Q. When was that photograph of you and your brothers taken?

A. It was taken last June or July two years ago, and it is a photograph of me and my brothers.

(Plaintiffs offer this photograph in evidence.)

Q. Was this photograph taken by Mr McCandless here in Asheville? A. Yes.

Q. He is a photographer? A. Yes.

Q. Your picture is the front one of those? A. Yes.

Q. What race of people do you associate with?

A. White people altogether.

Q. Have you ever associated with the negro race?

A. No sir, nothing except in a business way.

Q. Have you ever gone to a negro school? A. No sir.

Q. In the Telephone office in Hickory have they any negro boys and girls? A. No sir.

Q. What kind have you there in the telephone exchange there in Hickory? A. White.

Q. You are a grand son of Theodore Graham's?

A. No sir, a grand son of Milus Graham.

CROSS EXAMINATION

Q. Where did Milus Graham live?

68

A. He lived on Avery's Creek, I suppose; he got killed between here and Biltmore.

Q. You have a great uncle that lived in Madison County?

A. I don't know unless I heard his name.

Q. Do you know whether Milus Graham had a brother who lived in Madison County? A. I don't know.

Q. You grew up on Avery's Creek?

A. Yes principally.

Q. How old were you when you lived there?

A. I really don't know, but I was between nine and ten.

Q. Did you ever go to school any where?

A. Yes. I went to school on Avery's Creek and Turkey Creek in Leicester township and at different places.

Q. This Graham family have lived mainly in Averys Creek Township? A. Yes, all the ancestors lived there.

Q. I believe there were no negro schools or schools for black people in Avery's Creek township in your youth?

A. Not that I know of.

Q. You attended a school that was taught separately for the Graham family children?

A. I attended a school up there but I did not know it was for the Graham family specially. I was quite small.

Q. Where was the school taught?

A. I don't know that I can designate it so that you can tell.

Q. Was that school on upper Averys creek? A. Yes.

Q. There are only two schools in Averys Creek township?

A. I don't know.

Q. Did you ever attend a school in the lower part of Averys Creek township?

A. No sir; I lived in the upper section.

(15)

Q. The school you attended was taught on land belonging to some of the grimses?

A. Once it was I remember.

Q. Who was the teacher?

A. I think Mr Robert Chapman was one and Mr Jim Tucker was another.

Q. And the other school on Averys Creek was lower down the Creek, in the neighborhood of Joel Ingram's?

A. Yes.

Q. And you say you never attended that school? A. No sir

RE DIRECT EXAMINATION

Q. Did any negroes attend that school on Avery's creek?

A. No sir

Q. You stated that you attended a school in Leicester township? A Yes.

Q. Were you ever excluded from that school? A No sir.

Q. Do you have any brothers or sisters there now?

A. Yes. I have two brothers and a sister there who are attending that school there now.

Q. That is the public white school for Leicester township?

A. Yes.

Q. There are a good many negroes in Leicester? A Yes.

RE CROSS EXAMINATION

Q. There were very few negroes, as you grew up, in Averys Creek township? A. Yes very few.

W. A. GRAHAM sworn for the plaintiffs testified:-

Q. What is your name? A. Arthur graham.

Q. Are you a brother of the young man who has just left the stand? A. Yes.

Q. Where do you live? A. I have been living here for

(18)

about five years; my father lives at Leicester, N. C.

Q. Were you raised in Leicester? A. Yes, partly.

Q. Did you ever live on Averys Creek? A. Yes.

Q. How long did you live there?

A. Tennor eleven years.

Q. Did you ever go to school on Averys Creek? A. Yes.

Q. What kind of a school did you attend there?

A. White school.

Q. Were there any negroes in the school? A. No sir.

Q. Whom did you associate with on Avery's creek?

A. With white people.

Q. White people exclusively? A. Yes.

Q. When you lived on Avery's creek where did you move to?

A. Moved to Leicester.

Q. Did you attend a school at Leicester township? A. Yes.

Q. What schools did you attend?

A. Public schools, different ones.

Q. Who were your teachers?

A. Miss Irene Gudger, and the next one was Mr Jervis,
and the next one prof. Lunsford.

Q. Were those all white schools? A. Yes.

Q. Did you ever attend colored schools? A. No sir.

Q. Whom did you associate with in Leicester township?

A. The white people in general.

Q. When did you come to Asheville?

A. About six years ago.

Q. What business have you been in in Asheville?

A. I worked three years as a Clerk in Mr G. A. Greer's
H.E. in the Lunch Counter
grocery; then I worked for E. Graham, ~~the railroad~~
and then I went on the railroad.

Q. Did he keep a white lunch counter?

A. Yes, and then I went to a railroading awhile, and since
then I have been in the Swannanoa Laundry.

Q. What is your business now?

A. Laundryman of the Swannanoa Laundry.

Q. Are you a married man? A. No sir.

Q. What kind of ladies do you associate with in Asheville?

A. They are white girls.

CROSS EXAMINATION

Q. How old were you when you moved from the Avery⁸s Creek section?

A. I cannot tell you the exact date now. I was something like ten years old, I think.

Q. Did you ever go to school there? A Yes.

Q. Who were your teachers?

A. I went to one school that Mr Bob Shipman taught and once to Mr Jim Dicker.

Q. All the scholars that attended those schools were descendants of the Grahams or Grimses?

A. Not all of them.

Q. Did you ever look at the records of those schools?

A. No sir; I never had occasion to.

How many pupils were there, approximately that attended those schools?

A. Ranged, I suppose from 25 to 30.

Q. Will you name some of the children that were not akin to you that went to that school when Mr Shipman and Mr Ducker taught, that were not descendants of the Grimses?

A. I remember a girl that boarded with Mr Gilliland and I remember going to school with her, and her helping me with my lessons.

Q. Was Mr Gilliland married at that time?

A. Yes.

(18)

Q. Was that Mr Gilliland's sister?

A. I am not quite sure whether she was or not.

Q. Can you recall any others that went to that school except Grimses?

A. It has been so long that I don't know that I could.

Q. With the exceptions you mention the children that went to that school were descendants of the Grimses?

A. Yes, principally they were; but there were others but I can't remember exactly who they were.

RE DIRECT EXAMINATION

Q. How many students went to that school that he has just referred to? A. Twenty-five or thirty.

Q. Did the Grimses have that many children? A. No sir.

Q. Why can't you recollect the names of some of those children? A. I suppose if I had given it some thought I could.

Q. How old were you then?

A. About eight years old I guess.

B. F. LANCE, sworn for the plaintiffs, testified:-

Q. Q. Did you know the father of Mr Theodore Graham?

A. Yes, I knew him well. I remember him from the time I was old enough to go with the cattle to the pasture until he died, but I don't remember when he died.

I will be 66 in Feb. and I knew Jeffery Graham from that time I was old enough to take the cattle to the pasture.

Q. What was the color of Mr Jeffery Graham?

A. He was about the color of Mr Theodore there.

Q. What kind of hair did he have?

A. About like Mr Theodore's.

(19)

Q. What kind of people did he associate with?

A. The very best there and the best people from South Carolina of the white race. Mr Wallace Ruff used to get his dinners there when he would come up.

Q. Did you know whether or not he paid taxes?

A. I know that he owned a good farm up there on Avery's Creek and I suppose he paid taxes.

Q. State whether you were on the election grounds and recollect seeing him there?

A. Yes I have seen him on the election ground several times.

CROSS EXAMINATION

Q. You say you knew Jeffery Graham? A Yes.

Q. Did you know Lewis Grimes? A. Yes. He lived right close to where I lived, on my side of the river.

Q. Lewis Grimes, was he darker than Jeffery?

A. No sir; about the same complexion, as near as I could tell.

Q. In those days it was generally reported that they were negroes?

A. No sir; it was generally understood by them and others that they were of Portuguese descent.

Q. You never heard that they had negro blood in their veins?

A. Yes, I have heard that, and I have also heard that +
+++++ had negro blood
in their veins.

Q. The whole country is mixed up with negro blood here?

A. No sir, I don't say that.

Q. Back in the lifetime of Jeffery Grimes, I ask you if it was not generally reported that they were free negroes

94

A. I never heard that until somebody would get mad with them and say ~~that~~ something of that sort.

Q. They did say it then? A Yes.

Q. Don't you know that they were excluded from the muster rolls? A. No sir.

Q. Did you know James Graham? A. Yes.

Q. He was a great deal more darker than Theodore and he had curly or kinky hair?

A. I never noticed his hair.

Q. Did you know Tom, the brother of Jeffery? A Yes.

Q. He was black?

A. I don't know that there was much difference.

Q. Wasn't he much blacker than Theodore?

A. I don't remember that he was.

Q. He had kinky hair?

A. I never examined it.

Q. How old are you? A. Sixty-six in February.

Q. Jeffery Grimes died in 1855?

A. Yes, about that time, it was before the war.

Q. Do you know Mary Tayburn?

A. Yes, she staid at my mother's and I am well acquainted with her.

Q. She was an elder sister of Theodore? A Yes.

Q. How old is she? A. Up in eighty.

Q. What is her condition?

A. She is in very bad health.

Q. She is a dark woman?

A. Yes, very dark complexioned.

Q. Don't you know that she has the appearance of having negro blood in her veins?

A. I could not say that there was an appearance-- I un-

75-

(21)

derstand that a negro is black.

Q. You can't tell the difference between a white man and a mulatto or man of negro descent?

A. No not where they are right w light mulattoes.

Q. Don't you think that if you were genuinely sober and looked at a man you could tell whether he was white or a negro?

A. I think I am sober.

Q. You drink a good deal of liquor?

A. No sir.

Q. How many times have you been indicted in the Courts for crimes?

A. I am indicted in this Court for a little affray with Noah Prady.

Q. You were never indicted in any Courts anywhere else?

A. No sir.

Q. Wern't you indicted in South Carolina?

A. No sir; I was bound over before a United States Commissioner, and the pistriect Attorney said that he had no testimony against me and dismissed it. The Commis-sioner said that he had no evidence; but there was some counterfeit money passed on Mr Rankin .I did not go to S. C. but I came to Greenville and Mr Ducker was charg ed with it, and they were holding me because he was along with me; but Mr Ducker had his trial and proved by the best men in Buncombe County that he was not here

Q. You were not tried in that case? A. No sir.

RE DIRECT EXAMINATION

Q. I ask if the District Attorney did not get up and say that he had no evidence against you?

26
A. Yes, the pistriect Attorney said that he had no evi-

dence in the world.

Q Counsel asked you about the appearance of those people, whatx kind of features did they have?

A. Mr Theodore Graham is about like them

Q. Did they have any of the features of the negro?

A. I could not tell it if they did.

Q. They claimed to be of Portuguese descent?

A. Yes, I could not tell what they were.

S. B. BISHOP, sworn for plaintiffs testified:-

Q. What is your name? A. S. B. Bishop.

Q. How old are you? A. Sixty-one past.

Q. Where do you live? A. On Avery's Creek in this County.

Q. How far do you live from Theodore graham?

A. About a mile and a half I think.

Q. How long have you known Theodore graham?

A. I have known him about fifty-six years.

Q. Do you know his brothers?

A. Yes, I knew all of his brothers, have seen them.

Q. Did you know Lewis Graham?

A. I have saw him but I was not as well acquainted with him as I was with Mr Jeffery.

Q. What people have those people associated with from the time you first knew them?

A. I have heard Milus and him and Theodore tell that their ancestors told them that they were Portuguese.

Q. How have you heard say that?

A. Jim, Milus and Theodore.

Q. What people did they associate with?

A. They associated with the whites, because there was nobody else there to associate with.

Q. How did they associate with them.

A. They neighbored; received accommodations and accommodated, and were at the log rollings and corn shuckings. They were good neighbors, honest, and when they were attending log rollings or corn shuckings there was no distinction made.

Q. How about their eating?

A. I never saw any of them eating away from home.

Q. Did they eat at white people's houses?

A. The best men in the County did not know any more than to eat with them.

Q. Which Grahams did that?

A. Jeffery's people and Theodore's family.

Q. Are you old enough to remember whether Jeffery associated with the whites?

A. Yes, to be sure.

Q. He died in 1855, state what you know about it?

A. I was five years old when my father moved to North Carolina and he settled down by them and I remember seeing old uncle Jeffery and being with him, and when I was a boy I would follow him around on the mountains and was at his sale after he died.

Q. Do you know with whom Jeffery Grimes Associated

A. Yes, I have saw him at the neighbors' houses and ~~and~~ I have seen him at my grand father's house; I was a good big boy when he died.

Q. Did he associate with the whites regularly, he and the other Grahams?

A. I would go to church with my mother; we had an old log church and old uncle Jeffery was always there, a very conspicuous attendant at the church.

Q. Did preachers stop at his house?

A. I was a small boy and I remember seeing the preacher at his house; his home was the preacher's home while there.

Q. Were they white preachers?

A. Yes, there was no other kind of preachers there.

Q. Did he pay taxes?

A. Yes, he had a large farm there and was a man of considerable property.

Q. That was in slavery times? A Yes.

Q. When slavery was in full force and effect?

A. Yes.

Q. What color was old Jeffery?

A. He was a darker man than Theodore but he was not as dark as James.

Q. How was his hair? A. Dark and curly.

Q. Was it kinky? A. No sir, it was like Theodore's.

Q. What kind of features did he have?

A. He was a sharp nosed man; he was a man who favored old man Theodore and old man Jimmy.

Q. What kind of lips did he have?

A. Thin lips.

Q. Did he have the appearance of a negro?

Objection by defendant on the ground that that is the question at issue. OBjection overruled and the defendant excepts.

A. No sir; he had the appearance of an Indian and not a negro.

Q. Are you acquainted with the appearance of the Portuguese? A. No sir; I never saw one.

79 Q. Did you mean to say that he looked like a pure blooded Indian? A. I mean that he was copper colored and re-

minded you of an India.

Q. Was he black, brown or copper colored?

A. He was copper colored; he was not black at all.

Q. What was the business of Jeffery Graham?

A. So far as I remember now he was a farmer.

CROSS EXAMINATION

Q. How far did you live from old Jeffery Grimes or Graham's homestead?

A. About two and a half or three miles.

Q. You have no young children?

A. No sir; they have all gone and scattered.

Q. And for the past several years you have had no young children of school age?

A. No sir; I have got no children at all under me.

Q. You have heard all your life of this impure strain of blood in Jeffery and Lewis Grimes's people?

A. Yes, I have heard talk that they were mixed blooded; I have heard a good deal of gossip that they had negro blood in them.

Q. Hasent the feeling been such, the feeling that these people had negro blood in them, that Mr. Shipman, under direction of the school committee, taught a school there for them?

A. Yes, he taught a school for them in my understanding.

Q. And it was a school that was known as a colored school and the white children of the community did not attend that Shipman school?

A. I understood that some of the white children attended it.

Q. That school was established there in order to avoid this racial feeling existing there, on the part of the

50

white people against the Grimes family?

A. Probably it was; I don't say.

Q. You say that Jeffery Grimes was-- he was not a caucasian, was he a pure blooded white man?

A. No sir; I think not.

Q. Do you know Mary Tabor?

A. Yes, I have known her most of my life.

Q. She is a sister of Theodore's?

A. Yes.

Q. What was her color? A. Dark, she and Jenny was the darkest ones in the family.

Q. Tom Grimes went off as a servant of Dr. Fletcher's?

A. I don't know that that is so.

Q. Did you know old man Lewis, the brother of Jeffery?

A. He lived in another settlement.

Q. What was his color?

A. As well as I recollect, he was more of a brighter copper color than uncle Jeffery.

Q. I ask you if Jeffery Grimes hair, to say the least of it, was not black and curly? A. Yes.

Q. And Lewises was that way? A. Yes.

Q. Did you know Felix? A. No sir.

Q. Did you know Milus? A. Yes, Milus was brighter than Theodore, he was freckled.

Q. How about his hair? A. It was something like Theodore's is my recollection, though he had more hair than Theodore has now.

Q. Don't you know as a fact that these children of these people have not attended the regular white schools in that community since the war?

(27)

A. They have not been to school since to my knowledge. There are two districts and I live down at the lower district near the French Broad, and there is where I send my children.

Q. Isn't it a well known fact that this Mr Shipman taught that school up there as a colored school?

A. He taught a school for the Grahams, but whether it was a colored school or not I don't know.

Q. And Mr Ducker taught schools there for the Grimses?

A. That is my understanding.

Q. Do you know who Jeffery married?

A. I was told that he married an Estridge.

Q. She was a white woman? A Yes. His mother was an Estridge.

Q. She was a white woman? A. Yes.

Q. Jim was darker than Theodore?

A. Yes and him and Mary was the darkest ones of the family.

Q. And his hair was dark and curly? A Yes.

Q. Which was the darkest Mary Tabor or Jim?

A. I think she was the darkest.

Q. She is a good deal darker than Theodore?

A. Yes.

Q. And Jim was darker than Theodore?

A. Yes and Milus was brighter, and another one of the younger ones was brighter.

Q. It has been the reputation in that community for a number of years that these people had negro blood in them? A. I have heard that, but I have heard it disputed; I have heard it reported and disputed.

RE DIRECT EXAMINATION

Q. Do you know this photograph, do you know who that it?

A. That is Milus Graham.

Q. Is that a good representation of Milus Graham?

A. Yes, I never saw the picture before.

Q. Milus was a brother of Theodore? A Yes.

Q. Milus you say was the lightest?

A. Yes, he was lighter than Jimmy and Mary, they were the darkest ones in the family.

Q. Mr Murphy asked you if they were not kept out of the schools up there on account of feeling, I ask you if the people out there did not almost uniformly petition that these Graham children be admitted into the public white schools?

Objection by defendant. Sustained, question and answer ruled out and the Plaintiffs Except.

Q. Do you know the general character of Theodore Graham?

A. Yes.

Q. What is it? A. It is good.

Q. Do you know the general character of Robert Gilliland? A. Yes.

Q. What is it? A. It is good.

JOEL INGRAM sworn for plaintiffs, testified:-

Q. How old are you? A. Sixty the 5th of last June.

Q. Where do you live? A. In Averys Creek Township in this County.

Q. How long have you lived there.

A. My father Dix moved there in 1857, that would make forty some odd years.

Q. You did not know Jeffery Graham?

A. No sir, he died before we went there.

Q. You know Theodore Graham? A. Yes.

Q. You know his descendants there? A. Yes.

Q. Who did they associate with there?

A. They associated with white people; I never saw them associate with anybody else.

Q. How did they associate with white people?

A. They attended the public gatherings; I have seen them at church together with white people and I have seen them at the same table with white people and I never seen or heard any objection made.

Q. And you have lived there how long?

A. My father moved there in 1857, and I have been living there forty ~~years~~ odd years.

Q. You have been living there forty-eight years?

A. I was born in 1845.

Q. You have been living there then 48 years? A. Yes.

Q. Have you known these people all that time?

A. Yes, they were the first people I got acquainted with when we moved there.

Q. What schools did they go to?

A. I could not say that they attended any of the public schools, they are not in my district; they are in the upper district and I belong to the lower district.

Q. Do you know the general character of Theodore Graham? A. Yes.

Q. Do you know the general character of Robert Gilliland

A. Yes.

Q. What are their general characters? A. Good.