

CROSS EXAMINATION

Q. You never saw Jeffery Graham? A. No sir.

Q. You never saw Felix? A. No sir.

Q. And you don't know anything about their habits of attending school?

A. No sir; that is not in my district.

Q. As a matter of fact there is hardly a pure blooded African in Averys Creek Township?

A. Yes we have got four or five Africans in Averys Creek township.

Q. Not where they live?

A. No sir, down where I live, not where they live, but there have been Africans lived up there where they live to my knowledge.

Q. Don't you know that it has been the reputation of these Grimses or Grahams ~~that~~ there for the past thirty years that they had some negro blood in their veins?

A. As to myself, I can't say, but it has been claimed that they are mixed blooded people. That is what I learned when I first went there, that that was the understanding.

Q. And that reputation has continued from that time on?

A. Yes, up to now.

Q. Do you know Mary Tabor, sister of Theodore?

A. Yes, she is reasonably dark; she is a little darker in complexion.

Q. Did you know Jim? A. Yes.

Q. Was he a brother of Theodore? A. Yes.

Q. Was he bright or dark? A. He was a little darker than Theodore.

Q. Did you know Milus? A. Yes.

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

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Q. Was he lighter or darker? A. He was somewhat lighter

Q. Did you know Thm? A Yes.

Q. Was he lighter or darker than Theodore?

A. I think he was not quite as dark as those others, but I don't think he was as light as Milus.

Q. Did you know the women Gensey and Eliza?

A. No sir; not of that family.

Q. Did you know the one of them that married an Evans?

A. I never seen her; that was Phosbe I understand.

Q. Milus worked about Asheville a good deal didn't he?

A. I have no knowledge of his working at Asheville at all. He worked at Biltmore and got killed out there.

Q. That was in comparatively recent years?

A. Yes, it was about ten or twelve years ago I think.

Q. He was working for the Vanderbilt Estate at the time?

A. I don't know; he was working at the blacksmith shop either for himself or somebody else.

Q. How long since Jim died? A. This last summer past.

Q. Did Jim work about Asheville any within your knowledge?

A. Not within my knowledge; he was very old, away up in eighty.

Q. In the light of what you said, your lack of knowledge, do you remember when Shipman had a school up there?

A. Yes, I remember.

Q. And when Mr Ducker had that school there?

A. Yes, I was not there, but I have knowledge of it.

Q. Knowledge as a committeeman or as a citizen,

A. That was not in my district; I had nothing to do with that.

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Q. You say that they were reported to be mixed blooded, how did you understand that that they were mixed with negro blood?

A. That was what was said when I went there.

Q. What kind of mixed blood?

A. I don't know what they meant whether they meant negro blood or not.

Q. You have never had any conversation with them on that subject? A. No sir.

Q. You don't mean to say they were mixed with negro blood or some kind of foreign blood?

A. I was told when I went there that they were mixed blooded, but I don't know whether they were mixed with African, Portuguese or what.

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Q. You saw awhile ago in response to a question, that when you went there you heard that they had negro blood in their veins?

A. No sir; I said that they were mixed blooded people.

Q. You did say in response to my question awhile ago, that when you went there you heard that they were mixed with negro blood?

A. I don't know, but that is not my recollection.

RE RE RE DIRECT EXAMINATION

Q. If you said that you corrected it?

A. Yes, I don't remember anything about it.

BEN JULE ALEXANDER sworn for plaintiffs, testified:-

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Q. How old are you? A. Going on 78.

Q. Where did you live before you moved to Asheville?

A. Near the Long Shoals.

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

Q. Did you know the Grahams, his descendants?

A. I knew some of them. I knew his oldest brothers Lewis Theodore. Morris and Alexander.

Q. You knew them well?

A. Yes, I went to school with some of them.

What was their appearance with reference to what race they belonged to or were mixed with?

A. They were dark skinned, but I could not tell whether they were crossed with Africans or Indians.

Q. What was your opinion?

A. I thought that they might be crossed with the Indian rather than with the negro, because the children had rather red complexions.

Q. With whom did they associate?

A. With white people generally.

Q. Did they ever associate with you?

A. My father used to hire old Jeffery ~~Graham~~ Grimes to work for him, and he ate at my father's table.

Q. With whom did they go to school?

A. All the white children in the neighborhood went to school with them.

Q. What school was that?

A. A subscription school at Mount Zion.

Q. When was that? A. About sixty years ago. All the white children in the neighborhood went to school with them.

Q. State whether or not people up there associate with negroes on terms of equality?

A. I don't think so, as far as I know.

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Q. What kind of features did they have?

A. They were dark complected and some were darker than others.

Q. What kind of features did they have?

A. Their noses were bent and their lips were thin like those of white people.

Q. State whether or not they had any of the marks of an African or negro?

A. I could not say; I thought if they were crossed at all they were crossed with the Indian.

Q. But you could not say whether they were crossed with any foreign race or not? A. No sir.

Q. Do you know whether Jeffery voted and paid taxes.

A. I could not say about his paying taxes; but he had one of the best farms on the river and I suppose he paid taxes.

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Q. How long ago was it that you spoke of?

A. About sixty or sixty five years ago; I don't think I was more than ten or twelve years old.

Q. Did you ever know them after that?

A. No sir, not much after that, because he sold out to Johnson and moved ~~from~~ ^{to} Avery's Creek.

Q. Did you know Lewis?

A. I knew him when I saw him but that was about all; I did not know anything about his family. He lived across the river.

Q. Jeffery was a great deal darker than Theodore.

A. I could not say about that it has been so long ago.

Q. So you can only speak of the impression their features made on your mind sixty odd years ago?

A. Yes, but I have seen them several times since.

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

Q. And you knew little of Lewis?

A. Yes, I knew him when I saw him.

Q. Do you know any of the brothers and sisters of Theodore?

A. Yes, I knew the three boys, Milus, Thomas and Theodore.

Q. Do you know when Thomas was killed during the war?

A. No sir.

Q. Do you know in what capacity he went to the war?

A. No sir; I do not know that he went to the war.

Q. To how many schools did you go with Jeffery?

A. I don't remember to have gone but one session; we had very few schools in those days and had to walk three miles.

Q. You can recall the appearance of Jeffery's hair?

A. No sir.

A. And you can't recall with accuracy the features of any school fellow that long ago?

A. No sir, I could not of the others but I have seen them since.

Q. You don't recollect Jeffery?

A. Yes, I only remember that he was a dark man and a rather large man.

Q. You knew that he was not a pure blooded Saxon?

A. No sir, he looked like he was mixed blooded.

Q. You can't undertake to say whether his hair was curly or kinky or not? A. No sir.

Q. But you know that his skin was dark enough to make an impression on your mind?

A. Yes, that he was a colored man.

90 Q. Did you know Milus? A. Yes. I think I knew Milus, James and Theodore and Thomas. Thomas was youngest. My

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father used to get the old man to come and mow for him. I don't know that I was ever in the old man's house, but he lived about two miles from my father's house.

Q. Did you know Rosanna? A. I don't know.

Q. Did you know Phoebe? A. I don't know for certain that I did.

Q. Was one named Jensey? A. Don't know.

Q. Do you think there was one named Elila?

A. Yes, I think that was one I went to school with.

Q. Did you know Milus when he worked at Biltmore as a Blacksmith?

A. I did not see him.

Q. Do you know whether Tom worked about Biltmore or Asheville? A. I don't remember Tom being here. I have stopped at their house occasionally and asked about their seeing any stray cattle.

Q. Do you remember Jim?

A. Yes I knew James better than any of the others, he worked for me quite awhile.

Q. What was James' color? A. He was pretty dark; darker than any of the others I think except possibly Tom.

Q. What was the color of his hair?

A. Wavy and black and I think he had a prominent nose and thin lips.

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Q. Do you recollect the features of Jeffery Graham?

A. No sir, I could not tell now how he looked; I remember large that he was a pretty ~~dark~~ man and that he was of dark color.

Q. You don't recollect how his features looked?

A. No sir.

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I was quite a little boy.

Q. You say you knew Jim better than any?

A. Yes, because he worked for me.

Q. State whether Jim had the appearance of having been mixed with Indian or Portuguese blood?

A. He was a pretty dark man, but I don't know who he was mixed with.

Q. What would be your opinion if you expressed one as to what he was mixed with?

A. I think he looked like he had Indian blood in him, he looked more like he was mixed with Indian blood than with negro blood.

MRS M. C. KING, sworn for plaintiffs testified:

Q. Who was your father? A. Merritt Graham.

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

Q. What akin was Milus Graham to Theodore Graham?

A. Brothers.

Q. Have you gone to school with white children? A. I have.

Q. Have you associated with white people? A. Yes.

Q. Have you been recognized as a white woman? A. Yes.

Q. Have you ever associated with negroes?

A. No sir indeed.

Q. Are those your children?

A. The three in pink are.

Q. Those three are your children? A. Yes.

(Plaintiffs offer in evidence for the inspection of the jury these three children.)

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Q. Where do you live? A. On Flint street in Asheville.

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Q. Where is your husband from? A. Turkey Creek.

Q. Your husband of course is of white family?

A. Yes indeed.

Q. What is your husband's name? A. Lon King.

MRS G. H. CLAYTON sworn for plaintiffs, testified:

Q. You are Mr Josh Clayton's wife? A Yes.

Herritt

Q. Whose daughter are you? A. ~~Therndax~~ Grahams.

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Q. Have you ever gone to white schools?

A. Yes they were all I ever went to.

Q. Where did you go to white schools?

A. To some on Avery's Creek and some on Turkey ~~x~~ Creek.

Q. Is this your little girl? A. It is my little boy.

Q. Are those your sisters? A. Yes.

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Q. Who was your father did you say? A. Merrit Graham.

Q. You say you live on Avery's Creek?

A. Yes when I was little.

Q. How long did you live there?

A. Until I was ten or eleven years old I guess.

Q. Did you go to school to Mr Shipman there? A. Yes.

Q. Did you go to school to Mr Ducker? A. Yes.

Q. Which Clayton is your husband? A. G. W. Clayton.

TOM J. GRAHAM sworn for the plaintiffs testified:-

Q. What is your name? A. Thomas J. Graham.

Q. Where do you live? A. In Madison near Marshall.

Q. In what township? A. No 1 township.

Q. How long have you lived in that township?

A. Twenty or twentyone years.

Q. Who did you marry first?

A. I married a woman-- my wife was raised in Madison County.

Q. Were you married twice? A. Yes.

Q. Who was your second wife? A. She was a Price.

Q. Where was she from? A. Raised there where I live now

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

Q. What do you do now? A. I am generally at work in the Baptist Association.

Q. Are you a minister of the gospel? A. Yes.

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Q. What church are you pastor of?

A. The Baptist Church at Bat Creek in Madison County.

Q. Is that a white Baptist church? A Yes.

Q. Are you a member of the Baptist association? A Yes.

Q. What other position do you hold in the Baptist Church?

A. I was for a year working as an evangelist in the Baptist Association, and I have been an officer in the Sunday school fifteen years nearly all the time. I have been superintendent or Assistant Superintendent and also choirster, and also in our church I have taught several singing schools.

Q. Were you in the Spanish -American war? A Yes.

Q. In what capacity did you serve?

A. I was in the second regiment of North Carolina, second corporal.

Q. Who was your Colonel? A. Col. Burgwyn.

Q. Were you also in the Regular U. S. Army? A. Yes.

Q. How long did you serve in the United States Army?

A. Eight years.

Q. You were with a white Regiment? A. Yes.

Q. Were you in action in the Philippines?

A. Yes we had some skirmishes that were on record, and we also had some skirmishes that were not serious enough to put on record.

Q. How much did you travel? A. I was in the Philippine Islands, and in the Cuban and in the Hawaiian Islands.

Q. Did you come in contact with various races of the world? A. Yes, quite a number.

Q. Did you come in contact with the Portuguese? A. Yes

Q. Were you honorably discharged from the U. S. Army?

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A. Yes with an honorable and courageous character.

Q. Were you honorably discharged from the American Spanish war? A. Yes.

Q. Have you ever heard any tradition in your family as to the people from whom you were descended? A. Yes.

Q. Who made those declarations?

A. I heard them through my father and from my brother.

Q. Have you ever heard from any member of the family who are now dead? A. I don't remember that I have.

Q. Have you always associated with white people?

A. I never associated with anything else if I know it.

Q. Have you any children? A. Yes.

Q. How many children have you? A. Four now living.

Q. Are they here? A. My girl is in the Home Industrial. who was on the stand here this morning, and my baby child is at my niece's. I don't know where my oldest son is; the last time I heard of him he was in Asheville. Where he is right at present I don't know.

Q. Any of your children here now? A. Yes one.

Q. Is this your child? A. Yes.

Q. What relation to her is Theodore Graham?

A. Theodore Graham is her grand father.

Q. Did you ever hear your uncle Milus make a statement as to the race from which you were descended?

A. I never heard uncle Milus make a statement as I remember as to what race of people we belonged to, but I have heard uncle Milus deny that there was any African blood in our veins...

Q. Did you ever hear any of your other uncles who are dead say anything about it?

A. No sir, I don't remember that I ever did.

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Q. Did you ever live on Averys Creek?

A. I lived on Averys Creek but I lived there before I was grown.

Q. How old were you when you lived there?

A. I was near fifteen years old, don't think I was 16.

Q. What was the maiden name of your mother? A Wells.

Q. Did you ever go to school on Averys Creek? A. No sir

Q. You mean to say that you did not go to school at all until you were sixteen years old? A. Yes.

Q. Where did you go to school?

A. I never went to school. I attended ten days at a singing school, then I got some books and was able after awhile to teach a singing school. What education I have got I got myself.

Q. Why didn't you go to school up there?

A. I left there when I was very small and have not had an opportunity since.

Q. Why didn't you go to school during that time?

A. Before I was sixteen, I was probably eight or nine years old, there got up a kind of hardness between my folks and one of the school committeemen, as well as I remember, I think he was a school committeeman. As to the trouble raised between the School Committeeman and my uncles which are dead over a fence, and then it was I heard it said that there was negro blood, and it came through that family which was at hardness with my father's brothers; so I have not made that my home since.

Q. Because of this reputation of this blood you left there?

97 A. Yes that was one of the causes by which I left. Every where else I went I heard nothing of the kind, I was in good society as anywhere.

Q But because of this reputation you did leave there?

A. Yes.

RE DIRECT EXAMINATION

Q. You say this trouble arose over a fence? A Yes.

Q. How did that trouble arise about the fence?

A. The first I knew of the trouble was that I was out rabbit hunting up there, and I think it was Merrit or one of his brothers had ~~put~~ ~~xx~~ ~~xxxxxx~~ cut a tree across Mr Lance's fence.

Q. Was that a line fence between ^{him} ~~you~~ and your father?

A. Between my uncle and Mr Lance.

Q. What Lance? A. John Lance, and that was the first I ever heard of our having African blood in us.

Q. Did you ever heard anything as to this ~~xx~~ African blood--

A. No sir but after that trouble over the fence it has continued this thing.

Q. Was Lance a School Committeeman?

A. Yes, I think that he was. And so after that we had a good deal of trouble as boys, the larger boys. I think that uncle Minus's boys got into trouble with those people that lived on the Creek above us, and the line fence was between my uncle and them,

Q. How old were you? A. Seven or eight years old.

Q. How old are you now? A. Forty the 29th of next March.

MRS J. C. LANCE, sworn for the plaintiffs testified:-

Q. Where do you live? A. On Averys Creek.

Q. Who is your husband? A. James Lance.

Q. He is the gentleman spoken of as Superintendent of that Sunday school up there? A. Yes.

Q. Please state whether these children go to that school

and who they associate with?

A. They associate with my children and the other white children of that section.

Q. Do you visit their houses? A. I have.

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Q. What was your maiden name? A. Stradley.

Q. You spoke of this Sunday school, is that a day school building? A Yes.

Q. Do you know about the schools that were taught up there by Mr Chapman and Mr Ducker? A. No sir.

Q. You did not live in that neighborhood at that time?

A. No sir; I recon not.

Q. You have heard the reputation there in the community discussed among people that these people unfortunately had colored blood in them, you have heard that frequently in the neighborhood?

A. Only a little talk, not much.

Q. How long have you lived in that immediate neighborhood? A. About 26 years.

Q. You were in that neighborhood then when Mr Ducker and Mr Shipman taught weren't you?

A. I don't have any recollection of Mr Shipman teaching at all.

Q. Do you have any recollection about Mr Ducker teaching?

A. Not much.

Q. Do you recollect anything of the statement that there was a school being taught there for the Grahams or Grimses? A. No sir.

Q. Do you know Mary Tabor? A. Yes I have saw her.

Q Her hair is very black and wavy? A. I don't know.

Q. Her skin is very dark? A. Yes rather dark.

Q. She is a good deal darker than Theodore?

A. Yes some.

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Q. Did you know James Graham or Grimes? A. I have saw him.

Q. His skin was quite dark? A. Yes he was rather dark.

Q. His hair was wavy?

A. I don't know; did not examine it to see .

Q. You could see without any examination?

A. I just don't recollect.

Q. Did you know any of the other boys except Theodore and James.

A. I knew Milus a little; I remember seeing him a little

Q. You say you ~~had~~ have heard talk there in the neighborhood by the people that Jeffery Graham's descendants and Lewis Graham's descendants were mixed blooded?

A. I don't know; they were old people and were gone before I came on the Creek.

Q. There has been talk as to the present generation, Theodore and the others?

A. It seems to me that I have heard a little talk, not much.

RE DIRECT EXAMINATION

Q. That talk did not amount to enough to keep you from associating with them? A. No sir.

Q. Who is your father? A. Mr Thomas Stradley.

Q. What relation are you to old Father Stradley?

A. Preacher Stradley was my grand father.

HORACE E. GRAHAM sworn for the plaintiffs, testified:-

Q. What is your name? A. Horace Graham.

Q. Who is your father? A. J. B. Graham.

Q. Whose son is he? A. Son of Milus Graham.

Q. What have you been doing for the past three months?

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A. I have been clerking in a Lunch Counter.

Q. What Lunch Counter? A. The Palace Lunch room.

Q. You owned the Palace Lunch Room?

A. Yes, I owned it for about five months.

Q. Do you know Prof. A. C. Reynolds? A Yes.

Q. How came you to meet him? A. I went to school with him.

Q. Where? Cop. Academy.

Q. How long did you go to Prof. Reynolds?

A. As well as I recollect two terms.

Q. And the question of race was never raised?

A. No sir never heard of it.

Q. Have you had any other association with Prof. Reynolds at any other time? A. At the school and in the association.

Q. You never boarded with him?

A. No sir. I have a cousin who boards at the same place where he boards.

Q. Whom do you associate with? A. White people.

Q. Do you have any lady friends that you associate with here? A. Yes, at times.

Q. Do you know of any of your generation ever having associated with negroes at any time?

A. Never did in a social way.

CROSS EXAMINATION

Q. How long have you lived in Asheville?

A. The last time I think has been about five or six years.

Q. Did you ever live on Averys Creek at all?

A. When I was very small possibly when I was a baby but I have no personal recollection of it at all.

Q. Did you know Milus Graham, did you ever associate

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with him? A. I cantrecollect him.

Q. Did you ever see James Graham?

A. I cant recollect him, I was only a baby when I was there.

Q. You say you went to school to Prof. Reynolds? A Yes

Q. He was a mighty good teacher? A Yes.

Q. A mighty fine man? A. Yes I liked him very much as a teacher.

Q. You say you did not know Milus Graham at all?

A. No sir, have no recollection of him.

Q Did you know Jeffery? A. No sir.

Q. Had you ever heard of what blood jeffery Graham was, did you ever hear that he had some colored blood in him?

A. I did not know that there was a Jeffery Graham until a month or two ago.

Q Did you ever hear before this litigation about this particular case anything about these ancestors of yours, Lewis, Theodore and Milus having colored blood in them?

A. Yes I have heard it spoken of in the family that somebody had talked it. It has not been talked about much that I know of The usual way I heard it was possibly some trouble would arise some way with somebody and the next thing you would hear was that; that was about the only time I heard it.

Q Your family is cognizant of the fact this unfortunate state of facts, spoken of? A. I have heard it spoken of.

J. J. GRAHAM, sworn for plaintiffs, testified:-

Q. Where do you live? A. In Madison County on Spring Creek.

Q. How long have you lived there? A. About seven years

Q. What position do you hold in Madison County?

A. I was first Superintendent of the Sunday school three years.

Q. Which Sunday school? A. Missionary Baptist.

Q. That was a white church of course? A. Yes.

Q. What position do you hold now? A. I am only Assistant now.

Q. What position do you hold in Madison County?

A. I am one of the School Committee.

Q. What relation are you to Jeffery Graham?

A. I suppose he was my Grand father. I am a son of Milus

Q. Who served on the Committee with you in Madison County? A. Mr Peter Foreman, formerly of this county and Mr Cope Ledbetter.

Q. What kind of a school Committee is that?

A. White public school No 8 District; I am Clerk in the Baptist Church.

Q. Who did you first marry? A. Married an Embler.

Q. Where did she live? A. In Leicester township.

Q. Whose daughter was she? A. Emma Embler's daughter.

Q. Whom did you marry the second time?

A. The widow Hipps; she was a Freeman.

Q. In what County? A. I married her in Madison County, but she was raised up here at the Long Shoals.

CROSS EXAMINATION

Q. Did you ever live in the Avery's Creek section?

A. Yes, I recon I was born and raised there principally.

Q. How old were you when you left there?

A. I suppose 21 years old.

Q. You lived in the immediate neighborhood of where Theodore Graham lives now? A. Yes, lived on the same farm.

Q. Did you attend the public schools there at all?

A. No sir, not at Averys Creek.

Q. There were public schools in that community? A. Yes, but I did not attend them.

Q. Did you attend any school? A. Yes.

Q. Where? A. I want to say this: We was always a little kind of easy natured kind of people, never wanted to hurt any ones feelings at all; and we did not insist on ^{races} going to the school on this ground I think that all except Anglo X Saxons were barred; we felt a little timid. The old man and Jimmy told me they were of Portuguese

descent and I thought they were debarred from the schools and I did not feel like forcing myself on them, therefore I went down about fifteen miles below here and went to school ten months to John M. Davis, a graduate of Wake Forest; that was about all the schooling I ever got.

Q. Did you ever teach school up there? A. Yes.

Q. That school, was taught for the Grahams?

A. Yes it was taught for the Grahams.

Q. It was a school that you knew was established for the Grahams?

A. I don't know about established. Along about that time I was pretty young and I never took it upon myself to go and see if any different schools were established or not. I came here to Asheville and got a certificate and taught because my finances were low. There was a negro up there about half a mile from us but there was no negroes in the school. If there was any other negroes around there I don't remember them now.

Q. Under what grade did you teach that school?

A. It had to be taught under the colored schools, I had to make out my report on the colored school form.

Q. Those forms were given you by the School Committee?

A. I did not recognize it as a colored school; I only taught it under the head of a colored school to get my money. When it came to the vouchers, as well as I remember, it had to be under the colored school, to get my money.

RE DIRECT EXAMINATION

Q. Did any negroes go to that school?

A. No sir.

Q. Did you or any of your generation associate with any negroes there?

A. No sir; we were always recognized with the best people. We ate with them and slept with them and was recognized as white by the best people.

A. THEODORE GRAHAM sworn for plaintiffs, testified:-

Q. What is your name? A. Adolphus Theodore Graham.

Q. What was your father's name? A. Jeffery Graham.

Q. How long has your father been dead?

A. He has been dead fifty years.

Q. How old were you when he died? A. Twenty-one.

Q. You recollect your father well? A. Yes.

Q. What was the color of your father?

A. He was a shade darker than I am.

Q. What kind of hair did he have?

A. He had hair darker than mine, and not far from mine as to straightness.

Q. What kind of features did he have?

A. He had about the same kind of features that I have got

Q. What kind of mouth and lips did your father have?

A. He had thin lips; just the appearance of anyone else.

Q. What kind of a nose did he have?

A. He had a sharpe nose .

Q. State what your father,s appearance was?

A. He had every appearance of a white man;only his skin was a little shade darker than my own; his features were simply very nearly my own.

Q. How old was your father when he died? A. Seventy-two or seventy three.

Q. With whom did your father associate?

A. He associated with the white people and the best class of white people.

Q. What other race did he associate with on terms of social equality.

A. I never knew him to associate with the black race or with a low down class of white people.

Q. State whether you ever heard your father say from what race of people x he was descended?

A. I frequently heard him say that he was descended from the Portuguese.

Q. Did you ever see a Portuguese? A. No sir.

Q. State whether your descendants or any of your people ever associated with negroes?

A. No sir.

Q. What people have you always associated with?

A. I have always associated with the white people.

Q. How many brothers did you have?

A. I was the fourth son. I had three brothers.

Q. What was their names?

A. James Rufus, Milus Washington, and Thomas Jefferson;

the last named lost his life in Tenn.

Q. Were theyball your own brothers? A Yes.

Q. State whether or not you had a brother named Felix?

A. No sir; I had no brother Felix.

Q. Were you ever in the Army?

A. I served a little while in the Confederate Army.

Q. Whose company were you in?

A. Capt. U. B. Thrash's. Company.

Q. Were you in there as a white man or as a colored man?

A. As a white man of course.

Q. Who did you associate with in the army?

A. Generally with the boys in the company.

Q. Were you ever excluded from their association?

A. I never was.

Q. What other brothers did you have in the army.

A. James went into the army too.

Q. Where does he live now? A. He is dead.

Q. What other brothers did you have in the army?

A. My brother Thomas served in the confederate army.

Q. Why did you leave the army?

A. My brother took down sick at Raleigh in this State and I was permitted to bring him home.

Q. Did you ever see that before, (presenting paper to witness)? A. Yes.

Q. Where did you find this paper?

A. I got it at Raleigh.

Q. How long has it been in your possession?

A. Ever since the civil war.

Q. Did your father vote before the war?

A. I expect he did. I was only 21 the winter he died and

I paid but little attention to politics.

Q. State whether you ever knew him to go off to the elections?

A. Yes, I have known him going off to the elections frequently, whether he voted or not I do not know.

Q. State whether he paid taxes as the other citizens did? A. Yes there are plenty of old tax receipts among his papers.

Q. State whether or not your father was ever excluded from associating with white people?

A. Never that I know of.

Q. What old citizens did he associate with in the neighborhood?

A. Samuel Johnson, all the Johnsons, A.H. Johnson, Newton Alexander.

Q. Who was Newton Alexander?

A. He was the father of this gentleman who was introduced as a witness to-day.

Q. Where did you find this paper?

A. I found it in my father's old papers.

Q. Do you know who Charles Moore was?

A. Yes he was an old gentleman who lived on Hominy.

Q. What akin was he to Judge Charles A. Moore?

A. I am pretty certain he was his grand father.

Q. Where did Mr Charles A. Moore live then?

A. Lived on Hominy.

Q. How far from Averys Creek?

A. Seven or eight miles from where my father lived.

Q. Did you know Felix Graham?

A. I think I have seen the man.

Q. Do you know his mother? A. No sir.

- Q. Did you ever recognize him as your brother? A. No.
- Q. Do you know who was his father? A. No sir.
- Q. Did Felix Graham ever live with your family? A. No.
- Q. Did you know Mariah Grimes?
- A. No sir, not personally acquainted with her.
- Q. Where did Felix Grimes live?
- A. He called his name Grimes and he lived here in town I understood.
- Q. Was Felix Grimes recognized as a white man or as a black man?
- A. As a black man I think.
- Q. Did you know Mariah Grimes?
- A. No sir; not personally, I would know her face when I would see her on the street.

CROSS EXAMINATION

- Q. Where did you know Felix Grimes?
- A. I think I seen him here and he has been to our house on business I suppose.
- Q. Your father recognized the fact that he was his father?
- A. I never understood it that way.
- Q. How often was he there? A. I recollect only once.
- Q. How long was he there?
- A. I don't recollect. I was young; I don't recollect how long he staid, and I forget what business he came on.
- Q. Can't you recall that he came there but once?
- A. No sir, I don't recollect of ever seeing him there but once. He might have been there more than once.
- Q. Do you know whether your father Jeffery Graham ever worked for old man Joseph Patton?
- A. I don't know.

Q. I ask you if it is not known to your family and known to you that Felix Grimes was your half brother, haven't you heard that in your family, that he was your half brother?

Objection by Plaintiffs. Objection Sustained for the present and the DEFENDANTS EXCEPT.

Q. You knew of Mariah Grimes?

A. I have heard talk of her, but I don't know her.

Q. You have heard that she is the daughter of Jeffery Grimes?

A. I have heard--- Objection by the Plaintiffs. Sustained for the present and the Defendants Except.

Q. Do you know of her associating with James Graham and Milus? A. No sir, I did not.

Q. When was it Felix came to see your father?

A. It was some years ago, I cannot answer when. I was not grown, I was only a boy and I recollect seeing him.

Q. Did he stay all night? A. I can't recollect whether he staid all night or not.

Q. Where was your father living at that time?

A. On Averys Creek.

Q. Will you please state the names of the children of your father?

A. Delila Ann, Phoebe and Jane, James Rufus, Mary, Milus Thomas, myself, Lucilla, Elvira the youngest child.

Q. Which ones of those are now dead?

A. Phoebe, Delilah, James, Milus, Marharette and Rosanna

Q. Which ones are now living?

A. Myself, Vira and Mary.

Q. Did your father have any brothers and sisters that you know of?

A. I have heard them speak of and I have seen uncle Lewis

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Q. Did you ever see your grand father or your grand mother at all on either side?

A. No sir, I never saw them.

Q. Do you know where your father came from to Buncombe County?

A. No sir, but my understanding is that he came from over the mountain, from East of here.

Q. What was the color of Delilah's skin?

A. About the complexion of myself or probably fairer. She married old Billey Hampton, he is dead.

Q. Will you hold up the palms of your hands to the jury?

A. Yes, (witness holds up palms of hands to the jury)

Q. Will you hold up the backs of them?

A. Yes, (witness turns backs of his hands to the jury)

Q. Did you ever see a white man with as dark hands as that? A. I don't know how I can answer that.

Q. Did you ever see a North Carolina white man that had as black hands as that? A. No answer.

Q. As to Thomas, did he go into the war?

A. He served in the Confederate Army.

Q. Didn't he go into the war as old Dr Fletcher's servant?

A. I did not go with him and don't know in what way he served; he rendered service to the Confederate states.

Q. Don't you know that he went as the servant of Dr. Fletcher?

A. I was not present when he enlisted. I don't know whether he bore arms or just cooked, for I never asked him what he did.

Q. You say you had a brother there in the army and you don't know in what capacity he was there?

A. I don't know; I don't say that he was not a cook. I

don't know in what capacity he served.

Q. I believe it has been stated that your sister, Mary Taber was darker than you? A. Yes.

Q. Thomas was darker than you also?

A. There was very little difference in my complexion and that of Thomas.

Q. Do you recollect the appearance of your father?

A. Yes.

Q. How old were you when he died?

A. I was 21 in December and he died in March following.

Q. What was the color of his skin?

A. He was darker than I am. There was not much difference in the complexion of him and Jim.

Q. When you knew him first what was the color of his hair?

A. His hair was streaked with gray though it had the appearance of being black.

Q. Do you recollect the appearance of your immediate uncle Lewis? A. Yes.

Q. What was the color of his skin?

A. There was no difference that I know of between the two brothers' complexions.

Q. Which was the darkest one of the girls your sisters?

A. Mary Taber I think.

Q. Did your uncle Lewis have any children?

A. Yes he had a large family.

Q. Did they live in this Averys Creek Neighborhood?

A. Before the scattered much, they lived awhile in that neighborhood.

Q. Are any of the direct descendants of Lewis living in that neighborhood now? A. No sir.

Q. All that are there now are your descendants?

A. Yes, I think so.

A. All the children of Lewis have scattered?

A. Yes.

Q. How many children did you have?

A. I had eleven children born to me, but some of them are dead.

Q. About when was the first child born to you?

A. In 1866.

Q. Public schools have existed in that community all during the raising up of that family? of children, those that have lived to you? A. Yes.

Q. Have your children ever been admitted to the white public schools.

A. Mr Joel Bishop taught a school there that was a subscription school I think and my children, with the children of the neighborhood went to it.

Q. I ask you if ever during that whole time your children have been admitted to the white public schools in Averys Creek township?

A. I don't recollect that they have, because of the prejudiced feeling towards us.

Q. You have lived there all this time, and your children have never been admitted to the public schools that has existed all during the growing up of your family for thirty or forty years? /

A. My children have gone to other localities and attended. I have a daughter in New Jersey and her children are going to the public schools and the other two are in Madison. My children have never been excluded from the Madison County public schools that I have ever heard of.

Q. They have always been excluded from the Averys Creek Township public schools?

A. My children have been objected to.

Q. You have raised up this family of children and this fact has existed as to your grand children on Averys Creek township?

A. We have until recently submitted, not knowing our rights.

Q. Do you tell me that a man who uses the language you do, and has two of his sons educated, and their being educating their children, and they being deprived of that right, that you were ignorant of the law that pure blooded whites go to the schools?

A. No, sir, not until the recent legislature when I learned that we were entitled to the benefit of public education.

Q. I ask you if Jeffery Graham and your uncle Lewis, to use the language of the law, were not known as "persons of color?" A. No sir.

Q. Do you say to that jury that you have never known that you had the right to the benefit of the public schools of Buncombe County for your children and your grand children until right recently?

A. No sir; I thought nationalities were excluded from the public schools of North Carolina that were not purely white, and that is the reason we have never brought an action for our rights.

Q. Do you mean to tell the jury, you a man who uses that language, that the reason you never took advantage of your rights, and never took action, was that you did not know--

A. Yes.

Q. And you have lived up therein a few miles of Asheville

A. Yes.

Q. And you have known the men of that community and in your life-time you have known all the lawyers of Asheville? A. Yes.

Q. And you never went to them to advise you about it? A. No sir.

Q. You never went to any lawyer or public man to advise you about your rights. No sir.

Q. And you knew that your children and grand children had never been taught in the schools up there recognized as public schools?

A. I don't know sir, there was money appropriated.

Q. Don't you know that money was appropriated for the purpose of having schools for your descendants?

A. Yes that was done though for the purpose of gratifying malice against us.

Q. Then it did not arise from your ignorance, you know it arose from malice?

A. A gentleman came here who had got made, and had the schools separated, is my understanding.

Q. And you knew that that was the result of malice and still you did not undertake to assert your rights against malice.

A. I did not think it worth while.

Q. How do you tell that jury that it arose from malice and then say that it arose from your ignorance that you failed to assert your rights -- which is correct?

A. We did not know our rights, and did not trace up this malice against us for some cause.

Q. Which do you tell that jury was the cause of your having your children and your grand children taught in a school that everybody recognized as a colored school, which do you tell that jury that it was, on account of

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your ignorance of the law or from malice of your neighbors?

A. We did not know our rights, and that is the reason we did not seek redress, by the malice or otherwise, we did not know that we had the right until recent legislation opened our eyes.

Q. Which legislation was that?

A. The last meeting of the General Assembly, that changed the law, making it clearly known by the negro race, and when that was done it let us in. We did not claim to be negroes.

Q. Where did you get that law?

A. In the law books with regard to the school law and in the news papers.

Q. You read it yourself.

A. Yes, I read it myself and heard it read.

Q. You can read? A. Yes.

Q. And cipher? A. Yes and cipher considerable.

Q. And you read that law? A. Yes, that however remote was excluded.

Q. What was the law before that? A. I am no lawyer.

Q. You say the law has been changed? A. That is my understanding.

Q. Do you know what the law was before?

A. I can't quote the law before; but there has been a change.

Q. It made it more difficult, if you had negro blood in you, for your family to come in?

A. It evidently opened the way for us to come in.

Q. You spoke of your father, you said that he voted?

A. No sir.

Q. What did you say?

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A. I said that he went to the elections. I never went to the elections, I know that he went on every election day.

Q. Did you ever register up there before any registrar?

A. Yes, I registered and voted.

Q. Did you register as a white man or a colored man?

A. I suppose it was as a white man, though I don't know how he put it.

Q. Knowing this charge that you had this blood in you, were you so careless of your rights that you never noticed how he put you on the registration books?

A. I will say that if he done that he done it of his own responsibility, but what he wrote I don't know concerning me.

Q. How about Carlan. A. The same.

Q. Where is your sister now? A. At home on Avey's Creek

Q. How old is she? A. She is about eighty I guess.

Q. What is her condition of health?

A. She is about blind.

Q. Is she very infirm? A. Yes, very infirm, always tells me that she is never without a pain in her body.

Q. Is she able to get to Asheville? A. No sir.

She is about blind, ~~she was born in 1838.~~

Q. Is there another woman living? A. Yes.

Q. Where is she? A. At home on Avey's Creek

Q. How old is she? A. She was born in '36.

Q. What is the color of her skin?

A. There is not much difference between her skin and my own.

RE DIRECT EXAMINATION

Q. Who did your uncle Lewis marry?

A. He married an Estridge.

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Q. How many uncles did you have?

A. He is the only one I ever saw; I have heard my father speak of my uncle John.

Q. Who did your sister Delilah marry?

A. Old Billy Hampton.

Q. Where did he live? A. Most of the time in Haywood County, though he died on Averys Creek.

Q. Was he akin to the Hamptons on Averys Creek?

A. I don't know he was the grand father of Gen. Erastus Hampton.

Q. That was your sister Delilah? A. Yes.

Q. Well the Hamptons were white people? A. Yes.

Q. What was the color of your hair before it turned gray?

A. It was light, not solid black.

Q. You had eleven children? A. Yes.

Q. How many living? A. Three, dead.

Q. Are all of your living children here?

A. No sir; I have one in Madison County that is not here, and one in New Jersey that is not here.

Q. So long as they provided a school up there it was not necessary for you to assert your rights? A. No sir.

Q. And they did provide a school for your people up there? A. Yes.

Q. And no negroes went to that school?

A. No sir, none at all.

DAN EVANS, sworn for the plaintiffs, testified:-

Q. What is your name? A. Dan Evans.

Q. Where do you live? A. In Swain County.

Q. Who was your father? A. William Evans.

Q. Who was your mother? A. Phoebe Graham.

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Q. Whose daughter was she? A. Daughter of Jeffery Graham

Q. Were you a soldier in the Confederate Army? A Yes.

Q. How long did you serve in the Confederate Army?

A. Three years and six months.

Q. Who did you enlist under? A. Capt. Thad Bryson. ~~I went~~
from Webster in Jackson County.

Q. Were you in any of the important battles?

A. I was in the seven days fight at Richmond, and at
Plymoth, N. C. and I was at Petersburg.

Q. Why did you leave the war? A. I got wounded.

Q. Where did you get wounded and how?

A. I got wounded in the hand and feet near seven pines.

Q. Which Regiment were you in? A. The 25th N. C.

Q. Who was your Colonel?

A. I was first under Col. Clingman, and then Col. Rut-
ledge.

Q. Who was your General? A. Gen Bob Ransome.

Q. Were you wounded anywhere else in the war?

A. Yes, I was wounded in the ditches at Petersburg.

Q. How ~~z~~ were you wounded there?

A. In the leg, my leg was broken right below the knee.

Q. How had you been recognized in the Army? A. As a
white man.

Q. Who were your comrades in the war?

A. John B. Lance, and Joel Ingram, and I don't know that
I have seen any that were in our regiment other than
those that were in my company.

Q. Who were the men in your company?

A. There were Matt Lance, J.E. Estees, Robert Carpenter,
and Lewis Fisher and several of the greens and John All-
man, and Paris--

Q. Were there any negroes in that company? A. No sir.

Q. How did you associate in the company?

A. I associated with the other members as one of the company.

Q. Have you ever gone to school with the white people?

A. Yes.

Q. In what County? A. Jackson County and Buncombe County

Q. Where did you go in Buncombe County?

A. I went to a school house out here, they called it the Blakes school house on Cane Creek, and then I went to one in what you call Fairview, and then I went to a school this side of what we call New Salem or Arden.

Q. Where did you go to school in Jackson County?

A. To Shoal Creek in Jackson County.

Q. Were all of those schools for the whites? A Yes.

Q. Have you ever served in any capacity in the schools?

A. I have been school committeeman.

Q. Have you ever been denied the right to enter the white schools in North Carolina?

A. No sir.

Q. Who did you marry? A. A Leguire.

CROSS EXAMINATION

Q. All the associations you have had with white people ~~xxxxxxxx~~ ~~xxxx~~, either in school or as a soldier, have been away from the locality of Averys Creek.

A. I went to school in a few miles of Averys creek. I went to school at Arden about four or five miles from Averys Creek.

Q. That was a subscription school? it was not a public school in the district?

A. Yes, we lived in that District.

Q. When was that? A. That was when I was a boy twelve

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or thirteen years old.

Q. The neighborhood of Arden is at least seven or eight miles from the Averys Creek Section where Jeffery Graham lived--

A. Since I recall it, I went to school at Averys creek.

Q. When was that? A. About a year or two before I went on the other side of the river. I was about twelve or thirteen years old.

Q. Who did you go to school to? A. I went to a woman by the name of Lena Plunly, and to Emma Fletch and to a man by the name of Henry Carren, and I disremember the name of the teacher at Averys Creek, can't remember it.

Q. Have you ever heard of this impure strain of blood that was in your family?

A. I have heard it mentioned.

Q. And it was largely for that reason that you went to other parts of the land to live?

A. No sir, I left this County when I was small, about thirteen or fourteen years old.

Q. Then you were taken away by your parents? A. Yes.

Q. It was not a matter your will power acted upon at all? A. No sir; he moved us to Swain County and then they cut off Jackson County.

Q. Who was your father? A. Mr Evans.

Q. He married Jeffery Graham's daughter? A. Yes.

Q. There was never any suggestion that your father had any impure blood? A. No sir.

Q. But you have heard that there was impure blood on the maternal side?

A. It has been rumored around.

RE DIRECT EXAMINATION

Q. Do you belong to the church? A. Yes.

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Q. What church? A. Missionary Baptist Church.

Q. What color? A. White.

Q. Who is your pastor? A. Mr Monteith.

VIRGIL S. LUSK sworn for the plaintiffs, testified:-

Q. Did you know Jeffery Graham? A. No sir.

Q. Do you know Theodore Graham? A Yes.

Q. You know his general character? A Yes.

Q. What is his general character? Good.

CROSS EXAMINATION

Q. Do you know the reputation of the blood of the Graham family, and of Jeffery Graham, father of Theodore?

A. No sir.

Q. Did you know Lewis? A. No sir. Never knew any but Theodore.

Q. Did you ever see James Graham? A. Not to know him.

J. A. LYERLY, sworn for the plaintiffs, testified:-

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

A. Yes.

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

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

A. Yes.

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

Q. Do you know the general character of Arthur Graham at the Swannanoa Laundry? A Yes.

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

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Plaintiffs Offer the Deposition of William Whitesides of Swain County. This Deposition admitted and read by counsel to court and jury.

(c/s)

J. H. MARTIN sworn for the plaintiffs, testified:-

Q. You have travelled in Europe have you? A. Yes some.

Q. You have also lived in Washington City? A Yes.

Q. Are you acquainted with the Portuguese race?

A. Yes to some extent, I used to go to school with some Portuguese and Spanish boys.

Q. What race did they belong to?

A. I have always understood that they were of the Caucasian race, and I know they are very proud of their blood.

Q. Portugal is of the extreme Southern part of Europe?

A. Yes.

Q. How do the portuguese compare with the Spaniards?

A. My observation was that the Portuguese were even darker than the Spaniards.

Q. How do the portuguese compare with Theodore graham?

A. They were dark, had regular features, rather sharpe features.

Q. What kind of hair did they have?

A. Mostly straight hair, but I have seen them with hair that curled a little. There was one boy in my class who was one half Portuguese and his father was English, and that boy's hair was waivey.

Q. What was the color of that boy?

A. He was as dark as you are.

Q. Was any objection made by the whites to associating with the Portuguese? Objection-- sustained.

Q. They belonged to the Caucasian race? A Yes.

CROSS EXAMINATION

Q. You are familiar with the colored race?

A. Yes, I am a southerner, been in the South all my life.

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Q. Have you seen the relatives of these plaintiffs in the Court house here?

A. I have seen some of them.

Q. Did you see anything about their appearance that indicated to you that they had Portuguese blood in their veins?

A. I could not say that they had Portuguese blood in their veins but they are about the same color and some are not as dark as the Portuguese I have seen.

Q. Some of these parties are much darker than others?

A. I don't know all the plaintiffs in this case, but I see some people sitting around here that I should judge to be plaintiffs, they are darker than others.

Q. Could you not pick out the relatives of Jeffery Graham as they appeared in this trial without any trouble?

A. I don't think there would be any more trouble in picking out some of the darker ones from the lighter ones, than in picking out Mr Craig from you.

Q. Haven't you been able to pick out all of the relatives from all of the other white people in the court house?

A. I had not thought of it; never tried to pick them out, never knew I was to be examined on physiognomy.

Q. Are you an expert on races? A. No sir.

Q. Don't you know that the greater part of the Portuguese South of the Pyreneese mountains are very much mixed with the Africans; haven't you heard the expression, beyond the Pyreneese is Africa, ultra montain Africa, have you ever studied this subject from the standpoint of an Ethnologist?

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A. No sir; I have seen portuguese, members of the Portuguese Legation in Washington, high class Portuguese who

were quite as dark as some of these people who I understand are the plaintiffs in this case.

Q. Do you know whether the Portuguese have longer heads than other European people? A. No sir.

Q. Is it true or not true?

A. I don't know. I did not examine the heads of those boys that I went to school with, as a phrenologist.

Q. You have no knowledge of that subject?

A. No sir except from observation; their heads look very much like other peoples heads.

Q. Are the Portuguese a large or a small race of people

A. They were about like Frenchmen; they were low and stocky, the majority of them were medium sized and well built.

Q. Did you ever see any Portuguese that were as tall and large as Theodore Graham?

A. Yes, Mr Magaris is quite as large as he.

Q. Isn't he about six feet tall?

A. I shouldn't think he was six feet.

Q. What was the color of the hair of the Portuguese that you saw?

A. Some had very wavy hair and mostly black.

Q. You never saw any kinky haired ones? A No sir.

Q. Do you know that the Southern Portuguese were large compared with the African? A. I do not. I know that the Portuguese and the Spaniards were very proud of their blood.

Q. The Spaniards were the very proudest on earth? A Yes they were akin to the Portuguese.

125- Q. Don't you know that the Portuguese were the most prominent, for a hundred years, in the slave trade, than any other European people?

A. No sir; I don't know that they were any more prominently engaged in it than Massachusetts was.

Q. Don't you know that the Spaniards and the Portuguese both were overrun by the Moors and other African people?

A. Yes, and I know that they were all driven out of Portugal and Spain.

Q. Who were driven out? A. The Moors.

RE DIRECT EXAMINATION

Q. I suppose you know a great deal about history?

A. A very unwarranted presumption.

Q. The Portuguese had heads very much like other people?

A. They were similar; I never noticed any difference.

Q. He spoke of Portugal being overrun by the Moors, the were not negroes?

A. No sir; I understand that they were related to the Arabs.

Q. They belonged to the Arian Race? A. Yes.

Q. Did you ever see any Moors?

A. I don't know. I have seen some Redouins.

Q. They were even darker than the Portuguese? A. Yes.

Q. They did not look like negroes?

A. No sir, they have wonderfully clean cut features.

Q. The Moors came over from African to Spain? A. Yes.

Q. And were finally driven out? A. Yes.

PLAINTIFFS REST.

T. L. CROOK, sworn for the defendants, testified:-

Q. Where do you live? A. On Avarys Creek.

Q. How long have you lived there?

A. All my life only four years I was in the war, and except three years that I lived on Hominy.

Q. How old are you? A. Sixty seven next April 15th.

Q. How far do you live from the neighborhood of the Grimses?

A. The furdereest ones aint more than a mile from me.

Q. Did you know Jeffery Graham or Grimes?

A. Yes, I was very well acquainted with him.

Q. What name did he go by in the old days?

A. He went by the name of Jeffery Grimes.

Q. Did you know his brother Lewis?

A. I did not know him quite as well as I did old uncle Jeffery. I knew him.

Q. I notice you called him old uncle Jeffery, what was the history and cause of that?

A. I don't know what made them call him that. Most all the people called him old uncle Jeffery; he was a very old man.

Q. Did you ever have any conversation with him?

A. To be sure, I have had many conversations with him.

Q. Did you ever hear him make any statement about his ancestry, and if so when and where?

A. I never heard him but once. My daddy was a blacksmith, and he came to the shop one day and he and my father got to talking about his freedom.

Q. Were you present? A. Yes. And old Jeffery told my father that his father bought his freedom, was how he came to be free.

Q. Where did that occur? A. On Averys Creek.

Q. At your father's blacksmith shop? A. Yes.

Q. About when was that? A. It was before the war.

Q. Jeffery died before the war?

A. Yes, I think he did.

Q. Did you ever hear Lewis Graham say anything about his ancestors?

A. I never heard Lewis name them in my life.

Q. What was the general reputation in the neighborhood as to what Race he belonged to?

A. The reputation in the neighborhood was that they were of the colored race.

Q. State whether or not he was a free man?

A. Yes, always was since I knowed the man.

Q. What has been the reputation since that time as to his descendants, as to whether they were white or colored people?

A. They have always been counted as mixed blooded.

Q. Did you know Jeffery Grimes wife?

A. Yes I saw her.

Q. How did she appear? A. I don't know that she was what was said to be a white woman.

Q. Did she appear to be a white woman?

A. She looked to be a white woman, but I think she had changed right smart; she changed her color during her life time.

Q. Have you ever observed that change of color in any other persons. Objection Question withdrawn.

Q. What sort of a looking man was Jeffery Graham?

A. He was a dark looking man; he was darker than Theodore his son, right sharply.

Q. What color was his hair? A. It was black.

Q. What was the nature of his hair otherwise?

A. It rather resembled Theodore's only it was more curley than Theodore's.

Q. What sort of a looking face did he have?

A. He had Theodore's face. right smart, in the face.

Q. What sort of a nose did he have?

A. As well as I recollect his nose was a little flat.

Q. What kind of eyes did he have?

A. Black eyes.

Q. How was he treated in the neighborhood generally by the people, as a white man or as a free negro?

A. I don't know whether I can answer that or not. There was no other negroes around in that settlement; they was not allowed to go to the free schools in our township, in our precinct.

Q. Do you know anything about the children of Jeffery Grimes? A. I have seen them all.

Q. Could you name the children he had at home?

A. Jimmy, Milus, Theodore, Tom, Lyly, Mary, Jensey-- I can come over that many of the names.

Q. Can you tell us of the comparative color of these several sons and daughters?

A. Some were darker than others. There was Milus; he was a little darker than that fellow his son over there, (indicating person in court room.)

Q. How about it as comparing him with Theodore?

A. Milus I always thought had a brither, lighter color than Theodore.

Q. How about Tom?

A. Tom had the blackest color of any of them.

Q. How was his color?

A. I could not call him a white man by way yonder. He was the darkest one I ever saw-- well Jeny and Tom was about the same color.

Q. How much darker was he than Theodore?

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A. He was right smart darker than Theodore; he was darker than old aunt Mary.

Q. Speaking of aunt Mary is she darker than Theodore?

A. Yes.

Q. When did you see her last?

A. I aint seen the old lady in two or three months.

Q. What kind of hair did she have?

A. It was black once but is gray or white now.

Q. What was the nature of her hair?

A Her hair was a little bit more curley than Theodore's.

Q. Did any of them have entirely straight hair?

A. I never saw any with perfectly straight hair.

Q. Did you ever see any that were white of that older set? A. No sir.

Q. How about old man Jimmy that died awhile ago?

A. He was dark.

Q As compared with Theodore how was he?

A. He was darker than Theodore.

Q. And how about his hair?

A. It was very wavy; it was wavier than Theodore's a good deal.

Q What has been the general reputation in the neighborhood, as to the sons and daughters of Jeffery Graham, as to the race to which they belonged since his death, are they reputed to be white people or mixed with negro blood?

A. In our neighborhood there it has always been thatv they were mixed with negro.

Q. When did you first hear, if you ever did hear, of any other blood being infused in their veins?

A. I never heard it until this suit here was gotten up, in my life.

Q. Have you ever heard any of the family speak of their blood except Jeffery?

A Only one time and that was just before this suit com-

menced.

Q. Who was it you heard speak of it? A. It was Elmer

Objection as to what Elmer might have said. Objection sustained.

Q. Have the descendants of Jeffery Graham up in your neighborhood there ever attended the public schools for white children.

A. If they have I don't know it, unless it could have been when they went and were stopped. I think they have made three trials and were stopped every time.

Q. When was the first instance of their being put out of the public schools that you remember?

A. It was when Mr. Shelton taught a school up there.

Q. When? A. About ten or twelve years ago, maybe longer than that. It was the first time they were put out,

I was one of the committee that put them out.

BY MR CRAIG:

Q. Were you there? A. No sir.

BY MR MURPHY: Q. Why did you put them out?

A. On account of their color.

Q. Who was Superintendent of Public Schools then?

A. I think it was the Rev. James Adkins.

Q. Do you know whether the Superintendent went up there to investigate the matter?

A. I won't say whether the superintendent came or not, but Mr. Shelton came and saw the superintendent.

Q. They were excluded from the schools in consequence of what occurred and on account of their color?

A. Yes.

Q. You are related to the Gillilands?

A. No sir; I married his sister.

Q. Sister of this Gilliland who is here?

A. Yes, a plaintiff in this case.

Q. Was there any objection to this man, the plaintiff

Gilliland marrying into the Graham family?

A. I don't know about that.

Q. Did you know Felix Grimes? A. I saw the man a few times.

Q. What sort of a man was he? A. He was a dark man.

Q. You knew Felix Grimes? I saw him pass the road.

Q. Did he stop at your house? A. Yes, he was going up the Creek and asked me where the Grimes lived.

Q. Did he say anything about his relation to the other Grimes up there, and if so, what did he say?

A. He asked me if I knowed the Grimeses and I told him yes, and he asked me where they lived and I showed him, and I asked him if he was any relation of the Grimeses and he said old Jeffery Grimes was his brother or half brother, I don't remember which it was that he said.

Q. How many times did you ever see him up there?

A. I saw him three or four times, I could not say exactly how often. I seen him pass several times but have not seen him for several years.

Q. Do you know whether he is living now? A. No sir.

Q. What aged man was he?

A. He looked like he might have been fifty or sixty.

Q. How long ago was that?

A. Fifteen or sixteen years ago the last time I saw the old man.

Q. Did you ever hear any of the other members of the Graham family make any statements in regard to the relationship of Felix Grimes to the family? A. I never did.

Q. Do you remember what became of Tom Grimes or Graham?

A. I know what is said to have become of him; they said he was killed down here in Tennessee during the war.

Q. Did he go to the war? A. I don't know.

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Q. Did you ever hear in what capacity he went to the war?

A. I never did.

Q. You were acquainted, as you testified with Lewis Grimes and Jeffery Grimes and with their children, I want to ask you whether or not in your opinion those people had negro blood in their veins?

A. I don't know what they had in their veins.

Q. Have you an opinion on that question?

A. To me it looked like there was something there; they are mixed with something, there is no doubt in the world about that; I can't say what it is though.

CROSS EXAMINATION

Q. When did you see Felix Grimes passing along the road?

A. I don't know exactly how long ago it has been, but I think it has been about ten or twelve years ago and it may be longer than that. I saw him pass there going up to those other Grimeses.

Q. Ten or 12 years ago, that is your best recollection?

A. Yes.

Q. You said a little while ago that it was 15 or 16 years ago? A. I said that it might be longer or not so long.

Q. Now you say it has been 10 or 12 years ago?

A. I said that it has been ten or twelve years ago or longer.

Q. Then your best recollection is that it has been perhaps ten to sixteen years ago?

A. It has been that long a time.

Q. And you say when he passed there he was fifty or sixty years old?

A. I said that he looked like he might be that old.

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Q. And if he had lived until now, he might not have been more than 60 or 70 years old now?

A. I don't know how old he would have been .

Q. You know how much ten added to fifty makes? A Yes.

Q. How old was old man Jeffery when you saw him at the blacksmith shop?

A. It was before the war when I saw him at the blacksmith shop.

Q. That is everything you can tell about his age is it?

A. That is everything.

Q. Does that throw any light on how old he was when you saw him at the Blacksmith shop, before the war?

A. I can't give any idea as to how old a man he was.

Q. Not the slightest? A. No sir.

Q. He might have been 21 and he might have been 75?

A. I don't recon he was 75.

Q. Did he look like he was 21? A Yes.

Q. Did he look like he was forty? A. No sir.

Q. How old were you? A. About 10 or 12 years old.

Q. How old are you now?

A. Sixty-seven if I live to see the 15th of next April.

Q. Where did you see Jeffery Graham last?

A. I can't tell when was the last time I saw him.

Q. You have not seen him since the war? A. No sir. He died in the time of the war I think.

Q. And you can recollect what occurred in the blacksmith shop 56 or 57 years ago, a conversation between your father and Jeffery Graham? A Yes.

Q. And you can recollect the language that Jeffery Graham used when he was talking to your father? A. Yes.

Q. And you think he was not over forty?

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A. Yes he was about that old I reckon.

Q. You married a sister of Robert Gilliland? A Yes.

Q. And you married her since he married into the Graham family? A Yes.

Q. And you knew that your wife went to school with the Grahams? A. No sir.

Q. Didn't she go? A. She might have went.

Q. You don't know whether she went to that Graham school or not? A. No sir.

Q. Didn't you go to see her while she was going to that school? A. No sir.

Q. You knew that Robert Gilliland had married one of the Grimeses? A. Yes to be sure.

Q. You married into the family? A. I did not marry into the Grimes family.

Q. What akin is your wife to these little children that were in here yesterday? A. Their Aunt.

Q. Haven't you eaten with the Grahams? A. I think I have eaten with some of them.

Q. You sat down and ate with negroes?

A. I sat down and ate with colored people. I sat down and eat with some of them, I don't deny.

Q. That was nothing to be ashamed of?

A. I don't think there is; they are respectable folks, I think well of them all.

Q. And you have invited them into your house? A Yes.

Q. And invited them there on terms of social equality?

A. Yes.

Q. And you sat down and ate with some of them on terms of social equality? A. I Ate with some of them.

Q. Did you ever know anybody to refuse to recognize them on terms of social equality? A. Yes.

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Q. And you did not? A. No sir.

Q. You would not associate on terms of equality with colored people?

A. I do not say that they are negroes, but there is something there besides white man.

Q. I ask you as a man, would you associate with negroes on terms of social equality?

A. I have not done it yet, and I won't if I know it.

Q. Jeffery Graham has been dead a long time?

A. Been dead a right smart bit.

Q. He died in 1855 and was a very old man when he died?

A. Yes.

Q. And he has been dead fifty years? A. No answer.

Q. If he was 72 when he died that would make him born 122 years ago?

A. I aint no schollar can't count up that way.

Q. If that is correct, if Jeffery Graham died in 1855, and was 72 years old when he died, that would make him born 122 years ago.

A. Yes, if he had lived until now.

Q. So if this fellow Felix Grimes was his half brother it would make him a great deal older than Jeffery?

A. Yes.

Q. And he must have been about 50 years older than Jeffery? A. I don't know.

Q. Jeffery would have been 122 years old if he had lived until now, and when you saw Felix last, fifteen or sixteen years ago, he was about 50 or 60 years old when you saw him last.

A. No answer.

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Q. I ask you, according to your own testimony, if Jeffery Grimes was not at least fifty years older than you say that Felix Grimes was? A. Yes, I reckon so.

Q. Would you believe a man if he was to tell you that he was fifty years younger than his brother?

A. To be sure, I would have to believe them.

Q. This man Felix Grimes was not far from the age of Mr Theodore Graham.

A. When I saw him he did not look like he was far from
xxxxxx
~~Felix's~~ Theodore's age.

Q. You know a man that had bought his freedom was a free negro?

A. That is what I always thought he was.

Q. And that is what you understood he was? A Yes.

Q. And yet you sat down and ate with a free negro?

A. No answer.

Q. The son of a free negro is a free negro?

A. I heard old man Jeffery say--

W. E. LANCE sworn for the defendant, testified:-

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

Q. Where do you live? A. Away up towards the Henderson line in Buncombe County.

Q. In Averys Creek township? A. Yes.

Q. And on the headwaters of Averys creek? A Yes. No sir

Q. Do you live in the neighborhood of where Jeffery Graham used to live?

A. In the same township but two or three miles from there.

Q. Did you know Jeffery Grimes? A Yes.

Q. From what time did you know him?

(81)

A. It is nearly seventy years ago since I first saw him and Lewis.

Q. Where did you first see them?

A. Don't know where first, but I saw Jeffery at his home and I saw Lewis who lived near my fathers.

Q. Describe Jeffery Graham or Grimes to the jury?
What was he called when you first knew him?

A. He was called there a colored man.

Q. What was ~~xxx xxxxx~~ he called?

A. He was called in them days Grimes.

Q. Did you ever hear him say anything about his ancestry

A. No sir.

Q. Did you ever hear any one else say anything about it and if so who was it?

A. There was a man by the name of Charlie Lance and my father Martin Lance.

BY MR STEVENS: Q. Was this man Lance a member of the Graham family? A. No sir.

Objection by the plaintiffs. Objection sustained and the defendants EXCEPT.

Q. State whether there was a general reputation in the neighborhood where you lived and where Jeffery Grimes lived in his life time, as to what race of people his father and mother belonged to and if there was a general reputation what that reputation was.

A. The reputation was that they were colored.

Q. That who was colored? A. That was the character they had through the settlement.

Q. I am asking about the father and mother of Jeffery Graham or Grimes? A. I don't know anything about his mother.

Q. State whether or not there was a general reputation

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in the community as to what Jeffery Grimes father or mother was?

A. There was such a general reputation.

Q. What was that general reputation?

A. That they were mixed blooded people.

Q. Did that apply to the mother and father of Jeffery Grimes?

A. To his father.

Q. State whether or not that general reputation has continued down to the present?

A. Yes, I think it has, from the fact that his offspring was not allowed to go to the free white schools.

Q. Do you know how long your father lived in the vicinity of ~~xxx~~ Jeffery Grimes?

A. He lived until he was seventy five years old and he had been dead quite a good while; I think that Jeffery Grimes and father was about the same age--

Q. How well acquainted were they?

A. Lewis Graham worked for my father some; I don't know that Jeffery worked for him any.

Q. How long did they live in the same neighborhood, Jeffery, Lewis and your father?

A. Lived in about a mile and a half of my father for some time, and Jeffery Grimes lived on the river until he went to Averys Creek. My father was alive when R Jeffery lived on Averys Creek and lived there until he died.

Q. Do you know how long Jeffery Grimes and your father lived in the same neighborhood?

A. I lived as a neighbor to these people on Averys Creek quite a while.

Q. Where did you father live?

A. He lived over on Cane Creek near where the Westfelts live and he lived and died there.

Q. And about a mile and a half from where Lewis lived?

A. Where Lewis used to live, but he moved to Tennessee.

Q. What kind of a looking man was Lewis Graham?

A. He was more brown than Jeffery, not so dark; he was about the color of Theodore here.

Q. What kind of hair did he have?

A. I don't remember what kind of hair he had.

Q. Do you remember anything about the appearance of his face, shape of his nose or the color of his hair eyes?

A. No sir; I don't know.

Q. What colored man was Jeffery Grimes?

A. He was a good deal darker man.

Q. How dark would you say, was he dark enough to have been half white and half black? A Yes.

Q. How about his hair?

A. I don't remember about his hair. I never notice people particularly enough.

Q. Did you ever hear any one say anything about their ancestry? A. No sir.

Q. State whether or not Jeffery Graham during his life was generally reputed to be a colored man?

A. Yes.

Q. State whether or not Jeffery Grimes, during his life time was treated, received and controlled as a colored man?

A. He was received by the whites. Generally the whites and these people would have gatherings, log rollings, corn shuckings and the like and there was no distinction

between them and the whites; they all went to the tables with the whites and these people; they all went together they were always considered free people.

Q. So far as you know Jeffery Grimes was always considered free people?

A. Yes, from the first time I heard anything said about him he was free.

Q. What color of wife did he marry? A. A white lady, he and Lewis married sisters.

Q. When did you first hear the claim that these people had Portuguese blood in them if you ever did hear it?

A. That was about the winding up of the war. Mr Theodore married a lady in Tennessee.

Q. That was the first time you ever heard it? A Yes.

Q. When did Theodore marry? A I think it was the spring of the surrender.

Q. State whether you ever heard that report about the Portuguese blood prior to that time?

A. That was the first time I ever heard anything said about Portuguese, until this thing got up, then I have heard it frequently lately.

Q. You never heard Jeffery Grimes say anything about Portuguese? A. No sir.

Q. Or old uncle Jimmy? A. No sir.

Q. Did you know old uncle Jimmy? A Yes.

Q. Which was the darker he or his father?

A. It has been so long since I saw his father-- I seen old uncle Jimmy a little while before he died and he was pretty dark.

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Q. Judging from his appearance I wish you would state whether or not in your opinion he had the blood of colored people in his veins?

(85)

A. My opinion is that they were mixed blooded.

Q. What sort of mixture?

A. I don't know; I don't swear they were of the African race, they were mixed with some race.

Q. What sort of a race? A. They claim they are mixed with Portuguese.

Q. What made you think they were mixed blooded?

A. Those old people were very mannerly and never put themselves forward. Years ago the white children were allowed to go with them and years ago old Jeffery's children went to the school where the white children went.

Q. Speaking of their color--

A. Some were lighter and some were darker; one, Thomas, was pretty dark, he got killed during the war.

Q. Give us a description of Tommy. how dark was he?

A. He was pretty dark; Theodore and Milus was the brightest ones of the boys.

Q. What sort of hair did Thomas have? A. It was black.

Q. How about its shape?

A. I don't know; never noticed.

Q. Do you know in what capacity he went to the war?

A. If I remember right he went with the Confederates, and I think Jimmy was there, I remember I think that Dr Fletcher had Jimmy.

BY MR CRAIG: Q. Do you know that of your own knowledge?

A. No sir, by hearsay.

BY MR MURPHY: Q. How about Aunt Mary, is she as dark as Theodore? A. Yes she is a great deal darker than he is.

Q. How about her hair, is that more like a negroes than his? A. Yes.

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Q. Is she a sister of Theodore? A Yes.

Q. How about Theodore's hair as compared with Jim's?

A. There was right smart difference. Theodore's was the lightest and Jim's was the blackest.

Q. How about the shape of it? A. Right smart difference in color.

Q. What do you say about it being curly?

A. Jim's was a little curly kind like; I have seen him with tolerable long hair.

Q. Did you ever see him with his hair straight?

A. Yes, tolerable straight; he let it grow out.

Q. Do you know whether or not the old people, Jeffery Grimes and Lewis denied that they were born colored?

A. They never denied it that I heard of. They were very mannerly.

CROSS EXAMINATION

Q. You say the children of Jeffery Grimes were admitted to the white schools?

A. That was a long time ago, about seventy years ago.

Q. And you went to school with them yourself?

A. Yes, I was a chunk of a boy.

Q. You were with Theodore?

A. I went to school with Jim.

Q. You went to school with all the boys?

A. Yes, all the older ones.

Q. They were treated just as any others?

A. The whites and them all got along very smoothly together.

Q. Have you ever been to the house? A Yes.

Q. They have eaten at your house?

A. Some of them have.

Q. And you associated together on terms of equality?

A. Yes, in that line; we had works and the neighbors would help one another in log rollings &c.

Q. And when you sat down to eat, they sat with all the others?

A. Yes, to be sure.

Q. And eat together and were treated like the balance of the people? A. No sir.

Q. You don't believe in treating negroes on an equality with whites?

A. I have eaten with negroes; I took breakfast the other morning with a negro.

RE DIRECT EXAMINATION

Q. Have you heard that it was a disgrace to eat a meal at a negroes house? A. No sir.

Q. You did not marry into colored people? A. No sir.

Q. You draw the line there? A. Yes.

RE CROSS EXAMINATION

Q. The Grahams married into the best families up there, didn't they, as good as there were?

A. Yes, and better some of them.

Q. The Grahams up there married into families just as good as any people up there?

A. I understood you to say they married into Theodore's family.

Q. Did you say that Theodore's family was better than the families they married into? A. Yes, that Mrs Gilliland is a good or better than Gilliland was.

Q. Old Mr Theodore married a good woman there? A. Yes.

Q. And they associated on terms of equality with the neighbors? A. Yes.

Q. I ask you if they ever ate at the neighbors?

A. I never went to the neighbors houses and ate with them

(38)

Q. Youx never did that? A. No sir.

Q. And you would not let a negro come to your house and eat with you?

A. No sir, not that I knew was an African.

Q. And you would not sit down and associate with negroes and eat together? A. No sir.

Q. But you do sit down and eat with the Grahams? A Yes

Q. And you were not ashamed of it were you? A. No sir.

Q. You have taken communion at church with them?

A. Yes two of his sisters belonged to the Baptists and the balance was Methodists.

Q. And you sat down in holy fellowship with them? A Yes

Q. And there was nothing in that for a man to be ashamed of? No.

RE DIRECT EXAMINATION

Q. I understood you to say that Theodore married his wife in Tennessee? A Yes.

Q. And he brought her then to that community? A Yes.

DR. S. T. BAIRD sworn for the defendants, testified:-

Q. How old are you? A. Seventy-four years old.

Q. How long have you lived in this county?

A. All my life.

Q. When did you first see or become first acquainted with Jeffery Graham? A. In 1853.

Q. Under what circumstances did you become acquainted with Jeffery Graham.

A. I was a candidate for Clerk of the Court and met him there where he lived at Averys Creek; Bent Creek they

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call it now.

Q Can you tell what the general reputation in that community was as to whether he was a white man or a free negro?

A. I was given to understand that he was a mixed blooded man,

Q. In what way mixed blooded?

A. My information was that he was mixed with the African race.

Q. What was his appearance as to whether he was mixed with the African Race or not?

A. My recollection of him is, though it has been a long while ago, that he was something like is son Theodore; the resemblance between the two men was rather striking. He was a taller man and not made after the form of Mr Theodore, a more angular man and taller, and his father was not exactly like Mr Theodore but something like him.

Q. How about his color?

A. I think he was a little darker man than Theodore.

Q. From his appearance, state whether he had negro blood in his veins?

A. I would hate to state that; it was said that he had and I accepted it as such.

Q. Do you know anything that fixes your mind on that, if so tell us? A. Nothing particular.

Q. Do you know whether or not he voted?

A. I do not, I don't remember.

Q. Did you know his family?

A. I knew a number of the Grahams. I knew all the boys I believe, though I could not designate them by names. I knew Theodore, Milus, James, Lewis, and I believe I knew all the Grahams that lived in that section.

(90)

Q. What was their reputation in those early days as to the race to which they belonged?

A. My understanding was that they were reported as mixed blooded people and not recognized as white people.

Q. Did you know Felix Grimes? A. Yes, very well.

Q. Can you tell us what the reputation, if any, was as to the relationship of Felix Grimes to Theodore and the others?

A. I understood that Felix was related to the Grimes but I don't know in what way. My impression was that he was a brother or half brother to old man Jeffery Grimes; that was the general report that he was related to the other Grimeses. I knew Felix very well. He lived with Col. James Patton. Felix was very nearly as old a man as Jeffery Grimes, according to my recollection. I knew Felix Grimes quite fifty years ago.

Q. What sort of a looking man was he then?

A. A tall spare made man with his nose freckled, a prominent nose and his hair was straighter than Jeffery's. Jeffery's hair was a little inclined to curl.

Q. Was Felix recognized as a colored or a white man?

A. I think he was recognized as a colored man; I think that he was counted among Mr Patton's servants and worked there as a colored man.

CROSS EXAMINATION

Q. What part of the County do you live in now at this time?

A. Here in Asheville.

ZACH LEDBETTER, sworn for defendant, testified:-

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

about ~~one~~ mile from here on the south side of the French Broad River.

Q. Do you recollect Jeffery Grimes? A. No sir.

Q. Do you recollect Lewis Grimes? A. No sir.

Q. Do you know Mary Tayburn? A. Yes.

Q. She is a sister of Theodore?

A. Yes that is my understanding.

Q. What is her color? A. She is pretty dark.

Q. Describe her hair? A. I don't know that I ever saw her with her bonnet off.

Q. Did you know her brother Jim? A Yes.

Q. What was his color?

A. He was pretty dark, about the same color as old aunt Mary.

Q. You don't recollect Tom?

A. I think I remember seeing him but I was very small, I don't remember what kind of a looking man he was.

Q. How far has your place of residence been from the residence of Theodore and his family?

A. A mile and a half or two miles from where I live.

I was raised down on the river a mile farther; it was about two and a half miles from where I was raised to the Graham settlement.

Q. What has been the general reputation as to Theodore Graham and his family, in that community, as to the race to which they belonged?

A It was generally understood that they were mixed blooded.

Q. Mixed with what race? A. I don't know that I heard it said. My understanding was that they were of negro descent; that was the general rumor.

(92)

Q. How were they treated by the community as indicating their race status?

A. I hardly know how to tell you. Some few recognized them and associated with them and they ate at white people's tables occasionally. Treated them nice; they seemed to be fairly good citizens, they were always treated as nice as you could afford to treat them.

Q. How did the others treat them?

A. As a general thing they were held a little at a distance on account of their color.

Q. You knew Jim and you have seen Milus, Theodore and their sister Mary, now from your observation of those people state to his Honor and the jury what is your opinion as to the race to which they belonged or state whether they had negro blood in them in your opinion?

A. I am not an expert on races; could not tell what blood they had in them.

Q. You have already stated that Jim was a dark man?

A. Yes, darker than Theodore.

CROSS EXAMINATION

Q. They associated with the best people up there in that neighborhood, on terms of perfect equality?

A. I can't say that.

Q. They ate at your house?

A. Yes, when they worked for me I invited them to eat with me.

Q. They sat down at your table? A. Yes.

Q. And you ate at their houses? A. No sir.

Q. You extended to them your hospitality and they accepted it? A. Yes.

Q. You classified them with white people didn't you?

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A. No sir.

Q. Didn't you as Tax Collector classify them as white people?

A. No sir; I have been asked about that: The Deputy Sheriff asked me if I took them down when I was tax ~~xxxxxxx~~ ~~xx~~ lister or register. I have listed the taxes quite a number of times. I remember one occasion when one of them came in here, so I heard, to pay his taxes, and the tax collector-- Objection.

In consequence of what I heard, I refused to put them down as colored. I had listed them as colored and one of them had remarked that I had listed them as colored people--

Q. Which one made the remark to you?

A. Neither one made the remark to me, I heard it from another man, and after that I never marked them as colored people at all. My recollection is that after that I did not mark them at all. I think the first time I listed them I put them down as colored.

Q. None of those people made any remark to you? A. No.

Q. Never complained to you about how you listed them?

A. No sir.

Q. And you don't think you listed them as negroes again after you heard that it was offensive?

A. No sir I don't think I marked them at all.

Q. You did not mark them contrary to what you thought they were?

A. I don't think I did.

Q. If you did you are very much mistaken about that?

A. Yes, I probably am but that is the way my memory serves me. When I was listing taxes I was often very careless about making the colors, but I always marked

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the polls.

Q. Your name is Z T. Ledbetter? A Yes.

Q. There is no other family of Grahams up there is there

A. No sir, not that I know of.

Q. That is your name there, (exhibiting book to witness)?

A. That is my signature.

Q. Look up there and see how you marked him?

A. That is a cross mark and I don't think I made that cross mark. I don't say positively that I did not do it but I have no recollection of doing it. I may possibly have done that.

Q. That is the report you made? A Yes.

Q. That is your signature and you signed it? A Yes.

Q. And he is marked white? A. It is marked with a cross mark.

Q. Now here is one that is marked as white? A. Yes.

Q. You know him? A Yes.

Q. Who is he? T. Johnson.

Q. He is a white man? A Yes.

Q. You did not expressly pick out the Grahams to mark them white? A. No sir.

Q. A good many of these are not marked at all? A Yes.

Q. And a good many are marked? A Yes.

Q. And the Grahams are marked as white people, that is your book and the record you made? A. I think so. I can't remember making those cross marks, I generally make a straight mark.

Q. Didn't you make cross marks to all the white people you marked? A. Probably I did.

Q. But you did mark the Grahams as white people?

A. Yes, they are marked as white.

Q. And that is your book that you returned here? A Yes

Q. Under your oath of office? A. Yes.

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RE DIRECT EXAMINATION

Q. When you were listing taxes you did not regard it as very important, in the discharge of your duties, to mark what race they belonged to?

A. No sir, not so long as they paid the property tax and the polls. I think the first marking I did I marked them up on the colored list; afterwards I thought I did not mark them at all, but I see by this book that I marked them white.

Q. You said that you had never eaten a meal at the house of these people, when they ate at your house, under what circumstances was it?

A. I think I had Mr Merritt Graham working for me awhile and he always took dinner at my house, and Mr C. J. Graham and probably some other members of the family ate there when working for me.

Q. When he was at work there you slept in the room with him?

A. My recollection is that in tearing down the old house we all slept in the store room, but not in the same bed. We were very much crowded for room because we had to tear down the old dwelling and we had to sleep in the store room.

Q. Most of these men in this book you did not mark at all? A. I don't remember.

Q. Do you know Jonas Avery, A. Yes.

Q. You know his general character, ?

A. Yes it is good

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JOHN INGRAM, SWORN FOR DEFENDANTS, TESTIFIED:-

Q. How old are you? A. Seventy-one 16th of next April.

Q. Where do you live now?

A. At Averys Creek 13 miles from here.

Q. How long have you lived there?

A. I have not lived there for three years recently, but I lived there during the war and then three years ago I moved back down to where I live now.

Q. When did you first move into that neighborhood?

A. December 4th, 1860.

Q. I believe you did not know Jeffery Graham? A. No

Q. Which family did you know?

A. I knew a family there that they said was the Grimes family.

Q. Which ones did you know?

A. James, Milus, Theodore and some of the girls.

Q. Did you know Mary? A. Yes.

Q. Know Eliza? A. No sir. Don't think I know her by that name.

Q. What was the general reputation in the community, when you first went there, as to what race these people the Grimeses belonged?

A. As far as I knew they were not considered pure whites people seemed to hold them that way.

Q. What was the mixture according to that reputation?

A. As far as I know they were supposed to be mixed with the African race.

Q. Do you know to what extent they were reputed to be mixed with the African race?

A. I don't know that I do.

Q. What sort of a looking man was Tom Graham?

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A. I never saw Tom but a very few times; he got killed I understand during the war.

Q. What sort of a looking man was he? A. Very dark.

Q. What sort of hair did he have?

A. His hair was very dark and was kinder curled up around the edge of his head.

Q. Was it curly on his head?

A. I don't know that I ever saw him with his hat off.

Q. How did his hair appear as compared with Theodore Grahams?

A. He was right smart darker than Theodore.

Q. How was his hair, was it straight as compared with Theodore's?

A. It was right smart more curled than Theodore's.

Q. Do you remember anything about his looks that indicated that he had African blood in him?

A. Nothing except being very dark and the appearance of his hair.

Q. What sort of eyes did he have?

A. I don't remember exactly.

Q. You were well acquainted with James Graham? A. Yes.

Q. Describe him to the jury, what sort of a looking man was he? A. He was tolerable dark but not as dark as ~~Theodore's~~ Tom.

Q. Was he as dark as Theodore? A. Yes right smart, and Tom was right smart darker than he was?

Q. Tom must have been nearly black?

A. He was right smartly dark.

Q. Are you familiar with the color of the negro which is called the ginger-cake colored negro?

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A. I don't know.

Q. You know what the color of molasses gingercake is?

A. Yes.

Q. How would Tom's face compare with that color?

A. His face would be a little darker than that I would think.

Q. Compare Tom's face with your over-coat, (very dark brown) .

A. It had a darker appearance than that, that is not black.

Q. What about Mary's appearance? A. She is tolerable dark.

Q. When did you see her last?

A. Last Wednesday a week ago, when we were there taking her deposition.

Q. You were there that day? A. Yes.

Q. I believe she is blind and quite decrepid? A. Yes.

Q. Have you known her a long time?

A. I have known her as long as the rest of them.

Q. What sort of hair did she have, considering its general color and appearance?

A. Her hair was tolerable dark, as well as I remember 30 or 40 years ago.

Q. How did it lay as to straightness?

A. It was curled or wavyed some; she kept it plated and tied and it was pretty hard to tell. It was very dark.

Q. In your opinion what proportion of colored blood would you say was in the veins of these people?

A. That is a pretty tough question.

Q. What has been the general reputation, since you have known them as to whether or not they had negro blood in their veins?

15-J-

A. It has been generally heralded about by the people there ~~xxxx~~ since I have known them, that they was colored, not full blooded negroes but colored somewhat.

Q. If Jeffery Graham had a white wife, naturally his children would not be full blooded negroes? A No sir;

Q. Do you know the general reputation as to the color of Jeffery Graham's father in that community?

A. I cannot say that I do.

Q. I believe you are a brother of Joel Ingram who has been introduced here? A. Yes.

CROSS EXAMINATION

Q. You said that one was blacker than that coat?

A. I said that Tom was as dark as that coat.

Q. You don't say that Tom was darker than that coat?

A. I said that the coat was not black.

Q. Was Tom as dark as that coat?

A. I don't think his skin was as dark as that coat.

Q. Didn't you say awhile ago that Tom was darker than that coat?

A. No sir, I said that the coat was not black.

Q. Didn't you say that he was as dark as that coat?

A. No sir, I did not say that he was as dark as that coat

Q. You did not say anything about the coat? A Yes.

Q. I ask you if when Mr. Murphy asked you how Tom compared in color with that coat, if you did not look at that coat and say that Tom was darker than that coat?

A. No sir; I said that he was very dark and that I did not consider that coat black.

Q. I ask you how Tom compared with the color of the coat you have got on?

A. Tom was a little yellower complexioned than that coat.

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Q. He was not as dark as that coat? A. It was not as dark as that.

Q. What sort of dark is that coat? A. A sort of brown.

Q. What color was Tom? A. He was dark brown.

Q. And that coat is brown? A. Yes, kind of yellow brown.

Q. Didn't the Grahams associate with the white people up there?

A. They did with some of them.

Q. Weren't they generally received into the white people's society up there? A. Not to my knowledge.

Q. How far did they live from you?

A. Some of them don't live more than half a mile or three quarters.

Q. You ate dinner at their house last week?

A. I ate at the girl's house?

Q. You would as soon eat at a negro man's house as at a negro woman's house?

A. Yes, I suppose I would.

Q. And I ask you if you did not eat at their house?

A. Yes.

Q. And the day you took that deposition I ask you if you did not say it was a shame the way they were treating those people?

A. No sir, not to my remembrance.

Q. Didn't you tell Prof. Radford that that day?

A. I have no recollection of it.

Q. You deny telling him that?

A. I have no remembrance of telling him.

Q. Will you deny telling him that?

A. To the best of my knowledge I did not tell him that.

I have no recollection of it.

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Q. You have no objection to answering my question in a direct way?

A To the best of my knowledge I did not. I have no recollection of it; me and Mr Radford talked about this question but to the best of my knowledge I never said it.

Q. Would you sit down and eat on terms of social equality with people that you knew to be negroes?

A. Ever since I was a child -- my father was a slave holder, and I ate often as a child with them.

Q. But I ask you if you would eat with them on terms of social equality?

A. I eat at their tables but never eat with them.

Q. What church do you belong to?

A. No church at all now.

Q. Have you been turned out? A. No sir.

Q. What church did you belong to? A. Methodist.

Q. How did you get out?

A. I taken my letter out.

Q. Didn't some of the Grahams belong to that church?

A. Not while I did to my recollection now; before the war the colored people used to join the churches and they had separate book that they put their names down on

Q. I ask you if you were not turned out of the church?

A. No sir.

Q. I ask you if you were not accused of a moral crime and turned out of the church? A. No sir.

Q. Were you accused of it out of the church?

A I had some trouble with a woman once.

Q. That woman was your relative?

A. No sir, not the woman I had the trouble with was no relative of mine.

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Q. You were a Magistrate once? A. Yes.

Q. Didn't you fine a man ~~ex~~ \$15.00 once and keep the money? A. No sir.

Q. And didn't you pay him back part and ask him not to say anything about it?

A. I paid him five dollars back and paid the ten dollars into the court.

Q. You ever been indicted for bastardy?

A. Yes, for an illegitimate child, she swore it to me.

Q. Explain about that money?

A. Milus Graham, brother of Theodore, got into trouble with another man's boy, and Milus came up to the child that the other boy was striking and struck it with a stick, and they taken out a warrant against him for hitting that other boy with a stick and the case was brought before me and I fined him fifteen dollars for hitting that boy with a stick, and I fined the boy something for striking the other boy and the cost. The other boy did not pay the costs and milus wanted me to give him part of his money back because the boy did not pay the costs, and I paid back the \$5.00 and paid the \$10.00 into court.

Q. In this other matter you went on the witness stand in Hendersonville and swore that you were not guilty?

A. No sir, I said that I did not think I was the father of the child.

Q. Was it about that time that you quit the Methodist Church? A. No sir; it was before that time.

Q. How long has that been?

A. Twenty-one or twenty-two years ago.

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Q. And it was before that that you quit the church?

A. Yes, when I took my letter out.

Q. How old are you now?

A. I am nearly seventy-one.

Q. You were about fifty-one years old at that time?

A. Yes somewhere about that.

Q. Don't you know that Mr Theodore Graham went to school in Averys Creek township?

A. No sir, not when I was old enough to go to school in that county.

Q. When did you go there? A. In the year 1860.

Q. You don't know whether they associated with the white people or not?

A. They did with some people.

Q. Didn't they will all the people?

A. They mixed around the best people, but as to associating and neighboring with them and visiting them, I never knew it that way.

Q. They ate at the same tables?

A. No sir, I never saw it.

Q. And you say that Tom was about the color of your coat or something near it?

A. I said he was a very dark man.

Q. Joel Ingram is your brother?

A. Yes we pass for brothers.

Q. You heard him say that the associated with white people? A. No sir. There has always been a controversy in that settlement about this question.

Q. Was there any room for a controversy if he was a black as your coat?

A. Some would associate with these people and some wouldn't and would not let them go to the free schools.

Q. Did they associate with Tom just as they did with the others?

A. I said that I did not see Tom but a few times and he went off.

Q. I believe you said they were not considered pure whites? A. No sir.

Q. Did they consider Tom pure black? A. Considered Tom very dark.

Q. Independent of what you said, did you ever see a negro much blacker than that coat?

A. I have seen negroes as black as anything I ever did see, and that coat is not as black as the blackest thing I ever saw.

Q. Did you ever run away and go to South Carolina?

A. No sir, I deny it.

Q. Did you ever go to South Carolina?

A. I went there before the war, I have not been there since the war.

Q. Where did you move from when you came to Avery's Creek?

A. I came from Swannanoa, was born and raised there.

Q. You never run away to South Carolina? A.

A. No sir, I went there when I was about sixteen years old and lived.

CROSS EXAMINATION

Q. I suppose this is the first time you were ever accused of running away to South Carolina? A. Yes.

Q. Did you ever hear of your being turned out of the Methodist church? A. No sir.

Q. Did you ever hear of your being accused of any other matter except what you have mentioned? A. No sir.

Q. You were never married? A. No sir.

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* Q. You have no children? A. No sir.

Q. Have you any interest in this controversy?

A. No sir none in the world.

Q. You have no children to go to school? A. No sir..

Q. You were subpoenaed in this case?

A. Yes, yesterday morning.

Q And you took no part in this case? A. No sir.

Q. That is a fact that you have never taken any interest in this controversy?

A. No sir, I tried to keep out of it. The Grimses asked me if I knew anything benefitting them.

Q. I believe you said something about the schools, have you ever known these descendants of Jeffery Grimes to attend the public white schools in Averys Creek Township? A. I never have; they had a school on the upper edge of the township; there was some money appropriated to have a school taught for them up there and they had a little school there two or three times.

RE CROSS EXAMINATION

Q Which one of the Grahams asked you if you knew anything that would help them? A. Elmer and Noah.

Q. Where do they live? A. Right in the settlement there.

Q. Both of them asked you? ?

A. I am not right certain that both of them did but I think the old man did. Some of them asked me there that day of the investigation at old man Theodore's.

RE DIRECT EXAMINATION

Q You were there the day of the taking of the testimony of Mary Tabura? A. Yes. I went there to see a lawyer on another matter, I did not go there on anything connected with that.

MACK JONES sworn for defendants, testified :-

Q. Your name is F. MAC JONES? A Yes.

Q. How old are you? A. Will soon be 56.

Q Do you know the Grimes or Grahams? A Yes.

Q. How long have you known them?

A. Thirty-five or forty years, ever since I was a child.

Q. Under what circumstances did you first hear about them? A. In passing up there heard Dick Ledbetter talking about them.

Q. How far did you live from them?

A. About eight miles.

Q. What was the first thing you knew of them?

A They were termed to be free negroes when I was a child. that was taught to me before the war.

Q. Did you ever see Jim? A Yes.

Q. What sort of a man was he? A. Pretty dark.

Q Do you see anything here to which you could compare his darkness?

A. He was considerably darker than Theodore.

Q. How about Mr Ingram's coat?

A. Mr Ingram has a brown coat; I could not hardly compare Mr Ingram's coat to Jim.

Q Do you see any darkness in the court that you can compare Jim to?

A. He was darker than the man with glasses on who stood up there, (indicating man in audience.)

Q. Do you remember any incident of the treatment of these people as colored people, and if so state what it was?

A. I remember that about three times they thrashed at my father's place..

Q. Who was along at that time?

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A. Milus, possibly Theodore and Jim. They thrashed at my father's house probably two weeks, and when meal time came they ate with the colored men.

Q. Was there any protest on their part about eating with the colored people?

A. None whatsoever.

CROSS EXAMINATION

Q I ask you if there was not a redish tinge in their complexions? A. Yes, probably there was a little redish tinge.

Q. How long since you have known these people?

A. Forty years.

Q. How long since you knew Tom? A. I never knew Tom. I knew Milus, Theodore, Jim and the girls.

Q. How long since you know Milus and Jim?

A. I remember when Milus was hired at the railroad out here.

Q. Milus was lighter than Theodore?

A. I don't think there was much difference between Milus and Theodore; Jim was considerably darker than the others.

Q. Didn't he g have that same general complexion that Theodore has?

A. He was a good deal darker.

Q. Didn't he have the same general complexion? A. Possibly he did.

Q. And he had the same general cast of features?

A. I could not say about that.

Q. Don't you recollect that he had a humped nose?

A. I do not.

Q. Don't you recollect that he had thin lips?

A. I don't know. I know that he was a tall thin man.

and he had tolerable long back hair but it was not straight

Q. But it was not kinky?

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A. I don't say that his hair was kinky; he had long black hair and it was cured up around his head and ears.

Q. I ask you if the proper designation of his was was that it was wavy?

A. Yes, I reckon so.

Q. Do you know with whom they associated on Averys Creek?

A. No sir; I lived about eight miles from them.

Q. Jim wore his hair long? A. Tolerable long hair.

Q. And black? A. Yes.

Q. When was that thrashing at your father's house?

A. I don't remember the year but it was since the war.

Q. How old are you? A. Fiftysix in March. I was sixteen years old at the close of the war.

Q. Where did they eat? A. They ate at the same table but after the white people had eat.

Q. But there was not room for all to eat together?

A. I don't remember there was a pretty big table.

Q. There was a pretty big crowd with the machine?

A. Yes there were several.

Q. Who did the machine belong to?

A. It belonged to the Grimeses.

Q. And they went around the country thrashing wheat?

A. Yes.

Q. Which one of the Grimes came?

A. I don't remember, it might have been Milus, Jim and Thomas, there might have been three there.

Q. You don't know whether it was Milus, Theodore or Jim

A. No, I am satisfied there were two and probably three; I think it was Milus and Theodore.

Q. But you don't say for certain that they were the ones?

A. No sir.

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Q. It might have been Milus and Jim?

A. Yes or it might have been Milus and Jim, or Milus and Theodore or Jim and Milus.

Q. Was there a resemblance between those brothers?

A. Milus and Theodore was a good deal alike. Jim was as tall as either one and spare and had very black hair is my recollection; Milus and Theodore had lighter hair and ~~xx~~ Jim had black hair.

Q. You could tell they were brothers?

A. I knew they were brothers by reputation.

Q. Wasn't there a strong family resemblance?

A. Between Milus and Theodore there was, but not so strong between the other two. Milus and Theodore resembled each other more than Jim resembled either of them.

T. J. CARLAND sworn for the defendants, testified:-

Q. Where have you lived for a number of years?

A. In Averys Creek township in Buncombe County.

Q. How long did you live in Averys Creek township?

A. I lived there all my life. I lived two years temporarily in Transylvania, but my home was here all the while held my resident here.

Q. Did you know Jim Graham or Grimes? A Yes.

Q. How long did you know him?

A. I have known him ever since I was a boy.

Q. What was the color of his skin?

A. He was a dark skinned man.

Q. What was the color of his hair? A. It was dark.

Q. How did his complexion compare in color with Theodore?

A. He was a darker man than Theodore; he had the same tinge of color in his skin only darker.

Q. Did you know Mary Taybor? A. Yes.

Q. She was a sister of Theodore?

A. She was reputed to be his sister.

Q. What is her color? A. She is dark too.

Q. Did you know any of the other sisters or brothers of Theodore? A. I knew Milus.

Q. What was his color? A. About like Theodore's.

Q. So you knew Jim, Milus and Theodore, did you know any of the other members of the same family?

A. Yes, I knew some others but I forgot their names. There was Vira I believe.

Q. What was her color? A. About like Theodore's.

Q. You were too young to know Jeffery?

A. No sir, I did not know him.

Q. Did either of these men ever work for you?

A. No sir, they did not. Milus might have done some blacksmith work down at his shop. He was a ~~hazz~~ blacksmith by trade, he never done any work for my by the dat.

Q. What has been the a reputation in the community since you have known it, as to the blood of that family?

A. I have always been told by the citizens that they were mixed blooded.

Q. Mixed with what? A. I suppose they were mixed with negroes; I never heard anything to the contrary, it was always thought that they were mixed blooded.

Q. You are one of the school committee there now are you?

A. Yes.

Q. To what extent has that reputation and opinion prevailed there in that community, with what degree of uniformity?

A. It has been a pretty uniform opinion, I never heard it disputed, it was always recognized as a fact by everybody I heard say anything about it.

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CROSS EXAMINATION

Q. You sat down at the table and eat with them?

A. No sir, not to my recollection.

Q. Haven't you eaten with Theodore Graham?

A. Not to my recollection.

Q. Has he eaten at your house with you and your family?

A I don't think he did.

Q. I ask you if some years ago he did not go to your house and eat at your table with your wife and family?

A. I have no recollection of it. I don't think that is a fact. I would say it is not a fact to my best recollection.

Q. You were tax Lister up there on Averys Creek? A Yes

Q. You listed them as white folks didn't you?

A. I am inclined to think that I did not.

Q+ Do you recollect eating with Merrit Graham at Dick Ledbetter's house? A. No sir not that I recollect.

Q There are no other Grahams up there except those?

A+ No sir, none that I know.

Q. They all belong to this family?

A So far as I know they do.

Q. That is your name to that Tax list ? A Yes.

Q. Look up there and see if you recognize the name of the man at the top? A. Yes, N. W. Graham.

Q. Do you know him? A. No sir; I do not recognize him just not by those initials.

Q. How is he marked? A. White.

Q. Who is that, (indicating on book)? A. D. E. Graham.

Q. How is he marked? A. White.

Q. Who is that, Margaret E. Graham?

A. Yes I know her.

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- Q. Did she belong to that family? A. Yes.
Q. She is marked white? A. Yes.
Q. A. T. Graham is next, do you know him? A. Yes.
Q. That is Theodore? A. Yes.
Q. How is he marked? A. White.
Q. Who is next? A. D. J. Graham.
Q. How is he marked? A. Marked white.
Q. He belonged to this family? A. Yes.
Q. He is marked white? A. Yes.
Q. Who is the next? A. C. J. Graham.
Q. How is he marked? A. Not marked.
Q. Turn over, who is next?
A. J. B. Graham, not marked.
Q. Who is next? A. M. S. Glenn.
Q. How is he marked? A. Marked white.
Q. Who is that up there on the next leaf?
A. Don't know can't see well enough. I think that is F.M. Glenn.
Q. All the Glenns there are white? A. Yes.
Q. How is he marked? A. Not marked.
Q. There is M. S. Glenn? A. Yes.
Q. He is a County Commissioner? A. Yes.
Q. How is he marked? A. Not marked. Of course he would have been marked white.
Q. There is H. M. Ducker? A. Yes.
Q. How is he marked? A. Not marked.
Q. So you have got all those Grahams marked white?
A. Yes.
Q. And you have got old man Theodore marked white? A. Yes.
Q. And you have some white people there not marked? A. Yes some omissions in the marking.
Q. When was this record made? A. In 1899.
Plaintiffs OFFER THIS LIST IN EVIDENCE MARKED EXHIBIT "F".
Q. So in 1899 you marked all of these people as white?
A. Yes that seems to be right.
Q. You thought that was right or you would not have done it?
A. I don't know for what reason I did it; they were always a respectable lot of people and everybody treated them so as not to humiliate them.
Q. They never said anything to you about it, the Grahams did not? A. No sir.
Q. All you had to do was to make an X mark there? A. Yes.
Q. And a lot of white people you did not mark white?
A. Yes those omissions were by some carelessness.
Q. And you did not omit any of the Grahams? A. Yes.
Q. But every time you made a mark above one of them you marked him white? A. Yes, that seems to be the case.
Q. Did your children go to Nora Cordell's singing school?
A. I don't know anybody of that name.
Q. Do you recollect her teaching a singing school up there? A. No sir.

J. V. JOHNSON sworn for the defendants testified:-

- Q. You are a member of the school committee for Averys Creek township? A. Yes.
Q. How long have you lived in Averys Creek township?
A. About sixteen or seventeen years.
Q. Did you know Milus Graham or Grimes?
A. Yes, I have seen him.
Q. Describe his features and color to the jury if you.

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A. I saw him but I don't know whether I can accurately describe him. My recollection is that his features were more like Bud Graham's there.

Q As to his color, what would you say?

A. Milus was something near the color of Bud Graham in my recollection.

Q Do you know Mary Tabor? A Yes.

Q She a sister of Theodore? A Yes.

Q What was her color? A. Pretty dark.

Q Can you use a descriptive term that will convey to the jury your idea of the color of Jim?

A. He was a good deal darker than Theodore.

Q How was his color compared with the color of ginger bread?

A. That depends upon what color of ginger bread. He was darker than what I would call light ginger bread color.

Q Convey to the jury by any proper descriptive term, your opinion of the color of that man?

A He was very dark.

Q Do you know any of the other brothers or sisters besides Milus, James, Theodore and Mary?

A. I knew Margarette and Vira. Margarette and Vira was something like Theodore in color.

Q What has been the general reputation in that community as to the race to which that family of names we have just called belonged?

A They have been accounted, as far as I know, mixed with something. They have always been counted there as of the colored race.

Q Mixed with what race? A. The opinion has been around that that they were mixed with the negro.

Q What has been the general reputation?

A. The general reputation around there is that they were mixed with negroes.

Q. State what has been the conduct there, since you have known the community, with reference to the public schools

A. They have not to my knowing any of them went to the white public schools since I have been in that township. There has been a school there a purpose for them; they taught a school up there and there was only three went, and Prof. Venable said they could not spend money there if so few was going. Ever since I have been there there has been a school taught for them. Jim Ducker and Bob Shipman taught a school there for them since I have been over there.

CROSS EXAMINATION

Q. How far do you live from the Grahams?

A. I suppose about a mile or a mile and a half.

Q. Look at this gentleman, (indicating person in court) and say to the jury if you think he has one drop of negro blood in his veins, give me your opinion?

A. Just to look at this man I could not say, would have to look at his relatives.

Q Look at this man and give me your opinion as to whether you would think from his appearance that he had one drop of negro blood in his veins?

A I would have to say there was mixed blood.

Q Would you say from his appearance that the mixture was that of the negro? A. I could not say.

Q. Merritt Graham, come up here (Man advances), now look at him and say whether he bears the slightest resemblance

of having a drop of negro blood in his veins?

A. I could not say.

Q. I ask you if he is not as far from the negro in his appearance as anybody in this Court house?

A. I think there is some mixture of something.

Q. I am trying to find out your opinion and to see the accuracy of your opinion -- he does not bear the slightest resemblance to an African does he?

A. Knowing what I know, I could not say.

Q. You can't look at him and give an unprejudiced opinion?

A. If I was to see Merritt off by himself I don't suppose I could say anything about that.

Q. Would you look at him and say whether he has any negro blood in him?

A. I mean to say that I think he has mixed blood of some kind, but I would not say that it was negro blood.

Q. I ask you to look at this young man and say if he is not as free from negro any any man in this Court house?

A. He has that appearance.

Q. And he is a grand son of old man Graham? A Yes.

Q. You know you would not say these folks were mixed with negro?

A. I could not say because I do not know?

Q. And looking at all these people here you cannot give it as your opinion that they are mixed with negro?

A. That is my opinion that they are mixed with negroes.

Q. Did you ever hear that they were descended from the Portuguese? A No sir.

Q. Did you ever see a Portuguese? A. No sir.

Q. If you were acquainted with the Portuguese race and knew they were a very dark race, darker than Mr Theodore Graham and with prominent features, and these people were to present themselves to you and say they were descended from the Portuguese wouldn't you believe it?

A. I could not say.

Q. If you knew the Portuguese were a very dark race and Mr Theodore Graham were to present himself to you and say he was of Portuguese descent, wouldn't you believe him?

A. They are very truthful.

Q. The only two races you are acquainted with are the Anglo Saxon and the African? A Yes.

Q. They are not the only races on earth of course?

A. No sir.

Q. If you knew the Portuguese were a very dark race, a dark brown color, and you were to look in the faces of these people, and they said they were descended from the Portuguese wouldn't you believe them?

A. Yes, if they knewed.

Q. If they were to tell you they were descended from the Portuguese, just as other men would tell you they were descended from the Anglo Saxons, wouldn't you believe it? A. I could not say.

Q. You would not disbelieve it would you, there would be nothing unreasonable about it?

A. I can't say; because I don't know anything about the Portuguese.

Q. You ner saw one in your life?

A. No sir, not to my knowing.

Q. You have sat down atv the table and eat with these people?

A. I know that Merrit Graham has worked for me and eaten with my wife and children.

Q. And you did not feel yourself humiliated or discredit-

ed by it? A. No sir.

Q. You would not sit down and eat with a negro?

A. Yes, I have done it; I have eaten at one end of the table and then at the other.

Q. Have you eaten at table with negroes on terms of social equality?

A. I don't know what you would call it. I have eaten with them.

Q. Where did you eat with negroes?

A. In South Carolina. They got breakfast for us and we sat down at the table, me and a fellow by the name of Bell; they ate at one end and we ate at the other.

Q. You would not invite a negro to sit down at your house and eat at your table?

A. Not a full negro.

Q. Would you a Mulatto?

A. I don't know about that. I don't know that it could hurt a man very much.

RE DIRECT EXAMINATION

Q. Mr. Craig asked you if you ever heard of any Portuguese being in North Carolina until this thing got up? A. No sir.

Q. Did you ever hear of that race being in any part of North Carolina? A. Nonsir.

Q. You say you have taken a meal at some times with Merritt Graham?

A. Yes that is the only one I remember eating with. I know Merritt worked for me and worked in my shop.

Q. You spoke of having, under some circumstances eaten with a negro, explain that to the jury?

A. Yes, me and Mr. Bell was waggoning in South Carolina and we camped there and eat with them.

Q. You don't mean to say that you entertained them?

A. It was a rainy night and they said they would get our breakfast for us, and they sat us down at one end of the table and the darkies sat at the other end.

Q. Who is the teacher of this school up there now?

A. Miss Irene Clayton.

Q. What set of Claytons does she belong to?

A. Bob Clayton's daughter at Skyland

RE CROSS EXAMINATION

Q. Miss Clayton was willing to teach these children?

A. I don't know.

Q. They did go a week to her? A. Yes.

Q. And Dan Wells complained about it? A. Yes.

Q. And Dan Wells is the brother-in-law of Theodore Graham? A. Yes.

Q. And he was the only man who did complain?

A. He was the only man who complained to me.

RE DIRECT EXAMINATION

Q. You say Mr. Wells is his brother in law?

A. Yes, Theodore married his sister.

Q. He is no blood kin? A. No sir.

A. T. SUMMEX sworn for defendants, testified:-

Q. How long have you lived in Buncombe County?

A. Sixty three years; I came here in 1842.

Q. Did you know Jeffery Grimes?

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A. I have met the older people. I don't remember their names; would not know them now. I think they traded with Mr Patton with whom I did business.

Q. What was your relation to the Patton business?

A. Clerk in the store.

Q. They came there on business and you came in contact with them? A. Yes. I saw the older members of the family.

Q. Do you recollect anything about their personal appearance?

A. I have a recollection-- there was a brother or half brother or nephew of theirs here in town.

Q. What was his name? A. Felix.

Q. Do you recall the older Grimeses that you came in contact with as a Clerk in Mr Patton's business, other than Felix, do you remember them?

A. I don't recall now. I know that they were clever, reputable people and that they attended to their own business; I never heard of them being in any kind of a difficulty.

Q. Have you any recollection about their personal appearance? A. I do not.

Q. What was the reputation in that community as to the race to which they belonged?

A. It was generally understood that they were free negroes; I always understood it that way.

Q. Was there any general reputation as to the relationship of Felix Grimes to these people?

A. I don't know that there was. Felix Grimes belonged to James W. Patton.

Q. What positions have you held, if any with relation to the educational interests of this County?

A. I was a member of the board of education of this County from 1885 to 1895 and was Chairman of the Board.

Q. What was done in reference to the public schools of this section of the county for this Graham family at that time?

A. There was some difficulty gotten up and it was before the Board, and we decided we would turn it over to the Committee of that District, and let them make whatever arrangement they would; none of us ever went up there to investigate it, and it was made up and I think there was a separate school started.

G. W. BALLARD sworn for defendants, testified:--

Q. How old are you? A. Seventyone years old.

Q. How long have you lived in Buncombe County?

A. About fifty two or three years.

Q. Where did you live when you first lived here in this County?

A. I came from Henderson County to Averys creek.

Q. When did you move to Averys creek?

A. The first of the year 1855.

Q. How near did you live to Jeffery Graham or Grimes?

A. Something like three quarters of a mile.

Q. Do you know Jeffery Grimes?

A. Yes.

Q. How intimately did you know him?

A. I would see him like all of the other neighbors, up to the time of his death.

Q. Did you ever see him before he moved to Averys creek?

A. Yes.

Q. What sort of a looking man was he?

A. A big stout robust man, and what you might call of a tanrace. He was a colored man.

Q. What sort of hair did he have if you remember?

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A. It was hardly really kinky; it was cruley, culred at the end, the best I remember.

Q. You knew him right up to his death?

A. Yes, I was there the night he died.

Q. Did you ever hear him say anything about his racial connection and ancestry?

A. I don't think I did. I was a boy and I asked him if he was not a negro, and he said "people know me by my color", was about all he said. That was about all he said as I remember. He was a very quiet man and did not have much to say.

Q. Please state to the jury if you knew Lewis Graham?

A. Yes.

Q. How long did you know him? A. Pretty much the same length of time. I knew him from '54; he labored ~~me~~ for me after I was married.

Q. What was the general reputation in the community as to what these men were, as to what race they belonged to?

A. I never heard except that they belonged to the African race, I never heard any controversy about that thing. ~~They~~ They worked the roads as honest, fair and honorable men.

Q. Were they treated as white men or free negroes?

A. They were not treated as Caucasian people in all respects. Some people abhorred them and did not allow them the privileges of white men.

Q. Do you know whether they were admitted to the muster rolls?

A. I think not. I mustered at the Bent Creek ground and I don't remember seeing any of the boys in the company; they lived near where the company was mustered.

Q. I believe in those days people who were known as free colored people were not admitted to the militia companies or permitted to carry arms? A. I think not.

Q. Judging from the appearance of Jeffery Graham, state whether in your opinion he was a man who had the blood of the dark or black race?

A. I was of the opinion that the old gentleman was of the colored race, and from every appearance I thought that?

Q. Was he darker than Theodore Graham? A. Yes.

Q. How much darker would you say? A. Considerably darker.

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

Q. Describe him to the jury?

A. To make it in the old style, I would call him a light ginger cake color.

Q. How was his hair? A. Short curly hair, as I remember it. It grew out and curly at the end.

W. How did his color compare with Theodore Graham's?

A. It was darker than Theodore's.

Q. Did you know Tom Grimes? A. Yes.

Q. Describe him to the jury?

A. He was a brother to Theodore and was a lighter color than James.

Q. What became of him? A. I know nothing only that he was killed in Tennessee in the time of the war.

Q. Did you know this family pretty well, the younger ones as well as the older ones?

A. I knew very little about their genealogy except from Theodore up, Theodore and me was about the same age.

Q. Do you know Mary? A. Yes.

Q. What was her color? A. Light brown color.

Q. Have you ever observed people whose families had admittedly negro blood in their veins and observed their color?

A. Yes some would be darker than others.
 Q. I ask you if it is not a fact that where there is negro blood in a family, if it will not crop out in a lower generation and some of them look more dark than others?
 A. Yes, I think so.
 Q. You have no interest in this controversy?
 A. Not a bit in the world, I did not expect to be a witness in this case until last night.

CROSS EXAMINATION

Q. How long did you say you have known the Graham family?
 A. I have known them and lived by them since 1854.
 Q. You say you knew Jeffery Graham? A. Yes.
 Q. And you say he was a good upright, honorable man?
 A. Yes.
 Q. Who did you marry? A. I married a Rollins, a sister of Maj. W. W. Rollins.
 Q. You have visited the Graham family?
 A. I have been there occasionally.
 Q. You have eaten at their tables?
 A. I stated that I have.
 Q. Your wife and children have eaten at their tables?
 A. I don't remember that they did; they never ate at my house.
 Q. You used to play with Theodore Graham?
 A. We hunted together and were good friends, and they all worked for me when I married.
 Q. Isn't it a fact that you and your wife, played together with these children?
 A. I don't know that we ever did. We worked together; I don't think that we ever played together.
 Q. Didn't you call Theodore the Big Injun?
 A. I never did that I remember.
 Q. Have you ever heard your wife speak that way?
 A. I don't remember to have.
 Q. You said that sometimes people mixed with the African race you would see some appear darker than others? Ayes
 Q. And the same thing appears in pure Anglo Saxon families that some are darker than others? A Yes.
 Q. You said that Jim Graham had kinky hair and then you said that he had curly hair, what do you mean by saying both? A. It came out and kinked or curled at the end.
 Q. You say that Mary Graham was one of the darkest members of the family, wasn't she noted for her long beautiful hair? A. Yes she had long straight black hair.
 Q. And she had a beautiful form?
 A. Yes was a very good looking woman.
 Q. She had no negro features?
 A. She had a dark skin, I am no scientist to tell what is negro.

M. F. GLENN sworn for defendant, testified:--

Q. What position do you occupy in Buncombe County?
 A. I am one of the Commissioners of Buncombe County.
 Q. What position have you held in Averys Creek Township in reference to schools?
 A. I served there as a committeeman.
 Q. How long do you suppose you have served as a committee man in Averys Creek Township?
 A. Some 25 or 30 years. I suppose. I have served ever since the law came into force, until this year, in whole township.

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Q. Did you know James Grimes? A Yes.
Q. What was his color?
A. Uncle Jimmy was pretty dark.
Q. What would you say as to the character of his hair?
A. It was knot kinky, it was very short and curly.
Q. Did you know Tom? A. I Saw him a few times.
Q. When did you go into the neighborhood to live?
A. In 1861.
Q. Describe Tom, his color, so far as you recollect him?
A. So far as I remember Tom he was darker than Theodore.
Q. Do you recall the appearance of his hair?
A. I cannot.
Q. Do you know Mary Tayburn? A Yes.
Q. What was her complexion?
A. My recollection is that she was dark as Jim.
Q. Did you know Milus? A. Yes knew Milus well.
Q. How did he compare in color with Theodore?
A. I don't think there was very much difference. I dont know which was the darkest. Milus as I remember him was kind of freckled.
Q. Did you ever take the school census? A Yes.
Q. How were the descenadnts of these people classified in the school census. A. I numbered them as colored.
Q. You did the numbering yourself? A. Yes.
Q. How about the schools that have been taught there for them.
A. Ever since 1861, since I have been living there, they were never admitted into the white schools, there were schools taught for them. Jos. Bishop taught a school for them and Mr Roberson and Mr Ducker. Mr Ducker taught two schools for their especial benefit.
Q. What has been the reputation there in that community as to the race to which these people belonged?
A. I never heard but that they were colored until the starting of this suit. I never heard of their claiming anything else.

CROSS EXAMINATION

Q. Did they ever discuss with you what race they belonged to?
A. Noah Egraham did about the time he came here to get you to bring this suit, and he asked me if I knew his grand father and I told him I did not, and he asked me if I ever heard that they were Portuguese, and I told them that I had not.
Q. And they talked to you a year ago about this?
A. No sir, we were friendly and they were talking about it.
Q. Did they make a statement at any time before this suit arose? A. He said to me that he was going to bring suit I never had any conversation with them before.

W. W. GOLDSMITH sworn for the defendant, testified:-

Q. Your name is W. W Goldsmith? A Yes.
Q. How old are you? A Sixty seven.
Q. Where were you born?
A. I was born in Madrid Spain.
Q. Where do you live now?
A. I live in Asheville.
Q. What is your business? A. Watch maker and repairer.
Q. How long have you lived here? A. Twenty-five years.

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Q. How long did you live in Spain?
A. I was born and reared there and learned my trade there I left there when I was 27 years old.
Q. Where did you move to when you left there?
A. I went to Melbourne Australia.
Q. How long did you stay there?
A. Then I came to Mexico.
Q. How long did you live there?
A. I was in the city of Mexico about eighteen months.
Q. Then where did you go?
A. I went to California, in the United States.
Q. How long were you in California?
A. One year in Los Angeles, and six months in San Francisco.
Q. Then where did you move from there?
A. To Greenville, S. C.
Q. Then where? A. To Asheville.
Q. Where were you educated?
A. In Madrid. I received a partial English education when I was young there, under an English Professor, that enabled me to speak English quite well when I came here; my parents were dead and I served under the Old Indenture
Q. What languages were you educated in?
A. English and Spanish was my natural language. I am not much of a Spanish scholar.
Q. Did you speak Spanish in your early days?
A. Yes, I speak it now, but I speak Spanish with a sort of Brogue.
Q. You know where Portugal is?
A. Yes, I have been with the Portuguese a great deal.
Q. Have you ever been in Portugal? A. No sir.
Q. What language do the people of Portugal speak?
A. They speak the Portuguese language. I don't think they speak English there. I only know them from seeing them in other countries. I saw some in Australia, some in Naples, and some in Mexico. I don't think they are hardly considered as a race yet they are a very marked race of people, they are something like the Irishman, you can tell him wherever you see them.
Q. Can you tell a Portuguese when you see them?
A. Generally I can, I would not say always.
Q. What kind of people are they?
A. They are small and most of them are dark complected. They have sharp features, bad eyes, straight black hair like the Indian though their hair is not as coarse as the Indians. They are rather a coarse looking people.
Q. But their hair is straight?
A. Yes, it is not all jet black; all Chinamen have jet black hair.
Q. How about their eyes?
A. They have not a large full eye as an American, but as a rule it is a little smaller, but generally ~~xxx~~ black. I don't think I ever saw a blue-eyed Portuguese.
Q. Is there any resemblance between the Portuguese and negroes?
A. No sir, the Portuguese have thin lips and sharp features. Their nose is larger and more like an American nose.
Q. Have you noticed Theodore Graham and that family who are having this contest here?
A. No sir; I noticed one old gentleman and six children that were pointed out to me as the children--
Q. Have you seen them in the Court house here?

A. I saw a crowd that was pointed out to me as the children that were not allowed to go to school.

Q. Have you seen anything in their appearance, walk, manner or anything in regard to those people which would indicate that they were Portuguese?

A. No sir, I have not seen anything like that. That there is the gentleman I saw the other day, (indicating Theodore Graham).

Q. Is there anything about him that resembled a Portuguese?

A. No, I can't say that there is. That gentleman has sharp regular features but there is an expression that a Portuguese has not. If he is a Portuguese he is of a different type from what I have seen; you will see some fleshy men among the Portuguese, but as a rule they are small people.

CROSS EXAMINATION

Q. You are a Spaniard? A Yes.

Q. The Portuguese is a little darker race than the Spaniard?

A. The true Castilians are the fairest kind of people on earth.

Q. You are not a true Castilian then?

A. I am a pure bred Spaniard, but there is a class of Spaniards---

Q. Are you a Castilian? A. I am a Spaniard, I am of Spanish parents.

Q. There is nothing in your veins akin to the African blood?

A. No sir; I am much obliged. I am as clear a blooded man as you are.

Q. You stay in the house all the time and work at your trade? A Yes

Q. And you never work in the sun? A. No sir

Q. You have worked in the house for the last 25 years?

A. Fifty of them.

Q. You have not been exposed to the sunshine except as you walk back and forth to your work?

A. I don't walk now; I am old and rather fleshy and I ride most of the time.

Q. You are an industrious man and attend to your own business and let other people alone and stay in-doors all the time? A. Yes.

Q. You would be called dark?

A. Yes, a dark skinned man.

Q. I ask you if instead of working in the house and standing in the shade for the last fifty years, you had worked in the sun, don't you think you would have been a darker man than Theodore Graham?

A. Yes I would have been sunburnt. I sunburn very easily where the skin is exposed; under my clothes my skin is different, (witness shows white skin of his arm.)

Q. People of your race do sunburn easily?

A. Yes, very dark skinned persons as a rule are thin skinned and any dark skinned person will sunburn more than a fair one, I mean they will show it more.

Q. And that is the reason Southern peoples are dark, because they are exposed to the sun?

A. Yes, in the northern countries the sun hasn't the power that it has in Southern countries. Take a fair

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skinned person and he will freckle in the sun, but a darkskinned person just burns.

Q. The Portuguese are not mixed with negroes?

A. I don't think there is any negro about a Portuguese, but I don't know anything about their mixture. I don't think they are a race of people but still they have a language they speak.

Q. They belong to what is called the Latin races?

A. Yes the Spaniards, ~~the Portuguese~~ and the French all belong to the Latin races, and the Italians also, but I don't know as to the Portuguese.

Q. Some of your race are much darker than you?

A. I am about as dark as the common run of Spaniards. Some are darker, I may be fairer than the average Spaniard, but the air will tan my skin without the sun.

Q. I ask you if the only difference you can point out between Mr Graham and a Portuguese is his size?

A. No sir, there is a kind of expression on the face of the Portuguese something like there is among the Irish people, every one looks something like another.

Q. His color would not indicate that he was not a Portuguese?

A. No the Portuguese are darker than he is, he is fairer than the Portuguese as a rule.

Q. I ask you if the Portuguese, as a rule, don't wear their hair rather long and if it don't curl, at the ends?

A. I never saw it curl.

Q. I ask you if the Portuguese hair is not fine like that old gentleman's there? (Indicating Theodore Graham)

A. Yes and they have thin lips and prominent noses.

Q. I ask you if Mr Dan Evans does not present the appearance of a typical Portuguese? A. No sir, could not say that.

Q. Don't he look like a Portuguese?

A. No sir, not to me; he maybe a Portuguese but the features are not there, don't think so.

Q. There is not the slightest resemblance between Mr Graham there and a negro??

A. No sir, none at all.

Q. No more than there is between a negro and you or any white man in this house?

A. No sir, I do not see any.

Q. He is certainly no more like a Portuguese than a negro?

A. Yes, anything is more like a Portuguese than a negro.

T. J. RICHMAN sworn for defendant, testified:

Q. What County were you reared in? A. Henderson County.

Q. In what part of Henderson?

A. From 1830 to 1870 my father lived on what is known as McDowell Creek, close to the edge of the Sumner County line.

Q. At that time did you know Milus Graham? A. Yes.

Q. Did you know Theodore? A. No sir, I don't remember Theodore. I knew Milus and James.

Q. Describe them please in color and features?

A. I have always heard them spoken of as ginger-bread colored, yellow looking men.

Q. Do you know the reputation in the community as to what race they belonged to?

A. Yes they were always said to be from the colored people, or free negroes; they were not slaves.

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Q Did either of them or any of them ever do any work for your father?

A. Milus Graham has been to my father's house to buy their seed oats or corn, but I don't remember whether he did any work or not. They have been there frequently, James Graham has been there frequently, and I am certain that some of the Gilliland boys worked for my father.

Q With whom did Milus and James associate when they came there to your father's house?

A. I don't think that they ever ate there at my father's house. My father had the usual prejudices of a man and he never offered them to eat at all, all the times they came there they went away. The Gilliland boys perhaps may have. I remember this incident about the Gilliland boys, the table was prepared with the servants for them and they objected to it and did not eat at it.

Q Do you recollect any incident about the Grahams?

A. I remember that they were never invited to eat at the table, my father had the usual prejudices against that and they went away at meal times.

Q. From your observation of James and Milus, what is your opinion as to what race they belonged?

A. I never had studied a great deal about it. I took it from the reputation that came to me that they were of mixed blood. I was a small boy then, and when I remember them spoken of it was as being mixed with the colored race, and the impression sticks to my mind, but it may be an erroneous one. That was the impression made on my mind that they were men of mixed blood, mixed with African or some other race of people, and their hair was slightly turned up or curly.

Q How did their appearance compare with the mulattos you have seen?

A. They looked something like them, except that Milus Graham was a man with a long face and perhaps a Roman nose, but he had some features as I was impressed, like the African.

CROSS EXAMINATION

Q. Africans do not have Roman noses? A -No sir.

Q And they do not have long faces and sharp features? A No

Q. Did the se men have thick lips?

A. Yes, I think they did not have thick lips.

Q. Mr Theodore Graham has thin lips? A Yes.

Q. And he has a slightly Roman nose? A Yes. and Milus's nose was slightly Roman too. Milus was a slighter and rather taller man.

Q. They all had sharp noses, Roman noses?

A. I don't think that James's nose was particularly Roman my recollection is that it was not.

Q. Didn't they all have rather sharp features? A Yes.

Q. And thin lips. A Yes

Q. And that is exactly the contrary to negroes?

A. Yes, a negro is not apt to be that way.

Q. But all those folks were that way? A Yes.

PROF+ A. C. REYNOLDS sworn for the defendants testified:-

Q. What position do you occupy in Buncombe County?

A. Superintendent of Public schools for Buncombe County.

Q Are you a native of this County? A Yes.

Q. Did you ever see James Graham? A Yes.

Q You say you were raised in the County, what part?

~~XXXXXXXX~~

A. I was born on Sandy Mush and was brought up on Sandy mush, and staid there until I was 25 years old, and I have been three winters in Tennessee at school.

Q. Then where did you go after that?

A. I went to Burk County and spent five years in Burk County, taught school.

Q. What were you doing in Burke County

A. I was elected Vice Principal, of the College and afterwards Principal, and then I was elected President of Wofford College, then elected for a second term and resigned.

Q. How long have you been Superintendent of Public Education for Buncombe County?

A. Since the 15th of last August.

Q. You have seen James Graham? A. Yes, I have every reason to believe it was James Graham, he was described to me and I went to his home.

(Plaintiffs admit that witness saw James Graham.)

Q. How did you happen to go there to see him?

A. At the suggestion of the Board of Education and one of the attorneys for the Gilliland children. The attorney approached me two or three times and I promised to go and investigate the case. and in going past James Graham's cabin, I enquired the way to the school house.

Q. Describe James Graham to his Honor and the Jury.

A. I don't know that I can put in a minute description, if you will allow me to give you my intuitive impression when I saw him, and my intuitive impression was so clear that I determined my official action in that respect.

Q. State from your observation of him your opinion as to what race he belonged?

A. My observation confirmed me in the belief that he was mixed blooded and mixed with the African Race.

Q. After this investigation and your observation, what was the official action of the Board of Education?

A. The Board excluded these children from the school, and tried to make provision for them to be taught.

Q. You say these children were excluded on your report on the appearance of Mr James Graham?

A. I don't know that they were--

Q. Then you did upon your investigation exclude them?

A. As I understood from the Teacher and the Committee they had excluded them before I went there, I went for the purpose of investigating the matter and deciding what was the truth of the case, and I went with an unbiased judgment to investigate the case, but after I saw James Graham's appearance and the law, I then formed the opinion that they should be excluded, and I tried to make provision for their being taught. Then I tried to get the teacher to teach those children in the morning and on Saturdays, and we were to give her ten dollars for teaching them, not at the same place but at another, and she agreed to do that, upon the understanding that this would be no reflection upon her by the Board or the good people. I went back and reported to Mr Martin, and we offered the Gillilands the proposition of ten dollars a month for the four months the school was to be taught, and they rejected that proposition, and this was confirmed by the Board in Regular session.

Q. But they did reject that proposition?

A. Yes, I understood that they did from the teacher.

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WITH THE EXCEPTION OF TWO OTHER WITNESSES
DEFENDANTS CLOSE.

RICHARD C. BUNSELL sworn for the Plaintiffs, testified:-

Q. Where do you live? A. In New York City.
Q. What is your business? A. Lawyer.
Q. How happened you to be in Asheville?
A. I have been on a pleasure trip to Toxaway with my wife
Q. Did you happen to be in the Court room.
A. Yes, I have become interested in this case by the news papers and was anxious to see the parties.
Q. What opportunities have you had to see different peoples?
A. I have been down in Central America where you meet classes of all races.
Q. What kind of races live in Central America?
A. The Latin races predominate there.
Q. What kind of Latin races?
A. French, Portuguese, Italians. The Portuguese and the Italians are closely related to each other in my opinion.
Q. Do the portuguese visit New York
A. Yes, but the majority of them that I saw in New York were Portuguese sailors.
Q. What color are the Portuguese as a general thing?
A. They are dark; I would not call them ginger bread color, but between that and white.
Q. How dark are they generally?
A. I have seen some that were as dark as anybody in this room. I might say they are a light coffee color.
Q. What kind of features have the Portuguese? A. Very sharpe.
Q. Have you seen any people in this room that would make you think of the appearance of Portuguese?
A. Yes that one over there.
Q. Dan and Jim Evans come around here.
Q. What race of men do these two men belong to in your opinion?
A. The Portuguese.
Q. How do the portuguese usually wear their hair?
A. The Portuguese sailors usually wear their hair down and it curls at the end.
Q. Is this old man too dark to be a descendant from Portuguese, (indicating Theodore Graham)?
A. My opinion is that that man has a florid complexion that he is not dark at all.
Q. You have travelled a good deal and observed different peoples, do these people here resemble the negroes?
A. Not the slightest bit, those they have here.
Q. You have no interest in this controversy?
A. Not the slightest. I pointed those men, (indicating the Evanses), as men looking like descendants of Portuguese not knowing they were related to the plaintiffs.

CROSS EXAMINATION

Q. Where have you lived? A. In New York all my life with the exception of three or four months in South America.
Q. You have never lived in the Southern part of the United States? A. I have been down here for four months and I was down here for two or three months last winter.
Q. Are you very familiar with the negroes or Southern mulattoes?
A. We have in New York more negroes in proportion to the entire population--
Q. How many people are there in New York altogether?
A. Four Millions, in Greater New York, we see a great

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deal of the negro in New York city because they all live in one district.

Q. You are a well educated man, a graduate of some New York University?

A. I am a graduate from Columbia College and Columbia Law school.

Q. Are you familiar with the names of Portuguese? A Yes

Q. Give us some of the name that you are familiar with in Portuguese?

A. One I know is Pedro, he is Emperor of Brazil.

Q. Did you ever know a Portuguese of the name of Jim or James? A. No sir.

Q. I believe you say you would call this old man here not dark but a florid complexion? A Yes.

RE DIRECT EXAMINATION

Q. I ask you if the name Adolpheus is not peculiar as to the Latin names?

A. Adolpheus, as far as I know is a French name.

Q. I ask you if the name Theodore is not a name peculiar to the Latin races? A. I could not say.

Q. Theodore is a contraction of Theodorus?

A. I think it is from a Greek word.

Q. That name was adopted into the Latin language and was because the name of one of the Roman Emperors?

A. Yes something like that.

Q. If the name would indicate anything, the name of Adolpheus Theodorus would belong to what race?

A. I would say it belonged to one of the Latin races if the name indicated anything.

Q. Milus is also a Latin name? A Yes.

Q. What does Milus mean? A. It means a soldier, pure Latin for soldier.

Q. A Portuguese boy would speak the language of the surrounding people he was raised with? A Yes.

RE CROSS EXAMINATION

Q. Don't the linguists, the ethnologists judge of a man's name by his sur name, for instance if you know of a man by the name of Pedro--

A. You take the translation of Pedro and it is Peter.

Q. Given names do not indicate to what race a man belongs?

A. They may but not necessarily.

Q. Isn't it the sur names by which the race is judged?

A. Yes but frequently people of the lower classes change their names.

Q. Jefferson is not a Latin name? A. No sir.

Q. And Mary is not a Latin name?

A. They are not exclusively Latin.

Q. There was Maria Teresa? A. Yes she was a German.

Plaintiffs

S. W. Radford, sworn for the ~~defendant~~ testified:

Q. What is your occupation?

A. I am a teacher, a Teacher in the West Asheville Graded schools; I am Principal, of the West Asheville graded schools.

Q. Do you know John Ingram?

A. I saw John Ingram two weeks ago for the first time and I would not know him now.

Q. Where did you see him?

A. I saw him in Averys Creek township at the Home of Mary Tabor, and we took the deposition of Mary Tabor.

Q. Was the witness Dan Wells with you? A Yes.
Q. What did he say--
A. To the best of my remembrance he said that the Grimes had been treated shamefully, I believe that Mr Dan Wells said that.
Q. Do you know Mrs Mary Tabor? A. I have seen her one time.
Q. Can you describe her features to his Honor and the jury?
A. Yes she had a dark complexion, sharp features and a prominent nose and her lips are thin.
Q. Do you know Pedro Levene? A Yes.
Q. What Nationality does he belong to?
A. He is a Mexican. I think that Pedro Levene is darker than Mary Tabor; best I remember her is that he is darker than she.
Q. Do you know Vira Graham? A. Yes I saw her on the same occasion.
Q. Will you please describe her features to the jury?
A. She is not dark, she is slightly dark, she has a sharp bony countenance.
Q. From your observation of Vira Graham and Mary Tabor did they have the appearance of being tainted with negro blood?
A. No sir to the best of my knowledge they have not. Mary Tabor has thin lips and a Roman nose and sharp features. I did not see her hair. From what I saw I don't think she had any negro blood, though she seems to have foreign blood of some kind.
Q. Do you think from your conversation with them and your observation of them that they are negroes?
A. No sir, there is a difference in their speech from the negroes, they have a quick way of speaking.

CROSS EXAMINATION

Q. When did you see these people? A. About two weeks ago.
Q. What was the occasion?
A. Mr Anderson asked me to go with him and he said he thought I would like to ride up Avery's Creek, as I had been teaching school and I said that I thought I would enjoy the ride. I was at her home where he was taking the deposition. At the home of Mary Tabor.
Q. She had on a bonnet? A. Yes I think so.
Q. You did not see her hair? A. No sir.
Q. What was her complexion? A. Dark.
Q. You would not undertake to say that she did not have African blood in her?
A. No sir. The best of my opinion is that she has foreign blood, and my own private opinion is that it is not negro blood.
Q. But you don't know how that is? A. No sir.
Q. Did you see old man James? A. No sir.
Q. You never saw any but Theodore and Mary.
A. I saw Theodore, Mary and Vira, and I understand one or two of the sons of Theodore.

W. W. ROLLINS, sworn for the ~~defendants~~ Plaintiffs, testified)----

Q. I believe you were summoned by the defendant in this

case? A I think I have been summoned by both sides.

Q. You knew Jeffery Graham? A Yes.

Q. How long ago did you know him?

A. Fifty four, five or fifty six years ago.

Q. Where were you living then?

A. Away up at the farthest pass on the Creek.

Q. How far did you live from Jeffery Graham?

A. About two miles.

Q. Did you know him well? A Yes.

Q. What sort of a looking man was he?

A. Heavy set chunky man; an old man with a very white head.

Q. What kind of features did he have

A. They were dark.

Q. What shape were his features?

A. It was a yellowish dark color.

Q. What was the shape of his face?

A. His nose was not flat. It was an ordinary nose.

Q. A Roman nose? A Yes. I was a young thing did not know notice much about it.

Q. Did he look anything like a negro?

A. The impression ~~an~~ when I was a youngster on my mind was that they were mixed with Indian blood.

Q. When did you first hear that they were mixed with the Portuguese race?

A. Old man Jeffery has stated, when I would be at his house, that he was of Portuguese blood.

Q. How long ago did you hear that?

A. Fifty odd years ago.

Q. How were they treated in that community?

A. It was thoroughly settled then and they went to the log rolling s and corn shuckings, and they and everybody went together there. They went to the houses of the white people and the white people would set down at the table with them.

Q. How were they treated as a general thing?

A. That was the way. I would see them at those gatherings. They would go with the neighbors to get wood in the winter together, and there would be one or two of the boys along, and when we would go to their places to shuck corn, the white people would be there.

Q. State whether or not you heard anything about their being mixed with negro? A. Not at that time.

Q. You never heard that at all? A. No sir.

Q. You said they were mixed with Indian?

A. Yes, I remember when I was young my mother would say, you had better be good the Indians will get you.

Q. Fifty odd years ago you heard they were Portuguese?

A. That was what I heard the old man say.

Q. What difference was made between them and other people? A. None at all.

Q. You were acquainted with Theodore? A Yes.

I knew all the family then.

Q. State whether or not in your opinion they were mixed with negro blood? A. Never has been my opinion.

Q. Did you ever go to school with them?

A. No sir, that was before my school days much.

Q. Did you ever see Mary Tabor? A Yes.

Q. How did she look? A. She looked very much like an Indian, long black hair, and she was a great house-keeper.

Q. Did she look anything like a negro?

A. I don't think so.
 Q Did you know Elvira? A. I don't remember the names but I remember Mary.
 Q. You knew all of them? A. I have been there many times.
 Q. You knew all the family? A Yes.
 Q. And you say that none in your opinion looked like they were mixed with negro blood?
 A. I did not think that then; I moved away from there 50 years ago.
 Q And up until then you had never heard it? A No sir.
 Q But you have heard it discussed that he was Portuguese descent?
 A. Yes, I heard the old man discuss the way he came to this country and way he came up here. He said that he went up there on account of the game.
 Q. Where did he say he came from?
 A. I don't know that he said that; I don't remember.
 Q. What kind of hair did he have? A. Very white.
 Q. How did his hair look?
 A. It was short; cut short.
 Q. Did you know Jim? A. Yes.
 Q. State whether or not he looked like a negro?
 A. No sir, I think not.
 Q. What kind of hair did he have?
 A. I don't remember. I remember that one had a red complexion and redish hair.

CROSS EXAMINATION

Q. Didn't you ever hear that they were persons of color?
 A. No sir, not while I lived there.
 Q. How old are you? A. Sixty-seven.
 Q. And you lived there while you were quite young?
 A. Yes.
 Q And you saw them at the log rollings? A Yes.
 Q. You don't undertake to say what the public opinion about it was there at all?
 A. I was twelve or thirteen years old.
 Q. Since that time you have not lived in that community at all and don't know?
 A. No sir; there were very few families living on the creek then.
 Q. And you don't undertake to say they have not got African blood in them?
 A. I am not expert on that; I am just giving my opinion as formed then.

PLAINTIFFS OFFER IN EVIDENCE deposition of Mrs. Harriet Ruth. Admitted, read by counsel to court and Jury and marked EXHIBIT "F"

VIRGIL C. LUSK re-called, testified for plaintiffs:

Q You have observed these people sitting in the Court house? A Yes.
 Q. And you have known Theodore Graham how long?
 A. Insuppose 25 years.

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Q. You have seen him frequently? A Yes.

Q. State whether or not in your opinion they are mixed with negro blood?

A. They have nothing indicting that they have negro blood in them; they don't bear any resemblance to the negro either in physique or anything else, and for that reason I don't believe they are mixed with negro. There is a marked distinction between a negro and a white man. A negro has a flat nose and broad nostrils, thick lips and he has kinky hair; the front of his head is recedent and the back of his head is heavy and the forehead is generally receding, and the people here who have been pointed out to me have none of these marks of African descent.

Q. How about the color?

A. The negro is black and these people are white. As a general thing one who is mixed with negro blood will show it by freckles on their faces. I have observed them pretty closely for the last few days, and if they have any freckles, I have not been able to see them.

Q Do you know anything about the general reputation of these people.

A. No sir, I don't know any of them except old man Theodore.

THEODORE GRAHAM RECALLED, testified for the plaintiffs:

• Q. Do you know what record that is?

A. It is a family record.

Q. Where has it been kept? A. At the home of Jeffery Graham in his family Bible.

This record introduced and admitted in evidence and marked Exhibits "G" and "G2"

Q. That is part of your family record? A Yes.

Q State whether or not Felix Grimes name appears on the record or not? A. No sir.

Q. When did you father die?

A. In the spring of 1855.

Q. When was he born according to this record? A. 1784.

Q. Where did you get what education you did get.

A. First education I got was at school.

Q. Where? A. I went to school between my father's house and Mr Banks old place. It was called Canoe Hollow.

Q. Where was that? A. This side of the river.

Q. Who taught the school?

A. Wilson Johnson.

Q. Who went to the school?

A. The Hootses, the Presleys, and the Banks children, the Cogbruns and others.

Q State whether Mr Alexander went to school with you?

A. Yes he went to school with me at Mount Zion, that is Mr Jule Alexander, near what is now known as Skyland.

Q. How far is that from Averys Creek?

A. About five or six miles.

Q. How far is Canoe Hollow? A. About four or five from Averys Creek.

Q. Was that a white school? A Yes. both of them were white schools exclusively.

Q. How were you treated at those schools?

A. Was recognized by all the scholars and by the teacher just the same as all the others; no difference.

Q. Who is Mr Dan Willis? A. I married his sister.

Q. Where did you marry his sister?

A In Sevier County, Tennessee.

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Q Did she know anything about your folks before you married?

A. Yes she had seen a good many of my people before we were married.

Q. State whether anything was concealed from her?

A. No sir, nothing was concealed from her.

Q. How long did you live in Tennessee?

A. We were married the 8th day of March, 1865; made a crop that year, and in October moved to Buncombe County on Averys Creek.

Q. What of your people had she seen in Tennessee?

A. My first cousins, several of them.

Q. What cousins?

A. Cousins descended from my Uncle Lewis, Uncle Lewis, so children.

Q. Descended from the Grahams? A Yes.

Q. Did your family associate with the Ledbetters?

A. Yes, as commonly as with any other neighbors.

Q. Any of them been to your house? A Yes. Zack and his sister Polly.

Q Did they sleep at your house all night?

A. I don't recollect that they did. My sisters and me have all been there.

Q. Hasn't Wells ever staid at your home?

A. Yes he staid there about two years and ate and slept without any money.

Q. How long ago?

A. When we moved from Tennessee he followed us shortly and staid at our house for two years without board.

Q. Did he pay any attention to one of your sisters?

A. I heard talk in the neighborhood but I don't know personally.

CROSS EXAMINATION

Q Did you ever attend any of the musters?

A. I don't know that I ever did.

Q You never attended any of the musters that they had before the war in your neighborhood?

A. No sir, I was not 21 until about '54, I was born the 5th day of December, 1833. I was only 21 in the winter when my father died in the spring, and soon after that came up the civil war and mustering ceased.

Q From the time you were 18 up to the civil war did you attend any of the musters?

A. No, I don't know whether there were any musters held in my district.

Q You don't remember having attended any musters in that community? A No sir.

Q. When you went down to Tenn and married what was the first thing you did when you went to Tennessee?

A. I hired to cut wheat, and when the wheat harvesting was over I hired to cut meadows. I went there to work.

Q. How long were you there before you were married?

A. I went there in June and the next March, I think, I was married.

Q. You have known you were Portuguese for a long time, heard it talked? A. Yes.

Q. You have great sympathy and racial pride as a Portuguese? A. Yes.

Q You have taken interest in the Portuguese race and the Portuguese nation? A. Yes.

Q. Are there any other Portuguese in North Carolina?

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A. I don't know of any except my people.

Q. Which was the oldest of your boys?

A. James was the oldest; he was 15 or 18 years older than me. He was about eighty-six when he died.

Q. Was he in the militia or on the muster rolls?

A. I don't know I never saw him in the musters?

Q. Where did that Portuguese family that you were descended from come from?

A. I understand they came from over the Mountain in Wilks County.

Q. What did they call your father? A. Jeffery Graham.

Q. You know nothing of your paternal ancestry back of Jeffery Graham? A. No sir.

RE DIRECT EXAMINATION

Q. Can you name a single man who was on the muster rolls of Averys Creek Township?

A. I could not positively.

E. R. ISRAEL sworn for the Plaintiffs, testified:-

Q. Do you know any Portuguese family in this state?

A. There is a Portuguese family named Carter, they claimed to be Portuguese. Their brother lives in South Carolina. They live on Mills River; they were generally reputed to be white people.

Q. What color were they?

A. Their brother that lived in the South Carolina was very dark, about the same as old uncle Jimmy Graham.

Q. What nationality were they reputed to be mixed with?

A. The Portuguese.

Q. How long did you know them?

A. I have been acquainted with Joe Carter for some time several years, but I have not been with the one that lives in South Carolina.

Q. You knew those folks? A Yes.

Q. What is your understanding as to their nationality?

A. They have been regarded as mixed with some other blood.

Q. What blood? A They hardly ever stated, but sometimes

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somebody would get offended at them and throw negro at them.

Q About those people in South Carolina, had they ever got mad with them?

A. Yes, when Carter's children were going to school at Scrubby Hollow in Averys Creek Township, they brow negro at them.

CROSS EXAMINATION

Q So it is the reputation that these people are mixed blooded? A Yes.

Q. When you say mixed blooded in South Carolina that means mixed with African blood? A. No sir, not as a general rule, that requires a modifier.

Q. What does it mean as a general rule?

A. It means that you are not pure Anglo Saxon.

Q. You say there are some Portuguese on Mills River?

A. Yes, Carter is one of them, both of the brothers are very dark.

Q. He is sometimes charged with being a free negro?

A. I don't know that anybody but the school children throwed it up to them.

Q Don't you know that it is one of the oldest tricks or habits of these free people of color in the South to say that they are Portuguese, did you ever hear that?

A. I know there are a number of persons that would probably be likely to do it.

Plaintiff's offer in evidence a deed dated in 1808 from John Israel to Jeffery Graham, recorded in Book C page 106, records of deeds of Buncombe County, admitted and marked Ex. H.

Plaintiff's offer in evidence deposition of Mary Tabor, admitted and marked Exhibit "I"

PLAINTIFFS CLOSE.

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J. P. COCHRAN, sworn for defendant, testified:-

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

Q. How far from Theodore Graham?

A. Something near a half mile.

Q. Did you know Tom Graham?

A. There are two Toms, Son Tom and brother Tom.

Q. Did you know brother Tom? A. Yes he was dark.

Q. Did you know Jim? A. Yes.

Q. What was his color? A. He was dark.

Q. How about his hair?

A. His hair was considerably curly or kinky, whatever you would term it.

Q. Do you know Mary Tabor? A. Yes, she is dark too.

Q. What has been the general reputation in the community as to what race of people they belonged to?

A. The general opinion has been that they were mixed blooded with the African or negro race, that has been the general opinion all the while.

Q. Did you ever hear Milus state anything about what blood was in him? A. Yes.

Q. What was the question that brought up the conversation?

A. There was some trouble about his boy and another boy that was out hunting, and he struck this boy and they had a law suit about it, he had spoke about it and had called his children negroes and Milus said that he knew they were mixed blooded but that they could not call his children negroes, something to that amount.

CROSS EXAMINATION

Stand aside.

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GEO A. SHUFORD sworn for the defendant, testified:-

Q Do you remember to have attended Sardis Church on one occasion when the Grimes family or some of them appeared at the Church? A Yes.

Q You knew the Grimes family by reputation I presume?

A Yes, I knew them by reputation, and lived until I was twelve years old within a few miles of them, and then my father moved back in two years to Averys Creek and remained there three years longer?

Q. What years were those?

A. I was born on Hominy and I moved from there to Averys Creek in '67 and moved back in '69, nearly '70 and lived there three years.

Q. Did you know the Graham men and women personally?

A. I knew them when I saw them and I have seen some of them about my father's place, and have seen them in the community, and I used to go back and forth on that road and see them sometimes.

Q. What Church was it that you remember to have seen James in?

A. What I remember is that on one occasion the Grimes came to Sardis Church; I could not say what members of the family, but there were several members of the Grahams or Grimeses, and they took their seats about midway of the church and on the righthand side as you go in. They came in about the time Sunday school was being dismissed, and there was some little consultation between the Sunday School officers and the preacher, and my father and I think Mr Robert Murray or Mr Andrew Jones went to them and asked them to take seats back in the back seats provide for the colored people. I did not hear what they said to them but I saw them go and speak to them; and I saw those people get up and filed out of the church and went off up the road.

Q. What kind of a church was that?

A. Southern Methodist, white Church.

CROSS EXAMINATION

Q. Where is Sardis Church?

A. Close to Hominy near old man Stradley's place about 7 1/2 miles from there.

Q Is it on Averys Creek? A. I reckon it is 4 miles from Averys Creek.

Q. They did not belong to that church?

A. No sir, they were not in the habit of coming to that church. I have the impression that they had been there one Sunday before and had sat with the white people.

Q. You don't know which one of the Grimes that was?

A? No sir.

Q. Did you know Presiding Elder Long or Circuit Rider?

A. Yes J. A. Long, one time Elder.

Q. Did you know G. Long Ayes.

Q. What was he? A. He was presiding Elder of the Northern Methodist Church and was circuit rider at one time. I have heard him preach many times.

Q. He was a great preacher?

A. Yes, he is the one who I think went to Japan.

Plaintiffs offer the Herald containing Obituary notice of the death of Jeffery Grimes, published in 1883. Ruled Out.

Re DIRECT EXAMINATION

Do you know whether the Northern Methodist Church admitted negroes to their schools and churches in this country?

A. I never heard of them doing such a thing.

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Charge.

In this case, gentlemen of the jury, the contention of the plaintiffs is that they are entitled to admission, under the Constitution and laws of this State, into the Public Free Schools for white children in Buncombe County, and that being so entitled, they were, by the wrongful and unlawful action of the defendants, excluded from the said schools, and they ask at your hands that they be declared entitled to the privilege and rights of the said schools.

The contention of the defendants is, that they being the duly constituted school authorities of Buncombe County, and charged with the execution of the school laws, they did in the course of their duty, on the ...day of August, 1905, exclude the infant plaintiffs from the Public schools for white children, and situated, I believe in Averys Creek Township in this County, on the ground that they were of mixed blood, or of African descent, and not of the white race, and therefore not entitled to admission into the schools for the white race. Our Constitution and laws, as you know, provide separate schools for the white and for the colored race, and in pursuance of that constitution and the laws laws being that "All white children shall be taught in public schools for the white children, and all colored children shall be taught in schools for the colored children."

The Counsel on each side waive the reading of my notes of the evidence of the notes of the Stenographer.

Your attention is called to the testimony on the part of the plaintiffs, tending to show the association of the ancestors and family to which they belong, in their neighborhood, the churches which they attended, and also evidence tending to show, that they, or some of them went to the elections.

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You will also take into your estimate, the appearance of the ~~defendant~~ Plaintiffs and their kindred, as they were exhibited to you, their features; the testimony tending to show their color and as to their hair, whether kinky or merely curly. You will also take into consideration and estimate the evidence tending to show declarations of persons, on both sides, as to the stature, color and associations of the plaintiff's ancestors.

You will also take into your estimate evidence tending to show the facial features and characteristics of different nationalities as spoken of by witnesses on the part of the defendants; you will take into your estimate evidence tending to show associations of Plaintiffs and their ~~xxx~~ ancestors; the color of their skin, the kind of hair they had; And the declarations of ancestors tending to show they were of mixed blood of ~~x~~ African or negro descent; the general reputation as to their descent in the community in which they resided, tending to show they were of mixed or negro descent, and you give all the testimony on both sides such value as upon the whole circumstances you may think it entitled to.

The following is the issue which the Court submits for your determination: "Are the infant plaintiffs entitled to admission into the free white schools for Buncombe county?"

X Upon that part of the case you are advised that the burden is upon the plaintiffs to show by the greater weight of the evidence that they have no negro blood in their veins, howsoever remote the strain may be, and if you find from the evidence and by its greater weight, that Jeffrey Graham was an ancestor of the plaintiffs, as the testimony tends to show, and that he was of negro descent or had

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negro blood in his veins, then you will answer the issue "no".

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." X

In answering this issue you will take into consideration all of the evidence that has been introduced before you, and you should take into consideration the appearance of the children, the plaintiffs in this case, and the kindred of the plaintiffs. You should take into consideration the kind of features that the plaintiffs and their kindred have, and you will note whether or not their features differ from those of the negro, you will take that into your consideration; if you find that the color of the plaintiffs is due to foreign or non-Saxon blood, or that they were mixed with some other race not the negro race, and that they have no negro blood in their veins, you will answer the issue "yes".

If you find from the evidence 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 belong to, and you should consider in this connection the declarations of Jeffery Graham that he was of Portuguese descent.

So that now gentlemen you will take all of this testimony, and on returning to your room you will debate fully on each side, and find where the greatest ^{value} weight of the evidence is. In arriving at your conclusion it will be your duty to take into consideration the character of the witnesses as exhibited upon the stand, their demeanor upon the stand, how they stood their examination, chief,

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(4)

and the effect upon their testimony of the cross examinations; whether or not the statements which they made were probable or improbable, and whether or not and to what extent their statements were shaken by the cross examination.

It is your duty to reconcile conflicts in the testimony, wherever you can, but if you cannot, you will take the whole evidence and say what the truth is.

You will take into consideration the evidence tending to show character. That is not substantive testimony, but is admitted only for the purpose of enabling you to determine the proper estimate of the value of the testimony of the witnesses about whom it is given.

You will recall that there is another rule, or at least it is a guide to you in coming to your conclusion as to the weight you will give to the testimony of each witness, and that is, the interest which any may have in the result of your verdict. The law requires that you should examine interested testimony with some care and scrutiny, because of its interest, but if, after giving it careful scrutiny, and making allowance for all the circumstances under which it was given, you find upon the whole case that it is reasonable, you will give to such testimony the same weight as you would testimony wholly disinterested.

So upon all of these directions and the evidence, and under your oaths, disregarding everything that may have been said to you extraneous to the evidence, you will retire and make up your verdict by answering this issue: - "Are the plaintiffs entitled to admission into the white schools of Buncombe County?"

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State of North Carolina,

Buncombe County.

Alvia Gilliland

vs.

CLERK'S CERTIFICATE

Board of Education
of Buncombe County

I, Marcus Erwin, Clerk of the Superior Court of Buncombe County, N. C., hereby certify that the foregoing is a true perfect and complete transcript of the record and case on appeal in the above entitled case.

Witness my hand and the seal of said Court at my office in the City of Asheville N. C. this the 21 day of May 1906.

Marcus Erwin
CLK



C. H. SOMERS,
CLERK SUPERIOR COURT.

State of North Carolina
County of
WILKES.

Wilkesboro, N. C.,

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February Session 1897

Ordered by the court that George Grayham be bound to Thomas S. Bouchelle until 21 yrs old who agrees to give him a horse, bridle and saddle worth \$75 cash and a freedom suit of clothes Bond filed for Apt and indenture issued

August Term 1825

Ordered that Loucinda Graham be bound unto Mary Hunter aged about eleven years apt who gave bond with labor James Day and said Mary is to give said child when free two extra suits of clothes Ind is

August Term 1825

Ordered that Mary Grimes aged six years old be bound unto



Mootha Parlier until she arrives at
the age of 18 years old and the said
Mootha Parlier is to give the said
orphan when free one suit of clothes
One wheel, One Corda and Guns for
Security Masses Caps

North Carolina
Wilkes County

I C. H. Somers C. J. do hereby certify that
these are true copies of the record of the indentures of
Geo Grayham, Lucinda Grayham, and Nancy Grimes.
I further certify that there nothing appears in the record that
shows that said children are Colored or Mulattos. Witness my
hand & official seal this 26th day of Oct 1905.

C. H. Somers,
C. J. C.

State of North Carolina,
Buncombe County.

Sylva Gililand et al.

VS.

The Board of Education of
Buncombe County et al.

Personally appeared before me, Donald Gillis, who
being first duly sworn, deposes and says:

That he is ^{city editor of} ~~reporter for~~ the Asheville Citizen, and that
the case of Sylva Gililand et al. against the Board of Education
of Buncombe County et al. was published in the Asheville Citizen
several times before the said case was tried in the Superior
Court, and that the said case was much discussed on the streets
of Asheville and in other parts of the County. The said case
was also published in the New York World and a half a page
was given to the discussion of this case in said paper.

Donald Gillis

Sworn to and subscribed before me, this 12 day of
May, 1906.

Notary Public.