

stances is enough to satisfy any reasonable demand for specialized training. It appears that never before has a negro applied for admission to the Law School and none has ever asked that Lincoln University provide legal instruction.

The problem presented obviously is a difficult and highly practical one. A fair effort to solve it has been made by offering adequate opportunity for study when sought in good faith. The State should not be unduly hampered through theorization inadequately restrained by experience.

This proceeding commenced in April, 1936. Petitioner then twenty-four years old asked mandamus to compel his admission to the University in September, 1936, notwithstanding plain legislative inhibition. Mandamus is not a writ of right but is granted only in the court's discretion upon consideration of all the circumstances. *Duncan Townsite Co. v. Lane*, 245 U. S. 308, 311; *United States ex rel. Arant v. Lane*, 249 U. S. 367, 371.

The Supreme Court of Missouri did not consider the propriety of granting the writ under the theory of the law now accepted here. That, of course, will be matter open for its consideration upon return of the cause.

MR. JUSTICE BUTLER concurs in the above views.

EX PARTE CENTURY INDEMNITY CO.

No. —, Original. Decided December 12, 1938.

1. Upon a rule to show cause why a writ of mandamus should not issue requiring judges of the Circuit Court of Appeals to consider certain assignments of error which that court had declined to consider upon a ground which this Court, upon review, adjudged insufficient, it is an answer that another and sufficient ground for rejecting the assignments is revealed by the record. P. 355.

2. Papers purporting to be proposed findings of fact and conclusions of law, which are contained in the transcript but not in the bill of exceptions, are not properly authenticated. P. 356.

Rule discharged.

Mr. Jewel Alexander was on a brief for petitioner.

Mr. Joe G. Sweet was on a brief for G. Nelson, appellee below.

PER CURIAM.

On an appeal from a judgment for the plaintiff in an action at law, in which a jury was waived, the Circuit Court of Appeals refused to consider certain assignments of error upon the ground that they related to findings requested by the defendant after the trial had been concluded. The judgment was affirmed, 90 F. 2d 644, and certiorari was granted. We were unable to accept the conclusion of the Circuit Court of Appeals that when the trial court ordered "that judgment be entered for plaintiff, with interest and costs, upon findings of fact and conclusions of law to be presented," it was thereafter "too late adequately to present special findings of fact." It was not necessary to treat the first order for judgment as ending "the progress of the trial." 28 U. S. C. 875. The qualifying words in the order were appropriate to suggest a "reservation of opportunity for further action." Accordingly, the judgment of the Circuit Court of Appeals was reversed and the cause was remanded to that court for further proceedings in conformity with the opinion of this Court. *Century Indemnity Co. v. Nelson*, 303 U. S. 213.

On the later hearing, the Circuit Court of Appeals found another ground for its action,—a ground not dealt with in its former ruling and not presented by the petition for certiorari. That was that defendant's proposed

findings were "not incorporated in the bill of exceptions, either directly or by reference." The Circuit Court of Appeals refused to consider the assignments of error addressed to the rejection of these findings and again affirmed the judgment. 96 F. 2d 679.

On application of the defendant, this Court issued a rule directing the judges of the Circuit Court of Appeals to show cause why the judgment should not be vacated and the court be required to consider the assignments of error. The judges have made return to the rule.

While it appears from the bill of exceptions that the defendant "served and lodged its proposed findings of fact and conclusions of law," and the transcript contains a paper described as defendant's proposed findings of fact and conclusions of law, that paper is not included in the bill of exceptions and hence is not properly authenticated. 28 U. S. C. 875. *Insurance Company v. Folsom*, 18 Wall. 237, 249; *McLeod v. United States*, 67 F. 2d 740.

In view of that defect, we cannot direct the Circuit Court of Appeals to consider the assignments of error and the rule to show cause must be discharged.

Rule discharged.