

CONVICTIONS REVERSED

Montgomery *Alumni List* Mixed Dining March 8, p. 1 Ruling Set Aside

By THE ASSOCIATED PRESS

The Alabama Court of Appeals Tuesday set aside the convictions of a white college professor, a white minister and seven Negroes arrested while dining together in a Montgomery cafe.

All three judges joined in ruling that the disorderly conduct charges against the nine defendants failed to spell out what offense, if any, they committed.

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Segregation

Issue Settled

By Atlantans

By THE ASSOCIATED PRESS

Negroes scored a major victory in their sit-in movement Tuesday when business leaders in the Deep South city of Atlanta agreed to end segregation in downtown stores next fall.

The settlement will become effective in September, when Atlanta public schools are scheduled to begin integrating under federal court order.

Negro leaders agreed, in the meantime, to urge their followers to stop all sit-in demonstrations, boycotts and picketing at department stores, restaurants and lunch counters.

At another development in Georgia's capital city, the Rev. Martin

Luther King Jr. and seven Negroes were tried in another court, without a jury, and all convicted. Like Nesmith, they were fined \$100 and costs.

City police arrested Nesmith, his wife, the 10 MacMurray students, King and the seven Negroes last March 31 while they were eating together in a Negro cafe. All 20 defendants were fined \$100 and costs in city court for disorderly conduct.

Using the language of a city ordinance, the arresting officers charged the white and Negro diners with disorderly conduct by using "violent, profane, indecent or boisterous conduct or language, or by conduct calculated to provoke a breach of the peace."

10 STUDENTS

The white minister, the Rev. R. Edwin King of Boston University, and the seven Montgomery Negro defendants were tried in another court, without a jury, and all convicted. Like Nesmith, they were fined \$100 and costs.

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After their trials in city court, the defendants appealed to state court, and the nine convicted there went on to the Court of Appeals.

ACCUSED AGIT

Presiding Judge Robert B. Harwood and Associate Judges Aubrey Gales and Annie Lola Price on the Appellate Court held that the language in the complaints failed to specify what particular act the defendants were accused of committing.

The decisions were handed partly on another ruling announced Tuesday in which the Court of Appeals reversed the disorderly conduct conviction of a white Baptist minister in north Alabama.

In that case, the Rev. Jesse C. Mitchell had been sentenced to 60 days in jail for an incident which occurred on the grounds of the New Bethel Baptist Church near Powell's Cross Roads in DeKalb County. Mitchell had been pastor of the church, but led a minority group in the formation of another church nearby after the Bethel congregation split.

STATE STATUTE

The wording of the complaint against Mitchell was almost identical to that in the Montgomery integrated dining cases, since both were patterned after a 1959 state law. The Montgomery ordinance is an almost exact duplicate of the state statute.

In setting aside the north Alabama minister's conviction, Judge Gales ruled that the complaint (See REVERSAL, Page 2A)

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Reversal

(Continued From Page 1)

was too indefinite to allege a specific act.

To illustrate the point, the judge wrote:

"If a statute makes it a misdemeanor to spit on a public sidewalk, then the allegation that (the defendant) spat on the sidewalk should suffice. But if the statute denounces 'disturbing the act in a public thoroughfare which might menace the health of others,' the charge must allege an act done."

Officers who arrested the white visitors and the Montgomery Negroes while dining together charged that the incident was calculated to cause trouble at a time when racial tension was inflamed. But the formal complaint did not say what act was committed.

Negro students at Alabama State College a short time before had staged a series of demonstrations against segregation, including a sit-in at the white lunchroom in the Montgomery courthouse.

Two of the Negroes who were arrested at the cafe—Marzette Watts and Elroy Embury—had been expelled from Alabama State along with seven others as leaders of the demonstrations.

Nesmith, his wife and the 10 students who accompanied them said they came to Montgomery during a field trip to study sociological conditions in the South. King, visiting the city separately, joined them at the luncheon.