It is possible that the Missouri Courts will cite the above sentence from *Pearson v. Murray* and refuse Gaines' petition for a writ of mandamus to force his admission into the law school at Missouri University on the ground of more liberal legislative provisions for negroes in Missouri. The legislative authority given the board of curators of Lincoln University "to pay the reasonable tuition fees" of negroes sent to the universities of adjacent states for education not available at Lincoln would appear to permit the curators to appropriate as much money for tuition fees as they considered wise. If this authority were exercised, Judge Bond's first reason for holding inadequate the Maryland provision for colored students would not apply to the Missouri situation. The Missouri courts would still, however, be confronted with Judge Bond's second and third reasons, viz: the increased expense which attendance at an outside university would entail despite the state's payment of tuition fees and the disadvantages of not studying Missouri law primarily and of not being able to attend Missouri courts. These reasons, however, may not seem substantial to the Missouri judges; and if they take that view, they may then feel warranted in relying on *Lehew v. Brummel*,[11] in which the fact that the petitioner's children had to go three and a half miles to reach a colored school, while no white child had to go farther than two miles was held to be no substantial ground for complaint. A considerable number of other decisions hold that inconvenience in respect to the place or condition under which educational facilities are provided is no substantial ground for complaint.[12]

An alternative remedy of ordering the establishment of a separate law school for negroes was held not to be available in *Pearson v. Murray* in the absence of a legislative declaration of a purpose to establish such a school or even authority on the part of the state officers to do so. In view of the Missouri statutory provision that "whenever the board of curators deem it advisable they shall have the power to open any necessary school or department,"[13] the Maryland court's reason would lose most of its force in Missouri. Yet it seems most unlikely that in order to avoid admitting one colored student into the state law school the court would take the drastic step of ordering the curators of Lincoln University to establish a law school within the university.

F. F. '38.

EQUITY—SPECIFIC PERFORMANCE—STATUTE OF FRAUDS—PART PERFORMANCE OF LAND SALE CONTRACTS.—Where services have been rendered as full consideration for the promise to convey land pursuant to an oral contract when will equity decree specific performance in favor of the party who has performed? A distinct departure from established Anglo-American law has been made by the recent Missouri case of *Selle v. Selle*.[1] In this

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[11] (1890) 103 Mo. 546, 11 L. R. A. 528, 15 S. W. 765.

[12] People v. Gallagher (1883) 93 N. Y. 438; Ward v. Flood (1874) 48 Cal. 36; Dameron v. Bayless (1912) 14 Ariz. 180.

[13] R. S. Mo., 1929, s. 9622.

[1] (December, 1935) 88 S. W. (2d) 877.

case the plaintiff sought specific performance of an oral contract with the deceased by which the latter "then and there promised and agreed with plaintiff that if he, plaintiff, would take him (the said John Selle) into his (plaintiff's) home and there keep him and care for him and give him a home as long as he (the said John Selle) should live, that then plaintiff, upon the death of the said John Selle would give and leave to him, absolutely and in fee simple" the land there described.[2] In his answer the defendant invoked the Statute of Frauds, alleging further that the "services covered a very short time, of said services can easily be determined in dollars and cents, and adequate relief given at law." The Supreme Court upheld the contention of the defendant, and ordered the case reversed and remanded with instructions that plaintiff be given the reasonable value of his services, for the reason that the consideration given by plaintiff was inadequate and his services could be adequately compensated for by a money judgment. The plaintiff was given a lien on the land in question to the extent of the reasonable value of these services.

From the standpoint of prior decisions both in Missouri and elsewhere this opinion is open to severe criticism. The plaintiff in this case was seeking the land. It is universally held that land is unique, and a payment of damages for breach of a land sale contract is inadequate, therefore justifying specific performance of the promise to convey.[3] Perhaps in this case plaintiff was adequately compensated for his services by a money judgment. It might be said that in any land sale contract where the purchase price has been paid that a restitution of the amount paid with interest would adequately repay the promises, making specific performance unnecessary. But by these contracts the plaintiff is entitled to the land, and since land is unique, it is not enough merely to restore the parties to their status as of the time of the contract. The question is, therefore, not whether

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[2] Quotation from plaintiff's own pleading.

[3] Paris v. Haley (1875) 61 Mo. 453; Sutton v. Hayden (1876) 62 Mo. 101; Pomeroy v. Fullerton (1893) 21 S. W. 19, 113 Mo. 440; Collins v. Harrell (1908) 219 Mo. 279, 118 S. W. 432; Oliver v. Johnson (1911) 238 Mo. 359, 142 S. W. 274; McCall v. Atchley (1914) 256 Mo. 39, 164 S. W. 593; Hayworth v. Hayworth (1921) 236 S. W. 26; Heller v. Jentsch (1924) 303 Mo. 440, 260 S. W. 979. See also Williams v. Williams (1917) 128 Ark. 1, 193 S. W. 82. In Jones v. Jones (Mo. Sup. 1933) 63 S. W. (2d) 146, the court held it was no defense to an action for specific performance that plaintiff had an action for his services in quantum meruit, as such was not adequate relief. In Hall v. Harris, (1899) 145 Mo. l. c. 622, the rule is stated unequivocally that full performance of services by plaintiff takes the case entirely without the statute. In Berg v. Moreau (1906) 199 Mo. 416, 97 S. W. 901, the court answered defendant's contention that plaintiff had an adequate remedy in a money judgment, holding: "One trouble with this view is that it is directed to a court of conscience—a court in which the jingle of the guineas of a mere dry money recompense cannot cure the hurts of a broken contract relating to services such as were performed in this case." In Gupton v. Gupton (1870) 47 Mo. 36, specific performance was granted although at the time plaintiff agreed to care for promissor, the latter was seventy-three years of age and very infirm. In this case the court answered the contention of adequacy of legal remedy by saying: "A judgment for damages merely would be altogether useless."

the plaintiff might be given adequate compensation at law for the consideration already paid, but whether a money judgment is an adequate substitute for the land he was to receive. And the courts have usually held in the negative. An affirmative holding would unjustly deprive plaintiff of the benefit of his bargain.

An equally serious objection to the opinion lies in the court's pronouncement on the effect of inadequacy of consideration. The contract was made on the farm of the promisor, and in pursuance thereof the plaintiff removed and cared for him until he died fourteen days later. Two legal questions arise, namely: (1) Is adequacy of consideration to be determined as of the time the contract was made, or as of a later time? (2) Is inadequacy of consideration by itself a bar to specific performance?

The court did not determine the adequacy of consideration as of the time the contract was entered into. However, in the course of its opinion, the court in referring to the condition of the promisor at the time the contract was made, said: "His condition, when taken to plaintiff's home, must not have been considered serious, because a doctor was not called until August 25th, and the trouble was diagnosed as cancer of the stomach." The facts indicated that the plaintiff had no reason for believing his performance would last for only a brief time; indeed, on the basis of mortality tables, as the court indicated, the promisor's life expectancy was 8.65 years, he being seventy-one years of age. In *Berg v. Moreau*,[4] a Missouri case, the promisor was seventy-nine years of age at the time he promised to convey the land in return for care and maintenance for the rest of his life, and although at that time he was extremely feeble, specific performance was allowed. In a South Dakota case[5] specific performance was granted although plaintiff had rendered only one month of service and at the time the contract was made the promisor had chronic dyspepsia and asthma. The court in the Selle case found that after the promisor's death the consideration performed was inadequate, and for this reason denied specific performance. The weight of authority, however, is that adequacy of consideration should be determined as of the time the contract was made,[6] because the plaintiff should be allowed the benefit of his contract.

But even if the consideration is held to be inadequate, by the weight of authority this should not have been a bar to specific performance.[7] Inadequacy of consideration bars specific performance only when it is so gross

[4] (1906) 199 Mo. 416, 97 S. W. 901.

[5] Lathrop v. Marble, (1900) 12 S. D. 511, 81 N. W. 885.

[6] Aldrich v. Aldrich (1919) 287 Ill. 213, 122 N. E. 472; Shannon v. Freeman (1921) 117 S. C. 480, 109 S. E. 406.

[7] Harrison v. Town (1852) 17 Mo. 237; Campbell v. McLaughlin (Mo. 1918) 205 S. W. 18; Strachan v. Drake (1916) 61 Colo. 444, 158 P. 319; Scott v. Habinch (1919) 188 Ia. 155, 174 N. W. 1; Greenwood v. Greenwood (1916) 97 Kan. 380, 155 P. 807; Woodworth v. Porter (1923) 224 Mich. 470, 194 N. W. 1015; Moore v. McKillip (1923) 110 Neb. 575, 194 N. W. 465; Nugent v. Smith (1922) 195 N. Y. S. 338, 202 App. Div. 279; Forect Cemetery Assn. v. Ry. (1920) 12 Oh. App. 501; Welsh v. Ford (1925) 282 Pa. 96, 127 Atl. 431. See note, 10 Ore. L. Rev. 283 (1931).

as to be unconscionable or fraudulent,[8] and such was not the situation here. In holding that mere inadequacy of consideration is in itself a bar to specific performance the court relied on *Walker v. Bohannan*,[9] a Missouri case, in which the court said that in order that specific performance be decreed by equity "the contract must be based upon an adequate and legal consideration, so that its performance upon the one hand, but not upon the other, would bespeak an unconscionable advantage and wrong, demanding in good conscience relief in equity. . ." This statement was not necessary to the decision in the Walker case, and it is quite possible that what the court meant was simply that the consideration must be sufficient to support a promise, a requirement basic in contract law. Such seems to be the proper interpretation of the term "adequate and legal consideration," used in the Walker case.

J. C. L. '36.

EVIDENCE—WITNESSES—CHARACTER—IMPEACHMENT.—The credibility of a witness may universally be impeached by showing that his character for truth and veracity is bad, and in some jurisdictions inquiries relative to the general moral character of the witness are permissible as a proper mode of impeachment.[1] The courts in these latter jurisdictions faced something of a dilemma when statutes removing the common law disqualifications allowed the accused in a criminal prosecution to take the stand in his own

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[8] Bean v. Valle, (1829) 2 Mo. 126; Kirkpatrick v. Wiley (1906) 197 Mo. 123, 95 S. W. 213; Evans v. Evans (1906) 196 Mo. 1, 93 S. W. 969; Holmes v. Fresh (1845) 9 Mo. 201; Scott v. Habinck (1919) 188 Ia. 155, 174 N. W. 1. In regard to the whole problem see "Missouri Law on Performance of Oral Contracts as a Method of Validation when Statute of Frauds Is Invoked," by Professor Tyrrell Williams in 20 St. Louis Law Rev. 106 (1935).

[9] (1912) 243 Mo. 119, 147 S. W. 1024. In this case the following requirements were set out: "(1) the alleged oral contract must be clear, explicit, and definite; (2) it must be proven as pleaded; (3) such contract cannot be established by conversations either too ancient on the one hand, or too loose or casual upon the other; (4) the alleged oral contract must itself be fair and not unconscionable; (5) the proof of the contract as pleaded must be such as to leave no reasonable doubt in the mind of the chancellor that the contract as alleged was in fact made, and that the full performance, so far as lies in the hands of the parties to perform, has been had; (6) and the work constituting performance must be such as is referable solely to the contract sought to be enforced and not such as might be reasonably referable to some other and different contract; (7) the contract must be based upon an adequate and legal consideration, so that its performance upon the one hand, but not upon the other, would bespeak an unconscionable advantage and wrong, demanding in good conscience relief in equity; (8) proof of mere disposition to devise by will or convey by deed by way of gift, or as a reward for services, is not sufficient, but there must be shown a real contract to devise by will or convey by deed made before the acts of performance relied upon were had." In this case specific performance was denied because the contract was not sufficiently established.

[1] 2 Wigmore, *Evidence*, secs. 922-923; 28 R. C. L. 622; State vs. Scott (1933) 332 Mo. 255, 58 S. W. (2d) 275, 90 A. L. R. 860; See also annotation 90 A. L. R. 870.