seem strong enough to leave no room for doubt concerning the intention of the Missouri courts to control disbarment without any interference whatsoever from the legislature.

W. B. M. '38.

CONSTITUTIONAL LAW—EQUAL PROTECTION—COLLEGES AND UNIVERSITIES. —The application of Lloyd L. Gaines, a St. Louis negro, for admission to the law school at Missouri University has recently been denied by the University's board of curators.[1] Gaines is a graduate of Lincoln University, the state university for negroes, and is the petitioner in the mandamus suit now pending in Boone County Circuit Court in which the court is asked to compel the Registrar or the Curators of the University to act, and to act favorably, on his application for entrance to the law school. Hearing on this action is scheduled for the April term of court.

Gaines charges in his petition that, since Lincoln University has no law school, a refusal to admit him to the only law school maintained by the state solely because of his color is a violation of the equal protection clause of the Federal Constitution. The curators' answer to this, judging by their statement to the press, will be that the state legislature has given negroes substantially equal treatment by providing that "the board of curators of Lincoln University shall have the authority to arrange for the attendance of negro residents of the state of Missouri at the university of any adjacent state to take any course or to study any subjects provided for at the state university of Missouri and which are not taught at the Lincoln University and to pay the reasonable tuition fees of such attendance; provided that whenever the board of curators deem it advisable they shall have the power to open any necessary school or department."[2]

Whether this particular method of providing higher education for negroes meets the test of "equal protection of the laws" is an issue which no state or federal court has as yet passed on. But in *Pearson v. Murray*[3] the Court of Appeals of Maryland has recently handed down a decision in which the issues were quite similar to those raised in the Gaines case. The appellee in the Maryland case was a young negro who had graduated from Amherst in 1934 and had met the standards for admission to the law school of the University of Maryland in all other respects, but was denied admission on the sole ground of his color. He was a resident of Baltimore, where the law school is situated. He brought mandamus against the officers and governing board of the University of Maryland to compel them to admit him into the law school. From an order for the issue of the writ the defendants appealed. In affirming this order the Court's reasoning, for the most part, followed a long and almost unbroken line of decisions. The equal protection clause of the Federal Constitution requires the states to extend to their colored citizens educational facilities substantially equal to

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[1] St. Louis Post-Dispatch, March 28.
[2] R. S. Mo., 1929, Sec. 9622.
[3] (Jan. 15, 1936) 182 Atl. 590.

those provided for white citizens.[4] Though equal educational facilities does not mean identical educational facilities,[5] it does mean equal treatment in respect to any one facility or opportunity furnished citizens rather than a balance in state bounty to be struck from the expenditures and provisions for each race generally.[6] Where the law provides for the separation of the races in education, separate schools with equal facilities must be maintained, and if this is not done, mandamus lies to compel the school authorities to admit otherwise qualified members of the colored races into the schools maintained for the white race.[7]

As the Maryland court said, the main question in *Pearson v. Murray* was whether Maryland was denying the petitioner substantially equal treatment in refusing to admit him to the law school of the University of Maryland. Though this was the only law school maintained by the state, the legislature had appropriated $10,000 for scholarships of $200 each to negroes, to give the benefit of college, medical, law, and other professional courses to the colored youth of the state for whom no such facilities were available in the state. The court found three reasons why this provision "falls short of providing for students of the colored race facilities substantially equal to those furnished to the whites in the law school maintained in Baltimore": (1) "That any one of the many individual applicants would receive one of the fifty scholarships was obviously far from assured." (2) The evidence indicated that "going to any law school in the nearest jurisdiction would involve him (the petitioner) in considerable expense even with the aid of one of the scholarships should he chance to receive one." (3) "He could not there (the nearest jurisdiction) have the advantages of study of the law of this state primarily, and of attendance on state courts where he intends to practice."[8] The court rejected the idea that the number of colored students affected by the discrimination was a factor to be considered, quoting from *McCabe v. Atchison*, "The essence of the constitutional right is that it is a personal one."[9]

Chief Judge Bond, who wrote the opinion, was careful not to commit the court on any questions not directly raised by the case before it. "Whether with aid in any amount it is sufficient to send the negroes outside the state for like education is a question never passed on by the Supreme Court, and we need not discuss it now."[10]

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[4] Claybrook v. Owensboro (1883) 16 Fed. 297; Ward v. Flood (1874) 48 Cal. 36, 17 Am. Rep. 405; Clark v. Maryland Institute (1898) 87 Md. 643, 41 Atl. 126; Piper v. Big Pine School District (1924) 193 Cal. 664, 226 P. 926; Corey v. Carter (1874) 48 Ind. 327.

[5] People v. Gallagher (1883) 93 N. Y. 438, 45 Am. Rep. 232; Corey v. Carter (1874) 48 Ind. 327, 17 Am. Rep. 738; Ward v. Flood (1874) 48 Cal. 36, 17 Am. Rep. 405; State v. McCann (1871) 21 Ohio St. 198.

[6] State v. Board of Trustees (1933) 126 Ohio St. 290, 185 N. E. 196; Wong Him v. Callahan (C. C.) (1902) 119 F. 381.

[7] Piper v. Big Pine School District (1924) 193 Cal. 664, 226 P. 926; State v. Duffy (1872) 7 Nev. 342, 8 Am. Rep. 713.

[8] (1936) 182 Atl. 590, L. C. 593.

[9] McCabe v. Atchison (1914) 235 U. S. 151, 35 S. Ct. 69, 59 L. Ed. 169.

[10] (1936) 182 Atl. 590, L. C. 594.

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.