Michigan Law Review

Volume 37 | Issue 4

1939

CONSTITUTIONAL LAW - EQUAL PROTECTION OF THE LAWS - EXCLUSION OF NEGRO FROM LAW SCHOOL OF STATE UNIVERSITY

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CONSTITUTIONAL LAW — EQUAL PROTECTION OF THE LAWS — EXCLUSION OF NEGRO FROM LAW SCHOOL OF STATE UNIVERSITY — Petitioner, a negro, was refused admission to the law school of the State University of Missouri solely upon the ground of his race. While the state of Missouri assumed to provide reasonable tuition fees for the legal education of negro residents of Missouri in other states and possibly contemplated providing opportunities for professional training for negroes within the state at some future date, it did not provide for any instruction in law for negroes within the state. The Supreme Court of Missouri affirmed the judgment of the circuit court quashing an alternative writ of mandamus and denying a peremptory writ of mandamus which petitioner sought in order to compel the curators of the university to admit him. The United States Supreme Court granted certiorari. *Held,* the ruling of the Supreme Court of Missouri was error, for it denied

petitioner the equal protection of the laws in contravention of the Fourteenth Amendment of the United States Constitution, two judges dissenting. *Missouri ex rel. Gaines v. Canada*, (U. S. 1938) 59 S. Ct. 232; petition for rehearing denied, (U. S. 1939) 83 L. Ed. 320.

Equal protection of the laws has not been deemed to be an obstacle to segregation of blacks and whites for educational purposes.[1] It is enough that the opportunities available to the separate groups are substantially equivalent.[2] Considerable litigation has arisen as to whether the opportunities offered one group were substantially equivalent to those offered another.[3] The decision in the instant case will preclude litigation on the point whether the opportunities afforded by a state for training of negroes outside the state are substantially equivalent to those afforded whites within the state.[4] For the result of this decision is that a state must furnish to all residents substantially equivalent educational opportunities within its bounds.[5] This is on the theory that a state's laws are effective only within its geographical limits, and therefore the protection of equal laws can exist there alone.[6] Practical considerations were apparently at the basis of the dissent.[7] Considerations of practicality have always been present in cases of this nature.[8] The most serious practical consideration would seem to be the desirability of, in effect, denying a fundamental right on the ground that a substitute is just as good. It may well be doubted that a substitute is ever just as good, but, of more importance, once the door has been opened to substitution it is not unlikely that more substitution will be attempted and that

[1] People ex rel. King v. Gallagher, 93 N. Y. 438 (1883); Ward v. Flood, 48 Cal. 36 (1874), in which much reliance is placed on Roberts v. Boston, 5 Cush. (59 Mass.) 198 (1849); Gong Lum v. Rice, 275 U. S. 78, 48 S. Ct. 91 (1927), in which it was held that placing whites in one group and all other colors in another group—a Chinese girl in a negro school—was not prohibited by the Constitution.

[2] 10 AM. JUR. 904-907 (1937).

[3] In University v. Murray, 169 Md. 478, 182 A. 590 (1936), it was held that providing tuition fees for out of state training was not substantially the equivalent of an opportunity to receive training within the state and that the negro petitioner should be admitted to the law school at the state university. See 103 A. L. R. 713 (1936) where similar cases are annotated.

[4] State ex rel. Gaines v. Canada, (U. S. 1938) 59 S. Ct. 232 at 236.

[5] Ibid., at pp. 236-237.

[6] Ibid., at p. 236.

[7] Ibid., at p. 238.

[8] Roberts v. Boston, 5 Cush. (59 Mass.) 198 (1849); University v. Maryland, 169 Md. 478, 182 A. 590 (1936). And see 45 YALE L. J. 1296 (1936). As to whether a decision upholding segregation laws would alleviate or incense race prejudice opinion has varied. In Plessy v. Ferguson, 163 U. S. 537 at 560, 16 S. Ct. 1138 (1895), Justice Harlan, dissenting said, "What can more certainly arouse race hate, what more certainly create and perpetuate a feeling of distrust between these races, than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens?" Judge Danforth expressed somewhat similar views in his dissent in People ex rel. King v. Gallagher, 93 N. Y. 438 at 458, 462, 465 (1883). Of course most judges have felt the other way.

the fundamental right will be further invaded.[9] For this reason it is submitted that the decision of the majority is not only logical but commendable as well.

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[9] For example, laws segregating negroes and whites for educational purposes followed by laws providing that negroes must go out of state to receive training available to whites within the state.