IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1949

No. 34

G. W. MCLAURIN,

Appellant,

VERSUS

OKLAHOMA STATE REGENTS FOR HIGHER EDUCATION, BOARD OF REGENTS OF UNIVERSITY OF OKLAHOMA *et al.*,

Appellees.

Appeal from the District Court of the United States for the Western District of Oklahoma

BRIEF OF APPELLEES

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MARCH, 1950.

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STATEMENT OF THE CASE

The statement of the case that appears on Pages 6 to 10 of appellant's brief is substantially correct. However, for the convenience of the Court, appellees will amplify the same under the following sub-heads:

Findings of Fact and Conclusions of Law of the Trial Court

The above-mentioned findings and conclusions (R. 39 to 42), including a preliminary statement, were handed down by the three-judge Federal district court (Circuit Judge Murrah and District Judges Vaught and Broaddus) on October 25, 1948, as follows:

"PRELIMINARY STATEMENT

"At a former hearing of this cause, we held the segregation laws of the State of Oklahoma (70 O.S. 1941, Sections 455, 456 and 457) unconstitutional and inoperative *insofar as they deprived the plaintiff of his constitutional right to pursue the course of study he sought at the University of Oklahoma.* We were careful, however, to confine our decree to the particular facts before us, *while recognizing the power of the State to pursue its own social policies regarding segregation in conformity with the equal protection of the laws.* We expressly refrained from granting injunctive relief, on the assumption that the State statutory impediments to equal educational facilities having been declared inoperative, the State would provide such facilities in obedience to the constitutional mandate.

"Now this cause comes on for further consideration on complaint of the plaintiff, to the effect that although he has been admitted to the University of Oklahoma, and to the course of study he sought, *the segregated conditions* under which he was admitted, and is required to pursue his course of study, continue to deprive him of equal educational facilities in conformity with the Fourteenth Amendment.

"FINDINGS OF FACT

"I.

"The undisputed evidence is that subsequent to our decree in this case, plaintiff was admitted to the University of Oklahoma, and to the same classes as those pursuing the same courses. *He is required, however,*

to sit at a designated desk in or near a wide opening into the classroom. From this position, he is as near to the instructor as the majority of the other students in the classroom, and he can see and hear the instructor and the other students in the main classroom as well as any other student. His objection to these facilities is that to be thus segregated from the other students so interferes with his powers of concentration as to make study difficult, if not impossible, *thereby depriving him of the equal educational facilities.* He says in effect that only if he is permitted to choose his seat as any other student, can he have equal educational facilities.

"II.

"He is accorded access to and use of the school library as other students, *except if he remains in the library to study, he is required to take his books to a designated desk on the mezzanine floor.* All other students who use the library may choose any available seat in the reading room in the library, but a majority find it necessary to study elsewhere because of a lack of seating capacity in the library. The plaintiff says that this secluded and segregated arrangement tends to set him apart from other students and hence to deprive him of equal facilities.

"III.

"He is admitted to the school cafeteria, where he is served the same food as other students, *but at a different time and at a designated table.* He does not object to the food, the dining facilities, or the hour served, but to the segregated conditions under which he is served.

"In the language of his counsel, he complains that 'his required isolation from all other students, solely because of the accident of birth * * * creates a mental discomfiture, which makes concentration and study difficult, if not impossible * * * '; that the enforcement of these regulations places upon him 'a badge of inferiority which affects his relationship, both to his fellow students, and to his professors.'

"CONCLUSIONS OF LAW

"I.

"It is said that since the segregation laws have been declared inoperative, the University is without authority to require the plaintiff to attend classes under the segregated conditions. *But the authority of the University to impose segregation is of concern to this court only if the exercise of that authority amounts to a deprivation of a Federal right.* See *Screws* v. *United States,* 325 U.S. 91.

"II.

"The Constitution from which this court derives its jurisdiction *does not authorize us to obliterate social or racial distinctions which the State has traditionally recognized as a basis for classification for purposes of education and other public ministrations.* The Fourteenth Amendment does not abolish distinctions based upon race or color, nor was it intended to enforce social equality between classes and races. *Plessy* v. *Ferguson,* 163 U.S. 537; *Cummings* v. *United States,* 175 U.S. 528; *Gong Lum* v. *Rice,* 275 U.S. 78; *Missouri ex rel. Gaines* v. *Canada,* 305 U.S. 337. It is only when such distinctions are made the basis *for discrimination and unequal treatment before the law* that the Fourteenth Amendment intervenes. *Traux* v. *Raich,* 293 U.S. 33, 42. It is the duty of this court to honor the public policy of the State in matters relating to its internal social affairs quite as much as it is our duty to vindicate the supreme law of the land.

"III.

"The Oklahoma statutes held unenforceable in the previous order of this court *have not been stripped of their vitality to express the public policy of the State in respect to matters of social concern.* The segregation condemned in *Westminister School District* v. *Mendez,* 161 Fed.(2d) 774, was found to be 'wholly inconsistent' with the public policy of the State of California, while in our case the segregation based upon racial distinctions is in accord with the deeply rooted social policy of the State of Oklahoma.

"IV.

"The plaintiff is now being afforded *the same educational facilities* as other students at the University of Oklahoma. And, while conceivably the same facilities might be afforded under conditions so odius as to amount to a denial of equal protection of the law, we cannot find any justifiably legal basis for the mental discomfiture which the plaintiff says deprives him of *equal educational facilities* here. We conclude therefore that the classification, based upon racial distinctions, as recognized and enforced by the regulations of the University of Oklahoma, rests upon a reasonable basis, *having its foundation in the public policy of the State,* and does not therefore operate to deprive this plaintiff of the equal protection of the laws. The relief he now seeks is accordingly denied."

It was from the above findings and conclusions, and the November 22, 1948 journal entry of judgment (R. 43 and 44) based thereon, that this appeal was taken.

Applicable Statutes

At the time the above findings, conclusions and journal entry of judgment were handed down by the trial court, the applicable Oklahoma statutes were set forth as 70 O.S. 1941, §§ 455, 456 and 457, an abstract thereof (see Page 3 of appellant's brief) being as follows:

70 O.S. 1941, § 455, makes it a misdemeanor, punishable by a fine of not less than $100 nor more than $500, for,

"* * * any person, corporation or association of persons to maintain or operate any college, school or institution of this State where persons of both white and colored races are received as pupils for instruction,"

and provides that each day same is so maintained or operated "shall be deemed a separate offense."

70 O.S. 1941, § 456, makes it a misdemeanor, punishable by a fine of not less than $10 nor more than $50, for any instructor to teach,

> "* * * in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction,"

and provides that each day such an instructor shall continue to so teach "shall be considered a separate offense."

70 O.S. 1941, § 457, makes it a misdemeanor, punishable by a fine of not less than $5 nor more than $20, for,

> "* * * any white person to attend any school, college or institution, where colored persons are received as pupils for instruction,"

and provides that each day such a person so attends "shall be deemed a distinct and separate offense."

After the rendition of said findings, conclusions and journal entry, the Oklahoma legislature, at its 1949 regular session, enacted House Bill No. 409, effective June 9, 1949, same being Chapter 15, Title 70, Page 608, Oklahoma Session Laws 1949 (quoted in full on Pages 57 to 60 of appellant's brief), amending Sections 455, 456 and 457, *supra,* by adding to each thereof (see Page 4 of appellant's brief) the following *proviso:*

> *"Provided,* that the provisions of this Section shall not apply to programs of instruction leading to a particular degree given at *State owned or operated colleges or institutions of higher education of this State* established for and/or used by the white race, where such programs of instruction leading to a particular degree are not given at colleges or institutions of higher edu-

> cation of this State established for and/or used by the colored race; provided further, that said programs of instruction leading to a particular degree *shall be given at such colleges or institutions of higher education upon a segregated basis.* Segregated basis is defined in this Act as classroom instruction given in separate classrooms, or at separate times. * * *".

However, the said 1949 legislature did not make appropriations to the Oklahoma State Regents for Higher Education sufficient, in the opinion of said State Regents, to enable them to allocate funds to the University of Oklahoma to provide separate classroom instruction as defined in the last sentence of the above quoted proviso, and hence no such allocation has been made.

Segregation As Now Practiced

Appellant, on Pages 9 and 10 of his brief, *properly* called the Court's attention to the fact that segregation, *as now practiced at the University of Oklahoma,* is materially different than at the time the instant case was tried and decided. This change was made necessary by reason of the amendatory provisos above mentioned, and the failure of the State Regents to allocate funds, as aforesaid, to finance the *separate classroom* provisions of said provisos.

In this connection we quote from appellant's brief (Pages 9 and 10, *supra),* as follows:

> "Subsequent to the hearing and judgment in the lower court, appellant, McLaurin, was permitted to go into the regular classroom and to sit in a section surrounded by a rail on which there was a large sign stating 'Reserved for Colored.' At the beginning of the last semester, February, 1950, the rail and sign

were removed. Appellant is now permitted to eat in the students' cafeteria but is required to sit at a segregated table. He is permitted to use the main library but only on a segregated basis."

Appellees, however, *deem it proper to amplify the above quoted statement* so as to fully inform the Court in relation to said changed segregation practices. We assume that such information will be of assistance to the Court in reaching its decision not only as to the merits of this appeal but as to what type of an order should be entered therein.

In this connection appellees desire to state that after the adjournment of the regular session of the 1949 legislature and prior to the next regular school term *beginning in September, 1949,* pursuant to and under authority of a resolution of the Board of Regents of the University of Oklahoma, the proper administrative authorities of said University, in an attempt to carry out not only the terms of said resolution but the segregation public policy of the State as evidenced by Sections 455, 456, 457, *supra,* as amended, *that is,* insofar as available funds permitted, adopted certain administrative policies which they believed would provide *separate but equal educational facilities and advantages* for both the white and the colored students (including appellant) attending the University during the September, 1949, and subsequent school terms.

Insofar as the matters complained of by appellant are concerned, said policies are as follows:

1. Appellant, and other of the 23 colored students now receiving resident instruction at the University of

Oklahoma, *are assigned regular seats* in a designated row of each classroom in which they receive instruction, *the other seats being assigned to white students.* The seats so assigned are *equal or substantially equal,* and there are no railings or other division lines to indicate which seats are assigned to white and/or colored students.

2. Appellant, and said other colored students, have *full access* to the University library, and may check out books the same as white students. *They have assigned for their use* a designated table or tables on the main floor of the library, the other tables on said floor being *assigned for the use of white students.*

3. Appellant, and said other colored students, are permitted to take their meals at both of the University operated campus cafeterias *at the same times* as white students. They go through the regular cafeteria line, along and with the white students, *and are assigned* a special table or tables in the regular cafeteria dining room, the other tables in said room *being assigned* to white students.

Other Segregations Laws of Oklahoma

Section 3, Article 13, of the Constitution of Oklahoma, is as follows:

> *"Separate schools for white and colored children with like accommodation shall be provided by the Legislature and impartially maintained.* The term 'colored children,' as used in this section, shall be construed to mean children of African descent. The term 'white children' shall include all other children."

This provision, in appellees' opinion (although some entertain a *contra* view) is applicable only to the *public or common schools of Oklahoma,* and not to a State supported institution of higher education, such as is involved here. In this connection it will be noted that the provisos

in the 1949 amendments (see sub-head hereof entitled "Applicable Statutes") to 70 O.S. 1941, §§ 455, 456 and 457, *relate only* to institutions of higher education, hence the primary inhibitions of said sections *still apply to the public or common schools of Oklahoma.*

ARGUMENT AND AUTHORITIES

The argument of appellant is set forth on Pages 15 to 54 of his brief. In said argument it is in effect contended that the policy of segregation of white and colored students at the University of Oklahoma which was in force *at the time this case was tried and decided* in October and November, 1948, as well as the policy of segregation of such students *which has been in force* at the University of Oklahoma since the beginning of the September, 1949 school term, is violative of the Fourteenth Amendment of the Constitution of the United States, the material part of which is as follows:

> "No state shall make or enforce any law which shall * * * deny to any person within its jurisdiction the *equal protection* of the laws."

In this connection appellant, at Page 36 of his brief, *quotes the second paragraph of the conclusions of law of the trial court* (Page 4 hereof), and thereafter in effect asserts that the cases cited and relied upon in said paragraph, especially the basic or leading case of *Plessy* v. *Ferguson* (1895), 163 U.S. 537, do not support the conclusions of law set forth in said paragraph, and that if they do (which appellant denies), said cases, *especially the case of Plessy* v. *Furguson,*

"* * * should be re-examined and overruled."

In fact, on Page 43 of his brief, appellant contends:

> "*There are no precedents* * * * to which this Court must give weight *which hold* that the 'separate but equal' doctrine is a valid measure of the individual's entitlement to equal treatment with respect to the *educational advantages* a state offers. Therefore, we are left only with *Plessy* v. *Ferguson,* which, as we have pointed out, *did not involve educational facilities,* as a precedent for the application of the *'separate but equal doctrine'* in determining the reach of state power under the limitations of the Fourteenth Amendment."

This contention, in appellees' opinion, *raises the essential issue involved in this appeal,* and hence we will confine our argument, not to the *wisdom or lack of wisdom* of past or present laws of Oklahoma requiring *separate but equal educational facilities* for the white and colored races (same being solely a legislative matter), but to *pertinent decisions of this Court* passing on the constitutional validity of such laws under the Fourteenth Amendment.

In doing so, it should be kept in mind that if appellant is correct in contending that state laws requiring separate but equal educational facilities for members of the white and colored races *are so clearly violative of the Fourteenth Amendment* as to require this Court, after due consideration of "presumptions of constitutionality" and "contemporaneous and continuous administrative interpretation and practice," to hold such laws unconstitutional, *it necessarily follows that:*

1. The *modified* separate but equal educational facilities as to "graduate" instruction furnished to members of both the white and colored races at the Uni-

versity of Oklahoma both prior to and after 70 O.S. 1941, §§ 455, 456 and 457 were amended in 1949,

2. The separate but equal educational facilities as to college (not graduate) instruction furnished to members of the colored race at Langston University both prior to and after Sections 455, 456 and 457 were amended in 1949, and

3. The separate but equal educational facilities furnished members of the colored race attending the public or common schools of Oklahoma,

are being furnished in violation of the Fourteenth Amendment and hence must be discontinued. Such a holding would necessarily result:

(a) In the *abandoning* of many of the state's existing educational establishments,

(b) In the *crowding* of other such establishments, and

(c) In *preventing* practically all of the approximately 1600 Negro school teachers now employed in separate schools and colleges of Oklahoma from hereafter securing employment in schools and colleges of the state.

In connection with Paragraph (c), *supra,* it will be noted that since the population of Oklahoma is more than 90% white, such fact will probably mean that white members of school boards will be appointed in and for the several school districts and colleges of the state who will employ white (not colored) instructors to teach classes that are predominately white.

While appellees concede that the case of *Plessy* v. *Ferguson,* which appellant asserts, as aforesaid,

"* * * should be re-examined and overruled,"

involved the construction of a Louisiana law *requiring railway companies carrying passengers in their coaches to provide* "equal, but separate accommodations for the white and colored races," it will be noted by an examination of the opinion in said case that this Court relied, at least in part, upon principles of law theretofore announced by it and the appellate courts of many of the states, *holding that state laws,* as well laws of the District of Columbia, *requiring separate but equal educational facilities for members of the white and colored races, were not violative of the Fourteenth Amendment,* and that this Court laid down principles of law in said cases which clearly support the constitutional validity of such laws.

In this connection, appellees quote from *Plessy* v. *Ferguson, supra,* as follows:

> [Page 544] "The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, *or a commingling of the two races* upon terms unsatisfactory to either. *Laws permitting, and even requiring, their separation* in places where they are liable to be brought into contact do not necessarily imply the *inferiority of either race to the other,* and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. *The most common instance of this is connected with the establishment of separate schools for white and colored children,* which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced.

> [Page 545] "Similar laws have been enacted by Congress under its general power of legislation over the District of Columbia, Rev. Stat. D.C., §§ 281, 282, 283, 310, 319, as well as by the legislatures of many of the States, *and have been generally, if not uniformly, sustained by the courts.*
>
> (Citing Cases)
>
> *"Laws forbidding the intermarriage of the two races* may be said in a technical sense to interfere with the freedom of contract, and yet have been universally recognized as within the police power of the State. * * * "

In connection with the last above quoted paragraph of this Court's opinion in the *Plessy case,* appellees desire to state that 43 O.S. 1941, §§ 12 and 13, prohibit the *intermarriage of the two races in Oklahoma,* and that said sections were upheld by the Circuit Court of Appeals of the Tenth Circuit in the case of *Stevens* v. *United States* (1944), 146 Fed.(2d) 120, the 8th paragraph of the syllabus of said case being as follows:

> "8. The Oklahoma statute forbidding marriage of any person of African descent to any person not of such descent *is not violative of Fourteenth Amendment.* 43 O.S. 1941, § 12; U.S.C.A. Const. Amend. 14."

This Court, in the said case of *Plessy* v. *Ferguson, supra,* also laid down the following principles of law, which appellees believe support their position here:

> [Page 545] "The distinction between laws *interfering with the political equality of the Negro and those requiring the separation of the two races in schools,* theatres and railway carriages has been frequently drawn by this court. * * *
>
> [Page 55] "So far, then, as a conflict with the Fourteenth Amendment is concerned, the case reduces

itself to the question whether the statute of Louisiana is a reasonable regulation, and with respect to this *there must necessarily be a large discretion on the part of the legislature.* In determining the question of reasonableness it is at liberty to act with reference to the *established usages, customs and traditions of the people,* and with a view to the promotion of their comfort, and the preservation of the public peace and good order. Gauged by this standard, we cannot say that a law which authorizes or even requires the separation of the two races in public conveyances is unreasonable, or more obnoxious to the Fourteenth Amendment than the Acts of Congress *requiring separate schools for colored children in the District of Columbia,* the constitutionality of which does not seem to have been questioned, or the corresponding acts of state legislatures.

"We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the Act, but solely because the colored race chooses to put that construction upon it. The argument necessarily assumes that if, as has been more than once the case, and is not unlikely to be so again, the colored race should become the dominant power in the state legislature, and should enact a law in precisely similar terms, it would thereby relegate the white race to an inferior position. We imagine that the white race, at least, would not acquiesce in this assumption. The argument also assumes *that social prejudices may be overcome by legislation,* and that equal rights cannot be secured to the Negro except by an enforced commingling of the two races. *We cannot accept this proposition.* * * *"

In connection with the last quoted paragraph of the *Plessy case, supra,* attention is called to Page 12 of appellant's brief, wherein he asserts that to admit him to the University of Oklahoma and then to require him "to sit

outside a regular classroom" (since September, 1949, he sits in a designated row of the regular classroom),

> "* * * could be for *no purpose other* than to humiliate and degrade him—to place a badge of inferiority upon him."

Appellees do not believe *that the "purpose" of the University authorities* in adopting the administrative policy attacked here, was to "humiliate and degrade" appellant or to place a "badge of inferiority" upon him, but was an honest attempt by said authorities to comply with the *public policy of Oklahoma,* as heretofore reviewed, and at the same time not violate the Fourteenth Amendment.

Appellees do not deem it necessary to discuss here the case of *Cummings* v. *United States* (1899), 175 U.S. 528, or the case of *Gong Lum* v. *Rice* (1927), 275 U.S. 78, cited by the trial court in support of the conclusions reached thereby in Paragraph II of its conclusions of law (quoted on Page 4 thereof), and attacked as not being in point on Pages 39 and 41 of appellant's brief, *other* than to quote the following pertinent language of Chief Justice Taft in said latter case *(Gong Lum* v. *Rice, supra),* as follows:

> [Page 85] "The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow, or black. Were this a new question, it would call for very full argument and consideration, *but we think that it is the same question which has been many times decided to be within the constitutional power of the state legislature to settle without intervention of the Federal courts under the Federal Constitution.*
>
> (Citing cases)

"In *Plessy* v. *Ferguson,* 163 U.S. 537, 544, 545, 41 L. ed. 256, 258, 16 Sup. Ct. Rep. 1138, in upholding the validity under the 14th Amendment of a statute of Louisiana requiring the separation of the white and colored races in railway coaches, *a more difficult question than this,* this court, speaking of permitted race separation, said:

> 'The most common instance of this is connected with the *establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power* even by courts of states where the political rights of the colored race have been longest and most earnestly enforced.' "

The fourth and last case cited by the trial court in support of the conclusions reached thereby in Paragraph II of its conclusions of law, and attacked as not being in point on Pages 42 and 43 of appellant's brief, is the case of *Missouri ex rel. Gaines* v. *Canada* (1938), 305 U.S. 337. That the principles of law announced by Chief Justice Hughes in said case are in point here is clearly shown by the following excerpts thereof, to-wit:

> [Page 344] "In answering petitioner's contention that this discrimination constituted a denial of his constitutional right, the state court has fully recognized the obligation of the State to provide Negroes with advantages for higher education substantially equal to the advantages afforded to white students. *The State has sought to fulfill that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions. Plessy* v. *Ferguson,* 163 U.S. 537, 544, 41 L. ed. 256, 258, 16 S. Ct. 1138; *McCabe* v. *Atchison, T. & S. F. Ry. Co.,* 235 U.S. 151, 160, 59 L. ed. 169, 173, 35 S. Ct. 69; *Gong Lum* v. *Rice,* 275 U.S. 78, 85, 86, 72 L. ed. 172, 176, 177, 48 S. Ct. 91. Compare *Comming* v. *Richmond County Bd. of Edu.,* 175 U.S.

528, 544, 545, 44 L. ed. 262, 266, 20 S. Ct. 197. * * *

> [Page 349] "The admissibility of laws *separating the races in the enjoyment of privileges afforded by the State* rests wholly upon the quality of the privileges which the laws give to the separated groups within the State. * * *"

On Page 43 of appellant's brief it is in effect contended that neither the case of *Sipuel* v. *Board of Regents of the University of Oklahoma et al.* (Jan. 12, 1949), 332 U.S. 631, nor the subsequent case of *Fisher* v. *Hurst et al.* (Feb. 16, 1949), 333 U.S. 147, uphold or pass upon the constitutionality of state laws providing for separate but equal educational facilities for members of the white and colored races.

While it is true, as stated by this Court in the *Fisher case* (Page 150), that the petition for certiorari *in the Sipuel case,*

> "* * * did not present the issue whether a state might not satisfy the equal protection clause of the Fourteenth Amendment by establishing a separate law school for Negroes,"

since at that time the State of Oklahoma had not attempted to establish such a school but was asserting it had a reasonable time in which to do so, *said issue was presented in the subsequent Fisher case and, as we see it, in effect answered in the affirmative,* although the question as to whether or not a separate Negro law school, such as was referred to in the district court's order complained of in said case, would be timely established, and if established would be substantially equal to the law school of the University of Oklahoma, was, of necessity, not passed on in said case.

Inasmuch as the Court's decision in the *Fisher case* quotes the material portion of the Court's decision in the *Sipuel case,* and also quotes the order of the District Court of Cleveland County complained of by appellant in the *Fisher case, appellees* are quoting herein the pertinent language of said latter decision, as follows:

> [Page 147] "Petitioner moves for leave to file a petition for a writ of mandamus to compel compliance with our mandate issued in *Sipuel* v. *University of Oklahoma,* January 12, 1948 (332 U.S. 631, ante, 247, 68 S. Ct. 299). We there said:
>
> > 'The petitioner is entitled to secure legal education afforded *by a state institution.* To this time, it has been denied her although during the same period many white applicants have been afforded legal education by the State. The State *must provide it for her* in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group. *Missouri ex rel. Gaines* v. *Canada* 1938), 305 U.S. 337, 83 L. ed. 208, 59 S. Ct. 232.'
>
> * * * * *
>
> [Page 149] "It is further stated by petitioner that the District Court of Cleveland County of Oklahoma entered an order on January 22, 1948, as follows:
>
> > 'It is, therefore, ordered, adjudged and decreed by this court *that unless and until the separate school of law for Negroes,* which the Supreme Court of Oklahoma in effect directed the Oklahoma State Regents for Higher Education to establish
> >
> > > "with advantages for education substantially equal to the advantages afforded to white students,"
> >
> > *is established and ready to function* at the designated time applicants of any other group may

hereafter apply for admission to the first-year class of the School of Law of the University of Oklahoma, and if the plaintiff herein makes timely and proper application to enroll in said class, the defendants, Board of Regents of the University of Oklahoma *et al., be and the same are hereby ordered and directed to either:*

(1) enroll plaintiff, if she is otherwise qualified, in the first-year class of the School of Law of the University of Oklahoma, in which school she will be entitled to remain on the same scholastic basis as other students thereof *until* such a separate law school for Negroes is established and ready to function, or

(2) not enroll any applicant of any group in said class *until* said separate school is established and ready to function.

'It is further ordered, adjudged and decreed that *if such a separate law school is so established and ready to function,* the defendants, Board of Regents of the University of Oklahoma *et al.,* be, and the same are hereby ordered and directed *to not enroll plaintiff* in the first-year class of the School of Law of the University of Oklahoma. * * *'

"The only question before us on this petition for a writ of mandamus is whether or not our mandate has been followed. *It is clear that the District Court of Cleveland County did not depart from our mandate.* * * *.

[Page 151] "Motion for leave to file petition for writ of mandamus is denied."

CONCLUSION

The above decisions of this Court, coupled with the fact that all of the decisions of the state courts we have been able to find support the constitutional validity of state laws providing for separate but equal educational fa-

cilities for the white and colored races, lead appellees to the conclusion that said decisions should be followed (not overruled) in the instant case, and that, accordingly, the decision of the three-judge Federal district court appealed from here should be affirmed.

Respectfully submitted,

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MARCH, 1950.