The Afro-American, 22 April 1950.

Open U. of Md.

Decision Opens Doors to All Maryland Citizens

The doors of the University of Maryland Hospital have been opened to all citizens who desire nurse training. The Md. Court of Appeals has ruled that the school can no longer be restricted to whites only. The 12-story structure is located in Baltimore.

Court of Appeals Reverses City Judge

Orders Admission of First Tan Student to School of Nursing

BALTIMORE

In a far-reaching decision, last Friday, the Maryland Court of Appeals ruled that the University of Maryland must admit Miss Esther McCready of this city to its School of Nursing.

It was the first test of racial discrimination in educational facilities the Appellate Court has been called upon to decide since 1936, when it ordered Donald G. Murray of Baltimore, Amherst College graduate, admitted to the University of Maryland Law School.

Follows High Court's Edicts

The court's ruling in the McCready case was in full accordance with two Supreme Court decisions:

1. The historic Lloyd Gaines case, involving Gaines's admission to the University of Missouri Law School, and based on the provision of equal educational facilities within the State; and

2. The case of Mrs. Ada Sipuel Fisher, involving her admission to the University of Oklahoma Law School and based on the provision of equal facilites for colored applicants "as soon" as they are provided for white applicants.

City Court Reversed

The Appellate Court's decision reversed that of Chief Judge W. Conwell Smith, of the Baltimore City Court, and ordered the issuance of a writ of mandamus to compel Miss McCready's admission to the University's School of Nursing.

In the opinion written by Judge Charles Markell, the court ruled that the State cannot require a colored student to accept a scholarship at an out-of-State institution for courses offered to white students within the State.

Effects Three-Fold

This decision affects the University's Schools of Medicine, dentistry, engineering, and those for graduate studies.

Its immediate effects are three-fold:

1. It prohibits the University of Maryland from continuing its ban against the admission of colored students to its graduate and professional schools.

2. It virtually nullifies the Southern Regional Education Compact, fostered by Southern Governors.

3. It outlaws Maryland's Scholarship Plan for out-of-State students.

The Appellate Court's decision is bound to influence decisions in six other cases pending in the lower court. These involve the admission of colored applicants to the Schools of Dentistry and Pharmacy in Baltimore, and the Colleges of Engineering and Home Economics at College Park.

First Compact Test

The McCready case was the first to be instituted concerning use of the regional educational program for white and colored students.

The legality of the Regional Compact itself was not an issue. Mary-

(Continued on Page 6, Column 1)

Court Opens Md. University to All

(Continued from Page 1)

land is a party to the compact.

The State is now spending some $150,000 annually under its out-of-State scholarship program for subsidizing tuition, travel and living costs of colored students eligible for admission to the University of Maryland.

Ruling in Gaines Case

The Supreme Court ruled in the Gaines case that the State of Missouri could not require Gaines to attend an out-of-State school to obtain a legal education while it was offering such education to white students.

It decreed that the State had to admit Gaines to the University of Missouri School of Law or provide separate equal training for him within the State.

In Mrs. Fisher's case, the high tribunal implemented its decision in the Gaines case by holding that the State of Oklahoma had to afford her legal education offered at a State institution, at the same time as it afforded such education to white students.

Court Quotes Hughes

The Maryland court quoted at length from the opinion of the late Chief Justice Charles Evans Hughes in the Gaines case, and quoted in its entirety an order of the Supreme Court in the Fisher case.

"We cannot subtract anything from what the Supreme Court has said," the Maryland court concluded. "It would be superflous to add anything."

(The full text of the McCready decision appears on page 13 of this edition).

Miss McCready filed application for admission to the University of Maryland School of Nursing on Feb. 1, 1949.

Lower Court's Ruling

When the governing board and officers of the university failed to act on her application, she filed a petition for mandamus to compel consideration and action on her application.

Dismissing her petition, Judge Smith ruled that the State afforded Miss McCready equal educational opportunities when it offered her a nursing course at Meharry Medical College School of Nursing.

Meharry Contract Cited

The Board of Control for Southern Regional Education, an agency created by regional compact, entered into a contract with Meharry Medical College through which Maryland was given a quota of three first-year students in nursing education at Meharry.

The University of Maryland, last August, offered Miss McCready a course in nursing at Meharry at a total overall cost to her, including living and traveling expenses, not in excess of the cost to her in attending the University of Maryland School of Nursing.

Regional Group Balks

According to testimony offered at the trial in the Baltimore court, the Nursing School at Meharry is superior to the University of Maryland Nursing School.

The Board of Control for Southern Regional Education objected to being involved in the McCready case in which it intervened. It declared that:

"It is not the purpose of the board that the regional compact, and the contracts for educational services thereunder shall serve any State as a legal defense for avoiding responsibilities established or defined under existing State and Federal laws and court decisions."

Murray on Defense Staff

On this phase of the case, the Maryland Court of Appeals said: "Obviously no compact or contract can extend the territorial boundaries or the sovereignty of the State of Maryland to Nashville."

Donald G. Murray, a Baltimore lawyer who graduated from the University of Maryland School of Law after Maryland courts had ordered his admission, was one of the attorneys for Miss McCready.

No Room for Doubt

In the Murray case, the court left open the question whether sending a colored student outside the State met the requirement of "equal protection of the laws," which left arguable whether there was a difference between the study of law and the study of nursing.

Since the Murray case, the Maryland court pointed out, the question left open has been passed on by the Supreme Court and "foreclosed in a way that permits no distinction between the study of law and the study of nursing."

Attorney General Hall Hammond said he did not know whether the Appellate Court's decision would be appealed, that it would be up to his "client," Dr. N. C. Byrd, president of the university, to decide.

Dr. Byrd said the question of an appeal is for the Board of Regents to decide, and he expected them to discuss it at a special meeting called for another purpose Sunday at College Park.

The Sun's Reaction

The reaction of the Baltimore Sun to the Court of Appeals decision was a suggestion that since it took the colored people 14 years from the time they were admitted to the Law School to get a decision permitting them to enter the School of Nursing that some way might be found to beat around the bush so that it will be another 14 years before colored people could get into some other department of the university.

The State Commission now studying higher education of colored people within the State has been meeting regularly for the past six months but has come to no conclusions.

Byrd Favors J-C Schools

President H. C. Byrd of the University of Maryland said if he were permitted to handle things himself he could easily set up separate institutions for colored people under the direction of the University of Maryland.

More realistically the Baltimore Sun pointed out that "at present all schools of the University of Maryland must be thrown open to qualified colored students, or the State must scramble around and try to establish a full duplicate but separate set of schools of higher education for colored people."

It must do one or the other and the device of sending colored students out of the State at State expense on scholarships as a way of evading the issue is doomed.

Court Says She Can Attend Md. U.

Miss Esther McCready, 19-year-old honor graduate of Baltimore's Dunbar High School, who was the plaintiff in the NAACP-sponsored suit against the U. of Md. The State's highest court, the Court of Appeals, ruled last week that Miss McCready must be admitted to the university's school of nursing.

Text of Ruling Slapping Regional Plan

The following is the text of the Maryland Court of Appeals decision in the case of Esther McCready vs. the University of Maryland:

This is an apeal from an order dismissing a petition for mandamus to require the governing board of the University of Maryland and officers of the univeristy and its School of Nursing to consider and act on petitioner's application made February 1, 1949, for admission as a first-year student in the School of Nursing, without regard to race or color, and admit her to the school upon her complying with the uniform lawful requirements for admission.

No material facts are in dispute. Petitioner is a Negro. She has all the educational and character requirements for admission. She was refused admission solely because of her race."

The School of Nursing is a branch or agency of the State government. It has been so held as to the Law School. University of Maryland v. Murray, 169 Md. 478, 483.

Ratified Regional Compact

In 1948, the State of Maryland and other Southern states, without the consent of Congress under Section 10 of Article 1 of the Constitution, entered into a regional compact, which was subsequently amended and, as amended, is set out in and was ratified by Chapter 282 of the Acts of 1949, effective June 1, 1949, relating to the developing and maintenance of regional educational services and schools in Southern states in the professional, technological, scientific, literary and other fields, so as to provide greater educational advantages and facilities for the citizens of the several states who reside within such region.

By arrangement pursuant to the regional compact, the State of Maryland has sent a number of white students to study veterinary medicine in a school in another state and has sent, or is willing to send, Negro students for the same purpose to a different school in another state. No instruction in veterinary medicine is offered by the University of Maryland or any other State agency in Maryland.

Pursuant to the original compact, a contact for training in nursing education, dated July 19, 1949, was made between the Board of Control for Southern Regional Education, "a joint agency" created by the regional compact, and the State of Maryland relating to nursing education of three first-year students from the State of Maryland in Meharry Medical College, School of Nursing, at Nashville, Tenn. Meharry Medical School and its School of Nursing receive Negro students only.

Declined Offer of Study

In August, 1949, the University of Maryland offered petitioner a course in nursing at Meharry Medical College at a total overall cost to her, including living and traveling expenses, which would not exceed the cost to her of attending the School of Nursing at the University of Maryland. Petitioner declined the offer.

From the uncontradicted testimony, in ample detail, of Dr. Pincoffs, since 1922 professor of medicine in the University of Maryland Medical School and chief physician at the University Hospital, and other witnesses called by respondents, it seems clear that in other educational facilities and living conditions the Nursing School at Meharry College is not only equal superior to the University of Maryland Nursing School.

The offer to petitioner of a course in nursing at Meharry Medical College, therefore, included every advantage except the one she now insists upon, viz., education in a State institution within the State of Maryland.

Respondents stress the regional compact and the contract for training in nursing education. The terms and details of these agreements are not now material. Neither agreement mentions race. We may assume, without deciding, that the compact is valid without the consent of Congress. Under the contract, the board are only agents—or ambassadors—to negotiate a contract for nursing education between the State of Maryland and Meharry Medical College. Obviously no compact or contract can extend the territorial boundaries or the sovereignty of the State of Maryland to Nashville.

City Law-School Ruling

In University of Maryland vs. Murray, supra, the court affirmed an order for the issue of the writ of mandamus, commanding the officers and governing board of the University of Maryland to admit the petitioner, a Negro, as a student in the law school. It was contended, among other things, that the State had discharged its obligation to the petitioner by providing certain scholarships at Howard University in Washington.

This contention was rejected because the petitoner had a "rather slender chance" of getting a scholarship and, if he got one, would be subject to traveling or living expenses to which he would not be subject at the University of Maryland law school.

The court, in its opinion by Chief Judge Bond, remarked, "And as the petitioner points out, he could not there have the advantages of study of the law of this State primarily, and of attendance on State courts, where he intends to practice." Supra, 486.

As has been indicated, this was not the ground of decision. In its opinion the court also said, "Whether with aid in any amount it is sufficient to send the Negroes tion is a question never passed on outside the State for like educaby the Supreme Court, and we need not discuss it now." Supra, 487.

The statement last quoted from the opinion, by Judge Bond, in the Murray case left open the question whether it is sufficient to send Negroes outside the State for education like that given white students in Maryland, and the remark first quoted left it arguable that in this respect there may be a difference between the study of law and the study of nursing.

Question Passed Upon

Law in Tennessee is not the same as law in Maryland; presumably a sound education in nursing is the same in Tennessee as in Maryland. The statement last quoted from the Murray case was of course correct when made, but it would not be correct im made now.

Since the Murray case the question there left open has been "passed on by the Supreme Court" and has been foreclosed in a way that permits no distinction between the study of law and the study of nursing.

In Missouri, ex rel. Gaines v. Canada, 305 U.S. 337, the court reversed a judgment of the Supreme Court of Missouri which denied a writ of mandamus to compel admission of a Negro to the University of Missouri Law School.

One of the grounds of the decision of the State court was that "adequate provision (had) been made for the legal education of Negro students in recognized schools outside of this State." Supra, 346.

The court, in its opinion by Mr. Chief Justice Hughes, referred at some length to the Murray case, quoted the above question specifically left open in that case (supra 345), and referred to the remark first above quoted and to similar contentions made in the Missouri case. Supra, 349.

After mentioning these contentions, the opinion brushed them aside and decided the question left open in the Murray case on broad grounds which are no less applicable to a school of nursing than to a school of law.

Cites Basic Consideration

"We think that these matters are beside the point. The basic consideration is not as to what sort of opportunities other States provide, or whether they are as good as those in Missouri, but as to what opportunities Missouri itself furnishes to white students and denies to Negroes solely upon the ground of color.

"The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State.

"The question here is not of a duty of the State to supply legal training, or of the quality of the training which it does supply, but of its duty when it provides such training to furnish it to the residents of the State upon the basis of an equality of right.

"By the operation of the laws of Missouri, a privilege has been created for white law students which is denied to Negroes by reason of their race. The white resident is afforded legal education within the State; the Negro resident having the same qualifications is refused it there and must go outside the State to obtain it.

"That is a denial of the equality of legal right to the enjoyment of the privilege which the State has set up, and the provision for the payment of tuition fees in another State does not remove the discrimination.

"The equal protection of the laws is 'a pledge of the protection of equal laws.' Yick Wo v. Hopkins, 118 U.S. 356, 369. Manifestly, the obligation of the State to give the protection of equal laws can be performed only where its laws operate, that its, within its own jurisdiction. It is there that the equality of legal right must be maintained.

"That obligation is imposed by the Constitution upon the States severally as governmental entities—each responsible for its own laws establishing the rights and duties of persons within its borders. It is an obligation, the burden of which cannot be cast by one State upon another, and no State can be excused from performance by what another State may do or fail to do.

"That separate responsibility of each state within its own sphere is of the essence of statehood maintained under our dual system. It seems to be implicit in respondents' argument that if other states did not provide courses for legal education, it would nevertheless be the constitutional duty of Missouri when it supplied such courses for white students to make equivalent provision for Negroes.

"But plain duty would exist because it rested upon the State independently of the action of other states.

"We find it impossible to conclude that what otherwise would be an unconstitutional discrimination, with respect to the legal right to the enjoyment of opportunities within the State, can be justified by requiring resort to opportunities elsewhere. That resort may mitigate the inconvenience of the discrimination, but cannot serve to validate it." Missouri, ex rel. Gaines v. Canada, 305 U.S. 337, 349-350.

Words Not Overruled

It would be bold indeed to suggest that the late Chief Justice ever used words without due regard for their meaning. His words might be subsequently overruled ora qualified by the court. But the words quoted have not been overruled or qualified.

On the contrary, a case from Oklahoma, essentially the same as the Missouri case, was argued on Thursday, January 8, 1948, and was reversed on the following Monday, with the following per curian opinion:

"On January 14, 1946, the petitioner, a Negro, concededly qualified to receive the professional legal education offered by the State, applied for admission to the School of Law of the University of Oklahoma, the only institution for legal education supported and maintained by the taxpayers of the State of Oklahoma.

"Petitioner's application for admission was denied, solely because of her color.

"Petitioner then made application for a writ of mandamus in the District Court of Cleveland county, Oklahoma. The writ of mandamus was refused, and the Supreme Court of the State of Oklahoma affirmed the judgment of the District Court. 100 Okla. 36, 180. P. 2d 135. We brought the case here for review.

"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 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, 305 United States 337 (1938).

"The judgment of the Supreme Court of Oklahoma is reversed and the cause is remanded to that court for proceedings not inconsistent with this opinion.

"The mandate shall issue forthwith." Sipuel v. Board of Regents of University of Oklahoma 332 United States, 631, 632-633.

We cannot subtract anything from what the Supreme Court has said. It would be superfluous to add anything.

Order reversed, with cost, and case remanded with direction to issue the writ of mandamus as prayed, except as to changes required by lapse of time.

Ruling Cheers C. H. Houston, Sick in Bed

WASHINGTON

The decision opening the University of Maryland to all students brought joy to the heavily-laden heart of Charles Houston.

The veteran lawyer has been critically ill since last October. In fact it was the adverse ruling of Chief Cty Judge W. Conwell Smith on that date that was believed to have sent Mr. Houston to his sick bed.

Unable to receive visitors Mr. Houston the AFRO was told, was considerably cheered by the announcement that he had won again. Doctors were of the opinion the news will hasten his recovery.

Last of String

The McCready case was merely the last in a long string of victories won by Mr. Houston in the educational field.

As NAACP counsel, his forceful argument resulted in the University of Maryland law school being opened to all citizens fourteen years ago in 1936. That was the Murray case.

Two years later, he expanded the decision in this case by successfully arguing the Gaines case before the U. S. Supreme Court. It was in this decision that the court held a state must furnish equal education within its own boundaries.

Since then he won the Baltimore Library case the Maryland Art Institute case, opening training in these two schools two colored students.

Secured Equal Pay

He secured equal pay for colored teachers in many States and it was the decision he won in the Lucile Bluford case that forced Missouri to establish a journalism school at Lincoln (Mo.) University. Miss Bluford had sued for admission to the University of Missouri journalism school.

CHICAGO CHURCH MARKS ITS 100TH ANNIVERSARY

CHICAGO (ANP)— Olivet Baptist Church on Easter Monday began a month-long observance of its 100th anniversary.