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will, or other instrument does not describe them as husband and wife, or refer to their marital relationship. The court continued by ruling that the conveyance by the husband and wife jointly passed title to the property free and clear of any claims of creditors of the husband. This decision indicates that a judgment creditor of either spouse cannot render the title defective, or defeat the right to convey entirety property.

The dilemma facing a creditor who has a debt or a judgment secured against only one spouse is now very significant. A caveat to future creditors: demand the signatures of both spouses as obligees on any and all transactions, because a judgment against just one spouse will not subject the entirety property or its proceeds to the satisfaction of the judgment. To protect oneself from the above mentioned pitfalls, one must always keep in mind the full effect of the incidents of an estate by the entirety in day to day transactions involving real estate in Wyoming.

ROY R. PETSCH

THE JUDICIAL FATE OF LEGISLATIVE ATTEMPTS TO MAINTAIN SCHOOL SEGREGATION

In the three years since the Supreme Court of the United States announced in *Brown v. Board of Education of Topeka*[1] (popularly entitled the "School Segregation Case") that separate public school facilities for the white and Negro races were inherently unequal and that the schools must be integrated, there has been, in the south especially, a rash of legislation aimed at delaying or defeating completely the integrative process. Some of this legislation has been examined in the courts of the United States in an effort to test its constitutionality in light of the *Brown* decision. It is the purpose of this note to present the results of such examinations.

Before entering upon a discussion of the judicial results of legislative attempts to evade the school segregation case it will be well to examine briefly our present situation through the translucent pane of history.

In 1896 the Supreme Court of the United States announced in the case of *Plessy v. Ferguson*[2] the "separate but equal" doctrine. Under this doctrine segregation on the basis of race alone was constitutional so long as the facilities provided for one race were substantially equal to the facilities provided for the other. Even as it was articulated, however, the doctrine of separate but equal began to lose ground. In the same case, Mr. Justice Harlan's dissent sounded the depths of the majority decision and found it wanting. He pointed out that it was unfortunate that the nation's highest tribunal should conclude that it was competent for a

1. 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873, 38 A.L.R.2d 1180 (1954).
2. 163 U.S. 537, 16 S.Ct. 1138, 41 L.Ed. 256 (1896).

state to regulate the enjoyment of civil rights solely on the basis of race. He accurately prophesied that the decision would stimulate state enactments devised to defeat the constitutional amendments resulting from the civil war and keep alive a conflict of the races.[3] In the opinion of Mr. Harland, the *Plessy* decision would, in time, prove as pernicious as the decision made by the Supreme Court in the *Dred Scott* case.[4]

Mr. Justice Harlan's prophecy was vindicated in that the decisions subsequent to *Plessy v. Ferguson* all too often held a showing of "nominal equality" to be sufficient to satisfy the separate but equal doctrine[5]; however, as the pressure for school desegregation mounted, many courts began to require, to satisfy the doctrine, "real equality."[6] The real equality test, articulated in cases involving colleges and universities first, came to be applied for the benefit of the public schools as well. This meant that the buildings, facilities, curricula and busses furnished the Negro race had to be equal in quality and convenience to those furnished the white children.[7]

The long life of the separate but equal doctrine came to an ignominious end in 1954. The United States Supreme Court, as a result of a continued clamor of appeals from lower courts, announced in the *Brown* case that separate facilities were inherently unequal and that segregation solely on the basis of race was violative of the Equal Protection Clause of the Fourteenth Amendment. In a second hearing for the purpose of formulating a decree it placed the burden of solving problems raised by the integration decision on the local school boards.[8] In the same decision, federal district courts were directed "to take proceedings and enter such orders and decrees . . . as are necessary and proper to admit (colored children) to public schools on a racially non-discriminatory basis with all deliberate speed,"[9] and were further charged with the responsibility of determining whether the action of the school authorities constitutes "good faith implementation of governing constitutional principles,"[10] taking into consideration the circumstances of each case.

The reaction to the decision of the *Brown* case was varied. Immediately several states announced their intention to abide by the ruling.[11]

3. Id. at 1147.
4. Id. at 1146.
5. Dameron v. Bayless, 14 Ariz. 180, 126 Pac. 273 (1912); Williams v. Zimmerman, 172 Md. 563, 192 Atl. 353 (1938).
6. Missouri v. Canada, 305 U.S. 337, 59 S.Ct. 232, 83 L.Ed. 208 (1938).
7. Davis v. County School Board of Prince Edward County, 103 F.Supp. 337 (E.D. Va. 1952).
8. Brown v. Board of Education of Topeka, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955).
9. Id. at 301.
10. Id. at 299.
11. Delaware (Attorney General announced separate but equal provision of state constitution no longer binding), Kentucky (Governor stated that Kentucky would do whatever necessary to abide by law), Maryland (Governor stated that Maryland would accept Supreme Court's interpretation of Constitution), Missouri (Attorney General ruled all constitutional and statutory requirements for segregation void). Oklahoma, Texas, West Virginia, and the District of Columbia also announced their intentions to follow the ruling.

Others, from the first, opposed the ruling.[12] In these latter states, in the three years following the *Brown* case, a number of constitutional amendments and statutory enactments have appeared, apparently aimed at maintaining segregation in the public schools.

It is beyond the scope of this note to examine every constitutional amendment and statutory enactment passed by legislatures motivated to maintain segregation of the races in spite of the *Brown* decision. Some of the more typical amendments and enactments, in effect, are as follows: Expense grants to pupils desiring to attend conveniently located private nonsectarian schools generally accompanied by the granting of local options to school districts to suspend operation of public schools, and also accompanied by compulsory school attendance law amendments to provide that in the event white and Negro children are integrated a dissatisfied parent would not have to send his child to that school,[13] pupil assignment or placement acts,[14] and continued segreation under an amendment expressly providing that it is continued as a result of the exercise of the states police power.[15] Gerrymandering of school districts has been attempted by local school board resolution.[16]

Of the many legislative attempts to defeat the school segregation case comparatively few have reached the federal courts. The fact that so few enactments have been challenged in the federal court system may be mute testimony of their effectiveness; however, in all probability many of the statutes that have become law have become such despite a foreknowledge on the part of the responsible assemblies and legislatures that the acts would ultimately be declared unconstitutional in the light of the *Brown* case or for other reasons. Why then was much of this legislation given birth? It is the considered opinion of at least one legal writer[17] that some areas of the nation are fighting a delaying action and that the new laws, many of which are accompanied by complex administrative remedies,[18] are designed to delay indefinitely any judicial determination of non-compliance with the *Brown* case. It is a rule of administrative law that a complainant must exhaust all state administrative remedies before a federal court will enjoin state administrative action.[19] The Supreme Court has not considered the exhaustion rule as it is related to segregation cases; however, it did deny certiorari in one case where the Negro complainants appealed a court of appeals holding that Negroes must exhaust administrative remedies by individually applying for admission to the white schools as required by the North Carolina statute before they would

12. Alabama, Georgia, Louisiana, Mississippi and South Carolina.
13. E.g., N.C. Const., Art. IX, § 12; N.C. Laws § 3-5 (E.S. 1956).
14. Va. Code §§ 22-232.1 - 22-232.16 (Supp. 1956).
15. La. Const., Art. XII, § 1 as amended by Act 752 of 1954; La. Acts § 555-1 (1954).
16. Clemmons v. Board of Education of Hillsboro, Ohio, 228 F.2d 853 (6th Cir. 1956).
17. E.g., Abzug, Legislative Proposals in the South Against Integration, 16 Lawyers Guild Rev. 83 (1956).
18. E.g., Ala. Acts § 201-7-9 (1955); La. Acts § 556-1 (1954).
19. Prentis v. Atlantic Coast Line Co., 211 U.S. 210, 29 S.Ct. 67, 53 L.Ed. 150 (1908).

be entitled to a declaratory judgment and injunctive relief in a federal court with respect to their right to attend school.[20]

To date there have reached the federal court system three cases construing certain legislative provisions which have had the effect of continuing segregation in the public schools[21] and one construing a local school boards attempted gerrymandering of a school district.[22] First consideration will be given the gerrymander case of *Clemons v. Board of Education of Hillsboro, Ohio.*[23] In that case the Negro complainants sought to enjoin the defendants from enforcing a policy of racial segregation in the public schools by requiring the complainants to withdraw from previously all white schools and enroll in an all Negro school. The complainants were registered in the fall in the two previously all white schools and assigned seats in the classrooms. Six days after registration, the board of education, for the first time in its history, set up a school zoning system. The resolution divided the city into three school zones, one for each of the city's three elementary schools. The Negro school zone was divided into two completely separated parts, one in the north and one in the south of the city. Three of the complainants who lived in the south section of the Negro zone had to pass by one of the white schools in order to reach the Negro school. The colored school was not even in the colored zone, but was located in one of the white zones. The defendant board based its gerrymander action on the overcrowded conditions in the white schools. The district court, although holding the establishment of the system to be a subterfuge to segregate children who had been admitted to the white school, denied the relief prayed for upon the ground that it would seriously disrupt the orderly procedure of the white schools. It felt that the board's exercise of discretionary powers should not be interfered with. Granting the injunction, the circuit court held the lower court's conclusion to be "clearly erroneous" and said that under the holding in the second *Brown* case[24] the board abused its discretion in establishing the zoning ordinance and assigning the complainants to segregated schools, and that the district court abused its discretion in refusing to enjoin the board's violation.

The first of two Louisiana cases, *Orleans Parish School Board v. Bush,*[25] involved a suit by Negro pupils against the parish school board and others for a declaratory judgment that the state constitutional provision and certain statutes[26] designed to maintain public school segregation

20. Carson v. Warlick, 238 F.2d 724 (4th Cir. 1956), cert. denied, 353 U.S. 910.
21. Adkins v. School Board of Newport News, 148 F.Supp. 430 (E.D. Va. 1957); Ludley v. Board of Supervisors of L.S.U., 150 F.Supp. 900 (E.D. La. 1957); Orleans Parish School Board v. Bush, 242 F.2d 156 (5th Cir. 1957), motion to file writ of mandamus denied, 351 U.S. 948, cert. denied, 354 U.S. 921.
22. Clemons v. Board of Education of Hillsboro, Ohio, 228 F.2d 853 (6th Cir. 1956).
23. 228 F.2d 853 (6th Cir. 1956).
24. Brown v. Board of Education of Topeka, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955).
25. 242 F.2d 156 (5th Cir. 1957).
26. La. Const., Art XII, § 1 as amended by Act 752 of 1954; La. Acts §§ 555, 556 (1954).

were invalid, and for an injunction against the action of the defendants which required and permitted segregation. Subsequent to the decision in the *Brown* case, Louisiana adopted an amendment to its constitution, which already provided for segregation of white and Negro children in the public schools, by adding that:

> ". . . This provision is made in the exercise of the state police power to promote and protect public health, morals, better education and the peace and good order of the state, and not because of race. The legislature shall enact laws to enforce the state police power in this respect."[27]

The legislature then enacted statutes providing for the assignment of each pupil each year by the parish superintendent without providing any standards for the assignments other than the superintendent's discretion.[28] The same legislature provided for the imposition of penalties on local boards and individuals failing to observe the statutory requirements for the maintenance of segregated schools.[29] The court of appeals[30] held that the constitutional provision and the implementing statutes were unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment. As to the constitutional provision the court recognized that "the use of the term police power works no magic in itself."[31] It went on to say that although the police power of the state is broad, it is limited by the Federal Constitution.[32] As to the Pupil Assignment Law, the court said that whatever might be the holding as to the validity of such a law if it contained reasonable standards to guide officials, where the statute provided no standards to aid the superintendent of the local school board in the exercise of his discretion, it was unconstitutional.[33] Such a statute is unconstitutional, the court said, either because on its face it has the effect of depriving Negro children of their liberty or property without due process of law, or because it has implied as its only basis for pupil assignments the prohibited standard of race.[34]

In *Ludley v. Board of Supervisors of Louisiana State University*,[35] several Negro plaintiffs sought a declaratory judgment and injunction against the University Board of Supervisors and the Louisiana State Board of Education to determine the constitutionality of certain statutes by

27. Note 26 supra.
28. La. Acts § 556-1 (1954).
29. La. Acts § 555-4 (1954).
30. Orleans Parish School Board v. Bush, 242 F.2d 156 (5th Cir. 1957).
31. Id. at 163.
32. Id. at 164.
33. Id. at 164.
34. Id. at 164. Statutes and ordinances which do not prescribe rules, conditions and standards for the guidance of administrative officials are considered as violative of the Due Process Clause of the Fourteenth Amendment. The reason for the rule is expressed in the following language: ". . . For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself." Yick Wo v. Hopkins, 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886).
35. 150 F.Supp. 900 (E.D. La. 1957).

which the legislature attempted to maintain segregation in Louisiana educational institutions.[36] One statute required, as a prerequisite to attending state institutions of higher learning, a certificate of elegibility and good moral character signed by the student's former principal and superintendent.[37] The same legislature provided, in effect, that the jobs of principals and superintendents who signed the certificates would be in jeopardy.[38] The court held that the statutes were unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment when taken *in pari materia* with other statutes and that the statute requiring a certificate was unconstitutional even when taken alone because the obvious intent of the legislature was to discriminate against the Negro. The court said that this attempt, while more subtle than its predecessor, construed in the *Bush* case supra,[39] still must fail since the Fourteenth Amendment "nullifies sophisticated as well as simple minded modes of discrimination."[40]

In the Virginia case of *Adkins v. School Board of the City of Newport News*[41] the Negro plantiffs sought to enjoin the defendant from any practices, customs or usages in segregating students in the public schools. In 1956 the Virginia legislature passed the Virginia Pupil Placement Act[42] which provided for assignment by a pupil placement board of pupils to schools in consideration of such factors as the effect of enrollment on the best interests of the child and other children in the school, as well as the effect on the efficiency of the operation of said school, the sociological, psychological, and like intangible social scientific factors and such other matters as might have been deemed pertinent to the efficient operation of the schools. The act made provision for an administrative remedy whereby 105 days would elapse from the time a party aggrieved by a decision of the pupil placement board would file protest and the final decision by the governor.[43] The same legislature amended and re-enacted the Appropriations Act[44] so as to substantially cut off all funds for school appropriation at the state level for any class of schools in the entire locality, in the event any one school should be integrated. The court held that notwithstanding the fact that legislation carries a presumption of constitutionality and despite the fact that it makes no mention of white or colored school children, in light of the legislative intent as expressed by the

36. La. Acts § 555 (1954); La. Acts § 249 (1956); La. Acts § 15 (1956).
37. La. Acts § 15 (1956).
38. La. Acts § 249 (1956): "A permanent teacher shall not be removed from office except upon written and signed charges of willful neglect of duty, or incompetency or dishonesty, or of being a member of or contributing to any group, organization, movement or corporation that is by law prohibited from operating in the State of Louisiana, or of advocating or in any manner performing any act toward bringing about integration of the races within the public school system or any higher institution of learning of the State of Louisiana. . . ."
39. Orleans Parish School Board v. Bush, 242 F.2d 156 (5th Cir. 1957).
40. Ludley v. Board of Supervisors of L.S.U., 150 F.Supp. 900, 901 (E.D. La. 1957).
41. 148 F.Supp. 430 (E.D. Va. 1957).
42. Va. Code §§ 22-232.1-22-232.16 (Supp. 1956).
43. Va. Code § 22-232.6 (Supp. 1956).
44. Va. Acts §§ 71-133, 134, 137, 138 and 143 (E.S. 1956).

amended Appropriations Act, General Assembly Resolutions[45] and Governors Addresses,[46] the Pupil Placement Act was unconstitutional. The court said the pattern was plain—that the legislature had adopted procedures to defeat the *Brown* decision. As regards the alleged administrative remedy the court said that before persons would be barred from federal courts as not having exhausted the administrative remedy, the administrative remedy must be adequate—that it must be indeed a remedy and not an administrative block. They then determined the administrative remedy in this case to be, in fact, a block.

By way of conclusion it can be said that so far the federal courts have been very decisive in striking down legislative and other attempts to defeat the *Brown* decision. Some states will undoubtedly continue to endeavor to postpone integration by the exercise of every means at their disposal, including the enactment of statutes. In light of the present unsympathetic attitude of the federal courts toward such legislative proposals it would seem that states by passing such laws can hope to accomplish no more than a delaying of the inevitable. Even the element of delay has been seriously curtailed by the holding in the *Adkins* case[47] requiring the administrative remedy be "adequate" before the complainant is bound to exhaust it as a prerequisite to federal court jurisdiction.

SAMUEL A. ANDERSON

LEGAL INVESTMENTS FOR A WYOMING TRUSTEE

The use of trusts is presently accelerating with such force that trustees currently control an estimated 85 billion dollars.[1] This is sufficient to indicate that the use of trusts is becoming so prevalent that it may be considered to be the rule rather than the exception. This article will scrutinize the laws which control the Wyoming trustee's selection of investments as he fulfills his duty of making the trust funds properly productive.

The first thing the Wyoming trustee must use as a guidepost for his selection of investments is the Wyoming Constitution. This provides as follows:

> No act of the legislature shall authorize the investment of trust funds by executors, administrators, guardians, or trustees, in the bonds or stock of any private corporation.[2]

The Supreme Court of Wyoming has interpreted this constitutional provision as prohibiting the passage of such an act by the legislature as well as being a specific declaration of policy against a trustee making such an investment without court approval. The Court said:

45. Va. Acts 1956, Senate Joint Resolution No. 3, p. 1213 (Interposition Resolution).
46. Adkins v. School Board of Newport News, 148 F.Supp. 430 (E.D. Va. 1957).
47. Ibid.

1. Report of the New York Joint Legislative Committee on Charitable and Philanthropic Agencies and Organizations 15 (1954).
2. Wyo. Const., Art. III, § 38.