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CASES AND AUTHORITIES CITED.

CASES AND AUTHORITIES CITED—(Continued).

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MISCELLANEOUS.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No......

J. D. SHELLEY; ETHEL LEE SHELLEY, HIS WIFE, AND JOSEPHINE FITZGERALD, PETITIONERS,

vs.

LOUIS KRAEMER AND FERN W. KRAEMER, HIS WIFE, RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI, EN BANC, AND BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

Come now J. D. Shelley and Ethel Lee Shelley, his wife, citizens of the United States and State of Missouri, and respectfully petition this Honorable Court to grant a writ

of certiorari to review the opinion and judgment of the Supreme Court of Missouri, en banc, rendered and entered on the 9th day of December, 1946, rehearing denied the 13th day of January, 1947, lately pending in said Supreme Court, in this case entitled Louis Kraemer and Fern W. Kraemer, his wife (plaintiffs), appellants, v. J. D. Shelley and Ethel Lee Shelley, his wife, et al. (defendants), respondents, No. 39997 on the docket of said Supreme Court of Missouri, reversing a judgment of the Circuit Court of the City of St. Louis (Division No. 3 presided over by Hon. William K. Koerner, Circuit Judge) in said case in favor of your petitioners and against respondents, Louis Kraemer and Fern W. Kraemer, with directions.

OPINION OF THE COURT

The said opinion of the Supreme Court of Missouri, En Banc, in this cause, entitled Louis Kraemer and Fern W. Kraemer, his wife, appellants, v. J. D. Shelley and Ethel Lee Shelley, his wife, and Josephine Fitzgerald, respondents, appear in pages 153 to 159, inclusive, of the Printed Record filed herewith. Said opinion is reported in the 198 S. W. (2d), page 679.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On August 11, 1945, pursuant to an earnest money contract theretofore executed by them, petitioners paid the sum of $5,760.00 (in cash and deeds of trust) for the property involved in this case, and received a warranty deed from their co-defendant, Josephine Fitzgerald, conveying the same to them as husband and wife.

Thereafter, on the 9th day of October, 1945, respondents, as plaintiffs, brought an action in injunction against

petitioners and their said co-defendant in the Circuit Court of the City of St. Louis, the same being cause No. 91283, in which plaintiffs sought, among other relief prayed for, to enjoin petitioners from taking possession of said property, and prayed for a judgment divesting title thereto out of the petitioners and revesting it in their immediate grantor or in such other person as the Court should direct. And respondents based their right to bring said action upon a breach of certain provisions of a restrictive agreement (R. 19, 20) which had been signed on the 16th day of August, 1911, and recorded in the office of the Recorder of Deeds of the City of St. Louis on the following day, and purporting to cover the property fronting on Labadie Avenue, between Taylor Avenue on the east and Cora Avenue on the west, and located in city blocks 3710-B and 3711-B of the City of St. Louis, including property involved in this case. Said agreement contained the following provisions, among others:

> The said property is hereby restricted to the use and occupancy for the term of Fifty (50) years from this date, so that it shall be a condition all the time and whether recited and referred to as (or) not in subsequent conveyances and shall attach to the land as a condition precedent to the sale of the same, that hereafter no part of said property or any portion thereof shall be, for said term of Fifty years, occupied by any person not of the Caucasian race, it being intended hereby to restrict the use of said property for said period of time against the occupancy as owners or tenants of people of the Negro or Mongolian race. It is further ccontracted and agreed that upon a violation of this restriction either one or all of the parties to this agreement shall be permitted and authorized to bring suit or suits at law or in equity to enforce this restriction as to use and occupancy of said property in any court or courts and to forfeit the title to any lot or portion of lot that may

be used in violation of this restriction for the benefit of each and every person that may now or hereafter, after the recording of this restriction, become the owner of any property on said street.

Thereafter, petitioners in their Amended Return to the Order to Show Cause and Answer to Plaintiffs' Petition (R. 9, 16) specially set up property rights conferred upon them by Section 42 of Title 8 of the United States Code (Sub. Par. [a] of Par. 5) (R. 10), and further specially set up the right to make and enforce contracts and to the same full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens of Missouri, and to equal rights and protection under the law, all as guaranteed to them by Section 41 of Title 8 of United States Code (Par. 6) (R. 10); and pleaded that said agreement was invalid because its enforcement would deprive petitioners of the rights conferred upon them by said sections of the code.

Petitioners further specially set up rights, privileges, and immunities conferred upon them by the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States and alleged that the enforcement of said provisions of said agreement by the courts of Missouri would constitute state action contrary to said Section 1 of said Amendment, and would deprive petitioners of their property without due process of law, and constitute a denial to them of the equal protection of the laws, within the meaning of said Amendment (R. 11).

In paragraph 12 (R. 13) of said Return and Answer Petitioners invoked, in the consideration of this case, the construction given and the application made of said provisions of said Sections 41 and 42 of the United States Code and of Section 1 of the Fourteenth Amendment by the

Supreme Court of the United States in Buchanan v. Warley (245 U. S. 60) in passing upon the right of colored citizens to purchase, enjoy, and use real property without discrimination against them by state action (legislation) based solely on race and color; and further invoked the application of the principle of law enunciated in the opinion of the Court in Gandolfo v. Hartman (49 Fed. 181), that:

> "Any result inhibited by the Constitution can no more be accomplished by contract of individual citizens than by legislation, and the courts should no more enforce the one than the other."

Petitioners further pleaded in their said Return and Answer that said agreement was executed in furtherance of a scheme to segregate persons belonging to the Negro race from the white inhabitants of said City of St. Louis, and that an overcrowded ghetto had been created in said city by means of the use thereof and of restriction in deeds and agreements similar in import and purposes to those of the agreement involved in this case; that Negroes are restricted thereby to places of residence in said ghetto, and that the same was overcrowded beyond any other comparable area in said city, now housing more than 117,000 persons in an area comparable in size to the one occupied by members of said race in said city in 1910, when their number was 40,000; and that, as a result of said overcrowding, ill health, crime, the death rate and juvenile delinquency had increased therein beyond the average in said city, and that the purchase price and rate of rentals for real property in said ghetto were much higher than are charged for similar property in other areas of said city; and invoked the exercise of the powers of the Court of equity for relief from said social conditions (Par. 13, R. 14, 15).

Thereafter, hearings upon the Order to Show Cause and upon the merits were had before Division No. 3 of said Circuit Court, and said cause was submitted and taken under advisement by the Court.

Thereafter, on the 19th day of November, 1945, the Court made Findings of Fact (R. 140) and Conclusions of Law (R. 141); and on said same day the Court rendered and filed the following judgment (R. 144):

> "The contention that the restriction violates the Constitution of Missouri and of the United States and the federal civil rights statutes, and is against public policy, are ruled against defendant on the authority of Thornhill v. Herdt and Porter v. Prior, supra, and the numerous authorities cited in the note to 14 A.L.R,. pp. 1237 et seq. * * *
>
> "In accordance with the above views (contained in the memo filed by the Court) (R. 142), the restraining order heretofore issued (but never in force) will be dissolved, the temporary injunction will be denied and plaintiffs" bill will be dismissed."

After plaintiffs' motion for a new trial had been overruled (R. 148), they appealed said cause to the St. Louis Court of Appeals (R. 148), and the same was thereafter transferred to the Supreme Court Court of Missouri and lodged in the Court en banc. Thereafter on the 3rd day of October, 1946, said appeal was argued by both parties before said Supreme Court and submitted on their respective briefs and oral arguments (R. 153), and thereafter, on the 9th day of December, 1946, said Supreme Court rendered and filed its Opinion (R. 153) and Judgment (R. 160) in said cause, reversing the judgment and the order of said circuit court dismissing said petition, with directions to set aside its said order and to render judgment in favor of the respondents herein as prayed for in their said petition.

Rulings of Supreme Court of Missouri.

1. On the federal questions raised by the petitioners in specially setting up their property and other rights, the Supreme Court of Missouri ruled as follows:

> "The restriction does not contravene the guaranties of civil rights of the Constitution of the United States. Corrigan v. Buckley, 271 U. S. 323, 46 S. Ct. 521, 70 L. Ed. 969. A recent case, reviewing the Corrigan case and again upholding such an agreement, is Mays v. Burgess, 147 F. (2d) 869, 162 A.L.R. 168, decided by the United States Court of Appeals for the District of Columbia. That case considered the question whether a restrictive agreement violated the Fifth and Fourteenth Amendments and Section 1 of the Thirteenth Amendment of the Constitution of the United States and the statutes enacted thereunder, particularly 8 U.S.C.A., Sections 41, 2 (42), and held it did not. That case followed the ruling in Corrigan v. Buckley that neither the Thirteenth nor Fourteenth Amendments prohibited private individuals from entering into contracts respecting the control and disposition of their own property. While Gandolfo v. Hartman (1892), 49 F. 181, takes a contrary view, we find it has been criticized and not followed, and so far as we find it relates to the question here has been overruled in effect by Corrigan v. Buckley. Nor can it be claimed that the enforcement of such a restriction by a court process amounts to action by the state itself in violation of the Fourteenth Amendment, which relates to a state action exclusively. To sustain such a claim would be to deny the parties to such an agreement one of the fundamental privileges of citizenship, access to the courts. This would violate both the state and Federal Constitutions. Art. I, Sec. 14, Constitution 1945, Art. IV, Sec. 2, Constitution United States" (R. 158).

2. On the social conditions resulting from the formation of the ghetto for Negroes in the City of St. Louis, the Opinion ruled:

> "The chancellor found the Negro population in St. Louis has greatly increased in recent years, and now numbers more than 100,000, and that some of the sections in which Negroes live are overcrowded, which is detrimental to their moral and physical well being.
>
> "Such living conditions bring deep concern to everyone, and present a grave and acute problem to the entire community. Their correction should strikingly challenge both governmental and private leadership. It is tragic that such conditions seem to have worsened although much has been written and said on the subject from coast to coast. See Mays v. Burgess, supra, and Fairchild v. Raines, 24 Cal. (2d) 818, 151 Pac. (2d) 260. But their correction is beyond the authority of the courts generally, and in particular in a case involving contractual rights between parties to a law suit. If their correction is sought in the field of government, an appeal must be addressed to its branches other than judicial" (R. 159).

3. In paragraph 7a of their Return and Answer (R. 11), petitioners alleged that description of the property mentioned is "defective and so indefinite that it does not enable defendants and others, not parties to said agreement, to know what property is attempted to be restricted thereby, and fails to impart any notice to these defendants" (R. 11).

The parties to the suit, for the purposes of the appeal, stipulated in the transcript that said agreement did not contain any lot numbers of the property therein described nor any other means whereby said lots could be identified (R. 3).

The trial court found that petitioners had no knowledge of the restriction agreement in question [par. 4 of Findings of Fact (R. 140) and in the Memo filed with its Findings (R. 143, top of page]). Notwithstanding said stipulation and the said findings of the trial court in regard to the question of notice, the Supreme Court of Missouri failed to take note thereof, and to apply to the facts established thereby well-settled rules of law in Missouri, although fully briefed and argued by petitioners, and ruled as follows:

> "The filing of the agreement for record with the recorder of deeds gave the defendants at least constructive notice of the restrictions which is sufficient. * * * Defendants are in no position to claim lack of notice" (R. 158, 159).

It is a well-settled rule of law in Missouri that, in order for the recording of a deed or other instrument conveying real property or affecting interest therein, the description of property therein mentioned must be such as to enable a subsequent purchaser to identify the land by name, location, monuments and distance, or numbers, or the deed should refer to some instrument lawfully of record which does contain such means of identification. Said stipulation No. 3 and the rule of law above stated, together with the supporting Missouri authorities, were called to the attention of the Supreme Court of Missouri by petitioners in Point III, page 7, of their Brief (R. 149), and in both the written and oral arguments and in their said motions for a rehearing (R. 160) and to modify (R. 168), petitioners again called the Court's attention to said stipulation and said rule of law, and repeated said supporting authorities, adding thereto the latest ruling of said Court upholding said rules [Federal Land Bank of St. Louis v. McColgan, 332 Mo. 860, 59 S. W.

(2d) 1052]; and in paragraph 7 of said motion for a rehearing (R. 167), petitioners specially claimed their right to the protection of the inhibitions of the due-process and equal-protection clauses of Section 1 of the Fourteenth Amendment, in the following language:

> "7. Because, in overlooking stipulation 3 contained in the transcript of the record on page 4 thereof, and failing to apply and follow the rulings and decisions in Ozark Land Co. v. Franks, supra, and Gatewood v. House, supra, the decision and opinion of the Court deprives the respondents of their property without due process of law and denies to them the equal protection of the laws, contrary to section 1 of the Fourteenth Amendment (of the Constitution) of the United States."

Said federal rights and contentions were thus set up and claimed by petitioners at the first opportunity in the progress and consideration of said case. But the Supreme Court of Missouri denied said rights and protection by overruling said motions to modify and for rehearing on the 13th day of January, 1947 (R. 169), on which said day the judgment of the Supreme Court of Missouri, en banc, in this case became final. Thereafter, on the 10th day of February, 1947, the Court's mandate in this case was stayed pending application for a writ of certiorari to the Supreme Court of the United States.

JURISDICTION OF THIS COURT.

The jurisdiction of this Court is based upon Section 237 (b) of the Judicial Code, 36 Stat. 1156, as amended by Act of Feb. 13, 1925, ch. 229, Sec. 1, 43 Stat. 937, Title 28, U.S.C.A., Sec. 344 (b) providing for review by this Court, by certiorari, of final judgments in the highest court of a state in which a decision could be had, where any title,

right, privilege or immunity is specially set up or claimed under the Constitution, or any treaty or statute, of the United States. The judgment of the Supreme Court of Missouri, en banc, here sought to be reviewed was entered on the 9th day of December, 1946 (R. 160). Motions to modify and for rehearing were duly filed by petitioners, respondents in said Supreme Court, on December 24, 1946, within the time provided by the rules of said Supreme Court (R. 160), and said motions were denied by said Supreme Court on the 13th day of January, 1947 (R. 169), on which said date said judgment became final. The following cases are thought to sustain the jurisdiction of this Court:

Brooklyn Savings Bank v. O'Neil, 324 U. S. 697.
Longest v. Langford et al., 274 U. S. 499.
Seabury Rec. v. Green, Admin., 294 U. S. 165.
Great Northern Ry. Co. v. Sunburst Oil & Refining Co., 287 U. S. 358.

QUESTIONS PRESENTED.

(1) Whether the restrictive agreement involved in this case (R. 19, 20), which prohibits any portion of the land therein described from being sold to or occupied by a member of the Negro or Mongolian races, and which further provides for actions at law and in equity to enforce provision thereof and to forfeit the title of such prohibited purchaser to any of said property, is void by reason of being contrary to the provisions of Sections 41 and 42 of Title 8 of the United States Code, and because it necessitates denying petitioners rights conferred upon them by said sections; and whether said agreement is contrary to public policy.

(2) Whether the **enforcement** of said agreement by the courts of the state of Missouri is state action within the meaning of the provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States which forbids any state to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; and whether such **enforcement** of said agreement by the Supreme Court of Missouri constitutes depriving petitioners of their property and property rights without due process of law, and the denial to them of the equal protection of the laws, within the meaning of said section of said amendment.

(3) Whether the construction given to and the application made of said Sections 41 and 42 of the Federal Code in connection with Section 1 of the Fourteenth Amendment by this Court in Buchanan v. Warley (245 U. S. 60), in so far as the same relates to the rights of colored persons to purchase real property and enjoy and use the same without discriminations against them solely on account of their color, determine principles of law which are applicable to the issues in this case and binding upon the Supreme Court of Missouri, when that Court is called upon to enforce the provisions of said restrictive agreement against the petitioners in this case.

(4) Whether the principles of law enunciated in the opinion of the Court in Gandolfo v. Hartman (49 Fed. 181), while ruling on the invalidity of a similar agreement to that involved here which prohibited renting or selling lands to a Chinese: "That any result inhibited by the Constitution can no more be accomplished by contract of individual citizens than by legislation, and the courts should no more enforce the one than the other" (R. 13), and invoked by petitioners in their Return and Answer, is a

construction of the Constitution and laws of the United States touching the property right of members of the Negro and Mongolian races in the United States which the Supreme Court of Missouri should apply to the rights of petitioners herein.

(5) Whether the refusal of the Supreme Court of Missouri to afford petitioners relief from the perils to their health, life and well being, and from the unequal and higher financial burdens upon them in renting and purchasing property in which to live, by reason of being compelled to reside in a segregated area in the city of St. Louis created by means of said restrictive agreement and of others similar thereto in import and purpose, is a denial to petitioners of the same full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens of Missouri, within the meaning of Section 41 of the United States Code, and contrary to the equal-protection clause of the Fourteenth Amendment.

(6) Whether the ruling of the Supreme Court of Missouri that:

> "The filing of this agreement with the Recorder of Deeds gave the defendants at least constructive notice of the restriction which is sufficient. * * * Defendants are in no position to claim lack of notice" (R. 158, 159),

in view of the reliance of petitioners upon the insufficient and defective description of the property mentioned in said agreement to constitute its recording notice to them, as a defense, under the circumstances, stipulation (R. 3), finding of fact by the trial court (R. 140), and the claim to federal right in connection therewith as set up in petitioners" motions to modify, and for rehearing (R. 168, 168),

constitutes a denial to petitioners of the equal protection of the laws within the meaning of the Fourteenth Amendment.

(7) Whether the ruling of the Supreme Court of Missouri, that to sustain the claim that enforcement of the restrictions in said agreement is state action forbidden by the Fourteenth Amendment would constitute denial to the parties to the same to one of the fundamental rights of citizenship, access to the courts, violative of both the state and federal constitutions, is a proper construction of Art. I, Sec. 14, Const. of Mo., 1945, and of Art. IV, Sec. 2, Const. of the United States.

REASONS RELIED ON FOR GRANTING WRIT.

1. The Supreme Court of Missouri, in making the following ruling, has decided a federal question of substance not heretofore decided by this Court. Said ruling being as follows:

> "Nor can it be claimed that the enforcement of such restriction by court process amounts to action by the state itself in violation of the Fourteenth Amendment, which relates to state action exclusively. To sustain such a claim would be to deny to parties of the agreement one of the fundamental privileges of citizenship, access to the courts. This would violate both the state and federal constitutions" (Latter pt. Par., R. 158).

Only two cases seem to have been before this Court, in which the question of the enforcement of restrictions against Negroes contained in agreements between individual citizens was involved, Corrigan v. Buckley (271 U. S. 323, 46 S. Ct. 521, 70 L. Ed. 969) and Mays v. Burgess (147 F. [2d] 869, 162 A. L. R. 168).

In the former this Court dismissed the appeal on the ground that no federal question of substance was presented by the Record, and specifically declined to rule on the question of enforcement by court process being forbidden by the Fifth and Fourteenth Amendments. In the latter, certiorari was denied in a decision, without opinion, in which two of the justices were in favor of granting the writ and two others did not participate.

Both of these cases arose in the District of Columbia, where only the Fifth Amendment applies, the two pleaded sections of Title 8 of the Federal Code and the Fourteenth Amendment applying to states only in this regard.

Denial of certiorari by the Supreme Court of the United States imports no expression of opinion upon the merits. Atlantic Coast Line Ry. Co. v. Powe, 283 U. S. 401, 51 S. Ct. 498, 75 L. Ed. 1142; United States v. Carver, 260 U. S. 482, 490.

The following cases support the contention that the above ruling is state action within the meaning of the Fourteenth Amendment:

Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673.
Raymond v. Chicago Traction Company, 207 U. S. 20.
Twining v. New Jersey, 211 U. S. 78.
Ex Parte Virginia (1880), 100 U. S. 339.
See also "What is 'state' action under the 14th, etc., Amendments of the Constitution" by James D. Barnett, 24 Oregon Law Review, 227.

Certiorari is proper method of review of this question.

Brooklyn Sav. Bank v. O'Neil, 324 U. S. 697; Sup. Ct. Rule 38, Par. 5.

2. In making the ruling, and in adhering to its former decisions holding that an agreement "restricting property from being transferred to or occupied by Negroes * * * is one which the parties have a right to make and which is not contrary to public policy" (R. 157, 158), the Supreme Court of Missouri has decided a federal question of substance in a manner not in accord with principles of law established by applicable decisions of this Court, particularly, Buchanan v. Warley (245 U. S. 60, 75, 77 et seq.), the application and construction of which principles petitioners specially invoked in paragraph 12 of their Return and Answer (R. 13, 14). See also: Harmon v. Tyler, 273 U. S. 668; City of Richmond v. Dean, 281 U. S. 704.

Among the rulings in Buchanan v. Warley, declaring principles which it is contended are applicable to the facts disclosed by this Record, are the following:

Construction.

> "Colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color. These enactments (Sections 41 and 42 of Title 8, U. S. Code) did not deal with the social rights of men, but with those fundamental rights in property which it was intended to secure upon the same terms to citizens of every race and color. The Fourteenth Amendment and those statutes enacted in furtherance of its purposes operate to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color."

Application.

(Question.)

> "The concrete question here is: May the occupancy, and necessarily, the purchase and sale of property of

which occupancy is an incident, be inhibited by the State, or by one of its municipalities, solely because of the color of the proposed occupant of the premises?"

(Answer.)

"We think this attempt to prevent alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State, and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing State interference with property rights except by due process of law. That being the case the ordinance cannot stand."

When a court refuses to give a federal statute the construction insisted upon by a party which would lead to a judgment in his favor, it is a denial to him of the right or immunity under the laws of the United States. St. L. I. M. & S. Ry. v. Taylor, 210 U. S. 281, 293. Certiorari is proper remedy for review. San Giorgio v. Rheinstrom Co. (294 U. S. 494).

3. In ruling that: "The agreement is valid and the restriction should be enforced" (bottom 2d Par., R. 168), the Supreme Court of Missouri has decided a federal question of substance not heretofore determined by this Court, and has deprived the petitioners of their property, and of their property rights conferred upon them by Section 42 of Title 8 of the United States Code, and has denied to them the equal protection of the laws within the meaning of Section 41 of said title of the Federal Code, particularly the same full and equal benefit of all laws and proceedings for the protection of persons and property as is enjoyed by white citizens of Missouri, contrary to the due-process and equal-protection clauses of the Fourteenth Amendment of the Constitution of the United States.

It is contended that the agreement under consideration is void for the following reasons:

(a) It has for its object the violation of valid laws, in that its enforcement requires depriving petitioners of property and other rights conferred upon them by said laws. 17 C. J. S., Sec. 191, p. 545.

(b) It is based upon an illegal consideration, in that its enforcement deprives petitioners of their said property rights and the right to the same equal protection of the laws as white citizens enjoy in Missouri. Buchanan v. Warley, supra; Sprague v. Rooney, 104 Mo. 349, 358; Lehigh Valley R. Co. v. United Lead Co. (N. J.), 133 A. 290 (and cases cited on the invalidity of contracts violative of valid laws).

(c) Said agreement has for its purpose the establishment of racial segregation, contrary to the above mentioned statutes and the Fourteenth Amendment as construed in Buchanan v. Warley, supra, in relation to the question of racial segregation. It is an attempt to do by private agreement of individuals what is prohibited by the laws above mentioned, that is, take away the rights and immunities granted to petitioners by said laws by enforcing in the courts an agreement having an illegal purpose, contrary to the Fourteenth Amendment, Gandolfo v. Hartman, 49 Fed. 181.

(d) It is contrary to public policy, in that its enforcement is injurious to a large number of citizens of Missouri, violates public statutes, and tends to injure the public welfare. 12 Am. Jur. 663.

It is contrary to the present public policy of Missouri as expressed in the recently adopted Constitution, reading: "All persons are created equal and are entitled to

equal rights under the law." (Sec. 2, Art. I [Bill of Rights), Constitution of Mo. 1945] It is also contrary to the liberalized public policy of the United States, as set forth in the following treaties, made under the authority of the United States and of which it is a signatory; and which, by Clause Two of Article VI of the Constitution of the United States, are made the supreme law of the land and binding on the judges of the courts of Missouri, to-wit:

Act of Chapultapec, executed March 6, 1945, with Latin American Nations at Mexico City, Mexico (see Appendix A); Articles 55 (c) and 56 of United Nations Charter (see Appendix A), in both of which the United States redefined its public policy with reference to racial equality.

4. By overruling petitioners' Motion to Modify the Court's' opinion (R. 169) and their Motion for Rehearing, the Supreme Court of Missouri denied petitioners the equal protection of the well-settled rule of law in Missouri, that a document conveying or affecting real property which is too indefinite in its description thereof to enable a stranger thereto to know what property is being affected imparts no notice by its recording (Gatewood v. House, supra), contrary to the due-process and equal-protection clauses of the Fourteenth Amendment.

Petitioners gave notice in their Return and Answer (R. 9, 11), that they relied upon lack of proper description of the property in question in said agreement to constitute its recording notice, as one of their defenses, introduced sufficient evidence to establish the contention as a fact of the case (Stip. 3, R. 3), and to warrant a finding of fact by the trial court (R. 140), that petitioners had no actual knowledge of the existence of the restriction at the time they purchased the property in ques-

tion. They briefed said defense in Point III (R. 149), and presented the same to the Supreme Court of Missouri in their argument on appeal. Promptly after the opinion and judgment of the said Supreme Court were filed, petitioners filed their motions to modify said opinion and for rehearing, in the latter of which (par. 7, R. 167), petitioners set out that the failure to consider stipulation 3, supra, and to apply to it the principles of law established by the rulings in Gatewood v. House, 65 Mo. 663, supra; Ozark Land & Lumber Co. v. Franks, 156 Mo. 673, 57 S. W. 540, supra; Federal Land Bank v. McColgan, 332 Mo. 860, said Supreme Court deprived petitioners of their property and denied equal protection of the laws within the meaning of the Fourteenth Amendment.

Said stipulation reads as follows:

> "3. It is further stipulated and agreed that said restriction agreement does not contain the lot number of any parcel or lot of ground mentioned therein, nor does it contain any reference to any other recorded document wherein such information may be found."

5. In paragraph 13 of their Return and Answer petitioners pleaded the direful conditions which they and other members of their race suffer resulting in danger to their moral and physical well being and caused by the employment of agreements containing restrictions against members of the Negro race (R. 14, 15). The trial court found that more than a hundred thousand Negroes now reside in the City of St. Louis and that in some parts of the area in which they live overcrowding obtains that "is detrimental to their moral and physical well being" (R. 141, par. 7, Findings). The Supreme Court of Missouri considered said finding in the following language:

> "Such living conditions bring deep concern to everyone, and present a grave and acute problem to the entire community. Their correction should strikingly challenge both governmental and private leadership. It is tragic that such conditions seem to have worsened although much has been written and said on the subject from coast to coast. See Mays v. Burgess, supra, and Fairchild v. Raines, 24 Cal. (2d) 818, 151 Pac. (2d) 260. But their correction is beyond the authority of courts generally, and in particular in a case involving the determination of contractual rights between parties to a law suit. If their correction is sought in the field of government, the appeal must be addressed to its branches other than the judicial" (R. 159).

In ruling: "The judgment dismissing the petition should be reversed and the cause remanded with directions to the Chancellor to enter a decree upholding the restrictions and granting the plaintiffs the relief prayed for * * * Such is our order" [Fols. 171-172] (R. 159), and in making the said ruling considering said finding of the Chancellor, the Supreme Court of Missouri denied to petitioners one of the fundamental privileges of citizenship, access to the courts, contrary to the provisions of Section 1 of the Fourteenth Amendment, and to the provisions of said Section 41 of the Federal Code, and of Sec. 14 of Art. I (Bill of Rights) of the Constitution of Missouri, 1945, all of which constituted a denial of due process of law and the equal protection of the laws within the meaning of said amendment.

The Supreme Court of Missouri had ample power to give relief to petitioners from the detriment to their moral and physical welfare which they and other members of their race suffered by reason of the restrictions in the agreement in question, by proceeding under the provisions of said Sec. 14 of the Constitution of Missouri, and

by refusing to enforce a contract which was both void and injurious to a large number of citizens of the state of Missouri, including petitioners. 17 C.J.S., Sec. 16, p. 348; Sprague v. Rooney, 104 Mo. 349, 358; Thurston v. Rosenfeld, 42 Mo. 474, 97 Am.D. 351.

Since the conditions, injury and peril complained of and found by the trial court and Supreme Court of Missouri to be true, are general in the large urban centers from coast to coast of the United States (opinion of Court, R. 159), this case comes within the class of causes which former Chief Justice Taft said come "within the functions of the Supreme Court," involving principles the application of which are of wide public interest and which will "affect large classes of people." 35 Yale Law Journal 7. Undoubtedly, this Court ought to determine the principles of law and the rules of decision which apply to so grave a question now pending before a large number of courts of the land.

For further information as to the character of the conditions and the resulting overcrowding, ill health, increased death rate, juvenile delinquency, crime and unequal financial burdens among and imposed upon, the colored citizens of the United States, the attention of the Court is respectfully called to the following authoritative publications:

Report of the Committee on Negro Housing of the President, Conference on Home Building, 45, 46.

Woofter, Negro Problems in Cities, 95 (Doubleday, Doran and Co., New York).

Racial Problems in Housing, 9 (National Urban League, New York).

Myrdal An American Dilemma, 376, 379 (Harper and Bros., New York).

Report of Howard L. Holtzendorf, Housing Director, Abstract Housing, Feb. 24, 1945.

The Urban Negro: Focus of the Housing Crisis-Real Estate Reporter—Oct., 1945, p. 12, citing Mayor's Planning Committee on City Planning.

Embry—"Brown Americans" (Viking Press, 1943, p. 34).

McGovney: Racial Segregation (33 Cal. Law Review, 5.37).

Under the circumstances shown to exist by the record, it is contended that certiorari should be granted to review the decision of the Supreme Court of Missouri on this question and to fix the principles of law in reference thereto. McGildrick v. Bernard White Coal Min. Co., 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565.

Petitioners Have Made Timely and Persistent Claim to Invasion of Federal Right.

All the federal questions presented and the issues contended for herein, except that in relation to lack of notice by recording of the agreement (Reason 4), were raised in the Return and Answer (R. 9, 16) of petitioners, and have been kept alive at every stage of the proceedings. As to Reason 4 hereof, there was no reason to anticipate a federal question arising until after the rendering and filing of the Opinion and Judgment of the Supreme Court of Missouri. However, promptly thereafter, in their Motions to Modify and for Rehearing (R. 168, 169), petitioners brought said federal question to the attention of the Supreme Court of Missouri, and its ruling and judgment directing the trial court necessarily overruled and denied the same. A federal question of substance so raised, preserved, and thus adjudicated is reviewable in this Court, by certiorari. Great Northern Ry. v. Sunburst Oil Co., 287 U. S. 358.

Prayer.

Wherefore, petitioners pray that a writ of certiorari be issued by this Honorable Court, directed to the Supreme Court of Missouri, En Banc, to the end that said Opinion and Judgment of said Supreme Court of Missouri, En Banc, in said case of Louis Kraemer and Fern W. Kraemer, appellants, v. J. D. Shelley and Ethel Lee Shelley, respondents, No. 39997 in said Supreme Court, be reviewed by this Court as provided by law, and that, upon such review, said judgment of said Supreme Court of Missouri be reversed, and petitioners have such other relief as this Court may deem appropriate.

Respectfully submitted,

GEORGE L. VAUGHN,
HERMAN WILLER,
Counsel for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No.....

J. D. SHELLEY; ETHEL LEE SHELLEY, HIS WIFE, AND JOSEPHINE FITZGERALD, PETITIONERS,

vs.

LOUIS KRAEMER AND FERN W. KRAEMER, HIS WIFE, RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSOURI, EN BANC, AND BRIEF IN SUPPORT THEREOF.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion of the Court Below.

The opinion of the Supreme Court of Missouri, En Banc, Louis Kraemer and Fern W. Kraemer, appellants, v. J. D. Shelley, Ethel Lee Shelley and Josephine Fitzgerald, respondents, which petitioners here seek to have reviewed, appears on page 153 of the transcript of the Record filed herewith; and the opinion of the Court appears on pages 153 to 159, inclusive, of said transcript, pp. ... to ... of printed Record.

Statement of the Case.

The essential facts of the case are fully stated in petitioners' petition for a writ of certiorari herein, and in the interest of brevity are not repeated here, but are included herein by reference thereto. Reference will be made to such facts, on the points involved, in the course of the argument which follows:

Specification of Errors to Be Urged.

The Supreme Court of Missouri, En Banc, in its opinion in this cause (R. 163-170), erred:

(1) In holding and deciding that the agreement containing a restriction which prohibits the transfer to or occupancy by Negroes of the property therein described, solely on account of their race and color, is one which the parties have a right to make and which is not contrary to public policy.

(2) In holding and deciding that the enforcement by the Missouri Supreme Court of the restrictions against Negroes in said agreement is not state action within the meaning of the provisions of the Fourteenth Amendment forbidding any state to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

(3) In holding and deciding that the agreement in question is not invalid by reason of being contrary to the provisions of Sections 41 and 42 of Title 8 of the United States Code, and because its enforcement necessitates the depriving of petitioners of rights and immunities conferred upon them by said sections, the Constitution of the United States, and by other valid laws.

(4) In following and applying its former rulings and decisions upholding and enforcing similar restrictions against the transfer to or occupancy by Negroes of real property, solely because of their race, and in refusing to apply the principles of law in reference to the regulation and enforcement of residential segregation of colored persons by a state determined by this Court in Buchanan v. Warley (245 U. S. 60).

(5) In holding and deciding that it would be a denial to the parties to the restrictive agreement under consideration in this case of their fundamental privilege as citizens to have access to the courts, in violation of both Sec. 14 of Art. I of the Constitution of Missouri, 1945, and Art. IV, Sec. 2 of the Constitution of the United States, to sustain the claim of petitioners, that the enforcement of the restriction against them by court process would construe state action forbidden by the Fourteenth Amendment.

(6) In holding and deciding that petitioners are in no position to complain of lack of notice of the restrictions contained in the agreement in question.

(7) In holding and deciding that the courts of Missouri are without power to grant petitioners relief from the greater and unequal perils which they suffer to their physical and moral well being, and the higher and unequal financial burdens imposed upon them for housing accommodations by reason of being compelled to live in a segregated area of the City of St. Louis created by the use of the agreement in question and others of similar import.

(8) In that the decision of the Supreme Court of Missouri, En Banc, deprives petitioners of their property, and of property rights, without due process of law, contrary

to the Fourteenth Amendment, constitutes denial to them of the equal protection of the laws within the meaning of said Amendment; and abridges the privileges and immunities of petitioners as citizens of the United States, contrary to the Fourteenth Amendment.

Summary of the Argument.

I.

An agreement which is contrary to valid law, and the enforcement of which necessitates depriving petitioners of their property and other rights conferred upon them by said laws, resulting in peril to their physical and moral well-being and in imposing unequal financial burdens for housing accommodations solely because of their race, is invalid and contrary to public policy, and incapable of being enforced by the courts.

Secs. 41, 42, Tit. 8 U. S. Code (Conferring Rights)

17 C. J. S., Sec. 201, p. 555.

12 Am. Jur., Sec. 153, p. 647 (Mode of Performance).

State ex rel. Am. Surety Co. of New York v. Haid, 30 S. W. (2d) 100, 325 Mo. 949.

Lehigh Valley R. Co. v. United Lead Co. (N. J.), 133 A. 290 (and cases cited on invalidity of contracts.

Sprague v. Rooney, 104 Mo. 349, loc. cit. 358, 16 S. W. 505, 508.

(1) The purpose of enacting Sections 41 and 42 of Title 8 of the United States Code was to secure to citizens who are colored the fundamental rights of inheriting, owning, using and enjoying real and personal property upon the same terms as are enjoyed by white citizens living in a state, and to entitle them to the same full and equal

benefit of all laws and proceedings for the security of their property and persons as are enjoyed by the white citizens of the same state, and petitioners, under the provisions of said sections, are clothed with the same property rights and are entitled to the same full and equal benefit of all laws and proceedings offered by the State of Missouri for the security of the persons and property which the white citizens of said state enjoy.

Secs. 41, 42, supra.
Buchanan v. Warley, 245 U. S. 60.
Civil Rights cases, 109 U. S. 3, 22.
U. S. v. Rhodes, 1 Abb. 28, 27 Fed. Cas. No. 16,151.
Screws v. United States, 325 U. S. 91, 118-128.
U. S. v. Morris, 125 Fed. 322, 325.

(2) Among the statutory provisions of the laws of Missouri touching the property rights of citizens of said state, the benefits of which have been denied to petitioners, are:

(a) Laws of Descent and Distribution, Chapter 1, Art. 14, Secs. 306, 308, 309, 310 and 316, R. S. of Mo., 1939;
(b) Liens of Mechanics and Materialmen, Chapter 26, Art. 3, Secs. 3547, 3549, 3550, 3553 and 3561, R. S. of Mo., 1939;
(c) Judgment Liens on Real Property, Chapter 6, Art. 18, Secs. 1269, 1278, 1279, 1300, 1301, 1302 and 1303, R. S. of Mo., 1939;
(d) Conveyances of Real Estate, Section 3427, R. S. of Mo., 1939.

(For laws of Mo. cited above, see Appendix A.)

(3) The results of the employment and enforcement of the agreement in question, and of others of similar import and purpose, containing restrictions against the ownership and occupancy of real property against citizens of Missouri

who are colored, particularly these petitioners, have been to force them to live in a segregated area of the City of St. Louis which is grossly overcrowded, and where, by reason thereof, they are caused to suffer greater peril to their moral and physical well being and are compelled to pay higher rentals and purchase prices for places in which to live than white citizens of said city, who are not so restricted, have to suffer, or to pay for comparable places in which to live. Agreements thus endangering and injuring citizens of the United States are contrary to public policy, and should not be enforced by the courts.

12 Am. Jur., Sec. 191, p. 693.
13 C. J., Sec. 25 (3), p. 254.
Thurston v. Rosenfeld, 42 Mo. 474, 97 Am. D. 351.
17 C. J. S., Sec. 16, p. 348.

(4) By Clause Two of Article VI of the Constitution of the United States, that Constitution and the treaties and laws made and enacted thereunder are made by the supreme law of the land, and are binding upon the judges of the courts of Missouri, as fully as if they were set out in the constitution and laws of said state, forming a part of the public policy which the courts are without power to overrule.

Sola Electric Co. v. Jefferson, 317 U. S. 173, 176.
De Pass v. Harris Wool Co., 346, Mo. 1038, 1042, 144 S. W. (2d) 146.
Anderson v. Carkins, 135 U. S. 483.

II.

The ruling of the Supreme Court of Missouri, that the enforcement of the restrictions contained in the agreement in question by court process is not state action within the

meaning of the provision of the Fourteenth Amendment forbidding any state to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, is manifestly unsound and in direct conflict with principles of law determined by this Court in the following decisions:

Ex Parte Virginia (1880), 100 U. S. 339, 347.
Mo. ex rel. Gaines v. Canada, 305 U. S. 337, 343.
Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673.
Raymond v. Chicago Traction Co., 207 U. S. 20, 36.
Twining v. New Jersey, 211 U. S. 78.

(1) The Supreme Court of the United States has applied the same rule to the question of state action, whether by the legislative, judicial, or executive branches of state governments, and has not distinguished between judicial proceedings involving substantive or procedural laws.

Twining v. New Jersey, supra.
Brinkerhoff-Faris Co. v. Hill, supra.
Mo. ex rel. Gaines v. Canada, supra.
Alabama v. Polwell, 287 U. S. 45.
Cantwell v. Connecticut, 310 U. S. 296.
Bridges v. California, 314 U. S. 252.

III.

The refusal of the Supreme Court of Missouri to place the construction on Sections 41 and 42 of Title 8 of the United States Code, in connection with the provisions of Sec. 1 of the Fourteenth Amendment, contended for by petitioners, and which would have led to a judgment in their favor, constitutes a denial to petitioners of a federal right which is reviewable by this Court.

St. L. I. M. & S. Ry. v. Taylor, 210 U. S. 281, 293.

(1) The refusal of the Supreme Court of Missouri to construe Sections 41 and 42 of the federal code, supra, in accordance with the construction thereof by this Court in Buchanan v. Warley, supra, and as contended for by the petitioners, has deprived them of their property, and of property rights conferred upon them by the said sections of the federal code, and by the laws of Missouri hereinbefore mentioned in (2) (a), (b), (c), and (d), under I of this summary, contrary to the due process and equal protection clauses of the Fourteenth Amendment.

U. S. v. Morris, supra.
Mo. ex rel. v. Canada, supra.
Buchanan v. Warley, supra.
Civil Rights cases, supra.
Brinkerhoff-Faris Co. v. Hill, supra.
De Pass v. Harris, supra.

IV.

Certiorari is the proper remedy by which to obtain a review in this Court of the federal questions presented by the record in this case.

Sec. 237 (b) Jud. Code, Sec. 344 (b) Tit. 28 USCA.
Longest v. Langford, 274 U. S. 499, 500.
Seabury v. Green, 294 U. S. 165, 168.
Great Northern Ry. v. Sunburst Oil Co., 287 U. S. 358.
San Giorgio v. Rheinstrom Co., 294 U. S. 494.
Brooklyn Sav. Bank v. O'Neil, 324 U. S. 697.

(1) Where a state question relied upon by petitioners as a defense, disallowed by the Supreme Court of Missouri in its decision, thereby creating the first occasion to suspect a federal question in connection therewith, the federal claim in regard thereto set up in the motion for a rehearing, that being the first opportunity, is timely raised and reviewable on certiorari by this Court.

Brinkerhoff-Faris Co. v. Hill, supra.
Great Northern Ry. v. Sunburst Oil Co., supra.
Mo. ex rel. Mo. Ins. Co. v. Gehner, 281 U. S. 313, 320.

ARGUMENT.

I.

A RESTRICTIVE AGREEMENT PROHIBITING THE TRANSFER OF REAL PROPERTY TO OR ITS OCCUPANCY BY NEGROES, SOLELY ON ACCOUNT OF THEIR RACE OR COLOR IS ILLEGAL AND UNENFORCEABLE.

An agreement contrary to valid law or statute is void and unenforceable. Sprague v. Rooney (Mo.), 16 S. W. 505 (house rented for use as a brothel; written contract of sale to evade statute unenforceable); Hagerty v. St. Louis Mfg. Co., 44 S. W. 1114 (contract to store and preserve game during the "closed season" and restore it in open season held void); 17 C. J. S., p. 555, Sec. 201; 12 Am. Jur. 647, Sec. 153; Lehigh Valley R. Co. v. United States Lead Co. (N. J.), 133 Atl. 290. The same is true even though the statute does not therein expressly declare the agreement void. 17 C. J. S., supra; Sprague v. Rooney, supra. And as was said in Dettloff v. Hammond, Standish & Co., 195 Mich. 117, 161 N. W. 949, l. c. 955: "A contract which in its execution contravenes the policy and spirit of a statute is equally void as if made against its positive provisions."

The restrictive agreement in this case against transfer to, or occupancy by Negroes solely on account of race is contrary to the federal statute, Section 42, Title 8, United States Code. That statute provides:

> "ALL CITIZENS OF THE UNITED STATES SHALL HAVE THE SAME RIGHT IN EVERY STATE AND TERRITORY AS IS ENJOYED BY THE WHITE CITIZENS THEREOF TO INHERIT, PURCHASE, LEASE, SELL, HOLD, AND CONVEY REAL AND PERSONAL PROPERTY."

The restrictive agreement in this case contravenes and is contrary to Section 41, Title 8, United States Code, which provides:

> "ALL PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES SHALL HAVE THE SAME RIGHT IN EVERY STATE AND TERRITORY TO MAKE AND ENFORCE CONTRACTS * * * AND TO THE FULL AND EQUAL BENEFIT OF ALL LAWS AND PROCEEDINGS FOR THE SECURITY OF PERSONS AND PROPERTY AS IS ENJOYED BY WHITE CITIZENS * * *"

The laws of Missouri make no distinction because of race or color as to who can inherit property, purchase property on tax sale, occupy property, purchase property on execution sale, etc., but the restrictive agreement in this case is contrary to those laws and contravenes their express terms as well as the spirit thereof. A colored person would not be permitted to inherit — the restrictive agreement would make his title subject to forfeiture; nor could he occupy the property. The statute gives him a right to purchase property at a tax sale, but the restrictive agreement of private parties attempts to thwart the government's right and policy to have anyone purchase the property. The agreement is illegal, being founded on a breach of the law.

Furthermore, the restrictive agreement in this case violates the FUNDAMENTAL RIGHTS of petitioners, as contrasted with the social rights, and violates not only the spirit of our laws, but the Fourteenth Amendment of the United States Constitution. Treiber J., in U. S. v. Morris, 125 Fed. 322, after quoting the construction given to the two federal statutes in question from the opinion of Mr. Justice Bradley in the Civil Rights Cases, and from the opinion of Mr. Justice Swayne in U. S. v. Rhodes, supra, conclues, as follows:

> "That the rights to lease land * * * are **fundamental rights**, inherent in every free citizen, is indisputable; and a conspiracy by two or more persons to prevent Negro citizens from exercising these rights because they are Negroes is a conspiracy to deprive them of a privilege secured to them by the Constitution and laws of the United States within the meaning of Section 5508 Rev. St. U. S." (Emphasis added.)

The rights concerning which the conspiracy was charged to exist were conferred under what are now Sections 41 and 42 of Title 8 of the United States Code.

In the Civil Rights Cases, 109 U. S. 3, 22, this Court construed the two sections of the federal statutes in question as follows:

> "Congress, as we have seen, by the Civil Rights Bill of 1866, passed in view of the Thirteenth Amendment before the Fourteenth was adopted, undertook to wipe out the burdens and disabilities, the necessary incidents of slavery, constituting its substance and visible form; and to secure to all citizens of every race and color, and without regard to previous servitude, those **fundamental rights** which are the essence of civil freedom, namely, **the same right to make and enforce contracts**, to sue and be parties, give evidence, and **to inherit, purchase, lease, sell and convey property, as is enjoyed by the white citizens.** (Emphasis added.) * * * It (the aid given by the adoption of the Fourteenth Amendment) is referred to for the purpose of showing that at the time (1866) Congress did not assume, under the authority given by the Thirteenth Amendment, to adjust what may be called the social rights of men and races in the community; but only to declare and vindicate those fundamental rights which appertain to the essence of citizenship, and the enjoyment or deprivation of which constitutes the essential distinction between freedom and slavery."

The Court points out the distinction between the powers of Congress conferred by these two amendments and further says:

> **"The legislation, so far as necessary or proper to eradicate forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by state legislation or not."** (Emphasis added.)

Legislative restrictions restricting the right of a member of a particular race to live upon particular land denies rights guaranteed by the Fourteenth Amendment. Buchanan v. Warley, 245 U. S. 60; Harmon v. Tyler, 273 U. S. 668; City of Richmond v. Deans, 281 U. S. 704. As was said in Buchanan v. Warley, supra:

> "Colored persons are citizens of the United States and have the right to purchase property and enjoy and use the same without laws discriminating against them solely on account of color. These enactments (laws enacted to effectuate the 14th Amendment) did not deal with the social rights of men, but with those fundamental rights in property which it was intended to secure upon the same terms to citizens of every race and color. The Fourteenth Amendment and those statutes enacted in furtherance of its purpose operate to qualify and entitle a colored man to acquire property without state legislation discriminating against him solely because of color."

In its reference to "laws enacted to effectuate the 14th Amendment" the Court had reference in particular to Title 8, Sections 41 and 42 of the United States Code.

These statutes, together with the Fourteenth Amendment, led to the following well-reasoned holding:

> "We think this attempt to prevent alienation of the property in question to a person of color was not a legitimate exercise of the police power of the State,

> and is in direct violation of the fundamental law enacted in the Fourteenth Amendment of the Constitution preventing State interference with property rights except by due process of law. That being the case the ordinance cannot stand."

In Harmon v. Tyler, supra, legislation permitting the adoption of racial residential segregation by private action was passed in the state of Louisiana through a law forbidding whites or Negroes from occupying a residence in any portion of the city of New Orleans, except on written consent of the majority of the persons of the opposite race inhabiting such community or portion of the city. This race ordinance thus extended governmental sanction to racial segregation by community or neighborhood agreement. The Supreme Court, adhering to Buchanan v. Warley, supra, again declared legislative interference with residential patterns along lines of color to be violative of the 14th Amendment's guaranties and, as such, unconstitutional. There is, and can be, no logical distinction between **legislative** sanction of a **private** agreement of discrimination, and **judicial** sanction of the same **private** agreement. The act of discrimination in each case is exercised directly on the individual through the power of the government. And as said by Mr. Justice Murphy in Steele v. Louisville and Nashville Ry. Co. et al., 65 S. Ct. 225:

> "The Constitution voices its disapproval whenever economic discrimination is applied under authority of law against any race, creed or color."

This conclusion was long ago established in Gandolfo v. Hartman, 49 Fed. 181, decided in 1892, wherein the Court said:

> "It would be a very narrow construction of the constitutional amendment in question and the decisions based on it and a very restricted application

> of the broad principle upon which both the amendment and the decisions proceed to hold that while state and municipal legislatures are forbidden to discriminate against the Chinese in their legislation, a citizen of the state may lawfully do so by contract which the courts may enforce * * * Any result inhibited by the Constitution can no more be accomplished by contracts of individual citizens than by legislation and the court should no more enforce the one than the other."

The policy of the law is further shown by the treaties that have been made in recent years. On March 6, 1945, in Mexico City, the United States duly executed a treaty with the Latin American nations known as the Act of Chapultepec which provides, among other things, that the signers will:

> " * * * prevent with all the means within their power all that may provoke discrimination among individuals because of racial and religious reasons."

This pledge is similarly contained in the United Nations Charter, Article 55 (c), where it is stated that:

> "The United Nations shall promote * * * uniform respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion."

Article 56 of the United Nations Charter further states that:

> "All members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55."

Treaties are the supreme law of the land and are binding upon the judges of the courts of Missouri, as fully

as if they were set out in the Constitution and laws of the state, and form a part of the public policy which the courts are without power to overrule: Article VI, Clause 2, Constitution of the United States; Sola Electric Co. v. Jefferson, 317 U. S. 173; Missouri v. Holland, 252 U. S. 416; Hanenstein v. Lynham, 100 U. S. 483. In Kennett v. Chambers, 14 How. 38, the Supreme Court of the United States asserted the supremacy of the treaty by denying specific performance of a contract which, if enforced, would be repugnant to the objectives of treaties with Mexico. The Court, per Taney, J., stated at page 46:

> "These treaties, while they remained in force were by the Constitution of the United States, the supreme law, and binding not only upon the government, but upon every citizen. No contract could lawfully be made in violation of their provisions."

These constitutional, treaty and statutory provisions declare the public policy of the United States, and the courts of Missouri are without authority to set it at naught or deny their benefits. Sola Electric Co. v. Jefferson, supra; DePass v. Harris Wool Co., 346 Mo. 1038, 144 S. W. (2d) 146.

The Supreme Court of Missouri, by its decision, has refused to place the construction upon said constitutional, statutory and treaty provisions contended for by petitioners, and which would have resulted in a judgment in their favor, and has decided the aforesaid federal questions of substance in a manner not in accord with the principles of law heretofore determined by this Court in applicable decisions thereof, as set out above.

In Sola Electric Co. v. Jefferson, 317 U. S. 173, 176, it is ruled:

> "It is familiar doctrine that the prohibition of a federal statute may not be set at naught, or its benefits denied by state statutes or common law rules * * * **To the federal statute and policy, conflicting state law and policy must yield.**" (Emphasis added.)

It is contended that certiorari should be granted to review each of the above mentioned federal questions, all of which are questions of substance which have been specifically set up or claimed at the earliest possible time in the proceedings, kept alive at each stage thereof, and duly called to the attention of the highest court in the State of Missouri in which a decision could be had, prior to its ruling in this case. Sec. 237 (b), Judicial Code [Sec. 344 (b), Title 28, U. S. Code]; Rule 38, par. 5 of the Rules of the Supreme Court; St. Louis I. M. & S. Ry. Co. v. Taylor, 210 U. S. 281, 293; Longest v. Langford, 274 U. S. 499, 500; Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673; Seabury v. Green, 294 U. S. 165, 168; Murray v. Gerrick & Co., 291 U. S. 315, 316.

In none of the cases heretofore decided by the Supreme Court of Missouri involving racial restrictions, have the federal statutes and questions involved in this case, been at issue therein or passed on.

The party to an illegal or void contract is not denied access to the courts by the courts' refusal to enforce same. Sprague v. Rooney, supra. The Missouri Constitutional provision, Section 14, Article I, means only that for the redress of such wrongs and the protection of such rights as are recognized by the law of the land, the courts shall be open and afford a remedy. Landis v. Campbell, 232 S. W. 464; State ex rel. Nat'l Refining Co. v. Seehorn, 127 S. W. (2d) 418.

II.

RACIAL RESIDENTIAL SEGREGATION BY STATE COURT ENFORCEMENT OF RESTRICTIVE AGREEMENTS IS UNCONSTITUTIONAL AND CONSTITUTES STATE ACTION IN VIOLATION OF THE FOURTEENTH AMENDMENT.

This question has never been presented to the Supreme Court of the United States. 33 Calif. Law Review 5. In Mays v. Burgess, 147 Fed. (2d) 869, involving a restrictive agreement similar to the one in this case, Edgerton, J., in his dissenting opinion said, l. c. 875:

> "But the Court (in Corrigan v. Buckley) had no occasion to decide, and it expressly refrained from deciding, whether or not a contract of this sort was 'void because contrary to public policy' or 'was of such a discriminatory character that a court of equity will not lend its aid by enforcing the specific performance of the covenant'. **The Supreme Court has never decided whether this sort of contract is enforceable against anyone.**" (Emphasis added.)

State courts in upholding restrictive agreements have cited the case of Corrigan v. Buckley, 245 U. S. 60, but in that case the appeal was dismissed for want of jurisdiction and consequently did not pass on the question.

The Corrigan case has never since been cited by the Supreme Court itself, except on a different point not material here. The Corrigan case could not and did not settle anything about the application of the Fourteenth Amendment to this type of case because the case came to the Supreme Court on appeal from a court of the District of Columbia and involved solely a question of the law of the District to which the Fourteenth Amendment and the two federal statutes in question here have no

application. The Supreme Court dismissed the appeal for want of jurisdiction. The question of whether state **enforcement** of a racial restrictive agreement is a violation of the Equal Protection clause of the Fourteenth Amendment was not before the Court (although mentioned by the Court). The provisions of the Fourteenth Amendment are addressed only to the states and not to the District of Columbia. 33 Calif. Law Review 5; 12 University of Chicago Law Review 199.

The **enforcement by court process** of the agreement involved in this case, which was unenforceable by reason of being illegal and void, as hereinbefore set out, is state action within the meaning of the provision of the Fourteenth Amendment forbidding any state to make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. The ruling of the Supreme Court of Missouri:

> "Nor can it be claimed that the enforcement of such a restriction by court process amounts to action by the state itself in violation of the Fourteenth Amendment, which relates to state action exclusively,"

is manifestly unsound, has never been decided by this Court in connection with the question of the enforcement of racial restrictions in private agreements prohibiting the sale or occupancy of property to or by Negroes solely on account of their race; and said ruling is not in accord with the principles of law applicable to said question which this Court has determined in the following cases: Twining v. New Jersey, 211 U. S. 78; Raymond v. Chicago Traction Co., 207 U. S. 20, 36; Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673; Ex parte Virginia, 100 U. S. 339, 347; American Federation of Labor v. Swing, 312 U. S. 321, 326.

Legislative restrictions restricting the right of a member of a particular race to live upon particular land denies rights guaranteed by the Fourteenth Amendment. Buchanan v. Warley, supra; Harmon v. Tyler, supra; City of Richmond v. Deans, supra. Judicially established rules are subject to the same constitutional limitations as those established by the Legislature. Chicago B. & Q. R. R. v. Chicago, 166 U. S. 224.

The principle that judicial enforcement or court order constitutes action by the state has abundant authority. In Brinkerhoff-Faris Co. v. Hill, supra, the Supreme Court reserved the decision of the Supreme Court of Missouri, stating:

> "If the result above stated were obtained by the exercise of the state's legislative power, the transgression of the Due Process Clause of the Fourteenth Amendment would be obvious * * * The Federal guarantee of due process extends to state action through the **Judicial** as well as through the Legislative, Executive or Administrative branch of government." (Emphasis added.)

As early as 1880 the Supreme Court in ex parte Virginia, supra, cited by nearly every term of the court as a basic case on state action by courts, held that the limitation on state action applies to the exercise of the decisional powers of state courts as well as to laws enacted by a State Legislature. The Court said, at page 347:

> "Whoever by virtue of public position under a state government deprives another of property, life or liberty without due process of law, or denies or takes away the equal protection of the law, violates the constitutional inhibition; and as he acts in the name or for the state, is clothed with the state's power, his act is that of the state. This must be so,

> or, as we have often said, the constitutional prohibition has no meaning and the state has clothed one of its agents with power to annul or evade it."

So also in Twining v. New Jersey, supra, the Court said:

> "The judicial act of the highest court of the state in authoritatively construing and enforcing its laws is the act of the state."

The Court in construing not only statutes but the common law is acting for the state. In Cantwell v. Connecticut, 310 U. S. 296, the Supreme Court reversed a conviction on the ground that the **common law** of Connecticut as interpreted and applied by the courts, was a denial of due process by state action, contrary to the Fourteenth Amendment. Similarly in Bridges v. Calif., 314 U. S. 252, the Supreme Court reversed a contempt sentence on the ground that the State Court improperly interpreted the **common law** so as to infringe on the guarantees of the Fourteenth Amendment. Activities of individuals are not only of private concern, but frequently involve state action. In Smith v. Allwright, 321 U. S. 649, it was held that in view of the relationship of the primaries to the whole electoral process, the delegation to a political party by the state of the power to fix membership qualifications as to exclude Negroes, made the subsequent act of the parties excluding Negroes the act of the state, and therefore the discrimination was prohibited by the Fourteenth Amendment. This same principle of law was again decided by this Court in Mo. ex rel. Gaines v. Canada, 305 U. S. 337, 343. Should the elementary right to live in a community be deemed of less importance than the right to vote? What does it benefit a Negro to be given the right to vote if he be denied the right to live in the community? In Steele v. L. & N. Ry., 65 St. Ct. 226, the

Supreme Court indicated that since the law gave a union exclusive bargaining rights, the union had to use those rights in a non-discriminatory manner. In this case, the relationship of the governmental action, i. e., legislation to the discrimination was far less direct than in a restrictive covenant case. In the labor case, the union exercised powers conferred by legislation (however, unions have often achieved the status of exclusive bargaining representatives even independent of legislative aid) but the finally discriminatory exercise of such powers was their own act. In the restrictive covenant case the "private" discrimination is ineffectual, in every contested case, until the judicial agency of the Government implements it by injunction.

As stated under Point I, the case of Harmon v. Tyler, supra, prohibited the legislative attempt to authorize individuals by private agreement to effect racial segregation, and held such attempt invalid in violation of the Fourteenth Amendment.

Judicial enforcement by injunction of the restrictive covenant achieves precisely the same purpose as a zoning ordinance. In either case the power of the Government is exercised directly on the individual and on a discriminatory basis. Certainly judicial action should not be permitted where legislation to the same effect would be invalid. Permitting the enforcement by injunction will permit the state through its judiciary in violation of the Fourteenth Amendment to deny the right to a person because of his color or race alone to freely settle in the in the community.

So far as private agreements operate without state aid, they are indeed purely the acts of individuals, but as stated in the 33 Calif. L. R. 5:

> "but when the discriminatory objectives of private persons cannot be obtained without calling upon the state for aid, sanction or enforcement and that aid is given, unconstitutional action by the state has been taken."

The acts involved in the Civil Rights cases were the acts of a kind that accomplish their objective without any aid whatever from the state. If an innkeeper refuses entertainment to a Negro, or any other person, because of his race, that is the end of the matter. The refusal to serve operates of itself without any aid or intervention by the state or any of its officers or agents.

Although the discriminatory agreements, conditions or covenants in deeds that exclude Negroes or other racial minorities from buying or occupying residential property so long as they remain purely private agreements may not be unconstitutional so long as they are voluntarily observed by the covenantors or the restricted grantees, but when the aid of the state is invoked to compel observance and the state acts to enforce observance, the state takes forbidden action. The deed to the colored buyer cannot be cancelled by purely private action. The Negro cannot be ousted from occupancy by purely private action. When a state court cancels the deed or ousts the occupant, the state through one of its organs is aiding, abetting, enforcing the discrimination.

Does the state action make or result in a forbidden discrimination? The constitutional question is one of equality for all citizens. The laws which provide for equal accommodation of services can be sustained only because they require the facilities or services to be equal. Without equality there would be a forbidden racial discrimination. Equality of the services or accommodations is in fact a

possibility and can be brought about by rigid law enforcement. But residential segregation cannot stand that test. In 33 Calif. L. R. 5, the author states:

> "No two residential districts are equal. Even in mass production, though two houses may be identical, their locations are different. In the specific performance of contracts to convey lands, courts have traditionally held that every part of land is unique. In doing so, they have recognized as a fact what is a fact. Obviously, therefore, when a Black is barred from buying or residing on Whiteacre, no equality results to him from the fact that there is other property that he may buy or live in, nor would equality be produced by reason that White is or may be barred from buying or living on Blackacre. * * * When a Negro is denied the occupancy of the house of his choice, is not it specious to say that there may be other houses elsewhere that he may occupy from which Whites may be excluded by restrictive agreements "

There are types of non-racial restrictions which are valid, such as a restriction that intoxicating liquor shall not be sold on the premises, that the property may not be used for a slaughter house, soap or glue factory, livery stable, etc., but these restrictions are valid and can be enforced whether embodied in zoning laws or in private agreements as a legitimate exercise of police power and because they do not discriminate against a user by reason of his color or race; they apply equally to white or colored occupants. Are Negroes to be lumped with slaughter houses, soap and glue factories and livery stables? This would constitute a rather arbitrary classification. The above restrictions would violate the Equal Protection Clause if they forbade the use of the property as a livery stable when operated by a Negro, but permitted it when the stable was operated by a white person.

Isn't it illogical to say that the Legislature is powerless to establish ghettos, but that private individuals may do so and obtain the sanction of another branch of the Government, the Judiciary, in establishing and maintaining ghettos. In Gandolfo v. Hartman, supra, the Court said:

> "Any result inhibited by the constitution can no more be accomplished by contract of individual citizens than by legislation and the Court should no more enforce the one than the other."

The Record in this case discloses that private individuals got together to do what the state was forbidden to do, and created a ghetto solely because of race or color. This was a violent violation of the very function which the Constitution of the United States under the 14th Amendment directs the state to perform in the interest of the citizen. The actual result is usurpation and exercise by private individuals of the sovereign functions of the administration of justice in order to defeat the performance of duties required of the state by the Supreme law of the land. The inevitable effect is not merely to prevent the state from doing its duty, but to use the state as an instrumentality to deprive the citizen of the very rights which the 14th Amendment intended to secure for him. It permits the individual to set himself above the state and directly attacks the purpose which the Constitution of the United States had in view when it enjoined the duty upon the state. Such a situation cannot be tolerated in a land that gave birth to the Declaration of Independence, the Constitution and Democracy. State inaction exists, and will continue to exist. The extent to which this evil exists is stated in the decision of the Supreme Court of Missouri here sought to be reviewed. It extends from coast to coast. A standard form of restrictive agreement, comparable to standard insurance policies, is now in use for that pur-

pose. It is therefore important that the federal authority secure equal rights to all citizens and enforce federal rights guaranteed by statute. The evils of discrimination because of color exist and doubts as to whether or not federal power now exists to remedy it can only adversely affect our national morale. Hence, it is highly desirable that whatever doubt that may exist be authoritatively resolved.

For a further consideration of this, and of the other constitutional questions hereinbefore raised, the Court's attention is respectfully called to the following authoritative and exhaustive articles:

"What Is State Action Under the Fourteenth, Fifteenth, and Nineteenth Amendments to the Constitution."
By James O. Barnett, Prof. Emeritus Political Science, Univ. of Oregon, in 24 Oregon Law Review, p. 227, June, 1945.

"Validity of Anti-Negro Restrictive Covenants: A Reconsideration of the Problem."
By Harold I. Kahen (12 Univ. of Chicago Law Review 198, 1945).

"Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants and Conditions in Deeds Is Unconstitutional."
By Prof. D. O. McGovney (33 California Law Review 5, 1945).

Undoubtedly the ruling of the Supreme Court of Missouri, that the enforcement of the restriction in question is not state action forbidden by the Fourteenth Amendment is fallacious and cannot be upheld under the overwhelming authority to the contrary. Its interpretation of that provision of the Amendment is nowhere supported by respectable authority. It is further contended that the above ruling of the Supreme Court of Missouri, as it ap-

plies to the question of state action in regard to the enforcement of restriction against Negroes contained in agreements between private persons, has decided a federal question of substance not heretofore determined by this Court, and is reviewable on certiorari. Sec. 237 (b), U. S. Judicial Code, as amended; Sup. Ct. Rule 38, Par. 5; Brooklyn Sav. Bank v. O'Neil, 324 U. S. 697.

III.

THE SUPREME COURT OF MISSOURI IN HOLDING AND DECIDING THAT PETITIONERS ARE IN NO POSITION TO COMPLAIN OF LACK OF NOTICE OF THE RESTRICTIONS CONTAINED IN THE AGREEMENT, DENIED THE PETITIONERS THE EQUAL PROTECTION OF A WELL-SETTLED RULE OF LAW IN MISSOURI.

The rule of law contended for in this case is set out in Federal Land Bank v. McColgan (Mo.), 59 S. W. (2d) 1052, l. c. 1055, as follows:

> "It has been ruled by this court that if the description in a deed is void for uncertainty, its record does not impart notice * * * only the parties to the conveyance and those having actual knowledge were bound."

As to what is certainty, the Supreme Court of Missouri in Ozark Land & Lumber Co. v. Franks, 156 Mo. 673, 57 S. W. 540, l. c. 543, quoted the following with approval from Gatewood v. House, 65 Mo. 663:

> "To constitute the record of a deed notice to subsequent purchasers, the description contained in the deed should be such as would enable such purchasers to identify the land by any location, monuments,

> courses and distances, or numbers, or the deed should refer to some other instrument lawfully of record which does contain some means of identification."

And this ruling has been consistently adhered to by the appellate courts of Missouri since the Gatewood decision.

The trial court found that the petitioners had no actual knowledge of the restriction at the time of the purchase (Par. 4 Findings; R. 140; Memo. 143).

On appeal, the parties stipulated as follows: "It is further stipulated and agreed that said restriction agreement does not contain the lot number of any parcel or lot of ground mentioned therein, nor does it contain any reference to any other recorded document wherein such information may be found" (R. 3). The refusal of the Supreme Court of Missouri to apply the foregoing well-settled rule of law to the facts in this case constitutes a denial to the petitioners of the equal protection of the law and deprives them of their property without due process of law, contrary to the 14th Amendment. Cantwell v. Connecticut, supra.

No occasion arose for raising this federal claim prior to the decision of the Supreme Court of Missouri, and the issue was raised by a pleading upon motion for rehearing and passed upon by the Supreme Court of Missouri in overruling the same.

Where a state question relied upon by petitioners as a defense, and properly presented to the highest court of the state and disallowed by that Court, thereby creating the first occasion to suspect a federal question in connec-

tion therewith, the federal claim in regard thereto set up in the motion for a rehearing, that being the first opportunity, is timely raised and reviewable on certiorari by this court. Brinkerhoff-Faris Co. v. Hill, supra; Great Northern Ry. Co. v. Sunburst Oil & Refin. Co., 287 U. S. 358.

IV.

WHERE THE ENFORCEMENT OF A CONTRACT WILL ENDANGER THE STATE OR CAUSE INJURY TO ITS CITIZENS, THE COURTS WILL NOT ENFORCE THE SAME.

The record clearly discloses that, by means of the use of this agreement, and of others of similar import and purpose, petitioners and other members of the Negro race have been segregated and compelled to live in an area of the city of St. Louis which is grossly overcrowded by more than 100,000 persons; and that, by reason of such overcrowding, ill health, the death rate, juvenile delinquency and crime have increased among them beyond the average in said city. In some sections of said segregated area each room in a house is occupied by a different family, and many of them have children. A city housing project within said area, containing 629 family units, has 7,000 waiting applications, and some Negro families are living in buildings hardly fit for the habitations of beasts. (Testimony of John T. Clark and Mrs. Lillian Masee, (R. 134, 135).

Jas. T. Bush, a colored real estate dealer, testified that he received from 15 to 20 calls per day from colored persons seeking housing accommodations, and was able to place only about 5 per month; and that the only way to get a house at that time for Negroes in St. Louis was for someone to die, leave the city, or be evicted (R. 128).

Mrs. Fannie Cook, a prominent authoress and a member of the Mayor's Race Relations Committee, active in organization and social work among Negroes in St. Louis, testified that Negroes in some parts of St. Louis lived in crowded, congested conditions contributing to crime, juvenile delinquency and disease among them; that she had made a book review of Gunner Myrdal's work, "An American Dilemma," for the St. Louis Public Library, and that she fully agreed with what the author said therein with reference to the overcrowded and congested conditions in which Negroes live in the cities of the United States, and about the results of overcrowding. She read passages from said book, and from other pamphlets and magazines which she testified were true representations of said living conditions among Negroes and of the injury resulting therefrom.

Upon the testimony of the above-named witnesses, and certain census facts of which the trial court took judicial notice, that Court made the finding of fact in regard to these conditions which was reviewed by the Supreme Court of Missouri in its opinion (R. 134), where it said:

> "The chancellor found the Negro population in St. Louis has greatly increased in recent years, and now numbers in excess of 100,000; and that some of the sections in which Negroes live are overcrowded, which is detrimental to their moral and physical well-being.
>
> "Such living conditions bring deep concern to everyone, and present a grave and acute problem to the entire community. Their correction should strikingly challenge both governmental and private leadership. It is tragic that such conditions seem to have worsened although much has been written and said on the subject from coast to coast. See Mays v. Burgess, supra, and Fairchild v. Raines, 24 Cal. (2d)

> 818, 151 Pac. (2d) 260. But their correction is beyond the authority of the courts generally, and in particular in a case involving the determination of contractual rights between parties to a law suit. If their correction is sought in the field of government, the appeal must be addressed to its branches other than the judicial."

The refusal of the Supreme Court of Missouri to afford petitioners relief from the above conditions and injuries, as disclosed by the Record, was due, not to a lack of authority, but to its failure to apply to said facts the rule of law which has prevailed in Missouri since the decision in Thurston v. Rosenfeld, 42 Mo. 474, that: where enforcement of a contract will cause damage to the state or injury to its citizens, the courts will refuse to enforce the same.

No statement from counsel, other than that the living conditions shown by this Record to exist among Negroes in St. Louis are general in the large urban centers of the United States, could add anything to the dismal and terrible picture which has been painted by the testimony of the witnesses above cited and the reviewing comment of the Supreme Court of Missouri. However, for further information concerning these social conditions the Court's attention is respectfully directed to the following authoritative publications:

> An American Dilemma — Myrdal, Vol. 1, p. 379 (showing the payments of higher rents and suggesting it as a good reason for housing segregation).
>
> "The Urban Negro: Focus of the Housing Crisis"— Real Estate Reporter, October, 1945, p. 12, citing Mayor's Committee on City Planning, and showing 3,781 people housed in a single city block of the Harlem District in New York City.

"Brown American" by Edwin Embree (Viking Press—1943), commenting at p. 34 upon the above condition, that: "comparable concentration for the entire population would result in all of the people of the United States living in one-half of New York City."

Report of the Committee on Negro Housing of the President, Conference on Home Building, 45, 46.

Woofter, Negro Housing in Cities, 95 (Doubleday, Doran & Co., New York).

Racial Problems in Housing, 9 (National Urban League, New York).

Report of Howard L. Holtzendorf, Housing Director, Abstract in Housing, Feb. 24, 1945, Los Angeles, Cal.

The results of overcrowded housing conditions among Negroes in portions of the City of Chicago, Illinois, pictured by Richard Wright in his book, "Native Son," are not overdrawn. The denial of relief to petitioners under the circumstances disclosed by this Record is a denial of the equal protection of the laws within the meaning of the Fourteenth Amendment, particularly, Section 41, supra, and Section 14 of Article I of the Constitution of Missouri, 1945. If it is lawful to restrict one piece of property against Negroes in Missouri solely because of their race, then it would be lawful to restrict all of the property against them in that state, and thus take away their fundamental right to live in the state.

The courts of Missouri, at least, are not helpless; Section 14 of Article I, supra, reads:

> "That the courts of justice shall be open to every person, and certain remedy afforded for every injury to persons, property or character, and that right and justice shall be administered without sale, denial or delay.'"

CONCLUSION.

The issues involved in this case affect not only these petitioners but large numbers of citizens throughout the United States. The constitutional and statutory principles of law applicable to the conditions disclosed by the facts in this case are in need of being determined and clarified by this Court to the end that the several states will be able to deal authoritatively with these questions in accordance with what is just and right.

Wherefore, it is respectfully submitted that a writ of certiorari should issue as prayed.

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