Supreme Judicial Court of Massachusetts

Sarah C. Roberts

v.

The City of Boston

November Term, 1849

59 Mass. 198, 5 Cush. 198

The general school committee of the city of Boston have power, under the constitution and laws of this commonwealth, to make provision for the instruction of colored children, in separate schools established exclusively for them, and to prohibit their attendance upon the other schools.

This was an action on the case, brought by Sarah C. Roberts, an infant, who sued by Benjamin F. Roberts, her father and next friend, against the city of Boston, under the statute of 1845, c. 214, which provides that any child, unlawfully excluded from public school instruction in this commonwealth, shall recover damages therefor against the city or town by which such public instruction is supported.

The case was submitted to the court of common pleas, from whence it came to this court by appeal, upon the following statement of facts:--

"Under the system of public schools established in the city of Boston, primary schools are supported by the city, for the instruction of all children residing therein between the ages of four and seven years. For this purpose, the city is divided for convenience, but not by geographical lines, into twenty-one districts, in each of which are several primary schools making the whole number of primary schools in the city of Boston one hundred and sixty-one. These schools are under the immediate management and superintendence of the primary school committee, so far as that committee has authority, by virtue of the powers conferred by votes of the general school committee.

At a meeting of the general school committee, held on the 12th of January, 1848, the following vote was passed:--

*199 Resolved, that the primary school committee be, and they hereby are, authorized to organize their body and regulate their proceedings as they may deem most convenient; and to fill all vacancies occurring in the same, and to remove any of their members at their discretion during the ensuing year; and that this board will cheerfully receive from said committee such communications as they may have occasion to make."

"The city of Boston is not divided into territorial school districts; and the general school committee, by the city charter, have the care and superintendence of the public schools. In the various grammar and primary schools, white children do not always or necessarily go to the schools nearest their residences; and in the case of the Latin and English high schools (one of each of which is established in the city) most of the children are obliged to go beyond the school-houses nearest their residences.

The regulations of the primary school committee contain the following provisions:--

ADMISSIONS. No pupil shall be admitted into a primary school, without a ticket of admission from a member of the district committee.

ADMISSIONS OF APPLICANTS. Every member of the committee shall admit to his school, all applicants, of suitable age and qualifications, residing nearest to the school under his charge, (excepting those for whom special provision has been made,) provided the number in his school will warrant the admission.

SCHOLARS TO GO TO SCHOOLS NEAREST THEIR RESIDENCES. Applicants for admission to the schools, (with the exception and provision referred to in the preceding rule,) are especially entitled to enter the schools nearest to their places of residence."

"At the time of the plaintiff's application, as hereinafter mentioned, for admission to the primary school, the city of Boston had established, for the exclusive use of colored children, two primary schools, one in Belknap street, in the eighth school district, and one in Sun Court street, in the second school district.

The colored population of Boston constitute less than one sixty-second part of the entire population of the city. For half a century, separate schools have been kept in Boston for colored children, and the primary school for colored children in Belknap street was established in 1820, and has been kept there ever since. The teachers of this school have the same compensation and qualifications as in other like schools in the city. Schools for colored children were originally established

*200 at the request of colored citizens, whose children could not attend the public schools, on account of the prejudice then existing against them.

The plaintiff is a colored child, of five years of age, a resident of Boston, and living with her father, since the month of March, 1847, in Andover street, in the sixth primary school district. In the month of April, 1847, she being of suitable age and qualifications, (unless her color was a disqualification,) applied to a member of the district primary school committee, having under his charge the primary school nearest to her place of residence, for a ticket of admission to that school, the number of scholars therein warranting her admission, and no special provision having been made for her, unless the establishment of the two schools for colored children exclusively, is to be so considered.

The member of the school committee, to whom the plaintiff applied, refused her application, on the ground of her being a colored person, and of the special provision made as aforesaid. The plaintiff thereupon applied to the primary school committee of the district, for admission to one of their schools, and was in like manner refused admission, on the ground of her color and the provision aforesaid. She thereupon petitioned the general primary school committee, for leave to enter one of the schools nearest her residence. That committee referred the subject to the committee of the district, with full powers, and the committee of the district thereupon again refused the plaintiff's application, on the sole ground of color and the special provision aforesaid, and the plaintiff has not since attended any school in Boston. Afterwards, on the 15th of February, 1848, the plaintiff went into the primary school nearest her residence, but without any ticket of admission or other leave granted, and was on that day ejected from the school by the teacher.

The school established in Belknap street is twenty-one hundred feet distant from the residence of the plaintiff, measuring through the streets; and in passing from the plaintiff's residence to the Belknap street school, the direct route passes the ends of two streets in which there are five primary schools.

*201 The distance to the school in Sun Court street is much greater. The distance from the plaintiff's residence to the nearest primary school is nine hundred feet. The plaintiff might have attended the school in Belknap street, at any time, and her father was so informed, but he refused to have her attend there.

In 1846, George Putnam and other colored citizens of Boston petitioned the primary school committee, that exclusive schools for colored children might be abolished, and the committee, on the 22d of June, 1846, adopted the report of a sub-committee, and a resolution appended thereto, which was in the following words:--

Resolved, that in the opinion of this board, the continuance of the separate schools for colored children, and the regular attendance of all such children upon the schools, is not only legal and just, but is best adapted to promote the education of that class of our population."

The court were to draw such inferences from the foregoing facts as a jury would be authorized to draw; and the parties agreed that if the plaintiff was entitled to recover, the case should be sent to a jury to assess damages; otherwise the plaintiff was to become nonsuit.

C. Sumner and R. Morris, Jr., for the plaintiff.

Mr. Sumner argued as follows:--

1. According to the spirit of American institutions, and especially of the constitution of Massachusetts, (Part First, Articles I. and VI.,) all men, without distinction of color or race, are equal before the law.

2. The legislation of Massachusetts has made no discrimination of color or race in the establishment of the public schools. The laws establishing public schools speak of "schools for the instruction of children," generally, and "for the benefit of all the inhabitants of the town," not specifying any particular class, color, or race. Rev. Sts. c. 23; Colony law of 1647, (Anc. Ch. c. 186.) The provisions of Rev. Sts. c. 23, ß 68, and St. 1838, c. 154, appropriating small sums out of the school fund, for the support of common schools among the Indians, do not interfere with this system. They partake of the anomalous character of all our legislation with regard to

*202 the Indians. And it does not appear, that any separate schools are established by law among the Indians, or that they are in any way excluded from the public schools in their neighborhood.

3. The courts of Massachusetts have never admitted any discrimination, founded on color or race, in the administration of the common schools, but have recognized the equal rights of all the inhabitants. Commonwealth v. Dedham, 16 Mass. 141, 146; Withington v. Eveleth, 7 Pick. 106; Perry v. Dover, 12 Pick. 206, 213.

4. The exclusion of colored children from the public schools, which are open to white children, is a source of practical inconvenience to them and their parents, to which white persons are not exposed, and is, therefore, a violation of equality.

5. The separation of children in the public schools of Boston, on account of color or race, is in the nature of caste, and is a violation of equality.

6. The school committee have no power, under the constitution and laws of Massachusetts, to make any discrimination on account of color or race, among children in the public schools. The only clauses in the statutes, conferring powers on the school committee, are the tenth section of Rev. Sts. c. 23, declaring that they "shall have the general charge and superintendence of all the public schools in the town," and the fifteenth section of the same chapter, providing that they "shall determine the number and qualifications of the scholars, to be admitted into the school kept for the use of the whole town." The power to determine the "qualifications" of the scholars must be restrained to the qualifications of age, sex, and moral and intellectual fitness. The fact, that a child is black, or that he is white, cannot of itself be considered a qualification, or a disqualification.

The regulations and by-laws of municipal corporations must be reasonable, or they are inoperative and void. Commonweath v. Worcester, 3 Pick. 462; Vandine's Case, 6 Pick. 187; Shaw v. Boston, 1 Met. 130. So, the regulations and by-laws of the school committee must be reasonable; and their discretion must be exercised in a reasonable manner. The

*203 discrimination made by the school committee of Boston, on account of color, is not legally reasonable. A colored person may occupy any office connected with the public schools, from that of governor, or secretary of the board of education, to that of member of a school committee, or teacher in any public school, and as a voter he may vote for members of the school committee. It is clear, that the committee may classify scholars, according to age and sex, for these distinctions are inoffensive, and recognized as legal (Rev. Sts. c. 23, ß 63); or according to their moral and intellectual qualifications, because such a power is necessary to the government of schools. But the committee cannot assume, without individual examination, that an entire race possess certain moral or intellectual qualities, which render it proper to place them all in a class by themselves.

But it is said, that the committee, in thus classifying the children, have not violated any principle of equality, inasmuch as they have provided a school with competent instructors for the colored children, where they enjoy equal advantages of instruction with those enjoyed by the white children. To this there are several answers: 1st, The separate school for colored children is not one of the schools established by the law relating to publie schools, (Rev. Sts. c. 23,) and having no legal existence, cannot be a legal equivalent. 2d. It is not in fact an equivalent. It is the occasion of inconveniences to the colored children, to which they would not be exposed if they had access to the nearest public schools; it inflicts upon them the stigma of caste; and although the matters taught in the two schools may be precisely the same, a school exclusively devoted to one class must differ essentially, in its spirit and character, from that public school known to the law, where all classes meet together in equality. 3d. Admitting that it is an equivalent, still the colored children cannot be compelled to take it. They have an equal right with the white children to the general public schools.

7. The court will declare the by-law of the school committee, making a discrimination of color among children entitled to the benefit of the public schools, to be u n c o n s t i t u t i o n a l a n d

*204 illegal, although there are no express words of prohibition in the constitution and laws. Slavery was abolished in Massachusetts, by virtue of the declaration of rights in our constitution, without any specific words of abolition in that instrument, or in any subsequent legislation. Commonwealth v. Aves, 18 Pick. 193, 210. The same words, which are potent to destroy slavery, must be equally potent against any institution founded on caste. And see Shaw v. Boston, 1 Met. 130, where a by-law of the city was set aside as unequal and unreasonable, and therefore void. If there should be any doubt in this case, the court should incline in favor of equality; as every interpretation is always made in favor of life and liberty. Rousseau says that "it is precisely because the force of things tends always to destroy equality, that the force of legislation ought always to tend to maintain it." In a similar spirit the court should tend to maintain it.

The fact, that the separation of the schools was originally made at the request of the colored parents, cannot affect the rights of the colored people, or the powers of the school committee. The separation of the schools, so far from being for the benefit of both races, is an injury to both. It tends to create a feeling of degradation in the blacks, and of prejudice and uncharitableness in the whites.

P. W. Chandler, city solicitor, for the defendants.

The opinion was delivered at the March term, 1850.

SHAW, C. J.

The plaintiff, a colored child of five years of age, has commenced this action, by her father and next friend, against the city of Boston, upon the statute of 1845, c. 214, which provides, that any child unlawfully excluded from public school instruction, in this commonwealth, shall recover damages therefor, in an action against the city or town, by which such public school instruction is supported. The question therefore is, whether, upon the facts agreed, the plaintiff has been unlawfully excluded from such instruction.

By the agreed statement of facts, it appears, that the defendants support a class of schools called primary schools, to the number of about one hundred and sixty, designed for the instruction of children of both sexes, who are between the ages

*205 of four and seven years. Two of these schools are appropriated by the primary school committee, having charge of that class of schools, to the exclusive instruction of colored children, and the residue to the exclusive instruction of white children.

The plaintiff, by her father, took proper measures to obtain admission into one of these schools appropriated to white children, but pursuant to the regulations of the committee, and in conformity therewith, she was not admitted. Either of the schools appropriated to colored children was open to her; the nearest of which was about a fifth of a mile or seventy rods more distant from her father's house than the nearest primary school. It further appears, by the facts agreed, that the committee having charge of that class of schools had, a short time previously to the plaintiff's application, adopted a resolution, upon a report of a committee, that in the opinion of that board, the continuance of the separate schools for colored children, and the regular attendance of all such children upon the schools, is not only legal and just, but is best adapted to promote the instruction of that class of the population.

The present case does not involve any question in regard to the legality of the Smith school, which is a school of another class, designed for colored children more advanced in age and proficiency; though much of the argument, affecting the legality of the separate primary schools, affects in like manner that school. But the question here is confined to the primary schools alone. The plaintiff had access to a school, set apart for colored children, as well conducted in all respects, and as well fitted, in point of capacity and qualification of the instructors, to advance the education of children under seven years old, as the other primary schools; the objection is, that the schools thus open to the plaintiff are exclusively appropriated to colored children, and are at a greater distance from her home. Under these circumstances, has the plaintiff been unlawfully excluded from public school instruction? Upon the best consideration we have been able to give the subject, the court are all of opinion that she has not.

It will be considered, that this is a question of power, or of

*206 the legal authority of the committee intrusted by the city with this department of public instruction; because, if they have the legal authority, the expediency of exercising it in any particular way is exclusively with them.

The great principle, advanced by the learned and eloquent advocate of the plaintiff, is, that by the constitution and laws of Massachusetts, all persons without distinction of age or sex, birth or color, origin or condition, are equal before the law. This, as a broad general principle, such as ought to appear in a declaration of rights, is perfectly sound; it is not only expressed in terms, but pervades and animates the whole spirit of our constitution of free government. But, when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion, that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions and be subject to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law, for their maintenance and security. What those rights are, to which individuals, in the infinite variety of circumstances by which they are surrounded in society, are entitled, must depend on laws adapted to their respective relations and conditions.

Conceding, therefore, in the fullest manner, that colored persons, the descendants of Africans, are entitled by law, in this commonwealth, to equal rights, constitutional and political, civil and social, the question then arises, whether the regulation in question, which provides separate schools for colored children, is a violation of any of these rights.

Legal rights must, after all, depend upon the provisions of law; certainly all those rights of individuals which can be asserted and maintained in any judicial tribunal. The proper province of a declaration of rights and constitution of government, after directing its form, regulating its organization and the distribution of its powers, is to declare great principles and fundamental truths, to influence and direct the judgment and conscience of legislators in making laws, rather than to limit

*207 and control them, by directing what precise laws they shall make. The provision, that it shall be the duty of legislatures and magistrates to cherish the interests of literature and the sciences, especially the university at Cambridge, public schools, and grammar schools, in the towns, is precisely of this character. Had the legislature failed to comply with this injunction, and neglected to provide public schools in the towns, or should they so far fail in their duty as to repeal all laws on the subject, and leave all education to depend on private means, strong and explicit as the direction of the constitution is, it would afford no remedy or redress to the thousands of the rising generation, who now depend on these schools to afford them a most valuable education, and an introduction to useful life.

We must then resort to the law, to ascertain what are the rights of individuals, in regard to the schools. By the Rev. Sts. c. 23, the general system is provided for. This chapter directs what money shall be raised in different towns, according to their population; provides for a power of dividing towns into school districts, leaving it however at the option of the inhabitants to divide the towns into districts, or to administer the system and provide schools, without such division. The latter course has, it is believed, been constantly adopted in Boston, without forming the territory into districts.

The statute, after directing what length of time schools shall be kept in towns of different numbers of inhabitants and families, provides (ß 10) that the inhabitants shall annually choose, by ballot, a school committee, who shall have the general charge and superintendence of all the public schools in such towns. There being no specific direction how schools shall be organized; how many schools shall be kept; what shall be the qualifications for admission to the schools; the age at which children may enter; the age to which they may continue; these must all be regulated by the committee, under their power of general superintendence.

There is, indeed, a provision (ß ß 5 and 6,) that towns may and in some cases must provide a high school and classical school?? for the benefit of all the inhabitants. It is obvious

*208 how this clause was introduced; it was to distinguish such classical and high schools, in towns districted, from the district schools. These schools being of a higher character, and designed for pupils of more advanced age and greater proficiency, were intended for the benefit of the whole of the town, and not of particular districts. Still it depends upon the committee, to prescribe the qualifications, and make all the reasonable rules, for organizing such schools and regulating and conducting them??

The power of general superintendence vests a plenary authority in the committee to arrange, classify, and distribute pupils, in such a manner as they think best adapted to their general proficiency and welfare. If it is thought expedient to provide for very young children, it may be, that such schools may be kept exclusively by female teachers, quite adequate to their instruction, and yet whose services may be obtained at a cost much lower than that of more highly-qualified male instructors. So if they should judge it expedient to have a grade of schools for children from seven to ten, and another for those from ten to fourteen, it would seem to be within their authority to establish such schools. So to separate male and female pupils into different schools. It has been found necessary, that is to say, highly expedient, at times, to establish special schools for poor and neglected children, who have passed the age of seven, and have become too old to attend the primary school, and yet have not acquired the rudiments of learning, to enable them to enter the ordinary schools. If a class of youth, of one or both sexes, is found in that condition, and it is expedient to organize them into a separate school, to receive the special training, adapted to their condition, it seems to be within the power of the superintending committee, to provide for the organization of such special school.

A somewhat more specific rule, perhaps, on these subjects, might be beneficially provided by the legislature; but yet, it would probably be quite impracticable to make full and precise laws for this purpose, on account of the different condition of society in different towns. In towns of a large territory,

*209 over which the inhabitants are thinly settled, an arrangement or classification going far into detail, providing different schools for pupils of different ages, of each sex, and the like, would require the pupils to go such long distances from their homes to the schools, that it would be quite unreasonable. But in Boston, where more than one hundred thousand inhabitants live within a space so small, that it would be scarcely an inconvenience to require a boy of good health to traverse daily the whole extent of it, a system of distribution and classification may be adopted and carried into effect, which may be useful and beneficial in its influence on the character of the schools, and in its adaptation to the improvement and advancement of the great purpose of education, and at the same time practicable and reasonable in its operation.

In the absence of special legislation on this subject, the law has vested the power in the committee to regulate the system of distribution and classification; and when this power is reasonably exercised, without being abused or perverted by colorable pretences, the decision of the committee must be deemed conclusive. The committee, apparently upon great deliberation, have come to the conclusion, that the good of both classes of schools will be best promoted, by maintaining the separate primary schools for colored and for white children, and we can perceive no ground to doubt, that this is the honest result of their experience and judgment.

It is urged, that this maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste, founded in a deep-rooted prejudice in public opinion. This prejudice, if it exists, is not created by law, and probably cannot be changed by law. Whether this distinction and prejudice, existing in the opinion and feelings of the community, would not be as effectually fostered by compelling colored and white children to associate together in the same schools, may well be doubted; at all events, it is a fair and proper question for the committee to consider and decide upon, having in view the best interests of both classes of children placed under their superintendence, and we cannot say, that their decision upon it is not founded on just grounds of reason and

*210 experience, and in the results of a discriminating and honest judgment.

The increased distance, to which the plaintiff was obliged to go to school from her father's house, is not such, in our opinion, as to render the regulation in question unreasonable, still less illegal.

On the whole the court are of opinion, that upon the facts stated, the action cannot be maintained.

Plaintiff nonsuit.