

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. *164.*

J. W. CUMMING, JAMES S. HARPER, AND JOHN C. LADE-
VEZE, PLAINTIFFS IN ERROR.

vs.

THE COUNTY BOARD OF EDUCATION OF RICHMOND
COUNTY, STATE OF GEORGIA.

IN ERROR TO THE SUPERIOR COURT OF RICHMOND COUNTY, STATE
OF GEORGIA.

FILED DECEMBER 5, 1906.

(17,206.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 621.

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VEZE, PLAINTIFFS IN ERROR,

vs.

THE COUNTY BOARD OF EDUCATION OF RICHMOND
COUNTY, STATE OF GEORGIA.

IN ERROR TO THE SUPERIOR COURT OF RICHMOND COUNTY, STATE
OF GEORGIA.

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a UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the superior court of Richmond county, State of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court on a remittitur from the supreme court of the State of Georgia, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between J. W. Cumming, James S. Harper, and John C. Ladeveze, complainants, and The County Board of Education of Richmond County, State of Georgia, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was

b drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said complainants, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eighth day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

E. D. WHITE,
*Associate Justice of the Supreme Court
of the United States.*

c [Endorsed:] Filed in the office of the clerk of the superior court of Richmond county, Georgia, this November 28th, 1898. Wm. E. Keener, clerk superior court, Richmond county, Georgia.

1 STATE OF GEORGIA, }
 Richmond County. }

To the honorable the superior court of said county:

The petition of J. W. Cumming, James S. Harper, and John C. Ladeveze, who sue for themselves and all others in like case in this petition joining, respectfully showeth:

1st. That your petitioners are citizens of said State and residents, property-owners, and tax-payers in and of said county, and subject therein to all lawful taxes levied by said State or by its authority.

2nd. That the board of education of said county is a body corporate, incorporated under an act of the General Assembly of said State entitled An act to regulate public instruction in the county of Richmond, approved August 23rd, 1872, under the name of the county board of education, and commonly called the board of education of Richmond county; by said act is empowered to annually levy upon all the tax-payers of said county such tax as said board may deem necessary for public-school purposes in said county, as authorized by said act; which tax it is the duty of Charles S. Bohler, the county tax collector of said county, to collect.

3rd. That on the tenth day of July, 1897, said board levied for the year 1897, on all the tax-payers of said county, for public-school purposes in said county, to wit, for the support of a system of primary schools and a system of intermediate schools and a system of grammar schools and a system of high schools in said county, by said board a tax of forty-five thousand dollars, said tax being a tax of two and two-tenths mills on each one hundred dollars of taxable property; which said tax is now due and said tax collector is now proceeding to collect the same.

4th. That to so much of said tax as has been levied and is now being collected for the support of the primary, intermediate, and grammar schools system aforesaid your petitioners oppose no objections, but your petitioners aver that so much of said tax as has been levied and is now being collected for the support of said system of high schools in said county by said board is illegal and void, for the reason that said system of high schools is for the use and benefit of the white school population of said county exclusively,

2 and said board is not authorized by law to levy upon nor is said tax collector authorized by law to collect from the tax-payers of said county any tax for the support in said county by said board of any system of high schools wherein the colored school population of said county are not given the same educational facilities as the white schools populations of said county, the last quadrennial enumeration of the school population of said county, as taken pursuant to law, in the year 1894, showing the white school population of said county to be 8,866.

And your petitioners aver that at least \$4,500 of said tax of \$45,000, or ten (10) per cent. thereof, has been levied and is now being collected, and when collected will be used by said board for the support of said illegal system of high schools.

5th. That said board has now on hand the sum of twenty thousand dollars or other large sum, the proceeds of prior tax levies made by it on the tax-payers of said county of prior quotas of the State educational fund allotted said county, of prior poll taxes collected in said county and from other and lesser sources of revenue, all whereof said board has in hand in trust to disburse solely for legal educational purposes in said county; that for the present year, 1897, said board will receive from its said tax levy of July 10th, 1897, from the State educational fund of 1897, from the poll tax of 1897, and from said other sources of revenue other large sums in like trust; that said board is now the owner and has the custody and control of a large and valuable quantity of school fixtures and furniture and of educational equipments and appliances generally, all whereof said board holds in like trust; that said board is not authorized by law to expend any part of said funds, accrued or accruing, or to use any part of said property for the support and maintenance or in the operation of any system of high schools in said county wherein the colored school population of said county is not given the same educational facilities as the white school population thereof, but, nevertheless, so it is that said board is now using said accrued fund and said property, and threatens, means, and intends to use said
3 accruing funds and said property, in the support, maintenance, and operation of its present existing high-school system in said county, the educational advantages of said high-school system being by said board restricted wholly to the use and benefit of the white school population of said county, to the entire exclusion of the colored school population thereof. And your petitioners charge that by said illegal use, present and meditated, of said funds and said property a deficiency of funds and appliances for lawful educational purposes in said county by said board will inevitably result, and to make good such deficiency additional taxation on the tax-payers of said county must and will be imposed.

6th. That your petitioners are persons of color and are, respectively, parents of children of school age, lawfully entitled to the full benefit of any system of high schools organized or maintained by said board in said county. Your petitioners aver that up to the time of said tax levy and for many years continuously prior thereto said board maintained a system of high schools in said county, such as authorized by law, to wit, a system wherein the colored school population of said county had the same educational advantages as the white school population thereof, but on July 10th, 1897, said board withdrew from and denied to the colored school population of said county any admission to or participation in the educational facilities of a high-school system in said county, and now still denies and has voted to continue to deny to said colored school population any admission to or participation in said educational facilities. Your petitioners show that at the time of such

withdrawal and denial your petitioners respectively had children attending the colored high school then existing, but by means of said withdrawal and denial said children of your petitioners are now wholly denied and debarred from any participation in the benefits of a public high-school education in said county, though petitioners are being taxed therefor. Your petitioners, specially pleading and relying upon so much of the supreme law of the land, to wit, the Constitution of the United States, as declares that no State shall deny any person within its jurisdiction the equal protection of the laws, avers that said action of said board, whereby your petitioners, in the persons of their said children, are denied and debarred from an equal participation in the educational 4 advantages of the high-school system maintained in said county by said board with public funds raised by taxation or otherwise is a denial of the equal protection of the laws, such as forbidden by said Constitution, and that it is inequitable, illegal, and unconstitutional for said board to levy upon or for said tax collector to collect from your petitioners any tax for educational purposes in said county, for the benefits whereof your petitioners, in the persons of their children of school age, are excluded and debarred.

7th. That your petitioners have no adequate legal remedy in the premises.

Wherefore, waiving discovery, your petitioners pray:

1. That the said tax collector be enjoined from collecting so much of said tax levy of July 10th, 1897, as has been levied for the support by said board in said county of said system of high schools.

2. That said board be enjoined from using any funds or property now in or hereafter coming into its hands for educational purposes in said county for the support, maintenance, or operation of said system of high schools.

3. That process issue to said board and to said tax collector to be and appear at the next term of this honorable court, then and there to answer petitioners' complaint.

4. That your petitioners have such other and further relief as in the premises shall to equity seem meet.

SALEM DUTCHER,
HAMILTON PHINIZY,
JOE S. REYNOLDS,
Petitioners' Attorneys.

5 STATE OF GEORGIA, }
Richmond County. }

Personally appeared John C. Ladeveze, and on oath says that he is one of the petitioners in the foregoing petition, and that the facts set out in said petition are true.

JOHN C. LADEVEZE.

Sworn to and subscribed before me this 18 day of September, 1897.

E. B. BAXTER,
Not. Pub., Rich. Co., Ga.

STATE OF GEORGIA, }
 Richmond County. }

Personally appeared J. B. Cumming, and on oath says that he is one of the petitioners in the foregoing petition, and that the facts set out in said petition are true.

J. W. CUMMING.

Sworn to and subscribed before me this 20th day of September, 1897.

H. P. SHEWMAKE,
 N. P., Richmond Co., Ga.

STATE OF GEORGIA, }
 Richmond County. }

Personally appeared James S. Harper, and on oath says that he is one of the petitioners in the foregoing petition, and that the facts set out in said petition are true.

J. S. HARPER.

Sworn to and subscribed before me this 18 day of September, 1897.

G. BARRETT,
 Not. Public, Richmond Co., Ga.

IN CHAMBERS AT AUGUSTA, GA., Sept. 21, 1897.

Read and sanctioned. Let this petition be filed and copies thereof and of this order be served forthwith upon Charles S. Bohler, tax collector of Richmond county, Georgia, and the board of education of said county, who will show cause before me, at the court-house of said county, on the 4th day of October, 1897, at 10 o'clock a. m., why the relief in said petition should not be granted.

E. H. CALLAWAY,
 J. S. C., A. C.

STATE OF GEORGIA, }
 Richmond County. }

J. W. CUMMING ET AL.

vs.

COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY } Process.
 et al. }

To the sheriff of said county, Greeting:

The defendants, Board of Education of Richmond County and Charles S. Bohler, tax collector of said county, are hereby required, in person or by attorney, to be and appear at the superior court next, to be holden in and for the county aforesaid, on the third Monday in October, 1897, then and there to answer the plaintiff in action of petition, etc. As in default of such appearance, said court will proceed thereon as to justice may appertain.

Witness the Honorable E. H. Callaway, judge of said court, this 21 day of September, eighteen hundred and ninety-seven.

GEO. B. POURNELLE,
Deputy Clerk.

STATE OF GEORGIA, }
Richmond County. }

I have this day served the defendant with a copy of the within petition, order, and process by delivering a copy personally to W. C. Jones, president board of education of Richmond county, also delivering a copy personally to C. S. Bohler, tax collector, R. C., this Sept. 23, 1897, at 9.50 o'clock.

E. E. PRITCHARD,
D. S., R. C., Ga.

Filed in office this 21st day of September, 1897.

GEO. B. POURNELLE,
Deputy Clerk.

J. W. CUMMING ET AL.

vs.

THE BOARD OF EDUCATION OF RICHMOND COUNTY ET AL. }

The above-stated cause coming on to be heard under the rule to show cause, returnable this day, and it appearing to the court that petitioners desire a continuance, on account of the sickness of Salem Dutcher, Esq., their leading counsel, it is ordered that an adjournment be had until the 15th day of October, 1897.

It is further ordered that all pleadings and affidavits to be used in said cause be filed with the clerk of the superior court by Monday, October 11th, 1897, and that all counter or cross affidavits be filed with the clerk by Thursday, October, 14th, 1897.

This October 4th, 1897.

E. H. CALLAWAY,
J. S. C., A. C.

J. W. CUMMING ET AL.

vs.

THE BOARD OF EDUCATION OF RICHMOND COUNTY
et al. }

Injunction.

It appearing to the court that Salem Dutcher, Esq., is still physically unable to attend court, and motion being made in behalf of the plaintiffs for a continuance—

It is ordered that each of the cases be set down for hearing before the court on the 10th day of November, 1897.

This Oct. 15th, 1897.

E. H. CALLAWAY,
J. S. C., A. C.

8 CUMMING ET AL.
vs.
THE BOARD OF EDUCATION ET AL. } Injunction.

The court being engaged in the hearing of criminal cases, it is ordered that the hearing set for today of the above-stated cases is hereby adjourned over to 10 a. m., November 24th, 1897; that in the interim either party shall be at liberty to file any original affidavits, but the same shall be filed and notice thereof served upon the opposite side by November 17th, and each side shall have until November 22nd to file replies thereto.

This November 10th, 1897.

E. H. CALLAWAY,
J. S. C., A. C.

9 Richmond Superior Court.

J. W. CUMMING ET AL.
vs.
THE BOARD OF EDUCATION OF RICHMOND } Petition for Injunction.
County & Charles S. Bohler, Tax Col'r. }

And now comes the defendant Charles S. Bohler, tax collector of Richmond county, in response to the rule served upon him, and, in answer to the petition, says:

Demurrer.

1. That the plaintiffs have not, in and by their petition, made such a case as entitles them in a court of equity to any relief from or against this defendant as to the matters contained in the petition or any of such matters.

2. Because the plaintiffs make no such case as will authorize judicial interference by injunction with the system of taxation established by his codefendant in conformity to the law of its creation, to wit, the act approved August 23rd, 1872, "to regulate public instruction in the county of Richmond," and the amendments thereto.

Answer.

3. To paragraph 1 defendant admits the petitioners are citizens of the State and residents of the county of Richmond; that he is required to collect the taxes fixed by the State, county, and this county board of education upon the property appearing upon the tax digest of 1897, as turned over to him for collection; that J. W. Cumming appears as a tax-payer to the amount of \$2,080.00, James S. Harper to the amount of \$2,550.00, and John C. Ladeveze, in proper person, to the amount of \$5,900.00, and that as such tax-payers they are liable to all lawful taxes levied by the State or its authority.

4. He admits the averments in paragraph 2 of the petition are true according to his statement thereof.

5. In answer to paragraph 3, he admits that on the 11th day of July, 1897, the board levied for the year 1897 against all the legal tax-payers in the county a tax of forty-five thousand dollars, being two and two-tenths mills, and that defendant is proceeding to collect the same; that he annexes hereto, marked Exhibit "A," a copy of the certificate furnished to him as his authority in the premises, and Exhibit "B," certificate on the digest in his hands, but that beyond this he has no information in the premises; that the amount that will be due under this assessment upon the property appearing on the digest will be by the plaintiff J. W. Cumming, \$4.58; James S. Harper, \$5.61, and John C. Ladeveze, \$12.98, making a total of \$23.17, and that he will proceed to collect it unless restrained by this court.

6. In answer to paragraph 4, defendant says that he has no information as to the amount of the tax levied for the support of the primary, intermediate, and grammar school systems, to which plaintiffs oppose no objection, nor of the amount of taxes levied for the support of the system of high schools in the county, which they controvert, nor does he know that ten per cent. of the amount so levied and to be collected by him is for the support of high schools. Defendant can neither admit nor deny other averments because of the want of sufficient information.

7. That defendant can neither admit or deny the averments contained in paragraphs 5 and 6 because of the want of sufficient information, defendant being advised that these relate to matters at issue between the plaintiffs and his codefendants, in which he has no concern whatever.

8. Further answering in his own behalf, defendant says that he is a public officer under bond for the discharge of the duties of his office; that he is advised it is his duty to proceed to collect from each of the tax-payers of the county whose names appear upon the digest of 1897 the tax required at his hands by his codefendant, as set out in Exhibit "A," annexed hereto, and that he has no information as to any apportionment thereof nor any way of ascertaining how much is to be applied to the support of high schools, so as to retain that amount of money in conformity to the rule issued in this cause or to abide the judgment of the court in the premises. Defendant says that on the 12th day of December, 1883, there was filed in the clerk's office of this court by William H. Smith and others a bill in equity against John A. Bohler, the predecessor in office of this defendant, seeking to enjoin the collection of a tax imposed by the county board of education for the year 1883 and directed to be collected under a certificate from the county board of education, dated August 27, 1883, identical in character and terms as Exhibit "A" and "B," hereto annexed; that to this petition an answer was made by defendant's predecessor, and upon hearing of the cause a decree was entered, January 19th, 1884, in which the court said as to the matter of high schools "that that was covered by the general power to regulate public instruction. The constitution of 1868 is not restrictive as to grades. The constitution of 1877 and the debates in the con-

vention clearly indicate what the former meant." That a bill of exceptions to the supreme court of Georgia was sued out to this decision by the plaintiffs, the said bill served upon defendant's predecessor, and thereafter a decision was rendered in the supreme court, May 3rd, 1884 (72 Georgia Reports, p. 546), affirming the judgment of the court below; to the record in which cause as to file in this court reference is hereby made as if annexed hereto.

And this defendant pleads the said judgment in bar of any suit in equity or at law at the instance of any tax-payer to prevent him from obeying the mandate of the board of education and making collection of the taxes in conformity thereto; and having fully answered, defendant prays to be hence discharged with his reasonable costs and charges in his behalf sustained.

CHAS. S. BOHLER,
Tax Collector, R. Co., Ga.

AUGUSTA, GA., September 1st, 1897.

To Charles S. Bohler, tax collector, Richmond county, Georgia:

I hereby certify that — a regular meeting of the Richmond county board of education, legally held on the 11th day of July, 1897, it was voted in accordance with the law (two-thirds of all the members concurring therein) that the sum of forty-five thousand dollars (\$45,000) be raised in said county of Richmond for public-school purposes for the year 1897, and that a tax sufficient to realize the same be levied, the same tax being two and two-tenths ($2\frac{2}{10}$) mills on every dollar of property taxable of the legal tax-payers of said county.

12 In obedience to the order of said board and in pursuance of the law, I do hereby assess and return a tax against all the legal tax-payers in said county, in pursuance of the law entitled "An act to regulate public instruction in the county of Richmond," approved August 23rd, 1872, and I hereby place in your hands a copy of my assessment and return of said tax against all the legal tax-payers in said county of Richmond, made out by me in pursuance of law.

You are hereby directed to collect said tax and deposit it to the credit of the Richmond county board of education, in such bank in the city of Augusta as may be designated by the State commissioner for the deposit of the county school fund.

In witness whereof I have hereunto set my official hand and affixed the seal of the said board this the 1st day of September, 1897.

[SEAL.]

LAWTON B. EVANS,
Sec'y B'd Education & ex Of. Sch. Com'r Rich. Co.

EXHIBIT B.

Entry on the Tax Digest, 1897.

STATE OF GEORGIA, }
 Richmond County. }

I hereby certify that the within and following is a true copy of the assessment and return made out by me in pursuance of law and resolution of the Richmond county board of education against all the tax-payers of the county of Richmond for tax for public-school purposes and said county for the year 1897, the said assessment being \$22,433,175.00, and the rate on the same being two and two-tenths ($2\frac{2}{10}$) mills on every dollar of property.

In witness whereof I have hereto set my official hand and the seal of the board of education of Richmond county, this first day of September, 1897.

LAWTON B. EVANS,
Sec'y Bd Education and ex. Of. Co. Sch. Com. R. Co.

13 STATE OF GEORGIA, }
 Richmond County. }

You, Charles S. Bohler, tax collector of Richmond county, do swear that the facts set forth in the foregoing answer are true.

CHAS. S. BOHLER,
Tax Collector, Richmond Co., Ga.

Sworn to and subscribed before me this 29th day of September, 1897.

G. FRANK BOHLER,
Notary Public, R. Co., Ga.

Filed in office Octo. 9, 1897.

GEO. B. POURNELLE, D. C.

14 GEORGIA, }
 Richmond County. }

In Superior Court of said County, October Term, 1897.

J. W. CUMMING, JAMES S. HARPER, and }
 John C. Ladeveze }
 vs. }
 THE BOARD OF EDUCATION OF RICHMOND }
 County et al. }

Petition for Injunction
 and Relief. Rule to
 Show Cause.

Return to Rule.

1. In answer to the rule to show cause why the injunction in the petition prayed for should not be granted, defendant says:

(a.) Because there is no equity in the petition.

(b.) Because the allegations of the petition so far as they are

substantial are in the following answer sworn off, explained, and denied.

2. In order to understand the system defendant annexes as Exhibit "X" an extract from the public reports of the board.

Answer.

(Par. 1, 2, 3.)

3. The allegations in the first and second paragraphs are admitted and all of the third, save so much as implies that the high schools of respondent are under regular systems.

4. This defendant denies that it has established any system of high schools in said county, and answering in denial of this allegation defendant says that it is neither made its duty nor has it authority under the organic law to establish such systems (see section 10, act of August 23, 1872); that under said section it may in its discretion establish high schools at such points in the county as the interest or convenience of the people may require.

15 That in pursuance of said authority it had established the Neely high school Jan. 22, 1876, and changed its name for the Tubman high school on June 3rd, 1878, when Mrs. Emily H. Tubman presented to the board a large lot and building for the purpose of affording a higher education to the young women of the county. The Richmond academy afforded this benefit and advantage to the male sex. The call was loud and the want great for the continuance of this school by this respondent, and it was so accordingly determined. Each pupil to pay fifteen dollars for tuition per annum; non-residents of the county, *forty* dollars, this charge being the same as that made by the Richmond County Academy for Boys. The property was donated by Mrs. Tubman upon the express condition that in the event the board failed to use the building for a high school the same was to enure instantly to the benefit of the Richmond academy and the Augusta free school. The value of this property, with the fixtures, furniture, and appliances, is now not less than thirty thousand dollars.

In June, 1876, the board thought it wise to give its assistance to the Hephzibah high school, being a school conducted and controlled by the Hephzibah Baptist Association in the village of Hephzibah, in the southeastern portion of said county, charging and receiving for high-school scholars the sum of fifteen dollars per annum.

Thereafter, in 1880, there being no high school in the county for — colored race, and the funds of this defendant justifying it, and other schools of lower grade being established by the local trustees in the city of Augusta sufficient to accommodate the colored children, the board deemed it wise and proper to establish the Ware high school, charging for each pupil taught therein ten dollars per annum.

At meeting in June last of the board a special committee was raised to investigate the status of the high schools, with instructions

to report to the July meeting of the board, and submit such recommendations as in its judgment might be proper and necessary.

This committee held divers meetings and made a thorough investigation, as instructed, and duly reported to the July meeting. These reports are attached as exhibits hereto. Touching the Ware high school, its friends and the colored patrons thereof were called before the committee, and were heard by the committee with every respect and consideration. They were told the reasons that controlled the committee in its intention to recommend its discontinuance for the present. These were: Because four hundred or more of negro children were being turned away from the primary grades unable to be provided with seats or teachers; because the same means and the same building which were used to teach sixty high-school pupils would accommodate two hundred pupils in the rudiments of education; because the board at this time was not financially able to erect buildings and employ additional teachers for the large number of colored children who were in need of primary education, and because there were in the city of Augusta at this time three public high schools—the Haines industrial school, the Walker Baptist Institute, and the Payne Institute—each of which were public to the colored people and were charging fees no larger than the board charged for pupilage in the Ware high school.

Attached hereto are the reports of said committee, which were made to the last July meeting of the board, touching each of the high schools under this board, and which upon full consideration were adopted, marked "A," "B," and "C." At the same time when the vote was taken on the report of the Ware high school, it was unanimously resolved that the board of education reinstate the said school whenever in their judgment the board could afford it. See Exhibit "D." Subsequently to the board's temporary suspension of the Ware high school a number of colored people petitioned the board for rescission of this action, among whom were the complainants herein. A full board was called and convened on the — day of August, and the petitioners were heard and their request fully considered. The board, after a session and deliberation of over two hours, refused to rescind for the reasons heretofore set out, and says, in their view, until the local trustees—i. e., the city conference board—should have furnished a sufficiency of primary schools for the colored population it would be unwise and unconscionable to keep up a high school for sixty pupils and turn away three hundred little negroes who are asking to be taught their alphabet and to read and write. No part of the funds of this board accrued or accruing and no property appropriated to the education of the negro race has been taken from them. This board has only applied the same means and moneys from one grade of their education to another grade; and in this connection defendant says that the enrollment in the colored school is this year 238 more than the last, the Ware high school building accommodating 188 pupils. See Exhibit "E."

Defendant admits that the cost of the high school will be about \$4,500.00 for the present fiscal year.

5. The financial condition of the board is as follows:

Indebtmnt.....	\$31,000.00
Cash on hand.....	204.00

It denies, therefore, that it has in hand twenty-two thousand dollars; admits it will receive during the fiscal year from the tax levy, the poll tax of the county, and the State educational fund a considerable revenue, but hardly sufficient to conduct its business.

This board has always exercised the power of establishing, suspending, and abolishing high schools according to its means and as the interest, convenience, and wants of the people might require. At one time and another it has had conducted five high schools, to wit, a boys' high school at the Richmond academy, the Tubman High School for Girls, the Hephzibah High School for Boys and Girls, and the Summerville High School for Boys and Girls.

The school in Summerville was abolished June 1, 1878, when the trustees of the Summerville academy received possession of the income devised for the support of teachers under the will of William Robertson. The trustees of the Richmond academy having resumed full control over that institution July 1, 1878, and established their own school, the high school for boys taught under the direction of this board was discontinued and never re-established. On November 1, 1880, the high school for colored children—*i. e.*, the Ware high school—was opened.

Respondent denies that the levy of the tax for the high schools now under the board, to wit, the Tubman and the Hephzibah, are illegal and void. It denies the proposition that because this board has not at this time a high school for the colored race these two schools must be discontinued, and that the tax levied for their support is illegal.

This board admits it is the owner of large school properties and school fixtures and equipments, but denies that it may not use the same for the purpose of carrying on its high schools, and admits it is now using its funds and some of its property to carry on the

18 Tubman and Hephzibah high schools, and intends to continue to do so until the court shall declare the same illegal.

6. The respondent admits that petitioners are persons of color, but has no information touching their having children or their ages. It denies it has ever conducted any system of high schools wherein the same character of schools was given to the colored people as to the white; and, answering, says that under the act of 1872 it is nowhere declared that this board shall maintain the same grade of schools for the two races; that section 9 of said act commands the local trustees to provide the same facilities to each race as regards school-houses and fixtures, attainments and abilities of teachers and length of term, but that this section refers only to the schools established by the trustees of each school district under section 6 of said act, and does not apply to schools of higher grade;

that section 10 of said act, which empowers this respondent to establish schools of higher grade than those established by the local trustees, ordains their establishment to such as the interest and convenience of the people may in the judgment of this board require.

It admits that on the 10th day of July last it suspended the Ware high school for the reason that in its judgment its interest and convenience of the people did not require it, and that it caused to be established in its stead three primary schools for colored children, and for reasons heretofore in this answer set forth. Whether or not the petitioners at the time of said suspension had children attending the Ware high school this defendant is not advised, but denies that they are debarred from a high-school education in this community, since for the same charges as were made by this board for pupilage in the Ware high school they can find this education in three other colored high schools open to the public in the city of Augusta.

Defendants deny the allegations specially plead that the acts of 1872 and 1877 deny to the colored race equal protection of the law, or that the course and conduct of this board thereunder is obnoxious to this constitutional inhibition.

7. This defendant, having fully answered and shown that plaintiffs have no wrong or grievance, legal or equitable, pray the rule be dismissed with costs and defendants be herewith discharged.

And your respondent-, etc.

GANAHL & GANAHL,
Att'ys for Respondents.

19

EXHIBIT X.

General Information Concerning the Public-school System of Richmond County for the Instruction of Teachers and the Benefit of the Public.

The board of education consists of thirty-six members, three from each of the five city wards, five country districts, two incorporated villages, and the ordinary of the county, *ex officio*. Members must be freeholders and residents of the county. The term of office is three years, and an election occurs every November to fill the vacancies on the board, the term of one-third of the members expiring annually. The board meets regularly on the second Saturday in each month, and the president is chosen from among its members. The secretary, who is also the county school commissioner, is chosen annually at the meeting in January.

The schools in each district and village in the county are under the entire control of the local trustees. The teachers are chosen by them, the length of the term is regulated by them, and all matters pertaining to the schools are referred to them, under regulations of the board of education. In the city, the schools are under the charge of the conference board of city trustees, which consists of all the members from the five wards, of which the president is chairman.

The school fund at the disposal of the board is annually divided according to the school population among the city wards, the five country districts, and the two villages, after reserving a fund for the general expenses of the board and for the high schools. By this means each set of local trustees can see the amount at their disposal and can regulate their schools accordingly. They can have few or many teachers, a long or a short term, build and repair just as they please and as their funds permit.

Each district, village, and the city wards run a separate set of schools, and yet the whole system is controlled by one board of education, and the actions of the various local trustees are under the supervision of suitable committees from the general board.

20 The secretary and county school commissioner is in general charge of the whole. The teachers in the high schools are chosen by the entire board of education. Those in the city schools are chosen by the conference board of the city trustees, which consists of the 15 members from the 5 wards. Those in the country districts are chosen by the local trustees in which the district is situated.

EXHIBIT A.

Report of Committee on Tubman High School.

AUGUSTA, GA., July 10th, 1897.

To the board of education:

The committee appointed to investigate the condition of the high schools and to make such recommendations as they deem wise beg leave to make the following report on the Tubman high school:

This building is the generous gift of Mrs. Emily Tubman, made to the board of education over twenty years ago for the purpose of affording a higher education to the young ladies of our city. The building has been very much enlarged and improved at the expense of the board. The school has grown in numbers every year until now about 200 pupils are on the roll. Mr. John Neely is the principal of the school and is assisted by Miss Mary A. Coffin, Miss A. B. Coffin, Miss Zoe Barclay, Miss Elizabeth Vannerson; in addition there is a department of French by Madame Esmery, of stenography and typewriting by Miss De Hay. Music and penmanship are taught in the school by the regular directors of those branches in the city schools.

It is not amiss for your committee to say that they recognize the necessity of a high school for girls, to be operated by the board of education, because there is no other sufficient institution of this kind in the city. The Richmond academy in our city is a high school where the boys of our schools can attend. There are high schools for the accommodation of the negro boys and girls, and so the necessity for providing for the education of the white girls of the city is the one need that the board of education cannot escape. This is a sufficient reason for maintaining the Tubman high school.

21 Your committee bears cheerful testimony to the faithful performance of all duties devolving upon the principal and

his assistants. They have been devoted to the work, and the popularity of the school is a sufficient evidence of its efficiency. Your committee unanimously reports that the status of the Tubman high school is satisfactory and that the present management be continued.
Respectfully submitted.

JOS. GANAHL.
W. C. JONES.
W. H. BAXLEY.
W. A. LATIMER.
W. F. ALEXANDER.
J. L. FLEMING.
L. B. EVANS.

EXHIBIT B.

Report of Committee on Hephzibah High School.

Report.

The committee to whom was referred the investigation of the status of the high school under this board and their relation thereto, with instruction to report to the July meeting of the board and submit such recommendations as in its judgment may be proper or necessary, make the following report:

Hephzibah high school.

Your committee find that the board of education of Richmond county commenced relations with this school in 1871, when Mr. Lowery Carswell was the principal thereof. It was theretofore from 1860, when first instituted, exclusively conducted and controlled by the Hephzibah Baptist Association.

Mr. Carswell informs your committee, no minute of the matter appearing in the records of this board, that it was agreed between the board and the association that the latter should select and 22 nominate a teacher for the school, and the board should, if the nominee were satisfactory, elect him to the position; that this teacher should be paid six hundred dollars per annum from the funds of the board; that tuition fees of \$15 p'r annum should be collected by the teacher from the pupils, which sums were to be credited to the six hundred dollars. In this way the expense of the high school would be reduced to about \$300.00 per annum. The principal was allowed to charge full tuition fees for pupils residing out of Richmond county without an accounting for the same to the board.

Since that time the board has agreed to pay to a teacher of vocal music the sum of \$20 p'r month for 9 mos., or a total of \$180.00 p'r annum.

This contract and relation has continued on and exists to this day. Mr. Carswell was succeeded by Mr. Ellington, and Mr. Ellington by Mr. C. H. S. Jackson, the present incumbent, who has held the position for twelve years past.

The association owns the building in which the school is conducted. This board owns the school furniture, pays insurance on furniture and building, keeps the building in repair, and pays salary of janitor.

Besides these the principal receives from the local trustees of Hephzibah village \$540 p'r annum; from 121st district, \$400; from 124th district, \$61.00, making a total of \$1,601.00, which sum added to insurance, \$25; janitor, \$72, and music, \$180, makes a grand total of \$1,878.00, which this board and the local trustees pay annually towards the support of this school.

The principal is nominated to this board by the local trustees of Hephzibah district. He appoints his own corps of assistants with the approval of these local trustees. This corps at present consist of R. E. Cobb, Esq., musical director; Miss Sarah A. Kilpatrick, primary department; Miss Slara M. Sego and Miss Baker, intermediate department; Miss Sarling, elocution; Miss Hattie E. Carswell, art department.

The assistants do not desire any qualification from examinations and certificates demanded by this board or other of its teachers.

The school is a very large one. From the report made to Hephzibah Baptist Association in October last, we find the enrollment reached in 1896 to the number of 299 pupils.

23 After a searching inquiry your committee have reached the conclusion that the school in all its grades is excellent, giving with intellectual development exemplary moral training to religious example, and that the cause of education is advanced to the full value of the moneys paid out by this board.

The situation is anomalous, and is hardly consistent with the scheme upon which the public-school system of Richmond county was instituted by act of 1873 and subsequent amendments.

The scheme was for this board and the local trustees thereof to conduct and maintain their own schools exclusively, not to support private or other educational institutions of the county.

It is easy to discover errors. It is difficult to provide a remedy, for it so happens that the remedy often is worse than the disease.

To withdraw our pecuniary support from the Hephzibah school at a time we are not financially competent to provide another of equal value to the cause of education would work greater wrong than to allow the anomaly to continue.

Your committee therefore advise that for the present no action changing the present status and relation of the Hephzibah high school towards this board be taken.

They opine, however, that the school should come more strictly under the discipline and superintendence of this board. To this end your committee recommend that the assistants of the school be required to undergo due examination and obtain the certificates required of other schools under our system; that the curriculum of its departments and the text books used be submitted to the secretary of this board and our text-book committee, and that the corps

of teachers be submitted to this board for election, as is the principal of the school.

Resp'y, &c.,

JOS. GANAHL.
W. C. JONES.
W. H. BAXLEY.
W. A. LATIMER.
W. F. ALEXANDER.
JAS. L. FLEMING.
L. B. EVANS.

EXHIBIT C.

Report of Committee on Ware High School.

AUGUSTA, GA., July 10th, 1897.

To the board of education:

The committee appointed to investigate the status of the high schools of the city and county to ascertain the relation they sustain to the board of education, and to make such recommendations thereon as in their judgment seem wise and necessary, beg leave to make the following report and recommendations regarding the negro high school known as the Ware high school:

This school has been in operation under the board of education for the past fifteen or sixteen years. It was first under the charge of one teacher, Richard R. Wright, and was located on upper Reynolds street. When Wright resigned, four or five years ago, he was succeeded by Henry L. Walker, the present incumbent, and the school was moved to the corner of Twiggs and Walker streets. The number of pupils increased to about sixty and an additional teacher was added as an assistant to the principal. The school has been in a very prosperous condition and the principal and his assistant have done faithful and satisfactory work so far as their teaching is concerned. The principal of the school is paid \$807.50 and the assistant \$340, the janitor is paid \$45, incidental expenses about \$100, making a grand total of expense of \$1,292.50. The tuition fees amount to ten dollars a year for each pupil. The amount collected this year has been about \$450. This makes a net cost of the school of \$842.50.

Your committee has been informed that four or five hundred negro children are annually turned away from the primary grades of the city schools because they are unable to find seats. The board of education is not able to erect additional buildings and employ additional teachers for the accommodation of this large number of negro children who desire to obtain the rudiments of an English education. A very natural inquiry suggesting itself to our committee is whether it would not be best to take the \$842.50, which represents the net cost of running the negro high school, for the benefit of about 60 pupils who desire to study the higher branches, and with it employ four primary teachers who would teach about 250 pupils the rudiments of an education. It certainly seems wise to give as many negro children the advantage

of a primary education as possible and teach them all to read and write and calculate rather than advance a few of them through the high schools. If the Ware high school be abolished by the board of education the same money that it now costs will accommodate 250 more children in the primary schools.

Your committee observes the fact that there is no lack of high schools for negro children in the city. There is the Haines industrial school, the Walker Baptist Institute, and the Payne Institute, all designated for the higher education of negro boys and girls. While these are denominational schools, yet the fees they charge are moderate, and it is not in evidence that their teaching is sectarian. Your committee believes that all of the students now attending the negro high school can be accommodated in these schools without additional expense to them, thus leaving the board to divert its funds to the primary education of the race.

Your committee believes that the board of education is not liable to maintain the negro high school and also extend the negro primary schools. The lack of funds forbids this, and we are confronted with the question of the best disposition of the money in hand. Having heard from the principal of the school and other members of the colored race, and having carefully considered the questions in all its bearings, your committee makes the following recommendation:

1st. That the high school for negro children known as the Ware high school be discontinued by this board. This is not to be considered as a reflection upon the ability, or faithfulness, or character of the work done by the teachers in charge, but is not purely economic reasons in the education of the negro race.

2nd. That the city conference board be requested to open four primary schools in the same building at a cost of about \$200 apiece for the accommodation of those negro children who are annually denied admittance to the schools.

Respectfully submitted.

JOS. GANAHL.
W. C. JONES.
W. H. BAXLEY.
L. B. EVANS.
W. A. LATIMER.
W. F. ALEXANDER.
J. L. FLEMING.

26

EXHIBIT D.

Extract from the Minutes of the Board of Education, July 9th, 1897.

"After the reading of these reports of the special committee on high schools it was agreed to vote upon the adopting of these reports.

The report on the Tubman high school was unanimously adopted.

Mr. Joel Smith moved to lay the report of the Ware high school on the table. This motion was not seconded.

The vote was then taken on the report of the Ware high school, and it was adopted. Mr. Joel Smith voted in opposition, and desired his vote recorded.

Mr. Fischer moved that the board of education reinstate the Ware high school whenever in their judgment the board could afford it. This motion was carried."

EXHIBIT E.

Enrollment in Colored Schools.

1897.

1st ward colored school.....	574	
2nd " " Ware High School building.....	188	
5th " " school.....	110	
Mauge St. " ".....	713	
		1,585

1896.

1st ward colored school.....	481	
5th " " ".....	108	
Mauge St. " ".....	693	
Ware high " ".....	65	
		1,347

Excess 1897 over 1896..... 238

27 In witness of the foregoing answer, the board has caused to be hereunto affixed its corporate seal.

RICHMOND COUNTY BOARD OF EDUCATION,

By W. C. JONES, *President.*

[SEAL.]

STATE OF GEORGIA, }
Richmond County, }

Personally appeared W. C. Jones, Jas. L. Fleming, & W. A. Latimer, who, being duly sworn, say that they are members of the board of education of Richmond county; that the facts set forth in the foregoing plea are true; that what is contained in the answer, so far as concerns their own act and deed, is true, to their own knowledge, and what relates to the act and deed of any other person they believe to be true; that the foregoing defense as it stands stated is true, to the best of their knowledge and belief.

W. C. JONES,
JAS. L. FLEMING,
WM. A. LATIMER.

Sworn to and subscribed before me—

A. S. JONES,
Notary Public, Richmond Co., Ga.

Filed in office October 9th, 1897.

GEO. B. POURNELLE,
Deputy Clerk.

28

Richmond Superior Court, Oct. Term, 1897.

CUMMING ET AL.

vs.

BOARD OF EDUCATION ET AL.

} Injunction.

And now, upon the coming in of the answer of said board, come plaintiffs and say:

1st. That "the Payne Institute," "the Walker Baptist Institute," and "the Haines Normal and Industrial Institute" mentioned in said answer are purely private and pay educational institutions under sectarian control, and have been in existence for years past and have no connection and never have had any connection whatsoever with the public-school system conducted by said board.

2nd. That said board has no legal right to charge for extending a public high-school education to the children of school age of actual residents of said county.

3rd. That if a deficiency of means exists for extending a public primary school education to the colored school population of the city of Augusta in said county, said deficiency is due to the illegal action of said board in appropriating to the white school population of said city largely more of the public-school fund than it is legally entitled to, to the corresponding detriment of the colored school population of said city, and but for such illegal action there would be no such deficiency as said board avers.

4th. That in nothing herein said do plaintiffs in anywise abate or qualify the averments of their original petition, but, upon the contrary, in all things reaffirm and stand upon the same.

SALEM DUTCHER,
HAMILTON PHINIZY,
JOE S. REYNOLDS, *Plffs' Attys.*

Filed in office Nov. 17, 1897.

GEO. B. POURNELLE, *D. C.*

29

CUMMING ET AL.

vs.

BOARD OF EDUCATION, RICHMOND COUNTY,

et al.

} Injunction.

And now comes the defendant and demurs in law generally and specially to the amendment filed by plaintiff in the above-stated case November 17th, 1897, upon the following grounds, to wit:

1. Because paragraph two is an averment of illegal conclusion without setting forth the grounds of illegality.

2. Because the matter set forth in paragraph three is an averment of illegal action without stating the grounds of such illegality.

3. Because the whole petition as now amended sets forth no cause of action entitling the plaintiff to any relief, and the petition as

amended is contradictory to and inconsistent with the averments in the original petition and the relief prayed therein.

GANAHL & GANAHL,
FRANK H. MILLER,

Df's Att'ys.

Nov. 24, '97.

30

J. W. CUMMING ET AL.

THE COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY ET AL. }

STATE OF GEORGIA, }
Richmond County. }

Personally appeared J. W. Cumming and on oath says that he is now and has been a resident of said State and county for ten years and longer; that he is the father of one unmarried child, named Maud, between the age of sixteen and seventeen years, who was attending the Ware high school of said county when said school was abolished, and is now waiting to enter said child in a high school when furnished by the county board of education of Richmond county to the colored race; that no facilities for a high-school education has been furnished him by said board since the Ware high school was discontinued by said board.

J. W. CUMMING.

Sworn to and subscribed before me this 25th day of September, 1897.

FRED. T. LOCKHART,
Notary Public, R. Co., Ga.

31

J. W. CUMMING ET AL.

vs.

THE COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY ET AL. }

STATE OF GEORGIA, }
Richmond County. }

Personally appeared J. S. Harper and on oath says that he is now and has been a citizen of said State and county for ten years and longer; that he is the father of one unmarried child, name-Emily, between the ages of twelve and fifteen years, who was attending the Ware high school of said county when said school was abolished, and is now waiting to enter said child in a high school when furnished by the county board of education of Richmond county to the colored race; that no facilities for a high-school education has been furnished him by said board since abolishing the Ware high school.

J. S. HARPER.

Sworn to and subscribed before me this 25th day of September, 1897.

FRED. T. LOCKHART,
Not. Pub., Rich. Co., Ga.

32

J. W. CUMMING ET AL.

vs.

THE COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY ET AL.

STATE OF GEORGIA,
Richmond County.

Personally appeared J. C. Ladeveze and on oath says that he is now and has been a citizen of said State and county for ten years and longer; that he is the father of one unmarried child, name-Anna B., between the age of fifteen and sixteen years, who was attending the Ware high school of said county when said school was abolished, and is now waiting to enter said child in a high school when furnished by the county board of education of Richmond county to the colored race; that no facilities for a high-school education has been furnished by said board since abolishing said school.

J. C. LADEVEZE.

Sworn to and subscribed before me this 25th day of September, 1897.

WM. H. BARRTETT,
Not. Pub., Richmond Co., Ga.

33 J. W. CUMMING, JAS. S. HARPER, & JOHN C. LADEVEZE

vs.

THE COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY and
Charles S. Bohler, Tax Collector.

STATE OF GEORGIA,
Richmond County.

Personally appeared Albert S. Blodgett and on oath says that he is now and has been for six years a resident of said State and county; that he is the father of one unmarried child, name-Frank, between the age of six and sixteen years, who was attending the Ware high school of said county when said school was discontinued, and is now waiting to send said child to a high school when furnished by the county board of education of Richmond county to the colored race; that no facilities for a high-school education have been furnished him by said board since abolishing the Ware high school.

ALBERT S. BLODGETT.

Sworn to and subscribed before me this 29th day of September, 1897.

FRED T. LOCKHART,
Not. Pub., R. Co., Ga.

34 J. W. CUMMING, JAS. S. HARPER, & JOHN C. LADEVEZE

vs.

THE COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY and
Charles S. Bohler, Tax Collector.STATE OF GEORGIA, }
Richmond County. }

Personally appeared Jerry M. Griffin and on oath says he is and has been a resident of said State and county for ten years and longer, and that he is the father of one child, unmarried, name- Louise, between the age of six and sixteen years, who was attending the Ware high school of said county when said school was abolished, and is now waiting to enter said child in a high school when furnished by the county board of education of Richmond county to the colored race; that no high-school facilities is now furnished by said board nor has been since the Ware high school was discontinued.

JERRY M. GRIFFIN.

Sworn to and subscribed before me this day, 9th of September, 1897.

H. P. SHEWMAKE,
Not. Pub., Rich. Co., Ga.35 STATE OF GEORGIA, }
Richmond County. }

Personally appeared William J. White and on oath says that he is a person of color, a resident of and citizen of said State and county for over a quarter of a century past; that he is and has been editor of a weekly newspaper published in the city of Augusta, in said county, called the "Georgia Baptist," for seventeen years past; that he has been for thirty years past pastor of Harmony Baptist church in said city, and is well acquainted with the colored population of said city, and also the operations of the school board of said county since its inception, having attended its sessions regularly for many years and held frequent conferences with its officers and members on matters touching the educational welfare of said colored race.

Deponent says that for years past many colored children of said city have been annually denied admittance to the public schools of said county on the alleged ground of a deficiency of means by said board for their education. In one year deponent recalls that some six hundred were turned away, and this denial of a public education has been the occasion of frequent protest and remonstrances to said board by deponent and other representative men of the colored race.

Deponent says he is well acquainted with the three private colored schools in said city, namely, the Payne, Walker, and Haines Institute; that they have been established many years, the latter since 1882 or 1885, and the others also for years past; that they are all private pay schools under denominational control and have no connection with the public-school system of said county and have always been independent of it; and, that as said public-school system is now

conducted it has kinde-garten schools, a night school, and primary, intermediate, grammar, and high schools at public expense for the white scholars of said city, and only primary, intermediate, and grammar schools for the colored.

Deponent says that owing to the fact that there is an opening for employment for many small white boys in the stores and other places of business in said city as cash boys, errand boys, &c., &c., and as there is also a large opening for employment of the white boys and girls in the numerous cotton factories in said city, more particularly in the fourth and fifth wards of the city where
36 half of the entire white school population of said county is located, and as the parents of such children largely put them to work, there is not the same earnest call for education for white children as there otherwise would be; but as the smaller colored children have no opening for employment accessible there is a great pressure on the part of their parents to get them in the public schools, an eagerness of long standing and frequently noted in the reports of said board.

Deponent says that he earnestly pressed upon said board the legal right of the colored children to a high-school education some sixteen or seventeen years since when one was established; that he personally saw and urged each member of said board to establish one, and says that the board did finally establish one after a committee of its number had reported that it was the legal duty of the board to do so and after the then county commissioner, Hon. William F. Fleming, had in his reports informed them that "the law upon the question is plain. Equal advantages must be given to both classes of citizens," and insisted upon a compliance with it. A copy of the committee report referred to deponent annexes to this affidavit.

WILLIAM J. WHITE.

Sworn to and subscribed before me this 16th day of Nov., 1897.

J. G. WEIGLE,

Not. Pub., Rich. Co., Ga.

37 *Questions Propounded to Lawton B. Evans, Esq., a Witness for the Plaintiff, who Refused to Make Affidavit.*

CUMMING ET AL.

vs.

BOARD OF EDUCATION.

1st. What is your official connection with the Richmond county board of education?

Ans. I am secretary of the board.

2nd. How long have you been such?

Ans. Since 1882; November, 1882.

3rd. Have you not been notified that \$32,096.79, thirty-two thousand and ninety-six dollars and seventy-nine cents, is the quota coming to this board from the State education fund for the current school year?

Ans. Well, that is about right. I don't know about dollars and cents. It is in that neighborhood. I don't carry those figures in my mind. I would have to refer to the record. (On being shown book :) That is about right, sir; thirty-two thousand and something.

LAWTON B. EVANS.

Sworn to and subscribed before me November 24, 1897.

E. H. CALLAWAY.

38

July Report of W. H. F., Sup't, P. S.

JULY 10TH, 1880.

The sup't again feels compelled by a sense of duty to recommend the establishment of a high-school class for colored pupils. The law expressly says that while the white and colored schools shall be separate, the facilities shall be the same. The school ought to be given or the law ought to be repealed. To grant today the petition of the colored people would be only an act of tardy justice.

39

Committee Report.

OCT. 9TH, 1880.

To the hon. the board of education of Richmond county :

The undersigned, the high-school committee of your honorable body, to whom was committed the petition of W. J. White, L. H. Holsy, J. S. Harper, A. C. McClennon, Elbert Rogers, colored citizens, for the establishment of a high school for colored children, dated July 10th, 1880, respectfully report—

That they have assurance that there are forty-five colored children in the county who are prepared to enter a high school and pay therefor ten dollars for the scholastic year. A list of them is hereto annexed. It will require but a small amount of money to be added to the sum to be derived from this source to establish a high school for male and female children, and thus carry out the letter and spirit of our organic act.

They recommend, therefore, that the said high school be immediately organized by the election of a male teacher at a salary of \$—— dollars per month; that the superintendent procure and furnish a room suitable for the purpose, and that said school be opened on the first day of November next.

Your committee would add that the city board having unani- mously agreed on the propriety of establishing this school, they feel that the time has come when no valid objection can justly be urged against the action.

Very respectfully,

JOSEPH GANAHL.
M. J. CARSWELL.
MARTIN V. CALVIN.

40

J. W. CUMMING ET AL.

vs.

THE BOARD OF EDUCATION OF RICHMOND COUNTY ET AL. }

JUNE 12TH, 1897.

The following resolution was offered by Maj. Ganahl and seconded by James L. Fleming:

Resolved, That a committee of five together with the president and secretary of the board as *ex officio* members be appointed by the president, whose duty it shall be to investigate the status of the high schools and their relation to the board of education with power to call for information upon the school trustees and the principal and teachers of the school. The said committee to report to July meeting of this board, and make such recommendations as in its judgment may be proper and necessary.

Committee: Ganahl (chairman), Fleming, Baxley, Latimer, Alexander, Jones, and Evans *ex officio*.

Report of Committee on Ware High School.

JULY 10TH, 1897.

The committee appointed to investigate the status of the high schools of the city and county to ascertain the relation they sustain to the board of education and to make such recommendations thereon as in their judgment seems wise and necessary beg leave to make the following report and recommendations regarding the negro high school known as the Ware high school.

This school has been in operation under the board of education for the past fifteen or sixteen years. It was first under the charge of one teacher, Richard R. Wright, and was located on upper Reynolds street. When Wright resigned, four or five years ago, he was succeeded by Henry L. Walker, the present incumbent, and the school was moved to the corner of Twiggs and Walton Sts., the number of pupils increased to about sixty, and an additional teacher was added as an assistant to the principal. The school has been in a very prosperous condition, and the principal and his assistant have done faithful and satisfactory work so far as their teaching is concerned. The principal of the school is paid \$807.50 and the assistant \$340.00; the janitor is paid \$45.00, incidental expenses about \$100.00, making a grand total expense of \$1,292.50. The tuition fees amount to \$10.00 a year for each pupil. The amount collected this year has been about \$450.00.

41 This makes a net cost of the school \$842.50. Your committee has been informed that four or five hundred negro children are annually turned away from the primary grades of the city schools, because they are unable to find seats. The board of education is not able to erect additional buildings and employ additional teachers for the accommodation of this large number of negro children who desire to obtain the rudiments of an English education. A very natural inquiry suggests itself to your commissioners is whether it would not be best to take the \$842.50 which

represents the net cost of running the negro high school for the benefit of about sixty pupils who desire to study the higher branches and with it employ four primary teachers, who would teach about two hundred pupils the rudiments of an education. It certainly seems wise to give to as many negro children the advantage of a primary education as possible and teach them all to read and write and calculate, rather than to advance a few of them through the high schools.

If the Ware high school be abolished by the board of education, the same money that it now cost will accommodate 250 more children in the primary schools.

Your committee observes the fact that there are no lack of high schools for negro children in the city. There is the Haines industrial, the Walker Baptist high school, and the Payne Institute, all designed for the higher education of negro boys and girls. While these are denominational schools, yet the fees they charge are moderate, and it is not in evidence that their teaching is sectarian. Your committee believes that all the students now attending the negro high school can be accommodated in these schools without additional expense to them, thus leaving the board to direct its funds to the primary education of the race.

Your committee believes that the board of education is not able to maintain the negro high school and also expend the amount on the negro primary schools. The lack of funds forbids this, and we are confronted with the question of the best disposition of the money in hand. Having heard from the principal of the school and other members of the colored race, and having carefully considered the question in all its bearings, your committee makes the following recommendation:

1st. That the high school for negro children known as the Ware high school be discontinued by this board.

42 This is not to be considered as a reflection upon the ability or faithfulness or character of the work done by the teachers in charge, but is for purely economic reasons in the education of the negro race.

2nd. That the city conference board be requested to open four primary schools in the same building, at a cost of about \$200.00 apiece, for the accommodation of those negro children who are annually denied admittance to the schools.

Respectfully submitted,

JOS. GANAHL (*Chairman*),

W. C. JONES.

W. H. BAXLEY.

W. A. LATIMER.

W. F. ALEXANDER.

J. L. FLEMING.

L. B. EVANS.

July 10th, 1897.

The vote was then taken on the report of the Ware high school, and it was adopted. Mr. Joel Smith voted in opposition and desired his vote recorded.

Mr. Fisher moved that the board of education reinstate the Ware high school whenever the board, in their judgment, could afford it. This motion was carried.

43 8. *Portions of the Printed Report of the Board for 1896 and 1897.*

Report of the secretary.

"It is needless to say again that the negroes everywhere crowd into the schools." * * * "The eagerness of this race for school privileges is remarkable and commendable."

Report of the finance committee.

Expenditures:

Salaries, high schools (white)	\$6,549.61
" " " (colored)	1,057.50
" city " (white)	36,222.05
" " " (colored)	7,131.40
" country " (white)	11,521.90
" " " (colored)	6,092.08

By-laws of the board of education.

SECTION 3. Requiring the appointment of seven committees, namely, on finance, high schools, rules and regulations, text books, examination of teachers, and sanitary affairs, consisting of five members each.

SECTION 8. At the regular monthly meeting in July the board shall elect high-school teachers for the ensuing scholastic year.

Rules and regulations for the government of the public schools—
Organization.

SECTION 1. The schools shall be divided into primary, intermediate, grammar, and high school grades.

SECTION 8. Examinations shall be regularly held in all the schools at the close of each term. These examinations may be oral or written, or both combined, at the discretion of the commissioner, but the final examination at the close of the scholastic year must be at least partly written in high schools and the last year of the grammar schools.

SECTION 12. The text books and course of study pursued in all the schools shall be such only as are prescribed by the board.

As to the county school commissioner.

SECTION 8. He shall certify to the high-school accounts in the same manner as the trustees of the wards and districts certify to claims and accounts against the schools in their respective jurisdiction.

SECTION 18. Non-resident children may be admitted to the schools on the payment of tuition in advance each term and provided there is room, so that they do not prevent the admission of resident pupils.

SECTION 19. All resident pupils applying for admission into the high schools shall pay in advance the sum of \$7.50 per term for white schools and \$5.00 for colored schools.

SECTION 20. All pupils upon completing the full high-school course shall receive certificates or diplomas, the form of which shall be prescribed by the board of education.

General information concerning the system.

The schools in each district and village in the country are under the entire control of the local trustees. The teachers are chosen by them. The teachers in the high schools are chosen by the whole board of education. A certificate of the first grade entitles a teacher to teach in the primary schools only; of the second grade to teach in the intermediate schools only, and of the third grade to teach in the grammar and high schools. There are no expenses connected with the schools except that of janitor's fees, which amount to about 75 cents a year for each pupil.

45. STATE OF GEORGIA, }
Richmond County. }

Personally appeared before the undersigned George Williams Walker, who, being duly sworn, says:

That he is the principal of the Payne Institute, a school located within the limits of the city of Augusta, in said county.

That said institute conducts an academic and a collegiate department with a full and competent corps of instructors; that the curriculum of said academic department is of equal grade with the curriculum of the Ware high school, and the curriculum of the collegiate department is higher; said school is open to all colored children of either sex; said institute has now in process of erection a building which will furnish ample accommodations for a much greater number of pupils in the high school and collegiate grade than have ever applied for admission.

That the tuition fee charged in said institute is eight dollars per annual term of eight months, beyond which there are no expenses connected with the attendance on said school, except for the purchase of books.

Said school was opened in 1884; that the said school is supported mainly by the income from an endowment presented by Mr. Moses Payne and by donations received through the M. E. Church, South, and the Colored M. E. Church in America; that the total income of said institute during the fiscal year ending May 31st, 1897, was \$7,344.48, of which sum two hundred and three dollars and twenty-five cents was derived from tuition fees.

GEORGE WMS. WALKER.

Subscribed and sworn to before me this October 2nd, 1897.

E. B. BAXTER,
Not. Pub., Rich. Co., Ga.

46

J. W. CUMMING ET AL.

vs.

BOARD OF EDUCATION OF RICHMOND COUNTY ET AL. }

Personally appeared before the undersigned, a notary public in and for said county, George A. Goodwin, who, being duly sworn, says:

That he is the principal of the Walker Baptist Institute, a school located just outside of the city of Augusta and in the county of Richmond.

That said institute conducts an academic department for higher education with a full and competent corps of instructors; that the curriculum of said academic department is of equal grade with the curriculum of the Ware high school.

Said school is open to all colored children of either sex and has accommodation for many more pupils than have been attending it. Each pupil is charged eight dollars per annual session of eight months, beyond which there are no expenses connected with attendance on said school except for the purchase of books.

That said school was established here in 1892; that the school-house is a commodious building and well fitted up.

That the revenue of said school is derived from the Walker Baptist Association, which gives to the school five hundred dollars annually, and from John D. Rockfellow, who donates through the American Baptist Home Mission Society the further sum of five hundred dollars, and from donations from other sources amounting to about one thousand dollars per year.

That the income of said school for the fiscal year ending in June, 1897, was twenty-five hundred and ninety-eight dollars, of which sum the sum of five hundred and five dollars was derived from tuition fees and the balance from the sources above enumerated.

G. A. GOODWIN.

Subscribed and sworn to before me this Sept. 29th, 1897.

E. B. BAXTER,
Not. Pub., Rich. Co., Ga.

47 STATE OF GEORGIA, }
Richmond County. }

Personally appeared Ref. Geo. W. Walker, who on oath says that he is principal of the Payne Institute, and that said institute is a Methodist school, supported by the Methodist Episcopal Church, South, and the Colored Methodist Episcopal Church in America; that it has no connection with the public-school system of Richmond county, and receives no support from said school system.

GEO. WMS. WALKER, Pres't.

Sworn to and subscribed before me this — day of October, 1897.

H. P. SHEWMAKE,
N. P., Rich. Co., Ga.

48 STATE OF GEORGIA, }
Richmond County. }

Personally appeared Lucy Laney, who, being duly sworn, says that she is the principal of the Haines industrial school, located on South Boundary, or Gwinett, street, of the city of Augusta; that the said school conducts an academic department for higher education, with a full and competent corps of instructors; that the curriculum of the said academic department is of equal grade with the curriculum of the Ware high school; that the school is open to all colored children of either sex, and has accommodations for all pupils that will attend it. Each pupil is charged \$3 per annual term of 8 months, beyond which there are no expenses connected with attendance on the school, except for books.

That the revenue of the school is derived from the following source:

Presbyterian Board of Mission for Freedmen Friends North and South.

Tuition of students.

That the income of the school for the fiscal year ending June, 1897, was \$3,500, of which amount the sum of about \$1,100, board; tuition, about \$700, was derived from tuition fees, and the balance from the source above enumerated.

There is an attendance upon the school this session pupils who formerly attended the Ware high school, among which are the children of Albert S. Blodgett, Jerry M. Griffin, J. W. Cumming.

Deponent makes this affidavit because she has been subpoenaed as a witness to attend the court, and to avoid attendant upon the court pursuant thereto. She wants it to appear that she is not a volunteer in giving the information herein set forth.

LUCY C. LANEY.

Sworn to and subscribed before me this 11th day of October, 1897.

WM. J. WHITE,
Not. Pub., R. C., Ga.

49 STATE OF GEORGIA, }
Richmond County. }

Personally appeared Lawton B. Evans, who, being duly sworn, says that he is the county school commissioner of the county aforesaid; that he has read the affidavit of W. J. White, dated the 16th day of November, 1897, referring to public education in Richmond county. Deponent in reply says that he has been the county school commissioner since 1882, and that since that time said White has not been a regular attendant of the sessions of the board for many months. Deponent says that he has had occasional conferences with said White, and that about six years ago there were in the neighborhood of 600 negro children for whom the trustees of the city schools had not made provision, an application for which was

made to the board, and that in pursuance thereof the First Ward Grammar School building was erected to meet this want, whereby provision was made to accommodate 400 additional pupils, raising the attendance from 250 to 650.

That, in so far as the said affidavit refers to the Payne, Walker, and Haines Institutes, deponent says that each of these institutions have been established since he became the county commissioner and since the Ware high school was established; that while these institutions are under denominational control, there is no denominational teaching enforced in these schools; that they are open to everybody, irrespective of denomination, and that the impression sought to be conveyed by the said affidavit to the contrary is untrue.

LAWTON B. EVANS.

Sworn to and subscribed before me Nov. 2, 1897.

H. H. ALEXANDER,

Notary Public, Richmond Co., Ga.

50 STATE OF GEORGIA, }
Richmond County. }

Personally appeared Charles S. Bohler, who, being duly sworn, says he is tax collector of said county.

That he has examined the tax digest of the county of Richmond for the year 1897; that the name of J. W. Cumming appears thereon as a tax-payer on property to the amount of \$2,080; that the education tax imposed by the board of education of Richmond county on this amount is \$4.58.

That there also appears on said digest of 1897 the name of James S. Harper as a tax-payer on property to the amount of \$2,550; that the educational tax imposed by the board of education of Richmond county on this amount is \$5.61.

That there also appears on the said digest of 1897 the name of John C. Ladeveze as a tax-payer on property to the amount of \$5,900; that the educational tax imposed by the board of education of Richmond county on this amount is \$12.98.

CHAS. S. BOHLER.

Sworn to and subscribed before me Oct. 11, 1897.

WM. E. KEENER,

Clerk S. C., R. C., Ga.

51 *Minutes of the Board of Education of August 28th, 1897, Showing the Presence of Twenty-seven Commissioners.*

The president announced that the meeting had been called at the instance of several members of the board of education for the purpose of considering the petition of the colored citizens relative to the Ware high school. The secretary was directed to notify the petitioners that the board was ready to hear them. The committee came in and John C. Ladeveze read the following petition:

"We, the undersigned, citizens of Augusta and patrons of the Ware high school, most respectfully petition your honorable body to reconsider your action in abolishing the Ware high school for the following reasons, to wit:

"This school has been in operation for a number of years, and is now in a more prosperous condition than at any time since its establishment, and is being conducted satisfactorily to the board of education and its patrons.

"While we deplore the inability of the board to provide schools for all the children, yet we feel that it is more important to continue the Ware high school for the higher education of our children who have passed through the grammar schools than to abolish the said high school and establish primary schools, and, inasmuch as the board will receive an additional amount this year from increased taxation, we hope that you will see your way clear to establish the four primary schools as contemplated.

"We most respectfully call your attention to section 9, an act to regulate public instruction in Richmond county, which reads as follows: 'That the county board of education under the advice and assistance of the trustees in each ward of school district shall make all the necessary arrangements for the instruction of the white and colored youths in separate schools. They shall provide the same for each, both as regards school-houses, fixtures, attainments, and abilities of teachers, length of term time, and all other matters pertaining to education.'

"We most earnestly ask that you continue the Ware high school.

"And your petitioners will ever pray."

Signed by himself and others.

52 W. J. White read an address to the board supporting the petition. Maj. Ganahl spoke in answer to the petition and the address. Mr. M. M. Conner spoke in favor of granting the petition for the Ware high school, and a motion was made by him to rescind the action of the board and to re-establish the Ware high school. Discussion ensued and a vote was taken, resulting as follows: 23 nays, 3 ayes, 2 not voting. The chair declared the motion was lost and the petition refused. The board then adjourned.

53

Tax Levy, 1897.

Passed July 10th, 1897.

Resolved by the county board of education (two-thirds concurring therein), That a tax is hereby levied for school purposes for the year 1897 of forty-five thousand (\$45,000) dollars on the taxable property of said county held by the legal tax-payers therein, and Charles S. Bohler, tax collector of said county, or his successors in office, is hereby required and directed to collect said tax.

I, Lawton B. Evans, sec'y county board of education of Richmond county, Georgia, do hereby certify that the above-stated sev-

eral matters are full, true, and complete copies from the record book of the official proceedings of said board of said matters.

Witness my hand and seal this 20th day of Sept., 1897.

[L. s.]

LAWTON B. EVANS,

Sec'y B'd Educ.

54 J. W. CUMMING ET AL.

vs.

COUNTY BOARD OF EDUCATION OF
Richmond County *et al.*

Petition for Injunction, &c., in
Richmond Superior Court.

The rule to show cause in the above-stated case was made returnable October 4th, 1897, and was regularly continued from time to time, to suit the convenience of counsel, until November 24th, 1897, when the cause came on to be heard upon the amended petition of plaintiffs, the demurrer and answer of the defendant Charles S. Bohler, tax collector of Richmond county, and the amended demurrer and answer of the defendant The Board of Education of Richmond County. After hearing evidence and argument, the court reserved its decision.

After careful consideration of the pleadings and evidence and the law applicable to the issues raised, I have reached the following conclusions:

The act of 1872 creating the board of education of Richmond county vested in that board large discretionary powers, and the exercise of these discretionary powers are in most instances not subject to control, revision, or alteration by any court or by any other governmental agency. The board justly claims to be a subordinate branch of the government, possessed of legislative, judicial, and executive functions, and one of its strongest elements of usefulness is the power which it has to exercise its discretion, uncontrolled, in the management of the schools and educational interests of Richmond county; but, as large as its powers may be and as broad as the discretion which it possesses may be, it has no powers, discretion, or authority save those given by the act of the legislature creating the board and the acts amendatory thereof, and every exercise of discretion or power by the board, whether it be characterized as legislative, judicial, or executive, must be exercised within the limits of the authority delegated by the legislature.

I think a proper construction of the 9th and 10th sections of the act of 1872 will settle and control the main question raised in this case. Section 9 reads as follows:

55 "That the county board of education may establish schools of higher grade, at such points in the county as the interests and convenience of the people may require, which schools shall be under the special management of the board at large, who shall have fully power, in respect to such schools, to employ pay and dismiss teachers, to build, repair and furnish the school house or houses, purchase or lease sites therefor, or rent suitable rooms, and make all other necessary provisions relative to such schools as they may deem proper; the funds for such purpose shall be deducted ratably from the quota apportioned to the respective school districts."

It is contended by the board of education that the provisions and requirements of section 9, above quoted, apply only to the common schools of the county, which they are authorized to establish under the preceding sections of the act, and that they have no application to the high schools which they are authorized to establish in section 10. I think the provisions and requirements of section 9 apply with equal force to all the schools established by the board under this act, whether they be common schools or high schools. The section does not expressly nor by implication confine its provisions to district or common schools, but is to my mind expressly applicable to every school established under the act in Richmond county. The fact that it precedes instead of following section 10, which authorizes the establishment of high schools, does not exclude its provisions and requirements from such high schools if they are established. Any other construction of section 9 would render the act inconsistent. For instance, this is the only section of the act which requires that white and colored children shall be taught in separate schools. It would not be contended that this requirement would be binding on the board in common schools, but not binding on them in such high schools as they might establish. Again, why should the legislature require equal facilities for white and colored children in common schools and not in high schools? But the language of the section is not ambiguous. It says, "They shall provide the same facilities for each," and after enumerating teachers, school houses, &c., concludes with this comprehensive clause, "and all other matters appertaining to education." With this construction placed upon the act of 1872, it is not violative of the provisions of the constitution of 1868 nor of the 14th amendment to the Constitution of the United States; but if the construction contended for by the defendants is placed upon the act it would, in my opinion, be repugnant to both.

Therefore I have concluded that the establishment and maintenance of schools of higher grade than common schools, authorized by section 10 of the act, is a matter that rests exclusively in the sound discretion of the board, but if the discretion is exercised in the establishment or maintenance of schools of higher grade they must be established and maintained in harmony and in compliance with section 9 of said act, and the board must provide the same facilities for higher education for both races. I do not mean to say that they must provide the same number of high schools for one as for the other, because the necessities of each race, which would determine that question, might be very different, and I would be invading the province of the discretion vested in the board to attempt to determine that question.

It appears from the evidence in this case that there are colored children between the ages of six and eighteen of high-school grade in Richmond county; and it further appears that the board has discontinued the Ware high school, which was the only colored high school maintained by the board in said county; and it also appears that the board is now maintaining by contributing to the support of two high schools in said county for white children.

The colored children of high-school grade in Richmond county are, under the act in question, entitled to the same facilities for high-school education as are being provided by the board for the white children of the county. It is no answer to this proposition to say that there are in Richmond county three high schools for the education of colored children supported by private enterprise, independent of the board of education, nor does it matter how ample their facilities may be for providing higher education to the colored children of the county, nor whether they are sectarian or secular. These schools are entirely independent of the board of education and of the system of schools established by the act under consideration. While the existence of these private schools for colored children may have considerable influence in lessening the number of colored children of high-school grade that the board will be called upon to provide with the same facilities for high-school education as are furnished the white children, their existence does not diminish the right of colored citizens and tax-payers who have children of high-school grade that are not attending these private schools and who demand a school established by the board, managed under its supervision and supported by the funds raised by public taxation.

Whether the two high schools for white children in Richmond county, which are now supported by the board of education, constitute a system of high schools for white children, as charged, or whether they were established by the board under section 10 of said act, is immaterial in this case. Schools receive large contributions from the public-school fund of the county in the hands of the board, they are under the management and control of the board, and the contributions are made to these schools as high schools for white children. This action of the board is, in my opinion, illegal and violative of the provisions of their organic act, unless they provide equal facilities for the colored children in the county of high-school grade who are asking for such school privileges, the evidence in this case showing that there are a sufficient number of such colored children in the county to make their request reasonable.

I have not undertaken to determine the question raised by the 2nd paragraph of the amendment to plaintiff's petition as to the right of the board to charge tuition in high schools to children resident in Richmond county for two reasons: First, because I do not think the question is sufficiently raised by the pleadings; and, second, because counsel for plaintiff, in his argument, stated that he did not desire the court to consider this question otherwise than in its bearing upon the right of colored children to have equal high-school facilities with white children.

I do not think it would be a wise, if a legal, exercise of the powers of a court of equity to interfere with or to restrain the tax collector of the county from collecting any part of the taxes levied and assessed by the board of education for school purposes. These taxes were not levied separately for common and high-school purposes, but are being collected under one levy for educational purposes.

58 Therefore the demurrer filed by the defendant Charles S. Bohler, tax collector, is sustained, and the first prayer of plaintiff's petition is refused.

But the demurrer filed by the defendant board of education is overruled and the second prayer of plaintiff's petition is granted, and the Board of Education of Richmond County is hereby restrained and enjoined from using any funds or property now in or hereafter coming into its hands for educational purposes in said county for the support, maintenance, or operation of any white high school in said county until said board shall provide or establish equal facilities in high-school education as are now maintained by them for white children for such colored children of high-school grade in said county as may desire a high-school education or until the further order of the court.

This December 2d, 1897.

E. H. CALLAWAY,
J. S. C., A. C.

Filed in office Dec. 22, '97.

WM. E. KEENER, Clerk.

59

J. W. CUMMING ET AL.

vs.

THE COUNTY BOARD OF EDUCATION OF RICH-
mond County *et al.*

} Petition in Equity.
Injunction.

Pursuant to the law which authorizes the judge, upon rendering a decision, to make such order as may be necessary to preserve and protect the rights of the parties until the judgment of the supreme court can be had thereon:

It is hereby ordered that the decision of this day in the above-stated case granting injunction be suspended until a decision by the supreme court shall be rendered upon the bill of exceptions about to be sued out by the defendant to the said decision and to the making of the rule to show cause absolute.

December 22d, 1897.

E. H. CALLAWAY,
J. S. C., A. C.

Filed in office Dec. 22, '97.

WM. E. KEENER, Clerk.

60

Richmond Superior Court, October Term, 1897.

J. W. CUMMING ET AL.

vs.

THE BOARD OF EDUCATION OF RICHMOND COUNTY
et al.

} Injunction.

The remittitur from the supreme court, dated March 26th, 1898, being presented to the court reversing the judgment of the court because the court erred in granting an injunction, it is ordered:

1. That the same be entered on the minutes of this court and the

judgment of the court excepted to be reversed on the ground stated.

2. That the plaintiff in the case be, and they are hereby, refused all the relief prayed for and the petition dismissed at their costs.

3. That the Board of Education of Richmond County recover of the plaintiffs, J. W. Cumming, James S. Harper, and John C. Ladeveze, thirty-nine and fifty one-hundred-dollars (\$39.50) costs paid for the transcript of the record to the supreme court and costs in the court, and that execution issue therefor in favor of the Board of Education of Richmond County and also for — dollars costs in this court.

April 18, 1898.

E. H. CALLAWAY,
J. S. C., A. C.

Supreme Court of the State of Georgia.

ATLANTA, GA., March 23rd, 1898.

The honorable supreme court met pursuant to adjournment.

The following judgment was rendered:

BOARD OF EDUCATION OF RICHMOND COUNTY

vs.

J. W. CUMMING ET AL.

This case came before this court upon a writ of error from the superior court of Richmond county, and after argument had it is considered and adjudged that the judgment of the court below be reversed because the court erred in granting an injunction, all the justices concurring.

Bill of costs, \$10.00.

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, March 26, 1898.

I certify that the above is a true extract from the minutes of the supreme court of Georgia, and that Frank H. Miller paid the above bill of cost.

Witness my signature and the seal of said court, affixed the day and year last above written.

[SEAL.]

Z. D. HARRISON, Clerk.

Know all men by these presents that we, J. W. Cumming, James S. Harper, and John C. Ladeveze, as principals, and L. McKelvie and Americus Berry, as sureties, are held and firmly bound unto the County Board of Education of Richmond County, State of Georgia, in the full and just sum of five hundred dollars, to be paid to the said The County Board of Education of Richmond County, State of Georgia, its certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixteenth day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a superior court of Richmond county, State of Georgia, in a suit depending in said court between J. W. Cumming, James S. Harper, and John C. Ladeveze, complainants, and The County Board of Education of Richmond County, State of Georgia, defendant, a decree was rendered against the said complainants, and the said complainants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof:

Now, the condition of the above obligation is such that if the said complainants shall prosecute said writ to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

J. W. CUMMING.	[SEAL.]
JAMES S. HARPER.	[SEAL.]
JOHN C. LADEVEZE.	[SEAL.]
L. McKELVIE.	[SEAL.]
AMERICUS BERRY.	[SEAL.]

Sealed and delivered in presence of—

H. P. SHEWMAKE,

[NOTARY SEAL.] *Not. Pub., Rich. Co., Ga.*

I certify that in my opinion the signers of this bond are responsible for the amount thereof.

EMORY SPEER, *U. S. Judge.*

63 Approved by—

E. D. WHITE,

Associate Justice of the Supreme Court of the United States.

Washington, D. C., Nov. 25th, 1898.

Filed in the office of the clerk of the superior court of Richmond county, Georgia, this 28th day of November, 1898.

WM. E. KEENER,

Clerk Superior Court, Richmond County, Georgia.

64

Assignment of Errors.

The complainants aforesaid assign for error:

First. That the statute of the State of Georgia giving a discretion to the said county board of education to establish and maintain high schools for white persons, and to discontinue and refuse to maintain high schools for persons of the negro race, was and is contrary to the Constitution of the United States, and especially to the 14th amendment thereof.

Second. That the said court decided and held that the Constitution of the United States was not violated by the action of the said board in establishing and maintaining high schools for the education of white persons and in refusing to establish and maintain high schools for the education of persons of the negro race.

Third. In deciding and holding that persons of the negro race could, consistently with the Constitution of the United States, be by the laws of Georgia taxed, and the money derived from their taxation be appropriated to the establishment and maintenance of high schools for white persons, while pursuant to the same law the said board, at the same time, refused to establish and maintain high schools for the education of persons of the negro race.

65 Fourth. That the said court erred in dismissing the complaint of the plaintiff in error.

GEO. F. EDMUNDS,

Attorney & Counsel for Plaintiffs in Error.

66 [Endorsed:] *Cumming et al. v. County Board of Education*. Errors. Oct. 17, '98. Filed in the office of the clerk of the superior court of Richmond county, Georgia, this 28th day of November, 1898. Wm. E. Keener, clerk superior court, Richmond county, Georgia.

67 UNITED STATES OF AMERICA, ss:

To the County Board of Education of Richmond County, State of Georgia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the superior court of Richmond county, State of Georgia, wherein J. W. Cumming, James S. Harper, and John C. Ladeveze are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, associate justice of the Supreme Court of the United States, this eighth day of November, in the year of our Lord one thousand eight hundred and ninety-eight.

E. D. WHITE,

Associate Justice of the Supreme Court of the United States.

68 On this twenty-ninth day of November, in the year of our Lord one thousand eight hundred and ninety-eight, personally appeared Edward E. Pritchard before me, the subscriber, clerk of the superior court of Richmond county, State of Georgia, and makes oath that he delivered a true copy of the within citation to William C. Jones, president of the county board of education of Richmond county, State of Georgia, and that deponent is deputy sheriff

of said county, and that the sheriff of said county is incapacitated from illness from making said service of said citation.

EDWARD E. PRITCHARD.

Sworn to and subscribed the 29th day of November, A. D. 1898, before me, the subscriber aforesaid.

In witness whereof I have hereunto set my official signature and the seal of said superior court.

WM E. KEENER,

Clerk Superior Court, Richmond County, Georgia.

[Endorsed:] Filed in the office of the clerk of the superior court of Richmond county, Georgia, this 29th day of November, 1898. Wm. E. Keener, clerk superior court of Richmond county, Georgia.

69 STATE OF GEORGIA, }
Richmond County. }

1. Be it remembered that on the 21st day of September, 1897, J. W. Cumming, James S. Harper, and John C. Ladeveze filed their petition in equity against the board of education of Richmond county and Charles S. Bohler, as tax collector of said county, alleging that the county board of education had abolished a high school of the county known as the Ware high school, established for the colored school population, had levied a tax July 10th, 1897, one-tenth of which was for the support of high schools, and the collector was proceeding to collect it.

2. The petition prayed that the collector be enjoined from collecting so much of the tax levy for the year 1897 as had been levied for the support by said board in said county of the system of high schools; that the board be enjoined from using any funds or property now in or hereafter coming into its hands for educational purposes in said county for the support, maintenance, or operation of the system of high schools.

3. Upon the presentation of this petition, verified by the petitioners, a rule to show cause was issued why the relief in the petition should not be granted. Cause was shown by the defendant by demurrers and answers, copies of which will appear in the transcript of the record, and is herein referred to for full information.

4. Thereafter, on November 24th, 1897, the case came on to be heard before the Hon. Enoch H. Callaway, judge of the superior courts of the Augusta circuit, then and there presiding, when the
 70 pleadings were read and affidavits and other evidence were submitted by the petitioners and the defendants, an abstract of which is hereto attached, marked Exhibit "A," as a part hereof.

5. Pending the hearing the plaintiffs moved to amend their petition; to which the defendants objected because the amendment was not verified, set out a separate and independent cause of action, prayed for relief, conflicting with the relief prayed for in the original petition; in paragraph two it made an averment without stating the ground of illegality, and in paragraph three charged

illegality without stating the action complained of to make it such, a copy of which will appear in the transcript of the record.

6. All of these objections the court overruled, and then and there, without being verified, allowed the amendment to be filed, a copy of which will appear in the transcript of the record, to which reference is made as if set out herein.

7. Argument was then had, when, at its conclusion, decision was reserved by the court until December 22nd, 1897, when the demurrer filed by the defendant Charles S. Bohler, tax collector, was sustained, and the first prayer of the plaintiff's petition refused; but the demurrer filed by the defendant The Board of Education was overruled, and the second prayer of plaintiff's petition granted; to which decision, a copy of which will appear in the transcript of the record, reference is made as if inserted and fully set out herein.

8. And now, within twenty days from the rendition of said judgment, comes The Board of Education of Richmond County, by its solicitors, and, desiring to have the same reviewed in conformity to law, excepts to the same and assigns error on the following grounds:

9. Because the court, under the petition as amended, was without jurisdiction to grant the relief prayed for in paragraph two of the prayers of said petition, and erred in allowing the amendment to be filed.

10. Because the court overruled the demurrer to the bill as so amended.

11. Because the court, having allowed the plaintiff to file an amendment in which it denied the legal right of the board to charge for extending a public high-school education to the children of school age of actual residence of the county, and which amendment reaffirmed, without qualification, the averments of the original petition, failed to adjudicate and determine the questions raised by this amendment, assigning as one of his reasons therefor that counsel for plaintiff, in his argument, stated that he did not desire the court to consider this question otherwise than in its bearing upon the right of colored children to have equal high-school facilities with white children, no amendment of the pleadings to this effect having been made, and it being no such statement "*in judicio*" as would justify the court in failing to determine all questions at issue after allowing the amendment.

12. Because the court allowed petitioners to file at the hearing under the orders previously passed in the cause and to be found in the record, over the objections of the defendants, an amendment to the pleadings not verified, and failed to determine, in rendering his decision, the truth of the averment therein that the board had no legal right to charge for extending public high-school education to the children of school age of actual residence in the county.

13. Because the court, having by its *ad interim* decree sustained the demurrer of the tax collector and held the tax legal and refused to interfere with its collection, thereby exhausted its interlocutory jurisdiction and could not legally, under the pleadings in this case,

72 exercise visitatorial power over the defendant, and particularly before the final decree; nor could the judge set aside the solemn judgment of defendant finally rendered upon the written application of petitioners made to it at its meeting of August 28th, 1897, the board of education respectfully insisting that under the act of 1872 and amendments it is a body vested with full authority to determine all such questions as the establishment of schools, and that the decision then rendered cannot be reviewed by petitioners in this proceeding; that the decision now complained of by the board is in effect government by injunction, with legislation by the court.

14. Because the court failed to determine the questions at issue as to the legality or illegality of schools of higher grade now existing or in existence at the date of the adoption of the constitution, of 1877, but enjoined the board from using any funds or property now in hand or thereafter coming into its hands for continuing the operation of any white high school in the county until the board shall have provided or established equal facilities in high-school education as are now maintained by them for white children for such colored children of high-school grade in said county as may be desired by the colored school population of said county.

15. Because the court held that section nine of the "Act to regulate public instruction in the county of Richmond," approved August 23rd, 1872 (P. L., 460), which required the making of all necessary arrangements for instruction of the white and colored youth in separate schools, and required them to provide the same facilities for each, applied to and governed the board of education in the establishment of schools of higher grade authorized to be done by section ten of the said act, the error being that under section nine the county board were to act under the advice and assistance of the trustees in each ward or school district, and that in section ten the enactment was that the county board may establish 73 schools of higher grade, which schools should be under the special management of the board at large who may make all necessary provisions incident to said schools as they may deem proper, and that this discretion vested under section ten was controlled by section nine, under which the board was imperatively required to act, but not so under section ten, which left it entirely discretionary.

16. Because the court, in considering the powers of the board of education of Richmond county, and having before him for consideration sections nine and ten of the act of August 23, 1872 (P. L., 460) to regulate public instruction in the county of Richmond, held that the fact that section nine preceded instead of following section ten does not exclude its provisions and requirements from such high schools if they are established, the court overlooking the fact that after the passage of the act section ten was amended by the act of February 22nd, 1877 (P. L., 347), when there was added to it additional authority to charge tuition and incidental expenses in such schools of higher grade as the board from time to time may fix and determine, and the further provision contained in section

20 of the said act, that no general law on the subject of education then in force in the State or thereafter to be enacted by its General Assembly shall be so construed as to interfere with, diminish, or supercede the rights, powers, and privileges conferred upon the board of education of Richmond county by this act, unless it shall be so expressly provided by designating the said county and board under their respective names.

17. Because the court in the rendering of his decision limited it to an overruling of the demurrer of the board of education and did not pass upon the cause shown in the answer, which specifically asserted that the Ware high school had not been abolished, but suspended until the board was in funds and had applied the building formerly used for the high school and the funds set apart for its support to the education in primary schools of the colored race, as an imperative requirement on them under section 74 nine of the said act.

18. Because the court, having sustained the demurrer of the tax collector that the plaintiffs had made no case as would authorize judicial interference by injunction with the system of taxation provided for under the act of August 23rd, 1872, proceeded further to enjoin the application by the board of the tax so collected by it as to all schools of higher grade, it appearing that at the adoption of the constitution of 1877 the white schools now being supported were of the same character as those in existence at the adoption of the constitution of 1877, which, in art. 8, section 5, ordains that existing local school systems shall not be affected by this constitution.

19. Because the injunction, as granted by the court, was too broad and unlimited:

(a.) It was in effect a revision by certiorari of the decision of the board upon a question entirely committed to its discretion, and a revocation and overruling of the discretion so exercised upon matters brought to the attention of the board by petition of the same plaintiffs and decided adversely to them.

(b.) The injunction was not confined to the tax on petitioners' property, but it was extended to the tax assessed upon all other tax-payers, none of whom joined in the petition, and there being no evidence that petitioners were a class, or by their action represented a class.

(c.) It was made to apply in favor of all who desired a high-school education without limit, or definite as to the time when it was to become operative, when the evidence was clear and uncontroverted that with the obligations now assumed by the board for the maintenance of the primary schools established in the building formerly used as the Ware high school the board was without funds to carry on the said Ware high school under the levy for 1897.

75. 20. Because the court, having found that the authority of the board as set forth in section ten was limited in every particular to the requirements of section nine, if white schools were established and supported by it, and that this construction placed upon the act was not violative of the provisions of the constitution of 1868 nor of the fourteenth amendment of the Constitution of the

United States, further found that if the construction contended for by the defendants be placed upon the act it would, in his opinion, be repugnant to both, the error of the court being:

(a.) That the act of 1872 and this mode of taxation thereunder had been expressly adjudicated to be constitutional by the supreme court of Georgia.

(b.) Because the true action of the board had by it, as set forth in the answer, was not in violation of the fourteenth amendment of the Constitution of the United States.

(c.) Because the action of the board in temporarily suspending the Ware high school, for the reason that the wants of the public do not demand its present continuance, is not in violation of the act of 1872 and its amendments, nor violative of the fourteenth amendment of the Constitution of the United States, nor did this board thereby deny equal protection of the laws to any person within the jurisdiction of the State.

21. And the board of education of Richmond county hereby specify as the portions of the record to be certified and sent up:

1st. Original petition, filed September 21st, 1897, with the rule to show cause and return of service thereon.

2nd. Demurrer and answer of the board of education of Richmond county, filed October 9th, 1897.

3rd. Several orders of the court adjourning the hearings and prescribing the filing by plaintiffs of papers relied upon outside
76 of the record.

4th. Demurrer and answer of Charles S. Bohler, tax collector of Richmond county.

5th. Amendment to plaintiffs' petition.

6th. Amended demurrer and answer of board of education.

7th. Decision of the court, dated December 22nd, 1897.

GANAHL & GANAHL,
FRANK H. MILLER,
W. K. MILLER,

Solicitors for the Board of Education of R. County.

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EXHIBIT "A."

Evidence for Petitioners.

1. Affidavits of J. W. Cumming, James S. Harper, and John C. Ladeveze:

That they are the fathers of unmarried colored children between the ages of sixteen and seventeen who were attending the Ware high school, in said county, when the school was abolished, and are now waiting to enter the said children in a high school when it shall be furnished by the board of education to the colored race; that no facilities for high-school education have been furnished them by the said board since the said Ware high school was discontinued by the board.

2. Affidavits of Albert S. Blodgett, Jerry M. Griffin, petitioners in the mandamus case, to the same effect.

3. Affidavit of W. J. White:

That he has for seventeen years past been the editor of a weekly newspaper in the city of Augusta, and for years past colored children have been annually denied admittance to the public schools on the alleged grounds of deficiency of means for their education; that he is well acquainted with the three private colored schools in the city, the Payne, the Walker, and the Haines Institutes, which are all pay schools, under denominational control, and have no connection with the public-school system of the county; that owing to the fact that there is an opening for employment for many small white boys in the stores and other places of business in the city as cash boys, errand boys, etc., and as there is also a large opening for employment in the cotton factories of the city, more particularly in the Fourth and Fifth wards of the city, where half of the entire white school population is located, and as the parents of such children largely put them to work, there is not the same earnest call for education for white children as there
78 would otherwise be, but, as the smaller colored children have no opening for employment accessible, there is a great pressure on the part of their parents to get them into the public schools, an eagerness of long standing and frequently noted in the reports of said board.

4. Affidavit of L. B. Evans:

To interrogatory propounded, that he is the secretary of the board of education and has been since 1882; that he has been notified that \$32,096.79 is the quota coming to the board from the State educational — for the current school year.

5. In response to a notice to produce report of superintendent of public schools, dated July 10th, 1880:

That he again feels compelled by a sense of duty to recommend the establishment of a high-school class for colored pupils. The law expressly says that while the white and colored schools shall be separate the facilities shall be the same. The school ought to be given or the law ought to be repealed. To grant today the petition of the colored people would be only an act of tardy justice.

6. Report of the committee on the establishment of colored high schools, dated October 9th, 1880, acting upon the petition of White and others, setting forth that there were forty-five colored children in the county prepared to enter it and to pay therefor the sum of ten dollars per scholastic year. It is stated it would require but a small amount of money to be added to the sum to be derived from this source to establish a high school for male and female colored children, and thus carry out the letter and spirit of our organic act. They recommended that a high school be immediately established. Upon the presentation of this report it was adopted.

7. Action of the board of June 12th, 1897: The following resolution by Maj. Ganahl, seconded by Jas. L. Fleming:

Resolved, That a committee of five, together with the president and secretary of the board, be appointed by the president, whose duty it shall be to investigate the status of the high schools and their relation to the board of education, with
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power to call for information upon the school trustees and the principals and teachers of the school, said committee to report to the July meeting of the board and make such recommendation as in its judgment may be proper and necessary.

The committee filed a report July 10th, 1897, recommending "that the high school for negro children, known as the Ware high school, be discontinued by this board. This is not to be considered as a reflection upon the ability or faithfulness of the teachers or the character of the work done by them, but is for purely economic reasons in the education of the negro race; that the city conference board be requested to open four primary schools in the same building at a cost of about \$200 apiece for the education of those negro children who are annually denied admittance to the schools." Signed by the committee of seven. Vote was taken on the report, and it was adopted. Mr. Fisher moved that the board of education reinstate the Ware high school whenever the board could, in their judgment, afford it. This motion was carried.

8. Portions of the printed report of the board for 1896 and 1897:

Report of the Secretary.

"It is needless to say again that the negroes everywhere crowd into the schools." * * * "The eagerness of this race for school privileges is remarkable and commendable."

Report of the Finance Committee.

Expenditures.

Salaries, high schools (white).....	\$6,549.61
" " " (colored).....	1,057.50
" city " (white).....	56,222.05
" " " (colored).....	7,131.40
80 Salaries, country schools (white).....	11,521.90
" " " (colored).....	6,092.08

By-laws of the Board of Education.

SECTION 3. Requiring the appointment of seven committees, namely: On finance, high schools, rules and regulations, text books, examination of teachers, and sanitary affairs, consisting of five members each.

SECTION 8. At the regular monthly meeting in July the board shall elect high-school teachers for the ensuing scholastic year.

Rules and Regulations for the Government of the Public Schools, Organization.

SECTION 1. The schools shall be divided into primary, intermediate, grammar, and high-school grades.

SECTION 8. Examinations shall be regularly held in all the schools at the close of each term. These examinations may be oral or written, or both combined, at the discretion of the commissioner; but

the final examination at the close of the scholastic year must be at least partly written in high schools and the last year of the grammar schools.

SECTION 12. The text books and course of study pursued in all the schools shall be such only as are prescribed by the board.

As to the County School Commissioner

SECTION 8. He shall certify to the high school accounts in the same manner as the trustees of the wards and districts certify to claims and accounts against the schools in their respective jurisdiction.

Pupils

SECTION 18. Non-resident children may be admitted to the schools on the payment of tuition in advance each term, and provided there is room, so that they do not prevent the admission of resident pupils.

SECTION 19. All resident pupils applying for admission into the high schools shall pay in advance the sum of \$7.50 per term for white schools and \$5.00 for colored schools.

SECTION 20. All pupils upon completing the full high-school course shall receive certificates or diplomas, the form of which shall be prescribed by the board of education.

General Information Concerning the System.

The schools in each district and village in the country are under the entire control of the local trustees. The teachers are chosen by them. The teachers in the high schools are chosen by the entire board of education. A certificate of the first grade entitles a teacher to teach in the primary schools only; of the second grade to teach in the intermediate schools, and of the third grade to teach in the grammar and high schools. There are no expenses connected with the schools except that of janitor's fees, which amount to about 75 cents a year for each pupil.

For the Defendants.

9. Affidavit of George A. Goodwin:

That as principal of the Walker Baptist Institute, in the county of Richmond, he conducts an academic department of equal grade with the curriculum of the Ware high school, open to all colored children of both sexes, and has accommodations for many more pupils. Each pupil is charged \$8 per annum. School-house is a commodious building well fitted up. Revenue of the school for fiscal year was twenty-five hundred and ninety-eight dollars (\$2,598.00).

10. Affidavit of George Williams Walker:

That he is the principal of the Payne Institute, a school in the city of Augusta, which conducts an academic and collegiate depart-

ment; that the curriculum of the academic department is of equal grade with that of the Ware high school, and the curriculum of the collegiate department is higher. The school is open to all colored children of either sex; has in process of erection a building which will furnish ample accommodations for a greater number of pupils than have ever applied; tuition of \$8 per annum; no expense beyond except for books; school been opened since 1884; is supported by donations through M. E. Church (South), and colored M. E. church; income for last year, \$7,344.48, of which sum \$203.25 was derived from tuition fees.

11. Affidavit of Lucy C. Laney:

That as principal of Haines' industrial school, in the city of Augusta, she conducts an academic department for higher school education, curriculum of equal grade of Ware high school, and open to colored children of both sexes at \$8 per annum; income derived from Presbyterian board of missions for freedmen and friends, etc.; income present year, \$3,500.00. There is in attendance pupils who went to Ware high school, among them the children of Albert S. Blodgett, Jerry M. Griffin, and J. W. Cumming.

12. Affidavit of Lawton B. Evans:

That about six years ago there were in the neighborhood of six hundred children of the negro race for whom the trustees had not made provision, application for which was made to the board; that in pursuance thereof the First ward grammar-school building was erected to meet this want, whereby accommodations were made for four hundred additional pupils, raising the attendance from two hundred and fifty to six hundred and fifty; that the Payne, Walker, and Haines Institutes are not denominational schools; they are open to everybody, irrespective of denomination.

15. Affidavit of Charles S. Bohler, tax collector:

That the entire amount of educational tax imposed by the board of education upon the property of J. W. Cumming is \$4.58; upon James S. Harper, \$5.61, and upon John C. Ladeveze, \$12.93; upon the property of Albert S. Blodgett was 44 cents, no tax return being made by Jerry M. Griffin.

14. Minutes of the board of education of August 28th, 1897, showing the presence of twenty-seven commissioners:

The president announced that the meeting had been called at the instance of several members of the board of education for the purpose of considering the petition of the colored citizens relative to the Ware high school. The secretary was directed to notify the petitioners that the board was ready to hear them. The committee came in, and John C. Ladeveze read the following petition:

"We, the undersigned, citizens of Augusta and patrons of the Ware high school, most respectfully petition your honorable body to reconsider your action in abolishing the Ware high school for the following reasons, to wit:

"This school has been in operation for a number of years and is now in a more prosperous condition than at any time since its establishment, and is being conducted satisfactorily to the board of education and its patrons.

"While we deplore the inability of the board to provide schools for all the children, yet we feel that it is more important to continue the Ware high school for the higher education of our children who have passed through our grammar schools than to abolish the said high school and establish primary schools; and inasmuch as the board will receive an additional amount this year from increased taxation, we hope that you will see your way clear to establish the four primary schools as contemplated.

"We most respectfully call your attention to section 9, an act to regulate public instruction in Richmond county, which reads as follows: 'That the county board of education under the advice and assistance of the trustees in each ward or school district, shall make all the necessary arrangements for the instruction of the white and colored youths in separate schools. They shall provide the same for each, both as regards school-houses, fixtures, attainments and abilities of teachers, length of term time, and all other matters pertaining to education.'

"We most earnestly ask that you continue the Ware high school. "And your petitioners will ever pray."

Signed by himself and others.

W. J. White read an address to the board supporting the petition. Maj. Ganahl spoke in answer to the petition and the address. Mr. M. M. Conner spoke in favor of granting the petition for the Ware high school, and a motion was made by him to rescind the action of the board and to re-establish the Ware high school. Discussion ensued, and a vote was taken, resulting as follows: 23 nays, 3 ayes, 2 not voting. The chair declared the motion was lost and the petition refused. The board then adjourned.

15. Rebuttal for petitioners.

Affidavit of George W. Walker.

That he is the principal of the Payne Institute. Said institute is a Methodist school, supported by the Methodist Episcopal Church, South, and the Colored Methodist Episcopal Church in America; that it has no connection with the public-school system of Richmond county and receives no support from said school system.

The foregoing brief approved.

Dec. 30, 1897.

E. H. CALLAWAY,

Judge Superior Court, Augusta Circuit.

85 STATE OF GEORGIA, }
Richmond County. }

I do certify that the foregoing bill of exceptions is true and contains all of the evidence and specifies all of the record material to a clear understanding of the errors complained of, and the clerk of the superior court of Richmond county is hereby ordered to make out a complete copy of such parts of the record in said case as are in

this bill of exceptions specified, and certify the same as such, and cause the same to be transmitted to the October term, 1897, of the Supreme Court, that the errors alleged to have been committed may be considered and corrected.

December 30th, 1897.

E. H. CALLAWAY,
J. S. C., A. C.

STATE OF GEORGIA, }
Richmond County. }

I, J. B. Keener, d'p'ty clerk of the superior court of Richmond county, hereby certify that the above and foregoing is the true original bill of exceptions in the case therein stated just as received by me from the judge of the Augusta circuit, and filed in the clerk's office of the said court, and is now transmitted to the supreme court of the State of Georgia pursuant to the order of the said judge.

Witness my official signature and the seal of said court this 30 December, 1897.

J. B. KEENER, D. C.

86 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
ATLANTA, GA., November, 1, 1898.

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the original bill of exceptions in the case of Board of Education of Richmond County *et al. v. J. W. Cumming et al.*, as appears from the original now of file in this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, Clerk.

[Two-cent U. S. internal-revenue stamp, canceled 2, 10, '98, Z. D. H.]
[Two-cent U. S. internal-revenue stamp, canceled 2, 10, '98, Z. D. H.]
[Two-cent U. S. internal-revenue stamp, canceled 2, 10, '98, Z. D. H.]
[Two-cent U. S. internal-revenue stamp, canceled 2, 10, '98, Z. D. H.]

87 [Endorsed:] Filed in the office of the clerk of the superior court of Richmond county, Georgia, this 28th day of November, 1898. Wm. E. Keener, clerk of the superior court, Richmond county, Georgia.

88 BOARD OF EDUCATION, ETC., }
v. }
CUMMING ET AL. }

By the COURT, per SIMMONS, C. J.:

1. The county board of education of Richmond county has the discretionary power, under the law, of establishing or discontinuing

high schools at such points in the county as the interests and convenience of the people may require.

2. Under the facts of this case, there was no abuse of such discretion by the county board in discontinuing the high school established for the colored race, although it left in operation a similar school for white females, and contributed to the support of a high school for white boys and girls which, however, it had not established.

3. The provisions of the act "to regulate public instruction in the county of Richmond," approved August 23, 1872, investing the county board of education of Richmond county with the powers above designated, are not violative of any provision of the constitution of this State or of the United States.

Petition for injunction, before Judge Callaway, Richmond county,
December 22, 1897.

Ganahl & Ganahl, Frank H. Miller, and W. K. Miller, for plaintiff in error.

Salem Dutcher, Hamilton Phinizy, and J. S. Reynolds, *contra*.

SIMMONS, C. J.:

1 & 2. By an act approved August 23, 1872, a board of education was established for the county of Richmond. By the provisions of the act this board was composed of three freeholders from each militia district, three from each ward in the city of Augusta, and three from each incorporated town or village, other than the city of
89 Augusta, in the county. The act further provided that this board should meet and organize by electing one of their number as president and by electing a secretary. It gave this board power to employ teachers and to prescribe their qualifications. It provided that a certain part of the general school fund should be paid over to the board and authorized the board to levy such tax as it might deem necessary for public-school purposes. It made it the duty of the tax collector of the county to collect the tax and to deposit it to the credit of the board. The act also made the members of the board from each militia district and from each ward of the city trustees of the school of that militia district or city ward. In general it provided for a thorough system of public schools in the county. The tenth section of the act reads as follows:

"And be it further enacted, That the county board of education may establish schools of higher grade at such points in the county as the interest and convenience of the people may require, which schools shall be under the special management of the board at large, who have full power in respect to such schools; to employ, pay and dismiss teachers; to build, repair and furnish the school house or houses; purchase or lease sites therefor, or rent suitable rooms, and make all other provisions relative to such schools as they may deem proper. The funds for such purposes shall be deducted ratably from the quota apportioned to the respective school

districts. And the county board of education shall have full power and authority to charge such sums for tuition and incidental expenses in said schools of higher grades as the board, from time to time, may fix and determine."

(This last sentence was added as an amendment February 22, 1877.) In pursuance of this act the board established a high school for girls in the year 1876, and in 1878 a Mrs. Tubman presented the board with a lot and building for the purpose of affording a higher education to the young women of the county. The board fixed the rate of tuition in this school at \$15 per annum for residents of the county, under authority of the act of 1877, amending the act of 1872. In 1880 the board established the Ware high school for the colored race and fixed the rate of tuition at \$10 per annum. In 1897, the board, ascertaining that it had not funds sufficient to carry on the colored high school and at the same time afford school privileges to some 400 colored children in the primary schools, after consultation among themselves and the patrons of the colored high school, determined to suspend the Ware high school for the time. Cummings and others thereupon filed their equitable petition against the board of education and the tax collector seeking to enjoin the collection of that portion of the tax levied for school purposes which was for the support of the Tubman high school and another high school in the county which had been established by the Baptist denomination and to which the board had made a small appropriation for that year. They alleged that such tax was illegal and void because the system of high schools now in operation is for the use and benefit of the white school population exclusively, and the board is not authorized by law to levy or the tax collector to collect from the tax-payers of the county any tax for the support of any system of high schools wherein the colored school population cannot have the same educational facilities as the white school population; that the board is now using the funds on hand and intends to use the tax levied for the support of the white high schools to the entire exclusion of the colored high school. Petitioners are persons of color and represent children of school age who are lawfully entitled to the full benefit of any system of high schools organized and maintained by the board of education, and by suspending the colored high school they are wholly debarred from any participation in the benefits of a high-school education, although they are being taxed therefor. They rely upon so much of the Constitution of the United States as declares that no State shall deny to any person within its jurisdiction the equal protection of the laws, and aver that the action of the board is a denial of the equal protection of the laws, and that it is inequitable, unlawful, and unconstitutional for the board to levy upon petitioners or for the tax collector to collect from them any tax for educational purposes, from the benefits of which petitioners, in the persons of their children of school age, are excluded and debarred.

The defendants demurred to the petition, and also filed an answer in which they denied that they had established any system of high

schools in the county, and alleged that the act of 1872 did not make it the duty of the board nor had it the authority under the organic law to establish such system. The board claimed that under the tenth section of the act (recited above) it had the discretion to establish high schools at such points in the county as the interests of the people might require, and that, in pursuance of that authority, it had established the above-mentioned schools.

Upon the hearing the court below sustained the demurrer of the tax collector, overruled the demurrer of the board of education, and enjoined the board from using, for the support and operation of the white high school, any of the funds or property now in its hands or hereafter to come into its hands for educational purposes until the board shall provide or establish for such colored children of high-school grade in the county as may desire a high-school education equal facilities in high-school education as are now maintained for white children. The court held that "the establishment and maintenance of schools of higher grade than common schools authorized by section 10 of the act (of 1872) is a matter that rests exclusively in the sound discretion of the board. But if the discretion is exercised in the establishment (of such schools) and (they are) maintained in harmony and in compliance with section 9 of said act, the board must provide the same facilities for the higher education of both races." The defendants excepted to the ruling of the court and bring the case here for review.

The act of 1872, incorporating the board of education of Richmond county, made it a public corporation and conferred upon it certain powers of government, mainly those of establishing public schools and levying and collecting a tax for their support. It made it compulsory upon the board to establish free common schools, but gave it a broad discretion in establishing high schools. It declared that the county board of education might establish schools of higher grade than common schools at such points in the county as the interests and convenience of the people might require. It left it solely with the board to determine whether or not it would establish high schools. It could establish one for females and none for males or *vice versa*, it could establish a white school and provide none for the blacks or *vice versa*, if the "interest and convenience of the people" required that they should do so. The matter is left to their discretion, and that discretion is a power "conferred upon them by law of acting officially in certain circumstances according to their own judgment and conscience, not controlled by the judgment or conscience of others." The powers conferred are legislative in their character. If, therefore, this corporate body was of the opinion that the interests of the people required it, it had a right to suspend the operation of the colored high school and appropriate the fund which had previously gone to that school to the primary schools. It could do so, if, in the judgment of its members, it was better for the interests of the people that 400 colored children should obtain the elements of a common-school education than for fifty or sixty colored children to receive the advantages of a high-school education, and in the ex-

ercise of their discretion they could consider the fact that these negro children of high-school age had access to some three private schools of that grade, where the tuition was less than it had been at the Ware high school and less than the tuition charged the white high-school children. The board was not given authority to establish a system of high schools, but to establish individual schools in their discretion. We think that they were certainly not required to establish a high school for negroes whenever they established one for whites. It may be and probably is true that the number of white children prepared for a high-school course is greater than the number of negro children prepared for such course. If one school will accommodate all of the negro pupils of high-school grade, while it takes five schools to accommodate the white children of similar grade, must the board establish five high schools for each race merely because the whites require that number? Certainly here it must be allowed a broad discretion. We do not mean to intimate that any public corporation of this kind can arbitrarily and without reason establish one school and suspend another, but where it is in its discretion to pass upon facts and determine from the best interests of the people at large, courts will not control its discretion unless it is manifestly abused, although the court may be of the opinion that the corporation erred upon the facts. But it is claimed that the board had no discretion in this matter, and that its duties were fixed by the preceding (the ninth) section of the act. That section reads as follows: "And be it further enacted, That the county board of education, under the advice and assistance of the trustees in each ward or school district, shall make all the necessary arrangements for the instruction of the white and colored youths in separate schools. They shall provide the same facilities for each, both as regards school-houses and fixtures, attainments and abilities of teachers, length of term time, and all other matters pertaining to education; but in no case shall white and colored children be taught together in the same school." It will be observed, from a reading of this section, that the board acts upon the advice and assistance of the trustees in each ward or school district, and that upon this advice and assistance the board "shall make all the necessary arrangements for the instruction of the white and colored youths in separate schools." This section gives the board no discretion. It is compulsory upon it to establish proper arrangements to educate the children of both races and to provide the same facilities for each as to school-houses, fixtures, and the various other matters pertaining to education. This ninth section relates, in our opinion, entirely to the common schools and not to the matter of high schools. It does not control the board in the exercise of its discretion under the tenth section; that section relates to different and independent schools. The ninth section does not contemplate a system of high schools, as contended for by defendants in error. The schools to be established under the tenth section are separate from and independent of those established under the preceding section. They were not to be free schools, as contemplated in the other sections of the

act, but the pupils were required to pay tuition. It is therefore not a free high school. For these reasons and under the facts disclosed by the record we think that the board of education did not abuse its discretion in discontinuing the high school established for the colored race.

3. It is claimed in the petition that if the action of the board of education is authorized by the tenth section of the act of 1872 it is in violation of the Constitution of the United States and of this State. What provision of the constitution of this State is violated is not stated, either in the petition or in the brief of counsel. We know of no provision of the State constitution which is violated by the action of the board. It is claimed that this action is in violation of the 14th amendment to the Constitution of the United States. This point in the case was not argued before us by the learned counsel for the defendant in error, either orally or by brief, the only mention made of it in his brief being at the conclusion, where he says: "To deny the colored school population of Richmond county the equal protection of the educational laws of force in that county is to violate not only the State law, but the Constitution of the United States, fourteenth amendment." He cites no authority to sustain this contention. He does not point out in his brief which paragraph of the fourteenth amendment is violated. If it be the first, he does not point out what clause of that paragraph is violated, whether the privileges or immunities of citizens of the United States are abridged, whether his clients are deprived of life, liberty, or property without due process of law, or whether his clients are denied the equal protection of the laws. It is difficult, therefore, for us to determine whether this amendment has been violated. If any authority had been cited, we could from that have determined which paragraph or clause counsel relied upon, but as he has left us in the dark we can only say that in our opinion none of the clauses of any of the paragraphs of the amendment, under the facts disclosed by the record, is violated by the board. There is no complaint in the petition that there is any discrimination made in regard to the free common schools of the county. So far as the record discloses, both races have the same facilities and privileges of attending them. The only complaint is that these plaintiffs, being tax-payers, are debarred the privilege of sending their children to a high school which is not a free school, but one where tuition is charged, and that a portion of the school fund, raised by taxation, is appropriated to sustain white high schools to which negroes are not admitted. We think we have shown that it was in the discretion of the board to establish high schools. It being in their discretion, they could, without a violation of the law or of any constitution, devote a portion of the taxes collected for school purposes to the support of this high school for white girls and to assist a country denominational high school for boys. In our opinion, it is impracticable to distribute taxes equally. The appropriation of a portion of the taxes for a white girls' high school is not more discrimination against these colored plaintiffs than it is against many white people in the county. A tax-payer

who has boys and no girls of a school age has as much right to complain of the unequal distribution of the taxes to a girls' high school as have these plaintiffs. The action of the board appears to us to be more a discrimination as to sex than it does as to race. While the board appropriates some money to assist a denominational school for white boys and girls, it has never established a high school for white boys, and, if the contention of these plaintiffs is correct, white parents who have boys old enough to attend
 97 a high school have as much right to complain as these plaintiffs, if they have not more. Without, therefore, going into an analysis of the different clauses of the fourteenth amendment of the Constitution of the United States, we content ourselves by saying that, in our opinion, the action of the board did not violate any of the provisions of that amendment. It does not abridge the privileges or immunities of citizens of the United States, nor does it deprive any person of life, liberty, or property without due process of law, nor does it deny to any person within the State the equal protection of its laws.

Judgment reversed, all the justices concurring.

98 CLERK'S OFFICE, SUPREME COURT OF GEORGIA,
 ATLANTA, GA., Nov. 1st, 1898.

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the supreme court of Georgia in the case therein stated.

Witness my signature and the seal of said court hereto affixed the day and year above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled 2, 10, '98, Z. D. H.]

99 Supreme Court of the State of Georgia.

ATLANTA, GA., March 23, 1898.

The honorable supreme court met pursuant to adjournment.
 The following judgment was rendered:

BOARD OF EDUCATION OF RICHMOND COUNTY }
versus
 J. W. CUMMING ET AL. }

This case came before this court upon a writ of error from the superior court of Richmond county, and, after argument had, it is considered and adjudged that the judgment of the court below be reversed, because the court erred in granting an injunction, all the justices concurring.

Bill of costs, \$10.00.

Supreme Court of the State of Georgia.

CLERK'S OFFICE, ATLANTA, *November 1, 1898.*

I certify that the above is a true extract from the minutes of the supreme court of the State of Georgia, Georgia, and that Frank H. Miller paid the above bill of costs.

Witness my signature and the seal of said court affixed the day and year last above written.

Z. D. HARRISON, *Clerk.*

[Ten-cent U. S. internal-revenue stamp, canceled 2, 10, '98, Z. D. H.]

99½ [Endorsed:] Filed in office of clerk of the superior court of Richmond county, Georgia, this 28th day of November, 1898. Wm. E. Keener, clerk of the superior court of Richmond county, Georgia.

100 STATE OF GEORGIA,
Richmond County. }

I, William E. Keener, clerk of the superior court of said county, making return to the writ of error of the honorable the Supreme Court of the United States in the cause in said superior court lately depending, wherein J. W. Cumming, James S. Harper, and John C. Ladeveze were plaintiffs and The County Board of Education of Richmond County, State of Georgia, was defendant, do hereby certify that the above and foregoing typewritten pages, numbered consecutively from 1 to sixty-one (61), both inclusive, contain a full, true, and complete transcript of all the proceedings had in said cause in said superior court as the same are of file and record in the office of the clerk of said superior court.

And I do further certify that the above and foregoing transcript of bond of said plaintiffs, dated November 16th, 1898, is a full, true, and complete copy of said original bond as the same is now of file in said office.

And I do further certify that the assignment of errors, the citation, and the return of service on said citation hereunto annexed are the true original assignment, citation, and return filed in said office.

And I do further certify that the certified copy of the bill of exceptions in said cause and the certified copy of the opinion and judgment of the supreme court of Georgia in said cause hereunto annexed are the identical certified copies filed in said office in said cause.

In testimony whereof I have hereunto set my official signature

and the seal of said superior court on this the 29th day of November, A. D. 1898.

[Seal Superior Court, Richmond.]

WILLIAM E. KEENER,
Clerk of the Superior Court of Richmond County, Georgia.

[10-cent U. S. internal-revenue stamp, canceled —, '98, W. E. K.]

Endorsed on cover: File No. 17,206. Georgia superior court, Richmond county. Term No., 621. J. W. Cumming, James S. Harper, & John C. Ladeveze, plaintiffs in error, vs. The County Board of Education of Richmond County, State of Georgia. Filed December 5th, 1898.

Injunction.

Richmond Superior Court, October Term, 1897.

CUMMING ET AL.

vs.

BOARD OF EDUCATION RICHMOND COUNTY.

And now comes the defendant, upon being served with the amendment or replication of the plaintiff, and in reply thereto says, subject to its demurrer of file:

1st. It admits that the institutions referred to in the first allegation are private educational institutions under sectarian control, and have no connection whatever with the public-school system conducted by this board, but says that the impression sought to be conveyed by said allegation that there is sectarian, denominational teaching enforced in said schools is untrue; that said schools are open to the public generally, and any child of sufficient scholarship and moral character can enter said schools, irrespective of his or her religious belief.

2nd. This defendant denies the allegations of paragraph two, and says that it has a right to charge for tuition in high schools.

3rd. This defendant denies the allegations of paragraph three, and calls for strict proof thereof at the hands of the plaintiff.

GANAHL & GANAHL,
FRANK H. MILLER,

Def'ts Att'ys.

Supreme Court of Georgia, October Term, 1897.

THE BOARD OF EDUCATION OF RICHMOND COUNTY

vs.

J. W. CUMMING ET AL.

Filed in the clerk's office of Richmond superior court December 30, 1897.

J. B. KEENER, D. C.

Endorsed.

GEORGIA,
Richmond County.

Service acknowledged of a copy of the within bill of exceptions for J. W. Cumming, James S. Harper, and John C. Ladeveze, defendants in error.

Dec. 30, 1897.

SALEM DUTCHER,
H. PHINIZY,
J. S. REYNOLDS,

Att'ys for Def'ts in Error.

Counsel's P. O., Augusta, Ga.

Service acknowledged of the within bill of exceptions. Copy and all further service waived.

Dec. 30, 1897.

CHAS. S. BOHLER,
Tax Collector, Richmond Co., Ga.

Filed in the clerk's office of the supreme court of Georgia Jan'y 1, 1898.

LOGAN BLECKLEY,
D. C. S. C., Ga.

CLERK'S OFFICE, SUPREME COURT OF GA.,
ATLANTA, GA., Dec. 20, 1898.

I hereby certify that the above are true copies of entries on the original bill of exceptions of file in this office in the case above stated.

Witness my signature and the seal of said court, hereto affixed the day and year last above written.

[Seal Supreme Court of the State of Georgia, 1845.]

Z. D. HARRISON,
C. P. S. C. Ga.

[Ten-cent U. S. internal-revenue stamp, canceled 2, 12, '98, Z. D. H.]

Richmond Superior Court.

J. W. CUMMING, JAMES S. HARPER, and JOHN
C. Ladeveze, Plaintiffs,

vs.

THE COUNTY BOARD OF EDUCATION OF RICH-
mond County, State of Georgia, and Chas. S.
Bohler, Tax Collector of said County.

} Petition in Equity.

STATE OF GEORGIA, }
Richmond County. }

I, William E. Keener, clerk of the superior court of the county of Richmond, State of Georgia, hereby certify the foregoing page, number one hereof, is a true and correct copy of the amendatory answer of the Board of Education of Richmond County filed by it in the above-stated case.

I further certify that what appears on page two hereof, save and except the certificate of the clerk of the supreme court thereon, is a true and correct copy of the endorsements appearing upon the copy — bill of exceptions retained in the clerk's office of the said superior court of Richmond county when transmitting the original bill of exceptions to the supreme court, pursuant to the order of the judge of the said superior court December 30, 1897.

I further certify that what appears on page one hereof was inadvertently omitted in making out transcript of the record in the

above-stated case and certified to by me November 29, 1898, for transmission to the Supreme Court of the United States.

In witness whereof I have hereunto set my hand and seal this seventh (7) day of January, 1899.

WM. E. KEENER,
Clerk Superior Court, Richmond County, Georgia.

Supreme Court of the United States, October Term, 1898.

J. W. CUMMING, JAMES S. HARPER, and JOHN C. LADEVEZE, Plaintiffs in Error,

vs.

THE COUNTY BOARD OF EDUCATION OF RICHMOND County, State of Georgia.

No. 621.

In error to the superior court of Richmond county, State of Georgia

It is hereby stipulated and agreed between the counsel in the above-stated cause that the three preceding pages shall be filed with the clerk of the Supreme Court of the United States as a supplement to the transcript of the record filed December 5, 1898; the same to stand and be considered for all purposes whatsoever as if filed at the same time with the original transcript of the record, this agreement being entered into to avoid any suggestion of diminution of the record or application for certiorari in aid thereof.

GEO. F. EDMUNDS,
Counsel & Solicitor for Plaintiffs in Error.
JOS. GANAHL,
FRANK H. MILLER,
Solicitors for Defendant in Error.

[Endorsed:] Transcript of the record. Supreme Court of the United States, October term, 1898. No. 621. J. W. Cumming, James S. Harper, and John C. Ladeveze, plaintiffs in error, vs. The County Board of Education of Richmond County, State of Georgia. In error to the superior court of Richmond county, State of Georgia. Filed December 5, 1898. Original agreement between counsel to the filing of an additional portion of the record.

[Endorsed:] File No., 17,206. Supreme Court U. S., October term, 1898. Term No., 621. J. W. Cumming et al., pl'ffs in error, vs. The County Board of Education of Richmond County, Ga. Stipulation and addition to record. Filed Jan'y 17, 1899.