

JAN 4 1899

JAMES H. MCKERNEY,  
Clerk.

No. 164

Motion to advance.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898.

Filed Jan 6<sup>th</sup>, 1899.

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.

MOTION TO ADVANCE.

Now come the said plaintiffs in error and respectfully move the court that said cause be advanced for hearing at the earliest practicable time in this present session.

For cause for the granting of this motion they respectfully state that the suit was brought in the proper court of the State of Georgia by them, being colored citizens of the United States and taxpayers for public school purposes in the county of Richmond, and having children suitable for and desirous of public high school education in Augusta, in said county, to compel the Board of Education either to give their children the advantages of public high school education enjoyed by the children of the white citizens there, or else to compel said Board of Education to refrain from carrying on white high schools for the support of which the plaintiffs were taxed.

There was no dispute in respect of the fact that the Board of Education was carrying on one or more public high schools for white children, and that it had abolished or suspended during its discretion the high school for colored children, which had been carried on for several years. There was no claim that there was not a sufficient number of colored children to warrant a high school for them, but

it was claimed that there was a greater need for the elementary education of colored children. What was the comparative need in respect of the schools for white children does not appear.

The case was heard in the Superior Court of Richmond County upon its merits, and it was there held that while the collector of taxes, who was made a party in the first instance, could not be enjoined from collecting the school taxes from the plaintiffs in error and other colored citizens, and he was dismissed, the School Board had no authority to continue to carry on public high schools for white children while they refused to continue to carry on a high school for the colored children. This was determined upon two grounds:—

*First*, because the statutes of Georgia did not justify such a course of conduct; and,

*Second*, because if they did they would be in violation of the Constitution of the United States.

See opinion of Judge Callaway. (Record, pages 35–38.)

From this decree the Board of Education appealed to the Supreme Court of the State, which held and determined that the statutes of Georgia authorized the School Board, in their discretion, to do the acts referred to, and that these statutes did not conflict with the Constitution of the United States. (Record, pages 53–58.)

The case was remanded to the lower court, and pursuant to the judgment of the Supreme Court the petition was dismissed. (Record, pages 38, 39.)

It is submitted that the question of the constitutionality of the laws of the State of Georgia, as construed by its Supreme Court, affecting the *status* of the colored taxpayers of the whole State in respect of being taxed for the support of high schools for the children of white citizens, while they are denied similar public high school advantages for their own children, is one of peculiar, and, at this time especially, of very great public importance to the peace, safety, and good order of all the States in which considerable numbers of both races dwell, as well as to the interests of the taxpayers of the African race.

The record shows that this fundamental question, arising under the Constitution of the United States, was stated in the original petition, and was distinctly passed upon by the Supreme Court of the State.

It is therefore respectfully submitted that the case is one that falls within the seventh section of Rule 26 of this court, as one attended by the special and peculiar circumstances therein stated—it being one that involves the immediate public interests of equal opportunities for education of all the children of people of the colored race in every State in which separate schools for the two races are established; and involves, also, the right of a Government to impose taxation upon any class of its citizens for public objects from which they, because of their race, are denied any participation of benefits.

GEO. F. EDMUNDS,

*Attorney and of Counsel for Plaintiffs in Error.*