Supreme Court of the United States.

OCTOBER TERM, 1898. No. 151.

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.

BRIEF FOR THE PLAINTIFFS IN ERROR.

By GEO. F. EDMUNDS,
Of Counsel.

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STATEMENT.

On the 28th of November, 1898, the plaintiffs, citizens of the African race, filed their petition in said court, setting forth:—

First.—That they were citizens and residents, property owners and taxpayers in Richmond County.

Second.—That the defendant, the board of education, was a body existing for the management of schools in that county under an Act of the Georgia Legislature of August 23d, 1872.

Third.—That the board is empowered by law to levy and expend taxes in said county according to its judgment of what may be necessary for public school purposes.

(One Bohler, the collector of taxes, was also made party; but he was dismissed on the first hearing by the court, and the case has since proceeded as between the plaintiffs and the school board.)

Fourth.—That on July 10th, 1897, the board levied for that year for school purposes, including the high schools in said county, a tax of $4500, being two and two-tenths mills on each $100 taxable property, and that the tax was being collected and paid over for the school uses.

Fifth.—The petitioners made no objection to the tax, except as it regarded so much of it as was to be applied to the high schools.

Sixth.—They objected to that part on the ground that the school board were maintaining two white high schools for the benefit of the white children of the county and from which the colored children were excluded by the standing orders of the board. (Record, page 2.)

Seventh.—That at least $4500 of the tax had already been levied and collected, to be used by the board for the support of the high schools from which the children of the petitioners were excluded, although otherwise qualified, on account of their color.

Eighth.—That the board had then on hand large sums of money, the proceeds of taxes levied on the petitioners in common with other taxpayers, for the purposes of education; and that the board possessed large establishments for school purposes.

Ninth.—That the board has no right to expend any part of said funds for maintaining any system of high schools in the county wherein the colored school population is not given equal facilities for instruction; but that the said board, notwithstanding, had expended and was continuing to expend the moneys thus raised by the taxation of the petitioners for carrying on and supporting white high schools while it refused to keep up a colored high school.

Tenth.—That the board, on the 10th of July, 1897, abolished the colored high school that had heretofore existed, although it had sixty colored pupils, among whom were the children of all the petitioners; and it had refused on petition to provide any facilities for the high school education of colored children. (Record, pages 3, 4.)

Eleventh.—The petition set out that this denial by the board was in violation of the Constitution of the United States. It prayed that the tax collector be enjoined from collecting so much of the tax as related to the white high schools, and that the board be enjoined from using any funds so derived from taxation for maintaining the white high schools. (Record, page 4.)

The answer of the board admitted the *status* of the petitioners and the facts alleged, excepting that it asserted a want of information as to whether the petitioners had children who had been enjoying the benefits of the colored high school so abolished. It admitted that it had maintained, and was continuing to maintain, two white high schools, one for girls and one for boys, from which colored children were excluded. (Record, page 11.) It contended that the colored high school was abolished with the best of economical motives, alleging that large numbers of young colored children were being turned away from the primary grades for want of accommodation, and asserted that a great many more children of the primary grades could be accommodated in the building used for a colored high school than there were colored scholars in the high school. It did not claim that the white primary schools were not adequate for the full accommodation of all children, or that the white high schools were overcrowded, or that any children were excluded therefrom for want of suitable accommodations. It did claim that there were three private and sectarian schools for colored children where

the then sixty or more colored children attending the colored high school when it was abolished could get the same advantages for the same tuition fees that they had to pay in the abolished public school; and therefore they ought to be contented.

The management and control of the primary schools are in the local trustees, and not the board. (Record, page 12.)

The board admitted that the cost of the white high schools would be $4500 for the then current year. It admitted that it was using the tax funds for carrying on the two white high schools, and intended to continue so doing. (Record, page 13.) And it insisted that this action of the board did not deny the colored race the full protection of the law, and so forth. (Record, page 14.)

Twelfth.—The board, in Exhibit C, attached to its answer (Record, pages 18, 19), declared its ground for action in abolishing the colored high school to be "that the board of education is not liable to maintain the negro high school and also extend the negro primary schools," for the reason that the lack of funds forbade it. And that, as before stated, the private colored schools could give the colored children increased education without additional personal expense. (Record, page 19.) In the same series of exhibits, and at the same time, the board sets forth the excellent progress of the two white high schools, and nowhere makes any suggestion of want of accommodation or lack of funds, either for the primary or high schools.

It was proved that each one of the petitioners had a child or children attending the colored high school when it was abolished, and that they protested against its abolition. (Record, pages 22, 23, 24, 25.)

It was also proved that about $32,000 derived from the State taxation of the complainants and the other taxpayers of the county and State was the quota belonging to the board for expenditure in that year. (Record, pages 25, 26.)

It appears that the colored high school so abolished was established in 1880 on the recommendation of the superintendent of schools upon the ground that the law required equal facilities for the education of the two races, and that its establishment would be only an act of tardy justice. And that the school board at that time unanimously agreed on the propriety of its establishment. (Record, page 26.) But on its abolition the board voted that it would reinstate the colored high school whenever, in its judgment, it thought it could afford it. (Record, page 29.)

The tax at that time levied for schools by the board being only one-quarter of one cent on each $100 of property.

It appeared that the salaries for the white high schools were upwards of $6500 per year, and for the colored high school, which was so abolished, was only about $1000. It appeared that the salaries for the white primary schools amounted to more than $47,000, while the salaries for the colored primary schools

amounted to only a little more than $13,000. (Record, page 29.)

On this state of facts, none of which were in dispute, the Richmond County Superior Court dismissed the tax collector, but granted the prayer of the petitioner against the school board, enjoining it from using the public funds for maintaining the white high schools until the board shall provide facilities for high school education for colored children, of the same character, upon the ground that the conduct of the school board was in violation of the school laws of the State; and, if it were not, that it would be in violation both of the Constitution of Georgia and of the Fourteenth Amendment of the Constitution of the United States. (Record, pages 35–38.)

From this decree the board of education appealed to the Supreme Court of the State. The Supreme Court of the State on the 23d of March, 1898, reversed the decree of the Superior Court on the ground, as appears in its opinion, that the establishment or refusal to establish high schools for colored children, although the high schools for white children were established and paid for by taxation, was entirely a matter in the discretion of the school board, and that the colored taxpayers could be lawfully compelled to pay taxes for the support of white schools, although the authorities refused to establish colored high schools when, as in this case, there were a sufficient number of pupils qualified and desirous of and seeking to be thus educated. And that such action of the school board was not in violation of the Constitution of the United States. (Record, pages 53–58.)

The case was thereupon remitted to the Superior Court and the petition dismissed. (Record, pages 38, 39.) Whereupon this writ of error was sued out.

ASSIGNMENT OF ERRORS.

The complainants aforesaid assign for error:—

First.—That the statute of the State of Georgia, as construed by the Supreme Court 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 Fourteenth 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 public high schools for the education of white persons exclusively, and in refusing to establish and maintain high schools for the education of persons similarly situated 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 or authorities of Georgia, taxed, and the money derived from their tax-

ation 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.

Fourth.—That the said Superior Court erred in dismissing the complaint of the plaintiff in error.

POINTS.

1. As construed by the Supreme Court of Georgia, the Constitution and laws of that State justified the board of education in maintaining, at the expense of the plaintiffs, public high schools for white children, and in abolishing and refusing to keep up any similar or equivalent school for the education of colored children. The record shows that the colored high school was necessary for the education of the same class of colored children as that of the white children, for which two public high schools were provided. It shows that there was a sufficient number of colored children receiving the benefits of the colored high school when it was abolished, and that their parents protested against its abolition. It shows that the defendants themselves considered the colored high school necessary by declaring, in connection with their abolition of it, that they would reinstate it "whenever the board, in their judgment, could afford it." (Record, page 29.)

2. It may be assumed that the decision of the Georgia Supreme Court, that the Constitution and laws of that State warranted the action complained of (whether reviewable here or not) was correct, although it would seem reasonably clear that the opinion of the inferior court was the sound one, unless the Constitution and laws of Georgia were designed by their framers to be illusory.

3. The question, then, is whether the board of education, under its authority to "establish schools of higher grade at such points in the county as the interests and convenience of the people may require," authorized it to establish and maintain the advanced schools for the sole interest of the white children, and to refuse to maintain a similar school for the benefit of the colored children, while (though this makes no difference in principle) the parents of such colored children were being taxed and their money expended to maintain such higher grade white schools? Although the first section of the eighth article of the Constitution of Georgia only made it *compulsory* that common schools should be established for the elementary branches of an English education, and required the races to be taught separately, the fourth section authorized counties and cities to tax for public schools, and to maintain them out of such taxation. It is under this authority that the public schools in the county of Richmond are carried on. This authorizes the counties and cities to go beyond elementary English education, and to provide, as most civilized States do, for that larger education which

teaches not only reading, writing, and arithmetic, but those things which lead to the enlargement of mental perceptions, respect for social order, and, indeed, everything that may tend to make the best state of society. It is under this authority that the board of education has undertaken to discriminate distinctly and by name between the two races, and to impose upon one burdens of taxation from which they and their children receive no benefit, for the purpose of giving educational benefits necessary to public interests, to the white children alone. The sole pretense for this discrimination is, as expressly stated by themselves, that they cannot afford it. That is, that all of the public funds applicable to education of the higher grade in the public schools shall be devoted to the benefit of the white children, and none of it applied for the similar education of colored children, The excuse stated being that the board does not wish to increase taxation which they have the power to impose (then only one-fourth of one cent per $100), and that it can make good use of the money that would otherwise be expended in support of a colored high school, for the elementary education of some colored children for which the common school houses at that time furnished no accommodation. It is not anywhere hinted by the defense that there were not adequate accommodations for all the white children, both in the common and high schools; from which it conclusively follows that the public funds have been devoted to the complete provision for all the white children, when they had not for the colored children. The board of

education was, under the law as construed, the master of all this. Every provision, therefore, having been made for the full education of the white children, and inadequate provision having been made for the elementary education of the colored children, the board abolishes the colored high school because it cannot afford to maintain it. This, it is earnestly submitted, is not the reasonable exercise of such discretion as the board may have lawfully had, or the exercise of any discretion at all. It is the arbitrary denial of the equal protection of the laws to these persons of the colored race. It is believed that all the numerous decisions of this court upon this and analogous subjects are agreeable to the foregoing statement. It is unnecessary to refer to more than a very few of them.

In Chicago, Burlington, &c., Railroad *vs.* Chicago, 166 U. S., page 226, it was held that the prohibitions of the Fourteenth Amendment referred to all the instrumentalities of the State, legislative, executive, and judicial, and that if any public officer under a State Government deprives another of any right protected by that amendment he violates the Constitution. In Gulf, &c., R. R. *vs.* Ellis, 165 U. S., page 154, it was declared that constitutional provisions of the character herein questioned should be liberally construed, and that the courts should be watchful to guard against any stealthy encroachments thereon, and that otherwise the protecting clauses of the Fourteenth Amendment would be a mere rope of sand, in no manner restraining State action. It declared that classifications and distinctions could not be made arbitrarily.

In this case the discrimination was arbitrary, no matter how good the motive of the board may possibly have been. If such action can be upheld, the board will forever be the sole judge of when it can "afford" to give the colored race the same advantage of public education that they tax them to give to the whites. If there is really any life or spirit in the Fourteenth Amendment, such conduct cannot be upheld. In Yick Wo *vs.* Hopkins, 118 U. S., 356, this court said that, in spite of what the State court might have thought about it, it would put upon the ordinances of San Francisco an independent construction, and determine whether the proceedings under them were in conflict with the Constitution of the United States or not. In that case the ordinance vested in a board of supervisors the discretion of granting or withholding their assent to the use of wooden buildings as laundries, and so forth. The State court held that that was a discretion not judicially reviewable. This court denied the proposition, and held that while the ordinance gave absolute power to the board, the power was not confided to it as a discretion of regulation, but was to be exercised at their mere will, and that, so construed, it could not be maintained when exercised so as to produce inequality. This court held that the Fourteenth Amendment required "not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights;" and that "no greater burdens should be laid upon one than

are laid upon others in the same calling and condition." This court held that the principles upon which our Constitution rests do not "mean to leave room for the play and action of purely personal and arbitrary power." And it held that where the law gives a discretion, that discretion cannot be used, under color of regulating, to subvert or injuriously restrain a right, and that such questions are always open to judicial inquiry. To use the language of this court in that case, the board has, in the exercise of its authority applied and administered the law with "an unequal hand, so as practically to make unjust and unethical discriminations between persons in similar circumstances, material to their rights;" and that in such case "the denial of equal justice is still within the prohibitions of the Constitution." The case of Plessy *vs.* Ferguson, 163 U. S., 537, chiefly relied upon by the other side, is entirely consistent with and supports our contention. The case itself determined that a State law requiring separate railway carriages for the two races was valid, if provision were made for equal accommodations for both races, and the case stood upon the solid and indispensable ground that neither race was discriminated against in any particular, and it quoted with approval the opinion of the Court of Appeals of New York, that "when the Government, therefore, has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized," and so forth. In Strauder *vs.* West Virginia, 100 U. S., page 303, this court held that the Fourteenth Amendment "was de-

signed to assure to the colored race the enjoyment of all the civil rights that under the law are enjoyed by white persons, and to give to that race the protection of the general government in that enjoyment whenever it shall be denied by the States." The court further said that the words of the amendment, while prohibitory, "contained by necessary implication a positive immunity of right, most valuable to the colored race—the right to exemption from unfriendly legislation against them distinctively as colored—the exemption from legal discriminations implying inferiority in civil society, lessening the security of their rights which others enjoy," and so forth.

4. It will thus be seen that the fact that the school board had authority to establish and maintain public high schools at convenient places, and so forth, gives them no authority to establish and maintain public high schools for one race and to refuse to maintain them for the other, when the conditions and necessities for that advanced education existed in one race as well as the other in the place where their authority was to be exercised. These necessities and conditions are by the evidence of the board itself proved to exist.

The necessity for the public high schools for the colored children is, I repeat, distinctly confessed, and the only pretense of excuse for abolishing it, as stated by the board itself, was that it could employ the money necessary for its maintenance more advantageously by devoting it to common school purposes, while it could continue to employ all the money necessary to carry on the two white high schools in the same place. The mere statement

of the case, in view of what this court has already decided, condemns such conduct, no matter how good the motive or how ethically wise the action of the board may have been had it not been restrained by the fundamental provisions of the Constitution, although it is not by any means admitted that the motive of the board was purely in the public interest further than to avoid raising taxes to carry on the colored schools as well as the white ones, and although it is denied that the action was ethically wise.

5. In respect of the contention stated in the brief on the other side that Bohler, the tax collector, should have been made a party to this writ of error, it is sufficient to say that the petition as to him was dismissed by the Superior Court at the hearing (Record page 38), and that no appeal was taken by the petitioners. And it appears that when the case was remitted from the Supreme Court of Georgia that only the board of education had judgment for its costs, Bohler having disappeared, as before stated. (Record, pages 38, 39.) And it further appears that it was only the board of education that took exceptions and carried the cause to the Supreme Court of the State. (Record, pages 43-46.) The whole relief sought against Bohler was denied, and the petitioners acquiesced. Bohler therefore ceased to be any longer interested in the cause or a party thereto. His presence as a party was not in any respect essential or proper for that part of the controversy remaining. It may be said with all respect to the learned counsel on

the other side that his point as to parties is an imaginary technicality, even if the record does not show a formal dismissal of Bohler. (See 113 U. S., page 548.)

The provisions of the Constitution and statutes of Georgia on the subject are annexed.

GEO. F. EDMUNDS,
Of Counsel for Plaintiffs in Error.

CUMMING CASE.

Constitution of Georgia, adopted December, 1877.

ARTICLE VIII.

Education.

"Section 1. *Common Schools.*—There shall be a thorough system of common schools for the education of children in the elementary branches of an English education only, as nearly uniform as practicable, the expenses of which shall be provided for by taxation, or otherwise. The schools shall be free to all children of the State, but separate schools shall be provided for the white and colored races."

"Sec. 4. Counties and cities may tax for public schools. Authority may be granted to counties, upon the recommendation of two grand jurors, and to municipal corporations, upon the recommendation of the corporate authority, to establish and maintain public schools in their respective limits, by local taxation; but no such local laws shall take effect until the same shall have been submitted to a vote of the qualified voters in each county or municipal corporation, and approved by a two-thirds vote of persons qualified to vote at such election; and the General Assembly may prescribe who shall vote on such question.

"Sec. 5. *Local Schools not Affected.*—Existing local school systems shall not be affected by this Constitution. Nothing contained in section 1 of this article shall be construed to deprive schools in this State, not common schools, from participation in the educational fund of the State, as to all pupils therein taught in the elementary branches of an English education."

(Code of 1892, pages 1832–2.)

The Act of August 23d, 1872, "To regulate public instruction in the county of Richmond," is as follows:—

"SECTION 1. That from and after the first Saturday in January, 1873, the general interest of education in the county of Richmond shall be confided to the control and management of a board of education, consisting of three legal voters, freeholders in said county, 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 Augusta, in said county. On the first Saturday in November, 1872, the legal voters in each district, ward, incorporated town or village, shall elect three freeholders from their number as members of the county board of education; one for a term of three years, one for a term of two years, and one for a term of one year, and annually thereafter said legal voters shall, on the first Saturday in November, elect one member of the county board for a term of three years. The ordinary of Richmond County, for the time being, shall be *ex-officio* a member of the said county board of education.

"SEC. 2. That the said board of education shall be a body politic and corporate in law, and as such may contract and be contracted with, sue and be sued, plead and be impleaded in any court of the State having competent jurisdiction, and receive any gift, grant, donation, or devise made for the use of schools within their jurisdiction, and moreover, they shall be, and they are hereby, invested in their corporate capacity with the title, care, and custody of all schoolhouse sites, school libraries, apparatus, or other property belonging to the educational department of the county as now organized or hereafter to be organized, with all power to control, lease, sell, or convey the same, in such manner as they may think will best subserve the interest of common schools and cause of education.

"SEC. 3. That the members of the county board shall meet on the second Saturday in January, 1873, at the hour of 12 M., at the court house, in the city of Augusta; and having administered to each other an oath, or affirmation, faithfully and impartially to discharge the duties of their office, they shall organize by electing one

of their number as president, and by electing as secretary any citizen of Georgia having experience and skilled in the business of education, which latter office, by virtue of such election, shall become the county school commissioner; the president and county school commissioner shall each hold their offices for the space of three years from and after the day of their installation; ten members of the board shall constitute a quorum for the transaction of business; the board shall have authority to fix the number of and occasion of its regular meetings, and the president may call special meetings: *Provided*, That all regular or special meetings shall be held in the city of Augusta: *And provided further*, That no special meeting shall be legal unless after due publication in the city papers, or after special notice from the secretary to each and every member; in the absence of the secretary at any meeting the president shall appoint a secretary *pro tem.*, and, in the absence of the president, if a quorum be in attendance, the board may proceed to business by electing a president *pro tem.*; by a three-fourths vote the county board shall have authority to remove the county commissioner before the expiration of his term of office, and to elect a new commissioner in his stead: *Provided*, That the said board shall state their reasons for such dismissal to said commissioner if desired by him; the county board shall also have authority to fill any vacancy which may occur in their number from any ward district, incorporated town, or village, in said county; and the person chosen by them to fill such vacancy shall serve for the entire unexpired term of the member deceased, resigned, or disqualified; if deemed expedient, the board may adopt by-laws for its own government.

"SEC. 4. (Relates solely to appointment of teachers, &c.)

"SEC. 5. *And be it further enacted*, That the county board of education shall control the financial department of the public school system. On or before the fifteenth day of December in each year, the State School Commissioner shall remit, at his discretion, such quota of the public school fund as may be apportioned to Richmond County, to any solvent chartered bank in the city of Augusta, to be selected by him for this purpose, and deposit the same therein to the credit of the county board of education. In the same bank the county tax collector shall deposit, to the credit of the county board,

all amounts he may collect under any school tax levied as hereinafter provided. Certificates of deposit from such bank shall be sufficient and legal receipts to the State Commissioner and the tax collector, for all intents and purposes, of their respective offices, under the laws of this State. No portion of the school fund shall be drawn from the bank except upon checks, supported by sufficient vouchers, authorized by the county board of education and signed by its president and secretary: *Provided*, That it shall be competent, at any time, for the county board, under orders from the State School Commissioner, to withdraw the county school fund from the bank which he may previously have designated, and deposit the same in any other bank which he may thereupon deem it proper to designate: *And provided further*, That in case of war, or other unusual emergency, the county board shall have authority to take whatever steps are necessary for the safe custody of said county school fund: *And provided further*, That in the expenditures by the board of the county school fund, one-third of such fund shall be equally divided between the several school districts, and the remainder, after paying all proper expenses of the board at large, be apportioned upon the basis of the aggregate number of youths in such districts between the ages of six and eighteen years. The quota apportioned for each school district shall be used for such purposes as may be prescribed by the local trustees for such school districts as hereinafter provided. The county school board shall fix the salaries and superintend the payment of the teachers. The account of every teacher must be indorsed by at least two members of the board from the school district in which the teacher is employed, certifying that the amount is correct and has not been paid, and that the teacher has furnished all reports and statements as required by law. The county board shall have authority to pay any account rendered by the keeper of a private school for any children between the ages of six and eighteen years, actual residents of Richmond County: *Provided*, That such accounts shall be certified in the same manner as those of teachers regularly appointed for the public schools: *And provided further*, That the said private teacher shall have received a regular certificate of competency from the county board.

"SEC. 6. *And be it further enacted*, That the members of the county board shall act as trustees for their respective school

districts. As trustees in such districts, they shall have exclusive authority to employ and dismiss teachers; to examine and pass upon teachers' accounts before presentation of the same to the county board; to visit and examine the schools within their jurisdiction as often as they may deem necessary, inviting, whenever expedient, proper persons to assist them in such duty: *Provided*, That the trustees shall not employ as teachers any person who is without a certificate of competency from the county board. The trustees in any ward or school district shall have authority to exclude any book or books from use in the exercises of any school within their jurisdiction, when, in their judgment, such course may be deemed wisest and best. It shall be the duty of the trustees to record their proceedings in a book provided for the purpose, together with the minutes of all school meetings held within their respective school districts, which minutes shall be signed by a majority of such trustees. The trustees in each school district shall have exclusive authority to establish such schools within their jurisdiction as, in their judgment, may be expedient.

"SEC. 7. *And be it further enacted*, That in all matters mentioned in section 6, the trustees shall be free and independent of the county board; but it shall be the duty of the said trustees to manage and control the other local interests of their respective school districts, subject to the rules and regulations prescribed by the county board at large. The trustees shall not have authority to levy any tax for local expenses, but shall certify and forward all bills, claims, or accounts pertaining to their school districts to the county commissioner for the approval of the county board. Should the local trustees in any school district fail to discharge their duties in regard to the school within their jurisdiction, it shall be the duty of the board at large to perform such duties and secure to such schools the same privileges enjoyed by other schools in the county.

"SEC. 8. *And be it further enacted*, That it shall be the duty of the trustees in each school district to take, or cause to be taken annually, between the first and fifteenth day of October in each year, an enumeration of all the unmarried white and colored youths, noting them separately, between the ages of six and eighteen years, residents within such school district, and not temporarily there,

designating between male and female, and return a certificate copy thereof to the county commissioner.

"SEC. 9. *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 necessary arrangements for the instruction of the white and colored youth 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 appertaining to education, but in no case shall white and colored children be taught together in the same school.

"SEC. 10. *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 interests and convenience of the people may require, which school shall be under the special management of the board at large, who shall have full power, in respect to such schools, to employ, pay, and dismiss teachers, to build, repair, and furnish the schoolhouse 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.

"SEC. 11. *And be it further enacted*, That each member of the county board of education shall receive the sum of two dollars for his services at each meeting of said board, upon which he shall be in actual attendance, which amount shall be paid out of the school fund in the same manner as other bills: *Provided*, That no member of said board shall receive more than two dollars for services during any one month: *And provided further*, That the members of said board shall not receive any compensation for their services as trustees in their respective school districts.

"SEC. 12. *And be it further enacted*, That it shall be the duty of the county commissioners to be present at the meetings of the board, and record in a book, provided for the purpose, all their official proceedings, which shall be a public record open to the inspection of

any person interested therein; all such proceedings, when so recorded, shall be signed by the president and county commissioner, as secretary of the board. The county commissioner shall also provide a blank book, in which he shall keep the minutes of his own official proceedings; he shall deliver to his successor said record and all the books, papers, and property appertaining to his office; he shall report annually to the State School Commissioner the names of all persons to whom he has granted licenses, with the grade of such licenses, giving the number of males and females, the number, but not the names, of all whose applications for licenses have been rejected, and also the names of those whose licenses have been revoked.

"SEC. 13. *And be it further enacted*, That the county commissioner shall constitute the medium of communication between State and School Commissioner and subordinate school officers, and also between the State School Commissioner and the schools; he shall visit every school in the county, at least once in every two months, for the purpose of increasing their usefulness, elevating, as far as practicable, the poorer schools to the standard of the best, endeavoring to promote uniformity in their organization and management, and to secure their obedience to the school laws, and their compliance with the regulations of the State School Commissioner; he shall receive from the trustees their reports of enumeration and all other reports required by law from the said trustees, and he shall gather all necessary information in regard to private schools, high schools, colleges, and other institutions of learning, and, combining such information, he shall forward to the State School Commissioner, on or before the first day of November in each year, a complete report of the educational facilities afforded by the county; he shall advise with the trustees and teachers in regard to all matters pertaining to their respective duties, furnishing them with regular forms, blanks, instructions, regulations, and reports issued from the Department of Education.

"SEC. 14. (Relates only to pay of county commissioner.)

"SEC. 15. (Relates only to power over teachers.)

"SEC. 16. *And be it further enacted*, That at their first meeting in January of each year, or as soon thereafter as practicable, the county board, by a two-thirds vote of all its members, shall levy such tax as they may deem necessary for public school purposes; it shall be the duty of the county commissioner to make out an assessment and return of such tax against all the legal taxpayers in the county and furnish a copy of said assessment and return to the county tax collector, whose duty it shall be to collect the said tax and deposit it to the credit of the county board in such bank in the city of Augusta as may be designated by the State Commissioner for the deposit of the county school fund.

"SEC. 17. *And be it further enacted*, That it shall be the duty of teachers conscientiously to the utmost of their capacity to instruct the youth committed to their care, imparting to them knowledge of the studies embraced in the curriculum of the school, instilling into their minds and hearts the eternal principles of right and truth, and endeavoring to inspire their natures with courage, love of country, and reverence for the great and good.

"SEC. 18. (Relates only to reports of teachers.)

"SEC. 19. *And be it further enacted*, That admissions to all the public schools of the county shall be gratuitous to minors, between the ages of six and eighteen years, who are the children, wards, or apprentices of actual residents in Richmond County: *Provided*, That the county board shall have power to admit to said public schools other pupils, upon such terms, or the payment of such tuition, as the board may prescribe.

"SEC. 20. *And be it further enacted*, That no general law upon the subject of education, now in force in this State, or hereafter to be enacted by its General Assembly, shall be so construed as to interfere with, diminish, or supersede 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.

"SEC. 21. (Repeals conflicting laws.)

"Approved August 23d, 1872."

Another Act of August 23d, 1872, "To perfect the public school system and to supersede existing school laws," provided:—

"SEC. 12. That hereafter each and every county in the State shall compose one school district, and shall be confided to the control and management of a county board of education."

An Act of Georgia of February 22d, 1877, "To amend an Act entitled 'An Act to regulate public instruction in the county of Richmond,' approved August 23d, 1872, provided: 'That from and after the passage of this Act, section 10 of the above-mentioned Act be amended by adding thereto the following clause, to wit: 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 grade, as the board, from time to time, may fix and determine.'"

SEC. 2. (Repeals conflicting laws.)