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IN THE DISTRICT COURT OF THE UNITED STATES
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

GONZALO MENDEZ, et al.,
Plaintiffs.
-vs-
WESTMINSTER SCHOOL DISTRICT OR ORANGE COUNTY, et al.,
Defendants.

NO. 4292 M

PLAINTIFFS REPLY BRIEF

Let us examine the authorities cited by defendants, under his first leading

" The Court lacks jurisdiction over the subject -- "

he says--

" Education is purely a State Matter within the control of the States "

and cites--

"Cummings -vs- Richmond Board of Education 175 U. S. 528. The action involved the right of Negro children to attend high school. "

" The case was determined in 1899. This alone is not important except that in comparison with the latest language from our Courts as announced in Kerr -vs- Enoch, Pratt etc.(1945) -- the

changing views on constitutional impairments indicating the living, breathing and enlarging qualities of our constitutional guaranties-- yet in the Cummings -vs- Richmond case the Court said--

" The management of such schools cannot be justified except in the case of a clear and unmistakable disregard of right secured by the Supreme law of the land ."

We sumit that plaintiff herein by amply and by overwhelming proof demostrated a disregard by state school authorities " of rights secured by the Supreme law of the land".

The next authority cited is Gong Lum -vs- Rice 275 U. S. 78 where a chinese citizen of the United States was classed among the colored races and required to attend school with Negro children. Under the laws of Mississippi it was provided that"separate schools shall be maintained for children of White and colored races."

" The Court held that this provision of the Constitution divided the educable children into those of the pure white or Caucasian race, on the one hand, and the brown, yellow and black races, on the other, and therefore that Martha Lum of the Mongolian or yellow race could not insist on being classed with the whites under this constitutional division."

The defendants have insisted throughout their brief -"that race is not involved in this case " (page 2 lines 22-23) and again "that this case does not involve a racial segregation " (page 15 line 24).

They rely upon the settled policy and reasoning of the established authorities and in segregating children purely and solely upon a racial basis as their authority for segregating children of Mexican descent yet admit that such reason alone are in violation of Section 8003 of the State Education Code and that recourse

should be had to the State Courts for a remedy. Reading the following from Page 7 of the brief, wherein it is admitted.

> "If such are the facts, any Superior Court of the State of California would upon application grant a Writ of Mandate "--

This argument is mere sophistry. We are lost in a maze of legal verbeage, wherein the horse chesnut becomes the chesnut horse. The reasons for the segregation have been distorted to justify and sanction the results.

The Respondents shout under the guise of our State "Educational" Code, their can be no constitutional violations. As suggested by them.

> " Section 8003 of the Education Code cited by Amici Curiae permits a racial segrega - tion and <u>in our opinion any segregation upon a racial basis other than as permitted by said Section would be contrary to the laws of the State of California.</u> However this case does not involve a racial segregation." Page 15 lines 20-24- Resp. Brief.)

This Court has already stated that <u>segregation</u> was established by the evidence. This is segregation against a class. The test is- if a law rule or regulation is " <u>applied and administered by public authority with an evil eye and an unequal hand so as practically to make unjust and illegal discriminations between persons in similar circumstances</u>." (Yick Wo -vs- Hopkins 118 U. S. 356,373-374) it is the same as if the invidious discriminations were incorporated in the law itself.

If the action of the School Board in effect were the same as the California Education Code, that children of Mexican descent attend schools apart from the other children it would run afoul of the equal protection clause whether such discrimination were based on

these children being Catholic, Presbyterian, Free Mason, Jew or some other belief, religion or characteristic the school officials did not like.

The "evil eye and unequal hand" test easily may be gleaned from again reading the testimony of Mr. Kent, Mr. Hammerstan, Mr. Harris etc, where everything derogatory, unsavory and detrimental is attached to and associated with the child of Mexican descent, that he is unclean, dirty, afflicted with loath some deseases, ignorant, illiterate, poor and lacking in Americanization. Inferior to whites in matters of personal hygiene in their ability, in their economic and social outlook, their clothing and ability to take part in school activities. (See Resp. Trans. pages 85, 86, 87, 88, 89, 119, 120, 121, 122, 65, 67, 116,).

Not one child of Anglo Saxon descent is set apart because of any such reasons as applied to children of Mexican descent. Then what other reason or excuse can be given for such discriminatory tactics than that, it is the vicious operation and practice of the "evil eye and unequal hand " test and based upon the fact that these innocent children were born to parents of Mexican lineage, a class whom this puesdo school authorities do not like and did not desire their children or children of anglo saxon descent to associate with. This is the crux of the issue. Why evadem dodge or distort the issue? The veneer is to thin the arguement is sham and frivilous.

The truth of this accusations are found in the written words of Mr. Kent, wherein he advocates openly nay challenges the complete and absolute segregation of Mexicans from whites with impunity in his Thesis (in evidence) as though race superiority was an established practice in the United States.

He even had the audacity of continually urging that Mexicans were not of the white race but of another race and of comparing "Mexican" children with "white" children, upon this Superin-

tendent of Schools rests the honor and privilege of inculcating in minds and lives of school children the spirit of democracy, freedom and justice,-- what a mockery ! .

Respondents have made much arguement of Snowden -vs- Hughes 321 U. S. 1- An examination of the text of the opinion will not only show the distinction between the case at bar but will give weight and evidence to our arguement and reasoning.-

The Court held "-- an unlawful denial by State action of a right to state political office is not a denial of property or of liberty secured by the due process clause.

> " There is no contention that the statutes of the State are in any respect inconsistent with the guarantees of the Fourteenth Amendment. There is no allegation of any facts tending to show that in refusing to certify petitioner as a nominee, the Board was making any intentional or purposeful discrimination between persons or classes. On the argument before us petitioner disclaimed any contention that class or racial discrimination is involved. The insistence is rather that the Board, merely by failing to certify petitioner as a duly elected nominee, has denied to him a right conferred by state law and has thereby denied to him the equal protection of the laws secured by the Fourteenth Amendment."

What more can be said than the opinion itself suggests that if there had been a showing of "class or racial discrimination" the petition would have been permitted to stand and the cause tried rather than affirming "the judgment for failure to state a cause of action within the jurisdiction of the District Court."

And again defendants cite People -vs- Gallagher, 93 N. Y 438- 45 American Reports 232. This case decided in 1883, also deals with the right of colored children to attend schools established solely for white children. The head note recites.

> " Separate public schools being provided for colored children such children may be excluded from those provided for white children."

Plaintiffs being all American Citizens, theirs is not even that meagre hair line distinction as basis for segregation, for different races and nationalities as suggested in the foregoing opinion. Yet this opinion was decided by the Supreme Court of N. Y. in 1883 and the dictum is sought to be used as authority in the instant case.

The next case cited is that of Cory -vs- Carter 48 Ind. 327 decided November 1874. The head note likewise states.

> " The legislature passed a statute establishing separate schools for colored children having all the rights of other schools, held not in violation of state nor of the United States."

Defendants do magnanimously admit that in so far as Mrs. Ochoa and her children and Mrs. Sianez and her children are concerned in the Lincoln and Bolso Schools within the Garden Grove District, Mr. Kent the Superintendent - was acting contrary to and in violation of Trustees. He gave no consideration to the ability of the children to speak the English language nor due or any consideration to the proximity of the pupils residence to the nearest school." If such are the facts, any Superior Court of the State of California would upon application grant a Writ of Mandate -- ." (Page 7- Resp. Brief.)

Defendants forget this is a representative suit on behalf of all children similarly situated and affected. He forgets there

are hundreds of children who cry for the same benefits - freedom from unlawful discrimination. He recites the rule of admission of the Board of Trustees of September, 13, 1944, providing specially for Mexican children " a policy be adopted whereby there be no segregation of pupils on a racial basis, but that non English speaking pupils, so far as practical, should attend school where they can be given special instruction --" (Page 7 Resp. Brief.) Yet he forgets that every Superintendent and Principal testifying for defendants vehemently urged and consistently charged that every child of Mexican descent required special instruction in English, Americanization cleanliness or some other farciful or self serving idea. He urges the lack of Federal Jurisdiction because the Board in the passing of the "rule of admission" was acting through altruistic inspiration. Yet the very wording of the rule discloses the existance of the evil sought to be remedied - it begins - " Some problems were presented regarding the attendance of Mexican pupils in the school."

Counsel says in citing Snowden -vs- Hughes, supra that "otherwise every illegal discrimination of a policemen on the beat would be state action for purpose of suit in a Federal Court.-" The Court itself speaking your justice Frankfurter, stated that " there is no allegation of any facts tending to show that in refusing to certify petitioner as a nominee the Board was making any intentional or purposeful discrimination between persons or classes." On the argument before us petitioner disclaimed any contention that class or racial discrimination is involved."

That is the very issue involved in the instant cause. The complaint so alleges and the proof amply and conclusively so establishes.

Therefore it is a Federal question pure and simple and this supported directly and unquestionably by the main authority cited by defendants.

Under heading "C" defendants say " school Districts are

mere administrative agencies of the State, actions of such District cannot be considered State Action, within the meaning of the 14th. Amendment." (Page 10 of Resp. Brief.)

This disertation is an abviously erroneous statement of Law. In Kerr -vs- Enoch Pratt etc, 149 Fed. 2nd. 212 the Court said:

> " In any event, it is our duty in this case in passing upon the nature if the library corporation and its relationship to the state not to be guided by the technical rules of the law of principal and agent, but to apply the test laid down in Nixon v. Condon, 286 U. S. 73, 52 S. Ct. 484, 76 L. Ed. 984, 88 A.L.R. 458, to which we have already referred. There the Supreme Court held that an executive committee of a political party, which had been authorized by a Texas statute to determine the qualification of the members of the party, was not acting merely for the political organization for which it spoke but was acting as a representative of the state when it excluded Negroes from participation in a primary election. In declaring that this action was subject to the condemnation of the Fourteenth Amendment the Court said (286 U. S. at pages 88, 89, 52 S. Ct. at page 487, 76 L. Ed. 984, 88 A. L. R. 458):
> "*** The pith of the matter is simply this, that, when those agencies are invested with an authority independent of the will of the association in whose name they undertake to speak, they become to that extent the organs of the state itself, the repositories of official

power. They are then the governmental instruments whereby parties are organized and regulated to the end that government itself may be established or continued. What they do in that relation, they must do in submission to the mandates of equality and liberty that bind officials everywhere. They are not acting in matters of merely private concern like the directors or agents of business corporations. They are acting in matters of high public interest, matters intimately connected with the capacity of government to exercise its functions unbrokenly and smoothly. Whether in given circumstances parties or their committees are agencies of government within the Fourteenth or the Fifteenth Amendment is a question which this Court will determine for itself. It is not concluded upon such an inquiry by decisions rendered elsewhere. The test is not whether the members of the executive committee are the representatives of the State in the strict sense in which an agent is the representative of his principal. The test is whether they are to be classified as representatives of the State to such an extent and in such a sense that the great restraints of the Constitution set limits to their action. For further application of this principle see Smith -vs- Allwright, 321 U. S. 649, 64 S. Ct. 757, 88 L. Ed. 987."

Defendants urge that "if the rules of the [illegible] district are in conflict with any provision of the United States Constitu-

tion' they are expressly in violation of Section 2004 of the Constitution Code." Their obviously is denying the issue. Defendants claim no violation of the State Code for their reasons given in segregating Mexican pupils. This vicious circle of argument still leaves or returns to the main premise that there is segregation and the "guise" of the Statute for registration not withstanding its finess in phrasing still leaves the practice and act far from the thought. as aptly stated in Lane -vs- Wilson 307 U. S. 268.

> "We therefore cannot avoid passing on the merits of plaintiffs' constitutional claims. The reach of the Fifteenth Amendment against contrivances by a state to thwart equality in the enjoyment of the right to vote by citizens of the United States regardless of race or color, has been amply expounded by prior decisions. Guinn v. United States 238. The Amendment nullifies sophisticated as well as simple-minded modes of discrimination. It bits onerous procedural requirements which effectively bar Negroes exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race. "

The latest expression from the Supreme Court of the United States, which discusses the application of the Fourteenth Amendment to the actions of indiviauals as constituting state action is the case of Screws -vs- United States, 89 L. Ed. 1029, wherein the Supreme Court stated and held that the words "under color of any law" were interpreted to include acts of officers of the State, a Sheriff, a policeman, and a special deputy in flogging a negro prisoner to death while taking him to jail. In that case the defense was raised that the defendants had violated the State Law, and

therefore their actions were not acts of the State.

Justice Rutledge at page 1043 answered this contention as follows: "... The Amendment and the legislation were not aimed at rightful state action. Abuse of state power was the target. Limits were put to state authority, and states were forbiden to pass them, by whatever agency."

Defendants have sought by varied and devious excuses to justify the practice of segregation. An examination of the reasons in each district conclusively establishes the segregation as being discriminatory for the reason applicable to one district is abandoned and another applied whereas if the reasons were applied to all, there would be no excuse, except the honest reason, that it is the practice of the School authorities to compel children of Mexican descent to attend separate schools.

In the Garden Grove School District; it is claimed all Mexican children are handicapped "by reason of language" and the purpose of the special instruction and separate schools is for the purpose of assisting the pupils in their "understanding of the English language." This arguement was proven false. The experts testimony effectively spiked the arguement. You cannot help children with a supposed language handicap by keeping them together with children who suffer the same purported language handicap. The evidence of purported language handicap was overwhelming in favor, no language handicap. The obvious reason maybe gathered from reading Superintendent Kents treatese.

Mr. Kent's testimony is quoted verbatum on page 20-21 of the respondents brief. Why not read and quote the treatese of Kent written when there was no litigation thought of. His "true state of mind" is amply reflected in his own written words. That is the evil we are attempting to reach and the cancer we seek to eradicate. " The theory of race supremacy."

In the Santa Ana School District; the reason given is " the

segregation is made by the people of Mexican descent themselves ". Mr. Henderson testified the lines purposely drawn so that children of Mexican descent were all in one District and perchance if children of Anglo descent lived in the district they were permitted to go to schools out of the District attend wholly by children other than of Mexican descent. Whereas Mexican children were not given that privilege. The letters in evidence from the school Board to only persons of Mexican descent attest to discriminatory practice.

Defendants have devoted 3 pages of their brief citing State -vs- Wilmington School District 28 N. E. Rep. 2nd. 497 as authority. This case permits segregation of "colored children". It is directly contrary to Section 8003 of the Education Code of California and no authority to segregate white children on the basis of descent. Children of Mexican descent are white and Caucasians- not colored. The authority is worthless.

In the El Modeno District; the excuse is-- none. It is claimed that "never before the filing of this lawsuit did anyone complain." This is obviously a mistatement of fact. In this District-the most flagrant - discrimination and segregation is absolute and complete. It is claimed that a few persons with Mexican names attend the school attended by anglo saxon children- therefore there is no segregation. The argument is specious. The students themselves testified- complained to the principal and Superintendent but to no avail. Even the High School graduation exercises are held separately. If this is not a mockery of democracy then what is?

The reasons and argument advanced by defendants are evacious, specious and without support either from the facts advanced at the trial or from the quoted cases.

We respectfully request the judgment be entered in favor of plaintiffs as prayed in plaintiffs complaint.

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