

WALTER E. BURR,
on his own behalf and
as parent and guardian of
ALICE E. BURR, a minor,
et al;

THE MARYLAND PETITION
COMMITTEE, Jessups, Md.,
and

THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF WHITE PEOPLE,
Washington, D. C.,

Plaintiffs,

vs.

WALTER SONDHEIM, Jr., President
et al, as the BOARD OF SCHOOL
COMMISSIONERS OF THE
CITY OF BALTIMORE,

Defendants.

IN THE

SUPERIOR COURT

BALTIMORE CITY

Docket 1954, Folio 830

File No. 35526

Before: HONORABLE JAMES K. CULLEN.

October 5, 1954

Appearances:

Robert M. Furniss, Jr., Attorney for Plaintiffs.

Thomas N. Biddison, City Solicitor, Edwin Harlan, Deputy City Solicitor, and Hugo A. Ricciuti and Francis X. Gallagher, Assistant City Solicitors, for the Defendants.

George Washington Williams, as amicus curia.

MEMORANDUM OPINION (Oral)

CULLEN, J.:

The Court has given as careful consideration as is possible to the arguments in this case. I am deciding this matter today because it carries a very definite public interest.

As explained before we adjourned, it is the duty of the Judge to find the law as he believes it exists, without regard to his own personal opinions or the opinions of any individual. We are living in a democracy which I believe has the best law known to man. There are laws, as I said, with which we may not all agree. It would be impossible to find a vast group of people, which we have in this Country, with a variety of nationalities, religions and beliefs, to all agree on one principle in almost any line of endeavor or thought. So, we

are bound by the laws, some of which we approve and others of which we may not approve. We are bound by them, and we must be forced to abide by those laws.

Mr. Williams, I have considered carefully your argument, but I cannot believe it applies. It is for me to determine, had there never been a case in the Supreme Court, what the law is today. There are many cases that arise before me where there are no final decrees or judgments as precedents. I have to determine to the best of my ability what I believe the law to be. I am checked, fortunately, by another Court when my decisions are appealed, and it is, of course, my duty as a Judge to determine the law in a manner that the appellate court will affirm my action rather than reverse it. So, were there no precedent other than pure dicta, if that dicta were by the highest Court in the land, it would naturally have a decided influence on me as to how the instant case, being heard before me, would ultimately be decided when it goes to the higher Court.

There is a definite difference of opinion as to the effect of the Supreme Court's opinion in the case of *Brown vs. Board of Education*. It is unfortunate the Court was placed in a position to have to leave any phase of the case undetermined. The Court had before it five questions. The first three were questions dealing directly with the question of constitutionality of segregation in public education. As to those three questions the Court answered. It said, "it is our opinion," and "we hold"; and they further said "it is our decision" in that opinion. Both of those phrases, "we hold" and "it is our decision" are used with regard to the first three questions, that there can be no reasonable objectives as regards public education which could make the doctrine of separate but equal rights applicable.

It does not exclude the legality of separate but equal facilities as regards other endeavors in life, just as Judge Thomsen has said in the recent recreation case in the local District Court. It has left it open to be said that as regards recreation and other facilities there may be reasonable objectives which are necessary to the public good and security. Just how the Supreme Court will answer questions pertaining to those other endeavors in life, far be it from me to judge because it does not happen to be before me. I have enough with this subject of public education.

To me the question has been answered by the Supreme Court by a final and binding decision, without any deviation whatsoever, regarding public education. There is no such thing in the mind of the Supreme Court as separate and equal facilities. That is not my opinion; it is the law of the land because it is the opinion of the Supreme Court of the United States.

It is certainly an accepted theory of law under our form of government that the Supreme Court has the power and duty to construe the Constitution, and its findings are final and conclusive. That theory has been accepted since the historic decision by Justice John Marshall in the case of *Marbury vs. Madison* many years ago, and it has seldom if ever been questioned from that day to this.

There are two methods, and only two methods, that I know of, by which a decision of the Supreme Court of the United States construing a constitutional

For the reasons which have been stated, the answer to the question is that the practice of the plaintiff in bringing suit against the defendant is illegal.

provision can be changed: One is by the Supreme Court itself reversing or changing a prior decision, and that has been done; and the other is by constitutional amendment.

I have indicated here, principally for the press, the Supreme Court has answered precisely and clearly the issue involved in this case. It has rejected the separate but equal facilities doctrine, and has declared that segregation of races with regard to public education is a deprivation of equal protection of the laws guaranteed by the Fourteenth Amendment. I can understand those who do not agree with that opinion and believe or wishfully hope that there is a loop-hole by reason of the additional arguments to be had in the Brown case, but that is not a fact and is of no force in the question here presented.

It is for me to determine what the Supreme Court will do in this particular case; it is in that manner I have to construe the Constitution, and there is just no question in my mind that the Supreme Court in this case would uphold the action of the defendants.

The Court in the *Brown* case apparently recognizes the change which its decision had made with relation to its prior findings, and felt in some places a period of adjustment was necessary to carry out this change with the least possible harm to the public.

In Baltimore City the defendants, with full knowledge of this decision of the Supreme Court and, I am sure, with due regard to the discretion given to the Board by the Court as to a period of time within which to bring about the change, has determined to proceed as of September 1, 1954, to eliminate segregation in the public schools of Baltimore City, ignoring the direction to the Board under ordinances of the City of Baltimore passed in the latter part of the nineteenth century to provide separate schools for colored and white, white teachers for white pupils, and colored teachers for colored pupils.

In the instant case this Court is asked to issue a writ of mandamus requiring these defendants, the School Board, to continue with its policy of segregation. This Court finds the Board of School Commissioners have exercised their discretion legally and in accordance with a final and enforceable holding and decision of the Supreme Court. Those cases were undoubtedly argued before the Supreme Court fully, and the views of every division of thought of our citizenry was undoubtedly presented to the Court; but the Court has spoken. Whether the individual agrees or disagrees with the finding, he is bound thereby so long as it remains the law of the land. The Court realizes the change and the difficulty some may have accepting the reality, or the inevitable from the standpoint of enforcement. We live in a country where our rights and liberties have been protected under a system of laws which has withstood the test of time. We must allow ourselves to be governed by those laws, realizing there are many differences among our people. Respect for the law is of paramount importance. The law must be accepted. We must all be forced to abide by it. We can gain nothing by demonstrations of violence except sorrow and possible destruction.

The Court will deal with the substantive question involved in this petition and demurrer, and will ignore technical problems raised by the pleadings.

For the reasons which I have outlined, the demurrer of the defendants to the petition of the plaintiffs is hereby sustained without leave to amend.