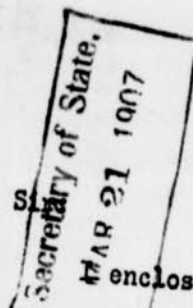




Office of the Attorney General,
Washington, D.C.

AFE

November 30, 1906.



Enclose a copy of a letter received to-day from the United States Attorney at San Francisco in which he asks instructions as to the proceedings before the Supreme Court.

I also forward herewith the original report upon the facts concerning the Japanese situation in San Francisco, with certain exhibits, and request the return of them after you have given them such consideration as you may desire.

It should be noted that Judge De Haven, United States District Judge for the northern district of California, has held, in a case brought by a Chinese person, by birth a citizen of the United States and of the State of California, that his rights, under a treaty with China, have not been violated by his exclusion from the public schools if a school offering the same educational advantages has been provided for him.

Yours very respectfully,

W. H. Moody
Attorney General.

The Honorable

The Secretary of State.

INDEX BUREAU

MAR 20 1907

DEPT. OF STATE

O. G. S.

DEPT. OF STATE

Secretary of State,
MAY 11 1907

Re. a law to safeguard rights acquired under treaty.

Encl. 180. December 3, 1906.
Memoranda by the Solicitor, putting in presentable form reasons why Congress should enact a law to safeguard rights acquired under treaty and to punish civilly or criminally the violation of such rights, and comments on the supremacy and scope of the Treaty-making power of the United States. (Rec'd March 19-07.)

Department of Justice.
United States Attorney,
Northern District of California.

San Francisco, November 23., 1906.

The Attorney General,
Washington,

Sir:

I have already written you on the legal aspects of this case, showing that the Board of Education of San Francisco are proceeding under Section 1662 of the Political Code of the State of California, authorizing the establishment of separate schools for Indian children and for children of Mongolian or Chinese descent, and also as to their contention that when such schools are established, it is incumbent upon them to send Japanese children to such separate schools.

On the educational feature of the case I enclose herewith a copy of a bill of equity for injunction, commenced in the District Court of this District, and also a copy of the opinion and decision of Judge DeHaven thereon.

In that case the complainant was an infant and native born citizen of the United States of Chinese parentage, and sought an injunction to restrain the members of the Board of Education from preventing the admission of the complainant into one of the Grammar Schools of San Francisco. In that case was involved the construction of Section 1662 of the Political Code of California above referred to. The Court stated that it is not alleged that such separate school did not afford the same advantages in the matter of acquiring an

*Copy Original
returned to Dep.
of Justice Nov 28/07.
J. J. C.*

DEPT. OF STATE
O. G. S.

Treatment of Japanese in California.

Encls. 181-187. November 30, 1906.

Department of Justice.

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(Rec'd March 22, 1907.)

RESPECTFULLY REFERRED
TO THE SOLICITORS.

Nov. 26/07

Dep. Bureau:

*Return enclosed
to Dept of Justice containing
copies.*

*Chen, reforming
and enclosing, and
attaching copies here -
I have, Mch. 20/07
J. J. C.*

education as is given to children of schools to which Chinese are not admitted. The sole ground of complaint was that the maintenance of separate schools for children of Chinese descent was a discrimination against such children, and it was alleged that such discrimination against such children was arbitrary, and the result of hatred for the Chinese race. The court stated that the validity of the statute did not depend upon the motive which might in fact have actuated the members of the legislature in voting for its enactment, and the law could not be declared invalid if it did not conflict with some constitutional limitation of the powers of the State legislature. The Court held that the State had the right to provide separate schools for the children of different races, and that such action was not forbidden by the Fourteenth Amendment to the Constitution, provided that no discrimination in the educational advantages afforded them was made.

I did not obtain this case until after the Secretary of Commerce and Labor left San Francisco. I have also sent him copy of the opinion today.

One of the complaints made was, in the recent agitation in California on the question of Japanese attendance at separate schools was that Japanese children of 15 and 16 years of age were attending schools attended by children of 5 and 6 years of age, owing to the fact that they were not further advanced than children of that age. The objection was also made that many of the Japanese understood the English language imperfectly.

and that they delayed the advancement of the other pupils because of their inability to comprehend the instruction imparted in English.

Japanese children are attending the University of California without discrimination, and are given all the advantages enjoyed by other pupils.

2.

Relative to the boycotting of Japanese restaurants, and to the antagonism expressed against the Japanese race, I assisted the Secretary of Commerce and Labor when he was here in making his investigation, and since that time I have obtained some additional information.

There is an existence in California an organization known as "The Japanese and Korean Exclusion League", whose constitution I enclose.

I also enclose a copy of the minutes of that League held in San Francisco on October 28, 1906.

The Japanese are conducting several restaurants in the City of San Francisco, and boycotting more or less extensive has been in force against them. On inquiry, however, it is learned that this boycott was not authorized by the direct action of any labor organization, but was created and fostered by speeches in Union meetings.

Mr. P. H. McCarty, President of the State Building Trades Council of California, stated that no official action was ever taken towards boycotting Japanese restaurants by the Unions affiliated with ~~the~~ his Council, but that the sentiment was

created and fostered by speeches made in Union meetings and by personal action of the different members.

A like statement was made by A. E. Yoell, Secretary-Treasurer of the Japanese and Korean Exclusion League, who declared that he knew of no action taken by ~~the~~ any Labor Union to boycott Japanese restaurants, but that the sentiment was fostered by individual action of the members of the Unions.

It was stated by Mr. Johnson, Secretary, and Thomas Aylward, Business Manager of the Waiters Union, Local No. 30, that no resolutions against Japanese restaurants had been passed by the Union, but that members were urged ~~to~~ in their meetings to refrain themselves and ^{keep} the public from patronizing such restaurants; that for about three weeks in the month of October 1906, men were employed by the Union to stand in front of Japanese restaurants on Third Street, and distribute match boxes on which were pasted a label: "White Men and Women patronize your own race". They claim this was not strictly a boycott, as a boycott must be instituted through the Labor Council.

Anton Balsow, Financial Secretary, and George Rowe, Business Agent, of the Cooks Union, Local No. 44, stated that no resolutions were ever passed by that Union towards boycotting Japanese restaurants, but that the feeling against them was always fostered by the different members; that during the picketing of the Third Street Japanese restaurants by the Waiters Union, the Cooks Union assisted the Waiters Union financially, and also gave them men for the purpose of picketing.

They stated also that a white restaurant between two Japanese restaurants on Third Street was driven out of business by the cheaper rates of the Japanese restaurants. They place their action upon the ground of self-preservation, claiming that the price of meals furnished by the Japanese is so much cheaper than those furnished by the whites that it is impossible for white restaurants to compete with them.

Several of the labor leaders interviewed stated that the Japanese were crowding white people out of other industries, and particularly out of the business of shoe repairing.

A synopsis of all of these interviews was given by me to Mr. Metcalf, and I repeat them briefly for your information.

3.

After Mr. Metcalf's departure for the East I came into communication with Walter H. Robinson, Attorney at Law, of this City, who was President of a meeting of the property owners of what is known in San Francisco as the Western Addition, being the residence portion of San Francisco not destroyed by the recent fire. These owners held several meetings to protest against the Japanese encroachment upon the residence district, and I asked Mr. Robinson to place his reasons and the views held by the owners of that district in a letter addressed to me, and I enclose the same herewith. I have also sent a copy of this letter this to the Secretary of Commerce and Labor.

4.

For

6

For the purpose of showing the views taken by some of the newspapers of California, I send you enclosed clippings from the press of San Francisco.

5

I was present when Mr. Dinan Chief of Police of San Francisco, and the next in command, were in consultation with Secretary Metcalf, and Chief Dinan stated that ample protection had been given to the Japanese in the past, and that he would in the future see that their rights were carefully guarded, and communicate with me should at any time an attempt be made to interfere with them in any manner, and that if I should communicate to him any complaints, they would receive his careful attention.

6.

I have endeavored to give you above succinctly the principal features of this question in response to your request for information, and shall be pleased at any time to give you any further information that you may desire in my power to obtain.

Very respectfully,

Robt T. Devlin.

United States Attorney.

In the Circuit Court of the United States, Ninth Judicial
Circuit, Northern District of California.

Henry Wong Him an Infant by
Wong Him his Prochein Ami,

Complainant

vs.

No. 13245.

Mary E. Callahan, Principal
of the Clement Grammar School of
the City and County of San Francisco,
James Denman, Cecil W. Mark, Alfred
Roncovieri and Thomas P. Woodward,
Constituting the Board of Education
of the City and County of San
Francisco, State of California.

Defendants.

*Copy Original
returned to Mr. J. J. G. J. C.
Feb. 20/07.*

Bill in Equity for Injunction.

To the Judges of the Circuit Court of the United States
for the Northern District of California:

Cometh now Henry Wong Him an infant and of the City and
County of San Francisco, in the Northern District of California,
and a citizen of the United States and of the State of Calif-
ornia, and brings this bill against Mary E. Callahan, of thr
said City and County of San Francisco, State of California, and
a citizen of the State of California, James Denman of the said
City and County of San Francisco, State of California, and a
citizen of the State of California, Cecil W. Mark of the said
City and County of San Francisco, State of California, and a
citizen of the State of California, Alfred Roncovieri of the
said City and County of San Francisco, State of California, and

a citizen of the State of California, and Thomas P. Woodward of the said City and County of San Francisco, State of California, constituting with the exception of the defendant, Callahan, the Board of Education of the said City and County of San Francisco.

And thereupon your orator complains and says:

1. That you orator is an infant of the age of eleven years and a natural born citizen of the United States and of Chinese parentage. That Waid Wong Him is the father of your orator and brings and prosecutes this bill as your orator's prochein ami. That said prochein ami is a subject of the Emperor of China, and a taxpayer and resident of the said City and County of San Francisco.
2. That the defendant Mary E. Callahan was at all the time in this bill mentioned, ever since has been and is now the principal and in the control and management of a certain public school of the said City and County of San Francisco, Northern District of California, and known and designated as the "Clement Grammar School", and situate in the District of your orator's residence.
3. That the defendants James Denman, Cecil W. Matk, Alfred Roncovieri and Thomas P. Woodward are the duly appointed, qualified and acting members of the Board of Education of the said City and County of San Francisco and constitute said Board of Education.
4. That section one thousand six hundred and sixty two of the Political Code of the State of California, is as follows, to wit;

"Every school, unless otherwise provided by law, must be open for the admission of all children between six and twenty one years of age, residing in the district, and the Board of Trustees, or City Board of Education, have power to admit adults and children not residing in the district whenever good reasons exist therefor. Trustees shall have the power to exclude children of filthy or vicious habits, or children suffering from contagious or infectious diseases and also to establish separate schools for children of Mongolian or Chinese descent. When such separate schools are established Chinese or Mongolian children must not be admitted into any other schools. (IN effect March 12, 1885.)"

Your orator avers that the said section one thousand six hundred and sixty two of the Political Code of the said State of California, is in conflict with section one of the Fourteenth Amendment of the Constitution of the United States in that it denies to your orator the equal protection of the laws of said State of California relative to his admission and attendance as a pupil in the public schools of the said City and County of San Francisco.

That at the time of the adoption of said section one thousand six hundred and sixty two of the Political Code of the State of California, to wit; on March 12, 1885, section one thousand six hundred and sixty nine of said Code was as follows:

"The education of children of African descent and Indian children, must be provided for in separate schools; provided,
that

that if the directors or trustees fail to provide such separate schools, then such children must be admitted into the schools for white children".

That thereafter and on the 7th day of April, 1880, the legislature of said State of California repealed said section one thousand six hundred and sixty nine of said Code, and ever since then, children of African descent and Indian and Japanese children and all children irrespective of race or nationality with the exception of children of Chinese descent have been and are admitted as pupils in the public schools in said City and County of San Francisco; to wit; the same public schools that are attended by white children; and together with white children receive instruction in said schools. That there are no separate ^{public} schools in said City and County of San Francisco for the children of any race or nationality except the children of Chinese descent. That said discrimination against the children of Chinese descent is arbitrary and the result of hatred for the Chinese race.

5. That the said Board of Education of said City and County of San Francisco claims to have established therein by virtue of said section one thousand six hundred and sixty two of said Political Code, a separate school exclusively for Chinese children; and excludes and threatens to continue the exclusion of such Chinese children from all other public schools of the said City and County of San Francisco, solely and exclusively upon the ground and only for the reason that said children are of Chinese descent, and that section one thousand six

that if the directors or trustees fail to provide such separate schools, then such children must be admitted into the schools for white children".

That thereafter and on the 7th day of April, 1880, the legislature of said State of California repealed said section one thousand six hundred and sixty nine of said Code, and ever since then, children of African descent and Indian and Japanese children and all children irrespective of race or nationality with the exception of children of Chinese descent have been and are admitted as pupils in the public schools in said City and County of San Francisco; to wit; the same public schools that are attended by white children; and together with white children receive instruction in said schools. That there are no separate ^{public} schools in said City and County of San Francisco for the children of any race or nationality except the children of Chinese descent. That said discrimination against the children of Chinese descent is arbitrary and the result of hatred for the Chinese race.

5. That the said Board of Education of said City and County of San Francisco claims to have established therein by virtue of said section one thousand six hundred and sixty two of said Political Code, a separate school exclusively for Chinese children; and excludes and threatens to continue the exclusion of such Chinese children from all other public schools of the said City and County of San Francisco, solely and exclusively upon the ground and only for the reason that said children are of Chinese descent, and that section one thousand six

hundred and sixty-two of said Political Code, authorizes their exclusion.

6. That your orator was admitted as a pupil, to the Clement Grammer School, a public school, of said City and County of San Francisco, by the defendants, and continued with the consent of defendants to attend said public school and receive instruction as a pupil therein, from the 22 day of July, 1901, to the 1st day of March, 1902, when said defendants arbitrarily refused to permit your orator to fu ther attend said school or receive instruction therein, and placed said refusal on the said ground that your orator was of Chinese descent. That at all said time said Clement Grammar School was and now is s public school of the said City and County of San Francisco, and by authority of defendants is attended by white children and children of African and Japanese descent; that all children irrespective of race and nationality are permitted by defendants to attend said Clement Grammar School with the exception of th children of Chinese descent.

7. That said defendants threaten to exclude your orator and to prevent him from continuing his attendance as a pupil at said Clement Grammar School upon the sole ground that he is of Chinese descent and claim that authority is vested in them to exclude him from said school, by said section one thousand six hundred and sixty two of the said Political Code of said State of California. That in the commission of all said acts the said defendants claim to derive their authority therefor, from the said provisions of section one thousand six hundred

and sixty two of the said Political Code, to the extent it permits the exclusion of Chinese children.

That unless restrained by the process of this Honorable Court, the said defendants acting under said provision of said Political Code, will execute said threats, and exclude your orator from attendance as a pupil at the said Clement Grammar School, and prevent his attendance as a pupil therein, upon the sole ground that is of Chinese descent.

8. That for the grievance herein complained of, your orator has no plain, greedy nor adequate remedy at law.

To the end therefore that your orator may have that relief which he can only obtain in a court of equity, and that the said defendants may answer the premises, but not upon oath or affirmation, the benefit whereof, is expressly waived by your orator, he now prays the Court:

May it please your Honors to grant to your orator a writ of injunction pendenti lite issuing out of and in accordance with the rules and practice of this Honorable Court, to be directed to the said defendants Mary E. Callahan, Principal of the Clement Grammar School of the City and County of San Francisco, James Denman, Cecil W. Mark, Alfred Rocovieri, and Thomas P. Woodward constituting the Board of Education of the said City and County, restraining them, and each of them from in any manner preventing or interfering with the attendance of your orator at the Clement Grammar School as a pupil therein, and from in any manner preventing his receiving instruction

instruction in said school as such pupil thereof; and that at the final hearing of this cause a perpetual injunction be granted your orator against all of said defendants, forever enjoining them from the commission of any and all of said acts and that by the mandatory injunction of your Honorable Court said defendants be required to permit your orator to attend said Clement Grammar School as a pupil therein and to furnish him at said school with the prescribed instruction. And that your orator may have such further or other relief in the premises as the nature of the case may require.

May it please your Honors to grant unto your orator a writ of subpoena, to be directed to the said Mary E. Callahan principal of the Clement Grammar School of the City and County of San Francisco, James Dehman, Cecil W. Mark, Alfred Roncovieri and Thomas P. Woodward, constituting the Board of Education of the said City and County, thereby commanding them at a certain time, and under a certain penalty therein to be limited personally to appear before the Honorable Court and then and there full, true, direct and perfect answer ^{to} make ^{all} and singular the premises, and to stand, perform and abide by such order, direction, and decree as may be made against them in the premises as shall seem meet and agreeable to equity. And your orator will ever pray.

George D. Collins,

Solicitor and Counsel for Complainant.

United States of America,	}	ss:
Northern District of California.		

Wong

Wong Him being duly sworn deposes and says he is the person named and designated in the foregoing bill the prochein ami of the complainant Henry Wong Him an infant; that affiant has heard read the said bill and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on his information or belief; that as to ^{those} the matter he believes it to be true.

Wong Him.

Subscribed and sworn to before me this 18th day of June 1902.

Julius Calmann, Notary Public in and for the City and County of San Francisco, State of California.

Notarial Seal.

In the Circuit Court of the United States, Northern
District of California.

Henry Wong Him an infant by
Wong Him his prochein ami,

Complainant,

vs

No. 13245.

Mary E. Callahan, Principal of
the Clement Grammar School of
the City and County of San
Francisco, James Denman, Cecil
W. Maek, Alfred Roncovieri and
Thomas P. Woodward, constituting
the Board of Education of the City and
County of San Francisco, State
of California.

*Copy Original returned
to Mr. W. Justice, March 28/07.
J. J. C.*

O p i n i o n .

George D. Collins, Attorney for Complainant.

No appearance for defendants.

DE HAVEN, District Judge. The question presented to the
court for decision at this time arises upon complainant's
motion for a decree pro confesso, under equity rules 18 and 19
The complainant is an infant and native born citizen of the
United States of Chinese parentage and seeks in this action
brought by his father as prochein ami, for a decree against
the principal of the "Clement Grammar School" in the City and
County of San Francisco and the members of the Board of Ed-
ucation of that City and County, which shall restrain them
from preventing the admission of the complainant into the
"Clement Grammar School" of San Francisco as a pupil. The
bill alleges that all children irrespective of age and nation-
ality

are permitted to attend the Grammar School with the exception of children of Chinese descent, and that the defendants exclude the complainant from the right to attend this school upon the sole ground that he is of Chinese descent, and claim the right to do so under the provisions of section 1662 of the Political Code of the State of California, which gives to the Trustees of school districts the power to establish separate schools for children of Mongolian and Chinese descent and further provides that; "When such separate schools are established, Chinese or Mongolian children must not be admitted into any other schools". It is further alleged that this statute is in conflict with the Fourteenth Amendment to the Constitution of the United States, in that it deprives the complainant of the equal protection of the laws of California relative to his right to admission as a pupil into the public schools of the State. As I construe the allegations of the bill, there has been established in the City and County of San Francisco, a separate school exclusively for Chinese children and children of Chinese descent, and this school the complainant is at liberty to attend. It is not alleged that such school does not afford the same advantages in the matter of acquiring an education as is given to children of schools to which Chinese are not admitted. The sole ground of complaint is that the maintenance of separate schools for children of Chinese descent is a discrimination against such children, and it is alleged that such discrimination "is

arbitrarily

arbitrary and the result of hatred for the Chinese race". The validity of the statute referred to does not depend upon the motive which may in fact have actuated the members of the legislature in voting for its enactment. Upon such inquiry the courts have no right to enter. If the law does not conflict with some constitutional limitation of the powers of the State legislature, it cannot be declared invalid. Concerning the authority of the State over matter pertaining to public schools within its limits, and the validity of legislation of the character of that under consideration it is well settled that the State has the right to provide separate schools for the children of different races, and such action is not forbidden by the Fourteenth Amendment to the Constitution, provided the schools so established make no discrimination in the educational facilities which they afford. When the schools are conducted under the same general rules and the course of study is the same in one school as in the other, it cannot be said that pupils in either are deprived of the equal protection of the law in the matter of receiving an education. Ward v. Flood, 48 Cal. 36; Lehigh v. Brummell, 11 L.R.A. 823; State v. McCann, 21 Ohio St. 198; People v. Gallagher, 93 N.Y. 438. People v. School Board, 161, N.Y. 598; United States v. Buntin, 10 Fed. 736; Bertonneau v. Board of Directors, 3 Woods, 177, Fed. Cas. No. 1361. See also Roberts v. City of Boston, 5 Cush. 198, in support of the conclusion that the matters alleged in the bill do not show that complainant has been

deprived

deprived of the equal protection of the laws of the State of California, relating to education.

2. The defendants are in fault, but this does not entitle the complainant to a decree pro confesso unless the allegations of the bill are sufficient to support a decree in his favor, Thomson v. Wooster, 114 U.S. 104. The bill does not in my opinion state facts sufficient to entitle the complainant to the relief prayed for, not to ~~any~~ any relief, and for this reason must be dismissed, and it is accordingly so ordered.