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**Ruling of Justice Lemuel Shaw in the case
*Sarah C. Roberts v. City of Boston, 1850***

The opinion was delivered at the March term, 1850.

Shaw, C.J. The plaintiff, a colored child of five years of age, has commenced this action, by her farther and next friend, against the city of Boston, upon the statute of 1845, c. 214, which provides, that any child unlawfully excluded from public school instruction, in this commonwealth, shall recover damages therefor, in an action against the city or town, by which such public school instruction is supported. The question therefore is, whether, upon the facts agreed, the plaintiff has been unlawfully excluded from such instruction.

The plaintiff had access to a school, set apart for colored children, as well conducted in all respects, and as well fitted, in point of capacity and qualification of the instructors, to advance the education of children under seven years old, as the other primary schools; the objection is, that the schools thus open to the plaintiff are exclusively appropriated to colored children, and are at a greater distance from her home. Under these circumstances, has the plaintiff been unlawfully excluded from public school instruction? Upon the best consideration we have been able to give the subject, the court are all of opinion that she has not.

It will be considered, that this is a question of power, or of the legal authority of the committee intrusted by the city with this department of public instruction; because, if they have the legal authority, the expediency of exercising it in any particular way is exclusively with them.

The great principle, advanced by the learned and eloquent advocate of the plaintiff, is, that by the constitution and laws of Massachusetts, all persons without distinction of age or sex, birth or color, origin or condition, are equal before the law.

But, when this great principle come to be applied to the actual and various conditions of persons in society, it will not warrant the assertion, that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions and be subject to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law, for their maintenance and security.

Conceding, therefore, in the fullest manner, that colored persons, the descendants of Africans, are entitled by law, in this commonwealth, to equal rights, constitutional and political, civil and social, the question then arises, whether the regulation in question, which provides separate schools for colored children, is a violation of any of these rights.

The power of general superintendence vests a plenary authority in the committee to arrange, classify, and distribute pupils, in such a manner as they think best adapted to their general proficiency and welfare.

The committee, apparently upon great deliberation, have come to the conclusion, that the good of both classes of schools will be best promoted, by maintaining the separate primary schools for colored and for white children, and we can perceive no ground to doubt, that this is the honest result of their experience and judgement.

It is urged, that this maintenance of separate schools tends to deepen and perpetuate the odious distinction of caste, founded in a deep-rooted prejudice in public opinion. This prejudice, if it exists, is not created by law, and probably cannot be changed by law. Whether this distinction and prejudice, existing in the opinion and feelings of the community, would not be as effectually fostered by compelling colored and white children to associate together in the same schools, may well be doubted; at all events, it is a fair and proper question for the committee to consider and decide upon, having in view the best interests of both classes of children placed under their superintendence, and we cannot say, that their decision upon it is not founded on just grounds of reason and experience, and in the results of a discriminating and honest judgement.

The increased distance, to which the plaintiff was obliged to go to school from her father's house, is not such, in our opinion, as to render the regulation in question unreasonable, still less illegal.

On the whole the court are of opinion, that upon the facts stated, the action cannot be maintained.

Plaintiff nonsuit.