State &c ex rel Clark, Jr. by

his next friend,

vs.

Maryland Institute.

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Opinion.

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This was a petition for the writ of mandamus. The Maryland Institute for the promotion of the Mechanic Arts is a body politic and corporate created by Acts of Assembly of Maryland. It was originally incorporated by the Act of 1849 Chapter 114; and its charter was renewed by the Act of 1878 Chapter 313. The object of the incorporation was the encouragement and promotion of manufactures and the mechanic and useful arts by the establishment of schools of art and design and by other means adapted to that purpose. Robert H. Clark, Junior, a youth of African descent, claims the right to be admitted to these schools as a pupil; and by his father and next friend, he files a petition for a mandamus requiring the abovenamed corporation to admit him. The grounds of his demand are set forth in his petition. The Maryland Institute (as the corporation is popularly called) filed its answer; and on demurrer to the answer, the petition was dismissed, and appeal was taken to this Court.

There can be no contest about the facts in this case; because in addition to those admitted by the demurrer to the answer, there is an agreement of Counsel admitting such other facts as it was desired to lay before the Court. We proceed to consider the circumstances which, in our opinion, are important in the decision of the questions in the case. The municipality of Baltimore by an ordinance passed in March 1893 authorized the Mayor, Comptroller and

Register to contract with the Maryland Institute for the instruc-
of a number of pupils in its schools of Art and Design for the per-
iod of eight years from the first day of September next ensuing. By
the second section of the ordinance it was enacted that before the
first day of September in every year each member of the City Council
should appoint one pupil who should be entitled to instruction for
the period of four years in the schools of Art and Design, and that
in case of a vacancy occurring from any cause among the pupils the
President of the Institute should forthwith give notice to the mem-
ber of the Council representing the ward to which the pupil was cred-
ited, and that he should thereupon appoint another pupil to fill the
vacancy. The third section of the ordinance required the President
of the Institute to report annually in the month of September to the
Mayor and City Council the names of the pupils appointed and in at-
tendance at its schools, together with a list of the vacancies, if
there should be any. It also enacted that if no appointments should
be made before the first day of October by the members of the City
Council entitled to fill such vacancies, then the Mayor should ap-
point pupils to fill them. The fourth section of the ordinance enact-
ed that the Mayor, City Comptroller and City Register should annu-
ally, or as much oftener as they might deem it expedient, inspect
the said schools of the Institute, and "the condition and manner"
in which it was fulfilling its contract with the municipality, and
that thereupon the City Comptroller, if he was satisfied that the
Institute was faithfully complying with the contract, should pay to
its President annually in the month of September nine thousand dol-
lars for the education of the pupils. The Maryland Institute on the
tenth day of March 1893 entered into a written contract with the

Mayor, City Comptroller and City Register for the reception of thirty three pupils into its schools of Art and Design for each of the eight successive years beginning on the first day of September 1893, and following thereafter. It appears that a youth of African descent was received into the Institute as a pupil in 1891; another in 1892, and two others in 1895. So far as we are informed by the record, no other pupils of this description have ever been admitted into the schools of the Institute. The effect of the admission of these four pupils was very disastrous. There was an immovable and deep settled objection on the part of the white pupils to an association of this kind. Notwithstanding earnest and zealous efforts on the part of the board of managers and the faculty of teachers to reconcile the white pupils, their parents and guardians to the innovation, it caused a great decrease in the number of pupils; and the bringing of this suit made it still greater. On the eleventh of November 1895, the Board of Managers approved this resolution:

"Baltimore, November 11th, 1895.

"The following action of the Committee on Schools of Art and Design was reported by its chairman, Mr. John M. Carter, and on motion, it was unanimously adopted:

"Whereas, the popular sentiment of all the citizens of Maryland is opposed to mixed schools; and

"Whereas, the appointment of colored pupils to this school, it is believed, has caused a large decrease in the number of white pupils attending the institute, thus lessening its power for good to the community.

"Resolved, that hereafter only reputable white pupils will be admitted to the schools.

"Resolved, that the actuary be directed to issue a circular to the members of the newly elected City Council and other appointing powers, informing them of this action".

The Actuary of the Maryland Institute prepared a circular signed by its President, and the Chairman of the Committee on Schools of Art and Design setting forth the action of the Board and of the Committee, and attached to it a blank letter of appointment of pupils for the following year (1896). This blank letter was in the following form:

Baltimore, ----------189 .

To the Board of Managers of the Maryland Institute for the promotion of the Mechanic Arts:

I hereby appoint, subject to the rules of the institute, --------- (residence ----------) to the scholarship in your schools of art and design, under the contract between the Mayor and City Council of Baltimore and the Maryland Institute.

Member ---------- Branch of the

City Council -------- Ward -------

A copy of this circular and of the blank letter of appointment was sent to each member of the City Council, and to the school boards of the City of Baltimore and the counties. In February 1896, J. Marcus Cargill, a member of the City Council from the eleventh ward appointed Clark, Junior (the appellant) to a scholarship in the Institute, writing the appointment on the printed blank, which had been sent to him with the circular just mentioned. The Board refused to admit Clark as a pupil and requested Cargill to appoint a reputable white person; the refusal was, of course, because of his color. Cargill made no other appointment, and the Maryland Institute certified to the Mayor of Baltimore that a vacancy existed among the

pupils from the eleventh ward, and he in October 1896 appointed a white pupil who has ever since been a member of the school. In February 1897, the Mayor, Comptroller and Register made an inspection of the Maryland Institute, and made a very favorable report as to its condition and the manner in which it was fulfilling its contract in regard to the instruction of pupils sent there by the authority of the City. With full knowledge of the refusal of the Institute to admit any pupils except those who were white, the City Council in 1896 and 1897 directed the annual appropriation to be paid to the Institute according to the contract. And on the twentieth day of September 1897, the City Solicitor in reply to an inquiry from the Chairman of the Committee on Ways and Means of the City Council, gave his official opinion in writing that the Institute had not violated its contract by its refusal to admit a colored youth as a pupil in its schools. In September 1897 Cargill appointed Clark to the scholarship for that year which he was entitled to fill by virtue of his position as a member of the City Council; and the Institute again refused to admit Clark as a pupil.

The Maryland Institute is essentially a private corporation. It was not created for political purposes, nor endowed with political powers. It is not an instrument of the government for the administration of public duties. It has none of the faculties, functions or features of a public corporation as they are designated in the Regents case, 9 Gill & Johnson, and the many other cases which have followed that celebrated decision. The Act of 1878 which renewed its charter granted it the annual sum of three thousand dollars, but this grant did not make it an instrumentality of government, nor make any change in its corporate character. The Regents case, 9 Gill

and Johnson 398, shows that it could not have such an effect. The Maryland Institute holds its property in its own right, and has the power to manage its concerns according to its own discretion within the limitations of its charter. It is, of course, bound faithfully and diligently to pursue the objects and purposes of its incorporation; but it necessarily must have the choice of means which it may judge most appropriate to its ends. It was established for the benefit of white pupils, and has never admitted any other kind with the exception of the four instances already mentioned. When it found that the admission of these pupils had a very injurious effect on its interests, and seriously diminished its usefulness, it certainly had the right to refuse to continue such a disastrous departure from the scheme of administration on which it was organized. It would have been mere folly to persevere in the experiment under the existing circumstances. We suppose that it could hardly be maintained that the constituted authorities of the corporation did not have the right to conduct its affairs according to the plan and policy on which it was founded. We see no evidence of an intention to abandon this right when the contract was made with the municipality of Baltimore. It certainly does not appear on the face of the contract itself. And there is nothing in the surrounding circumstances from which it can be inferred that either of the contracting parties contemplated or desired such an abandonment. The City of Baltimore has shown in the most distinct manner that it knew that the Institute had the right to refuse colored pupils, and that this right was not impaired by the contract. The Mayor, City Comptroller and City Register, the officers appointed by the Ordinance to inspect the schools of the Institute and ascertain the manner in which it was fulfilling

the contract with the City, having full knowledge that colored pupils were denied admission made a most favorable report on the subject to the First Branch of the City Council. And the City Solicitor gave his official opinion to the Committee of Ways and Means that the Maryland Institute did not violate the contract by refusing to receive a colored youth because of his color. And, finally, after the resolution had been adopted that none but white pupils would be received and after this Appellant had been rejected on account of his color, the City Council well knowing these facts continued to make the annual appropriation of nine thousand dollars according to the terms of the contract. So it is evident that both the contracting parties meant the same thing when they made this contract, and that they have dealt with each other according to their mutual understanding of this meaning. We suppose that it would be a difficult matter to show that a person not a party to a contract has the right to intervene and establish a meaning contrary to the intention of the contracting parties, and upon this substituted meaning acquire and enforce rights in a Court of Justice. But unless this can be done the Appellant has no cause of action, of any description, under this contract.

It has been urged that the Appellant has been deprived of his rights under the Fourteenth Amendment of the Constitution of the United States. The portion of the Amendment which is supposed to sustain this position is in these words: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of

the laws." The gravamen of the offence of the Maryland Institute is that it has exerted the ordinary right of the proprietor of a private school to admit only such pupils as are considered desirable. It has been said by the Supreme Court of the United States that the right to follow any of the common occupations of life is inalienable. Allgeyer v Louisanna, 165 U.S.Repts. 589. And in the same case the Court evidently shows that it regards the prevention of a citizen from doing what is proper necessary and essential to the successful management of his business is a deprivation of his liberty, which cannot be done without due process of law. This is one of the wrongs which the Fourteenth Amendment was intended to prohibit. It would be a curiosity in jurisprudence, if the exercise in the ordinary and accustomed way of rights which the Fourteenth Amendment is so solicitous to protect should be obnoxious to its condemnation. No one can plausibly maintain that the Maryland Institute has done any wrong to the Appellant by simply attending to its own business in a quiet and unobtrusive manner. It has not deprived him of any privilege or immunity which he possessed; it has robbed him of no property; it has not excluded him from the benefit of any legal enactment made in his favor. It has merely let him alone. It would be difficult to prove that it had in this way acted in violation of the Fourteenth Amendment. We find, in fact, that the authorities all hold that the Fourteenth Amendment refers, as its terms ~~import~~ import, exclusively to State action, and not to anything which might be done by private individuals. In Virginia v Rives, 100 United States Reports 100, the Supreme Court said: "The provisions of the Fourteenth Amendment of the Constitution we have quoted all have reference to State action exclusively, and not to any action of private individ-

uals. It is the State which is prohibited from denying to any person within its jurisdiction the equal protection of the laws, and consequently the statutes partially enumerating what civil rights colored men shall enjoy equally with white persons, founded as they are upon the amendment, are intended for protection against State infringement of those rights." And in Ex parte Virginia page 346 of the same volume, the Court speaking of the same provisions said: "They have reference to actions of the political body denominated a State, by whatever instruments or in whatever modes that action may be taken. A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws." And this is the settled doctrine on this question.

It is contended in behalf of the Appellant that the Ordinance is to be regarded as the act of an agency established by the State, and that it is therefore subject to the Fourteenth Amendment. And that the exclusion of colored pupils consequently makes it invalid. No other objection to the ordinance is stated; and therefore we will confine our attention to this point, without expressing an opinion on any other question in this regard. It must be obvious, however, if the ordinance is unconstitutional, that the Appellant can have no rights under it, and that his prayer for mandamus must be denied. For the purpose of viewing the question in every aspect, we will ex gratia argumenti consider the ordinance as the Act of the State of Maryland. The Constitution of this State requires the General Assembly to establish and maintain a thorough and efficient system of

free Public Schools. This means that the schools must be open to all without expense. The right is given to the whole body of the people. It is justly held by the authorities that "to single out a certain portion of the people by the arbitrary standard of color, and say that these shall not have rights which are possessed by others, denies them the equal protection of the laws" Cooley on Torts page 287, where a large number of cases are cited. Such a course would be manifestly in violation of the Fourteenth Amendment, because it would deprive a class of persons of a right, which the Constitution of the State had declared that they should possess. Excellent public schools have been provided for the education of colored pupils in the City of Baltimore. But the Maryland Institute is not a part of the Public School system. This has been solemnly adjudged by this Court. St. Mary's School vs. Brown, 45 Maryland 310. The Appellant has no natural, statutory or constitutional right to be received there as a pupil, either gratuitously or for compensation. He has the same rights, which he has in respect to any other private institution; and none other or greater. Suppose that the State should form the same high opinion of the Maryland Institute which all men entertain, would it not be a competent and reasonable exercise of its discretion to determine that the public good would be promoted by extending its benefits to young persons who would not otherwise be able to obtain them? And could it not make an appropriation for paying the expense of the instruction of a certain number of pupils, and appoint a mode of selecting them? It has been the practice for a long series of years to make provisions of this kind in the case of other institutions, and the validity of these appropriations is not questioned. Of course the pupils selected must be eligible under the

rules of the institutions into which they seek admission. The selection of certain individuals is no injury to others who would not be eligible. These last mentioned would not be admitted into the institutions under any circumstances, and therefore are not concerned in the question of selection. Enlightened legislation is not enacted on the narrowminded principle that a benefit conferred on one object is necessarily something unjustly withheld from another. Let us suppose for the sake of illustration that there was a school of great merit conducted exclusively for the instruction of colored pupils in branches of learning not taught in the public schools, and that the Legislature saw fit to appropriate money for the tuition of a number of colored pupils. It is not probable that such action would be assailed as forbidden by the Fourteenth Amendment, because of an unjust discrimination against the whites. The Fourteenth Amendment was intended to prevent [illegible]. But it cannot be doubted that the Legislature has ample power to make appropriations to special objects, whenever in its judgment the public good would be thereby promoted. It has constantly exercised this power from the beginning of the State government. The Legislature may make donations without regard to class, creed, color or previous condition of servitude. The only condition limiting this exercise of this power is that it must in some way promote the public interest. The State has never surrendered this power to the General Government; and never can surrender it without stripping itself of the means of providing for the good order, happiness and general welfare of society. The benefits conferred in this way are matters of grace and favor which the State

bestows on its own citizens for worthy public reasons. They certainly cannot properly be described, in the language of the Fourteenth Amendment, as "privileges or immunities of citizens of the United States". If they were such, they could be demanded by any citizen of the United States, whether resident in Maryland or Oregon. And in that event, and only in that event, they would be comprehended within the scope of the Fourteenth Amendment. Slaughter House Cases, 16 Wallace. It is needless to say that the Legislature is not limited by the State Constitution in the particular mentioned. The forty-third Article of the Declaration of Rights seems to have been intended to impress upon it the necessity of exercising for the public good the vast powers which it possesses. It is in these words: "That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the People."

In every view which we have been able to take of the questions presented by this appeal, we think that the judgment of the Court below ought to be affirmed.

Judgment affirmed.