3 1954

No. ~~101~~ 4 ~~1952~~ 1953 Term

Note - I favor hearing with Brown & the others

DAVIS V. COUNTY SCHOOL BD. OF PRINCE EDWARD COUNTY, VA.

Appeal from DC for ED Va. (Dobie, Hutcheson, Bryan)

This school segregation case once more brings up the constitutional problems of Brown v. Board of Educ. of Topeka, No. 8 this term, and Briggs v. Elliott, No. 101 this term, prob juris noted in both (memos attchd).

Appellants, negro children and their parents, squarely challenge the constitutionality, as conflicting with the equal protection clause of the 14th Amendment, of §140 of the Va. Constitution and §22-224 of the Va.Code, which read:

> Art.IX, §140: "White and colored children shall not be taught in the same school. "
>
> Tit.22, Ch.12,Art.1,§22-221: "White and colored persons shall not be taught in the same school, but shall be taught in separate schools, under the same general regulations as to management, usefulness and efficiency."

Three public high schools are operated in Prince Edward County; one colored and two white. In a suit for injunction alleging unconstitutionality, the 3-judge DC found that the Negro school was inferior in building, facilities, curricula, and student transportation. It decreed prompt equalization, but refused to hold school segregation unconstitutional per se, relying on the holding of the DC in Briggs v. Elliott, supra.

Before this Court, appellants squarely attack school segregation as invalid per se; in fact, they "take the unqualified position that the Fourteenth Amendment has totally stripped the state of power to make race and color the basis for governmental action." In any event, they contend, the finding of present inequality by the DC should have compelled immediate admission of the Negro children to the superior white schools.

The crucial importance of this case warrants this Court's review. While in Briggs v. Elliott 342 U.S.350 (1952), when before this Court the first time, this Court remanded for the DC's consideration of additional evidence submitted by the parties under a DC order directing an action report within 6 months, no such problem appears here. This DC rendered a decree commanding prompt equalization, and then struck the case from its docket without more.

Counsel for appellee School Bd. in this case have also submitted a motion to advance argument in this case, if juris be noted, so as to be heard with the Brown and Briggs cases, supra, tentatively scheduled for Oct 14-15, or that the argument in all three cases be deferred until

they can be heard together. The Clerk's office informs me that all parties in this case are cooperating in this endeavor, and that all ppapers will be ready in time for consideration with Brown and Briggs on Oct 14.

NOTE PJ and advance argument FMR