

En banc.]

SCHOOL TRUSTEES v. HAINES.

[June 17.

School contract—Ambiguity—Parol evidence.

On January 23rd, 1902, S., one of the defendant trustees, requested P. to telephone to the plaintiff and ask her if and on what terms she would teach their school for the balance of the then current school term, which began on January 1 and would end on June 30. P. talked to the plaintiff over the telephone in the hearing of S. Plaintiff said she would go at the rate of \$90 a term, and P. said that as there were five months, or five-sixths, of the term remaining, that would be about \$75 for the unexpired portion. Plaintiff said she would go at the rate of \$90 a term, or \$75 for the balance of the term. S. agreed, and plaintiff went to the district and began teaching on the 2nd of February, and on the 4th of February signed a written contract agreeing to teach the school "during the unexpired portion of the term" ending June 30, 1902, for \$75. This term contained 121 teaching days of which plaintiff's contract covered 100. Clause 4 of this contract provided that "for a term or for any part of a school year the teacher is to receive such a proportion of the salary stated in the contract as the number of days actually taught bears to the whole number of teaching days in the unexpired portion of the term," and clause 5 that in default of written notice it shall continue in force from school year to school year. Plaintiff taught the unexpired portion of the term and was paid the agreed salary. No notice was given by either party, and she went on and taught the next term, which began on July 1 and ended on December 31 following, but which in consequence of certain holidays under the regulations of the Board of Education, contained only 92 teaching days. In the teachers' and trustees' returns sent to the chief superintendent, as required by the School Law, for both terms her salary was stated to be \$180 per year. These returns were sworn to by two of the trustees. When the trustees paid the plaintiff for the short term they claimed she was entitled only to the same rate per day as the first term, viz., 75c., and refused to pay more than that, or \$ 9 for the term.

In an action brought by her for her salary in the York County Court, evidence of the verbal agreement and of the school returns was received to explain the written agreement in its application to the second term. The trial Judge admitted it upon the ground that the terms of the agreement were ambiguous because of the use of the expression "the unexpired portion of the term" when it came to be applied to a subsequent term under the operation of clause 5. Reading the written agreement and the parol evidence together, he held that the contract was not a contract fixing \$75 as the salary for the unexpired portion of the term, and then a per diem rate based upon that salary for any future term, but a contract for a definite portion of the first term, with a provision that in default of notice it should continue from school year to school year, applicable in all its provisions alike to each subsequent term as to the first term, and that