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CONTRACT WITH TEACHER MUST BE UNDER SEAL, OTHERWISE TEACHER HAS NO LEGAL STATUS SO AS TO CLAIM AN ARBITRATION.

BIRMINGHAM V. HUNGERFORD ET AL.

Held, on demurrer to the avowry and cognizance set out below, that there is no right to arbitrate under the Common School Acts (C. S. U. C. ch. 64), unless the contract of service is entered into by the trustees with the employee in their corporate capacity, and evidenced by their corporate seal; and unless the contract has been so entered into, the person discharging the duties of teacher has no legal status as such.

This was an action of replevin for plaintiff's goods, seized by defendant Hungerford, as bailiff, under a warrant issued by the other three defendants, who professed to act as arbitrators under the Common School Act. The case was heard in the Court of Common Pleas. It was also heard in the Court of Queen's Bench. See next page.

The avowry stated that plaintiff, Birmingham, Alexander Graham, and Roderick Grant were school trustees, and Isabella McDougall was employed by them as a teacher, and performed the duties of teacher; but the written agreement between the said trustees and teacher was not sealed with the corporate seal, owing to one of the trustees (Birmingham) wrongfully refusing to affix the same, and keeping it in his possession against the will of the remaining trustees, that differences arose between the plaintiffs Graham and Grant, as such trustees on the one side, and said Isabella, as such teacher, on the other side, in regard to her salary and the sum due to her as such teacher, and the same was submitted to arbitration; that the trustees, after notice of an award (which was set out) and demand made, wilfully refused, &c., to perform the same, and to pay the teacher the moneys awarded; after one month after demand elapsed the arbitrators issued warrant to Hungerford (setting it out), and plaintiff's goods were seized.

This avowry was demurred to on many grounds, one being the invalidity of the alleged agreement with the teacher.

HAGARTY, C. J.—The act of 1860, ch. 49, sect. 12, says: "All agreements between trustees and teachers, to be valid and binding, shall be in writing, signed by the parties thereto, and sealed with the corporate seal."

The school trustees are created a corporation with a legal name, and hold all the corporate property (section 77 U. C. Consol. ch. 64), and by the section cited above they are formally to contract under their corporate seal.

If we attach any meaning to the clause cited, we think it must be that a person can only become a common school teacher by agreement under seal, and that any other agreement, verbal or written, would not be an agreement for that purpose with the school corporation. In this view we do not see how Isabella McDougall ever became a school teacher within the meaning of the Act.

It was argued before us that under the words of this Act (section 84), "in case of any difference between trustees and a teacher in regard to her salary, the sum due to him, or any other matter in dispute between them," the very subject of dispute might be the not affixing the seal or completing a valid contract. The answer is, we think, obvious, that no person should expect to become a teacher under the school corporation, or should commence the performance of any duties, with a view to remuneration from the corporation, without the essential preliminary of a contract under the corporate seal.

The moment it is settled that no agreement can be made except in the prescribed manner, there is nothing to bind the corporation in any manner or dispute between them and a teacher: no person has acquired the *status* of teacher.

If this person choose to give her services in teaching without any binding contract with the corporation, it may be possible that she has a remedy against any individuals who pledged their personal credit to her.

It seems clear to us that she is not a school teacher in the view of the Act. If this be correct the whole of the proceedings fail, and no arbitration under this statute has taken place, and of course the plaintiff's property has been taken without legal warrant.

Nothing, in our judgment, turns upon the statement of the wrongful withholding of the seal by plaintiff.

The provision in the statute as to the kind of contract required is one of a very wholesome character, and we ought to give every reasonable effect to it.