

Corporal Punishment.

The law in reference to corporal punishment in school should be understood by teachers, trustees and parents. A case occurring recently in Halifax is important, as throwing much light upon the subject.

A boy in Albro street school refused to take off his cap while marching from the hall to his class room, as required by the rules of the school. A lady teacher present made him step from the ranks, whereupon he kicked her. For this offence he received three strokes on the hand with a rubber strap from the principal. He was then sent to his room upstairs in charge of a boy. Refusing to go, he received on the legs two strokes which caused a discoloration of the skin for ten days.

The case was argued in court for two afternoons. The principal was very ably defended by Mr. Hector McInnes, who moved that the case be dismissed. Mr. Fielding's judgment explains the nature of the teacher's authority so clearly that it will form hereafter a determining precedent for magistrates in similar cases.

The following is a copy of the judgment rendered by Stipendiary Fielding in the case:

In the city of Halifax a school teacher has the power, and it is his duty, to act in *loco parentis* to the extent of maintaining and enforcing order and discipline. This authority and obligation cannot, in my opinion, be withdrawn or lessened by any notice from the parent. The teacher may be, and should be, informed of the scholar's peculiarities, etc., and take them into consideration; but it would be subversive of all discipline to declare that each parent has a right to determine just when his child should or should not be punished, or the mode or measure of punishment.

The ideas of the parent might be altogether different from these of the governing body. He might consider the use of the strap "brutality," and the school commissioners might hold an altogether different view. In that event a regulation of the school board directing or sanctioning its use would be rendered nugatory if the authority could be considered only as delegated by the parent and reversible at his pleasure.

I should prefer to adopt the view that, where there is a public school act and regulations made under it (which a teacher by his agreement in the form prescribed by law is bound to carry out), the power of control is not to be considered as presumably obtained from the parent so much as from the law, and especially so where there is a provision for compulsory attendance with penalties on the parent, or, in other words, the statute binding the parent gives to the teacher his authority and prevents the parent revoking it.

Section 55 of the Canadian Criminal Code allows force to be used by way of correction of a pupil. Section 7 of the same preserves all rights under the common law not altered by law. The school regulations for the city sanction and explicitly direct the use of strap to punish. The teacher's agreement obliges him, at his peril of dismissal, to carry out the regulations. If he fails to enforce proper discipline in the schools his usefulness is gone. Possibly being in receipt of public money to perform a duty in a glaring case of inaction he would be liable to indictment.

When it comes to the infliction of punishment he should strive to act as the father should. Although he has not the affection of the parent, he has special training in discipline, the chance of dismissal and the duty correctly rendering the punishment to keep him in check, and that he is enlightened by education does not detract from his sense of what in his special position is due to public opinion. These may go to make up for the lack in affection. At all events, courts regard it that he should stand in the same place as the parent when he is called upon to justify his conduct towards a scholar.

It seems to me, quite apart from decisions cited in the argument, that—subject of course to the control of the school board and its action, if he is there impeached—it is only reasonable, under our system of education, that the school teacher should be considered, like a parent, *prima facie* to have acted without malice, and, unless the circumstances show facts from which malice can be gathered in relation to the correction or punishment of pupils, he should not be convicted of assault where the injuries are not of a permanent or lasting character.

Entertaining this view, I think, on the evidence produced, no such case has been made out by the prosecution as should result in conviction, and I accordingly dismiss the complaint.

Teachers should be very careful not to resort to corporal punishment until they have exhausted every other means of securing obedience. If such punishment is necessary, it should not be administered in anger. The pupil should have a fair trial and every opportunity of explaining his offence. Before being punished the nature and evils of his offence should be made perfectly clear to him. He may be struck on the palm of the hand, but not on the wrist. If he obstinately refuses to hold out his hand he may be struck from behind on the more fleshy parts of his legs. The punishment should take place at least one hour before he has an opportunity of going home. The instrument used should be a moderately sized leather or rubber strap. A record of the punishment should be made before the close of the day.

When teachers act prudently, and do not exceed their authority, they should be upheld by their trustees, who should pay any loss or damage arising to them in the proper discharge of their duties. In such circumstances no manly board of trustees would look on and allow a faithful teacher to pay a fine imposed by some ignorant or partial magistrate. Any servant has a right to be protected from any loss that comes to him in his work from no fault of his own. In the case referred to above the defendant was backed up by Principal Kennedy, acting for the Teachers' Union.

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