

U. S. Rep.]

MORROW V. WOOD.

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We shall spend no time in the consideration of this point in the case, for the reason that we are fully agreed upon a question of law involved, which is fundamental and underlies the cause, and is entirely decisive of every other question arising upon the record. And as this is a question of some practical importance as affecting the duties and powers of teachers in our public schools we deem it best to decide it in the present case. The facts upon which this question of law arises as established on the trial, are these in brief.

About the 18th of November, 1872, the plaintiff, a qualified teacher under a contract with the district school board, commenced teaching a district school in Grant county. The defendant, an inhabitant of the district, sent his son, a boy about twelve years of age, to the school. The defendant wished his boy to study orthography, reading, writing, and also wished him to give particular attention to the study of arithmetic, for very satisfactory reasons which he gave on the trial. In addition to these studies the plaintiff at once required the child to also study geography, and took pains to aid him in getting a book for that purpose. The father, on being informed of this, told his boy not to study geography, but to attend to his other studies, and the teacher was promptly and fully advised of this wish of the parent, and also knew that the boy had been forbidden by his parent from taking that study at that time. But, claiming and insisting that she had the right to direct and control the boy in respect to his studies even as against his father's orders, she commanded him to take his geography and get his lesson. And when the boy refused to obey her and did do as he was directed by his father, she resorted to force to compel obedience. All this occurred a the first week of school. The defendant instituted a criminal action before a justice for this assault and battery upon his son, which is the malicious prosecution complained of. If the teacher had no right or authority to chastise the boy upon these facts for obeying his father, this action must fail. And whether or not she had the power to correct him is the question in the case, for it is not pretended that the boy was otherwise disobedient or was guilty of any misconduct, or violated any rule or regulation adopted for the government of the school. The Circuit Court, in considering the relative rights and duties of parent and teacher, among other things told the jury that where a parent sent his child to a district school he surrendered to the teacher such authority over his child as is necessary to the proper gov-

ernment of the school, the classification and instruction of the pupils including what studies each scholar shall pursue, these studies being such as are required by law or are allowed to be taught in public schools. And the court added in this connection, that a prudent teacher will always pay proper respect to the wishes of the parent in regard to what studies the child should take, but where the difference of view was irreconcilable on the subject, the views of the parent in that particular must yield to those of the teacher, and that the parent by the very act of sending his child to school impliedly undertakes to submit all questions in regard to study to the judgment of the teacher. In our opinion there is a great and fatal error in this part of the charge, particularly when applied to the facts in this case, in asserting or assuming the law to be that upon an irreconcilable difference of views between the parent and teacher as to what studies the child shall pursue, the authority of the teacher is paramount and controlling, and that she had the right to enforce obedience to her commands by corporal punishment. We do not think she had any such right or authority, and we can see no necessity for clothing the teacher with any such arbitrary power. We do not really understand that there is any recognized principle of law, nor do we think there is any rule of morals or social usage, which gives the teacher an absolute right to prescribe and dictate what studies a child shall pursue, regardless of the wishes or views of the parent, and, as incident to this, gives the right to enforce obedience even as against the orders of the parent. From what source does the teacher derive this authority? From what maxim or rule of the law of the land? Ordinarily it will be conceded the law gives the parent the exclusive right to govern and control the conduct of his minor children, and he has the right to enforce obedience to his commands by moderate and reasonable chastisement. And furthermore, it is one of the earliest and most sacred duties taught the child to honor and obey its parents. The situation of the child is truly lamentable if the condition of the law is that he is liable to be punished by the parents for disobeying his orders in regard to his studies, and the teacher may lawfully chastise him for not disobeying his parents in that particular. And yet this was the precise dilemma in which the defendant's boy was placed by the asserted authority on the part of parent and teacher.

Now, we can see no reason whatever for denying to the father the right to direct what