

JOLIFFE V. BOARD OF EDUCATION—MORISON V. ASHMAN, BIRMINGHAM V. ASHMAN.

that plaintiff as he arose to go said: "I will leave it with the Board" and passed out. Mr. Boddy swore that the plaintiff said he would leave what they should do as to his resignation to the Board; that this referred to remuneration. Mr. G. P. Wight, another trustee, swore that plaintiff said he would "leave it to the generosity of the Board what he was to receive for vacation"; that it was agreed that \$600 would cover the time he had taught and a portion of the vacation, and at the next meeting of the Board it was resolved to give him \$25 on account of vacation—the \$625 to be in full.

MACDONALD, Co. J.—If the decision of the case rested merely upon the resignation and the acceptance thereof, I would decide in favour of the plaintiff—owing to the terms of such resignation and acceptance. Section 161 of chapter 204 of the Revised Statutes of Ontario (which enacts that "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 of the trustees") only applies to public school teachers. Without at all deciding whether or not this enactment could be successfully pleaded in bar of an action brought by a public school teacher who had without such an agreement completed a term of teaching and was seeking by such action to recover the agreed salary, it certainly does not apply to a high school teacher, nor can the provisions of sections 153 and 154 of chapter 204, or of sections 13 and 14 of chapter 205, in any way be strained to support such a contention. Indeed I do not remember that it has been stated that they do. The enactment which appears to bear upon the employment of high school masters is sub-section 11 of section 39 of chapter 205, while under the provisions of section 50 of the same Act, "every master or teacher of a high school or collegiate institute shall be entitled to be paid his salary for the authorized holidays occurring during the period of his engagement with the trustees, and also for the vacations which follow immediately on the expiration of the school term during which he has served, or the term of his agreement with such trustees."

I say again that if the decision of the case rested merely upon the resignation and the acceptance thereof, I would decide in favour of the plaintiff. But such is not the case. The plaintiff was under engagement for all of 1884. He sought to be released and put himself into the hands of the trustees. Instead of refusing to let him go they acceded to his request and decided to allow him his salary for a portion of the vacation. This all appears very reasonable, and I do not think the plaintiff is justly entitled to recover more than the sum allowed by the trustees. He appears to rely, to some extent

at least, on the fact that public moneys were given to the trustees to be applied towards salaries, and that he is entitled to recover all moneys so given which were allotted for a head master, or for him (as case may be), for the term during which he was employed. I think he received a good deal more than the amount of the moneys, (other than local sums), granted for him, and at any rate this is a case of a bargain made between the trustees and teacher in which the latter virtually says: "relieve me from my contract" and "I leave it to you to say what I shall receive for the vacation," and I do not think he can, after the Board has acted upon his request in such manner as was done in the case, be permitted to recover any further amount. Judgment for defendants with costs.

GENERAL SESSIONS OF THE PEACE.

MORISON V. ASHMAN.

BIRMINGHAM V. ASHMAN.

Recognizance—Who to decide sufficiency of an appeal to sessions—Adjournment of appeal from one session to another.

[Lindsay.

Appeal to General Sessions from two convictions.

After notice of appeal moved and recognizance filed, counsel for respondents proposed to prove that the sureties were not sufficient. Counsel for appellant objected and contended that the Court to whom the appeal is made has no right to enquire into the sufficiency or insufficiency of the sureties but it was a matter wholly within the jurisdiction of the justice who took the recognizance. The learned judge allowed counsel for respondents to examine sureties and found as a fact that the sureties were not sufficient, and subsequently

DEAN, Co. J., *held*, that the justice taking the recognizance was the proper person to decide on the sufficiency of the sureties and the court appealed to had no right to enquire into the matter.

By 33 Vict. (Dom.) cap. 27, sec. 1, ss. 3, power is given to the Court if necessary from time to time by order endorsed on the conviction or order to adjourn the holding of the appeals from one sitting to another or others of the said Court.

The hearing of the appeals in these cases were noted in the learned judge's book and also in the clerk of the peace's book as being adjourned until the next sessions but no order was endorsed on the back of the conviction. On objection being taken that the hearing of the appeals was not properly adjourned and that the court could not proceed.