

SCHOOL TEACHERS AND PUPILS.

power. Here it is said: "The welfare of the child is the main purpose for which pain is permitted to be inflicted. Any punishment, therefore, which may seriously endanger life, limbs, or health, or shall disfigure the child, or cause any permanent injury, may be pronounced in itself immoderate, as not only being unnecessary for, but inconsistent with, the purpose for which it is authorized. But any correction, however severe, which produces temporary pain only, and no permanent ill, cannot be so pronounced, since it may have been necessary for the reformation of the child and does not injuriously affect his future welfare. . . . When the correction administered is not in itself immoderate, and not therefore beyond the authority of the teacher, its legality or illegality must depend entirely on the *quo animo* with which it was administered. Within the sphere of his authority the master is the judge when correction is required, and of the degree of correction necessary; and like all others imparted with a discretion, he cannot be made personally responsible for error of judgment, but only for wickedness of purpose."

In inflicting such punishment the teacher must exercise sound discretion and judgment, and must adopt it not only to the offence, but the offender. Horace Mann, a high authority in the matter of schools, says of corporal punishment: "It should be reserved for the baser faults. It is a coarse remedy, and should be employed upon the coarse sins of our animal nature, and when employed at all it should be administered in strong doses." Of course, the teacher in inflicting such must not exceed the bounds of moderation. No precise rule can be laid down as to what shall be considered excessive or unreasonable punishment. Each case must depend upon its own circumstances.*

The teacher must exercise reasonable judgment and discretion and be governed as to the mode and severity of the punishment by the nature of the offence, and the age, size and apparent powers of endurance of the pupil."

(b) And he should also take into consideration the mental and moral qualities of the pupil, and, as indicative of these, his general behaviour in school and his at-

titude toward his teacher become proper subjects of consideration. And in making the chastisement the teacher may take into consideration, not merely the immediate offence which had called for the punishment, but the past offences that aggravated the present one and showed the pupil to have been habitually refractory and disobedient. Nor is it necessary that the teacher should, at the time of inflicting the punishment, remind the pupil of his past and accumulating offences. The pupil knew them well enough, without having them brought freshly to his notice.¹⁰

(c) The chastisement must not exceed the limits of moderate correction, and though courts are bound, with a view to the maintenance of necessary order and decorum in schools, to look with reasonable indulgence upon the exercise of this right, yet, whenever the correction shall appear to have been clearly excessive and cruel, it must be adjudged illegal.¹¹ And the master is not relieved from liability in damages for the punishment of a scholar which is clearly excessive and unnecessary by the fact that he acted in good faith and without malice, honestly thinking that the punishment was necessary, both for the discipline of the school and the welfare of the scholar.¹²

(d) And whether under the facts the punishment was excessive, must be left to the jury to decide.¹³ But in the *State v. Mizner*, it was said, that "any punishment with a rod which leaves marks or welts on the person of the pupil for two months afterwards, or much less time, is immoderate and excessive, and the court would have been justified in so instructing the jury."¹⁴ The pupil must also understand and know, or have the means of knowing, for what offence he is being punished.¹⁵

In criminal actions, if there is a reasonable doubt whether the punishment was excessive, the teacher should have the benefit of the doubt.¹⁶

¹⁰Sheehan v. Sturges, 24 Rep. 455; 8 C. 16 Cin. L. Bul. 33; S. C. Conn. 1880.

¹¹Hathaway v. Rice, 19 Vt. 102.

¹²Lander v. Seaver, 32 Vt. 114.

¹³Com. v. Randall, 4 Gray, 36.

¹⁴30 Iowa, 145.

¹⁵Id.

¹⁶Lander v. Seaver, 32 Vt. 114. Whar. Crim. Law, 1259.

*Reeves on Dom. Rel. 288, 534.

¹Com. v. Randall, 4 Gray, 36.