

the relief asked is incidental to the action, I can grant it if it would be granted upon substantive motion. But the more important point is to draw the line correctly between the jurisdiction of the Court and the exclusive functions of the trustees. If amendments of the pleadings are necessary to meet the evidence and define the issues as they have developed, and there is no answer of surprise, the pleadings can be, and in this instance they may be, amended.

As to the dividing line then? In matters relating to the schools under their control, the defendants are clothed with wide discretionary and quasi-judicial powers. Assembled at a properly constituted meeting of the Board, regularly conducted, dealing with matters within their jurisdiction, and acting in the bonâ fide discharge of their duties and in harmony with the laws of the Province, the regulations of the Department, and any existing judgment or order of the Court affecting them, the conclusions they reach, whether thought to be wise or unwise, cannot be interfered with by a Court. They are the judges in such a case. The salaries they will pay, the engagement and discharge of teachers, and the selection or rejection of duly qualified teachers, from time to time as these questions arise, but not in advance, are all matters within their jurisdiction.

But to shut out judicial actions where error or misdoing exists and a remedy is invoked, there must be the act of the Board *as a Board*, and not merely the act of its individual members. In all matters involving discretion or judgment, the whole question *must be* presented to the Board, *should be* weighed and considered by the Board, and *must be* determined upon by the Board.

What was done here was the act of Chairman Genest alone. The Board had not the power to delegate their duties or functions to him. They have not discharged the old teachers, and they have not entertained or deliberated or determined upon the selection or engagement of any teacher or teachers to take their place; and, speaking of the majority—for the plaintiffs are powerless—the Board, by their flagrant neglect to discharge the duties imposed upon them by law, have not only opened the way but have unintentionally invoked the action of the Court. More than this, not only was there no power to delegate, but the resolution purporting to appoint Mr. Genest was vicious and unlawful per se, for its exercise was intended, upon the face of it, to contravene and override the injunction order of the Court should it be issued. The omission of this provision from a subsequent resolution does not change the character of the act.