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A summary of the Massachusetts law on education for the use of teachers.

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A SUMMARY OF THE MASSACHUSETTS LAW ON EDUCATION FOR THE USE OF TEACHERS

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A SUMMARY OF THE MASSACHUSETTS LAW ON EDUCATION FOR THE USE OF TEACHERS.

DENNIS M. CROWLEY

THESIS SUBMITTED FOR DEGREE OF MASTER OF SCIENCE

MASSACHUSETTS STATE COLLEGE, AMHERST

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The subject of educational law is of considerable interest to teachers, and becomes increasingly important for the educator who hopes to rise to a higher administrative position. There are essential rules of law dealing with the relations of teachers with pupils and teachers with the school committee, that are necessarily accumulated as part of the working equipment of every student who prepares for the teaching profession. In the ordinary course of events the beginning teacher has some educational law impressed upon him early in his professional practice. From established co-workers and through the sometimes stern rulings of his superiors the young teacher absorbs information about the law as it applies to the school system. Occasionally he is puzzled as to whether this is bona-fide law or simply dicta from above, and often he regards the rules as he hears them as needless and ridiculous. The gradual accumulation of a knowledge of educational law entirely by experience, rulings and the recollections of fellow-teachers is a slow process of training for most efficient and effective work in education. Too often this method of professional improvement is fraught with possibilities of mis-information and weak understanding of the necessity for the particular law that applies. Frequently, the young teacher is annoyed upon being confronted with new rules at every turn, and becomes discouraged with the "red-tape" aspects of school administration.

If the prospective teacher could be encouraged to accept a sound training in the fundamental law that governs education, there might be less distress, annoyance, and interruption to his progress in the teaching profession, and consequently a happier cooperation between teachers and administration. A fair presentation of educational law should inspire prospective teachers with an appreciation of the wholesome relation of the courts and the schools in a democracy. The teacher would start upon his life-work inspired by the realization that the courts of our Nation are interested in and will zealously guard and maintain a sound public school system. Rather than creating in the mind of a young teacher suspicion of overbearing tactics, the publication of rules should thus only recall to him the ever-watchful and benevolent attitude of our courts for education.

Unfortunately, such sound training in education law is not always available for prospective teachers. Greater emphasis has always been placed upon the operation of school law than upon the basic reasoning and splendid decisions of great jurists. Even where courses in educational law are available for teachers, the material for study is not always accessible to the students.

It has been my purpose in the preparation of this Thesis to do some little service toward making material in educational law available for the use of teachers.

While engaged upon education courses upon the direction of Professor Winthrop S. Welles, I became intrigued with the possi-

bility of collecting the essential law of education into a reasonably-sized case book for study and reference by teachers. I started to collect and analyze the leading cases in educational law that had arisen in Massachusetts and was somewhat amazed at the accumulation of material. It was obvious that we could not expect even the serious student of education to comb through over three hundred volumes of the Reports of the Supreme Judicial Court in search of material on the relation of our courts to our schools. Even if all the cases were brought together we would still have a cumbersome book, and there would be a great deal of comparatively unimportant material to confuse the serious student.

My task became apparent after I had read but a few of the leading cases. It should be my responsibility to read and analyze all the cases on educational law that had ever arisen in this Commonwealth and collect fundamental information about all of the cases. I should then tabulate the information and make it easily available for the serious student of educational law. Then I should collect the representative cases and best decisions on educational law and present them in a case-book where they should be indicated as typical of a group of court decisions. Other cases might be cited for use by students who cared to make further investigation beyond the case-book. Such a case-book should make easily accessible to students the fundamental law of education.

To help in determining the importance of cases to be included, I make frequent reference to the General Laws Relating

to Education. In this booklet, that is a frequent reference source for teachers and administrators, all cases relating to a chapter or a section of the General Laws are cited by volume and page of the Massachusetts Reports. Obviously, it would be helpful to the teacher or student to know readily the nature of the case referred to, and so I developed a numerical index to all the cases cited in this reprint of the General Laws Relating to Education. The Numerical Index (page 11a) will prove a time-saver and an aid to the student who wishes to have information on the cases relating to or interpreting a specific section of the General Laws, and this may be done without reference to the Massachusetts Reports or the Annotated Laws of Massachusetts.

For reference to the original reports, the student will find included in this case-book a list of all cases relating to education that have been reported from the Supreme Judicial Court of Massachusetts. These cases are arranged in alphabetical order, and also are noted as to the nature of the case. Thus the student who wishes to make further investigation upon any phase of educational law may determine in advance through reference to the numerical or alphabetical indexes whether or not a particular case will reveal the information that he seeks. When the student knows in advance only the volume and page of the Massachusetts Reports for the given case, the Numerical Index will prove most helpful, and the Alphabetical Index can serve when only the title of the case

is at hand.

Although it was impracticable to include in this case-book a great number of cases, it seemed advisable that every aid toward understanding the nature of all the cases should appear. For that reason you will find here a complete tabulation of all the cases with the rule of law or subject-matter of the particular case indicated. This outline is so arranged that we might call it a table of contents for the more complete collection that could be made. It should prove most helpful to a student in discovering cases that deal specifically with a point in educational law that is not covered by the representative cases that are here included.

The selection of representative cases to place in this book called for exercising judgment that might be considered as arbitrary by some readers. Naturally, the decisions and opinions conveying the greatest human interest appealed for inclusion. But there is so much human interest in many of the educational cases that found their way into the Supreme Judicial Court Reports that a more scientific method of determining the cases for inclusion had to be evolved. The cases which are presently important in school administration, as disclosed from personal experience and inquiry must be included. Enduring quality of a court decision is indicated by the frequency with which that decision is cited in later opinions of the court and by other appellate tribunals, and those cases which revealed such lasting value have been included. Due consider-was given to those cases which revealed great clarity of

language, and I may be excused if I occasionally pay a small tribute to a favorite justice whose style I have enjoyed, by including his opinion in the group that make this case-book.

ALPHABETICAL INDEX TO MASSACHUSETTS CASES ON EDUCATION

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Antell v. Stokes	287 Mass. 103	School control of pupils
Averell v. Newburyport	236 Mass. 208	Salaries-vacation and sick leave
Averell v. Newburyport	241 Mass. 333	Salaries-vacation and sick leave
Barnard v. Shelburne	216 Mass. 19	Exclusion-failure in studies
Barnard v. Shelburne	222 Mass. 76	Exclusion-failure in studies
Barrett v. Medford	254 Mass. 384	School Committee-fiduciary office
Batchelder v. Salem	4 Cush.(58 Mass.)599	Salaries-power in the committee
Bigelow v. Randolph	14 Gray(80 Mass.)541	Liability for injury
Bishop v. Inhabitants of Rowley	165 Mass. 460	Exclusion-misconduct
Boody v. Barnstable	276 Mass. 134	Principal-relation to school committee
Brine v. Cambridge	265 Mass. 452	Physical education-purchases
Brown v. City Council of Cambridge	289 Mass. 333	Budgets
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Caverno v. Fellows	286 Mass. 440	Removal of teacher
Caverno v. Fellows	300 Mass. 331	Removal of teacher
City of Charlestown v. Gardner	98 Mass. 587	School committee-salary control
Clifford v. Lynn	275 Mass. 258	School committee-fiduciary office
Commonwealth v. Boston and Northern St. Ry. Co.	212 Mass. 82	Pupil's fares
Commonwealth v. Childs	299 Mass. 367	Vaccination
Commonwealth v. Conn.Valley St. Ry. Co.	196 Mass. 309	Pupil's fares
Commonwealth v. Green	268 Mass. 585	Vaccination
Commonwealth v. Griffiths	204 Mass. 18	Child labor
Commonwealth v. Horrigan	2 Allen(84 Mass.)159	Damage to schoolhouse
Commonwealth v. Inhabitants of Dedham	16 Mass. 141	Failure to provide school

Title of Case	Volume and Page	Nature of Case
Commonwealth v. Interstate St. Ry.	187 Mass. 436	Pupil's fares
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Commonwealth v. N.E.College of Chiropracty	221 Mass. 190	Degree without authority
Commonwealth v. Porter	1 Gray (67 Mass.) 476	Disturbing school or assembly
Commonwealth v. Randall	4 Gray (70 Mass.) 36	Corporal punishment
Commonwealth v. Roberts	159 Mass. 372	School attendance
Corrigan v. New Bedford	250 Mass. 334	Removal of principal
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Downey v. City of Lowell	305 Mass. 329	Salary reduction-principal
Duffy v. Hopkinton	236 Mass. 5	Removal of teacher
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Freeman v. Inhabitants of Bourne	170 Mass. 289	Union Schools-election of Sup't.
Frye v. Leicester	300 Mass. 537	Tenure
Fulgoni v. Johnston	302 Mass. 421	liability of teacher
Fuller v. Inhabitants of Groton	11 Gray(77 Mass.)340	School committee-legal expenses
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Merrick v. Inhabitants of Amherst	12 Allen(94 Mass.)500	Suit to prevent aid to Mass. Agri. College
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13 Pick. (30 Mass.) 229	Hartwell v. Inhab. of Littleton	School committee—purchases
23 Pick. (40 Mass.) 224	Spear v. Cummings	Exclusion—before statute granting hearing
10 Metc. (51 Mass.) 508	Cushing v. Newburyport	School committee—town not limited to offer only schooling required by statute
4 Cush. (58 Mass.) 599	Batchelder v. Salem	Salaries—power to fix is in school committee
5 Cush. (59 Mass.) 198	Roberts v. Boston	School committee—segregation in schools
8 Cush. (62 Mass.) 160	Sherman v. Charlestown	Exclusion—immoral person
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236 Mass. 5	Duffey v. Hopkinton	Removal of teacher
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Chapter I

Historical Interest of Our Courts in the Public Schools.

The courts in Massachusetts have always taken a healthy interest in the public education of our citizens. Although education is primarily the concern of the State Legislature in creating facilities and establishing requirements for all the towns to abide by, there have been many occasions when the courts have by careful interpretation of the law upheld public education. Moreover, the decisions of our Supreme Judicial Court have enunciated the traditional role of the school committee, and have helped the friends of public education to stand strongly against the groups which would deny the independence of the school system.

Our Supreme Judicial Court has often quoted the portion of our State Constitution which is included in this Chapter as the basic charter for public education.

Constitution for the Commonwealth of Massachusetts
Part II, Chapter 5, Section 2

"Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this

commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people."

John N. Cushing v. Inhabitants of Newburyport
10 Metc. (51 Mass.) 502 (1845)

John N. Cushing, a taxpayer of the town of Newburyport sought to recover a portion of the taxes paid because the town used tax money to construct a high school. At the time there was no State requirement upon the town to furnish a high school education to any of its inhabitants.

J. "The establishment of schools for the education, to some extent at least, of all the children of the whole people, is not the result of any recent enactment; it is not the growth even of our present constitutional government, or the provincial government which preceded it, but extends back two hundred years to the early settlement of the colony. Indeed, the establishment of popular schools is understood to have

recover back the amount paid.

William Jenkins and others v. Inhabitants of Andover
103 Mass. 94 (1869)

The town of Andover sought to raise money by taxation to donate to the support of Punchard Free School. In an attempt to thus pay town money to rebuild a private school which had been destroyed by fire, the town had a special statute passed by the General Court. The court held that the legislative enactment was in violation of the Constitution of the Commonwealth which forbids the use of town funds for the support of an institution wherein the "order and superintendence" are not in the school committee.

The following excerpt from the decision is primarily of historical interest.

The founders of the colony appreciated the importance and necessity of providing for the universal education of the people, at a very early period; and, to make it secure, they felt the necessity of placing it under the control of the people in each muncipality. Accordingly the colonial act of 1647 required each town containing fifty householders to maintain a school in which the children should be taught to read and write; and each town containing one hundred householders to set up a grammar school, with a master able to instruct youth so far as they might be fitted for the university. The teachers were to be paid, "either by the parents or masters of the children, or by the inhabitants in general by way of supply, as the major part of those that order the prudentials

been one of the objects for which powers were conferred on certain associations of persons living together in townships, enabling them to regulate and manage certtain prudential concerns in which they had a common interest."

On the whole, the court are of the opinion, that the provision in the revised statutes, which provides the small amount of schooling which towns are compelled to provide for under a penalty, is not a definition or limit of the public schools which they have authority to provide for by taxation, but that the provision is to be taken in connection with the broader power given to towns to grant and vote money, as they shall judge necessary, for the support of schools, and also with the whole course of policy and of legislation on the same subject. This power is to be exercised in good faith, for the support of "town schools", as that term is well known and understood, for the common and general benefit, and not colorably for the promotion of other and different objects. In the agreed statement of facts, it appears to the court that the schools established by the town of Newburyport, though extending to instruction in branches of knowledge beyond those required by the statutes, were yet town schools, within the proper meaning of that term, provided for the benefit of all the inhabitants; that the taxes levied for the support of them, in common with other town charges, were not illegal; that the plaintiff, in paying his just proportion of them, was not illegally taxed, and cannot maintain this action to

of the town shall appoint". Thus they laid the foundation of a system of common schools which has been modified and improved from time to time; but has always retained its fundamental character and purpose. It provided free education in the elementary branches of learning to the children of every town, in schools to be managed and controlled by the authorities of the town, and supported by taxation of the inhabitants, unless sufficient contributions are received from other sources; and in the larger towns, which are sufficiently populous to make it desirable and reasonable, similar schools are to be maintained for the education of the more advanced pupils in higher branches of learning.

Chapter II

The Parent and the Child

The Right to an Education

There is an obligation upon the towns and cities in Massachusetts to provide schools for the education of the young. This obligation which was in an earlier day limited to lower education has become extended, and through the device of State aid extends to high school and vocational education for every worthy child in the Commonwealth.

It has been repeatedly emphasized by our court that the public schools are open to all who reside within a town, and the statutes which require school attendance between the ages of seven and sixteen years do not set those limits for school attendance so as to exclude persons outside of those limits. In Needham v. Wellesley 139 Mass. 372, the court said in interpretation of such an attendance statute, "This section does not fix the ages within which children may legally attend the public schools. It is designed to compel the education of children and not to fix a legal age".

Vanets L. Alvord v. Inhabitants of Chester
180 Mass. 20 (1901)

Tort by an infant, by her father and next friend, for the exclusion of the plaintiff from a public school in the town of Chester. Writ dated April 25, 1900.

At the trial in the Superior Court, before Lawton, Jr., without a jury, it appeared, that the plaintiff at the time

of her exclusion from the school in April 1900, was five years and ten months old, that she applied for admission to a public school for beginners taught by one teacher, and that at the time of the application there were children younger than the plaintiff attending this school. The rule under which the plaintiff was excluded was as follows: That "All pupils must enter this school at the beginning of the fall term, or within three or four weeks thereafter; and that pupils desiring to enter at any other time were excluded unless found qualified to enter the classes then in said school." This rule did not apply to children between the ages of seven and fourteen years, and children between those ages had the right to attend the public schools at any time.

The rule was not recorded in the permanent record book provided for in Pub. Sts. c. 44 s. 27, and there was no record in the book of any vote or order regulating the time of admission to the respective schools.

The plaintiff requested rulings, that the plaintiff was excluded unlawfully because the regulation was not recorded in the permanent record book, that the regulation was not a lawful one, and that the plaintiff being of school age had the same right to attend the public schools as if she had been between seven and fourteen years of age.

The judge refused to give the rulings and found for the defendant; and the plaintiff alleged exceptions.

Barker, J. The sole reason for the exclusion of the plaintiff from school was the regulation adopted by the school committee to the effect that children under the age of seven years could not enter the school except at the beginning of the fall term or within three or four weeks thereafter unless qualified to enter classes existing in the school at the time of entry.

This was a reasonable rule. Children under seven years of age, although allowed to attend the public schools are not required to attend.

St. 1898, c. 496, s. 12. Grading is a permitted, if not an essential, feature of the public school system. The introduction, late in the school year, of a very young scholar not qualified to enter the existing classes, would tend to impair the efficiency of the school, and so to prevent the other scholars from obtaining such advancement in learning and in training as would enable them to proceed with their education in due course. The right given to every child by St. 1898, c. 496, s. 7, to attend the public schools is not unqualified but is "subject to such reasonable regulations as to the numbers and qualifications of pupils to be admitted to the respective schools, and as to other school matters, as the school committee shall from time to time prescribe."

Nor was it essential to the validity of the regulation that it should be recorded in the permanent record book of the school committee, required by Pub. Sts. c. 44, s. 27.

That section directs the committee to appoint a secretary and directs the secretary to keep a permanent record book in which all the votes, orders and proceedings of the committee shall be recorded. But this does not make invalid all rules and orders of the committee not so recorded. Russell v. Lynnfield 116 Mass. 365,367. See also Libby v. Douglas, 175 Mass. 128, 130.

Exceptions overruled.

Note that the public schools are open to all, and that the school committee may admit children under seven. There is no prohibition upon school attendance after sixteen years, although the child is not compelled to attend.

Commonwealth v. Conn. Valley St. Ry. Co.
196 Mass. 309

Eliza C. Millard, Admx. v. Inhabitants of Egremont
164 Mass. 430 (1895)

An action to recover tuition paid to another town after the town of Egremont withdrew its approval, which it had previously given, to the attendance of child at high school in other town.

Morton, J. The plaintiff contends that the school committee, having once given its approval could not withdraw it except for misconduct on the part of the pupil, and that the daughter of the intestate was entitled to pursue the studies on which she had entered until her graduation in due course, which it is said in the plaintiff's brief would

have been in June 1895. She further contends that, if this is not so, the defendant is liable for the amount paid for tuition for the term on which the daughter had entered at the time when her intestate first learned of the action of the school committee, or at least that it is liable for the amount paid down to such time.

The object of the statute appears to be to provide a way in which a child living in a town which is not obliged to maintain, and which presumably does not maintain, a high school, may attend one in a neighboring city or town at the expense of the town where he resides, and it seems to be an extension of Pub. Sts. c. 47, s. 6, 8. There is nothing in the act of 1891 or in the substituted act of 1894, c. 436, which obliges a town that is not required by law to maintain a high school to provide for the attendance of children living in it at a high school in another city or town, or which obliges any city or town to receive into its high school upon the payment of reasonable tuition children living in a town where there is no high school. There is no such provision elsewhere. Cities and towns are bound to furnish within their respective limits "schools for the instruction of all the children who may legally attend public school therein", (Pub. Sts. c. 44, s. 1) but they are not obliged to provide for the attendance of such children at schools elsewhere. In certain cases two adjacent towns, or two or more contiguous districts in adjoining towns, may unite and maintain a school for the

common benefit of children in said towns or districts, or children living remote from any public school in the town where they reside may be allowed to attend school in an adjoining town under such regulations and on such terms as the school committees of said towns agree upon or they may, with the consent of the school committees, attend schools in towns or cities other than those in which their parents or guardians reside. But these matters are left to the discretion of the school committees or of the towns and districts interested.

Although it may appear from the above case that children of the smaller communities suffer in the educational advantages that are available to them, later enactments have removed most of the obstacles. Under General Laws, Chapter 71, section 4 to 10, there are adequate provisions for high school education for any resident of the Commonwealth. The re-imbursement provisions made it possible for every town to care for the attendance of any worthy child at a high school, even if the town does not maintain such a school and is not required to do so.

There is no authority in a school committee to accept pupils who reside out of the state, and the promise of a non-resident parent to pay tuition for his child in a Massachusetts school is not enforceable.

Inhab. of Haverhill v. Gale
103 Mass. 104

The duties of the Parents.

The primary responsibility for school attendance rests upon the parent. Although there are occasional instances of waywardness and habitual truancy in which even the parents are unable to exert influence, we see the wisdom of the law which insists on the responsibility of the parent for regular school attendance. A parent may be penalized under G. L. Chapter 76, Section 2 (Terc. Ed.) for neglect in this essential parental duty.

Commonwealth v. Frank Roberts
159 Mass. 372 (1893)

Complaint under St. 1890, c. 384, alleging that the defendant on September 1, 1890, and from that day continually to November 5, 1891, at Fitchburg, "did have under his control a child between the age of eight years and fourteen years, to wit, Mary Roberts of the age of eleven years, and then and there during all of said time did neglect to cause said child to attend any public day school at said Fitchburg for at least twenty-eight weeks during the school year, the said public schools of said Fitchburg being kept open that length of time during said time, and the said child not having attended for a like period of time a private day school approved by the school committee of said Fitchburg, and said child not having been otherwise instructed for a like period of time in the branches of learning required by law to be taught in the public schools, and said child not having already acquired the branches of learning required by law to be taught in the pub-

lic schools, and said child's physical and mental condition not being such as to render such attendance inexpedient or impracticable.

Trial in the Superior Court, before Bishop, J., who reported the case for the determination of the Supreme Judicial Court, in substance as follows:-

It was proved "that at the time alleged in the complaint the defendant had under his control a daughter named Mary Roberts, between the ages of eight and fourteen years, and that he neglected to cause her to attend a public day school in said Fitchburg at the time and for the period alleged in the complaint."

The defendant offered to show that for a like period of time with the period alleged in the complaint, during the time alleged in the complaint, the said Mary Roberts had been instructed in the branches of learning required by law to be taught in the public schools in a private day school not approved by the school committee of said Fitchburg, application to approve said private school having been made to said school committee and refused; and asked the judge to rule that these facts, if proved, brought the case within the exceptions mentioned in the statute. The judge declined so to rule, and excluded the evidence.

The jury returned a verdict of guilty. If the evidence offered should have been admitted, the verdict was to be set aside; otherwise it was to stand.

Allen, J. The penalty imposed by St. 1890, c. 384, is

not incurred "if such child has attended for a like period of time a private day school approved by the school committee of such city or town, or if such child has been otherwise instructed for a like period of time in the branches of learning required by law to be taught in the public schools, or has already acquired the branches of learning required by law to be taught in the public schools". The words, "if such child has been otherise instructed for a like period of time in the branches of learning required by law to be taught in the public schools", were first enacted in St. 1889, c. 464, by way of substitution for the words, "if such child has been otherwise furnished for a like period of time with the means of education", which words were in the earlier statutes. Pub. Sts. c. 47, s. 1, St. 1873, c. 279, s. 1. Gen. Sts. c. 41, s. 1.

The great object of these provisions of the statutes has been that all the children shall be educated, not that they shall be educated in any particular way. To this end public schools are established, so that all children may be sent to them unless other sufficient means of education are provided for them. If a child has in any manner already acquired the branches of learning required by law to be taught in the public schools, the law does not compel any further instruction. If he has not acquired them, the law requires that he be instructed in them for the specified time each year. Sending a child to a private day school approved by the school comm-

ittee is enough to comply with the requirements of the law, without further inquiry. The Pub. Sts. c. 47, s. 2, prescribe what private schools may be so approved. But if the person having a child under his control, instead of sending him to a public school or to a private day school approved by the school committee, prefers to have him instructed otherwise, it will be incumbent on him to show that the child has been instructed for the specified time in the required branches of learning, unless the child has already acquired them. This permits instruction in those branches in schools or academies situated in the same city or town, or elsewhere, or instruction by a private tutor or governess, or by the parents themselves, provided it is given in good faith and is sufficient in extent. If the school committee has not approved of a particular school, or has expressly refused to approve of it, then the person having control of a child, if he sends the child to that school, must take the responsibility of being able to prove that he has been sufficiently and properly instructed there. He has no such responsibility if he sends the child to a private day school approved by the school committee.

The evidence which was excluded should have been admitted.

Verdict set aside.

COMMONWEALTH V. GREEN
268 Mass. 585 (1929)

Sanderson, J. The defendant was convicted upon a complaint charging him with failing to send to school his two children, between the ages of seven and fourteen years, for seven specified days within a period of six months next before the making of the complaint. The only exception was to the denial of the defendant's motion that the jury be directed to return a verdict of not guilty.

Testimony offered by the Commonwealth tended to prove that the defendant refused to have the children vaccinated as required by law, and failed to send them to school. The defendant admitted that he refused to have his children vaccinated and that he knew the authorities would not allow them to attend school unless vaccinated.

G. L. c. 76, s. 1, as amended by St. 1921, c. 463, requires every child between seven and fourteen years shall, subject to s. 15, attend a public day school in the town or some other day school approved by the school committee during the entire time that public schools are in session. G. L. c. 76, s. 2. G. L. c. 76, s. 15 provides an unvaccinated child shall not be admitted to a public school except upon presentation of a physician's certificate. In the case at bar, no such certificate was obtained and upon the testimony of the defendant the physical condition of the children was such that a certificate could not properly have been given.

The requirement for vaccination has been held to be constitutional. Commonwealth v. Pear 183 Mass. 242. Jacobson v. Comm. 197 U. S. 11. The defendant's view cannot affect the validity of the statute nor entitle him to be excepted from its provisions. By statute, vaccination is made a condition precedent to the right of a child to attend a public school. Spofford v. Carleton 238 Mass. 528. The defendant's sole defence to the complaint seems to be that because of his religious belief and conscientious scruples concerning vaccination he should not be held to have incurred the penalty of the statute for failing to send his children to school. But he cannot thus avoid this penalty even if their failure to attend school was based upon this ground alone. Comm. v. Plaisted 148 Mass. 375. It was his own act which kept the children in the class ineligible for school attendance.

In Hammond v. Hyde Park 195 Mass. 29, the court held that the school committee was justified in excluding an unvaccinated child during an epidemic, even though the child had a certificate from a physician that the child could not be vaccinated without grave injury to his health. Such a certificate will permit attendance in school under normal conditions.

In Spofford v. Carleton 238 Mass. 528 the school committee was upheld in its action of requiring constant renewal of such a certificate. The school committee required that the certificate be renewed several times during the year.

Carleton B. Nicholls, Jr. v. Mayor and School
Committee of Lynn
297 Mass. 65

Rugg, C. J. This petition for a writ of mandamus was submitted without evidence upon agreement that the facts stated in the petition and answer are taken to be true, the answer to control in case of inconsistencies. The single justice reported the case without decision with the statement that he should not exercise his discretion against the issuance of the writ if in other respects the petitioner was entitled to it. The object of this petition is to secure reinstatement as a pupil in a public school from which the petitioner has been expelled.

The essential facts are these: The petitioner is about eight years old, a resident of Lynn, and in his third year as a pupil in the public schools of that city. During all this time and for many years theretofore, there was in effect a rule as to the conduct of the schools in Lynn of this tenor: "Rule 18. Salute To The Flag.--The following salute to the flag shall be given in every school at least once a week and at such other times as occasion may warrant; I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all." During his first two years in school, the petitioner joined with his teachers and room classmates in the salute to the flag and the recitation of the

pledge of allegiance. After the opening of the school in 1935, it was observed that the petitioner, while standing during the salute and the recitation of the pledge, was otherwise taking no part therein. Upon inquiry it was said by the petitioner and his father that the petitioner would not take part in the ceremony "because he was being called upon to adore the flag and to bow down to the flag and that according to his religious views, he could only adore and bow down to Jehovah." Courteous requests by the teacher and principal of the school failed to change the decision of the petitioner not to participate in the ceremony. On September 30, 1935, there was repeated a refusal by the petitioner to join in the salute to the flag and the pledge of allegiance as a part of the opening exercises of the school, but he remained seated and refused to rise. The father of the petitioner was present at the time. After due notice to the petitioner and his father, a hearing was held before the respondents on October 8, 1935, on the question why the petitioner should not be expelled from school because of his conduct. The father was present and was represented by counsel, who made an explanation of the reasons for the refusal of the petitioner to salute the flag and to recite the pledge of allegiance in that they constituted an act of adoring and of bowing down to the flag, which is contrary to the religious beliefs of the petitioner. The respondents as members of the school committee of Lynn

then voted to exclude the petitioner from attending the Lynn public schools "until he, of his own free will, shall be willing to subscribe to the laws of the Lynn School Committee and Commonwealth of Massachusetts." This petition was then seasonably brought.

By G. L. (Ter. Ed.) c. 71, s 37, the school committee is given general charge of all the public schools in Lynn and is authorized to make regulations as to attendance therein. In Leonard v. School Committee of Springfield, 241 Mass. 325, 329, 330, it was said: "The school committee is an independent body, entrusted by law with broad powers, important duties and large discretion...The school committee may make all reasonable rules and regulations for the government, discipline and management of the schools under their charge." In holding that a child of immoral character might be excluded from the public schools, it was said in Sherman v. Charlestown, 8 Cush. 160, 167, that "the whole tone and tenor of the laws demonstrate, that it was the intention of the legislature to make the public schools a system of moral training, as well as seminaries of learning." The decipline of the classroom may be maintained. Hodgkins v. Rockport 105 Mass. 475. Pupils of such intellectual capacity and weakness of mind as to interfere with the progress of others may be excluded. Watson v. Cambridge 157 Mass. 561. Rules to promote health may be enforced. Hammond v. Hyde Park, 195 Mass. 29. Secret societies may be suppressed. Antell v. Stokes 287 Mass. 103.

The discretion of the school committee was diminished by St. 1935, c. 258, amending G. L. (Ter. Ed.) c. 71, s. 69. It was thereby enacted that the school committee shall provide flags for each schoolhouse under itscontrol and that a flag of the United States "shall be displayed in each assembly hall or other room in each such schoolhouse where the opening exercises on each school day are held. Each teacher shall cause the pupils under his charge to salute the flag and recite in unison with him at said opening exercises at least once each week the "Pledge of Allegiance to the Flag." Failure to comply with this mandate by the school committee or by a teacher is made punishable by fine. No penalty is imposed on pupils for refusing to participate in the ceremony. The respondents are required to cause to be given instruction in the public schools in American history and civics, the Constitution of the United States, and the duties of citizenship. All instructors of youth are required to "exert their best endeavors to impress on the minds of children and youth committed to their care and instruction the principles of piety and justice and a sacred regard for truth, love of their country, humanity and universal benevolence..." G. L. (Ter. Ed.) c. 71, s. 1, 2, 30.

The general rule of the school committee of Lynn, already quoted, is within the power conferred by G. L. (Ter. Ed.) c. 71, s. 37, and is expressly authorized by St. 1935, c. 258. The latter statute established no penalty for a

disobedient pupil, but is directed to the school committee and to the teacher. Power to enforce the rule is implied in the grant of power to establish it. It necessarily follows that, if said c. 258 and the rule are valid, the school committee was acting within its jurisdiction in excluding the petitioner from attending school. Antell v. Stokes 287 Mass. 103. Sherman v. Charlestown 8 Cush. 160, 164. Hodgkins v. Rockport 105 Mass. 475 Hammond v. Hude Park 195 Mass. 29. Watson v. Cambridge 157 Mass. 561. The rigidity of this rule extends no latitude to pupils who refuse to obey it because of religious objections. Said c. 258 is clear in its command that "each teacher shall cause the pupils under his charge to salute the flag and recite in unison with him "the pledge of allegiance.

The public obligation to provide for general education is imposed by c. 5, s. 2, of the Constitution of this Commonwealth in these impressive words: "Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and

grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments, among the people." In the performance of the obligation thus imposed on the Commonwealth, it seems to us within the competency of the General Court to enact a statute like c. 258, requiring the flag salute and the pledge of allegiance. That is a ceremony clearly designed to inculcate patriotism and to instill a recognition of the blessings conferred by orderly government under the Constitution of the State and nation. The study of those instruments is a proper subject for instruction in the public schools. It is plain that the Republic and the State undertake to establish liberty and to provide justice for all within their borders in accordance with standing laws. The flag is a symbol of those aims of government. It is important for all who attend the public schools to know these facts and to appreciate these advantages. An understanding of these matters enables citizens to comprehend and to assert their rights and to seek and obtain their safety and happiness.

As justification for his conduct, the petitioner appeals to art. 2 of the Declaration of Rights of the Constitution of

this Commonwealth. It is there provided that "no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship." He invokes, also, s. 1 of art. 18 of the Amendments to the Constitution, as found in art 46 of the Amendments; "No law shall be passed prohibiting the free exercise of religion." He further relies on G. L. (Ter. Ed.) c. 75, s. 5, to the effect that "No child shall be excluded from a public school of any town on account of race, color or religion."

Neither the Constitution of this Commonwealth nor that of the United States contains any definition of religion. Reynolds v. United States 98 U. S. 145, 162. Nevertheless, a deep reverence for religion permeates several parts of the Constitution of this Commonwealth. That Constitution guarantees "absolute freedom as to religious belief and liberty unrestrained as to religious practices, subject only to the conditions that the public peace must not be disturbed nor others obstructed in their religious worship or the general obligations of good citizenship violated." Opinion of the Justices 214 Mass. 599, 601.

In Davis v. Beason 133 U. S, 333, 342, it wassaid; "The

term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will...With man's relations to his Maker and the obligations he may think they impose, and the manner in which an impression shall be made by him of his belief on those subjects, no interferences can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with." The flag salute and pledge of allegiance here in question do not in any just sense relate to religion. They are not observances which are religious in nature. They do not concern the views of any one as to his Creator. They do not touch upon his relations with his Maker. They impose no obligations as to religious worship. They are wholly patriotic in design and purpose.

The petitioner has made no disturbance in school and has simply stood mute during the ceremony of flag salute and pledge of allegiance, except that he remained seated on the single occasion on September 30, 1935, when his father was present. He refused to recognize the rule. It is assumed that the statement of beliefs of the petitioner made by him is genuine and true and constitutes the ground of his conduct.

It has been assumed by both sides in the argument of the case at bar that the petitioner and his parents belong to the group known as "Jehovah Witnesses." A member of that group,

as stated in the brief of the petitioner, through a literal reading of the Bible, and especially of the first two Commandments as found in Exodus XX, entertains the belief that he "must express reverence to God alone and not to the flag, which is not the symbol of God." According to his belief, a salutation is equivalent to an act of reverence or adoration, or idolatry, and in violation of the Commandments of Scripture. The pledge of allegiance to the flag, as set forth in the rule of the school committee and referred to in said c. 258, is an acknowledgment of sovereignty, a promise of obedience, a recognition of authority above the will of the individual, to be respected and obeyed. It has nothing to do with religion.

The salute and pledge do not go beyond that which, according to generally recognized principles, is due to government. There is nothing in the salute or the pledge of allegiance which constitutes an act of idolatry, or which approaches to any religious observance. It does not in any reasonable sense hurt, molest, or restrain a human being in respect to worshipping God" within the meaning of words in the Constitution. The rule and the statute are well within the competency of legislative authority. They exact nothing in opposition to religion. They are directed to a justifiable end in the conduct of education in the public schools. The practice of the petitioner was in contravention of them. It was said in Reynolds v. United States 98 U. S. 145, 166: "Laws are made for the govern-

ment of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices."
In Fraina v. United States 255 Fed. Rep. (C.C.A.) 28, 36, the statement occurs: "the most profound religious conviction that compliance with statute is wrong will not by law save any one from conviction...for violating that statute."
In Spiller v. Woburn 12 Allen 127, a pupil sought damages for her alleged illegal expulsion from school. A rule had been passed that the schools should be opened each morning with reading from the Bible and prayer, and that during the prayer the scholars should bow their heads; with a proviso that any pupil whose parent so requested should be excused from taking part in the ceremony. The father of the plaintiff refused to make such request, but instructed her to refuse to bow her head. As a result, she was expelled from school. Judgment was rendered for the defendant and the rule was upheld as a reasonable exercise of the power of the school committee. In the opinion, at page 129, it was stated: "We do not mean to say that it would be competent for a school committee to pass an order or regulation requiring pupils to conform to any religious rite or observance, or to go through with any religious forms or ceremonies, which were inconsistent with or contrary to their religious convictions or conscientious scruples...But we are unable to see that the regulation with which the plaintiff was required to comply can be justly said to fall within this category."

In Hamilton v. Regents of the University of California 293 U. S. 245, relief was sought against refusal to allow citizens to attend a State university except upon condition of taking military training, to which objection was made on religious and conscientious grounds. It was said at pages 261, 262; "Appellants assert--unquestionably in good faith--that all war, preparation for war, and the training required by the university, are repugnant to the tenets and discipline of their church, to their religion and to their consciences ...There need be no attempt to enumerate or comprehensively to define what is included in the 'liberty' protected by the due process clause. Undoubtedly it does include the right to entertain the beliefs, to adhere to the principles and to teach the doctrines on which these students base their objections to the order prescribing military training...They are seeking education offered by the State and at the same time insisting that they be excluded from the prescribed course solely upon grounds of their religious beliefs and conscientious objections to war, preparation for war and military education. Taken on the basis of the facts alleged in the petition, appellants' contentions amount to no more than an assertion that the due process clause of the Fourteenth Amendment as a safeguard of 'liberty' confers the right to be students in the state university free from obligation to take military training as one of the conditions of attendance. Viewed in the light of our decisions that proposition must at once be put aside as untenable."

That decision appears to us to support in general the contentions of the respondents. It stamps with disapproval the contention of the petitioner that any right secured to him by the Federal Constitution or its Amendments has been infringed. There is nothing at variance with the conclusion here reached in Meyer v. Nebraska 262 U. S. 390, and Pierce v. Society of Sisters 268 U. S. 510.

The result is that, in our opinion, the rule and said c. 258 are not invalid and the petitioner fails to show that any of his rights have been invaded.

Matters of policy or wisdom are not open for our consideration. Our decision is confined to the question of law whether the petitioner is entitled to the writ.

Petition dismissed.

The "flag-salute" cases which have arisen in the past few years are similar in many respects to the religious freedom problem in school administration as represented by Spiller v. Woburn 12 Allen (94 Mass.) 127, and the vaccination cases. In all these situations we find a stubborn reluctance to do many of the things that the majority of our citizens find advisable manifestations of cooperation. There are times when our tolerance and patience with these non-conformists is apparently wasted, but that is the very point where tolerance is most needed.

If we permit conscientious objectors to accept a substitute for military service, and if we permit atheists or Quakers to

give an affirmation rather than an oath in court proceedings, surely there must be some arrangement that can be made for the group who cannot conscientiously salute the flag.

Fortunately, our court decided in Commonwealth v. Johnson that the children who refuse to salute the flag and are urged to refuse by their parents, cannot be sent to a training school.

"It does not follow that, in the absence, as here, of other facts tending to show misconduct or misbehavior, violation of such a regulation of instruction in the public schools of a town, adopted under the terms of a statute that applies in terms only to children in public schools, and imposes no penalty even upon such children for failure to participate in the required exercise, imports such misconduct or misbehavior on the part of a child persistently failing to comply with such regulation as warrants a finding that such a child is an "habitual school offender" subject to being committed to a training school, within the meaning of G. L. (Ter. Ed.) c. 77, s. 5. No implication of power to discipline a child in this manner is necessary for the enforcement of the statute or the regulation. An intention that a child should be so disciplined is not lightly to be attributed to the Legislature, in the absence of express provision therefor."

Commonwealth v. Johnson
309 Mass. 476

The Duties of the Child

In the administration of our schools, it is essential that the school committee have control over the child for the maintenance of good discipline and morale. There is seldom any question of the necessity of such control inso-far as ordinary discipline problems are concerned. However, some great difficulties have arisen when there has been a question by parents as to possible invasion by the schools of the parental sphere of influence. Adopting the thought of the great Justice Holmes who said of a disappointed civil service candidate "The plaintiff has the constitutionsl right to talk politics, but he has no constitutional right to become a policeman", we must agree that a pupil has no constitutional right to run the school. Nor has the parent the right to dictate courses of study, selection of teacher for his child, and classification of the child in the school.

Our court has been positive in upholding the power of the school committee to enforce its reasonable rules on all matters affecting school life, and upholds exclusion for persistent failure to abide by the rules.

For the habitual offender in the schools, there is the provision of training schools.

Antell v. Stokes et al
287 Mass. 103 (1934)

Eight petitions for writs of mandamus, filed in the Supreme Judicial Court for County of Essex on February 15,

1934. The material facts were agreed on and are stated in the opinion. Cases were consolidated and were reserved and reported for determination by the full court.

Rugg, C. J. Several petitions for writs of mandamus were consolidated for purposes of hearing by the single justice, who then reported the cases without decision. Each petitioner prays for a writ to compel the respondents, the school committee of the City of Haverhill to reinstate her as a pupil in the High School of that city. The material facts are agreed. The school committee passed a rule entitled "Regulations on Fraternities and Sororities" of the tenor following; "On and after May 15, 1933 no student in the High School shall be pledged to or join a secret organization composed wholly or in part of high school pupils unless said organization is approved by the Superintendent and Principal of the High School, nor shall a student member or student members of such secret organizations as now exist pledge, initiate, accept or attempt to pledge, initiate or accept a fellow student into membership. The wearing of jerseys, sweaters, caps, or other conspicuous evidence of membership in an unapproved secret organization now existing shall file with the principal: a. Name of organization, b. Lists of all student members, c. Dates and places of all meetings, d. Programs, dates and places of all house parties or other gatherings, whether occurring during school year or in short vacations. The penalty for violations of any of the above regulations is exclusion from the Haverhill

High School. The principal of the High School may adopt such other rules and penalties as seem to him best for the close regulation of such fraternities and sororities as now exist until they shall pass out of existence and such rules shall be considered additions to the regulations given above."

The principal of the High School prepared registration blanks to be signed by pupils on which was printed a copy of this regulation and to which was added the sentence: "My signature signifies that I have carefully read the school committee's regulations and promise on my honor to observe them". Each pupil was expected to sign this blank. No one refused. The only misconduct on the part of the petitioners who were excluded from school was violation of the rule and of the pledge.

The question is whether the school committee had power under the law to pass and enforce this rule. The relevant statutes are in General Laws (Ter. Ed.) c. 71; by s. 37 it is provided that the school committee "shall have general charge of all the public schools...It may determine, subject to this chapter the number of weeks and the hours during which such schools shall be in session, and may make regulations as to attendance therein"; and by s. 47, "The committee may supervise and control all athletic and other organizations composed of public school pupils and bearing the school name or organized in connection therewith".

Education ofyouth was provided at public expense and nourished with anxious solicitude through the colonial and provincial period of our history. The duty to maintain and cherish public schools was declared in the Constitution, c. 5, s. 2. Money raised by taxation for the support of public schools has been segregated to those conducted under "the order and superintendence" of approved officials of the town or city by Article 40 of the Amendments to the Constitution. The jealous care of the General Court has always clothed municipal officers with adequate authority to encourage the highest practicable efficiency of thesystem of public education. The words quoted from the statutes are of wide import. They confer an ample power. For the promotion of the interests of the pupils and of all the people they have been broadly construedby the court for nearly a century. In the absence of other limitations, they include the power to determine within reason what pupils shall be received and what pupils shall be rejected. The general principle that the control and superintendence of the school committee extend to the regulation of attendance by the pupils upon the public schools has been illustrated by application to many specific instances. Cushing v. Newburyport 10 Metcalf 508; Alvord v. Chester 180 Mass. 20; Morse v. Ashley 193 Mass. 294; Wulff v. Wakefield 221 Mass. 427; Leonard v. School Committee of Springfield 241 Mass. 385.

As matter of interpretation the words of these sections warrant the adoption of the rule here assailed. It would be difficult to frame a more comprehensive grant of power in this connection than that to supervise and control all organizations composed of public school pupils and established in connection with the public schools. Discussion cannot clarify these unambiguous words. The history of section 47 confirms this view. By St. 1906, c. 251, the power was conferred upon the school committee to supervise and control school athletic organizations. By St. 1919, c. 292, s. 4, this power was enlarged so as to include other organizations as well as those purely athletic. The legislative intent to cede power embracing every kind of such organization could hardly be more clear.

The rule of the school committee here attacked was well within the grant conferred by s. 47. The power in this particular as set forth in s. 47 manifestly extends to organizations designed to be operative away from the school premises and outside school hours. This is not an invasion of the domain reserved exclusively to home and family. Formal associations of pupils in connection with a public school possess possibilities of genuine harm to the reputation of the school and to the studious habits and personal character of the members. These factors intimately concern the general welfare in connection with the public schools. They properly may be regulated by rules adopted pursuant to legislative sanction.

The rule is not invalid because it forbids the solicitation and initiation of new members and does not at one stroke abolish such societies. To provide for their gradual extinction by the efflux of time is not unreasonable and is within the scope of the legislative grant of power. Further provisions of the rule as to filing information touching the name of the organization, lists of members, dates, places and programs of meetings are incidental to general supervision and control of such organizations.

No point arises on the record as to the authority attempted to be delegated to the principal of the high school to adopt further rules and penalties for the close regulation of such existing organizations. It does not appear to have been exercised. The petitioners have no complaint in that regard. In any event it is merely incidental to the main purpose and substance of the rule and is easily separable from other parts of it. There is no occasion to consider its validity. Plainly the principal was authorized to prepare the registration blanks and to request signatures to them by the pupils.

The penalty of expulsion from school for violation of the rules does not exceed the power conferred by s. 47. The power to make rules would be vain without the capacity to annex reasonable penalties for their violation. Rules adopted by the constituted authorities for the governance of public schools must be presumed to be based upon mature deliberation and for the welfare of the community. A pupil who persistently

violates such rules, especially after having made an express promise to obey them, may be excluded from the school by the school committee acting in good faith. No personal right stands superior to the public welfare in this particular.

Sherman v. Charlestown 8 Cush.(62 Mass.)160
Spiller v. Woburn 12 Allen (94 Mass.)127
Hammond v. Hyde Park 195 Mass. 29
Hodgkins v. Rockport 105 Mass. 475

No right guaranteed by the Federal Constitution is infringed by the statute as thus interpreted. Waugh v. University of Miss. 237 U. S. 589.

In each case the entry may be,

Petition dismissed.

There is a remedy for unlawful exclusion of a child from school, and wherever a child is excluded without a hearing, there can be recovery against the town. However, if a hearing is held, and a vote of exclusion is made by the school committee, acting in good faith, there can be no recovery.

In Morrison v. Lawrence 181 Mass. 127 ahearing was held, but the school committee refused to permit pupils of the school to be compelled to give testimony in regard to matters that occurred in the school. However, the committee would allow such pupils to make statements if they chose to do so. The court refused to hold that there was any bad faith in the refusal to permit such examination, and agreed that for the maintenance of morale, and for the protection of the children, this was probably the best action that the committee could have taken.

Pauline Jones v. City of Fitchburg
211 Mass. 66 (1911)

Tort for unlawful exclusion of Plaintiff from defendant's public schools. Writ dated May 9, 1908.

In the Superior Court the case was tried before Bell, J. Found for plaintiff in $1,075. Reduced to $600. by Judge. Defendant alleged exceptions.

The general mangement of the public schools having been conferred on the school committee, the plaintiff's exclusion was not unlawful unless they acted in violation of the provision of R. L. c. 44, ss. 7,8, under which the action is brought. Bishop v. Rowley 165 Mass. 460. Morrison v. Lawrence 186 Mass. 456. R. L. s 42, s, 27. At the grammar school where she attended, a course in civil government had been prescribed in which the functions of the various officers required by the defendant's system of municipal administration were exemplified by the pupils and while in the performance of the duty of a policeman, to which she had been a ssigned, differences arose between the plaintiff and the principal. The aspersions upon her honesty, which the jury could find caused the difficulty, were finally decided by him to be without foundation. The plaintiff, however, desired to be relieved from the office, and upon his refusal to grant the request, declined to act further, when he informed her that without compliance she would not be permitted to attend school. The order was enforced, and the interviews and correspondence in which the plaintiff and her father, the principal and the superintendent of schools, who also acted as secretary of the school committee, participated

having failed to adjust the controversy, a written application was made by the plaintiff's father asking that, in accordance with s. 7, a statement in writing be furnished giving the reasons for his daughter's exclusion. The reply returned must be read in connection withthe undisputed evidence. It appears that through a subordinate committee of visitation, whose report was before them, the full committee had been informed of the circumstances. The board consequently knew that the plaintiff had been denied readmission and deprived of the benefit of the public schools because of alleged misconduct. They also must have been aware that their vote then passed to sustain the principal established a condition which could be terminated only by the acknowledgment of the plaintiff that her conduct was unjustifiable, although upon an impartial inquiry by the committee she might have been exonerated, or a less severe penalty might have been imposed. It was open to them upon receiving the application to have ordered a hearing and decided the question whether she had been guilty of insubordination, and their decision affirming the order, if made in good faith, would have been final. Morrison v. Lawrence 186 Mass. 456. But, instead, the committed voted to inform him, that the plaintiff had been suspended for refusing to obey the principal's directions and that she could return to school at any time upon acceding to the terms to which we have referred. The jury were warranted in finding that the severance of the plaintiff from the school, even if characterized in the vote as a suspension, operated, and

was intended to operate for an indefinite period, and in effect amounted to a permanent exclusion, which could not be justified unless preceded by the hearing required by sect. 8. Spiller v. Woburn 12 Allen 127, Carnig v. Carr 167 M. 544. If found to be permanent, the exclusion was unlawful for the reasons stated, and the defendant's requests were properly denied.

Exceptions overruled.

Emma Wulff v. Inhabitants of Wakefield
221 Mass. 427 (1915)

Tort under R. L. c. 44, s. 7 for the alleged unlawful expulsion of the plaintiff from schools of Wakefield. Writ dated May 29, 1912.

In the Superior Court the case was tried before Dana, J. The material evidence is described in the opinion. At the close of the evidence, the judge ordered a verdict for the defendant and reported the case to this court for determination.

Pierce, J. There was evidence tending to show that for some reason, presumably because of the burden of work, the teacher selected a pupil as an assistant to perform in his stead the purely mechanical work of comparing the answers to problems as worked out by pupils with the correct answers contained in a "key book". It happened that a certain problem submitted by the plaintiff to the assistant for examination was marked "wrong". The plaintiff worked upon it as best she could during a week and a half and then submitted it

the same answer to the teacher, who went over it and called it correct. There was evidence that as a consequence of this error of the assistant, the plaintiff "worried, was nervous and lost her appetite and sleep...She reported the incident to her mother and her stepfather, Mr. and Mrs. Kleeman." Kleeman protested against the manner of correcting the papers in turn to the teacher, the superintendent of schools, and to the principle of the high school.

Pending a hearing before the school committee, Kleeman requested that the plaintiff's work be corrected by the teacher only and not by a fellow pupil. He also "protested against the method of correcting the work and told the committee of the ill effect that the situation created by the method was having on the plaintiff's health". This request or petition was refused, after hearing, and thereupon the plaintiff requested that she be excused from the work.

Pending these hearings she did not attend to the work and after the decision of the committee was communicated to her she continued to absent herself although required to resume work on pain of suspension. Remaining obdurate she was formally suspended from school. Kleeman later filed a formal request to the same end and was granted a hearing, but the request was denied. A verdict was directed at the close of the plaintiff's case and hence the plaintiff is entitled to the view of the evidence most favorable to her contention.

The hearings apparently were informal, and we get a glimpse now and then of a disposition to make fun of the em-

barrassment and possible peculiarities of the stepfather; but on the whole there is no reason to find that there was not a fair hearing and a decision rendered in good faith.

The real and vital question is not whether the plaintiff was guilty of misconduct in refusing to attend her class, but whether a parent has the right to say a certain method of teaching any given course of study is to be pursued. The question answers itself. Were it otherwise, should several parents hold diverse opinions all must yield to one or confusion and failure inevitably follow. The determination of the procedure and the management and direction of pupils and studies in this Commonwealth rests in the wise discretion and sound judgment of teachers and school committee, whose action in these respects is not subject to the supervision of this court. R. L. c. 42, ss. 27 and seq. Hodgkins v. Rockport 105 Mass. 475, Watson v. Cambridge 157 Mass. 561; Morse v. Ashley 193 Mass. 294; Hanion v. Hyde Park 195 Mass. 29.

The case at bar is one purely of administrative detail and its exercise violates no legal right of pupil or parent. The plaintiff was without right in requring that the principal personally should attend to the supervision of her individual work, perhaps to the neglect of more important duties.

While constrained to this decision, we cannot refrain from the expression of disapproval of the practice of setting a rival pupil in judgment upon the work of an eager and zealous competitor. However honest that pupil may be, a mistake or

error of decision inevitably leads to suspicion and often to charge of intentional wrong.

Judgment on the verdict.

So Ordered.

Watson v. City of Cambridge
157 Mass. 561, (1892)

Tort, to recover damages for the exclusion of the plaintiff by the school committee. Verdict for plaintiff. Exceptions alleged.

Knowlton, J. The records of the school committee of the defendant city set forth that the plaintiff in 1895 was ec-cluded from the schools "because he was too weak-minded to de-rive profit from instruction". He was afterwards taken again on trial for two weeks, and at the end of that time again ex-cluded. The records further recite that "it appears from the statements of teachers who have observed him, and from the certification of physicians, that he is so weak in mind as not to derive any marked benefit from instruction, and further, that he is troublesome to other children, making uncouth noises, pinch-ing others, etc. He is also found unable to take the ordinary decent physical care of himself." The evidence at the trial tended strongly to show that the matters set out in the records were true.

"The defendant requested the court to rule that, if the facts were true which are set forth in the records of the comm-ittee as the cause of the exclusion of the plaintiff from the

public schools, the determination of the school committee thereon, acting in good faith, was final, and not subject to revision in the courts." The court refused so to rule, and submitted to the jury the question whether the facts stated, if proved, showed that the plaintiff's presence in school "was a serious disturbance to the good order and discipline of the school."

The exceptions present the question whether the decision of the school committee of a city or town, acting in good faith, in the management of the schools, upon matters of fact directly affecting the good order and discipline of the schools, is final so far as relates to the rights of pupils to enjoy the privileges of the school, or is subject to revision by a court. In Hodgkins v. Rockport 105 Mass. 475, it appeared that the school committee, acting in good faith, excluded the plaintiff from school on account "of his general persistence in disobeying the rules of the school, to the injury of the school."

Of the plaintiff's acts of misconduct it is said, in the opinion in that case, that "whether they had such an effect upon the welfare of the school as to require his expulsion, was a question within the discretion of the committee, and upon which their action is conclusive." The principles there laid down are decisive of the present case. It was found by the presiding justice that the alleged misconduct of the plaintiff in that case was not mutinous or gross, and did not consist of a refusal to

obey the commands of the teachers, or of any outrageous proceeding, but of acts of neglect, carelessness of posture in his seat and recitation, tricks of playfulness, inattention to study, and regulations of the school in minor matters. The only difference between the acts of disorder in that case and in this is that in this they resulted from the incapacity and mental weakness of the plaintiff, while in the other they were willful or careless, the result in part of youthful exuberance of spirits and impatience of restraintor control. In their general effect upon the school they were alike, and the reasons for giving the school committee, acting in good faith, the power to decide finally a question affecting so vitally the rights and interests of all the other scholars of the school,are the same in both cases.

Under the law, the school committee "have the general charge and superintendence of all the public schools in the town" or city. Pub. Sts. c. 44 s 21. The management of the schools involves many details, and it is important that a board of public officers dealing with these details and having jurisdiction to regulate the internal affairs of the schools, should not be interfered with, or have their conduct called in question before another tribunal, so long as they act in good faith within their jurisdiction. Whether certain acts of disorder so seriously interfere with the school that one who persists in them, either voluntarily

or by reason of imbecility, should not be permitted to remain in the school, is a question which the statute makes it their duty to answer, and if they answer honestly in an effort to do their duty, a jury composed of men of no special fitness to decide educational questions should not be permitted to say that their answer is wrong. Spear v. Cummings 23 Pick 224, at 226.

When the exclusion from school is for some other reason than misconduct, a hearing is not required by statute. Thus, a pupil who is incompetent to continue with the class may be re-classified, Barnard v. Shelburne 216 Mass. 19. A child who will be a bad influence upon other children because of moral weakness may be refused admission to the school. Sherman v. Charlestown 8 Cush. (62 Mass.) 160. A child may be excluded from school for uncleanliness, Carr v. Dighton 229 Mass. 304. The habitually tardy child may be suspended, Russell v. Lynnfield 116 Mass. 365.

Chapter III

The School Committee

Extent of Control over School Affairs

The educational policy of our Commonwealth is determined legislatively by the General Court. It would be within the province of that body to place in a State department exclusive control of the schools. In fact, much of the responsibility for the enforcement of the statutory law of education is placed in the Commissioner of Education. However, throughout the history of our Commonwealth, the General Court has chosen to delegate a large part of its power in education to the local school committees. The State Department of Education functions as a very active division of the administrative government in promoting and developing educational programs, in administering the reimbursement provisions of the law, and in training teachers. The local school committees are entrusted with the general charge of all the public schools. The election of teachers, and the other details of the school management are the responsibilities of the school committee.

Leonard et als v. Springfield
241 Mass. 325 (1922)

Bill in Equity under G. L. c. 40, s. 53, filed in the Supreme Judicial Court on June 21, 1921, by nineteen taxable inhabitants of the City of Springfield, seeking an injunction restraining the school committee from diverting money of the

city from particular school purposes to which it was appropriated in the budget of 1921, as adopted by the city council, and devoting it to other school purposes included within general headings of the budget.

The material facts were agreed to and are described in the opinion. The suit was reserved by Pierce, J., for determination by the full court upon the pleadings and an agreed statement of facts.

Rugg, C. J. This is a suit in equity by the mayor and more than ten other taxpayers of the city of Springfield against the school committee, auditor and treasurer of that city. The object of the suit is to restrain the school committee from diverting money of the city from particular school purposes to which it was appropriated in the budget of 1921, as adopted by the city council, and devoting it to other school purposes included within general headings of the budget.

The relevant facts are that, in response to request by the mayor of Springfield, the school committee seasonably submitted estimates for expenses of the public schools, which, amongst numerous other matters, included an increase in the compensation to be paid many teachers, as well as salaries of additional teachers. The mayor in his budget as transmitted to the city council named a sum smaller than that asked by the school committee, intending to include salaries

of additional teachers at the rate previously fixed by the school committee but intending not to make provision for increases in salaries beyond those arising under general rules established by the school committee. The estimate transmitted by the school committee to the mayor and the budget submitted by the mayor to the city council were arranged under fifteen main headings, so far as the present controversy is concerned. The city council failing to approve or disapprove any items in the budget within sixty days, it became operative as the city's budget under the law. There after the school committee, in order to provide money for the increases in salaries upon which they had determined and for which they had asked, but which the mayor had refused to include in the budget, voted to eliminate "summer schools," which was one heading or item in the budget, to discontinue ten out of a larger number of kindergarten schools thereby diminishing by several thousand dollars the amount required to maintain "kindergarten," another separate heading or item in the budget, and to curtain expenses in other schools constituting distinct headings or items in the budget. The result of the several votes of the school committee was not to exceed the total appropriation for schools but to change the application of some of the items in the budget.

The precise question to be decided is whether the school committee has power thus to carry out its policy as to the

management of the school system or whether it is bound by the action of the mayor and city council to the items set forth in the budget without power to modify or change them in any substantial particular. That question concerns the relative powers and duties of the mayor and city council on the one side and of the school committee on the other side under the provisions of law relative to the budget as applied to the administration of the public schools system. The governing statutes are C. L. c. 44, relating to "Municipal Finance," G. L. c. 71, relating to "Public Schools," and the city charter of Springfield concerning the school committee. The crucial provision of G. L. c. 44, s. 32, which, omitting its exceptions and quoting only parts pertinent to the form of city government established by the charter of Springfield, is in these words: "Within sixty days after the annual organization of the city government...the mayor...shall submit to the city council the annual budget of the current expenses of the city...The budget shall consist of an itemized and detailed statement of the money required, and the city council, by a majority vote, shall make such appropriations in detail, clearly specifying the amount to be expended for each particular purpose; but the budget shall not be in such detail as to fix specific salaries of employees under the direction of boards elected by the people, other than the city council. The city council may reduce or reject any item, but, without

the approval of the mayor...shall not increase any item in or the total of a budget, nor add any item thereto..the city officials, when so requested by the mayor, shall submit to him forthwith in such detail as he may require estimates for the next fiscal year of the expenditures of their departments or offices under their charge, which shall be transmitted to the city council...if the council fails to approve or disapprove any item in the budget, as submitted by the mayor...within sixty days after its receipt thereof, such item shall, without any council action, become a part of the budget for the year, and the sum named shall be available for the purpose designated..."

The charter of the city of Springfield provides that the "school committee shall have the care and superintendence of the public schools, and shall have all the powers, and perform all the duties, of town school committees." St. 1852, c. 94, s. 11.

The school committees of cities and towns as enacted by G. L. c. 71 s. 37, "shall have the general charge of all the public schools" and, by s 38, "shall elect and contract with the teachers of the public schools."

The slight verbal changes made in these sections of the General Laws, as compared with corresponding sections of ealier statutes, wrought no alteration in meaning and did not modify the pre-existing law. Main v. County of Plymouth 223 Mass.

66,69. Commonwealth v. Kozlowsky 238 Mass. 379, 387.

It was said in 1846 by Chief Justice Shaw in Cushing v. Newburyport 10 Met. 508, at page 511: "The establishment of schools for the education, to some extent at least, of all the children of the whole people, is not the result of any recent enactment; it is not the growth even of our present constitutional government, or the provincial government which preceded it, but extends back two hundred years, to the early settlement of the colony. Indeed, the establishment of popular schools is understood to have been one of the objects for which powers were conferred on certain associations of persons living together in townships, enabling them to regulate and manage certain prudential concerns in which they had a common interest." The policy of the Commonwealth from early times has been to establish a board elected directly by the people separatefrom other governing boards of the several municipalities and to place the control of the public schools within the jurisdiction of that body unhampered as to details of administration and not subject to review by any other board or tribunal as to acts performed in good faith.

The general statutory provisions as to the powers of the school committee, to which reference has been made, have been in substance the same for many years. They had been interpreted by numerous decisions and had acquired a well settled

meaning long before the enactment of the law providing for a budget. Without reviewing these decisions one by one, it is enough to state summarily their essential conclusions.

The school committee is an independent body, entrusted by law with broad powers, important duties and large discretion. The obligation to select and to contract with teachers implies examination as to their fitness and of necessity carries with it the authority to fix the compensation to be paid. It would be vain to impose upon the school committee responsibility for excellence of the instruction to be afforded to pupils and to deprive them of the power to determine the salaries of teachers. There is much of self sacrifice and devotion to the common welfare among teachers in the public schools. But, nevertheless, the character of service to be obtained depends to a considerable degree upon the compensation offered. The full and appropriate discharge of their duties by school committees requires ample power to select competent teachers. The Legislature, moved by obvious and strong reasons, has vested the school committee with the absolute and unconditional power to agree with teachers upon their salaries to the end that high standards may be secured and maintained in the education of the youth of the Commonwealth. In the exercise of their honest judgment on the question of salaries for teachers, the school committee are not restricted to the

amounts appropriated. For the time during which schools must be kept by law the municipalites must pay such salaries as may be fixed by the school committee. To take this power from the school committee would break up the long established system of our law in regard to public schools. The only supervision which the city council or towns can exercise over the school committee is to vote to close the schools after they have been kept the length of time specified by the law. The school committee may make all reasonable rules and regulations for the government, discipline and management of the schools under their charge. This includes a determination within the bounds set by the statutes of the subjects to be taught and the nature of the schools to be maintained and the exercise of discrimination, insight and wisdom in the election of teachers and in the general supervision of the school system, with all the incidental powers essential to the discharge of their main functions. Batchelder v. Salem 4 Cush 599. Spiller v. Woburn 12 Allen 127. Charlestown v. Gardner 98 Mass. 587. Kimball v. Salem 111 Mass. 87. McKenna v. Kimball 145 Mass. 555. Morrison v. Lawrence 181 Mass. 127. Morse v. Ashley 193 Mass. 294. Hammond v. Hyde Park 195 Mass 29. Barnard v. Shelburne 216 Mass. 19. Whittacker v. Salem 216 Mass. 383 (483). See Day v. Greenfield 234 Mass. 31.

The statutory provisions under which these decisions

were rendered have been substantially the same for a long time. They have been re-enacted without change in successive revisions of the laws. The interpretation of their terms in the numerous decisions which have been cited may be presumed to have been adopted by the General Court. Welch v. Boston 211 Mass. 178, 185. King v. Thissell 222 Mass. 140, 141.

This body of statutory and common law regarding a matter of universal interest and profound importance to the public well was established and widely known before the budget law came into existence. The budget law must be construed and applied in the light of this history and with reference to this background of school law. The budget law, now G. L. c. 44, s. 32, already quoted, was enacted first by St. 1913, c. 719. It was entitled "An Act Relative to Municipal Indebtedness." It was founded upon a report of a joint special committee of the General Court on municipal finance. The joint order of 1912 providing for that committee authorized an investigation of municipal indebtedness and assessment and collection of taxes and kindred matters. The report of that committee is comprehensive concerning the subject of municipal assessment and collection of taxes, and the incurring and paying of municipal indebtedness and allied

subjects. There is nothing in it directly touching the public school system. Its words convey no express intimation of a purpose to effect any change in the powers of the school committee. If there is modification, it flows wholly from implication.

The municipal indebtedness act of 1913, with its provisions for a budget, was highly important legislation. It was an innovation in the fiscal affairs of cities governed by a mayor and city council. It was calculated to cultivate municipal thrift and to discourage current expenditures at the cost of future taxation. The payment of present charges out of the present tax levy is one obvious purpose of the act. Another manifest design was "to set rigid barriers against expenditures in excess of appropriations, to prevent the borrowing of money for current expenses, to confine the making of long time loans strictly to raising money for permanent improvements, and in general to put cities upon a sound financial basis so far as these ends can be achieved by legislation." Flood v. Hodges 231 Mass. 252,256. Shannon v. Cambridge 231 Mass. 322. While by the municipal indebtedness act with its budget provisions general and special laws inconsistent therewith are repealed with exceptions not here material, yet it cannot be construed as reaching outside its proper territory over into the well recognized field of public school education equally established and retained as a separate statutory domain, and obliterating the functions of the

school committee in important particulars. There are combined in the General Laws the pre-existing provisions respecting public schools and the budget system of municipal finance, both substantially in the phrases theretofore employed in the statutes. This demonstrates that there was no thought in the minds of the framers of that compilation of laws, or of the legislators in enacting it, that there was conflict between the two or that they could not stand together as practically workable statutes. To support the contention of the plaintiffs would put the school committee, hitherto at least for almost a century an independent body charged with duties vital to the welfare of society, wholly under the domination of the mayor and city council in essential particulars. As matter of statutory construction, such a revolution in the management of the public school system cannot be effected merely by doubtful implication from a statute enacted to accomplish a quite different end. Duggan v. Bay State Street Railway 230 Mass. 370,374.

It is to be noted that no question here is raised as to an attempt by a school committee to spend more than a total appropriation made for the support of the public schools. The school committee only assert a right to fix the salaries of teachers in conformity to their own sound discretion without being restricted in this regard to particular items specified in the budget. That contention is sound. The statutes, interpreted as an harmonious body of laws in the light of our

history and traditions as to the public school system, confer upon the school commitee of Springfield power to establish the salaries of teachers within the total amounts appropriated by the budget, according to their best judgment of public needs, as set forth in G. L. c. 71, and other laws governing the conduct of the public school.

The case at bar is distinguishable in its controlling statutory provisions from School Committee v. Mayor of Cambridge 233 Mass. 6, and Simpson v. Marlborough 236 Mass. 210.

The request of the school committee for fees of its solicitor to be taxed as costs against the plaintiffs is denied. This is not an appropriate case under our practice for the application of that principle. Higginson v. Fall River 226 Mass. 423. Ten taxpayers frequently invoke the aid of the court under G. L. c. 40, s. 53, purely for the public welfare and not to enforce a private interest. Even taxable costs often have not been charged against defeated plaintiffs under that statute. Fuller v. Mayor of Medford 224 Mass. 176. Lee v. Lynn 223 Mass. 109. See in this connection Burrage v. County of Bristol 210 Mass. 299; Sears v. Nahant 215 Mass. 234; Frost v. Belmont 6 Allen 152; Stiles v. Municipal Council of Lowell 233 Mass. 174.

Bill dismissed without costs.

It now seems clear that the remedy in case of insufficient appropriation by the governing body of the wotn or city must be by petition to the Superior Court under Chapter 71, Section 34. This section was amended in 1939, so as to create a remedy for such failure to appropriate that might reasonably be applied. The former remedy was really penal in that it would impose an unreasonable burden upon a town.

The Municipal Finance Act of 1913, Chapter 64, Section 32, provides for the arrangement of the budget in cities, and there has been some question as to the power of the school committee over the salaries of teachers and other financial arrangements. This question was cleared somewhat in Leonard v. Springfield 241 Mass. 325, where the court held positively for the right of the school committee to control the schools..."It would be vain to impose upon the school committee the responsibility for the excellence of the instruction to be afforded to pupils and to deprive them of the power to determine the salaries of teachers...While by the municipal indebtedness act, with its budget provisions general and special laws inconsistent therewith are repealed, yet it cannot be construed as reaching outside its proper territory over into the well-recognized field of public school education, equally established and retained as a separate statutory domain, and obliterating the functions of the school committee in important particulars."

Fiduciary Nature of the Office

Traditionally, the school committeeman has occupied an elective office that is as far removed from politics as public opinion and the careful rulings of the courts could keep it. The office is without compensation and the best citizens have been willing to serve under a system that maintains the independence of the schools from politics. A school committeeman is ineligible for any school position within the public schools.

Edward W. Barrett v. City of Medford
254 Mass. 384 (1926)

Pierce, J. This is an action to recover for services rendered as school physician, or "medical inspector" of the City of Medford, from September 1, 1923 until August 1, 1924, eleven months at $60.00, a total of $660. The answer, in addition to a general denial, alleges that "the appointment (of the plaintiff) was ultra vires, against public policy and otherwise void." The case was heard in the Superior Court without a jury, on an "Agreed Statement of Facts". The judge found for the defendant, and the plaintiff appealed to this Court.

The pertinent facts are that on November 12, 1917, the plaintiff was appointed by the school committee of the defendant city temporary medical inspector for all the schools. On June 14, 1920, his appointment was made permanent and placed under the civil service. The appointment was made under G. L. c. 71, s. 53, and previous similar statutes. Thereafter, he

continued to serve as medical inspector by appointment of the school committee and under the civil service at a monthly salary of $60.00 until the bringing of this action. During all this period he was a member of the school committee, elected every three years, but took no part officially as a member of said school committee in his appointment by said school committee as such "medical inspector". After September 1, 1923 owing to the refusal by the mayor to approve the payroll item covering the plaintiff's salary as medical inspector, he no longer received a salary for such services. Nevertheless, he continued to perform the duties of medical inspector and to serve as a member of the school committee. On August 1, 1924, he brought this action against the city for $660. the amount he would have received to date had his salary as medical inspector been continued and paid.

"The duties of the medical inspector are regulated partly by statute, (G.L. c. 71, ss. 54,55) partly by the school committee and partly by conditions as they arise." Under this statute he examines all school children referred to him, he examines teachers, janitors and school buildings; he grants employment certificates to children who are entitled to work; and as a part of his duties, at the discretion of the school authorities, he examines girls who play basket ball and boys who play hockey. The school committee, under G. L. c. 71, s. 59, elects and fixes the compensation of a superintendent of schools, who "shall be the executive officer

of the committee, and under its general direction". It appoints a school physician (herein called medical inspector) under s. 53 and fixes his compensation. Under St. 1904, c. 173, G. L. c. 71, s. 52, "No member of aschool committee in any town shall be eligible to the position of teacher, or superintendent of schools therein." Under the rules of the school committee, the superintendent or the executive officer of the school committee, s. 59 supra, has general care and supervision of the schools and nominates all principals, supervisors, teachers, janitors,...and other school employees" and makes recommendations "to the school committee regarding their duties, salaries, and dismissal." The charter or ordinances of the defendant city do not forbid the school committee from appointing one of its own members as medical inspector of schools and the rules of the school committee of the defendant city make no reference to it.

Having in mind that a member of either branch of a city council or of a municipal board of a city is not permitted to be personally interested directly or indirectly in a contract made by the city council, or other branch thereof, or by such board, or by authority derived therefrom, in which the city is an interested party, G. L. c. 268, s. 9; that no "member of the city council shall, during the term for which he was chosen be eligible to any office the salary of which is payable by the city," G. L. c. 39, s. 8; that a board of health of a city, who are

authorized to appoint a quarantine physician under an ordinance giving him a compensation fixed by the city council, may not appoint one of their own members such quarantine physician, Gaw v. Ashley 195 Mass. 173; that no member of a school committee shall be eligible to serve as teacher or superintendent in the public schools, St. 1904, s. 173; we think a school committee, in the absence of a statute permitting it, cannot elect one of themselves to the salaried office of school physician. The duties he is to perform as physician are incompatible with the supervisory duties which as a member of the committee he should exercise over the incumbent of the office of school physician. Consistently he cannot be master and servant.

Again, under the rules of the Committee and G. L. C. 71, 3. 59, the superintendent of schools, under the direction of the school committee, is the"executive officer of the committee" who, among other services, has the duty to nominate for election "all principals, supervisors, teachers, janitors ...and other school employees, make recommendations to the school committee regarding their duties, salaries, and dismissal". It is to be further observed that the superintendent of schools may hold his office by the deciding vote of the member he may subsequently nominate for school physician, with whom an accompanying recommendation of a stated salary for the incumbent of that office.

Judgment for the defendant.

In Clifford v. Lynn 275 Mass. 258 (1931) a dismissed teacher who later sought election to the school committee and was elected could not be re-appointed to her teaching position. By becoming a member of the school committee she had rendered herself ineligible for re-instatement as a teacher, even though her petition for a writ of mandamus was filed before the election.

See also Wood v. Cambridge 269 Mass. 67 for a treatment of the requirement that a city school committeeman may not hold other elective office for compensation within the period of his elected term.

The Superintendent is the Executive Officer

Edward J. Russell v. John F. Gannon
281 Mass. 398 (1933)

Two Petitions, filed in the Supreme Judicial Court for the county of Berkshire on September 26, 1931, for writs of mandamus, and described in the opinion.

Rugg, C. J. We deal first with the case of Russell v. Gannon. This petition for writ of mandamus is brought to compel the respondent as superintendent of schools of Pittsfield to recognize the petitioner as assistant superintendent of schools. The relevant facts are that the school committee in 1931 voted that the office of assistant superintendent of schools be created and that the petitioner, then a teacher in the high school, be assigned to that office. There after

the school committee requested the respondent to recommend some one to be assistant superintendent of schools. He recommended some one other than the petitioner. The school committee rejected the person so recommended and again elected the petitioner. The single justice ruled as requested by the petitioner that the school committee had power to create the position of assistant superintendent of schools by majority vote, and to assign to such position a person already on the teaching force not recommended by the superintendent after the latter had recommended another person, and ordered the writ to issue. The exceptions of the respondent bring the case here.

The dominating characteristic of the statutes relating to public schools is that the school committee of the several cities and towns (in the absence of some special provision) "shall have general charge of all the public schools" and "shall elect and contract with the teachers of the public schools." G. L. (Ter. Ed.) c. 71, s. 37, 38. It is provided also by G. L. (Ter. Ed.) c. 71, s. 59, that the school committee of a city such as Pittsfield "shall employ a superintendent of schools and fix his compensation. A superintendent employed under this section...shall be the executive officer of the committee, and under its general direction, shall have the care and supervision of the public schools, shall assist it in keeping its records and accounts and in making such reports as are required by law, and shall recommend to the

committee teachers, textbooks, and courses of study."
It is plain from these three sections and from the general tenor of said c. 71 that the Legislature has placed the final power as to the management of schools in the school committee. While the school committee may always seek the superintendent's advice, and in some instances must have it, as precedent to action, Duffey v. School Committee of Hopkinton 236 Mass. 5, still the power rests with the school committee. There is nothing in the statutes or in the customs as to the conduct of public schools that requires the action of the school committee to be controlled by the opinion of the superintendent. Although his duties are highly important, they do not with respect to essential features of school management override the authority of the school committee. Boody v. School Committee of Barnstable 276 Mass. 134. Sheldon v. School Committee of Hopedale 276 Mass. 230, 235. If in a city like Pittsfield the school committee decides that an assistant superintendent of schools is necessary for the economical and efficient administration of the public schools, it has the power to create such a position....It may act on its own sound judgment as to what is required by the public welfare, and contrary to advice from any source, even from the superintendent of schools. It is still the master and not the servant. This conclusion is in harmony with the body of statutes governing the public school system of the Commonwealth and with the uniform current of judicial decisions...To adopt the contention of the respondent

would be subversive of the principles there established.

Exceptions overruled.

The Municipality's Liability is Limited

Jane F. Sweeney v. City of Boston
309 Mass. 111 (1941)

Report by Good, J., of an action of tort tried before him in the Superior Court.

Dolan, J. This is an action of tort to recover compensation for personal injuries sustained by the plaintiff as a result of falling down a stairway in a public school building in the City of Boston, known as the "Teachers' College and Girls' Latin School Building." The case was tried to a jury and at the close of the plaintiff's case the judge granted the defendant's motion for a directed verdict for the defendant, subject to the plaintiff's exception. The jury returned a verdict for the defendant, as directed, and the case comes before us on the report of the judge, the parties having stipulated that if the verdict for the defendant was properly ordered, judgment shall be entered accordingly, otherwise judgment shall be entered for the plaintiff in a stated sum.

The evidence would warrant the jury in finding the following facts: On June 21, 1937, one Sullivan applied to the director of extended use of the public schools of the school committee of Boston for permission to use two halls and four rooms in the school building, before referred to on October 22, 1937, for a "bridge, whist and beano" entertainment. The

application was received by the director pursuant to s. 385 of the "Rules of the School Committee and Regulations of the Public Schools of the City of Boston, "adopted under the authority of St. 1912, c. 195, s. 1, as amended by Spec. St. 1916, c. 86. The director approved the application and sent Sullivan a letter on September 8, 1937 stating that a charge of $33.45 was made for the proposed use of the school accomodations. Sullivan paid that sum to the director's secretary, who transmitted it to the office of the business manager of the committee who turned it over to the city collector. All funds received by the committee are turned over to the city collector and by him to the city treasurer, are put to the credit of the school committee, and are all used for purposes of the school committee. The sum charged in the present case was based upon certain schedules adopted by votes of the school committee. Only $3.51 of the total charge was not expended for expenses incurred by the committee in connection with the use of the building on the night of the entertainment.

After paying the charge made, Sullivan procured a temporary entertainment license on September 20, 1937, for "bridge, whist and beano" on October 27, 1937, from the licensing division at City Hall, paying therefor a fee of $2. Tickets were sold for the affair in advance,and could be procured at the door of the school on the night of its occurence, by any member of the public who should choose to purchase one.

The plaintiff, an elderly woman, had purchased a ticket in advance. Immediately after passing through the main door of the building, she stopped in the entrance to the vestibule proper, located about eight feet distant, to take her ticket out of her bag. There was a throng of people there, and as the "crowd was going along" she took one step to the right and fell down a stairway, which was about eighteen inches from the door through which she had entered. An electric light bulb affixed to the wall over the landing of this staircase was not lighted and the stairway was unguarded at the point where the plaintiff fell. Further facts which the jury could have found relative to the accident and its proximate cause need not be recited, since even if it be assumed that the employees of the school committee who were on duty in the building that night (the custodian of the building and assistants) were negligent, that the plaintiff's injuries resulted therefrom, and that she was in the exercise of due care, she cannot recover.

St. 1912, c. 195, s. 1, as amended by Spec. St. 1916, c. 86, reads as follows: "For the purpose of promoting the usefulness of the public school property of the city of Boston, the school committee of that city may conduct such educational and recreative activities in or upon school property under its control, and shall allow the use thereof by individuals and associations, subject to such regulations as the school comm-

ittee may establish, for such educational, recreative, social, civic, philanthropic and similar purposes as the committee may deem to be for the interest of the community; provided, that such use shall not interfere or be inconsistent with the use of the premises for school purposes."

The school committee of the City of Boston is a board of public officers whose duties are prescribed by statute, and in the execution of its duties its members act not as agents of the city but as public officers in the performance of public duties. McKenna v. Kimball 145 Mass. 555,556. The appropriations it may make are fixed by statute. St. 1936, c. 224. Its powers concerning the taking of land and construction of new school buildings thereon, as well as alterations, repairs and equipment, are set forth in St. 1929, c. 351, under which the commissioners of school buildings and the department of school buildings are made responsible to the committee rather than to the mayor and city council, or either. By St. 1875, c. 241, s. 5, it is provided in part that the committee "shall appoint janitors for the school-house, fix their compensation, designate their duties and may discharge them at pleasure." The amendment of this section by St. 1933, c. 121, does not affect that provision. While the city charter of the defendant city confers broad powers upon the mayor and city council, there is nothing therein that confers upon them control of the committee in the performance of the duties imposed upon it as a board of public officers, or of its agents

or servants in the execution of those duties. Provisions in St. 1936, c. 224, under which the mayor is given a veto power over appropriations voted by the committee (which may be overridden by the committee by the same vote as is required to pass them in the first instance), provisions of the city charter whereby certain employees of the school committee are defined as employees of the city for pension purposes, and those requiring a list to be furnished annually to the city auditor of all persons paid by the city or county, and similar provisions of the city charter (St. 1909, c. 486, as amended), do not affect the status of the school committee as an independent board of public officers. A reading of the charter as a whole discloses a recognition therein of the school committee as an independent body set apart from the departments of the city itself. There is nothing in conflict with this view in Trustees of Public Library v. Rector of Trinity Church, 263 Mass. 173, 176.

Although the title to the school building in question is in the city, by force of the statutes the building is in the sole control of the committee. The plaintiff's counsel concedes in his brief that the building involved was "under the control and general charge of the school committee," and not subject to "municipal regulation and inspection." The authority to permit the extended use of the school buildings, under which the permission for use was granted in the present case, is conferred by statute upon the school committee, not

upon the city government or any of its officers or agents. In exercising that authority, whether for profit or otherwise, the members of the committee acted as public officers, for whose torts or those of its agents or servants liability cannot be imposed upon the city, which had no voice in or control over the matter.

The decisive fact is that the school committee of the city of Boston are not officers or agents of the city itself, but public officers. It is the established law of this Commonwealth that in the absence of express statutory provisions to the contrary a city is not liable for the torts of public officers or for those of their agents or servants acting in the discharge of public duties imposed upon such officers. Manners v. Haverhill 135 Mass. 165, 17. Mahoney v. Boston 171 Mass. 427,430. Attorney General v. Stratton, 194 Mass. 51, 58. Galassi Mosaic & Tile Co. v. Boston 295 Mass. 544, 550. Ryder v. Lexington 303 Mass. 281, 287, 289. Adie v. Mayor of Holyoke 303 Mass. 295, 300. Ryder v. Taunton 306 Mass. 154, 159. It is likewise settled that a "municipality can exercise no direction or control over one whose duties have been defined by the legislature." D'Addario v. Pittsfield 301 Mass. 552,558, and cases cited. Breault v. Auburn 303 Mass. 424, 428. Gibney v. Mayor of FAll River 306 Mass. 561,565. It follows from what has been said that judgment must be entered for the defendant in accordance with the directed verdict.

So ordered.

Chapter IV

The Teacher

The Principal is a Teacher in Charge

Laura M. Boody v. School Committee
of Barnstable
276 Mass. 134 (1931)

Petition for a writ of mandamus, filed in the Supreme Judicial Court for the County of Barnstable on December 4, 1930, and afterwards amended, described in the opinion.

The only provisions of our statutes which limit the authority of school committees to discharge teachers, to reduce their salaries, or to change the duties assigned to them are contained in G. L. c. 71, ss. 39-44, both inclusive, as amended by St. 1921, c. 293, and c. 420, s. 4. No question of reduction of salary is involved here. No provision with regard to change of duties exists, unless it be involved in the provisions with reference to dismissal. For the purposes of the retirement fund for the benefit of teachers in the public schools, G. L. c. 32, s. 6, as amended by St. 1925, c. 228, s. 1, a "Teacher" is defined as "any person employed by one or more school committees...on a full time basis as a teacher, principal, supervisor, or superintendent in the public day schools in the Commonwealth..."This is the only definition of teacher made by our statutes so far as has been brought to our attention. G. L. c. 71, s 42, as amended by St. 1921, c. 293, provides that school committees

"may dismiss any teacher, but in every town except Boston no teacher or superintendent, other than a union or district superintendent, shall be dismissed unless by a two-thirds vote of the whole committee. In every such town a teacher or superintendent employed at discretion under the preceding section shall not be dismissed unless at....30 days. Neither this nor....No teacher or superintendent..lawful suspension followed by dismissal". The language makes manifest that the dismissal contemplated is a complete separation from the schools of the town; and is not a mere change in assignment of duties resulting in lessened authority or scope of employment. No limitation is placed by this statute on the power of a majority of the school committee to change or to lessen the duty assigned to a teacher. Although G. L. c. 71, s. 4, requires towns of a certain size to maintain high schools to be "kept by a principal and such assistants as may be needed" and s. 5, in providing for reimbursement of expense by the Commonwealth, speaks of payment "for a principal and for each teacher", we do not interpret the law as creating a class of principals as distinct from teachers. Principals are teachers who are entrusted by the school committee with special duties of direction of management, which may be changed or taken away as the school committee by a majority vote decides.

The ruling requested based on an assertain of rights by

contract could properly be denied in the circumstances.

Distinguishing Pollars v. Revere 249 Mass. 525, lack of good faith. Here, good faith.

Exceptions overruled.

The Committee can Change the Duties of a Teacher

Although the superintendent, as the executive officer of the school committee holds an office from which he cannot be demoted during his elected term or after he has been placed "on tenure", without a hearing, the teacher who is placed in charge of a school under the title of principal may be demoted by the school committee. It is also within the powers of the school committee to change or vary the class duties of a teacher.

John W. McDevitt v. School Committee of the City of Malden
1937 A. S. 1253

Report by Donahue, J., without decision, of mandamus proceedings in the Supreme Judicial Court for the County of Suffolk.

Qua, J. The petitioner had been elected and had served for three successive school years as a teacher in the public schools of Malden and was therefore serving at discretion under G. L. (Ter. Ed.) c. 71, s. 41. On December 17, 1935, the school committee elected the petitioner as "Principal of the Lincoln Junior High School and Lincoln Elementary School

to begin work on January 10, 1936." It was also voted that his salary "be fixed at $3,000.00 for the Lincoln Junior High and $300.00 for the Lincoln Elementary School." On January 6, 1936, after a city election had brought about a change in the personnel of the board, the new board voted that "the Superintendent be instructed not to recognize" the vote of December 17, "inasmuch as it does not conform with Section 59, Chapter 71 of the General Laws of Massachusetts and that the position be declared vacant." That section provides that superintendents of schools "shall recommend to the committee teachers, textbooks, and courses of study." The auditor has found that both votes of the committee were taken in good faith. His subsidiary findings are not inconsistent with this conclusion. Sweeney v. School Committee of Revere 249 Mass. 525, 530. The petitioner now seeks to compel recognition of himself as principal of the Lincoln Junior High School with the salary for that office voted to him on December 17.

The school committee had "general charge of all the public schools." G. L. (Ter. Ed.) c. 71, s. 37. This section has been construed broadly. Hammond v. Hyde Park 195 Mass. 29, 30. Leonard v. School Committee of Springfield 241 Mass. 325. Russell v. Gannon 281 Mass. 398. The general managerial powers of the committee continued to exist after the election of the petitioner on December 17. Those powers included the power to change by a majority vote the duties of teachers on tenure at discretion and to assign them

to new duties, or to continue them in their existing duties, or to return them to duties formerly performed, although such teachers cannot be dismissed from the teaching force without compliance with G. L. (Ter. Ed.) c. 71, s. 42. And a principal is merely a teacher who is entrusted with special duties of direction or management. Boody v. School Committee of Barnstable 276 Mass. 134. The second vote of the committee on January 6, 1936, did not dismiss the petitioner from the teaching force. It did no more than revoke the vote of December 17, 1935, which in any event by its terms was not to go into practical effect until January 10 and which therefore never became effective at all. The purpose and result of the second vote were merely to continue the petitioner as a teacher in the performance of the same duties which he performed before December 17. It was within the power of the committee to do this. The petitioner has in fact continued to perform those duties and to receive his salary therefor. This is not like cases where an officer is elected to a particular office with permanently fixed duties for an established term.

Even if a majority of the committee were mistaken in their belief that the vote in December electing the petitioner as principal was invalid because the superintendent had not recommended the petitioner under G. L. (Ter. Ed.) c. 71, s 59, or because the superintendent had not nominated the pe-

titioner as it is contended that a rule of the committee required, that belief is not shown to have been the dominating reason for the vote of January 6. On the contrary it is found that the majority of the committee as constituted in January believed that the petitioner was not qualified for the position and that he had been elected without proper consideration. Furthermore it is difficult to see how erroneous beliefs as to law or fact can vitiate a vote passed in legal manner and within the power of the governing board.

Petition dismissed.

The Salaries of Teachers are Determined by the Committee

The salaries of teachers are determined by the school committee. It is not within the province of any other department of the town or city government to determine the compensation of teachers. However, we see in the Paquette case that the legislative authority which has delegated this power to the school committee can withdraw some portion or all of the delegated power. In this case a finance commission received authority from the General Court to institute general pay reductions, and it was held by the court that this statutory delegation of power was supreme over the power of the school committee and represented a temporary

suspension of that portion of the school committee's full superintendence of the schools.

Lillian J. Paquette v. City of Fall River
278 Mass. 172 (1932)

Two actions of contract. Writ dated June 26, 1931.

The powers reposed in the Fall River Board of Finance under St. 1931, c. 44, are extensive enough to warrant the action as here disclosed. By the express terms of s. 8 that board has supervision of all financial affairs of the defendant, including those relating to the public schools; it is empowered to make recommendations to the school committee as well as to other municipal officers. The enactment of this statute, so far as concerns the issues here involved, was without the competency of the General Court in order to inaugurate and insure necessary economies in the municipal administration of the defendant. Broadhurst v. Fall River 278 Mass. 167, and cases cited. The action of that board and of the school committee did not in any degree impair the contractual obligation existing between the plaintiffs and the defendant. The vote of the Board of Finance was sufficient basis for the action of the school committee in exercising its discretion to make the reduction in the salaries of the plaintiffs.

The enactment of St. 1931, c. 44, was within the general power of the Legislature even if its s. 8 be regarded

as an amendment or suspension of G. L. c. 71, s. 43. The General Court has extensive authority respecting cities and towns. It may distribute the functions of municipal government among several officers and boards and from time to time may revoke, or alter, or modify the duties thus reposed and grant them to other and newly established instrumentalities as in its judgment the public welfare may require. Embraced with this broad prerogative would be the transfer of the exercise of the discretion vested in the school committee by G. L. c. 71, s. 43, to the board of finance so far as concerned Fall River, or to require its joint exercise by action by both. There is no requirement for uniformity in the laws for the executive and administrative functions of the several cities. Four different general forms of city charter are set forth in G. L. c. 43. Prior to the enactment of the first general law of that nature in St. 1915, c. 267, there was and there still is great diversity of substance and of detail among the charters of the several cities. Cunningham v. Mayor of Cambridge 222 Mass. 574, 576-577. See Wheelock v. Lowell 196 Mass. 220,226-227 for collection of references. The constitutionality of St. 1931, c. 44, so far as the plaintiffs are entitled to question its terms, is covered by Broadhurst v. Fall River 278 Mass. 167. In the Paquette case, the point is raised that the vote to reduce the salary of the plaintiff was invalid because of failure to comply with the

provision of G. L. c. 71, s. 43 to the effect that the salary of no teacher serving at discretion shall be reduced without his consent "except by a general salary revision affecting equally all teachers of the same salary grade." The pertinent facts in this connection are that there were employed by the defendant several other teachers receiving the same annual salary as this plaintiff, whose salaries were not reduced. None of those teachers had been elected to serve at discretion but they were employed under yearly contracts and had not been so employed more than three consecutive years. Several of those teachers were engaged in schools of distinct character and in teaching of a different nature from the employment of this plaintiff. Others, while apparently employed in schools of the same character and in teaching of the same general classification, were not serving at the discretion ofthe school committee because not eligible for that tenure, not having been employed for the requisite period of time. The governing statutory words to be interpreted are "same salary grade.". Clearly identity of salary is not the sole test. So to interpret the phrase would eliminate the word "grade". It is a familiar canon of statutory construction that every word of a legislative enactment must be given force and effect and no word treated as superfluous, unless no other possible course is open. The word "grade" has significance in connection with schools. It

has been customary to describe the several schools in which instruction is given preparation for entrance to the high school as "the grades". It has a wider import in this context because it is designed plainly to include all public school teachers employed in a particular municipality, regardless of the name of the school in which the service may be rendered. The word is broad enough also to comprise tenure of service. Two teachers, one having a contract for one year only and the other having the continuous and indeterminate service enjoyed by the plaintiff, cannot rightly be said to be in the same grade even though receiving identical sums as salary. Perhaps the word may have other bearings and implications. Salary is only one factor in determining whether specified teachers are "of the same salary grade". In deciding whether a general salary revision affects all such teachers, not only must consideration be given to "salary" received, but also to the sum of the factors comprehended within the scope of "grade" as already suggested. The result is that it does not appear on this record that there has been any violation of G. L. c. 71, s. 43, in making the salary reduction here attacked. There was a general salary revision and the salary of each plaintiff was thereby reduced. It is not necessary to review one by one the rulings of the trial judge. There was no error of law in any of them.

In each case the entry may be

Finding for the defendant to stand.

The Tenure Law Protects the Teacher

The greatest number of recent cases in educational law which have continued in litigation as far as the Supreme Judicial Court have been those relating to dismissal of teachers and superintendents. Although the school committees have rather effective control in the matter of election and dismissal of teachers, there is a necessity for guiding statutory law in the matter of dismissal. Fortunately, the tenure acts prevent the hasty discharge of teachers at the whim of a school committee which happens to come into power. A teacher who has served for three consecutive school years then becomes an elected teacher "to serve at the discretion of the school committee". It is now well settled that there must be not only opportunity for a hearing before final dismissal of such a teacher, but there must be a substantiation of the charges upon which the dismissal is based. The Graves case, although not the most recent example of its type well summarizes the present law of tenure as the statute was improved in 1934 to require substantiation of charges.

S. Monroe Graves vs. School Committee of Wellesley.
299 Mass.80 (1937)

The petitioner, by this petition for a writ of mandamus, seeks to be reinstated in the office of superintendent of schools of Wellesley. Petitioner had been employed as Superintendent of Schools since 1914. School Committee notified him of intended dismissal and he sought written charges and a hearing. The written charges dealt with his apparent inability to maintain

the school system as one continuous and consistent whole, and failure to inspire citizens with his ability in managing the schools. Hearings were held by the respondents on April 13, 23, 25 and 26, 1936. On April 27, 1936, the respondents passed the following vote: "That S. Monroe Graves be dismissed as Superintendent of the Wellesley Schools, effective as of July 31, 1936." One of the respondents who presided over these hearings announced that it was the intention of the respondents not to call any witnesses or produce other evidence in support of the alleged charges, and they called no witnesses and produced no other evidence in substantiation of the so called charges. Testimony and other evidence were introduced by the petitioner in contradiction to and refutation of the alleged charges. "Much evidence of a documentary nature and exhibits in the form of reports and other literature," favorable to the work of the petitioner, were introduced which the respondents did not read or examine. All testimony and evidence presented were favorable to the petitioner and the alleged charges as stated by the respondents were not substantiated in any degree as required by St. 1934, c. 123.

It is plain that prior to the enactment of St. 1934, c. 123, whereby G. L. (Ter.Ed.) c. 71, sec.42, was amended, the dismissal here assailed would have been within the power of the school committee. That is settled by Corrigan v. School Committee of New Bedford, 250 Mass. 334. Said c. 123 applies to a town such as Wellesley and so far as here material is in these words: "In every such town a teacher or superintendent employed at discretion under the preceding section shall not be dismissed, except

for inefficiency, incapacity, conduct unbecoming a teacher or superintendent, insubordination or other good cause . . . nor unless, if he so requests, he shall have been furnished by the committee with a written charge or charges of the cause or causes for which his dismissal is proposed; nor unless, if he so requests, he has been given a hearing before the school committee which may be either public or private at the discretion of the school committee and at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them; nor unless the charge or charges shall have been substantiated; . . ." Thus a material alteration was made in the governing statute. Prior to 1934 no judicial investigation was required as a prerequisite to removal. The committee in good faith could, by the requisite majority, dismiss a superintendent of schools without legal cause. After the enactment of said c. 123 the procedure for dismissal resembled that required by G. L. (Ter. Ed.) c. 31, secs.43 and 45, in ending the employment of persons in the classified public service and police officers whose tenures were protected by the civil service laws (see G. L. (Ter.Ed.) c. 31, sec. 42A). Proceedings under those sections partake of the nature of a "judicial investigation." McCarthy v. Emerson 202 Mass.352,354. Stiles v. Municipal Council of Lowell, 233 Mass.174,181. Such an officer as the petitioner can be dismissed in conformity to the statute only on certain specified grounds or for "other good cause." These conditions mean that "removal is not authorized without notice and hearing . . . The term removal "for cause" means removal "for cause sufficient in law. That can only be determined after an opportunity

to be heard and a finding so that the sufficiency of the cause may be determined in court.'" Corrigan v. School Committee of New Bedford, 250 Mass.334,338. The allegations of the petition already recited show that the respondents did not proceed as required in a judicial investigation. Before they gave the petitioner any intimation of their intention to dismiss him, they notified him that they had already appointed his successor. Manifestly this was not in accordance with a judicial investigation.

The course of procedure by the respondents was not in conformity to the requirements of St. 1934, c. 123. It is doubtful whether there was a written formulation of definite and specific acts showing a good cause for dismissal sufficiently concrete in nature to be susceptible of proof at a hearing. The case at bar in this respect is quite distinguishable from Rinaldo v. School Committee of Revere, Mass. Adv. Sh. (1936) 843. Of course the nicety of a criminal indictment is not required. Considerable latitude is given to the school committee in stating grounds for dismissal but they must amount to a good cause. McKenna v. White, 287 Mass. 490, 495. The allegations of the petition are categorical to the effect that the respondents called no witnesses and introduced no evidence and that no evidence was introduced unfavorable to the reputation, standing, efficiency, or competency of the petitioner, or that substantiated any of the alleged charges of the respondents, but that all the evidence was in support of the petitioner's contention that he had faithfully and efficiently performed his duties as superintendent of schools. These averments of the petition cannot be treated as vain assertions, because the respondents by their demurrer have admitted the truth of them for the purposes of this proceeding.

A mandate of said St. 1934, c. 123, is that there can be no removal "unless the charge or charges shall have been substantiated." The word "substantiated" has been defined to mean "to establish the existence or truth of, by true or competent evidence." State v. Lock, 302 Mo. 400, 412. That is the signification in common usage of the word employed in the governing statute. There is no provision for a review of the good cause found by the school committee by a district court judge, as in cases arising under G. L. (Ter. Ed.) c. 31, Secs. 43, 45, and in such instances mandamus will lie to enforce compliance with the statute. Peckham v. Mayor of Fall River, 253 Mass. 590. The respondents called no witnesses and offered no evidence. The witnesses called by the petitioner may have been disbelieved but it is alleged that their testimony was wholly favorable to the petitioner. Disbelief of their testimony is not the equivalent of evidence in support of the charges produced by the respondents. While the decision whether proper charges have been substantiated rests with the school committee, an affirmative decision can be rendered only when the truth of the charges has been supported by evidence adequate in law to warrant that conclusion. There is no incompatibility in such a finding made by the person or tribunal which has formulated the charges. Executive and judicial faculties may be combined in one body of men. Swan v. Justices of the Superior Court, 222 Mass.542.

The result is that evidence has not been disclosed on the record which warranted a dismissal of the petitioner. No one

of the charges made by the respondents appears to have "been substantiated." There has been no "judicial investigation" such as is required by St. 1934, c. 123. There has been no compliance with the essential provisions of St. 1934, c. 123. That statute in substance and effect required a hearing upon evidence. Nothing can be treated as evidence which is not introduced as such. Baltimore & Ohio Railroad v. United States, 264 U. S. 258. Charges cannot be substantiated without supporting evidence. American Employers' Ins. Co. v. Commissioner of Insurance, Mass. Adv. Sh. (1937) 1207, 1212-1213. The general demurrer must be overruled. It is not necessary to examine the special demurrers.

Demurrer overruled.

The school committee cannot avoid the effect of the "three consecutive school years" clause in the statute by electing a teacher on the last day of the third consecutive year so as to thwart the force of the law and prolong the period before tenure to four years. Frye v. Leicester, 302 Mass. 421.

A clerk who occasionally was called in to act as a substitute teacher is not an elected teacher within the meaning of the statute so as to be entitled to the protection of the tenure law.

LaMarsh v. Chicopee. 272 Mass. 15.

The marriage of a woman teacher in violation of a school committee rule that married women cannot teach in the public schools can be "good cause" for removal of that teacher after a hearing.

Rinaldo v. Dreyer. 294 Mass. 167.

The Teacher and the Child.

Among the great mass of material in court decisions on education the least common cases that have gone to the Supreme Judicial Court are those relating to the teacher and the child. Because it is the duty of the teacher to enforce school committee rules on the first front, we may at first regard many of the attendance and exclusion cases as teacher-pupil relations. However, they have been classified elsewhere and we have now to consider only the matter of class-room discipline and the liability of the teacher for personal injury to the child in his charge.

The authority of the school committee to exclude a child from school is never delegated to a teacher, but the teacher may send a child home, pending a report to the committee for further action.

There is no statutory law forbidding corporal punishment in the schools, and except where the school committee forbids it, reasonable and necessary punishment is permitted.

Walter A. Bishop vs. Inhabitants of Rowley,
165 Mass. 460 (1896)

Tort, for an alleged unlawful exclusion of the plaintiff from a public school of the defendant town in which he was a pupil. Allen, J. For an alleged fault, the teacher excluded or suspended the plaintiff from school until he should receive the permission of the school committee to return. The school committee continued such suspension, and would not allow the plaintiff to return to the school until he should apply to some one of them for permission to return, and promise to do his best at school. This assumed that he had been guilty of a fault, and required from him a virtual acknowledgment thereof. His father applied to the school committee

for a hearing by them upon the matter of the plaintiff's misconduct, and the question of fact involved therein. The committee refused to give such hearing.

It is well settled that a teacher has no authority to exclude a child permanently from school, unless such teacher acts under the order of the school committee. This authority is vested in the school committee, to whom a parent must appeal in case of a teacher's refusal to instruct a child. It is the act of the school committee of which the plaintiff complains. No question arises as to the extent of a teacher's authority, because the permanent exclusion of the plaintiff was not the teacher's act.

If the school committee acts in good faith in determining the facts in a particular case, its decisions cannot be revised by the courts. Watson vs. Cambridge, 157 Mass. 561. Davis vs. Boston, 133 Mass. 103. Hodgkins v. Rockport, 105 Mass. 475. Sherman v. Charlestown, 8 Cush.160. But the power of exclusion is not a merely arbitrary power, to be exercised without ascertaining the facts. In all the cases heretofore decided by this court the essential facts were not in dispute. In the present case the facts were in dispute, and a hearing was asked for on the question of fact, and it was refused. Under these circumstances, the permanent exclusion of the plaintiff from the school was unlawful. The school committee should have given the plaintiff or his father a chance to be heard upon the facts, or, in other words, should have listened to his side of the case. The plaintiff was therefore entitled to maintain an action against the town. Pub. Sts. c. 47, s. 4, 12.

Such action is not defeated by the finding of the court that the plaintiff was disrespectful to the teacher. The effect of this finding upon the question of damages is not now before us.

Exceptions sustained.

The Liability of the Teacher for Personal Injury

Arthur Fulgoni v. Thomas H. Johnston
302 Mass. 421 (1939)

Tort. Writ in the Superior Court dated May 14, 1935. A verdict for the defendant was ordered by F. T. Hammond, J., who reported the action.

Qua, J. The plaintiff, who was a pupil in the Medford Vocational School, a public school, was injured, while operating a band saw, which it could be found projected at the time of the accident about an eighth of an inch sidewise from the rim of the unguarded lower wheel under the "table".

The defendant was a teacher in the school, but the actual woodworking was taught by a Mr. Roberts. The defendant taught English, science, mathematics, mechanical drawing and hygiene, which were "related" to the cabinet making course, and the defendant's school room was known as the "related room."

There was evidence of the following facts: On the morning of the accident the plaintiff asked the defendant if he (the plaintiff) could make a body post for an automobile. The defendant gave his permission. The plaintiff found both of the band saws which were in the "mill room" broken and so used a third machine

which was in the "related room." The defendant and about fifteen pupils were in this room. The plaintiff worked on the saw for three and one-half hours, and later, after going to lunch and to another class, started the saw again, and the accident happened. The defendant was in the room all the time while the plaintiff used the saw; it "was the custom in the school for the instructors to adjust the machines or they were adjusted by a student under the personal supervision of the instructor." If a student noticed the saw running over the edge, he would tell the instructor. A fellow student of the plaintiff testified that at some time in the morning, before the accident, when walking by, he saw "the edge of the blade running over the wheel and the cause of that was the adjustment of the top wheel was slightly off."

The age of the plaintiff does not appear, but he himself testified that he was a "senior"; that he had been enrolled in the cabinet making course for the three preceding years; that he had been taught and had worked on band saws in the junior high school and during his three years at high school; and that he had used the same band saw about ten times within a month.

The school was a free institution maintained by the city in its public or governmental capacity and not in the quasi-private capacity. G. L. (Ter. Ed.) c. 74, sec. 1-24. Hill vs. Boston, 122 Mass. 344. The plaintiff came to the school as a member of the public entitled to enjoy its privileges. Learock v. Putnam, 11 Mass. 499, 501. The defendant was a public servant with limited duties and powers. At least since the leading cases of Moyn-

ihan v. Todd, 188 Mass. 301, and Barry v. Smith, 191 Mass. 78, it has been settled in this Commonwealth that public officers engaged wholly in the performance of public duties are liable only for their own acts of misfeasance in connection with ministerial matters.

In our opinion, the evidence would not support a verdict against the defendant under the rule just stated. Between the defendant and the plaintiff there was no relation of employer and employee. The defendant was under no obligation to furnish the plaintiff a safe machine. He did not in fact furnish the band saw and was in no way responsible for the manner of its construction or for the absence of a guard upon the lower wheel. There was no evidence that the defendant employed this machine in connection with any of the subjects which he taught, or that he had any control over it, except that it was in the "related room" where he taught and that he gave permission to use it. If negligently giving the plaintiff permission to use the machine when it was out of order would be a misfeasance within the rule hereinbefore stated, which we need not decide (see Bell v. Josselyn, 3 Gray, 309, 311: Tibbets v. Wentworth, 248 Mass. 468, 472, and cases cited) we fail to discover any substantial evidence that the defendant was negligent in this respect. We assume that the permission given to the plaintiff included the use of the machine in the "related room." Apparently the absence of a guard on the lower whelly was of no consequence as long as the wheels were properly adjusted so that the saw would run in the centers of the rims. There was no evidence that the

wheels were not properly adjusted when the defendant gave his permission. There was no evidence as to how often they became out of adjustment or from what causes. Evidence that at some undetermined time "earlier in the morning before the accident", but apparently after the plaintiff had begun using the machine, the "edge of the blade was running over the wheel" will not charge the defendant with negligence. So far as appears this may have been due to the manner in which the plaintiff himself operated the saw. It is not shown to have been brought to the attention of the defendant at any time. The plaintiff, although a student, was an experienced operator of the saws, including the one on which he was hurt. There was nothing to indicate that he did not know all that he needed to know about the condition and adjustment of the saw, or that he needed immediate supervision while operating it, even if failure to furnish such supervision could be considered misfeasance.

In view of the limited nature of the defendant's legal obligations there is no foundation for a verdict for the plaintiff. This result is consistent with that reached in other somewhat analagous situations.

Judgment for the defendant on the verdict.

The threat of possible civil suits for negligence has long been the "bugbear" of vocational instructors, and in Massachusetts most teachers of shop work have insured at a nominal premium to gain protection against such actions. Undoubtedly, the insurance is a wise investment for the legal defence that it offers,

but in fact, the limited liability of the teacher in such a situation makes extremely unlikely the chance of a suit being successfully carried against him. The extremely low insurance rate indicates that there is little danger for teachers losing a suit in such a case. There is always the possibility that such negligence might be shown as to warrant a recovery.

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