Supreme Court Decisions In Kansas Affecting The Status of Employed Teachers

Leo J. Rogers
Fort Hays Kansas State College

Follow this and additional works at: https://scholars.fhsu.edu/theses
Part of the Education Commons

Recommended Citation
Rogers, Leo J., "Supreme Court Decisions In Kansas Affecting The Status of Employed Teachers" (1939). Master's Theses. 304.
https://scholars.fhsu.edu/theses/304

This Thesis (L20) is brought to you for free and open access by the Graduate School at FHSU Scholars Repository. It has been accepted for inclusion in Master’s Theses by an authorized administrator of FHSU Scholars Repository.
SUPREME COURT DECISIONS IN KANSAS AFFECTING
THE STATUS OF EMPLOYED TEACHERS
SUPREME COURT DECISIONS IN KANSAS AFFECTING
THE STATUS OF EMPLOYED TEACHERS

being

A Thesis presented to the Graduate Faculty of the Fort Hays
Kansas State College in partial
fulfillment of the requirements
for the Degree of Master of Science

by

Leo J. Rogers, B. S.
Fort Hays Kansas State College

Approved:

[Signature]
Major Professor

[Signature]
Acting Chairman of the Council

Date Feb. 13, 1939
TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Introduction</td>
<td></td>
</tr>
<tr>
<td>Problem</td>
<td>1</td>
</tr>
<tr>
<td>Previous studies</td>
<td>2</td>
</tr>
<tr>
<td>Procedure</td>
<td>2</td>
</tr>
<tr>
<td>II. Teacher contracts</td>
<td></td>
</tr>
<tr>
<td>Aikman v. School District</td>
<td>3</td>
</tr>
<tr>
<td>Faulk v. McCartney</td>
<td>5</td>
</tr>
<tr>
<td>Brown v. School District</td>
<td>7</td>
</tr>
<tr>
<td>Jones v. School District</td>
<td>8</td>
</tr>
<tr>
<td>Parrick v. School District</td>
<td>9</td>
</tr>
<tr>
<td>Calloway v. Atlanta Rural High School</td>
<td>12</td>
</tr>
<tr>
<td>Strange v. School Board</td>
<td>15</td>
</tr>
<tr>
<td>Petrie v. Sherman County High School</td>
<td>17</td>
</tr>
<tr>
<td>Grimison v. Board of Education</td>
<td>18</td>
</tr>
<tr>
<td>Dunfield v. School District</td>
<td>20</td>
</tr>
<tr>
<td>Fuller v. Consolidated Rural High School District</td>
<td>21</td>
</tr>
<tr>
<td>III. Teacher dismissal and removal</td>
<td></td>
</tr>
<tr>
<td>School District v. Colvin</td>
<td>24</td>
</tr>
<tr>
<td>Armstrong v. School District</td>
<td>25</td>
</tr>
<tr>
<td>School District v. McCoy</td>
<td>27</td>
</tr>
</tbody>
</table>
Brown v. School District .................................................. 29
Board of Education v. Cook .............................................. 30
School District v. Davies .................................................. 31
Duncan v. School District .................................................. 33
Parrick v. School District .................................................. 34
Morris v. School District .................................................. 35

IV. Teacher compensation

Jones v. School District .................................................. 37
School District v. McCoy .................................................. 38
Board of Education v. Cook .............................................. 39
Board of Education v. State .............................................. 40
Davis v. Jewett ............................................................. 41
Smith v. School District .................................................. 42
Brown v. Board of Education ............................................ 44

V. Summary .................................................................. 46

Glossary .................................................................... 50

Bibliography ................................................................ 51
Introduction

The Supreme Court as the highest tribunal in the State of Kansas has from time to time during the Statehood of Kansas rendered decisions that are of importance in settling controversies between teachers and school district boards. In any state there is a need for a higher court to see that justice is meted out to those who, through some misunderstanding, become involved in conflicting ideas or opinions. Since time immortal there has been conflicting ideas and opinions in all societies and institutions. One result of which is our Supreme Court set-up.

The purpose of this thesis is to review the Supreme Court decisions affecting the status of employed teachers in Kansas. These decisions will be reviewed under three separate categories, namely:

1. Teacher contracts
2. Teacher dismissal and removal
3. Teacher compensation

A teacher contract as referred to in this study is an agreement between the teacher, as an individual and a corporate body, known as the school district board. Dismissal and removal are synonymous terms meaning to
remove from, or to terminate, or to part from. Compensation will be thought of as the gain or pay that is expected to be given to the teacher by the school district board for the services rendered by that teacher.

No previous study has been made of these particular types of cases affecting teachers. There has been, however, a limited number of studies made to determine what effect supreme court decisions had in determining our present school systems. They are: 'Some phases of Kansas School Law as Determined by Supreme Court Decisions' by Roy A. Hoglund, Kansas University, 1934. 'Some Phases of School Law as Determined by Supreme Court Decisions' by Rolland R. Elliott, Kansas University, 1935. 'Some Phases of Kansas School Law as Interpreted by the State Supreme Court' by John F. Lindquist, Kansas University, 1935. 'A Study in Educational Trends Affecting School Development in Kansas from the Beginning of Statehood to the Present Time' by Lawrence Saylor, Fort Hays Kansas State College, 1937.

The material for this thesis for the most part has been procured from the reports of the decisions of the Supreme Court, known as the Kansas Reports. A small portion is from the reports of the Kansas Courts of Appeals, subsidiary courts of the Supreme Court in Kansas. Hatcher's digest was used as an aid to make a bibliography of the decisions of the Supreme Court and the Kansas Courts of Appeals relating to schools. Those decisions dealing with teachers were then selected for this study.
II

TEACHER CONTRACTS

A contract between a teacher and a district school board signed by two members in the absence of each other is not binding. A contract with one member of the board is also insufficient. The law concerning the hiring of a teacher reads as follows: 1

"Where the power is vested in a district board of a school district composed of three, to contract with and hire a teacher for and in the name of the district and a written contract is signed by two members of the board in the absence of each other, without consultation with each other, or with the other member, and without any meeting of the district board, upon the application of a party seeking to be employed as a teacher, such contract is not binding upon the school district." 1

In a case before the court in 1882 brought by G. P. Aikman v. School district No. 16, Butler County, the court decided in favor of the defendant. The opinion of the court was delivered by Horton, C.J.:

"This action was commenced by plaintiff in error against defendant in error before a justice of the peace of Butler county, upon an alleged written contract dated in January, 1880, setting forth that plaintiff was employed to teach a school for district No. 16 of Butler County, for the term of three months, commencing on April 12, 1880, at $25. per month, to be paid at the end of each month. Judgment was rendered for plaintiff by the justice of the peace, and the defendant appealed to the district court. Upon the trial in the district court a demurrer to the

1. Laws of Kansas 1876, ch. 122, art. 4, sec. 24.
evidence was interposed by defendant; the court sustained the demurrer, and rendered judgment for the defendant. The plaintiff duly excepted and brings the case here.

The question for our consideration is, whether the district board can bind the school district by a written contract of the character of the one sued on, without having a board meeting, at which all the members are present. Section 56, ch. 92, p. 830, Comp. Laws of 1879, reads: 'The district board in each district shall contract with and hire qualified teachers for and in the name of the district, which contract shall be in writing, and shall specify the wages per week or month, as agreed upon by the parties, and such contract shall be filed in the district clerk's office; and, in conjunction with the county superintendent, may dismiss for incompetency, cruelty, negligence, or immorality.'

It is an elementary principle, that when several persons are authorized to do an act of a public nature, which requires deliberation, they all should be convened, because the advice and opinions of all may be useful, though all do not unite in opinion. We think, in view of the elementary principles applicable to the duty of a body like the district board, consisting of several persons authorized to do acts of a public nature, where the power to contract with the person seeking employment as a teacher is vested by the statute in the 'board,' that all must meet together, or be notified to meet together, or have the opportunity of meeting together, to consult over the employment of the teacher, before a contract can be legally entered into by them so as to bind the district. Certainly two members would have no right to exclude the third from consulting or acting with them, and although it is not necessary that all of the members of the board should be present at a board meeting, or that all of the members should concur in the making of the contract in order to bind the district, yet the contract should be agreed upon at a meeting of the board where all are present, or have the opportunity of being present.

It appears from the evidence that A. Ailman was director, Martin A. Pratt Clerk, and a Mr. Turner treasurer. The paper was signed on the 7th or 8th of January. The plaintiff saw M. A. Pratt at his own house, and there obtained his signature. He then presented the paper on the same or next day to his father, A. Ailman, at his own house, and his father signed it, neither the director nor clerk being together at the time. It is further in evidence that the plaintiff did not present the contract to Mr. Turner for his signature, and that he saw the clerk and his father, the director, separately in reference to
such contract; the paper was signed by the director and clerk in the absence of each other, and this was not done at any board meeting. Under these circumstances we can hardly see the necessity for the court to have submitted to the jury any question of fact about the contract having been signed at or after a meeting of the district board. The action on the part of the clerk and the director seems to have been taken upon the personal application of the plaintiff to each of them individually, and separately from each other. Taking all the circumstances together, the evidence is of such a nature as to preclude any fair inference that the officers whose signatures are to the paper sued on were acting under the direction of any power conferred by the district board or by any meeting of the board.

............... At a board meeting ............, a majority of the board could have ordered or entered into the contract, notwithstanding the other member dissented.

The judgment of the district court will be affirmed. All the Justices concurring."

A contract between a teacher and the school district board must be in writing, but it is not necessary that it be reduced to writing during a session of the district board; it is enough if the contract, though made in parol, be entered into at such session; it may be reduced to writing and signed after the board has adjourned. In 1889 the court reviewed a case in error from the Finney District Court and reversed the decision of the lower court. The decision of the lower court was in favor of the defendant. Charles F. Faulk v. H. L. McCartney, as director of School District No. 6 of Finney County. The opinion states the case. Opinion by Holt, C.:

'This action was brought by Charles F. Faulk, plaintiff in error, for the purpose of compelling

the defendant, as director of School District No. 6, Finney county, to sign an order on the district treasurer for the payment of $40 for wages as teacher for one school month. The Hon. A. J. Abbott, judge of the twenty-seventh judicial district, granted an alternative writ of mandamus, on January 1, 1888, in the Finney district court, a motion to quash the alternative writ was sustained. The plaintiff brings the case here for review.

It is claimed that the alternative writ of mandamus, treated as the petition of plaintiff, did not state facts sufficient to constitute a cause of action, for two reasons: first, that it is not shown that the contract between the teacher and the school district board was in writing; second, that the director is not required by law to sign the orders drawn by the clerk upon the treasurer for the payment of teachers' wages. In the alternative writ it is alleged that the plaintiff and the school district entered into a contract to teach the district school in District No. 6 for six months at $40 per month, payable at the end of each month.

The general allegations that the contract between plaintiff and the school district was in writing are sufficient, but defendant contends that these allegations are limited by the following part of this writ, namely: 'That said written contract was entered into by and between said plaintiff and said school district in pursuance to and with an agreement, verbal contract, and order previously thereto, made and entered into by and between said plaintiff and said school district at and during a meeting of said school district board, held as aforesaid, prior to so making and entering into said agreement, verbal contract, and order.' A general allegation cannot be held to be any broader or more effectual than the special circumstances that are detailed in the pleading; therefore we are called upon to pass directly upon the question as presented by the charges specially detailed as above set forth. There was a contract entered into between the plaintiff and the district board, not by a part of the members thereof, but by the district board; that contract, being in parol, was afterward reduced to writing. It may have been done immediately after the adjournment of the board; in any event, the contract is embodied in writing made and authorized by it. It was the contract of the board, and was reduced to writing. Probably a majority of the contracts for teachers' wages in the state are made in parol, and afterward reduced to writing; it may be done at a meeting of the district board—that is the better way; it may, however, be directed to be done at that time.
and immediately afterward reduced to writing by the clerk; ordinarily the contract is signed by the director, but we know of no rule that would prevent the treasurer from signing instead of the director. The main fact to be determined is, whether the board made this contract; if it did, it could be reduced to writing and signed by the director or the treasurer. The law requiring the written contract between the teacher and the district board was sufficiently complied with in this instance.

We recommend that the judgment be reversed.

By the Court: It is so ordered.

All the Justices concurring.

A teacher suing on a contract must prove the authority of the officers signing for the school district. If all members of a board agree to hire a certain teacher, but one is absent when contract is made—the contract is nevertheless good. These points of law were affirmed by the Southern Department of the Kansas Courts of Appeals in the case of L. C. Brown v. School District No. 41, Cowley County, Kansas in 1895. This case was in error from Cowley district court; M. G. Troup, judge. Judgment was for the defendant in the district court and affirmed by the higher court. The opinion of the court was delivered by Cole, J.:

'This was an action brought by plaintiff in error against the defendant in error in the district court of Cowley county, Kansas, upon an alleged written contract, dated in July, 1888, setting forth that plaintiff in error was employed to teach school for district No. 41, Cowley county, for a term of six months, commencing October 1, 1888, at $50 per month. The defendant in error had judgment below, and plaintiff in error brings the case here.

It is sufficient if all are present, or had an opportunity to be present, and that at least two of them agreed to make the contract in dispute. Applying these views to this case, it seems clear to us that the contract sued upon was one made by the district board, and was therefore the contract of the district.

Plaintiff in error urges that the trial court com-

mitted error in compelling him, after he had proven the execution of the contract, to assume the burden of proof and prove this meeting and the steps which led up to the completed contract. Under the pleadings in this case, we think the ruling of the court was correct. The petition nowhere alleges that the persons who signed the said contract were officers of the school district, or that they had authority to act for the district. It does not allege that the district had any officers, or who they were. The answer denies generally and specifically any authority in the persons who signed the contract to act for the school district, and nowhere admits that either of the persons so signing were officers of said district. There being no sufficient allegations in the petition to require a verified answer, the burden was upon the plaintiff below to prove the authority of those purporting to act for the district. 

The decision of the trial court is affirmed.
All the Judges concurring.

An invalid contract will become binding on a district school board by ratifying the contract in accepting a teacher. In 1898 a case, Edna Jones v. School District No. 144, Elk County, was before the Kansas Courts of Appeals, Southern Department. The decision of the district court, which was in favor of the defendant, was reversed. The opinion of the court was delivered by Milton, J.:

‘Edna Jones bring these proceedings in error to review the ruling of the district court of Elk county, sustaining the defendant’s demurrer to her petition. The petition alleged that on July 22, 1891, the plaintiff, being then and ever since duly qualified as a school-teacher, entered into a written contract in due form with the school board of the defendant district to teach one of the four departments of defendant’s school for the ensuing term of eight months, beginning September 7, 1891, at forty dollars per month; that on the 30th day of July, 1891, the annual meeting of said district was held, and that the electors then voted that female teachers should be employed, but did not take action on any other proposition; that after said school meeting the district board met, and, with full
knowledge of the existence of plaintiff's contract, employed two female teachers, who, with plaintiff and other lady who had also been employed prior to said annual meeting, constituted the corps of teachers when school opened on September 7, 1891, for the term; that pursuant to the terms of said written contract, and with the full knowledge and consent of the school board, plaintiff taught in said schools for nine weeks, and was then, without just cause or excuse, discharged by said school board and not permitted to teach any longer; that plaintiff was paid by said board according to the terms of said contract at the end of the first and second months she so taught, and that by the unwarranted act of the district board in so discharging her, plaintiff lost all opportunity of obtaining a school, and thereby suffered a loss of wages equal to the amount stated in said contract. She prayed for judgment for the entire amount of her wages.

The contract in question, if valid when made, was entire; if it became operative by adoption it was likewise entire. The petition alleges that plaintiff was discharged without just cause or reason. We think she is entitled to have the question raised decided on a trial of the case upon its merits. The judgment of the district court is reversed, and the case remanded with instructions to overrule the demurrer to plaintiff's petition.

The case of Mattie E. Parrick, Appellee, v. School District No. 1 in the counties of Riley and Geary, Appellant, was before the court in 1917. The court determined that when the teacher was allowed to teach and paid, the school board waives irregularities in employing her. The syllabus by the court:

'Where a teacher was employed by the members of a school board without a formal meeting of the board and a contract was signed by two members of the board engaging her services for a school term of eight months, and the contract delivered to her, and under such irregular employment she was permitted to teach for four months, and school warrants for her issued each month in her favor and she was paid pursuant thereto in accordance with her contract, the circumstances recited amount to a ratification of her irregular contract of employment.'

The opinion of the court was delivered by Dawson, J.:

'The plaintiff was employed as teacher in the defendant school district for a term of eight months beginning in September 1914. The board dismissed her because she took an extra week's holiday at Christmas time without the consent of the school board.

It seems that it was informally understood between the school board and the teacher that owing to bad roads and shortage of coal the midwinter vacation should last two weeks and that the school should be reopened on January 4, 1915. The teacher was told by the clerk of the board that the time could be made up by extending the school another week in the spring.

The teacher was married during the vacation, and wrote the clerk of the school board: 'Important business detains me for another week so I'11 not be back until Jan. 10th. Will you please let the other children know when I'11 be back.'

This did not suit the members of the school board, and within a day or two after January 4th another teacher was employed. When the plaintiff appeared for duty the following week the clerk of the board informed her that on account of her taking the extra week she had broken her contract and had dismissed herself.

After some parleying the plaintiff and the school board went to the county seat to have a meeting with the county superintendent to consider the matter in conference with officer pursuant to the statute (Gen. Stat. 1915, sec. 8975), which provided that the district board in conjunction with the county superintendent may dismiss a teacher 'for incompetency, cruelty, negligence or immorality.' The only basis for invoking this statute was on the question of negligence. The county superintendent disagreed with the school board and stated that while she hoped the teacher would resign, she said: 'I told the board that I could not concur in the dismissal of the plaintiff for it seemed to me she had not been sufficiently negligent for her dismissal......I told them (the board) that I thought she had not done just right in adjourning school over one week.......I hoped they (the board) would change their minds, and I made it plain to them that I felt I couldn't concur in the dismissal of the teacher.'

After the term of school closed, the plaintiff not having secured other professional employment in the interim and there being no suggestion that with dili-
gence she might have done so, this action was begun, and judgment was rendered against the school district for the teacher's wages for four months, which was the remainder of the school term according to her contract.

The defendant school district contends that the contract of employment was never formally entered into between the school board and the teacher, she procured her employment merely by interviewing the members of the school board individually, and that her contract was executed in the same irregular way. Of course this procedure was invalid. But pursuant to this irregular contract and employment the teacher was permitted to open school in September and to teach for four months, and the board paid her regularly month by month for her services. In view of this, a defense based upon the irregularity of her contract of employment should not be countenanced. The board were more derelict than the teacher. It was their duty to meet regularly each month and order payment of her salary as it became due. They had no right to disburse the district funds in any other manner. If the acts of the school board were called in question for irregularly paying out the district funds the members of the board would exercise their wits to show that the district funds were disbursed with sufficient regularity to relieve them personally. Doubtless they are upright men, but it is shown that they had not in several years had a formal meeting as a school board, and the new teacher secured to supplant the plaintiff was employed in the same irregular way. One member of the board testified: 'The signature (to the plaintiff teacher's contract) looks like my wife's writing. She has signed a school order or two when I was not at home without my consent. I have been a member of the school board for seven or eight years. We have always employed the teacher without a meeting of the board. Miss Martin (the new teacher) was employed the same way. I did not learn until after this trouble arose that the law required a board to meet as a board in order to elect teachers.'

We think that since the irregularities touching the contract of employment and its execution were those of the school board rather than those of the teacher, there was a sufficient ratification, for the purpose of this case, by permitting her to teach four months under her contract and by paying her from month to month in accordance with its terms. Of course this ratification was of a piece with the loose, irregular conduct which had char-
acterized all the acts of the school board, but under the circumstances we think it was so close-
ly akin to ratification that it will be recognized as such.

The judgment is affirmed. 7

The case of A. W. Calloway, Appellant, v. Atlanta Rural High School, District No. 2, Appellee, was before the court in 1930. The court determined that a school district board, having only such powers as are conferred upon district boards in charge of the common schools, has no power to make a valid contract of employment with a teacher prior to the annual meeting provided for by the statute. The opinion of the court was delivered by Jochems, J.:

"This was an action on contract; the lower court sustained a demurrer to plaintiff's petition and plaintiff appeals.

The petition in substance stated that the plaintiff was by vocation a teacher, a graduate of the Kansas State Teachers College of Emporia, and that he held a life certificate from that institution; that on February 3, 1927, he was then engaged in teaching the rural high school conducted by the defendant, having been employed for that school year; that on February 3, 1927, the three members of the school district board met and entered into a contract with him in writing, whereby they employed plaintiff to act as principal of the rural high school conducted by the defendant, for a term of nine months commencing the first Monday of September, 1927, at a salary of $255 per month; that the said board was constituted according to the laws of the state of Kansas; that two of the members of said board would hold office under the term for which they were elected for a period of at least one year from and after April, 1927, and that the term of only one member of said board would expire in April, 1927; that on July 14, 1927, the plaintiff received notice by registered mail, purporting to be signed by the clerk and one of the directors of the said school board, notifying him that he was not the principal of the Atlanta Rural

High School for the coming year and in no way connected with said school; that thereafter he duly presented himself at the beginning of the school term and signified his readiness to comply with his contract; that he made diligent efforts to obtain other employment for the school year, but was unable to do so and asked for judgment for the full contract price for the nine months. There was attached to the petition a copy of the written contract, which was as alleged in the petition; also copy of the notice of July 14, 1927.

The plaintiff contends that the school board is an entity recognized by law independent of the names of the various individuals who hold the offices of director, clerk, or treasurer; that the school board as an entity is the only authority having power to employ a school principal or superintendent as well as teachers; that there is no statutory inhibition preventing the school district board from employing superintendents or principals at any time after February 1, and that the school board had the authority to enter into the contract which it did enter into as of February 3, 1927.

The defendant takes the position that the school board had no authority to enter into a contract with the plaintiff which would bind the district, prior to the annual district meeting in April.

It is conceded that the rural high school maintained by the defendant does not come within the provisions of R.S. 72-1027. This section relates to the authority of district boards in districts maintaining schools which employ ten or more full-time teachers and provides that such boards shall not enter into a contract prior to February 1 for a term beginning the following August. R.S. 72-3507 relates to rural high school boards and provides that such boards 'except as herein provided, shall have the powers prescribed by law for school district boards.' It is clear, therefore, that the district board in charge of the rural high school maintained by the defendant had only such rights, powers and authority as are conferred upon school district boards in charge of the common schools.

The question is: Can a school district board created under the general laws governing school districts, legally contract with a teacher prior to the annual meeting, for a term to begin at a date subsequent to such annual meeting?

Boards of education and school district boards are the creatures of statutory law. The extent of their
powers and authority must be determined from the statutes by which they are governed. School district boards such as the one governing the defendant are elected under the laws of Kansas at an annual meeting.

It appears that the annual meeting of the school district is intended by the legislature to be a pure democracy. Each qualified voter residing within the district is given the right to appear at the annual meeting and there exercise his voice in all matters pertaining to the conduct of the affairs of the school district as outlined by the statutes. Each voter has the right to say, at the annual meeting in April, how long a term shall be conducted during the ensuing school year. Each voter has the right likewise to voice his judgment as to the amount of compensation to be paid to each teacher hired by the district. He has the further right to vote on the question of whether any school shall be conducted by the district during the ensuing year. The powers of the school district board are clearly limited by the express powers granted to the voters of the district to be exercised at their annual meeting.

The legislature of this state has, as above indicated, amended the laws relating to school districts on numerous occasions and yet it has never seen fit to confer expressly upon the district board the power to hire teachers, prior to the annual meeting, for the term following such annual meeting. If the legislature of this state deemed it wise public policy so to do it would be a simple matter for it to so amend the statutes.

It is not within the province of this court to extend the statutes beyond their plain intendment. Until the annual meeting has fixed the length of term and the amount of wages to be paid, it is manifest that the board is in no position to make a contract.

The judgment is affirmed.

Burch, J., dissenting. 8

When a teacher misrepresented that he held certificate, it is equivalent to misrepresentation as to educational qualifications and the contract is rendered unenforceable. The court affirmed the de-


The opinion of the court was delivered by Smith, J.:

"The action was against a school district to collect damages for the breach of a contract to employ plaintiff to teach school. A demurrer to the evidence of plaintiff was sustained. He appeals.

The facts are that Virgil B. Strange had taken some work at the Kansas State Teachers College of Emporia some time prior to the fall of 1927. When he finished his work there that spring he thought he was entitled to a three-year certificate entitling him to teach for three years in the schools of the state. He wrote a letter in May, 1927, to the board at Green, Kan., making application for a position on the faculty of that school. He stated therein that he was the holder of a three-year certificate. On the first day of September, 1927, appellant and appellee entered into a written contract whereby appellant agreed to teach in the school of appellee for the term beginning September 5 of that year, and appellee agreed to pay him $120 a month therefor. The contract recited that Strange was the holder of a three-year certificate. At this time Strange knew that that recitation did not state the fact.

When the fifth of September came Strange presented himself to start teaching school under his contract. The superintendent of schools was informed on a visit to Emporia that Strange, according to the records there, did not have a certificate and was not entitled to one. He went away and stayed for the balance of that week.

On the 11th day of September the board had a meeting and advised plaintiff that if he would have a certificate there in two days they would permit him to go ahead and teach. Appellant then called at the college and asked them to mail his certificate to the office of the state superintendent of public instruction at Topeka for registration. This was done and he went there and obtained it. He returned to Green and the board told him that they had made other arrangements and would not need him. He thereupon sued the board of education for what his salary would amount to for nine months at $120 a month, or $1,080.

The evidence was that there has been a misunderstand-
ing at the college as to the grades of appellant. This was corrected by report from one of his instructors. The report should have been made in time so as to entitle him to certificate on January 18, 1927, but was not made until some time after September 5, 1927, when the attention of the authorities of the college was called to the matter by the appellant. The certificate was then issued to him in September, but was dated January 18, 1927. The petition alleged, among other things: 'That plaintiff is the holder of a three-year state teacher's certificate, No. 3366, dated January 18, 1927, issued by the Kansas State Teachers College of Emporia, Kan., which, under the laws of the state of Kansas, is a legal certificate, enabling this plaintiff to teach in the schools of the state of Kansas for a period of three years.'

Appellant argues that the provision of the section which permits district boards to hire 'qualified teachers' means that the only criterion provided for is the learning possessed by the applicants, and the word 'qualified' does not mean to be in possession of a certificate. From this he reasons that since, under the statute it was not necessary for one to be in possession of any certain certificate to be qualified, and since he possessed the requisite learning, as is evidenced by the fact that he later procured a certificate based on school work he had done prior to that time, the school district had a right to make a contract with him, even though he did not possess a certificate and since they had a right to make a contract the contract they did make was binding upon them. He makes the argument that the courts in many states hold that where a teacher has the necessary qualification and does not secure a certificate until after the contract is made, but before he starts to teach, the contract is valid. The trouble with applying that argument to the case at bar is this: Suppose it should be held that the applicant for a school was not required to obtain a certificate. In this particular case the school board relied upon the fact that he said he possessed a certificate as evidence that he did have the educational qualifications before entering into the contract....

All these things appeared in the evidence presented by appellant in support of his petition and this evidence not only failed to show any ground entitling plaintiff to the relief prayed for in that petition, but had it been amended so as to conform with the proof
that was offered, still the appellant would not have been entitled to judgment.

We conclude that the motion to permit an amendment to the petition was rightfully overruled and that the demurrer to evidence of appellant was rightfully sustained and the decision is affirmed.9

On March 4, 1929, the Sherman county high school board met in regular session with all members present, and voted to employ B. R. Petrie as a teacher for the ensuing school year, and fixed his salary at $2,250. The clerk's record of the meeting fully and accurately disclosed the action of the board. B. R. Petrie orally accepted employment on the terms stated. After the oral acceptance, and on March 18, the board formally rescinded its action of March 4, and voted not to hire Mr. Petrie. The case of B. R. Petrie, Appellee, v. The Sherman County Community High School and the Board of Education of the city of Goodland, Appellants, was before the supreme court in the January term 1932. The judgment of the district court in favor of Mr. Petrie was reversed by the supreme court. The supreme court held there was no contract. The opinion of the court was delivered by Burch, J.:

'The action was one by a school teacher to recover for breach of contract of employment. The verdict and judgment were in his favor, and the community high school, which he claimed made the contract of employment with him appeals. The points in the case are, first, whether a written contract was required by statute, and if so, what the legislature meant by a written contract...........

On March 4 the community high school board met in regular session at Goodland, with all members present, and the minutes of the meeting show plaintiff was elected to teach vocational agriculture for the ensuing school year, beginning August 10, at a salary of $2,250.

Authority of this meeting to do what the minutes show was done is not contested by either plaintiff or defendants. Within a day or two plaintiff did what was sufficient to constitute oral acceptance of employment on the terms stated, and asked the secretary if his contract had been mailed out, since he had not yet received it. The secretary replied they were out of blanks, were having blanks printed, and as soon as the blanks were received the contract would be sent out.

On March 18 the board met again, formally rescinded the action of March 4, voted not to employ plaintiff, and immediately after the vote was taken notified plaintiff he would not be employed. The work of teaching vocational agriculture includes summer work—overseeing home-work projects of students, getting new students, and doing community work among farmers of the district. Plaintiff testified that on August 10 he 'began teaching.' When school regularly commenced about September 10, plaintiff appeared at the school-house, and on the second day of school he found himself locked out.

The petition stated facts sufficient to raise the legal questions which have been discussed. The petition contained a count for damages in the entire sum of $2,250, and contained a count for a month's salary earned between August 10 and time school regularly commenced in September. A demurrer to the petition was overruled. There was no allegation (nor proof) that the board knew plaintiff was 'teaching' before school commenced. It was alleged (and proved) that about September 10 (when plaintiff reported for duty at school) he was locked out. Since the action of the board on March 4 did not result in a contract, it availed plaintiff nothing to obtrude himself into the school's affairs under an unfounded claim he was legally employed.

The judgment of the district court is reversed, and the cause is remanded with direction to sustain the demurrer to the petition.

Dawson, J., not sitting. 10

In the month of May, 1931, Betty Chaffin Grimison, a woman teacher, contracted with the Board of Education of Clay Center, Kansas to

teach school for nine months commencing with the opening of the school term in the following September. The contract provided that marriage of the teacher during the term of the contract would automatically terminate the contract. She married in June of the same year, and when school commenced in September the board of education refused to permit her to teach. The supreme court upheld the decision of the Clay district court. The contract was held valid, and was automatically terminated by the teacher's marriage. The case was Betty Chaffin Grimison, Appellant v. The Board of Education of the City of Clay Center, Appellee.

The opinion of the court was delivered by Burch, J.:

'The action was one by a school teacher against a board of education for breach of contract of employment to teach school. A demurrer to the petition was sustained, and plaintiff appeals. In May, 1931, the board of education of the city of Clay Center employed Betty Chaffin, a single woman, to teach in the city schools for nine months, beginning with the opening of school in September, 1931. The contract of employment was in writing and contained the following stipulation:

'A further stipulation is that the marriage of a lady teacher during the term for which her contract is made automatically abrogates said contract.'

In June, 1931, Betty Chaffin married J. G. Grimison. When school opened in September the board of education refused to recognize Mrs. Grimison as an employed teacher.

Plaintiff contends her contract was not automatically abrogated since she married before school commenced and not within the term for which she was employed. The contract related to status of a woman teacher during the term for which she was employed, and plaintiff's engagement was that if she changed her status, so that she would not be single during the term of employment the contract was abrogated when the change occurred.

Plaintiff contends that if the contract be inter-
preted as just indicated, the provision relating to marriage is void and should be disregarded. This would leave a valid contract of employment which the school district refused to perform.

The board of education was charged with sole control over the schools of the city. No man and no woman has a right protected by law to be employed as a teacher by the board of education of the city of Clay Center. No constitutional, statutory or common-law right of any woman would be infringed if the board refused, for any reason, to employ female teachers. Tender of employment to a woman may be on such terms as the board may deem to be for the best interest of the school, and acceptance of terms by an applicant for employment constitutes waiver of privilege to object to them.

We do not have here a case of discharge of a teacher for some reason, good, bad or indifferent. The case is one in which a person presented herself as a teacher who had no contract of employment with the board of education, and the board was not bound to recognize her as a teacher. Likewise, we have no case of arbitrary or capricious exercise of power by the board of education. Plaintiff and the board of education agreed on terms of employment. Plaintiff exercised her privilege to marry and thereby terminated her employment.

The judgment of the district court is affirmed.\footnote{\textit{Kansas Reports, Volume 136, p. 511-14, 1934.}}
tions as a teacher; that on April 9, 1932, at a regular meeting of the school district board held at the office of the county superintendent of Coffey county, a contract, in writing was entered into whereby plaintiff was employed as a teacher of a period of eight months commencing September 5, 1932, and ending with the school year in 1933, at a salary of $72.50 per month; that on September 5, 1932, plaintiff presented himself at the schoolhouse of the district prepared to teach the school and was informed that he would not be permitted to do so and that the contract was not recognized. Plaintiff claimed damages by reason of the breach of the alleged contract covering his salary at the rate of $72.50 per month with interest at 6 per cent upon each monthly payment as it became due.

Appellant contends that a verbal contract was made in the district and reduced to writing at the county seat, and that the board had power to contract outside the geographical limits of the district. Although there is contention about the oral contract, it clearly appears from the testimony that if any oral agreement was made between plaintiff and two members of the board, it was before the meeting with the third member, and when they came to his home, and as soon as the question of regularity of the school meeting and of their power to act was raised, the plaintiff and the members of the board without agreeing on plaintiff's employment or anything else so far as the record shows, went to the county seat and had the meeting above mentioned. The only evidence of an oral contract is that, prior to the meeting with the third member, plaintiff and two members of the board agreeing upon plaintiff's employment. At the time there was no meeting of the board and no notice to the third member, and a binding contract could not be made.

There being no statute authorizing the meeting of the board at the county seat and outside the geographical limits of the district, its action at such meeting was invalid and the contract was a nullity.

The judgment of the lower court is affirmed.

Hutchison, J., not sitting. 12

On April 20, 1931, a school district contracted with a teacher to

teach in the district school for a term of nine months, beginning September 7, 1931, at a stated salary, subsequently, and before September 7, 1931, the district was consolidated with another district. The teacher was not employed by the board of the consolidated district, and she was unable to obtain employment during the term specified in her contract. In an action against the consolidated district the teacher recovered judgment. The case before the court in 1934 was Inez Hill Fuller, Appellee, v. Consolidated Rural High-school District No. 1 in Pottawatomie County, Appellant. The opinion of the court was delivered by Burch, J.:

'The action was one by a school teacher to recover from a consolidated school district on her written contract to teach school made with one of the districts entering into the consolidation. Plaintiff recovered and defendant appeals.

Pursuant to the practice of engaging teachers in the spring for the school year beginning the next fall, the board of a school district, which, for convenience, may be called the Louisville district, entered into a contract with plaintiff to teach school for a term of nine months, commencing September 7, 1931. The contract was signed on April 20, 1931, was in the form prescribed by the state department of education, and provided that plaintiff should be paid a salary of $145 per school month, payable monthly. After the contract was signed, petitions were circulated in the Louisville district for the calling of an election to vote on a proposition to consolidate the district with another, which, for convenience, may be called the Wamego district. The election was held on June 16, and the vote was favorable to consolidation. On June 29 the Wamego district voted to consolidate. The county superintendent designated the consolidated district as Consolidated Rural High School District No. 1 Pottawatomie county, Kansas. About July 13 officers constituting a school board for the consolidated district were elected. The consolidation proceedings were instituted and consummated pursuant to Laws 1931, chapter 275. School opened in the consolidated district at Wamego on September 7. Plaintiff was not employed as a teacher in
the school of the consolidated district. On September 7 plaintiff, with other teachers and the principal of the Louisville school, reported for duty and conducted school at the Louisville schoolhouse for several days, when they were served by the sheriff with notice from the board of the consolidated district to desist and to surrender school property.

Plaintiff was ready and willing at all times to perform the contract on her side, and could not find employment within the school year. It is contended, however, she did not diligently seek employment by the consolidated district board.

Actions against defendant by two other teachers, Dorothy Hinman and Dorothy Mayden, were consolidated for trial in the district court with the Fuller action, and judgments were rendered in favor of plaintiffs in those cases. It is stipulated that this appeal shall be determinative of the three cases.

The judgment of the district court in each case is affirmed.

Johnston, C. J., and Hutchison, J., not sitting.\textsuperscript{13}

\textsuperscript{13} Kansas Reports, Volume 138, p. 881-4, 1934.
III

TEACHER DISMISSAL AND REMOVAL

A teacher may be discharged at any time he fails to give satisfaction if the contract so reserves that right. In a case before the supreme court in 1872, the decision of the district court was reversed. The district court had decided in favor of Wm. D. Colvin, a teacher, who had sued School District No. 5 in the county of Wyandotte. Action by Colvin on the following contract:

'It is hereby agreed by and between school-district No. 5, county of Wyandotte, state of Kansas, and William D. Colvin, a legally qualified teacher, that said teacher is to take, govern, and conduct the public school of said district to the best of his ability, keep a register of the daily attendance and studies of each pupil belonging to the school, and make other records as the board may require, with the report required by law, and endeavor to preserve in good condition and order the edifice, grounds, furniture, apparatus, and such other district property as may come under his immediate supervision as such teacher for a term of six months, commencing on the ninth day of September, 1870. And the said school-district hereby agrees to keep the school-house in good repair; to provide the necessary fuel and school registers; and for the services of said teacher, as aforesaid shown, well and truly performed, to pay said teacher the sum of three hundred and sixty dollars on or before the expiration of said school; the district board reserving the right to discharge the teacher at any time he fails to give satisfaction to said board...

The opinion of the court by Kingman, C. J.:

---

1. Kansas Reports, Volume 10, p. 216.
'The defendant in error engaged to teach a school for the plaintiff in error for six months, under a written contract which contained this clause: 'The district board reserving the right to discharge the teacher at any time he fails to give satisfaction to said board.' Under this contract defendant in error taught the school for three and a half months, and was then discharged by the board. He was paid for the full time he taught, and brought his action to recover for the residue of the six months. It was proven on the trial that he failed to give satisfaction to the board, and for that reason he was discharged.............It would be a public calamity if a teacher employed for a year should prove negligent or immoral, and there was no way to rid the district of such a teacher. It was wise in such a case to make provision by law for his discharge, and it was thought wise to connect the county superintendent with the board in any such action. If all the contracts were made as the one in this case is made, there would be no necessity for such enactment. The law was made for the benefit of the district. It does not prevent the board from making any other contract with the teacher. In this case they have made one which is not prohibited either by law or public policy. No one doubts that a contract hiring a teacher might be abrogated by mutual consent. So they may stipulate in advance, as in this case, what shall put an end to the contract. That contingency arose, and the board, with the previous consent of the teacher, put an end to the contract. There seems to be no doubt but what that part of the contract was valid.

The judgment is reversed, and the cause remanded for further proceedings.

(All the justices concurring).2

A school board may discharge a teacher without a formal trial, for incompetency after giving notice, if it is so stipulated in the contract. An action was brought by A. Laura Armstrong against Union School-District No. 1, Dickinson and Saline counties, for damages alleged to have been caused by the defendant's illegal dismissal of the

plaintiff as a school-teacher of the said Union School-district. The opinion of the court in 1882 by Valentine, J.:

'It is admitted by counsel for both parties that the only question involved in this case is whether the plaintiff, A. Laura Armstrong, was legally dismissed as a school-teacher from the public school held in Union school-district No. 1, Dickinson and Saline counties, Kansas. She was employed as a school-teacher by such school-district on September 6, 1881, and immediately entered upon the discharge of her duties as such school-teacher. The contract of employment was such as is generally used in the employment of a teacher, except that it contained the following proviso, to-wit: 'and provided, further that if by the inability or neglect of the said Armstrong the interests of the school shall suffer, the district board shall have full power to annul this contract, after one month's written notice.'

The plaintiff continued to teach in said school-district up to April 4, 1881, when the school board finally dismissed and discharged her, on the ground of inability and neglect. This was done in pursuance of a written notice previously given to her and served upon her, March 5, 1881. She therefore claims that the dismissal was illegal and void for two reasons: First, because she did not have a formal trial; second, because the school-district board in dismissing her did not act in conjunction with the county superintendent.

As to the mode of procedure by the school board in coming to a determination whether it would discharge the plaintiff or not, under the contract we think it had an almost unlimited discretion. Neither the contract nor the statute provides what the mode of procedure should be in such cases.

This is substantially all there is in the case. Counsel for plaintiff suggest some other questions; but having decided the main questions involved in the case as we have, and under the circumstances of the case, we do not think that it is necessary to comment upon them. The judgment of the court below will be affirmed.

Brewer, J.; concurring; Horton, C. J., dissenting.'

The formality of a court is not required in the dismissal of a teacher. The directors of a school district may discharge a school teacher for incompetency or neglect of duty; but afterward, if they are sued by the teacher for the sum agreed to be paid him, it is then necessary for the directors to show that the teacher was dismissed for incompetency or neglect of duty, and that in fact he was incompetent, or that he neglected his duty. In a case before the court in 1883, Joseph McCoy had brought suit against School District No. 23, in Bourbon county, to recover for wages claimed by him as a teacher in said district. The district court gave the plaintiff judgment against the defendant school district. The supreme court, however, reversed the decision of the district court. The opinion of the court was delivered by Valentine, J.:

'It appears from the record, that on September 11, 1880, the school district employed McCoy to teach a school for eight months in that district, for $40 per month. He taught the school from September 13, 1880, up to January 4, 1881, when he was discharged by the district board, in conjunction with the county superintendent of public instruction, for incompetency. Previous to this discharge, the district board requested the county superintendent to act in conjunction with it in an investigation of the charge of incompetency on the part of McCoy; and McCoy was notified of such proposed investigation, and at his request the investigation was adjourned a few days, and set for January 4, 1881. On that day the school-district board, in conjunction with the county superintendent, met at the district school house for the purpose of investigating the charge. McCoy and his attorney appeared, as did also a large proportion of the people of the district, including the school children. An investigation was had, but not upon written charges nor evidence under oath, but upon oral testimony, not under oath. The district board and county superintendent decided to discharge
McCoy, and did discharge him; but no record of the discharge nor of any of the proceedings was kept or made. The board, however, at the time paid McCoy in full for his services up to that time, and made an entry of such payment on its records.

It seems to us that the district court committed error. The whole of the statute with reference to proceedings for the dismissal of school teachers is as follows:

'The district board in each district, in conjunction with the county superintendent, may dismiss (a school teacher) for incompetency, cruelty, negligence, or immorality.'

There is no statute anywhere to be found providing, either in terms or by implication, that the school-district board and the county superintendent when acting together shall constitute a court. There is no provision defining who shall be the presiding officer in such cases, or whether there shall be any presiding officer; no provision for a clerk, or sheriff, or marshall, or constable, or any other officer except themselves. There is no provision for the issuing or serving of writs or process; no provision for the filing of any pleadings; no provision for administering oaths to witnesses, or even for hearing the testimony of witnesses; no provision for reducing the proceedings to writing, or for preserving any record of the same; no provision for keeping any records; no provision for appeal or petition in error; nothing, in fact, in all the statutes that even squints toward the idea that the school-district board acting in conjunction with the county superintendent, in the dismissal of a school teacher, acts as a court.

.................it was held that the directors of a school district may undoubtedly discharge a school teacher for incompetency or neglect of duty; but that afterward, if they are sued by the teacher for the sum agreed to be paid him, it devolves upon the directors to show that the teacher was dismissed for incompetency or neglect of duty, and that in fact he was incompetent or that he neglected his duty.

After a careful examination of this case, we are satisfied that the district court erred, and that its
judgment must be reversed, and the cause remanded for a new trial.
All the Justices concurring.¹⁴

A provision in a teacher's contract for discharge if not satisfactory to the school board is valid. The case of L. C. Brown v. School District No. 41, Cowley County, Kansas, has been explained in Chapter II. L. C. Brown had contracted to teach the school of District No. 41. The contract contained a clause that provided for the teacher's discharge if he was not satisfactory to the school board. Mr. Brown was discharged before he started to teach the school. The supreme court affirmed the decision of the district court, which had decided in favor of the defendant school district. The opinion of the court delivered by Cole, J.:

'.........The facts in this case are that, before the time arrived for the plaintiff in error to enter upon his duties under the contract, a large majority of the qualified electors of said district, at a school-district meeting regularly called and held for the purpose of settling the question as to whether they would retain or dismiss plaintiff in error, expressed their dissatisfaction, and voted to dismiss him; and upon the authority of such vote, and after adopting a resolution of similar import at a board meeting, the said board notified plaintiff in error in writing of the fact that the district did not desire his services; and when the time arrived for school to commence he appeared and demanded the right to teach, and they refused to permit him to do so. In instructing the jury upon this clause in the contract, and under the evidence aforesaid, the court said, in substance, that this clause did not give either board or the district the right to dismiss the plaintiff in error without any cause or excuse, but that its import was that at any time the board or the majority of the district had reasonable ground for dissatisfaction

---

they might dismiss the plaintiff in error and that the question for the jury to settle upon this particular point was whether or not at the time when the plaintiff was dismissed either the board or a majority of the district had reasonable grounds for such dismissal. The court further instructed the jury that it was not absolutely necessary, under the contract, that the plaintiff should have had an opportunity to try his hand at teaching school before such dismissal took place or the district or the members of the board had reasonable ground to believe that plaintiff would not prove satisfactory....

The decision of the trial court is affirmed.
All the Judges concurring.5

A teacher in a city of the second class cannot be removed before the end of the school term without cause. In the case before the court in 1896, The Board of Education of the City of Ottawa v. Jennie Cook, the decision of the lower court in favor of Jennie Cook was affirmed. The contract contained the following, 'unless sooner removed by vote of the board.' It was decided that the clause did not specify the causes for which a teacher might be removed, nor can it be construed to mean that the teacher may be removed without cause. The opinion of the court delivered by Dennison, J.:

'This action was brought in the district court of Franklin county by Jennie Cook, as plaintiff, against the Board of Education of the city of Ottawa, Kan., as defendant, to recover the amount claimed to be due her as wages under a contract to teach in the public schools of Ottawa. The record discloses the fact that she was elected by the board to teach in the schools for the school year of 1890-'91 at $45 per month, and that she accepted the employment and entered upon her duties and taught for 62 months. The board paid her for six months' service

One of the rules and regulations of the board of education for the year 1890-'91 is the following: 'SECTION 1. (See section 204, Schools Laws of Kansas.) At the regular meeting in June, or as soon thereafter as practicable, the board shall elect the teachers of the public schools, to hold their positions for one year unless sooner removed by vote of the board.'

The board could not, therefore, legally remove Miss Cook by a vote except for a sufficient cause, and the question was properly submitted to the jury as to whether there was sufficient cause for removal. To decide otherwise, and to hold that the words 'unless sooner removed by vote of the board' must be construed to mean that the board might remove without cause, or at its pleasure or caprice, would be doing violence to all known definitions of words or construction of sentences. The only rational interpretation of the whole contract, including the rules of the board, is that all parties recognize that there are causes for which a teacher may be removed, and the board employed Miss Cook to teach in the city schools for the ensuing year, unless removed by vote of the board for sufficient cause. The case was tried by both sides upon the theory that the board must justify the removal of Miss Cook by her actions, and the answer of the board to the petition filed herein and all the evidences were directed toward showing that she continually violated the rules of the board, and that she inflicted extremely cruel punishment upon the pupils in her room. This question was properly submitted to the jury, and they found in favor of Miss Cook.

The judgment of the district court is affirmed. All the Judges concurring.

The act of a school-board, in conjunction with the county superintendent, of dismissing a teacher is conclusive in the absence of fraud, corruption, or oppression. In the case of School District No. 18, of Kearny County, Kansas, v. Lewis Davies, the supreme court reversed the
The district court found in favor of Mr. Davies. This case was before the court in 1904. The opinion of the court was delivered by Atkinson, J.:

'On August 10, 1901, school district No. 18 of Kearny county, entered into a written contract with Lewis Davies to teach school for a term of eight months, to commence on September 30 following, at a salary of $40 per month, payable at the end of each school month. Davies commenced work under this contract and continued to teach, receiving payment therefore, until January 31, 1902, when he was dismissed by the district board, acting in conjunction with the county superintendent, on a charge of incompetency, cruelty, and negligence.

The record discloses that at a meeting of the district board in conjunction with the county superintendent, on January 31, 1902, plaintiff was dismissed on the charge of incompetency, cruelty and negligence. There was no claim of fraud, corruption or oppression in the action of dismissal.

It is manifest that the intention of the legislature in enacting section 6184 was to provide a speedy and inexpensive mode for the dismissal of teachers from the district schools. We believe that the legislature established this tribunal, clothed with the power to dismiss, with the intention that its acts should be final. The teacher takes his employment with the knowledge of this power and it enters into his contract of hire, however made or formulated. We can see no purpose or object of the legislature in joining the county superintendent with the district board and giving the tribunal thus created the power to dismiss teachers unless it was intended that, in the absence of fraud, corruption, or oppression, its acts should be final and conclusive. It would tend greatly to impair the government and efficiency of the public schools if the honest judgment and discretion of this tribunal, so exercised, were subject to review.

The judgment of the district court is reversed. All the Justices concurring.

Maigon, J., not sitting, having been of counsel.\(^7\)

---

\(^7\) Kansas Reports, Volume 69, p. 162-7.
The unanimous decision of the county superintendent and two members of a school board is sufficient for the dismissal of a teacher. The school board and county superintendent constitute the proper tribunal to determine a teacher's dismissal. These were points brought out in the case of Laura Duncan, Appellee, v. School District No. 8 of Reno County, Appellant, by the court in 1910. The decision of the district court of Reno county was reversed by the supreme court. The district court had given judgment to Laura Duncan, Appellee. The opinion of the court was delivered by Smith, J.;

''''''''The contract in the usual form was signed by two members of the board and the teacher.

The appellee entered upon her duties as such teacher and continued thereafter to teach until the 25th day of November, 1907, when she was served with a notice, signed by all the members of the school board and the county superintendent, to close the school, and that she was dismissed on charges of incompetency and negligence, and the schoolhouse was closed against her. She was paid full wages, according to the terms of the contract, for the time she taught the school. After the expiration of the term for which she was employed she brought this action to recover the amount of the wages unpaid, at the rate prescribed in the contract. A trial was had to the court and a jury, and a verdict was returned in favor of the teacher for the full amount claimed.

Testifying in regard to the meeting with the two members of the board, the county superintendent said, in substance, that they wanted her to quit and she was unwilling to do so, and he told them they could not dismiss her without his consent; they made complaint that she did not keep order, and that the children were not learning anything; that he told them he was ready to pass his judgment, and there was only one way to do it, and that by acting as they thought it should be done; that they said she should quit; that he and the two members of the board agreed in every respect;''''''''''''

As before stated, there was no evidence contradict-
ing these statements. It is not contended but that the evidence of the plaintiff was sufficient to justify the verdict and judgment, if she was not legally dismissed. At the conclusion of the evidence the court was requested in writing to instruct the jury to return a verdict in favor of the defendant, and we see no reason why this instruction should not have been given....... The request for an instruction to return a verdict for the defendant should have been allowed, and the motion for a new trial, on the ground that the verdict was not sustained by the evidence, should have been sustained. The judgment is therefore reversed, and the case is remanded with instructions to render judgment in favor of the defendant. 8

The conduct of a teacher in extending a vacation without consent of the school board is a question of negligence. The dismissal of a teacher for negligence requires the concurrence of county superintendent. The case of Mattie E. Parrick, Appellee, v. School District No. 1, in the Counties of Riley and Geary, Appellant, has been explained in chapter II. It was informally understood between the school board and the teacher, Mattie Parrick, that the vacation at Christmas time would be for a two weeks period, due to bad roads and the shortage of coal. The teacher was married during the vacation and wrote to the clerk of the school board that she would not be back until Jan. 10th, which date would extend the vacation another week. This did not suit the school board. When the teacher returned from her extended vacation she found another teacher hired to teach the district school. The school board maintained that she was dismissed because of negligence. The county superintendent did not concur in the action with the school board. The supreme court

affirmed the decision of the lower court that Mattie Parrick could not have been dismissed by the school board without the concurrence of the county superintendent. The opinion of the court was delivered by Dawson, J.:

"After the term of school closed, the plaintiff not having secured other professional employment in the interim and there being no suggestion that with diligence she might have done so, this action was begun, and judgment was rendered against the school district for the teacher's wages for four months, which was the remainder of the school term according to her contract.

Turning now to the ground of the teacher's dismissal for negligence: The statute provides that the sanction of the county superintendent is necessary to dismiss a teacher for that delinquency. For reasons which seemed sufficient to the county superintendent, she withheld her concurrence therein. The county superintendent had a right to exercise her discretion—her own judgment—with due consideration to all the circumstances. With the exercise of that discretion the court has no right to interfere. It is not enough that the court might think the circumstances sufficient to justify the dismissal of the teacher, the authority for dismissing a teacher for negligence, etc., is not vested in a mere majority of four persons, the three members of the board and superintendent, but requires the independent assent of the superintendent in addition to that of the board. While the assent of a majority of the school board, the independent concurrence of the superintendent being withheld and denied, the pretended dismissal of the teacher was of no legal effect.

In this way the legislature, in its wisdom, has sought to safeguard district school teachers from dismissal without sufficient cause or through arbitrary action, caprice or injustice on the part of the school board.

The judgment is affirmed."

In the case of Nellie Brady Morris, Appellee, v. School District No. 40 Joint in Lyon County, Appellant, before the court in 1934, the

supreme court reversed the decision of the district court. The district had found in favor of the plaintiff, Nellie Brady Morris, suing for wages due her, after what she termed an illegal dismissal. The opinion of the court was delivered by Burch, J.:

'The action was one by a school teacher, who was dismissed before her term of employment expired, to recover, from the school district which employed her, salary for the portion of the term remaining after dismissal. The verdict and judgment were for plaintiff, and the district appeals.

Plaintiff alleged she was dismissed without just cause or legal excuse, that she was qualified (not incompetent) to teach, and had not been guilty of cruelty, negligence, or immorality. There was no allegation the board had not acted in conjunction with the county superintendent, there was no allegation of facts showing the board acted fraudulently, corruptly, or oppressively, and the petition did not state a cause of action. It was for the board, in conjunction with the county superintendent, to determine whether there was just cause or excuse for dismissal.

The board was required by statute to act in conjunction with the county superintendent, and did so. The fact that the joint act of dismissal occurred outside the territorial limit of the school district did not detract from the validity of the dismissal.

The judgment of the district court is reversed, and the cause is remanded with direction to render judgment in favor of defendant.'

TEACHER COMPENSATION

A teacher is entitled to receive reasonable value for services if he is not working under a written contract. In a case before the court in 1871, Larkin Jones v. School District No. 47, the court affirmed the judgment of the district court reversing the judgment of the justice of peace. Jones brought suit before a justice of the peace against School District No. 47 Neosho Co., to recover $150 alleged to be due him as assignee of H.C.W. for three months' services of said H.C.W. as a teacher of the district school under 'a certain contract' made by and between the district board of said School District No. 47 and said H.C.W. The defendant appeared specially and moved to dismiss the action, because, 1st, the justice had no jurisdiction, the amount claimed being over one hundred dollars; 2d, the contract sued was not in writing. The justice overruled the motion, and on final hearing gave judgment for plaintiff for $150. The defendant removed the cause to the district court by petition in error, when said judgment, at the March term, 1871, was reversed. Jones thereupon asked that the district court retain said action 'for trial and final judgment for costs given against plaintiff.' Jones now brings the case here on error.¹ The opinion of the court was delivered by Brewer, J.:

¹ Kansas Reports, Volume 8, p. 362.
The bill of particular filed with the justice alleged a teacher's contract with the district, but whether written or verbal was not disclosed. The testimony showed that it was verbal. Section 5, p. 925, Gen. Stat., requires teachers' contracts to be in writing. It does not follow from this that the district can have the benefit of the teacher's services without compensating him therefor. The teacher or his assignee can recover of the district, not the stipulated price but the reasonable value of the services actually performed. The law implies a contract from the doing and accepting of work.

The judgment of the district court reversing the judgment of the justice will be affirmed, and the order of the court overruling the motion of the plaintiff to have the cause retained for trial will be reversed and the case remanded for further proceedings, in accordance with this opinion. The costs in this court will be charged against the defendant.

All the Justices concurring.

In an action by a teacher for salary, dismissal for incompetency is held good defense. In a case before the court in 1883 as explained in Chapter III, (School District v. McCoy), McCoy brought suit against School District No. 23, in Bourbon county, to recover for wages claimed by him as a teacher in said district. The opinion of the court was delivered by Valentine, J.:

'This was an action brought in the district court of Bourbon county by Joseph McCoy against School District No. 23 of that county, to recover for wages claimed by him as a school teacher in such district from January 4, 1881, up to the time of the commencement of this action, on March 25, 1881, at $40 per month. The case was tried before the court and a jury, and a verdict and judgment were rendered in favor of the plaintiff and against the defendant for $115 and costs. The defendant brings the case to this court for review.

2. Kansas Reports, Volume 8, p. 362-5.
the directors of a school district may undoubtedly discharge a school teacher for incompetency or neglect of duty; but afterward, if they are sued by the teacher for the sum agreed to be paid him, it devolves upon the directors to show that the teacher was dismissed for incompetency or neglect of duty, and that in fact he was incompetent, or that he neglected his duty.

After a careful examination of this case, we are satisfied that the district court erred, and that its judgment must be reversed, and the cause remanded for a new trial.

All the Justices concurring.

A wrongfully discharged teacher may recover the balance due on a contract. This point was determined by the court in 1895. The case was 'The Board of Education of the City of Ottawa v. Jennie Cook.' The opinion of the court was delivered by Dennison, J.

'This action was brought in the district court of Franklin county by Jennie Cook, as plaintiff, against the Board of Education of the city of Ottawa, Kansas, as defendant, to recover the amount claimed to be due her as wages under a contract to teach in the public schools of Ottawa. The record discloses the fact that she was elected by the board to teach in the schools for the school year of 1890-'91 at $45 per month, and that she accepted the employment and entered upon her duties and taught for 6½ months. The board paid her for six months' service only.'

Miss Cook was dismissed at the end of the 6½ months period. The board did not pay her for the last two weeks she taught. The district court found in favor of Miss Cook. This decision was affirmed by the Kansas Courts of Appeals. Continuing the opinion of the court:

'The amount of $22.50, and interest thereon, is therefore due Miss Cook, even if the contention of

the counsel for the board that it had discretionary-
ary power to remove without cause be correct. There
was no error committed by the court in the instruc-
tions given.
The judgment of the district court is affirmed.
All the Judges concurring.¹²

A school board may pay teachers for time while school is dismissed
for a holiday. In a case before the Kansas Courts of Appeals in 1898,
the decision of the district court was reversed, and this decision given.
The case was 'The Board of Education of the City of Emporia et al. v.
The State of Kansas, ex rel., etc.'

The board of education, of the City of Emporia, pursuant to the
Thanksgiving proclamation of the president of the United States and of
the governor of the state of Kansas, determined to close the schools of
the city on Thanksgiving day, Thursday, November 29, 1894, to enable
the school children, with their parents, to observe the day in accord-
ance with the general custom of the country. The board deemed it ad-
visable to have the schools closed on the next day also, and so ordered.

The schools were accordingly closed on Thanksgiving day until the
following Monday. The board intended to pay the teachers of the schools
the regular salary for the month of November without making any deduc-
tion on account of the two days during which the schools were to be
closed as aforesaid, and this action was brought on November 26, 1894,
to prevent such payment. The teachers did not request that the schools
be closed, nor did they consent thereto, but, on the contrary, they ob-

jected to such intermission if they would thereby lose their wages for the time. The opinion of the court was delivered by Milton, J.: 

'..........If the board acted within the limits of its lawful power and discretion in dismissing the schools for the two days, its obligation to pay the teachers is a necessary inference. The judgment of the district court is reversed, and the cause remanded for further proceedings in accordance with the views herein expressed.'

A director of a school board does not have to sign a warrant when there is a dispute as to the teacher's salary. In the case before the court in 1904, John W. Davis v. Nellie Jewett, the supreme court reversed the decision of the district court in favor of the plaintiff, Nellie Jewett, a teacher. The court decided a proceeding in mandamus cannot be maintained against the director of a school district to compel him to sign a warrant drawn by the clerk on the treasurer for a teacher's salary when there is a controversy over the right of the teacher to compensation, and when the director has not been ordered by a district meeting or the district board to sign the warrant. The opinion of the court was delivered by Smith, J.: 

'Nellie Jewett, defendant in error, entered into a written contract with school district No. 75, in Johnson county, to teach for a term of seven months, beginning on September 16, 1901, at a monthly salary of forty dollars. The contract contained this proviso: 'In case said teacher fails to give satisfaction to a majority of board at end of any month, shall be legally dismissed from school, then said teacher shall not be entitled to compensation from and after such dismissal.' John W. Davis, plaintiff in error, was director of the school district, C. E.

Jewett, clerk, and Mallie E. Watson, treasurer. On January 3, 1902, a written notice was served on Miss Jewett, signed by the director and treasurer, informing her that she had failed to give satisfaction to a majority of the board and notifying her to quit and vacate the school on January 14, 1902, the end of the school month. On the date last mentioned the school-house was locked with a padlock, but the teacher gained entrance to the building and continued to teach there-in. The controversy was over the nonpayment of salary for three months' service, following the order of dismissal mentioned. Defendant in error was plaintiff below, and brought this proceeding in mandamus to compel Davis, the director of the school district, to sign two warrants, aggregating $120, which had been theretofore drawn on the treasurer by the clerk in her favor, and signed by the latter. A preemptory writ was awarded by the court below, the director, Davis, has come here by proceedings in error.

It seems that the court below tried the question of the liability of the school district under the contract of employment. The plaintiff below had no judgment against the district. Her right to recover was resisted because the board asserted the legal right to terminate the contract at the time it did so by virtue of the conditions contained in it. Plaintiff had a plain and adequate remedy at law by action on the contract to recover what she claimed was due.

It is the duty of the director of a school district to sign all orders drawn by the clerk on the treasurer when they are ordered drawn by a district meeting or the district board. No such authority was shown to have been given by the board to the director, Davis, to sign the school warrants in favor of Miss Jewett, and, in the absence of such authorization, it would have been a clear violation of duty on his part to do so.

The judgment of the court below is reversed, with directions to proceed further in accordance with this opinion.

All the Justices concurring.  

A teacher prevented from teaching by a school board closing schools

during an epidemic can recover full salary. A teacher is entitled to salary for full term where board closes school a month early. These points were affirmed in the case before the court in 1913, Sam J. Smith, Appellant, v. School District No. 64, Appellee. The opinion of the court was delivered by Porter, J.: 

'The plaintiff, who is appellant, was employed to teach school at a salary of $55 per month. The action is to recover for two months' salary. A copy of the written contract between the board and the plaintiff was attached to the petition, and it was alleged that plaintiff had been able, ready and willing at all times to perform his part of the contract and had performed the same; and that the board had failed to pay two months of the salary agreed upon. The answer set up a general denial and a further defense, admitting the execution of the written contract for a seven-months school, but alleging that the plaintiff had failed to teach two months of the term. On the trial, which was to the court, it was shown by the plaintiff's testimony that the school opened September 26, 1910, and continued until February 9, when it was closed by order of the board on account of sickness among the scholars. It reopened March 14, and continued until April 11, at which time, over appellant's objections, the board ordered the term finally closed on the ground that it was getting late and that a good many of the boys were needed for farm work. It appeared that plaintiff was ready and willing to complete the full term and had been paid for five months only. In his testimony he admitted, in substance, that the board was willing to pay him for the sixth month, and the court intimated an intention to hold that he was only entitled to pay for one month; and that as he had been tendered an order for that month and refused to accept it the costs should be taxed against him. It must be obvious that the board could not avoid liability for payment of the salary for the full term by arbitrarily closing the school a month earlier than the contract provided; and, that since there was no express stipulation for a deduction from the compensation agreed upon by reason of the closing of the school during the prevalence of a contagious disease
in the community, the plaintiff was entitled to his salary for that month. The judgment will be reversed and the cause remanded with directions to render judgment for the plaintiff for the amount prayed for.

It is within power of a school district to terminate a teacher's contract because of insufficient funds, where the teacher's contract provided that it 'may be terminated by either party on thirty days' notice when there exists some reasonable ground therefor.' The action in terminating the contract must be in good faith, and timely notice given of its termination. These are points brought out by the court in a case before it in 1924. The case was: Daisy Brown, Appellant, v. The Board of Education of the City of Bonner Springs, Appellee. Miss Brown was informed by the superintendent of schools that her services would not be needed because of insufficient funds after she had contracted to teach in the school the following year. The opinion of the court was delivered by Hopkins, J.:

'The action was one to recover on a school teacher's contract. The defendant prevailed and plaintiff appeals.

The case was tried on an agreed statement of facts, which showed that on April 3, 1921, the plaintiff and defendant entered into a written contract whereby the plaintiff agreed to teach music in the public schools of Bonner Springs for the year beginning September 5, 1921, at a salary of $135 per month. The contract contained this provision: 'Fifth. That this contract may be terminated by either party on thirty days' notice in writing to be given by the party desiring such termination, and only when there exists some reasonable ground therefor, excepting that this contract

may be terminated at any time by mutual consent of the parties thereto."

The plaintiff contends that the contract was cancelled for the convenience and whim of the board of education; that the notice given her in no way fell within the provisions of the contract providing for cancellation, and that there was no evidence of a reasonable excuse for cancelling the contract.

...A fair interpretation of the contract in controversy indicates that either party under the fifth clause might cancel it, if acting in good faith and for reasonable cause. There is no allegation or proof indicating bad faith on the part of the defendant board, and bad faith cannot be assumed.

The judgment is affirmed.8

SUMMARY

CHAPTER II, TEACHER CONTRACTS.

A. A contract with one member of a school district board is insufficient.

B. A contract signed by two members of a school district board in the absence of each other is not binding.

C. It is sufficient that a contract be reduced to writing after the board has adjourned if made in parol before.

D. A contract between the teacher and the school board must be in writing.

E. A provision in a teacher's contract for discharge if not satisfactory to the school board is valid.

F. If all members of a school board agree to hire a certain teacher, but one of the members is absent when contract is made, the contract is nevertheless good.

G. A teacher suing on a contract must prove the authority of the officers signing for the school district.

H. An invalid contract will become binding on the board by ratifying it in accepting a teacher.

I. Where a teacher is allowed to teach, and paid, a school board waives irregularities in employing her.
J. Misrepresentation of the teacher that she held a certificate is equivalent to misrepresentation as to educational qualifications and contract is rendered unenforceable.

K. A valid contract cannot be made prior to the annual April meeting unless the school has ten or more teachers.

L. Oral acceptance of a contract is insufficient. The contract must be written and signed by both parties.

M. If the contract contains a provision that marriage during the school term would terminate the contract; the fact that marriage is performed before the term began is no excuse.

N. A contract executed at a meeting of a board outside the territorial limits of the district is void.

O. Consolidation of districts rendering teachers' services unnecessary does not relieve a district of its contractual liability.

CHAPTER III, TEACHER DISMISSAL AND REMOVAL.

A. A contract may reserve the right to discharge the teacher at any time she fails to give satisfaction.

B. By contract, a school board may discharge a teacher for incompetency after giving notice thereof.

C. The formality of a court is not required in the procedure for the dismissal of a teacher by a school board.

D. If a teacher's contract provides for removal by the vote of
the board, the teacher is removable without cause.

E. The act of a board in dismissing a teacher is conclusive in the absence of fraud, corruption, or oppression.

F. The school board and the county superintendent constitute proper tribunal to determine a teacher's dismissal.

G. The unanimous decision of the county superintendent and two members of a board is sufficient for the dismissal of a teacher.

H. The conduct of a teacher in extending a vacation without consent of the board is a question of negligence.

CHAPTER IV, TEACHER COMPENSATION.

A. A teacher is entitled to receive reasonable value for services if not working under a written contract.

B. In an action by the teacher for salary, dismissal by board for incompetency is held good defense.

C. A wrongfully discharged teacher may recover the balance due on a contract.

D. A school board may pay teachers for the time while school is dismissed for a holiday.

E. A director does not have to sign a warrant for salary when there is a dispute as to the teacher's salary unless given authority by a district meeting or the school board.

F. A teacher prevented from teaching by the board closing schools
during an epidemic can recover full salary.

G. A teacher is entitled to salary for full term where a board closes school month early.

H. It is within the power of a school district to terminate a teacher's contract because of insufficient funds, if the contract contains a provision to that effect.
BIBLIOGRAPHY

Kansas Supreme Court. **Kansas Reports, Volumes 1-145.**

Topeka, State Printer, 1864-1937. 145 Vols.

Reports of cases argued and determined by the Kansas Supreme Court. Chief source of information.


Edited and revised by W. T. Markham, State Superintendent of Public Instruction.

Kansas Courts of Appeals. **Kansas Appeals Reports, Volumes 1-10.**

Topeka, State Printer, 1895-1900. 10 Vols.

Reports of cases decided in the Courts of Appeals of the State of Kansas.

Hatcher, Earl Hilton and McCue, Howard F. assisted by Vance, Charles.


A digest of Kansas Reports, covering all decisions in McCahon’s Reports, Supreme Court Reports, Volumes 1-125, Appeal Reports, Volumes 1-10, with citations to Pacific Reporter.