E. B. LARIVIÈRE (PLAINTIFF).....APPELLANT; 1894

AND *Nov. 5

THE SCHOOL COMMISSIONERS FOR THE CITY OF THREE RIVERS (DEFENDANTS) ..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Bond in appeal—School mistress—Fee of office—Future rights—R. S. C. ch. 135, sec. 29 (b)—C. S. L. C. c. 15 s. 68—R. S. Q., art. 2073.

E. Larivière, a school mistress, by her action claimed $1,243 as fees due to her in virtue of sec. 68, ch. 15 C. S. L. C. which was collected by the School Commissioners of the City of Three Rivers, while she was employed by them. At the time of the action the plaintiff had ceased to be in their employ. The Court of Queen's Bench for Lower Canada (appeal side) affirming the judgment of the Superior Court, dismissed the action.

On a motion to the Supreme Court of Canada to allow bond in appeal, the same having been refused by a judge of the court below. the Registrar of the Supreme Court and a Judge in Chambers, on the ground that the case was not appealable :

Held, that the matter in controversy did not relate to any office or fee of office within the meaning of sec. 29 (*b*) of the Supreme and Exchequer Courts Act, R.S.C. c. 135.

2. Even assuming it did, no rights in future would be bound and the amount in dispute being less than $2,000, the case was not appealable.

3. The words "where the rights in future might be bound" in subsec. (*b*) of sec. 29, govern all the preceding words "any fee of office, &c." *Chagnon* v. *Normand* (16 Can. S.C.R. 661) ; *Gilbert* v. *Gilman* (16 Can. S.C.R. 189) ; *Bank of Toronto* v. *Le Curé &c. de St. Vierge* (12 Can. S. C. R. 25) ; referred to.

MOTION for allowance of security on appeal from the judgment of the Court of Queen's Bench for Lower Canada.

---

*PRESENT :—Sir Henry Strong C.J., and Taschereau, Gwynne, edgewick and King JJ.

1894

LARIVIÈRE v. THE SCHOOL COMMISSIONERS FOR THE CITY OF THREE RIVERS.

This was a motion by way of appeal from the decision of Mr. Justice Taschereau confirming the ruling of the registrar in chambers on an application made by the appellant.

The facts and proceedings in the case are as follows:

On the 22nd August, 1877, the defendants engaged the plaintiff as teacher of a separate girl's school in school district no. 4 of the city of Three Rivers. The resolution adopted by the defendants on the subject was to the effect that the plaintiff should keep the said school at the same salary and upon the same conditions as the Reverend Sisters of Providence, who taught it before her. This was for a salary of $144 a year with lodging and heating.

The plaintiff kept the school from August, 1877, until July, 1891, fourteen years.

The plaintiff alleged that during this period the monthly fees payable on account of the children attending the school belonged exclusively to the plaintiff, but that the School Commissioners received these fees and refused to render any account of them, or to pay them over; and she brought her action to compel them to make such payment.

It was admitted by the parties that the plaintiff was engaged at the same salary and upon the same conditions as the Sisters of Providence, viz., $200 per annum, when they themselves provided lodging and heating, and $144 per annum when the Commissioners provided lodging and heating.

But the plaintiff contended that she was entitled to the monthly fees over and above the salary mentioned, and she based her action on sec. 68 of ch. 15 C. S. L. C. which enacts as follows:—

"The monthly fees payable on account of children attending a Model School, or a separate girl's school, or a school kept by some religious community forming

a school district, shall form no part of the school fund; but such monthly fees, to the amount established for the other children in the municipality, shall be payable directly to the teacher, and be for his or her use, unless different monthly fees have been agreed upon."

The defendants by their pleas alleged that the plaintiff had no right to these fees, because the Reverend Sisters never pretended to have any right to receive them;

because the plaintiff received her salary each year without reserving any right to receive these fees;

because on the 4th January, 1892, she sued the defendants for a part of her salary and did not include any claim for those monthly fees and she must be considered as having abandoned her right to those fees; and

because her salary of $144 constituted a different monthly payment or agreement (*une rétribution ou convention différente*) which deprived the plaintiff of the right to claim the monthly fees, even assuming she would otherwise have the right to them.

The defendants also pleaded a plea of prescription which need not now be considered.

The Superior Court dismissed the plaintiff's action for the reasons set out in the pleas of the defendants above summarized, and this judgment was confirmed by the Queen's Bench.

A bond has been filed to the form of which objection has been taken by counsel for defendants.

The registrar, before whom the application came in the first instance, held that there was no jurisdiction to entertain the appeal as no rights in future would be bound, and he referred to *Bank of Toronto* v. *Le Curé, &c., de Ste Vierge* (1); and *Gilbert* v. *Gilman* (2).

(1) 12 Can. S. C. R. 25.

(2) 16 Can. S. C. R. 189.

1894

LARIVIÈRE v. THE SCHOOL COMMISSIONERS FOR THE CITY OF THREE RIVERS.

J. A. Ritchie then made a motion by way of appeal from the above decision of the registrar in chambers before Mr. Justice Taschereau who refused the motion.

Thereupon an application was made to the Supreme Court of Canada.

J. A. Ritchie was heard for the appellant, and *McDougall* Q.C. for the respondents.

Per Curiam: The position of school mistress is not an office within the meaning of section 29 (*b*) of ch. 135 R.S.C. Even assuming it were an office the appellant having ceased to be in the employ of the respondents no rights in future were bound.

The words "where the rights in future might be bound," in subsection (*b*), section 29, govern the preceding words "any fee of office, &c." See *Chagnon* v. *Normand* (1); *Gilbert* v. *Gilman* (2).

Motion refused with costs.

---

(1) 16 Can. S.C.R. 661. (2) 16 Can. S.C.R. 189.