THE BOARD OF TRUSTEES OF THE ACME VILLAGE SCHOOL DISTRICT No. 2296, OF THE PROVINCE OF ALBERTA (DEFENDANT)..... APPELLANT;

1932

*Oct. 12, 13.
*Dec. 23.

AND

JOHN STEELE-SMITH (PLAINTIFF) .. RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ALBERTA

Statutes—Construction—Retrospective operation—School Act, Alta., 1931, c. 32, s. 157—Provision requiring inspector's approval before notice terminating teacher's engagement—Its application as to engagements entered into prior to its enactment.

The provision in s. 157 of the Alberta *School Act, 1931,* that, except in the month of June, no notice terminating a teacher's engagement should be given by a school board without the approval of an inspector previously obtained, which provision was first introduced into the school law by said Act (1931, c. 32), which replaced the former Act (R.S.A., 1922, c. 51), was *held* to apply in regard to the termination (after said Act of 1931 came into force) of an agreement of engagement entered into prior to the enactment of said provision.

Judgment of the Appellate Division, Alta., [1932] 1 W.W.R. 849, [1932] 3 D.L.R. 262, affirming judgment of Ewing J., [1932] 1 W.W.R. 315, affirmed.

Rinfret J. dissented.

APPEAL by the defendant (by leave given by the Appellate Division, Alta.) from the judgment of the Appellate Division of the Supreme Court of Alberta (1), dismissing its appeal from the judgment of Ewing J. (2), answering in favour of the plaintiff the questions submitted in a special case stated for the opinion of the court, pursuant to Rule 114 of the Alberta Rules of Court.

The defendant Board and the plaintiff entered into an agreement dated June 28, 1929, whereby the Board agreed to employ the plaintiff as teacher from and after September 3, 1929. Clause 6 of the agreement provided:

6. This agreement shall continue in force from year to year, unless it is terminated as hereinafter provided, or unless the Certificate of the Teacher has been revoked in the meantime.

Either party hereto may terminate the agreement by giving thirty (30) days' notice in writing to the other party:

*PRESENT:—Rinfret, Lamont, Smith, Cannon and Crocket JJ.

(1) [1932] 1 W.W.R. 849; [1932] 3 D.L.R. 262.
(2) [1932] 1 W.W.R. 315.

1932

ACME VILLAGE SCHOOL DISTRICT v. STEELE-SMITH.

Provided that no such notice shall be given by the Board until the Teacher has been given the privilege of attending a meeting of the Board (of which five clear days' notice in writing shall be given to the Teacher) to hear and to discuss its reasons for proposing to terminate the agreement .

The following is stated in the special case (which is dated November 18, 1931):

"2. The defendant desiring to terminate the said agreement complied with the provisions of paragraph 6 thereof in the following manner, namely, that the plaintiff was given the privilege of attending a meeting of the Board, of which five clear days' notice in writing was given to the plaintiff by service of a notice to that effect upon him, which meeting was held to hear and to discuss its reasons for proposing to terminate the agreement, such notice being served on or about the 4th day of July, 1931, and a meeting was held pursuant to such notice on the 14th day of July, 1931, at Acme, in the province of Alberta, and a resolution having been passed by the defendant Board that the said agreement should be terminated, a notice was duly served upon the plaintiff by the defendant Board on or about the 18th day of July, 1931, notifying the plaintiff that the agreement would be terminated at the expiration of such period of thirty days from the date of service of said notice, no approval of an inspector having been previously obtained by the defendant Board.

"3. The plaintiff brings this action complaining that the said agreement has been wrongfully terminated in that the provisions of The School Act, Statutes of Alberta (1931), Chapter 32, Section 157, have not been complied with by the defendant in giving such notice of termination.

"4. The questions for the opinion of the Court are:

(1) Can the agreement in question be terminated by compliance only with the provisions of Section 6 thereof?

(2) Are the provisions as to termination of an agreement, as set forth in The School Act, Statutes of Alberta (1931), Chapter 32, Section 157, applicable to an agreement entered into between a teacher and a Board of School Trustees in the province of Alberta prior to the 1st day of July, 1931?

The said Act, c. 32 of 1931, was assented to on March 28, 1931, and came into force on July 1, 1931.

(Said section 157 has since been amended by c. 34 of 1932).

Ewing J. answered the first question in the negative and the second question in the affirmative, and his decision was affirmed by the Appellate Division. By the judgments now reported, the appeal to this Court was dismissed with costs, Rinfret J. dissenting.

H. E. Crowle for the appellant.

O. M. Biggar, K.C., for the respondent.

LAMONT, J.—I agree with the conclusion of my brother Crocket. Section 157 of the present School Act of Alberta came into force on July 1, 1931. It, in part, reads as follows:—

157. Subject to the conditions hereinafter set out in this section, either party thereto may terminate the agreement of engagement between the teacher and the Board by giving thirty days' notice in writing to the other party of his or its intention so to do;

Provided always:

(*a*) that except in the month of June no such notice shall be given by a Board without the approval of an inspector previously obtained;

(*b*) that except in the months of June and July no notice of the termination of a contract shall be given by a teacher without the approval of an inspector previously obtained;

The School Act of 1931 repealed the School Act in force prior to that time (R.S.A. 1922, c. 51). Under the former Act the agreement of engagement between a teacher and the Board of Trustees of a school could be terminated by either party giving to the other party thirty days' notice in writing of his or its intention to terminate it unless otherwise provided in the agreement. In this action the agreement of hiring between the teacher and the Board was entered into in 1929. In the month of July, 1931, the appellant gave notice to the respondent that the agreement between them would be terminated at the expiration of thirty days. Therefore the question for determination is, whether or not the appellant, in July, 1931, could give a valid notice terminating the agreement without having previously secured the approval of the inspector.

The question involves the construction of section 157. In the *Sussex Peerage* case (1), Lord Chief Justice Tindal, in delivering the opinion of the judges, said:—

(1) (1844) 11 Cl. & F. 85, at 143; 8 E.R. 1034, at 1057.

1932

ACME VILLAGE SCHOOL DISTRICT v. STEELE-SMITH.

Lamont J.

My Lords, the only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver.

If, however, any doubt as to the legislative intention exists after a perusal of the language of the Act, then, as Lord Hatherly, L.C., said in *Pardo* v. *Bingham* (1):—

We must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated.

In this Court in the case of *Upper Canada College* v. *Smith* (2), Mr. Justice Duff, at page 419, pointed out various ways in which the legislative intention might be expressed. He said:—

That intention may be manifested by express language or may be ascertained from the necessary implications of the provisions of the statute, or the subject matter of the legislation or the circumstances in which it was passed may be of such a character as in themselves to rebut the presumption that it is intended only to be prospective in its operation.

Referring first to the language of the section, we find the legislature declaring that "subject to the conditions hereinafter set out either party may terminate the agreement of engagement between the teacher and the Board". The legislature here was providing by whom and in what circumstances agreements of engagement might be terminated. The old Act provided for such termination, but that Act was being repealed by the Act of 1931, it was, therefore, necessary to make provision in the new Act for terminating the agreements. Giving to the words employed in section 157 their natural and ordinary meaning, we have a section general in its character, and susceptible of application to every agreement of engagement between teacher and trustees. Why then should the section be construed as relating to future agreements only?

The appellant contends that to construe the section as applying to agreements in existence prior to the coming into force of the Act would be to violate two well known rules of construction. The first is that statutes are not to be construed as having retrospective operation unless such a construction appears very clearly in the terms of

(1) (1869) 4 Ch. App. 735, at 740.

(2) (1920) 61 Can. S.C.R. 413.

the Act, or arises by necessary or distinct implication; the second is they should not be given a construction that would impair existing rights, unless that effect cannot be avoided without doing violence to the language of the enactment.

That these are well recognized general rules of construction is not questioned. Rules of construction, however, are only useful in ascertaining the true meaning of a statute where the language is not clear and plain. If the intention of the legislature can be ascertained all rules of construction must yield to the legislative intention.

The foundation upon which the above rules rest is that it would be unfair and unjust to deprive people of rights acquired by transactions perfectly valid and regular at the time they were acquired, and that the legislature is not to be presumed to act unjustly. The right of the Board under the previous Act to give a thirty days' notice of the termination of the agreement of engagement without the consent of the inspector amounted, in my opinion, to something more than a mere matter of procedure. Therefore a legislative intention to deprive the Board of that right will not be presumed. But the legislature was competent to take away that right, and we have to determine whether a legislative intention to take it away is not a necessary implication from the language of the Act, particularly in view of its scope, the mischief it was designed to prevent and the remedy provided.

Briefly, the Act had for its object the amendment and revision of the former school law so as to present in one Act the law governing the formation and organization of school districts, the erection of schools and the control and management thereof, including the employment and dismissal of the teacher by Boards of Trustees. The provisions of the Act clearly indicate a legislative intention to give the Minister what may be termed a supervising control over the employment of the teacher and the termination of that employment by either the Board or the teacher. (Sections 155 to 158). The right under the former Act that one party could at any time give to the other a thirty days' notice of the termination of the agreement permitted a Board of Trustees to dismiss a teacher, or a teacher to quit the school, during the term, no matter how detrimental to the efficiency of the school and the pupils' courses of studies

1932

ACME VILLAGE SCHOOL DISTRICT v. STEELE-SMITH.

Lamont J.

the termination of the agreement at such a time might be. That was the mischief struck at by subsections (*a*) and (*b*) of section 157. The remedy provided was to require the consent of the inspector before notice of termination was given, except during the months specified in those subsections. Thus to the inspector was committed the duty of deciding whether the reasons for desiring the termination of the agreement were, in the circumstances of the particular case, sufficient to justify the impairment in efficiency of the school which would likely follow upon a break in the course of the pupils' studies.

Considering the nature and scope of the Act and the control over the agreement of engagement between teacher and Board retained by the Minister, and considering also that the mischief for which the legislature was providing a remedy was a presently existing evil which the legislature proposed to cure by making the right of either party to terminate the agreement depend upon the consent of the inspector, I am of opinion that sufficient has been shewn to rebut the presumption that the section was intended only to be prospective in its operation. I can find nothing that would justify us in construing section 157 as if it read: "Either party may terminate any future agreement between the teacher and the Board." In order to give the section the meaning contended for by the appellant we should have to read into it words which limit its *prima facie* operation and which would make it something different from and smaller than what its terms express. As Bowen, L.J., said in *The Queen* v. *Liverpool Justices of the Peace* (1):—

> Certainly we should not readily acquiesce in a non-natural construction which limits the operation of the section so as to make the remedy given by it not commensurate with the mischief which it was intended to cure.

In my opinion section 157 was passed to remedy an evil which had been found to exist. It should, therefore, be construed in conformity with the well established rule that all cases within the mischief aimed at by that statutory provision are, if the language permits, to be held to fall within its remedial influence.

(1) (1883) 11 Q.B.D. 638, at 649.

In Craies on Statute Law, 3rd ed., at page 336, the author says:—

> If a statute is passed for the purpose of protecting the public against some evil or abuse, it will be allowed to operate retrospectively, although by such operation it will deprive some person or persons of a vested right.

And in *West* v. *Gwynne* (1), Buckley, L.J., points out that most Acts of Parliament do in fact interfere with existing rights.

The case at bar, in my opinion, is similar to that of *West* v. *Gwynne* (2). In that case the statutory provision was as follows:—

> In all leases containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent.

The lessees applied to the landlord for his consent to their subletting the demised land. The landlord replied that he was only prepared to grant the plaintiffs a licence to underlet on condition that he should thenceforward receive for himself one-half of the surplus rental to be obtained from the lessees in respect of the demised premises over and above the rent payable under the lease. An action was brought for a declaration that the lessees could make a valid underlease without his consent. The question was, as in the present case, whether the statutory provision applied to all leases or only to those executed after the passing of the Act. It was held to apply to leases already existing as well as to those to be executed in the future, on the ground that the Act was passed for the purpose of correcting a state of the law which was lending itself to grave abuse.

The appellant relies upon the case of *Upper Canada College* v. *Smith* (3). That case, in my opinion, is clearly distinguishable, for there, if the statutory enactment had been given a retrospective operation it would have deprived an agent who had earned a commission on the sale of land, under a contract valid when entered into, from recovering that commission. The statutory provision in that case prohibited the bringing of an action to recover the commis-

(1) [1911] 2 Ch. 1, at 12. (2) [1911] 2 Ch. 1.
(3) (1920) 61 Can. S.C.R. 413.

1932

ACME VILLAGE SCHOOL DISTRICT v. STEELE-SMITH.

Lamont J.

sion "unless the agreement upon which such action shall be brought shall be in writing * * * and signed by the party to be charged therewith * * * ". As Mr. Justice Duff pointed out at page 422, "the words 'shall be in writing' point to a writing to be brought into existence after the passing of the Act". It was there held that the enactment was prospective only in its operation.

In the case at bar there is, in my opinion, nothing whatever to indicate an intention that the section was to be more restricted in its operation than the language employed would convey given its ordinary meaning.

I would dismiss the appeal.

The judgment of Smith and Crocket JJ. was delivered by

CROCKET J.—This case arises out of the repeal by the Legislature of Alberta, in the year 1931, of the School Act of that province, chap. 51, R.S.A. (1922), and its replacement by a revised Act, which came into force on July 1 of that year.

While the old Act was in force, on June 28, 1929, the respondent, a qualified teacher, entered into a contract with the appellant Board as teacher in the above school district at a salary of $2,200 per year. The contract, which was in the form approved by the Minister of Education in accordance with the provisions of the old Act, contained, *inter alia*, the following provision, as clause no. 6, which is the only one with which this appeal is concerned:—

> 6. This agreement shall continue in force from year to year, unless it is terminated as hereinafter provided, or unless the certificate of the teacher has been revoked in the meantime.
>
> Either party hereto may terminate the agreement by giving thirty (30) days' notice in writing to the other party.
>
> Provided that no such notice shall be given by the Board until the teacher has been given the privilege of attending a meeting of the Board (of which five clear days' notice in writing shall be given to the teacher) to hear and to discuss its reasons for proposing to terminate the agreement.

On July 14, 1931, after the new Act came into operation, the appellant gave the respondent thirty days' notice in writing of the termination of the agreement, as provided by the above clause, but failed to obtain the approval of a school inspector to such notice, in accordance with the provisions of section 157 of the new Act, chap. 32 of the

Statutes of Alberta for the year 1931, which had come into force on July 1 of that year.

The respondent having brought an action against the appellant to recover damages for the alleged wrongful termination of the contract, on the ground that the provisions of sec. 157 of chap. 32, Statutes of Alberta, 1931, had not been complied with, a special case was stated for the opinion of the court, pursuant to Rule 114 of the Alberta Rules of Court, the questions submitted to the court being:—

(1) Can the Agreement in question be terminated by compliance only with the provisions of Section 6 thereof?

(2) Are the provisions as to termination of an Agreement, as set forth in The School Act, Statutes of Alberta (1931), Chapter 32, Section 157, applicable to an Agreement entered into between a teacher and a Board of School Trustees in the Province of Alberta prior to the 1st day of July, 1931?

The case was argued before Ewing, J., who answered the first question in the negative and the second question in the affirmative (1). On appeal these answers were affirmed by the Appellate Division of the Supreme Court of Alberta (2).

The text of sec. 157 of the new Act, in so far as it is relevant to the question involved, is as follows:—

157. Subject to the conditions hereinafter set out in this section, either party thereto may terminate the agreement of engagement between the teacher and the Board by giving thirty days' notice in writing to the other party of his or its intention so to do:

Provided always:

(*a*) that except in the month of June no such notice shall be given by a Board without the approval of an inspector previously obtained;

(*b*) that except in the months of June and July no notice of the termination of a contract shall be given by a teacher without the approval of an inspector previously obtained.

This section is one of sixteen sections—154 to 169 inclusive—comprising Part XIII of the Act under the principal caption "Relating to the Teacher." Sec. 154 appears under the sub-caption "Qualification," while sections 155 to 158 inclusive are under the sub-caption "Engagement and Contract." Sec. 159 follows under the sub-caption "Suspension and Dismissal" and the remaining sections of this Part of the Act, are set out under such sub-captions as "Board of Reference" (for the investigation of disputes between school boards and teachers), "Payment of Teachers," "Duties of Teachers," etc.

(1) [1932] 1 W.W.R. 849.

(2) [1932] 1 W.W.R. 849; [1932] 3 D.L.R. 262.

1932

ACME VILLAGE SCHOOL DISTRICT v. STEELE-SMITH.

Crocket J.

The agreement here in question, as already pointed out, provided for its termination on thirty days' notice in writing by either party. Had it not done so it would have been terminable in the same way by virtue of subsec. 2 of sec. 199 of the old Act, which read as follows:—

> Unless otherwise provided for in the contract either party thereto may terminate the agreement for teaching between the teacher and the board of trustees by giving thirty days' notice in writing to the other party of his or its intention so to do.

It will be noticed that the change which sec. 157 of the new Act effected in the law regarding the termination of teaching agreements was to require the previous approval of an inspector to the thirty days' notice of termination by the Board of Trustees, except in the month of June, and the like approval of an inspector to the notice of termination by the teacher, except in the months of June and July. In the month of June the Board of Trustees can, as before, terminate on thirty days' notice, without previously obtaining the approval of an inspector, and in the months of June and July the teacher also has the same privilege, as formerly. The object evidently was to prevent, except for some sufficient reason, the cancellation of teachers' contracts during the teaching days of the school year, and the disturbing and detrimental effects thereof upon the work of the schools. The change, undoubtedly, deprives the Board of Trustees of the right to terminate the teaching agreement on its own motion, except by notice given in the month of June, as it deprives the teacher of the right to do so on his own motion, except in the months of June and July.

In behalf of the appellant, it is contended that section 157 was not intended to apply to existing teachers' contracts, but only to contracts entered into after July 1, 1931, when the new Act came into force, and that the trial judge and the Appeal Division of the Supreme Court of Alberta erroneously gave it a retroactive operation.

I am of opinion that Ewing, J., and the Appeal Division correctly construed the section, as enacted in 1931, as applicable to all teachers' contracts, those entered into before the coming into force of the Act, as well as those entered into afterwards.

Whether or not such a construction really involves giving retroactive operation to the section, having regard to the

fact that its new provisions relate only to the manner in which exising contracts may subsequently be terminated or to the right of terminating them in the future, I am satisfied that the clear intention of the legislation was that it should apply to all teachers' contracts alike just as all other provisions of Part XIII were clearly intended to apply to all teachers alike, whether engaged before or after the coming into force of the Act.

Reading the section in question with its context in Part XIII and as part of an Act passed as a complete revision and consolidation of the former School Act, which it repealed, and to which all schools, school boards, teachers, teaching contracts and all else pertaining to the maintenance and administration of schools were subject, I cannot for my part find, either in the language of the section itself or in its context, any indication whatever that the legislature intended to exclude all existing teachers' contracts from its operation.

It was argued that the use of the word "shall" in the two previous sections, 155 and 156, indicated an intention that these sections should apply only to future contracts. It goes without saying that, in so far as the provisions of these two sections relate to the manner and authority in and under which teachers shall be engaged and the form and terms of the contract which they shall enter into, they could not possibly apply to contracts which had already been entered into, but it does not follow from this fact that none of their provisions shall have any application to existing contracts, where it is clear they may apply to existing and future contracts alike. For example, subsec. 3 of sec. 156 provides that "unless the employment be stated in the contract to be for a definite period, the contract shall, subject to the following provisions, continue in force from year to year unless and until the certificate of the teacher shall have been revoked." Unquestionably, this latter provision may apply to existing as well as to future contracts. As a matter of fact, it is a re-enactment of an identical provision in the repealed Act. Every teacher's contract in which the employment is not stated to be for a definite period would on the face of the subsection itself fall within its terms. The word "shall" in the phrase "*the contract* shall continue, etc." throws no light whatever upon the

1932

ACME VILLAGE SCHOOL DISTRICT v. STEELE-SMITH.

Crocket J.

question whether the intention was to exclude or to include existing contracts. It is true that its provisions could operate only prospectively, so far as the contract continuing in force from year to year is concerned, but this does not mean that the subsection cannot and does not apply to existing as well as to future contracts.

Similarly, when sec. 157 is examined it will be seen that it treats exclusively of the manner of terminating "*the agreement* between *the teacher* and *the Board*". It provides in its main clause that "either party may terminate *the agreement* between *the teacher* and *the Board*". Its provisions, so far as the terminating of teachers' contracts is concerned, could likewise operate only prospectively, but this is not to say that they cannot and do not apply to existing as well as to future agreements. The question wholly turns upon the meaning of the words "*the agreement* between *the teacher* and *the Board.*" Were they intended to embrace all teachers' contracts, existing as well as future, as they undoubtedly did as they stood in the former Act when it was repealed, or are they now to be limited as applying only to such contracts as might be entered into after the coming into force of the new Act?

Were it not for the addition of the provisoes (*a*) and (*b*), no one would suggest that the phrase "either party may terminate *the agreement* between *the teacher* and *the Board*" in the main clause of sec. 157 has any different meaning in the new Act than it had in the repealed Act, where it seems to me to be perfectly clear that it referred, not to any agreement that might be entered into in the future, but was used as a form to designate all teachers' agreements. In my opinion, it does this quite as effectually as if the words "either party may terminate *any agreement* between a teacher and a board" had been used. If the intention had been as argued in behalf of the appellant, how simply it could have been shewn by inserting the words "hereafter entered into." If the meaning I have indicated be the true meaning of the words of the opening clause, the addition of the provisoes cannot alter that meaning. They are the controlling words and if they apply to all teachers' contracts, existing as well as future, the provisoes likewise apply to all.

If the language of the section itself and its immediate context left any doubt as to its general application, the implications arising from its remedial object, the nature of the agreement and of the right affected and the extent to which it is affected, the fact of the amendment being made in a general revision and consolidation of the former Act, and the whole frame and scope of the new Act, which, though passed on March 28, did not come into operation until July 1, would, in my judgment, put the matter beyond all question.

To confine the words to future contracts only would be, if not entirely to defeat the remedial object of the enactment, at least to render it ineffective for years to come in the great majority of the schools of the province. There would, of course, be no contracts to which it could apply in any way at the time the Act was passed or at the time it came into force, and after that it would only be as existing contracts were cancelled and new ones substituted here and there that the legislation could begin to speak. It would be impossible for the Department of Education to know whether it was in effect at all without an examination of all teaching contracts, to ascertain whether they were entered into before or after the coming into force of the Act. It would necessitate the division of all teaching contracts into two classes: those entered into before July 1, 1931, and those entered into afterwards, and thereby entail such inconvenience and confusion in the administration of the provincial school system as to render the new enactment extremely difficult, if not practically impossible, of observance.

Moreover, public school teachers' contracts are of a public character. The School Boards are essentially public corporations representing the rate-payers of the different school districts. The teachers are licensed by the Board or Minister of Education. The Minister of Education was authorized by the former School Act, as he is authorized by the new Act, to prescribe a standard form for all teachers' contracts, and to determine the terms and conditions which all teachers' contracts uniformly should and shall contain. They are contracts which affect the rights and interests of the whole population of every school district. The contracts themselves and the School Boards and teachers being

1932

ACME VILLAGE SCHOOL DISTRICT v. STEELE-SMITH.

Crocket J.

so peculiarly subject at all times to public control, I find it impossible to conclude that when the legislature revised and consolidated the entire school law of the province and provided in that revision that a notice terminating a teacher's contract in the middle of a teaching term should require the approval of a school inspector, it did not intend that provision to have any present operation or indeed any future operation until some new teachers' agreement should be entered into. If there were any presumption that the legislature did not intend to affect such an existing right, which I very much question, such a presumption must yield to the language of the enactment read in the light of the circumstances and considerations I have mentioned. As was said by Buckley, L.J., in *West* v. *Gwynne* (1), practically every legislative enactment does affect to some extent existing rights. The rights affected by the legislation now in question were mere potential rights, upon which no causes of action had accrued, and the modification of which to the extent indicated could cause no substantial injustice to either the Board of Trustees or the teacher. Each party, had it been desired to terminate the contract without the approval of the inspector, had the interval between the passage of the Act and its coming into force, to do so. Even had the Act come into force on the date it was assented to, the trustees in the case at bar could have acted under its provisions in the month of June.

I would dismiss the appeal with costs.

CANNON J.—The contract, admittedly, was in the form approved by the Minister of Education under a regulation made in accordance with the provisions of the old Act. This old Act was repealed and "other provisions were substituted by the repealing enactment for the provisions or regulations thereby repealed." Section 14 of the *Interpretation Act* (R.S.A., 1922, ch. 1) provides that in such a case

(*b*) all proceedings taken under the old enactment or regulation or which may require to be instituted shall be continued or instituted as the case may be *under the substituted provisions, so far as applicable;*

(*c*) all by-laws, orders, regulations and rules made under the old enactment *shall continue good and valid in so far as they are not inconsistent with the substituted provisions,* until they are annulled or others are made in their stead;

(1) [1911] 2 Ch. 1.

In my opinion, the various steps regulating the dismissal of a teacher were always subject to change by regulation or statute and the teacher and the Board were both subject to such contingency—which excluded the possibility of any right, as to notice, becoming incommutably vested in either party.

Even assuming that such right or advantage had accrued or become vested, it would always be subject to the application of section 12 of the same *Interpretation Act,* which expressly reserves to the Legislative Assembly the power of revoking, restricting or modifying any advantage vested or granted by any Act of the Legislature to any person or party, whenever such repeal, restriction, or modification is deemed by the Legislative Assembly to be required for the public good. This has been done in a matter of public policy, and I would therefore answer the questions as follows:

1. No.
2. Yes.

and dismiss the appeal with costs.

RINFRET J. (dissenting).—With deference, I think the appeal in this case ought to be allowed.

We have to construe section 157 of the *School Act,* being c. 32 of the Statutes of Alberta (1931).

In the Act, section 157 forms part of a fasciculus of sections (ss. 155-158) under the sub-heading "Engagement and Contract"; and, so as to understand its full purport, I think all the sections must be reproduced in the order in which they appear:

155. A teacher *shall* not be engaged except under the authority of a resolution of the Board passed at a regular or special meeting of the Board.

Provided always that in case the chairman or secretary sends any communication in writing to an applicant for engagement as a teacher by the Board, to the effect that the Board has decided to engage such applicant, and if the applicant delivers or causes to be delivered to the chairman or secretary of the Board a communication in writing to the effect that the applicant accepts such engagement, either by actual delivery or by mail or by telegraph, not later than the fifth day after the day upon which the communication from the chairman or secretary was mailed or otherwise despatched, the Board and the applicant *shall* be thereupon under a legal obligation to enter into a contract in the standard form, subject only to such variation as may be approved by the Minister; otherwise such communications *shall* not be effective to create any contract whatsoever between the Board and the applicant.

1932

ACME VILLAGE SCHOOL DISTRICT v. STEELE-SMITH.

Rinfret J.

156. (1) The contract of employment *shall* contain such agreements, terms, conditions and restrictions as may be approved by the Minister, who may prescribe a standard form of contract.

(2) In the event of any alteration or amendment of the standard form being made without the approval of the Minister, the standard form shall have effect as if such alteration or amendment had not been made.

(3) Unless the employment be stated in the contract to be for a definite period, the contract shall, subject to the following provisions, continue in force from year to year, unless and until the certificate of the teacher shall have been revoked.

157. Subject to the conditions hereinafter set out in this section, either party thereto may terminate the agreement of engagement between the teacher and the Board by giving thirty days' notice in writing to the other party of his or its intention so to do; Provided always

(*a*) that except in the month of June no such notice shall be given by a Board without the approval of an inspector previously obtained;

(*b*) that except in the months of June and July no notice of the termination of a contract shall be given by a teacher without the approval of an inspector previously obtained;

(*c*) that any such notice may be given either by delivering the same to the person to whom it is addressed or sending the same in a duly addressed and prepaid cover by registered mail, and in the latter case the notice shall be deemed to have been given upon the day on which it is mailed;

(*d*) that a teacher may notify the secretary of a post office address to which any notices may be sent, and in that event, all notices shall be sent to that address, but if no such address is furnished to the secretary, any notice sent by mail shall be deemed to have been duly addressed if addressed to the teacher at the last known post office address of such teacher.

158. The contract shall be signed by the teacher and by the chairman, or, in the absence of the chairman, by another trustee on behalf of the Board.

The question is whether the new enactment applies to contracts entered into before the Act came into force.

The fundamental rule is that, *prima facie,* statutes are to be construed as prospective. The rule is " one of construction only " and " will certainly yield to the intention of the legislature." (*Moon v. Durden* (1).) But, as pointed out by Duff J. in *Upper Canada College* v. *Smith* (2), there is high authority for the proposition " that the intention to affect prejudicially existing rights must appear from the express words of the enactment"; and he quotes Fry J. in *Hickson* v. *Darlow* (3); Rolfe B. in *Moon* v. *Durden* (4); and a passage of Erle, C.J., in *Midland Ry. Co.* v. *Pye* (5),

(1) (1848) 2 Ex. R. 22, at 42 & 43.
(2) (1920) 61 Can. S.C.R. 413 at 419.
(3) (1883) 23 Ch.D. 690, at 692.
(4) (1848) 2 Ex. R. 22 at 33.
(5) (1861) 10 C.B.N.S. 179 at 191.

approved by the Privy Council in *Young* v. *Adams* (1); and " words not requiring a retrospective operation so as to affect an existing status prejudicially ought not to be so construed " (per Lord Selborne in *Main* v. *Stark* (2)). For, as a general principle, legislation introduced for the first time, " ought not to change the character of past transactions carried on upon the faith of the then existing law." (*Phillips* v. *Eyre* (3).)

Wright J., in *In re Athlumney* (4), laid down the principle as follows:

> No rule of construction is more firmly established than this: that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.

The above rule was referred to and followed by this Court only recently in *Electric Motor & Machinery Co.* v. *The Bank of Montreal* (5).

Now, if the principle and the rule be applied first to the language of section 157, there exists no difficulty in giving to it a meaning which makes it prospective only in its operation and, on the contrary, there is nothing " on the face of the enactment putting it beyond doubt that the legislature meant it to operate retrospectively." (Rolfe B., in *Moon* v. *Durden* (6).)

The following passage of the trial judge's judgment has my fullest concurrence:

> At the outset I find myself unable to agree with the argument that sec. 157 of the new Act merely effects a change in procedure and has therefore a retrospective effect. Under the contract and under the old Act the Board had the complete and unassailable right to terminate—subject only to the requirements as to notice and as to giving the Teacher the privilege of attending a meeting of the Board to hear and discuss the reasons for proposing to terminate the contract. It lay easily within the power of the Board to comply with these requirements. Under the new Act the Board is required, except in the month of June, to get the approval of an Inspector, which it may or may not be able to get. Failing to get the approval of an Inspector the Board has no power to terminate the contract—except in the month of June. This provision therefore seriously limits the contractual powers of the Board.

(1) [1898] A.C. 469.
(2) (1890) 15 App. Cas. 384, at 388.
(3) (1870 L.R. 6 Q.B. 1, at 23.
(4) [1898] 2 Q.B. 547, at 551, 552.
(5) [1932] Can. S.C.R. 634, at 637.
(6) (1848) 2 Ex. R. 22, at 33.

1932

ACME VILLAGE SCHOOL DISTRICT v. STEELE-SMITH.

Rinfret J.

There are many dicta to the effect that statutes which make alterations in procedure are retrospective. There is Lord Blackburn's well known dictum in *Gardner* v. *Lucas* (1), viz:—

"I think it is perfectly settled that if the Legislature intended to frame a new procedure, that instead of proceeding in this form or that, you should proceed in another and a different way; clearly there bygone transactions are to be sued for and enforced according to the new form of procedure."

But in the case at bar the Legislature has not merely altered the form by which a thing shall be done, but it has taken away from the Board in certain contingencies the power to do it at all. New disabilities and obligations are created and the change in this respect cannot therefore be a mere matter of procedure.

But I cannot follow the learned judge further when he says:—

But to declare that sec. 157 applies to contracts, still in effect, although entered into before sec. 157 came into force, with respect to acts done or events happening after sec. 157 came into force is not to declare that the section is retrospective.

If these acts are done pursuant to the rights of the parties under the existing contracts, and if the parties are told that they may no longer act in accordance with their contracts mutually agreed upon, clearly their legal rights are prejudicially affected retrospectively and the legislation is given a retroactive operation upon the contracts themselves. I do not think the intention to deprive the parties of their contractual rights and to substitute a new contract is manifested in sec. 157, either by express language or by necessary implication. Still less can I come to that conclusion, when I look at the heading under which and the sections among which section 157 is to be found in the Act.

The heading is a key to the interpretation of the sections ranged under it. It must be read in connection with them and the sections interpreted by the light of it. (Brett, L.J., in *The Queen* v. *Local Government Board* (2); Lord Herschell in *Ingliss* v. *Robertson* (3); *Toronto Corporation* v. *Toronto Ry. Co.* (4)). As already mentioned, the heading reads "Engagement and Contract," which imports the idea of a future agreement.

Then sections 155 and 156 which precede and section 158 which follows section 157 clearly refer to contracts to be entered into in the future. They are all sections under the same heading. Moreover, subsec. 3 of sec. 156 is made

(1) (1878) 3 App. Cas. 582, at 603.
(2) (1882) 10 Q.B.D. 309, at 321.
(3) [1898] A.C. 616, at 630.
(4) [1907] A.C. 315, at 324.

"subject to the following provisions," namely, those of sec. 157, and therefore connects the latter with the former. It is in accordance with the ordinary rules of interpretation, that the words "the agreement of engagement" in sec. 157 should be held to bear the same meaning as the words "the contract of employment" in the surrounding sections under the same heading. There is no sufficient indication that sec. 157 should be treated as an isolated enactment, wherein the legislature jumped from one subject-matter to another, viz., from the subject of future contracts to that of contracts already in existence, again to return to the subject of future contracts in the following section. It seems more natural and more logical to interpret all four sections as dealing with the same kind of contracts, namely, future contracts.

For these reasons, I would allow the appeal with costs throughout.

Appeal dismissed with costs.

Solicitor for the appellant: *H. E. Crowle.*
Solicitor for the respondent: *G. H. Van Allen.*