

LES SYNDICS D'ECOLES DISSI- }
 DENTS DE ST. ROMUALD (DE- } APPELLANTS;
 FENDANTS) }

1930
 *Feb. 12.
 *Apr. 10.

AND

W. SHANNON (PLAINTIFF) RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
 PROVINCE OF QUEBEC

School legislation—Mandamus—Dissentient school—Right to send children—Children born from mixed marriage—Agreement as to their religious faith—Authority of the parents as to education—Education Act, R.S.Q., 1925, c. 133, ss. 99, 103, 106, 116, 124, 250, 310.

The trustees of a dissentient school cannot deny the right of a dissentient ratepayer to have his children educated during the statutory school years at the dissentient school for the support of which he is taxed, notwithstanding the fact that the religious faith of the children is different from that professed by the parent.

Judgment of the Court of King's Bench (Q.R. 47 K.B. 242) aff.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Gibsone J. (2) granting the respondent a writ of *mandamus* and ordering the appellants to receive the respondent's children in their school.

The respondent, Whitefield Shannon, is a resident of the municipality of St. Romuald in the province of Quebec, and is therefore, in educational matters, subject to the control either of the school commissioners or of the school trustees, under the provisions of the *Education Act*, R.S.Q., 1925, chapter 133. The great majority of the people in the municipality are Roman Catholics, and therefore the school commission of St. Romuald is a Roman Catholic body. There also exists a dissentient school corporation composed of those who have dissented and it is this school body that the respondent has sued to have his children educated in their school. The respondent, who professes to be a Protestant, is married to a Roman Catholic and has several children, three of whom are old enough to attend school. The fact of the dissidence

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Rinfret and Lamont JJ.

(1) (1929) Q.R. 47 K.B. 242.

(2) (1929) Q.R. 67 S.C. 263.

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of the respondent was admitted on the pleadings. The appellants who are operating a small school in St. Romuald for the Protestant children there, refused in 1927, to accept in their school the children of the respondent, whom they knew to be Roman Catholics. They, furthermore, advised the respondent that, as his children professed a religion different from his own, they were not entitled to consider him as a dissentient, and to collect school taxes from him, and that they had struck him from the dissentient roll, and that he should pay his taxes to the school commissioners in conformity with section 250 of the *Education Act*. In December, 1928, the respondent sought in a writ of *mandamus* against the appellants to force them to receive his children in their school. The appellants pleaded that they were not obliged to receive his children because the latter were not Protestants; that they had struck him from the roll of dissentient taxpayers and that the appellants, trustees of the dissentient school of the parish of St. Romuald, were entitled to exclude from their school children of the Roman Catholic faith.

B. Devlin K.C. for the appellants.

Noel Belleau K.C. and *Laetare Roy K.C.* for the respondent.

The judgment of the court was delivered by

DUFF J.—The key to the question raised by this appeal is to be found in sections 99 and 103 of the statute under consideration (chapter 133, R.S.Q., 1925). These sections are as follows:—

99. In any school municipality, any number of property owners, occupants, tenants or ratepayers, professing a religious belief different from that of the majority of the ratepayers of such municipality, may give to the chairman of the school commissioners or to their secretary, a notice in writing informing him of their intention to withdraw from the control of the school commissioners in order to form a separate corporation under the administration of school trustees.

103. As soon as such trustees are elected, every rate payer of the municipality belonging to the religious denomination of the dissentients, and who has either given the notice mentioned in sections 99 and 100, or who thereafter gives a notice in writing to the chairman of the school commissioners and to the Superintendent that he withdraws from the control of the school commissioners, shall be deemed to be a dissentient, and shall, for school purposes be under the control of the trustees.

So soon as the ratepayers who have signed one of the notices mentioned in the first paragraph of this section shall amount to two-thirds of the ratepayers of the municipality professing a religion different from that of the majority of the inhabitants thereof, then all the ratepayers of the municipality of the religious denomination of such dissentients, who have not given such notice, and who did not send their children to a school under the control of the school commissioners, shall also be deemed dissentients.

This section shall apply to cases where school trustees are elected under the provisions of sections 105, 109 or 112. R.S. (1909), 2620.

A "dissentient" is a ratepayer who, "for school purposes, is under the control of the trustees," and, by section 106, he is not liable to taxes imposed by the "Commissioners," and, by section 124, he is not eligible for election as a School Commissioner. School trustees elected by such dissentient inhabitants form a corporation for the purposes of the dissentient schools of the municipality, and, by section 310, trustees of dissentient schools

shall alone have the right to impose and collect the taxes to be levied upon the dissentient inhabitants.

A dissentient may cease to be such by giving notice

that he professes the religion of the majority and that he therefore desires to be under the control of the School Commissioners. (Section 116.)

I agree with the Court of King's Bench that the fact of the dissidence of the respondent is admitted on the pleadings.

As a dissentient, he could, as mentioned above, bring himself under the jurisdiction of the Commissioners by declaring that he professes the religion of the majority; this, he says, would be untrue.

In these circumstances I agree with the decision of the majority of the Court of King's Bench. The plan of the statute, so far as concerns this case, is to provide for the establishment of dissentient schools, which are to be under the control of a board of trustees elected by the "dissentient inhabitants", who are subject to taxation for the support of these schools. The dissentients themselves must be of a common religious faith, but the statute does not appear to contemplate an investigation by the Board of Trustees into the religious faith of the children of any dissentient whom he wishes to attend the school he is supporting.

The statute appears to assume the authority of the parents, in respect of the education of their children, during the statutory school years.

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Section 250 has no application to a case of this kind. It is probably intended to meet cases where the parents desire some of the children to be educated in one kind of religious atmosphere and others in another. Its precise effect in particular circumstances may be matter for debate; but, at all events, it does not point to an intention to enable the trustees of a dissentient school to deny the right of a dissentient ratepayer to have his children educated at the dissentient school for the support of which he is taxed.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *St. Laurent, Gagné, Devlin & Taschereau.*

Solicitor for the respondent: *Laetare Roy.*
