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# DECISIONS IN APPEAL CASES

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No. 4516

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STATE OF NEW YORK  
DEPARTMENT OF PUBLIC INSTRUCTION  
BEFORE THE SUPERINTENDENT

IN THE MATTER OF THE APPEAL OF  
FAYETTE B. DURANT AND OTHERS,

*vs.*

BOARD OF EDUCATION OF WEST  
TROY SCHOOL DISTRICT.

WARD & CAMERON, *Attorneys for Appellants.*

JAMES F. TRACEY, *Attorney for Respondents.*

The appellants, in the above entitled matter, Messrs. Durant Ross, Covert, and Hilton, as residents and qualified voters in the West Troy School District, appeal from the action of the Board of Education of the West Troy School District, consisting of Messrs. Van Vranken, Phelps, Sabin, Mace, Neason, McKeever, McLeese and Ball, in leasing for school purposes rooms in a building known as "St. Bridget's Parochial School," the property of St. Bridget's Roman Catholic Church, during school hours only, and at the nominal rate of \$1 per month, the church authorities to

furnish fuel, pay the fireman and janitor, and maintain therein a school of said district, and to employ eight persons as teachers in such school, all of whom are members of the Roman Catholic Church, and six of whom are of the class known as "Sisters," residing in St. Joseph's Convent. These Sisters dress in a garb peculiar to their religious sect or order, and are usually addressed in school by the names assumed by them in the religious order of which they are members, prefixed by the term "Sister."

The appellants allege that by reason of the action of said Board of Education, the school is wholly or partly under the control or direction of a religious sectarian denomination; that denominational doctrines, or tenets, are taught therein, and that by the reason of the sectarian character of the school many parents residing within the district object to sending their children thereto.

The appellants ask that the action of the Board of Education in leasing said school rooms be annulled and set aside; that the contracts with the teachers be annulled and set aside, and that the Board of Education be instructed to provide a suitable building or rooms for school purposes, if the public school buildings now owned by the district are inadequate, and to employ duly qualified teachers to teach the school, irrespective of any religious denomination, order or sect, to which they belong, and that the teachers be prohibited from teaching any denominational doctrines or tenets in the school, and for such other or further relief as may be proper in the premises.

The members of said Board of Education, with the exception of Mr. Ball, have joined in an answer to the appeal, in which they give their statements as to the leasing of the rooms, the contracts with the teachers, and the charges of sectarian influences, with denials, either upon information and belief, or positively, of certain allegations in the appeal.

Mr. Ball, in an affidavit made by him and annexed to the answer, alleges that he has read the answer, and that he concurs in the statement of facts as to all past transactions of the Board contained therein, but is unable to concur in the conclusions



thereof, as to sectarian influences, and for that reason refuses to sign or verify the answer.

To the answer of the respondents the appellants have filed a reply containing statements controverting certain allegations in the answer, and stating certain matters relative to the establishment of Union Free School District No. 1 in West Troy, all of which occurred prior to the election of the respondents as members of said Board of Education, and are not relevant to the action of the Board complained of in the appeal.

It is contended by the appellants in the reply, in substance, that the public school buildings in the district are of sufficient capacity to accommodate the scholars attending school, provided they are put in proper condition to receive pupils applying for admission, and such pupils not residing in the First Ward are required to attend the schools in those portions of the district in which they reside.

Annexed to the reply are the affidavits of twenty-five persons, residents of said West Troy School District, who are the parents of, or stand in parental relations to, in the aggregate, fifty-two children of school age, in which they severally allege that, while they have no personal knowledge of religious doctrines being actually taught as part of the studies in the school maintained in St. Bridget's Parochial School building, the sectarian character of the school is so well known and denominational influences in the school are so great that they are unwilling to submit their children to such influences while attending school, and for that reason would not allow their children to attend the school.

A rejoinder to the reply has been filed, in which all of the members of the Board of Education join, excepting Mr. Ball, who, in his affidavit annexed to the rejoinder, states that he prefers not to sign the same for the same reasons substantially as stated in his affidavit annexed to the answer, and for the further reason that he believes the capacity of the public school buildings in the First Ward is conservatively stated in the reply of the appellants. Mr. Ball, one of the members of the

Board of Education, has filed a separate affidavit relative to the capacity of said public school buildings.

The following facts are admitted :

That by Chapter 881 of the Laws of 1895 the territory embraced in what, on February 1, 1895, constituted Union Free School District No. 1, and school districts numbers two, nine and twenty of the town of Watervliet, and that portion of school district No. 22, town of Watervliet, lying west of the track of the main line of the Delaware and Hudson Canal Company's Railroad was, from and after the organization of the Board of Education provided for in said chapter, consolidated into one school district to be known as the " West Troy School District."

That the public schools of said West Troy School District shall be under the exclusive charge of eight school commissioners to be chosen as in said chapter provided, who were constituted a body corporate under the name of " The Board of Education of the West Troy School District."

That on the first Tuesday of August, 1895, at an election to be held in the aforesaid districts, eight school commissioners were to be elected or appointed as in such chapter provided, and at such election Messrs. Van Vranken, Phelps, Sabin, Mace, Neason, McKeever, McLeese and Ball were elected as the Board of Education of the district, and are acting as such.

That said Board has power to appoint a superintendent of schools ; to raise by tax such sums as it may determine necessary and proper (not, however, more than two and one-half times the amount of school moneys apportioned to the district, or the consolidated districts composing said district for the previous year, except as thereafter provided), for the purposes, among others, to purchase, lease or improve sites for school purposes ; to build, purchase, lease, alter and repair school-houses, out-houses and appurtenances ; but the Board, whenever in its judgment a greater sum will be required in any



one year for such purposes than it is authorized to raise, as hereinbefore stated, is authorized to call a special meeting of the qualified voters of the district to consider the proposition to raise such additional sum.

That said Board has the power, and it is its duty to organize, establish and maintain such and so many schools in said school district, including the common schools now existing therein, as it shall deem requisite and expedient, and to alter and discontinue the same; to purchase and hire school-houses and rooms, lots or sites for school-houses, and to fence and improve them; upon the lots and sites owned by the Board of Education, to build, enlarge, alter, improve and repair school-houses, out-houses and appurtenances as it may deem expedient; to have the custody and safe keeping of the school-house and all the school property belonging to the district, and to see that the regulations of the Board in relation thereto be observed; to contract with and employ all teachers in the schools and for sufficient cause to remove them; to have in all respects the superintendence, supervision and management of the schools in the district; . . . . from time to time to adopt, alter, modify and repeal as it may deem expedient, rules and regulations for the organization, government and instruction of the schools, and for the reception of pupils and their transfer from one class to another or from one school to another, and generally for their good order, prosperity and utility. By said Chapter 881 it is further enacted that nothing therein shall be construed to limit, restrain or annul the powers of the State Superintendent of Public Instruction; that in all matters of dispute which shall be referred to him by appeal and which shall arise under and by virtue of such act or under and by virtue of any other act which is now, or shall hereafter be applicable to the schools, school officers or school property of or in said district, his decisions or orders shall be final and binding.

That on the first Tuesday of August, 1895, upon a parcel of land situate in the First Ward of West Troy, and in former

Union Free School District No. 1, and within said West Troy School District, which land is bounded on the north by an alley, on the east by Fourth avenue, on the south by Seventh street and on the west by Fifth avenue, there were three buildings: one known as St. Joseph's Convent, one as St. Bridget's Roman Catholic Church, and the third as St. Bridget's Parochial School. That said third building was erected in or about the year 1886, and is owned by the St. Bridget's Roman Catholic Church, having over the front entrance on Fifth Avenue a tablet with the inscription "St. Bridget's Parochial School," and the building is surmounted by a large gilt cross similar to the one on St. Bridget's Church. That after the completion of this building the officers of St. Bridget's Roman Catholic Church conducted a parochial school therein, and during the school year of 1894-95 the Board of Education of former Union Free School District No. 1 leased certain rooms in the building in which a portion of the schools of the district were maintained.

That at a meeting of the Board of Education of said West Troy School District, held on August 19, 1895, an offer in writing was received from the Trustees of St. Bridget's Roman Catholic Church to lease for one year to the West Troy School District, the school rooms in the building at the corner of Fifth avenue and Seventh street (St. Bridget's Parochial School Building), the Board to have control of all school rooms during school hours; the said church officers to furnish fuel and pay the fireman and janitor; and the consideration to be paid being one dollar per month. That the Board of Education at this meeting unanimously adopted a resolution accepting the offer. That thereupon at the opening of the schools of the district by the Board for the school year of 1895-6, the rooms in said building so leased were occupied and used during the school hours of each school day in which the schools have been in session therein for schools conducted by the teachers employed by the Board. That no religious emblems are displayed in the school rooms.



That at a meeting of the Board of Education held on August 19, 1895, a resolution was adopted for the employment of eight teachers in the school to be conducted in the rooms so leased, and such teachers designated, all of whom were members of the Roman Catholic Church, and six of whom resided in St. Joseph's Convent, and were members of a religious order or sisterhood of said church, viz. :

Catherine Walsh, known as Sister Leonie ;  
 Anna G. Conway, known as Sister Gertrude ;  
 Kate Rice, known as Sister Ludwina ;  
 Victoria Melinda, known as Sister Adelaide ;  
 Hannah Keefe, known as Sister Ignatia ;  
 Jennie Higgins, known as Sister Dechautal.

That on August 31, 1895, each of the six teachers named received a contract partly printed and partly written, dated that day, addressed to each respectively by name at St. Joseph's Convent, stating that at a meeting of the Board held August 19, 1895, she was appointed a teacher in the first district for the probationary term of one year at a salary therein named, and stating further the manner in which the payment thereof would be made, and providing as to payment in the event of a resignation by her for sickness, or any other good cause ; and containing a statement that it was to be distinctly understood that the appointment was for one year only, and her further retention was wholly within the discrimination of the Board ; and which contract was signed by the President of the Board and the Superintendent of Schools ; that upon each of the contracts was the following form of acceptance :

“ To the Board of Education, West Troy, N. Y.

“ I hereby accept the employment mentioned in the foregoing contract upon the terms stated therein, dated Aug. 31, 1895.”

and which acceptance was duly signed by each of the six persons respectively on the contract addressed to her.

That the six persons named, under these contracts, entered upon their employment as teachers in the school conducted in the leased rooms, and at the date of the submission of this appeal were still performing the duties of teachers therein under the direction of the Board of Education and under the rules and regulations adopted by the Board. That each of the six persons during the school hours of each school day in the performance of her duties as such teacher respectively, was dressed in the particular garb of the religious order or sisterhood of which they are respectively members.

The following facts are established :

That in August, 1895, each of the six persons so employed as teachers in the schools in the West Troy School District was duly qualified to teach in the public schools of this State under the provisions of the school law prescribing the qualifications necessary to be possessed by persons to qualify them to teach in the schools of this State.

That during the school hours in which the school conducted in said leased rooms has been held no prayers have been said and no religious exercises have been held, nor any denominational tenets or doctrine taught, either orally or by the use of books.

That the West Troy School District has a superintendent of the schools therein, duly elected, pursuant to the provisions of Chapter 881 of the Laws of 1895.

That it is the belief of a large number of the residents of that part of the West Troy School District known as the First Ward that, by reason of the leasing of rooms in St. Bridget's Parochial School building for school hours only, and conducting a school therein, and the employment of eight teachers, all of whom are members of the Roman Catholic church, and of whom six are members of a religious order or sisterhood of said church, and who wear the distinctive



garb of their order, that denominational tenets or doctrines are taught in the school, and hence a large number of children are not permitted by their parents or guardians to attend thereat.

The first question presented by the appeal herein for my consideration and decision is in relation to the action of the respondents herein in the leasing of certain rooms in St. Bridget's Parochial School building during the school hours of each school day only, and maintaining a school therein.

The respondents state as grounds for such leasing: that the public school buildings in the West Troy School District do not furnish adequate accommodations for the children of school age residing therein, or for such children enrolled therein, or for the average number of children attending the schools; that more school rooms were needed, and the offer to lease the rooms seemed in the interest of the district; that the Board of Education of Union Free School District No. 1 (a part of the present West Troy School District) had, for the ten years prior, leased the same rooms; that no other suitable building in the First Ward could be leased, and to build and furnish a new school building would cost the district many thousand dollars; that they believe that they and their predecessors in Union Free School District No. 1 have saved the tax payers of West Troy great sums of money by annually renewing the lease; that there were two school buildings owned by the district within four blocks of the St. Bridget building, so that no scholar was without a choice of schools; that they have express authority to hire school-houses and rooms by sub-division 2 of Section 21 of Chapter 881 of the Laws of 1895, and cite Decision No. 3,520 of Superintendent Draper, in the matter of St. Raphael's Church, decided March 24, 1887.

No proofs have been presented to me herein of the number of children of school age residing in the school district, nor the number registered in the schools therein respectively, nor of the average attendance at the schools respectively; nor as to the number of school buildings the property of the district, and the

seating capacity of each building; nor whether said buildings or any of them would properly accommodate more children than now attend school therein if additional seats and desks were provided.

No proof has been presented herein as to the aggregate assessed valuation of the district upon which taxes for school purposes could be assessed.

The appellants herein, in their reply, annex thereto a map showing two school buildings in Ward One on Sixth street, one school building in Ward Two on Fourteenth street, one school building in Ward Three, near Sixteenth street, and one school building in Ward Four, near Fourth avenue. An affidavit of Mr. Ball, one of the respondents, alleges that he has personally inspected and investigated as to the capacity of the public school buildings of said district in the Fourth Ward, and that the floor space of the buildings is sufficient for 394 scholars without more crowding than in the other public school buildings in the district; that in the larger building with four rooms, with a capacity of 60 scholars in each room, one room had 13 scholars enrolled, one 18, one 45 and one 36, aggregating only 112, with a capacity for 240. The brief for the appellants states that in these two buildings, with a capacity for 394, but 250 children are enrolled. The respondents allege in their answer that the daily attendance for the past two years in the school in the St. Bridget's school building was 351. The appellants allege that of the number attending the school, 150 should properly be required to attend at the other school buildings in the district.

From the statements contained in the papers herein it is not clearly established that the public school buildings, the property of the school district if put in proper condition in August, 1895, were not sufficient to accommodate all the children attending school in the district.

It has been uniformly the policy of this Department to call the attention of the inhabitants of school districts, and the trustees and boards of education therein, to the condition and improvement of school-houses and grounds, to the end that the



comfort and health of the pupils attending may be promoted, and the best educational interests secured. It is the policy of the school law and of this Department that each of the school districts of the State should become the *owner* of a school-house or school building, either by purchase or by building, upon a suitable site or sites.

The school law provides that in the levying of taxes for the construction of school-houses such taxes may be collected in installments, extending several years, and thus obviate any heavy burden upon the taxpayers of such districts. By section 26 of the law creating the West Troy School District it is enacted that in case a tax shall be voted to erect a suitable building for an academy or high school the same may be raised in installments, the amounts of which and the times of payment of which to be left optional with the Board of Education; and it is further enacted that the provisions of said section shall extend *to all amounts required for building school-houses where the estimated cost exceeds three thousand dollars.*

It was the duty of the respondents herein, admitting for the purposes of argument that when they entered upon their duties in August, 1895, there were not sufficient public school buildings in the district to accommodate all the children desiring to attend school therein, to have taken into consideration the erection of a new school building, and the submission of the question of such construction and the voting of a tax therefor, to a meeting of the qualified voters of said district. Instead of taking such action they entered into a lease with the trustees of St. Bridget's Roman Catholic Church for certain rooms in the Parochial School building owned by the church, alleging as a reason for such leasing that the building and furnishing of a new school building would cost the district many thousand dollars; that the Board of Education of Union Free School District No. 1 had for several years previously hired the rooms, and that the respondents believed that they and the former lessees thereof saved the taxpayers of West Troy great sums of money.

Care in the expenditures made by the authorities of school districts, to relieve the burden of taxation, is commendable when

reasonably exercised, and when it does not result unfavorably to the best educational interests of the district; but when the money saved to the districts is obtained solely by the occupation of leased property for school purposes, thereby postponing the construction of needed school buildings, or necessary additions to school buildings then existing, it cannot be claimed in good faith that the result is in any sense really of benefit to the districts.

If the West Troy School District is financially weak, such action might be deemed excusable; but this is not the fact.

From the reports in this department made by the School Commissioner of the Third Commissioner District of Albany County, I find that on July 31, 1895, the aggregate assessed valuation of taxable property in Union Free School District No. 1 was \$1,185,501; that by the reports of 1894, on July 31, 1894, the aggregate assessed valuation of taxable property in School District No. 2, town of Watervliet, was \$733,682; that of School District No. 9, of Watervliet, was \$867,736; that of School District No. 20, of Watervliet, was \$1,013,010.

Under Chapter 881, Laws of 1895, the territory which on February 1, 1895, constituted Union Free School District No. 1, and Districts Nos. 2, 9 and 20, and part of No. 22, of Watervliet, were consolidated into the West Troy School District, and in August, 1895, in the West Troy School District there was an aggregate assessed valuation of taxable property therein of \$4,000,000. A tax of half a mill upon a dollar (a low rate for a school tax), would produce the sum of \$20,000. The West Troy School District, by the apportionment made in March, 1896, of the public school money to the district so constituted, received from the State between \$5,500 and \$6,000.

The respondents claim that under the provisions of Chapter 881, Laws of 1895, they had and have the power to hire school-houses and rooms. It is true they had and have that power, and such grant or power is given, in like language, to the trustees of the common and union free school districts by the general school law of the State; but such provisions



have never been held to authorize school authorities to lease rooms except to temporarily supply the lack of school-houses and rooms in buildings the property of the district, or during a time when the district does not own sufficient school accommodations, and pending action on the part of the school authorities or the inhabitants of the district to supply such deficiency.

Admitting for the purpose of argument that the respondents had lawful authority to hire rooms in which to conduct a public school in the district, they had no legal authority to hire the school-rooms in St. Bridget's Parochial School building or elsewhere for the term of one year, with the right of control of the rooms *during the school hours only of each day* in which a school, under the direction of the respondents, should be held during the year; they consenting and giving to the lessors complete control of the rooms *at all other times* except during school hours.

Under the lease entered into between the respondents and the trustees of St. Bridget's Roman Catholic Church, the trustees thereof retained the use, custody and control of the leased rooms for and during the term of time mentioned except between the hours of nine o'clock in the forenoon and four o'clock in the afternoon of each day in which the school conducted under the direction of the respondents should be in session. The lessors had the right to use the rooms for any purpose they desired during all the time on every day and night of the year, except the school hours during the school days on which the school was in session. The respondents had no control of the janitor of the building, the fires and lights therein, nor of any school property or apparatus placed therein by the respondents for school purposes, nor of the books and property of the pupils attending such school which might be left in the rooms, as is customary to be left in public school buildings.

The decision of Superintendent Draper in 1887, cited by the respondents, is not in point in this appeal for the reason that the lease taken by the Board of Education was of the St. Raphael's Catholic School building for a period of five years, and not of certain rooms in said building during school hours only.

I am clearly of the opinion that the action of the respondents in hiring the rooms upon the conditions demanded by the trustees of the church, and assented to by the respondents, was an unwise exercise of the power given to them in relation to the leasing; nor can I escape the conclusion that while no direct instruction of a religious character is or has, so far as appears from the pleadings, been given in this school, nevertheless it is worthy of inquiry why the church authorities are willing to indefinitely contribute to the school authorities the use of this valuable property for a mere nominal consideration. Formerly the church authorities had maintained a separate denominational school therein.

It is entirely natural to suppose that those parents who now object to its present use, reason that such school, with its close proximity to the church building and convent, with the inscription over the doorway, the emblem surmounting the building and the teachers therein employed with their distinctive garb, furnish an object lesson at least, and all the surroundings of the school therein maintained tend to lead the mind of the child toward this particular religious denomination. This result is but natural, and I am convinced is quite in conflict with the trend of American sentiment toward public schools, and the school authorities should perform no acts in their official capacity tending to subject the schools under their charge to this criticism.

Since this appeal was presented the territory embraced within the Village of West Troy has been incorporated into the City of Watervliet, but no provision was made in this legislative enactment for additional school facilities, nor has any provision been made for the ownership by the new city, so far as I am informed, of additional school facilities. If such neglect is to be considered as an indication that the present system of leasing—a system only intended to meet sudden emergencies—is to be continued indefinitely, I cannot approve such a course, and the respondents herein must be directed to surrender said rooms and discontinue the public school maintained therein.

The second question presented by the appeal herein for my consideration and decision is, in relation to the action of the



respondents in the employment as teachers in the school conducted in the St. Bridget's Parochial School building of the six persons, members of a sisterhood or order of the Roman Catholic Church, and the wearing by them during school hours of the particular dress or garb of such order. The appellants allege that these six persons, with others of their order, in their examination under the rules of Uniform Examinations for Commissioners' certificates, established by the State Superintendent of Public Instruction, occupied a separate room apart from other persons taking such examinations; that such persons have not attended at the teachers' institutes held in the school commissioner district in which the school is situate; that it is contrary to the rules and regulations of the religious order of which such persons are members for them to attend mixed gatherings, such as public examinations and teachers' institutes.

The appellants have failed to establish by proof these allegations or any of them.

It appears that the examination referred to by the appellants was conducted by School Commissioner Main, assisted by Examination Clerk Mr. Finegan, of this Department, and several other examiners from this Department, in accordance with the rules established; that the six persons, with others, attended thereat and complied with the rules; that the six persons, with the others attending, were distributed in three rooms, and were under the direction and subject to the supervision of the examiners at all times during such examination; that the answer papers of all those examined were forwarded to this Department for examination, marking and filing, and that upon such examination, etc., it was found that these six persons were qualified, and each received the proper certificate of qualification, and each became, under the school law, a qualified teacher in the common schools of this State of the grade and for the term of time in the certificates respectively stated.

As to the allegation that these persons have not attended at a teachers' institute, it appears that the West Troy School District has a population of more than five thousand and employs a super-

intendent of schools, and it is therefore optional with the Board of Education as to whether or not it will close the schools in the district during the time a teachers' institute shall be in session; that it is not shown that the schools were closed during any session of a teachers' institute in the school commissioner district in which the West Troy School District is situated.

The appellants also allege that the six teachers, members of a religious order or sisterhood, were usually addressed in school hours by the scholars, not by their family names, but by the names assumed by them in the religious order, prefixed by the term "Sister." The appellants have failed to sustain this allegation by proof.

The allegation that these six teachers, members of a sisterhood or order of the Roman Catholic Church, have worn, and continue to wear, during school hours the particular dress or garb of the order, is admitted by the respondents.

It is also established that at the meeting of the respondents, on August 19, 1895, when a resolution was adopted to employ these six persons as teachers, it was stated that they would wear such dress or garb while teaching.

There is no statutory law in this State which prescribes that any particular dress or garb shall be worn by the teachers in the public schools in this State during school hours, nor which prohibits the wearing by them of any particular dress or garb during school hours; neither is there any decision of any court of this State upon the matter. Therefore, the questions to be determined are whether such practice shall be discontinued as a matter of school polity; and what the effect of the recent amendment of the Constitution is upon such practice.

In the appeal of *Leander Colt vs. The Board of Education of Union Free School No. 7, Village of Suspension Bridge, Town of Niagara, County of Niagara*, taken to State Superintendent Draper in 1887, it was established that the Board of Education on February 1, 1886, hired of St. Raphael's (Roman Catholic) Church, by a written lease, a building owned by it for the term of five years at a nominal consideration, and established a school



therein under the board, and employed in the school three duly qualified and licensed teachers, who were members of the Order of St. Joseph, of the Roman Catholic Church; that the teachers wore in the school-room, and at all times in common with all of the members of said order, a particular dress or garb; that such teachers were commonly known to the world, and were uniformly addressed by their pupils by their Christian names, with the prefix of "Sister," as "Sister Martha," etc.; that there were no religious ceremonies or exercises held in the school during school hours. Superintendent Draper in his decision, No. 3,520, made on March 24, 1887, held that:

"The wearing of an unusual garb, worn exclusively by members of one religious sect and for the purpose of indicating membership in that sect by the teachers in a public school, constituted a sectarian influence, which ought not to be persisted in. The same may be said of the pupils addressing the teachers as 'Sister Mary,' 'Sister Martha,' etc. The conclusion is irresistible that these things may constitute a much stronger sectarian or denominational influence over the minds of children than the repetition of the Lord's Prayer or the reading of the scriptures at the opening of the schools, and yet these things have been prohibited whenever objection has been offered by the rulings of this Department from the earliest days, because of the purpose enshrined in the hearts of the people and embedded in the fundamental law of the State, that the public school system shall be kept altogether free from matters not essential to its primary purpose and dangerous to its harmony and efficiency."

Superintendent Draper directed the Board of Education to require that the teachers should discontinue the use, in the school-room, of the distinguishing dress of the religious order to which they belonged, and to cause the pupils to address such teachers by their family names with the prefix "Miss," as teachers are ordinarily addressed. It does not appear that this decision has been modified or vacated by Superintendent Draper or modified or disapproved by his successors in the office of State Superintendent of Public Instruction.

The respondents herein cite the decision of the Supreme Court of the State of Pennsylvania in the case of John Hysong

*et al., vs. Gallatzin Borough School District et al.*, decided in the October term, 1894, 164 Penn. State Reports, pp. 629, etc.

From an examination of the case it appears that a bill in equity was filed in the Common Pleas of Cambria county to restrain the school directors of Gallatzin borough from permitting sectarian teaching in the common schools of the borough, and from employing as teachers sisters or members of the order of St. Joseph, a religious society of the Roman Catholic Church. It was alleged in the bill that the "Sisters," while teaching in the public schools wore the garb, insignia and emblems of their order, and that they used the garb, etc., in such manner as to impart to the children under their instruction certain religious and sectarian lessons and ideas peculiar to the Roman Catholic Church. The Court of Common Pleas found as a fact that there was no evidence of any religious instruction or religious exercises of any character whatever during school hours. The fact being admitted that such "Sisters," as teachers, wore, while teaching, the habit or garb of their order, the Judge said :

"We conclude, as to this branch of the case, that, in the absence of proof that religious sectarian instruction was imparted by them during school hours, or religious sectarian exercises engaged in, we cannot restrain *by injunction* members of the order of Sisters of St. Joseph from teaching in the public schools in the garb of their order, nor the school directors from employing or permitting them to act in that capacity."

An appeal was taken from the decision of the Common Pleas to the Supreme Court, the main assignment of error being that, "The Court erred in finding that the employment of the Sisters of St. Joseph as teachers in the public schools, and their acting as such while wearing the distinctive sectarian garb, crucifixes and rosaries of their order and sect, could not be enjoined."

The Supreme Court affirmed the decree of the court below and dismissed the appeal. The opinion was written by Justice Dean and Justice Williams wrote a dissenting opinion. The decision of the court appears to be made upon the ground that the school directors of Gallatzin, in the absence of any special provisions of law upon the subject, had the discretion to employ the sis-



ters as teachers in the school and to permit them to wear, while teaching, the distinctive dress or garb of the religious order of which they were members, and that the court had no power to revise the exercise of such discretion.

Justice Dean, in his opinion, said : " In thus expressing our full accord with the learned president, Judge of the court below, we intimate no opinion as to the wisdom or unwisdom of the action of the school board in selecting six Catholic school teachers, members of an exclusively religious order. *In this matter was involved, solely, the exercise of discretion by the school board in the performance of an official duty, for which they alone are responsible. This discretion, when it does not transgress the law, is not reviewable by this or any other court.* When a teacher of good moral character applies for a school, and presents a certificate of qualification as to scholarship and aptness to teach, *that is the end of judicial inquiry into the action of the board in appointment, because the law makes no further inquisition up to this point.* . . . . We cannot infer, from the mere fact that a school board composed of Catholics has selected a majority of Catholics as teachers, that, therefore, it has unlawfully discriminated in favor of Catholics ; because the selection of Catholic teachers is not a violation of law, or, which is the same thing, is not an abuse of discretion. Unless this be the case, *no court has power to revise the exercise of this discretion,* for the very sufficient reason that the law has not made the court school directors, while it has devolved on six citizens of Gallatzin borough the duties of that office."

Upon the contention that such teachers, wearing such distinctive dress while teaching in the school, should be enjoined from wearing it, the court declined to decide, *as a matter of law*, that it is sectarian teaching for a devout woman to appear in a school-room in a dress peculiar to a religious organization of a Christian church, and, as Judge Dean said, "We decline to do so ; *the law does not so say.*"

Justice Williams, who dissented from his associates on one point, viz., the wearing of a distinctive garb while teaching, said : " Clergymen sometimes wear on the street a coat or hat that affords some evidence of their profession, but they do not appear in churchly rôles when about their daily work, or in any garb that points out the church to which they belong, or the creed to which they adhere ; but these six teachers in Gallatzin do just that. They wear, and must wear at all times, a prescribed, unchange-

able ecclesiastical dress, which was plainly intended to proclaim their non-secular and religious character, their particular church and order, and their separation from the world. They come into the school not as common school teachers, or as civilians, but as the representatives of a particular order, in a particular church, whose lives have been dedicated to religious work under the direction of that church. Now, the point of the objection is not that their religion disqualifies them. It does not. Nor is it thought that church membership disqualifies them. It does not. It is not that holding an ecclesiastical office or position disqualifies, for it does not. *It is the introduction into the schools as teachers of persons who are, by their striking and distinctive ecclesiastical robes, necessarily and constantly asserting their membership in a particular church, and in a religious order within that church, and the subjection of their lives to the direction and control of its officers."*

It appears that at the first session of the Legislature of the State of Pennsylvania, held after the decision of the Supreme Court in *Hysong et al.*, above referred to, an act was passed, which became a law, prohibiting any teacher in any public school of the State from wearing any dress or garb peculiar to or distinctive of any religious denomination, order, sect or society. So long as such law is operative so much of the decision in the case of *Hysong et al.* as holds that school directors in the public schools in that State may permit teachers employed by them to wear, while teaching, the garb of any religious denomination order, sect or society, is of no force or effect.

The passage of the act by the Legislature of the State of Pennsylvania prohibiting any teacher in any public school in that State from wearing any dress or garb peculiar to or distinctive of *any* religious denomination, order, sect or society, is indicative of the intention of the people of that State to restrain the directors of the public schools therein from permitting in their schools anything that would create the impression or belief on the part of the patrons of such schools that even indirectly the schools are under the control or direction of *any* religious denomination, or in which *any* denominational tenet or doctrine is taught.

It has been the policy of this Department, when the matter has been brought to its attention and its action invoked, as in the



case of the Colt appeal decided by Superintendent Draper, that when the wearing by teachers in the public schools of this State of any dress or garb peculiar to or distinctive of *any* religious denomination, order, sect or society, creates the impression or belief on the part of the patrons of the school that the school was under the control or direction of *any* religious denomination, or in which *any* denominational tenet or doctrine was taught; or when by reason of said distinctive garb being so worn contentions and dissensions have arisen among the inhabitants of a school district, threatening the harmony therein and the efficiency of the school, and antagonistic to the best educational interests therein, to advise that the wearing of such distinctive garb should be discontinued.

By section 4 of article IX. of the Constitution of the State, it is enacted: "Neither the State nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught."

This amendment to the organic law of the State has but recently been adopted by an overwhelming majority. It indicates very clearly an unmistakable and earnest desire on the part of our citizens to permanently establish and maintain a public school system that shall be entirely non-sectarian. That this is the trend of public opinion, both in this country and in the neighboring provinces on the western continent, is manifest. With this spirit I am heartily in accord. The public school system has achieved its greatest measure of success where this has been insisted upon. It is my duty, as it is the duty of the school authorities of the public schools in the several districts of the State, to see that the provisions of the Constitution above cited are neither directly or indirectly violated.

I take great pleasure in stating that the clergy and laity of the Roman Catholic Church have given to this Department their earnest support and aid in the enforcement of the Compulsory

Education law, as well as every other act relating to the public school system of the State.

The appellants ask that the contracts with the six teachers herein referred to be annulled and set aside. This I have no power to do. These teachers are duly qualified teachers within the provisions of the school law, and having been duly employed by the respondents herein, cannot be dismissed during their term of employment without sufficient cause, and no sufficient cause has been shown. Nevertheless, upon this branch of the case I desire to express my disapprobation of the custom of their dressing, while in the performance of their duties, in the garb peculiar to and indicative of the particular sect or order of which they are members. Such dress or garb taken in connection with the location, surroundings, and distinguishing characteristics of the building leased by the school authorities and in which they are employed, is a constant and hourly reminder to the pupils under their charge of the existence of one particular religious denomination or sect, and this public declaration under all the circumstances is such an object lesson to the susceptible mind of the pupils under their charge that it comes dangerously near the line of prohibition laid down in the Constitution as herein quoted.

The proofs herein show that it is considered such by the parents of upwards of fifty of the pupils who would otherwise attend this school. They are the people whose interests are to be conserved by this particular school. The objections herein urged against such influences would, of course, apply to like public declaration of religious preference or belief on the part of teachers connected with any other denomination. The fact that but few, if any, of the many sects or denominations insist upon members of their order dressing upon all occasions in a distinctive garb adds force to the objection as it presents itself to my mind. I therefore concur in the opinion of my predecessor in office, viz., that the teachers in the public schools of the State ought not to wear the distinctive garb of any religious denomination, order, sect or society, but dress in the usual costume worn by men and women generally; and that any other costume or usage is inimical to the best educational interests of the locality and should be discontinued by



direction of the local school authorities whose duty it is to so administer the trusts reposed in them as to bring about the very best results with the least irritation, and in harmony with the spirit of the section of the organic law herein quoted.

The school best does this which avoids any reference directly or indirectly to any particular denomination, sect or order, both in the construction of the buildings used for school purposes and in the dress worn by the teachers employed therein. To those not satisfied with this complete and absolute severance of secular and religious instruction, the private school is open.

If we ask ourselves in what particulars this school differs from the usual Parochial School as formerly maintained therein, before the adoption of the Constitutional amendment herein quoted, what reply shall we make? By the nature of the lease, by the wearing of distinctive garb, by the emblem surmounting the building, by the inscription over the doorway, by the practical result that only the children of one particular faith attend this school, the conclusion is irresistible that the State to all external intents and purposes is maintaining a sectarian school therein at public expense. It was clearly the intent of this amendment to the organic law that this practice should be prohibited.

The delay in rendering a decision in this appeal was primarily caused by the hope and expectation that in the legislative enactment incorporating the city of Watervliet and providing for the school system thereof, such legislation would determine the questions raised in this appeal. No provision has, however, been made for school facilities to be owned by the city, and to take the place of those secured by such lease.

The contracts made by the respondents herein both in respect to leasing said building and the employment of the teachers engaged therein from which the appeal herein is taken, having expired at the termination of the school year 1895-6, this decision cannot be operative except as a determination of the principles involved, and to that extent this decision will be valuable only as indicating the policy to be pursued by school authorities.

A new appeal to reach the result here indicated as the

policy to be pursued by local school authorities ought not to be necessary.

I DECIDE : That the action of the respondents herein, in hiring the rooms in St. Bridget's Parochial School building, in which to conduct a public school, with the right of the control of the rooms during the school hours *only* of each day, in which a school under the direction of the respondents is maintained, and consenting and giving to the lessors complete control of the rooms at all times other than during school hours, and the continuation of such lease beyond the period of emergency contemplated by the statute, was without legal authority on the part of the respondents.

I also decide that it is the duty of the respondents to require the teachers employed by them to discontinue the use in the Public School room of the distinguishing dress or garb of the religious order to which they belong.

This decision must be filed with the clerk of said West Troy School District and notice thereof be by him given to the appellants and respondents with opportunity to examine the same.

*In Witness Whereof*, I, CHARLES R. SKINNER,  
State Superintendent of Public Instruction of the State of New York, do here-  
unto set my hand and affix the seal of the  
Department of Public Instruction, at the  
City of Albany, this twenty-fifth day of  
November, 1896.

[SEAL]

CHARLES R. SKINNER,  
*State Superintendent of Public Instruction.*