

N. J. COURT OF ERRORS AND APPEALS.

LILLIAN G. GOWDY,
Appellee,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF PATERSON,
Appellant.

*On Appeal from
the Supreme
Court.*

November term, 1913, No. 49.

MAUDE F. HOMER,
Appellee,

vs.

THE BOARD OF EDUCATION OF
THE CITY OF PATERSON,
Appellant.

*On Appeal from
the Supreme
Court.*

November term, 1913, No. 48.

Case to be argued upon such briefs as come in.

BRIEF OF EDWARD F. MERREY,
Of counsel with the Board of Education of the
City of Paterson.

GOWDY CASE.

STATEMENT OF CASE.

On June 24th, 1910, the Board of Education of
the City of Paterson adopted the following reso-
lution:

“Resolved, that the plan of payment of principals and teachers in the employ of this department be changed from the present, or what is known as the ten payment plan, to what is known as the twelve payment plan, the same to become effective in the case of each principal and each teacher upon the next anniversary of the date of his or her employment by the department; that notice of the adoption of this resolution be sent to each principal and teacher forthwith.”

Case page 9, lines 20 &c. Case, page 94, lines 1 to 12.

At the time of the adoption of this resolution the principals and teachers in the Paterson schools were paid their yearly salaries in ten installments, payable about the first of each month with the exception of August and September. All salaries were fixed upon a basis of so much per year. The resolution was intended to change the system so that salaries would be paid in twelve installments, payable about the first of every month in the year.

It will be noticed that the resolution is very indefinite, merely stating that a change is to be made “to what is known as the twelve payment plan,” without describing that plan. Nowhere in the evidence is the plan described.

The fact that there is not in evidence any complete description of the twelve payment plan is of great importance.

We claim that it can be so operated as not to cause the result ascribed to it by the Supreme Court. As a matter of fact it is now so operated.

At the time the resolution was adopted, Lillian G. Gowdy was a teacher in one of the Paterson schools and had been for much more than three years. She was entitled to the benefits of the Teachers' Tenure of Service Act, Compiled Statutes, 4763, sec. 106a, which reads as follows:

"The service of all teachers, principals, supervising principals of the public schools in any school district of this state shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive years in that district, unless a shorter period is fixed by the employing board; provided, that the time any teacher, principal, supervising principal has taught in the district in which he or she is employed at the time this act shall go into effect, shall be counted in determining such period of employment. No principal or teacher shall be dismissed or subjected to reduction of salary in said school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause and after a written charge of the cause or causes shall have been preferred against him or her, signed by the person or persons making the same, and filed with the secretary or clerk of the board of education having charge of the school in which the service is being rendered, and after the charge shall have been examined into and found true in fact by said board of education, upon reasonable notice to the person charged, who may be represented by counsel at the hearing. Charges may be filed by any person, whether a member of said school board or not. (P. L. 1909, p. 398.)"

Miss Gowdy felt that this resolution would reduce her pay and so appealed to the State Superintendent of Public Instruction to set the resolution aside. Her application was under Section 10 of the School Law, Compiled Statutes, page 4727.

“The State Superintendent of Public Instruction shall decide, subject to appeal to the State Board of Education, and without cost to the parties, all controversies and disputes that shall arise under the School Laws, or under the rules and regulations of the State Board of Education.”

Her petition is set out on pages 5 to 10 of the printed case. It appears from the petition that on October 3rd, 1910, Miss Gowdy was offered a check for one twelfth of her salary and that she refused to accept the same. It appears from the answer to her petition (case, p. 11) and from the evidence (Thomas Kelly, p. 21-22-23) that the offering of this check to Miss Gowdy was an error of the employees of the Board of Education and that Miss Gowdy should on that day have received a check for one tenth of her yearly salary. This error was corrected in the next payroll by adding the difference to the check for November. These checks, together with others for December and January (made out December 23rd on account of the Christmas holidays) under the old plan, were offered to Miss Gowdy at the hearing before the State Superintendent. Without any good reason she refused to accept these checks although they were for the full amount she claimed was due her at the time. (Case, p. 19, line 29.)

The date of putting the new plan into operation as to each teacher has an important bearing on the case. The Supreme Court overlooked the fact that the offer of seventy-five dollars to Miss Gowdy was an error. (See opinion, p. 94, line 17.)

The State Superintendent decided that the resolution of June 24th was null and void. (Case, p. 86, last paragraph.) His intention was to set it aside entirely as to the whole teaching force, notwithstanding that many of the teachers were not protected by the Tenure of Service Act and others preferred the new plan to the old.

In reaching his conclusion he said,

“Under the powers thus granted (referring to sec. 106 of the School Law) a Board of Education has power to adopt a rule to the effect that the salaries of all teachers in its employ who are not protected by the ‘Tenure of Service Act’ shall be paid in twelve monthly installments *and may make such rule apply to teachers protected by the act*; provided it is so drawn that such teachers shall not be subjected to any reduction in salary.” (Case, p. 82, lines 23 to 31.)

The State Superintendent then goes on and quotes from a brief presented to him on behalf of the local Board of Education and says that it is admitted that under certain circumstances a teacher would lose by the adoption of the plan. Those portions of the brief were addressed to another phase of the question and were not such an admission as the Superintendent placed upon them. The point was made in that brief that the Board of Education could so interpret the resolution of June 24th, 1910, that under no circumstances could any loss result to a teacher protected by the Tenure of Service Act; while on the other hand it could so interpret it that under certain circumstances it would act as a penalty on a teacher deserting her class in the middle of a session, and as such would be justified. No admission was made that loss to a teacher must necessarily follow her leaving the service at such periods.

Our claim is that the State Superintendent was right in his first findings set out above, that the Board had the right to adopt a twelve payment plan and was wrong in the second finding that the resolution in question would necessarily reduce a teacher's pay quitting the service at certain periods of the year.

The local Board of Education appealed the decision of the State Superintendent to the State Board of Education, and were sustained on the grounds above set forth.

See extracts from minutes of that Board as follows: Case, page 89, line 27:

"The State Superintendent decided

"First, That the Board of Education had the power to change the method of the payment of teachers' salaries from ten to twelve equal monthly installments, provided in making such change the salaries of the teachers protected by the Tenure of Service Act were not reduced.

"Second, That the action of the Board of Education would result in a reduction of salaries paid to teachers protected by the Tenure of Service Act,

"The Committee recommended that on the first point the decision of the State Superintendent be affirmed and that on the second point the decision of the State Superintendent be reversed for the reason that the evidence does not show that the petitioners in the above named cases had suffered any reduction in salary. The roll was called with the following result:

"First point: To affirm, Messrs. Allen, Barricklo, Dilworth, Frey, Hawke, McCutchen, Morrow, Russ, Scott, Thomson, Woodward and Hays. 12."

“To reverse, none.

“Second point: To affirm, Mr. Morrow. 1.

“To reverse, Messrs. Allen, Barricklo, Dilworth, Frey, Hawke, McCutchen, Russ, Scott, Thomson, Woodward and Hays. 11.”

Miss Gowdy then secured a writ of certiorari to review the action of the State Board of Education.

The Supreme Court reversed the action of the State Board of Education and set the resolution of June 24th aside so far as it affected Miss Gowdy.

At the time the matter was brought before the State Superintendent the petitions of three teachers were heard and it was agreed between counsel that the facts proved in one case would be used in the other. (See case, page 14.)

For this reason the testimony of Lynn E. Jennison is in the record and some facts in regard to his case are printed which are not applicable to the present case, but it was not convenient to separate such facts from those which were applicable.

II.

We contend the Supreme Court was in error:

1. In assuming that a dispute had arisen between the local Board of Education and the teacher over the amount due her for September, 1910.

2. In finding as a fact that the resolution of June 24th might under certain circumstances reduce the salary of the teacher, whereas there was no evidence upon which to base such finding.

POINT I.

There was no dispute or controversy between Miss Gowdy and the Paterson Board of Education over the amount due Miss Gowdy for September, 1910.

The Supreme Court in its opinion says:

“The Board of Education tendered the prosecutrix seventy-five dollars for her September salary which she refused to accept.” (Case, p. 94, lines 16, 19.)

The court must have meant that a dispute arose over this check.

The officers of the Board offered Miss Gowdy on October 3rd, 1910, a check for seventy-three dollars and fifty cents (i. e., seventy-five dollars less two per cent. deducted for retirement fund). (Case, p. 21, line 14.) She refused to accept the check but made no formal objection to the Board. The Board learned of her refusal and ordered its Clerk to make a correction which was done at the earliest possible opportunity; that is, upon the next payroll when a second check for the difference was made out to her.

We contend that no controversy or dispute between the Board and the teachers arose over the payment of this check.

If a debtor through error mails his creditor a check for less than is due and the creditor returns it calling attention to the error and the debtor at once acknowledges his error and sends a check for the correct amount, it cannot be said that a controversy has arisen between them.

The petition of Miss Gowdy states the controversy to be that she was not paid the proper amount due her for her September salary and requests the State Superintendent to order the local Board of Education to pay her the proper amount.

The answer of the Board of Education admitted that she was right and offered the sum she demanded.

Clearly there was no dispute or controversy over the amount due to Miss Gowdy for September.

POINT 2.

The controversy or dispute between the parties, if any arose, was that raised by the last paragraph of defendant's answer. (Case p. 13.)

In order that a dispute or controversy may arise it is necessary that two parties shall meet and one assert a proposition which the other negatives. It is necessary that the position of each should be clearly defined to the other. Until the parties come to an issue there is nothing for the State Superintendent to decide. I do not believe that a dispute or controversy arises merely because of an error in a payroll which is corrected as soon as discovered. Neither do I believe a controversy or dispute arises because a Board of Education passes a resolution which may possibly be void as to some teachers under the Tenure of Service Act.

Let us assume that the resolution was void as to Miss Gowdy. So was the September payroll; the Board promptly corrected the one and who knows that it would not have promptly corrected the other if it was given the opportunity?

I claim that it was the duty of Miss Gowdy to have protested to the Board of Education and objected to the resolution and to have specified her grounds of objection.

Until she did so no dispute or controversy arose between her and the Board. She presented no formal objection to the Board of Education. If she had said to the Board of Education, "I object because you cannot adopt any twelve payment plan at all," that Board would immediately have asserted its right to do so and issue would have been joined on that question. If she had said, "I object because the twelve payment plan you have adopted is bad because under it if I leave at certain seasons of the year I will get less

than under the old plan," the Board might have answered in one of the following ways:

1. "No, you misunderstand the plan; it contemplates paying you any such difference if you leave during such seasons."

2. "Yes, you are right and we will correct the error at once."

3. "You are right in assuming that you will get less if you leave in the middle of the school term but we intend to inflict this loss as a penalty."

No controversy would have arisen under the first two answers.

The Board in its answer (p. 13, line 1-14) asserted its right to make a change in the plan and its right to do so was upheld by the State Superintendent (p. 82), by the State Board of Education (p. 89, lines 28-33). The Supreme Court conceded this right to the Board, provided it did not work a reduction in salary. (Case, p. 95, line 17, 23.)

Because the plan of payment did not go into effect upon one certain date it affected each teacher in a different manner. When the working of the plan caused an injustice to any teacher and she brought that fact to the attention of the Board of Education prompt consideration was given to it and if the Board felt the claim was justified the matter was rectified. See testimony of Mr. Kireker, President of the Board, commencing line 32, page 52.

The Board employs over five hundred teachers and it was impossible for it to have in mind the circumstances of each case. We think, therefore, that before applying to the State Superintendent it was the duty of the teacher to present her claim to the Board of Education and have it passed upon by that body, so that its position could be clearly defined.

Miss Gowdy's petition did not attempt to raise the question as to the right of the Board of Education to change its system of payments and until the answer filed by the Board there was no issue raised between them. That issue was as to the right of the Board to change its system of payments.

POINT 3.

The local Board of Education had the right to change its plan of payment in ten installments to a plan of payment in twelve installments.

The authority of the Board of Education to change its mode of payment of teachers is given directly by statute.

"A board of education may make rules and regulations governing the engagement and employment of teachers and principals, the terms and tenure of such employment, and the promotion and dismissal of such teachers and principals, the salaries, and the time and mode of payment thereof, and may from time to time change, amend or repeal such rules and regulations." Compiled Statutes, 4762, sec. 106.

The State Superintendent decided the Board had this authority. See his opinion on page 82.

POINT 4.

The local Board of Education is the only body which may interpret the meaning of its resolution.

A body which had authority to make a rule has the sole authority to interpret its meaning. That is unless others have been allowed to act upon it to their detriment.

If the Board of Education has authority to change the system of payment of its teachers in certain ways but not in others, and adopts a rule which is susceptible of two interpretations, one legal and the other illegal, clearly it is the right of the Board to say which interpretation it places upon it. In the absence of such interpretation a court should give to such a rule a meaning which would keep it in force rather than the reverse.

POINT 5.

The resolution of June 24th can be so interpreted as in no event to reduce a teacher's salary.

It was contended in the argument below that a teacher leaving during certain periods of the teaching year would receive less money under the new plan than under the old. For instance, it is claimed that if Miss Gowdy was put upon the new plan on May 1st, 1911, and left on June 1st, she would receive seventy-five dollars instead of ninety dollars. But this was pure assumption; that is the way counsel construed the plan but it was not the way the Board of Education construed it. That Board when it had such a case before it immediately concluded that such a result was unfair and voted the teacher the difference between what she would have received under the old plan and what she actually had received under the new plan. The question being presented it immediately added the following section to its by-laws:

“74 K. Principals and teachers who hereafter resign, in accordance with the rules of this Board or who are removed by death during the teaching term beginning September 1st, and ending June 30th, following, shall receive for each month's service one twelfth of the yearly salary to which

they are entitled and in addition thereto shall receive a pro rata proportion of their July and August salaries based on the actual period of teaching between above dates.”

Under the above resolution a teacher could not possibly receive any less under the new plan than under the old. This resolution is not in evidence and it is merely cited to show that an interpretation can be placed upon it so as not to bring about the result which the State Superintendent and Supreme Court found objectionable. Nowhere in the case is there any evidence that the plan adopted contemplated a reduction of any teacher's salary under any circumstances. The State Superintendent placed such a construction upon the resolution because of extracts in a brief of counsel. These extracts were from a part of the brief which argued that if the Board of Education did interpret the resolution so as to cause a loss under certain circumstances it would be justified. The Board does not make claim that it has such authority. Clearly under Sec. 106 of the School Law the Board of Education may pay in twelfths if it desires. This is all the resolution says. Nothing is said as to what is to be done in case Miss Gowdy leaves at the end of May or June. Who has any right to say that the Board would not give her all she claims?

Mr. Kireker, President of the Board, says that they hear all such claims and adjust them. No controversy over the amount due can arise until the Board refuses to pay a specific sum claimed by a teacher.

The Board of Education has the right to pass such an amendment of its by-laws as above set forth.

For the purpose of this argument it matters not whether that new by-law is in evidence or not,

so long as there is nothing in evidence which conflicts with it.

My claim is that the petition of Miss Gowdy was filed prematurely and that she should have waited until the Board interpreted the meaning of its resolution. That until the Board does interpret the resolution, we must place upon it such an interpretation, if possible, as will allow it to stand.

It may and should be interpreted to mean that the twelve payment plan is in no event and under no circumstances to reduce any teacher's salary.

POINT 6.

Until the Board of Education places an interpretation on the resolution which will result in a reduction of salary there can be no controversy and no appeal can be made to the State Superintendent.

POINT 7.

There was no evidence from which the Supreme Court could find that the resolution of June 24th would reduce Miss Gowdy's salary.

The opinion of the Supreme Court reads:

“The contention of the prosecutrix is that she is to teach in the public schools from September 1st, to June 30th. That the practical operation of the rule in her case would result in withholding from her one-twelfth of nine hundred dollars for a period of one month and another for a period of two months after she had fully performed her contract. And should she from any cause cease to be a teacher in Paterson before September 1st, 1912, she would not receive the full amount of salary called for by her contract. The contention is sound.

And it may be added that if the prosecutrix should die during the term near or at the end of a month and shortly after the term has commenced, her estate would receive less under the twelve payment plan than under the ten." (Case, p. 98, line 28, &c.)

Under the Statute the school year begins on the first day of July and ends on the thirtieth day of June. (Compiled Statutes, p. 4804, Sec. 238.)

Miss Gowdy was appointed a teacher in September, eighteen hundred and ninety-three, and continued teaching under various salaries until May, nineteen hundred and seven, when she was advanced to nine hundred dollars per year, that is, she was to receive nine hundred dollars for her work between May, 1907, and May, 1908, and a like sum from May, 1908, to May, 1909, and from May 1st, 1909, to May 1st, 1910, and from May 1st, 1910, to May 1st, 1911.

The Paterson Board of Education employs more than five hundred teachers. Teachers are appointed during every month of the year and at a yearly salary.

Increases in this yearly salary are made from time to time. We claim that each such increase is a new contract with the teacher. For this reason the resolution was intended to go into effect with each teacher upon the next anniversary of that contract. The resolution provided that the plan was to become effective "in case of each principal and each teacher upon the next anniversary of the date of his or her employment by the department."

This phrase was construed by the Board to mean "the last employment or hiring of such teacher as evidenced by the last increase of salary of such teacher." (See case, p. 81.)

The resolution in question was adopted on June 24th, 1910, and under our contention the same did not become effective, so far as Miss Gowdy was concerned, until May 1st, 1911.

When the Supreme Court said (opinion, page 95, line 30), "That the practical operation of the rule in her case would result in withholding from her one-twelfth of nine hundred dollars for a period of one month and another for a period of two months after she had fully performed her contract," it was in error.

The Supreme Court assumed that the change of plan would become operative in Miss Gowdy's case on September 1st, 1910. In this it was entirely mistaken and the evidence does not sustain any such finding.

It seems that the Clerk in the office of the Secretary of the Board of Education made an error and assumed that the rule would go into effect in Miss Gowdy's case on September 1st, 1910, and in making up the payroll for that month made out a check to her for seventy-three dollars and fifty cents, that is, for one-twelfth of nine hundred dollars or seventy-five dollars, less a deduction to go to the Teachers' Retirement Fund. Upon attention being called to this mistake, and that the plan was not to become effective so far as Miss Gowdy was concerned until the following May, the Secretary of the Board made out a check on November 1st for one hundred and two dollars and ninety cents, this check being in full payment under the ten payment plan. (See the testimony of Thomas Kelley, Clerk in the office of the Secretary of the Board of Education, pages 21, 22 and 23 of the Gowdy case.)

The State Superintendent seemed to think that the Board of Education had no right to interpret its own resolution, and argues also that each in-

crease in salary is not a new contract. (See case, p. 84, line 12.) It must be kept in mind that these increases were not mandatory on the Board of Education. In no case was a teacher entitled to an increase until voted by the Board.

The method of working the plan would then be that on the first of May, nineteen hundred and eleven, Miss Gowdy would go upon the twelve payment plan and would receive on the first of June a check for seventy-five dollars, less Retirement Fund, and a similar check on the first of July, the first of August and the first of September. The working of the plan thus, was not to withhold from her one-twelfth of her salary for a period of one month and another twelfth for a period of two months as found by the Supreme Court. Had the plan gone into operation in Miss Gowdy's case on the first of September, the opinion of the Supreme Court would have been right in these particulars. Under the actual operation of the plan Miss Gowdy would have had more money in the earlier part of her contract year under the new plan than she would have had under the old plan. Her contract year ran from the first of May, until the first of the following May, and at the end of that period she would have had her entire sum in full. It was claimed by her counsel that she would lose interest by the withholding of this money. Under the old plan she would have received her pay as follows:

June 1st, 1911,	\$90.00
July 1st, 1911,	
August 1st, 1911,	
September 1st, 1911,	90.00
October 1st, 1911,	90.00
November 1st, 1911,	90.00
December 1st, 1911,	90.00
January 1st, 1912,	90.00
February 1st, 1912,	90.00

March 1st, 1912,	90.00
April 1st, 1912,	90.00
May 1st, 1912,	90.00

Under the new plan she would receive her pay as follows:

June 1st, 1911,	\$75.00
July 1st, 1911,	75.00
August 1st, 1911,	75.00
September 1st, 1911,	75.00
October 1st, 1911,	75.00
November 1st, 1911,	75.00
December 1st, 1911,	75.00
January 1st, 1912,	75.00
February 1st, 1912,	75.00
March 1st, 1912,	75.00
April 1st, 1912,	75.00
May 1st, 1912,	75.00

It will thus be seen that on the first of September under the old plan Miss Gowdy would only have received ninety dollars from the city, whereas under the new plan she will receive two hundred and twenty-five dollars, and a difference of one hundred and thirty-five dollars, and the amount which she is thus ahead of the city would decrease every month at the rate of fifteen dollars until at the end of the year she would be even. If she were able to take the amounts as paid to her and invest them at six per cent, immediately upon receipt, she would receive under the old plan at the end of her year in interest the sum of twenty-one dollars and fifteen cents and under the new plan the sum of twenty-four dollars and seventy-five cents, a gain to her under the new plan of three dollars and sixty cents. It will thus be seen that the plan as applied to her will not result in the loss of interest, but will result in a gain, and, therefore, it cannot be said that the mere withholding of a portion of her salary from her results to her in a loss of interest and for that reason

is a reduction in salary.

Any claim that there would be any loss of interest to Miss Gowdy is not founded upon any evidence in the case and is directly contrary to all the evidence.

The answer of the local Board of Education shows that it offered to Miss Gowdy her checks in full under the old plan as soon as the Clerk's error was discovered. She admitted that she had refused to accept the checks and if she took them that she would have all the money coming to her up to the time of the offer. (See Gowdy case, p. 20, lines 3 to 10.) What she really objected to was that the plan was to be put in operation as to her in May of the following year. (See case, p. 20, lines 20 to 25.)

The evidence, therefore, shows that the new plan became effective in Miss Gowdy's case on May 1st, 1911, and that she could suffer no loss in interest. Further, if she leaves the service in August, September or during any other month than June or July she will have in her possession more money under the new plan than under the old.

HOMER CASE.

The facts in the Homer case differ little from the Gowdy case. Under the resolution as interpreted by the Board of Education, the plan was changed in regards to Miss Homer in the first of September, nineteen hundred and ten. The employees of the Board made up a payroll in September and paid Miss Homer on the ten payment plan. The following month this error was corrected and a deduction was made so as to make the plan effective as to her from September 1st. No claim was made to the Board that its action would re-

sult in a loss of interest. If such a claim is made the Board may allow it. Since the Board has not passed upon this matter, I can not say what their action will be. However, I claim that no controversy over the matter has arisen because she has presented no such claim to the Board of Education for its action. The resolution of June 24th is indefinite in this respect and until the Board takes some action, it cannot be said that they refused to pay this interest if any is due.

At the time that the matter was before the State Superintendent he endeavored to have counsel for the Board of Education state the position of the Board in regard to the payment of those teachers who should quit the service just prior to the summer vacation. The State Superintendent or his Assistant wanted the position of the Board stated at that time so that it might be distinctly understood whether there was a certainty that a teacher would lose money in the manner set forth by the Supreme Court in the opinion in the Gowdy case. Counsel refused to take any position in the matter stating that he was not authorized to do so, inasmuch as the question had not been presented to the Board of Education and it had taken no action. (See page 25 of the Homer case.)

Our position in this matter has been consistent. We have never claimed or assented to the proposition that any teacher leaving during any period of the year would lose money by the change of plan. We do not admit that the plan does not contemplate the paying of those teachers who should leave near the beginning of the summer vacation such part of the deferred payment as would make the amount paid to her equal the amount she would have received under the old plan. If the matter were to be heard now, we would make the positive statement that the plan did contemplate such pay-

ment because the Board has so interpreted its resolution.

IN CONCLUSION.

No one can say that the Paterson Board of Education has any disposition to take advantage of its teachers or to treat them unfairly.

At the time the new plan was adopted a number of teachers opposed it. A few years before some had petitioned for its adoption. At the time the petitions were filed no claim was made that a loss would occur in the way pointed out by the Supreme Court. That was first suggested by Mr. Betts in the Homer case, p. 25, lines 33, etc.

These petitions were not filed for the purpose of demonstrating that the plan adopted would cause the loss mentioned by the Supreme Court, but for the purpose of preventing any change of plan. They were filed in a spirit of insubordination with a desire of forcing on the Board the will of the teachers in the matter and to take away from the Board the prerogative given it by statute of fixing the time of payment.

There is no desire on the part of the members of the Board to take advantage of any teacher and I do not believe that any teacher claims that the Board has any such desire. Some of the teachers have been misled because the Board was able to get along the first year with a smaller appropriation under the new plan than under the old. Many others have been misled by that fact because they do not understand the making of municipal budgets.

From the time of the incorporation of Paterson until 1908 the fiscal year began on March 20th. The school fiscal year began on the same date. In 1908 the State Superintendent called the city's attention to the School Law which provided that the school year begins on July 1st. It then became incumbent on the city to extend its then current school year from March 20th to July 1st, a period of practically four months. This meant that in

making the budget a sum sufficient to carry on the schools for sixteen months had to be raised. This added about \$175,000 to the usual appropriation although the teachers gained nothing. When the Board decided to change its plan so that payments would be made in July and August it was not necessary to raise for the year, July 1st, 1910, to June 30th, 1911, a full year's payroll, inasmuch as the July and August payments would not come in that fiscal year. The deduction was a little more than one-tenth of the entire roll.

To one not accustomed to the subject this would seem as if the taxpayer gained something when as a matter of fact payment was simply deferred.

In the former case of the change in the school year, payment was advanced. The amount of the advanced payment was much greater than the amount deferred if these two instances are considered together.

The question of appropriations which has been brought into the case by the counsel for teachers is not pertinent in any way.

The desire of the Board of Education in prosecuting this appeal is to have its right to adopt a twelve payment plan settled. The Board cannot pay one set of teachers under the ten payment plan and another set under the twelve payment plan. Such a course would lead to endless confusion. To go back now to the ten payment plan would lead to many disputes. The contesting teachers believe the decision of the Supreme Court sustained their claim that the Board had no right to adopt any kind of twelve payment plan.

We take it from the opinion of the Supreme Court that it felt that the Board had a right to adopt a twelve payment plan which would not cause loss to teachers who left at periods of the year just before the summer vacation. Notwithstanding the fact that the reading of the opinion

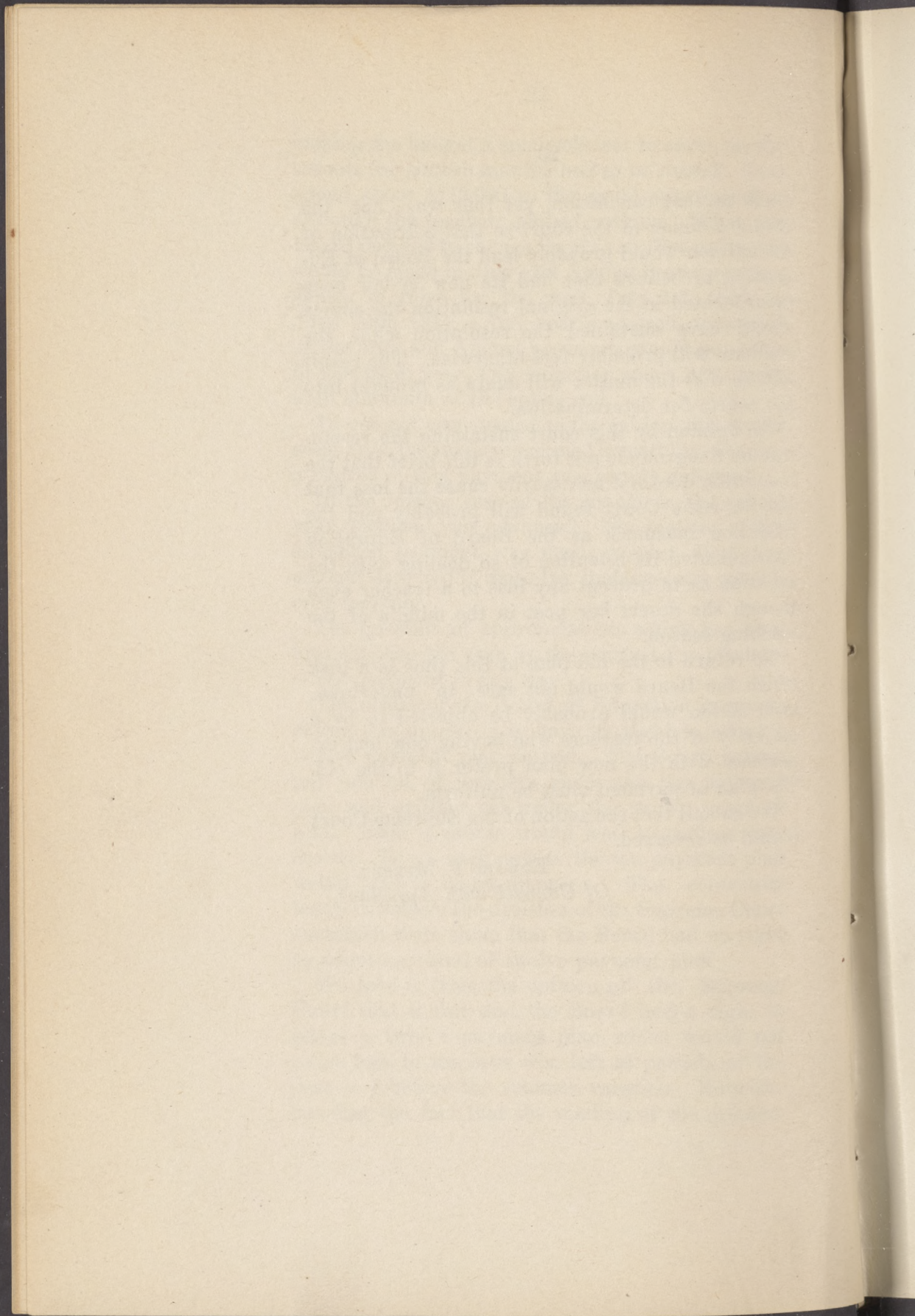
leads to that conclusion, yet that was not the actual decision of the court so that affirmation of the opinion would probably lead the Board of Education to believe that had its new by-law been incorporated in the original resolution the courts would have sustained the resolution while the teachers will probably feel otherwise. The result will be that the matter will again be brought into the courts for determination.

An opinion by this court sustaining the resolution on the grounds put forth in this brief that the resolution does not necessarily cause the loss that the Supreme Court found will probably end the litigation inasmuch as the Board of Education has indicated its intention of so dealing with the question as to prevent any loss to a teacher even though she desert her post in the middle of the teaching season.

To return to the old plan at this time is a task which the Board would not care to undertake; such action would probably be objected to by a majority of the teachers who having now had experience with the new plan prefer it to the old. The plan of payment must be uniform.

We submit that the action of the Supreme Court should be reversed.

EDWARD F. MERREY,
Of Counsel with Appellant.



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and BOARD OF EDUCATION OF
PATERSON.

*On Certiorari.
On Appeal from
the Supreme
Court.*

BRIEF OF MICHAEL DUNN, Of Counsel with Appellees Lillian G. Gowdy and Maude F. Homer.

These two cases involve the same principle of law. In each case the appellee is a teacher in the public schools of Paterson, and has been for more than three years prior to June twenty-fourth, nineteen hundred and ten. The salary of each was nine hundred dollars per school year, payable in ten monthly installments of ninety dollars.

On June twenty-fourth, nineteen hundred and ten, the Board of Education of Paterson passed the following resolution, to wit:

“Resolved, That the plan of payment of principals and teachers in the employ of this department be changed from the present, or what is known as the ten-payment plan, to what is known as the twelve-payment plan, the same to become effective in the case of each principal and each teacher upon the next anniversary of the date of his or her employment by the department; that notice of the adoption of this resolution be sent to each principal and teacher forthwith.”

The appellees protested against the resolution of the Board of Education of the City of Paterson as violative of the Act of 1909, found in 4 Comp. Stats., page 4763, Sec. 106-A, in operating to reduce the salaries of the school teachers.

They appealed to the State Superintendent of Education. (Case, p. 5.) He decided against the validity of the resolution. (Gowdy Case, p. 80.) (Homer Case, p. 84.) The State Board of Education reversed the State Superintendent. The Supreme Court reversed the State Board of Education, and affirmed the State Superintendent. (Homer Case, p. 90.) (Gowdy Case, p. 93.)

Gowdy vs. State Board of Education *et al.*, 86 Atl., 948.

The testimony of Miss Homer, in the Homer case (p. 17, State of Case), was that she was appointed May first, eighteen hundred and eighty-seven. She has been receiving nine hundred dollars since nineteen hundred and eight, payable in ten installments of ninety dollars each. She received in September, nineteen hundred and ten, ninety dollars; in October she received fifty-eight dollars and twenty cents. She went to the Board

of Education and protested (p. 18). They told her she should have been reduced in September. As she received ninety dollars then, they took sixteen dollars off, and offered fifty-eight dollars and eighty cents. They told her it was the operation of the twelve-payment plan, under the new interpretation of Mr. Kireker's resolution (p. 19). Her objection was that it was a reduction in salary (p. 19), and (on page 20, line 10), she claimed the loss of one hundred and fifty dollars for the months of July and August, besides interest amounting to four dollars and fifty cents. She signed a petition of protest and presented it to the Board.

The testimony of Miss Gowdy (p. 44 of Gowdy case) was that the date of her appointment was in September, eighteen hundred and ninety-three, and that she had been teaching ever since. She had received an increase in her present salary to nine hundred dollars in May, nineteen hundred and seven; she should have received it in September, nineteen hundred and six (p. 15, l. 20, &c.). She had received nine hundred dollars for more than three years prior to the "Teachers' tenure act" (p. 16). She received a notice of the change from the ten-payment plan to the twelve-payment plan, and protested to the Board against the twelve-payment plan. In September, nineteen hundred and ten, they tendered her seventy-five dollars less the amount deducted for the Teachers' Retirement Fund (p. 17); she refused the tender, she then appealed to the Superintendent of the State Board (p. 17).

C. F. Kireker (p. 66) ^(Gowdy Case) testified that the teachers' salaries for the school year from September first, 1910, to the last Friday in June, 1911, amounted to four hundred, eleven thousand, nine hundred, twenty-seven dollars and eighty cents under the ten-payment plan (p. 67). The determination to change from the ten-payment plan to the twelve-payment plan reduced the estimate for

teachers' salaries for the year 1910-1911, to the sum of three hundred, sixty-three thousand, one hundred and forty-one dollars and sixty cents (p. 67). (Gowdy Case, p. 68). Thereby \$48,786.20 was withheld from the teachers (p. 68, Homer Case, l. 30.)

The regulations of the Board of Education of the City of Paterson concerning the payment of the teachers' salaries is found in Sec. 19 of the By-Laws of the Board and reads as follows:

“The salaries of officers and teachers shall be paid monthly. All certificates of teachers' time shall be made out after school hours on the last school day of each month for that month, and payment shall be made as soon thereafter as practicable, and not later than the fifth day of the following month.”

(See page 7, line 10, Homer Case, and page 32.)

The Board of Education admitted that prior to June twenty-fourth, nineteen hundred and ten, the rules and regulations provided that the yearly salaries should be paid in ten equal installments (p. 12, Homer Case, ll. 27-30).

The Board of Education has no authority, under the Act of the Legislature establishing the public school system, approved October 19th, 1903, and the supplement thereto, contained in Sec. 106-A, page 4763 of Comp. Stats., to reduce the salaries of teachers after a teacher shall have served three years.

The rules and regulations of the Board of Education of the City of Paterson provide that the school year shall begin on the first Tuesday in September and end on the last Friday in June; that the salaries shall be paid monthly (p. 7 of Homer case, ll. 4, &c.).

It is submitted, that the legal relation between teacher and the Board of Education is one of contract. This was held expressly between school teachers who accepted the provisions of the Act of 1896 respecting the Teachers' Retirement Fund.

Ball vs. Trustees, 71 N. J. L., 64; Flemington vs. The State Board, 81 Atl. Rep., 163.

The rules and regulations of the Board of Education of Paterson constitute a contract, which can not be altered without the consent of the parties thereto. That the salaries of the teachers are reduced by the resolution of June 24th, 1910, is obvious. Teachers under the rules and regulations in force for more than three years prior to the passage of the Act, 1909, should be paid in ten monthly installments, while the later By-Law compels them to receive their pay in twelve monthly installments. To receive nine hundred dollars in ten monthly installments, of ninety dollars each, is more than nine hundred dollars payable in twelve monthly installments, of seventy-five dollars each.

It will be perceived that these teachers in the months of July and August, 1910, after the passage of the resolution of June 24th, 1910, did not receive any salary. The payment was postponed until July and August of the next year. The profit to the Board of Education which followed the passage of this resolution amounted to forty-eight thousand, seven hundred, eighty-six dollars and twenty cents, and this sum was the loss which the teachers of Paterson sustained by the adoption of this resolution.

When teachers' salaries are due, they are entitled to interest if default be made in their payment.

In *Swann vs. Turner*, 23 Miss., 565, it was held that interest must be paid on salaries which were not paid when due, citing Judge Story in *Thorn-dyke vs. The United States*, 8 Mason, wherein he said:

“The United States has no prerogative to claim one law upon their own contract as a creditor and another as debtor.”

In *Taylor vs. Mason*, 67 N. Y., 94, Chief Judge Church affirmed, that interest was collectible on a salary from the time of non-payment after demand therefor.

In *O'Neill vs. Supreme Council*, 70 N. J. L., 410, it was held that in contracts of insurance in which it was provided that the by-laws should be part of the contract, and that these by-laws could be altered, amended or abrogated, that these by-laws could not be altered, amended or abrogated to the detriment of the other contracting party.

Sec. 75 of the School Act provides that between May fifteenth and June first the Board of Education shall fix and determine the amount of money to be appropriated for the use of public schools during the ensuing school year.

The criminal statute of this State requires that the expenditures of a municipal body, like the Board of Education, shall not exceed the appropriation. It is plain that in spirit, if not in letter, this statute was violated by the Board of Education.

The resolution of the Board operates as a fraud upon the school teachers, and the Supreme Court in finding that the operation of the resolution of June 24th, 1910, effected a reduction in salaries of the teachers was sustained by the evidence, very properly decided that the resolution was void as to the appellees.

I submit the Supreme Court should be sustained.

Respectfully submitted,

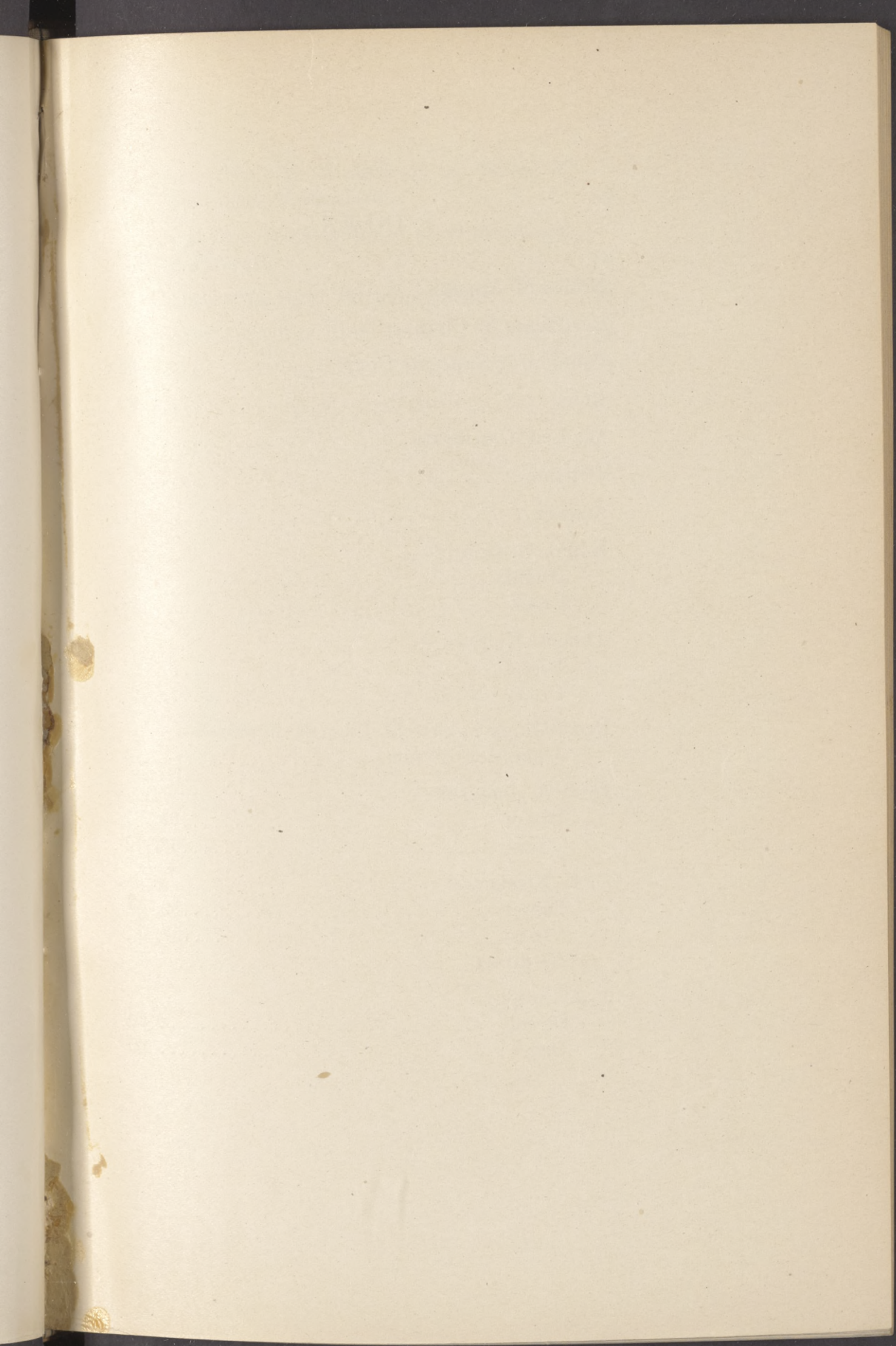
MICHAEL DUNN,
of Counsel for Appellees.

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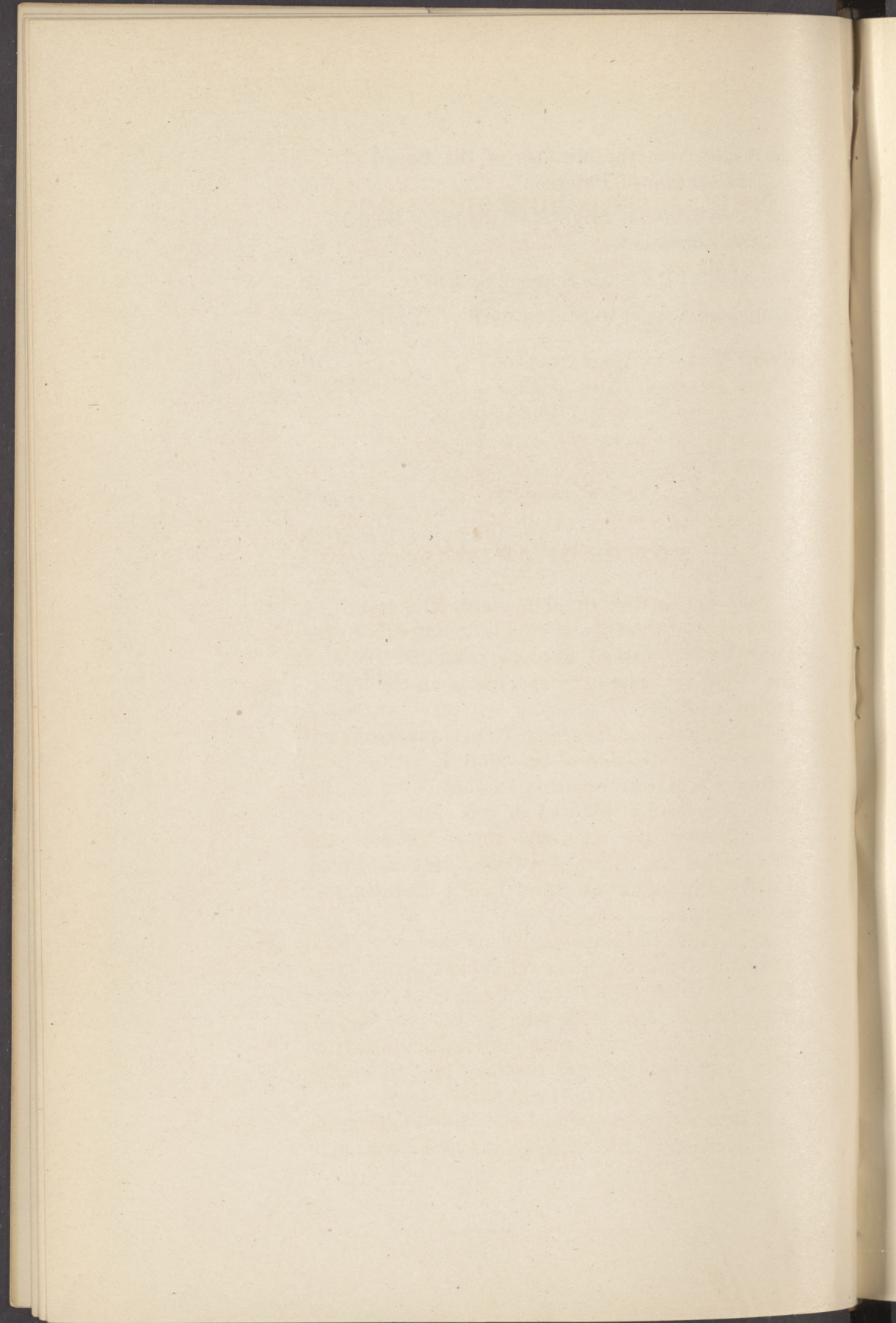
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constitution and government of the
country.



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New Jersey Supreme Court.

LILLIAN G. GOWDY, <i>Prosecutrix,</i>	}	<i>On Certiorari.</i>	
<i>vs.</i>			
STATE BOARD OF EDUCATION OF THE STATE OF NEW JERSEY AND THE BOARD OF EDUCA- TION OF THE CITY OF PATER- SON,	}		10
<i>Defendants.</i>			

NOTICE OF APPEAL.

Take notice that the defendant, The Board of Education of the City of Paterson, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds: 20

1. Because the Supreme Court reversed and set aside the decision of the State Board of Education which was removed to said court by the writ of certiorari allowed in this cause.
2. Because the Supreme Court affirmed the decision of the State Superintendent of Public Instruction which the State Board of Education had set aside.
3. Because the Supreme Court declared illegal and as to the prosecutrix set aside the resolution of the Board of Education of the City of Paterson, passed June 24th, 1910, whereby the plan of payment of teachers and principals was changed from what is known as the ten payment plan to what is known as the twelve payment plan. 30
4. Because the Supreme Court did not affirm the said decision of the State Board of Education.

NOTICE OF APPEAL.

5. Because the Supreme Court did not reverse the decision of the State Superintendent above referred to.

6. Because the Supreme Court did not sustain as legal and binding on the prosecutrix the resolution of the Board of Education of the City of Paterson, passed June 24th, 1910, and above referred to.

10 7. Because the Supreme Court decided that said resolution of the Board of Education passed June 24th, 1910, was in violation of the statute entitled "The Teacher's Tenure of Service Act," (P. L. 1909, p. 398) in that it reduced the salary of a teacher who was under its protection.

20 8. Because there was no evidence submitted in the case from which the Supreme Court could find that the said resolution, passed June 24th, 1910, by the Board of Education of the City of Paterson reduced the salary of the prosecutrix or any other teacher.

EDWARD F. MERREY,

*Attorney with Board of Education
of City of Paterson.*

TO MICHAEL DUNN, ESQ.,

Attorney of Prosecutrix.

NOTICE OF APPEAL

CERTIFICATE OF CLERK OF SUPREME
COURT.

I, William C. Gebhardt, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the court in the above stated cause.

In testimony whereof, I have set
my hand and the seal of said court, at
Trenton, thisday of.....

A. D. nineteen hundred and thirteen.

WILLIAM C. GEBHARDT,

Clerk.

10

20

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WRIT OF CERTIORARI.

Writ of Certiorari.

New Jersey, ss.

The State of New Jersey to
State Board of Education of the
State of New Jersey.

Greeting:

10 We being willing, for certain reasons, to be certified of a certain decision or judgment, by you lately made and rendered, on an appeal brought to you, from a decision rendered by the State Superintendent of Public Instruction of the State of New Jersey, on the eighth day of March, nineteen hundred and eleven, in a certain matter wherein Lillian G. Gowdy was petitioner and Board of Education of the City of Paterson was respondent, do hereby command you, that you

20 send, under your seal, to our Justices of our Supreme Court of Judicature, at Trenton, on the third Tuesday of February, instant, as well the judgment aforesaid, as the decision or judgment of the said State Superintendent of Public Instruction, together with the proofs, depositions, petition and answer thereto, and all things touching and concerning the same, together with this, our writ, that we may further cause to be done thereupon, what of right we shall see fit to be done.

30 Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court at Trenton, this sixteenth day of February, nineteen hundred and twelve.

MICHAEL DUNN
Attorney.

WM. RIKER, JR.
Clerk.

I allow this writ. Let it be sealed.

JAMES F. MINTURN,
J. S. C.

RETURN TO WRIT.

LILLIAN G. GOWDY,	}
VS.	
THE BOARD OF EDUCATION OF THE CITY OF PATERSON.	

RETURN TO WRIT

10

Pursuant to the command of the within writ and for a return thereto, the State Board of Education makes the following return, which includes all the papers, documents and the like which have been presented to the said Board in the above matter.

CALVIN N. KENDALL,
*Secretary, State Board
of Education.*

20

To the Honorable CHARLES J. BAXTER,
*State Superintendent of Public Instruction of
State of New Jersey:*

Your petitioner, Lillian G. Gowdy, of the City of Paterson, County of Passaic and State of New Jersey, respectfully shows that in the month of September, A. D., eighteen hundred and ninety-three, she was duly appointed by the Board of Education of the City of Paterson in school No. 18 in said City, and that her appointment was made as a permanent teacher; that she afterwards was transferred to school number 12 and later to school number 10 where she has been teaching in the grammar department since December, nineteen hundred and two; that under the salary schedules adopted by said Board at different times, her salary has been increased from time to time; that

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PETITION.

she is now teaching Grade 7-B and since May, nineteen hundred and seven, has been teaching in that grade, and that her yearly salary was then increased and since that time has been nine hundred dollars.

10 Your petitioner further shows that at the time of her appointment by said Board of Education, and since she has continued to teach in the schools of the said City of Paterson, and during all that time has been duly licensed to teach in keeping with the rules and regulations of the said board and laws of the State of New Jersey, and since the month of June, nineteen hundred and six, she has held, and still holds a teacher's certificate known as a professional city certificate, which was issued under the authority of the said Board of Education of the City of Paterson in conformity with the laws of the State by which she is authorized to teach and draw her salary.

20

Your petitioner further shows that at the time she was employed as a permanent teacher in said City of Paterson there were, and still are, in force certain by-laws, rules and regulations which have been adopted by the Board of Education pertaining to the employment of teachers and their duties and their salaries and the time of payment of the same; that the same have been printed in book form by the said Board of Education and delivered to each teacher; and the said book is entitled "Manual of the Board of Education of the City of Paterson, New Jersey." A copy of the said book delivered to your petitioner by the said Board is presented herewith and is marked Exhibit A, and reference thereto is hereby made for greater certainty as to some of the matters herein stated concerning the rules and regulations still in force and bearing upon the question presented by this peti-

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PETITION.

tion; that among said rules and regulations are the following as to the "school year":

"The school year shall begin on the first Tuesday in September and end on the last Friday in June. The first term shall end on the last school day in January; the second term shall begin on the following school day."

There is also a provision in Section 19 of the By-laws of said board as follows:

10

"The salaries of officers and teachers shall be paid monthly, and those of janitors semi-monthly, as nearly as possible, without the special order of the Board, the same having been approved by the proper committees. All certificates of teachers' time shall be made out after school hours on the last school day of each month for that month, and payment shall be made as soon thereafter as practicable, and not later than the fifth day of the following month, provided the necessary funds therefor are to the credit of the Board."

20

And there were also rules and regulations fixing the salaries of teachers in the different grades and providing for an increase of salary from time to time until the maximum amount was reached under the conditions therein specified. It was also provided by the said rules and regulations that the salaries of teachers shall be paid in ten equal payments, deductions of one two-hundredth of the yearly salary to be made for each day's absence not excused under the school rules. There was also a provision that any teacher might withdraw from the service of the Board by giving one month's notice of such intention, and the Board might dismiss a teacher at any time after one month's notice.

30

Your petitioner further shows that for the school year ending June thirtieth, nineteen hundred and

PETITION.

eight, and ever since her yearly salary has been nine hundred dollars, and the same has been paid to her in ten installments of ninety dollars each, the first installment being paid on or about the fifth of October, nineteen hundred and nine, and the last installment about the third of July, nineteen hundred and ten; that from said amount there was deducted the amount required by law for the retirement fund.

10 Your petitioner further shows that she resumed her duties as teacher of grade 7-B in school number 10 at the opening of the term on the first Wednesday of September, 1910, and continued teaching during the said month, and that the first installment of her salary became due on or about the first of October and that she was informed that the same would be paid to her on or about the third of October; that the practice adopted by the said board in paying the teachers' salaries is as follows:—A pay roll is prepared with the names of the teachers thereon and the amounts of their salaries for the month stated, with a blank space on which to sign their names in receipt for the same. These pay rolls are delivered to the principals of the schools who are expected to secure the signatures of the teachers to the same, and on presentation of that receipt as a voucher to the treasurer of the Board of Education, the checks for the teachers are delivered to the respective principals to be delivered by them to the teachers; that the pay roll presented to your petitioner to be signed for the month of September, 20 nineteen hundred and ten, stated that the amount due to her was seventy-five dollars, less two per cent. deducted for the retirement fund, which said amount was one-twelfth of her salary, making a difference of fifteen dollars in the amount that

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PETITION.

she was entitled to receive and had been accustomed to receiving since her yearly salary had been advanced to nine hundred dollars; that your petitioner thereupon declined to sign the said pay roll and declined to accept the said sum of seventy-five dollars less said two per cent. as the amount due to her for her salary for the month of September, nineteen hundred and ten, claiming that there was due to her the sum of ninety dollars, less two per cent., to be retained for the retirement fund.

10

Your petitioner further shows that she was informed by Henry Ridgway, secretary of the said Board of Education, that the said pay roll had been made out in that way, and the amount was fixed at one-twelfth of the yearly salary instead of one-tenth, in pursuance of a certain resolution adopted by the Board of Education at a meeting held by the said board on the twenty-fourth day of June, A. D. nineteen hundred and ten, which resolution was as follows: Resolved, "that the plan of payment of principals and teachers in the employ of this department be changed from the present, or what is known as the ten payment plan, to what is known as the twelve payment plan, the same to become effective in the case of each principal and each teacher upon the next anniversary of the date of his or her employment by the department; that notice of the adoption of this resolution be sent to each principal and teacher forthwith."

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Your petitioner further shows that she refused to accept the said sum of seventy-five dollars in payment of the money then due to her because the same was a reduction of her salary; that she had been for more than three consecutive years employed in the school district known as the City

PETITION.

of Paterson, and was there employed for more than three years prior to September 1st, nineteen hundred and nine, when the provisions of an act of the Legislature took effect in said school district, entitled, "A Supplement to an act entitled 'An act to establish a thorough and efficient system of free public schools and to provide for the maintenance, management and support thereof,' approved October nineteenth, one thousand nine hundred and three," P. L. 1909, page 398. And that the said resolutions, so far as the salary to which your petitioner was entitled, was clearly in violation of the provision of said act.

Your petitioner further shows that the said Board of Education of the City of Paterson refused to pay to her the proper amount due to her for salary for the month of September, nineteen hundred and ten. And your petitioner, therefore, claims that by reason thereof, a controversy and dispute has arisen under the school laws of the state between her and the said Board of Education of the City of Paterson, and she prays that the same may be heard and determined by you, and that such decision shall be made therein as may be equitable and just, and that the said Board of Education of the City of Paterson may be ordered and directed to pay to your petitioner the said sum of ninety dollars less two per cent. to be retained for the retirement fund as the amount due to her for the month of September, nineteen hundred and ten.

(Signed) LILLIAN G. GOWDY,
Petitioner.

ANSWER.

State of New Jersey, }
 County of Passaic. }

Lillian G. Gowdy, of full age, being duly sworn, according to law, upon her oath says that she is the petitioner in the above stated petition, and that the facts therein stated are true.

(Signed) LILLIAN G. GOWDY.

10

Sworn to and subscribed before me this tenth day of October, nineteen hundred and ten.

(Signed)

WM M. DREW,
 M. C. C. of N. J.

The answer of the Board of Education of the City of Paterson, in the County of Passaic to the petition of Lillian G. Gowdy filed with the State Superintendent of Public Instruction.

20

To the State Superintendent of Public Instruction:

The answer of the Board of Education of the City of Paterson, in the County of Passaic to the petition of Lillian G. Gowdy shows that it is true that said Lillian G. Gowdy is employed by it as a teacher at the rate of nine hundred dollars per year; that the board adopted the resolution set forth in said petition on June 24th, 1910; that through a clerical error it was presumed by employees in the office of this board that said twelve payment plan went into effect in the case of Miss Gowdy on September 1st, 1910, and a check for seventy-three dollars and fifty cents, or one-twelfth of her yearly salary less amount due pension fund

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ANSWER.

was offered her about October 1st, 1910; that before the service of her petition it was discovered that the said plan did not become effective in her case until May, 1911; that in order to correct the mistake on November 1st, a check for one hundred two dollars and ninety cents was prepared and offered to Miss Gowdy and she has refused to receive the same; that said two checks are at the office of this board and will be paid to the petitioner upon her request for same at the office of this board and upon her signing a receipt therefor upon the pay roll. That said checks together equal two-tenths of her yearly salary less the deduction for the retirement fund as required by law.

10
20 This board submits that there is no controversy or dispute between this board and the petitioner as to the actual amount now due and owing to her.

And this board further submits that it adopted the resolution of June 24th, 1910, and that the same will become effective so far as concerns the said Lillian Gowdy on May 1st, 1911.

30 And this board submits that it has the power and authority to adopt such resolution; that it has never entered into any contract in writing with the said Lillian G. Gowdy; that the salaries of the teachers employed by this board, and the time and mode of payment thereof are fixed by the rules and regulations of this board, and that by the laws of the State of New Jersey this board may from time to time change, amend or repeal such rules and regulations.

And this board shows that the resolution above referred to does not nor will it reduce the salary of the said Lillian G. Gowdy or any other teacher.

ANSWER.

And this board further shows that if the said Lillian G. Gowdy claims that this board has not the authority to pass such resolution and to so change the plan of payment from what is known as the ten payment to the twelve payment plan; that a controversy has arisen between the said Lillian G. Gowdy and this board which this board requests may be decided by the State Superintendent of Public Instruction as provided by law subject to the right of this board to have such decision reviewed if the same be adverse to it. 10

All of which is respectfully submitted,
 (Signed) EDWARD F. MERREY,
City Counsel.

In the matter of the Petition
 of LILLIAN G. GOWDY, to the
 HON. CHARLES J. BAXTER,
 State Superintendent of Public
 Instruction of the State
 of New Jersey. 20

Stenographer's minutes of hearing, on the above petition before the State Superintendent of Public Instruction, at the State House, in the City of Trenton, on January 18th, 1911, at eleven o'clock in the forenoon.

Appearances. 30

MICHAEL DUNN, ESQ.,

For the Petitioner.

EDWARD F. MERREY, ESQ., *City Counsel,*
 and

HON. THOMAS F. MCCRAN, *City Attorney,*
For the Respondent,
Board of Education of the City of Paterson

LILLIAN G. GOWDY.—DIRECT.

Petitioner's Case.

Mr. Dunn.—Cannot we stipulate on the record that all the facts which were admitted on the hearing of the petition of Mr. Jennison, that are applicable to this case, may be considered part of this record?

10 *Mr. Merrey.*—Yes; all that are applicable; and also that we have been trying to pay Miss Gowdy what we owe her.

LILLIAN G. GOWDY, sworn as a witness in her own behalf, testifies as follows:

Direct Examination by Mr. Dunn.

20 Q. You are a teacher in the employ of the school district of the City of Paterson? A. I am.

Q. What was the date of your first appointment? A. September, 1893, right after Labor Day.

Q. You were appointed before that, but your appointment took effect the first of September? A. Yes.

Q. You have been teaching there ever since? A. Ever since, yes.

30 Q. At first you were teaching what kind of a grade? A. Primary grade in school No. 18.

Q. And then afterwards? A. After one year I was transferred to No. 12, still in primary grade, and—I forgot what year it was—I was transferred to a grammar grade.

Q. December, 1902? A. Yes.

Q. During this period of teaching from 1893 down to the time you became a grammar grade teacher, in 1902, did you get any increase of salary from time to time? A. I received regular in-

LILLIAN G. GOWDY.—DIRECT.

creases according to the recommendation of the principal.

Q. I show you this manual. Was this the manual in use in the schools of the City of Paterson?

A. That is the only manual I have ever received. I never received any other manual.

Q. The increases in your salary were made according to this manual? A. Until I took a grammar position, and then the increases were different. We had \$600 or \$650 in the grammar department. There I think it is not quite as much as that.

10

Q. That increase was made under some other schedule than set forth here? A. As soon as I took that grammar grade, I received that.

Q. That was increased how much? A. That would amount to \$100 or \$150.

Q. When did you receive other increases after that? A. Then, June 26th, 1906, I received a salary of \$800. I was increased to \$800. I received no further increase until May, 1907, because I contested. I should have had an increase in September; I had been recommended by my principal, but there was a shortage of money, and

20

lost several dollars. I was increased then in May, 1907, to \$900. I should have received an increase September 1st, 1906, but I did not receive any until 1907. Then I heard that the other teachers were getting it and I was not getting it, and I went to Mr. Wilson and Mr. Dunphy. I heard that teachers still received this increase, and then Mayor Johnson stepped in and said I should get it. I received it, but no back pay.

30

Q. When did that take effect? A. I should have got it in January, but I did not get it until May, 1907.

Q. From that time on, from May, 1907, down

LILLIAN G. GOWDY.—DIRECT.

to date, you have continued receiving \$900? A. I have received \$900.

Q. You have had it more than three years prior to the going into effect of the tenure of office act? A. Yes.

10 Q. How was that salary paid to you during the period, of the last four or five years? A. Why, the Board of Education notifies the principal by telephone whether you are to get an increase or not. Then the principal sends word to you in your class room. He brings around a paper similar to this showing how much a year, how much a month, how much a day, and I saw such a paper, I saw both of these papers.

Q. Then you signed a pay roll like that? A. Yes; I signed a pay roll like that.

20 Q. How do you get your money? A. The principal takes that down, and on the fifth of the month he brings our checks.

Q. In the year 1910 did you receive a notice of a resolution that had been passed? A. Yes; I received such a notice.

Q. Making a change from the ten payment plan to the twelve payment plan? A. Yes; I received such a notice.

30 Q. Prior to that time, had you with other teachers signed a petition and appeared before the Board of Education? A. I was an active worker trying to get this adjusted. I signed a petition and—

Q. (Interrupting) I show you this petition. A. I signed that petition. I spoke—

Q. (Interrupting) Do you remember that it was presented to the Board of Education? A. Yes.

Q. And they refused to act upon it? A. Yes.

Q. It was afterwards presented to the Board of Education and they did give a hearing? A.

LILLIAN G. GOWDY.—DIRECT.

They gave a hearing, and called for the question but allowed no discussion on the question. We had nothing to say. They passed it.

Mr. Dunn.—I offer that in evidence.

Asst. Supt. Betts.—It is in evidence.

Q. After that you resumed teaching in September? A. I resumed teaching in September. 10

Q. Did you get paid for September? A. Word came that I would receive \$75 a month.

Q. Was a pay roll presented? A. A pay roll was presented.

Q. For \$75? A. For \$75 less the retirement fund.

Q. Did you sign it? A. I did not sign it.

Q. Did you notify them of the position that you took? A. They already knew what my position was. 20

Q. Had you made it known to them? A. I went to the board and protested. The principal asked me, and I told him why I objected to the twelve payment plan; that I had lost money.

Q. Why did you object to the twelve payments? A. Because I had lost \$150 at the start, and \$15 for the year. Up to June I would lose the use of \$15. I would receive \$75 for July. For August I would receive \$75 probably—I was not sure of anything—and the interest besides is \$4.15. My loss at the beginning was \$150 the first of September. 30

Q. Then you filed this petition and brought the case before the State Board? A. Yes.

Q. And you have never received— A. (Interrupting) I waited. They knew that I objected. I was told to wait. I waited, and I heard nothing, and then I went to you.

LILLIAN G. GOWDY.—CROSS.

Q. You have not received any pay since the first of September? A. Nothing; I was offered a check.

Q. For how much? A. \$102 the second month. I refused that on account of the twelve payment plan.

10 Q. This petition was then pending before the board? A. Yes; that had been pending for two months, before that.

Cross Examination by Mr. Merrey.

Q. Your salary was \$410 commencing with September 1st, 1893? A. Yes.

Q. \$425 next? A. According to my recollection; yes, sir.

Q. \$450 September, 1901? A. I could not swear.

20 Q. \$475 September, 1902; \$500 September, 1903; \$550 September, 1904? A. I suppose so.

Q. And in June, 1906, \$800? A. Yes.

Q. And in September, \$850? A. No, sir; never; that is where the point comes in.

Q. Do you mean to say that you did not get paid \$850? A. No, sir.

Q. \$850 in September, 1906? A. No; not to my recollection. I went for it, but I never got a dollar.

30 Q. And in May, 1907, you were increased to \$900? A. Yes.

Q. Are you sure about the increase to \$850 in 1906? A. I went for it, but I do not think I ever got it.

Q. Are you quite sure? A. I am quite sure.

Q. The records show that you did? A. I heard they did.

Q. If you have not received it, I think you will get it. A. I would like to see it.

LILLIAN G. GOWDY.—CROSS.

Q. You are afraid that for some reason or other the board will refuse to pay you in next July or August? A. I consider that I finish my year in June.

Q. You are afraid? A. I am not afraid of anything.

Q. You think you will get nothing in July or August? A. I don't know.

Q. You are a little afraid? A. I don't know. 10

Q. Do you mean that if they make a bargain with you they will go back on it? A. I think they may go back on it. They have done it before. I lost \$40 once. They went back on the bargain then.

Q. As a matter of fact, don't you know that there are checks in the rooms of the Board of Education waiting for you to come and get them? A. Yes; I know.

Q. For the full amount that you claim? A. They were not there when I filed this petition. 20

Q. How do you know? A. Because I was told they were not.

Q. Who told you that? A. The only one that was authorized, the principal who would bring me the check for \$75 if I would take it.

Q. Since that time you have found out that your checks are there waiting for you? A. Yes.

Q. Why do you refuse to take them? A. Because I object to the twelve payments. 30

Q. They were paying you on the ten payment plan? A. They were not in September.

Q. The checks are on the ten payment plan? A. My petition had been filed. I object to the twelve payment plan. That is the answer.

Q. Were you not offered these checks in November for your salary for the month of October before you filed your petition? A. No. My peti-

LILLIAN G. GOWDY.—CROSS.

tion was filed October 14th. That is why I waited so long.

Q. You simply refused to take these checks now because you object to the resolution of the board?

A. Yes.

Q. If you got these checks, then you would have all the money coming to you up to the present time? A. Of course, I would have all; yes.

10 Q. These checks would pay you everything that you claim? A. I did not say that.

Q. (Showing witness) Do you want these checks? A. No; I do not. Why didn't you offer them as soon as I refused the first check? That left me without money until November. I could not have had it until November. It was not offered to me until then.

20 Q. It has been offered now. A. Yes; I know from November on, but before that, it was not.

Q. From November up to the present time? A. Yes.

By Mr. Dunn.

Q. When did they claim that they would reduce you to the twelve payment plan again? A. In May.

Q. May of this year? A. Yes.

Q. That, you object to? A. That I object to.

30

Petitioner Rests.

THOMAS KELLY.—DIRECT.—CROSS.

Respondent's Case.

THOMAS KELLY, sworn as a witness on the part of the respondent, testifies as follows:

Direct Examination by Mr. Merrey.

Q. You are a clerk in the rooms of the Board of Education? A. Yes, sir. 10

Q. Do you assist in making up the checks? A. Yes.

Q. Do you know whether a mistake was made in Miss Gowdy's check on the September payment? A. Yes; we made a mistake in the September pay roll. We inferred that Mr. Kireker's resolution was to date from the date of her appointment, and she was appointed from September, and then afterwards the interpretation of the resolution was from the date of the last increase. 20

Q. Did you make out the new check? A. Yes, sir; giving her the difference between \$75 and \$90, with the deduction of two per cent. for the teachers' retirement fund.

Q. Have the checks been made out on the ten payment plan? A. Yes, sir; \$90 a month, less deduction for the pension fund.

Q. If these checks were accepted, would there be anything due to Miss Gowdy? A. No. 30

Cross Examination by Mr. Dunn.

Q. When did that ten payment plan go into effect with Miss Gowdy? A. In June, 1906, the new salary schedule went into effect. She was getting \$550. It will go into effect with her on May 11th, 1911.

THOMAS KELLY.—CROSS.

Q. Why do you say that? A. That was the last time she received any increase in salary. She went from \$800 to \$850, and then she was granted an increase of \$50 which made it \$900. That was in May, 1907, from \$850 to \$900.

Q. That is her present salary? A. That is her present salary.

10 Q. Under what resolution do you say that you are going to make the twelve payment plan begin in May? A. From the date of the last contractual salary.

Q. Under what resolution; is it the last resolution passed in October? A. The two of them.

Q. Considering the first resolution; is it the resolution passed in October? A. I do not know which one it is just now.

20 Q. When you made out the first check in October you considered that it was to take effect as to Miss Gowdy from the date of her appointment? A. Yes.

Q. That is the reason you then had? A. Yes.

Q. Afterward you learned when they used the expression "appointment" they did not mean "appointment?" A. Contractual salary.

Mr. Kireker.—The word "appointment" is not used.

30 Q. Then you were instructed to make out a new check and to give her the difference— A. (Interrupting) Between \$75 and \$90.

Q. After the passage of that resolution? A. Yes.

Mr. Merrey.—We offer these checks made out to the order of Miss Gowdy, dated as follows and for the following amounts:

THOMAS KELLY.—CROSS.

October 5th	\$ 73.50
November 4th	102.90
December 2nd	88.20
December 23rd	88.20

I think this case should be dismissed. Simply because a teacher refuses to receive her salary is no reason why the State Superintendent should be called upon to act in in any controversy she thinks she has with the City Board of Education.

10

20

30

ADMISSION OF FACTS.

In the matter of the Petition of LYNN E. JENNISON to the HONORABLE CHARLES J. BAXTER, State Superintendent of Public Instruction of the State of New Jersey.

- 10 Stenographer's Minutes of hearing on the above petition held at the State House in the City of Trenton, on the eighteenth day of January, 1911, before the Hon. Charles J. Baxter, State Superintendent of Public Instruction of the State of New Jersey.

Appearances.

MICHAEL DUNN, Esq.,

For the Petitioner.

20

EDWARD F. MERREY, Esq., City Counsel,

HON. THOMAS F. MCCRAN, City Attorney,

For the Respondent,

The Board of Education of the City of Paterson.

Petitioner's Case.

Mr. Dunn.—Perhaps we can get some admissions on the record.

30

Mr. Merrey.—It depends altogether upon whether there are any disputed questions here. We are not sure what questions the petitioner comes here to argue. If he wishes to argue the main question, which I understand teachers want decided, we do not need any testimony at all. It is merely whether the Board of Education has a right to adopt the twelve payment system. There are in the petition a number of side issues. If those issues are brought into question, it

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may be that testimony will be necessary. We object to that. We think the matter is not properly before the State Superintendent, and our desire is to confine the matter, if we can, to the main question which is really agitating the teachers; and which they evidently want decided, and that is the authority of the board to adopt the twelve payment system. Outside of that, we claim there is no controversy between Mr. Jennison and the board, because the matter has never been presented to the board.

10

Mr. Dunn.—We differ on that point. There are two or three points alleged in Mr. Jennison's petition which may be admitted that he was appointed and began his service on the first of February, 1907, which date was the beginning of the second term of the school year, 1906-1907, and that he received from the Board of Education a temporary certificate dated February 1st, 1907, good for one year from that date, and when made permanent, that he did serve under that certificate from the first of February, 1907, to the first of February, 1909, and then received a permanent certificate, which is marked "Exhibit B," the first one being marked "Exhibit A"; and that from the first of February, 1909, he has been teaching and still teaches in the high school under the said permanent certificate, and that he is duly licensed to teach. Is there any dispute as to those facts?

20

30

Mr. Merrey.—No; I think not.

Mr. Dunn.—The reason we want these facts upon the record is to raise the ques-

ADMISSION OF FACTS.

tion whether or not the effect of this resolution is not a reduction of salary, and therefore a violation of the law of 1909. Then, these facts are admitted, are they, Mr. Merrey?

10

Mr. Merrey.—The fact is that he was appointed and started to teach for the City of Paterson, February 1st, 1907, and that he had two certificates. What the effect of them is we do not know.

Mr. Dunn.—The point is that he taught more than three years at the time of the resolution.

Mr. Merrey.—Yes; we admit that he taught three years at the time of the passage of this resolution for the City of Paterson continuously.

20

Superintendent Baxter.—And had continued under the act of 1909?

Assistant Superintendent Betts.—That is probably one of the things that they object to.

Mr. Merrey.—That he has continued under the act of 1909?

Superintendent Baxter.—He is still teaching?

Mr. McCran.—That is a matter of law.

30

Assistant Superintendent Betts.—You agree that he was still teaching at the time the petition was filed?

Mr. Merrey.—He is still teaching now and he taught continuously for the City of Paterson from the first of February, 1907.

Assist. Supt. Betts.—Until this time?

Mr. Merrey.—Yes.

Mr. Dunn.—Do you further admit the rules and regulations that are set forth in

ADMISSION OF FACTS.

Mr. Jennison's petition were in force in the City of Paterson at the time?

Mr. Merrey.— We cannot admit them because you have annexed to your petition an obsolete copy of the rules and regulations of the board.

Mr. Dunn.—Do you admit this: That at the time this petition was filed there were in force certain by-laws and regulations which are printed in book form, a copy of which was annexed to the petition, in which is contained this provision: 10

“The salaries of officers and teachers shall be paid monthly, and those of janitors semi-monthly as nearly as possible, without the special order of the board, the same having been approved by the proper committee.”

Mr. Merrey.—I might say for your benefit that at the time these petitions were filed, and for a long time prior thereto, the board was engaged in revising its by-laws and manual, and that changes had been made. This book which you have here was printed in 1901, and there have been a great many changes made since that time; so that this book cannot be considered the rules and regulations of the board. 20

Mr. Dunn.—What I asked you is whether at the time this petition was filed, and this dispute arose, the provisions which I have just read from page 9 of your manual were then in force. I will read again: 30

“The salaries of officers and teachers shall be paid monthly, and those of janitors semi-monthly as nearly as possible, without the special order of

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the board, the same having been approved by the proper Committee."

Mr. Merrey.—I forgot, Mr. Dunn, to bring a manual as corrected to date. I thought we had it here.

Mr. Dunn.—You do not deny this rule and regulation in your answer.

10 *Mr. Merrey.*—We will admit that that was in force at that time except so far as it was amended by the resolution of June 24, 1910.

Mr. Dunn.—Do you admit that the following provision was in force:

20 "The salaries of officers and teachers shall be paid monthly, and those of janitors, semi-monthly, as nearly as possible, without the special order of the board, the same having been approved by the proper committee. All certificates of teachers' time shall be made out after school hours on the last school day of each month for that month, and payment shall be made as soon thereafter as practicable, and not later than the fifth day of the following month, provided the necessary funds therefor are to the credit of the board."

Do you admit that by-law was in force at the time these petitions were filed?

30 *Mr. Merrey.*—It was, subject to the resolution of June 24, 1910, which appears in the answer.

Mr. Dunn.—Do you also admit that there was a provision in the manual, under rules and regulations, that the salaries shall be paid in ten equal payments, deductions of one two-hundredth of the yearly salary to be made for each day's absence not excused under the school rules?

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Mr. Merrey.—That was so, subject to the change made afterwards by the board which is practically negating the whole thing.

Mr. Dunn.—Do you also admit that there was also a provision that any teacher might withdraw from the service of the board by giving one month's notice of such intention, and the board might dismiss a teacher at any time after one month's notice? Was that in force in October, 1910? 10

Mr. Merrey.—Do you admit it is in force?

Mr. Dunn.—Will you admit it is in the manual?

Mr. Merrey.—It is in that manual. It is apparent.

Mr. Dunn.—Do you admit also that Mr. Jennison's salary during all the time he was there was thirteen hundred dollars per year until the first of September, 1910, when he received an automatic increase of one hundred dollars under a schedule for male teachers of the High School which had been previously adopted? 20

Mr. Merrey.—I will admit this: That Mr. Jennison was employed by the board from the first day of February, 1907, at the yearly rate of \$1,300 per year; and that on the first of September, 1910, he received an increase—not an automatic increase—but an increase to \$1,400 per year. 30

Mr. Dunn.—Which went to him under a schedule adopted the preceding year by the board.

Mr. Merrey.—Which went to him under a schedule adopted June 24, 1910—that is,

ADMISSION OF FACTS.

not under a schedule, but under a resolution adopted on June 24, 1910.

Mr. Dunn.—Will you produce a copy of the resolution and schedule?

Mr. Merrey.—What are you asking for now?

10 *Mr. Dunn.*—That his salary was \$1,300 a year, and that his salary was paid to him in keeping with the rules and regulations, in ten installments during that time, and that under proceedings taken by the board concerning a plan or schedule for male high school teachers, prior to the first of September, 1910, his salary was, on the first of September, 1910, in keeping with those proceedings and by reason of his complying with the conditions imposed by them, increased to the sum of \$1,400.

20 *Mr. Merrey.*—I say his salary was increased on the first of September, 1910, to \$1400.

Mr. Dunn.—Do you admit this letter that is annexed to the petition marked “Exhibit D?”

Mr. Merrey.—Yes. Just read the letter.

Mr. Dunn.—The letter reads as follows:

“Paterson, N. J., Aug. 8, 1910

30 “Mr. Lynn E. Jennison,
Wortendyke, N. J.

“Dear Mr. Jennison:

“At the regular meeting of the Board of Education Friday evening, Aug. 5th, your general average in the recent examination was reported as 85 per cent.

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“According to the plan adopted at the April meeting of this board, you will be granted an increase in salary to date from September 1st.

“Very truly yours,
“John R. Wilson,
“*Superintendent.*”

I ask counsel to produce the schedule.

Mr. Merry.—What schedule do you wish? 10

Mr. Dunn.—The schedule referred to in that letter.

Mr. Merrey.—I want to say that during the incumbency of Mr. Chancellor, as Superintendent of Schools, a schedule was adopted, but no formal action was taken by the Board of Education or any action adopting the schedules as far as I can find in the minutes. We know that a schedule was adopted, but the minutes are not in such shape or the resolutions are not put in such form as to make it of any assistance. I do not understand what you mean by a schedule. If you want the action of April 24th referred to in that letter, I have it. 20

Mr. Dunn.—I would like to have you read from your minutes what you have showing the adoption of the plan.

Mr. Merrey.—If you will ask for the minutes, we will have them for you. 30

Mr. Dunn.—Give us the minutes of April 10, on that subject.

Mr. Merrey.—We find here in the March meeting, a resolution as follows:

“On motion of Commissioner Kireker, seconded by Commissioner Bridges, the Committee recommended the adoption by the board of the High School salary schedule for male teachers of a

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minimum of \$1,000 per year and maximum of \$1,800 per year, subject to such provisions and requirement as the board may hereafter adopt."

That resolution was adopted by the Committee on Education at their meeting held March 17th, 1910, and their action was reported to the board at their March meeting.

10 At the meeting held on March 29th, 1910, the following action was taken:

"On motion of Commissioner Kireker the Committee recommended the adoption by the board of the High School salary schedule for male teachers or a minimum of \$1,000 per year and maximum of \$1,800 per year, subject to such provisions and requirements as the board may hereafter adopt. The recommendation of the Committee was adopted by a vote of six yeas and nays none."

20 At a regular meeting of the Board of Education held on April 29th, 1910, the board adopted the recommendation of the committee on Education as follows:

"The superintendent presented the following plan for examination of male teachers in the High School as suggested in the action of the committee at a meeting held on March 17th, when the salary schedule for male teachers in the High School was adopted.

- 30
1. Careful examination of the teacher's record on file in this office.
 2. Written and oral examination in English, in the subject the candidate is teaching and in methods of teaching that subject.
 3. The personal inspection of the work of each teacher in the class room by the Board of Examiners.
 4. A written report on each teacher's work by the principal of the High School.

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5. That a general average of 80 per cent. be required.

Mr. Dunn.—Will you admit from the records and from the understanding between the board and the male teachers of the High School that this increase, when it started would continue to go up to the maximum?

Mr. Merrey.—The board can act only in a formal manner, and no understanding of that kind is binding. I do admit that the board agreed to pay Mr. Jennison \$1,400 per year from the first of September, 1910. 10

Mr. Dunn.—And the same is true with respect to all male High School teachers who pass the examination?

Mr. Merrey.—The board took the same action in regard to all teachers who passed the examination and whose records were satisfactory, and they did increase them all, and the increases were at the rate of about \$100 a year. I have a list here, and they all seem to be about \$100 more. If Mr. Jennison does not get the recommendation next year he stays where he is. He does not go up without favorable report. The increase is not automatic at all, because a teacher is sometimes held back by the superintendent who is not satisfied with the work of the preceding year. 20 30

Mr. Dunn.—There is no action required by the board.

Mr. Merrey.—Yes; the board acts upon the recommendation; and the board is not obliged to make the increase unless it sees fit, it is entirely in the control of the board.

Mr. Dunn.—There is no dispute as to the question, Mr. Superintendent, and Mr. As-

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sistant Superintendent, but what there was a High School male teachers' salary schedule; and that Mr. Jennison came within the scope and requirements of that and became entitled as his salary from the first of September to \$100 more than he was getting prior thereto.

10 *Mr. Merrey.*—I do not admit what you have said. We simply admit that the board did in September, 1910, raise Mr. Jennison's salary to \$1,400 per year, and that they did adopt a maximum and minimum salary for High School male teachers, which was a higher maximum than they had theretofore adopted.

20 *Mr. Dunn.*—Do you admit that his raise was made on August 8th, in keeping with the plan adopted at the April meeting of the board?

Mr. Merrey.—Yes; that was the plan which was on the record that certain examinations had to be passed and certain other things complied with.

LYNN E. JENNISON, the petitioner, sworn as a witness in his own behalf, testifies as follows:

30

Direct Examination by Mr. Dunn.

Q. You are the petitioner in this case, are you?

A. I am.

Q. And you were teaching in the High School of the City of Paterson from February 1st, 1907; down to the present time, were you? A. I was.

Q. Under the certificates that are mentioned in the petition? A. Yes, sir.

Q. Now, in the month of August, 1910, did you

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receive a letter, a copy of which I show you, which is marked "Exhibit D" in the petition, dated August 8, 1910, from Mr. Wilson? A. I did.

Q. Then, did you resume your work in September? A. I did.

Q. Did you continue to teach during the month of September? A. I continued to teach as before.

Q. What was the custom, or what was the practice there at that time, in reference to the payment of the teachers? A. The teachers are presented a pay roll to be signed by them, the amount of their salary for that month being opposite their names.

10

Q. Who presents that pay roll to them? A. In the case of the High School it is presented by Miss Dempsey, the clerk to the principal.

Q. (Showing witness) I show you a blank. Is that a blank form such as is presented to the teachers of the High School? A. Yes, this is a copy.

20

(Paper is marked "Exhibit F.")

Q. Was such a pay roll presented to you, Mr. Jennison, in October for the pay due for the month of September, 1910? A. It was; yes, sir.

Mr. Dunn.—Mr. Merrey, have you that pay roll?

30

Mr. Merrey.—I have it here.

Mr. Dunn.—Will you produce it and let me show it to Mr. Jennison?

Mr. Merrey.—Yes.

Q. (Showing witness) I show you this pay roll. Where is your name on it? A. (Indicating) Here. This is the pay roll for September.

Q. That paper was presented to you, was it? A. Yes, sir.

L. E. JENNISON.—DIRECT.

Q. When that was presented to you what was the amount of your salary stated to be on it? A. The amount of \$140 was placed opposite my name.

Q. Being one-tenth of \$1,400? A. Yes.

Q. Did you receive the \$140? A. No, sir.

10 Q. After you had signed the pay roll, which I produce, and which I ask to have marked "Exhibit G"—after you signed your name, what was done with the pay roll? A. It was passed on for the rest of the teachers—it generally takes about two days—and signed by them as usual, and during the course of the next day I heard that by some action or other the amount opposite my name had been changed from \$140 to \$116.67.

Q. Did you hear why it was changed? A. Yes.

20 Q. That would be what? A. It would be one-twelfth of my salary for September instead of one-tenth, and upon investigating, I went to Miss Dempsey and asked her if I could see the pay roll, and she showed me the pay roll, with the line drawn through the \$140 and written above it \$116.67. Whereupon, I scratched my name off; I drew a line through my name.

30 Q. Show it to the Commissioner; show what you did in reference to that matter. A. This is the pay roll with the amount opposite the name here. The teacher is asked to sign in this column opposite the amount. There is my name, and there was the amount \$140 at the time it was presented to me first. Of course I signed. Then some time after—that day or the next day—not later than the next day—that was changed to \$116.67, making it appear as though I had signed for less than I had signed in the first place. When I heard of that I said; "I do not understand that." So I took a pen and drew a line through my name.

L. E. JENNISON.—DIRECT.

Q. What did you do after that? A. Then before it was finally presented to the board or taken back, Miss Dempsey came again and asked me if I would sign for the new amount. I said: "Yes, but I will sign 'on account.'" So I wrote my name again opposite \$116.67, and wrote the words "on account" right above it. I see by this line it appears as though the line went through the words "on account" but that line went through my name, and on writing the words "on account" my intention was to have that go with the new signature and not the crossed off signature. It looks here as though that went through.

10

Q. You simply meant to sign for \$116.67 on account. Did you receive the \$116.67 on account?

A. No.

Q. What was the response that came back to you from the board after you had signed that?

20

Mr. Merrey.—I object to any question of that kind. I think you should ask him what response he got, and from whom. The board acts as a body.

Q. What response did you get after you had signed in that way? A. Well, I had no response.

Q. Did you get any information from the board; did you get your check? A. No, sir.

30

Q. Did you hear why you didn't get your check? A. No; nothing. I know generally about that part of it.

Q. They did not take you any check? Did you go to see about it? A. I will tell you. We were told this—

Q. (Interrupting) You were told what?

Mr. Merrey.—He should not testify to hearsay.

L. E. JENNISON.—DIRECT.

A. It was stated in the newspapers that teachers who had signed "on account" should not call for their checks, or could not receive their checks; that the City Treasurer would not issue any checks to any teacher who had signed reservedly, or who had signed "on account." There was no need of my going to apply.

10 Q. Did you learn that it would not be paid? A. Yes; I knew it would not be.

Q. Did they ever tender you a check? A. No, sir; they never sent it over like they did the others.

By Mr. Merrey.

20 Q. Did they ever send you a check? A. They sent them when I signed them all right. They sent them all right, and they are distributed by Miss Dempsey, but she does not give those out that there are any questions about. We have to go to the board room and apply for them, and I have never gone to the Board room, to apply for mine.

- Q. Have you ever received your check? A. No. It was common talk, but I do not say so definitely.

30 *Mr. Dunn.*—Do you deny this, and the Board of Education would refuse to give a check to Mr. Jennison unless he signed the pay roll for \$116.67?

Mr. Merrey.—I want to say right here now, Mr. Dunn, personally I think that if Mr. Jennison applied to the board and presented his case, to the board, he would get his money. I cannot guarantee that he would, but I have talked to individual members of the board, and from my talk with them, I think that if he presented his case to the board he would get his money, be-

L. E. JENNISON.—DIRECT.

cause some of them are in favor of it. This is a particular case, different from any other, and the matter has not been presented to the board, and Mr. Jennison won't present it.

By Mr. Dunn.

Q. Did you receive your October salary? A. 10
No.

Q. Was the pay roll presented to you for October? A. Yes.

Q. For how much? A. \$116.67.

Q. You declined to sign it? Yes, I declined to sign it.

Q. Was it presented to you for November? A. Yes; for November.

Q. How much did they tender you then? A. 20
The same amount, \$116.67.

Q. Did you decline to sign it? A. I did.

Q. And for December was it presented to you for the same amount? A. Yes.

Q. And you declined to sign it? A. Yes. It came every month and I shook my head and passed it to the next one.

Q. And brought by the same person as representative of the board each time? A. Yes.

Q. Who was that? A. Miss Dempsey, clerk to the principal. 30

Q. Those teachers who did sign received their checks? A. I believe they did.

Q. You saw them some times—did you see any of them? A. Yes, sir; I did.

Q. On or about the twenty-seventh day of June did you receive a letter from Mr. Ridgway which contained a resolution, of which that is a copy (showing witness)—dated June 27, 1910? A. Yes.

Q. Exhibit E? A. Yes; I received one of those.

L. E. JENNISON.—DIRECT.

Mr. Dunn.—Do you admit that that is a copy of the notice?

Mr. Merrey.—Yes; that is a copy.

Q. Did you object to the receipt of your money in twelve payments, beginning the first of September?

10 *Mr. Merrey.*—The witness has already told you he did not do anything.

Q. Did you have any talk to the City Superintendent in reference to getting your salary? A. Yes, sir.

Q. What did the City Superintendent say to you? A. The City Superintendent told me—

20 *Mr. Merrey.*—I object. The superintendent has no authority to bind the Board of Education.

Mr. Dunn.—That is a matter of law.

Mr. Merrey.—It depends on what authority the board has put in him.

A. I registered my protest with the City Superintendent.

30 Q. What conversation did you have with him in reference to it? A. I told him that I did not understand the change in the amount and I did not stand for it because—

Mr. Merrey.—Fix the date.

Q. When was this? A. It was less than a week after—the checks came around about October 5th, and I went over within a week—say, the twelfth of October or thereabouts.

Q. State what took place. A. I went to the superintendent's office, I had sent there in advance, in response to the Mayor, a letter to him. He had invited the teachers who did not undersand it, to write to him, and I wrote to him, giving the figures, showing my claim of loss by this change, and on the same day I received a notice from the Superintendent to come over to his office. There I found the letter that I had written to the Mayor had been referred to the Superintendent and he presented me with some figures to show me that I would not lose anything, and I was in his office about half an hour perhaps, and I said: "Well, I will take these figures home with me over night and study them. I do not understand them exactly." He showed on the paper that I would have to wait until September 1st, 1911, before apparently I would receive what was due me. I took the paper home over night and I came back to school still convinced that I would be the loser by the proposed change. That afternoon I again called at his office and he was out. I was in company with two or three other teachers. I went into his office and wrote a note for him and stated that I was still of the same opinion that I was the day before, that I would be the loser, and I stated to him that in my opinion this action of the board was in direct opposition to the Kireker resolution of June 24th. I wrote that letter—

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Q. (Interrupting) Did you have a talk with the superintendent? A. Yes.

Q. What was that talk? A. The second day I did not. The first day I did.

Q. What did you say to him? A. I told him I did not—that my amount was not right.

L. E. JENNISON.—DIRECT.

By Mr. Merrey:

Q. Is this the same conversation that you gave us before? A. Yes; this one I had the first day.

Q. That you have told us about? A. Yes.

By Mr. Dunn:

10 Q. You objected? A. Yes.

Mr. Merrey.—Do not tell the witness what he is to say. That is called leading.

Q. What did you say, if anything, in reference to the effect that it would have upon your salary?

A. Well, I told him I believed it was a reduction of my salary.

Q. And that is one of the grounds upon which you make this protest? A. Yes.

20 Q. Have you figured out to your own satisfaction that it is a reduction of your salary? A. I have; yes.

Q. How much do you claim it is a reduction, and in what way? A. I claim it reduces my salary the last half of my school year; that each year runs from February 1st to February 1st.

30 Q. If they treat it as the resolution treats it? A. Yes; by the calendar year. According to that resolution the twelve payment plan should not affect me until the next anniversary after the date of my employment which would be in February, but it did affect me in September, which was five month before that date.

Q. If it was by the school year it would be a considerable reduction? A. Yes.

Q. That is, if you were hired by the school year? A. Yes.

Q. Did you afterwards receive notice in October of another resolution that had been passed

L. E. JENNISON.—CROSS.

or did you receive no notice of that? A. Why, yes; I believe there was some subsequent notice sent around—this later notice of the board—some action taken after this matter came up.

Q. November ten, 1910? A. Yes; I recognize that.

Mr. Dunn.—I offer this in evidence.
(Paper is marked "Exhibit 8".)

10

Cross Examination by Mr. Merrey.

Q. Did you ever present any objection to the board itself? A. No, sir; I have never presented a direct communication to the board.

Q. You say that when you saw the Superintendent you left him to examine some figures? A. No; I did not say that.

Q. You took some figures away with you? A. 20
Yes; I said that.

Q. Then, your idea was to examine it and find out? A. To examine his figures.

Q. To find out whether you were right or wrong? A. Yes; if I could find out what method he figured on.

Q. Then you never presented to the secretary or to any member of the Board of Education any statement of your position in this matter? A. I did not consider that necessary, because I considered the superintendent the representative of the board. 30

Q. You did not know that he had no authority in money matters? A. I did not know anything whatever about his authority in money matters.

Q. You know he never paid you any salary? A. He told me what my contract was, and he told me what the salary would be.

Q. He never paid you any money? A. Never.

L. E. JENNISON.—CROSS.

Q. He never had anything to do with financial questions at all? A. No.

Q. You never had any written contract with him, did you? A. No, sir.

Mr. Dunn.—I guess we can admit that there was no written contract with any of these teachers.

10

Q. Under the rules of the board, you consider your case much different from the majority of the teachers?

Mr. Dunn.—I object to that.

Q. You considered, when you spoke to Mr. Wilson, that you had a different kind of a case than the others?

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Mr. Dunn.—That is a conclusion. What difference does it make what he considered?

By Mr. Dunn.

Q. I show you this, Mr. Jennison. Do you remember signing a protest to the Board of Education and to the Board of Estimate against changing these payments from ten payments to twelve payments? A. Yes; the original protest I signed.

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Q. Is that a copy? A. Yes.

(Paper is marked "Exhibit 1.")

Mr. Dunn.—Will you produce the requisition by the Board of Education upon the Board of Estimate for the appropriation for the year 1910?

Mr. Merrey.—I will read from the min-

MINUTES OF THE BOARD.

utes the requisition for the year 1910 and 1911.

At a special meeting May 13, 1910.

By Commissioner Kireker.

RESOLVED: That the sum of five hundred and seventeen thousand, three hundred and twenty-seven dollars and eighty cents, (\$517,327.80) is the amount of money estimated by this board to be necessary for the current expense of, and for the repairing and refurnishing of the public schools in the school district known as the school district of the City of Paterson, New Jersey, for the fiscal year ending June 30, 1911. 10

An itemized statement of the monies estimated to be necessary for such purpose is as follows:

Teachers' Salaries	\$411,927.80	
Janitors' Salaries	31,300.00	20
Superintendent's Salary	3,600.00	
Secy. & Assts. Salaries	4,800.00	
Erection, Repairs & Furniture	10,000.00	
Fuel, Light & Water	15,000.00	
Books & Stationery	25,000.00	
Printing	1,500.00	
Medical Inspectors	1,500.00	
Contingent	1,200.00	
Insurance	3,500.00	
Evening Schools	6,000.00	30
High School Rent	8,000.00	
Manual Training	7,500.00	
	<hr/>	
	\$530,827.80	
Less tuition fees	\$7,500.00	
Less 1910 surplus	6,000.00	
	<hr/>	
	13,500.00	
	<hr/>	
	\$517,327.80	

The amount of money that has been apportioned

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10 to the school district known as the school district of the City of Paterson, by the County Superintendent of Schools, is the sum of three hundred and forty-nine thousand, six hundred and twenty-four dollars, and ninety-three cents (\$349,624.93) which when deducted from the above mentioned estimate leaves the sum of one hundred and sixty-seven thousand, seven hundred and two dollars and eighty-seven cents (\$167,702.87) as the money to be raised by taxation in the school district of the City of Paterson, New Jersey, for the above mentioned purpose.

On motion of Commissioner Kireker, the above resolution was adopted by a vote of yeas eight, nays none.

20 *Mr. Dunn.*—We ask for a copy of the requisition to the Board of School Estimate asking for so much money, and a copy of the resolution by the Board of School Estimate, appropriating a less amount of money.

30 *Mr. Merrey.*—You must remember this: The Board of School Estimate does not figure how much is to be used in school salaries. They simply determine the amount necessary for the running of the schools, and the difference between that amount and the amount appropriated by the state. They do not make any determination how it is to be used by the Board of Education. The Board of School Estimate has no authority to do that. This item is merely the estimate of the Board of Education and shows why they need a certain amount of money. We will furnish for the record the copies you ask for.

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The extracts asked for are as follows:

WHEREAS: The Board of Education of the City of Paterson, in the County of Passaic, having prepared and delivered to the respective members of this board, an itemized statement of the amount of money estimated to be necessary for the current expenses of, and for the repairing and refurnishing of the public schools in the school district known as the school district of the City of Paterson, N. J., for the fiscal year ending June 30, 1911, and also the amount which has been apportioned to the said district by the County Superintendent of Schools.

10

And Whereas, The said statement so presented has been considered at a meeting held this day.

Therefore be it resolved, That the Board of School Estimate of the school district of the City of Paterson, in the County of Passaic, do fix and determine that the sum of one hundred and eleven thousand, four hundred and sixteen dollars, and seventy-three cents (\$111,416.73) is the amount of money necessary to be appropriated for the use of the public schools in the school district of the City of Paterson, in the County of Passaic, for the ensuing fiscal year, exclusive of the amount which has been apportioned by the County Superintendent of Schools and exclusive of the Manual Training Account appropriation of seven thousand, five hundred dollars, (\$7,500.00).

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And be it further resolved, That the said Board of School Estimate make two certificates of the said amount which shall be signed by at least three members of the said Board, one of which is to be delivered to The Board of Education of the City of Paterson, in the County of Passaic, and the other to The Board of Finance of the City of Paterson, and that upon receipt of the same, the

MINUTES OF THE BOARD.

10 said Board of Finance is hereby requested to appropriate in the same manner as other appropriations are made by it, the sum of one hundred and eleven thousand, four hundred and sixteen dollars and seventy-three cents (\$111,416.73) to the end, that such proceedings may be taken by the said Board of Finance as may be necessary to appropriate and raise the amount necessary for the purposes above mentioned.

The above resolution was adopted by a vote of yeas five, nays none.

Minutes Board of School Estimate May 26, 1910.
Certificate.

To the Board of Education and The Board of Finance of the City of Paterson, N. J.

20 Gentlemen:—The Board of School Estimate of the City of Paterson, in the County of Passaic, does hereby certify that they have given consideration to the statement delivered to the respective members of said Board of School Estimate by the Board of Education of the City of Paterson, as to the amount of money estimated to be necessary by said Board of Education for the use of the public schools in the school district of the City of Paterson, in the County of Passaic, for the ensuing fiscal year, exclusive of the amount which has
30 been apportioned to it, by the County Superintendent of Schools.

And does further certify that they have fixed and determined the sum of one hundred and eleven thousand, four hundred and sixteen dollars and seventy-three cents, (\$111,416.73) as the amount of money necessary to be raised for the above mentioned purposes, to the end, that you may take such proceedings as may be necessary under the law, to raise the said money.

MINUTES OF THE BOARD.

An itemized statement of the monies estimated to be necessary for the ensuing year is as follows:

Teachers' Salaries	\$363,141.66	
Janitors' Salaries	31,300.00	
Superintendent's Salary	3,600.00	
Secy. & Assts. Salaries	4,800.00	
Erection, Repairs & Furniture	10,000.00	
Fuel, Light and Water	15,000.00	10
Books & Stationery	25,000.00	
Printing	1,500.00	
Medical Inspectors	1,500.00	
Contingent	1,200.00	
Insurance	3,500.00	
Evening Schools	6,000.00	
High School Rents	8,000.00	
	<hr/>	
	\$474,541.66	
Manual Training Account ..	7,500.00	20
	<hr/>	
	\$482,041.66	

Mr. Dunn.—We offer the manual in case of Mr. Jennison.

Petitioner rests.

Mr. Merrey.—At this time we object to the jurisdiction of the superintendent because it has not been shown that there is any controversy between Mr. Jennison and the Board of Education. In order that there may be a controversy, the parties must at least understand the position taken by the other before they can discuss anything. Mr. Jennison has not, according to his own statement, ever presented any objection to the Board of Education, and never told them why he refused to take his check—not only

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10 that, the controversy is not such a controversy as can be examined by the state superintendent because it is a controversy concerning the construction of the rules of the board and not of the school law nor of the rules of the State Board of Education, but of the rules of the City Board of Education over which the City Board of Education has control. As I understand the case made out by the petitioner, under the resolution adopted by the Board of Education Mr. Jennison should still receive his payments on the ten payment plan. If that is so, under our rules, then the case is improperly brought here. If the officers or representatives of the Board of Education have made a mistake in the amount of Mr. Jennison's salary, the proper thing for him to do was to go to the Board of Education and explain the matter to them, and ask them to make a correction. I say right here that that fact never appeared to the Board of Education until this petition was filed, when the question was raised the first time, and I do not know what the action of the board will be. I do not agree with Mr. Jennison's position, but I know individual members of the board are agreed that he is right; so that there is no controversy which you can consider, except the main question which seems to be ignored—the change from the ten payment plan to the twelve payment plan, which is not in the case.

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Mr. Dunn.—Yes; it is. The Board of Education sends its representatives with the pay roll, and Mr. Jennison signs it for \$140,

MINUTES OF THE BOARD.

and then it goes along and some representative of that Board scratches out \$140. It was in the custody of somebody representing the Board of Education. It was signed for \$140. It goes somewhere and comes back to Mr. Jennison with that amount changed to \$116.67, which he objects to, and he immediately scratches his name off, and then he is induced to sign "on account" and it goes back, but he did not get his check. He has not received his check for September, October, November, and December, and it seems to me that it is idle for the representatives of the city to come here and say that there was no dispute between them and Mr. Jennison to whom they owe \$400 salary. They do not pretend to claim that they made any change in his salary until after his petition is sent in, and they have not taken any action on it. I submit that there is a dispute, and that there is also in this case the dispute that Mr. Jennison objects to the twelve payment plan, that it is a decrease in his salary, and that he comes under the law of 1909.

Superintendent Baxter—Each local Board of Education exercises its authority under the school statute of the state, and we deem that this is a question arising under the school law.

C. F. KIREKER.—DIRECT.

Respondent's Case.

C. FRANK KIREKER, sworn as a witness on the part of the respondent, testifies as follows:

Direct Examination by Mr. Merrey:

10 Q. You are a member of the Board of Education and were a member of the board in May, 1910, were you not? A. I was.

Q. Did the City Superintendent of Public Instruction have any authority to receive protest or to adjust any question of finance between the Board and the teachers?

20 *Mr. Dunn.*—Objected to upon the ground that the question calls for a conclusion of law. They cannot prove by oral testimony what the authority of the superintendent is where they have statutes and rules and regulations.

Mr. Merrey.—Then you admit that you did not prove that Dr. Reinhardt had authority, and that it is necessary to prove it.

Mr. Dunn.—We proved what was done.

The Superintendent.—We will admit the question.

30

A. The superintendent had no such authority.

Q. Did the Board of Education ever receive from Mr. Jennison a protest specifying on what grounds he objected to receiving his salary from the Board of Education?

Mr. Dunn.—How can Mr. Kireker testify to that? He says he was a member and president of the board. There may have

C. F. KIREKER.—CROSS.

been a hundred communications, so far as he was concerned, which he might not know of.

A. None was ever brought to my attention.

Q. I might ask if other teachers have made complaints to you about these matters? A. They have.

Q. Have they been rectified by the board? A. 10
They have in many cases.

Q. Is the board now considering other cases of that kind? A. I think they are; yes.

Cross Examination by Mr. Dunn:

Q. Was Miss Barrowclough's claim rectified?
A. I did not say that all were. I did not mean to say that because a complaint was made it was necessarily well founded, but those complaints which the board thought well founded they have 20
rectified. Some may have felt that the complaints were not sound.

Q. Did you know in September or the first of October, 1910, the method that was being pursued about getting teachers to sign for their salaries, under the approval of the board? A. I cannot say that I did.

Q. Did you know that teachers were paid by check? A. I knew that.

Q. Did you know that teachers were required to give a receipt for the money before they were paid? A. I did not. 30

Q. Did you know that teachers were required to receipt the pay roll before they were paid? A. I did not.

Q. You never saw a pay roll? A. Oh, yes.

Q. When did you suppose that the teachers signed the pay roll? A. They signed a pay roll,

which, as I understand it, authenticates the amount as being correctly set forth.

Q. You have seen these pay rolls? A. Yes; lots of times.

10 Q. Did you know the teachers were always required to sign them before the Board would give them the check? A. I understood they signed them and left them with the principal, and they were delivered when the checks were tendered.

Q. That was the practice? A. That is what I understood; yes.

Q. To save the teachers from coming to the City Hall, as they used to? A. Yes.

Q. Did you know that Mr. Jennison had objected to receive the \$116? A. I did not.

Q. Did you know that he had signed for \$140? A. I did not.

20 Q. When did you first see this pay roll with his name on? A. I think the first time I saw that was three or four days ago—within a week.

Q. You knew it was in existence? A. I supposed it was; I had no knowledge of it,—none whatever.

Q. You knew he had not received his check last October? A. No; I did not know it until I was informed that the petition had been filed here.

30 Q. That was in October? A. When I was informed that a petition had been filed? I do not know when he filed the petition—some time afterwards I was informed of it.

Q. Have you ever taken any action in the board to tender him his check? A. No; the matter was simply turned over to the City Counsel in view of the fact that an action had been taken.

Q. You knew that about the fourth or fifth of October there was a number of teachers who had declined to take their checks? A. I knew at that

C. F. KIREKER.—CROSS.

time that there were many objections.

Q. And that there were objections to the twelve payment plan instead of the ten payment plan?

A. Yes; it is hearsay for me; I do not know personally and I do not know any of it, except that many of the teachers called upon me and stated their objection to the method of payment and the amounts they were receiving, and in a great many instances the matter was made to suit their desires and their objections were removed.

10

Q. This subsequent resolution—how did you come to pass that—the one in October, by which you undertook to interpret the meaning of the first?

Mr. Merrey.—I object. The resolution speaks for itself.

A. When the primary resolution of June 24th was adopted, its phraseology was not such as might be readily understood by anyone who did not care to inspect it very closely. It provided that the change from the ten to the twelve payment plan should become effective upon the anniversary of the employment of each teacher meaning the then present employment—not when they originally came into the service of the city, which might have been twenty years ago—and they have had a great many employments since—every time a new salary was—

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Q. (Interrupting) Was there anything ambiguous in the language used in the first resolution? A. Not ambiguous. There was no ambiguity at all.

By Mr. Merrey:

Q. Go ahead. A. The purpose of the primary

10 resolution was that the change should become effective one year or two years or three years from the date of the last increase of salary, meaning a new employment, and while it said anniversary of employment, it meant the then present employment—the anniversary of the employment under which they were working at that time for the city, the intention being to carry them out to the end of their year on the ten payment plan, so that within a period of a year they would receive the entire amount which they contemplated receiving when they began that year. Many of the teachers tried to read that resolution this way—that it meant the time when they first started their service with the city; that that was the anniversary intended, although the resolution was intended to mean the anniversary of their present employment, and to make that fact clear to all the teachers of the city, we, on October 28th, 1910, adopted this resolution which clarifies the whole situation as nearly as we could.

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By Asst. Supt. Betts:

Q. In the case of the increase of the salary of a teacher, at what date did that increase go into effect—at the beginning of a school year or at the end of the year of the first employment? A. Do you mean that was our practice?

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Q. Yes? A. It has been according to the certificate they have received and according to the Chancellor schedule. Ordinarily it took place at the end of every year. For instance, a teacher has been in the employ of the board for three years. Under this schedule, their pay might increase \$50 or \$60 a year, and then the Chancellor schedule came along in May and went into effect in June,

C. F. KIREKER.—CROSS.

1906, which was irrespective of the time the teacher came into the board originally; so that that schedule made a difference between the anniversary of the time they originally came in and the anniversary of the employment.

Q. Then do I understand that the increase from 1906 on took effect the latter part of June or the first of July in each year? A. They are all different, all the way through the year.

10

By Mr. Merrey:

Q. In the Jennison case when would that take place? A. In the Jennison case the resolution provided specifically that the increase become effective on the first of September, 1910, although he had been with the board since February, 1907.

By Asst. Supt. Betts:

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Q. I am trying to get at the general practice. For instance, you would engage the teachers in September, or November, or January or March, and they would go along for a number of years? A. Yes.

Q. And there is an increase in the salary under this schedule of 1906. When would that increase take effect? A. In most cases upon that anniversary of when they came into the service of the city, but in some cases they have raised the salaries of teachers by transferring them from one grade to another, and one time they raised the salary of a number of teachers and said that it became effective, provided the city has money to pay them, and they had no money to pay the increase, and they drifted to another period.

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Q. What I want to show you is how it occurs that the anniversary of the increase in salary is

not always co-incident with the anniversary of their coming into the board: but the result has been brought about by all sorts of resolutions, and some of the teachers have been there for a great many years, and there has been no harmony. Now, we want to get on the record the date on which the change of the payment of salary went into effect? A. September 1st, 1910.

10

Q. The change in his salary went into effect and the change of method of payment went into effect—

Mr. Merrey.—The same day.

Asst. Supt. Betts.—Both the \$100 increase and he went to the twelve payment plan on the same day?

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Mr. Merrey.—Mr. Jennison's case is this: I say that the Board of Education of the City of Paterson itself has never had an opportunity to pass upon Mr. Jennison's case, because they feel that this case is somewhat different from the majority of cases. Personally I do not agree with the board, but the majority of the members of the board feel that this case is somewhat different from the other cases, and the result will be as Mr. Jennison claims; but they never had the opportunity to pass upon it. Mr. Kireker won't let me admit when it went into effect. Mr. Kireker will say that they had no right to do that. Personally I think the employees of the board were right. The Board of Education passed on that in the end, and it may be that their vote will be that the employees were wrong. The board never knew, until the petition was filed, what Mr. Jennison's claim was. They thought it was a general

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J. J. DUNPHY.—DIRECT.

claim made by the other teachers, objection to the twelve payment plan.

Mr. Dunn.—Well, it is.

JAMES J. DUNPHY, sworn as a witness on the part of the respondent, testifies as follows:

Direct Examination by Mr. Merrey:

10

Q. You are the Assistant Secretary of the Board of Education of the City of Paterson? A. Yes.

Q. Have you got a copy of the minutes of the board for several years last past with you? A. Yes.

Q. You have attended all the meetings since September, 1910? A. Yes.

Q. Did Mr. Jennison ever present to the Board a protest against receiving \$116.07, for which amount check was made out for him? A. No, sir.

20

Q. Or any statement concerning the same? A. No, sir.

Q. Has the board ever passed on the question as to how much Mr. Jennison particularly is entitled to? A. No, sir.

Q. Did the original pay roll that came into your board from the principal of the High School show that Mr. Jennison was to receive \$140 or \$116? A. \$116.

Q. (Showing witness) Is this pay roll which is presented to your office by the principal of the High School? A. Yes.

30

Q. And from which the checks were made out? A. Yes.

Mr. Merrey.—I offer this in evidence.

Mr. Dunn.—We object to this unless Mr. Jennison has had it called to his attention. This has never been signed.

J. J. DUNPHY.—DIRECT.—CROSS.

Mr. Merrey.—I know it has not.

Q. Where is this pay roll made out? A. At the school.

Q. That is the one which was offered in evidence by Mr. Dunn which is marked "Exhibit G." When did you first get that? A. I got this pay roll first from the school.

10 Q. The one which was first offered? A. Yes.

Q. In which the amount was stated to be \$116? A. Yes, and this (indicating) comes in afterwards, and we check it up. This (indicating) came in signed for \$140, and it was sent back again.

Q. Do you receive this upon the delivery of the check to the principal? A. We receive that before the checks are delivered to the principal. It is sent in advance and is signed.

20 Q. Then this is kept as a voucher to show how much money has been paid out? A. Yes, and to whom paid.

Q. And kept as a voucher in the office? A. Yes.

Cross Examination by Mr. Dunn:

Q. When you found that had been signed for \$140, what did you do with the Jennison pay roll? A. That was sent back to the school.

30 Q. For what purpose? A. Sent back to the school, because it was not the same amount as the check.

Q. How much was the check? A. The check was \$116.67, the same as the original pay roll.

Q. That was the check made out by order of the board? A. Made out to correspond to the pay roll.

Q. Made out by the board? A. The general summary is approved by the committee. This was

J. J. DUNPHY.—CROSS.

the pay roll from which we get the figures to make the checks.

Q. That was approved by the committee? A. The pay rolls are all signed by the committee as a summary pay roll.

Q. The pay roll approved by the committee called for a check for \$116.67 and not \$140? A. Yes.

Q. So that when the pay roll came to you with Mr. Jennison's signature for \$140, it was wrong, and it was sent back? A. Yes.

Q. And then it was sent back signed for \$116? A. Yes.

Q. And he refused to take the check for \$116? A. As I understand it.

Q. You sent your pay roll back? A. Yes.

Q. And it has stayed that way since? A. Yes.

By Mr. Merrey:

Q. Did you say that the committee have approved that? A. No; no.

Q. They only approved the summary? A. Yes.

Q. So that the committee in approving the pay roll, do not know how much was the check for Mr. Jennison? A. No.

By Mr. Dunn:

Q. Did you report to anybody in connection with the board that Mr. Jennison had declined to take the check for \$116? A. I did not.

Q. Who did? A. I do not know that anybody did.

Q. Was it not talked over? A. I had no talk with Mr. Jennison.

Q. Was it not talked over with the board, or Mr. Kireker, or anybody? A. Not that I know of.

J. J. DUNPHY.—CROSS.

Q. You spoke of it to nobody? A. No, sir.

Q. Never? A. No, sir.

Q. Didn't you talk in general? A. We talked among ourselves.

Q. So that the board knew that there was objection as to the acceptance of the check? A. I don't know.

10 Q. Did the members of the board know that there was objection to the acceptance of the check?

A. I don't know.

Q. Did Mr. Kireker know? A. I don't know.

Q. Didn't you know that the board knew that there was objection to the acceptance of the check?

A. I don't know that.

Q. Don't you know that the teachers came to the office about the matter? A. Yes.

20 Q. Do you remember Mr. Kireker being in the office on an occasion of that kind? A. I remember Mr. Kireker being in the office one day when two or three gentlemen came in there.

Q. Was Mr. Jennison one of them? A. I don't know. He may have been.

Q. You know that Mr. Jennison came there and objected to receiving \$116.00? A. I do not know that Mr. Jennison in particular came there. He objected to it, of course, when he refused to sign it.

30 Q. Did you know that Mr. Jennison had filed a petition and appealed to the State Superintendent in October? A. Do you mean this paper that was served on our board?

Q. Yes? A. Yes.

Q. You knew that action had been taken before you got a copy of this paper? A. No; I did not know that any action was taken.

Q. When the petition was served was any action taken by the board? A. Yes, I believe so.

J. J. DUNPHY.—CROSS.

C. F. KIREKER.—DIRECT

Q. Do you know when that was first presented to your board? A. I don't know.

Q. Do you know that the board has done nothing as to paying Mr. Jennison since that time? A. The checks have been made out for him regularly every month.

Q. For \$116.67? A. Yes.

Q. And not for \$140? A. Not for \$140.

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FRANK KIREKER, a witness already sworn on the part of the respondent, recalled and further examined as follows:

Direct Examination by Mr. Merrey:

Q. Did the Board of Education ever pass on the pay roll, as to how much was to be paid to each teacher particularly in any month? A. Oh, no.

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Q. Do they pass upon the totals? A. No.

Q. How are the teachers paid by the pay roll? A. The employees are instructed to draw the warrants according to the schedules in force in each teacher's case, and they draw a total warrant, and take it to the President of the board for the total amount, and he signs it. That is all the board has to do with this. They do not know anything about the detail work of it.

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By Mr. Dunn:

Q. That is all delegated to others? A. Oh, yes.

By Mr. Merrey:

Q. Each principal signs the amount of the pay roll, and that is checked up by the secretary? A. Yes.

By Asst. Supt. Betts:

C. F. KIREKER.—DIRECT.—CROSS.

Q. Do I understand that the pay roll signed by the President is simply for a lump amount without being attached to the detail statement? A. Yes; that is correct.

Q. Just for the lump amount? A. Yes.

Q. But individual checks are made out for each teacher? A. Yes.

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Mr. Merrey.—They are signed by the Secretary of the Board and the of the school money, signs them, too.

(At this point a recess is taken until 1:45 in the afternoon.)

C. FRANK KIREKER, resumes the stand.

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Further Cross Examination by Mr. Dunn:

Q. Do you remember as a member of the Board of Estimate to which the requisition offered in evidence this morning was presented, you being a member of the Board of Education how much there was deducted from the item "Teachers' Salaries" in the estimate certified afterwards to the Board of Education? A. I do not.

Q. Do you remember that it was about \$48,000? A. I do not; I do not remember what it was.

30

Q. Do you remember this—that was the principal item that was cut—the teachers' salaries? A. The idea of the Board of School Estimate was that in changing from the ten payment to the twelve payment plan, the Board of Education would need considerably less money for the item of teachers' salaries than if we had continued on the old ten payment plan for the coming year; but as to how much I cannot say.

C. F. KIREKER.—CROSS.

Q. Do you remember that at the time the requisition was presented to the Board of School Estimate the resolution changing from the ten payment plan had not yet been adopted by the Board of Education? A. That is my recollection; yes.

Q. The requisition was presented to the Board of Estimate prior to the meeting of the fifteenth of May and the first of June? A. Yes.

Q. It had to be passed before the first of June? A. Yes.

Q. And the resolution was not adopted until the twenty-seventh of June? A. The twenty-fourth of June.

Q. Do you remember that there was \$48,000 deducted by the Board of School Estimate from the teachers' salaries item? A. I don't remember that. I know that there was a considerable deduction—that the amount was changed in some considerable degree; but as to what it was I cannot recollect.

Q. Do you remember as to whether this was the reason or not, then given by the Board of Estimate: "It is the opinion of a majority of the Board of School Estimate, and they take the position, that in the face of this enactment (speaking of the law of 1903) they have no legal right to appropriate money in one fiscal year for salaries payable for two months of the next succeeding year;" and that that was the fundamental reason upon which the members relied for justification; and that "the appropriation made for teachers' salaries at the last meeting of the Board of Estimate was adopted solely to conform to the requirements of the law as quoted above," that is, the law of 1903 which provides in Paragraph 238 that the school year shall begin on the first of July and end on the thirtieth of June? A. My answer is

that I cannot recollect that such was the understanding of the board.

Q. Now, I will ask you whether or not the requisition offered in evidence this morning prepared by the Board of Education of which you were President, was not made to cover the teachers' salaries accruing during the year 1910-1911?

10 A. My understanding of that when we prepared it was that it was intended to cover the payment of teachers from September, 1910, until June 30, 1911, upon the ten payment plan. That amount would have enabled us to do that during that period upon that plan, if we decided to do so.

Q. The itemized statement was prepared under Sections 74 and 75 of the School Law by the Board of Education, so as to get the appropriation for the current year 1910-1911, as I understand it? A. I don't know just what you mean

20 by that question.

Q. The resolution seems to have been introduced by you that the sum of \$517,327.80 is the amount of money estimated by this board to be necessary for current expenses for the repairing and refurbishing of public schools in the school district for the fiscal year 1911, and in the items which follow is the item "teachers' salaries", \$411,927.80. That was the amount estimated by the Board of

30 Education to be required to defray the current expenses of teachers' salaries for the school year 1910-1911? A. As I explained before, if the board continued—we were then contemplating a change in the method of payment of teachers, and we were uncertain as to what method would be finally adopted for the period beginning September, 1910; and so we drew that resolution and included that amount of \$411,927.80 to cover the amount which would be required if we continued upon the then

C. F. KIREKER.—CROSS.

present plan of ten payments in the year.

Q. That would cover the salaries for the work done by the teachers up to the thirtieth of June, 1911? A. We so figured it, that is, on the ten payment plan.

Q. Or on any plan? A. On the ten payment plan; not on any plan at all.

Q. (Showing witness) I show you these figures, \$363,141.60. Do you know that that was the amount that was certified back to the Board of Education as the amount appropriated? 10

Mr. Merrey.—I object to that. The law says what shall be done. They give you one lump sum. They cannot find out and say how much the board shall spend for teachers' salaries.

Mr. Dunn.—Cannot he tell us what item they deducted from in the requisition? 20

Mr. Merrey.—The board's action speaks for itself.

Q. Is there any record in the minutes of your board which shows what the response was by the Board of Estimate to that requisition made upon them by the Board of Education? A. We have the report there.

Q. Is there anything in your minutes? A. As I understand it, you want the resolution passed by the Board of School Estimate? 30

Q. In answer to your requisition? A. I say that I looked over the minutes this morning with the secretary and did not find that copy of the resolution, but I since find that there is a copy.

Q. After the communication was received back from the Board of Estimate to which reference has just been made, was there any appropriation

C. F. KIREKER.—CROSS.

different from the requisition originally made in May as to the amount appropriated for the year 1910-1911 for teachers' salaries, by the Board of Education?

Mr. Merrey.—I object to that. I do not understand that they make any appropriation.

10

A. After the requisition was prepared the board, in June, 1910, determined to change its plan of payment of teachers and principals; and when the Board of School Estimate fixed the amount that the city was to raise, in addition to what we received from the state, the Board of Education set apart a lesser amount for the payment of teachers than had been included in the estimate furnished to the Board of School Estimate; and I refer to the payment of teachers from September, 1910, to June, 1911.

20

Q. Will you turn to your minutes and show us what was the action of the Board of Education on that item? A. I say we set aside a lesser amount.

Q. That is not what I asked you. Will you turn to your— A. You will probably find it in the accounts.

30

Q. Was there any action of the board taken changing the appropriation in that item? A. It is not a case of changing or doing anything with any appropriation.

Q. Did you make any change in the amount that was allotted to you by the state and the County Superintendent for salaries that were to be paid for the year 1910-1911? A. There was not any such allowance made.

Q. Was there not an appropriation made to

your board and to the School District of the City of Paterson for the year 1910-1911, that was to be specially applied toward current expenses, including teachers' salaries for the year? A. There was not, so far as I understand the matter.

Q. For what purpose does the state appropriation apply? A. For the school purposes set forth in the school law.

Q. Is not teachers' salaries one of the items? A. It is one of them. The appropriation is made to us in bulk by the state.

Q. Was there not an amount apportioned to the district by the County Superintendent? A. In gross, in bulk, as I understand it.

Q. No portion of that was apportioned to teachers' salaries? A. It is not appropriated in any event to any specific purpose.

Q. So that the reduction which you made as a Board of Estimate was made on the teachers' salaries item, and you received the full amount from the state and used it and are using it for the year 1910-1911, just the same as if you had made no such reduction in your teachers' salaries? A. I cannot answer a question which is premises upon the idea that we have reduced the teachers' salaries because I maintain that we have not reduced the teachers' salaries.

Q. Was not the effect of your action as a Board of Estimate and a Board of Education to take out from the item "teachers' salaries" two months' salary, which heretofore had been paid in the current year, in the year 1910-1911? A. No; it was not.

Q. Was this not done with that idea? A. Was not what done?

Q. Was not this reduction in the amount of the appropriation for teachers' salaries in the certif-

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C. F. KIREKER.—RE-DIRECT.

icate made back to the Board of Education done with the idea that the Board of Estimate and the Board of Education were not obliged, if they went to the twelve payment plan, to pay two month's salary in the year 1910-1911, although it was earned by work done in that year? A. Oh, no.

10 Q. What was it? A. What was what?

Q. The reason? A. The City determined to appropriate to the board a lesser amount than the board asked for because the Board of Estimate figured that if we adopted the twelve payment plan, it would need only to pay the teachers on that plan from September, 1910, until June, 1911, which was ten months, because we had paid the teachers for July and August, 1910, when we completed the year ending June 30, 1910.

20 Q. That you had paid for the school year ending June 30, 1910? A. They argued they were entitled to pay until the following September. We paid them in advance.

Re-Direct Examination by Mr. Merrey.

Q. Were you a member of the board when the City, to comply with the law of 1903, corrected the school year? A. I think so.

30 Q. Prior to that time and after 1903 up to 1908, I think it was? A. Yes.

Q. When did the city authorities call the school year; when did they arrange for their salaries? A. I am inclined to think it was from March to March.

Q. March 20th? A. Yes.

Q. Then it was decided that in order to comply with the school law, the fiscal year was extended. To when was it extended? A. It was extended to June 30th.

Q. Do you know how much that cost the city

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L. E. JENNISON.—DIRECT.

approximately? A. No, I do not.

Q. Do you know that it cost a considerable sum of money? A. That would depend on what you mean by cost.

Q. I mean it had to be appropriated at that time in excess of the budget? A. Yes; in excess of the budget—from March to June.

Q. It cost the city that much? A. Yes. 10

Q. That had to be put into the budget at that time? A. Yes.

Q. That was done under the direction of the State Superintendent? A. Yes.

Respondent Rests.

Rebuttal.

20

LYNN E. JENNISON, the petitioner, recalled as a witness in his own behalf, and further examined as follows:

By Mr. Dunn.

Q. Did you make a calculation how much you are going to be injured by the change from the ten payment plan? A. Yes.

Q. How much? A. I have made such a calculation; \$116.65. 30

Q. That is, in this year, you mean? A. Yes.

Q. (Showing witness) Is that the calculation to which you refer? A. \$116.65.

Q. Will you explain to the superintendent how you get at that calculation? Just give the figures how you get at that calculation? A. I will read the figures, as I figure it. On February 1st, 1910, I start my current year at \$1.20 a month for ten

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10 months. Down to June of that year, 1910, I received five payments at \$130 each, amounting to \$650. Well, then, beginning with September 1910, I am paid \$116.65 for five months up to February first, 1911, which make five payments at \$116.65 each, or a total of \$583.35. Now, adding these two amounts together, it comes to \$1,233.35. According to a raise of \$140 a month beginning with Sep-

10 tember 1st for five months, amounting to \$700, added to \$650 from February to June would make \$1,350, which I claim I ought to receive for that year and which the figures really show to be \$1,233.35. Now subtract \$1,233.35 from \$1,350.00, which is half of the raise of the \$1,300, makes a difference of \$116.65 which I claim is a difference and a loss.

20 Q. In addition to that, do you lose anything in interest? A. I am getting \$116.65 and I should get \$140. I lose \$23 and some cents. I lose the use of that from September to June, nine months, and I lose the October difference of \$23 for eight months and I lose November difference of \$23 for seven months, and so on.

By Mr. Merrey.

30 Q. Why don't you lose it forever? If you figure interest for one year, why not for seventy years? A. I am figuring on one year. I lose the October difference for eight months and the November difference for seven months. You add them together, and it comes to sixty months, which I lose interest, or a total of five years, or about seven dollars in interest.

Cross Examination by Mr. Merrey.

Q. Under the twelve payment plan you will

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receive some money next July and August? A. Yes.

Q. Have you taken that into consideration in your calculation? A. Yes.

Q. Does not that reimburse you for what is taken off from September to February? A. No.

Q. Why not? A. Not as I understand it.

Q. Not as you understand it? A. Not as I look at it. 10

Q. Still, you do? A. Do what?

Q. You do get money in those months, which you would not get under the ten payment plan, and which go to make up the difference? A. Yes; I get it in time but—

Q. (Interrupting) Does not that July and August payment make you square for what you lost in the other months? A. No; there is a difference. 20

Q. The Board of Education hired you in February, 1907? A. Yes.

Q. They agreed to give you \$1,300 per year? A. Yes.

Q. They paid you that up to the first of February, 1908? A. Yes.

Q. And up to February, 1909, they had paid you the entire \$1,300? A. Yes.

Q. Then the change came in 1910? A. Yes.

Q. Now, then, in August or September 1910, they agreed to pay you \$1,400, didn't they? A. Yes. 30

Q. Beginning with the first of September, and if they pay you twelve times \$116.67, before the first of September, 1911, they will have paid you fourteen hundred dollars and a few cents; will they not? A. Yes.

Q. Is that not what they agreed to do? A. No, sir.

L. E. JENNISON.—CROSS.

Q. They did not? A. They agreed to pay \$1,300 beginning February 1st and ending February first, and I am getting \$1,233. There is a difference.

Q. The understanding was that you were to receive \$1,300 between the first of February, 1909, and February 1st, 1910? A. Yes.

10 Q. And that would have gone along under the twelve payment plan? A. On the ten payment plan.

Q. And you would have received exactly that, if this change had not taken place and this raise of salary made to you. Now, do you intend to accept that change before the first of February, or do you want your old salary? Do you intend to accept that money, or do you insist on your old salary? A. I don't know about that until I know
20 whether I am going to get it February 1st, 1911, or—

Q. (Interrupting) Do you insist on remaining on your old salary until the first of next February, or do you insist now, or have you insisted on fourteen hundred dollars on the twelve payment plan? A. I don't know.

Mr. Dunn.—He is not bound to answer that question.

30

Q. Did you know when you got that raise to fourteen hundred dollars that the board had adopted the twelve payment plan?

Mr. Dunn.—That took effect—

Q. Didn't you know, when you took fourteen hundred dollars and received that increase September, 1910, that by that time, and practically in

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the June preceding, that the board had changed its system to a twelve payment system? A. I knew that they changed.

Q. You understood the change? A. I understood the change.

Q. What is your position—that you are entitled to \$1,300 on the old plan from the first of February, 1909? A. This is—

Q. (Interrupting) Or, are you willing to start in with a new contract of \$1,400 beginning September 1st, 1910? 10

Mr. Dunn.—I object to the expression “new contract.” We claim that the raise or automatic increase is not a new contract.

Q. If you insist on the increase, you must keep to your bargain under the plan then in force, and you will get \$1,400 as the city bargained to give it to you, in twelve monthly payments? A. I understood the new plan, but I cannot see how the new plan connected with the old, and it does not; there is an omission there. 20

Q. The trouble is whether you insist on the old contract of \$1,300 in ten payments, or whether you now want the board to pay you \$1,400 on the new plan. 30

Mr. Dunn.—We insist on our legal rights.

Q. Do you insist that you are entitled to receive \$1,300 from the first of February to the first of February, 1911?

Mr. Dunn.—We claim here—

Mr. Merrey.—I object and I insist that

the Superintendent instruct Mr. Dunn not to put an answer in the witness's mouth.

10 *Mr. Dunn.*—I have a right to have my objection noted. I object because the position of Mr. Jennison is clearly stated in his petition, and it has been heard here, and we contend that the actions of the Board of Education are controlled by law. It is admitted what was done. The legal effect of these facts is a matter of law, and Mr. Jennison is here standing upon his legal rights. We claim that in the month of June, 1910, the Board of Education could not pass a resolution changing from a ten payment plan to a twelve payment plan for his then current year; and we claim that the mere fact that afterwards, on September 1st, a raise under a general schedule went to Mr. Jennison, that the fact of that raise did not alter his position and that even though on 20 June 27th, they passed a resolution saying that the twelve payment plan applies to a man on the anniversary of his appointment, he having been appointed February, 1907, —when they attempted to enforce it against him in September, 1910, and not in February, 1911, that they were then violating their arrangement with him. We claim 30 that the mere fact that they went to work afterwards and passed a subsequent resolution and put a different meaning on the plain English words, cannot help them out in this emergency. We claim that the action of the board in putting this resolution in effect on the first of September is a violation of the contract, and that their action is a reduction of his salary, he being

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within the provisions of the act of 1909.

Mr. Merrey.—In answer to Mr. Dunn, I say this: Mr. Jennison was employed by the Board of Education in February, 1907. The board has agreed to pay him at the rate of \$1,300 each year. Clearly, under that arrangement he was entitled to have \$1,300 up to the first day of February, 1910. In August after they had adopted the twelve payment plan, they said to Mr. Jennison: “You have passed the requirements, and you are entitled to \$1,400 a year commencing on the first of September.” Mr. Jennison might have said; “I do not agree to that. I won’t accept that increase until the first of February. This new plan does not suit me.” He could have said that. He could have said; “I will not accept the increase. You must pay me \$1,300 for the year ending February 1st, 1911.” The board tendered him a contract of \$1,400 on the twelve payment plan. He has not yet indicated to the board whether he will accept that. If he refuses and says now: “I will not take \$1,400 on that plan, but I insist on the old payment plan up to the first of February, when the twelve payment would go into effect,” we will have to pay him \$130 a month. For that reason we must know whether he accepts the new contract or not. I do not think it is fair for Mr. Dunn to tell him how to answer.

Asst. Supt. Betts.—It seems to the Superintendent that the very question that Mr. Merrey has asked brings up the whole question in dispute as to the intent and effect of this resolution of the board increasing

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Mr. Jennison's salary; and the question asked by Mr. Merrey is an attempt to make Mr. Jennison interpret the action of the board, which is the matter in dispute now before the State Superintendent.

Mr. Merrey.—The question is whether he has accepted the increase or not.

10 *Supt. Baxter.*—Is not that answered by the fact that he has not taken the checks?

Mr. Merrey.—No; there may have been other reasons. Are we not entitled to know why he refused his checks?

Asst. Supt. Betts.—My understanding is that he refuses on the ground that the checks represent but a part of the salary due him.

20 *Mr. Merrey.*—How much does he claim his salary is?

Asst. Supt. Betts.—\$1,400 in ten payments. The matter in dispute here is as to whether there was a new bargain, or what it was.

30 *Mr. Merrey.*—The new bargain I refer to is whether his salary is \$1,400 or \$1,300 or as to whether he is to get his salary in ten payments or twelve payments. We cannot make him take \$1,400 if he does not want it.

Mr. Kireker.—Might I say a word? It is a very important subject to settle now—for this reason, that if Mr. Jennison claims that he is under the new contract, \$1,400 a year, from September to February, it will result in this, that he will get \$140 for five months from September to February which would be \$700. Thereafter, from February to next September, he would get

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\$116 a month, which would total up to \$813 from February to the following September. So that, under his claim he would receive from the city from September, 1910, to September, 1911, \$1,516 on a \$1,400 basis. That is where the difficulty is going to come in; and so we would like to know where Mr. Jennison stands in this matter. He wants \$1,516, from the first of one September to the first of next September, and his salary is only \$1,400 a year.

10

Mr. Dunn.—The answer to your suggestion is that it would make no difference what his claim was. His rights and your obligations must be determined on what has been transpired, and that is why we are here.

Mr. Merrey.—What we ask is whether he has accepted the increase or not.

20

Mr. Dunn.—That is a fact for the Superintendent to decide.

Mr. Merrey.—We ask to have the pay roll which was offered in evidence marked in evidence "Exhibit 1."

30

Decision of the State Superintendent.

In the matter of Lillian G. Gowdy against the Board of Education of the City of Paterson.

10 The Petitioner claims that the effect of a resolution adopted by the Respondent changing the method of payment of teachers' salaries from ten to twelve equal monthly installments will be to reduce her salary, which is prohibited by an act entitled "A supplement to an act entitled an act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof," (P. L. 1909, page 398) commonly known as "The Teachers' Tenure of Service Act."

20 This resolution was adopted at a meeting of the Board of Education of the City of Paterson, held June 24th, 1910, and reads as follows:

30 "RESOLVED: That the plan of payment of principals and teachers in the employ of this department, be changed from the present, or what is known as the ten payment plan, to what is known as the twelve payment plan, the same to become effective in the case of each principal and each teacher upon the next anniversary of the date of his or her employment by the department. That notice of the adoption of this resolution be sent to each principal and teacher forthwith."

At a meeting of said board, held October 28, 1910, the following preamble and resolution were adopted which were intended to construe the meaning and intent of the resolution adopted June 24, 1910.

"WHEREAS, many of the teachers employed by

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this board, have stated that they do not understand the meaning of the resolution of this board adopted June 24, 1910, changing the plan of payment of teachers and others and that such misunderstanding relates particularly to the time when such change is to take place.

"Now therefore be it RESOLVED, that the phrase 'anniversary of the date of his or her employment' means and was intended to mean the last employment or hiring of such teacher as evidenced by the last increase of salary of such teacher. 10

"The intention of such resolution being to cause such change of plan to become effective in the case of each principal or teacher upon the then next anniversary of his or her last increase of salary.

"And further by said twelve payment plan it was intended that upon the taking effect of said plan in the case of each principal or teacher, each such principal or teacher should thereafter be paid his or her salary in equal one-twelfths of his or her yearly salary, each to be paid within five days after the end of the month for which the same is paid." 20

There are three questions in this case.

First—Had the Board of Education power to change its system of payment of teachers' salaries from a ten payment to a twelve payment one. 30

Second—If it had such power, did the adoption of the twelve payment system cause a reduction in the salary paid to a teacher protected by the "Tenure of Service Act?"

Third—What loss, if any, has the petitioner

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suffered by the resolution adopted by the Board of Education of the City of Paterson?

10 First—Section 106 of the School Law gives to a Board of Education the power to “make rules and regulations governing the engagement and employment of teachers and principals, the terms and tenure of such employment * * * the salaries, and the time and mode of payment thereof, and may from time to time change, amend or repeal such rules and regulations.” The section further provides that “the employment of any teacher by such board, and the rights and duties of such teacher with respect to such employment shall be dependent upon and shall be governed by the rules and regulations in force with reference thereto.”

20 The provisions of this section are modified by the “Tenure of Service Act” which prohibits the discharge of a teacher, except for cause, or the reduction of his salary. Under the powers thus granted a Board of Education has power to adopt a rule to the effect that the salaries of all teachers in its employ who are not protected by the “Tenure of Service Act” shall be paid in twelve monthly installments, and may make such rule apply to teachers protected by said act; provided it is so drawn that such teachers shall not

30 be subjected to any reduction in salary.

Second—In order to determine the second question it will be necessary to interpret the meaning and intent of the resolution of June 24th and what effect, if any, the adoption of the resolution of October 28th had in amending or interpreting said resolution of June 24th.

The Respondent in its answer claims that “the State Superintendent has no jurisdiction to decide

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any dispute or controversy arising over the meaning or constitution of any rule or by-law of this board." It is true that the law gives to a Board of Education the power to make rules governing the employment of the teachers and the payment of their salaries, and it is also true that the board has the power to construe its own rules, but it is not true that a dispute between a Board of Education and a teacher as to the meaning of a rule of the board or as to the interpretation of such rule is not "a controversy or dispute arising under the school laws." Rules adopted by a Board of Education must not contravene any provision of the school law and a dispute as to whether or not a rule of a Board of Education is in violation of any provision of the school law is a dispute arising under the school law and is within the jurisdiction of the State Superintendent.

10

The rule adopted by the Respondent on June 24th provides that the twelve payment plan shall "become effective in the case of each principal and each teacher upon the next anniversary of the date of his or her employment," and the resolution of October 28th attempts to interpret this by providing that the phrase "anniversary of the date of his or her employment" means and was intended to mean the last employment or hiring of each teacher as evidenced by the last increase of salary of such teacher. "The intention of such resolution being to cause such change of plan to become effective in the case of each principal or each teacher upon the next anniversary of his or her last increase of salary."

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30

There is nothing in the language of the resolution of October 28th which makes it an amendment of or supplement to the resolution of June 24th, it is simply a declaration of the Board of

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Education of its understanding of the intent and meaning of the resolution of June 24th.

The counsel for the Respondent in his brief says "The interpretation put on the resolution of June 24th by the resolution of October 28th is the natural one."

10 "Each increase of salary was a new contract of employment with a teacher, and naturally the contract then in force, that is, the last one made, was the one referred to."

An increase in salary is not a new contract of employment but simply an increased compensation for services to be rendered in the future under a contract already in existence. The rule is only good, if good at all, if interpreted so that it shall go into effect on the date of the original appointment of the teacher. The rule is bad as
20 against a teacher protected by the "Tenure of Service Act" for the reason that its effect would be to cause a reduction in salary.

Until the present school year the teachers in Paterson have been paid their salaries in ten equal monthly installments, the first payment being made early in October and the last early in July. While it is true that the salary is stated as so much per year, the service is completed in ten months.

30 The counsel for the Respondent attempts to justify the change by making a comparison between the teachers and the police and firemen but the cases are not parallel. The latter are paid in twelve installments, and I presume they all have some vacation, but the work of the police and fire departments never ceases and the members of these forces can be called upon for duty at any time, while in the case of the teachers the service required from them is fully completed in ten

STATE SUPERINTENDENT'S DECISION.

months, and even if they were willing, they are unable to perform any service during July and August by the act of the Board of Education in closing the schools during those months.

This Petitioner has been in the employ of the Board of Education of Paterson continuously since September 1st, 1893. Under the construction given of the above rule of June 24th, the change to the twelve payment plan would go into effect in her case September 1st, 1911. The contract between the Board of Education and Miss Gowdy is that in consideration of the payment of a yearly salary of \$900 she is to teach in the public schools under the control of the board from September 1st to June 30th. The effect of the rule in her case would be to withhold from her one-twelfth of \$900 for a period of one month and another twelfth for a period of two months after she had fully performed her part of the contract. Should she, from any cause, cease to be a teacher in Paterson before September 1st, 1912, she would not receive the full amount of salary called for by the contract.

The counsel for the Respondent in his brief says, "The board has the right to impose upon teachers a penalty for breaking its rules. Otherwise no discipline could be maintained. Penalties where rightly imposed cannot be considered a reduction of salary against the provision of the teachers' tenure of office law. In order that efficient work may be done teachers should not leave their classes in the middle of the term. A teacher who voluntarily leaves her work in the middle of a term to take a new position elsewhere, or to otherwise better her condition, and without consideration to the service in which she has been engaged is rightly penalized the small difference

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STATE SUPERINTENDENT'S DECISION.

in her pay caused by the adoption of the twelve payment plan. In fact, this was one of the objects sought to be accomplished by the adoption of the plan. No teacher will resign at the end of June under this plan. Any teacher working up to June 30th will be entitled to pay for July and August. I understand it is the intention of the board to make the July payment on July 1st.

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“No case is presented where a teacher is affected by leaving after the plan was put in effect as to her and before the summer vacation.

“Where such leaving is voluntary on the teacher's part, the loss incurred is a deserved penalty. If a case occurs where the leaving is caused by circumstances for which the teacher has a good excuse the board should make good any loss to the teacher.”

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This is an admission that in certain cases the twelve payment plan will result in a loss of salary by the teacher. An attempt is made to justify this in the case of a teacher who leaves voluntarily by calling it a penalty for breach of contract. A penalty for a breach of contract must be specific and must be contained in the contract. That the teacher under such circumstances would suffer a loss of salary is clearly conceded in the extracts from the brief quoted above.

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It is also admitted in said extracts that “when a teacher's leaving is caused by circumstances for which the teacher has a good excuse the board should make good any loss to the teacher.”

The rule under consideration does not contain any such provision.

For the reasons stated above the rule adopted June 24th, 1910, providing for the payment of the teachers' salaries in twelve installments is illegal, null and void.

STATE SUPERINTENDENT'S DECISION.

In view of the conclusion reached on the second question no decision is necessary on the third point raised.

March 8th, 1911.

(Signed)

C. J. BAXTER,
*State Superintendent of
Public Instruction.*

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APPEAL TO STATE BOARD.

10	<p>In the matter of LILLIAN G. GOWDY,</p> <p style="text-align: center;">vs.</p> <p>THE BOARD OF EDUCATION of the City of Paterson.</p>	}	<p><i>Before the State Superintendent of Public Instruction.</i></p>
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NOTICE OF APPEAL.

To Charles J. Baxter,
State Superintendent of Public Instruction and
Michael Dunn, Esq., Attorney of Lillian E. Gowdy.
Sirs:

20 Take Notice, that the Board of Education
of the City of Paterson, in the County of Passaic,
hereby appeals to the State Board of Education of
the State of New Jersey from the decision ren-
dered in the above stated matter on March 8th,
1911, by C. J. Baxter, State Superintendent of
Public Instruction.

Dated, March 11th, 1911.

Respectfully yours,
(Signed) EDWARD F. MERREY,
*Attorney of the Board of
Education of the City of
Paterson.*

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EXTRACTS FROM MINUTES.

In the matter of LILLIAN E.
GOWDY,

vs.

THE BOARD OF EDUCATION of
the City of Paterson.

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**Extract from the Minutes of the
Meeting of the State Board of Educa-
tion, June 27, 1911.**

The Committee on Law and Legislation re-
ported that it had heard the appeals from the de-
cisions of the State Superintendent in the follow-
ing cases: Lillian G. Gowdy vs. The Board of
Education of the City of Paterson, Lynn E. Jen-
nison vs. The Board of Education of the City of
Paterson; Maude F. Homer vs. The Board of
Education of the City of Paterson.

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These cases all involve the same questions.

The State Superintendent decided

First, That the Board of Education had the
power to change the method of the payment of
teachers' salaries from ten to twelve equal
monthly installments, provided in making such
change the salaries of the teachers protected by
the Tenure of Service Act were not reduced.

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Second, That the action of the Board of Edu-
cation would result in a reduction of salaries paid
to teachers protected by the Tenure of Service
Act.

The Committee recommended that on the first

EXTRACTS FROM MINUTES.

point the decision of the State Superintendent be affirmed and that on the second point the decision of the State Superintendent be reversed for the reason that the evidence does not show that the petitioners in the above named cases had suffered any reduction in salary. The roll was called with the following result:

10 First point: To affirm, Messrs. Allen, Barricklo, Dilworth, Frey, Hawke, McCutchen, Morrow, Russ, Scott, Thomson, Woodward and Hays. 12.

To reverse, none.

Second point: To affirm, Mr. Morrow. 1.

To reverse, Messrs. Allen, Barricklo, Dilworth, Frey, Hawke, McCutchen, Russ, Scott, Thomson, Woodward and Hays. 11.

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REASONS.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">LILLIAN G. GOWDY, Prosecutor,</p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">STATE BOARD OF EDUCATION of the State of New Jersey.</p>	}	<p style="text-align: center;"><i>On Certiorari.</i></p> <p style="text-align: right;">10</p>
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REASONS.

The said Prosecutor, Lillian G. Gowdy, by Michael Dunn, her attorney, comes and prays that the decision and judgment of the State Board of Education of the State of New Jersey made against her may be set aside, reversed and for nothing holden, for the following reasons: 20

1. Because said decision is inconsistent with the evidence and contrary to the law applicable thereto.

2. Because the State Board of Education found that the evidence did not show that the prosecutor suffered any reduction in salary, whereas the fact is that the evidence shows that the prosecutor did suffer a reduction in salary. 30

3. Because the State Board of Education committed error in reversing the decision of the State Superintendent of Public Instruction in his finding "that the action of the Board of Education of the City of Paterson would result in a reduction of salaries paid to teachers protected by the Tenure of Service Act."

REASONS.

10 4. Because the decision of the State Board of Education is inconsistent and contrary to an act of the Legislature entitled, "A Supplement to an Act entitled, An Act to establish a thorough and efficient system of free public schools and to Provide for the Maintenance, Management and Support thereof," (P. L. 1909, page 398) commonly known as "The Teachers' Tenure of Service Act," and is therefore null and void.

20 5. Because the resolution adopted at a meeting of the Board of Education of the City of Paterson on June 24th, 1910, changing the plan of payment of teachers' salaries from the ten to the twelve payment plan is illegal and void in that said Board of Education has no right to make any rules and regulations concerning the time and mode of payment of teachers' salaries, whereby such payments should not all become due and payable within the statutory school year, to wit, between the first day of July and the thirtieth day of June, next following.

30 6. Because the resolution passed by said Board of Education of the City of Paterson on June 24th, 1910, unlawfully imposes upon the prosecutor and injects into her contract with said Board of Education of the City of Paterson a penalty for the breach of such contract, which said penalty is no part of the prosecutor's said contract, wherefore, said resolution insofar as the prosecutor is concerned is null and void. The decision of the State Board of Education, upheld this resolution, and is illegal and void.
Dated February 27, 1912.

MICHAEL DUNN,

Attorney of Prosecutor.

OPINION.

NEW JERSEY SUPREME COURT.
June Term, 1912.

LILLIAN G. GOWDY,
Prosecutrix,
vs.
STATE BOARD OF EDUCATION OF
THE STATE OF NEW JERSEY
et al.,
Defendants.

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Submitted June term 1912—Decided April ,
1913.

OPINION.

On Certiorari.

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Before Justice Swayze, Voorhees and Kalisch.
For the Prosecutrix, Michael Dunn.

For the Respondents, Thomas F. McCran and
Edward F. Merrey.

The opinion of the Court was delivered by
Kalisch, J.

The prosecutrix is a school teacher in one of
the public schools of the City of Paterson and she
had been such teacher for more than three years
prior to the 24th of June, 1910, receiving a salary
of \$900.00 per school year, payable in ten month-
ly installments of \$90.00. The school year was a
period of ten months, commencing on the first day
of September and ending on the thirtieth day of
June.

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The Board of Education of the City of Paterson,
on the 24th day of June, 1910, passed the follow-
ing resolution:

OPINION.

10 “Resolved that the plan of payment of principals and teachers in the employ of this department be changed from the present, or what is known as the ten payment plan, to what is known as the twelve payment plan, the same to become effective in the case of each principal and each teacher upon the next anniversary of the date of his or her employment by this department; that notice of the adoption of this resolution be sent to each principal and teacher forthwith.”

20 The prosecutrix complains of this action, refused to accept the reduction of salary or the twelve payment plan, as violative of the supplement to the Public School Act. (P. L. 1909 P. 398; Comp. Stats. 4763 Sec. 106 A.) The Board of Education tendered the prosecutrix seventy-five dollars for her September salary which she refused to accept.

The prosecutrix appealed to the State Superintendent of Education who reversed the Board of Education of the City of Paterson, and the latter in turn appealed to the State Board of Education, which reversed the finding and adjudication of the State Superintendent, and affirmed the action of the Board of Education of the City of Paterson.

30 The prosecutrix had served three consecutive years as such school teacher and therefore under section 106 A. (Comp. Stats. 4763) she holds her employment during good behavior and efficiency and is not subject to a reduction of salary except for causes specified in said section, and they are not pertinent to the inquiry here. Section 106 of the Public School Act, Comp. Stats. 4762, *in* *al*ia provides: “Boards of Education may make rules and regulations governing the engagement and employment of teachers and principals, the terms and tenure of such employment and the

OPINION.

promotion and dismissal of such teachers and principals, the salaries, time and mode of payment thereof and may from time to time change, amend or repeal such rules and regulations. The employment of any teacher by such board and the rights and duties of such teacher with respect to such employment shall be dependent upon and shall be governed by the rules and regulations in force with reference thereto." 10

It is insisted by the defendants that by virtue of this provision the Board of Education of the City of Paterson had a right to change, amend or repeal such rules and regulations in force and therefore the resolution to change from the ten payment plan to the twelve payment plan was an authorized act. If the effect of this change reduced the salary of the prosecutrix (and we think it does) the resolution is ineffectual as to her, she being within the protection of section 106A which clearly forbids the reduction of the salary of a teacher who has completed three consecutive years of service. Furthermore this act is a later act than the section which gives the department the right to change its rules and regulations, and the two acts must be read together. 20

The contention of the prosecutrix is that she is to teach in the public schools from September 1st, to June 30th. That the practical operation of the rule in her case would result in withholding from her one-twelfth of \$900.00 for a period of one month and another for a period of two months after she had fully performed her contract. And should she, from any cause cease to be a teacher in Paterson before September 1st, 1912, she would not receive the full amount of salary called for by her contract. This contention is sound. And it may be added that if the prosecutrix should die 30

OPINION.

during the term near or at the end of a month and shortly after the term has commenced her estate would receive less under the twelve payment plan than under the ten. We think that such a result is in effect an impairment of the contract and in clear violation of section 106A.

10 Even if it appeared that by the full performance of the contract the twelve payment plan was more profitable than the ten payment plan, nevertheless any change made in the contract by the resolution which makes the contract less effective in that it might under certain circumstances tend to reduce the salary of the prosecutrix is a violation of said section.

20 With that view, the resolution is obnoxious to the statute which prevents a reduction in salary of a teacher who has completed three consecutive years of service.

30 Whatever dispute there might be over the meaning of the word "monthly" as defined by the latter part of section 106 which reads, "in every contract a month shall be taken to be twenty school days or four weeks of five school days each and the salary specified in every such contract shall be paid in equal monthly installments not later than five days after the close of each month while the school shall be in session", usage in payment, as appears by the case, had interpreted the meaning of the payment "in ten monthly installments" to mean "ten installments during the school year".

We think, therefore, that there was a reduction in the salary and that the resolution of Board of Education of the City of Paterson, as to the prosecutrix who was a teacher under the tenure of office (section 106A) the action was illegal and must be set aside.

RULE.

NEW JERSEY SUPREME COURT.

LILLIAN G. GOWDY,
Prosecutrix,

vs.

STATE BOARD OF EDUCATION OF
THE STATE OF NEW JERSEY
AND THE BOARD OF EDUCATION
OF THE CITY OF PATERSON,
Defendants.

On Certiorari.

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RULE.

The court having heard the argument of counsel for the respective parties in the above stated cause, and having considered the records and proceedings, the testimony and the resolution of the Board of Education of the City of Paterson, passed June 24th, 1910, whereby the plan of payment of principals and teachers was changed from what is known as the ten payment plan to what is known as the twelve payment plan, and also having considered the decision of the State Superintendent of Public Instruction of the State of New Jersey rendered on March 8th, 1911, adjudging that the said resolution was illegal, null and void as to the prosecutrix who was a teacher protected by the "The Teachers' Tenure of Service Act," (P. L. 1909, page 398); and also having considered the decision of the State Board of Education of the State of New Jersey, rendered on June 27, 1911, on an appeal from the said decision of the State Superintendent, reversing his decision, and which

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RULE.

was removed to this court by the writ in this cause.

And it appearing that the said resolution of the said Board of Education of the City of Paterson, passed June 24th, 1910, was in violation of the statut above mentioned, in that it reduced the salary of a teacher who was under its protection.

10 It is ordered and adjudged that the said decision of the State Board of Education of the State of New Jersey reached in this cause be and the same is hereby reversed and set aside, and that the said decision of the State Superintendent of Public Instruction be and the same hereby is affirmed, and that the said resolution of the said Board of Education of the City of Paterson, passed June 24th, 1910, be and the same is hereby declared to be illegal and as to the prosecutrix the same is hereby
20 set aside and for nothing holden.
Rule entered May 12, 1913.

On motion of MICHAEL DUNN,
Attorney of Prosecutrix.

A true copy,
WM. C. GEBHARDT,
Clerk.

