

E. A. L. McAULEY, Appellant, vs. **THE REPUBLIC OF LIBERIA**, Appellee.

[January Term, A. D. 1900.]

Appeal from the Court of Quarter Sessions and Common Pleas, Sinoe County.

Injunction.

1. In an action of injunction brought to restrain a Commissioner of Education from teaching public school, it was held that the judgment could not extend beyond perpetuation of the interlocutory injunction and costs, where there appeared reasons for restraining the defendant.
2. Commissioners of Education are the agents of the Government in matters relating to public schools and are therefore incompetent to employ themselves as public school teachers.

This case is before this court for review, upon an appeal from the judgment of the Court of Quarter Sessions and Common Pleas, Sinoe County, rendered at the November term of said court, A. D. 1899. The nature of this case as exhibited by the record may be briefly stated as follows, to wit:

Upon an application made to the judge of the court below, by the County Attorney of Sinoe County, representing the appellee (the plaintiff in the court below), a writ of injunction was issued against the appellant (the defendant in the court below) to restrain him as School Commissioner, and in his capacity as such, from doing certain acts, which acts, it was complained, he ought not to do. The court below, after hearing the cause, perpetuated the interlocutory injunction, and went further in its ruling and decreed that "the appellant should refund to the Government all moneys obtained by him from the Government as school teacher."

To this ruling and judgment the appellant excepted, and has raised in his bill of exceptions three points for the consideration of this court, which we proceed to consider.

The first exception laid in the bill of exceptions is, that "the appellant excepts to your Honor's ruling upon the second count in appellee's complaint, in which your Honor in rendering final judgment said that E. A. L. McAuley, School Commissioner for the County of Sinoe, defendant (now appellant), desist forever from teaching school and

charging upon Government funds, while under commission as School Commissioner of Sinoe County," etc.

The question which is here involved is whether the appellant, while holding the office of School Commissioner for Sinoe County, could lawfully and consistently employ himself as a public school teacher or not.

In construing statutory laws, courts should exercise the greatest care to ascertain the intention of the lawmakers. The apparent object of the Legislature is to be sought for, and made to harmonize with what is disclosed in the act itself. It would be adhering to a view not consonant with the spirit and intention of the act creating School Commissioners, to hold that such officers, who by the act creating them are constituted and made the supervisors and overseers of our public schools, can at their pleasure appoint themselves as teachers. Moreover, it is the opinion of this court that such a view of the law would work an injury to the educational interests and prosperity of the country.

The object of the Legislature in providing for School Commissioners (or Commissioners of Education) was to promote a sound and healthy system of public schools in our country. They are the agents of the State, so far as relates to the appointment and discharge of teachers, and the general supervision of public schools. We proceed to recite a section of the act bearing on this point:

"There shall be appointed after the usual way of official appointments by the President, a learned and discreet person in each county to be styled Commissioner of Education, who shall have the general supervision of all public schools in said county, unto whom quarterly reports shall be made by all teachers of public schools. Said Commissioners shall visit public schools of the respective counties in person four times during each year ; direct and examine all teachers. Said Commissioners of Education shall see that all teachers perform faithfully their duty as such, shall institute rules for the government of all public schools, and on failure of any teacher or teachers to discharge his or their duty, or for other sufficient cause, the said Commissioners shall discharge such teacher or teachers, subject to the approval of the Secretary of the Interior, and appoint others." (Act. Leg. Lib. appr. Jan. 23, 1869, pp. 33-34, sec. 1-2.)

It is clear to the mind of this court, that E. A. L. McAuley, the appellant in this case, while holding the office of School Commissioner for the County of Sinoe and exercising the functions of said office, had no power nor right to appoint himself as a

public school teacher for Sinoe County; because, as we have already observed, his relation to the State in the matter of public schools, was that of an agent. The law implies a contract between every teacher of a public school and the State; and the appellant, who was the express representative of the State in such matters, could not contract with himself. To every contract there must be at least two parties. No person can contract with himself in a different capacity, as there must be an agreement of minds. (i Bouv. Law Dict. p. 275, fig. z : "Parties to Contracts.") Therefore it is the opinion of this court that the court below did not err in perpetuating the interlocutory injunction; and had the judgment of the court below stopped here, this court would have felt itself bound to uphold it.

The second exception in the bill of exceptions is as follows, to wit: "The appellant further excepts to your Honor's final judgment in which your Honor said that appellant should refund to the Government all moneys obtained by him from the Government as school teacher," etc.

This court has failed to discover the law upon which this portion of the judgment is founded. By reference to the record we find that the suit was brought to restrain the appellant from doing certain acts, and the form of action chosen by appellee (the plaintiff in the court below) was injunction. Undoubtedly the appellee could not recover moneys alleged to have been wrongfully and unlawfully received by appellant from appellee, under this form of action, for the issues involved in this question are clearly beyond the power of the court to decide in the case before it. An action of injunction is defined by our statutes to be an action in which the plaintiff seeks to compel the defendant to permit matters to remain in the present state. (Stat. Lib. ch. 1, p. 31, sec. 8.) And this definition is upheld by Mr. Kerr, a leading authority on the law of injunctions, as well as by Bouvier, Blackstone, and other law-writers.

If upon the hearing of an action of injunction it shall appear to the court that the defendant ought not to do the act from the doing of which he is sought to be restrained, the court shall simply proceed to perpetuate the interlocutory injunction and award costs for the plaintiff. The court below therefore erred in ruling the appellant to refund to appellee moneys received for teaching school, which, this court is of the opinion, could not be recovered in an action of injunction. This court therefore reverses this portion of the judgment and will proceed to give the decree which in its opinion the court below ought to have given in the premises.

This court adjudges and decrees that the interlocutory injunction sued out by appellee (plaintiff in the court below) against E. A. L. McAuley, appellant (defendant in the

court below), to restrain him from teaching public school in the County of Sinoe while holding the office of School Commissioner for said county, is hereby perpetuated, and he, the said appellant, is hereby enjoined and prohibited from teaching public school in the County of Sinoe while holding the office of School Commissioner for said county. And the clerk of this court is hereby authorized to issue a mandate directed to the judge of the court below, informing him of this decision.