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Teacher Tenure - Reduction in Position and Salary

J. B. D.

that under Article 738[12] the right to exercise a servitude was suspended when the servitude had been granted by only one of the co-owners of the land. The court indicated that Article 738 provides only for suspension of the right to exercise a servitude, and not for a suspension of the prescription. Here the defendants could have removed the obstacle by demanding a partition under Article 740.[13] This Article seems to provide for the situation where one co-owner has granted a servitude on his part of the estate only; but it may possibly be taken to cover the situation where one co-owner has granted a servitude purporting to be on the whole property, because such a grant might be interpreted as existing on a part only. It is the policy of the courts to prevent the inactive preservation of mineral servitudes for indefinite periods, and the present decision is in line with that policy.

J. T. B.

TEACHER TENURE—REDUCTION IN POSITION AND SALARY—Plaintiff, a public schoolteacher of ten years' experience and who had served as a high school principal for the past three years, was demoted by defendant school board to a grade school position at a salary substantially less than that which he had formerly received. The board preferred no charges against him and failed to allow him an opportunity for a hearing. Plaintiff seeks by mandamus to compel his reinstatement at the salary paid him during the prior session. *Held,* that reinstatement be granted and plaintiff be awarded back pay. The action of the board was in derogation of the Teacher Tenure Act.[1] The purpose of this Act is to guarantee security to teachers in the position, grade, or status which they have attained, and removal to a position of lower grade and rank is a violation thereof. *State ex rel. Bass v. Vernon Parish School Board,* 194 So. 74 (La. App. 1940).

Although the Teacher Tenure Act has been construed on sev-

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12. Art. 738, La. Civil Code of 1870: "The coproprietor of an undivided estate can not impose a servitude thereon, without the consent of his coproprietor.

"The contract of servitude, however, is not null; its execution is suspended until the consent of the coproprietor is given."

13. Art. 740, La. Civil Code of 1870: "If the coproprietor has established the servitude for his part of the estate only, the consent of the other owners is not necessary, but the exercise of the servitude must be suspended, until his part be ascertained by partition. In this case, he to whom the servitude has been granted, may compel the coproprietor from whom he received it, to sue for a partition, or may sue for it himself."

1. La. Act 58 of 1936 [Dart's Stats. (1939) §§ 2267, 2267.1].

eral occasions,[2] the point raised in the instant case has never before been considered by a Louisiana appellate court. The question, however, has arisen in other jurisdictions where similar statutes are in effect. The Supreme Court of California in an early case held that although a teacher could be transferred from one school to another, the new position must not be one of *lower grade* and on which a smaller salary is paid.[3] Subsequent California cases have followed this rule, and have held that an employee must be allowed to continue in a position of rank and grade equivalent to that previously occupied.[4] However, the same court has held that a person is not removed to a lower grade if he performs substantially the same service, even though the new position carries a smaller salary.[5] This construction of the statute as requiring a preservation of the teacher's status and grade has been followed by the New York courts under a similar statute. Thus it was held that if charges are not preferred, a teacher may not be demoted to a lower position earlier held by her and which carries a smaller salary.[6]

2. Louisiana jurisprudence on the Teacher Tenure Act has been on four distinct phases. It has been held that a person who has taught for three consecutive years was a permanent teacher and could not be dismissed without written and signed charges of wilful neglect of duty or of incompetency or of dishonesty having been made and proved on due and regular hearing. Andrews v. Union Parish School Board, 191 La. 90, 184 So. 552 (1938), affirming 184 So. 574 (La. App. 1938); State v. Vernon Parish School Board, 179 So. 320 (La. App. 1938); Read v. Union Parish School Board, 185 So. 67 (La. App. 1938); State v. Red River Parish School Board, 185 So. 490 (La. App. 1938); State v. Vernon Parish School Board, 178 So. 176 (La. App. 1938), and followed in several concurrent cases arising at the same time against the Vernon Parish School Board. Secondly, it has been decided that the teacher's right as a permanent teacher may be lost by failure to demand it within a reasonable length of time. State v. Orleans Parish School Board, 189 La. 488, 179 So. 830 (1938); State v. Orleans Parish School Board, 189 La. 502, 179 So. 834 (1938); Fontenot v. Evangeline Parish School Board, 185 So. 104 (La. App. 1938); Williams v. Livingston Parish School Board, 191 So. 143 (La. App. 1939). Thirdly, it has been held that the marriage of a permanent teacher does not justify her dismissal and the School Board's resolution to that effect is null and void. State v. Jefferson Parish School Board, 191 La. 102, 184 So. 555 (1938). Lastly, it has been held that a probationary teacher may be discharged by the School Board only upon written recommendations and reasons therefor by the superintendent. Andrews v. Claiborne Parish School Board, 189 So. 355 (La. App. 1939); State v. Red River Parish School Board, 193 So. 225 (La. App. 1939).

3. Kennedy v. Board of Education, 82 Cal. 483, 22 Pac. 1042 (1890).

4. Fairchild v. Board of Education of City and County of San Francisco, 107 Cal. 92, 40 Pac. 26 (1895); Cullen v. Board of Education of City and County of San Francisco, 126 Cal. App. 510, 15 P. (2d) 227 (1932), affirmed 16 P. (2d) 272 (1932); Anderson v. Board of Education of City and County of San Francisco, 126 Cal. App. 514, 15 P. (2d) 774 (1932), affirmed 16 P. (2d) 272 (1932); Klein v. Board of Education of City and County of San Francisco, 1 Cal. (2d) 706, 37 P. (2d) 74 (1934).

5. Loehr v. Board of Education, 12 Cal. App. 671, 108 Pac. 325 (1910).

6. People v. Board of Education of City of New York, 174 N.Y. 169, 66 N.E. 674 (1903).

In other states which operate under similar statutes the courts have not reached the same result. In Massachusetts the Teacher Tenure Act was held not to limit the power of the school committee to reduce compensation or to change the duties of teachers.[7] This view was followed by an Indiana decision in which the court pointed out that although a teacher becomes a permanent employee of the school corporation at the expiration of the probationary term, the Act does not require that he continue to hold the same position. Consequently, it was held that a teacher may be either promoted or demoted at the will of the Board.[8]

The result reached in California and New York, that a teacher cannot be reduced in rank, is obviously sound, and the Louisiana court is to be commended for adopting this position. The evident purpose of the Act is to give security to those members of the teaching profession who have proved themselves to be capable. Hence, the instant opinion holding that the Act guarantees the same grade or status attained by permanent teachers is eminently correct.

J. B. D.

WIRE TAPPING—ILLEGALLY OBTAINED EVIDENCE—DERIVATIVE USE —In *Nardone v. United States*,[1] decided in 1937, the Supreme Court held that the Federal Communications Act[2] rendered inadmissible as evidence any facts gained by the surreptitious interception of interstate communications (wire tapping). Later these communications were used to obtain other evidence and the defendant was re-indicted. On certiorari the Supreme Court *held* that the statute also prevented the prosecution from making any derivative use of such evidence. *Nardone v. United States,* 308 U.S. 338, 60 S.Ct. 266, 84 L.Ed. 227 (1939).[3]

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7. Boody v. School Committee, 276 Mass. 134, 177 N.E. 78 (1931).

8. School City of Peru v. State, 212 Ind. 255, 7 N.E. (2d) 176 (1937).

1. 302 U.S. 379, 58 S.Ct. 275, 82 L.Ed. 314 (1937). In this case the prosecution contended that the purpose of the Act was to transfer jurisdiction over radio and wire communications to the newly constituted Federal Communications Commission, and it was not intended to prohibit wire tapping to obtain evidence. The Court said that the provision of Section 605 "no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effort or meaning of such intercepted communication to any person . . ." operates to render such evidence inadmissible.

2. 48 Stat. 1064, § 605 (1934), 47 U.S.C.A. § 605 (1939).

3. The Court quoting from Silverthorne Lbr. Co. v. United States, 251 U.S. 385, 392, 40 S.Ct. 182, 183, 64 L.Ed. 319, 321 (1920) said: "The essence of a provision forbidding the acquisition of evidence in a certain way is not merely