THE

ONTARIO REPORTS,

VOLUME VI.

CONTAINING

REPORTS OF CASES DECIDED IN THE QUEEN'S BENCH, CHANCERY, AND COMMON PLEAS DIVISIONS,

OF THE

HIGH COURT OF JUSTICE FOR ONTARIO

WITH A TABLE OF THE NAMES OF CASES ARGUED.
A TABLE OF THE NAMES OF CASES CITED,
AND A DIGEST OF THE PRINCIPAL MATTERS.

EDITOR:
CHRISTOPHER ROBINSON, Q.C.,

REPORTERS:
QUEEN'S BENCH DIVISION..... S. J. VANKOUGHNET, Q.C.
CHANCERY DIVISION ..... A. H. F. LEFROY, GEO. A. BOOMER,
COMMON PLEAS DIVISION..... GEORGE F. HARMAN,
BARRISTERS-AT-LAW.

TORONTO:
ROWSELL & HUTCHISON,
KING STREET EAST.
1885.

[CHANCERY DIVISION.]

DUNN V. THE BOARD OF EDUCATION OF THE TOWN OF WINDSOR.

Mandamus to admit a child to a public school—Want of accommodation—Public School Regulations ch. 10, secs. 6, 7—Necessity of conformity thereto.

A mandamus to compel the admission of a child to a public school will not be granted where it is shewn that there is not accommodation for her, for this is a valid answer to such an application, especially where it appears, as here, that there is sufficient accommodation at another public school in the same town; nor where it is shewn that the application for admission was not made in the regular and proper way, under the Public School Regulations, as was the case here, inasmuch as, although the child in question was a registered pupil at the other public school in the same town during the preceding term, she had not attended there at the commencement of the present one, nor had application been made to the inspector to have her admitted to the school to which admission was now sought.

THIS was an application on motion for an order for a mandamus compelling the defendants to admit Jane Ann Dunn, the child of the plaintiff, into a certain public school in the town of Windsor, and to duly register her and receive her as a pupil in the said school.

The facts of the case and the arguments of counsel sufficiently appear in the judgment.

The motion was made on October 2nd, 1883, before Ferguson, J.

N. W. Hoyles, for the motion, referred to *Re Hutchison and The School Trustees of St. Catharines*, 31 U. C. R. 274; *Re Stewart and The School Trustees of Sandwich East*, 23 U. C. R. 634; *Washington* v. *The School Trustees of Charlotteville*, 11 U. C. R. 569; *Re Dennis Hill* v. *The School Trustees of Camden and Zone*, 11 U. C. R. 573; R. S. O. ch. 204, sec. 102, subsec. 19.

W. A. Foster, contra, referred to *Hodgins* on Public School Law, 1st ed., p. 190; *Ib.*, ch. 10, secs. 6, 7; R. S. O. ch. 204, sec. 194, subsecs. 11, 12; *School Trustees of Elzevir* v. *The Corporation of Elzevir*, 12 C. P. 548; *Trustees of the Roman Catholic School of Belleville* v. *The School Trustees of the Town of Belleville*, 10 U. C. R. 469; *In re the Strat-*

ford and Huron R. W. Co. and The Corporation of the County of Perth, 38 U. C. R. 112; *In re the Hamilton, &c., R. W. Co. and The Corporation of the County of Halton*, 39 U. C. R. 93.

October 19th, 1883. FERGUSON, J.—This is an application for a mandamus to compel the defendants to admit Jane Ann Dunn, a child of the plaintiff, into the public school in the town of Windsor, of which one James Duncan is the head master, and to duly register her and receive her as a pupil in the said school.

The evidence shews that apart from the Roman Catholic Separate School there are but two public schools in the town. One of these is the school mentioned, of which Duncan is the head master. It is called the Public Central School. The other is a coloured school. It is not a "separate school." During the last term the plaintiff's child was a pupil at the coloured school, and was registered as such under the provisions in that behalf contained in the school regulations, and I think it sufficiently appears that she attended the coloured school as a pupil till the termination of the last term.

At the commencement of the present term, on the morning of the 3rd day of September last, the plaintiff took his child to the Public Central School which he says is the school nearest to which she resides, and presented her to the teacher (Duncan) for admission to the school and registration as a pupil thereof. He says that the teacher Duncan refused to receive her as a pupil, and told him to make application to the school trustees for permission to have her admitted, and that he left after having instructed his child to remain in the school till expelled.

The plaintiff also says that he made application to the trustees at one of their regular meetings held on the 4th day of September last, and it was refused, and he seeks to make out that the real reason for not admitting his child to the school was that she is a coloured child.

The defendants on the other hand say that such was not

their reason at all, alleging as the reason that there was not accommodation at the school, and as a further reason that the application of the plaintiff was not made in the regular and proper way, under the provisions of the public school regulations.

The clause of the regulations relied upon by the defendants is ch. 10, sec. 6, which is in these words: "Every pupil, once admitted to school, and duly registered, shall attend at the commencement of each term, and continue in punctual attendance until its close, or until he is regularly withdrawn (by notice to the teachers to that effect); and no pupil violating this rule shall be entitled to continue in this school, or be admitted to any other, until such violation is certified by the parents or guardian to have been necessary and unavoidable, which shall be done personally or in writing."

The defendants also rely on section 7 of the same chapter, which is in these words: "Pupils in cities, towns, and villages shall be required to attend any particular school which may be designated for them by the inspector, with the consent of the trustees. And the inspector alone, under the same authority, shall have the power to make transfers of pupils from one school to another."

The defendants contend that the plaintiff should have complied with the requirements of those regulations, which the evidence shews have ever since they came into force been recognized and acted upon in the town of Windsor. It is beyond doubt, upon the evidence, that the plaintiff's child was a registered pupil at the coloured school during the last term. It is contended that she should have attended there at the commencement of the present term, and that the plaintiff desiring to have her transferred to the other school should have applied to the inspector for that purpose, and in this contention I am of the opinion that the defendants are right. I think the plaintiff should have complied with the regulations, and I think it is shewn that he did not do so. Counsel for the plaintiff relied upon sub-sec. 19 of section 102 of the School Act, R. S. O. c.

204, which says: it shall be the duty of the trustees of every rural school section "to permit all residents of the section between the ages of five and twenty-one years to attend the school so long as they conform to the general regulations and the rules of the school;" but in my opinion this sub-section does not apply to the case. Then as to the question in regard to want of accommodation in the Public Central School. After having again perused all the affidavits, I am of the opinion that it has been shewn to be a fact that there was not accommodation. At first I had doubts on this subject, although the fact was deposed to by more witnesses than one, because I thought the witnesses might be giving their opinion only on the subject, and it was a matter on which opinions might well differ, and I asked from the defandants more definite information as to the actual facts and circumstances, and after having perused the additional affidavits, I think the defendants right in this contention.

The inspector says in his affidavit that he was always willing to entertain and consider any application of the plaintiff for the transfer of his child from one school to the other, and I think the plaintiff should have taken the course pointed out in the regulations. In any view of this branch of the case I apprehend the result must be the same, for after looking at the cases to which I have referred I think the want of accommodation at the Public Central School is a valid answer to the plaintiff's application especially when it appears, as I think it does, (though there is some confusion in the evidence owing to an alleged unauthorized removal of pupils from one room to another) that there was sufficient accommodation at the other school. I do not think it appears the plaintiff's child was refused admittance into the Public Central School on account of colour, nor do I think it proved that this was assigned by the teacher or by the trustees as the reason for such refusal, I think the application for the mandamus must be refused.

If costs are asked and insisted upon, I will hear what counsel may say on the subject.

A. H. F. L.