89 Vt. 193
Supreme Court of Vermont.

STATE ex rel. MARTIN
v.
FOLEY et al.
STATE ex rel. WRIGHT
v.
KEELAN et al.

June 28, 1915.

Synopsis

Writs of quo warranto by the State, on the relation of Josephine M. Martin, against Cortis M. Foley and Charles H. Farnsworth, and by the State, on the relation of Eugene S. Wright, against Daniel K. Keelan, Cortis M. Foley, and Charles H. Farnsworth. Judgment for relators in part and denied in part, and petition making Daniel K. Keelan a party dismissed as to him.

West Headnotes (7)

[1] Quo Warranto
Trial of title to office

Where one has acted as superintendent of schools, and his report is about due, the court on quo warranto will not oust him, though his title is defective.

Cases that cite this headnote

[2] Quo Warranto
Costs

In quo warranto challenging right of a person to hold public office, the court ousting incumbent may, under P.S. 1972-1977, adjudge costs as is equitable.

Cases that cite this headnote

[3] Education
Meetings

Power of a town meeting to act under Acts 1910, No. 65, § 4, in fixing time for meetings for school purposes, is not exhausted by action at one annual town meeting.

Cases that cite this headnote

[4] Education
District meetings in general

Order of annual town meeting fixing the evening of a designated date for annual school meetings as authorized by Acts 1910, No. 65, § 5, is uncertain because of the word "evening."

Cases that cite this headnote

[5] Education
Appointment or Election, Qualification, and Tenure

Education
District meetings in general

Public Employment
Election or appointment

Warning of annual March meeting, 1913, of a town to see if town would vote to hold school meetings on the first Tuesday in March of that year held to authorize the meeting to fix that date, and, on fixing it, to elect school directors.

Cases that cite this headnote

[6] Education
Appointment or Election, Qualification, and Tenure

Education
District meetings in general

Public Employment
Election or appointment

Where March meeting of a town in 1914 passed over the article in the warning looking to a vote on the question of rescinding the vote of 1912 fixing date of annual school meeting, it could proceed to elect a school director conformably to the general laws.

Cases that cite this headnote

[7] Education
Eligibility and qualification

Public Employment
Age

Public Employment
Residence or domicile

Under P.S. 987, as amended by Acts 1910, No. 65, § 5, a woman 21 years of age or over, who has always resided in a town, is qualified to hold the office of school director.

Cases that cite this headnote

***842** Argued before MUNSON, C. J., and WATSON, HASELTON, POWERS, and TAYLOR, JJ.

Attorneys and Law Firms

P. H. Coleman, of Montgomery, for complainants. J. W. Redmond, of Newport, for respondents.

Opinion

HASELTON, J.

We have here two petitions for writs of quo warranto brought under P. S. c. 97, and heard as one case. The right of the respondents Foley and Farnsworth, respectively, to hold the office of school director in the town of Montgomery is challenged; and, though the respondent Keelan is agreed to be a legal school director and entitled to act as such, his right to exercise the office of superintendent of schools of the town named is challenged.

[1] [2] School directors are to be elected at the annual town meeting in March, unless otherwise provided; but by Acts of 1910, No. 65, § 4, it was provided that, if on due notice in the warning a town so votes at an annual March meeting, it may fix a date not earlier than May 1st, nor later than June 30th, for holding annual town meetings for the election of school directors and for other school purposes.

In 1912 the warning for the regular town meeting of the town of Montgomery notified the voters that one of the purposes of the meeting was to see if the town would vote to hold its annual town meeting for the election of school directors and for other school purposes as authorized by the act of 1910. At the meeting, under this notice or article in the warning, the town voted to hold its annual town meeting for the election of school directors and other school purposes, as authorized by the act referred to, "in the evening of the 26th day of June." In the record of the vote the word "meeting" instead of "meetings" is used. the respondents, however, call our attention to the testimony of the respondent Foley, who, as moderator, put the motion, and who testifies that as it was made, put and carried the word was "meetings." The relators, on the other hand, call attention to the testimony of C. A. Gardyne, an assistant judge of Franklin county court, who was clerk of the meeting, and who testifies that the motion, as made and put to vote, contained the word "meeting," ***843** and not "meetings." Both sides agree that the date fixed was June 26th, in the evening, a rather awkward date, if, as the respondents claim, it was fixed irrevocably for future years, since every few years June 26th would come on Sunday, and rather uncertain in its designation of the "evening." For, to say nothing of the various uses of the term elsewhere, the word "evening" in this locality means, probably, from the usual supper time to the usual bedtime, and these limits are somewhat indefinite. In the circumstances, we find the vote to have been as the record shows it. But the date was not fixed irrevocably, for the power of the town to fix the date at a March meeting was not exhausted by one experiment. The purpose of the act would be defeated by any such unnecessary construction.

June 26, 1912, in accordance with the vote mentioned, the annual school meeting of the town of Montgomery was held, and such action was taken that the school directors July 1, 1912, consisted of respondents Farnsworth, Foley, and Keelan, their respective terms of office to continue until June 30th, in the years 1913, 1914 and 1915, and in each case until the election of a successor. The evidence shows to our satisfaction that the attendance at the school meeting held in the evening of June 26, 1912, was somewhat smaller, and so unsatisfactory.

[3] At any rate, in the warning of the annual March meeting, in the spring of 1913, an article was inserted which reads:

> "To see if the town will vote to hold its annual town meetings for the election of school directors and other school purposes on the first Tuesday in March, commencing with the first Tuesday in March, 1913."

It is claimed by the respondent that, if the town wished to change back to its March meeting as the time for electing school directors, it could, in any view, do so only at a meeting held June 26th, but we think the claim is unsound. Whatever the voters of a town are authorized to do in respect to town officers they can do in the annual March meeting, if the warning for that meeting is broad enough. At the meeting so warned the town voted to hold its annual town meeting for the election of school directors and other school purposes on the first Tuesday of March annually, beginning with the first Tuesday in March, 1913; and thereupon the town proceeded to elect the relator Josephine M. Martin school director for a term of three years to succeed the respondent Farnsworth.

The respondents claim that, even if the town had a right at the meeting to make the change as to the time of choosing school directors, it had not, under the warning, authority to elect school directors at the March meeting in 1913. But the warning was explicit notice to the voters that, if the time of election was changed, they were to commence electing at the March meeting in 1913. The warning was explicit as to the proposition to be voted on, no one could have been misled, and when the article in question was acted on affirmatively it was the duty of the meeting to proceed to elect a successor to the school director whose regular term would expire July 1, 1913.

[4] But it is urged that Miss Martin was ineligible to the office of school director, as "her list was not taken" in either of the years 1912 or 1913. She was born in Montgomery. She has always resided there. At the time of her election she was more than 21 years of age, and since 1908 she has been the owner of real estate in the town, and has had a grand list in 1909, 1910, 1911, and 1914. In 1912 and 1913 her real estate was set in the list to her father, so that her list was not taken in those years, though she indirectly paid the taxes on her real estate. We assume that the fact that her list was not taken in 1912 was fatal to her right to vote in town meeting regarding school officers in 1913, as otherwise she might have done. P. S. 986, 3416; School District v. Bridport, 63 Vt. 383, 22 Atl. 570. And, where the qualifications of officers to be elected in town meeting are not otherwise stated, it seems a reasonable construction of the statute (P. S. 3426, as amended by Acts 1912, No. 118) to say that the voters are to choose such officers from among themselves, that is, from among those qualified to vote in the meeting. This was said, in substance, in Clarendon v. Brown, 55 Vt. 61, in construing substantially the same statute that we now have. And see Quinn v. Halbert, 52 Vt. 353, 366. But, where the qualifications of an officer are clearly fixed by statute, there is no room for construction. Thus for a long time a woman 21 years of age, with one year's residence in a town, has been eligible to the important offices of town clerk and town treasurer. P. S. 3429. So also the qualifications of a school director are exceptional, and the right of a woman to be such is not determined by P. S. 986, which the respondents invoke, but by P. S. 987, as amended by Acts 1910, No. 65, § 5, which requires for that office no other qualification than citizenship in the town.

Under the old school district system the law was explicit that the prudential committee of a school district must be "men" 21 years of age, resident in the district and taxable therein, and so, as the law then was, legal voters in the district. Revised Laws, pp. 161, 507, §§ 7, 9; Compiled Statutes, p. 146, §§ 23, 25; General Statutes, p. 153, §§ 29, 32. It was not, however, until 1864 that a voter in a school or town meeting was required to have the additional qualification of citizenship. Acts 1864, No. 12. In 1868 it was made clear that a person must reside in a district and be qualified to vote in town meeting in order to be a voter in the district school meeting. Acts 1868, No. 39.

In 1869 the qualifications of voters in town meetings were restated and the phrase "male ***844** citizen" was substituted for "male person." Acts 1869, No. 50. Compare General Statutes, 105, § 1. So, down to 1869, voters in town meeting and school district meetings must be "males," and the officers elected by them, no qualifications being prescribed, must be males.

The next year, 1870, educational matters received much attention, and the Legislature provided that towns might experimentally abolish the school district system and establish the town system; and it was then provided that any town doing so might elect three or six school directors required to be "citizens" of such town, but not "male citizens." The legislative intent was, as we think, to permit a town to avail itself of the services of women in the capacity of school directors. the people of the state were already familiar with the value in many communities of the services of women as postmasters. the meaning of the word "citizen" had been sharply and broadly defined in the fourteenth amendment, adopted in 1868, and in examining our legislation in 1869 and 1870 and subsequent years we are satisfied that, if the Legislature

had meant "male citizens" in the act under consideration prescribing the qualifications of town school directors, they would have said so.

In 1880 the Legislature went a step further, and provided that women might be chosen superintendents of schools, which comports with the idea that they were already citizens eligible to be school directors. In the Revision of 1880, not in the Session Laws of that year, upon the recommendation of the commissioners Mr. Willard and Judge Veazey, the Legislature inserted in the statutes a definition of the word "citizens" which could not possibly be understood to exclude women. R. L. § 61. the commissioners in their report remarked that there ought to be such a definition, and that there was none, except that in the Acts of 1864, No. 12, which applied only in special cases. Having recommended the definition of "citizens," which the Legislature adopted, the commissioners came to the revision of the school laws, and after remarking upon the extent to which they were discordant and involved, and having their definition of "citizens" before them, they recommended no change in the statement of the qualifications of school directors under the town system, and the Legislature made none. Report upon the Revision of 1880, pp. 26, 38; R. L. § 594. And so prescribed qualifications of town school directors, though several times re–enacted, have since remained unchanged. Acts 1892, No. 20, § 4; Acts 1894, No. 15; V. S. 669; P. S. 987; Acts 1910, No. 65, § 5.

And all this time the definition of "citizens" has remained unchanged. V. S. 60; P. S. 67.

Our court rules, adopted by legislative authority, require that every applicant for admission to the bar of this state shall be a "citizen" of the state; and when a few years ago a woman, otherwise qualified, made application for admission, we did not undertake to read the word "male" into the rule, but admitted her to the bar, because, having the other qualifications, and being a "citizen," she was entitled to admission. We are not aware that we have ever held that the word "citizen," without any qualification, means a "male citizen." See, here, Minor v. Happersett, 21 Wall. 162, 165, 168, 169, 22 L. Ed. 627.

That as a matter of law a woman may be a citizen, and that as matter of law, applied to the facts proved here, Miss Martin was a citizen of Montgomery at the time she was chosen as school director of that town, are propositions beyond question. She duly took the oath of office and furnished the required bond, and July 1, 1913, became school director of the town of Montgomery, in the place of the respondent Farnsworth, whose term then expired.

[5] The testimony shows that considerable discussion followed the action taken by the town at the March meeting in 1913, and that some claimed that the town had not, in form or effect, rescinded the vote of 1912, fixing the date of holding the annual school meeting June 26th, in the evening. Accordingly, in the warning of the March meeting for 1914 an article was inserted looking to a vote upon the question of rescinding the vote of 1912. But the meeting when assembled passed over the article in the warning, took no action upon it, and proceeded to elect a school director, conformably to the general laws, to succeed the respondent Foley; for, if the town had a right to proceed under the general law, that was the time for electing Foley's successor. And the town had a right to proceed under the general law, for it needs no nice discussion to show that by its action in 1913 it had undone what it did in 1912 about holding its annual meeting for the election of school directors and other school purposes June 26th, in the evening. As Foley's successor, the town at the March meeting in 1914 elected the relator Eugene S. Wright, who was duly qualified. So July 1, 1914, neither the respondent Farnsworth nor the respondent Foley was a school director of the town of Montgomery, but the school directors were D. J. Keelan, Josephine Martin, and Eugene S. Wright,

[6] This board elected Daniel Keelan as chairman and Eugene S. Wright as superintendent of schools, and the respondents, two of whom were not legal school directors, chose Daniel Keelan as superintendent of schools; but in his sworn answer he makes the averment which nobody denies, and which we find to be true, that he has advised with the relator Wright concerning school matters. The office of superintendent of schools was an annual office. P. S. 933, as amended by Acts 1910, No. 65, § 2. Dr. ***845** Keelan's term is about to expire, and, having acted as school superintendent, his report to the school directors appears to be due on or before June 30, 1915, a date soon to arrive. P. S. 937, as amended by Acts 1910, No. 65, § 3. Although his title is defective, it is discretionary with us whether or not to disturb him in the exercise of his office as superintendent. State v. Mead, 56 Vt. 353; Pomeroy v. Kelton, 78 Vt. 230, 62 Atl. 56; Clark v. Wild, 85 Vt. 212, 81 Atl. 536, Ann. Cas. 1914C, 661. We think that, in the exercise of a sound discretion, he should be allowed to serve out the remaining and minute fraction

of his term of office as superintendent. Therefore the petition as to him should be dismissed. The complaints of Josephine Martin and Eugene S. Wright against Cortis M. Foley and Charles H. Farnsworth ought to and do prevail. Questions made by the pleadings, but not relied on in the respondents' brief, are not considered; neither are questions considered that are rendered immaterial by our findings and holdings already stated.

The difficulties in the case have arisen largely from the necessity of construing our school laws as they stood before the legislation of the present year.

[7] In these proceedings costs may be adjudged as is equitable. P. S. c. 97. The action of the town brought about such a situation of uncertainty that in all the circumstances of the case costs should be awarded to neither party.

The respondents Farnsworth and Foley are respectively adjudged not to be entitled to exercise the office of school director in the town of Montgomery and judgment of ouster is rendered against them as if the writs prayed for had issued in the first instance, as is provided by P. S. 1974.

Judgment is rendered that Josephine Martin and Eugene S. Wright are duly elected and qualified school directors of the town of Montgomery and authorized to act as such. The petition which makes D. J. Keelan a party is dismissed as to him. No costs are awarded.

All Citations

89 Vt. 193, 94 A. 841