

1894.

NEW ZEALAND

EDUCATION: CASE OF WRIGLEY V. FISHER

(CORRESPONDENCE BETWEEN THE TE RAHU SCHOOL COMMITTEE AND THE AUCKLAND
EDUCATION BOARD RELATING TO).

Laid on the Table by Leave of the House.

Education Board, Auckland, 7th August, 1894.

THE following correspondence is published for the information of School Committees.

By order of the Board.

VINCENT E. RICE, Secretary

SIR,—

Te Awamutu, 30th July, 1894.

The case *Wrigley v. Fisher*, tried recently at the Supreme Court, places School Committees in a position so critical that this Committee respectfully asks your Board's written decision for their guidance. Heretofore Committees deemed that your Board was the arbiter of their official conduct as well as that of the teachers. The results of the case quoted above show that your Board do not consider such to be the case and Committees find themselves confronted—in spite of their office, and in the *bonâ fide* execution thereof—with all the penalties of both civil and criminal law. According to this ruling, Committees will certainly decline to take any action against a teacher, no matter how just or how patent may be the grounds for doing so and this Committee would not feel justified in communicating to your Board touching any wrongful acts which teachers in their district might be guilty of, seeing that they are in no way privileged in the performance of such a duty, but ever have the law of libel hanging *in terrorem* over them. Why School Committees, as well as Judges on a judicial bench, should not be privileged in the *bonâ fide* execution of their duty seems inexplicable, since the former have duties as onerous, albeit humbler, and, moreover, performed gratuitously, which the latter certainly are not. No honourable men can be expected to serve on Committees on conditions so humiliating, nor could the faithful performance of their duties be expected of them even should they accept the office. This Committee, therefore, respectfully await your Board's instructions and advice.

I have, &c.,

WILLIAM JOHNS,

Chairman, Te Rahu School Committee.

The Secretary, Board of Education, Auckland.

SIR,—

Education Board, Auckland, 7th August, 1894.

I am directed to inform you that your letter dated 30th July was considered by the Board at its meeting to-day, and that the Board unanimously indorsed the opinions expressed in Mr. Cooper's letter, of which a copy is herewith subjoined for your information.

I have, &c.,

The Chairman, Te Rahu School Committee.

VINCENT E. RICE, Secretary

DEAR SIR,—

Gisborne, 3rd August, 1894.

As I promised on Thursday, I now send you my views on the questions raised by Mr. Johns in his communication to the Board on behalf of the Te Rahu Committee. (1) I cannot see the slightest occasion for School Committees to be alarmed at the result of the action *Wrigley v. Fisher*. I had an opportunity of hearing his Honour Mr. Justice Conolly's direction to the jury in that case and that direction was quite sufficient to protect any Committee who had acted in the *bonâ fide* exercise of their duty. As I understood his Honour, he directed the jury that the law was that communications from a School Committee to the Education Board were, although not absolutely

privileged, the subject of the rules governing what lawyers call qualified privilege, that is, that the plaintiff, in order to succeed, must not only show that the charge communicated to the Board was untrue and without foundation, but that the Committee or the person against whom the action was brought were actuated by malice against the teacher. In other words, if the Chairman or the Committee (as the case might be) honestly believed in the truth of the charges communicated to the Board, and acted in what he or they considered *honestly and in good faith* to be the interests of the school, then that, however untrue the charges might eventually be proved to be, the Chairman or the Committee were entitled to a verdict, but if the plaintiff succeeded in showing that these charges were not made from a proper motive, but with a desire to injure the teacher, and not in the honest performance of the duties of the Committee, then the plaintiff should obtain the verdict, and that the onus of showing this rested on the plaintiff. (2.) This, in my opinion, is all the protection School Committees require, and we, as members of the Board, are subject to precisely the same principles. (3.) There are two classes to be considered—(a) the Committees, (b) the teachers, and while on the one hand the protection which the law gives to Committees relieves them from all liability for any communication made by them to the Board as Committeemen in the honest performance of their duties, however groundless upon investigation the charges in that communication may subsequently appear to be, on the other hand a teacher is entitled to be protected against false charges maliciously made by Committees or individual Committeemen, and the law righteously and properly gives the teachers that protection. 4.) So long as I am a member of the Board I will strenuously oppose the adoption of any office rule which will have the effect of keeping a teacher in ignorance of charges made against his or her character, or which will prevent him or her from obtaining the fullest investigation into, and, if the charge be groundless, the fullest exoneration from, such charge. I consider that ordinary justice requires that when a teacher's character is attacked a copy of the charge, with the necessary information showing by whom that charge is made, should be supplied to the teacher. One of the plainest and most important duties of the Board is to protect teachers against charges improperly made, and not to allow their characters to be aspersed and their reputation ruined by charges made behind their backs by a hidden antagonist. (5.) As I stated at a recent meeting of the Board, it would be intolerable if either the members of the Board or of School Committees were absolutely protected in what they said or did, however malicious their motives might be. Such a principle if carried into law would lead, I am assured, in many cases to the cruellest injustice, and would tend more than anything else to lower the tone and character of our teachers and react to a marked degree upon the character of our children. (6.) I do not think Mr Johns or his Committee have rightly appreciated the position, and, as I shall not be able to be present at the meeting of the Board on Tuesday, I send you my views, and I shall be glad if you will make them public. I feel that on a question of this kind it is the duty of the members of the Board to speak with no uncertain sound.

I am, &c.,

R. Udy, Esq., Chairman, Education Board, Auckland.

THEO. COOPER.

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