

McMILLEN, *et al.*, v. SMITH, *et al.*

MANDAMUS—*Will not control judicial discretion.*—The issuing of an injunction is not an act ministerial in its character only, but one of judicial discretion, and mandamus never lies to control that discretion.

*Petition for Mandamus.*

*Witherspoon and Garland & Nash*, for petitioners.

*Montgomery & Warwick*, for respondents.

HARRINGTON, Special Chief Justice.

The plaintiffs, claiming to be the school board of directors for the single school district of Arkadelphia, in Clark county, petitioned the Hon. E. J. SEARLE, as judge of the Clark circuit court, praying an injunction restraining the defendants, as the acting school board of directors for said single school district of Arkadelphia, from paying out or otherwise disposing of moneys in the hands of the treasurer of said county, and belonging to the aforesaid school district of Arkadelphia, which application was refused, and they now apply to this court for mandamus against the said judge of the Clark circuit court, to compel him to grant the injunction as prayed for in said petition.

The issuing of an injunction is not an act ministerial in its character only, but one of judicial discretion, and the only question involved in this case is fully discussed and decided in *Hays, ex-parte*; of the present term, in which it was held: That mandamus never lies to control judicial discretion. See opinion in *Hays, ex-parte*; also 6 *Howard*, 92; 5 *Iowa*, 380; and 13 *Peters*, 279, 404.

Mandamus is denied.

SEARLE, J., being disqualified, did not sit in this case.

HON. S. R. HARRINGTON, special Supreme Judge.

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