

SCHOOL DISTRICT NO. 3 v. BODENHAMER.

1. SCHOOL DISTRICTS: *May sue and be sued.*

By section 53 of the common schools Act of December 7, 1875, each school district is constituted a body corporate with power to sue and be sued in any of the courts of this State having competent jurisdiction.

2. MANDAMUS: *Against School Directors.*

Mandamus to compel a public corporation to pay a debt can be employed only after judgment establishing the amount of the debt.

APPEAL from *Baxter* Circuit Court.

Hon. R. H. POWELL, Circuit Judge.

J. L. Abernethy, for appellant.

This was a simple money contract for services rendered as teacher. If the directors made any such contract they exceeded their powers and authority, and the appellant as a

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quasi public corporation is not bound. *Story on Agency, Sec. 172; Perry on Trusts, Vol. 2, Sec. 475, 511.* The directors may be personally liable, but not the district. 2 *Ark.*, 338; 38 *Ib.*, 454. See *School Act 1875 Secs. 61, 62, 67, &c.*

Mandamus was the proper remedy, after demand and refusal. *Gantt's Dig., Sec. 4150; 6 Ark.*, 9; 26 *Ark.*, 257.

J. Frank Wilson and Z. M. Horton for appellee.

The Justice of the Peace had exclusive jurisdiction. *Const. Art. VII, Sec. 40, Clause 1.*

Each school district is a body corporate and *may sue and be sued as such.* *Sec. 53, p. 71 School Act, Dec. 7, 1875,* and the action of the directors bind the District. *Ib. Sec. 62.*

2. Mandamus not the remedy until after judgment. *Wells Jurisdiction of Courts, Sec. 472 and notes; 26 Ohio St. 365; 34 Mich.*, 201; 20 *Kans.*, 404.

SMITH, J. This action was begun before a Justice of the Peace to recover a balance of \$75 due for teacher's wages, pursuant to the terms of a written contract entered into between the plaintiff and the defendant's directors. The plaintiff had judgment and the School District appealed to the Circuit Court. There, after a motion to dismiss and a demurrer for want of jurisdiction, the defendant declined to contest the matter further in that forum, and allowed judgment to go, and has appealed to us.

By Section 53 of the Common Schools Act of December 7, 1875, each School District is constituted a body corporate, with power to sue and be sued in any of the courts of the state having competent jurisdiction. And the cause of action was within the exclusive original jurisdiction of the Justice of the Peace. There is no force in the suggestion that the plaintiff's remedy was mandamus to

compel the directors to issue an order upon the County Treasurer for her wages. The writ of mandamus is frequently employed to compel public corporations to perform their duties towards their creditors. But there must first be a judgment to establish the validity and amount of the debt.

Affirmed.
