

SCHOOL DISTRICT No. 23 v. OZMER.

Opinion delivered December 24, 1906.

1. SCHOOL DISTRICT—EMPLOYMENT OF TEACHER—LIABILITY.—Where a school district employed a teacher holding a second-grade license, which would expire before his term of employment would end, and subsequently he was examined before his school was to begin, and received license in the third grade, which authorized him to teach the school, the school district was liable for his salary, if he held himself ready to teach, though the directors refused to permit him to do so. (Page 194.)
2. SAME—EMPLOYMENT OF TEACHER—WARRANTY AS TO GRADE.—The recital in a contract of employment of a teacher that he holds a license of the second grade is not a warranty that he will continue to hold that grade. (Page 195.)

Appeal from Columbia Circuit Court; *Charles W. Smith*, Judge; affirmed.

C. W. McKay, for appellant.

Smcad & Powell and *A. S. Kilgore*, for appellee.

HILL, C. J. The school district in April employed Ozmer to teach a three-months' school beginning in June. The directors prevented him opening his school, and he sued for salary, and the court, after a trial, directed a verdict in his favor, and the district appealed.

The contract begins thus: "This agreement, between * * * (names of the directors of the district) and H. F. Ozmer, a teacher who holds a license of the second grade," etc. Ozmer's license would expire in July; he went before the county examiner after his contract was executed, and before his school was to begin, and stood his examination and received license, but of the third grade this time. This fact is urged as cause to

justify the district in attempting the rescission of the contract. This third grade license gave Ozmer lawful authority to teach this school, and there is no clause in the contract requiring him to continue to hold a second-grade license.

The district and Ozmer could have contracted that, should he fail to get a renewal of his second-grade license, the contract should terminate, but they made no such contract; and so long as Ozmer was licensed to teach, and he was ready to do so, he performed his part of the contract, and the district must perform its. The recital of his grade of license can not be construed into a warranty that it would continue such. He was required by law to stand another examination before the life of this contract expired, and he made no warranty what his next license would be; merely described, and truthfully described, his present one.

Judgment affirmed.
