Indiana Law Journal

Volume 15 | Issue 3 Article 6

2-1940

Teachers' Tenure

CONTRACTS—TEACHERS' TENURE.—Plaintiff brought suit for the breach of a permanent teacher's tenure contract, the alleged breach consisting of defendant's refusal to assign him a teaching position since 1931. Damages sought were loss of salary from date of breach. Held, for defendant; a permanent tenure teacher's indefinite contract is a protected contractual right entitling the teacher to a succession of definite contracts, but such indefinite contract will not sustain an action for compensatory damages. *Lost Creek School Tp., Vigo County v. York* (Ind. 1939), 21 N. E. (2nd) 58.

The case presents two questions: first, what is the nature of the indefinite contract for which the statute provides, and second, what are the remedial rights thereunder? As to the first question, there is sound basis for the holding that the indefinite contract gives the teacher a mere functional relationship, a right to be re-employed, and does not provide the specific terms for the employment in any school year. The tenure act provides that it shall be construed as supplementary to the Act of 1921 which sets out the requirements to be incorporated in teachers' yearly contracts and prohibits the bring-

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6 Kemble v. Weaver (1925), 200 Iowa 1333, 206 N. W. 83; Stansell v. Roach (1923), 147 Tenn. 183, 246 S. W. 520; West v. Coos County (1925), 115 Ore. 409, 237 P. 961.

7 Coyne v. Superior Incinerator Co. of Texas (1936), 80 F. (2d) 844; Herrick v. Barzee (1920), 96 Ore. 357, 190 P. 141; West v. Coos County (1925), 115 Ore. 409, 237 P. 961.

8 Lafferty v. Jelley (1864), 22 Ind. 471; Scobey v. Ross (1859), 13 Ind. 117.

9 Stroemer v. Van Orsdel (1905), 74 Neb. 132, 103 N. W. 1053.

10 Acts of 1915, Ch. 2, § 4, par. 5; Burns Ind. Stat. Ann. 1933, § 34-304.

11 Coquillard's Administrators v. Bearss (1863), 21 Ind. 479.

ing of an action on any contract not in conformity therewith.[1] A supplementary act adds to the former and takes nothing from it.[2] Thus the requirement that there be definite yearly contracts was left the same by the tenure act, and any action brought on a yearly contract of employment which does not meet the requirements of the Act of 1921 could not be sustained. But the tenure act provides for an additional relation between schools and teachers, separate and apart from the relation arising out of definite yearly contracts, and it is the rights arising out of this additional relationship which are in question.

Although the court in the principal case denied damages in an action at law, it does not necessarily follow that the teacher is finally precluded from a recovery of damages.[3] He can ask for general relief in equity, and the court, in addition to compelling the school district to give the teacher a definite contract to run in the future, can, considering that as done which should have been done, do complete justice and award damages for the time during which the teacher was not allowed to teach.[4] But there is no sufficient reason why damages should not be recoverable at law as well. The Indiana courts have awarded damages for the breach of the permanent tenure contract in a number of cases decided previously to the principal case, and even based the quantum of damages upon the salary received by the teacher during the last year that he served under a definite contract.[5]

The United States Supreme Court has held that the relationship which arises between a teacher and a school district under the Teachers' Tenure Act is contractual, and not merely one of status.[6] This being true it appears that either party should be entitled to damages for a breach by the other. From the wrong of breach of contract, injury is presumed, and the right to recover damages is thereby established.[7] The party injured must, of course, sustain

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[1] Ind. Acts 1921, c. 91, § 1; Burns Ind. Stat. Ann. (1933), § 28-4304; Acts 1927, c. 97, §§ 1, 6; 1933, c. 116, §§ 1, 5; Burns Ind. Stat. Ann. (1933), §§ 28-4307, 28-4312.

[2] Board of School Comm. v. State ex rel. Wolfolk (1936), 209 Ind. 498, 199 N. E. 569; McCleary v. Babcock (1907), 169 Ind. 228, 82 N. E. 453; State ex rel. Cuneo v. Board of Commissioners of Wyandott Co. (1897), 16 Ohio C. C. 218.

[3] The Indiana Statute of limitations provides that a party who seeks to enforce a right but pursues the wrong remedy may bring a new action within five years after the determination of the first, and it shall be deemed a continuation of the first. Ind. Acts 1881 (Spec. Sess.), c. 38, § 45; Burns Ind. Stat. Ann. (1933), § 2-608. Cases cited.

[4] Doherty v Holliday (1893), 137 Ind. 282, 32 N. E. 315; Spidell v. Johnson (1890), 128 Ind. 235, 25 N. E. 889, 19 Am. Jur. 125-132.

[5] Haddon School Twp. of Sullivan County v. Willis (1935), 209 Ind. 356, 199 N. E. 251; Ratcliff v. Dick Johnson School Twp. (1935), 204 Ind. 525, 185 N. E. 143; School City of Brazil v. Rupp (1937), 104 Ind. App. 287, 10 N. E. (2nd) 924; Patoka School Twp v. Ashby (1938), 105 Ind. App. 235, 14 N. E. (2d) 764; Spice Valley School Twp. of Lawrence Co. v. Rizer (1938), 214 Ind. App. 528, 15 N. E. (2d) 270; Sherrod v. Lawrenceburg School City (1938), 213 Ind. 392, 12 N. E. (2d) 944.

[6] State ex rel. Anderson v. Brand (1938), 303 U. S. 95, 58 S. Ct. 95.

[7] Restatement, Contracts (1932), § 327. 5 Williston, Contracts (Rev. ed. 1937), § 1338; Finley v. Atlantic Transport Co. (1917), 220 N. Y. 249, 115 N. E. 715, L. R. A. 1917E 852, Ann. Cas. 1917D 726; Hall v. Delphi-Deer Creek Twp School Corp. (1933), 98 Ind. App. 409, 189 N. E 527, 15 Am. Jur. 393-4.

the burden of proving actual damage, and the defendant can offer evidence to mitigate the damages. However, if, in any case, the plaintiff cannot prove actual damage, he is nevertheless entitled, on proof of the breach alone, to an award of nominal damages.[8]

The court, in the principal case, refuses to allow damages because the indefinite contract sued upon does not supply certain terms under which the service is to be rendered, so as to provide a definite criterion for ascertaining the quantum of damages. In the great number of cases in which recovery has been denied on the grounds of uncertainty, it is to be observed that the real reason for the decisions is that there has been no agreement and so no contract on which to recover.[9] In the principal case it has been established that there is a contract—an agreement.[10] So long as there is damage, and damage is presumed from the breach of a contract, uncertainty as to the amount is not a bar to recovery.[11] Moreover, it has been held that a wrongdoer who has, by his wrong, caused the uncertainty as to the amount of damage may not complain of such uncertainty and obviate liability on those grounds.[12]

Courts have awarded damages for the breach of a contract to make a contract, as the court holds the teacher's indefinite contract to be.[13] These contracts have been specifically enforced[14] even though the courts have repeatedly held that a higher degree of certainty in the agreement is required for a decree of specific performance than for a judgment for damages.[15] Moreover, the courts have upheld contracts for permanent employment, even where the terms under which the service is to be rendered may not have been definitely fixed. Especially is this true where, in return for the promise that the employment be permanent, there can be found some consideration other than the mere promise to perform services. Damages have been awarded for the breach of these contracts, applying the test of reasonableness to ascer-

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[8] 5 Williston, Contracts (Rev. Ed. 1937), § 1339A; Hall v. Delphi-Deer Creek Twp. School Corp. (1933), 98 Ind. App. 409, 189 N. E. 527; Rosenbaum v. McThomas (1870), 34 Ind. 331; Ladoga Canning Co. v. Corydon Canning Co (1912), 52 Ind. App. 23; 98 N. E. 849; Grau v. Grau (1905), 37 Ind. App. 635, 77 N. E. 816! Watts v. Weston (1894), 62 Fed. 136.

[9] 5 Williston, Contracts (Rev. Ed. 1937), § 1339; Crichfield v. Julia (1906), 203 U. S. 593, 27 S. Ct. 781, 147 Fed. 65; Occidental Consolidated Mining Co. v. Comstock Tunnel Co. (1903), 125 Fed. 244.

[10] State ex rel Anderson v. Brand (1938), 303 U. S. 95, 58 S. Ct. 95.

[11] Story Parchment Co. v. Paterson Co. (1930), 282 U. S. 555, 75 h. Ed. 544, 51 S. Ct. 248; Shannon v. Shaffer Oil and Refining Co. (1931), 51 F. (2d) 878, 78 A. L. R. 851; Hoffer Oil Corporation v. Carpenter (1929), 34 F. (2d) 589, 15 Am. Jur. 414.

[12] 5 Williston, Contracts (Rev. Ed. 1937), § 1346; Crichfield v. Julia (1906), 203 U. S. 593, 27 S. Ct. 781, 147 Fed. 65; Emerson v. Pacific Coast & N. Packing Co. (1905), 96 Minn. 1, 104 N. W. 573, 1 L. R. A. (N. S.) 445; Dart v. Laimbeer (1887), 107 N. Y. 664, 14 N. E. 291.

[13] 2 Sedgwick, Damages (9th ed. 1920), § 622c; where the terms of the contract to be entered into are not definitely fixed, Olympia Bottling Works v. Olympia Brewing Co. (1910), 56 Ore. 87, 107 Pac. 969.

[14] Slade v. Lexington (1910), 141 Ky. 214, 132 S. W. 404, 32 L. R. A. (N. S.) 201; Faucett v. Northern Clay Co. (1915), 84 Wash. 382, 146 Pac. 857.

[15] Harter v. Morris (1920), 72 Ind. App. 189, 123 N. E. 23; Stanton v. Singleton (1899), 126 Cal. 657, 59 Pac. 146, 47 L. R. A. 334; Grayson L. Co. v. Young (1915), 118 Va. 122, 86 S. E. 826; Restatement, Contracts (1934), § 370, Comment b.

tain their amount.[16] The contract in the principal case is like these, both in the matter of certainty and consideration. Consideration for the promise of permanent employment may be found in the teacher's promise to give up the privilege of teaching elsewhere during the required probationary period.

Minimum salaries are fixed by statute for the payment of teachers.[17] Thus it appears that in any action at law for the breach of a teacher's tenure contract, the teacher should be entitled to damages based on the minimum salary established by law, or on the reasonable salary to which he was entitled, if he can prove that the reasonable salary would have been higher than the minimum established by law. C. D. S.

DAMAGES—BENEFITS RECEIVED FROM THIRD PARTIES IN MITIGATION.—Action for personal injuries. Plaintiff appealed from the lower court's refusal to instruct the jury that the fair value of the nursing care rendered plaintiff by his wife was a proper element of damages. Held, affirmed. Daniels v. Celeste (Mass. 1939), 21 N. E. (2d) 1.

It was reasoned that the fair value of nursing care is recoverable only if the plaintiff has paid or incurred a legal liability to pay.[1] The court pointed out that, by reason of the marital relation, the plaintiff could not make a valid contract with his wife for such services.[2] Therefore, the plaintiff may not recover for services for which he is under no obligation to pay.

The case adopts a minority rule that benefits received from sources wholly independent of the wrongdoer may operate to reduce damages recoverable from the latter.[3] The court pointed out that the object of compensatory damages is to afford the equivalent in money for the actual loss caused by the wrong of another.[4] The conflict in cases has arisen in determining whether actual loss has occurred. The principal case holds that no loss is suffered where the plaintiff is under no obligation to pay for the services rendered. The issue was early raised in cases involving a wrongdoer claiming benefit of insur-

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[16] Pennsylvania Co. v. Dolan (1892), 6 Ind. App. 109, 32 N. E. 802; Carnig v. Carr (1897), 167 Mass. 544, 46 N. E. 117; Fisher v. John L Roper Lumber Co. (1922), 183 N. C. 485, 111 S. E. 857; F. S. Royster Guano Co v. Hall (1934), 68 Fed. (2d) 533.

[17] Burns Ind. Stat. Ann. (1933), § 28-4314.

[1] Hunt v. Boston Terminal Co. (1912), 212 Mass. 99, 98 N. E. 786.

[2] Mass. G. L. (Ter. Ed.), c. 209, sec. 2: "A married woman may make contracts, oral and written, sealed and unsealed, in the same manner as if she were sole, except that she shall not be authorized hereby to make contracts with her husband." This statute, although noted by the court, does not change the common law since there can be no valid contract between husband and wife for the performance of duties incident to the marriage relation. Bohanan v. Maxwell (1921), 190 Iowa 1308, 181 N. W. 683.

[3] McCormick on Damages (1935), sec. 90.

[4] " 'Rule of damages is a practical instrumentality for the administration of justice. The principle on which it is founded is compensation. Its object is to afford the equivalent in money for the actual loss caused by the wrong of another. Recurrence to this fundamental conception tests the soundness of claims for the inclusion of new elements of damage.' Sullivan v. Old Colony St. R. (1908), 197 Mass. 512, 83 N. W. 1091."