

evidence had actually been submitted to the court, or whether there was any direct ruling upon such question at the time, or exceptions, if rulings were made. The admission of evidence in a case being tried by a court without the intervention of a jury does not require the nice distinction of ruling that it does when it is to go to a jury, and the fact that testimony is given in an answer or read in a deposition does not necessarily imply that it is improperly considered in the final examination and conclusion of the case. The same judicial mind that would exclude it from a jury can as readily set it aside upon a final consideration; and, where there appears sufficient evidence to justify the conclusions reached, the presumption is that the irrelevant testimony, although heard and not positively excluded by order, was set aside eventually, and not considered to the injury of the plaintiff in error.

It is considered that the error in overruling the demurrers to the third and fourth pleas will necessitate a new trial, and it is ordered that the judgment below be reversed, and the cause be remanded for a new trial.

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**CALDWELL v. SCHOOL DIST. NO. 7 OF LAKE COUNTY.**

(Circuit Court, D. Oregon. March 1, 1893.)

No. 1,945.

**1. SCHOOLS AND SCHOOL DISTRICTS—TEACHERS' CONTRACTS—DURATION.**

In the absence of statutory limitations, a school district can enter into a contract of employment with a teacher for the period of two scholastic years, though such contract extends beyond the term for which some of the directors were elected.

**2. SAME—COMPENSATION—CERTAINTY.**

Such contract is not void for uncertainty where the stipulation for the teacher's compensation provides that he shall receive the same salary for his services as was established at that date for like services by the school district within which the city of Portland is situated.

At Law. Action by C. J. Caldwell against School District No. 7, of Lake county, Oregon, to recover for breach of contract. Defendant demurs. Demurrer overruled.

James F. Watson, for plaintiff.

Earl C. Bronaugh, for defendant.

**GILBERT**, Circuit Judge. The plaintiff sued School District No. 7, of Lake county, upon a contract made on June 1, 1889. The questions presented in this case on demurrer to the complaint are—First, whether under the laws of Oregon a school district can enter into a contract of employment with a teacher for the period of two scholastic years; and, second, whether such a contract is void for uncertainty if the stipulation for the teacher's compensation provides that he shall receive the same salary for his services as was established at the date of the contract for like services by the board of directors of the school district within which the city of Portland is situated.

It is contended on behalf of the defendant that the school directors have not power to enter into a contract extending

further into the future than the term for which all the members of the board hold their office. In support of this view citation is made to decisions of the state courts of Illinois. Undoubtedly that doctrine is supported by the decisions of that state. An examination into the grounds of those decisions, however, discloses the fact that they are based upon the interpretation given to the statute of Illinois. The statute there provides that at the annual election of directors the course of study for the ensuing scholastic year shall be determined by ballot of the electors. The courts have held it to be a necessary inference that no contract could be made for the employment of a teacher until it should be known what service was to be contracted for. In other states, where there is no statute limiting expressly or by implication the time for which such a contract may be made, the decisions uniformly concede the power to the directors to enter into agreements for a period longer than their term of office. *Gates v. School Dist.*, (Ark.) 14 S. W. Rep. 656; *Reubelt v. School Town*, 106 Ind. 480, 7 N. E. Rep. 206. In this state there is no such limitation by statute, and it is not perceived that any principle of public policy would prohibit the making of a contract for a period of two scholastic years.

Neither is the contract void for want of certainty as to the terms of payment. That is certain which may be rendered certain. It does not appear from the complaint that the compensation to be paid the plaintiff was not capable of being rendered certain by reference to a fixed and definite standard of compensation established by the directors of another district. The practice of so expressing the rate of compensation in a contract may be justly open to criticism when it is considered that the directors are trustees of the people, and owe to them full and accurate information as to the terms of all contracts; yet upon a demurrer to a complaint filed to recover compensation under such a contract, after the same has been executed, the court will not be justified in holding the contract void. The demurrer is overruled.

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UNITED STATES v. CLOUGH.

(Circuit Court of Appeals, Sixth Circuit. February 6, 1893.)

No. 26.

- 1 CLAIMS AGAINST THE UNITED STATES—COMMISSIONER'S FEES—AFFIXING SEAL. Rev. St. § 1014, requires the process issued by a United States commissioner to be the same as that issued against offenders under the state law by examining magistrates. In Tennessee the seal of the magistrate is necessary to validate the process. Rev. St. § 828, allows clerks for issuing and entering every process, with certain exceptions, \$1, and a further allowance of 20 cents for affixing the seal of the court to any instrument when required. Rev. St. § 847, allows commissioners the same fee as is allowed the clerks for like services. *Held*, that the allowance of 20 cents applies only to those instruments for which specific provisions are not made, and that a commissioner in Tennessee is not entitled to such fee for affixing his seal to warrants, writs of mittimus, etc., issued by him upon preliminary examinations, since such action is a necessary part of the issuance of the process, and is paid for by the fee for the process. 47 Fed. Rep. 791, reversed.