PRIVATE TUTORING, COMPULSORY EDUCATION AND THE ILLINOIS SUPREME COURT

The struggle between parent and state for control of the child's education, though frequently before the courts, has not yet resulted in a decision which fully comprehends the significance of the conflicting claims, or states clearly the objectives of compulsory school attendance. An opportunity for clarification recently was avoided by the Illinois Supreme Court. In *People v. Levisen*,[1] the parents refused to send their seven year old daughter to a public school and were convicted of violating the compulsory attendance law.[2] This Act provides, in part, that whoever has custody of a child between the ages of seven and sixteen years shall cause such child to attend some public school, unless such child is "attending a private or parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools. . . ."[3] The defendants, Seventh Day Adventists, refused to comply with the law because of alleged religious convictions. They argued that a child should be taught by parents in a religious atmosphere at home where there would be no danger of exposure to fairy tales or to competitive activities conducive to a pugnacious character "contrary to the teachings of Christ."[4] The supreme court held that since the instruction was provided at regular hours and included subjects taught to children of the same age in public school,[5] it was within the meaning of the term "private school" in the statute;[6] the conviction, with one judge dissenting, was accordingly reversed.

The majority's construction of the statute is unsupported not only by ordinary connotations of the term "private school"[7] but also by the legislative his-

[1] 404 Ill. 574, 90 N.E. 2d 213 (1950).

[2] Ill. Rev. Stat. (1949) c. 122, §§ 26-1 through 26-9.

[3] Ill. Rev. Stat. (1949) c. 122, § 26-1.

[4] Appellants' brief (abstract), at 8.

[5] The defendants' daughter was being educated at home by her mother, who had two years of college education and some training in pedagogy and educational psychology. Regular hours of instruction and study were maintained in the subjects taught to children of the same age in the public schools with materials provided by the Seventh Day Adventists Home Study Institute.

[6] The authority primarily relied upon held, under a similar statute, that a child being tutored by a private instructor was attending a "private school" within the meaning of the Indiana act. *State v. Peterman*, 32 Ind. App. 665, 70 N.E. 550 (1904). However, the opposing case, *State v. Counort*, 69 Wash. 361, 124 Pac. 910 (1912), in which the defendant's conviction under such an act was upheld, notwithstanding his claim that he was giving his children equivalent education at home, was considered by the dissent in the *Levisen* case as stating the better rule.

[7] Even where the words of a statute have more than one meaning, the accepted rule of statutory interpretation is that the words should be given that meaning which comports with the usual and popular meaning attached to such words. People v. Carman, 385 Ill. 23, 52 N.E. 2d 197 (1943); Svithiod Singing Club v. McKibbin, 381 Ill. 194, 44 N.E. 2d 904 (1942); Revzan v. Nudelman, 370 Ill. 180, 18 N.E. 2d 219 (1938); 59 C.J. § 569; 2 Sutherland, Statutes and

tory of the compulsory attendance law. The original act did provide for home instruction, but subsequent amendments clearly indicate an intent to repeal this exception to the public school attendance provision.[8] It is conceivable that implicit in the decision was a judgment as to the propriety of the state's forbidding the parents to provide equivalent instruction at home as an alternative to public or private school attendance, particularly when this alternative is claimed on religious grounds. This question could have been more appropriately dealt with by a determination of the constitutionality of the Illinois Compulsory Attendance Act. However, the court may not have wished to decide the issue of constitutionality when it had other grounds on which to dispose of the case.

Aside from defendants' contention that they should prevail as a matter of religious liberty, the question arises as to whether a parent has a constitutional right, protected by the Fourteenth Amendment, to undertake personally the responsibility of educating his child. With particular reference to the Illinois statute, must the court recognize, as a complete excuse, proof that the child is receiving an equivalent education at a place other than at a public or private school, where the compulsory attendance statute does not expressly provide that such instruction will be considered a compliance with its terms? Although there is no case which precisely answers this question,[9] the preponder-

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Statutory Construction § 4502 at 316 (1943). Many compulsory attendance statutes specifically make the distinction between "private schools" and "tutors." Ala. Code Ann. (Michie, 1941) tit. 52, §§ 299, 300; Cal. Civ. Code (Deering, 1943) §§ 16624, 16625; N.C. Gen. Stat. (Michie, 1943) § 115-302; Ore. Comp. Laws Ann. (1940) § 111-1801.

[8] The original compulsory attendance law did provide that a child might be taught at home. Ill. Laws 1883, § 2, at 167. This exception was excluded from the Illinois act in the 1929 amendment, Ill. Laws 1929, § 274, at 726 which otherwise incorporated all the various provisions theretofore passed in connection with the subject of school attendance. The ordinary rule of statutory construction is that in such a case such portions of the old act as are not repeated in the new act are repealed without any express words for that purpose. "A general rule of construction is that if an act or section of an act be amended, and the amendment does not entirely repeat the original act or section, such portions not repeated are repealed without any specific expression for that purpose. The omitted portion cannot be legislated into existence by judicial construction." People ex rel. Martin v. Village of Oak Park, 372 Ill. 488, 490, 24 N.E. 2d 571, 572 (1939); Miner v. Stafford, 326 Ill. 204, 157 N.E. 164 (1927); Chicago v. Jewish Consumptives Relief Society, 323 Ill. 389, 154 N.E. 117 (1926). This would appear to be the logical inference as to the intent of the legislature in respect to the compulsory attendance statute, and it is difficult to justify the Illinois supreme court's unwillingness to declare it applicable to the action of the defendants.

[9] State v. Peterman, 32 Ind. App. 665, 70 N.E. 550 (1904), and the Levisen case, following it, avoided the constitutional question by reading the statute as providing competent private tutorship as a defense. State v. Counort, 69 Wash. 361, 124 Pac. 910 (1912), impliedly decided the issue of constitutionality in favor of the statute, but such discussion would appear to be dictum in view of the court's finding that the home instruction provided in that case was in many respects inadequate. Contrary dictum asserting the parent's constitutional right to teach his child at home appeared in Commonwealth v. Roberts, 159 Mass. 372, 34 N.E. 402 (1893), and Wright v. State, 21 Okla. Cr. 430, 209 Pac. 179 (1922), but at the time of the respective prosecutions, both statutes involved explicitly provided exemption when some other means of education had been provided.

ance of authority indicates that a court need not recognize home instruction as a defense where the statute is reasonable in its regulation of education. What will be considered reasonable regulation, and thus a proper exercise of the police power of the state, is, of course, the basic and less clearly defined problem.

At the very least, it is well established that the alleged natural right of the parent to teach his child will not avail against a statute which provides that private tutors or teachers must have their qualifications approved by the superintendent of schools or other authorized body.[10] The constitutionality of such statutes has been upheld repeatedly,[11] even in situations where the parent neglecting to obtain approval was undoubtedly qualified to instruct his child.[12] Where the statute has provided that "equivalent" instruction must be provided, courts have insisted that the educational facilities and requirements of the public schools be employed as the strict standard.[13]

The fact that the statute may operate against an alleged religious freedom appears to affect the general rule here stated only in that courts will scrutinize more carefully the state policy when it is to be balanced against a claim of right under the First and Fourteenth amendments.[14] If it can be shown that the legislation serves "no useful purpose contemplated by the ends sought to be achieved under the police power of the state in the protection of the health, welfare, or morals of the community,"[15] it will not be upheld as against the claim of religious freedom. Thus, in *West Virginia State Board of Education v. Barnette*,[16] it was held that no useful purpose was served by compelling a child to salute the flag, since the value of the ceremony lay entirely in the spirit with which the act was

[10] A recent New York case suggests that the authority delegated must have some limitations. In Packer Collegiate Institute v. University of State of New York, 298 N.Y. 184, 81 N.E. 2d 80 (1948), the court of appeals declared unconstitutional a statute requiring registration of private nonsectarian schools. Since the commissioner of education was given the power to grant or refuse registration under regulations to be adopted by him with no standards or limitations of any sort, the schools' constitutional right to exist was threatened. The case was noted in 1 Stanford L. Rev. 316 (1949).

[11] Rice v. Commonwealth, 188 Va. 224, 49 S.E. 2d 342 (1948); State v. Williams, 56 S.D. 370, 228 N.W. 470 (1929); Parr v. State, 117 Ohio St. 23, 157 N.E. 555 (1927).

[12] Rice v. Commonwealth, 188 Va. 224, 49 S.E. 2d 342 (1948).

[13] Stephens v. Bongart, 15 N.J. Misc. 80, 189 Atl. 131 (1937).

[14] The concept of "liberty" in the Fourteenth Amendment includes the liberties guaranteed by the First Amendment, the former in effect making the latter applicable to the States. West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943). The First Amendment begins, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ." The problems dealt with here concern the application of the second phrase, the interference of the state with religious practice. A much larger body of law is concerned with the first phrase of the Amendment, usually in controversies involving sectarian instruction in the schools, or the use of public funds in the aid of sectarian institutions. 47 Am. Jur. 446–56.

[15] 3 A.L.R. 2d 1401, 1403 (1949).

[16] Note 14 supra.

done, and belief in the words recited.[17] But in *Rice v. Commonwealth*,[18] parents, who, in accord with their religious beliefs, gave their child adequate instruction at home, were convicted under the Virginia compulsory attendance statute, the court stating:

The religious beliefs of the defendants in the case at bar do not exempt them from complying with the reasonable requirements of Virginia laws. The constitutional protection of religious freedom, on the other hand, does not provide immunity from compliance with reasonable civil requirements imposed by the State. The individual cannot be permitted, on religious grounds, to be the judge of his duty to obey the regulatory laws enacted by the State in the interests of the public welfare. The mere fact that such a claim of immunity is asserted because of religious convictions is not sufficient to establish its constitutional validity.[19]

As in all constitutional questions, what is here involved is a balancing of values[20]—the carrying out of state policy, nondiscriminatory in intent, as against a claim of interference with individual action based upon religious conviction. However, courts appear to be impressed with the necessity of upholding reasonable policy of the state,[21] particularly when that policy is directed towards the interests and activities of children.[22] Where, in connection with these activities, the attempt is made to claim religious rights seemingly remote from basic religious conviction and the normal incidents of worship,[23] courts generally seem sympathetic to the will of the legislature.

[17] The decision did not depend upon the claim of religious liberty. It was stated in the majority opinion (at 634): "Nor does the issue as we see it turn on one's possession of particular religious views or the sincerity with which they are held. While religion supplies appellees' motive for enduring the discomforts of making the issue in this case, many citizens who do not share these religious views hold such a compulsory rite to infringe constitutional liberty of the individual. It is not necessary to inquire whether nonconformist beliefs will exempt from a duty to salute unless we first find power to make the salute a legal duty."

The "clear and present danger" test, which was mentioned by the court, sometimes has been broadly applied in respect to alleged religious rights. In Prince v. Commonwealth, 321 U.S. 158 (1944), there was a "clear and present danger" involved in allowing a nine year old girl to sell religious magazines.

[18] 188 Va. 224, 49 S.E. 2d 342 (1948).

[19] Ibid., at 234 and 347.

[20] Beth, Church and State in American Political Theory 196 (1949).

[21] "[T]he family itself is subject to reasonable regulation in the public interest. We are concerned solely with the reasonableness of this particular prohibition of religious activity by children." Murphy, J., dissenting, in Prince v. Commonwealth, 321 U.S. 158, 173 (1944). (But see the remainder of his opinion for argument that religious rights should be carefully guarded.)

[22] "The state's authority over children's activities is broader than over like actions of adults." Prince v. Commonwealth, ibid., at 168 (Rutledge, J., for the Court); "As the opinion of the Court demonstrates, the power of the state lawfully to control the religious and other activities of children is greater than its power over similar activities of adults." (Murphy, J., at 173.)

[23] In State v. Drew, 89 N.H. 54, 192 Atl. 629 (1937), where a parent refused to send his child to school for reasons "partly religious" and partly to avoid having his child vaccinated, the court held that religious ideas, when they do not appear to be more than opinions, are

If the Illinois statute may be read as necessitating approval by the superintendent of schools of tutoring or of parental instruction as an alternative to the stated requirements, it would appear to conform exactly to state statutes which previously have been held constitutional.[24] This interpretation seems to be justified both in law and policy.[25] It was pointed out in the *Rice* case that the authorities are better able to evaluate the competency of private instruction than a judge and jury.[26] Moreover, courts have appreciated that the task of supervising education might prove unreasonably burdensome if parents were permitted at any time to remove their children from public school under the claim that they were going to provide competent private tutorship elsewhere.[27]

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irrelevant and immaterial. In Commonwealth v. Bey, 57 York Leg. Rec. (Pa.) 200, 92 Pitts. Leg. J. 84 (1944), the court convicted a parent under the compulsory attendance law for refusing to allow his children to attend school on Fridays, notwithstanding his claim that this was in accord with his religious beliefs as a Moslem.

In Ferriter v. Tyler, 48 Vt. 444 (1876), the school committee excluded from further attendance children who had absented themselves from school on a religious holiday pursuant to a command by their parents and their priest. The court upheld the committee's action against a claim of violation of the "constitutional right to worship" and the "right to exercise parental authority over the children as regards their moral training and culture." (At 460) "[T]he action of the committee touches not nor affects the worship of Almighty God by the orators, . . . nor does it in any manner interfere with or control the rights of conscience in the free exercise of religious worship." (At 467) "[W]hile the individual may hold the utmost of his religious faith and all his ideas, notions and preferences as to religious worship and practice, he holds them in reasonable subservience to the equal rights of others, and the paramount interest of the public as depending on, and thereby served by, general laws and uniform administration. . . ."

[24] Note 11 supra.

[25] The school authorities in Illinois and in every jurisdiction in the United States have always been vested with discretionary power to determine what constitutes a sufficient excuse from school, and the courts should not interfere or attempt to control the exercise of such power, unless it has been substantially abused. People ex rel. Latimer v. Bd. of Education, 394 Ill. 228, 235, 68 N.E. 2d 305, 309 (1946).

[26] "The defendants claim the jury should be allowed to pass upon the question of the parent's qualifications. We cannot agree. . . . The State Board of Education and the local division superintendent are . . . required to be well-informed and well-versed in the field of education. They are undoubtedly much better equipped to pass upon a parent's qualification as a teacher than the ordinary laymen who comprise nearly all juries. In order to appraise intelligently such qualifications, it is necessary to carry on an investigation into the experience, character and ability of the parent as a teacher. This inquiry obviously cannot be conducted by a jury, the members of which are themselves not required to be qualified to teach or be learned in the profession." Rice v. Commonwealth, 188 Va. 224, 237, 49 S.E. 2d 342, 348 (1948). The extreme case was People v. Himmanen, 178 N.Y. Supp. 282, 108 Misc. 275 (1919), where it was held that it was no defense to a prosecution for violation of the compulsory education law that the distance and poor condition of the roads made it unreasonable for the father to send his young children to school, since his excuse should have been presented by proper petition to the state board of education.

[27] "We have no doubt that many parents are capable of instructing their own children, but to permit such parents to withdraw their children from the public schools, without permission from the superintendent of schools, and to instruct them at home, would be to disrupt our common school system, and destroy its value to the state." State v. Counort, 69 Wash. 361, 363, 124 Pac. 910, 911 (1912).

However, the present Illinois school statute does not explicitly grant such authority to any school official.[28] It may well be that it was intended to eliminate, without exception, home or private tutorship as an alternative to attendance at elementary grade schools. If this is the case, there arises the further question of whether a statute, so construed, is constitutional.

Other states have omitted provision for home instruction, but differ from Illinois by requiring that private schools be officially approved.[29] The New Hampshire statute provides that a parent must send his child to public school "unless the child shall be excused by the school board of the district . . . because he was instructed in the English language in a private school approved by the school board, for a number of weeks equal to that in which public school was in session. . . ."[30] This statute was expressly held constitutional in *State v. Jackson*[31] in 1902. Later, in *State v. Hoyt*,[32] it was held that "private school" did not include home instruction, and the parents were convicted, notwithstanding that their child had been "instructed and taught by a private tutor in his own home in the studies required to be taught in the public schools to one of his years."[33]

Still other statutes require that children attend either a public or private school, but, like the Illinois statute, do not provide for home instruction or tutoring as an exception. Furthermore, these statutes do not provide for general discretion by a school official as to what constitutes an excuse for nonattendance; they similarly ignore the problem of approval and supervision of private schools.[34] Unless a state may abolish private tutoring, all statutes of the Illinois[35] and New Hampshire type[36] are unconstitutional.

Two cases are often cited as holding unconstitutional prohibitory, as opposed to regulatory, legislation in respect to private instruction. In the earlier

[28] Nor does the statute provide any standards or methods of inspection and approval of private schools.

[29] Ky. Rev. Stat. Ann. (Baldwin, 1943) §§ 159.010, 159.030, 159.040; Mass. Ann. Laws (1945) c. 76, § 1; N.M. Stat. Ann. (1941) § 55-1203.

[30] N.H. Rev. L. c. 137, §§ 1, 2 (1942).

[31] 71 N.H. 552, 53 Atl. 1021.

[32] 84 N.H. 38, 146 Atl. 170 (1929), noted in 33 Law Notes 230 (1930). However, the parents in this case did not request approval, and the court refused to consider the question of whether or not they could have been approved under the statute. Contra: State v. Peterman, 32 Ind. App. 665, 70 N.E. 550 (1904).

[33] State v. Hoyt, 84 N.H. 38, 146 Atl. 170 (1929).

[34] La. Gen. Stat. Ann. (Dart, 1944) §§ 2355.1, 2355.3; Ga. Code (1933) § 32-2101; Tenn. Code Ann. (Michie, Supp. 1949) § 2442.1. The following statutes differ only in that they allow discretion by the superintendent or other official body to make individual exceptions to the act: Ark. Civ. Code Ann. (Crawford, 1947) §§ 80-1502, 80-1504, 80-1505; Idaho Code Ann. (1932) § 33-1901; Me. Rev. Stat. (1944) c. 37, § 83.

[35] Statutes cited note 34 supra.

[36] Note 29 supra.

of these,[37] the Supreme Court held invalid a state statute providing that no foreign language could be taught in any private or public school to a child who had not passed the eighth grade. Basic to the holding was the court's conclusion that the statute was "arbitrary and without reasonable relation to any end within the competency of the State."[38]

The second case, *Pierce v. Society of Sisters*,[39] involved an amendment to the Oregon compulsory education statute eliminating an exception which provided for attendance at a private school. Although private tutorship was permitted under the statute, annual approval had to be obtained from the superintendent, who was granted wide discretion in determining the competency of the instruction to be given. Thus, the state was given a virtual monopoly of elementary education. The court declined to uphold the amendment, stating:

As often heretofore pointed out, rights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the state. The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only.[40]

The *Pierce* case indicates that under no circumstances may a state abolish all private school instruction. Hypothetically, if a justifiable purpose or clear state policy could be shown, the *Pierce* case is legitimately distinguishable. But the import of the decision is that there can be no state policy which will justify such a drastic restriction of private educational facilities.[41] Furthermore, the case involved a very real issue of the unconstitutional deprivation of existing property without due process of law. The Supreme Court dwelt at length with the investment of the private school noting that "it owns valuable buildings, especially constructed and equipped for school purposes."[42] The statute had the obvious effect of drastically depreciating the assets of the appellees and ruining the business by depriving them of their patrons.[43]

Apart from the problem of whether or not the state may legislate in such a

[37] Meyers v. Nebraska, 262 U.S. 390 (1923).

[38] Ibid., at 403. The defendant, a teacher in a parochial school convicted of instructing a child in the German language, had a right to engage in his profession, while parents had a right to so engage him. The state could not prohibit the teaching of any subject not inherently harmful and injurious to the pupils, the state or the nation.

[39] 268 U.S. 510 (1925).

[40] Ibid., at 535 (1925).

[41] Nevertheless, the following statutes appear to require attendance at public school without allowing exception for either private school attendance or tutorship: Nevada Comp. Laws (Hilyer, 1929) § 6056; S.C. Code of Laws (1942) §§ 5475, 5473.

[42] 268 U.S. 510, 532 (1925).

[43] Ibid., at 536: "Plaintiffs asked protection against arbitrary, unreasonable, and unlawful interference with their patrons and the consequent destruction of their business and property."

manner without compensating the injured parties, the reasoning in the *Pierce* case is sound. There is great danger in giving the state a monopoly or near monopoly of education. The opportunity to control the thinking of all children might well prove tempting to some aspiring demagogue. Democracy and the more material benefits of competition both suffer when variety is lacking in education. Against these disadvantages, it is difficult to see the benefits to be derived from abolishing private and parochial schools. These schools are in fact often superior to the public schools in both teaching and facilities. Supervision by the state of a few large educational institutions is neither difficult nor expensive. Finally, in such institutions the child does not lose the benefit of social intercourse with other children, which advantage the state might justifiably insist upon.

The same arguments do not apply to the abolition of private tutorship nor to the question of the constitutionality of the Illinois statute. The menace of state monopoly of education can hardly be thought of as a real danger as long as the state permits competing private schools to operate. Private tutorship is a little used method of education, even in states which explicitly provide for it. No clearly defined rights of individuals are violated by the abolition of private instruction. The right of a parent to direct the education of his child[44] is at best an elusive concept found almost exclusively in the realm of dictum.[45] It never has been clearly held that parents have a natural right to teach or to have their children tutored privately, while there are numerous decisions denying the existence of such a right.[46]

The absolute right of an individual to the profession of tutoring is a notion strange to the law and to common sense. No person or institution has a right to potential customers in the face of a legitimate legislative policy which incidentally eliminates that possibility for profit.[47] However, unless the statute is based upon a reasonable and proper policy, the state may not abolish a normally useful and beneficial profession.[48]

It would appear that in all instances the constitutionality of the Illinois statute, and other statutes which do not allow private or home instruction as

[44] "It is in the case of children that misapplied notions of liberty are a real obstacle to the fullfillment by the State of its duties. One would almost think that a man's children were supposed to be literally, and not metaphorically, a part of himself, so jealous is opinion of the smallest interference of law with his absolute and exclusive control over them; more jealous than of almost any interference with his own freedom of action: so much less do the generality of mankind value liberty than power." J. S. Mill, On Liberty, p. 125 (Mod. Lib. Ed., 1926).

[45] Note 9 supra.

[46] Notes 11, 31, 32 supra.

[47] "Generally it is entirely true . . . that no person in any business has such an interest in possible customers as to enable him to restrain exercise of proper power of the state upon the ground that he will be deprived of patronage." Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925).

[48] Ibid., at 534. Meyers v. Nebraska, 262 U.S. 390, 403 (1923).

an exception to compulsory attendance at a public school, is dependent upon the reasonableness of the public policy to be served by such a restriction. The state may readily find justification for enacting legislation of this sort. In cities, and even more so in rural areas, the danger of abuse of the alternative of home instruction is real. Where a parent can keep his child at home, there is the obvious temptation to employ what should be hours of instruction as hours of labor of one sort or another in behalf of the family.[49] The effects are even less desirable when the child is allowed to play for a substantial period of "school," or where the motives in keeping him at home are the result of a selfish, emotional attachment. Yet, these abuses are inevitable unless the state is prepared to incur great expenses in the investigation of private educational facilities. The difficulty of supervision is itself a strong argument for the complete abolition of private or home tutorship.[50]

Most important, it cannot be denied that there is a value to the individual and to the state in having the child learn the essentials of social conduct. Having been placed in an environment in which much of his happiness and success depends upon adaptation to other individuals and to group activity, the child will be better able to acquire those attributes which will make him a more secure and productive member of society. It is this aspect of education which is unique to an educational institution, as opposed to mere private instruction,[51] at home or otherwise, and the state does and should have the constitutional power to insist that its citizens are so educated.[52]

[49] Abbott & Breckenridge, Truancy and Non-Attendance in the Chicago Schools (1917).

[50] "If the parent undertakes to make use of units of education so small, or facilities of such doubtful quality, that supervision thereof would impose an unreasonable burden upon the state, he offends against the reasonable provisions for schools which can be supervised without unreasonable expense. The state may require, not only that educational facilities be supplied, but also that they be so supplied that the facts in relation thereto can be ascertained, and proper direction thereof maintained, without unreasonable cost to the state. Anything less than this would take from the state all-efficient authority to regulate the education of the prospective voting population." State v. Hoyt, 84 N.H. 38, 41, 146 Atl. 170, 171 (1929).

[51] "I incline to the opinion that education is no longer concerned merely with the acquisition of facts; the instilling of worthy habits, attitudes, appreciations, and skills is far more important than mere imparting of subject matter. A primary objective of education today is the development of character and good citizenship. Education must impart to the child the way to live. This brings me to the belief that in a cosmopolitan area such as we live in, with all the complexities of life, and our reliance upon others to carry out the functions of education, it is almost impossible for a child to be adequately taught in his home. I cannot conceive how a child can receive in the home instruction and experiences in group activity and in social outlook in any manner or form comparable to that provided in the public school. To give him less than that is depriving the child of the training and development of the most necessary emotions and instincts of life." Stephens v. Bongart, 15 N.J. Misc. 80, 92, 189 Atl. 131, 137 (1937).

[52] It undoubtedly would have been wiser for the Illinois legislature to have provided the superintendent with discretion to make exceptions to the compulsory attendance statute in certain instances, and to have established machinery for the inspection and approval of private schools. However, this possible failing in the statute should not affect the question of its constitutionality. The legislature's determination of the wisdom, justice or necessity of its acts,

Education in public schools is considered by many to furnish desirable and even essential training for citizenship, apart from that gained by the study of books. The association with those of all classes of society, at an early age and upon a common level, is not unreasonably urged as a preparation for discharging the duties of a citizen. The object of the school laws is not only to protect the state from the consequences of ignorance, but also to guard against the dangers of incompetent citizenship.[53]

TRADE DISPARAGEMENT AND THE "SPECIAL DAMAGE" QUAGMIRE

"During all his years in public life Harry Truman never bothered to have his portrait painted. Recently, however, as President, he sat for artist Jay Wesley Jacobs. The result, Truman's first portrait, is shown here." So claimed *Life* magazine for November 26, 1945. But it appeared that Harry Truman's first portrait had been painted in January 1945 by artist Larry Pendleton, and was not that reproduced in *Life*. An agreement between *Life* and Pendleton to feature that portrait had not materialized. Plaintiff Pendleton brought suit in Illinois alleging the falsity of the statements and that defendant, notwithstanding knowledge of the falsity, maliciously published said statements with intent to injure plaintiff and plaintiff's reputation as an artist. He claimed damage in the sum of $100,000.00. A motion to dismiss was sustained in the lower court but reversed on appeal.[1] Plaintiff possessed a "property right in the value attained in the painting of the 'first' portrait of Harry S. Truman. . . ," and since an "injury to plaintiff's property right was willfully, maliciously and intentionally committed by defendant, there must be a remedy for this wrong to the plaintiff."[2] The court required no allegation and proof of "special" damage. But the dissent saw the action as one of "disparagement" and, surveying the authorities, found that "the publication of falsehoods disparaging the merits, quality, utility or value of another's property is not actionable unless the plaintiff has suffered special damage and pecuniary loss as a direct and natural result of the publication."[3] Finding insufficient allegation of "special" damage,[4] the dissent thought that the complaint should have been dismissed.

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and of what constitutes public policy, are not subject to review by the courts. Cremer v. Peoria Housing Authority, 399 Ill. 579, 78 N.E. 2d 276 (1948); People v. Eakin, 383 Ill. 383, 50 N.E. 2d 474 (1943).

[53] State v. Hoyt, 84 N.H. 38, 146 Atl. 170 (1929).

[1] Pendleton v. Time, Inc., 339 Ill. App. 188, 89 N.E. 2d 435 (1949).

[2] Ibid., at 194 and 438. [3] Ibid. See authorities cited notes 13, 15, 16 infra.

[4] The allegations of damage stated that plaintiff lost all benefit and advantage accruing to him by reason of his having painted the first portrait of Harry Truman, that plaintiff was made to appear as having false claim to the painting of the first portrait, that plaintiff lost all value in the rights of reproduction of his painting as the first portrait, and that plaintiff lost the commission to do portraits of other prominent persons. Pendleton v. Time, Inc., 339 Ill. App. 188, 190, 89 N.E. 2d 435, 437–38 (1949).