1919.

*Present* : De Sampayo J.

AMARIS *v.* AMARASINGHE.

*285—C. R. Galle, 1,223.*

*Action by parent against schoolmaster for not issuing leaving certificate to boys—Does an action lie?—Implied contract.*

The plaintiff alleged that the defendant, who was head teacher in an aided school, refused to grant leaving certificates to his sons, and brought this action to compel the defendant to grant such certificates, and to recover damages. The Code issued by the Department of Education contained a rule that the teacher must furnish a certificate to every pupil who leaves the school, and another rule prohibited the admission of a pupil to a Government school or grant-in-aid school without such certificate. The Commissioner held that the infringement of the rules was only a matter for the Department of Education, and would not form the subject of an action.

*Held*, that there was an implied contract between plaintiff and defendant, which rendered the breach of the rule actionable.

THE facts appear from the judgment.

*H. V. Perera*, for plaintiff, appellant.

*E. G. P. Jayatilleke*, for defendant, respondent.

March 5, 1919. DE SAMPAYO J.—

This is an unnecessary appeal, but as it involves a point of practical importance I am willing to deal with it. The plaintiff is the father of two boys, named William and David, who attended the Wesleyan School at Metaramba, and the defendant is the head teacher of the school. The plaintiff's case is that, wishing to withdraw his sons from that school and send them to another school, he applied to the defendant to grant leaving certificates for the boys, but that the defendant refused to do so, in consequence of which he has been unable to send the boys to the other school. He accordingly has brought this action to compel the defendant to grant such certificates, and to recover Rs. 25 as damages. The defendant pleads, as a matter of law, that no action lies, and states, as a matter of fact, that he did not refuse to grant the certificates; that he was always willing to grant them, but that none were applied for except by the letter of demand preceding this action. At the trial the defendant produced the certificates, and they were then and there handed over to the plaintiff. There remained nothing

more to be done, as the plaintiff dropped his claim for damages, apparently because no damages of an appreciable kind could be proved, or because he could not establish his allegations. The plaintiff, however, still desired the question of law to be decided, and the parties agreed that the costs of action should follow the decision of the Court on that point. After argument the Commissioner held against the plaintiff on the law, and dismissed the action, with costs.

The school in question appears to be an aided school, and in the Code issued by the Department of Education there is a rule that, in the case of vernacular schools, the teacher must furnish a certificate in the prescribed form to every pupil who leaves the school, and another rule prohibits the admission of any pupil to another Government or grant-in-aid school without such certificate. These rules are subject to certain exceptions which are not applicable to this case, and need not, therefore, be mentioned. The Metaramba Wesleyan School is not described in the proceedings as a vernacular school, but I gather from the nature of the arguments at the trial that it is. The Code, however, contains practically similar provisions in the case of English schools, and I need only concern myself with the question as to what bearing the rules have on the obligations of the teacher towards the parents of the pupils. The Commissioner considered that any infringement of them was only a matter for the Department of Education, and would not form the subject of an action. I am not able to take the same view. It is true that the rules in question are primarily intended to serve the purposes of the Department, and the Government grant may depend on their regular observance. But they may also affect the relation between the parent and the teacher. That relation is, of course, referable to a contract, but the terms of the contract may be expressed or implied. I should say that the grant of a leaving certificate, such as the Code provides, would in ordinary circumstances be an implied term of the contract. The withholding of a certificate would prevent the pupil from entering another and, perhaps, better school, and consequently from making further educational progress. The grant of a certificate is, therefore, an important matter in the point of view of the parent, and, in the absence of any agreement to the contrary, should naturally be presumed to be part of his contract with the teacher. There was in this case no express agreement relating to the certificate, and I think it only reasonable to hold that the grant of a certificate was impliedly included in the contract between the plaintiff and the defendant.

This holding, however, does not materially help the plaintiff. I need not pause to inquire whether a mandatory injunction, such as he asked for, could have been granted by the Court. The denial of the defendant that he refused to grant a certificate put the burden of proving the facts on the plaintiff, but he did not call any evidence,

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and was, on the contrary, content to receive the certificates in Court. In these circumstances, the defendant's denial holds good, and the plaintiff, who did not obtain, or was not in a position to obtain, a decree for an injunction or for damages, is not entitled to costs of the action. Although I have above expressed my opinion on the bare question of law, this appeal, which could have reference only to the order as to costs, practically fails. The appeal is therefore dismissed, with costs.

*Appeal dismissed.*