

by charging the district scholars tuition for common-school studies, because, if there has been a breach of the contract in this respect, the law affords an adequate remedy for any party injured. It is not alleged that the rights of the plaintiff as a citizen and taxpayer are infringed. School-districts being bodies corporate, with power to sue and be sued upon contracts by them made (G. L., c. 86, s. 14), their remedy is a corporate one, and must be exercised accordingly.

The original agreement was by its terms to continue until April 1, 1884, at least, "and for such further time as the contracting parties might deem useful and expedient, and by renewal and extension might agree upon." The option as to extension was therefore personal, and confined to the "contracting parties." Who, then, were the "contracting parties"? The obvious answer is, The school-districts and the academy;—in fact, the bill so alleges and the statute so prescribes. G. L., c. 90, s. 15. The superintending committee did not undertake to do, or not to do, anything in the performance of the agreement, and he was no more a contracting party thereto than is the magistrate or clergyman who solemnizes a marriage. Indeed, his power as to educational contracts between school-districts and academies or other literary institutions is expressly limited by the statute to approval or disapproval. Hence, when he duly approved the contract in question, which contained no condition precedent to the exercise by the contracting parties of the option as to extension, his power in respect to it was exhausted; and as his approval must be held to be applicable to the optional as well as to the fixed period named in it, or, in other words, to the contract as an entirety, we see no reason why his formal and additional approval of the extension was necessary. And in any view, how can it be held that the extension constituted a new and independent contract within the meaning of the statute? No answer occurs to us.

*Exceptions overruled.*

STANLEY, J., did not sit: the others concurred.

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#### ENFIELD v. COLBURN.

A person against whom a false and fraudulent claim is made cannot recover of the claimant the expense which he incurs in investigating and detecting the attempted fraud.

CASE. The declaration alleged that the defendant falsely and fraudulently made a claim upon the town for damages to his horse while travelling on a highway in said town, and falsely stated to

the officers of the town that his horse had been injured through the insufficiency of the highway, and falsely swore to an affidavit stating the particulars of said injury, which he filed with the town-clerk of said town, "and said town, relying upon said false and fraudulent representations, so made by said defendant, incurred large expense in investigating the facts represented by said defendant, and found said representations to be false, and that said defendant's horse was not injured through the insufficiency of the highway in said town as said defendant well knew." The defendant demurred.

*Spring & Spring*, for the plaintiffs.

*C. A. Dole*, for the defendant.

CARPENTER, J. A mere naked lie—a falsehood—though told with intent to deceive, upon which nobody acts, and by which nobody is deceived, is not actionable. The declaration alleges, in substance, that the defendant falsely and fraudulently represented that he had a valid claim against the plaintiffs for damages, that the plaintiffs relied upon the representations, and that they investigated them at a large expense and found them to be false. One or the other of the last two allegations is as untruthful as the representations are claimed to be: both cannot be true. If the plaintiffs relied upon the representations, they did not investigate them: if they investigated them, they did not rely upon them. It is a perversion of language to say that they did both. The averments are incurably repugnant, and neither of them can be rejected as surplusage.

If the inquiry had resulted in favor of, instead of against, the validity of the defendant's claim, and if, relying upon the result of the examination and not upon the representations, the plaintiffs had paid the demand, they could maintain no action, however unfounded the claim and however false and fraudulent the defendant's representations might be. He only who has trusted in and acted upon a falsehood to his injury can maintain an action. It is upon this principle that no action lies for false representations of facts which are equally open to the observation and knowledge of both parties.

If this declaration can be sustained, a plaintiff who makes and institutes a suit upon a false and fraudulent claim, and is beaten, must not only satisfy the judgment against him for costs, but is also liable to an action on the case; and, generally, one may recover the cost of detecting and defeating any fraud which may be attempted upon him. There is no precedent for such an action. It is always at a party's option to act upon the faith of statements made to him, or upon his own judgment of the facts after making full inquiry. If, where he does the latter and makes a mistake, another is not answerable for his blunder whatever pains he may have taken to lead him into it, still less should he be punished if

by reason of the injury no mistake is committed. It is the damages which result from acting upon false representations as if they were true, and not the expense of detecting their falsity, which a plaintiff is entitled to recover.

*Demurrer sustained.*

STANLEY, J., did not sit: the others concurred.

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PEASLEE v. DUDLEY.

Where the facts appearing on the trial of an action of trover showed that the plaintiff was entitled to recover for the same cause in an action of assumpsit, the court declined to consider the question whether trover could be maintained, but gave the plaintiff leave to amend by joining a count in assumpsit, and thereupon ordered judgment.

TROVER, for six tons of straw-board. Facts found by the court. July 18, 1881, the plaintiff, at the request of the defendant, receipted to an officer for six tons of straw-board which had been attached on a writ against the defendant. He did not see the straw-board; and there was no agreement that he should have a lien on it as security for signing the receipt. Judgment having been recovered in the suit, an execution was taken out and placed in the hands of the same officer for collection. The officer seasonably demanded of the plaintiff the property mentioned in the receipt; and the plaintiff, being unable to deliver it because the defendant had converted it to his own use, paid the officer the amount of the execution. Some time after the receipt was given, the officer went to the defendant's storehouse, and finding that part of the straw-board had been removed, called with the plaintiff upon the defendant's foreman, and told him that no more of it must be sent away. The plaintiff had no title or possession except as above. Both parties moved for judgment. If the plaintiff is entitled to judgment, it should be for \$139.36 and interest from August 24, 1882.

*G. W. Murray*, for the plaintiff.

*Barnard & Barnard*, for the defendant.

CARPENTER, J. The question presented is of no practical importance. Time spent in considering it would be wasted. If upon examination it should be found that the action in its present form cannot be maintained, the plaintiff would be permitted to amend by filing a count in assumpsit. The facts upon which the rights