

**REMARKS OF JOHN L. MASON
AND JOS. S. BOSWORTH, ESQ.,
BEFORE THE BOARD OF
EDUCATION, MARCH 17 AND 24,
1847**

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Remarks of John L. Mason and Jos. S. Bosworth, ESQ., Before the Board of Education, march 17 and 24, 1847 by Joseph S. Bosworth & John L. Mason

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JOSEPH S. BOSWORTH & JOHN L. MASON

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AND JOS. S. BOSWORTH, ESQ.,
BEFORE THE BOARD OF
EDUCATION, MARCH
17 AND 24, 1847**

REMARKS
OF
JOHN L. MASON, ESQ.,
AND
JOS. S. BOSWORTH, ESQ.
BEFORE THE
BOARD OF EDUCATION,
MARCH 17 AND 24, 1847,
Upon the Right and Power Claimed by the
PUBLIC SCHOOL SOCIETY

TO ESTABLISH NEW COMMON SCHOOLS ENTITLED TO A PARTICIPATION IN THE SCHOOL MONIES, AND TO USE THOSE MONIES IN ESTABLISHING SUCH SCHOOLS.

NEW-YORK:

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—:—
1847.

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BOARD OF EDUCATION, *March 24, 1847.*

Resolved, That the remarks of John L. Mason, Esq. and Joseph S. Bosworth, Esq., in reply to the argument made in behalf of the Public School Society, be printed and published under the direction of this Board.

JOHN A. STEWART, *Clerk.*

At a meeting of the Board of Education, held on the 17th day of March, 1847, the following resolution, submitted by the special committee to which was referred a communication from the Public School Society, in answer to a resolution of inquiry passed by the Board of Education, was under consideration,—viz.

Resolved, That in the opinion of the Board of Education, the Public School Society has no right, since the passage of the act entitled "An Act more effectually to provide for Common School education in the city and county of New York," passed May 7, 1844, to establish any new schools; and that if any such schools have been or may be established, they are not entitled to participate in the apportionment of the school monies.

Hiram Ketchum, Esq. was then heard before the Board in behalf of the Public School Society, and in opposition to the Resolution.

Mr. Mason then spoke in substance as follows:—

Mr. President,—Before proceeding to the discussion of the Resolution which has just been read, I beg leave to submit one or two preliminary remarks.

In the first place, I am happy that this discussion has taken place, and that this Board so promptly acceded to the request of the Public School Society, to allow them to be heard on the subject of this resolution by their Committee. Such a course was due to that society, composed as it is of so many of our most respectable citizens, and exercising so important an influence upon the public education of the city. It was due also to this Board, that before deciding on a step so important as that involved in the resolution, it should patiently hear and examine both sides of the question.

In the next place, the impression has been made in some quarters, that the resolution and the report of the Committee on which it is founded, proceeds from a feeling of hostility on the part of the Board towards the Public School Society, and that a desire exists to injure and weaken the Society. For myself, I utterly disclaim any such feeling. The Public School Society is, in my judgment, entitled to the warmest gratitude of this community. For a number of years the Common School Education of the city was, for the most part, committed to this society; and it has, with great ability and fidelity; discharged the high trust confided to it; and I would resist to the utmost of my powers any attempt to interfere in the least degree, with any of the powers conferred upon it with regard to those schools which existed at the time of the passage of the act of 1844; and these I believe to be the sentiments of the Board.

But the question is a naked question of law, involving the interpretation of the statute under which we are constituted, and one which it is absolutely necessary for us to settle, in order properly to fulfill the duties we have to perform.

I have listened this evening to the able argument of the

learned advocate of the Public School Society in opposition to the resolution and report of the Committee now under consideration, but he has failed to convince me that the position taken by the Committee is erroneous. On the contrary, I have no doubt that the construction given by the Committee to the act of May 7, 1844, is the true one.

Let us clearly understand the question involved, for, with great respect, I think the learned gentleman has somewhat obscured it.

The question before us then is, not whether the Public School Society has or has not faithfully discharged the trust confided to it. I should have no hesitation in answering this question in the affirmative. Nor is it, whether, by the law of 1844 the schools of the Society are merged in the ward schools—such a position has never been advanced, much less contended for.* Nor is it whether the society have or have not a corporate right to establish *free* schools, to be supported by the private contributions of the members of the society.

But the question is, whether the Society has a right to establish *new Common Schools* which will be entitled, under the act of 1844, to participate in the school monies, and a right so use their surplus funds derived from the school monies, in building or renting school houses for such new schools.

This was the question discussed in the report of the Committee. The term "Schools" was indeed used in that report without any other designation or qualification,

* Allusion is here made to some of Mr. Ketchum's remarks which do not appear in the printed report published by the Society. These remarks, as they appear in print, are somewhat modified from their original shape. The reply now presented immediately followed the remarks, and were founded on a few notes, many of which were taken while Mr. K. was speaking, and have since been reduced to writing at the request of the Board of Education.

because it was only with *Common Schools* that this Board has any thing to do.

In order the more clearly to understand the subject, I will briefly advert to the course of legislation in relation to *Common Schools*.

The Legislature, many years since, established the *Common School* system, extending to every part of the state, except the city and county of New York.

By the provisions of that system, as is well known, different officers are elected in the various towns of the state, each having their distinct and appropriate duties; commissioners, to receive the school monies apportioned from the revenue of the *Common School Fund*, and to distribute them with a like amount raised by tax among the school districts; inspectors, to examine into the qualifications of persons proposed as teachers; and trustees of districts to take charge of the school houses, pay the teachers, &c., &c.

These officers, it is also well known have *exclusive* jurisdiction in these matters. They alone have power to *establish Common Schools* in their respective towns, and no other schools but *Common Schools* thus established, and managed by the school officers of the town and district in which they are situated have a right to participate in the school monies.

This *Common School* system, I have said, did not originally, nor until a very late period, extend to this city.

The various religious societies in the city had, for the most part, schools belonging to their respective denominations; and, in the year 1805, the *Free School Society*, now the *Public School Society*, was established for the instruction of poor children who did not belong to, or were not provided for by any religious society. The schools which it formed, according to the original plan of

the Society were to be supported by private contributions and it was, in every respect, a private Eleemosynary institution.

In the year 1826, however, the character of this Society was essentially changed. The first section of the act of January 28, 1826, entitled "An Act in relation to the Public School Society of New York" altered its name to that of the Public School Society of New York; and the second section made it *the duty of said Society to provide*, so far as their means might extend, for the education of *all children in the city of New York not otherwise provided for* whether such children were or were not the proper subjects of gratuitous education, and without regard to the religious sect or denomination to which such children or their parents might belong.

Thus an important public trust was committed to the Society—the common school education of the city was placed under its control—the duties and powers of Commissioners, Trustees and Inspectors in the County, were vested in its officers; they became the executive officers of the government for this important branch of public service; new and distinct powers were grafted upon their original Charter; and by a subsequent section of the same act, their right to draw upon the School Fund was expressly recognized.

But in the year 1842, the Legislature saw fit to extend the Common School system which prevailed throughout the State, to the City of New York, with some modifications.

The Act of 1842 provided for the appointment of Commissioners, Inspectors and Trustees, *with the like powers and duties* with the Commissioners and Inspectors of Common Schools, and the Trustees of School Districts