

Act alone, he would not say the result would have been the same; but the subsequent statutes were decisive of the matter.

The other Judges concurred on every point, Lord Ardmillan pointing out that the Court were not deciding an excise prosecution for a penalty, but a question of a criminal, and perhaps moral, offence.

Agents for Appellant—Gillespie & Paterson, W.S.; and W. D. M'Jannet, Irvine.

Agents for Respondent—Morton, Whitehead & Greig, W.S.; and Party.

COURT OF SESSION.

Tuesday, June 13.

FIRST DIVISION.

HAMILTON v. POLICE COMMISSIONERS FOR THE BURGH OF DUNOON.

Burgh—Public Officer—Clerk—General Police and Improvement Act 1862.—Held that the clerk to the commissioners of a burgh, under the General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. c. 101), has no right to his office *ad vitam aut culpam*, like the clerk of a royal burgh, and that such an officer was competently elected for one year.

This was an action by Mr Gavin Hamilton, writer, Glasgow, against the Police Commissioners of Dunoon, to have it declared that the pursuer holds the office of clerk to the Commissioners *ad vitam aut culpam*.

Dunoon was constituted a burgh for the purposes of the General Police Act, 1862, (25 and 26 Vict. c. 101), in 1868. The first meeting of the Commissioners took place on 26th October 1868. The minutes of the meeting bear that, "the meeting elected Mr Hamilton to be clerk to the Commissioners, at a salary of £40 for the first year." Mr Hamilton accepted the office. At the next annual meeting, held October 25th 1869, a motion was made that Mr Hamilton should be re-elected. Mr Hamilton maintained that he had been elected *ad vitam aut culpam*, and did not require re-election. The majority of the Commissioners were of opinion that the appointment had been made for one year only. After some discussion it was resolved to re-elect Mr Hamilton *ad interim*, till it should be determined on what conditions a new engagement should be made. The subsequent relations between Mr Hamilton and the Commissioners were anything but amicable, and on 17th January 1870 they resolved not to renew his appointment as clerk. Mr Hamilton raised the present action.

Two of the Commissioners, Messrs Stirling and Somerville, who had protested against the resolution of the meeting of 17th January 1870, lodged separate defences, disclaiming all responsibility in the proceedings of the majority. The other Commissioners defended the action on the merits.

After some procedure the Court were of opinion, that, the minute recording the appointment of the pursuer being somewhat ambiguous, it was necessary to ascertain more accurately what passed at the meeting of 26th October 1868, when the pursuer was elected clerk. A proof was allowed before answer.

SCOTT, MAIR, and RHIND, for the pursuer.

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The SOLICITOR-GENERAL, and HALL, for the defenders, Archibald, Mitchell, and others (the majority).

HUNTER, for Stirling and Somerville.

The Lord Ordinary (MURE) pronounced the following interlocutor:—"Finds that, at the meeting of the Police Commissioners for the burgh of Dunoon, held on the 26th October 1868, the pursuer was elected clerk to the Commissioners for a year from that date, at a salary of £40: finds that, on the expiry of that year, the appointment to the pursuer was not renewed for any specific period, but that he was continued as clerk, under an interim arrangement, until that arrangement was put an end to, in terms of a resolution passed at a meeting held on the 17th January 1870: finds that, at the date of that meeting, the Commissioners had reasonable grounds for resolving not to continue the pursuer in the office of clerk to the Police Commissioners of the burgh, and for appointing another clerk in his stead: Therefore assilizes the defenders from the conclusions of the action."

The pursuer reclaimed.

Argued for him. It is incompetent under the statute (25 and 26 Vict. c. 101), and at common law, to appoint a clerk of a burgh otherwise than *ad vitam aut culpam*; *Adams*, 7 March, 1823, 2 S., 281; *Farish*, 22 November, 1836, 15 S., 107. Secondly, upon the evidence, when Mr Hamilton was elected clerk, at the meeting of 26th October 1868, nothing was said as to the duration of his office, and hence it must be presumed to be *ad vitam aut culpam*.

Counsel for the defenders were not called upon.

At advising—

LORD PRESIDENT—The Lord Ordinary "Finds that, at the meeting of the Police Commissioners for the burgh of Dunoon, held on the 26th October 1868, the pursuer was elected clerk to the Commissioners for a year from that date, at a salary of £40: Finds that, on the expiry of that year, the appointment to the pursuer was not renewed for any specific period, but that he was continued as clerk, under an interim arrangement, until that arrangement was put an end to, in terms of a resolution passed at a meeting held on the 17th January 1870." His Lordship goes on to find that the Commissioners had reasonable cause for resolving not to continue the pursuer in the office of clerk. I do not consider it necessary to go into that. From October 1869 there was a complete dispute as to the nature of the office. The pursuer insisted that he held the appointment for life, while the Commissioners continued him in office under an interim appointment. The question really is, Can the pursuer defend his possession of the office on the ground that he was appointed for life? or, Are the Commissioners justified in maintaining that he was appointed for one year? The first point is the construction of the General Police and Improvement Act. The pursuer says that under section 67 it is unlawful for the Commissioners to appoint a clerk on any other tenure than for life. The words of section 67, when read without reference to other sections, give no countenance to any such notion. It enacts that "the Commissioners shall appoint a clerk for keeping the records of the proceedings of the Commissioners, which records shall contain accurate minutes of the proceedings and orders of the Commissioners and their committees; and being signed by the preses of each respective meeting,

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or any copy or extract therefrom authenticated by the signature of the clerk, shall be received as evidence in all courts whatsoever, in any case or matter concerning this Act." No doubt, the clerk to a body of commissioners, whose proper and chief duty is to record their proceedings, is in a certain sense a public officer. But there is no rule in common law that the office is necessarily *ad vitam aut culpam*. On the contrary, the tenure depends on the circumstances of the appointment. But the pursuer says that section 67, when contrasted with other sections which deal with the tenure on which certain other offices are to be held, clearly shows that the clerk can only be appointed *ad vitam aut culpam*. The 436th section is referred to as an instance—"The Commissioners shall appoint a proper person to be clerk of the Police Court, who shall hold office only during their pleasure; and such person may be the same person who is clerk to the Commissioners," &c. Here the provisions of the statute are imperative. The Commissioners cannot make an appointment of clerk to the Police Court for life, nor for a definite period. But does it follow that because the statute is silent in regard to the office of clerk to the Commissioners that it must necessarily be a life office? We cannot from these other clauses construe section 67 as from its silence enacting that the clerk must necessarily be appointed for life. The very nature of the appointment and the duties which the clerk has to discharge would make it improbable that the Legislature would tie down the Commissioners to a life appointment. It is highly expedient that the appointment should be for a time, in order to give the Commissioners an opportunity of revising the duties, salary, and conditions of the office. It appears to me that this is precisely the sort of discretion intended to be given by section 67. I have no doubt on the first point that it is perfectly lawful to appoint a clerk for a definite term.

The next question is, Did the Commissioners make the appointment for a year? The minute is very short, and not clearly expressed. It has been necessary to resort to evidence to ascertain what really passed at the meeting when Mr Hamilton was appointed. The proof which was allowed was intended to show this. I am sorry to see that it has extended into other matters having no bearing on the real question,—What was done at the meeting. The minute is a part of the evidence. It is certainly capable of two constructions: it may mean that the appointment was for an indefinite period, but that the salary was fixed at £40 for the first year; or it may mean that Mr Hamilton was appointed clerk for the first year of the commission. It must be kept in view that that body had just been brought into existence: they were new to their duties, and required the assistance of the clerk. They could not foresee the nature and amount of the clerk's duties; but they saw that a year's experience would give them a fair estimate of the work and the remuneration. It was not unreasonable, then, or unlikely, that they should make the appointment in a kind of experimental way. They would see whether the person appointed was the kind of man for the office, and whether the remuneration, which they had fixed at a rough guess, was adequate or not. Upon the evidence, the great preponderance is in favour of the construction of the minute contended for by the defenders. I am satisfied in point of fact that what passed at the meeting was, that Mr Hamilton was appointed clerk for a year. If anything is re-

quired to make this perfectly satisfactory as matter of evidence, it is to be found in the proceedings of the meeting held the next year, 25th October 1869. It was then proposed to re-elect Mr Hamilton. The parties who made the proposal clearly understood that the appointment had been made for a year. Mr Hamilton objected on the ground that he required no re-election. A question was then put to him by Dr Thomson,—a very important and pertinent question,—“But, Mr Hamilton, were you not under the impression yourself that you had been appointed only for a year?” Mr Hamilton's answer was, that such was his impression at the time of his appointment, but that he had reason to change his mind on the point. Now, it appears that his reason for changing his mind was not that his memory of the facts was altered, but that he had got new lights in point of law. I think that these new lights were illusory, and misled him. But we are dealing with the facts. Mr Hamilton's own statement at the meeting of 25th October 1869 is conclusive evidence against him. I am therefore for adhering to the interlocutor of the Lord Ordinary.

LORD DEAS—The first question here, which is certainly of general importance, is, whether a clerk to a body of Commissioners under the General Police and Improvement Act can be appointed otherwise than for life. I am of opinion with your Lordship that there is no incompetency. The second question is, whether the pursuer was appointed for life? The minute of appointment is ambiguous. It was mainly to clear up this ambiguity that a proof was allowed. The proof has branched out into all sorts of irrelevant matter; but, so far as it applies to the *res gestæ*, it shows that it was not intended by the words of the minute that the appointment was to be for life. The only other question that remains is, whether there was reasonable cause for the pursuer's removal. I agree with the Lord Ordinary, that even if he had been appointed during the pleasure of the Commissioners, he could not be capriciously removed without due notice. But he was not taken unawares. An appointment for a year is itself notice of its termination. When the year was about to terminate the Commissioners did not at once hold him to be out of office, but elected him *ad interim*. Their conduct was so reasonable and deliberate that I do not know that it is necessary to find that there was any cause of complaint against Mr Hamilton. But it is quite evident that there were disputes of a serious character between Mr Hamilton and the Commissioners.

LORDS ARDMILLAN and KINLOCH concurred.

The Court recalled, as unnecessary, the finding of the Lord Ordinary that the Commissioners had reasonable grounds for resolving not to continue the pursuer in the office of clerk, and *quoad ultra* adhered, with expenses.

Agent for Pursuer—William Officer, S.S.C.
 Agents for Defenders Mitchell and Others—Macconochie & Hare, W.S.
 Agent for Defenders Stirling and Somerville—John Galletly, S.S.C.