

if it raises any controversy at all. Being a petition for the division of the area and sittings in a church, it might be carried through without dispute or question, but when dispute or question arises amongst the heritors or others concerned, the process becomes one of competition. The Sheriff's interlocutor disposes of the whole matters at issue between the parties, and by its terms the heritors within the *quoad sacra* parish are finally excluded from all interest, and put out of Court. The only difficulty which arises is owing to the fact that the Sheriff has not disposed of the question of expenses. But this matter of expenses cannot again be raised, and it has to all intents and purposes been dealt with already. It would be incompetent for the Sheriff to revert to it at any later stage, and an award must have been made in this interlocutor if at all, seeing that the exclusion of the parties interested is final.

LORD DEAS—I think that a process of competition includes, in the sense of the statute of 1868 (31 and 32 Vic., cap. 100, sec. 53), a process of division of the area and sittings of a church. A process of division of a commony may be thus comprehended, and it seems to me that such a process as the present also falls to be similarly included. I doubt whether the argument based on the omission of an award of expenses could hold even in the case of processes of multiplepointing where an interlocutor with findings analogous to those in the present case has been issued. The Sheriff cannot return to give a decision on the matter of expenses.

Lords ARMILLAN and MURE concurred.

Repel objection to the competency of the appeal, and to roll.

Agents for Appellants—Mackenzie, Innes, & Logan, W.S.

Friday, May 28.

SECOND DIVISION.

MORISON v. SCHOOL BOARD OF GLENSHIEL.
*Education (Scotland) Act, 1872, sec. 60, sub-sec. 2—
Parochial Schoolmaster — Dismissal — Fault—
Retiring Allowance.*

A School Board dismissed a parochial schoolmaster on account of inefficiency arising from his own fault. The resolution of the Board was sanctioned by the Education Board. In an action of declarator by the master to be found entitled to a retiring allowance.—*Held* that the dismissal having been carried out *bona fide*, and having been sanctioned by the Education Board on the ground of personal fault, the schoolmaster had not a good action for a retiring allowance on a general denial that the unfitness for which he was removed was due to his fault.

This was an action at the instance of James Morison, parochial schoolmaster of the parish of

Glenshiel, against the School Board of that parish, for declarator that the defenders were bound to pay to the pursuer, whom they had removed from office, a retiring allowance.

The pursuer was appointed schoolmaster of the parish of Glenshiel in 1860. In April 1874 the School Board obtained a special report from Her Majesty's Inspector of Schools for the district, which certified the pursuer's inefficiency, and on the 15th June they passed the following resolution:—"The special report under section 60 (2), 'Education (Scotland) Act, 1872,' on the Glenshiel Public School by Mr J. MacLeod, H.M. Inspector of Schools, was read, and the clerk stated that a copy of this report had been sent to Mr Morison, the teacher. The School Board having considered the said report, and finding that Mr Morison has failed to make any communication to this meeting, of which he had notice, and a copy of the special report having been sent to him, they have no hesitation in coming to the conclusion, on the strength of this report and from the knowledge of the majority of the members of the School Board of the circumstances of the case, that the teacher is unfit by his conduct, and inefficient from his own fault, and that, in justice to the inhabitants of the parish, he should be removed from the office of teacher. They therefore resolved, subject to the confirmation of the Education Board, to dismiss, as they hereby do dismiss, the said Mr James Morison from the office of teacher of the Glenshiel Public School aforesaid, together with all the privileges and emoluments attaching thereto; and they respectfully trust that the Educational Board will grant the necessary confirmation of this judgment and resolution." The Board of Education for Scotland confirmed the foregoing judgment, removing the pursuer from office on 24th July 1874.

The pursuer pleaded that, as his removal was not occasioned by any fault on his part, he was entitled to a retiring allowance.

The defenders, *inter alia*, pleaded that they ought to be assoilzied, in respect the pursuer having been removed for inefficiency caused by his fault, he was not entitled to a retiring allowance.

The Lord Ordinary (YOUNG) pronounced the following interlocutor:—

"6th February 1875.—The Lord Ordinary having heard counsel for the parties, and considered the record and process, Sustains the defences: Assoilzies the defenders from the conclusions of the summons, and decerns: Finds the pursuer liable in expenses, and remits the account thereof, when lodged, to the Auditor to tax and report."

"*Opinion.*—This is an action by a schoolmaster, removed under clause 60 (sub-section 2) of the Education Act, 1872, for unfitness and inefficiency, to recover the retiring allowance to which he alleges right under the provisions of that clause. The action proceeds on the same construction of the clause which I rejected in a similar action at the instance of the schoolmaster against the School Board of Logiealmond. The parties here were not content to abide by the final decision in that case, and I was not unwilling to hear a full argument from the able counsel who represented them, and to reconsider the opinion which I had previously formed on a question of novelty and interest. In deciding the Logiealmond case, I assumed that the management of the school (in the ordinary sense of the

term management) was by Act committed to the School Board, with the power and duty of seeing to its continued efficiency as an educational establishment, and of removing the teacher if in their judgment the school should at any time fall into a state of inefficiency by reason of his unfitness. It was not suggested in argument, nor did it occur to myself as a reasonable or even possible view of the Act, that the School Board were only managed, to the effect of seeing that the material and mechanical appliances of education were provided with due economy to the ratepayers, and had so little concern with education itself that they were not at liberty, without the teacher's leave, to visit the school for the purpose of satisfying themselves that it was efficiently conducted, but only to see that the building in which the children were taught was sufficiently commodious, and kept in decent repair. In the view that the members of the School Board were chosen by the constituency, not from any confidence in their ability to manage the schools as educational establishments, and to take care that they should be efficiently taught and conducted, but only as likely persons to see to the condition and repairs of the school buildings and furniture, I should have had some difficulty in dealing with the case of the removal of a teacher by such a Board, because *they considered him* 'incompetent, unfit, or inefficient.' The language of section 60 might have been found too strong to admit of the removal with all its consequences being resisted, but it would have been impossible not to feel that the Legislature had unfortunately and quite inexplicably committed an important and delicate duty to a body which, as being chosen for a very different kind of duty, were presumably unfit to discharge it, and were even denied the most obvious and apparently essential means of enabling themselves to perform it with such intelligence as they might accidentally possess. In such a case a court of law would at least regard the proceedings with considerable distrust, and, attaching no importance or weight to the opinion of so incompetent a body, would be disposed to strain the construction of the statute in order to compensate the dismissed teacher with a pension.

"As a right view of the powers, duties, and responsibilities of school boards is material to every question that can arise out of the relation between them and their teachers, I deem it my duty to take this opportunity of stating my opinion on the subject, as one of general interest and concern, and bearing, not remotely, on the case before me.

"The leading principle and feature of the Act of 1872 is, that the direction and management of the public schools supported by local rates and government grant is thereby committed to the people themselves, to be exercised by means of school boards elected, as the Act directs, in the several districts into which, for the purposes of education, the country is divided. I venture to lay it down as a true proposition that the *whole* management of every public school existing, or which may exist, under the Act is committed to the school board of the district in which it is situated. The management is certainly not divided, and therefore, if it were true which I think it is not, that anything which school management involves is withheld from the school boards, it is certain that to this extent the schools are left without management altogether, for no power of management is given to any other bodies or per-

sons. With respect to the parish and burgh schools, which constitute a considerable though ever-decreasing proportion of the public schools under the Act, the whole powers and duties of their former managers, viz., the heritors, ministers, and town-councils, are transferred to the boards, while all power of interference by church courts is taken away. The power and duty not only of providing suitable buildings and furniture, but of appointing and removing teachers, is expressly conferred and imposed on the boards. It has been suggested that there is significance in the circumstance that the visiting powers of presbyteries are not transferred to the boards. But as these (whatever they were) are not transferred at all, but simply abolished, the only significance is that any connection between the Established Church and the schools is severed, which cannot, I should think, signify that the schools are not to be visited by their managers.

"The whole powers and duties respecting the material appliances, and the personal staff of every school established under the Act in any district, being thus conferred and imposed on the school board of that district, it was perhaps superfluous to provide, as section 36 does in express terms, that 'the school board of every parish and burgh shall maintain and keep efficient every school under their management,' for this would probably have been implied. One purpose of the provision was to guard against the possibility of a school board which had, under section 28, been compelled to establish a school which they thought unnecessary, thereafter, when an opportunity occurred, practically discontinuing it, by simply omitting to do what was necessary to maintain it in a state of efficiency, as by omitting to appoint a teacher when a vacancy occurred, or continuing an inefficient teacher who drew no scholars, which would, of course, be as efficacious for the discontinuance of the school, contrary to the opinion of the Board of Education, as allowing the school building to go into disrepair. If it was necessary to make express provision against the practical discontinuance by the school boards of any schools instituted or taken over under the Act, this is the only clause which does so, and it will probably be generally thought that the provision was a prudent one. I am aware that it has been suggested that the clause relates only to the school buildings and furniture, and that a school board will well perform its duty to 'maintain and keep efficient any school,' by keeping the school-house with its furniture in good repair, although it is not resorted to by a single child, whether because there is no teacher at all, or because the teacher is so 'incompetent, unfit, or inefficient' that no prudent parent will, and no parent ought to be required to, intrust a child to his tuition. With reference to this suggestion, I will only observe that it is not in accordance with my notion of maintaining and keeping a school in a state of efficiency by a board which is intrusted with the power, and charged with the duty of appointing efficient teachers and removing such as they shall 'consider' to be inefficient. I should certainly be greatly surprised if, on a complaint by the Lord Advocate, under section 36 of the Act, this Court should acquit a school board which had really discontinued a school by neglecting to provide and maintain a proper educational establishment therein, because the school-house, although disused and empty, was commodious and in decent

repair. It is, indeed, abundantly clear that the words 'maintain and keep efficient' in the first branch of the clause are opposed to the word 'discontinue' in the second; and that as allowing the school buildings to go to ruin is not the only way of discontinuing a school, so keeping these in repair is not the only thing requisite in order to maintain the school in a state of efficiency.

"But if school boards be responsible, as I think they clearly are, for maintaining and keeping the schools 'under their management' in a state of efficiency, it is obviously necessary that they shall have the power not only of appointing, but also of removing, the teachers, and so the provisions of the Act which confer this power appear to be in harmony with the principle of the measure. It is clear that they have the choice of the teachers, for whose fitness and competency they are responsible, and, being equally responsible for the conduct and continuing efficiency of every teacher whom they employ, they have also the power of removal. Nor need the power surprise any one, for not only had Parliament conferred the same power on the school boards of England only two years before, but it is a power which, so far as I know, is possessed and exercised by every body of school managers in the civilized world. It is true that, by a rule of which I believe there is no example elsewhere in any case at all similar, the parish schoolmasters of Scotland held their places for life. That this was an inconvenient and inexpedient rule appeared (so, at least, Parliament thought) not only from the experience we had of its operation, but from the conduct of mankind, proceeding on experience, in every department of life and business. Parliament accordingly determined that there was no reason why the school boards of Scotland should employ their teachers upon any other footing than those of England, or why such contracts as all school managers, including those of the great foundation schools of the country, and, indeed, the managers of all undertakings whatever, found the most expedient with their employés, should not also be esteemed the most expedient for the Scotch school boards and their teachers. They are, accordingly, required by the Act to contract with teachers exactly as all others who require the services of teachers contract with them. In the public interest there is a certain qualification prescribed, to be testified by certificate. This is analogous to the qualification prescribed by law for ship-masters, medical practitioners, and many others who seek employment in their several callings.

"But it is according to the practice of Parliament to make reasonable provision for the protection of existing interests, and accordingly clause 60 was introduced into the Act. The object of it, as is plain I think from the language, was to modify with respect to teachers appointed before the Act, to such extent as was deemed necessary for their reasonable protection, the power of removal which in all other cases was conferred absolutely on the school boards. It would have been against the public interest and contrary to the policy of the Act to exempt them from the control of the boards who were made responsible for their efficiency. But, on the other hand, it was considered proper, in deference to the principle of reasonable protection to existing interests, that the action of the boards, with a view to their removal for inefficiency, should be subjected to certain specified checks. Accordingly, while the School

Board of every parish or burgh is empowered officially to 'consider' whether 'any such teacher is incompetent, unfit, or inefficient,' a board which considers that he is so must, before proceeding to remove him, require a special report 'regarding the school and the teacher' from H. M. Inspector, and furnish the teacher with a copy of it. This is the first check. The second and only other is, 'that a judgment removing the teacher shall not have effect until confirmed by the Board of Education.' It is, I think, not amiss that I should mention, with reference to some views which have been expressed regarding the functions of Inspectors, that it was not without hesitation and difficulty that the department of the Government charged with the administration of the Parliamentary grant, whose servants Her Majesty's Inspectors are, consented to allow this duty to be put on these officers, it being contrary to the rule and practice of the department to interfere, or permit their inspectors to interfere, with the management of any school, or to interpose in any way between the managers of a school and their teachers. But the case was considered to be exceptional and temporary, and so the clause was allowed to pass as matter of public convenience.

"But, attaching all due importance to the checks, it must nevertheless be acknowledged that the duty imposed on the school board is of a very onerous kind, and that respect is justly due to their judgment. They are responsible for the efficiency of the school, although taught by a teacher appointed before the Act, and may be made answerable (upon a complaint to this Court) if they allow it to fall into a state of inefficiency, although its inefficient condition is attributable to the unfitness or incompetency of the teacher. Their opinion, or, as the Act expresses it, what they as managers of the school 'consider' regarding the efficiency of the teacher, is the primary condition of any action under the Act. If their judgment be favourable to the teacher, there is no power elsewhere to remove him, although they may no doubt be compelled to take action by proceedings against themselves, under section 36 of the Act. They are thus put to form their judgment under the responsibility of a grave duty, for the due discharge of which they are answerable, not only to their constituents but to the law. With the opinion which I have expressed, I cannot hold that they are unfit for the duty which Parliament has put on them, or that they are without the means of acquiring the knowledge necessary to enable them to perform it intelligently. I cannot hold that the teacher is entitled to set them at defiance and to exclude them from the school unless they come to see to the repair of the building or the condition of the desks and forms. I must hold, on the contrary, that the managers of a school, responsible for its efficiency (as all managers presumably are, and as these managers expressly are), are entitled to visit it, and that, acting on the ordinary prompting of the human understanding, they will do so before condemning the teacher as 'incompetent, unfit, or inefficient.' I have already pointed out that the school board must themselves judge in the first instance, although their first judgment (if condemnatory of the teacher) is provisional, and need take no more formal shape than a requisition for a special report by one of H. M. Inspectors. It is not, however, too much to say that reasonable men will not form such a judgment and act upon

it, even to the extent of calling for a special report from the inspector (in itself a serious and significant step), without grave deliberation on the subject, after taking all due means of informing themselves regarding the school and the teacher.

"When, therefore, the school board in this case required a special report from the inspector, I must assume that they had previously, after due deliberation, and in the intelligent and honest discharge of their statutory duty, come to the conclusion that the pursuer was 'incompetent, unfit, or inefficient.' These expressions are almost undistinguishable in meaning, and really only aid each other exegetically. On resuming consideration of the case with the inspector's report, they had 'no hesitation in coming to the conclusion, on the strength of this report and from the knowledge of the majority of the members of the school board of the circumstances of the case, that the teacher is unfit by his conduct, and inefficient from his own fault, and that in justice to the inhabitants of the parish he should be removed from the office of teacher,' and they pronounced judgment removing him accordingly. Nothing remained but the application of the second statutory check, and it was applied, with the result that the judgment was confirmed by the Board of Education.

"In condescendence 3 the pursuer declines to admit the regularity of the proceedings; but the only criticism which he makes seems to me to be unfounded, and no conclusion or plea is put upon alleged irregularity. The action assumes regular and effectual dismissal under the Act, and concludes for a retiring allowance on the ground alleged in condescendence 4, that the pursuer 'denies, and it is not the fact, that there has been any incompetency, unfitness, or inefficiency on his part which is or has been due to his fault.' The pursuer makes no other averment, but calls on the defenders 'to specify in what particulars the pursuer has been guilty of fault in the discharge of his duties'—a call which the defenders, disputing the pursuer's right to make it, answer by alleging intemperate habits, neglect, and frequent absences from his duties.

"The question thus raised for decision seems to be whether a teacher who has been removed under clause 60 (subsection 2) of the Act has a good action for a retiring allowance on a general denial that the unfitness, &c., for which he was removed was due to his fault; and I am of opinion that he has not.

"It is obvious that the trial of such an issue would be most perplexing, although, were such trial necessary to vindicate a right clearly conferred by statute, the difficulty would no doubt have to be encountered. The general rule is that the proof of fault is on the party alleging it, and perhaps the pursuer's case may be put most strongly on the call which he makes on the defenders for a specification of the fault they allege and undertake to prove, for the purpose of resisting his claim. But it would, in my opinion, be contrary to the meaning and intention of the Act to require the defenders to establish by evidence in this Court the grounds on which they proceeded in the discharge of their statutory duty. The managers of a school, if they are to do their duty fearlessly, must often proceed on their observation of results during a considerable period, and their judgment of the teacher's responsibility for them. Their conclusion of fault on his part may be just, and such as

they are bound in duty to act upon, without the possibility on their part of establishing it by evidence in a court of law. They are themselves the best judges, and have the best opportunities of judging. It is to them, accordingly, that the statute commits the duty of judging, so far at least as regards removal; and they are assuredly not tied to proceed only on such evidence as a court of law requires. Then, does the Act provide that they must pay a retiring allowance unless they prove fault in a court of law? I think it does not.

"The Act of 1872 (clause 60, sub-section 2) gives no larger power to school boards to grant, and no larger rights to teachers to demand, pensions than were conferred on heritors and schoolmasters respectively by the Act of 1861 (section 19). This is clear, for the later Act refers to the prior for the measure of the powers and rights which it gives. The prior Act authorised the heritors to remove and give pensions to teachers who were 'disqualified because of infirmity or old age for the due performance of the duties' of their office, but it authorised removal *with a pension* in no other case whatever. Removal *without pension* was authorised in the case of a teacher who 'from negligence or inattention has failed efficiently to discharge such duties.' The defenders say that the pursuer 'is unfit by his conduct and inefficient from his own fault,' and this is on the face of their judgment, which the Board of Education confirmed. The pursuer denies 'fault,' but as he does not allege 'infirmity or old age,' I fail to see how he can have right to a pension. Had he been removed under the Act of 1861 it must have been for 'negligence or inattention,' for he is not old or infirm, and it seems clear that the heritors could not have granted him a pension. But if this be so, the school board which removed him under the Act of 1872 have no power to grant him a pension for the power of the heritors under the one Act is the measure of the Board's power under the other.

"In refusing to allow the pursuer a proof of his negative averment of no fault, or to require the defenders to prove the faults which, in answer to his call, they have averred in general terms, I proceed on what I conceive to be the law applicable to all cases of removal under this clause of the Act, and it concerns the community that the law should be settled. I think it would be contrary to the intention of the Act, and detrimental to the public interest, to put a school board which has dismissed a teacher in the same position as a defender in an action for slander, by requiring them to condescend upon and prove the *veritas* of the grounds on which they proceeded. The members of the board may be morally certain that the teacher is inefficient, intemperate, negligent, and frequently absent from duty, leading to the utter destruction of the school, without being able to establish much of it (except, perhaps, the condition of the school) on a trial in a court of law. It is not for the interest of the community that they should be deterred from dismissing the teacher if they, the Inspector and Board of Education, all concur in thinking that the interests of education require it, by the apprehension of a litigation with a dismissed teacher, in which they may be required to satisfy this Court also of the propriety of that step. The question may only regard a pension, but a pension means a higher school rate in the parish, and I am not disposed to countenance the

notion that there must either be proof of delinquency in a Court of law, or a pension and increased rate. This was not, I think, the intention of the Act, and so to construe it would be calculated to deter school boards from the due discharge of their duty. No public department, no business or domestic establishment, could be efficiently conducted on the condition that those in charge and having the responsibility should not dismiss an employé unless prepared to set forth and establish his misconduct at law. Even in private establishments good men require no such protection against the caprices of employers, and school boards are public bodies which ought to be regarded, and I trust ever will be regarded, by this Court with a confidence in their integrity and discretion corresponding to that which Parliament has manifested by the large and important duties committed to them. Teachers who are disabled by infirmity or old age are proper objects of compassion, and the Legislature has made fair provision for them accordingly. But to allow a young and vigorous man who (after applying all the statutory checks in his favour) has been properly dismissed for unfitness and inefficiency, to call the School Board into Court and insist that they shall there either make and prove charges of misconduct against him or submit to judgment for a pension, is what I for one do not find consistent with the provisions of the statute, or the interests of the public.

“It was conceded that the Court has no power to review the judgment of removal on its merits, or at all, the regularity not being questioned, and I think the Court owes it the respect due to any final judgment or determination by the proper statutory authority. Nor do I think that it is to be regarded by the Court only in the abstract as a judgment under section 60 of the Act, without looking to the import and plain substance of it as a judgment in the particular case. So looked at, it is a judgment of removal for unfitness by misconduct and inefficiency from fault. The pursuer says that it is erroneous in fact, and he reflects on the motives of his judges, or some of them, and thus (but only thus) represents his removal as without fault on his part. I think this is not relevant, for the judgment of removal is final, and not examinable on its merits in this Court.

“If a teacher who is not disqualified by age or infirmity may be well removed under section 60 without fault on his part, it must be for a cause which is not only satisfactory to the School Board, but approved by the Board of Education as good reason for the removal which they confirm. I am unable to conjecture (within the bounds of reason and likelihood) such a cause, and the possibility of its occurrence may, I think, be prudently left for determination till an actual removal shall occur for a cause having such an aspect. I do not admit that a school board may (as has been supposed by way of illustration) direct new subjects to be taught in an old parish school which the schoolmaster is excusably unable to teach, or task him in any way beyond his reasonable powers, and then remove him for unfitness. Such a removal, on the report of the inspector, and confirmed by the Board of Education, is, I think, beyond the region of reasonable supposition, and a speculative consideration of it is at least foreign to the case which the pursuer presents; for he, being on the face of the judgment removed for unfitness and inefficiency,

which the School Board and Board of Education in attributing to his misconduct and fault, does not allege a cause of removal which involved no fault on his part, but only that the cause assigned by the proper authority was not true in fact, and that he was thus unjustly removed without any cause at all. It was not maintained that a judgment of removal for unfitness and inefficiency from misconduct and fault ought to specify the facts in which the misconduct and fault consist, or that it would be less assailable in such an action as the present if it did. I think the generality of expression is preferable; and do not suppose for a moment that the School Board and Board of Education adopted the general terms without particular grounds established to their satisfaction in the individual case. Looking to the judgment on the one hand, and to the case stated by the pursuer on this record on the other, it seems to me impossible to represent the latter as consistent with the former, or otherwise than as a direct contradiction of it. I am myself of opinion that the Act of 1872 sanctioned a retiring allowance only in the case of infirm or aged teachers, to which case it was admittedly confined by the Act of 1861, which is referred to as the measure of the power and right which the latter Act confers. I also think that this does not result from any rigid or strict construction of the words of the Act of 1872, but accords with the intention and plain reason of the Act, for no other case of legitimate or reasonably supposable removal under the Act without fault on the part of the teacher has been suggested or occurs to my mind; and the notion that the Legislature intended to confer a power and create a right conditioned on the opinion of a court of law on the question of fault or no fault on the part of the removed teacher, upon a general inquiry into the whole circumstances and merits of the removal, is one which I cannot adopt. It has been said that the Act of 1872 extends, with respect to old teachers, the power of removal without fault on their part. I do not think so, for I think it only further (and reasonably and beneficially) extends and facilitates the power of removal for fault. But if it be reasonably supposable that a teacher who is neither infirm nor old may nevertheless be properly removed under the Act of 1872 after observing all the checks provided for his protection, without fault on his part, it is not too much to require that a party appealing to this Court in reliance on so special a case should condescend on the particular facts which raise it. And these facts must consist with the notion of a just dismissal without fault on the part of the teacher; for that is the condition of relevancy in this view of the matter. But the pursuer condescends on no facts whatever. He only impugns the justice of his removal, and upon that, as the only *medium*, claims a retiring allowance. His case is, that on a true construction of clause 60 he is entitled to be compensated by a retiring allowance on satisfying the Court that the judgment of removal (which, as such, the Court is precluded from reviewing) was an unjust judgment, which ought not to have been pronounced.

“To sustain the relevancy of such a case would, in my opinion, be, not to put a liberal construction on a remedial statute, but to put an erroneous construction on a statute which is remedial in no other sense than every statute is remedial. The managers of the old parish schools (*viz.*, the valued rent

heritors who supported them) could always practically get quit of an unfit and inefficient schoolmaster by giving him a retiring allowance. The evil of the law was that they could not get quit of him except on that condition—the practical result being that teachers who really ought to be removed were retained to the detriment of education, rather than burden the rates with a pension to a man who had no just or reasonable claim to it. This evil was partially remedied by the Act of 1861, and more completely by that of 1872—both Acts providing (the latter by simple reference to the former) for a retiring allowance to aged and infirm teachers, and no others.”

The pursuer reclaimed.

Case cited—*Robb, supra*, 279.

At advising—

LORD ORMIDALE—I do not understand that the master complains of irregularity in the procedure of the Board. There is no question of the Board having gone out of the statute or exceeded its powers. The action is framed as if the pursuer was not dismissed for fault. The statement in condescendence 4 is important as to the relevancy of the action. “The pursuer does not admit that he is incompetent, unfit, or inefficient. On the contrary, he avers that he is at least as competent, fit, or efficient as he was when appointed in 1860. In any view, he denies there has been any incompetency, unfitness, or inefficiency on his part, which is, or has been, due to his fault. The defenders are called on to specify in what particulars the pursuer has been guilty of fault in the discharge of his duties.” This is a very negative statement on the pursuer’s part. The defenders explain in their answer that the unfitness and inefficiency of the pursuer are caused by his own negligence and fault. The question is, whether, because the pursuer denies this charge, he is entitled to have a trial of it in an action at law. I think he is not. There is nothing in the Act of 1872 to recognise such a system, and if such a procedure were competent it would go far to frustrate the object for which the Act was framed. The choice of the master was to be with the Board, and I think it was intended they were to have the power of dismissal, subject to certain checks. The inspector’s report is one check, and we have it here. Then the approval of the Education Board must be obtained, and that was done here; and on such statements as we have here there was an end of the matter. I can suppose a case of mischievous conspiracy on the part of a School Board to dismiss a master, which, if well laid, might have a different result, but there is no such case here. I entirely concur with the Lord Ordinary’s view, that it would be contrary to the intention of the Act, and detrimental to the public interest, to put a School Board which has dismissed a teacher in the same position as a defender in an action for slander, by calling on them to condescend upon and prove the *veritas* of the grounds on which they proceeded.

LORD NEAVES—I am for adhering. We have a statement here by the Board that the teacher is unfit by his own conduct—not by his backwardness in attainments, or from any physical disqualification—but from his own fault to conduct the school efficiently. There is a plain statement of personal fault amounting to delinquency, of in-

efficiency caused by the conduct of the pursuer, which I hold amounts to a charge of misconduct. Was it necessary for the Board to specify the particular name of the fault? I do not think it is necessary for them to go into all the details. The words of the section are—(*reads* sec. 60)—and I think if the dismissal does not acquit the master of fault he cannot claim the benefit of the clause. The Court are not to distrust a responsible statutory body like a School Board, and will not as a general rule allow investigation as to the existence of fault found by them to exist. Hence there is enough to show that the dismissal proceeded on the ground of moral fault, and that is sufficient to exclude the demand now made.

LORD GIFFORD—I concur. My difficulty is that, while the statute provides that where “such resignation shall not be occasioned by any fault on the part of the schoolmaster the heritors shall grant a retiring allowance.” It does not say “of which fault the School Board are to be the sole judges.” Can we make out such a finality from the statute without express words? I think we can. I think it is the sound and salutary construction of the Act. I think the School Board is to be the judge of fault, subject to the checks of a report from an inspector and the sanction of the Education Board. It was not intended that every dismissed schoolmaster should have the power of bringing an action against the Board, leading a proof, and causing immense inconvenience. Then there is no provision for trial by the School Board, and we would really try the question for the first time. It is strong to say that the schoolmaster can bring a new trial before a body of strangers.

LORD JUSTICE-CLERK—I concur in the opinions which have been expressed, and think the result sound and satisfactory. I reserve my opinion on some points touched on in the note of the Lord Ordinary. In particular, as to how far section 60 of the Education (Scotland) Act gives any power to School Boards beyond that given by section 19 of the Act of 1861. The dismissal here was in consequence of the fault of the schoolmaster, which is set out sufficiently: the School Board alone are the judges of the fault, their actings were *bona fide*; there is no case of oppression here, and the interlocutor of the Lord Ordinary must be sustained.

The Court pronounced the following interlocutor:—

“The Lords having heard counsel on the reclaiming-note of James Morrison against Lord Young’s interlocutor of 6th February 1875, Refuse said note, and adhere to the interlocutor of the Lord Ordinary, with additional expenses, and remit to the Auditor to tax the same and to report.”

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