

suspend. Review is also excluded by section 108 of the Public Health (Scotland) Act. The suspender has lain bye for four months, until he saw the result of the landlord's appeal, and has so disenthralled himself to suspend.

At advising—

LORD JUSTICE-CLERK—I think we must give a liberal interpretation to the clause which cuts off the common law remedies. I do not think we can give so stringent a construction to it as to hold that the preparing of the Case amounts to an appeal being taken.

LORD YOUNG—I concur. The respondent's argument is strict to inadmissibility. There is nothing in the Act to prevent a party reconsidering his position after he has required the judge to state a Case, and if he thinks proper withdrawing from the prosecution of his intended appeal. The Court might prevent him abandoning his appeal at a time when to do so would be injurious to his antagonist; but we have no such case here.

LORD CRAIGHILL concurred.

Counsel then proceeded to argue the remaining questions, but ultimately consideration of the case was superseded by the Court until October.

Counsel for Suspender—Moncrieff.

Counsel for Respondent—Balfour.

Friday, June 30.

APPEAL—ARTHUR V. PEEBLES.

Act 2 and 3 William IV. c. 68—Conviction.

A person was convicted of trespass by entering, and being without leave of the proprietor "in and near," a field, &c.—Held that the expression being "in and near" was ambiguous, and did not warrant a conviction under the statute.

Thomas Arthur, a bolter, residing in Dundyan, in the parish of Old Monkland, Lanarkshire, appealed against a conviction obtained against him by John Kidd Peebles, procurator-fiscal for the county of Lanark. The indictment upon which the conviction was obtained set forth that the appellant, along with another man named Abraham Burton, had been guilty of an offence within the meaning of the Act 2 and 3 Will. IV. cap. 68, entitled "An Act for the more effectual prevention of trespasses upon property in pursuit of game," in so far as on the 15th of May 1876 the appellant and the said Abraham Burton did commit a trespass by entering, or being without leave of the proprietor "in and near, a field in the farm of Kirkstyle, in the parish of Old Monkland and county of Lanark (the property of the Rev. Sholto Douglas Campbell Douglas of Rose Hall, and occupied by James Buchanan, a farmer), in search of game, and did kill a hare on said field. Secondly, they were charged with committing a further trespass by entering or being without leave of the proprietor in the field on the farm of Bankhead, (the property of David Carrick Buchanan of Drumpellier, and occupied by John

Hendrie, residing at Kirkwood) in pursuit of game. The appellant, on being brought before the Justices of Peace for the county on this charge on the 1st of June, was fined £1, 10s. of modified penalty, with £2, 13s. 6d. of expenses, and in default six weeks' imprisonment. The charge against Burton, who was not charged with the offence till the 5th of June, was found not proven, although the two men were both together and the appellant had been convicted. The appellant therefore, on this ground, and also in consequence of an alleged informality in the indictment, craved a bill of suspension and liberation.

Argued for him—(1) In libelling a charge under the statute the language of the statute must be used. Accused is not charged with entering on any lands without leave of the proprietor, but with entering, and being in and near, the field. This charge contains too many alternatives, and the justice found him guilty of the offence charged. It is not clear that the justice may not have thought that being "near" a field was an offence and have found him guilty accordingly; but being "near" a field is not an offence except in regard to night-poaching. "In and near" is an ambiguous expression. The justice had it in his discretion to send the accused on conviction to prison, or to grant warrant for pointing his goods; but here warrant for imprisonment was granted without stating reason for so doing. It is evident the justice did not consider the alternative, which he ought to have done. Lastly, the two men ought to have been tried together.

Argued for respondent—The charge is not alternative; and if one be relevant and the other be irrelevant, the appellant has been convicted of both charges. At any rate the words "and near" are surplusage, and are to be disregarded.

At advising—

LORD CRAIGHILL—It is quite plain that the charge ought to set forth the statutory offence, not necessarily in the very words used in the statute, but in that case full equivalents must be used. Here the charge is that the defenders were guilty of the statutory offence by entering or being in and near the field libelled. The question is, whether "in and near" is equivalent to "upon." I think the expression is ambiguous. There is no warrant in the Act for the statement that being near a field amounts to an offence. We do not know the evidence, but the result of the trial has been that the appellant has been convicted of being near a field, which, as I have said, is not an offence. The conviction must then be quashed on this ground. As to the other objections, I think that they are quite baseless.

LORD YOUNG—The objection which has been taken to this charge is a critical one, but, upon the whole, I think Lord Craighill's opinion is the safe one to follow. The charge is slovenly, and the conviction is slovenly. For this there is no excuse, because the statute is distinct and precise in its terms. The gist of the objection lies in the fact that being near a field is no offence, while in this charge it is represented as being one. The conviction may have proceeded on evidence that the appellant was in the field, but then the justice may have convicted him of

being near the field. This is improbable; but the more wholesome view is that stated by Lord Craighill.

LOLD JUSTICE-CLERK—It is not without reluctance that I concur. I am inclined to think that “and near” was mere surplusage, but what reconciles me to the view taken by your Lordships is, that the person who drew this charge evidently thought that being near a field in the day-time is a statutory offence, which it is not.

Counsel for Appellant—M’Kechnie. Agent—
R. A. Veitch, S.S.C.

Counsel for Respondent—Balfour. Agent—
C. C. Taylor, S.S.C.

COURT OF SESSION.

Monday, July 3.

SECOND DIVISION.

[Sheriff of Perthshire

MORRISON v. SCHOOL BOARD OF ABER-
NETHY.

(Before the Judges of the Second Division, with
Lords Deas, Ardmillan, and Mure.)

School—Education (Scotland) Act 1872—Contract—
Notice of Dismissal—Implied Right.

A master was engaged by a School Board for the public school under their charge; he remained with them for upwards of a year, being paid his salary quarterly, and occupying a free house with garden. Soon after the commencement of the second year he was dismissed without cause assigned, the Board only paying his salary to the end of the then current quarter. Held (*diss.* Lords Neaves and Ormidale) that the 15th clause of the 55th section of the Education Act, while providing that every appointment should be at the pleasure of the Board, did not entitle them to dismiss without cause assigned unless upon giving reasonable notice, and decree given for a sum in name of damages for want of notice.

Election of Schoolmaster.

Opinion (*per* Lord Gifford) that under the Act a School Board cannot elect a schoolmaster for life, or *ad vitam aut culpam*, or for a period of years, but only during pleasure.

This was an action at the instance of William Morrison, M.A., lately head-master of the public school of Abernethy, Perthshire, against the School Board of that parish. The summons concluded for payment of £50 in name of damages for dismissal on 30th November 1874 from his post as head-master aforesaid, in which situation his emoluments were £150 per annum, with free house and garden. The pursuer averred that “having on the 14th day of July 1873 been appointed by the defenders as head-master aforesaid for the year then ensuing, and having fulfilled his said engagement for a year, he, by tacit re-

location, remained engaged as head-master aforesaid for another year, and entered upon and performed his duties until he was illegally and summarily dismissed as aforesaid without any notice, or a quarter’s salary in lieu of notice, for which quarter of a year’s salary and emoluments the £50 claimed is an equivalent, with expenses.”

In defence the School Board admitted the dismissal, but denied that it was illegal and unjustifiable.

The circumstances as stated on record were as follows:—On 2d July 1873 an advertisement was inserted by the Board in the *Scotsman* for a head-master to the public school of Abernethy, the pursuer applied, and on 14th July 1873 was appointed to the post, and on 15th July the following letter was sent by the chairman to the pursuer:—“My dear Sir—With great pleasure indeed I have to inform you that you have been chosen *unanimously* head-master of our public school.” On 1st October the pursuer entered upon his engagement, and took possession of the free house and garden. He was paid £150 during the teaching session 1873-74, quarterly, or £37, 10s. per quarter. He remained till 30th November 1874, when he received, without previous intimation, the following letter from the acting clerk to the Board:—“Sir—At a meeting of the Board held this evening I have been instructed to inform you that you are now relieved of your engagement as head-master of the Abernethy public school. The Board have agreed that you be paid the current quarter’s salary in full.—Yours, &c.” This letter proceeded upon a resolution, carried at the meeting of the School Board on the same evening, by Mr Somerville, to this effect—“The 15th clause of the 55th section of the Education (Scotland) Act is, in regard to the appointment of teachers—‘Every appointment shall be during the pleasure of the School Board.’ In accordance with the above, I move that Mr Morrison be relieved of his engagement as head-master of this school, and that his office be now declared vacant; also that Mr Morrison be allowed the salary for the current quarter.” The 15th clause of Section 55 of the Education (Scotland) Act 1872, is as follows:—“After the passing of this Act, the right and duty to appoint teachers of public schools shall be in the respective School Boards having the management of the schools, who shall assign to them such salaries or emoluments as they think fit, and every appointment shall be during the pleasure of the School Board.” There was admittedly no special contract between the parties, but the defenders made general allegations to the effect that for some time Mr Morrison’s conduct had been highly objectionable and improper.

The pursuer pleaded, *inter alia*,—1. Contract of yearly service. 2. Tacit relocation. “3. A School Board dismissing a teacher without fault on his part is bound either to give reasonable notice or pay corresponding compensation or damages. 4. The pursuer having been dismissed during the currency of his second year, without any just cause or previous notice, is entitled to damages for breach of said contract renewed as aforesaid.”

The defender pleaded, *inter alia*,—1. Irrelevancy. 2. The pursuer’s engagement being only during the pleasure of the defenders, they were entitled