

Counsel for the Claimant David Patrick—C. S. Dickson. Agents—Ronald & Ritchie, W.S.

Counsel for the Claimants Hill, Thomson, & Company—C. S. Dickson. Agents—Davidson & Syme, W.S.

Saturday, February 2.

SECOND DIVISION.
SCHOOL BOARD OF ECKFORD *v.* THE
RATEPAYERS.

School Board — Retiring Allowance — Teacher's House.

Held (1) that the amount of the retiring allowance of a teacher appointed before 1872, provided only it be not less than two-thirds of his salary, is entirely in the discretion of the school board; and (2) that a school board may competently allow a retiring teacher to continue to occupy rent free the teacher's house as part of such allowance—Lord Lee *dub.* whether a teacher's house, so long as it is kept up, should not be occupied by the person actually discharging the duties of teacher.

The School Board of the parish of Eckford, in the county of Roxburgh, in December 1886 arranged with Mr Henry Richardson Lawrie, the teacher of the Eckford School, that he should retire upon an allowance of £60 per annum, with the use of the teacher's house and garden rent-free for the rest of his life.

Mr Lawrie was then nearly seventy-eight years of age, had taught in the parish for fifty-eight years, and had occupied the house and garden attached to Eckford School for fifty-five years.

Mr Lawrie's emoluments consisted of a salary of £50, the school fees, which amounted to about £32 or £33 per annum, and four-fifths of the annual Parliamentary grant, amounting to between £33 and £39. His whole emoluments as teacher of Eckford Public School accordingly amounted to about £120 per annum, exclusive of the house and garden.

Certain of the ratepayers objected to the arrangement made by the School Board, holding that they were not entitled to give the retiring teacher the use of the house and garden, or more than the amount of his salary—£50 per annum in money.

A Special Case was presented to the Court by the School Board of the first part, and by the said ratepayers of the second part, to have the legality of the School Board's action determined.

The following questions were submitted—"1st, Whether the first parties in granting Mr Lawrie a retiring allowance were (a) restricted to a sum not exceeding the gross amount of his salary? or whether (b) their power in fixing the amount was entirely discretionary? 2nd, Whether the first parties (a) were entitled to grant to Mr Lawrie, in addition to the retiring allowance in money, the free use of the schoolmaster's house and garden during his life? or whether (b) they were bound to make them over to the person actually discharging the duties of schoolmaster?

3rd, Whether, assuming that the first parties are wrong in giving Mr Lawrie the continued use of the schoolmaster's house and garden, they have power, in addition to his retiring allowance of £60 (a) to provide him with another house and garden of the same annual value? or (b) to pay him a further yearly sum equal in amount to such annual value? or (c) to let the schoolmaster's house and garden to him?"

The Parochial and Burgh Schools (Scotland) Act 1861 (24 and 25 Vict. c. 107), provides, *inter alia*—Sec. 18. "Nothing in this Act shall be held to interfere with any arrangement which may have been concluded between the heritors and schoolmaster of any parish for the retirement of such schoolmaster, except as regards the house and garden, and premises attached thereto, which shall in every case be made over at the term of Whitsunday next after the passing of this Act to the person actually discharging the duties of schoolmaster, and where the use of such premises may have formed part of a retiring allowance, the heritors shall make reasonable compensation to the ex-schoolmaster." . . . Sec. 19. . . . "Provided that where such resignation shall not be occasioned by any fault on the part of the schoolmaster, the heritors shall grant a retiring allowance, the amount whereof shall not be less than two-third parts of the amount of the salary pertaining to said office at the date of such resignation thereof, and shall not exceed the gross amount of such salary." . . . Sec. 20. "In all cases in which the minister and heritors are by this Act empowered to provide a retiring allowance for a schoolmaster who shall resign or shall be removed from his office, it shall be lawful for them, if they see fit, to provide for such schoolmaster in addition to such allowance, and in like manner, a further yearly sum equal in amount to the annual value of any dwelling-house and garden to which he may be entitled as such schoolmaster, as the same shall be valued by the assessor of the county."

The Education (Scotland) Act 1872 (35 and 36 Vict. c. 62), provides by section 60 that "Any teacher of a public school appointed previously to the passing of this Act may be removed from his office in manner following. . . . (2) If the school board of any parish or burgh shall consider that any such teacher is incompetent, unfit, or inefficient, they may require a special report regarding the school. . . . and in receiving such report the school board may, if they see cause, remove such teacher from office. . . . provided also that in the case of teachers of parish schools appointed previously to the passing of this Act who may be so removed, the school boards shall have the same powers of granting retiring allowances, and the teachers shall have the same rights to retiring allowances, as were vested in heritors and ministers and in parish schoolmasters respectively by sections 19 and 20 of the Parochial and Burgh Schoolmasters (Scotland) Act 1861, in the case of parish schoolmasters permitted or required to resign, or dismissed or removed from office as therein provided." Section 61 provides that "A school board may permit any teacher of a public school to resign his office upon the condition of receiving a retiring allowance, and the said board may award or pay to such teacher out of the school fund such retiring allowance as they shall think fit, provided always

that nothing herein contained shall affect the right under the existing law to a retiring allowance of any teacher appointed under the recited Acts or any of them."

Argued for the first parties—Section 60 of the Education Act, which dealt with removals of teachers, was not in point. This was a retirement by arrangement under section 61, which left the School Board full discretion to give what retiring allowance they thought fit, provided only they did not give less than the teacher would have been entitled to under the 1861 Act. That Act was repealed by the 78th section of the 1872 Act, except in so far as its 19th and 20th sections were retained by sections 60 and 61. Consequently the 18th section of the Act of 1861, making it obligatory that the house attached to the school should be occupied by the person actually discharging the duties of schoolmaster, was not binding upon the School Board. By section 54 school boards were only bound to keep up the teachers' houses during their tenure of office, after which the school boards were free to deal with the houses as they saw fit. It was no longer compulsory to provide houses for teachers. This house and garden were just a part of the allowance, upon receipt of which the teacher had agreed to resign. The new teacher did not suggest that his rights were being interfered with, and the second parties here had really no interest in objecting to the arrangement made. Even if it were upset they would gain nothing, for in that case an increased money payment would have to be made to the retiring teacher out of the school fund which was maintained by the rates.

Argued for the second parties—(1) As to the money payment, the 19th section of the 1861 Act was still in force, and limited the allowance to the gross amount of the salary, which was here £50. The school fees and the Parliamentary grant were uncertain in amount, and in any case were not to be taken into account as part of the salary. (2) As to the house and garden—The intention of the Legislature must be looked to, which clearly was, that although in some places it might be unnecessary and inexpedient to keep up teachers' houses, where they were kept up they must be occupied by the acting teachers. It was *ultra vires* of the School Board to allow anyone else—even the retiring teacher—to occupy the teacher's house.

At advising—

LORD JUSTICE-CLERK—I think this is a clear case. The first parties, the School Board of the parish of Eckford, have made an arrangement by which the aged schoolmaster is to retire. The Board propose, in the language of section 61 of the Education Act of 1872, "to award and pay" to him "out of the school fund such retiring allowance as they shall think fit." In the exercise of the discretion which this section confers upon them they have fixed the retiring allowance at so much money, viz., £60, and they have agreed to give him rent-free for life the use of the teacher's house and garden which he has so long occupied in connection with the school.

Now, the first question raised is, whether the School Board are restricted in fixing the retiring allowance to observe the limits which were laid down by sections 19 and 20 of the Parochial and

Burgh Schoolmasters Act of 1861, which sections are kept in force by section 60 of the Act of 1872 for the purpose of being applied to cases of "removal" of teachers who are "incompetent, unfit, or inefficient." The amount of retiring allowance which these sections contemplate is a sum which "shall not be less than two-third parts of the amount of the salary pertaining to such office at the date of such resignation thereof, and shall not exceed the gross amount of such salary." The second parties, who are ratepayers in the parish, say that Mr Lawrie's salary was only £50, and that the school fees and other emoluments must not be taken into account in fixing the retiring allowance, which therefore, they maintain, cannot in any view exceed £50. I think it unnecessary to decide the question which they thus seek to raise on section 60, because the School Board are not giving the allowance under section 60. That section refers, as I have mentioned, to removal of a teacher, but this case is under section 61, which applies to a resignation arranged and agreed on between the schoolmaster and the Board. Section 60 is appropriate to removal, against the teacher's will, for bad conduct or inefficiency, while section 61 contemplates such a case as the present—a resignation. It is meant for cases in which the School Board very probably could not remove the teacher, but in which, for all that, they think that for the interest of the parish and in fairness to him, such arrangements should be made as will induce him to resign. Such arrangements will certainly not be lightly interfered with by the Court. I do not think the Court would interfere with them unless they appeared to be so outrageously contrary to the interests of the parish as to amount to malversation by the Board in their office as trustees for the interests entrusted to them.

On these grounds I think that the first question which is raised ought to be answered in favour of the School Board.

The other question in the case is, whether the School Board has acted beyond their powers in regard to the house and garden, in respect that they have thought fit, instead of giving the new teacher the house attached to the school, to give to the aged teacher in consideration of his long services to the parish the use of it for the rest of his life. The second parties say that the Board had no power to do that.

Now, I do not think that even under the old law it would have been illegal for the heritors to arrange in the interest of all concerned that the old teacher should remain in the house, and the new teacher should be properly provided for elsewhere in the neighbourhood. But however that may have been, I think that under the new system which the Act of 1872 has introduced it is in the discretion of the School Board to say whether a teacher's house is or is not to be part of the educational equipment of the parish. The question truly is, whether the use of the house and garden is to form part of the retiring allowance?

So far as appears the new teacher is quite satisfied they should, and is quite satisfied with the arrangement that he should have provision made for his residing elsewhere. It is by certain ratepayers that the objection is taken. They maintain that the Board are not entitled to keep on

the house unless it is to be occupied by the teacher who is discharging the duties of teacher in the parish. Now, I do not see what real interest these ratepayers have to raise that question. They are only interested in preventing any illegal application of property which improperly adds to the rates. But here if this question were answered in their favour no benefit would accrue to the ratepayers, for the Board would simply change the allowance as regards house and garden into a money allowance in addition to the £60 already given. I could even conceive circumstances in which the course the second parties contend for would be against the interest of the ratepayers.

I am clearly of opinion in law that the School Board may make such an arrangement as they have done with Mr Lawrie, and that no misuse of office has been substantiated which calls upon this Court for interference with their action. They have acted within their powers, and we have no power to control them in a reasonable exercise of the discretion vested in them by the Act.

LORD YOUNG—I am of the same opinion. I think the second parties here have no title and interest to state their objections, and have neither law nor reason to support them. Retiring allowances under the existing law are clearly governed by section 61 of the Act of 1872. Retiring allowances are entirely in the discretion of the School Board, and I do not assent to the view that the allowance fixed in this case was £60, and that the house was a free gift in addition to the retiring allowance. I think that the retiring allowance which the School Board determined upon in the exercise of their discretion was the £60 together with the house and garden. They might, instead of the house and garden, have increased the money allowance so as to enable the old teacher to secure a house for himself, say by making it £75. There could have been no objection on the ground of want of power. It might have been represented as an outrageous use of their discretion, but we should hardly have listened to that suggestion.

If, then, it was within their power, their power was not abused by what they have done, and would not have been abused if they had made the allowance £60, and £15—that is, £75—to enable the retiring teacher to provide a house for himself. But, dealing with an old man, they acted wisely in listening to the suggestion that he should not be turned out of his house, but that an arrangement should be made with his successor to provide a house for himself while the old man lived. The money withheld from the allowance of the old teacher will enable the new teacher to get a house for himself, and in so arranging, the School Board acted reasonably and within their discretion. Even supposing they had put the new teacher into the school-house, they would not have been bound to restrain him from letting it, unless by doing so he neglected his duties. He might, for the sake of his health it may be, have let it, and let it to the old teacher for a sum enabling him to get a more suitable house elsewhere. Would it have been illegal to let it? Schoolhouses are constantly let in summer, so are manses. No doubt the Presbytery might interfere if a minister let his manse

and left the neighbourhood, so that his parish suffered, but not otherwise, and the notion of there being any illegality or indiscretion in a schoolmaster letting his house with the consent of the school board is extravagant. I think the questions submitted to us are needlessly numerous and elaborate, and I propose that we should simply answer that the arrangement made by the School Board with regard to the retiring allowance, both as to the money payment and as to the house and garden, was lawful and in the proper exercise of their discretion.

LORD RUTHERFURD CLARK concurred.

LORD LEE—The objection here taken is that the arrangement is *ultra vires* of the School Board in two particulars—First, as regards the £60, and secondly, as regards the house and garden. I cannot say that I share the view that the ratepayers have no good title to state their objections as affecting the rates, but I agree in thinking that the first objection is unfounded, because the 61st section gives the School Board exclusive discretion in fixing the amount of a retiring allowance. As to the house, my only doubt has been whether a school board, so long as they hold the house, are not bound to use it for the schoolmaster. They may change the site and sell the buildings, but it is not clear to me that they have full right and title to deal with the house as if it were private property belonging to them. While expressing this doubt, I have nothing to add to the opinions expressed by your Lordships.

The Court pronounced an interlocutor finding that the School Board had acted within their powers in fixing the teacher's retiring allowance at £60, and in allowing him the use of the teacher's house and garden.

Counsel for the School Board—Sym. Agents—J. & J. Ross, W.S.

Counsel for the Ratepayers—W. E. Fraser. Agent—J. P. Sym, W.S.

Tuesday, February 5.

FIRST DIVISION.

SIMPSON *v.* HORSBURGH (LIQUIDATOR OF THE BOSON OIL COMPANY, LIMITED).

Public Company—Voluntary Liquidation—Application to Court by Liquidator for Powers—Companies Act 1862 (25 and 26 Vict. c. 89.)

The Companies Act 1862, sec. 138, provides—“When a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court in . . . Scotland . . . to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court, and the Court, . . . if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such applica-