

her office. As to damages for that suspension, Mr Boswell maintained that a suspension involved a slur. I do not think it involves any slur. That would depend upon the character of the suspension.

Upon the whole case I think that the Lord Ordinary was right, and that his interlocutor should be affirmed.

LORD M'LAREN — The first question is whether there is here a relevant charge of wrongous dismissal. To a right understanding of that point I think it is necessary to consider the provisions of the Act of 1872 as well as those of the Act of 1882. By the 55th section of the earlier Act it is provided that every appointment of a teacher shall be during the pleasure of the board, and there is no question that under that statute an interim appointment is within the powers of a school board; no appointment can be more clearly an appointment during pleasure than an interim appointment. It has been held that as a matter of equity the teacher is entitled to fair notice, and in the case of an interim appointment the statement in the letter of appointment that it is to be for so many weeks or months would be regarded by any Court as sufficient notice—all the notice, indeed, which the appointee can receive as to the duration of the appointment and its termination. Fair notice of the termination of the appointment is implied in the terms of the appointment—in the very fact that it is an interim appointment.

The law regarding the determination of a teacher's engagement was so far varied by the Act of 1882 that under the 3rd section of that Act a teacher was not to be dismissed until after three weeks' notice had been given of the meeting called to consider the proposal to dismiss. If this was a case of dismissal, as it is stated to be in the pursuer's averment, the provisions of the third section of the Act of 1882 were not in fact brought into operation. But then this was not a case of dismissal, because the appointment was in its nature a terminable appointment, and was for a period of three months certain, and the pursuer has received three months' salary according to contract.

It does not follow that because a teacher is entitled to salary the teacher is to be allowed to remain in the school against the wishes of the school board. It might lead (I do not suggest that it was so in this case) to great harm if the teacher remained in the school during the time the notice was running. Accordingly, it is provided by section 4 that it shall be in the power of the School Board to suspend any teacher. The pursuer was suspended when her appointment had a month to run. After the children had been dismissed upon the occasion in question, the chairman of the School Board said to the pursuer—"You must leave." That was a suspension of the pursuer from her office. That is made plain by the letter of the clerk, in which she is told that she has been suspended. No legal wrong was done to the pursuer by being displaced from her position of interim

teacher in the manner set forth upon record.

No doubt there is force in the observation that a teacher who is suspended lies open to the reflection that there must be good ground for it. It is an unpleasant position for the teacher. But we cannot inquire into the reasons of the Board. Even if there were no grounds for it, and even if, as is said here, the Board was actuated by malice, still as its members were acting within their statutory powers, being entitled at their discretion to suspend a teacher without giving reasons, I am of opinion that no action will lie against them.

As to the other point, I think the proper course will be to remit to the reporters on *probabilis causa*.

LORD TRAYNER—I agree with the Lord Ordinary.

LORD YOUNG and LORD MONCREIFF were absent.

The Court adhered.

Counsel for the Pursuer and Reclaimer—M'Lennan—Boswell. Agent—Peter Dowie, W.S.

Counsel for the Defenders and Respondents the School Board (and the individual members other than the Chairman)—Shaw, Q.C.—Guy. Agents—Sibbald & Mackenzie, W.S.

Counsel for the Defender and Respondent the Chairman of the School Board—W. Hunter. Agents—Turnbull & Herdman, W.S.

Saturday, January 20.

## FIRST DIVISION.

### TRUSTEES OF PORTOBELLO FEMALE SCHOOL, PETITIONERS.

*Trust—Scheme of Administration—Nobile Officium—Allowance to Teacher when School Discontinued.*

In an application to the Court to sanction a scheme for the disposal of funds belonging to an endowment of which the objects had become useless, the Court (*distinguishing Governors of Dollar Institution, Petitioners*, Nov. 28, 1890, 18 R. 174) sanctioned a proposal to provide an annual allowance to a teacher in a school which had hitherto been carried on under the endowment, and which it was proposed to discontinue.

This was a petition by John Ord Mackenzie and others, trustees of the Portobello Female School, to have a scheme settled and approved for the future administration of the trust.

The petition set forth that the object of the trust was to provide a school for girls of the lower classes, which had been established prior to 1823, and that owing to the

existence of board schools this had now become impracticable and unnecessary. The trustees lodged a draft scheme, in which they proposed to apply the funds of the trust in, *inter alia*, "paying to Miss Jemima Sinclair, late headmistress of the school, a retiring allowance of £10 per annum, to take effect from the date when her salary as headmistress ceased."

The petition was remitted to Mr James Fleming, advocate, to report on the regularity of the procedure and the merits of the proposed scheme.

Mr Fleming reported, *inter alia*, as follows:—"The petitioners further ask that the scheme for the future administration of the trust should include a power to award a retiring allowance of £10 per annum to Miss Jemima Sinclair, late headmistress of the school. Miss Sinclair became a mistress in the school in 1849, and excepting for a break of five years, in 1880-1885, remained there until the school was closed in 1898. Her salary at the latter date was £60. She had been awarded a pension of £25 by the Scotch Education Department. This seems to me a suitable case for granting a small pension, but I think it right to direct your Lordships' attention to the case of the *Dollar Institution*, 18 R. 174. In that case, as here, the application was not for a general power of awarding pensions, but only for the purpose of enabling specific payments to be made to particular individuals, which otherwise there was no power to make. In that case the application was for alteration of a scheme under the Educational Endowments Act 1882, while the present is an appeal to the *nobile officium* of the Court, but I venture to think it is a matter for consideration whether the principle there laid down does not apply to the present case."

Argued for the Petitioner—The case of the *Governors of Dollar Institution, Petitioners*, Nov. 28, 1890, 18 R. 174, was decided on the terms of the Education Endowments (Scotland) Act 1882 (45 and 46 Vict. c. 59), sec. 20, and was a proposal to grant retiring pensions to masters of a school which was still being kept up. It was not an authority on the present application, where the *nobile officium* of the Court was appealed to, and where the proposed allowance was of the nature of compensation to Miss Sinclair for being deprived of her employment. In all the cases compensation to teachers whose offices were abolished had been sanctioned—*Governors of Logan and Johnston School*, Dec. 5, 1890, 18 R. 190; *Governors of Heriot Trust*, Nov. 17, 1897, 25 R. 91; *Shaw Stewart, Petitioner*, July 18, 1899, 36 S.L.R. 924.

In other points of the proposed scheme certain amendments were agreed to.

LORD PRESIDENT—It appears to me that we may approve of the proposed scheme as amended at the bar. It is proper, however, in doing so, to say a word with reference to the second purpose of it. In approving of that purpose we are not going against anything which was decided in the case of the *Dollar Institution*, 18 R. 174. In that case the appli-

cation was made under sec. 20 of the Educational Endowments Act 1882, for alteration of a scheme passed by the Educational Endowments Commissioners. In conformity with the principles which, with the concurrence of the Education Department, governed the action of these Commissioners, they had not introduced into the scheme any power of granting pensions to aged or disabled teachers, and application was made to the Court, under section 20, to sanction what in terms purported to be a general power of granting pensions, but a power which, it was explained, was only intended to apply to the cases of three persons named, and the Court considered that they could not confer a benefit upon these persons under the colour of what purported to be an amendment of the scheme for the general administration of the trust. That was quite a different case from the present, because here the application is not made under the Educational Endowments Act of 1882. We are asked, in the exercise of our *nobile officium*, to settle a scheme for the administration of a trust the original purposes of which have failed, and in doing so we are not fettered by considerations applicable to petitions under the Act of 1882, or by the course of administration pursued in reference to schemes under that Act.

There are other reasons which would warrant us in sanctioning the proposed allowance of £10 per annum to Miss Jemima Sinclair. In principle, an allowance to a teacher who has been deprived of his or her office by the closing of a school, differs from a pension to an aged or disabled teacher whose office continues to exist, and for the effective service of which the funds may be required. By granting the allowance proposed in this case nothing will be withdrawn from the effective service of any existing office.

It may further be pointed out that the £10 per annum may be obtained from the income of the sum of £375, as to the disposal of which the trustees have the greatest latitude, without encroaching on the rest of the trust funds.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court approved of the proposed scheme as amended at the bar.

Counsel for the Petitioners—Dove Wilson, Agents—Mackenzie & Kermack, W.S.