

est son : but, then, I make no doubt that *Randieston* had a like intention, and that he expressed his intention in words sufficient to bind James Balfour, his gratuitous disponee ; and yet the Court found that James Balfour was not limited by the entail. Here lies my difficulty to reconcile the present decision with that of *Randieston*.

PRESIDENT. The case of *Randieston* is different : in it the institute was only mentioned as an heir of entail in the last clause, whereas the first clause in the entail of *Duntreath* mentions the institute as an heir of entail, and all the following clauses refer to it. There is some difficulty, from this circumstance, that Archibald Edmondstone is mentioned *nominatim* in so many of the clauses, and not in the rest.

On the 23d November 1769, “ The Lords, in respect that it appears, from the entail, that the entailer mentioned Archibald Edmondstone as an heir of entail, found that he is subject to the limitations and restrictions of the entail, and therefore assoilyed from the reduction.”

Act. Ilay Campbell, R. M'Queen. *Alt.* A. Murray.

Reporter, Mönboddo.

Diss. Pitfour, Gardenston, Hailes.

Reversed on appeal.

1769. June 29. MR JOHN HASTIE *against* PATRICK CAMPBELL of Knap and OTHERS.

PUBLIC OFFICER.

Schoolmaster of a Royal Burgh removable summarily by the Council, upon just cause.

[*Faculty Collection*, p. 351 ; *Dictionary*, 13,132.]

BARJARG. This is a matter of administration, but not of jurisdiction, and is subject to review.

MONBODDO. Were the question, Whether Hastie was properly tried?—I should be clear that he was not : but the question is singly as to administration. The Magistrates have the power of turning out, both by public policy and by the decisions of the Court.

STONEFIELD. There is a contract, between the Magistrates and the schoolmaster, that he shall enjoy the office while he behaves properly.

PITFOUR. We now lay greater stress on freeholds than in former times. If a man is named a schoolmaster, his office is understood to be for life. The law has given to Presbyteries a jurisdiction over schoolmasters. I therefore think the proceedings before the Magistrates void, and am moved with the keenness showed by the Magistrates.

AUCHINLECK. The office of a schoolmaster is a small but an important of-

fic. The law, as to schoolmasters, is not well expressed: it says that they are amenable to the church courts; but it does not say that the sole jurisdiction is in the church courts. The proceedings there are tedious and inextricable. There was no occasion to bring a formal libel. Upon a proper precognition and inquiry, a schoolmaster may be dismissed. The proceedings here were irregular. I would allow the proof to go on here, instead of throwing the cause into the church courts, which is the same thing as throwing it into the sea.

KAIMES. Whether a man is chosen into an office *durante beneplacito*, or for life, depends upon the nature of the office. The decisions have determined, rationally, that he who names a schoolmaster, may turn him out; but then it must be at his peril.

PRESIDENT. I maintain the same opinion here as in the case of *Harvey*: he may be removed from his office, but not arbitrarily. It would be inconvenient and dangerous to bring a schoolmaster before a court of law, either civil or ecclesiastical, in the first instance.

On the 29th June 1769, "The Lords repelled the objections against proceeding; but found it still competent for the pursuer to bring a proof, and the defenders a conjunct proof."

Act. A. Crosbie. *Alt.* Ilay Campbell.
Reporter, Pitfour.

1769. August 1. EARL of HYNDFORD, and OTHERS, *against* DAVID DICKSON of Kilbucko.

SEQUESTRATION.

Sequestration of Rents awarded upon the application of the Trustees of the proprietor of the estate, deceased, though opposed by the Heir, who had brought a reduction of the trust-deed.

[*Faculty Collection*, V. 14; *Dictionary*, 14,347.]

GARDENSTON. It is not competent for the trustees to obtain a sequestration when they may act if they think fit. Here they may act, but they find they have a troublesome party; and, so, to relieve themselves from trouble, they would put the estate into the hands of the Court.

JUSTICE-CLERK. Dickson obstructs the management, and challenges the trust-right. There is a competition actually depending in Court. A sequestration is never refused, when asked by the person apparently in the right of the subject.

PITFOUR. Lord Gardenston's opinion does not apply; for here there is a proper competition as to possession.