spirit of the provisions of the Act. The defenders, however, found upon the 55th section of the statute, which provides that the retiring allowances to schoolmasters 'shall be paid and provided by the School Board having the management of such schools respectively,' as now imposed on the pursuers the obligation to pay Mr Lyon's annuity; they maintain that while, on the one hand, they are bound by the Act to give up the schools, and to continue to pay to the School Board the amount of their permanent annual contributions to the school, they are relieved from all future burdens connected with the school, and are expressly relieved from the future payment of schoolmasters' retiring allowances. It might be naturally expected that the statute would have provided that a payment of a temporary nature, such as has been here made to Mr Lyon under an obligation granted by the burgh, and which cannot, I think, be regarded as in any sense permanent, should continue to be made by the burgh for the lifetime of the annuitant; but it may be that such cases are not common, and were thus not under the notice of the Legislature. However this may be, I am of opinion that the provisions of section 46, being the only section which imposes future obligations on burghs in reference to their burgh schools, does not impose on the defenders the obligation to continue to pay such an allowance as that given to Mr Lyon. The only payments there referred to are to be continued in all time coming, and for the reasons already stated I do not think the language used includes such a retiring allowance as that which is here the subject of dispute."

The pursuers reclaimed.

Argued for them—The 62d section of the Education Act of 1872 provided that the School Board were to receive from the burgh such a sum as the burgh had been in use to contribute to the school, and what was to be looked to were, all payments made in respect of the school at the date of the passing of the Act. In this case such payment was moderately stated at £102. The retiring allowances were payments to the school within the meaning of the Act, and the burgh had, with a very small exception, been in use to pay retiring allowances from time immemorial. If it should be found that the whole retiring allowance of £42 could not be charged against the burgh, an average of the retiring allowances which the burgh had been in use to pay should be taken, and that, along with the sums expended upon the maintenance of the school buildings (which clearly fell within the meaning of the Act) would bring the sum due by the burgh up to the sum concluded for in the summons.

Argued for the defenders—The meaning of the 62d section of the Education Act was that the School Board should be entitled to receive from the burgh such a sum as the magistrates had been in use to pay to the burgh school, looking to its normal establishment, and apart from extraordinary or temporary expenditure. In this case it was not competent to go further back than 1851, because then the school had been changed from a higher class school to an elementary school—from a school with several teachers to a school with one teacher—and the school which existed before 1851 was not the school which had been vested in the School Board by virtue of the Act of 1872. Thus, the retiring allowance to Mr Lyon could not be taken as a payment which the burgh was in use to make to the school, because it was an extraordinary and temporary payment arising out of the fact that the school had formerly been of a different kind. Although, however, the burgh could not be ordained to hand over the amount of the retiring allowance to the School Board, the School Board would be bound to pay that allowance to Mr Lyon so long as he lived, in terms of the provisions of the 55th section, and of the last clause of the 62d section of the Act. In regard to the expenditure for the maintenance of the buildings, that was clearly a co-relative to the proprietary right in the buildings; and when the School Board, by virtue of the Act, became vested in the buildings, they had also imposed upon them the duty of maintaining these buildings. Here the School Board got the buildings unburdened, whereas, if the burgh had made the £600 expended in 1851 a burden on the buildings, the School Board would have got them with that burden.

At advising—

Lord Justice-Clerk—We do not think that it is necessary to have any further inquiry in this case, but that we have enough before us to enable us to decide the question here raised. There is no doubt that the meaning of the statute is that what the burgh must pay yearly in all time coming to the School Board is the fair average of what, prior to the passing of the Act, the school cost the burgh. So, without entering upon details, I am of opinion that the defenders should be ordained to make an annual payment to the pursuers of £80.

The other Judges concurred.

Counsel for Pursuers—Balfour—Jamieson. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Defenders—Burnet—Low. Agents—J. & J. Milligan, W.S.

Saturday, March 18.

SECOND DIVISION.

APPEAL—HENDERSON *v.* M'KENZIE.

Dogs Act 1871 (34 *and* 35 *Vict. c.* 56, *sec.* 2)—*Summary Prosecutions Appeals (Scotland) Act* 1875—*Relevancy of Libel.*

By the second section of the Dogs Act 1871, power is given to Courts of Summary Jurisdiction to take cognisance of any complaint that a dog is dangerous and not kept under proper control.—*Held* that this section is not limited in its operation to dogs which are dangerous to human beings; and a libel held relevant in regard to dogs dangerous to sheep.

This was an appeal to the Court of Session under the Summary Prosecutions Appeals (Scotland) Act 1875. It arose out of a complaint brought by the appellant William Horn Henderson, Procurator-fiscal for the county of Linlithgow, against the respondent Alexander M'Kenzie,

tailor in Whitburn, in the Sheriff Court of Linlithgow. M'Kenzie was charged with an offence against the provisions of the second section of "The Dogs Act 1871," in so far as he had on or about the "ninth day of September 1875, and still has, in his possession, within or at or near his dwelling-house or premises at Whitburn aforesaid, a dog of the retriever breed, or of some other breed to the complainer unknown, which is dangerous, and not kept under proper control; and the said dog by itself, or in company or in concert with another dog belonging to the said accused, and which he has since caused to be destroyed or put away, did (*first*) on or about the said ninth day of September 1875, and in or near a field on the farm of Blaeberryhill, in the parish and county aforesaid, now or lately occupied by David Grieve, farmer there, chase for a considerable time and distance a flock of grey-faced lambs, or other description of sheep, the property or in the lawful possession of Walter Dandie, then and now or lately residing at Blaeberryhill aforesaid, and did severely bite and shake or worry one of said sheep, and injure or terrify the remainder of the flock; and (*second*) on or about the said ninth day of September 1875, and in or near a field commonly called the 'Townhead' field, situated on the farm of Whitedalehead, in the parish and county aforesaid, and now or lately occupied by Robert Gardner, bank-agent in Whitburn, did chase and pursue for a considerable time and distance a flock of two-year old sheep, or other description of sheep, the property or in the lawful possession of the said Robert Gardner, did force and compel or otherwise cause the said sheep to leap the wall between said field and the Cleuch turnpike road, and did chase or pursue the said sheep along said road into or towards the village of Whitburn, all in said parish and county, whereby one of said sheep was staved or otherwise injured in both or one of its shoulders, and the remainder of the flock were injured or terrified, in consequence whereof, or of part whereof, the said Alexander M'Kenzie is liable to be ordered to keep the said dog under proper control, or to destroy it, and failing his compliance with such order, is liable to a penalty not exceeding twenty shillings for every day during which he fails to comply with such order."

The respondent was cited, and accordingly appeared, before the Sheriff-Substitute at Linlithgow on 19th October 1875, when it was pleaded on his behalf that the libel was irrelevant and incompetent, and did not come within the meaning of the Act founded on, in respect that the operation of that Act was limited to dogs which were dangerous to human beings, while the libel only alleged that the respondent's dog was dangerous in respect of its having chased, injured, and terrified sheep.

The appellant contended that the Act was not so limited, and that it applied to all dogs which in the opinion of the Court of Summary Jurisdiction were dangerous to human beings, or to animate or inanimate property.

The Sheriff-Substitute sustained the objection to the relevancy, and dismissed the complaint.

The appellant (and complainer) appealed against said judgment, and applied in writing within three days after such determination to the Sheriff-Substitute to state and sign a case in terms of section 3 of 'The Summary Prosecutions Appeals (Scotland) Act 1875."

The questions of law submitted by the Sheriff-Substitute for the opinion of the Court of Session were:—

"I. Is the second section of "The Dogs Act 1871" limited in its operation to dogs which are dangerous to human beings, and which are not kept under proper control?

"II. If not, is the libel relevant in regard to dogs that are dangerous to sheep?"

The following is the section of the "Dogs Act 1871" (34 and 35 Vict. c. 56) referred to:—"Any Court of Summary Jurisdiction may take cognisance of a complaint that a dog is dangerous and not kept under proper control, and if it appears to the Court having cognisance of such complaint that such dog is dangerous, the Court may make an order in a summary way directing the dog to be kept by the owner under proper control or destroyed; and any person failing to comply with such order shall be liable to a penalty not exceeding twenty shillings for every day during which he fails to comply with such order."

At advising, the opinion of the Court was delivered by Lord Ormidale.

Lord Ormidale—The questions which the Court has to answer in this case depend for their solution upon the meaning and effect of the Act 34 and 35 Vict. cap. 56, entituled "An Act to provide further Protection against Dogs."

Founding on this Act, the Procurator-fiscal for the county of Linlithgow presented a complaint to the Sheriff, setting out that the respondent Alexander M'Kenzie had been guilty of an offence, or had contravened the provision of the second section of the Act, in so far as he had on or about the 9th of September last, and continued to have in his possession, within or near his dwelling-house or other premises at Whitburn, a dog "which is dangerous and not kept under proper control, and that said dog had by itself, or in concert with another dog belonging to the said accused, and which he has since caused to be destroyed or put away," and on or about said 9th of September, chased for a considerable distance two flocks of sheep, and severely bit and shook or worried one and injured others of them.

This complaint was objected to by the accused as irrelevant and incompetent, as not coming within the meaning of the Act founded on, in respect the operation of the Act was limited to dogs which were dangerous to human beings, while the libel only alleged that the respondent's dog was dangerous in respect of its having chased, injured, and terrified sheep.

The Sheriff-Substitute sustained this objection and dismissed the complaint, whereupon the prosecutor appealed, in terms of the Summary Prosecutions Appeals (Scotland) Act 1875 (38 and 39 Vict. c. 62), and applied to the Sheriff-Substitute to sign and state a case for the opinion of a Superior Court. That having been done, and counsel for the parties having been heard, the Court has now to give judgment in answer to the following two questions submitted in the case:—"(1) Is the second section of the 'Dogs Act 1871' limited in its operation to dogs which are dangerous to human beings and which are not kept under proper control?" And "(2) If

not, is the libel relevant in regard to dogs that are dangerous to sheep?"

These questions involve very much the same thing, and in the present instance an answer, either affirmative or negative, to the first must also dispose of the second.

Now, in regard to the limitation of the Act to dogs which are dangerous to human beings, there is certainly nothing in it expressly to that effect. Neither am I satisfied, looking at the statute in all its clauses, that any such limitation was intended. The title to the Act is quite general, being simply "An Act to provide further Protection against Dogs;" and the preamble is in the same terms. The second section, again, of the Act, being that on which the complaint is founded, provides that any Court of Summary Jurisdiction may take cognisance of a complaint "that a dog is dangerous and not kept under proper control;" and if it appear that such dog is dangerous, may make an order directing the dog to be kept by the owner under proper control or destroyed, and that failing compliance he shall be liable to certain penalties. Now, it is not said here that the dog must be dangerous to human beings, although, if that had been meant, nothing could have been more simple and easier than to have so expressed the enactment. Nor can I find anything in the other sections of the Act indicative of a limitation of the second section to dogs dangerous to human beings.

But it is only with the second section of the Act we have to deal at present; and considering that it contains no express limitation of its operation to dogs dangerous to human beings, but that in the generality of its words it is fairly, and I think not unreasonably, applicable to dogs dangerous to sheep, and it may be to other property as well as human beings, I am of opinion that the first question submitted in the case must be answered in the negative; and if so, it necessarily follows that the second question must be answered in the affirmative, as there can be no question or doubt, I think, that the complaint is relevant. The result on a proof we cannot anticipate, and this Court has nothing to do with it.

The result, therefore, is that the interlocutor or deliverance of the Sheriff-Substitute sustaining the respondent's objection must be reversed, and the complaint allowed to proceed, with a view to an investigation and disposal of its merits.

The Lord Justice-Clerk and Lord Gifford concurred.

Lord Neaves was absent.

The Court accordingly answered the first question in the negative, and found the libel relevant, remitting the case to the Sheriff for further procedure.

Counsel for Appellant—Burnet. Agent—James Auldjo Jamieson, Crown Agent, W.S.

Counsel for Respondent—Strachan. Agent—James Gardner, L.A., Solicitor, Bathgate.

Saturday, March 18.

FIRST DIVISION.

[Lord Rutherfurd Clark.

GILRAY (CURATOR BONIS TO ROBERTSON), PETITIONER.

Judicial Factor—Curator Bonis—*Powers.*

A *curator bonis* added to his ward's estate by purchase of certain subjects without judicial sanction. He then applied to the Court for their sanction and approval, and for authority to borrow over the subjects. The reason of the omission to apply before making the purchase was explained chiefly to be that if he had come to the Court and disclosed his intentions the price of the property would have risen in the market, and he would have been prevented from acquiring it. The estate was further said to be greatly benefited, and on remit to a man of skill that statement was confirmed.—*Held* that the rule which forbade the exercise of such a power without previous sanction is not of absolute inflexibility, and that in the special circumstances of the case the application might be granted.

This was an application by John Gilray, appointed on 2d April 1867 *curator bonis* to William Robertson, ironfounder, Edinburgh, then and still confined in the Royal Lunatic Asylum at Bothwell. It arose out of circumstances which were of so special a nature that the Court desired they should be reported at length.

The report to the Accountant of Court, dated 6th December 1865, upon which the application was made, was as follows:—

" . . . . The ward, previous to the time he became insane, carried on the trade of an ironfounder in the said foundry. On the *curator bonis* being appointed he continued to carry on the business of his ward, and still does so. During the period the *curator bonis* has conducted the said business he has rendered it very remunerative, and has also increased it to a very considerable extent, as will be seen from the different accounts lodged by the *curator bonis*, and the reports by the Accountant thereon.

" The ward at the date of the curator's appointment was proprietor of one-half of the tenement of land No. 112 Pleasance, the lower flat as well as the ground to the back of which was used by him as part of the foundry premises, and in connection with the said business, both by the ward and afterwards by the curator.

" The local authorities, on 30th September 1873, intimated to the ward and his curator 'that it has been ascertained to the satisfaction of the Magistrates and Town Council of the city, as the Local Authority under the Public Health (Scotland) Act 1867, that a nuisance exists in connection with the premises situated at 112 Pleasance, of which you are owner or part owner, in terms of the Act, in respect of insufficiency of size, defect of structure, want of repair, want of water and privy accommodation, rendering the tenement injurious to the health of the inhabitants, and unfit for human habitation or use.' And further, that 'proceedings under the said Act,