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

LORD 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 ABERNETHY.

(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 foresaid for the year then ensuing, and having fulfilled his said engagement for a year, he, by tacit relocation, remained engaged as head-master foresaid 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

to dismiss him at any time. 3. *Separatim*, the grounds for dismissal were such as in the circumstances to render it justifiable.

After certain preliminary procedure the Sheriff-Substitute (BARCLAY) pronounced on 22d June 1875 an interlocutor, whereby, *inter alia*, he "Finds, considering the nature of the office, and the stipulation as to an annual salary, payable quarterly, with the occupancy of a house and garden, and in the absence of any contrary stipulation, the bargain was for a year certain, and which engagement was renewed by tacit relocation for the subsequent year: Finds that the defenders, though specially called on, have not put on record any averments of fault on the part of the pursuer to justify such dismissal; therefore repels the defenders' second preliminary plea, and their first plea on the merits, and orders the cause to the motion roll, that parties may be heard as to the amount of damages to be awarded.

"*Note.*—At the former hearing of this case the Sheriff-Substitute understood that the solicitor for the defenders argued that it was illegal under the recent educational statute for a School Board to contract with a teacher for any term certain, but that in all cases a national teacher holds office only at the pleasure of the School Board. On the second and recent hearing the solicitor for the defenders admitted that the statute did not prevent parties of the freedom of contract; but he disputed that there was any contract for a year in this case, and although there were such, yet under the statute it was defeasible at any time at the pleasure of the Board, without cause assigned. The first question to be ascertained is, whether there was a contract for a year? It cannot be questioned that were the school at Abernethy a private institution the transaction which took place in this case would be held to constitute an engagement for a year. The nature of the office is such as points to that endurance in the absence of contrary stipulation, and it is settled law that salary for any definite time implies an engagement for the like period, be it day, week, month, quarter, or year. In this case the salary was by the year, payable quarterly, with the occupancy of a house and garden, which implies duration of tenure. The next inquiry is, whether such an engagement for a term certain is positively excluded by the recent educational Act? Under the former law no engagement for a period was valid, and even though expressly so made, like some other offices, as burgh clerks, the appointment was held to be in fact one *ad vitam aut culpam.* There existed some plausible agreement, considering the character and functions of the offices, for such almost indefeasible tenure of office. But there were other obvious disadvantages in the expensive and tedious mode of getting quit of a teacher who had become inefficient. The recent statute deals with teachers in office at its date, providing for their removal under a certain form of procedure. With regard to those subsequently appointed (of which the pursuer is one), the appointment was left to the pleasure of the Boards, and no provision was made as to their dismissal. It is doubtful if a Board could, under that peculiar phrase, give a life appointment, but assuredly there is no law or reason why they should not make an engagement for a year, or any number of years, defeasible it might be on stipulated notice on either side. Indeed, under the phrase they might even engage a teacher to hold office subject to be dismissed at any time at their pleasure without cause or notice. If any teacher was so facile as engage on such strange and inequitable terms, it might stand, though one party could resile from the contract whilst the other could not. But the Sheriff-Substitute would require very strong expression of power to warrant a School Board at their pleasure to engage a teacher for a certain period, and nevertheless at their pleasure to dismiss him at any time during the term of the contract without cause or notice. The word 'appointment' is not equivalent to 'dismissal' but, on the contrary, is the beginning, not the termination of a contract. Neither can the Sheriff-Substitute read the term 'pleasure' as a synonym for caprice, prejudice, or passion. Giving the utmost credit to School Boards elected by the voice of the ratepayers as being well qualified for and most anxious for the conscientious discharge of their important functions, they do not and cannot claim infallibility. The triennial shifting of the Board, and many other safeguards in the statute, all show that the Legislature never intended to entrust School Boards with irresponsible and despotic powers. The Sheriff-Substitute is ever cautious to exclude public expediency from counteracting clear enactments of law, but he may venture to express an opinion that the power to contract with teachers, and then to dismiss them at any time without fault, would be grevious to a most deserving class of officials, and still more to the cause of national education. Unless excluded by the statute, where the teacher appeals to the ordinary courts of law for a breach of a civil engagement there can be no exclusion of jurisdiction, which would indeed amount to a denial of justice. The defenders, though specially called on, have declined to state the grounds of dismissal, and it would be against all forms of procedure to afford them another opportunity of recording their grounds of dismissal."

The School Board appealed to the Sheriff-Depute (ADAM), who recalled his Substitute's interlocutor, and assoilzied the defenders. The note appended to this interlocutor, of date August 20, 1875, is as follows:—

"*Note.*—In July 1873 the defenders inserted an advertisement in the newspapers stating that a head-master was wanted for the public school, Abernethy, and that the minimum salary was £150, besides house and garden. In answer to this advertisement the pursuer made application for the office. A meeting of the School Board was held on the 14th July 1873, at which 'the Board unanimously agreed to elect Mr William Morrison, Edinburgh (the pursuer), to the office of head-master.' The fact that he had been chosen unanimously 'head-master of our school' was next day intimated to him by the defenders.

"The contract between the parties is to be found in the terms of the advertisement, resolution, and intimation. There was no other contract or agreement between them.

"On 1st October 1873 the pursuer entered on the duties of his office, and he continued to discharge these duties until the 30th November 1874. A resolution was of that date passed by the School Board, to the effect that the pursuer be relieved of his engagement as head-master of

the school, that his office be declared vacant, and that he be allowed the salary for the current quarter. This resolution of the Board was, of the same date, intimated by letter to the pursuer.

"The pursuer was thus summarily dismissed from his office of teacher of the public school of Abernethy. He had received no previous notice of the intention of the Board to dismiss him.

"The resolution of the Board does not proceed on any allegation of fault on the part of the pursuer. It proceeds on a narrative of the 55th section of the Education (Scotland) Act 1872, and bears to have been passed by the Board in the exercise by them of a summary power of dismissal of teachers, which the Board held was conferred on School Boards by that Act.

"The question is, whether the Board was entitled thus summarily to dismiss the pursuer without reason assigned?

"The 55th section of the Act specially enacts in regard to the appointment of teachers, that 'every appointment shall be during the pleasure of the School Board.'

"In this case there was no special contract or agreement between the parties that the pursuer should hold office for any fixed period of time. He was simply appointed teacher of a public school under the Education Act of 1872. The Sheriff therefore thinks that the pursuer held his appointment during the pleasure of the defenders, and not otherwise.

"With respect to the meaning of these words, 'during the pleasure of the Board,' the Sheriff thinks that these words clearly mean that a teacher of a public school shall continue to hold his appointment only so long as the Board shall choose, and no longer. He cannot read these words as empowering School Boards to enter into contracts with teachers to hold office during such periods as the School Board may agree with them. If School Boards have this power, there appears to be nothing to limit its exercise, so that they might appoint teachers for life or for any shorter period. It appears to the Sheriff not to be the intention of the Act that School Boards should have any such power. They are clearly directed to make appointments to be held only during the pleasure of the Board. The power of summarily dismissing a teacher without assigning any cause is no doubt a power inferring a grave responsibility on the part of those entrusted with it; but if properly exercised it is a valuable power for School Boards to possess, and no doubt the Legislature, in confiding it to them, had confidence that it would not be capriciously exercised, but only with prudence and discretion, and under a due sense of responsibility.

"The Sheriff had some doubts as to whether the pursuer was not entitled to reasonable notice that his services were to be dispensed with. But if the Sheriff is right in holding that he held office only during the pleasure of the Board, it would seem to follow that he was liable to be dismissed from office at any moment, and that therefore the School Board could not be required to give him previous notice of their intention to dismiss him."

Mr Morrison appealed to the Court of Session.

Argued for the appellant—The intention of the Legislature was to remove the inconvenience of an *ad vitam aut culpam* appointment, and to destroy permanency of tenure. Pupil teachers were appointed for five years, with six months' notice before dismissal. The interpretation clause of the statute applied to them. This was a case of yearly hiring, and that required before it could be terminated a notice that the service was not to be renewed. That obtained alike in hiring of service and in hiring of land. If that was not so, the hiring was at least during pleasure; and being so, there was no authority to dismiss where reasonable notice was not given. That rule rested upon equitable considerations; it was reasonable that he should have time to look out for another place.

Authorities—*Cameron* v. *Scott*, Dec. 7, 1870, 9 Macph. 233; *Mason* v. *Scott's Trustees*, Jan. 14, 1836, 14 S. 343 (*cf.* Lord Moncrieff's note, p. 349); *Gordon* v. *Bell's Trustees*, Dec. 13, 1843, 6 D. 222; *Adam* v. *Directors of Inverness Academy*, July 7, 1815, 14 S. 714 (foot-note); *Gibson* v. *Directors of Tain Academy*, March 11, 1836, 14 S. 710, and 16 S. 301—aff. in H. of L., 1 Rob. 16; *Duff* v. *Grant*, M. 9576; *Magistrates of Montrose* v. *Strachan*, M. 13,118; *Macfarlane* v. *School Board of Mochrum*, May 27, 1875, 12 Scot. Law Rep. 457; *Cameron* v. *Fletcher*, Jan. 9, 1872, 10 Macph. 301; *Bentinck* v. *Macpherson*, Feb. 26, 1869, 6 Scot. Law Rep. 376; *Moffat* v. *Shedden*, Feb. 8, 1839, 1 D. 468; *Campbell* v. *Fyfe*, June 5, 1851, 13 D. 1041; *Hayman* v. *Governors of Rugby School*, 18 L. R., Eq. 28; *Pollock* v. *Commercial Bank*, 3 Wilson and Shaw, 430; Public Schools Act (England), 31 and 32 Vict. cap. 118, sec. 13.

Argued for the respondents—The question turned altogether on the interpretation of the 55th section of the statute. The case of a pupil teacher, as defined in the 70th article of the Scotch Education Code, was outside of this question entirely. The contract of service, too, did not admit of being specifically carried out at common law. In the cases quoted on the other side the duration was not specifically contracted for. In them the real question was whether the schoolmasters exercised a *munus publicum?* If the statute said that no notice was necessary, then the School Boards could not contract outside the Act, and the proviso should be read into every contract. Further, there was no case of oppression alleged here; merely one of breach of contract.

Authorities—*Bell* v. *Mylne*, June 15, 1838, 16 S. 1136—aff. May 4, 1841, 2 Rob. 286; *Wray* v. *Darlington Free Grammar School*, 6 Adolph. and Ellis, Q. B. Reps. 682.

At advising—

Lord Deas—On 2d July 1873 the School Board of Abernethy, acting under the Education Scotland Act 1872 (35 and 36 Vict. c. 62), advertised for a head master for what was lately the parish school, and is now the public school, of Abernethy. The advertisement bore—"The minimum salary to be £150, besides house and garden; liberal encouragement will be given to an experienced energetic teacher." The pursuer Mr Morrison, then in Edinburgh, became a candidate for, and was unanimously elected to the vacant office. He entered upon his duties on 1st October 1873. He occupied the house and garden assigned to him, which is said to have been worth £18 or £20 a-year. His salary of £150 was paid to him in quarterly instalments

of £37, 10s. each. Matters continued to stand in this position till 30th November 1875, when, at a meeting of the School Board, and without any previous notice to Mr Morrison, a motion was made and carried "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." This resolution was officially intimated to Mr Morrison by the clerk of the Board on the same day.

Mr Morrison shortly afterwards raised an action before the Sheriff of Perthshire against the School Board. The summons sets forth in the outset—somewhat inconsistently with what follows—that the pursuer was entitled to damages on the footing of his engagement having been annual and continued by tacit relocation for the year current at the date of his dismissal. But the concluding words of the summons restrict his claim distinctly to "a quarter's salary in lieu of notice, for which quarter of a year's salary and emoluments the £50 claimed is an equivalent." Accordingly, in the 4th article of his condescendence the pursuer sets forth that he had intimated this claim to the defenders extrajudicially, "and that what he wanted, and still wants, is a quarter's salary in lieu of a quarter's notice." Consistently with his claim as thus explained, the pursuer's 3d plea in law in the record is—"A School Board dismissing a teacher without fault on his part, is bound either to give reasonable notice or pay corresponding compensation or damages." The counter plea of the defenders on the merits is—"The pursuer's engagement being only during the pleasure of the defenders, they were entitled to dismiss him at any time." Neither of these pleas are very accurately expressed. For the pursuer's claim, if he has one, is, in my opinion, not for damages but for an allowance, or, as he alternatively calls it, compensation in lieu of notice, and the defender's plea, on the other hand, although it does not bear on what footing they were entitled to exercise their alleged power of dismissal, really means (and they have so contended at the bar) that they were entitled to dismiss the pursuer at any time without any notice and without making any allowance to him in lieu of notice. The opposing pleas and statements may therefore fairly be assumed to be sufficient in a case of this kind to raise the only question which we are called upon to decide, namely, whether the pursuer is entitled to any allowance in lieu of notice, and if so, what ought to be the measure of that allowance.

This being so, the first thing, I think, to be settled is, under what category of contracts or engagements does the contract between the pursuer and the School Board fall? In considering this question we must keep in view that the pursuer is not in the position of a parochial schoolmaster, who, under the law as it stood at the date of the Education Scotland Act 1872, was one of that class of public officers, such as town clerks, &c., who from the nature of their office were understood to hold their appointments *ad vitam aut culpam.* We must also keep in view that by the judgment of the House of Lords in the case of *Gibson* v. *The Directors of the Tain Academy*, 2d March 1840, 1 Robinson's App. 16, it was finally settled that teachers and rectors in high class schools and academies, although the institution may be incorporated by Act of Parliament or royal charter, and although these institutions may in one sense be called public schools, are not public schools in the sense in which our parochial schools were so; and this, as Lord Ivory observed in his note in *Melvin* v. *The Governors of Gordon's Hospital*, 4th Dec. 1841, 4 D. 176, at once reduces the question of engagement and power of dismissal of the rectors and teachers in such schools to a mere ordinary question of contract between master and servant. It may or may not be desirable that this should be so, but this appears to me to be the relative position of the masters, whether head or subordinate, in all the public schools established under the authority of the Education Scotland Act 1872, so far as regards the appointment and tenure of office of the teachers appointed since the passing of that Act. I think the enactment in section 55 of the Act, that "every appointment shall be during the pleasure of the School Board," whatever effect it may have otherwise, has at least the effect of taking the masters in these schools out of the category of public officers in the sense in which parochial teachers were public officers, and of placing them in no higher category as respects appointment and dismissal than the rector and teachers of the Tain Academy were held to be in the case of *Gibson.*

It does not necessarily follow from this that the School Board can make no other appointment of a teacher than during pleasure—that, however impracticable they may find it to be to obtain the services upon that footing of some high-class man upon whom they have set their minds, they cannot appoint him for a year or some other fixed period, or agree that his appointment shall be held to be renewed from term to term or year to year, failing a specified notice or a stipulated allowance in lieu of such notice. That is a different and important question, upon which I do not enter here, as it is not necessary to do so for the purposes of this case.

There was no special contract in this case between the pursuer and the defenders as to the endurance of the pursuer's tenure of office. That being so, I think the appointment must be held to have been made in accordance with the 55th section of the Act. I have therefore no hesitation in holding that the pursuer's appointment must be considered to be an appointment during the pleasure of the Board, whatever that may imply.

This, then, enables me to solve the first question I proposed to consider, namely, under what category the contract between the pursuer and the defenders falls. The answer I make to that question is, that it falls under the category of an ordinary contract of service for no specific period, and consequently terminable at pleasure.

The next question is, does such a contract imply, in a case like the present, an obligation on the master or employer to give notice or to make a pecuniary allowance in lieu of notice when he means to terminate the contract without alleging fault on the part of the servant? And my answer to that question is, that by the law and practice of Scotland such a contract does imply that obligation.

Even where the contract is for a stipulated

period, such as for a year or half a year, notice falls in the general case to be given, or an allowance made in lieu of notice; otherwise tacit relocation takes place. I need not go over the list of familiar cases, including those of domestic and agricultural servants, gardeners, foresters, gamekeepers, and others, in which this has been decided. See, for instance, *Maclean* v. *Fyfe*, (the case of a gardener), 4th Feb. 1813, F.C., and the case of an agricultural servant, *Cameron* v. *Scott*, 7th Dec. 1870, 9 Macph. 233. It appears to me *a fortiori* to follow, that when the contract is during pleasure there must in the general case be notice, or a sum paid in lieu of notice.

The object in both classes of cases is the same—to give the servant a fair opportunity of looking out for and obtaining another situation, instead of being thrown suddenly and unexpectedly upon the world, with, it may be, a wife and family to support, and no means, either from savings or otherwise, of supporting either himself or them.

It is even more necessary that this rule should be applicable to the higher class of servants—such as managers and other officers of banks, insurance offices, railway companies, and many other companies and employers, because it is much more expedient and much more common that such persons should hold their appointments during pleasure than that servants of an inferior class should do so; and there is a more clear implication in the one case than in the other that a considerable period of employment is reasonably to be expected, although not actually stipulated for.

In all cases of exuberant trust it is important for the master or employer that he should be able at any moment to stop the actings and intromissions of his servant, and the higher the position of the servant the more necessary this power comes to be. But, on the other hand, the higher the position of the servant the greater is the expediency, on grounds of public policy, that he (the servant) should not be discouraged from accepting and continuing in such precarious employment by the additional risk of being left at any moment without either time or means to enable him to look out for and obtain another situation.

All this applies, I think, in a high degree to a master or head-master in a public school. To tempt men of learning and ability to agree to hold such an office at the pleasure of their employers—especially at the pleasure of a popular board—it is expedient that they should feel assured that the law will allow them the means of subsistence for at least some limited period after they have been dismissed without cause assigned. The voluntary liberality with which the directors of many institutions treat their officials when they discontinue their services can hardly be expected from a School Board. A schoolmaster, moreover, is peculiarly helpless if driven to seek employment out of his own element. His learning and his habits disqualify him, rather than otherwise, for many occupations to which other professional men might readily turn. On the other hand, it is highly expedient that the School Board should be able to discontinue the employment of the schoolmaster at any moment, because they may have good reasons connected with the interests of the pupils and the welfare of the institution, which they are not prepared to avow or to prove, and which it would not be expedient either to avow or to attempt to prove. The case of a schoolmaster is therefore a case to which it is peculiarly expedient that the rule should apply, that failing notice being given a reasonable allowance should be made in lieu of notice. It was at one time the practice of this Court to protect the better class of servants who held their offices at the pleasure of their employers, and particularly schoolmasters, not parochial, from being arbitrarily and oppressively dismissed, by requiring that there should appear to have been grounds for presuming fault—taking that word as including any reasonable cause for dissatisfaction—of which we have instances in the cases of *The Magistrates of Montrose* v. *Strachan*, 18th Jan. 1710, M. 13,118; *Kempt* v. *The Magistrates of Irvine*, M. 13,136; *The Schoolmaster of Dunsyre*, 1777, M. 131,377, and other cases.

Gradually, however, it came to be thought that the sounder and more expedient rule, where the appointment was one during pleasure, was to hold that all that was incumbent on the employer was either to give reasonable notice before dismissal, or to make a reasonable allowance to the schoolmaster or other party employed in lieu of notice.

The case of *Pollock's Trustees* v. *The Commercial Bank of Scotland*, decided in the House of Lords 12th June 1829, 3 W. and S. 430, did not raise any question of that kind, as the company had voluntarily allowed Mr Pollock his salary to the end of the year, which had five months to run at the date of his dismissal. Mr Pollock claimed to hold his office as manager of the bank *ad vitam aut culpam*, or, alternatively, by the year, and the point decided was, that he held during pleasure only, and had been validly dismissed with the approval of two-thirds of the committee of management, as provided for by the constitution of the company.

The case of *Mason* v. *Scott*, 23d July 1836, 14 S. and D. 343, was the case of the master of a school on a private foundation in connection with the Episcopal congregation of St James', Edinburgh. The only point directly raised was whether Mason held his office *ad vitam aut culpam*, which was ruled against him; but Lord Moncreiff (Ordinary) observed in his note that "the very utmost that can be made of the correspondence is that it was an indefinite hiring or employment if it even admits of this construction, and though such employment might imply that the complainer was not to be removed without some reasonable notice, it never could import an appointment for his life, or such an appointment as to preclude the trustees from removing him upon reasonable notice."

The suggestion of his Lordship in this note is very valuable, for it lays the foundation of what is now, I think, recognised as the true principle applicable to such cases. Money is a universal solvent, and it was an easy transition from the necessity of reasonable notice to allowing the alternative of a reasonable allowance in lieu of such notice.

In the case of *Mitchell* v. *Smith*, 26th January 1836, 14 S. 358, Mitchell held his office of manager of the Western Bank on condition that it should be in the power of two-thirds of the

ordinary directors to dismiss him when they saw occasion. They did dismiss him, but without assigning any cause; and the whole ground of action was that the directors could not legally do so without assigning special cause, of the sufficiency of which it was for the Court to judge. On this footing Mitchell concluded that the company should be ordained to "restore and re-instate" him in his office or to pay damages—that is to say, damages for not re-instating him in his office,—and this of course was disallowed.

In the Dollar Academy case (*Bell* v. *Milne,* 15 June 1838, 16 S. and D. 1136, and F.C.; affirmed in the House of Lords, 4 May 1841, 2 Robinson 286) the appointment bore expressly to be during pleasure, and Mr Bell's claim to a life tenure was negatived. In April 1838 it had been intimated to Mr Bell that his services would not be required after the following Whitsunday, but that his salary would be paid up to 1st October and his house-rent up to Martinmas. In these respects, therefore, he had no cause of complaint, so that in this case, again, the question was avoided by a liberal allowance being made.

The recent case of *Hayman* v. *The Governors of Rugby School,* March 1874, 18 Law Rep., Equity Cases, p. 28, was mentioned at the bar, but in that case there was abundance of notice, and the other points involved, which alone were dealt with, have no application whatever to the present case.

The case of *Moffat* v. *Shedden,* 8th July 1839, 1 D. 468, in like manner did not raise the question, because the ground on which the family tutor there got three-quarters of a year's salary and an allowance for bed and board was that his engagement was held to have been for a year. But the case is valuable for the opinion of Lord President Hope, who held the engagement to have been during pleasure, but who said—"I apprehend that the connection of the parties might be brought to a close by either of them upon reasonable and equitable notice being given of the period of its termination. If such notice were not given, then compensation must be due in respect of the failure to give it" (p. 472).

I think that the law as thus laid down by Lord President Hope is the general law of master and servant where the employment is during pleasure, and contemplates some considerable period of endurance. I think, further, that it is the law applicable to the present case.

There has been little occasion for direct decision upon the present point, because several of the cases I have cited, as well as the practice which we know to prevail in high-class establishments, shew that the principle of the law has been voluntarily given effect to—I do not say because it was conceded to be the law, but certainly because it was considered to be equitable, and that of itself is by no means unimportant in a question of this kind.

The only remaining question is, What shall be held reasonable notice, or a reasonable allowance in lieu of notice?

That is a question which does not admit of any general or abstract answer. It is necessarily to a considerable extent a question of circumstances. What the pursuer is entitled to is not damages for illegal dismissal; there was no breach of contract on the part of the defenders. The contract was that they should retain the pursuer in their service during pleasure, but it was an implied condition of that contract that when they dispensed with his services without cause assigned he should be allowed the means of livelihood for a period within which he might reasonably be expected to find another situation. That I think the fair and reasonable construction to be put upon such a contract. The nature of the office to which the pursuer was appointed implied the contemplation on both sides of a period of some endurance; for the frequent shifting of the head-master of a school is not a thing which would suit either the institution or the master, who may have given up for it another, although not a better, situation, and whose opportunity of obtaining another in its place is necessarily limited and precarious. The pursuer, although he says his engagement falls to be construed as a yearly engagement, does not conclude for or claim the salary and emoluments for the remainder of the year on which he was dismissed, some seven and a-half months before its alleged termination; and that of itself is a conclusive answer to the footing on which the Sheriff-Substitute seems to have contemplated assessing the sum due to him. He claims the salary and emoluments for three months only. At the same time, it is a fact favourable to the pursuer's claim for a substantial amount that part of his emoluments consisted of a dwelling-house and garden, and that fact militates strongly against the view of the Sheriff, that he might be dismissed at any moment with no allowance whatever, for he could not, like the tortoise, carry away his house on his back, nor could he expect to find, by remaining in it, another situation to his mind in the ancient Pictish town of Abernethy.

The defenders have allowed the pursuer his salary to the end of the quarter current at the date of his dismissal—that is, as I understand it, for the period of fifteen days. The only hesitation I have felt in the case has been in interfering with the discretion which the defenders have exercised as to the amount of the allowance they have thus made to the pursuer, although they have not made it on the footing of its being in lieu of notice, but *ex gratia* merely. Where a School Board or other employers recognise the principle on which the schoolmaster or other servant is entitled to an allowance on being dismissed without fault assigned from an employment during pleasure, I should be slow to interfere with their discretion fairly exercised as to the amount. Still, I think they must in all cases be subject to the equitable control of the Court in that matter. If our estimation of the amount must necessarily be somewhat arbitrary, theirs must be equally so: and our judgment is likely to be at least as impartial as theirs. I think that in this case the fact that the pursuer's salary had been always paid quarterly is a fact to be taken into view along with the other circumstances, and, on the whole, I am of opinion that the allowance to be made to the pursuer in lieu of notice cannot fairly be estimated at less than what is concluded for, viz., a quarter's salary and emoluments from the date of dismissal; and, in that view, it is not said in the record, nor has it been contended at the bar, that these are otherwise than fairly represented by the sum of £50.

Lord Neaves—I am sorry to differ in opinion,

but I must dissent from the views expressed by Lord Deas, and say that I consider this action wholly groundless. Any other view would, it appears to me, be a direct infringement of the new system of education introduced by the Education Act into this country.

The present is, I think, an era in the history of education in Scotland, in which a change has been made of a most fundamental character; what the effect of that change may be, beneficial or otherwise, it is not for the Court to consider; we are here to administer the law as it stands. Now, under the old law the parochial schoolmasters were public officers, who held their posts *ad vitam aut culpam*, it being then deemed necessary to secure them in their official position. But by degrees it came to be discovered that this very security of position had its drawbacks as well as its advantages. It became a positive obstacle to the progress of education; men grew old at their posts, or old-fashioned in their teaching, yet it was very difficult to get rid of them. Accordingly the Legislature, for purposes which it is not for us to scan, wished and decided to change this state of matters, and I hold that now all schoolmasters, whether old parochial schoolmasters or not, are in the same position under the Board by the statute—[*His Lordship read* § 55 *of the Act.*] Under that Act the moment the pleasure of the School Board ceases his office ceases. The old schoolmaster was a public officer; the new one is not.

The grounds of action here appear to me to be of the most extravagant kind—[*His Lordship referred to the passages on record as to "tacit relocation."*] Now, according to this view, Morrison could not for another year cease to be schoolmaster, and when the Board intimated to him that they relieved him of his services, he says they were not entitled to do this, and raises this action alleging tacit relocation. I think he meant that he was illegally dismissed. Now, it is utterly at variance with recent legislation to say that Morrison was entitled to three months' notice. It simply means that before dismissal a man may have three months' time, in which he may do great mischief in the school, or if the Board are to get rid of him without such notice they must make the cause of dismissal the subject of an inquiry and of a publicity often much to be deprecated on such occasions. I cannot think that this is an even admissible construction of the Act; it is one which is calculated to do infinite harm, and I cannot affirm the pursuer's views either upon tacit relocation or upon the right to notice; and if there be no right to notice there was no wrong done by the Board in giving no notice; nor can damages be due. Damages really are what the pursuer wants. It may be called compensation, but for what? The old state of things has passed away, and we are under a new regime; the Board are bound to appoint the schoolmaster to be such at their pleasure, and they are entitled to withdraw his appointment also at their pleasure. I think the action should wholly fail, and should be dismissed as irrelevant.

Lord Ardmillan—I concur in the result of Lord Deas' opinion. I think it of importance that the judgment now given should be so guarded as to prevent misunderstanding; for there ought to be no doubt in regard to the relations existing between the School Board and the teachers.

It appears to me clear that under this Education Act the teachers appointed since the date of the Act hold their office at the pleasure of the School Board. These teachers are liable to be dismissed by the School Board at any time, and without cause assigned. This is a change in the law. But it is intended to promote, and I do not doubt that it is calculated to promote, the efficiency of the schools and the interests of education, and we are administrating the law as it now exists.

This teacher held his appointment at the pleasure of the Board, and the Board were entitled to dismiss him when they thought fit, and they have dismissed him. He stands dismissed, and there can be no doubt that he has been legally dismissed. But, assuming this, the question remains, Whether reasonable notice, or a reasonable payment in lieu of notice, ought not to be given? for it may be that the propriety and the duty of giving some notice may exist quite consistently with the right of dismissal at pleasure. I am disposed to hold that this summons is not well framed, for I do not think that there was engagement for a year, or any term of engagement, or that there has been or could be any relocation. All that is quite out of the question. I doubt the right to make a special agreement limiting the power to dismiss. But at anyrate no such agreement is here. The teacher cannot, in my opinion, retain his position or his office for a day after his dismissal against the will of the School Board. The teacher cannot hold his office in defiance of the School Board. Their dismissal of him, when duly sanctioned, is conclusive. But a reasonable notice to enable the teacher to look out for another situation, or at least for another home, is, I think, in fairness required, or, instead of notice, a reasonable sum proportioned to the notice is just and proper. This appears to me to be in accordance with the opinion of the Lord President Hope in the case of *Moffat*. Your Lordships are disposed to hold three months to be reasonable notice, or three months' salary to be a reasonable allowance in place of notice. I do not differ from that conclusion.

The teacher is an educated man, suddenly dismissed, it may be without fault, at least without cause alleged. Some notice is due to a man dismissed under such circumstances, even though he holds his office at pleasure, for he is turned not only out of his situation, but out of his house and his garden; and while I think three months is a very liberal proposal, I am not prepared to say that three months' notice is unreasonable. In requiring reasonable notice or reasonable compensation in lieu of notice I concur with Lord Deas. I only add that I give this opinion in regard to the executorial procedure for enforcing removal, without any compromise of my view —as decided as that of any of my brethren— that the teacher holds office at the pleasure of the School Board, and that he may be dismissed by the Board without cause assigned.

Lord Ormidale—I entirely concur with Lord Neaves in his observations on the terms of the summons in this case, and as to the ground of

action there libelled. And it is not unimportant to keep in view that by the statute which regulates the form of procedure in Sheriff Courts (16 and 17 Vict. cap. 80, sec. 1) the ground of action must be set out in the summons itself. It is there and there alone it must be looked for. This being so, I do not well see how the barrier to the appellant's succeeding in his present contention, interposed by the terms of his own summons, and his ground of action as there set out, can be got over. But, independently of that or any other objection of a technical nature, I think he has failed to show any sufficient reason for disturbing the judgment of the Sheriff appealed against.

The leading question in the case is, What was the tenure as respects endurance of the appellant Mr Morrison's appointment as schoolmaster of the parish of Abernethy. Now, although at first it seemed to be contended in argument on the part of Mr Morrison that his appointment was, in accordance with his ground of action as libelled, a yearly one, this contention was ultimately not pressed, and it was, as I understood, conceded that the appointment was at the pleasure of the Board. But at any rate this is a matter, as it appears to me, so clear as to make it of no importance whether it was conceded on the part of the appellant or not. The appointment he held was that of schoolmaster of the parish of Abernethy, in terms of the Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62), which by its 55th section enacts that "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 and emoluments as they think fit, and every appointment shall be during the pleasure of the School Board." It would be idle therefore to contend that the appointment of the appellant, who undoubtedly received his appointment from the School Board of the parish of Abernethy, acting under and in the exercise of the statutory powers thus conferred upon them, and who does not say that there was anything special in his engagement, but expressly admits in his answer to the third article of the defenders' statement of facts that there was not, now to dispute that the tenure of his appointment as regards its endurance depended entirely on the pleasure of the defenders the School Board. Indeed, it is very clear, according to any view I can take of the matter, that the defenders had not the power, even had they been disposed, to make any appointment of schoolmaster except during the pleasure of the School Board. On this point I adopt entirely the views so well and briefly expressed by the Sheriff in the note to his judgment appealed against.

Assuming, therefore, that the appellant held his appointment during the pleasure of the defenders as the School Board of Abernethy, it seems necessarily to follow that they were entitled to bring it to a termination whenever they pleased, and without assigning any cause or establishing any fault as justifying dismissal of the pursuer. The statute does not require anything of that kind, and I can very well understand that it might be very inexpedient that it should. From many circumstances which cannot well be made the subject of a proof, and might possibly not be capable of being judicially established, it might nevertheless be very advisable, if not absolutely necessary, having regard to the interests of a school, that the teacher should be removed; and so the power of dismissal in their discretion and at their pleasure has been conferred on the School Board. Nor can it be reasonably supposed that this is a power which is likely to be exercised by a body of individuals elected by the ratepayers, presumably in respect of their integrity and fitness generally for the important duties they have to discharge. Neither, on the other hand, has the schoolmaster who accepts an appointment subject to the contingency of his being dismissed at the pleasure of the School Board any right to complain of the exercise of their power, for it is to be presumed that his salary and emoluments were calculated and accepted of by him with a view to that contingency.

I am not, however, to be understood to mean that a schoolmaster may not be wrongously dismissed—that is to say, dismissed in such a way and under such circumstances as to entitle him to maintain a claim for damages against the wrong-doers; as, for example, in the case of the dismissal having been brought by a conspiracy on the part of some of the members of the School Board or others, and carried into effect by corrupt and fraudulent means, or of a dismissal accompanied by false malicious statements injuriously affecting the character and conduct of the schoolmaster. But the present is not a case of that description. On the contrary, it is manifest on the appellant's own showing, having regard to his statements in the record, that assuming the defenders had the power of dismissing him at any time they pleased, the way and manner in which they exercised their power,—apart from absence of warning or previous notice, a point that will be immediately noticed,—was wholly unobjectionable.

But it was strenuously urged for the pursuer—and ultimately, as I understood it, was the sole foundation of his argument—that the defenders were at least bound to have given him a quarter of a year's warning or notice that he was to be dismissed, and that as they gave him no such warning or notice they are liable to him in lieu thereof in a quarter's salary. This claim, as made by the appellant in his summons and record, proceeds on the assumption that his appointment was for at least a year. Accordingly, in his summons he expressly states that on the 14th of July 1873 he was appointed by the defenders as head-master of the school of Abernethy "for the year then ensuing, and having fulfilled his engagement for a year, he by tacit relocation remained engaged as head-master foresaid for another year." Not only so, but apparently apprehensive that he had not made this his ground of action quite clear, he, by the minute No. 25 of process, repeated his statement that his engagement had been a yearly one, and that he had been dismissed after the engagement had by tacit relocation been renewed for another year. Now, if the appellant's engagement had been a yearly one, his right to warning or notice might have been maintainable, although why it should be a quarter of a year is not so clear. But if the appellant's appointment was not a yearly one, but determinable at pleasure, as I hold it beyond

all doubt to have been, the case of the appellant entirely fails. It would, indeed, be a contradiction in terms to say that his appointment was terminable at the pleasure of the School Board, and at the same time to say that he was entitled to a quarter of a year's warning or notice.

Many decided cases were referred to on the part of the appellant at the debate as shewing that according to established law and practice individuals engaged in various departments of service were entitled to some warning or notice before their engagement could be terminated by the master or employer, but in all these cases the engagement was from its terms held to be for a year or other period of time; and consequently, by usage and common law, warning or notice of dismissal was in these cases necessary to prevent a renewal of the engagement by tacit relocation. But it is difficult to understand how tacit relocation could operate except in cases of that description. I do not, for example, see how it could operate at all in the case of an engagement terminable by express contract at the pleasure of the master or employer, for it is necessarily of the very essence of such an engagement that it may be brought to a conclusion at any time the master or employer thinks proper; and in such a case also the elements of usage and common law are excluded by the terms of the contract.

Accordingly, the precedents are, I think, conclusive to the effect that no warning or notice of dismissal is necessary where the engagement or appointment is during pleasure. In the case of *The Commercial Bank* v. *Pollock's Trs.*, as decided in the House of Lords, reversing, so far as the present point is considered, a judgment of this Court (2d June 1829, 3 Wilson and Shaw's App. p. 430) it was held that while the servant—in that case the manager of the bank—was in terms of his appointment dismissible at the pleasure of the directors of the bank, and without cause assigned, no allusion is made to previous warning or notice, and no point was attempted to be made as regards that matter. No doubt an allowance of some months' salary seems to have been given to the dismissed manager, but this was *ex gratia* of the bank directors, and not in respect of any obligation incumbent on them; and I think it obvious from the observations of the Lord Chancellor that he did not consider that any warning or notice of dismissal was necessary, or that there could be a claim for damages or compensation in lieu of it. His Lordship remarked, indeed, in reference to the dismissed manager's claim for compensation, that he could find "no stipulation whatever—no clause whatever—entitling Mr Pollock to the benefit of any compensation or any retiring provision in the event of his being removed. "I find, therefore," his Lordship added, "no subsisting contract which entitles Mr Pollock to any compensation." And again, a little further on, the Lord Chancellor observes—"It appears to me that the committee of management had an absolute discretion to remove Mr Pollock when they thought proper, that they were not responsible for the manner in which they exercised that discretion, and that they were not bound to make any compensation or remuneration to Mr Pollock for the loss he sustained in consequence of that removal." So, in like manner, in the case of another bank manager (*Mitchell* v. *Smith*, manager of the Western Bank, 26th January 1836, 14 Sh. 358) which came before this Court soon after the judgment in the House of Lords in the *Commercial Bank* v. *Pollock's Trs.*, it was held that the appointment of the manager being one during the pleasure of the bank, they could dismiss him when they pleased, and were not bound to justify the dismissal. In that case the pursuer concluded for restoration to office, and alternatively for damages. Lord Moncreiff, who was Ordinary in the case, and whose judgment was adhered to by the Court, made the following important observations, which I think are equally applicable to the present case—"There is no case of damages," his Lordship observed, "raised by the summons on the independent ground of injury arising from anything in the particular time, mode, or terms in which the dismissal took place, supposing there was otherwise power to do the act. And, indeed, it is plain that if the power existed the defenders might comply with the first alternative to the effect of restoring the pursuer, and so put an end to the action, and then immediately dismiss him in some more formal and simple manner according to their own view of the matter." This case of *Mitchell* v. *Smith* is all the more important as a precedent for the present, inasmuch as I find from the session papers that there, as here, the deceased manager had besides his salary a house and offices; and further, that not only no notice or warning of his dismissal was given to him, but also that he received no allowance whatever in lieu of such notice or warning.

Besides these cases of the dismissals of bank managers, which appear to me to be precedents in point—for the circumstance of the dismissed employee in the present case being a schoolmaster cannot, I think, affect the legal principle—there are some cases of the dismissal of schoolmasters. I do not refer to the cases of the *Tain Academy* and others, where warning required to be given by the terms of the engagement. These cases are not in point. But in *Bell* v. *Milne and Others*, 15 June 1838, 16 Sh. 1136 (the Dollar Academy case) a schoolmaster holding office merely during the pleasure of his employers was dismissed by them without any notice or warning; and I do not think it is of any consequence as regards the legal principle that an allowance of some months' salary appears to have been given to him through the liberality of his employers, but not in consequence of any obligation on them to do so. It was in that case distinctly ruled that the schoolmaster having accepted the appointment to be held during the pleasure of his employers, it was in their power to remove him whenever they pleased and without assigning any cause, and therefore that his plea for damages was unfounded. The learned Judges were unanimous in the case, and I find that Lord Corehouse remarked "that it is altogether new to me to hear it maintained that a power of dismissal at pleasure cannot be made the subject of legitimate stipulation at the appointment of a teacher. In the decisions which have been referred to by the pursuer there was nothing to warrant such doctrine. In the case of the *Inverness Academy*, for instance, there was no power of dismissal conferred on the managers by the charter except upon proper grounds." In the present instance it appears to have been quite right that the appointments were made during pleasure only; and

in general, where there is a good body of judicious managers having the right to elect, I am not sure that it is wrong to qualify the appointment by a declaration that it shall be held only during pleasure.

There is also in conformity with these views the recent English case—and it has not been suggested that the laws of England and Scotland are different as regards such a question as the present—of *Hayman* v. *The Governors of Rugby School*, Law Reports, Equity Cases, vol. xviii. p. 68. In that case Vice-Chancellor Malins, whose judgment I believe was acquiesced in, stated—"It is in my opinion clear that the plaintiff and all the head-masters of the public schools to which the Act of 1868 applies are subject to the control of the new governing body of each school, and that they hold their office at the pleasure merely of the new governing body, and are consequently liable to be dismissed without notice and without any reason being assigned." If the principle as so expressed be sound and applicable to the present case—and I am not aware of any ground on which it is not, and certainly none was suggested at the debate—it is difficult to see any reason for interfering in the present case with the judgment appealed against.

The case may perhaps be a hard one for Mr Morrison, the appellant, and possibly other hard cases may occasionally occur in relation to the dismissal of schoolmasters holding appointments under the Education Act; but these are not considerations by which the Court can be influenced. The contract between the appellant and the respondents cannot be reformed; it must be given effect to as it stands. The only question, therefore, the Court has to determine is whether the appellant has in the present instance any maintainable claim for damages against the respondents in respect of breach of contract or other wrong done to him. Now, as I have been unable for the reasons I have stated, and having regard to the authorities to which I have referred, to see that he has, it follows that in my opinion the interlocutor of the Sheriff appealed against ought to be affirmed, and the appeal dismissed.

Lord Mure—The question here to be decided is, what the position of a schoolmaster is who has been appointed at pleasure under the Act of 1872—for that really is the point at issue. Upon the construction of the statute two contentions arise—the first is, that a schoolmaster under the Act, dismissed at pleasure without cause assigned, is entitled to a reasonable notice; the other is, that the School Board are entitled to dismiss him instanter, and therefore equally that he is entitled at any time to go off.

Now, no doubt it was the intention of the Act to change the schoolmaster's position, and to put an end to the *ad vitam aut culpam* arrangement, making the office one tenable at the discretion of the Board, but I cannot think it was intended by the Legislature to confer such powers as those contended for by the School Board of Abernethy. While the statute confers powers of dismissal at pleasure, I do not think it was intended that the Board should act thus save under equitable considerations of notice.—[His Lordship referred to the case of *Moffat*, 1 D. 468, and Lord President Hope's opinion there.] That opinion I have just quoted is applicable to a contract between parties terminable at pleasure, as this is. In conclusion, I may say that I agree with the opinion at which the majority of your Lordships have arrived.

Lord Gifford—I agree with Lord Deas and with the majority of your Lordships.

I think that the true meaning and effect of section 55 of the Education Act of 1872 is, that every schoolmaster appointed under the Act shall hold his office simply at the pleasure of the School Board, and not either for life or for any fixed period. I think it quite impossible to read the enactment as providing that the School Boards may fix "at their pleasure" any definite time during which the schoolmaster shall have a right to hold office—in short, that the School Board shall have liberty to contract according to circumstances. On the contrary, I think the statute deprives the School Board of all power in the matter, and prevents them from making any time engagement whatever with the teachers whom they may appoint. The statute appears to me to be imperative in its terms, and to fix in all cases the character of the employment and appointment. The words are—"Every appointment shall be during the pleasure of the School Board." It is not for such period as the School Board may fix, it leaves the School Board no discretion. They cannot elect for life or *ad vitam aut culpam*, or for a period of years, but only "during pleasure." The School Board is a varying body, and the Board of any particular date cannot bind its successors or even itself for any time. The enactment seems to be that the office of teacher shall be precarious, at the pleasure of the respective Boards. With the policy of this provision I have no concern. If the enactment is clear it must receive effect—and I read it as equivalent to a provision that every schoolmaster under the Act may be dismissed at any time, and at the mere pleasure of the School Board. I cannot therefore agree with the Sheriff-Substitute, who finds that the bargain was for a year certain, renewable by tacit relocation. On the contrary, I agree with the Sheriff-Principal that the appointment was during pleasure, and terminable whenever the School Board should choose.

But the question remains, and indeed it is the only question really at issue between the parties, Whether a schoolmaster appointed under The Education Scotland Act 1872, and holding office "during the pleasure of the School Board," is entitled to reasonable notice of his dismissal where no fault is alleged or proved, or to a proportion of his salary and emoluments corresponding to such reasonable notice?

Of course the right of the School Board to dispense with the teacher's services and to deprive him without any notice of the control and superintendence of the school is not disputed. This is a power which exists in every contract of employment of a personal nature, and belongs to every master or employer where there is a *delectus personæ*. The only question is the pecuniary question, whether the servants' or schoolmasters' emoluments are to run on for whatever time may be held to be reasonable notice.

Now, here I feel myself compelled to differ from the Sheriff-Principal, and I am of opinion that a schoolmaster, although he holds his office

simply "during the pleasure" of the School Board, is yet entitled to reasonable notice of dismissal, or if the School Board without notice insist upon his instantly giving up the school and ceasing to discharge his duties, that he shall have compensation equivalent to what he would have received had reasonable notice been given.

It does not follow that because an engagement is terminable "at pleasure" that either party may terminate it without notice to the other. On the contrary, I think that wherever an office or employment is in itself of a permanent nature, that is, implying endurance or continuance for a considerable period of time, reasonable notice must be given by either party desirous of terminating it. The notice may be long or short according to circumstances, but even a labourer hired by the day is entitled at least to notice the previous day of his intended discharge. This seems not only in accordance with equity, but to be absolutely necessary in most cases for the convenience or safety of both parties, and the rule is illustrated by many familiar cases. Thus, in the general hiring of domestic servants, where they are not hired for a fixed term, a month's notice or warning, or a month's wages in lieu thereof, seems to be the unvariable practice recognised by decisions—*Cutter* v. *Powell*, 6 Tr. 326; *Robinson* v. *Hindman*, 3 Esp. 235, 2 Selwyn, N.P. 1032, S.C.; *Archard* v. *Horner*, 3 C. and P. 349; *Fawcett* v. *Cash*, 5 B. and Ad. 904; *Beeston* v. *Collyer*, 4 Bing. 309. Even where the engagement is from term to term, reasonable notice must be given before each term arrives; otherwise the engagement will be held renewed by tacit relocation for another term or another year.

There seems no reason why this rule should not apply to the case of a schoolmaster holding his office during pleasure. Undoubtedly the office is of a permanent nature, that is, it contemplates an endurance for some considerable time. The schoolmaster is in possession of a dwelling-house and garden. He and his family cannot be required to give up possession of these without being allowed reasonable time to provide themselves with accommodation elsewhere. The arrangements of the school and the management and regulation of the classes have a certain permanence which cannot without great injury and inconvenience be interrupted without notice or preparation, and the teacher cannot provide himself with another school without reasonable, and it may be without some considerable, delay.

Nor is the teacher the only party interested in insisting for reasonable notice. The School Board also have perhaps as strong an interest in the same direction. The rights of the teacher and those of the Board are corresponding and corelative. The utmost mischief might be done if the teacher any morning without notice were entitled to desert his post, and, without providing a substitute or giving any opportunity for doing so, leave his school untaught and allow the whole pupils to be perhaps permanently scattered; and yet this would be the result if the contention maintained by the Abernethy School Board is well founded, for if the Board are not bound to give reasonable notice to the teacher it would be impossible to hold that the teacher was bound to give reasonable notice to them. Both parties must be bound in this matter or neither, unless of course in the case of some very special and specific bargain.

Tenancy at will or mere precarious possession of land affords another instance of the necessity of reasonable notice to quit, and such notice must be longer or shorter according to the nature of the subject possessed and the mode of its use or cultivation.

The only other question is, What is reasonable notice? and on this point, and looking to the whole circumstances in which a schoolmaster such as the present pursuer is placed, I agree with the majority of your Lordships that three months' notice, or three months' salary in lieu of notice, is a reasonable and suitable arrangement.

LORD JUSTICE-CLERK—As this case is decided, and as I agree with the majority of your Lordships, I had not intended to add anything, but I should now like to say a few words after hearing Lord Neaves' opinion. I have no doubt that the result arrived at will increase the stability of the Act, and give likewise a certain degree of self-reliance to schoolmasters under it. We have not to consider the policy of the statute; we have only to consider the principles of the action. Lord Ormidale has suggested that the grounds of our judgment are not to be found in the summons. But I think that to sustain the plea of compensation for want of reasonable notice is not really to alter in any way the tenure of the schoolmaster; he holds at pleasure. Now what is a tenure at pleasure? In ordinary circumstances such a tenure, while it allows instant dismissal without cause assigned, nevertheless calls on the employer either to give reasonable notice or compensation for failure to do so. This decision will not allow the schoolmaster to hold his office one day longer than the Act permits, but it will also be a certain security to him against being turned suddenly adrift without cause assigned.

The Court pronounced this interlocutor:—

> "Sustain the appeal, and recal the judgment of the Sheriff appealed against: Find that the respondents were entitled to dismiss the appellant from his office of head-master of the public school of Abernethy at their pleasure, but were bound either to give him reasonable notice or to compensate him for the want of it: Find that three months' notice would in the present case have been reasonable, and that the sum of £50, as concluded for, is a proper amount of compensation: Therefore decern against the respondents for payment to the appellant of the said sum of £50, under deduction of £5 received by him to account thereof: Find the appellant entitled to expenses in both Courts, and remit to the Auditor to tax the same and to report."

Counsel for Appellant (Pursuer)—Fraser—Rhind. Agent—R. Menzies, S.S.C.

Counsel for Respondents (Defenders)—Dean of Faculty (Watson)—Alison. Agents—Murray, Beith, & Murray, W.S.