there is no statement of any intention or resolution to do so. The date of the injury may be held to be sufficiently given in the statement that at the date of the letter (5th Dec. 1883), 'It is now five weeks since Adam got his accident' (31st Oct.).

"By the last subsection of section 7 of the statute there are provisions that a notice shall not be deemed invalid by reason of any defect or inaccuracy therein. That is a wise and fair provision for the protection of illiterate people, but though any defect or inaccuracy, so long as there does not appear to be any fraudulent intention, will not render a notice invalid, the Sheriff-Substitute is humbly of opinion that the writing founded on as notice must show that it was written with the view of giving notice of an injury and of an action. Now, the letter No. 6 of process is certainly not a letter written for that purpose. It is an intelligible and well-written letter. The object is to crave a payment of ten shillings; that is clearly all the writer had in view, and it cannot be fairly said to be a notice under the statute.

"Taking that view of the letter, the Sheriff-Substitute must sustain the first plea-in-law stated for the defender."

The pursuer appealed to the Court of Session, and argued—(1) The notice need not necessarily be in writing. The reference to written notice in the Employers Liability Act is not imperative but merely directory. (2) The notice contained in the letter of 5th December was quite sufficient to satisfy the terms of the Act. This was an Act to enable illiterate people to obtain equitable compensation for injuries received in the course of their work, and must be construed in a liberal spirit. The English cases on the subject did not invalidate a notice when the date or cause of accident were amissing. The only object of the notice was to give notice of injury, and that was amply done in the letter. (3) In any view, the Sheriff should not have sustained the objection at this stage; he should have allowed a proof, as was contemplated by the last clause of section 7 (*supra cit.*).

The defenders, in supporting the interlocutor of the Sheriff-Substitute, cited *Moyle* v. *Jenkins*, December 6, 1881, L.R., 8 Q.B. Div. 116; *Keen* v. *The Millwall Dock Company*, March 15, 1882, L.R., 8 Q.B. Div. 482.

At advising—

The Lord Justice-Clerk delivered the opinion of the Court as follows:—It appears to me that the writing referred to is a sufficient notice that Adam Thomson had been hurt in the employment of the defenders, and hurt badly, by the fracture of his jaw, and that he had been advised to sue for damages. The question which has been raised is, whether the letter is a sufficient notice in terms of the Employers Liability Act? I am of opinion that it is. The only real objection to it is, that the cause of injury, required by the 7th section of the Act to be in the notice, is not given here. I think that is a very critical objection, and I am not in the least disposed to sustain it, nor do I think that courts of law are well employed in discovering unsubstantial obstructions to the provisions of an Act meant to benefit workingmen. The 7th section provides as follows—"A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading." Therefore by itself, and so stated, I am not prepared to sustain the objection. If at the time of proof the Judge thinks prejudice has been done, and that there was a purpose to mislead, then the statute gives a remedy. In the meantime I am not disposed to throw the action out.

The Court sustained the appeal, recalled the judgment, and remitted to the Sheriff-Substitute.

Counsel for Pursuer (Appellant)—Law. Agent—James Reid, W.S.

Counsel for Defenders (Respondents)—MacWatt. Agents—H. & H. Tod, W.S.

Saturday, November 15.

FIRST DIVISION.

[Sheriff of the Lothians and Peebles.

THE DOUGLAS SCHOOL TRUSTEES *v.* MILNE.

Master and Servant—School—Dismissal of Teacher—Retention of Dwelling-House by Teacher after Dismissal—Warrant of Ejection.

Trustees of a school acting under a private deed of mortification appointed a schoolmistress, whose engagement was to be "terminable by either party on three months' written notice on either side," a residence being part of the remuneration. The trustees subsequently gave her three months' notice to leave their service, but at the end of that time she refused, on the ground that under the deed of mortification the teacher was to hold office *ad vitam aut culpam*, to give up possession of the house. *Held* that the trustees were entitled to a warrant of ejection against her, because (1) her engagement had been terminated in conformity with the conditions of her agreement with them, and (2) assuming the dismissal to be wrongful, refusal to quit possession was not the appropriate remedy.

In 1819 a school was established in Linlithgow for the purpose of training female servants. It was called Mrs Douglas' Cottage School, and in the deed of mortification various persons were named as trustees. The deed provided—"*Eighth*, The committee shall have full power to dismiss the schoolmistress at any time for non-compliance with the rules as laid down in this deed, and also for immoral, irreligious, or other conduct at variance with the best interests of the institution."

In 1880 the then trustees entered into an arrangement with Miss Eliza Milne whereby they appointed her teacher of the Douglas Trust School upon the conditions contained in the following agreement, which Miss Milne signed:—"Miss Milne to begin her duties on the current, and her engagement to be terminable by either party on three months' written notice on either side. The salary to be at the rate of £60 per annum, with free house, coal and gas. Miss

Milne shall make out all returns which may be required from her by the trustees. The trustees and Miss Milne have signed this memorandum in evidence of the terms of the agreement." The residence was in the school premises.

The trustees having in 1884 resolved to terminate their engagement with Miss Milne, their secretary on June 5, 1884, wrote to her intimating that her services would not be required after 6th September 1884. Miss Milne acknowledged that notice upon the 8th June in the following terms:—"I beg to acknowledge the receipt of your letter of the 5th inst., intimating to me a decision of the Douglas School Trustees dismissing me from the situation now held by me. I feel very much surprised that they should have so acted towards me without any cause so far as I can conjecture."

When the three months had elapsed Miss Milne refused to give up possession of the residence in the school premises, and this petition was presented in the Sheriff Court at Linlithgow by the trustees praying for a warrant to eject her from the premises.

The pursuers pleaded that the defender's right to occupy the school-house, garden, and pertinents having terminated, she was now a vitious intromitter, and they were entitled to the decree craved.

The defender stated—"(Stat. 3) The pursuers have assigned no reason why the defender should be dismissed from her appointment of teacher, or evicted from her dwelling-house, and she knows of none. Under the constitution of the school she holds office *ad vitam aut culpam*. The trustees have never charged her with any fault. A few days before their pretended dismissal of her, viz., on 22nd May, they answered in the affirmative to Government the question, 'Are the managers satisfied with the teacher's character, conduct, and attention to duties?' The defender believes and avers that the trustees have not in any legal way authorised the present action. The defender entered upon her duties within a short time after her appointment, and she has ever since discharged them, and she is now discharging them, and she means to continue in the discharge of them to the best of her ability. But in that she has been greatly hampered by the pursuers withholding from her the said trust-deeds, and by their not providing for and furnishing to her and publishing the rules and regulations according to which the school ought to be governed and conducted."

The defender pleaded, *inter alia*,—"(3) The pretended dismissal of the defender was *ultra vires* of the trustees, in respect that in terms of the Douglas Trust she could not be dismissed without reason assigned."

By interlocutor of 17th October 1884 the Sheriff-Substitute granted warrant to summarily eject and remove the defender as craved upon the expiry of fourteen days.

"*Note.*— . . . . . The trustees say they have dismissed the defender, and require her to quit the premises she occupies as part of the remuneration for her services as schoolmistress. If they are wrong in dismissing her, she may have a remedy, but she is not entitled to keep possession of her employers' house. There is no difference between her case and that of a domestic servant, who must leave his house and employment whenever his master dismisses him. It does not matter so far as the possession of the house is concerned that the master may have acted unjustly."

The defender appealed to the Court of Session, and argued that by the constitution of the school, to make the dismissal of the teacher valid, fault must be averred, and that was not done here; further, the dismissal was effected by a quorum only of the trustees, and not by a full meeting.

Authorities—*Gibson* v. *Tain Academy*, March 11, 1836, 14 Sh. 711; *Goldie* v. *Christie*, March 3, 1868, 6 Macph. 541; *Mitchell* v. *School Board of Elgin*, June 15, 1883, 10 R. 982.

Counsel for the respondents were not called upon.

At advising—

Lord Shand—The object of this application is to recal an interlocutor of the Sheriff-Substitute by which he finds that the respondents are entitled to remove the appellant from the house which she occupied as part payment of her salary as teacher of the "Douglas Trust" School at Linlithgow. This school seems to have been a private one, and to have been under the management of the trustees of the late Mrs Isabella Douglas. The Sheriff says that as the trustees have dismissed the appellant from her office of teacher she is bound to quit the premises which she occupied as part of the remuneration of her services, and that in dismissing her the trustees were not acting in any way *ultra vires*, but were entitled to terminate their engagement with her at the time when they did in terms of the arrangement which the appellant entered into with the trustees when she commenced her duties in 1880. I think that the Sheriff-Substitute was right in the decision at which he arrived.

The appellant here signed an agreement upon the 24th of August 1880, one of the conditions of which was that her engagement was to be "terminable by either party on three months' written notice on either side." It is not alleged that there was any other agreement between the parties, and after signing it she enters upon and proceeds to discharge her duties under it. In June 1884 the trustees send her a notice that at the end of three months from that date her engagement with them will terminate, and requiring her thereafter to quit the house which she occupied as part of her emoluments as teacher. If there was nothing else in the case than the two documents to which I have just referred, I do not see how it could be said that the trustees had exceeded their rights under this agreement, or that the appellant could have any answer to their demand that she should now quit their premises. But it is said that there is something behind this contract which makes the appellant's appointment one *ad vitam aut culpam*, and not one which is terminable at the pleasure of the trustees; and reference has been made not only to the averments in article 3 of the appellant's statement of facts, but also to the 8th provision of the Douglas deed of mortification. Now, it is quite impossible that any attention can be paid to the allegations in article 3, or to any of its vague averments. I can see nothing in this engagement which can in any way entitle the appellant to consider it as one *ad vitam aut culpam*. She is not in the position of a public officer or a parish schoolmaster, nor

were the trustees, so far as I can see, in any way precluded from making a contract of this kind with any teacher whom they might engage. I think that the trustees were entitled to dismiss the appellant upon reasonable notice, nor can I see anything in the constitution of this school which supersedes the agreement signed by the appellant. But even supposing that the appellant has been wrongfully dismissed, the retention of this house is not her remedy. She may obtain redress—if she has suffered wrong—in some other way, but she cannot retain possession of these premises against the wishes of the trustees. I hope that she may not be advised to take any further steps, seeing that in my opinion she cannot get over the effects of this agreement.

Lord Kinnear—I agree with the opinion expressed by your Lordship, and for the reasons stated. The appellant held her appointment under a contract terminable by either party on three months' notice, and her engagement was not affected by article 8 of the deed of mortification, which warranted the trustees in dismissing a teacher for any one of the causes therein specified, because it does not appear that she was made aware of its terms, or that it was imported into her agreement. It is not suggested that this dismissal is for any fault on the part of the appellant, but simply from a desire on the part of the trustees to terminate their engagement with her.

Lord Mure—I agree with the opinion expressed by your Lordships, and have very little to add. By the terms of her agreement with the respondents the appellant's engagement with them was terminable after three months' notice, and the proceedings under which it is now sought to have her removed are just in terms of the conditions of that agreement. The trustees have terminated their engagement with this lady, and have given her three months' notice. They now require her to quit the house which she occupies under her engagement with them, and this demand on their part is quite, I think, within their powers.

The only objection which has been stated is one founded upon some of the older cases, where the appointments of teachers were held to be *ad vitam aut culpam*, and it was urged that an appointment such as that contemplated under this agreement was not one which the parties had the power of making. The law has been materially changed since these decisions, and the principles then laid down are no longer applicable. I therefore agree with the views expressed by the Sheriff-Substitute and your Lordships, while leaving it quite open to the appellant to obtain her remedy in some other form if she is advised that she has been wrongfully dismissed.

The Lord President and Lord Deas were absent.

The Court adhered to the interlocutor of the Sheriff-Substitute and dismissed the appeal.

Counsel for Pursuers (Respondents)—Trayner—Strachan. Agents—Liddle & Lawson, S.S.C.

Counsel for Defender (Appellant)—Campbell Smith—Rhind. Agent—Daniel Turner, S.L.

Tuesday, November 18.

SECOND DIVISION.

FULTON *v.* ANDERSON.

Reparation—Negligence—Damages for Personal Injury—Insecure State of Property—Duty of Proprietor of Tenement having Common Stair to Keep the same in Safe Condition.

A man was ascending a common stair in a tenement with a sack of coals on his back, when the stair suddenly gave way under him and precipitated him to the bottom of the tenement. He sustained severe bodily injuries. The stair was a "hanging" stair of unusual breadth. About three years before the occurrence of the accident, the stair being then in an infirm condition from the wearing away of the steps by use, the proprietor, without consulting any skilled person, employed a slater to repair it by cutting out a portion of each step and piecing it with fresh stone. In an action of damages by the injured man against the proprietor of the tenement, the Court, being of opinion on the facts that the fall of the stair was due to its having been materially weakened by the imperfect way in which it had been repaired, *held* that the accident was due to the fault of the defender, who had failed in his duty to keep the stair in a safe condition, and that he was liable to the pursuer in damages.

This was an action of damages for personal injury raised by Edward Fulton, labourer, against James Anderson, tea and coffee merchant, both in Glasgow. The facts which led to the action are given in the Sheriff-Substitute's findings in fact, as follows:—"Finds that the defender is, and for the last five or six years has been, proprietor of the tenement in which No. 90 Maxwell Street is situated: Finds that the said tenement was erected about twenty-eight years ago, and that the stair by which access is had to the business premises in the tenement, having gradually got worn away, and frequent complaints thereof being made, the defender, about three years ago, employed a slater to renew the surfaces of the steps by indenting or cutting out a portion of the worn stone and replacing it with fresh Caithness flagstone: Finds that the said stair is a hanging stair of unusual breadth, and consisting of three flights, and that the indenting by the defender was done to every step of these three flights: Finds that the stair, in consequence of the cutting to which it was subjected, was much weakened, and that on various occasions the indentations became loose, and that the stair was unfit to stand the strain to which, in the ordinary course of traffic, or accidentally, it might be exposed: Finds that on the 3d October the pursuer was engaged, along with another man, in carrying coals to the premises occupied by Allan & Orr on said stair: Finds that while pursuer was carrying up a bagful of said coals, weighing about one cwt., the stair suddenly gave way with him, and he was precipitated, along with two flights of the stair, to the bottom of the tenement, and was so seriously injured that he required to remain for a period of fourteen weeks in the infirmary, and