

No 104.

The defenders presented a bill of suspension against this judgment, which, with answers for the Corporation, and replies, the Lord Ordinary on the bills took to report.

*Pleaded* for the complainers; The combination of the journeymen is entirely at an end by returning to their work. They are under no contract to serve their former masters, and it is a matter of perfect indifference to the community, whether they work to one master or to another, or on their own account. The Sheriff's interlocutor, in fact, adjudges their service to particular persons for a limited time, which is neither justified by the former judgment of this Court, nor consistent with the liberty of the subject.

*Answered*; It is undoubtedly true in the abstract, that every individual may change his master or his profession whenever he thinks fit. But the judgment of the Sheriff is the result of the extraordinary situation into which matters were placed by the combination entered into by the complainers themselves and their associates, which makes it necessary, in order to destroy it, that they should be ordained for a limited time to return to their former masters; case of Brewers of Edinburgh in 1725. For if the pretences held out by the complainers, of entering into a different line, or of having plenty of business on their own account, are sustained, a plausible reason for remaining idle will never be wanting to any member of the combination. If there be any hardship in the Sheriff's judgment, the complainers have their own improper conduct alone to blame for it.

THE LORDS, while they had no doubt but that every journeyman might quit his master's service *debito tempore*, were equally clear, on the ground stated for the chargers, that in the circumstances of this case, the Sheriff's judgment was right with regard at least to seven of the complainers. They thought, however, that the facts stated by Arnot and Henderson, if true, afforded a sufficient reason for their conduct. They, therefore, unanimously passed the bill of suspension as to these two complainers, and refused it as to the rest.

Lord Ordinary, Cullen.

For the Corporation, Hope, Monypenny, Inglis.

Alt. H. Erskine, Fletcher.

R. D.

Fac. Col. No 97. p. 227.

No 105.

A parochial schoolmaster holds his office *ad vitam aut culpam*, and an obligation taken from him by the heritors,

1799 February 20. LEWIS ALEXANDEE DUFF against Sir ARCHIBALD GRANT.

THE parochial schoolmaster of Monymusk, on his appointment in 1782, wrote a letter to the late Sir Archibald Grant, the sole heritor of the parish, in which he admitted, that he had been taken on trial till the next term, and was afterwards to hold the office at the pleasure of Sir Archibald. He at the same time renounced all views of becoming a clergyman.

On his voluntarily resigning the office in 1792, the minister of the parish wrote to Sir Archibald, then in England, soliciting him to appoint his son, Lewis Alexander Duff, to the school. In consequence of the answer received, (which was not afterwards produced,) Mr Duff entered to the duties and emoluments of the office.

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to remove  
from it at  
their plea-  
sure, is not  
binding.

In 1795, he had become a preacher, and he was summarily expelled from the school by the present Sir Archibald Grant, in consequence of orders from his father, upon an allegation of misconduct.

He afterwards brought an action against the late and present Sir Archibald Grant, concluding to have his right to the office declared to be *ad vitam aut culpam*, and for damages.

The defence was, that the pursuer had never been regularly elected, but had been taken on trial, and during pleasure, like his predecessor, and must submit to the condition of his appointment.

*Answered*; The pursuer was admitted with the concurrence of the sole heritor and minister of the parish. There was, therefore, no occasion for a formal minute of election. His appointment was unconditional; and the burden of proving the contrary lies with the defender, who has produced no evidence of it.

Besides, a parochial schoolmaster is a public officer, who holds his office *ad vitam aut culpam*, and is subject only to the jurisdiction of the presbytery for his deportment. Any stipulation exacted from him, making him dependent on the heritors, would be disregarded as illegal.

The Lord Ordinary reported the cause on informations.

The Court were clearly of opinion, that the pursuer's plea was well founded; both in fact and in law. It was at the same time observed, that though heritors cannot effectually stipulate, that a parish schoolmaster shall be removable at their pleasure, this will not preclude the competency of their taking one for a few months on trial.

THE LORDS "found, that the pursuer is parochial schoolmaster of the parish of Monymusk, and entitled to hold that office, and to all the emoluments thereof, *ad vitam aut culpam*;" and therefore found the defender liable in damages and expenses.

Lord Ordinary, *Glenlee*. Act. *W. Robertson*. Alt. *G. Ferguson*. Clerk, *Menzies*.  
D. D. *Fac. Col. No. 114. p. 259.*