The parish of Thurso maintained that either the parish of South Leith or the parish of North Leith was liable, and that at all events no liability could be established against the parish of Thurso, with which the pauper had no connection except through his stepfather William Dundas.

The following question of law was submitted for the opinion and judgment of the Court:—"Whether the parish bound to support the said pauper is the parish of South Leith, or the parish of North Leith, or the parish of Thurso?"

Argued for the parish of South Leith—(1) Any derivative settlement which the pauper might have had in South Leith at the date of his father's death came to an end in 1880 (*a*) by the pauper attaining the age of puberty—*Craig* v. *Greig and Macdonald*, July 18, 1863, 1 Macph. 1172; *Greig* v. *Ross*, February 10, 1877, 4 R. 465; and (*b*) by his then leaving his mother's house with the intention of earning his own livelihood—*Ferrier* v. *Kennedy*, February 8, 1873, 11 Macph. 402; North Leith was therefore liable; or (2) Thurso was liable as being the settlement of the pauper's stepfather, in respect that the settlement which the pauper's mother had in South Leith was lost, not only for herself but for her pupil children, by her second marriage—*Greig* v. *Adamson and Craig*, March 2, 1865, 3 Macph. 575.

Argued for North Leith—This case was indistinguishable from the case of *Inspector of Poor of St Cuthbert's* v. *Inspector of Poor of Cramond*, November 12, 1873, 1 R. 174. In that case the Court had before them, and fully considered the Judges' opinions in, the case of *Ferrier* v. *Kennedy*, decided in the First Division in the same year, and relied on here by the parish of South Leith. The *Cramond* case was authoritative, and was directly in point.

Counsel for Thurso were not called upon.

At advising—

LORD JUSTICE-CLERK — The decision in the *Cramond* case rules this one in terms, and I am not going to consider whether that was a right or a wrong judgment. It has stood for ten years, and I can see no ground for reconsidering it. As I have often had occasion to say with regard to these poor-law cases, they are really encumbrances on the law, and the parties litigating in them have no substantial interest. The very next case which occurs may make the parish which was successful in the former one liable. This case must be held to be completely ruled by the *Cramond* case, it being impossible to distinguish them.

There is a subordinate point as to the effect of the pauper going to sea. I do not think that creates any difficulty. Going to sea in the prosecution of a seafaring mode of life does not affect a settlement already acquired.

The question will be answered to the effect that the parish of South Leith is liable.

LORD YOUNG—I am entirely of the same opinion.

It has been explained to us that this case has been brought here because it was supposed that the decision in the *Cramond* case was in conflict with certain observations made by the Judges who decided the case of *Ferrier* v. *Kennedy*, although these observations were not necessary to the judgment in that case—that is, the case was capable of being decided as it was on other grounds. But then these observations were cited to the Court during the discussion in the *Cramond* case. The *Cramond* case therefore was decided ten years ago, after these observations and all the cases which have been cited to us to-day had been fully considered. This case is admittedly the same on the facts as the *Cramond* case, and no argument, no fact, and no decision have been submitted to us which were not made the subject of decision in that case—and then we are asked to reconsider that judgment. I entirely agree with your Lordship that we should follow the judgment of this Division of the Court, which is the last upon the point, especially seeing that the circumstances are exactly the same.

I also concur in the observation that these litigations are greatly to be regretted, and this is no exception. The question raised does not seem to be one of importance, or likely to recur often. It has not been before this Court for ten years, when it was disposed of by a unanimous judgment after all the authorities had been considered. The result one way or the other is of infinitesimal importance. I think we should follow the decision in the *Cramond* case.

LORDS CRAIGHILL and RUTHERFURD CLARK concurred.

This interlocutor was pronounced—

"The Lords are of opinion and find that the parish of South Leith is bound to support the pauper Hugh Donald M'Lean, and decern."

Counsel for South Leith—Scott—Begg. Agents—Snody & Asher, S.S.C.

Counsel for North Leith — Guthrie Smith—Salvesen. Agents—A. & G. V. Mann, S.S.C.

Counsel for Thurso—Trayner—J. A. Reid. Agents—Curror & Cowper, S.S.C.

Wednesday, June 6.

SECOND DIVISION.

[Sheriff of the Lothians.

HINDS *v.* SCHOOL BOARD OF DUNBAR.

School—Schoolmaster, Dismissal of—Public Schools (Scotland) Teachers Act 1882 (45 *and* 46 *Vict. cap.* 18), *sec.* 3—*Notice by Circular.*

By the Public Schools (Scotland) Teachers Act 1882 no resolution of a School Board to dismiss a teacher is valid unless adopted at a meeting called not less than three weeks previously by circular sent to each member intimating that the dismissal is to be considered, and unless notice of the motion for his dismissal has been sent to the teacher three weeks previous to the meeting.

A School Board who had appointed a teacher before the passing of the Act on an agreement providing for three months' notice of termination on either side, passed at a meeting held subsequent to the Act, and not called in the manner nor intimated to the teacher as directed by the Act, a resolution

dismissing him. Thereafter, in order to comply with the terms of the statute, they, at a meeting duly called and intimated in terms of the statute, passed another resolution dismissing him, the dismissal to take effect three weeks after the resolution. *Held*, in an action at the instance of the teacher, that as the proceedings at the first meeting at which he was dismissed were illegal, they could not be taken as the stipulated notice to terminate the engagement, and that he was therefore entitled to the value of his emoluments for three months from the date of his regular dismissal.

In April 1880 Humphrey Crerar Hinds was elected by the School Board of Dunbar as head teacher in West Barns School, Dunbar. The terms of his appointment were contained in a letter, dated 19th April 1880, addressed to him by the clerk of the School Board, and were substantially these—The salary was to be £150 per annum, 10 per cent. of Government grant, and 5 per cent. of fees, the appointment to take effect on the 15th May following, and to terminate on three months' notice on either side. Agreeably to this appointment he entered on the discharge of his duties on 15th May 1880.

On 3d July 1882 the Public Schools (Scotland) Teachers Act 1882 became law, section 5 of which Act enacts that—"In order to secure that no certificated teacher appointed by and holding office under a School Board in Scotland shall be dismissed from such office without due notice to the teacher, and due deliberation on the part of the School Board, the following provisions shall from and after the passing of this Act have effect—that is to say, (1) No resolution of a School Board for the dismissal of a certificated teacher shall be valid unless adopted at a meeting called not less than three weeks previously, by circular sent to each member, intimating that such dismissal is to be considered, and unless notice of the motion for his dismissal shall have been sent to the teacher not less than three weeks previous to the meeting.". .

On the 4th July, the day after the above Act had received the royal assent, the School Board met and resolved to dismiss Mr Hinds. The clerk was instructed to inform him that his services would not be required after the termination of three months. No notices of the business of the meeting were given previously to the members of the Board or to Hinds. The agent of Mr Hinds gave notice to the Board that he regarded his dismissal as irregular and illegal.

The School Board having found that they had not complied with the provisions of the Act, and that in consequence their resolution of 4th July was invalid, met on 17th August 1882, when a member of the School Board gave notice that in terms of the Act he would at a subsequent meeting move that Hinds should be dismissed from his appointment. Notice of this motion was on the 19th August 1882 given to Hinds, and circulars containing it were duly sent to the members of the Board in terms of the Act. On the 12th September thereafter the School Board met again, and formally dismissed him, the dismissal to take effect on 5th October.

In this action Hinds sued the School Board for the sum of £46, 1s. 8d. sterling as compensation in lieu of three months' notice of dismissal, as agreed between him and the School Board, from 12th September, at which date he was validly dismissed. The sum sued for was made up of three months' salary, the pursuer's proportion of Government grant and school fees, and the value of the occupancy of the teacher's house from 5th October to 12th December. The Board consigned the sum of £11, 17s. as in full of salary from 11th September to 5th October, and of the proportion of Government grant and school fees which they admitted to be due.

The pursuer pleaded—"(1) The pursuer being, under his contract of service with the defenders, entitled to three months' valid notice of their intention to terminate the engagement and bring the same to an end, and the defenders having failed to give the pursuer such valid notice, and having illegally and invalidly dismissed him as at 5th October 1882, they are bound to pay to the pursuer his salary and the value of the emoluments of his office for the period of three months from the date at which he was validly dismissed, viz., 12th September 1882. (2) The defenders having failed to comply with the provisions of the Public Schools (Scotland) Teachers Act 1882, their resolution of 4th July 1882 is invalid and incompetent, and cannot be founded on by the defenders. (3) The sum sued for being the proportion of the pursuer's salary for three months from 12th September 1882, and the value of the emoluments of his office for the same period, the pursuer is entitled to decree for the amount sued for with expenses."

The School Board pleaded—"(1) The defenders having, on 4th July 1882, given three months' notice to the pursuer of the termination of the contract of service, the agreement between the parties was fully implemented. (2) The proceedings of the defenders at the meeting of the Board held on 12th September 1882 were in conformity with the statute, and the dismissal of the pursuer formal and legal."

The Sheriff-Substitute (SHIRREFF) found—1st, That the pursuer was not legally dismissed by the defenders until 12th September 1882; 2d, that his dismissal not being for fault, he was entitled, under his contract with the defenders, to three months' notice of his dismissal, or to such compensation in lieu thereof as is just; 3d, that the sum sued for might be taken as a fair estimate of the value of his office for three months, and was a reasonable amount of compensation. He therefore repelled the defences, and decerned for the sum sued for.

"*Note.*— . . . It was held by the majority of the Judges in the case of *Morrison* v. *The Abernethy School Board*, July 3, 1876, Sess. Rep., 4th series, vol. iii. p. 945, that notwithstanding the provision of section 55 of the Education (Scotland) Act 1872, that the appointment of all teachers should be at the pleasure of the School Boards, that unless there is some fault justifying instant dismissal a teacher is entitled, like all other persons who hold their situations at the pleasure of their employers, to due notice of their dismissal, or such compensation as is reasonable in lieu thereof. In the present case the School Board, by special agreement embodied in their contract with the pursuer, fixed that the notice was to be three months.

"It appears to the Sheriff-Substitute that the only question necessary to be determined in order to dispose of this case is, whether the

resolution come to at the meeting of the School Board on 4th July 1882 was due notice of his dismissal to the pursuer. The Sheriff-Substitute is of opinion it was not.

"The statute which had become law the previous day specially enacted that certain requisites should be observed in order to ensure due deliberation before a teacher can be legally dismissed from his situation. At that meeting of 4th July it was not resolved to give him notice he would be dismissed, or that his dismissal would be considered, but it was resolved to dismiss him. The pursuer was not bound to take that as legal notice of his dismissal. There was no reason to hold that because the majority of the Board at one meeting resolved on his dismissal, that at another meeting, after further consideration of the circumstances, due deliberation, and hearing the pursuer, a majority of the Board would still be of opinion he should be dismissed. To hold the resolution of the meeting of 4th July equivalent to notice of dismissal would just be holding that at that meeting the defenders were entitled to dismiss the pursuer. No doubt the resolution of that meeting was notice to him that there was then a desire to get quit of him on the part of the majority of the School Board, but was not legal dismissal.

"The Sheriff-Substitute being of opinion the pursuer was entitled to three months' notice of his dismissal from 12th September last, and not having got that notice, he is entitled to an amount of pecuniary compensation equal to the value of his office for three months. It does not appear that the sum of £46, 1s. 8d. is an over-estimate of the value of his situation for three months. He has therefore been found entitled to payment of the sum he has concluded for."

On appeal the Sheriff (Davidson) recalled this interlocutor, and found that in the circumstances of the case the pursuer was not entitled to longer notice than he received, that the amount of salary and other emoluments to which the pursuer was entitled was £11, 7s., which sum had been admitted and consigned by the defenders.

"*Note.*—The arrangement that the School Board and the pursuer entered into in 1880 was a fair and reasonable contract, by which both parties were to be benefited. It was not illegal, because though a schoolmaster holds his office during the pleasure of the School Board, so that he may be instantly dismissed for fault, it is advantageous for both master and Board to arrange by what notice the contract may come to an end. This arrangement was, in fact, in accordance with what had been found legal and reasonable in the case of the *Abernethy School Board* in 1876.

"In accordance with this contract, the defenders, after having considered the circumstances and adjourned to a future day, being dissatisfied with the pursuer (and they were not bound to state the grounds of their dissatisfaction), agreed on 4th of July to dispense with his services after the 5th of the following October. They gave the pursuer the stipulated notice of three months. There would have been no question in the case if the late Act of 1882, chapter 18, had not received the royal assent and become law on the 3d of July, the day before the pursuer's dismissal. The defenders were not aware of the fact, and it is presumed neither was the pursuer, as his notice of objection to the notice he had received was not made till the 2d of August.

"Now, what effect had that Act on the contract between the parties? The object of the Act is to secure that there shall be no dismissal without due notice to the teacher and due deliberation by the School Board. It is not that the teacher shall have power to resist his dismissal if the School Board resolve on it; it does not alter the rule that he holds his office at pleasure, but it enables him to be present and to be heard for his interest. Accordingly, the 3d section prescribes what the notices are to be. To apply these notices to such a contract as this would change its terms, and would put on one party to the contract a new undertaking, which would be entirely inapplicable to the other. It is not maintained by the pursuer that the Act annulled the contract; but his contention comes to this, that while the notice he had to give the Board was only three months, their notices must be different, and longer. In virtue of the contract the notices to be given must be the same.

"But the Board, on receiving the pursuer's objection to his notice, took the course of giving notices in terms of the statute, and a meeting in pursuance of these notices was held on the 12th of September. On that day the pursuer was again dismissed, the dismissal to take effect on the 5th of the following October, being the day on which, by his notice under his contract of 1880, his connection with the school ended. It may be maintained that the recent Act does not contemplate the lapse of any time between the meeting and the actual dismissal, and that it means that, due notices having been given, the teacher may be instantly dismissed on the day of the meeting. It is not necessary to consider here whether that is the right reading of the Act. The pursuer did get a certain period after the 12th of September before he was obliged to remove. The Sheriff is of opinion that in the circumstances he got a reasonable time. In no view can the fact be excluded that on the 4th of July he got notice of what was intended. He had the whole time between that day and the 12th of September, and thereafter till the 5th of October, for preparation, and the outlook for another situation. The demand that he should have full three months after the 12th of September, and that he should have it in respect of his contract, is extravagant, and most unreasonable.

"There seems a mistake as to the case of *Morrison* v. *Abernethy School Board.* The judgment there was not that there must be always three months' notice; it was only that there should be reasonable notice, 'long or short, according to circumstances.' In that particular case it was thought that though three months was 'a very liberal proposal,' it was still in that case reasonable.

"Now, in this instance the Sheriff is of opinion that the School Board have acted rightly, and exercised a wise discretion, with which he certainly is not inclined to interfere.

"There is no question as to the amount due to the pursuer if he is not entitled to all he contends for; and judgment has been given for that sum accordingly."

The pursuer appealed, and argued — The special agreement embodied in the contract between the defenders and the pursuer fell to be

enforced, as was the schoolmaster's appointment in the case of *Morrison* v. *Abernethy School Board*, July 3, 1876, 3 R. 945. He was entitled, then, to reasonable notice of dismissal, which had been in point of fact fixed under the agreement as three months. The Act of 1882, which became law on 3d July, rendered the proceedings of 4th July null and void, in respect its provisions as regards notice of dismissal had not been complied with. The pursuer was, then, entitled to three months' notice of dismissal from 12th September, at which date alone the solemnities required by the Act were complied with, or pecuniary compensation equal to the value of his office for three months.

At advising—

Lord Young—The short question here (assuming the legality of the contract between the parties, which is not disputed) is, whether the notice given on the 4th July can be attached to the dismissal of, or the termination of the contract with, or the dispensation with the services of (whatever name may happen to be the proper one to be applied to it), the schoolmaster on the 12th of September? I am of opinion that it cannot. This really decides the case; and the Sheriff-Substitute taking that view, gave the pursuer from the 12th of September an amount of pecuniary compensation equal to the value of his office for three months from that date. The Sheriff altered the judgment on the ground that the Act of 1882, according to the provisions of which the dismissal (or whatever else it is called) of July was invalid, did not apply to the contract. Now, I cannot assent to this unless the contract was illegal. The Act applies to all legally appointed schoolmasters under School Boards, and therefore it applies to the appellant unless he was illegally appointed. Taking it as a contract of employment during pleasure, it falls to be enforced as the contract in the *Abernethy* case was enforced. There it was decided that reasonable notice was necessary, and that three months is reasonable notice here I assume, because I find that the parties have themselves fixed that term.

On the whole matter I am of opinion, and without any difficulty, that the judgment of the Sheriff-Substitute is right and should be reverted to.

Lord Craighill—I am of the same opinion, and if the School Board on the 4th July were entitled to dismiss the appellant, notwithstanding the Act of Parliament passed on the previous day, no doubt the dismissal then was good. But if, on the other hand, the passing of the Act paralysed the proceedings of the School Board because they failed to give the notice required by the Act, then the appellant was entitled to have notice of three months after such a notice as the Act required should be duly given. The after proceedings must be looked upon just as if the notice of July 4th had never been given.

I agree, then, in thinking that the appellant is entitled to the emoluments of his office for three months subsequent to 12th September, when he received a valid notice under the Act.

Lord Rutherfurd Clark—I am of the same opinion. After the *Abernethy* case I must hold that the agreement of 1880 is valid in all its terms. Under it the schoolmaster is not to be dismissed till after three months' notice of such dismissal—in other words, he is entitled to draw the emoluments of his office for three months after he has received valid notice of his dismissal. The Act of 1882 was passed, and regulated the manner in which notice is to be given. As the Act passed the day before the appellant was dismissed, and it is conceded he got no notice of dismissal as required by the Act, it follows that his dismissal was invalid.

I am of opinion, then, that the Sheriff-Substitute was right in giving him the emoluments of his office for three months after the valid resolution on the 12th September.

Lord Justice-Clerk—I concur. It seems clear enough that the proceedings taken for the dismissal of the appellant were invalid in consequence of the passing of the Act. The School Board then had to take fresh proceedings, and in doing so are bound to give the pursuer his emoluments for three months from the date of their valid proceedings.

The opinions of the Judges in the *Abernethy* case establish that there is no inconsistency between tenure of office at pleasure and one at reasonable notice, and that tenure at pleasure involves due notice.

The Court sustained the appeal, recalled the interlocutor of the Sheriff, and affirmed that of the Sheriff-Substitute.

Counsel for Appellant—Thorburn. Agent—John Rutherfurd, W.S.

Counsel for Respondents — Campbell Smith. Agent—R. Ainslie Brown, S.S.C.

Thursday, June 7.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

BUCHANAN AND ANOTHER *v.* MARR.

Property—Superior and Vassal—Feu-Contract—Building Restrictions—Self-Contained Villa.

A feuar was prohibited by his feu-contract from erecting or occupying on his feu "any buildings for any other purpose than dwelling-houses and relative offices," which buildings, it was further stipulated, should be self-contained, detached, or semi-detached villas," and should not be less than a certain size, nor exceed one on each quarter of an acre. He erected on his feu a detached dwelling-house of two storeys and a basement, with a separate entrance to each storey. The upper storey was entered by an outside stair. There was an inside stair giving communication between the basement and the ground floor, and the ground floor and top flat, so that the whole house could be used for one family. In an action at the instance of the superior and a co-feuar for declarator that the building was contrary to the terms of the feu-contract, and to have the vassal ordained to remove it—*held (diss.* Lord Rutherfurd Clark) that the building was not from its structure a contravention of the provisions of the feu-contract.