Friday, February 17.

FIRST DIVISION.

[Bill Chamber.

SCHOOL BOARD OF TARBERT *v.* AIRD.

School—Board School—Teacher—Dismissal—Resolution of School Board—Resolution not Bearing to have been duly Carried Ineffectual to Operate Dismissal—Public Schools (Scotland) Teachers Act 1882 (45 *and* 46 *Vict. cap.* 48), *sec.* 3.

Held that a minute of a school board, purporting to contain a resolution dismissing a teacher, which recorded that a motion was made to dismiss the teacher but did not record whether the motion was duly carried, did not in fact contain a resolution to dismiss the teacher, and was ineffectual as a dismissal.

The Public Schools (Scotland) Teachers Act 1882 (45 and 46 Vict. cap. 18), section 3, enacts—"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. Such circulars shall be held to have been delivered to the members of the school board if sent by the clerk by post, addressed to the usual or last known place of abode of each member, and such notice to the teacher shall be held to have been delivered if sent by the clerk by post in a registered letter addressed to the usual or last known place of abode of such teacher. (2) No resolution of a school board for the dismissal of a certificated teacher shall be valid unless agreed to by a majority of the full number of members of such school board."

This was a note of suspension and interdict at the instance of the School Board of Tarbert, Loch Fyne, against Robert Aird, headmaster, Tarbert Public School, Tarbert.

The prayer of the note craved the Court to interdict the respondent from acting as the headmaster of Tarbert Public School, from entering therein for the purpose of teaching, and from interfering in the conduct or management thereof. *Interim* interdict was also craved.

In their statement of facts the complainers averred that in August 1893 they had appointed the respondent to be headmaster of Tarbert Public School, under an agreement by which they were entitled to terminate his engagement upon giving him six weeks' notice.

They further averred (Cond. 3) that "on or about 21st October 1904 the complainers having become dissatisfied with the conduct of the respondent, requested him to resign his office as headmaster, but as he did not do so the complainers, on or about 24th November 1904, at a meeting called in terms of section 3 of the Public Schools (Scotland) Teachers Act 1882, resolved to dismiss the respondent from his office as headmaster of said School. This resolution, a copy of which is produced, was duly intimated to the respondent, and in terms of the foresaid agreement between the complainers and respondent six weeks' notice was given by the complainers to the respondent."

In answer the respondent averred (Ans. 3)—"The pretended proceedings at the meeting on 24th November 1904 are referred to. The only intimation thereof given to the respondent is contained in a letter dated 25th November 1904 from the complainers' clerk in the following terms:—'I herewith enclose copy of minute of special meeting of Tarbert School Board held on 24th inst. Yours truly, A. M'Dougall, clerk.' This said letter and the copy minute enclosed therewith are herewith produced. After narrating the calling of the meeting the minute proceeds as follows:—'The chairman moved the motion of which he gave notice of, namely, that Mr Aird, headmaster of the school, be dismissed, his duties to terminate six weeks from this date according to the terms of his engagement.' Then follows a protest by two members of the School Board present at the meeting, and at the end of the minute there is recorded a motion by the Rev. Mr Campbell that Mr Robert Aird be not dismissed, which was seconded by Dr M'Millan. Neither the said letter nor the said copy minute contains any notice terminating the respondent's contract with the complainers. *Quoad ultra* denied. Explained that no valid finding of any kind was come to at the said meeting. . . . Further, the pretended certified copy minute produced by the complainers does not contain a statement that the chairman's illegal resolution either was seconded or was otherwise supported or became the finding of the meeting. From the copy produced it appears from a pencil note by the complainer's clerk that an addition was made to the said minute at a meeting of the Board held on 1st December 1904, in the following terms:—'Mr Donald Blair seconded and Mr M'Intyre supported the motion.' It is not stated which motion these gentleman supported, and the addition was not authenticated by the chairman, but was expressly excluded from the approval of the minute by the Board at said meeting. The addition to the minute was never intimated to the respondent."

The copy minute sent to the respondent as notice of his dismissal was as follows:—"At a Special Meeting of the School Board of Tarbert, held in the Hotel, Tar-

bert, on Thursday the 24th day of November 1904. *Present:*—Mr John Campbell, Tarbert, *Chairman;* Dr Duncan M'Millan, Tarbert; Rev. M. C. Campbell, Tarbert; Mr Peter M'Intyre, Tarbert; Mr Donald Blair, Tarbert. This special meeting was called on 2nd instant, in accordance with the Board's instructions as per their minute of meeting, dated 27th ultimo, and in terms of the Public Schools (Scotland) Teachers Act 1882. The chairman moved the motion of which he gave notice of—namely, that Mr Aird, headmaster of the school, be dismissed, his duties to terminate six weeks from this date, according to the terms of his engagement. In entering this meeting I decline any responsibility as to consequences, having dissented and protested against such a meeting being held, already believing the whole process in the matter of complaint against Mr Aird to have been unconstitutional and illegal, and I hereby relieve myself of any responsibility of the consequences that may follow the action of the majority of this Board. I also now protest against the chairman sitting at this meeting, having rendered himself incapable of acting as a member of the Board by becoming a contractor thereto, in violation of Act 1878, section 21.

"(Signed) M. C. CAMPBELL.
"also (Signed) DUNCAN M'MILLAN.

"Rev. Mr Campbell.—I move that Mr Robert Aird be not be dismissed. Seconded by Dr M'Millan.

"(Signed) DUNCAN M'MILLAN.
"(Signed) A. M'DOUGALL, *Clerk.*"

The complainers pleaded—"In respect that the respondent persists in discharging his duties as headmaster of the Tarbert public school after having been dismissed from his office as headmaster therein in terms of law, the complainers are entitled to interdict, with expenses as craved."

The respondent pleaded—"(1) No relevant case. (2) In respect the respondent's contract of service with the complainers has not been terminated, the prayer of the note ought to be refused, with expenses."

On 11th January 1905 the Lord Ordinary on the Bills (LORD PEARSON) ordered intimation of the note and granted interim interdict.

Thereafter on 27th January 1905 the Lord Ordinary on the Bills (LORD ARDWALL) pronounced the following interlocutor:—"Recals the interim interdict granted by interlocutor of 11th January 1905: Refuses the note: Finds the respondent entitled to expenses: Allows an account thereof to be given in," &c.

Opinion.—"The complainers in this note demand that the respondent should be interdicted from exercising the office of headmaster in Tarbert public school on the ground that he has been validly dismissed from that office. I consider that no relevant case is presented by the complainers. They state that they, 'on or about 24th November 1904, at a meeting called in terms of section 3 of the Public Schools (Scotland) Teachers Act 1882, resolved to dismiss the respondent from his office of headmaster of said school. This resolution, a copy of which is produced, was duly intimated to the respondent, and in terms of the foresaid agreement between the complainers and respondent six weeks' notice was given by the complainers to the respondent.'

"On turning to the copy of the so-called 'resolution,' which is a minute of a meeting of the complainers' Board held on 24th November 1904, it is found that the minute bears that the chairman moved that the respondent be dismissed. Then follows a protest against the constitution of the Board by a Mr M'Millan, then follows a motion by Mr M'Millan that the respondent be not dismissed, and there the minute ends. It is not said that these motions were ever put to the meeting, and that either or which of them was carried. To this minute there is appended a docquet, not authenticated by the chairman, stating that Mr Donald Blair seconded, and Mr M'Intyre supported the motion. I think it clear that this minute does not contain a resolution of the Board to dismiss the respondent, and that therefore there is no relevant averment by the complainers that such resolution was ever arrived at.

"But the further question arises, was notice of any resolution to dismiss him given to the respondent? Clearly not; the only notice given him was the letter of 25th November 1904, which simply enclosed a copy of the futile minute above examined. That minute, as already shown, could not convey to the respondent that a resolution had been passed by the complainers dismissing him from office. No notice, therefore, has been given to the respondent in terms of the letter of agreement.

"A number of general remarks were made by the complainers' counsel in the course of the discussion to the effect that to continue the respondent in office would bring the administration of the School Board into contempt, that it would be going in the teeth of the Education Acts, which made the School Board paramount as to dismissing teachers, and so on. I do not see much force in these remarks in the present case. If the complainers had set forth a flagrant case of misconduct on the part of the schoolmaster and of detriment to the school in the event of his continuing in office there might have been a case for interim interdict till all possible questions were settled. But it appears that the respondent was and is an efficient teacher, that there was no clamant need for his instant dismissal for gross misconduct, because the complainers did not dismiss him at once but merely pretended to give him the six weeks' notice he was entitled to in the event of their desiring to terminate their contract with him. It further appears that only three out of five members of the Board were in favour of his being dismissed. Accordingly the case may safely be disposed of as it stands. I was invited to look at other minutes as showing that it was the desire of a majority of the School Board to dismiss the respondent, and counsel for the complainers said on their behalf that they did desire to do so, and said he could prove their resolution to

do so otherwise than by the said minute. But this minute is the only 'resolution' they set forth as the ground of this note. For other reasons I cannot give weight to these observations. A school board must not go about the dismissal of a teacher in the way a housekeeper might dismiss a scullerymaid; they must solemnly adopt a resolution to dismiss him (see 45 and 46 Vict. cap. 18, sec. 3), and if they are not resolving on instant dismissal for gross misconduct they must give the notice required by their contract with the teacher. The complainers on their own showing have done neither of these things, and that being so I think the proper course is to refuse the note."

The School Board reclaimed, and argued—They were entitled to set up this incomplete minute by proof that, in point of fact, the resolution was carried at the meeting. There was no statutory provision in regard to keeping minutes of School Board meetings, and at common law evidence was admissible to set up an incomplete account of what happened—*City of Glasgow Bank Liquidators*, July 20, 1880, 7 R. 1196, 17 S.L.R. 483. They further maintained that it was competent for a school board to dismiss a teacher summarily, and that on dismissal he was obliged to leave forthwith, although he might have a claim against the board for salary—*Douglas' Cottage School Trustees* v. *Milne*, November 15, 1884, 12 R. 141, 22 S.L.R. 98; *Robson* v. *School Board of Hawick*, January 19, 1900, 2 F. 411, 37 S.L.R. 306; Public Schools (Scotland) Teachers Act 1882 (45 and 46 Vict. cap. 18), sec. 4.

Counsel for the respondent were not called upon.

The LORD PROBATIONER (DAVID DUNDAS, K.C.)—Having listened attentively to all that has been said by the counsel for the reclaimers I see no reason to doubt that the Lord Ordinary's interlocutor is right and ought to be adhered to. The complainers, the School Board, ask that the respondents be interdicted from acting as headmaster of the school, and from entering the school and grounds thereof for the purpose of teaching therein, and from interfering in the conduct or management of the school. In support of the prayer of their note they aver that on 24th November 1904, "at a meeting called in terms of section 3 of the Public Schools (Scotland) Teachers Act 1882, they resolved to dismiss the respondent from his office as headmaster of said school." The averment proceeds to incorporate, as part of the pleading, the alleged "resolution" which is said to be contained in the complainers' minute of said date. Now, when one comes to inspect the terms of that minute, it is, I think, quite clear that, whatever the complainers may have desired or intended, it does not contain any resolution to dismiss the schoolmaster from his office. The minute records a motion by the chairman that Mr Aird "be dismissed, his duties to terminate six weeks from this date according to the terms of his engagement." It also records a protest by two of the members present against the legality of the whole proceedings, and then there is a counter motion that "Mr Aird be not dismissed." But the minute does not disclose whether or not either of these motions was put to the meeting nor any "resolution" at all in either sense. It seems to me, therefore, that the complainers' averment that they "resolved to dismiss" the respondent is radically irrelevant. It is not, I think, a question of defective language, which might be improved and corrected upon an adjustment of the record, but rather of an essential defect in fact which cannot be cured by any alteration of the pleadings. I agree with the Lord Ordinary where he says in his note—"I think it clear that this minute does not contain a resolution of the Board to dismiss the respondent, and that therefore there is no relevant averment by the complainers that such resolution was ever arrived at." The Lord Ordinary in a later part of his note, where he states that in his opinion the case may safely be disposed of as it stands, says that he was invited to look at other minutes "as showing that it was the desire of a majority of the School Board to dismiss the respondent, and counsel for the complainers said on their behalf that they did desire to do so, and said he could prove their resolution to do so otherwise than by the said minute. But this minute is the only 'resolution' they set forth as the ground of this note." I agree with this expression of opinion by his Lordship. The complainers' counsel urged that your Lordships should infer from an examination of the minute that a resolution though not recorded was actually passed in favour of dismissal, and that the Court ought to allow parole proof of what occurred at the meeting, although not embodied in the minute. My opinion, concurring with that of the Lord Ordinary, is that these contentions are quite untenable, and in expressing this view I do not think that I am saying anything which could possibly be held to differ from or to infringe upon the *dicta* of Lord President Inglis in the well-known case of the *City of Glasgow Bank Liquidators*, 7 R. 1196, which was referred to in the argument.

Upon these short and simple grounds my opinion is in favour of adhering to the interlocutor reclaimed against.

No other point seems to arise for decision. For if there was no valid dismissal, there is no occasion to discuss whether or not the respondent received due intimation that he was dismissed.

LORD ADAM—I entirely concur with the very clear observations of the Lord Probationer, and I only desire to add with regard to the third section of the Act of 1882 that I dissent altogether from the view that a statutory body such as a school board can depose a schoolmaster by a merely verbal dismissal. It can only be done by a resolution formally adopted and duly authenticated.

LORD M'LAREN—I also concur with the Lord Probationer. I think that when a statute empowers a board to appoint or

dismiss a person by resolution it must be by a resolution in writing duly recorded and authenticated. In the absence of any authority for the view that a verbal resolution is sufficient I should suppose that 'resolution' must mean a resolution made and recorded in the ordinary way. In this case, for some reason which was unexplained, there was no recorded resolution dismissing the master of the school, and in these circumstances I think the Lord Ordinary was right in refusing to interdict him from discharging his duties.

LORD KINNEAR concurred.

The Court adhered.

Counsel for Complainers and Reclaimers —Salvesen, K.C.—W. Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for Respondent—T. B. Morison —J. G. Jameson. Agents—Kirk, Mackie, & Elliot, S.S.C.

Friday, February 17.

FIRST DIVISION.

[Sheriff Court at Stornoway.

MACKENZIE *v.* MACKENZIE (MACKENZIE'S TRUSTEE).

Crofter—Forfeiture of Tenancy—Renunciation of Tenancy -- Renunciation by Bankrupt Crofter with a View to Trustee in Bankruptcy Claiming Compensation for Improvements--Bankruptcy--Crofters Holdings (Scotland) Act 1886 (49 *and* 50 *Vict. c.* 29), *secs.* 1, 3, 7, *and* 8.

The Crofters Holdings (Scotland) Act 1886, sec. 3, provides that a crofter's tenancy shall be forfeited upon breach of any of certain statutory conditions—one of these conditions being the doing of "any act whereby he becomes notour bankrupt." Section 7 gives a crofter a right to renounce his tenancy, and section 8 a right on such renunciation to compensation for any permanent improvements.

A crofter's estate having been sequestrated, but his landlord having taken no steps to have him removed as in breach of the statutory conditions, the trustee applied to the bankrupt to execute a renunciation of the tenancy with a view to a claim to compensation for improvements. The bankrupt refused, and the trustee applied to the Sheriff to grant a warrant to compel the bankrupt to execute a renunciation of his tenancy.

Held that the bankrupt had no power to renounce his tenancy under section 7, inasmuch as it was already forfeited under section 3.

The Crofters Holdings (Scotland) Act 1886 (49 and 50 Vict. c. 29), sec. 1, provides—"A crofter shall not be removed from the holding of which he is tenant except in consequence of the breach of one or more of the conditions following (in this Act referred to as statutory conditions), but he shall have no power to assign his tenancy—(1) The crofter shall pay his rent at the terms at which it is due and payable. (2) The crofter shall not execute any deed purporting to assign his tenancy. . . . (6) The crofter shall not do any act whereby he becomes notour bankrupt within the meaning of the Bankruptcy (Scotland) Act 1856 and the Debtors (Scotland) Act 1880, and shall not execute a trust-deed for behoof of creditors." . . . Section 3 . . . — "When two years' rent of the holding is due and unpaid, or when the crofter has broken any other of the statutory conditions, he shall forfeit his tenancy, and shall be liable to be removed in manner provided by the 4th section of the Act of Sederunt anent removing of the 14th December 1756." Section 7—"A crofter shall be entitled upon one year's notice in writing to the landlord to renounce his tenancy as at any term of Whitsunday or Martinmas." Section 8—"When a crofter renounces his tenancy, or is removed from his holding, he shall be entitled to compensation for any permanent improvements, provided that" . . . . Section 16—"A crofter may by will or other testamentary writing bequeath his right to his holding to one person, being a member of the same family—that is to say, . . . subject to the following provisions"—. . .

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 4, provides— . . . "The words 'property' and 'estate' shall, when not expressly restricted, include every kind of property, heritable or moveable, wherever situated, and all rights, powers, and interests therein capable of legal alienation, or of being affected by diligence or attached for debt." . . . Section 81— . . . "And the bankrupt shall at all times give every information and assistance necessary to enable the trustee to execute his duty, and if the bankrupt fail to do so, or to grant any deed which may be requisite for the recovery or disposal of his estate, the trustee may apply to the sheriff to compel him to give such information and assistance and to grant such deeds under the penalty of imprisonment and of forfeiture of the benefit of this Act, and unless cause be shown to the contrary the sheriff shall issue a warrant of imprisonment accordingly." Section 102—"The act and warrant of confirmation in favour of the trustee shall *ipso jure* transfer and vest in him or any succeeding trustee for behoof of the creditors heritably and irredeemably as at the date of the sequestration, with all right, title, and interest, the whole property of the debtor to the effect following"— . . .

Donald Mackenzie, fisherman, Shader Point, Stornoway, was the holder of a croft under Major Duncan Matheson of Achany and the Lews, upon which he had erected a dwelling-house and other buildings of the value of about £300. His estates were sequestrated upon the 5th April 1904, and in due course James Murdo Mackenzie, law-clerk, Stornoway, was confirmed trustee thereon. With a view to making a claim upon the landlord for com-