Having regard to the undisputed facts, the claim of the appellant is in my judgment neither reasonable nor just. He admits that he was a purchaser with noticed of the rights of the fishermen. "I saw," he says, "the particulars of the purchase when I got the estate. I noticed that a charge of 5s. was made for beaching boats." And having had such notice, and having for many years recognised the privilege by receiving the payments and admitting his full knowledge that the withdrawal of it will be disastrous to the humble men who cannot pursue their calling unless their boats be preserved as they have been for generations from the winter storms, I am clearly of opinion that he should not be permitted to set up a claim which is equally discredited by lengthened usage, consensual legislation, and his own deliberate conduct for so many years.

I therefore entirely concur in the judgment proposed by my noble and learned friend on the Woolsack.

Appeal dismissed and judgment affirmed.

Counsel for Appellant — Southgate, Q.C. — Murphy, Q.C. Agents—Graham & Wardlaw, Westminster—Auld & M'Donald, W.S.

Counsel for Respondents — Cotton, Q.C. — Pearson, Q.C.—W. A. Brown. Agents—Holmes & Co.—Alexander Morison, S.S.C.

Monday, February 28.

MUIR *v.* THOMPSON AND OTHERS.

(Aute, vol. ix. p. 132.)

Mandate—Adjourned Meeting—Writ—Erasure.

Held (aff. judgment) that mandates bearing to be used at a meeting of the Parochial Board of a parish, to be held on 2d August or any subsequent day to which the said meeting might be adjourned, were validly used at a meeting held on a later day for the same purpose, although there had been no meeting on 2d August, and consequently no adjournment. *Held*, also, that an alteration by the printer of the date originally appointed in the mandate did not invalidate such mandate.

This was a case of disputed election to the inspectorship of the poor for the parish of Inveresk. The grounds of objection will be found in the report of the case in the Court below.

The defenders appealed against the judgment of the Second Division of the Court of Session.

The only objections discussed were those as to the invalidity of the mandates given for the election, on the ground (1) that no meeting for election had been held on the day specified in the mandates for such meeting, and that consequently the meeting at which the election was made could not be said to be an adjournment of such meeting, and that the mandates therefore, as they bore to be granted for a meeting to be held on the 2d August 1870, or any subsequent date to which such meeting may be adjourned, did not apply to the meeting at which the election took place; (2) that the date in certain mandates had been erased, and that they were therefore void.

Counsel for the respondents were not called on.

At delivering judgment—

LORD CHANCELLOR—My Lords, there was an election to the office of inspector of poor in the parish of Inveresk, and the question arose in consequence of that election, whether the respondent (Thompson) had been properly elected, his election being challenged by the appellant. Various objections were made to the validity of it, and two have now fallen to be reviewed by your Lordships. Those two objections concern, one of them 12 mandates and proxies, and the other 33 mandates, given by certain persons qualified to vote at that election.

My Lords, the objection to the 12 mandates was this. They were granted in point of form authorising the mandatory to attend, vote, and act for the person giving the mandate, "at a meeting of the Parochial Board of the parish of Inveresk, to be held on the 2d of August 1870, or any subsequent date to which the said meeting may be adjourned, for the election of an inspector of poor and collector of poor-rates in room of the late Mr Andrew Symons, with the same powers as belonged to the person signing the mandate." My Lords, the persons holding 12 of these mandates attended a meeting for the election of an inspector of poor and collector of poor-rates in the room of Symons, in 1870; they attended the only meeting held for that purpose in that or any other year, and they voted at that meeting. But the meeting was not held, and was not intended to be held, upon the 2d of August 1870, and therefore it could not be adjourned from the 2d August to any subsequent day. It was held upon a subsequent day in August. It was adjourned to a day in September, and the business was concluded in September. The objection is that the mention of the date of the 2d August 1870 being an error, made it impossible for the mandatory to to exercise his powers on the right day in August on which the meeting was held.

My Lords, I have no doubt that when any case comes before your Lordships or any court in Scotland in which any departure from a mandate, in anything which is essential or can alter the rights of the parties, is shown, it will be held that such a departure invalidates the use which has been made of the mandate. But the question here is, Is there any departure from the mandate in anything which can be essential? Your Lordships invited the learned counsel at the bar to point out any matter in respect of which this error of date could have led to any evil consequence—to any consequence not expected by the person who gave the mandate. But no suggestion of that kind could be made; nothing could be suggested in which there could have been any possible evil resulting from the error. In point of fact, my Lords, I submit to your Lordships that this is an instance of what is term in law *falsa demonstratio*. There is an error in the date which is corrected by the other parts of the mandate—the mandate pointing out in a way which could not be mistaken what the meeting was to be held for, and what the business was which the meeting was to transact. The object of the meeting was such that only one meeting could be held for the purpose. There could therefore

be no doubt or uncertainty as to the meeting at which the mandatory was to act. If that is so, if there is what Lord Bacon, I think, calls *præsentia corporis* as it were, the collateral error is immaterial; the certainty is gained by the description of the purpose for which the meeting was to be held. If that is so, I think your Lordships may well reject any error, if it be an error, in regard to the date, and hold that there is a certainty of the meeting, and that in point of fact the mandate was exercised at the meeting at which it was intended to be exercised.

My Lords, the other 33 mandates were subjected to an objection of a different kind. They were mandates in print, and the printer had in the first instance printed them with the date of, I think, the 15th of August 1870. That was an error of date; it ought to have been the 16th, and the figure 5 was erased by some process, and over and on the space where the 5 stood there was printed by type 6 in the place of 5. Now, my Lords, if it stood there without any evidence—that is to say, if your Lordships had had to deal with a case where there were a number of mandates all in print, and all with the same alterations made in this way upon them—I should myself have been clearly of opinion that the reasonable and natural presumption was that that alteration was made before the documents issued from the printer's hands, and before therefore they were used—before the person giving the mandate handed it to the mandatory. That, I think, would be the natural conclusion to be drawn under the circumstances. If you have got a document in print which has been altered afterwards in writing, inasmuch as writing may be placed upon it at any time, it may be doubtful at what time the writing was put there, and the presumption may perhaps be that it was put there after the document left the printer's hands. But it is quite different where you find that the alteration is a typical alteration, as to which the more natural presumption is that it was made in the place where alone types are to be found, namely at the printer's.

But your Lordships need not decide that question here, for your Lordships have the evidence of the printer, and the printer tells you that it was he who made the alteration, and that he made it as part of the business or job with which he was charged, and that after having made it he gave out the mandates to be used. Therefore your Lordships have nothing more than this, a printed document in which there has been an alteration in print made before the document has been used, or as we say, executed before the person putting it in circulation handed it to the mandatory. That being so, my Lords, I am at a loss to conceive what possible vice there is in the fact of an alteration having been made under these circumstances.

I therefore think that the Court below were perfectly right in the conclusion they arrived at, as well with regard to the 33 as to the 12 mandates, and that there is no ground whatever for this appeal, which I am bound to say is so minute in its nature, and proceeds upon a point of so little foundation, that one cannot but regret that such a case has been brought to your Lordships' House.

Lord Chelmsford—My Lords, the case is so very clear as to render it perfectly unnecessary for me to say more than that I entirely concur with my noble and learned friend.

Lord Hatherley—My Lords, I also fully concur. The object of the mandate was a simple one, namely, to authorise the mandatory to act for the person who gave the mandate at an election which was about to take place on some subsequent day, and which could take place only, as my noble and learned friend the Lord Chancellor has observed, at one meeting. It might be at the meeting adjourned, but that would be a continuance of the same meeting. And the meeting could be held only for one purpose, namely to fill up a given vacancy; for your Lordships will observe that the mandate says that the person was to be elected "in room of the late" so and so. There being that one object, and there being the certainty of the meeting being held for that purpose on a subsequent day, it appears to me that all this discussion about whether the exact date was correctly mentioned in the mandate, or whether there was an omission to put in the exact date in the instrument at the proper time, is wholly beside the question. The instrument is not vitiated in either case. This is different from the ordinary case in which instruments are treated as imperfect. This mandate is perfect for the purpose for which it was required, and I think therefore that these mistakes are of no importance.

Lord O'Hagan—My Lords, I quite agree with my noble and learned friends, and the case is in my opinion so perfectly clear that I do not desire to add anything to what they have said.

Appeal dismissed and judgment affirmed.

Counsel for Appellant—Robertson. Agents—W. Kelso Thwaites, S.S.C. — Andrew Gilman, Westminster.

Counsel for Respondent—Southgate, Q.C.—Shiress Will—Badenoch Nicolson. Agents—Gillespie & Paterson, W.S.—Connell & Hope, Westminster.

Thursday, March 9.

HUTTON *v.* HARPER.

(*Ante*, vol. xii. p. 586.)

Church—Parish quoad sacra—*Marriage—Proclamation of Banns.*

Held (aff. judgment of Court of Session) that the proclamation of banns is one of the functions and duties of the office of minister of a church erected into a parish church under the Act 7 and 8 Vict, c. 44, for the district attached thereto as a parish *quoad sacra*.

This was an action at the instance of the Rev. R. S. Hutton, the minister of the parish of Cambusnethan, and other members of the kirk-session of that parish and the session-clerk, "against the Rev. Alexander Harper, M.A., minister of the *quoad sacra* parish of Wishaw, and others, constituting, or claiming to constitute, the kirk-session of the said *quoad sacra* parish of Wishaw, and John Mackenzie, distiller at Wishaw, clerk to the kirk-session of the said *quoad sacra* parish of Wishaw," concluding for