

No. 1. ‘ of the county, and to the Commissary of the bounds, respectively, to inquire
 ‘ into the situation of the above-mentioned offices, and into the conduct of
 ‘ those acting as the Sheriff or Commissary-clerks, whether principal or depu-
 ‘ ties, particularly in the view of obliging the principals either to officiate them-
 ‘ selves, or to provide other qualified persons to act for them as their deputies,
 ‘ with adequate allowances for so doing ; and likewise into the conduct of Mr.
 ‘ Fraser as a practitioner, and how far he has been guilty of any malversation
 ‘ or breach of duty, either in one capacity or another, in case of any charge
 ‘ being made against him by the Procurator-fiscal or others, and to proceed as
 ‘ he shall find just and fit in the circumstances of the case.’

Act. *Rae.*Alt. *Hay.*Clerk, *Pringle.**D. D.**Fac. Coll. No. 149. p. 334.*1808. *July 9.*

ANDREW MILLAR, Schoolmaster in the parish of Cambuslang, *against* WIL-
 LIAM JACKSON.

No. 2.

Act 43d
 Geo. III. C.
 54. anent
 schoolmasters
 salaries. By
 2d and 5th
 sections of
 this act, it is
 declared, that
 within three
 months the
 heritors shall
 meet to ac-
 complish its
 purposes ;
 and within
 three months
 from the time
 when such
 meeting is or
 ought to have
 been held, the
 dissatisfied
 party may ap-
 peal to the
 quarter-ses-
 sions. These
 periods hav-
 ing elapsed,
 it was never-
 theless found
 competent to

By the act 43d Geo. III. C. 54. it is enacted, ‘ That from and after the
 ‘ term of Whitsunday next, 1803, the salary of each parochial schoolmaster, in
 ‘ every parish of Scotland, shall not be under the sum of 300 merks Scots per
 ‘ annum, nor above the sum of 400 merks Scots per annum, except in the cases
 ‘ herein after mentioned.’

Sect. 2. prescribes a period within which the heritors are to meet and settle
 the amount of the salaries : ‘ And be it further enacted, *That within three*
 ‘ *months after the passing of this act,* the heritors possessed of the qualification
 ‘ required by this act, and the ministers of every parish, shall hold a meeting,
 ‘ of which intimation shall be given from the pulpit immediately after divine
 ‘ service in the forenoon, and by circular letters to be written by the ministers
 ‘ of the parish to such heritors having the qualification prescribed by this act,
 ‘ who are non-resident, and also by leaving a written notice at the mansion-
 ‘ house of every heritor, whether resident or not, at least thirty free days be-
 ‘ fore such meeting shall take place ; and on due consideration of the circum-
 ‘ stances of the particular parish, in respect of extent, population, and valued
 ‘ rent, and the probable amount of the other emoluments of the schoolmaster’s
 ‘ office, such meeting shall judge and determine whether the schoolmaster’s
 ‘ salary should be 300 merks Scots per annum, or 400 merks Scots per an-
 ‘ num, or such sum between these two sums as to such meeting shall seem
 ‘ most suitable to the circumstances of the parish ; and shall fix and determine
 ‘ the amount of the schoolmaster’s salary by a resolution to be made at such
 ‘ meeting ; a copy of which resolution, signed by the preses of the meeting, shall

‘ be delivered to the schoolmaster of the parish, as his authority for collecting
 ‘ and receiving the salary thereby fixed and determined, which shall be paid
 ‘ by the several heritors at the same terms, apportioned among them in the
 ‘ same manner, and with the same relief against their tenants as is provided by
 ‘ the aforesaid act of Parliament of Scotland, passed in the year 1696.’

No. 2.
 call a meeting
 of the heri-
 tors.

Sect. 5. prescribes a period within which the dissatisfied schoolmaster or heritor may respectively appeal to the quarter-sessions from the determination of the heritors.

Sect. 5. ‘ Provided always, and be it enacted, That in case the heritors and
 ‘ minister shall neglect or refuse to determine the amount of the salary to be
 ‘ paid to the schoolmaster, according to the provisions of the act; or in case
 ‘ any heritor, or the schoolmaster, shall be dissatisfied with the determination
 ‘ made, it shall be competent, *within three months after such meeting ought to have
 ‘ been held, or such determination shall have been made*, for the schoolmaster to
 ‘ apply, or for such person so dissatisfied to appeal, to the next quarter-session
 ‘ held for the shire or stewartry within the bounds of which the parish or parish-
 ‘ kirk lies, whose judgment shall be final; and no appeal, by advocacy, sus-
 ‘ pension, or otherwise, shall be admitted against the judgment given at the
 ‘ quarter-session: Provided always, that no heritor of the parish, from whence
 ‘ such appeal comes, shall vote upon such appeal at such quarter-session.’

It is declared by sect. 3d, ‘ *That the salaries so fixed and determined, in manner
 ‘ above directed, shall continue to be the salaries payable to the schoolmaster of
 ‘ every parish for and during the period of 25 years from and after the passing
 ‘ of this act.*’

The three months from the enactment of the statute, within which the heritors might meet, elapsed on 11th September 1803, and the three months within which the heritors or ministers might appeal, elapsed on December following, before any steps were taken under this act in the parish of Cambuslang.

On the 2d of February 1804, a meeting was held, which was attended by two of the heritors. One of the heritors stated, that the period pointed out by the statute, both for the meeting of the heritors, and appealing to the quarter-sessions, had elapsed, and that any proceedings, therefore, on the matter were illegal and incompetent. Nothing was done at this meeting.

Another meeting was called, and held on the 15th November 1804, which was adjourned to the 15th December following, in expectation of a better attendance of the heritors. This meeting was attended by the clergyman of the parish, and by the factor of Mr. Hamilton Dundas of Westburn; and the sum of $385\frac{5}{4}$ merks was given in augmentation of the schoolmaster's salary, and $14\frac{3}{8}$ in lieu of a certain deficiency of garden ground, making in all 400 merks.

The Duke of Hamilton and Mr. Jackson of Spittal having declined to pay their proportion, the pursuer raised an action concluding for payment.

No. 2. The following defences were returned, ‘The meeting of the heritors at Cambuslang, held on 15th December 1804, had no power to augment the salary of the schoolmaster of that parish; that even although said meeting had possessed the power of augmenting, yet the circumstances of the parish did not warrant their doing so.’

The case was discussed before the Lord Justice Clerk, Ordinary, who pronounced the following interlocutor (17th December 1807 :) ‘The Lord Ordinary having considered the libel, with the defences, and act of Parliament libelled on, and heard parties procurators, sustains the defences given in for William Jackson, Esq. assoilzies him from the conclusions of the libel, and decerns.’

The cause came by petition and answers before the Inner-House.

Several of the Judges agreed with the Lord Ordinary. It was observed, that the act had augmented the salary of all the schoolmasters in Scotland to 300 merks; and any further augmentation could only be obtained by calling a meeting of the heritors according to the form, and within the period prescribed by the statute. This period had expired, and nothing could be done for 25 years.

A considerable majority of the Court, however, were of opinion, that, in just and fair construction of the act, the claim of the schoolmaster was not foreclosed; a peremptory obligation is imposed on the heritors to meet within a certain period; but it is no where declared that if the schoolmaster shall acquiesce in a delay beyond this period, further proceeding should be null, or that it should, at a future period, be incompetent for the heritors to fulfil the obligation imposed on them by the statute.

The Court (9th July 1808) altered the interlocutor of the Lord Ordinary, and ordained the heritors to meet.

Lord Ordinary, *Justice-Clerk.*

Act. *John Connell.*

Alt. *John Jardine.*

John

Patison, W. S. and Jas. Wylie, W. S. Agents.

F. Clerk.

J. W.

Fac. Coll. No. 68. p. 248.