LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court pronounced this interlocutor—

"Direct and ordain that the voluntary winding-up of the Eglinton Chemical Company, Limited, resolved on by the special resolution of the shareholders of the company on 7th and confirmed 28th, both days of December 1898, be continued, with Patrick Graham, C.A., Glasgow, as liquidator, but subject to the supervision of the Court in terms of the Companies Acts 1862 and 1898, declaring that any of the proceedings under the said winding-up may be adopted as the Court may think fit: And declare that the creditors, contributories, and liquidator, and all other persons interested, are to be at liberty to apply to the Court as there may be just occasion: And declare that unless and until it shall be otherwise directed and ordained by the Court, no sale of the assets of the said company shall take place, and no compromise with any contributory shall be effected without the sanction of the Court: Find the petitioner W. J. A. Donald entitled to the expenses of the petition, as the same shall be taxed by the Auditor, and ordain the said expenses to be expenses in the liquidation, and remit to Lord Stormonth Darling, Ordinary, in terms of the Companies Act 1886, to proceed in the subsequent proceedings in the winding-up, and decern."

Counsel for the Petitioners—Shaw, Q.C. —Fraser—Spens. Agents—Cuthbert & Marchbank, S.S.C.

Counsel for the Respondents—Hunter. Agents—Wallace & Begg, W.S.

Friday, January 19.

SECOND DIVISION.

[Lord Stormonth-Darling, Ordinary.

ROBSON *v.* HAWICK SCHOOL BOARD.

School—Teacher—Appointment—Interim Appointment — Dismissal — Education (Scotland) Act 1872 (35 *and* 36 *Vict. c.* 62), *sec.* 55 *—Public Schools (Scotland) Teachers Act* 1882 (45 *and* 46 *Vict. c.* 18), *sec.* 3 (1).

Notwithstanding the terms of the Education (Scotland) Act 1872, sec. 55, which enacts that every appointment of a teacher in a public school "shall be during the pleasure of the School Board," it is within the powers of a School Board to appoint an interim teacher to act for a definite period during the temporary absence of the ordinary teacher, and the provisions of the Public Schools (Scotland) Teachers Act 1882, sec. 3 (1), as to the dismissal of teachers do not apply to such interim appointments, no further or other notice of their termination being required than what is involved in the terms of the appointment.

School — Teacher — Suspension — Public Schools (Scotland) Teachers Act 1882 (45 *and* 46 *Vict. c.* 18), *sec.* 4—*Reparation — Wrongous Suspension of Teacher — Malice.*

A school board is entitled in their absolute discretion to suspend a teacher summarily, and such suspension will not afford ground for an action of damages by the teacher against the school board, even if the teacher avers malice and special damage.

Process—Poor's Roll—Memorial to Reporters — Conclusions not Mentioned in Memorial—Act of Sederunt 21*st December* 1842, *sec.* 11.

A litigant who had obtained the benefit of the poor's roll brought an action, in which she claimed (1) salary, (2) damages for wrongous dismissal, or alternatively for wrongous suspension, and (3) damages for assault and wrongous imprisonment. Although the facts upon which the third conclusion was based were mentioned in the memorial which had been presented to the reporters, in terms of the Act of Sederunt 21st December 1842, section 11, the pursuer only claimed in that memorial that she had a relevant action for wrongous dismissal. *Held* that the case must be sisted until the pursuer had had an opportunity, if so advised, of applying for admission to the poor's roll to enable her to follow forth the action so far as the third conclusion was concerned.

This was an action at the instance of Miss Jane Robson, formerly school teacher, and now residing in Edinburgh, against the School Board of Hawick, and the individuals who composed that Board in October 1896, in which the pursuer concluded (1) for payment by the School Board of £200 as salary due to her; (2) for payment by the School Board of £500 as damages and *solatium* (*a*) for wrongous dismissal and defamation, or for wrongous suspension and defamation, and (*b*) for assault committed by the clerk to the School Board; and (3) for payment by the individual defenders of £500 as damages and *solatium* for assault and wrongous imprisonment.

In August 1896 the School Board of Hawick inserted the following advertisement in the *Scotsman* and *Glasgow Herald*—"Teachers wanted by the Burgh of Hawick School Board, viz., one interim female certificated teacher to take charge of infant school for two or three months during absence of principal. Salary £80." . . .

The pursuer, who was a Government parchment certificated teacher, applied for this appointment, and received the following telegram from the clerk to the School Board:—"Board appointed you interim head-mistress. Engagement three months, salary £80. Commence Monday. Wire

acceptance." The pursuer replied—"Accept Board's appointment; conditions as *per* your telegram." On 11th September 1896 the clerk wrote to the pursuer—"I have your telegram accepting the appointment of interim headmistress of Wilton School, and I now beg to confirm same. The engagement is to be for a period of three months. Salary at the rate of £80 per annum, and you are to enter on your duties on Monday first." The pursuer entered on her duties on 14th September 1896. On 26th October 1896 the pursuer ceased to act as a teacher in Wilton School On the same day she left Hawick, and since that date she had not acted as a teacher under the Hawick School Board.

On 2nd November 1896 the clerk wrote to the pursuer . . .—"Madam,—I am instructed by the Board to inform you that at a meeting of the Board, held at Wilton Infant School on Monday the 26th of October last at 3·30 p.m., it was resolved unanimously, after full consideration, and in consequence of the complaints made to the Board against you by the headmaster and others, summarily to suspend you from the exercise of your duties as interim headmistress of the said school."

On 18th January 1897 the pursuer received payment of the balance of salary due to her up to 13th December 1896, being three months from the date of her entry on her duties.

With reference to the circumstances under which she left Wilton School, the pursuer averred that she had differences with the headmaster and her fellow-teachers, who she believed brought influence to bear on the School Board against her, but that it was unknown to her whether definite complaints were made against her, and if so, what they were, and that in other respects the causes of the events referred to were most imperfectly understood by the pursuer, and had never been explained to her; that on 26th October 1896, about 3·45 p.m., the individual defenders and the clerk to the Board came to her class-room, and after the children had been dismissed, the chairman of the Board said to her, "You must leave," and that she said she would go to Edinburgh at once and get advice; that immediately thereafter the clerk to the School Board tore out of her hands certain books which were her own property, and endeavoured to take certain keys from her; that her hat was knocked off, and that she was struck and kicked; that she was assaulted by the clerk, being the servant of the Board, and acting in their supposed interests, and that he was aided and abetted and his conduct approved by the individual defenders; that on the same day she was charged by the individual defenders, or the clerk on their behalf, with assault and breach of the peace, and was apprehended and taken in custody to the police office; that she was subsequently tried and convicted of assault by the Sheriff-Substitute, and that this conviction was ultimately quashed by the High Court of Justiciary; that the School Board or some members thereof, at or shortly after the assault, made statements to the effect that she was insane, thus showing malice on their part towards her; that she had never been validly dismissed from her situation in Wilton School according to the provisions of the Act (45 and 46 Vict. c. 18); that in particular no notice of any meeting to consider her dismissal had been intimated to her, as required by section 3 (1) of said Act, and that accordingly she still held her situation, and was entitled to salary at the rate of £80 per annum from 13th December to the present time; that if, however, she had been validly dismissed, her dismissal was made maliciously and not from a sense of duty.

With reference to the clerk's letter, in which the Board's resolution to suspend the pursuer was intimated, she averred as follows:—"(Cond. 15) It is not within her [the pursuer's] knowledge whether any such resolution was ever formally and effectually passed. If passed, said resolution, in view of the mode of its intimation and of the whole facts condescended on, was not adopted from a sense of duty, but was malicious and oppressive, and being injurious to the pursuer's professional reputation, she claims reparation in respect thereof alternatively to the claim made in the following article for damages for wrongous dismissal."

The pursuer also alleged that in consequence of her suspension or her dismissal if validly made, she had suffered injury to her professional reputation and prospects and to her feelings, and further alleged that in consequence of the whole actings of the defenders it had become virtually impossible for her to obtain employment in her profession, and that in fact she had been unable to obtain any situation therein.

The defenders the Burgh School Board of Hawick pleaded, *inter alia*—"(3) No relevant case."

The other defenders also pleaded that the action was irrelevant.

The pursuer had been admitted to the benefit of the poor's roll. In the memorial submitted to the reporters in terms of the Act of Sederunt, 21st December 1842, section 11, the facts with reference to the alleged assault upon the pursuer, and her apprehension, imprisonment, trial, and conviction, were set forth, but it was only claimed that she had a relevant action for wrongous and illegal dismissal against the School Board and its individual members, the assault and wrongous imprisonment being referred to not as an independent ground of action but merely as indicating that the Board and its individual members on dismissing or suspending the pursuer were acting maliciously.

The Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62) enacts as follows—Section 55 . . . "After the passing of this Act the right and duty to appoint teachers of public schools shall be in the respective school boards having the management of the schools, who shall assign to them such salaries or emoluments as they think fit,

and every appointment shall be during the pleasure of the school board."

The Public Schools (Scotland) Teachers Act 1882 (45 and 46 Vict. cap. 18) enacts as follows—Section 3 (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" . . . Section 4. "Notwithstanding anything contained in this Act, it shall be lawful for a school board summarily to suspend any teacher from the exercise of his duties, but such suspension shall not affect the teacher's right to the salary or other emoluments attached to his office."

On 24th November 1899 the Lord Ordinary (STORMONTH DARLING) pronounced the following interlocutor—"Sustains the third plea-in-law for the defenders the Burgh School Board of Hawick, and in respect thereof dismisses the first and second conclusions of the summons, and decerns: Finds the said defenders entitled to expenses: Allows an account thereof to be given in, and remits the same to the Auditor to tax and report: *Quoad ultra* sists further procedure in order that the pursuer may have an opportunity, if so advised, of applying for admission to the poor's roll to enable her to follow forth the action so far as the third conclusion is concerned."

Opinion.—"This action consists of two branches, the one being directed against the School Board of Hawick, and the other against certain individual members of it as it stood in October 1896. The action, so far as regards the School Board, is met by a plea founded on the Public Authorities Protection Act 1893, but I find it unnecessary to decide whether that Act is applicable to the circumstance of the case, because I am very clearly of opinion that the pursuer has not stated a relevant case as against the School Board. She was engaged in September 1896 as interim headmistress of the School Board upon an engagement of three months at a fixed salary. The necessity for that engagement arose out of the fact that the regular teacher in the school had obtained leave of absence. Accordingly, when the pursuer entered upon her duties she knew that her appointment was limited to three months, that it was an interim appointment, and that the most she could expect was that she should receive the stipulated salary for these three months. It happened that the School Board were not satisfied with her mode of discharging her duties, and suspended her from their execution. That appears from the statement of the pursuer herself as having been intimated to her on 2nd November; but although they requested her to relinquish her duties—a decision in which she very properly acquiesced by leaving Hawick—they did not carry the matter so far as to raise any question about her remuneration. Accordingly, she received her full salary for the stipulated three months. In these circumstances I must say it borders on the extravagant for her to say that she is still headmistress of this school, and still entitled to receive a salary. It seems to me equally vain to say that the School Board were in any way bound, in dealing with her, to adopt the machinery provided by the Act of 1882, which is plainly intended to meet the case of what I may term the regular staff of the public schools. It is intended to provide a certain security against sudden and inconsiderate dismissal. But it has no conceivable connection with the case of a person who was employed, as this pursuer was, for a definite short period to fill a temporary vacancy, and who was never dismissed at all. It seems to me, therefore, that the summons, in so far as it concludes for £200 of salary, and £400, which is the amount claimed for wrongous dismissal, is entirely irrelevant, and ought not to be allowed to proceed further.

"Then there is a further sum of £100 which lurks under the general conclusion of £500, and which the pursuer explains is intended to meet the case of an alleged assault which was committed upon her by the clerk to the School Board. Here also I think the allegations are irrelevant. It is always a matter of delicacy to 'redd the marches,' so to speak, between the two maxims *culpa tenet suos auctores* and *respondeat superior*, but courts of law must at all events be careful not unduly to extend the cases where a master is to be held responsible for the criminal or quasi-criminal act of his servant. Negligence is another matter; but where, as here, the ground of claim is something in the nature of a crime, the area of a master's responsibility is a very limited one, and I take it to extend no further than this, that if the servant is placed by his master in a position where it is within the scope of his authority to exercise a certain amount of force, and if he is left to judge of the amount of force which he ought to exercise, then the master will be responsible for even an error of judgment on his part which leads to something of the nature of assault, and that although the master may have enjoined him to exercise caution, and to refrain from anything like undue violence. The case of railway servants is a familiar instance. It is part of their duty to exercise force in certain circumstances in the treatment of passengers, and if they use force where they ought not to use it the railway company are rightly held liable. But that always proceeds upon the view that the servant at the time of the assault was acting within the scope of his employment and by the implied authority of his master. Now, if that be the law, it is idle to say that a school board engages a clerk for the purpose of using any kind of force towards the teaching staff of the school. He has no duty at all of that sort. Indeed, his duties are mainly within the offices of the School Board, and if he does so far forget his duty as to commit anything in the nature of an assault upon an

official of the Board, then he must answer for that himself, as in nine cases out of ten he is very well able to do. But the Board have not placed him in a position in which it can be said that he is acting with their authority. I find not a single allegation by the pursuer that Mr Oliver was acting within the scope of his employment, except the bare fact that at the time of this alleged offence he occupied the position of clerk to the Board, and that the pursuer was acting as a temporary teacher. That is not a ground for letting in the maxim *respondeat superior*, and accordingly I think that on this branch of the case as well as on the other the averments of the pursuer are altogether irrelevant.

"The case against the individual members stands in a somewhat different position. Here again the Public Authorities Protection Act is pleaded, but I think it inapplicable. It limits the time within which action can be brought for any act done in the direct execution of a statutory or public duty. It does not, in my opinion, apply to acts which arise out of the execution of such a duty, but are only indirectly connected therewith. It is further said that the decision in *Taylor* v. *M'Dougall*, 12 R. 1304, strikes at the conclusion for £500 against all those defenders, because the conclusion is founded on two separate wrongs, one being the alleged assault and the other the alleged wrongous information given to the police which led to the arrest of the pursuer. Now these, no doubt, are separate wrongs, but in the pursuer's narrative they are very closely related, and, what is still more important, she charges all of the defenders with complicity in both. It may turn out, if the case goes to trial, that she will fail altogether or succeed only as regards one or two; but as a question of averment she charges all with both of these alleged wrongs. Accordingly it seems to me that *Taylor* v. *M'Dougall*, the peculiarity of which was that one of the defenders had no connection whatever with one of the wrongs complained of, has no application.

"But then there remains what I confess I have found a very troublesome question—whether there is any relevant charge of assault here at all. The averments are to be found in condescendence 8, and certainly they are open to very serious criticism. If one were to scan the words of that condescendence critically, I think it might be said that, taking the weakest limb of the pursuer's averment, she charges these gentlemen with nothing more than approving of the action of somebody else and failing to give her assistance, which of course would not amount to an assault at all. But on the whole I have come, with some hesitation, to think that the relevancy is sufficient, for two reasons. In the first place, she does aver that they all had a common object in attempting to obtain possession of some keys in her possession, and she avers that these gentlemen assaulted her, and that she was struck and kicked and pushed against the wall by all or one or more of them. I am naturally unwilling to criticise averments of that kind too closely, and on the whole I think they probably amount to a relevant charge of assault. Similarly, with regard to the malicious information, it is a very strong *prima facie* circumstance against the pursuer's case, that the Sheriff who tried the charge of assault found it proved. That is the pursuer's own averment. The conviction was afterwards quashed, but not upon the merits; and the fact remains that a capable magistrate was convinced of her guilt by the evidence before him, which is not said in any way to have been procured by perjury or other unlawful means. At the same time what I think makes the charge barely relevant is that in substance it amounts to this—'You five gentlemen having made an assault upon me, proceeded immediately to charge me with making an assault upon you;' and if that were proved to be true, probably it would constitute sufficient proof both of malice and want of probable cause; and therefore upon that ground I have come to the conclusion that the relevancy may be held sufficient.

"But then it appears that this pursuer, who is suing *in forma pauperis*, has not, as regards this part of the case, obtained any finding by the reporters that she has a probable cause for litigation. When she went before these gentlemen she merely told them in the memorial which was submitted under the Act of Sederunt that she intended to raise an action of damages against the School Board and its individual members for wrongous dismissal. She said not a word about her claim for assault. Certainly as regards this charge she did not afford the reporters any opportunity of judging whether she had a probable cause of litigation or not. Accordingly it seems to me, if she intends to proceed with this part of her case, she can only do it upon condition either of finding caution or going back to the reporters and adopting the procedure prescribed by the Act. Therefore, as regards the conclusions against the School Board, I shall dismiss the action as irrelevant, and *quoad ultra* I shall sist it in order that the pursuer may have an opportunity, if so advised, of applying for the benefit of the poor's roll."

The pursuer reclaimed, and argued—(1) As regards the third conclusion, in the memorial submitted to the reporters the pursuer set forth the facts upon which the claim of damages for assault and wrongous imprisonment was based. It did not signify that she had only asked for leave to bring an action for wrongous dismissal. Once she had been found to have a *probabilis causa litigandi* she was entitled to bring an action with any conclusions which her advisers thought proper, so long at least as these conclusions were all based upon the same facts as had been disclosed to the reporters. Intimation to the opposite party was not necessary as an essential solemnity—*Grassie, Petitioner*, November 24, 1836, 15 S. 116. But in any view this objection to the pursuer's action came too late, and was not competently raised. The

Lord Ordinary had no power to deal with it. The only competent course open to the defenders was to petition the Court to refuse the pursuer the benefit of the poor's roll *quoad* the third conclusion. (2) It was not competent for a school board to appoint a teacher otherwise than during their pleasure—Education (Scotland) Act 1872, section 55—*Morrison* v. *Abernethy School Board*, July 3, 1876, 3 R. 945. It was not, therefore, within the power of the School Board here to appoint the pursuer for a definite period of three months, no more and no less. This rule applied to the case of an interim teacher, for "teacher" was defined by section 1 of the Act to mean "every person who forms part of the educational staff of the school." The pursuer could only therefore be appointed, and must be assumed to have been appointed, during pleasure; her appointment could not be held to be upon the condition that it was to terminate exactly three months after it began, and she could only be validly dismissed by following the procedure pointed out in the Public Schools (Scotland) Teachers Act 1882, section 3 (1). The effect of that Act and the decisions was, that a teacher was entitled to three weeks' notice of the meeting at which his dismissal was to be considered; and thereafter, if at such meeting a resolution for his dismissal was duly carried, to three months' notice of dismissal—*Morrison* v. *Abernethy School Board, cit.*; *Hinds* v. *Dunbar School Board*, June 6, 1883, 10 R. 930. The appropriate procedure for dismissing a teacher had not therefore been adopted here, and the pursuer was therefore entitled to salary as concluded for in the first place. Suspension, even conceding that the pursuer had been validly suspended here, did not affect her right to salary—Public Schools (Scotland) Teachers Act 1882, section 4. (3) Even assuming that no objection could be taken to the pursuer's dismissal in respect of non-compliance with the statutes, the mere payment of wages was not sufficient damages for such a dismissal as took place here—Fraser, Master and Servant (3rd ed.) 165. (4) The pursuer's averment that she was suspended, coupled with allegations of malice, and of facts and circumstances from which malice might be inferred, and also of special damage resulting, were relevant to found a claim of damages. Suspension necessarily inferred injury to professional reputation, and if such injury were inflicted not in pursuance of official duty but for the gratification of malice, as averred here, the perpetrator of the injury was liable in damages to the party injured. (5) The Board, and also the individual members, were liable for the assault committed by their clerk under the circumstances stated—*Dyer* v. *Munday* [1895], 1 Q.B. 742.

Counsel for the defenders were not called upon.

Lord Justice-Clerk—The pursuer in this case is maintaining the relevancy of an action in which she concludes for damages (1) on account of wrongous dismissal, and (2) on account of assault. The case therefore falls into two departments. Part of it has been decided by the Lord Ordinary, and part of it has been reserved. As regards the part which has been reserved, I have no doubt that the Lord Ordinary was right. On the face of the memorandum which was laid before the reporters on *probabilis causa litigandi* there appears nothing but a case of wrongous dismissal. There is nothing about any claim for assault, and I think that the Lord Ordinary was right in reserving that part of the action until the reporters have had an opportunity of considering it.

As regards the part of the action which relates to wrongous dismissal, the pursuer concludes (1) for salary and (2) for damages in respect of wrongous dismissal. We have here in writing the terms upon which the pursuer was appointed. The terms of the appointment were communicated to the pursuer by telegram first, and then by a letter, which is quoted in the pursuer's condescendence, and is to this effect—"I have your telegram accepting the appointment of interim headmistress of Wilton School, and I now beg to confirm same. The engagement is to be for a period of three months. Salary at the rate of £80 per annum; and you are to enter on your duties on Monday first." That telegram and letter followed on an advertisement which originated the communications between the parties, and the terms of which were—"Teachers wanted by the Burgh of Hawick School Board, viz., One interim female certificated teacher to take charge of infant school for two or three months during absence of principal. Salary £80.' There was therefore here a principal teacher, and she remained the "teacher" in the sense of the Education Acts. But she was allowed leave for a time, and some one else had to be appointed *ad interim*. That the Board had power to make an interim appointment I hold cannot be doubted. Such a department of the public service as a school board school could not be carried on if they had not such a power. There is nothing in the Acts to prevent a school board from appointing interim teachers upon such terms as they please. If a "teacher" is appointed, then under the Acts such a teacher is directly entitled to have the benefit of all the conditions which the Acts impose on the dismissal of a "teacher." It is not so here. The pursuer was appointed as an interim teacher on an express contract for a fixed period of three months. There is nothing to show that the School Board were not entitled to make such an interim appointment, or that if made the Acts of 1872 and 1882 apply to it.

But further, I am of opinion that the pursuer had notice of dismissal, for her appointment contained notice that it was to terminate in three months, and she accepted the appointment upon these terms. The pursuer got her appointment for three months only, and she had no right to occupy it for one day longer.

As to the suspension, I think the Board were entitled to suspend the pursuer from

her office. As to damages for that suspension, Mr Boswell maintained that a suspension involved a slur. I do not think it involves any slur. That would depend upon the character of the suspension.

Upon the whole case I think that the Lord Ordinary was right, and that his interlocutor should be affirmed.

LORD M'LAREN — The first question is whether there is here a relevant charge of wrongous dismissal. To a right understanding of that point I think it is necessary to consider the provisions of the Act of 1872 as well as those of the Act of 1882. By the 55th section of the earlier Act it is provided that every appointment of a teacher shall be during the pleasure of the board, and there is no question that under that statute an interim appointment is within the powers of a school board; no appointment can be more clearly an appointment during pleasure than an interim appointment. It has been held that as a matter of equity the teacher is entitled to fair notice, and in the case of an interim appointment the statement in the letter of appointment that it is to be for so many weeks or months would be regarded by any Court as sufficient notice—all the notice, indeed, which the appointee can receive as to the duration of the appointment and its termination. Fair notice of the termination of the appointment is implied in the terms of the appointment—in the very fact that it is an interim appointment.

The law regarding the determination of a teacher's engagement was so far varied by the Act of 1882 that under the 3rd section of that Act a teacher was not to be dismissed until after three weeks' notice had been given of the meeting called to consider the proposal to dismiss. If this was a case of dismissal, as it is stated to be in the pursuer's averment, the provisions of the third section of the Act of 1882 were not in fact brought into operation. But then this was not a case of dismissal, because the appointment was in its nature a terminable appointment, and was for a period of three months certain, and the pursuer has received three months' salary according to contract.

It does not follow that because a teacher is entitled to salary the teacher is to be allowed to remain in the school against the wishes of the school board. It might lead (I do not suggest that it was so in this case) to great harm if the teacher remained in the school during the time the notice was running. Accordingly, it is provided by section 4 that it shall be in the power of the School Board to suspend any teacher. The pursuer was suspended when her appointment had a month to run. After the children had been dismissed upon the occasion in question, the chairman of the School Board said to the pursuer—"You must leave." That was a suspension of the pursuer from her office. That is made plain by the letter of the clerk, in which she is told that she has been suspended. No legal wrong was done to the pursuer by being displaced from her position of interim teacher in the manner set forth upon record.

No doubt there is force in the observation that a teacher who is suspended lies open to the reflection that there must be good ground for it. It is an unpleasant position for the teacher. But we cannot inquire into the reasons of the Board. Even if there were no grounds for it, and even if, as is said here, the Board was actuated by malice, still as its members were acting within their statutory powers, being entitled at their discretion to suspend a teacher without giving reasons, I am of opinion that no action will lie against them.

As to the other point, I think the proper course will be to remit to the reporters on *probabilis causa*.

LORD TRAYNER—I agree with the Lord Ordinary.

LORD YOUNG and LORD MONCREIFF were absent.

The Court adhered.

Counsel for the Pursuer and Reclaimer—M'Lennan—Boswell. Agent—Peter Dowie, W.S.

Counsel for the Defenders and Respondents the School Board (and the individual members other than the Chairman)—Shaw, Q.C.—Guy. Agents—Sibbald & Mackenzie, W.S.

Counsel for the Defender and Respondent the Chairman of the School Board—W. Hunter. Agents — Turnbull & Herdman, W.S.

Saturday, January 20.

FIRST DIVISION.

TRUSTEES OF PORTOBELLO FEMALE SCHOOL, PETITIONERS.

Trust—Scheme of Administration—Nobile Officium — Allowance to Teacher when School Discontinued.

In an application to the Court to sanction a scheme for the disposal of funds belonging to an endowment of which the objects had become useless, the Court (*distinguishing Governors of Dollar Institution, Petitioners*, Nov. 28, 1890, 18 R. 174) *sanctioned* a proposal to provide an annual allowance to a teacher in a school which had hitherto been carried on under the endowment, and which it was proposed to discontinue.

This was a petition by John Ord Mackenzie and others, trustees of the Portobello Female School, to have a scheme settled and approved for the future administration of the trust.

The petition set forth that the object of the trust was to provide a school for girls of the lower classes, which had been established prior to 1823, and that owing to the