

[14th June, 1847.]

ANDREW WEIR, formerly one of the teachers of the Kilmarnock Academy, *Appellant*.

WILLIAM HOWIESON CRAWFURD, Esq., and Others, Directors of the Academy, *Respondents*.

Schoolmaster.—Master and Servant.—If a schoolmaster holding his appointment *ad vitam aut culpam*, from the Directors of a body of subscribers, on having notice given him of charges intended to be made against his moral character, and being required to attend before the Directors with the view of giving explanation of the matters charged, refuse either to attend or to give any explanation, that is sufficient *culpa* to justify the charges being entertained, and his dismissal being resolved upon in his absence.

IN the year 1806 it was resolved at a meeting of the heritors of the parish of Kilmarnock, a parish partly landward and partly burghal, that an academy should be instituted in the burgh for general education, to be supported by the voluntary contributions of the inhabitants, and that the parish school and an English free-school previously existing in the burgh should be incorporated in the proposed academy. Accordingly, Thomson, the parish schoolmaster, and Henderson, the teacher of the free-school, were appointed teachers of the academy, and had apartments assigned to them in the building of the academy.

In 1820 Thomson resigned, and in the month of June of the same year the Appellant was, by the directors of the academy, in a meeting of that body, appointed “to fill the “vacancy” occasioned by Thomson’s resignation. In September following, the Appellant accepted of “the appointment “as teacher of English, &c., in the Academy of Kilmarnock”

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by signing a minute in the Minute Book of the Directors to that effect, the appointment being “*ad vitam aut culpam.*”

At the time of this appointment there was not any definite constitution of the governing body of the Academy. But a constitution had previously been proposed, by which the body was to consist of the ministers of the burgh *ex officio*, five heritors of the parish as representing the general body, five members of the Town Council of the burgh, five of the subscribers to the Academy, and the chairman of the Merchants' House of the burgh. This proposed constitution was acted upon up to the year 1828, when a change was made to the effect of constituting subscribers of 20*l.*, and the heirs male of their bodies life governors.

The Appellant discharged the duties of the office to which he had been appointed from the time of his appointment without anything having occurred to disturb him in its enjoyment. On the 8th of January, 1844, Gairdner, one of the directors, addressed to the convener of the body the following letter:—
 “ For some weeks past a number of reports and statements
 “ have been before the public respecting our English teacher,
 “ Mr. Weir. Having long taken an active interest, I feel it to
 “ be due to the children, to the future usefulness of the semi-
 “ nary, and to the other teachers in the seminary, that the
 “ reports against Mr. Weir's integrity should be examined into
 “ by the directors. If Mr. Weir is innocent of the charge so
 “ publicly made, he is well entitled to the testimony of the
 “ patrons in his favour. If otherwise, he should be dealt with
 “ accordingly;” and at the same time Gairdner addressed this letter to the Appellant himself:—“ SIR, I take the earliest
 “ opportunity of informing you that I have this day requested
 “ the provost, as preses of the directors of the academy, to call
 “ a meeting of directors for Thursday first.

“ I consider it due to your long services in that institution
 “ to make you thus early aware that certain charges will then

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“ be laid before the patrons, which, if admitted by you, or
 “ proved to their satisfaction, will very much affect your present
 “ status in that institution. While it is very probable that
 “ other charges may be made against you, I beg you to under-
 “ stand, that I shall myself propose that a very stringent exami-
 “ nation into your conduct shall be made as regards your duty
 “ as Treasurer for the Schoolmasters’ Widows’ Fund, and Agent
 “ for the Scottish Provident Insurance Company. I trust that
 “ you will be able to explain away conduct implying great mal-
 “ versation of office.” On the same day the Appellant received
 a letter from one of the directors of the academy, informing him
 that a meeting of the body would be held on the 10th, for the
 purpose of investigating charges affecting his character and use-
 fulness.

The meeting referred to in Gairdner’s letter was held on the
 10th of January; but instead of the Appellant appearing, the
 clerk of the Academy presented to the meeting a letter from the
 Appellant in answer to a note sent to him from the meeting
 requiring his attendance, which was in these terms:—“ I
 “ received a monitory letter from Mr. Gairdner on Monday,
 “ which entirely precludes my attending the meeting of directors
 “ to-day, and which would effectually seal my lips if I were
 “ there, *for I cannot hold any verbal communication on the*
 “ *subject.*”

The meeting, however, in the absence of the Appellant, ap-
 pointed a Committee of three of their body to enquire into the
 charges and report. The Committee proceeded in the enquiry,
 and made their report to a meeting of the directors which was
 held on the 19th February. Upon considering the report, the
 meeting came to the following resolutions:—“ *First*, That Mr.
 “ Weir had been guilty of a very great breach of trust in the
 “ management of the funds entrusted to his charge, as collector
 “ of the Presbytery of Irvine, of the Schoolmasters’ Widows’
 “ Fund, and also as agent of the Provident Insurance Company.

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“ *Second*, That he has therefore disqualified himself from being
“ a teacher in the Academy, and that it would be highly im-
“ proper to retain a person who has exhibited such dishonesty
“ in a situation of such vital importance to the rising genera-
“ tion.” After these resolutions were adopted, the Appellant
was sent for, when they were read over to him, and after some
conversation the meeting adjourned, “to afford Mr. Weir an
“ opportunity of making up his mind whether he will resign
“ the situation or force the directors to proceed upon the
“ charges above mentioned.”

Another meeting was held on the 26th February, at which
the Appellant offered to resign his office upon certain conditions.
These conditions were refused by the meeting, and a committee
of their number was instructed “to proceed forthwith to serve
“ the charges of inculcation on Mr. Weir, and full power is
“ hereby given to the committee to adopt all necessary legal
“ steps to have him removed from the situation.”

In pursuance of this instruction the committee served upon
the Appellant a statement of the charges which were made
against him. Upon receiving this statement the Appellant, on
the 14th of March, wrote a letter to the directors in these
terms:—“After services so long, so arduous, so faithful, so
“ devoted, and so ill-requited as mine have been, your procedure
“ towards me, in attempting to effect the utter ruin of myself
“ and family, appears unaccountable, unprecedented, and
“ astonishing, especially as no charge of incapacity to teach, or
“ want of diligence in the performance of my duty has been
“ alleged. I have received from the secretaries what you call
“ charges of inculcation, which contain much misinformation,
“ misconception, and misconstruction, with certain allegations
“ founded thereon. From the tone which was assumed on
“ former occasions I plainly perceived that it was in vain for
“ me to attempt anything like an explanation, I therefore most
“ respectfully decline doing anything further in the meantime

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“ than to give a general denial to the whole charges as they
 “ stand, and, while I do so, I beg to mention that I have been
 “ advised that you have no right to impugn my character as
 “ a private individual, or to make enquiries into my circum-
 “ stances, and into matters which do not affect the institution
 “ with which I am connected, while my ability and diligence as
 “ a teacher are unimpeached.”

Another meeting was held on the same day, 14th of March, at which it was resolved, “ That the charges are in no manner
 “ of way *removed* by Mr. Weir’s answer. The meeting, there-
 “ fore, conceive that they have no alternative but to *proceed*
 “ against Mr. Weir, to have him removed from the academy,” and a committee was appointed to adopt such proceedings for that purpose as should be recommended by counsel.

The opinion of counsel having been obtained, two meetings were held, on the 2nd and 10th of April, at both of which a resolution was carried not to proceed further in the matter in the meanwhile. But at a subsequent meeting, held on the 22nd of April, a resolution was passed deposing the Appellant “ from
 “ his situation as teacher in the Kilmarnock academy,” and directing notice of this to be served upon him, and requiring him to remove from the school-room and other premises occupied by him.

The Appellant presented a note of suspension of this proceeding. The Lord Ordinary, (*Robertson*), while he directed the case to be brought before the Inner House, issued a note of his own opinion, which, after detailing the facts of the case, contained these observations:—“ The charges preferred against the
 “ complainer, into the truth of which he had thus declined to
 “ enter, either by verbal or written explanation, were of so
 “ serious a description as rendered it impossible that the matter
 “ could be allowed to stand unexplained, consistently with the
 “ honour and respectability of the seminary, and that such a
 “ person, however able and diligent in his vocation, was, if

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“ guilty, disqualified by his immorality to continue a teacher of youth.”

“ The directors seem to have proceeded with all fairness and deliberation in the discharge of their duty. And if it be admitted that they were not bound to take judicial steps, then it seems to follow, that, after making full investigation by committee, and serving the complainer with specific charges, which he refused to answer or explain, they had no alternative left but to dismiss him from his situation in the institution, They never could be justified to have continued in his situation an individual who denied their right to inquire into his moral conduct, and maintained that their authority in superintending the teachers elected by them, *ad vitam aut culpam*, was limited to enquiry into mere matters of ability and diligence. It is quite clear that, if the moral character of the teacher of youth be tainted, his literary qualifications are of subordinate importance, and that the directors of such institutions must have power of dismissal on cause shown.—See the cases of the Ayr Academy, 3d June, 1825, 4 *Shaw*, 63; and Dundee Academy, Murray *v.* Lindsay, 2d July, 1833, 11 *Shaw*, 856.”

The court, after hearing counsel, remitted to the Lord Ordinary to refuse the note of suspension.

The appeal was against this interlocutor.

Mr. Anderson, for the Appellant, endeavoured to make two points. 1st. That the Appellant was parish schoolmaster, and as such was amenable to the presbytery of the parish alone, and had not, therefore, been dismissed by a competent jurisdiction. 2nd. That if the jurisdiction were competent the proceedings had not been conducted in such a way as to give the Appellant an opportunity of being heard; that the sentence of deposition had been passed behind the Appellant's back without any enquiry into the truth of the facts alleged, and that this enquiry should yet be allowed.

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In the course of the argument counsel was stopped, as to the 1st point, by an observation from the woolsack, that “neither
“ in the Appellant’s appointment—his dismissal—nor his com-
“ plaint against the dismissal, was any reference made to an
“ appointment as parish schoolmaster, and that in the opinion
“ of the House the Appellant could not be treated as a parish
“ schoolmaster.”

Mr. S. Wortley and Mr. A. McNiell, for the Respondents, were not called upon.

LORD CHANCELLOR.—I think your Lordships will not deem it necessary in this case to hear the counsel on the part of the Respondents, because, upon consideration of the facts that have been brought before us, I arrive at the opinion that no case has been made out by the Appellant.

It appears that the Appellant was appointed as a teacher to the Kilmarnock Academy *ad vitam aut culpam*, and he pleads that what has taken place, has not taken place within the latter of those words. It appears that he had notice from one of the directors to appear before them, (the directors,) at a meeting which was about to take place. That meeting taking place, a note was sent to the Appellant, requesting his attendance. This meeting was in due form. A charge was made, and the party accused was sent for that he might attend. To this he sends the following answer:—“I received a monitory letter
“ from Mr. Gairdner on Monday, which entirely precludes my
“ attending the meeting of directors to-day, and which would
“ effectually seal my lips if I were there, for I cannot hold any
“ verbal communication on the subject.” This is the tone that is assumed by an officer acting under a body by whom he was appointed, and who had a clear right to investigate and ascertain his conduct, in order that they might see whether it was proper for them, as the managers of this institution, to continue him

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in the office of teacher or not. A grave charge is made against him, and he refuses to hold any verbal communication with that body on the subject. Then, he having refused to attend, they clearly had no other resource but to endeavour to satisfy themselves as to the truth of the allegations made. [His Lordship then went through the further history of the case, and then continued.]

The result of this case therefore is, that a teacher of an academy being charged at all events with very grave offences—not in his character as a teacher, but holding other appointments, as he did under other institutions—when he is called upon to explain his conduct in relation to them, in the first place refuses to hold any communication whatever with the parties; he refuses to hold any communication with those parties who are bound to investigate his conduct; and when by proceedings among themselves they had satisfied themselves that this enquiry was of such a nature as to require it to be answered by Mr. Weir, and when regular charges are communicated to Mr. Weir, which he is called upon to answer, he tells them that he will not answer; he tells them that he will enter into no explanation, but that he will content himself with saying that they are not proved; and then he puts forward what has not been attempted to be supported at the bar, that the directors have no right to interfere with, or to enquire into his conduct in reference to any other matter, except in his character as a teacher in their academy.

The question for your Lordships' consideration is whether under these circumstances the directors were bound to continue him in the office of teacher of this academy, or whether they were justified, in that stage of the proceedings, in dismissing him. And I cannot but think that they were not only justified in dismissing him, but that they were bound to do so. These charges having been made, he refuses to answer them; he refuses to accede to the jurisdiction which, by accepting office

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under them, he had acknowledged. If he committed a fault, the jurisdiction to try that fault was the directors under whom he was acting; but he refuses to come to any explanation. Is not that of itself a *culpa* upon the part of a person who is bound to submit to that jurisdiction?

The question was not whether he was to be subjected to any punishment by the course that has been adopted, but the question was whether he was to be continued in his appointment as teacher of this academy by those whose authority he would dispute. I cannot help thinking that for the purposes of conviction there was quite sufficient evidence to make it the duty of the directors to consider that in the course of conduct he had pursued he was rendered unfit for the office that he held, that he had by his conduct been guilty of a *culpa* within the meaning and understanding of that term in Scotland, and that they were justified in voting for his dismissal. I therefore submit to your Lordships that this appeal be dismissed.

LORD BROUGHAM.—I take the same view entirely with the noble and learned lord who has just sat down. My Lords, I am perfectly clear that to call this a public office, and to say that the Appellant is a parochial schoolmaster under the Act of 1803, the 43rd of George the Third, is perfectly out of the question. It is a matter of contract; he is appointed upon particular terms and in a particular manner, and the contract is that he shall hold his office *ad vitam aut culpam*. That must be taken with reference to the nature of the office, and that which would be a malversation, a *culpa* in such a party, in a schoolmaster—might very possibly not be a *culpa* in any other person.

Now, what are the facts, and upon what ground alone is it said that this officer should not be dismissed? It is said that the charge being made against him, he had not a due and sufficient opportunity of answering it, and that the parties, his mas-

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ters and employers, by a secret proceeding, enquired into his conduct. In my opinion, the letter of the 8th of January, 1844, was quite sufficient notice. If a schoolmaster is charged with a grave crime, it is not necessary that he should receive a formal written copy of the indictment, summons or libel; but if he receives that which brings to his knowledge that there is a charge against him, is it for him, instead of coming before those who are bound in the discharge of their duty, as directors, to exercise discretion, and to see that a proper person fills that important place, is it for him, instead of coming before them and giving an answer, to say, “My lips are sealed; I will not acknowledge you as my superiors; I can hold no communication on the subject of my conduct with you.” I consider that is *culpa* sufficient of itself to warrant their proceeding upon it, not merely as an act of obstinacy, (that is not the point,) but as not showing that due readiness to give an explanation, or to state a defence in justification of his conduct, when called upon in the way that my noble and learned friend has pointed out.

He having had the opportunity of explaining his conduct if he thought fit, I consider that his refusal to do so is sufficient ground for what has been done by the Directors. No summons, no judicial proceeding is at all requisite; but sufficient knowledge is to be given, and sufficient opportunity is to be afforded, to enable the party to meet the charge. In my opinion, both those matters exist in this case, and I therefore think that the Appellant was wrong, and that the Directors were right.

Now, Lord Cockburn, who does not in the smallest degree excuse the party, differs from the other members of the Court, and differs from myself upon the subject, inasmuch as he thinks that the party, in a certain sense, was right in refusing to come into the proceedings of the Directors, and in refusing to come to the appointed meeting; and that though he perhaps acted unwisely, yet that was not enough. But I deny that it was merely an act of imprudence on his part. I think it was a

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wrong act; and I think it was an act to justify a grave suspicion in a schoolmaster, who is like a confidential clerk, or confidential servant or agent—a steward, for instance—and it is not to be contended, though there is a contract, that he should be continued as long as he behaves well in his office—that if he conducts himself in such a manner as to give rise to a charge, and that charge being made,—if by his obstinate refusal to give any explanation, or to take advantage of the opportunity of making any explanation or defending himself, he gives countenance to that, (for in the domestic *forum* in which these tribunals act, and in which these examinations are conducted in Scotland, at all events, he had an opportunity of defending himself). There is, I think, sufficient *culpa* to justify the parties in taking these proceedings. It is a mere matter of contract; he is not a public functionary; he is to be viewed in the light of a clerk or a steward, and is to be amenable to those who employ him.

LORD CAMPBELL.—My Lords, I cannot help feeling very much about this unfortunate person. It is possible that he may be innocent—it is possible that he may be a meritorious teacher, and that he might be of service to the town in which he has exercised his profession for a considerable number of years; but really as to the merits of this appeal, I think that they are entirely groundless.

In the first place, it was wholly in the distress of the case, and from feeling no confidence upon other points, that Mr. Anderson could have contended that this was a case for the Presbytery. There was not the remotest notion of that even in the mind of Mr. Weir himself—there is no ground for the supposition that he was appointed as a parochial schoolmaster, or that when he was appointed he had anything like the remotest idea to that effect. He was appointed the master of this academy and by the directors, who were the parties to determine whether he duly demeaned himself in the office to which he was appointed.

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If there had been any proceedings against him in the Presbytery as a parochial schoolmaster, the very terms of his appointment would have been fatal to the jurisdiction of the Presbytery.

This, therefore, is a mere matter of contract; and the question is whether the contract has been broken on the part of the directors.

Now, certainly, if they have engaged him *ad vitam aut culpam*, they have no right vexatiously to remove him; there must be a breach of trust, *a culpa*, or he is entitled to remain for life.

But then who is to be the judge of that *culpa*? Setting aside the view of his being a parochial schoolmaster, it is allowed that the directors are the proper judges. Very well, then, his moral conduct must be considered; and that notion which unfortunately entered into Mr. Weir's mind, that the directors had no right to enquire into his conduct, except in so far as regarded his conduct in the school, is wholly groundless; and I think, indeed, it is not denied that the offence imputed to him, if it really was committed, and if proper proof was given of it, would be a ground of dismissal, it would be a gross breach of trust, a thing peculiarly wrong.

Then, that being so, the question is whether he has had a fair opportunity of justifying himself from this imputation. I do not say that before such a domestic tribunal you are to proceed by summons, and answer, and so on; that would be quite absurd. You ought to proceed fairly, and one ingredient in that mode of proceeding is this, that the party accused is to attend and to be examined, and to explain, and to give answers to the questions put to him, so that the consciences of the directors may be duly informed, and that they may be enabled satisfactorily to perform their duty.

This, then, being a sufficient charge, a charge proved, and justifying his removal, again and again he might, and even after what is called the sentence against him, (for it looks somewhat

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like a proceeding at law, where the rule *nisi* is made absolute, unless cause is shown to the contrary,) he might then have come, and he would have been heard, and even then he might have cleared himself from the imputations that were cast upon him. But he sets them all at defiance, and he will give no explanation of the allegations against him. I therefore apprehend that where under such circumstances there is such an appointment *ad vitam aut culpam*, and where those, who are the judges of the conduct of the party appointed, give him notice of the nature of the charge brought against him, which charge, if proved, substantially justifies his removal, and he refuses to give any explanation, the directors are perfectly justified, and indeed bound to proceed to his removal. Under these circumstances, I think they were fully authorized in point of law, and I give my judgment accordingly.

EDWARD PRITCHARD—DEANS, DUNLOP, and HOPE, Agents.