

## CHAPTER VII.—TENURE OF OFFICE OF MASTERS.

§ 1. APPOINTMENTS 'AT PLEASURE.'—§ 2. APPOINTMENTS FOR A DEFINITE PERIOD.—§ 3. APPOINTMENTS DURING 'GOOD BEHAVIOUR.'—§ 4. APPOINTMENTS DURING 'GOOD BEHAVIOUR AND AT THE WILL' OF THE ELECTORS.—§ 5. APPOINTMENTS 'AD VITAM AUT CULPAM.'—§ 6. SUMMARY OF DIFFERENT TENURES.—§ 7. TENURE OF OFFICE CHANGED.

PREVIOUS to the Reformation the schoolmaster was appointed sometimes for life, and sometimes during the pleasure of his patrons.<sup>1</sup> In the period subsequent to that event, the master continued to be appointed (1.) *durante bene placito*; (2.) for a definite period; (3.) *ad vitam aut culpam*. For the sake of clearness we shall classify, as well as we can, the appointments according to the nature of the tenure of office—arranging them chronologically under the respective burghs in which they were made.

§ 1. We shall begin with appointments during pleasure. In 1572, the council of Haddington grant 'ane gyft of thair comone schole' to the master, 'during thair willis allendarlie.'<sup>2</sup> In 1580, a schoolmaster of Brechin is appointed during the 'council's pleasure.'<sup>3</sup> In the same year, the bailies and council of the Canongate grant the office of master of the grammar school of the burgh to a teacher 'induring the bailies' and council's will alenerly.'<sup>4</sup> In 1593, the first writing-master in the high school of Edinburgh was appointed, 'induring the town's will;'<sup>5</sup> in the following year, a successor during the 'town's pleasure allanerlie;'<sup>6</sup> and in 1654, a doctor 'dureing the counsell's pleasure;'<sup>7</sup> on 28th August

<sup>1</sup> *Supra*, § 17, p. 41.

<sup>2</sup> Burgh Records of Haddington.

<sup>3</sup> Black's History of Brechin, p. 45 (2d ed.).

<sup>4</sup> Burgh Register of the Canongate.

<sup>5</sup> Burgh Records of Edinburgh.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

1719, the town council resolved that in future all the teachers should be appointed 'during the pleasure of the council,' and that a clause to that effect be inserted in every deed of presentation.<sup>1</sup> In 1620 the master of the grammar school of Burntisland was requested to deliver up the keys of the schoolhouse, and of his dwelling-house, to the council, in acknowledgment that he held his office during the pleasure of the council.<sup>2</sup> In 1628 the council of Aberdeen appoint a doctor of the grammar school 'during the will and plesour of the councill allanerly;'<sup>3</sup> in 1641 a doctor during the council's 'pleasure;'<sup>4</sup> and, in 1642, another 'ad bene placitum concillii tantum.'<sup>5</sup> In 1632 the council of Perth appoint a master of the grammar school 'during their goodwill and pleasure;'<sup>6</sup> in 1641 two doctors are chosen during the 'councillis will allanerlie.'<sup>7</sup> On 3d November 1662 the council of Paisley agree with Mr Alexander Park, and he with them, to be their schoolmaster 'aye, and till he either be called away or not permitted to stay; he shall have 100 merks for the first half-year, whether or not he shall have liberty to stay the whole time or, more or less, part of it;'<sup>8</sup> in 1751 a master of the grammar school appointed during the 'pleasure' of the council;<sup>9</sup> in 1758 his successor chosen on the same condition.<sup>10</sup> In 1682 a master of the Scots school of Ayr admitted during the 'pleasure' of the council;<sup>11</sup> in 1727 a doctor of the grammar school, 'during the council's pleasure alanerly;'<sup>12</sup> in May 1755 an English master, 'during the pleasure of the magistrates and council.'<sup>13</sup>

It was agreed, in 1690, that the English master of Dunbar

<sup>1</sup> Burgh Records of Edinburgh.

<sup>2</sup> Burgh Records of Burntisland. This custom long continued.

<sup>3</sup> Burgh Records of Aberdeen.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Burgh Records of Perth.

<sup>7</sup> Ibid.

<sup>8</sup> Presbytery Records of Paisley.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Burgh Records of Ayr.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid. In 1835, the royal commissioners appointed to inquire into the condition of Scottish burghs, report that the teachers of the Ayr academy may be discharged at six months' notice: Municipal Corporations Report, i., 86.

and the council, if not satisfied with each other, may mutually part, on giving notice of forty days preceding Whitsunday or Lammas;<sup>1</sup> in 1727 it is agreed that a master of the English and grammar schools shall continue in office so long as he and the council are satisfied with one another.<sup>2</sup> In 1685 it was ordained that a doctor of the grammar school of Stirling may continue in office during the 'pleasure' of the council;<sup>3</sup> in 1698 a doctor admitted 'during pleasure';<sup>4</sup> in 1728, 1730, 1732, 1735, 1736, 1737, and 1744, respectively, doctors appointed during 'pleasure';<sup>5</sup> in 1753 a rector, during the council's 'pleasure allenary';<sup>6</sup> in the same year, a music-master, writing-master, and teacher of arithmetic, during 'pleasure';<sup>7</sup> and in 1764 and 1765 teachers of the English school, during 'pleasure.'<sup>8</sup> In 1692 the council of Wigtown declare that they and the schoolmaster may always part with one another, on giving two months' advertisement, 'if they are not amind to keep longer together.'<sup>9</sup>

In 1707 a schoolmaster of Kirkcaldy was admitted 'during the pleasure.'<sup>10</sup> In 1710 the doctor of the grammar school of Crail was appointed 'during the council their pleasure allenary';<sup>11</sup> the commissioners appointed to inquire into the state of the Scottish burghs in 1833 report that in the burgh school of Crail (not the united burgh and parochial school), the master holds office at the pleasure of the council.<sup>12</sup> On 18th July 1710, the council of Dundee, after voting, statute that whoever be presented to be master of the grammar school of the burgh shall only hold office during the council's pleasure only;<sup>13</sup> on

<sup>1</sup> Burgh Records of Dunbar.

<sup>2</sup> Ibid. All the early appointments were insecure; latterly, however, it would seem that the 'ad vitam aut culpam' has been tacitly acknowledged, as shown by retiring allowances granted to masters. See minutes, 19th December 1818, 17th February 1819, 1st March 1822, 10th September 1852.

<sup>3</sup> Burgh Records of Stirling.

<sup>4</sup> Ibid.      <sup>5</sup> Ibid.      <sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Burgh Records of Wigtown.

<sup>10</sup> Burgh Records of Kirkcaldy.

<sup>11</sup> Burgh Records of Crail.

<sup>12</sup> Municipal Corporations Report, i., 158.

<sup>13</sup> Burgh Records of Dundee.

31st October a master chosen 'during the council's pleasure alenarly;' <sup>1</sup> in 1711, doctor, on the same terms; <sup>2</sup> in the following year, master of English, 'during the council's pleasure;' <sup>3</sup> on 31st March 1715, doctor of the grammar school, 'during the council's pleasure;' <sup>4</sup> others on 14th November 1717, <sup>5</sup> on 26th June 1718, <sup>6</sup> 20th August 1718, <sup>7</sup> 29th July 1727 on the same terms; <sup>8</sup> in 1763, doctor of the grammar school and master of the English school, during the 'council's pleasure;' <sup>9</sup> in 1764, rector of the English school, 'during council's pleasure;' <sup>10</sup> in 1771, under doctor of the grammar school, 'during the council's pleasure.' <sup>11</sup> In 1716, and again in 1720, masters of the grammar school of Kirkcudbright were appointed 'during the pleasure of the council alenarly.' <sup>12</sup> In 1717 a schoolmaster of Forfar was appointed 'during pleasure and no longer.' <sup>13</sup> In 1721 the council of Selkirk grant to the English schoolmaster of the burgh a certain salary 'during pleasure.' <sup>14</sup> In 1723 the schoolmaster of Irvine was appointed 'during pleasure.' <sup>15</sup> In 1730 the council of Fortrose appoint a schoolmaster of the burgh during 'their pleasure;' <sup>16</sup> in 1807, master of the grammar school, 'during the pleasure of the council.' <sup>17</sup> In 1748 a doctor of the grammar school of Dunfermline was appointed 'during the pleasure of the town council and kirk session, or major part of them, only, and no longer;' <sup>18</sup> in 1767 an usher was chosen on the same terms. <sup>19</sup> In 1748 the magistrates and council of Rothesay appoint a master of the grammar school of the burgh 'during their pleasure;' <sup>20</sup> his successor was appointed in 1750 on similar terms; <sup>21</sup> the next master of the school was also appointed during the 'pleasure of the council allanarly.' <sup>22</sup> There were appointed, during the pleasure of the council of

<sup>1</sup> Burgh Records of Dundee.

<sup>5</sup> Ibid. <sup>6</sup> Ibid. <sup>7</sup> Ibid. <sup>8</sup> Ibid.

<sup>12</sup> Burgh Records of Kirkcudbright.

<sup>14</sup> Burgh Records of Selkirk.

<sup>16</sup> Burgh Records of Fortrose.

<sup>18</sup> Burgh Records of Dunfermline.

<sup>20</sup> Burgh Records of Rothesay.

<sup>2</sup> Ibid. <sup>3</sup> Ibid. <sup>4</sup> Ibid.

<sup>9</sup> Ibid. <sup>10</sup> Ibid. <sup>11</sup> Ibid.

<sup>13</sup> Burgh Records of Forfar.

<sup>15</sup> Burgh Records of Irvine.

<sup>17</sup> Ibid.

<sup>19</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

St Andrews in 1747, an usher of the grammar school;<sup>1</sup> in 1750 and 1752, other ushers;<sup>2</sup> in 1750 an English master;<sup>3</sup> in 1764 an usher of the grammar school;<sup>4</sup> and in 1767 it was ordered that the master of the English school shall possess the schoolhouse during the 'pleasure of the council alanerly.'<sup>5</sup> In 1776 the council of Dumbarton continue the usher of the grammar school 'during pleasure';<sup>6</sup> the burgh commissioners report in 1835 that the teacher of writing and arithmetic in the burgh school is removable on six months' notice; the other teacher, who, it is said, may be considered as parish schoolmaster, holds his situation for an indefinite period.<sup>7</sup> In 1781 the council of Greenock admitted a master of the mathematical school 'during pleasure.'<sup>8</sup> In 1791 the council of Campbeltown declared that it is competent for them always to remove the master of the grammar school 'at any time they may think proper, on giving him six months' notice of their intention to remove him.'<sup>9</sup> The burgh commissioners report, in 1835, that the masters of the grammar school of Banff hold their office during the pleasure of the council.<sup>10</sup>

§ 2. A great number of appointments were made for a limited or definite period, extending from a few months to eleven years. We shall give instances of such appointments, arranging them also in a chronological order, under the respective burghs in which they were made. In 1571 a schoolmaster of Crail is chosen for one year.<sup>11</sup> In 1573 a doctor of the grammar school of Haddington is engaged 'during the space of ane yeir';<sup>12</sup> in 1577, another doctor for a year;<sup>13</sup> in 1582, a master for five years;<sup>14</sup> and in 1591, another for fifteen months.<sup>15</sup> On 24th April 1582, the township of Kirkcudbright 'conducit a schoolmaster until

<sup>1</sup> Burgh Records of St Andrews.    <sup>2</sup> Ibid.    <sup>3</sup> Ibid.    <sup>4</sup> Ibid.    <sup>5</sup> Ibid.

<sup>6</sup> Burgh Records of Dumbarton.

<sup>7</sup> Municipal Corporations Report, i., 206.

<sup>8</sup> Burgh Records of Greenock.    <sup>9</sup> Burgh Records of Campbeltown.

<sup>10</sup> Municipal Corporations Report, i., 109.

<sup>11</sup> Burgh Records of Crail.

<sup>12</sup> Burgh Records of Haddington.    <sup>13</sup> Ibid.    <sup>14</sup> Ibid.    <sup>15</sup> Ibid.

Martinmas next;'<sup>1</sup> on 6th January 1582, a master engaged till Martinmas next;<sup>2</sup> in 1584, he is continued for another year;<sup>3</sup> in 1586, James Dickson is 'feid for ane yeir;'<sup>4</sup> on 23d July 1588, he is 'feed fra Beltane last till Alhallowmas next;'<sup>5</sup> on 13th October 1591, another schoolmaster engaged from Hallowmas next till Beltane;<sup>6</sup> on 9th February 1592, Mr Herbert Gledstanes 'conducit' schoolmaster till Lammas next;<sup>7</sup> in 1593, Mr John Callendar 'feit' for a year;<sup>8</sup> in 1607, Mr James Glen appointed for a year;<sup>9</sup> in 1620, Mr Thomas Lamb, for three years;<sup>10</sup> in 1696, a schoolmaster appointed for half-a-year; he shall be continued longer if found 'well qualified;'<sup>11</sup> in 1699, a schoolmaster appointed for half-a-year; his further continuation being at the determination and pleasure of the council.<sup>12</sup> In 1595, a master of the grammar school of Ayr is elected for 'five years;'<sup>13</sup> in 1596, a doctor, 'for one year;'<sup>14</sup> in the following year, William Wallace, son of William Wallace of Barnwell, for the same period;<sup>15</sup> in 1601, a master of the music school, for one year;<sup>16</sup> in 1605, a master of the grammar school, for five years;<sup>17</sup> in 1612, another master, for the same period;<sup>18</sup> in the following year a master of the music school appointed for one year;<sup>19</sup> in 1675, a teacher agrees to serve the town, as master of the grammar school, for one year;<sup>20</sup> in 1676, a doctor of the grammar school is admitted for half-a-year, or longer, during the pleasure of the council;<sup>21</sup> in the following year, another doctor of the grammar school admitted for one year.<sup>22</sup> On 6th February 1602, two masters of the grammar school of Aberdeen appointed until the feast of Candlemas next, 'on their good service and diligence, and during the will of the council only.'<sup>23</sup>

On 14th November 1602, Mr James Ireland is appointed

<sup>1</sup> Burgh Records of Kirkcudbright.	<sup>2</sup> Ibid.	<sup>3</sup> Ibid.
<sup>4</sup> Ibid.	<sup>5</sup> Ibid.	<sup>6</sup> Ibid.
<sup>7</sup> Ibid.	<sup>8</sup> Ibid.	<sup>9</sup> Ibid.
<sup>10</sup> Ibid.	<sup>11</sup> Ibid.	<sup>12</sup> Ibid.
<sup>13</sup> Burgh Records of Ayr.	<sup>14</sup> Ibid.	<sup>15</sup> Ibid.
<sup>16</sup> Ibid.	<sup>17</sup> Ibid.	<sup>18</sup> Ibid.
<sup>19</sup> Ibid.	<sup>20</sup> Ibid.	<sup>21</sup> Ibid.
<sup>22</sup> Ibid.	<sup>23</sup> Burgh Records of Aberdeen.	

to 'travail in the office of doctor of the grammar school of Stirling till Whitsunday next;' <sup>1</sup> on 27th June, in the following year, two doctors chosen for one year; <sup>2</sup> on 18th November, in the same year, two doctors appointed for one year; <sup>3</sup> on 30th December 1604, a doctor admitted till the 'feast and term of Whitsunday next;' <sup>4</sup> on 26th July 1613, a doctor 'conduces himself of new,' from 1st August to 1st February, and longer, 'induring the will of the council, of the master, and of himself;' <sup>5</sup> on 24th October, in the same year, a doctor appointed for one year; <sup>6</sup> on 22d May 1620, another for the same period; <sup>7</sup> on 6th December 1620, a doctor admitted for three years and a half, the town reserving to itself the liberty to demit him at any time within that period, if not pleased with his service; <sup>8</sup> in 1625, a master of the grammar school engaged 'for the space of five years;' <sup>9</sup> in 1631, a doctor, 'for one year;' <sup>10</sup> in 1641, another, for the same period; <sup>11</sup> in 1642, a master, for five years; <sup>12</sup> in 1649, master, for eleven years; <sup>13</sup> in 1661, a Latin doctor, 'for one year and further, during the pleasure of the council, or doctor;' <sup>14</sup> in 1662, a principal master elected for nine years; <sup>15</sup> on 7th June 1671, the council, considering that the agreement between them and the master expires at Whitsunday next, agree to continue him for one year after Whitsunday next, providing he 'be always at the council's disposal to depose him at their pleasure, if he malevers in his charge;' <sup>16</sup> in 1665, a Latin doctor chosen for 'ane yeare;' <sup>17</sup> on 19th June 1665, an 'English doctor for half an yeare and farder, dureing the counsell's plesour;' <sup>18</sup> on 18th April 1668, a Latin doctor chosen for a year from Whitsunday next; <sup>19</sup> on 28th April 1673, a Latin doctor and English doctor of the grammar school elected till Martinmas next, and 'farther, during the pleasure of the council;' <sup>20</sup> in the same year, a master ap-

<sup>1</sup> Burgh Records of Stirling.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

pointed 'for ane year,' and longer, during the pleasure of the council;<sup>1</sup> in 1698, master appointed for nine years;<sup>2</sup> in 1722, an English teacher in the grammar school for a year.<sup>3</sup>

In 1604, the council of Paisley bind a master to teach the grammar school for the 'space of five yeiris at the lest;'<sup>4</sup> in February 1648, a schoolmaster engaged for four years from Whitsunday coming—'the fyift yeir being refered in the master's will;'<sup>5</sup> on 4th November 1653, a master engaged from Martinmas 1653 till Martinmas 1654;<sup>6</sup> on 26th March, a doctor appointed for a year from Whitsunday next;<sup>7</sup> on 6th October 1653, a master, for four years;<sup>8</sup> on 12th October 1654, a master for a year;<sup>9</sup> on 8th May 1654, a doctor for a quarter of a year;<sup>10</sup> on 25th May 1680, a master and doctor for one year;<sup>11</sup> on 22d March 1683, a master for a year;<sup>12</sup> the schoolmasters of Paisley were generally appointed for a term of years—frequently from year to year; down even to the present time—till the school board took over the school—the rector was appointed annually.<sup>13</sup> On 23d October 1607, the town of Inverurie engages a schoolmaster for a year;<sup>14</sup> on 24th December 1608, another teacher, 'for ane yeir;'<sup>15</sup> on 10th October 1612, Alexander Mitchell, for a year;<sup>16</sup> on 3d February 1650, two candidates apply for the vacant office of schoolmaster—Mr Alexander Mitchell and Mr Walter Torie; the former is elected 'for ane quarter of a year, and that to try how the youngers profited with him, assuring him if the youngers did not mak proficiency he should be changit att the quarter's end.'<sup>17</sup> In 1627, a school doctor appointed for Peebles from Whitsunday to Martinmas;<sup>18</sup> on 21st July 1654, a master undertakes the charge of the grammar school for one year; if he fails to submit to the admonition and censure of his patrons in anything, he shall be removed *ipso facto*;<sup>19</sup> on 30th April 1655, he is called before the council, and demits his

<sup>1</sup> Burgh Records of Stirling.

<sup>4</sup> Burgh Records of Paisley.

<sup>8</sup> Ibid.    <sup>9</sup> Ibid.    <sup>10</sup> Ibid.

<sup>14</sup> Burgh Records of Inverurie.

<sup>18</sup> Burgh Records of Peebles.

<sup>2</sup> Ibid.    <sup>3</sup> Ibid.

<sup>6</sup> Ibid.    <sup>7</sup> Ibid.

<sup>11</sup> Ibid.    <sup>12</sup> Ibid.    <sup>13</sup> Ibid.

<sup>16</sup> Ibid.    <sup>17</sup> Ibid.

<sup>5</sup> Ibid.

<sup>11</sup> Ibid.

<sup>15</sup> Ibid.

<sup>19</sup> Ibid.



office, which of new is granted to him for another year;<sup>1</sup> on 29th October of the same year, a schoolmaster is engaged from 1st November 1655 to 1st May 1656, and agrees to remove on the latter date, if it please the council, on a premonition of forty days, previously made to him; if he transgress any of the school regulations, he shall, *ipso facto*, be removed, without 'any appellation or again calling,' within twenty days after the council try the offence;<sup>2</sup> on 15th May 1656, Mr Robert Speir, son of William Speir, writer to the signet, is admitted schoolmaster for the year ending 15th May 1657;<sup>3</sup> on 25th November 1689, the council elect a master for half a year—till Beltane next;<sup>4</sup> on 28th April 1693, a master elected from 1st May next to 1st May 1694;<sup>5</sup> on 28th April 1709, a school doctor appointed 'for a year or longer as the council please.'<sup>6</sup>

In 1620, a schoolmaster is chosen for the town of Jedburgh, from 16th November of that year to 3d May 1621, for trial; if after the trial he shall not be found qualified, the school shall, *ipso facto*, 'vaik';<sup>7</sup> Andro Kirkton—that was his name—having given satisfaction, was admitted on 16th May 1621 *de novo* for four years;<sup>8</sup> the next schoolmaster was appointed on 20th April 1624, exactly on the same terms;<sup>9</sup> on 27th October 1627, Mr William Stephen is accepted as schoolmaster for half-a-year 'as ane assay';<sup>10</sup> on 15th May 1628, he is appointed for five years; the deed of appointment concludes—'And in cace within that time a better place is offered to him, some of the five years may be dispensed with, according to reason and discretion,' on condition that he, with consent of his patrons, plant another master in the school, so that the place shall not 'vaik in his default';<sup>11</sup> his successor was appointed for one year 'as ane assay'; if found suitable at the year's end, for the space of five years;<sup>12</sup> on 27th August 1649, a master is appointed for seven years.<sup>13</sup> In 1638 the council of Cupar

<sup>1</sup> Burgh Records of Peebles.<sup>2</sup> Ibid.<sup>3</sup> Ibid.<sup>4</sup> Ibid.<sup>5</sup> Ibid.<sup>6</sup> Ibid.<sup>7</sup> Burgh Records of Jedburgh.<sup>8</sup> Ibid.<sup>9</sup> Ibid.<sup>10</sup> Ibid.<sup>11</sup> Ibid.<sup>12</sup> Ibid.<sup>13</sup> Ibid.

appoint a master of the grammar school 'for ane yeir to come and swa long thereafter as the town pleasis to continew him ;' if found negligent or unable to discharge his duty, the council may always remove him.<sup>1</sup> In 1645 a doctor of the grammar school of Montrose obliges himself to remain 'in the charge, God willing, thrie zearis.'<sup>2</sup> On 11th June 1660, a schoolmaster of Forfar is admitted for three years from Lammas next;<sup>3</sup> on 20th January 1665, another schoolmaster is appointed for three years.<sup>4</sup> On 13th April 1663, a schoolmaster elected for the burgh of Pittenweem from Candlemas 1663 to Candlemas 1664;<sup>5</sup> on 2d May 1677, a schoolmaster elected for 'ane yeir ;'<sup>6</sup> on 27th February 1692, a master of the grammar school nominated for 'ane yeir after his entrie, and longer during the pleasure of the council ;'<sup>7</sup> on 19th January 1697, a master of the grammar school elected 'from 23d January instant to 23d January 1698, and longer if the patrons be satisfied with him ;'<sup>8</sup> on 21st April 1699, a schoolmaster admitted from 1st May next to 1st May 1700;<sup>9</sup> on 17th June 1704, a schoolmaster appointed for a year, and longer as shall be hereafter agreed upon ;<sup>10</sup> on 24th October 1712, he is elected for a quarter of a year only.<sup>11</sup>

In 1686 the council of Irvine engage a schoolmaster for 'ane yeir ;'<sup>12</sup> on 16th December 1692, one is appointed for five months;<sup>13</sup> on 26th May 1746, an English teacher appointed 'for one year ;'<sup>14</sup> on 26th May 1747, another for the same period.<sup>15</sup> On 28th November 1684, the council of Stranraer continue Alexander Bruce in the office of 'scoolmaister from Witsunday nix to cum, 1685, to Witsunday nixt thereafter.'<sup>16</sup> Schoolmasters of Wigtown appointed from 1st October 1692 to 1st April 1693, from 1720 to 1721, from 1730 to 1731 ; the council and they may always part from one another on giving two months' advertisement, 'if they are not amind to

<sup>1</sup> Burgh Records of Cupar.<sup>2</sup> Burgh Records of Montrose.<sup>3</sup> Burgh Records of Forfar.<sup>4</sup> Ibid.<sup>5</sup> Burgh Records of Pittenweem.<sup>6</sup> Ibid.    <sup>7</sup> Ibid.    <sup>8</sup> Ibid.<sup>9</sup> Ibid.<sup>10</sup> Ibid.<sup>11</sup> Ibid.<sup>12</sup> Burgh Records of Irvine.<sup>13</sup> Ibid.<sup>14</sup> Ibid.<sup>15</sup> Ibid.<sup>16</sup> Burgh Records of Stranraer.

keep longer together.’<sup>1</sup> On 1st May 1697, the council of Banff appoint a master of the grammar school ‘until Lammas, and longer, according to his behaviour and peaceable demeanour, and as the youths are instructed in learning;’<sup>2</sup> on 21st December 1780, the council resolve to continue the masters of the grammar and English schools on their present establishment ‘from year to year, at the council’s pleasure;’<sup>3</sup> on 27th September 1781, it is re-enacted that the masters continue ‘for one year after Whitsunday next;’<sup>4</sup> on 7th May 1782, a master of the grammar school is appointed from Whitsunday 1782 to Whitsunday 1783, and is to have a certain salary ‘so long as the council shall keep him in employment.’<sup>5</sup> In 1702 a schoolmaster of Musselburgh is appointed for three years.<sup>6</sup> In 1743 a school doctor appointed for Kinghorn for a year.<sup>7</sup> On 15th May 1776, a master of the grammar school of Dumbarton appointed for the ‘year ensuing, and thereafter during pleasure;’<sup>8</sup> on 14th November 1785, two joint teachers appointed ‘for the year to Martinmas next;’<sup>9</sup> on 11th November of the following year they are continued for another year, ‘that is, till Martinmas;’<sup>10</sup> on 25th October 1787, they are elected ‘for two years only after Martinmas 1787;’<sup>11</sup> on 15th July 1789, the council are of opinion ‘that it is much to be desired that a short agreement should be made with the masters of the grammar school, in order that the council shall be fully satisfied with their diligence in teaching and prudent behaviour in the place;’ accordingly, on 22d instant, two masters are appointed for two years.<sup>12</sup> When the Dundee academy was established, some of the masters were appointed in May 1786 for three, and others for two, years.<sup>13</sup> In 1793 the magistratés of Elgin appointed a master of their grammar

<sup>1</sup> Burgh Records of Wigtown. The schoolmaster of this burgh appears to have been always appointed from year to year: Burgh Records, *passim*.

<sup>2</sup> Burgh Records of Banff.      <sup>3</sup> Ibid.      <sup>4</sup> Ibid.      <sup>5</sup> Ibid.

<sup>6</sup> Report on Burgh Schools, ii., 130.

<sup>7</sup> Burgh Records of Kinghorn.      <sup>8</sup> Burgh Records of Dumbarton.

<sup>9</sup> Ibid.      <sup>10</sup> Ibid.      <sup>11</sup> Ibid.      <sup>12</sup> Ibid.

<sup>13</sup> Burgh Records of Dundee.

school for three years; and his successors were appointed for the same period.

§ 3. Appointments were frequently made during the diligence and good behaviour of the incumbent: thus in 1577 the council of Haddington stipulated that 'in caiss the town funds ony fail or falt in the schoolmaster, he shall remove at the quarter end.'<sup>1</sup> In 1623 the council of Perth appoint a master of the grammar school, 'during his good and diligent service;'<sup>2</sup> in 1633, and again in 1679, masters were appointed during the 'hail time of their diligent attendance—*ad culpam* worthie of deprivation.'<sup>3</sup> In 1643, schoolmaster of Montrose is admitted *ad culpam*, he obliging himself to remain for seven years;<sup>4</sup> on 15th November 1643, another schoolmaster admitted *ad culpam*, and obliges himself to remain for ten years, and so long afterwards as the council please;<sup>5</sup> in 1656 a master chosen *ad culpam*, and is required to remain five years.<sup>6</sup> In 1698 a master appointed to teach the grammar school of Banff, 'during his good behaviour and peaceable demeanour;'<sup>7</sup> in 1718 a master of the grammar school chosen during his 'good deportment and behaviour;'<sup>8</sup> in 1742 a master appointed 'during his good behaviour.'<sup>9</sup> In 1703 Mr Robert Chisholm 'is heartily invited to be schoolmaster of Selkirk, during his behaving himself faithfully and honestly as he ought to do in the function of his office.'<sup>10</sup> In 1752 a schoolmaster of Fortrose appointed 'during his good behaviour;'<sup>11</sup> in 1791 it was declared that no master shall be settled for life in the academy, but only during his diligence and good behaviour, so as to give satisfaction to the visitors and public.<sup>12</sup> In 1755 the council of Stirling appoint a rector who shall be continued 'during his good behaviour and application in the office, to the satisfaction of the council, for

<sup>1</sup> Burgh Records of Haddington.

<sup>2</sup> Burgh Records of Perth.

<sup>4</sup> Burgh Records of Montrose.

<sup>7</sup> Burgh Records of Banff.

<sup>10</sup> Burgh Records of Selkirk.

<sup>12</sup> Records of Fortrose Academy.

<sup>3</sup> Ibid.

<sup>5</sup> Ibid.

<sup>8</sup> Ibid.

<sup>11</sup> Burgh Records of Fortrose.

<sup>6</sup> Ibid.

<sup>9</sup> Ibid.

the time allenary, who are declared to be sole and ultimate judges thereof.'<sup>1</sup> On 15th May 1761, the council of Paisley declare that 'in case they shall, from faults alleged and proven respecting the office of master of the grammar school, find cause to remove him, the power of which is hereby reserved to them in that event, they shall give him three months' warning.'<sup>2</sup> In 1779 the council of Greenock appoint an English teacher, 'during his good behaviour and attention to the school,' of which they shall be the only judges; if they find him defective they may always dismiss him, on giving him six months' notice.<sup>3</sup>

§ 4. Again, we find appointments made in the same terms as the last group, with the addition of 'at the will of the council:' thus in 1603 a master of the grammar school of Aberdeen is admitted 'during his good service, and the will of the council';<sup>4</sup> in 1620 the magistrates declare that if any defect be found in the master, they shall have 'absolute power to deprive him of his benefit, in respect he has the same only during his good conduct and the pleasure of the town';<sup>5</sup> in 1661 the council permit two persons to teach children, 'during their good service and the council's pleasure';<sup>6</sup> in the same year, licence is granted to Mr William Aidy to teach Greek, on similar terms;<sup>7</sup> a doctor of the music school is appointed in 1664, during his good service and the council's pleasure.<sup>8</sup> In 1648 a doctor of the grammar school of Ayr appointed, so long as the magistrates 'think good, and according to his deserving.'<sup>9</sup> In 1722 a schoolmaster of Forfar nominated 'during his good behaviour, and the pleasure of the council.'<sup>10</sup> The last two classes of appointments—those made during 'good behaviour,' and during 'good

<sup>1</sup> Burgh Records of Stirling. In 1757 the music-master, who also taught writing, arithmetic, and bookkeeping, was, on his own supplication, installed on the same footing.

<sup>2</sup> Burgh Records of Paisley. It has been supposed that in this entry there is the germ of a life appointment.

<sup>3</sup> Burgh Records of Greenock.

<sup>4</sup> Burgh Records of Aberdeen.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Burgh Records of Ayr.

<sup>10</sup> Burgh Records of Forfar.

behaviour and at the will' of the patrons—probably approached to, if they did not correspond with, life appointments, of which we shall now proceed to give examples from the records of different burghs.

§ 5. The first instance which we have found of an office being granted *ad vitam aut culpam* after the Reformation occurs in the records of Haddington, where, on 17th February 1563, the town council, in name of the whole community, elect Mr Thomas Cumyng schoolmaster of the burgh 'during all the dayis of his lyftyme.'<sup>1</sup> A few years later (1568), a principal master of the grammar school of Edinburgh was elected 'for all the dayis of his lyfe';<sup>2</sup> in 1584 Mr Hercules Rollock was appointed principal master of the grammar school 'all the dayis, termes, or zeris of his lyfetime: at the leist, ay and quhill he is dischairgeit thair of be ressoun of sum just occasioun or fawlt in him fund be tryell of the provest, bailzeis, counsall, and deykins.'<sup>3</sup> A life appointment appears to have been granted on 18th February 1580 to Mr John Buthill, master of the grammar school of Crail, who is allowed to continue in his office 'in time coming after the expiry of his former gift';<sup>4</sup> at a long interval we find a person appointed doctor of the same grammar school for life: on 8th May 1726, a doctor is chosen 'for ane tryall for half ane year'; if he give satisfaction during that time, he 'shall be settled wholly to the hail emoluments as other schoolmasters were in use formerly to bruik';<sup>5</sup> on 12th December of the same year, the council, finding no complaint against him since his entry, appoint him schoolmaster '*ad vitam*, he exercising the office faithfully and truly *sine culpa*;'<sup>6</sup> in 1749

<sup>1</sup> Burgh Records of Haddington. The burgh commissioners report, in 1835, that the two schoolmasters of Haddington are appointed *ad vitam aut culpam*: Municipal Corporations Report, ii., 68.

<sup>2</sup> Registrum Secreti Sigilli, xxxviii., 34.

<sup>3</sup> The original deed in the archives of Edinburgh.

<sup>4</sup> Burgh Records of Crail.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid. Ten years later a doctor is appointed 'for ane tryall' from Martinmas till Whitsunday; if he give satisfaction, he shall be appointed '*ad vitam aut culpam*:' Ibid.

a schoolmaster appointed '*ad vitam*, he exercising his office faithfully and dutifully *sine culpa*;' <sup>1</sup> in 1779, the rector having dismissed his usher, who was admitted *ad vitam aut culpam*, the council censure the rector, and reponé the usher. <sup>2</sup> The appointment of Mr John Blackburn to the mastership of the grammar school of Glasgow on 13th November 1582 appears to be practically *ad vitam aut culpam*: the council chose him master 'in time coming.' <sup>3</sup> The inference appears to be that the master of the grammar school of Aberdeen, who, in 1620, binds himself not to 'leave his charge during his lifetime,' was appointed to the charge for his lifetime; <sup>4</sup> in 1636 a master of the music school of Aberdeen is admitted '*ad vitam vel ad culpam*, the fault, if deserving of deprivation, to be tried by the council as the only judges;' <sup>5</sup> in 1640 a master of the grammar school is appointed '*ad vitam vel ad culpam*.' <sup>6</sup> In 1640 Mr James Ainslie, 'be moniest votes,' is admitted schoolmaster of Jedburgh '*ad vitam vel ad culpam*.' <sup>7</sup> In 1664 a master of the grammar school of Ayr is admitted *ad vitam aut culpam*. <sup>8</sup> In 1693 the council of Perth nominate a doctor of the grammar school '*ad vitam aut culpam*, in which this house ar to be only judges;' <sup>9</sup> in 1704 a master is appointed, 'during his lifetime, and diligent attendance and waiting on the school, or *ad culpam* worthy of deprivation.' <sup>10</sup>

No record is preserved of the acts appointing the masters of the grammar school of Cupar who resigned in 1706, but it appears from the terms on which they demitted office that they regarded their appointments to be *ad vitam aut culpam*: in 1706 the council, considering the 'great decay of the school,' request the master and doctor to resign their office, which they decline to do, without receiving a yearly gratuity during life, their act of admission being, they allege, *ad vitam*; the

<sup>1</sup> Burgh Records of Crail.    <sup>2</sup> Ibid.    <sup>3</sup> Burgh Records of Glasgow.

<sup>4</sup> Burgh Records of Aberdeen.    <sup>5</sup> Ibid.    <sup>6</sup> Ibid.

<sup>7</sup> Burgh Records of Jedburgh. This is the only appointment made for life in Jedburgh from 1618 to, at least, 1668, the reason for the change of tenure, perhaps, being that he was the son of a bailie of the burgh.

<sup>8</sup> Burgh Records of Ayr.    <sup>9</sup> Burgh Records of Perth.    <sup>10</sup> Ibid.

council, judging that unless they voluntarily demitted, the town might be brought to trouble and expense, grant them a retiring allowance.<sup>1</sup> In 1710 a doctor of the grammar school of Montrose is appointed 'during all the days of his lifetime,' but it is provided that for all 'faults, misdemeanour, or neglects, he shall be subject to the trial, judgment, sentence, and determination of the town council;' any sentence pronounced by them shall be final, and no appeal shall be competent; at his entry he shall be obliged to grant bond, binding him to acquiesce in case of any difference in the deliverance of the council, that he shall never appeal from the town council, nor raise advocacy of any process pursued before the town council against him.<sup>2</sup> In 1718 the council of Selkirk appoint a master of the grammar school of the burgh 'during all the dayes of his lifetime, he behaving himself suitably as effeiring to one of that station.'<sup>3</sup>

The earliest entry in the minutes of the town council of St Andrews throwing light on the subject of tenure of office, occurs on 16th November 1723, on which day the council considering that the present master is old and infirm, supersede him, but grant him a retiring allowance equal to his full salary; the old master, dissatisfied with the decision of the council, disclaims and 'protests for remedy in law.'<sup>4</sup> The minute books contain no more information regarding the subject, but the protest is of importance as showing that he regarded his office as one *ad vitam aut culpam*; but the next entry regarding the school establishes the nature of tenure at the grammar school: on 27th November of the same year, the council admit a successor to the pensioned master, '*ad vitam aut culpam*;' <sup>5</sup> in 1775 a master of the English school is appointed '*ad vitam aut culpam*, he being obliged not to leave

<sup>1</sup> Burgh Records of Cupar.

<sup>2</sup> Burgh Records of Montrose. This contract was made after the decision of the Court of Session in the case of Strauchan: *infra*, p. 259.

<sup>3</sup> Burgh Records of Selkirk. This appointment was set aside, having not been granted with consent of the heritors, as well as town council.

<sup>4</sup> Burgh Records of St Andrews.

<sup>5</sup> *Ibid.*



the office,' at least for the space of five years, on any pretence whatever;<sup>1</sup> in 1761 a master is appointed of the English school, *ad vitam aut culpam*;<sup>2</sup> and in 1762, a master of the grammar school, *ad vitam aut culpam*;<sup>3</sup> in 1786, a rector of the grammar school appointed, *ad vitam aut culpam*, in room of Mr Hackett, who, on 5th April 1787, was awarded 100 merks Scots annually, for having resigned;<sup>4</sup> in 1814 a grammar schoolmaster was appointed *ad vitam aut culpam*.<sup>5</sup>

The earliest life appointment in Stirling occurs in 1727, when the council elect a master of the grammar school '*ad vitam aut culpam*;'<sup>6</sup> the only other instance of such a tenure of office at Stirling, before the beginning of this century at least, occurs in 1791, when the council instal a teacher of writing, arithmetic, bookkeeping, and mathematics *ad vitam aut culpam*.<sup>7</sup> The appointment of the schoolmaster of Forres, though, in the first place, for a limited period, appears practically to have been one for life: the town council, in 1736, appoint a schoolmaster for 'three years after this date, and during his life, and his teaching and instructing the youth and children at the grammar school of this burgh, and ay and while he behaves himself suitably in that station.'<sup>8</sup> In 1739, the council of Kinghorn elect a schoolmaster of the burgh *ad vitam aut culpam*.<sup>9</sup> A life appointment appears substantially to have been made in Banff in 1742, though the act is not so expressed: on 26th February, on the recommendation of Mr Thomas Ruddiman, the famous grammarian, the council invite Mr George Robertson to officiate as schoolmaster, assuring him that, after trial of his conduct for a few months, if it be satisfying to them both, he will be settled in the office;<sup>10</sup> on 19th August it is declared

<sup>1</sup> Burgh Records of St Andrews.    <sup>2</sup> Ibid.    <sup>3</sup> Ibid.    <sup>4</sup> Ibid.

<sup>5</sup> Ibid.    <sup>6</sup> Burgh Records of Stirling.    <sup>7</sup> Ibid.

<sup>8</sup> Burgh Records of Forres. The limitation of the appointment to three years, and the condition of the teacher giving satisfaction to the council, were continued or repeated in the minutes of subsequent appointments: Ibid.

<sup>9</sup> Burgh Records of Kinghorn.

<sup>10</sup> Burgh Records of Banff.

that Mr Robertson having taught the school since 1st April last, and given 'full satisfaction to the community in general,' the council appoint him master of the grammar school;<sup>1</sup> on 3d February 1762, the council resolve that the masters and mistresses of the burgh schools shall be settled 'during their lives and good behaviour';<sup>2</sup> in 1766 a teacher of writing, arithmetic, and mathematics appointed 'during life and his good behaviour.'<sup>3</sup> In 1749 a rector of the grammar school of Dundee appointed *ad vitam aut culpam*;<sup>4</sup> in 1761 a teacher of the English school is ordered to have the 'hail salary and profits, and that *ad vitam aut culpam*;'<sup>5</sup> on 27th December 1764, a master of the public English school is nominated *ad vitam aut culpam*;<sup>6</sup> on 22d December 1773, a teacher of writing, arithmetic, bookkeeping, and church music appointed *ad vitam aut culpam*;<sup>7</sup> and on 15th June 1773, a rector of the grammar school, *ad vitam aut culpam*;<sup>8</sup> on 18th December 1794, a doctor of the grammar school, *ad vitam aut culpam*;<sup>9</sup> and on 24th March 1798, a public teacher of the English school, on the same terms.<sup>10</sup> In 1766 a teacher of English and mathematics in Kirkcudbright is appointed *ad vitam aut culpam*, the magistrates being the sole judges of the latter.<sup>11</sup> In 1772 the town council of Greenock appoint Mr John Irvine English teacher of the burgh, 'during his natural life or good behaviour,' of which they shall be the only competent and final judges; in case of there being anything immoral in his behaviour, or negligence, or incapacity in his attending on the school, they may dismiss him, on giving six months' notice;<sup>12</sup> in

<sup>1</sup> Burgh Records of Banff.

<sup>2</sup> Ibid. But on 28th April 1763, Mrs Innes, from Dalkeith, was appointed 'for a year after Whitsunday next, and during her good behaviour and the pleasure of the magistrates and council:' Ibid.

<sup>3</sup> Ibid.      <sup>4</sup> Burgh Records of Dundee.      <sup>5</sup> Ibid.      <sup>6</sup> Ibid.

<sup>7</sup> Ibid.      <sup>8</sup> Ibid.      <sup>9</sup> Ibid.      <sup>10</sup> Ibid.

<sup>11</sup> Burgh Records of Kirkcudbright.

<sup>12</sup> Burgh Records of Greenock. A teacher of writing, arithmetic, bookkeeping, geography, and mathematics was appointed in the same year, on similar terms. In 1779, the council considering the decay of the English school, caused by the negligence of Mr Irvine, request him to

1789 the council appoint a master of the grammar school, of whose good behaviour they shall be the only judges; if they find him defective, they may dismiss him on giving him three months' previous notice in writing;<sup>1</sup> in 1823 a master of the grammar school is appointed 'in the usual terms (*ad vitam aut culpam*).'<sup>2</sup> In 1789 the council of Lanark appoint a doctor of the grammar school *ad vitam aut culpam*.<sup>3</sup> In 1794 a schoolmaster of Forfar is appointed 'during all the days of his life;' but the council may 'elect another in his place in case of neglect in the instruction of youth or immoral conduct;'<sup>4</sup> a successor was appointed, on the same terms, in 1802, but the council add that, if after trial they shall be dissatisfied with his conduct, or the success of the school, they may withdraw one-third of his yearly salary.<sup>5</sup>

§ 6. Briefly, we have recorded from the middle of the sixteenth to the end of the eighteenth centuries sixty-nine appointments, distributed over twenty-six different burghs, made during the pleasure of the town councils; one hundred and nine appointments, distributed over twenty-three different burghs, made for a definite period, extending from a few months to several years; and forty-nine life appointments, over twenty-one burghs; again, there are fifteen 'good behaviour' appointments, distributed over nine burghs, and seven 'good behaviour and at will' appointments, over three burghs. From this short abstract, it appears that the class of appointments by far the most common from the Reformation to the beginning of this century, were those made for a definite period; the next most prevalent were those made during pleasure; and the less frequent were those made *ad vitam aut culpam*. To which of the two last groups the appointments made 'during good behaviour' and 'good behaviour and at will' of the patrons belong, we shall not undertake to

resign on condition of receiving a 'compliment;' if he refuse, they must make a judicial inquiry into the cause of the decay of the school: *Ibid.* Mr Irvine resigns, and receives £100 sterling, in full of every claim.

<sup>1</sup> Burgh Records of Greenock.    <sup>2</sup> *Ibid.*    <sup>3</sup> Burgh Records of Lanark.

<sup>4</sup> Burgh Records of Forfar.

<sup>5</sup> *Ibid.*

determine, but perhaps we shall not err much by including them among those made for life.

The nature of the tenure was not more different in the different burghs than even in the same burghs: thus, in Aberdeen, three appointments were made for life, two during pleasure, two for a limited period, and five during good behaviour and at the will of the council; in Ayr, one for life, three during pleasure, ten for a period, and one during good behaviour and at the will of the council; in Banff, three for life, four for a period, and one during good behaviour; in Crail, six for life, four during pleasure, and one for a period; in Cupar, two for life, and one for a period; in Dumbarton, one during pleasure, and six for a period; in Dundee, seven for life, twelve during pleasure, and the period-appointment was introduced when the academy was established in 1786; in Edinburgh, two for life, and three during pleasure; in Forfar, two for life, two for a period, one during pleasure, and one during good behaviour and at will; in Fortrose, two during pleasure, and two during good behaviour; in Greenock, one during good behaviour, one during pleasure, and three for life; in Haddington, one during life, one during pleasure, one during good behaviour, and four for a definite period; in Irvine, one during pleasure, four for a period; in Jedburgh, one for life, and four for a period; in Kinghorn, one for life, and one for a period; in Kirkcudbright, one for life, one during pleasure, and twelve for a period; in Montrose, one for life, one for a period, and three during behaviour; in Paisley, three during pleasure, one during behaviour, and all the rest for a period (one year); in Perth, two during behaviour, two for life, and three during pleasure; in St Andrews, seven for life, and five during pleasure; in Selkirk, three kinds (behaviour, life, and pleasure); in Stirling, one during behaviour, two for life, twelve during pleasure, and twenty-three for a period. Appointments during pleasure only appear to have been made in Brechin, Burntisland, Campbeltown, Canongate, Dunbar, Dunfermline, Kirkcaldy, and Rothesay; for a period, in Elgin, Inverurie, Musselburgh, Peebles, Pittenweem, Stran-

raer, and Wigtown; and for life, in Forres, Glasgow, and Lanark.

It may safely be asserted that, even so late as the beginning of this century, neither town councils nor masters regarded the office of teacher as a *munus publicum*; the councils appointed the master, paid his salary out of the common good, removed him for reasons assigned,<sup>1</sup> or without condescending on any reasons<sup>2</sup>—deeming him, in every sense, as an ordinary servant, to be treated and disposed of according to the convenience of the burgh, always, of course, observing the terms of any contract made with him, when admitted to office. The question of tenure of office was first raised in connection with the school of Montrose on 10th August 1709, when the council, seriously considering the ‘much decayed and daily decaying condition of the grammar school,’ resolve that the master, Robert Strauchan, shall be removed at Martinmas next—a resolution, says the record, intimated to him in face of council.<sup>3</sup> The schoolmaster having resisted the resolution, the council, on 9th November, pass a further act, ordering him to deliver up the keys of the school-door, on pain of imprisonment;<sup>4</sup> on 30th November, Mr Strauchan presented, before the Court of Session, a bill of suspension,<sup>5</sup> in which he contends that being admitted without mentioning either *ad vitam aut culpam*, or *durante bene placito*, the inference is that he was appointed *quamdiu se bene gesserit*; he is ready, he says, to subject himself to any censure for malversation or insufficiency; further, all his predecessors had, he pleads, enjoyed the place for life, and it would be a great discouragement to competent men to be removed summarily; the council answered that though

<sup>1</sup> See *infra*, under Removal of Masters from Office.

<sup>2</sup> Thus, on 19th October 1683, the council of Forfar ordain the schoolmaster to ‘provide for himself:’ Burgh Records of Forfar. On 9th September 1689, the council of Peebles order the schoolmaster to ‘provide for himself by Hallowmas next, as they are resolved to provide for themselves by that time:’ Burgh Records of Peebles, *et passim*.

<sup>3</sup> Burgh Records of Montrose.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

they are not bound to give any reason, more than a master needs when he dismisses his servant at the term, here they have sufficient cause in removing him from the fact that the school which used to be flourishing is now decayed; the office, they contend, wholly depends, as to salary and admission, on the town, and there being neither a separate patron nor mortifier, they are not obliged to give any reason for discharging him; it would have a very bad consequence, they continue, if it were found that he held not his office at their pleasure, because it might happen, as in this particular case, that the school might be ruined if there were an absolute necessity to prove a malversation, which is a matter of great difficulty, if at all possible. The Lords thought it a matter of vast importance to the kingdom that grammar schools should be furnished with men of learning and prudence, and that persons entrusted with such responsibility should not be turned out at the caprice of every new set of magistrates who come into office; they ordained, therefore, the town to condescend on some 'rational grounds of their dissatisfaction, either from immoralities, insufficiency, malversation, or unsuccessfulness in his way of teaching or discipline,' in order that they might consider whether Mr Strauchan should be deprived or not.<sup>1</sup> Unfortunately, no more notice of the dispute is found in our law books, but an entry in the minutes of the council of the burgh proves that the town did not altogether succeed in their contention: on 31st May 1710, the schoolmaster 'demits his office, and the town, in respect thereof, grants him £50 sterling, for helping him and his family to a way of living.'<sup>2</sup>

The next case bearing on the question of tenure of office is that of John Hastie, rector of the grammar school of Campbeltown, to which office he was called from Watson's Hospital, Edinburgh, by the town council of Campbeltown on 28th January 1760, and admitted, after examination by the presbytery, on 4th June. No complaint was preferred against Mr Hastie until 18th August 1767, when a memorial, at the instance of Patrick Campbell of Knap and others, was pre-

<sup>1</sup> Dictionary of Decisions, 13,118.    <sup>2</sup> Burgh Records of Montrose.

resented to the council, in which he was charged with disregarding school hours, neglecting his office, engaging in trade incompatible with his duties, and 'obstinately persevering in severe and improper methods of correcting the scholars, notwithstanding repeated injunctions to the contrary.' Mr Hastie's answers, with the depositions of witnesses, and the whole steps of procedure having been considered by the council, they, finding all the articles of the indictment proved, remove him from his office.<sup>1</sup> Mr Hastie, having raised an action against the council for his illegal removal, was successful in the Court of Session, but the House of Lords, to which the case was appealed, reversed, in 1770, the judgment of the lower court, and held that neglect of duty, acts of cruel chastisement, and engaging in business incompatible with his duty, justified the council in dismissing him.<sup>2</sup> A more recent case, in which the question of tenure of office of the burgh teacher was discussed, occurred in 1815, when Lord Meadowbank observed: 'It has always been a matter of regret that the ultimate reward of schoolmasters is so small in this country. They have no scale as they have in England, where they rise to the first situations in the State. The bench of bishops in the House of Lords is filled with them. We have but a very scanty opportunity of giving them any reward, but we have at least the common law of Scotland, giving them independence and protection from the caprice of any set of men. It is *contra bonos mores* to appoint a man to a school during the pleasure of any set of gentlemen. It is using him like a shoebblack, whose situation depends upon the will of a gentleman; and worse than a shoebblack, for it leaves him to the disposal of a numerous open body, who always, to a proverb, have no conscience.' 'The common law is,' says Lord Bannatyne, 'that schoolmasters hold their situation *ad vitam aut culpam*. They cannot make a bargain under it, that will deprive them of their right.'<sup>3</sup> Mr Bell,

<sup>1</sup> Burgh Records of Campbeltown.

<sup>2</sup> Dictionary of Decisions, 13,322; Patton's Appeals, 277.

<sup>3</sup> Shaw's Cases, xiv., 715 (note).

one of our institutional writers, says that the schoolmasters of public schools established in burghs by the magistrates are public officers who hold a *munus publicum*, their offices being *ad vitam aut culpam*.<sup>1</sup> In 1868 counsel gave it as their opinion that any stipulation making the tenure of office of the burgh teacher other than *ad vitam aut culpam*, would be illegal;<sup>2</sup> and the masters of the following schools, for example, claim life appointments subject to the provisions of sections 55 and 60 of the Education Act: Aberdeen grammar school,<sup>3</sup> Annan academy,<sup>4</sup> Banff grammar school,<sup>5</sup> Brechin Preceptory,<sup>6</sup> Burnt-island grammar school,<sup>7</sup> Edinburgh high school,<sup>8</sup> Elgin academy,<sup>9</sup> Forfar academy,<sup>10</sup> Forres academy,<sup>11</sup> Irvine academy,<sup>12</sup> Kirkcudbright academy,<sup>13</sup> Lanark burgh school,<sup>14</sup> Linlithgow grammar school,<sup>15</sup> Montrose grammar school,<sup>16</sup> Paisley grammar school,<sup>17</sup> Renfrew grammar school,<sup>18</sup> Perth academy.<sup>19</sup> It thus appears that for some time past the office of a burgh teacher has come to be regarded by lawyers, teachers, and probably by the patrons, as one *ad vitam aut culpam*; but it cannot be said that the point has been expressly decided, though raised again and again, in the law courts.

In academies and high schools which are under the superintendence of the council and subscribers, the patrons have more liberty in disposing of their teachers. If the charter contains special powers, such as the making of by-laws, the masters, says Mr Bell, are more in the discretionary power of the directors, provided they do not remove them under a by-law inconsistent with their constitution, or the law of the land.<sup>20</sup> Thus the directors of the Inverness academy had, by their charter, power to dismiss their masters on 'proper grounds,' but it was found that they had

<sup>1</sup> Bell's Principles of the Law of Scotland, § 2189 (5th ed.).

<sup>2</sup> Report on Burgh Schools, i., 229.

<sup>3</sup> Report on Endowed Schools, ii., 337.

<sup>4</sup> Ibid., 344.

<sup>5</sup> Ibid., 360.

<sup>6</sup> Ibid., 366.

<sup>7</sup> Ibid., 369.

<sup>8</sup> Ibid., 437.

<sup>9</sup> Ibid., 449.

<sup>10</sup> Ibid., 460.

<sup>11</sup> Ibid., 465.

<sup>12</sup> Ibid., 503.

<sup>13</sup> Ibid., 505.

<sup>14</sup> Ibid., 514.

<sup>15</sup> Ibid., 524.

<sup>16</sup> Ibid., 529.

<sup>17</sup> Ibid., 546.

<sup>18</sup> Ibid., 574.

<sup>19</sup> Ibid., 564.

<sup>20</sup> Bell's Principles of the Law of Scotland, § 2189 (5th ed.).



no power to make a by-law whereby they could dismiss them at pleasure.<sup>1</sup> The question of tenure of office was also raised in connection with the Ayr academy, whose chartered constitution provides that the situation of masters shall be held during the pleasure of the directors, who may dismiss them on giving six months' notice: in 1824, the rector having become insolvent, and his character having been affected, he was dismissed, whereupon he presented a bill of suspension, and contended that, being unimpeachable as a teacher, the directors had no right to inquire into his moral character; the court held it to be essential that he should be possessed of a moral character, and that the directors were justifiable in dismissing him.<sup>2</sup> The master was therefore here dismissed for immoral principles; and the decision did not touch the merits of the question, the tenure of office. In 1837 the same question was raised in connection with the Tain academy, when Adam Gibson was dismissed for intemperate habits; the rector having raised an action against the directors for his dismissal, it was held that they had power to dismiss a teacher, when they considered it necessary, under a by-law not inconsistent with the terms of their charter.<sup>3</sup> In this case there was no settlement of the question either, but undoubtedly the tendency of the decision is to establish the presumption of law that tenure of office of an academy teacher is also, in the absence of an express contract, one *ad vitam aut culpam*.

§ 7. The Education Act has put the tenure of office of the

<sup>1</sup> Shaw's Cases, xiv., 714. At present engagements at Inverness academy and Greenock academy terminate on three months' notice; at Arbroath high school they continue for six months only; at Cupar Madras academy, and Madras college, St Andrews, they are renewed yearly; at Stirling high school the masters are appointed for a number of years, varying from one to five, but the assistants hold their situations during pleasure only.

<sup>2</sup> Shaw's Cases, iv., 63. The masters appointed previous to the passing of the Education Act claim to be *ad vitam aut culpam*.

<sup>3</sup> Shaw's Cases, xvi., 301. At the Tain academy engagements terminate on three months' notice.

public school teacher, including the burgh teacher—a teacher who is under the control of the school board—beyond question, by changing it, in the case of teachers elected after the passing of the Act, from *ad vitam aut culpam* to *durante bene placito*, the teacher being now appointed ‘during the pleasure of the school board’<sup>1</sup>—the true meaning, if not the proper construction, of which appears to be that the school boards and the teachers may make any agreement as to the tenure of office that they please.<sup>2</sup> The school boards would not, accordingly, be acting *ultra vires* by appointing a teacher for one year, for three years, or even for life, and the teacher can compel them to implement the terms of any such agreement. It may be questioned whether there was necessity for the sweeping change made in the nature of the tenure of the public school teacher by the Education Act, especially when it is considered that the zealous and learned commissioners appointed to inquire into the burgh schools in 1867 reported that, ‘as a fact, there were very few cases in which the burgh schoolmasters were retaining offices for which they were unfit.’<sup>3</sup> The office being one of great labour and small emoluments, it is to be feared that the precarious character of the tenure will make it less attractive now than formerly to distinguished teachers.

<sup>1</sup> 35 and 36 Vict., c. 62, § 55.

<sup>2</sup> Counsel has given it as his opinion that, according to this clause, the teacher's tenure depends upon the will and pleasure of the school boards in such a way that they cannot by any resolution or contract appoint him teacher for a limited period—say a year or three years. Was this section passed with the view of interfering with, or putting an end to, the freedom of contract between masters and servants—school boards and teachers? Was it not rather the intention of the clause to prevent a public school teacher from claiming—as he was formerly entitled to do by law—his office as a *munus publicum*—to prevent him from saying to the school boards: ‘It is *contra bonos mores* of you to appoint me your teacher during your pleasure, and it is *ultra vires* of me to enter with you into any stipulation limiting the nature of my tenure, which, *de jure*, is *ad vitam aut culpam*?’ If the opinion of counsel be correct, all parties—school boards as well as teachers—will, we doubt not, demand the repeal of this vicious clause.

<sup>3</sup> Report on Burgh Schools, i., 48.