back" or in need of being "pushed forward." But that does not interfere with his being a foreman in the proper sense of the term. Every man knows that a farm grieve, who undoubtedly is a foreman, takes a turn with his own hands, or works with or at the head of the men. But that does not interfere with his position as a foreman, or make him any the less superintendent of their labour.

If, then, the defender was thus engaged, can he be held an artificer within the sense of the Truck Act. The clause with which we are specially dealing is the 6th. Now, in this and in all the other sections of this Act, the artificer and employer are spoken of as belonging to two different and opposing classes, between whom contracts of service may exist—the one paying and the other receiving wages for purely manual labour. But the 25th section of the Act defines more particularly what is to be understood by the term artificer. In the sense of the Act, "All workmen, labourers and other persons in any manner engaged in the performance of any work, employment, or operation of what nature soever, in or about the several trades or occupations aforesaid, shall be and be deemed 'artificer." On the other hand, it provides that "all masters, bailiffs, foremen, managers, clerks, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers shall be and shall be deemed to be employers." It thus includes among employers any person who is engaged in the "superintendence of the labour of any such artificers." A person who stands in that position cannot be an artificer himself. The two terms "artificer" and "employer," are put in contrast for the purposes of the Act. Now, the defender is a foreman put in superintendence of the work of those who are artificers in the sense of the Act, and therefore not an artificer himself. That is a sufficient ground of judgment in this case, and I do not therefore go into any of those nice and delicate questions which have been raised in the cases cited from the Common Law Courts of England, which, I confess, seem to me somewhat unsafe guides in this matter.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"Find, in fact, that the defender (appellant) was, when the goods sued for were supplied to him by the pursuer (respondent) the now deceased James Phillips, a foreman employed by the pursuer on an engagement for a year, at a salary of £60; find, in law, that the defender was not at such time, in a question with the pursuer, an artificer within the meaning of the statute 1st and 2d Will. IV., c. 37; therefore refuse the appeal, and decern; find the appellant liable in expenses; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Appellant—Millie. Agent—Thomas Carmichael, S.S.C.

Counsel for Respondent — R. V. Campbell. Agents—W. & J. Burness, W.S.

M. Clerk.

Friday, December 18.

FIRST DIVISION.

[Sheriff Court of Roxburgh.

SCHOOL BOARD OF KELSO *v.* HUNTER.

School—Education (Scotland) Act 1872—*School Board, Powers of—Interdict—Competency.*

Held that the School Board of a parish had not such a clear right to depute its members to make visitations to the parish School, for the purpose of inspecting it, and ascertaining for the information of the Board that the work therein was being properly conducted, as to entitle them to interdict against the teacher from preventing or excluding the said School Board, or members thereof under the authority of the Board, from entering the said school during school hours whenever and so often as they might deem necessary.

This was a petition to the Sheriff of Roxburgh, in which the School Board of the parish of Kelso, and David Broomfield, writer, Kelso, their clerk, were petitioners, and George Duncan Hunter, teacher of the Kelso Public School, was respondent.

The petition was in the following terms:—"The petitioners humbly showeth, that Kelso Public School is vested in and under the management of the petitioners, the School Board of the parish of Kelso, who are bound to maintain and keep the same efficient, in terms of "The Education (Scotland) Act 1872." That George Duncan Hunter, the respondent, is the teacher thereof. That the petitioners found it necessary, in the discharge of the duties devolving on them under said Act, to establish a system of visitation to the schools under their charge, including the school before mentioned, such visitations being made at irregular intervals during school hours, and by two or more members of the Board, under the authority of the Board, at a time. That the respondent objected to such visitations being made to the said school of which he is teacher; and on or about the 13th day of March last he refused to admit to the school-rooms two members of the Board, Mr Charles Robson and Mr James Brunton, although they intimated to him, agreeably to the fact, that they had been deputed by the Board to make such visitation for the purpose of inspecting the school, and ascertaining for the information of the Board that the work therein was being properly conducted. That in consequence of such refusal the said visitation is frustrated. That the unwarrantable and illegal course of conduct thus pursued by the respondent not only obstructs and hinders the petitioners from efficiently or properly discharging the duties imposed on them by the Act of Parliament, but injuriously affects the educational interest of the parish, and frustrates the provisions and intentions of the said Act. In these circumstances the present application has become necessary. May it therefore please your Lordship to appoint a copy of this petition and deliverance to follow hereon to be served upon the respondent, the said George Duncan Hunter, and to ordain him to enter appearance within a short space after such service, with certification; and thereafter, on again advising this petition, whether such appearance should have been entered or not, to interdict, prohibit, and discharge the said George Duncan Hunter, or others

in his employment, from refusing admission to the said School Board, or members thereof under the authority of the Board, into the said school during school hours, whenever and so often as they may deem necessary in the discharge of their duties under the Act of Parliament, or in any other way obstructing the School Board in effectually carrying out the visitations referred to; and in the meantime to grant interim interdict as craved, and to find the respondent liable in expenses, and to decern therefor."

The following defence was stated:—The defender's procurator stated that the defence was that there was no authority in the Education Act of 1872, or in the Education Code for Scotland, authorising a School Board to make visits of surprise to a school under their charge, or to interfere with the schoolmaster appointed to a public school before the passing of that Act, otherwise than directed by that Act."

The Sheriff-Substitute (RUSSELL) pronounced the following interlocutor:—

"*Jedburgh*, 22*d June* 1874.—Having heard parties' procurators, and thereafter considered the whole process—Finds that the petitioners, as the School Board duly appointed for the parish of Kelso, and their clerk, are *in titulo* to raise the questions presented in this petition; that the school therein referred to has been effectually transferred to and vested in the petitioners, and came under their management in terms of the Education (Scotland) Act, 1872; that the respondent was duly appointed on 15th October 1858, and still continues to be the principal teacher in the said school: Finds it admitted that the respondent has claimed and asserted the right to prevent any members of the School Board, even although specially nominated by the Board for that duty, from visiting the said school during school hours without previous notice given to the respondent; and that, in particular, on the 13th March last he informed two members of the School Board (who had been deputed by the Board to make such a visitation of the school) that no such visits, made without previous notice, would be permitted by him, and that in consequence of the conduct of the respondent, it became necessary for the said School Board to present this petition: Finds, as matter of law, that, in terms of the provisions of the said Act, the said school being under the management of the said School Board, and it being their duty to maintain the same and keep it in a state of efficiency, and to satisfy themselves that the rules applicable to it are duly observed, it is lawful to the said Board, by means of managers duly appointed by them in terms of the Act, or by means of any committee or deputation of their number, or otherwise in any reasonable manner, to visit the school during school hours so often as they shall deem it their duty to do so: Therefore repels the defences, and declares the interdict already granted *ad interim* perpetual, and decerns; and in the circumstances finds no expenses due to or by either party.

"*Note.*—The only question involved in this case is, whether it is competent to a School Board to visit, by a committee or deputation of their number, or by managers appointed by them, or in any other reasonable manner, the schools transferred to them as 'public schools' under the Education (Scotland) Act, 1872. The Act confers on the Board the management of the schools, and especially provides (sect. 23) 'That the Board shall, with respect to the school management and the election of teachers, and generally with respect to all powers, obligations, and duties in regard to such schools now vested in or incumbent on the heritors and the minister of the parish, supersede and come in place of such heritors and minister; and that all jurisdiction, power, and authority possessed or exercised by the Presbyteries or other church courts with respect to any public schools of Scotland are abolished.' The Act of King William (1696), and that of Geo. III. (1803), and that of 24 and 25 Vict., c. 107 (1861), are all repealed by section 78 of the Act now under consideration.

"The only serious difficulty which occurs in reference to the general questions involved in this case arises from the circumstance that while all the powers of presbyteries and other church courts with respect to public schools are abolished, no corresponding powers are by the Act expressly or in general terms conferred on School Boards; the visitation of schools having been in law and practice one of the well recognised powers and duties of presbyteries. But considering the duties imposed on School Boards by this Act, and by the code of regulations for Scotland issued (in terms of the Act) by the Scotch Education Department, the Sheriff-substitute is satisfied that the fair construction of the Act, as a whole, leads to the conclusion that it is within the power of a School Board, by any committee of their number, or otherwise in any reasonable manner, to visit any of the schools under their management so often as they shall deem this to be necessary, in order to satisfy themselves as to the condition of the school as respects its discipline, the due observance of the prescribed hours of teaching, and the observance of the regulations applicable to it. In particular, it is the duty of the Board (sect. 36 of the Act) to keep the school efficient, and to inform themselves as to the competency, fitness, and efficiency of the teacher (sect. 60); and in the Education Code duties are imposed as a condition of sharing in the Parliamentary grants, which seem to imply not only visits *with*, but also visits without previous notice to teacher. By the Code (sect. 67) it is provided that 'the managers must annually state whether the teacher's character, conduct, and attention to duty have been satisfactory;' and there are other provisions, which need not here be specified, that lead to the same result. It is to be presumed that the members of a School Board will exercise the right in question with reasonable moderation and a due regard to the position and the feelings of the teacher, so as neither needlessly to interfere with his teaching nor wound his susceptibilities. In the present case no facts are disclosed leading to the inference that such moderation has not been observed by the Board; and, on the other hand, the teacher appears to have assumed almost a defiant attitude towards the Board. At all events, no excess on their part is so stated as to affect the judgment in this case.

"As to the expenses, according to the usual rule the respondent would be liable in them. But it is to be considered that (so far as appears) the question raised here has not hitherto been decided in any competent Court; and that, from some correspondence between the School Board for Greenlaw and the Scotch Education Board, referred to in the debate, the respondent may have not unreasonably regarded himself as justified in disputing the powers of visitation claimed by the School

Board. Due weight being given to these considerations, no expenses have been found due to either party."

The petitioner appealed to the Sheriff, who pronounced this interlocutor:—

"*Edinburgh, 31st October* 1874.—The Sheriff having considered the closed record and whole process, dismisses the petition as incompetent; finds the petitioners liable in expenses to the respondent; allows an account thereof to be given in, and remits the same when lodged to the Auditor of Court to tax and report.

"*Note.*—The petitioners are the School Board of the parish of Kelso. The respondent is schoolmaster of the parish of Kelso and rector of the Kelso Grammar School, appointed by the heritors and minister of the parish under the Act 43 George III., cap. 54, in October 1858. The petitioners say that this school (they do not distinguish between them) is vested in them by virtue of the Education (Scotland) Act, 1872. The present petition prays the Court to 'interdict, prohibit, and discharge the said George Duncan Hunter, or others in his employment, from refusing admission to the said School Board, or members thereof, into the said school during school hours, whenever and so often as they may deem necessary, in the discharge of their duties under the Act of Parliament, or in any way obstructing the School Board in effectually carrying out the visitations referred to.' An application to interdict a person from refusing to do something is quite new in the Sheriff's experience. It comes in effect to a prayer to compel the person against whom it is directed to do what he is said to have refused to do. This is a prayer or demand inappropriate to a process of interdict, the proper and legitimate object of which is to continue or protect from innovation a lawful or established and existing possession. The concluding part of the prayer is only auxiliary to this, and by itself it would not be competent, as being much too vague and general for an interdict. But further, when examined into, it is obvious that the object of this petition is to obtain judicial sanction to and power to enforce at the instance of the petitioners what they call 'a system of visitation to the schools under their charge,' which they say they have established, and which consists of 'visits of surprise' to the school during school hours. They do not say in the petition that this system of visitation has been in use for any length of time. But they plead, and in the debate before the Sheriff they maintained, that, as succeeding under section 23 of the statute to all the powers and duties of management of the parish schools, formerly vested in and incumbent on the heritors and the ministers by law, they have a right to establish and carry out this system of visitation. This right is what they seek to have authorised and given effect to by the present process.

"The Sheriff does not feel himself called upon to say whether School Boards, as established since 1872, have or have not such a right of visitation. There has not been any time yet for any such right, if claimed generally, to have the sanction of use and the benefit of possession. The Sheriff sees many reasons which may be urged against the arbitrary exercise of such a right. But what he is satisfied of is, that he cannot be called on in this form of process to pronounce any judgment affirmative of the right claimed. Such judgment would be a declaratory one, which is not within his competency. And this would be the effect of any judgment in terms of the prayer of the petition.

"He has therefore no hesitation in dismissing the petition as incompetent. And as the petitioners have chosen to resort to a novel and unusual form of action, altogether inapplicable and incompetent, the Sheriff is of opinion they must pay all the expenses thereby occasioned to the other party."

The petitioners appealed to the Court of Session, and amended the petition to the effect of substituting, in the prayer of the petiton, the words "to interdict, prohibit, and discharge the said George Duncan Hunter or others in his employment from preventing or excluding the School Board, or members thereof under the authority of the Board, from entering the said school during school hours" for the corresponding clause in the original petition.

Argued for them—By sections 23 and 26 of the Education Act the management of parish schools was vested in the School Board. By sections 27, 29, and 36 of the Act the duties of the School Board were to ascertain the extent and quality of the provisions for supplying the educational requirements of the parish, and to maintain and keep efficient the educational apparatus. Then section 60 empowered the School Board to proceed against a teacher *inter alia* for inefficiency. All these duties imposed upon the School Board, and especially the last, implied that they were empowered to ascertain such facts as were requisite to enable them to perform these duties; and how could they ascertain, for example, whether or not the teacher was efficient but by visiting the school? To enable them to perform their statutory duties the right of the members of the School Board to visit the schools was clear, and they were therefore entitled to the interdict craved against the Schoolmaster. By section 23 of the Education Act the powers of the Presbytery were abolished, but the powers of the heritors and minister were transferred to the School Board. Now, the minister of the parish, apart from the Presbytery, had power to visit the schools and inspect the teaching. So, apart from the new and special provisions of the Act, this power was vested in the School Board.

Argued for the respondent—The proper subject for an interdict was a clear and undoubted right. There was no such right here. The duties of the School Board under the Act were to provide school accommodation sufficient for the wants of the parish, and to appoint a duly qualified teacher. But the School Board had no inspectorial power. They were not entitled themselves to form a judgment as to the efficiency of the teacher. If they had reason to suspect that the teacher was inefficient they had their remedy under the Act of obtaining a report from Her Majesty's Inspector of Schools. Thus in visiting the school in an inspectorial capacity the School Board were exceeding their power, and could not ask interdict against the teacher for excluding them. As to the argument that the School Board had succeeded to the right which the minister of the parish had irrespective of the Presbytery, the plain answer was that he had no such right. As a matter of practice the minister of the parish did visit the schools and superintend the teaching, but that was a mere usage founded on utility, and had no foundation or warrant in law.

At advising—

LORD PRESIDENT—This is an application to the Sheriff of Roxburghshire for an interdict of rather a singular description, and the circumstances under which it is asked are also peculiar.

The petition of the School Board of Kelso is:—(*His Lordship here read the petition*).

Now it is quite competent to ask for interdict against any one opposing the exercise of a clear right or duty. But it is necessary that the right or duty must be very clear. A process of interdict is not one for trying a question of doubtful right. That is a very different matter. Now what is the position of the petitioners in this respect. It is assumed that the School Board is entitled to send any of its members at any time to inspect the school—*i.e*, to examine and ascertain whether the teacher is doing his work well; whether the mode of education pursued by him is in their opinion satisfactory,—in short, to do the very work which by the Education Act is lodged in the Inspector of Schools. The right thus claimed by the School Board is anything but clear, and I cannot find any words in the statute conferring such a right upon them; nor do I think that we can infer that any such right is conferred upon them, for *a priori* a School Board is a kind of body most unfit to perform such a duty. A School Board is not elected to inspect—that is, to look after the teaching in the school—but, on the one hand, to look after the rights and interests of the ratepayers, and, on the other hand, to provide school accommodation. Various sections of the Act were referred to as shewing that the School Board should visit and inspect the teaching of the school. No doubt the School Board can visit the school in order to enable them to discharge such of their duties as necessarily imply that they should visit the school, and they can do this at all times. On the question whether it is desirable or necessary that notice of intended visits should be sent to the teacher I do not express an opinion; but the School Board must visit the school in order to perform their duty of providing necessary and proper school accommodation. So the notion of the schoolmaster excluding the board is quite out of the question. If in this case he had wanted to do so absolutely, I would have held that he had no right to do so. But here the members of the School Board come to the school for the purpose of doing a thing which, as far as I can see, is not contemplated by the Act. I do not want to give a strong opinion upon the point, but it has not been made clear to me that any such duty is imposed upon the School Board.

The first section founded on was the 23rd, which provides *inter alia* that the School Board shall "with respect to School management and the election of teachers, and generally with respect to all powers, obligations, and duties in regard to such schools now vested in or incumbent on the heritors qualified according to the existing law, and the minister of the parish, supercede and come in the place of such heritors and minister; and all jurisdiction, power, and authority possessed or exercised by Presbyteries or other church courts with respect to any public schools in Scotland are hereby abolished."

It is said that although this section abolishes the visitorial function of the Presbytery, it transfers to the School Board all the duties which formerly belonged to the minister, and it was maintained that the parish minister had right to visit and inspect the school when he thought fit. Now I think it doubtful whether any power which may have been in the minister individually is transferred by this section to the School Board; but, in the first place, I would ask what powers of that sort had the minister? The only answer to that question is that he had none. In practice the minister of the parish took a great lift in educational affairs, but from a statutory point of view he had no power to do so. There is nothing in any Act of Parliament which gave power to the minister of the parish individually to do anything of the kind. The practice which existed, of the minister visiting the school, may easily be accounted for by the fact that the parish minister was necessarily a member of the Presbytery, and was a fit person to acquire information for the presbyterial visitation. So I do not think that the contention of the School Board is countenanced by section 23.

The 27th section was also founded on. That section provides that the School Board shall ascertain the amount of school accommodation, and report thereon to the Board of Education, and the 36th section, also founded on, provides that "the School Board of every parish and burgh shall maintain and keep efficient every school under their management, and shall from time to time provide such additional school accommodation as they shall judge necessary."

There is no doubt that it is the duty of the School Board to provide and maintain an efficient school in the parish, but it does not follow that individual members have right to inspect the school.

Then in the 60th section there is this provision of importance in regard to this question:—"If the School Board of any parish or burgh shall consider that any such teacher is incompetent, unfit, or inefficient, they may require a special report regarding the school and the teacher from Her Majesty's Inspector charged with the duty of inspecting such school."

Now it is maintained that if there is power in the School Board of removing a teacher for inefficiency, they must also have some power of personally ascertaining whether or not the teacher is efficient. But the answer to that is that the very clause which gives the power also gives the means of ascertaining the fact. The School Board must call for a report by one of the Inspectors of Schools, so that this section is rather an argument against than for the position taken up by the School Board.

On the whole matter, I conclude that the School Board have not on the face of the statute so clear and undoubted a right to visit the school for the purpose of inspecting it as to entitle them to have the interdict craved.

LORD DEAS—It is very necessary in disposing of this case to keep in view that it is an application for interdict; and we all know that when an interdict is imposed, a breach of it infers very serious consequences. Moreover, we can grant this interdict only in the terms in which it is asked. A person applying for interdict must take the responsibility of asking it in the very terms in which he means to enforce it; for it is not a thing which we ever do qualify or can qualify in any other way than it is qualified in the prayer. The consequences of a breach of interdict, viz., the punishments of censure, or of fine, or of imprisonment, according to the discretion of the Court, show very clearly how necessary it is that the interdict should be

precise in its terms, so that the person against whom it is granted may perfectly understand what he is forbidden to do. Now, what we are here asked to do is to interdict this schoolmaster Mr Hunter from preventing or excluding the School Board, or members thereof under their authority, from entering into the school during school hours, whenever and so often as they may deem necessary in the discharge of their duties under the Act of Parliament, or in any other way obstructing the School Board in carrying out the visitations referred to. The School Board are thus to be the sole judges as to when and how often it is necessary for them to enter the school: and if the schoolmaster prevents or obstructs their doing so he is liable in a breach of interdict. Now, whatever may be the duties or the rights of the School Board under the Act of Parliament, I am of opinion, with your Lordship, that we cannot grant an interdict in these terms. When we look beyond the prayer of this application we see that the main question in dispute is whether the School Board, or any portion of the School Board, can make what are called visits of surprise, that is to say, whether they are entitled to enter the school without notice, during school hours, at all times that they think proper. It is plain enough that on at least the greater number of the occasions when visits are to be made, visits of surprise are not necessary, for example, in order to inspect the building or to see that there is proper school accommodation. The proposed visits can therefore only relate to the discipline of the pupils or to the teaching, or to both of these. Now, it is certainly a material consideration that the Act of Parliament provides for the superintendence of both the discipline and the teaching by a well qualified officer, whose aid the School Board are entitled to, and who is entitled to enter the school without notice. The School Board may have very extensive powers and duties, entitling them to visit the school-house; but it does not follow that they are entitled to enter it at all times, reasonable or unreasonable, during school hours, and without notice, interrupting the teaching and discipline of the school. But however that may be, I am clearly of opinion, with your Lordship, that it is by no means so clear that they can proceed in the way proposed by them as to put the schoolmaster in the position of a criminal the moment he differs from them as to the purpose or the manner of their visit.

Lord Ardmillan—I regret extremely that this dispute between the School Board and the schoolmaster of Kelso has arisen. I trust the misunderstanding may be only temporary, for if the dispute is not reconciled, the result will be most injurious to the cause and the interests of education, in the promotion of which both parties have duties to discharge.

It appears that the respondent, a schoolmaster appointed prior to the Act of 1872, refused to admit into the school two members of the School Board who had been specially appointed and directed to visit the school. In consequence of this procedure, the School Board have presented an application for interdict, the terms of which are certainly so general as to create difficulty in granting or enforcing interdict.

It is alleged by the Board that the circumstances of the case and the conduct of the respondent have made this application for interdict necessary.

The question is, Has the School Board the right to visit the school, or has the schoolmaster the right to exclude members of the Board proposing to visit it? Can he exclude them absolutely, or can he exclude them in respect of want of previous notice of their intended visit? This question is certainly one of great importance, and I cannot say that I have any difficulty in replying to it.

In the first place, I entertain no doubt of the right of the School Board to visit the parish school, or to appoint members of the Board to visit the school; and I have no doubt of the right of these members of the Board to enter the school. They are in the discharge of their duty in visiting and entering the school. The excluding or obstructing the entrance of these members of the Board into the school—the closing of the door of the school against them—by the schoolmaster, is in my opinion illegal. The statute of 1872 entrusts to the School Board important duties, extensive management, and the power appropriate and required for the discharge of these duties. It is not contended that in regard to the question before us any specialty is created by the fact that the teacher was appointed prior to the statute of 1872. In regard to this matter of visiting or preventing visits, the principle is the same and the law is the same whether the teacher was appointed before or after the Act. We are called on to dispose of the general proposition that the schoolmaster of the parish school is entitled to close the door of the school against members of the School Board appointed and authorised to visit. The School Board have the right to dismiss new teachers, and to complain of any teacher. It is said that the act of dismissing, or of complaining, cannot be preceded by personal enquiry; but that the schoolmaster is entitled to bar them out. I have no hesitation in negativing that proposition. I think that to give judicial sanction to such a proceeding would be subversive of the objects and the principles of the statute. The suggestion made by the respondent, that all the School Board may come in at once and interrupt the teaching, and sit down permanently in the school, is simply extravagant. Nothing of the kind has been attempted or can be contemplated. Two deputed members proposed to visit and enter the school and admission was refused—as I think wrongfully refused.

In the second place, I am of opinion that one of the duties committed by the Legislature to the School Board is to "maintain and keep efficient every school under their management," and in the present case to "maintain and keep efficient" this parish school of Kelso. I do not think that the duties of the School Board are limited to the protection of the pecuniary interests of the ratepayers. To my mind it is clear that the School Board have duties in regard to education apart from these interests of ratepayers. I am further of opinion that, on a sound construction of the statute, the word "efficient" as applied to a school cannot be limited to mere structural or accommodational efficiency such as stability of building, capacity to accommodate, draining or ventilation, as was argued to us. I have no doubt at all that the word "efficient" in this statute, and in this clause of the statute, has a more extended and comprehensive meaning. The very words of the 36th section, fairly and reasonably construed, must mean more than mere sufficiency of building. The word "maintain" is sufficient to meet the ex-

gencies created by defective building, insufficient accommodation, or ventilation, or draining, but the words "keep efficient" as applied to the school, and as distinct from the providing of accommodation, must in my opinion have a wider meaning. But when we look to the other sections of the statute, where the words "efficient" and "efficiency" are applied to education as well as to the school, any critical difficulty suggested by the respondent on the mere words of the 36th section entirely disappears. In the 26th, 27th, 30th, 34th, 35th, and other sections—all fairly cognate and relative to the 36th section—the limitation of the word, so as to exclude education, as now contended for by the respondent, would be out of the question. It is the duty of the School Board to keep the school efficient, and they are bound to satisfy the Board of Education in regard to the efficiency of the school—surely not of the mere building, but of the school as an educational institution. I cannot accept the respondents' narrow and hypercritical interpretation of the words of this Act. He is using subtlety of construction where it is quite inapplicable. In the interpretation of the fettering clauses of an entail I have heard of a construction so severe as to be termed malignant. But I never did hear such a construction applied to the language of a remedial and reforming statute.

In the third place, I am of opinion that if the School Board are entitled to visit the school, or to send members to visit the school, in order to ascertain the efficiency of the school as an educational institution, and not merely as a building, then they may so visit without giving previous notice.

I think that giving previous notice of such a visit would frustrate and defeat its object. Every one accustomed to take a part in the direction, management, or superintendence of schools is aware of this. The notice of a coming visit would give time for the preparation and getting up of a show. Such a visit would be a mere form. It would be no test of efficiency. It might be only an occasion for presenting a delusive picture. When the visitors retired from the school with complimentary remarks, the attractive and adjusted exhibition would terminate, and the current of undiscovered mismanagement might flow on as before. A really good teacher, and there are many such, and I hope the respondent is one of them, would welcome a visit at any time, and would not complain of the want of previous notice. I feel convinced that this respondent would on reflection withdraw his demand for previous notice. It is a demand unworthy of an efficient and conscientious schoolmaster.

Thus viewing the question before us as one of power,—as involving the School Board's right to enter the school without previous notice on the one hand, and the schoolmaster's right to shut the door and exclude the members of the School Board from the school on the other hand—my opinion is in favour of the School Board. I have anxiously and carefully considered the matter, and am of opinion that the Board has the right of entrance, and that the schoolmaster has no right to exclude.

But I wish to add the expression of my regret that this dispute has arisen, and also my regret that this interdict in its very broad terms has been applied for.

The prayer for interdict, even as proposed to be amended, is too general and indefinite. An interdict, the breach of which involves serious liability, ought never to be granted in terms otherwise than definite and precise. Some of the observations of the Sheriff on this point are well founded. The requiring of a definite and precise prayer is according to the settled practice of this Court.

I do not perhaps feel the objections to this prayer to be as strong as some of your Lordships do, because the circumstances out of which those proceedings arose are very peculiar. But it is fairly open to criticism, and it might have been better expressed, and your Lordships, concurring with the Sheriff, think it defective.

If your Lordships, looking to the defective prayer of the petition as too wide and general, are of opinion that it ought to be refused, on the ground that interdict in these general terms, to be followed it may be by penalties for breach of interdict, is not the appropriate remedy under the circumstances of the case, I am not prepared to dissent from that conclusion, though I could not concur in it on the footing of holding the respondent right, or even of holding it doubtful whether he is right or wrong, for I think him wrong; and, if we were dealing with the question in an action of declarator, my opinion, on the merits, would be in favour of the School Board.

If the refusal of this interdict, giving time for calmer consideration, shall lead to the adjustment of differences, it will do much good. In carrying practically out the provisions of a statute for national education it is most important that those engaged in working the measure should act harmoniously and with discretion. I cannot help thinking that this dispute ought not to have arisen, and that it ought to be settled, and indeed that it would be settled if both parties, setting aside jealousy, prejudice, and irritation, would meet to adjust it with good sense and good temper. I have already explained that, speaking generally, it is my opinion that the School Board does possess the powers which they here claim. But in the exercise of these large powers it is their duty and their interest to be temperate, and discreet, and considerate towards the schoolmaster. In that view, I think that the School Board would act wisely in not attempting to press as matter of right their personal examination of pupils, and in abstaining, as far as possible, from direct and unacceptable interference with the schoolmaster's special duty of teaching. Exceptional cases may, from time to time, occur; and as I have already explained, I think the power is with the Board. But some confidence should be placed in the teacher; friendly relations with the teacher should, if possible be preserved; undue interposition by the School Board can scarcely do good, and may lead to discord in working and failure in result. I think that it was according to the intention of the Legislature and the meaning of this statute to give to the School Board all the power which is here claimed; and I do not think that the appointment of an Inspector, as provided by the Act, operates a restriction or diminution of those powers. But the Inspector is also a statutory officer, to whom important duties are committed; and in the duty common to both of promoting in different spheres the work of education, their labours should be conducted in a friendly spirit. The duties of the Inspector in the examination of pupils, and in that respect in the ascertainment of the educational efficiency of the school must be of great service to the School Board; and the assurance that these duties of the Inspector are well discharged may encourage the Board to refrain with wisdom and courtesy from too frequent or too peremptory interposition in the department of teaching.

I make these remarks as one friendly to the cause of national education and hopeful of the results of this statute. On the question of power, my opinion is in favour of the Board, and my view is in accordance with that of Lord Young, whose interpretation of this statute cannot be otherwise than important. His Lordship's views have been clearly stated in a note to a recent decision. On the question of procedure by interdict I do not venture to differ from your Lordships; and I trust the result may be that time, and better consideration, and kindlier feeling, may lead to an amicable settlement.

LORD MURE—The question raised as to the powers, rights, and duties of School Boards by this application for interdict is a very important one; and I agree with Lord Ardmillan in regretting that it should have been raised in an application for interdict, and particularly in such a prayer as we have here before us. I think that the granting of this prayer, even with the amendment that has been allowed, would, by the vagueness of its terms, cause much inconvenience and annoyance, and not improbably lead to further litigation. If this question of right and duty were very clearly laid down in the statute it might be very proper for the School Board to seek to maintain it by interdict: but as it has, in my opinion, not been clearly defined, I think an action of declarator would have been the proper form of process for the trial of the question. I agree with your Lordship in the chair that, looking to the express abrogation of the right of the Presbytery, the mere declaration that the rights of the minister and heritors are transferred to the School Board does not of itself imply that the School Board are to have such a power of inspection as they here claim; for I am not aware of any such power having been conferred by Act of Parliament on the minister and heritors, or of such duty having formerly been exercised by them. Looking to the fact that the statute expressly gives the right of inspection to the Government Inspectors, and is silent as to the rights of the School Board in the matter, I am not prepared to say what their rights may be. But I am quite satisfied that these rights are not so clear as to entitle the School Board to the interdict here craved.

The Court pronounced the following interlocutor:—

> "Recal the interlocutor of the Sheriff-Substitute of 22d June 1874, and the interlocutor of the Sheriff of 31st October 1874; refuse the prayer of the petition, and decern: Find the appellants liable in expenses both in the inferior Court and this Court, Allow accounts thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for the Petitioners—Dean of Faculty (Clark), Q.C., and Darling. Agent—J. Stormonth Darling, W.S.

Counsel for the Respondent—Solicitor-General (Watson), Q.C. Agent—Baird Hunter, S.S.C.

Friday, December 18.

FIRST DIVISION.

JOCOBSON *v.* UNION BANK AND OTHERS.

Process—Cessio—*Competency*—6 *and* 7 *Will. IV.*, *c.* 56, *sec.* 2.

Where a debtor brought a summons of *cessio* before the expiry of the *inducicæ*, on a extract decree, and therefore before a warrant of imprisonment had issued—*Held* that the action was incompetent, in terms of Act 6 and 7 Will. IV., c. 56, sec. 2.

Counsel for Pursuer—Lancaster. Agent—John Wright, L.A.

Counsel for Defender—Robertson. Agents—J. & F. Anderson, W.S.

Friday, December 18.

FIRST DIVISION.

[Sheriff of Perthshire.

SPALDING *v.* SPALDING'S TRUSTEES.

Trust—Posthumous Child—Aliment—Debt.

A father executed a trust-deed whereby he conveyed his whole property to trustees. The purposes of the trust were—(1) To pay his debts; (2) To pay him during his life the whole free income of the estate; (3) To pay an annuity and a small sum for mournings to his widow; (4) To aliment, educate, and clothe, until the majority of the youngest, his three children, who were named in the deed; (5) On the majority of the youngest of these three children, to make over to the eldest child the heritable subjects conveyed by the deed, under burden of certain provisions to the other two. The truster left no moveable property. The deed was delivered during the lifetime of the granter, and the trustees took infeftment. *Held* (*diss.* Lord President) that a posthumous child of the truster was entitled to aliment out of the trust estate.

Mrs Mary Spalding, widow of the late Charles Spalding, raised an action in the Sheriff-court of Perthshire against her husband's trustees, concluding for £5 inlying expenses incurred by her in giving birth to a posthumous child, and £20 per annum in name of aliment to the said child. The principal provisions of the trust-deed, in virtue of which the trustees acted, were as follows:—"(1.) That the said trustees shall, out of the means and estate conveyed by said trust-disposition, pay all expenses incurred in the management and administration of the trust, and also pay all just and lawful debts due by the said Charles Spalding; (2.) That the said trustees, during the life of the said Charles Spalding, pay to him the whole free income, interest, and annual produce of the means and estate conveyed by said trust-disposition; (3.) That after the said Charles Spalding's death, the said trustees shall pay to the pursuer an annuity of £10 sterling, and that half-yearly, on 1st January and 1st July in advance, and also pay to the pursuer the sum of £10 sterling for mournings on the death of the said Charles Spalding, which annuity is to be in lieu of all terce of lands, legal share of moveables, and everything that the pursuer *jure relictæ* or otherwise could ask, claim, or demand at the death of the said Charles Spalding; (4.) That said trustees after the death of the said Charles Spalding, shall aliment, educate, and clothe his children, Mary Ann Spalding, James Mitchell Spalding, and John Spalding, in a manner suitable to their station and prospects in life, until the youngest