

Wednesday, June 2.

SECOND DIVISION.

SPECIAL CASE—VEASY *v.* MALCOLM'S  
TRUSTEES.

*Codicil—Testing Clause.*

Where the testing clause to a codicil was filled up after the testator's death, and where it was admitted (1) that everything set forth in the testing clause was true, and (2) that it was added before the deed was produced and founded on in Court—*Held* that the deed was a tested deed.

Counsel for Reclaimers—Dean of Faculty and Balfour. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for Malcolm's Trustees—Solicitor-General (Watson) and Pearson. Agents—Dewar & Deas, W.S.

Saturday, June 5.

SECOND DIVISION.

SPECIAL CASE FOR THE SCHOOL BOARD OF  
SELKIRK PARISH AND THE SCHOOL  
BOARD OF SELKIRK BURGH.

*Education (Scotland) Act, clause 23—Parish School.*

The Parish School of Selkirk, previous to the Education (Scotland) Act, was the parish school of a partly landward parish; it was situated within the burgh, and when the Act came into operation it was the school of the landward district of the mixed parish, in which there was a School Board distinct from the Burgh School Board. In a Special Case, to which the School Boards of the Burgh and Parish of Selkirk were parties, *Held* that the school, with the teachers' houses and land attached came under the exemption in clause 23 of the Education Act, and was vested in the School Board of the Parish of Selkirk.

This was a Special Case at the instance of the School Boards of the parish and of the burgh of Selkirk, brought to settle the question whether the parish school was vested in the School Board of the parish or of the burgh. The facts were:—The parish of Selkirk is partly landward and partly burghal, and it includes the Royal Burgh of Selkirk. Prior to the passing of the Act 1696 there were within the parish and burgh of Selkirk a Grammar or Latin School, and an English School. They were carried on under one roof, but were separate schools taught by separate teachers. The question between the parties to this case referred solely to the parish or Latin school. The teacher of the English school was appointed, and his salary paid, by the Corporation alone. The Corporation of the burgh are amongst the largest heritors of the parish. By an agreement between the Corporation and other heritors the Corporation were allowed two votes in the appointment of schoolmaster, and they agreed to pay the half of his salary and to furnish a school-house. In 1780 the Corporation rebuilt the school-house, and the other heritors gave £40 as a donation to defray

the expense. In 1791 the school-house was sold by the Corporation, and in terms of the foresaid agreement the site of the present school-house was purchased by the Corporation, in whose name alone the title was taken. With the aid of £100 from the other heritors, and the price of the former school, school-houses were erected by the Corporation on the ground so bought, which was situated within the burgh. The buildings erected in 1791 consisted of two separate school-houses under one roof, the one the English school, known as the Burgh School, and entirely under the charge of the Corporation, the other, the school of Selkirk parish. In 1830, when considerable repairs were made on the parish school, more than half the cost was defrayed by the heritors, exclusive of the Corporation. In 1863 a new burgh school-house was erected on another site, and in 1872 it became vested in the School Board of the burgh; on the removal of the burgh school in 1863 the parish school was enlarged and improved. Towards the expense of erecting the new school and enlarging the parish school the landward heritors, exclusive of the Corporation, contributed a large amount.

The school in question was, from its foundation down to the date of the passing of the Education (Scotland) Act, 1872, the only parish school of the parish of Selkirk, and it was treated by all parties as falling under the statutory provisions relating to parish schools; and, in particular, under the provisions of the Acts 43 George III., cap. 54, and 24 and 25 Vict. cap. 107, but subject always to the conditions of the said agreement of 1791. The fabric of the said school was all along maintained at the expense of the Corporation, under the obligation contained in the foresaid agreement supplemented by voluntary contributions; while the furnishings for the school-room were always provided at the expense of the landward heritors (exclusive of the Corporation) by assessment on valued rent. The school is largely resorted to by the children of persons resident within the burgh, and in a lesser proportion by children of persons residing within the landward district.

In the year 1868, on the application of the schoolmaster of the parish of Selkirk, the heritors provided for him a dwelling-house and garden, in terms of the said Acts 43 George III., cap. 54, and 24 and 25 Vict., cap. 107, and this is the house and garden to which the questions in this case have reference. The cost was about £650, one half whereof was paid by the landward heritors other than the Corporation, and the other half by the Corporation, in terms of the 13th section of the said Act of 43 George III. The title of the ground feued for the purpose was taken to the heritors of the parish and their successors and assignees. Before 1868 an allowance was in use to be made to the schoolmaster in lieu of a house in terms of said Act, which was paid in equal proportions by the landward heritors and by the Corporation; and the salary of the schoolmaster was paid by the same parties and in the like proportions, in terms of the agreement of 1791 and Act of Parliament.

Under the Education (Scotland) Act, 1872, a School Board (the first party to this case) was elected for the parish of Selkirk, and another School Board (the second party hereto) was elected for the burgh of Selkirk. On the said Act coming into operation, both parties proceeded on