seller contrary to the spirit of the contract, which contemplates immediate delivery, Any other construction of the clause would lead to strange consequences.

It was a peculiarity of Scotch law before this Act was passed that where the price had been paid but the goods not delivered, the seller remained undivested owner of them, and was entitled to retain them in security for the unpaid balance of a current account, or, in the event of his bankruptcy, his creditors could attach them. In that respect Scotch law differed from the English law, for there where there was a well-ascertained obligation to deliver the goods the property was with the purchaser, and the hardship that might arise under our law could not occur. It was to avert that hard case that the Mercantile Law Amendment Act was passed; but if we hold that the pursuer is to prevail here we shall introduce into our law a principle not known in the law of England. This contract, which is very like a contract for furnishings with advances, would be assimilated to a contract of sale, and therefore, as I think that there can be no doubt that the section of the Act of Parliament refers to the case of a present sale where there is a right *ad rem specificam*, and where a certain price has been paid and immediate delivery may be required, I am for adhering to the Lord Ordinary's interlocutor.

Lord Deas—The Mercantile Amendment Act bears—(*His Lordship quoted the first section.*) The present contract refers to a subject to be produced, without any obligation to produce it. The amount due is to be determined by the quantity produced and the price at the time. I am of opinion with your Lordship that this does not fall within the category mentioned in the statute. There was no present right of delivery at the time of the contract, and I do not see that there was any at the date of the sequestration. The only difficulty I had in the case arises from the suggestion that there were here two contracts, one on the 22d September for thirty tons of scrap-iron, along with whatever might be made for the succeeding six or eight weeks, at market prices, the other for that which might be made for two months after the 11th January 1876, and the difficulty was, whether a different rule did not apply to the quantity mentioned in the first contract so far as undelivered. It is true that the pursuer does not aver that any part was undelivered at the date of the second contract. But supposing that he had averred it, the construction that the pursuer puts on the letter of 11th January in the 4th article of the condescendence makes it impossible for him to make any distinction between the iron on hand at the different times referred to in these contracts. The construction of that letter of the 11th January is by no means plain, but I should have great difficulty in accepting the pursuer's construction of it. But he adheres to that construction, and does not ask to amend. We must therefore deal with the case on the assumption that the whole subject is comprehended under the letter of 11th January 1876. Supposing he had not got delivery of all he was entitled to under the letter of 22d September, he would have had to aver that that iron was distinguishable from that which was made between the date of the first and second contracts, but no such averment is made. It is therefore, as I said, a case where the subject of the contract was yet to be produced, and there was no obligation on the seller to produce it, the price to be determined by the market price of the time and by the quantity produced; and that, I agree with your Lordship in thinking, is not under the category of the Act.

Lord Mure—I agree in thinking that this is not a contract covered by the first section of the statute. I had, I confess, some difficulty in reference to the portion of the iron produced under the first contract. If the parties had averred there was a quantity of iron due under the first contract and that it had not been delivered, I should have had difficulty in holding that the pursuer had not a right to that portion. But the second contract covers any iron then in the premises and any that might be produced. Under the first contract there were 30 tons and two months' produce disposed of; for that the pursuer gave a bill for £298, 12s. 6d. He writes "I think it will be better to let them lie till I get the whole 'as one trip would do it,' unless I see a possibility of the market coming down." But by the second contract he is to get all that was then on the premises and all that should be produced up to 1st April; and therefore we have nothing to do with the first contract; there is no case under it.

Now, in this second contract there is no subject existing and no price ascertained. Everything would have to take place at the end of the period; the iron would have to be weighed to determine the quantity, and to determine the price reference would have to be made to market prices, about which there might be much dispute, and therefore the transaction comes to be, as your Lordship called it, a continuing arrangement to supply iron to meet a bill until that bill was run off, and such an arrangement cannot be said to come under the statute.

The Court adhered.

Counsel for Pursuer — Balfour — Pearson. Agents—Lindsay, Paterson & Co., W.S.

Counsel for Defender—J. G. Smith—R. V. Campbell. Agents—J. & A. Peddie, W. S.

Wednesday, November 22.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

ALLAN AND OTHERS *v.* GOVERNORS OF STIELL'S HOSPITAL.

Charity — Charitable Bequest — School—Intention—Trust—Nobile officium.

In the original deed, dated in 1808, the trustees of a charitable bequest for the foundation of a school were empowered by the truster "from time to time, as they shall see cause, to make such alterations, amendments, improvements, or additions to the rules and regulations laid down by me for the management of the said hospital and public

school, they always keeping in view the original intention of said charitable institution." Circumstances in which *held* that it was not *ultra vires* of the trustees—(1) To discontinue the boarding and maintenance of inmates, although that occupied a place in the founder's original scheme; (2) To institute an entrance examination for the admission of poor children who were proper objects of the charity; (3) To admit paying pupils, but only if they were not in any degree educated at the expense of the charity, and derived no direct benefit from the fund (*dub.* Lord Deas, who was not prepared to say that the reception of paying pupils should be allowed only in event of it being shown that they would not diminish the fund available for the education of poor children); and (4) To provide bursaries for children who were proper objects of the founder's charity.

This was an action raised by Archibald Allan and others, parishioners of and residenters in the parish of Tranent, and having an interest in the due management and administration of Stiell's Hospital, against the Rev. William Cæsar, minister of Tranent, and others, the acting trustees or Governors of the hospital. The object of the action was to enforce the trust-disposition and settlement of the founder, and to have it found and declared that certain changes on the rules for the management of the endowment were illegal, and in violation of the fundamental purpose of the charity. It was further asked that the defenders should be ordained to lodge in process the draft of a scheme for the administration of the trust, or that the Court should make a remit for that purpose.

The truster George Stiell died in 1812, leaving a trust-deed, dated 27th January 1808, by which he provided that the yearly interest and profits of the residue of his estate should be "applied in founding and endowing an hospital or charitable institution within the village of Tranent, or in its immediate vicinity, in the county of East Lothian, and for the aliment, clothing, and education of poor children for ever," to be always called "George Stiell's Hospital." After making this provision, the testator proceeded in his trust-deed to give express directions as to the manner in which the trustees were to act in carrying out that fundamental purpose. They were directed immediately to acquire ground for the hospital, and to acquire sitting-room in the parish church of Tranent for the accommodation of the boys and girls to be admitted into the hospital, and for the master, assistants, mistress, and servants. The hospital was directed to be built with accommodation for thirty children, or a larger or lesser number according to circumstances, and for a master, assistants, and servants, and with a schoolroom for the education of these children, and of sixty children or a larger or lesser number as should be deemed expedient to be admitted as day-scholars. As soon as the hospital was fit to be possessed, the trustees were directed to select from the parish of Tranent sixty boys or girls, or a larger or lesser number according to circumstances, and to admit them into the day-school, where it should be the duty of the master or rector and his assistant to teach them the English language, writing, and arithmetic. When the yearly rents and profits should be more than sufficient to defray the salaries of the rector and his assistants, servants' wages, and expenses "of managing and maintaining the said establishment and hospital as a day-school," the trustees were directed from time to time to choose from the residenters for at least three years in the parish of Tranent and to admit into the said hospital as many boys and girls as the surplus of the said yearly revenues would afford to maintain, clothe, and educate, who were to be clothed and maintained in the hospital, and to be educated in the day-school of the hospital. The trust-deed provided for the appointment of a mistress or governess, who was to act as housekeeper, and of a surgeon to attend any of the members of the hospital who might be sick; and it contained various minute directions for the management of the hospital. And lastly, the trustees were empowered "from time to time, as they shall see cause, to make such alterations, amendments, improvements, or additions to the rules laid down by me for the management of the said hospital and public school, they always keeping in view the original intention of the said charitable institution."

The pursuers averred that the trustees had recently changed the whole character and constitution of the charity, in violation of the original intention of the truster, and that they had diverted, and were diverting, a large amount of the trust-funds from the class of poor children intended to be benefited, and had misapplied them in providing at low fees a cheaper and higher class education, embracing Latin, Greek, mathematics, and other branches, for the children of parents who were able to procure and pay for such higher class education at other educational establishments in the parish of Tranent or its neighbourhood. It was averred that in order to carry out these alterations the trustees had ceased to clothe, maintain, and educate any poor children as boarders in the hospital; and that not only had the number of poor day-scholars been restricted very far below the number to which the funds of the hospital if applied in accordance with the intention of the founder would have given education, but that nearly the whole services of the master or rector were devoted to the tuition of the children whose parents paid the fees charged.

The trustees answered, *inter alia*, that "about 1869 the question of education was much discussed in consequence of the several measures introduced into Parliament, both with reference to parochial schools and endowed schools, and a considerable outcry was raised against the monastic system of training children. It then occurred to the defenders that were a change made in the system of management and the regulations of the hospital, its usefulness, instead of being impaired, would be very much increased, while it would still remain in keeping with the original intention of the institution. Accordingly a report was obtained by the trustees from Mr Simon S. Lawrie, the secretary to the Education Committee of the Church of Scotland, and the trustees took into consideration the best mode of amending the regulations, with the view of increasing the usefulness and efficiency of the institution, in accordance with the intention of the founder. The changes recently introduced by the

trustees were so introduced after frequent and careful deliberation, and in order to adapt the institution to the altered state of circumstances both in the neighbourhood of Tranent and elsewhere. The said changes were thought proper and necessary for the efficient management of the institution, keeping in view the original intention of the truster's bequest. These changes were—(first) The raising of the salaries of the master, assistant, and mistress or governess; (second) The addition of a female teacher for elementary branches, which was urgently required, and of a teacher of music, on the footing formerly explained, which was also very much wanted; (third) The admission of children as day-scholars on payment of fees, but without prejudice to the maintenance of the school as a free school for the same number of poor children as before; (fourth) The establishment of small bursaries tenable for three years. These bursaries were two in the elementary school, of the value of £2 per annum each, and two in the upper school, of £5 per annum each; (fifth) The discontinuance in the meantime of the practice of boarding and clothing a small number of children as inmates of the institution. This was done by arrangement with the parents of the inmates for the time. It is explained that the income of the trust was not more than sufficient to defray the salaries to the master, assistant, and mistress or governess, servants' wages, and other contingent and necessary expenses of managing and maintaining the said establishment and hospital as a day-school."

The pursuers, *inter alia*, pleaded—"(1) The object and wish and intention of the said George Stiell, according to the just and true construction of his said trust-disposition and settlement, having been to afford gratuitous education to poor children of the parish of Tranent, and failing such children, of the adjoining parishes above named, for ever, the trust-funds ought to have been and to be applied to that purpose, and the pursuers should have decree in terms of the first declaratory conclusion of the summons. (2) The various changes and alterations made by the defenders on the constitution, management, and administration of the hospital and school being at variance with the wish and intention of the said George Stiell, were and are illegal and *ultra vires* of the defenders. (4) In respect the said institution is not being administered and managed in accordance with the will and intention of the said George Stiell, the Court ought to adjust and approve of a scheme or constitution for the future administration and management of the said institution, as concluded for."

The defenders, *inter alia*, pleaded—"(1) No title or interest to sue. (5) The defenders having acted in regard to the recent alleged changes in accordance with the powers conferred upon them by the will of the founder and trust-disposition and conveyance following thereupon, they should be assoilzied from the declaratory conclusions of the action."

The Lord Ordinary repelled the preliminary pleas of the defenders, and further allowed the parties a proof of their averments.

The defenders reclaimed, and upon 5th February 1875 the First Division of the Court recalled the Lord Ordinary's interlocutor in so far as it allowed a proof; *quoad ultra* refused the reclaiming note, and remitted to Mr Kinnear, advocate, "to examine the minute-books, books of accounts, and all other books and writings connected with the administration by the defenders of the charity, and to receive the explanations and suggestions of both parties, and to report whether the administration of the defenders has been in conformity with the provisions of the founder's trust-disposition and settlement, dated 27th January 1808, or in what respects, if any, the defenders have departed from or acted contrary to the provisions of the said deed; and appointed the defenders to exhibit to the reporter the whole books and other writings above specified, reserving in the meantime all questions of expenses."

In Mr Kinnear's report the history of the administration and conduct of the charity was detailed. It appeared that it was in 1870 that it first occurred to the trustees to make any material change in the management. They then drew up amended regulations and a prospectus with a view to carrying out the new system, both of which were brought under notice of the Court by the reporter. The facts bearing upon the proposed changes were commented upon at length, but are sufficiently set forth in the opinions delivered by the Court.

Authorities—*Manchester School* case, May 13, 1867, 1 Law Rep., Equity 55, 2 Law Rep., Ch. Apps. 497; *Attorney-General* v. *Hartley*, 2 Jac. and Walk. Ch. Reps. 353; *Latymer's Charity*, Jan. 16, 1869, 7 Law Rep., Equity cases, 353; *Attorney-General* v. *Dean and Canons of Christ Church*, Jac. Ch. Reps.; *Harrow School* case, 17 Vesey 491.

At advising—

Lord President—The pursuers of this action challenge the legality of certain new regulations made by the defenders as the acting Governors and Directors of Stiell's Hospital, Tranent, on the ground that they involved a diversion of the funds of the endowment for purposes not contemplated by the founder. It is not disputed that the Governors have the power of making new regulations conferred upon them by the deed of foundation, and it is worth while to read the terms of that power as the limit of the discretion vested in the trustees. They are authorised "from time to time, as they shall see cause, to make such alterations, amendments, improvements, or additions, to the rules and regulations laid down by me for the management of the said hospital and public school, they always keeping in view the original intention of said charitable institution." The power thereby conferred seems in accordance with the discretion always held to be vested in the trustees of a charity of this kind, subject to the control of the Court, and the principle which guides the Court is very much what has here been laid down as the power to be allowed the trustees.

There are a number of things complained of here without much foundation, into which it is not necessary to examine in detail. But for the purpose of examining the more formidable it is necessary to understand the intention of the founder as gathered from the trust-deed. It is quite clear from it that the founder intended that the first thing to be done was to feu a piece of ground in the village of Tranent, and a certain

accumulation of the capital was directed to that end. There was then to be a further accumulation of the rents and interests of the capital for a particular time, in order to put the trustees in funds to build a house for the accommodation of about thirty boarders, and a master, an assistant, and servants. The boarders were to be clothed and maintained there. But the house was also to be so situated as to have a school-room for about sixty children as day-scholars. The house being built, the next thing to be done was, not to appoint children to be inmates of the house, but, on the contrary, to set up the day-school; and it is quite plain that the institution of the day-school was to be preferable in point of time to the setting up of the hospital proper—that is to say, the house in which the children were to be clothed and maintained. It was only if there was a sufficient surplus after providing the day-school that this secondary object was be carried out.

When the case was originally before us we had an argument on the relevancy of the action, and upon certain pleas which the Lord Ordinary had repelled. It appeared to us then (while we agreed with the view taken by the Lord Ordinary so far) that this was a case in which it was not desirable that proof should be taken, and we therefore remitted to Mr Kinnear to report. His report is now before us, and it is a very able and satisfactory one. Although he has not told us how far in his opinion the trustees have exceeded their power, if they have done so at all, he has furnished us with materials for forming an opinion ourselves. He says that it seems to have been in the beginning of the year 1870 that it first occurred to the Governors that a material change in the management of the hospital might be made with advantage; and the most important changes introduced in September 1871 were as follows:—(1) The discontinuance of the old system of boarding and maintaining children as inmates of the hospital; (2) the restriction to 60 of the number of free scholars to be educated on the foundation; (3) the institution of a preliminary examination; (4) the institution of a further examination of children passing from the lower to the upper branches (now for the first time introduced); (5) the provision for advanced education in languages and the physical sciences; (6) the increase of the teachers' salaries; (7) the introduction of paying-pupils along with the free pupils on the foundation; and (8) the institution of bursaries.

In regard to the first of these matters—the discontinuance of the old sytem of boarding and maintaining children as inmates of the hospital—it is no doubt an important question. It must be kept in view that the truster himself had obviously a preference so far for a day-school in comparison with the hospital proper that it was not until the day-school had been fully and satisfactorily set up that his trustees were to proceed to elect inmates to the house. At the same time it is not possible to disguise from one's self that he did mean that as soon as the day-school was set up, capable of accommodating sixty scholars, there should be a proportion of about one-half of that number educated as inmates of the hospital. It has been represented by the Governors, and it is quite within the knowledge of the Court, that there are great objections to the maintenance of a system of that kind at the present day, and that wherever it is possible it is very desirable that the system of maintaining and clothing children in such an institution should give way to the far better object of providing a day-school. The only question is whether it is within the powers of the trustees to make that change—to discontinue and abandon altogether what constituted one part of the founder's original scheme. This question is certainly not free from difficulty, but upon the whole I am inclined to say that this is quite within the powers of the Governors. The powers intended to be vested in them were to make such alterations upon the original scheme of the founder as might be rendered necessary or deemed expedient in the different constitution of society and the altered circumstances of the times generally; and there are various cases in which the Court have sanctioned alterations of this kind. Within the last few days we have given our sanction to a change of a similar kind, though not exactly of the same description as this, in the case of Bishop Burnet's foundation (reported *ante*, p. 106), and I cannot help thinking it is within the power of these trustees, subject of course to the control of the Court, to prefer the day-school to the boarding system, even to the extent of discontinuing the boarding system altogether. Therefore I am not prepared to say that they have exceeded their powers in this respect.

The complaint which is made under the second head, that the Governors have restricted their scholars to sixty, is not well founded in point of fact.

The third complaint is as to the institution of the examination for the children to be admitted into the day-school. I think this is a regulation entirely within the powers of the trustees. I do not think it can be maintained that any person has an absolute right upon the mere ground of poverty alone to the benefits of educational endowments. I should be very sorry indeed to give any countenance to such a proposition, and I think it was quite within the powers of the Governors of such an institution to say that they would select from among the poor children of the class intended to be benefited the most promising, and those who were likely to benefit most from the education which they were prepared to give. The preliminary examination of such a child must be of a very slight kind, but it may show what children are best suited to reap advantage from their educational training. In the same manner, if the institution of the higher school be in itself lawful, I cannot for one moment doubt that the examination of children passing into it was also quite within the power of the trustees.

In the next place, I think the increase of salaries was quite within the power of the trustees. And further, with regard to the introduction of (1) what is called the higher school, and (2) of bursaries, I cannot see any illegality, provided that the benefits are confined to the objects of the founder's charity. But it is necessary to consider these changes in connection with the last and most important change—that of the introduction of paying-pupils. In regard to that, I am far from saying that it was not in the power of managers of a charitable institution of this kind to add to it the instruction of pupils who pay for their education. Unquestionably, some of the best institutions both in Scotland and England were originally

charitable institutions purely, and yet have grown up to be schools of very great importance for the instruction of the children of both rich and poor persons. The only condition that it was absolutely necessary to attend to was that the paying-pupils should not derive any direct benefit from the charitable fund. It would not do to say we shall take in children whose parents may pay to a certain extent, and to give them so far the benefits of the charity, advancing them to a higher position of culture than their parents could give them. That proceeding would not fall under such a foundation as this. There was also no objection to the bursaries, provided that the paying-pupils did not benefit by them. In short, what the managers of an institution of this kind must do in adding paying-pupils to the foundation is to make sure that in affording the benefits of education to the paying-pupils they shall take care that the pupils paid the full value of it, or, in other words, that they shall not be educated either wholly or partially at the expense of the charity. It is not necessary that they shall make a profit by paying-pupils. But if there is no margin of profit they must at least pay the full expense of what they get, and the question comes to be whether they do so here? The trustees have made a mistake in confining the number of free scholars, and although they have increased their number they have not yet increased to such a point as to exhaust the funds of the charity. On the contrary, it seems quite clearly made out that there are charity funds in their hands which would suffice to educate a larger number of poor children in the proper sense of the term than they have at present in the school. And so in the present administration of these funds they are really making use of the funds for the benefit of what are called paying-pupils. In short, the school funds are administered in such a way as to give instruction to those who are not objects of the charity. The amount contributed by paying-pupils is plainly insufficient to furnish their quota of the expense of the establishment. I think it indispensable, therefore, that we set the managers right in so far as regards that matter; and it follows from what has been said in respect to the institution of bursaries that these must plainly be confined to the proper objects of the truster's charity, because if bursaries provided out of the charity were given to paying-pupils, the benefit of the charitable fund would be given to persons who are not the objects of the foundation.

It appears to me, therefore, as regards these matters, that we ought to direct that this part of the scheme of the managers should not receive effect. I am not disposed to say that in any other respect there is any error in principle in what has been proposed, and I can see a great deal of expediency in the general scheme. I think that the best course would be to make a finding in accordance with what has been suggested, and to remit to Mr Kinnear to adjust the scheme which the trustees have issued in accordance with these views.

Lord Deas—We have before us a very clamorous summons against trustees who have endeavoured to discharge their duty to this charity conscientiously and to the best of their ability. It is now admitted that if there be an error at all it is an error of judgment; and if there has been an error of judgment I do not think it is a great one.

I agree with your Lordship in all that you have said with respect to the extent of the power of the trustees.

The only conclusions of the summons that can be given effect to are those with reference to the drawing up of the scheme. These are not objected to, and there are good grounds for that apart from the charge made against the trustees. Important changes have been made in the hospital, such as the abolition of inmates, which your Lordship proposes to sanction; and I quite agree with the observation that there has been a change of opinion as to the expediency in the present day of boarding children in an hospital if the object of the founder can be attained conscientiously with the enjoyment by the children of the benefits of domestic training. The incomes of the masters have also been largely increased, and several other things have been done for which, assuming the changes to be proper, the trustees are entitled to get judicial sanction. I can therefore have no doubt of the propriety of the preparation of a scheme.

That being so, I would have preferred that when the scheme came before us it should be open to us to consider what effect the sanctioning of the changes would have on the question of paying-scholars. My impression at present does not agree with that of your Lordship, as I do not think that the testator ever contemplated free education for all the poor children in Tranent and the other parishes named. All that he intended to provide for was 30 inmate and 60 day-scholars.

Now, I do not read the deed as showing the founder's intention, in the first place, to provide for day-scholars, and as a secondary object to provide for inmates. The primary purpose of the truster was to have a house built (to be called Stiell's Hospital) for the education of poor children. I do not see why the funds set free by the changes proposed, viz., the discontinuance of inmates, must necessarily be devoted to increase the number of day-scholars. But when you take, in connection with that the powers given by the truster to make alterations on the rules and regulations, I am not prepared to say that the trustees have exceeded their powers, or that these necessary changes did not open up to them an opportunity of conferring greater advantages than the truster considered himself able to afford. The terms in which these powers are conferred are very important.

Now, the original intention of a charitable institution may have been to provide education for a certain number of poor children—for sixty, more or less. But if the changes which your Lordship proposes to sanction are to be carried out, I am not prepared to say that the reception of paying-pupils should be allowed only in the event of its being shown that they will not diminish the fund available for the education of the poor children. We do not know what the result will be—whether it will add to the funds or not; but that is a matter for inquiry, and if it turn out that there is no diminution of the funds, the objection will come to depend on the fact that part of the accommodation which was required by the inmates of the hospital will be taken advantage of by the paying-pupils. I am not the least prepared to say that that would be unlawful, but I would like to

reserve my opinion on this part until the scheme is before us.

There is only one thing more to which I wish to refer. The persons who are favoured in the deed are said to be poor children. We all know that a most important change has been made in the education of poor children by the recent Education Act. Children are now to be all educated at the public expense. I do not think the testator intended to provide for children whose education was to be provided at the public expense; and I would like to have had that also in view in deciding upon a scheme.

Lord Mure—I concur with your Lordship and Lord Deas on those branches of the case upon which you are agreed. And with reference to the admission of paying-pupils, if that should involve the exclusion of children who are the proper objects of the charity, I concur with your Lordship in the chair, because, as matters now stand, I do not see how a scheme can be put into proper shape unless some such finding as that proposed by your Lordship is pronounced. But I should certainly not wish to pronounce any finding which would seem to imply that the trustees had intentionally deviated from the directions of the founder, because I am satisfied that they had no such intention. On one point, however, viz., the introduction of paying-pupils to the exclusion of day-scholars, I am disposed to think that they have gone beyond their powers. And if the scheme as proposed points to the admission of scholars not on the foundation—to the competition for bursaries provided out of the funds of the institution—that would, I think, also be beyond the power of the trustees.

As regards the construction of the deed, it appears to me to be pretty clear that the intention of the founder, as explained by the terms of the deed, was to provide an institution for "poor children;" and that, while he contemplated as part of that institution an hospital for inmates who were to be maintained and clothed as well as educated, that was to be subordinate to the day-school. In these circumstances, I concur in thinking that it was within the discretion of the trustees to give up the part of the institution which consisted of resident inmates, provided the funds thereby set free were otherwise applied towards the education of proper objects of the charity; and I did not understand it to be contended on the part of the pursuers that such a change, subject always to the above qualification, or that the institution of a higher and lower school, was beyond the powers of the trustees. But I agree with your Lordship that if the effect of taking in paying-pupils is to lead to the exclusion, either directly or indirectly, of children who are proper objects of the charity, that is beyond the power of the trustees. And as the scheme as proposed may, in the view I take of it, operate in such a way as to lead to this result, I am of opinion, with your Lordship in the chair, that a finding or instruction to meet this state of matters should be embodied in the interlocutor to be pronounced. And I think it should also be made clear that the bursaries provided out of the funds of the institution are not open to paying-pupils, who were not, as it appears to me, within the contemplation of the founder.

The following interlocutor was pronounced:—

"Find that the defenders, as Trustees and Governors of Stiell's Hospital, in framing, publishing, and acting on the prospectus and new regulations for the administration of the charity in the year 1871, and subsequently, have not exceeded the powers conferred on them by the trust-disposition and settlement of the founder, or otherwise belonging to them as Trustees and Governors, except so far as by the operation of the said new regulations pupils attending the school and paying for their education, as not being proper objects of the charity, receive benefit from the funds, property, and revenue of the charity: Find that no part of the funds, property, and revenue of the said charity can be legally employed for the education of persons who, being able to pay for their education, are not poor children within the meaning of the founder's trust-disposition and settlement: Find that the said Trustees and Governors are not entitled to admit pupils who are not proper objects of the charity as pupils, to the effect of excluding from the school other pupils who are proper objects of the charity, or otherwise than on the footing of the persons, who are not proper objects of the charity, paying fees which shall fully meet the expense of their education at the said school: With these findings, remit the cause back to Mr Kinnear to alter the said new regulations and adjust a scheme for the administration of the charity in accordance with the said findings and with the trust-disposition and settlement of the founder, and to report the same to the Court."

Counsel for Pursuers—Lord Advocate (Watson) —Balfour. Agents—Dalmahoy & Cowan, W.S.

Counsel for Defenders—Lee—J. P. B. Robertson. Agents—J. & F. Anderson, W.S.

Wednesday, November 22.

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

LAWSON (INSPECTOR OF ANNAN) *v.* GUNN (INSPECTOR OF CRAMOND).

Poor—Settlement—Lunatic.

Held that a parish which had afforded relief to an adult pauper who had been imbecile from her birth was entitled to claim repayment from the birth parish of her father, who had died without acquiring a residential settlement.

This was an action raised by the Inspector of Poor of the parish of Annan against the Inspector of Poor of the parish of Cramond. The summons concluded for payment of £48, 7s. 2d., being the disbursements by the Parochial Board of Annan for the maintenance of Maria Farie, a pauper, during her confinement in the Southern Counties Lunatic Asylum, from 19th February 1874 to 16th February 1876, and thereafter for all the time that she should continue a lunatic and require parochial relief.

The circumstances of the case were as follows: