into a voluntary agreement, for that would not give him a right to relief from the child's parent.

At advising—

LORD PRESIDENT—The key to the present question is to be found in the fact that under the Factory and Workshop Act 1878 the employer is only liable for that for which the child or its parents are liable. The scheme of the enactment is that, up to the limit of 3d. a-week, the school managers have got a direct claim against the employer for the moneys due them by the child, and the employer can stop this amount off the child's wages. Unless, then, the child is due what is now asked, the employer cannot be. The simpler way, therefore, of testing the validity of the present claim is to drop the employer out of the case, and to consider whether this demand is good against the child.

Now, the pursuer's claim is for 2d. a-week, a charge made for books, &c. furnished to each child. I pause to notice that while the circular speaks of "books, stationery, &c.," it is explained in condescendence 8 that "the books, &c., to which the circular letter of the pursuers referred were school books, &c., furnished by the pursuers to, and taken home day by day by the children, and at no time claimed or received as the property of the pursuers, but used up by the children." This, therefore, is not a charge made for the use of the apparatus of the school; it is a charge for supplying the equipment of the individual child.

The case we have to deal with is free of any complication arising out of the pecuniary circumstances of the child. This being so, the law as laid down in *Haddow's* case is that the child is bound to find its own books; and the normal course for the School Board to take is to see that this is so done in each case. If the Board choose to waive the specific performance of this duty by the individual children or parents, it must be on one of two footings, either that the Board buy the children's books out of the rates, or that they buy the books as the mandatory of the children (or of course their parents). If the former be the case, there is no claim against the child. If the latter, the Board must prove their mandate, and the mere fact of the purchase of the books will not suffice—there must be evidence that the child or its parents instructed the Board to buy the books as their agent.

Apart from special arrangement, it is not to be presumed that the children or their parents authorised the Board to buy these books as their agent, and no special agreement is alleged. The Board relied solely on the supposed liability of the employer under the Factory Act, and never in this matter put themselves in relation with the children or parents at all.

Accordingly, I hold that the Board had no claim against children or parents for this charge for books, and by consequence that they had no claim under the Factory Act against the employers.

The pursuers attempted to represent their record as containing an averment of contract between the employers and the Board; but I am entirely unable to discover anything of the kind. There is nothing alleged to support the theory that between 23rd March 1894 and 16th July 1897 the pursuers supplied the children with books as the agents of the defenders, or that the defenders had in any way undertaken to pay for the books.

I think, therefore, that the defenders are entitled to hold their absolvitor.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for Pursuers—Sol.-Gen. Dickson, Q.C.—Salvesen. Agents—J. & D. Smith Clark, W.S.

Counsel for Defenders—Wm. Campbell, Q.C.—Hunter. Agents—Skene, Edwards, & Garson, W.S.

Saturday, June 10.

FIRST DIVISION.

KIRK SESSION OF LARGS *v.* SCHOOL BOARD OF LARGS.

Expenses — Charitable and Educational Trust — Administration — Right of Respondent to Expenses.

When a private individual or a public body appears and lodges answers in an application to fix a scheme of administration of an educational trust fund, the measure of the respondent's right to his expenses out of the trust fund is the extent to which his intervention has furthered the interests of the trust administration.

Circumstances in which, following the above principle, a school board, which appeared as respondent in an application to fix a scheme of administration of the funds of an endowed school within its district, *held* entitled to one-third of the expenses of its appearance out of the trust fund.

The Reverend John Keith and others, being the members of the Kirk Session of Largs, presented a petition to the Court for authority to sell the site and buildings of the Female School of Industry at Largs, and for directions as to the application of the price.

The petitioners set forth that the site had been conveyed to them for the erection of a school for the children of poor persons, the said school to be under the inspection of the Presbytery of Greenock, and to remain in perpetual connection with the Established Church of Scotland. The cost of the building was defrayed partly by a grant from Government, partly by private subscription. The school was managed and maintained by the Kirk Session down to 1893, when the establishment of a large public school at

Largs and the abolition of fees rendered it no longer necessary.

The petitioners proposed that the money resulting from the sale should be applied by devoting the annual income therefrom to the purposes of the library maintained in connection with Largs Parish Church Sunday School, and to providing class books for the children attending the same.

Answers were lodged by Mr Dewar Paton, who had been an annual subscriber to the school for nearly thirty years, and by the School Board of Largs. The respondents objected to the proposed scheme of administration on the ground that, under it, the funds of the endowment would be applied for the benefit of one religious denomination exclusively, whereas the charity had hitherto always been conducted irrespective of creed or sect. The respondents accordingly craved that the proceeds of the sale should be handed over to the School Board of Largs.

Mr Ewan Macpherson, advocate, to whom the Court remitted to report and prepare a scheme, submitted a scheme the substance of which was that the yearly income of the trust funds should be applied in the purchase of books, to be housed in the Parish Church Sunday School library, and to constitute a special department of that library, for the use, without any charge being made, of all boys and girls attending public or State-aided schools within the parish of Largs.

On the reporter's scheme appearing in the summar roll, neither party objected thereto, but the respondents asked for their expenses out of the trust fund, and argued—The intervention of the respondents here had been of assistance, for it was on their suggestion that the benefits of the fund had been extended to children of all denominations. The respondent had also kept the petitioners' right in sundry details of procedure, *e.g.*, by suggesting intimation to the Lord Advocate.

Argued for the petitioners—The respondents had pressed for the fund being handed over to the school board, in defiance of the decision in *The Kirk Session* v. *School Board of Prestonpans*, November 28, 1891, 19 R. 193. In that contention they had been wholly unsuccessful, and they were therefore not entitled to their expenses.

Lord President—When a party comes forward as respondent in an application of this kind, and at the end of the proceedings demands his expenses out of the trust funds, it seems to me that the proper inquiry is—What advantage has his appearance rendered to the due administration of the fund? In the present case the intervention of Mr Trotter's clients has been advantageous to a certain extent. They have called attention to certain points on which the petitioners very properly gave way, and to certain other points by which the reporter's opinion may have been modified. But that does not necessarily lead to the conclusion that Mr Trotter's clients are entitled to full expenses, because in the first place the counter scheme proposed by them has been rejected, and it was the main, or ostensibly the main, object of their lodging answers. I think therefore we shall do well if, adopting the criterion I have stated, and having regard hereby to the extent to which the interests of the trust administration have been furthered, we give them one-third of their expenses out of the trust fund.

The only other observation I wish to make is that for my part I should not like it to be supposed that every school board, when an endowed school within its district comes into Court with a scheme, is entitled to come forward and take part in the proceedings as a matter of course and get expenses out of the endowment. It may very well be that in the public interest a school board may think it right to come forward at its own expense, but it must not depend on its being necessarily treated as a tutelary deity of the endowment whose presence is indispensable to the success of its every enterprise. I say this to guard against even this modest grant of expenses being construed as an invitation to school boards to come forward and take part in proceedings like the present.

Lord Adam, Lord M'Laren, and Lord Kinnear concurred.

The Court approved of Mr Macpherson's report and scheme, allowed the petitioners their expenses out of the trust fund, and found the respondents entitled to one-third of their expenses.

Counsel for the Petitioners—Chisholm. Agent—J. B. M'Intosh, S.S.C.

Counsel for the Respondents—Trotter. Agent—William Fraser, S.S.C.

Tuesday, June 13.

SECOND DIVISION.

REID *v.* REID'S TRUSTEES.

Succession — Fee and Liferent — Power of Disposal of Fee by Mortis causa Deed.

By his holograph will a testator left and bequeathed to his sister "all my property, heritable and moveable, real and personal, either mine at present or in expectancy, for her sole and separate use in liferent, and at her option as to destination in the event of her death."

Held that the effect of the will was to confer upon the sister, not a fee, but only a liferent, with power to dispose of the fee by *mortis causa* deed.

Marriage-Contract — Trust — Denuding — Alimentary Liferent—Power to Terminate Trust stante matrimonio.

In the antenuptial contract of marriage the husband conveyed certain property to trustees for, *inter alia*, the following purpose—to apply the annual produce for behoof of the spouses as an alimentary provision free from their debts and deeds or the diligence of their creditors.