LORD ANDERSON did not hear the case.

The Court adhered.

Counsel for the Claimant and Reclaimer Mrs Coralie M. L. Williams or Wilson or Mackenzie—Henderson, K.C.—Macdonald. Agents—Fraser, Stodart, and Ballingall, W.S.

Counsel for the Claimants and Respondents, the Rev. J. B. Wilson and Others and also for John James Moubray and Others (the testamentary trustees of the late John Wilson), Pursuers and Real Raisers—Chree, K.C.—Duffes. Agents—Mackenzie & Wyllie, W.S.

Thursday, March 20.

SECOND DIVISION.

[Lord Constable, Ordinary.

NORFOR AND OTHERS *v.* ABERDEENSHIRE EDUCATION AUTHORITY.

(Reported *ante*, July 13, 1923, 60 S.L.R. 553.)

School — Transferred School — Powers of Education Authority with regard thereto —"Hold, Maintain, and Manage as a Public School" — Education (Scotland) Act 1918 (8 *and* 9 *Geo. V, cap.* 48), *sec.* 18 (3) *and* (9).

Statute — Education (Scotland) Act 1918 (8 *and* 9 *Geo. V, cap.* 48)—*Construction— "Hold, Maintain, and Manage as a Public School."*

By the Education (Scotland) Act 1918, section 18, provision is made for the transfer of voluntary schools to the Education Authorities constituted by that statute. By sub-section (3) it is enacted—"Any school so transferred shall be held, maintained, and managed as a public school by the Education Authority, who shall be entitled to receive grants therefor as a public school, and shall have in respect thereto the sole power of regulating the curriculum and of appointing teachers." To this enactment are adjected three provisos, viz. — (*a*) That the existing staff of teachers shall be taken over; (*b*) that the religious belief and character of all teachers appointed to the staff shall be approved by representatives of the Church or denominational body in whose interests the school has been conducted; and (*c*) that facilities shall be provided for religious instruction in the school by a supervisor to be approved as aforesaid. By sub-section (9) it is provided that after the expiry of ten years from the transfer of a school the Department may in certain circumstances discontinue the school, or maintain it as a public school free from the conditions prescribed in sub-section (3).

The trustees of a voluntary school transferred it under the provisions of the Education (Scotland) Act 1918 to the County Education Authority. Prior to the transfer the school was carried on as a primary school, providing a full primary course of instruction together with a supplementary course. Two years after the transfer the Education Authority resolved to alter the status of the school by discontinuing the giving of primary instruction therein to pupils beyond the infant or junior stages, whereupon the former trustees of the school brought an action against the Education Authority for declarator that the defenders were bound for the space of at least ten years from the date of the transfer to maintain the school as a primary school providing a full and supplementary course of instruction, and for interdict against the defenders for the said space of time maintaining the school as a school for infants and junior pupils only, or otherwise than as a school providing a full primary course of instruction. *Held* (*rev.* judgment of Lord Constable, Ordinary) that the defenders were bound to hold, maintain, and manage the school for the space of at least ten years from and after the date of the transference as a public school of the same character and status as at the date of the transference.

Robert Thomas Norfor, C.A., Edinburgh, as secretary and treasurer of the Representative Church Council of the Episcopal Church in Scotland, and others, *pursuers*, brought an action against the Education Authority for the county of Aberdeen, *defenders*, for declarator (1) that St John's Episcopal School, New Pitsligo, was at the date of the passing of the Education (Scotland) Act 1918 (8 and 9 Geo. V, cap. 48) on 21st November 1918 a voluntary school within the meaning of "the Education (Scotland) Act 1897" (60-61 Vict. cap. 62); (2) that the said school was transferred as and from 15th May 1919 to the defenders as the Education Authority for the county of Aberdeen, in terms of the said Education (Scotland) Act 1918, by the trustees for behoof of the congregation of St John's Church, New Pitsligo . . . ; (3) that at the date of the said transference the said school was a primary school providing a full primary school course of instruction together with a further supplementary course; and (4) that the defenders as Education Authority foresaid and as such now vested in the property, control, and management of the said school in virtue of the said transference and of the provisions of the said Education (Scotland) Act 1918, are bound in terms of the said Act to hold, maintain, and manage the said school for the space of ten years at least, from and after the said 15th May 1919 as a primary public school providing a full primary and supplementary course of instruction, subject to the provisions of the said Education (Scotland) Act 1918, and to the defenders' curriculum for the time being applicable to courses of primary instruction in schools under their charge; "*or alternatively, as a public school of the same character and status as at the date of the said transference and providing similar instruction to that pro-*

vided at said date, subject to the provisions of the said Education (Scotland) Act 1918." [The words in italics were subsequently added by way of amendment]; and further, the defenders ought and should by decree foresaid be interdicted, prohibited, and discharged from holding, maintaining, and managing the said school at any time within the space of ten years from and after the said 15th May 1919 as a school for infants and junior pupils only, or otherwise than as a school providing a full primary course of instruction, subject to the provisions of the said Act according to the defenders' curriculum for the time being applicable to schools under their charge, and from transferring, within the said space of ten years, pupils attending the said school at any stage of their primary or supplementary course to the Public School, New Pitsligo, or to any other school under the charge of the defenders.

The pursuers pleaded, *inter alia*—"1. The said school having been transferred to the defenders in terms of the Education (Scotland) Act 1918, the defenders are bound to hold, maintain, and manage the same for the space of at least ten years from and after the date of the transference as a public school of the same character and status as at the date of the transference, and decree should accordingly be pronounced in terms of the declaratory conclusions of the summons."

The defenders pleaded, *inter alia* — "3. The question raised by the pursuers being a question as to the due fulfilment or observance of a provision of sub-section (3) of section 18 of the Education (Scotland) Act 1918, the same falls to be decided finally by the Scottish Education Department, and the action is therefore incompetent and ought to be dismissed. 5. The arrangements made by the defenders for the management of St John's School not being in contravention of the provisions of the Education (Scotland) Act 1918, the action is without foundation and the defenders are entitled to be assoilzied from the conclusions of the summons."

On 9th January 1923 the Lord Ordinary (CONSTABLE) pronounced an interlocutor in which he sustained the third plea-in-law for the defenders and dismissed the action.

The Lord Ordinary's opinion will be found in the previous report.

The pursuers reclaimed, and on 13th July 1923 the Court (*diss.* the Lord Justice-Clerk) recalled the interlocutor reclaimed against, repelled the third plea-in-law for the defenders, and remitted to the Lord Ordinary to proceed (*vide* previous report *ut supra*).

The amendment to the summons shown in italics *supra* was allowed on 23rd October 1923.

On 9th November 1923 the Lord Ordinary pronounced an interlocutor in which he sustained the fifth plea-in-law for the defenders and assoilzied them from the conclusions of the summons.

Opinion. — "The circumstances of this case and the questions raised by the parties were fully narrated in the note to my interlocutor of 9th January 1923, to which I refer. That interlocutor having been recalled I must now determine the merits of the question at issue between the parties in so far as that question depends upon the construction of the statutory obligation imposed upon the defenders as transferees of St John's School. On the assumption that the construction was in favour of the pursuers it might still be necessary, according to the views expressed by their Lordships in the Second Division, to refer to the Education Department the further question whether the obligation had been reasonably fulfilled. In the fourth declaratory conclusion of the summons as originally framed the pursuers expressed the measure of the defenders' obligation in terms so definite that no further reference would probably be necessary. But in case the Court might take a more limited though favourable view of the pursuers' rights they added at my suggestion an alternative declarator expressed in more general terms. I have now to consider whether the provisions of section 18 (3) of the Education (Scotland) Act 1918 will warrant either of these conclusions.

"It will be convenient in the first place to narrate the material provisions of section 18. Sub-section (1) provides that at any time after the first election of education authorities under the Act it shall be lawful for the vested owners and trustees of any voluntary school to transfer it by sale, lease, or otherwise to the education authority, who shall be bound to accept the transfer on such terms as to price, rent, or other considerations as may be agreed on, or as failing agreement may be determined by arbitration. Sub-section (3) provides that 'Any school so transferred shall be held, maintained, and managed as a public school by the education authority, who shall be entitled to receive grants therefor as a public school, and shall have in respect thereto the sole power of regulating the curriculum and of appointing teachers.' To this provision are adjected three express conditions, viz., (*a*) that the existing staff of teachers shall be taken over, (*b*) that the religious belief and character of all teachers appointed to the staff shall be approved by representatives of the Church or denominational body in whose interest the school has hitherto been conducted, and (*c*) that facilities shall be provided for religious instruction in the school by a supervisor to be approved as aforesaid. Sub-section (9) provides that if at any time after the expiry of ten years from the transfer of a school the education authority are of opinion that the school is no longer required, or that the special conditions prescribed in sub-section (3) ought no longer to apply thereto, it shall be lawful for the authority with the approval of the Department 'thereafter to discontinue the school, or as the case may be, to hold, maintain, and manage the same in all respects as a public school not subject to those conditions.' A proviso is added that in either of these events the education authority shall make to the trustees by whom the school was transferred such com-

pensation (if any) in respect of the school or other property so transferred as may be agreed, or as failing agreement may be determined by arbitration.

"I was favoured with a very careful argument from both sides of the bar. Shortly stated, the pursuers' contention is that the main provision of sub-section (3)—'Any school so transferred shall be held, maintained, and managed as a public school by the education authority'—refers to the transferred school as an educational institution, and implies that such institution must be preserved in its existing condition, or at anyrate that its essential features—its character and status as determined by the scope of the instruction provided—must be preserved, subject only to the qualification that it is open to the public. The defenders' contention is that their only obligation is to maintain in the transferred building a public school within the meaning of the Education Acts, and to comply with the three special conditions expressly adjected to the main provision of the sub-section. The interest which each of the parties have to maintain their respective contentions is obvious. The value of the right to give religious instruction reserved to the transferors materially depends upon the type of school in which it is to be given. On the other hand the utility of the transferred school to the transferees may materially depend upon their right to alter the classes and scope of instruction therein so as to co-ordinate the system of education in the district. But neither of these considerations is, I apprehend, relevant to the construction of the statute.

"The broad features of the scheme of transfer are sufficiently clear:—1. It is an out-and-out transfer of the property and management of the school with no reversionary rights in the transferors, though the final payment of the compensation to be made by the transferees may be postponed till the cessation of certain limited interests reserved to the transferors. 2. The school must be maintained (in some sense of the term) by the transferees for at least ten years, during which time the transferors are entitled to enforce certain conditions. 3. At the expiry of ten years if the Education Authority and the Department agree the school may either be altogether discontinued or may continue to be maintained free of the conditions in favour of the transferors.

"Two points of verbal criticism of the language used in sub-section (3) were a good deal pressed in argument, but neither of them seems to afford very much help in the construction of the provision. One was whether the term 'school' is used in the limited sense of a physical structure or in the broader sense of an educational institution. On this question the context throws little light, because I think it is obvious that the term is sometimes used in the one sense and sometimes in the other. Thus in sub-section (1)—the transfer provision—the term is obviously used to mean the physical structure, whereas in sub-section (2) it is obviously used to mean the educational institution. The other point was the meaning of the word 'maintain.' It was argued for the pursuers that the primary meaning of the term is 'to keep up,' 'to preserve in its existing condition,' and on the assumption that the term applied to an educational institution it is necessarily implied that the character of that institution must be preserved. If the sole statutory direction was to hold, maintain, and manage the transferred school I think the argument would be formidable. The objection to it is that it does not take into consideration the language of the sub-section as a whole. The full provision is that the school is to be maintained and managed as a public school, and that the Education Authority is to have the sole power of regulating the curriculum and of appointing teachers subject to three carefully expressed conditions to safeguard the interests of the existing teachers and the interests of the transferring body in religious education. The question is whether the additional words 'as a public school' do not necessarily define the measure of the transferees' obligation. If they do, there can be no question as to the transferees' power to alter the system of education. 'Public school' means 'any school under the management of the school board,' now the education authority—Education (Scotland) Act 1872, sec. 1. Now in my opinion the presumption is that the words 'as a public school' are inserted in sub-section (3) for the purpose of defining the transferees' obligation; and I think the natural implication that the words are used for that purpose, and not merely for the purpose of imposing an additional obligation, is confirmed in the first place by the express power to regulate the curriculum and to appoint teachers conferred upon the transferees, and in the second place by the provisions expressly securing the transferors' interests in religious education. Regulation of the curriculum may no doubt be used to describe variation in the scheme of work prescribed for children of a certain age or for those taking a certain course, and, as counsel for the pursuers pointed out, 'curriculum' is sometimes applied in the circulars and instructions of the Education Department to such a scheme of work. But *prima facie* I think that power to regulate the curriculum in a school includes power to regulate the scope as well as the details of instruction given therein. With regard to the provisos, I think the presumption is that these defined the measure of the transferors' reserved rights. If it was intended that the transferors should possess the reserved right to insist upon the maintenance of the full system of secular education in force at the date of transfer, it is incomprehensible why this should have been omitted from the carefully expressed conditions in their favour and left to mere implication. The structure of sub-section (3) strongly supports the argument of the defenders that the main provision of the sub-section was truly in the public interest, and can only be founded on by the transferors to the effect of insisting that a public school shall be maintained in which their

expressly reserved rights shall be operative.

"I think that this view is strongly confirmed by the provisions of sub-section (9). The alternatives there presented to carrying on the school subject to the transferors' rights after the lapse of ten years are either (*a*) to discontinue the school or (*b*) 'to hold, maintain, and manage the same in all respects as a public school not subject to those conditions.' The words 'hold, maintain, and manage as a public school' are identical with those used in sub-section (3). If as used in sub-section (3) they impose an obligation to maintain the same system of education as prevailed at the date of transfer, they must impose the same obligation in sub-section (9). But this would be absurd, because in the latter case the school is to be maintained free of all conditions in favour of the transferors. And if the transferors' interest has ceased, why should the hands of the Education Authority be tied for all time in administering the school in the public interest? Counsel for the pursuers endeavoured to get over this difficulty by suggesting that if the Education Authority desired after the lapse of ten years with the approval of the Department to continue the school on a different basis, they might secure their object by first availing themselves of the special statutory power to discontinue the school, and then using their general powers under the Education Acts to start it again as a public school of a different kind. The suggestion ingeniously gets over the difficulty resulting from the pursuers' construction of sub-section 9, but it does not help to make that construction any more reasonable.

"The provisions for the transfer of voluntary schools which were made in previous statutes, though they differ in some material respects from the present clause, are also worth considering. Section 38 of the Education Act of 1872 provides that it shall be lawful for the vested owners and trustees of any such school to transfer it to the School Board and for the School Board to accept the transference 'and the school shall thereafter be deemed to be a public school under this Act and shall be maintained and managed by the School Board and be subject to all the provisions of this Act accordingly.' The section concludes with a provision that the use of the school-house at such times and for such purposes as shall not interfere with the use thereof under the provisions of the Act by the School Board may be made a condition of the transfer. The effect of a transfer under this section was considered in *School Board of Glasgow* v. *Kirk Session of Anderston* (1910 S.C. 195). A Kirk Session in Glasgow as trustees of a voluntary school transferred it to the School Board in 1874 under a deed which reserved a limited right of user to the transferors. In 1907 the School Board having provided other accommodation for the children closed the school and resolved to use the buildings for a day industrial school and a school for defective children of the Roman Catholic faith. In a special case between the successors of the Kirk Session and the School Board it was held that the actings of the Board were within their powers, that a transferred school was in the same position as any other public school under the Act subject only to the transferors' reserved right of user. The obligation to maintain a school imposed by that section does not accordingly imply that the school is to be maintained in its existing condition.

"The other prior transfer provision is section 29 of the Education Act of 1908. It provides that the governing body of any intermediate or secondary endowed school may, with a view to the maintenance of such school as an intermediate or secondary school, resolve to transfer the management thereof together with the buildings and endowments to the School Board, who 'shall have power to receive the same, to manage the school as an intermediate or secondary school,' and to make up any deficiency in the school income. In this case the preservation of the character and status of the school was expressly provided for in the statute.

"Counsel for the pursuers founded specially upon two decisions by the English Courts on the meaning of certain provisions in the English Education Act of 1902 (2 Edw. VII, cap. 42), viz., *Attorney-General* v. *West Riding of Yorkshire County Council* (1907 A.C. 29), and *Wilford* v. *West Riding of Yorkshire County Council* (1908, 1 K.B. 685). In the first of these cases the question was whether the Local Education Authority was bound to pay for denominational religious instruction given during school hours in a non-provided school. The scheme of the Education Act of 1902 was to entrust the management of schools, which had not been provided by the Local Education Authority, to a body of six managers, of whom four represented the trustees who had provided the school, and two were appointed by the Local Education Authority (sections 6 and 11), while the burden of maintenance, except the maintenance of the school-house, was imposed upon the Local Education Authority. The Local Education Authority were entitled to give directions as to secular education, but religious instruction was left in the hands of the managers (section 7 (1) (*a*) (*b*)). Section 7 (1) provided that 'the Local Education Authority shall maintain and keep efficient all public elementary schools within their area.' Construing these words the House of Lords held that the Local Education Authority are bound to pay what is reasonable for religious instruction because, in the words of the Lord Chancellor, 'in order to maintain a school in which the law allows the managers to make religious instruction a part of the curriculum, the Local Education Authority must take the school as it is and bear the cost of the whole.' The decision appears to me to have no bearing on the present case. The right of management entailing certain expenditure was conferred upon another body, and the Education Authority had to pay the cost of maintenance resulting from such management.

"At first sight the other case of *Wilford*

seems to come nearer the present. The Local Education Authority issued a direction under section 7 (1) (*a*) of the Act to the managers of a non-provided school, which had hitherto afforded a full course of instruction in all standards from 1 to 7, that after a certain date no secular instruction was to be given in the school except to children in standards 1 to 3. The managers thereupon applied for an injunction to restrain the Education Authority from interfering with them in the exercise of their rights and duties as managers of the school, and Channel, J., granted a declaration that the directions were *ultra vires* being in breach of the defendants' obligation to maintain the school, and an injunction restraining the defendants from taking any steps to enforce it. Counsel for the defenders argued that the learned Judge was mistaken in saying (p. 697) that the matter before him was covered by the previous decision in the House of Lords. I do not propose to go into that question, because in any case I think, if I may respectfully say so, that the decision of Channel, J., was sound. The power claimed by the Education Authority to alter the character of the school by giving directions as to the secular instruction to be given therein were equally inconsistent with the power of management statutorily conferred on the plaintiffs, and with the obligation of maintenance statutorily imposed on the defendants themselves. But the circumstances and the statutory provisions were materially different from those involved in the present case. There was no transfer either of property or management, and the obligation of maintenance was unqualified. The essential feature of the present case is that the obligation of maintenance imposed on the Authority, to whom both property and management have been transferred, is qualified.

"On a sound construction of section 18 of the Statute of 1918 I am unable, for the reasons above stated, to hold that it warrants the pursuers' case. I shall therefore sustain the fifth plea-in-law for the defenders, and grant decree of absolvitor."

The pursuers reclaimed, and argued—The three conditions adjected to section 18, sub-section 3, of the Education (Scotland) Act 1918, fell to be observed during the interregnum of ten years. The defenders had been guilty of a breach of the second and third of these conditions. The pursuers were legally entitled to have the school carried on during that period as before the transfer thereof. The true meaning of the word "maintain" was the preservation or up-holding of the *status quo*. The defenders were bound by the Act to maintain the school as a public school and to take over the staff existing at the date of transfer. The word "school" meant not only the building but also the educational institution. The terms of the Act prohibited the defenders from altering the status and character of the school during the interregnum. By section 18 (3) of the Act it was provided that religious instruction was to be given in the particular school, whereas the defenders had transferred the upper classes of the original school to a school where no such instruction was given. It was reasonable that the pursuers should desire the trial of ten years to test the right of the school to continue and justify its existence in the new scheme of things. Only the course of study, which was experimental, could be changed. Otherwise the school ought to be continued in its existing condition—*Wilford* v. *West Riding of Yorkshire County Council*, 1908, 1 K.B. 685; *Attorney-General* v. *West Riding of Yorkshire County Council*, 1907 A.C. 29. Counsel also referred to Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62), section 38; the Act of 1908 (8 Edw. VII, cap. 63), section 29; *School Board of Glasgow* v. *Kirk Session of Anderston*, 1910 S.C. 195, 47 S.L.R. 278.

Argued for the respondents—The term "maintain" was quite familiar in earlier Acts, *e.g.*, in the Education Act of 1872, section 36. It applied only to the cost of upkeep of the present school, and did not prevent the education authority from transferring certain classes in its discretion to other schools. There was nothing in the Act to prevent this purely administrative act. The education authority was in a position to determine the kind of school. The cases cited were distinguishable. The transfer of the school having taken place, the education authority did not require to carry it on as it had been prior to the transfer—*Board of Glasgow* v. *Kirk Session of Anderston* (*cit.*).

At advising—

LORD JUSTICE-CLERK (ALNESS)—By section 18 of the Education (Scotland) Act 1918 the education authorities constituted by that statute are bound to accept a proffered transfer of voluntary or denominational schools. By the same section such transfers are rendered inevitable, for, in the normal case, after the expiry of two years from the passing of the Act, grants from the Education (Scotland) fund are withheld from any voluntary or denominational school which has not then been transferred. The compulsitor was doubtless intended to be, and has, I understand, proved effective. By the same section a review of the position of such schools is provided for, after the expiry of ten years from the date of transfer, when, with the consent of the Scottish Education Department, they may be either discontinued, or continued as public schools free of the fettering conditions set out in sub-section 3.

The question in this case relates to the position of one of these schools during the period which intervenes between the date of transfer and the date of review. The pursuers contend that during that period the education authority must maintain the school as an educational institution in its existing state—that the school, in other words, must retain the same character and status as it possessed before transfer. The defenders on the other hand argue that the obligation of an education authority is discharged if it maintains, in the building where the transferred school was carried on,

a "public school" within the proper meaning of that phrase. I desire to make two preliminary observations. The first is that I fully recognise the importance of the question submitted to us, inasmuch as our judgment will determine the position of all voluntary schools in Scotland, Roman Catholic and Episcopal, which have been or which may yet be transferred under the provisions of the Act. The second is that I of course assume that both parties to the action have throughout acted in entire good faith, and from a single-minded desire to further the interests which have been committed to their charge.

The controversy has arisen with reference to St John's School, Pitsligo, a voluntary school which was transferred to the Aberdeen Education Authority, in virtue of the provisions of section 18, as and from 15th May 1919. That school, before transfer, provided a full primary course of instruction, together with a supplementary course. After transfer the defenders determined to run the school in association with the public school at New Pitsligo, to confine the former school to junior classes, and to transfer the senior classes of the denominational school to the public school. In short the transferred school was cut in two. Four senior classes were sheared off from it, and were absorbed by the public school, while four junior classes remained in the transferred school. In other words, St John's School became, by the defenders' direction, a purely preparatory school. The question we have to determine is whether or not that is a legal operation.

The answer to the question must obviously be sought for in the first place in the provisions of the section itself; but light may also be shed upon the problem by consideration of earlier statutory provisions with regard to the transfer of voluntary schools —for the operation is not by any means a novel one in Scotland—and also from the decisions which deal with similar statutory provisions in England.

Primarily, however, the question depends for its answer on the provisions of section 18, and in particular on the provisions of sub-section 3. Whatever speculations may be indulged in with reference to the bargain which the section embodies, as to the motives which induced the parties concerned to consent to it, or as to the interest which they thought would thereby be served, the problem is truly one of statutory construction and nothing else. It may be convenient to quote the precise terms of sub-section 3. They are these—"Any school so transferred shall be held, maintained, and managed as a public school by the education authority, who shall be entitled to receive grants therefor as a public school, and shall have in respect thereto the sole power of regulating the curriculum and of appointing teachers." To the substantive provisions are adjected three provisos, with which I shall subsequently deal. The main inquiry, however, manifestly is, what is the meaning of the words "held, maintained, and managed as a public school?" These are obviously the governing words of the sub-section. The pursuers say that the direction to "maintain" involves that the school, after it crosses the line, shall be kept up, that it shall be preserved in its existing character, that its identity shall not be destroyed or impaired, and that the type of education given within its walls shall be regarded as stereotyped. The defenders contend that the word "maintain" merely involves that the education authority is thereby obliged to pay for the upkeep of the school, and to keep it in repair. Now the word "maintain" appears to me *prima facie* to postulate continuity, and to suggest that the identity or individuality of the educational establishment shall remain unaffected. An obligation to maintain a house could not, I think, be deemed to be implemented, if the top storey were lopped off. That, in effect, is what the defenders have done. They must maintain that they are entitled to cut the school into ribbons, and to discontinue it *quoad* at any rate one-half of its contents. On any reasonable interpretation of the word "maintain" I think that the contention is unsound. But that by no means ends the matter. The defenders found strongly on the words "as a public school," and they argue that they have discharged their obligation, if they can affirm that the transferred establishment is maintained "as a public school." I think the contention is based on a misapprehension of the purpose and effect of the words "as a public school." In my judgment these words are not exegetical of the word "maintain," and do not furnish a criterion of its content. In my view the words are used to ensure that the doors of the school, when transferred, shall be open to the public irrespective of creed, and to warrant the payment of public money, in the shape of grants, to the transferred school. In other words, I construe the sub-section as meaning—"The school shall be maintained, and it shall be maintained as a public school." The words "as a public school" do not measure the obligation to maintain, but superadd to that obligation yet another obligation. This construction is borne out, I think, by the immediately following words "who shall be entitled to receive grants therefor as a public school." The significance of the words "as a public school" is to be found in its right to receive grants of public money. Then follow the words, which must also be considered, "and shall have in respect thereto the sole power of regulating the curriculum and of appointing teachers." The defenders seek to give a wide interpretation to the word "curriculum." Indeed, I understood them at one time to maintain that these words authorised them to do what they have done. On that contention I have two observations to make. In the first place, if the word "maintain" has the limited interpretation which the defenders seek to attach to it, the new power which is claimed to reside in these words is superfluous. However that may be, I decline to regard a right to regulate the curriculum of one school, *i.e.*, to direct its studies, and to prescribe the books necessary for the prosecution of these, as con-

ferring a right on the defenders to abstract half the scholars from that school and to instruct them in another school.

The views which I have expressed find confirmation, I think, from certain of the provisos attached to the main enactment. The first proviso deals with taking over the existing staff of teachers, and casts, I think. no light on the problem. That obligation has, I understand, been implemented by the defenders. The second proviso is, however, I think, of considerable significance. It enacts that all teachers appointed to the staff of a transferred school shall be approved by the representatives of the church whose school is transferred. Now, no doubt the requirement only applies to teachers in the school transferred. But nothing can be more plain than that it was intended that the scholars at the transferred school should, during ten years at least, be instructed by teachers approved by the church, and that the senior classes which are now instructed in the public school are being instructed by teachers who do not satisfy that requirement. In other words, the operation carried out by the defenders violates, in my opinion, the spirit of the proviso, if it is not in breach of its letter. What the defenders have done does not differ in effect from the result which they would have achieved had they segregated the senior classes in St John's School in that building, and had they seconded a group of teachers from the public school to instruct these classes in St John's School. That would have been a manifest infraction of the proviso under review. The defenders, acting no doubt in perfect good faith, have nevertheless, by a circuitous method, succeeded in circumventing the direction contained in the proviso. They have, in my opinion, ignored the ancestry of the school, and the limitation upon their freedom of action with regard to it which that ancestry entails, and they have treated St John's School as if it were an ordinary public school, over which they have undisputed and unfettered dominion, and whose educational co-ordination is theirs, and theirs alone, to determine and adjust.

Further light on the question is shed by a consideration of proviso (*c*). It enacts that an approved supervisor shall report to the education authority on the efficiency of the religious instruction given in the school. There is no such supervisor in the public school, and the transferred scholars are deprived of this statutory safeguard. I do not forget that the defenders have offered to allow the senior pupils to return to St John's School for religious instruction, subject, I suppose, to superintendence by the supervisor there; but I cannot think that, even if the offer be made, not as a concession, but as in discharge of a statutory obligation on the part of the education authority, the statute contemplated such an inconvenient and haphazard implement of the obligation imposed. Indeed, it is not clear that the arrangement proposed might not at any time be terminated by the defenders.

The pursuers' argument is, I think, further reinforced by consideration of the provisions of sub-section (9). That sub-section deals, as I have indicated, with the right of review at the end of ten years. The statute contemplates that, at the expiry of that period, an inquiry should take place with regard to the question whether or no the school should be altogether discontinued. If the defenders' argument is right, it is plain that that inquiry would be of a very different nature from that which, it seems to me, the statute contemplates. It contemplates, I think, that investigation should then be made as to whether the school taken over ten years before, and "maintained" in the interval, has justified its existence during the period of probation, and should continue to exist. But it is clear that the education authority, by sapping and mining in the interval, by depriving the school of its individuality, by curtailing its dimensions and so reducing it to a *simulacrum* of its proper self, may render the extinction of the school at the end of the decade a practical certainty. Indeed, I think that St John's School will have but a small chance of escaping the educational axe at the end of ten years in its now eviscerated condition, whatever might have been its chances of survival had it been maintained unimpaired by the education authority. I cannot think for a moment that the statute contemplated such a result, or that the church would have agreed to the bargain which the statute embodies had they contemplated it. Indeed, it would appear that the defenders, if their argument be sound, could, by their action in the intervening years, materially reduce the compensation payable at the end of the decade to the church authorities. It may be that that compensation is payable only where there is a lease, not where as here, the property passed on transfer, but that is an adventitious circumstance, and cannot affect the legal position.

I therefore reach the conclusion, on a survey of section 18, that the pursuers are right in their contention, and that the defenders are wrong in their contention.

But reference was made by the defenders to transfers of schools which were made in virtue of provisions contained in earlier Acts of Parliament, and to the light which may be cast on the meaning of the word "maintain" by consideration of these provisions. Reference was made in particular to section 38 of the Education Act of 1872, and to section 29 of the Education Act of 1908. The language of the first of these provisions is essentially different from that of the Act of 1918. Moreover, there were no provisos such as we have here, and there was no right of review at the end of ten years. It does not therefore appear to me that any reliable inference can be drawn regarding the construction of this section from the construction of that section. The case of the *School Board of Glasgow* (1910 S.C. 195), which was decided on a consideration of the terms of the section in the Act of 1872, appears to me to be remote from the present case. Section 29 of the Act of 1908 no doubt provided for the maintenance of the transferred school, its character and

status, in words which are more precise and definite than those employed in the section under review, but that does not seem to me to yield any safe inference in favour of the defenders' argument.

It only remains to consider the cases which were cited to us in argument. They are two in number. The first was the *Attorney-General and the Board of Education* v. *The County Council of the West Riding of Yorkshire*, [1907] A.C. 29. The words there under consideration were, "The local education authority shall maintain and keep efficient all public elementary schools within their area which are necessary," sec. 7 (1) of the Education Act 1902 (2 Edw. VII. cap. 42), and it was held that a non-provided school was not maintained if the education authority refused to pay what was reasonable for denominational religious instruction lawfully given during school hours. The Lord Chancellor (Loreburn), after saying (at p. 35), that the decision in the case turned "on the effect of one solitary word," viz., the word "maintain," said (at p. 36)—"When an education authority is directed by an Act to maintain schools which may or may not give religious instruction, the preferable meaning is that it must maintain them as they are, not as they might be." And Lord Davey said (at p. 38)—"The direction is . . . to maintain the school such as it is with all its staff of teachers, apparatus, and appliances." In *Wilford and Others* v. *County Council of West Riding of Yorkshire* ([1908] 1 K.B. 685) the construction of the word "maintain" was again considered. The identity of the facts with those in the present case is remarkable and complete. The defendants there claimed the right to direct that the plaintiffs' school should be conducted only as a school for infants, and as a junior school for the lower standards 1, 2, and 3, and that all scholars who, at the time of the direction, were being taught in standards 4 to 6 should leave that school and attend the new provided school for instruction in those upper standards. Channell, J., said (at p. 696)—"The real questions in this action, therefore, are whether the defendants had power to direct . . . that this school should be carried on in future only as an infants' and junior school, teaching only scholars up to about the age of eleven, and then passing on those scholars to the provided school. . . . Now, the effect of the direction in question is obviously to alter the whole character of the school." Again (at p. 697) he said—"I consider that the matter is covered by the decision of the House of Lords in *Attorney-General* v. *County Council of the West Riding of Yorkshire*. The eight law Lords who either gave judgment or agreed in the judgments given in that case were unanimous in saying that the obligation of the local education authority to maintain a non-provided school is to maintain it as it is. The Lord Chancellor, with whom five other law Lords, without giving separate reasons, agreed, says it is to 'maintain the schools as they are and not as they might be.' Lord Davey says in one passage, 'the school such as it is, with all its staff of teachers, apparatus, and appliances,' and in another passage, 'the school and all the instruction lawfully given in it.' Lord Robertson says, 'the obligation to maintain applies to each extant school as if it were named'; and Lord Atkinson expressly agrees with Lord Robertson, as well as with the Lord Chancellor. The result clearly is that these voluntary schools have to be maintained as long as they are necessary—that is, as long as there are parents of children to the number of thirty who desire to send them there, and they have to be maintained as such schools as they are, religious instruction and all." Again (on p. 698) he said—"Now, that being so, it appears to me, assuming that I have jurisdiction to say what is the legal construction of section 7, that I must say that the defendants are under an obligation by virtue of that section to maintain this school as the school it was, that is, as a complete school for children of all school ages, and giving instruction in all branches, classes, or standards for the time being taught in public elementary schools (subject, of course, to the power to vary from time to time the syllabus or details of instruction), and that there was no power to turn it into an infant school, or a junior school taking only the younger children just over the age of infants." The opinions which I have quoted appear to me to harmonise with and indeed to fortify the pursuers' argument.

I therefore think that, whether one has regard to the section of the Act 1918 under review, to previous transfers in Scotland of voluntary schools, or to the decided cases in England, the result yielded is the same, viz., that the pursuers' claim in the present case is well founded. Whether one has regard to the part of the school taken away or to the part of the school left, it appears to me that the defenders are in breach of their statutory obligation. I reach this result without misgiving and without regret—without misgiving, because I think the statutory provisions are clear and explicit, and without regret, because it is apparent that these provisions give exact expression to a bargain between the parties, which, having regard to the past history and the future fate of these schools, appears to me to be not only intelligible but reasonable and fair.

As regards the remedy to be afforded, I prefer the amended declaratory conclusion of the pursuers to their original conclusion, and I suggest to your Lordships that the Lord Ordinary's judgment should be recalled, the first plea-in-law for the pursuers sustained, and decree pronounced in terms of the conclusions of the summons—the amended declaratory conclusion having been substituted for the original declaratory conclusion.

LORD ORMIDALE—The question raised in the present case is one of general importance relating to the transfer of voluntary schools to the education authority under the provisions of the Education (Scotland) Act 1918. The owners and

managers of such schools would appear to have no course open but to transfer them, because, if they do not, then any grant from the Education Fund would be forfeited. The education authority, on the other hand, are bound to accept a transferance when offered. They are not, however, given an absolutely free and unfettered hand to deal as they like with the schools transferred. What we have to decide is the meaning and measure of an obligation arising upon them under section 18 (3) of the Act. The controversy centres on the legal construction of the word "maintain."

The school which was the subject of transference in the present case is St John's Episcopal School, New Pitsligo. Within 100 yards of it is the public school. St John's was transferred to the Education Authority in March 1919. What type of school was it at that date? It provided a full primary course of instruction together with a supplementary course. In other words, it was being carried on by the school managers as a primary school in accordance with the requirements of the Scottish Education Department. How did it fare after the transference? For a couple of years the defenders continued to carry on the school precisely as before, but thereafter a change was made by them whereby the public school and St John's were run in sequence, instruction in the latter being confined to infants and juniors, the older pupils being transported to the public school. In the statements made by the defenders, and especially in statements 6 and 7, there is much to indicate that, in respect to economy and efficiency, the change was eminently desirable and that little, if any, prejudice could result to the pursuers. With these topics, however, we are not concerned. The sole question we have to determine is whether the defenders were acting within the scope of their statutory rights and duties in turning into an infant and junior school what hitherto had been a primary school.

Turning to the Act, what is to be "maintained" by the education authority is "any school so transferred." Passing from the general to the particular that means St John's School. Has St John's been "maintained"? The pursuers say that it has not, that the *status quo* at the date of the transference has been subverted, and that a new school has been substituted for the old, whereas under the statutory enactment the defenders were bound to keep up and continue in its existing condition the entity transferred to them—that is to say, an educational institute essentially identical in character and type with the St John's School of 1919.

If the word "maintain" stood by itself there would be little difficulty in giving effect to this contention, but one must read along with it the context in which it is found. "Any school so transferred shall be held, maintained, and managed as a public school by the education authority." The defenders' position is that the words "as a public school" have a modifying or restrictive effect on the phrase "maintain" and that irrespective altogether of the scope and extent of the instruction given in St John's School when they took it over, *i.e.*, that their statutory obligation is satisfied if they supply a school of whatever type and character, provided only that it answers to the description and fulfils the requirements of a public school in the sense of the Education Acts, and conduct it in conformity with the conditions set out in the provisos which conclude sub-section (3). The infant and junior school, they say, is such a public school. I prefer the construction put upon the term by the pursuers. The words "as a public school" appear to me to be introduced for the purpose of marking with emphasis the transition of transferred schools like St John's from the voluntary class to the public class of schools, that is, schools open to the public irrespective of creed, with the consequential right of participation in the Education Fund; the words that follow, "who shall be entitled to receive grants therefor as a public school," not being in any sense redundant, but going on to declare in natural sequence that, as the transferred school, St John's, now falls within the category of "public schools," with its title and management vested in the education authority, the latter are to be entitled to receive, in its case as in the case of other public schools, the appropriate grant from the Education Fund. If the words "as a public school" were to receive the construction put upon them by the defenders, and St John's School were held to have been translated, to all intents and purposes, into a public school, there would have been no necessity for such a provision, for the right to receive a grant is inherent in every public school. So, too, is the right to vary the scope and extent of the instruction—the right, for example, to change a school for seniors into a school for juniors. No express enactment to that effect would have been necessary. Curriculum falls to be read therefore in the narrower sense as having reference only to the details of the instruction to be given.

Nor do I think that the provisos have the force and effect attributed to them by the defenders, and that they and they alone fix the measure of the reserved rights of the transferors. They are called into existence for the purpose of meeting the otherwise unlimited power of the education authority to regulate the curriculum—for, using that word in the narrower sense, religious instruction might be excluded altogether as a mere detail of instruction—and to appoint teachers. The first provides for the existing staff of teachers being taken over and placed on the same scale of salaries as teachers of the like qualifications in other schools, which harmonises with the view that it is intended to continue the transferred school in its existing condition. So, I think, does the second, which gives the transferors the last word in determining whether the re-

ligious belief and character of the teachers is satisfactory. The third appears rather to have reference to the curriculum defining as it does, and in some degree restricting as I have already pointed out, the rights of the education authority in the matter of religious instruction. While it is true that the word "school" and not "scholars" is used in the proviso, it appears to me to run counter to the intendment of the proviso to suppose that the "school" might be depleted to any extent by the administrative action of the education authority by the transfer of the "scholars" to the public school.

Sub-section (9) does not, in my judgment, contradict the construction put upon "maintain" by the pursuers. It demonstrates that the obligation to hold, maintain, and manage is not to continue for all time but only for ten years certain. The school as taken over is, as it were, to be put on probation for that period. Thereafter the Education Authority with the sanction of the Department may either discontinue the school, or "hold, maintain, and manage the same in all respects as a public school not subject to those conditions" not, be it observed, to any conditions. "Those conditions" are the conditions already referred to in the sub-section, and keeping in view the context, viz., "having regard to the religious belief of the parents of the children attending the school." These are clearly the conditions of the provisos to sub-section (3). It appears certain that if sub-section (3) is to be read as giving the defenders an unfettered right to cut and carve on the transferred school from the day they take it over, very little of such a school might be left to be dealt with at the end of the ten years. The school itself might practically have come to an end, and sub-section (9), so far as providing for a probationary period, would be a dead letter. I cannot conceive that it was intended to be of so little effect. On the other hand, if the school had been "maintained" in the pursuers' sense, while at the end of the ten years the provisos would have become extinct, there is no reason why the Education Authority should not, unfettered by "those conditions," continue to "maintain" the school in the pursuers' sense of the term without subjecting the character it possessed when taken over to any fundamental alteration. If the Education Authority deemed such a course to be inexpedient, then it would be open to them to take steps to have the school discontinued.

Three cases were cited to us. The *School Board of Glasgow* v. *Kirk Session of Anderston* (1910 S.C. 195) was concerned with an out-and-out transfer under the provisions of the Act of 1872. The rights of the transferors were not measured by any statutory provisions, but solely by the terms of the deed of transference, and it was not necessary to construe the word "maintain." In both the English cases, *Attorney-General* v. *West Riding of Yorkshire County Council* ([1907] A.C. 29) and *Wilford* v. *West Riding of Yorkshire County Council* ([1918] 1 K.B. 685), the meaning of the word had to be ascertained. What was under construction was section 7 (1) of the Education Act of 1902, the opening words of which are—"The Local Education Authority shall maintain and keep efficient all public elementary schools within their area." Both the decisions, it appear to me, are helpful. The later is really based upon the earlier, and as its circumstances are more analogous to those of the present case, I refer to it in more detail. In *Wilford's* case, although it is true that the school property and management were not, as here, vested in the Education Authority, the decision did not depend on that consideration, but, in the relevant branch of it, on the construction of the obligation imposed on the Authority to "maintain and keep efficient." The Authority had issued a direction to the managers of the school which, prior to the Act of 1902, had been carried on as a school for children in all standards, that the school was to be carried on only as an infant and junior school, and on the legal construction of the words I have quoted from section 7 (1), Channell, J., held that the Authority were bound to maintain the school as it was, that is, as a complete school. In his opinion will be found many references to the House of Lords case. While the decision may not be a binding authority, the views expressed by the Judge and the reasoning by which he reached his conclusion are directly in point and appear to me to be well founded.

I agree, therefore, with the judgment advised by your Lordship.

LORD HUNTER—The question involved in this case is as to the rights and obligations of an education authority with reference to a voluntary school transferred to them under section 18 of the Education (Scotland) Act 1918. Provision is made under that section for the transfer to the Education Authority constituted under the Act of any school which within the meaning of the Education Act 1897 was a voluntary school. A transfer offered by those authorised to make it must be accepted by the new authority, and the school so transferred is to be held, maintained, and managed as a public school. The Education Authority have the sole power of regulating the curriculum and appointing teachers, subject to certain provisos as to the taking over of the teaching staff; to the approval of new teachers by the Church or denominational body in whose interests the school has been conducted; and to the time to be devoted to religious teaching and the appointment of an unpaid supervisor to report as to the efficiency of the religious instruction. Sub-section (9) of the same section provides at the end of ten years for the discontinuance in certain events and under certain conditions of the school or for its continuance in all respects not subject to those conditions.

The school about which the present action was raised is St John's Episcopal School, New Pitsligo, Aberdeenshire. It was transferred by the Church authorities to the Education Authority on 15th May 1919. At the date of the transfer the school was

being carried on by the managers as a primary school providing a full primary course of instruction together with a supplementary course. In 1921 the Education Authority altered the organisation of the school by confining instruction at the school to pupils in the lower classes and transferring the pupils in the more advanced classes to the public school, New Pitsligo. The representatives of the Episcopal Church in Scotland maintain that this alteration in the status of the school is *ultra vires* of the defenders as in breach of their obligation to maintain the school transferred to them.

In acting as they have done I have no doubt that the Education Authority are satisfied that the course pursued by them is in the best interests of education. Such a consideration is, however, irrelevant in considering the provisions inserted in an Act of Parliament for the protection of those who regard the teaching of religion of a denominational character as of paramount importance.

The Lord Ordinary has decided in favour of the defenders on the ground that the defenders discharge the statutory obligation imposed upon them so long as they maintain the transferred school as a public school. I agree with your Lordships in thinking that those words are not introduced so as to qualify or restrict their duty of maintaining the school. So to hold would give the Authority the right entirely to alter the status of a transferred school as an educational institution of the character and description possessed by it at the date of the transfer. That appears to me contrary to the expressed intention of the Legislature as disclosed in the language used. The reasoning of the Judges of the House of Lords in interpreting a provision as to maintaining a school in an earlier English Education Act in the case of *Attorney-General* v. *West Riding of Yorkshire County Council* ([1907] A.C. 29), and of Channell, J., in *Wilford* v. *West Riding of Yorkshire County Council* ([1909] 1 K.B. 685), appears to me to support the pursuers' contention. I therefore agree that the reclaiming note should be sustained and the interlocutor of the Lord Ordinary recalled.

LORD ANDERSON — At the conclusion of the debate the impression I had formed was that the judgment of the Lord Ordinary was right. It seemed to me that the defenders were discharging their statutory duties by maintaining the school as a public school of any kind. On further consideration, however, I am satisfied that the impression was not well founded, and that the reclaiming note must be sustained. I reach this conclusion with much regret for two reasons. In the first place I am not satisfied that the pursuers are suffering any prejudice under the arrangements which the defenders have made. It was suggested that the pupils who have been removed from the transferred school are deprived of the advantage of being instructed by teachers who are Episcopalians. I am unable to hold that there is any substance in this suggestion. It may be that in reference to a few topics where questions of creed are involved instruction may take a different form according as it is conveyed by an Episcopalian or by a Presbyterian. In regard, for example, to the history of Scotland during the "killing times" an Episcopalian teacher might instruct his pupils that Claverhouse and Dalyell were demigods, while a Presbyterian teacher of Covenanting stock would doubtless give them a very different character. But speaking generally, a pupil will be as well taught by a Presbyterian teacher as by one who is an Episcopalian. I therefore do not think that the pursuers have any real interest to crave the decree which they seek. They demand, however, that they should have their statutory pound of flesh, and I am unable to hold that they are not entitled to have it.

The other reason which makes me regret the judgment which is being proposed is that I am clearly satisfied that the arrangements made by the defenders are the best in the public interest. These arrangements, as they obviate duplication of staffs in the junior and senior departments, make for economy, and thus are for the benefit of the general body of ratepayers in the area of administration. As a result of the judgment proposed there will be overlapping of staffs, four being required where two would suffice, and consequently unnecessary expense will be incurred. The ratepayers, it is true, could by sensible action on their part obviate these unhappy consequences of the proposed judgment. They could send all their children above the school age of infancy to the other school. The defenders would not be bound to retain junior and senior departmental staffs if no pupils were attending these departments. But the spirit of sectarianism, that curse of Scotland, will doubtless prevent this sensible course from being followed, and the result will be that a handful of junior and senior pupils will attend the transferred school, and for these teaching staffs will have to be maintained at that school. This is a deplorable state of matters, but it is entirely due to the provisions of the Act of Parliament if it be the case that we are rightly construing it. It is said that a bargain has been made from which these consequences ensue. There is nothing, however, to prevent the abandonment of a bargain which is really against the public interest.

It is common ground that the question at issue depends entirely on the terms of section 18 of the Education (Scotland) Act 1918, and particularly (I think exclusively) on sub-sections (3) and (9) of that section. There are three provisos to sub-section (3) which deal with these matters — (1) The future of the teachers who were employed in the transferred school at the date of transfer, (2) the qualification of teachers who might be appointed to that school thereafter, and (3) the matter of religious instruction in the transferred school. I do not think that anything in these provisos is helpful to the determination of the question at issue. Nor do I find anything in sub-section (9) which is material to the point to be decided save this, that the transferred

school is to be continued for a period of at least ten years. Everything therefore turns on the terms of the enacting part of sub-section (3). By it the transferred school is to be "held, maintained, and managed as a public school" by the defenders. They are also given the sole power (subject to the provisos) of regulating the curriculum and appointing teachers. It is plain that the phrase "as a public school" qualifies each of these three verbs. The term "held" is satisfied by the defenders having the title to the school and being its occupiers. "Managed" is satisfied by the exercise of a general power of supervision over the teaching staff and the organisation generally of the school. "Maintained" is the debatable term. It was not contended by the defenders that this term applied only to the physical structure of the school. It was conceded that the school had to be maintained as an educational institution. I have already indicated the main argument of the defenders. They contend that as managers and administrators of the school they are entitled to administer it as any other school within their jurisdiction supported by public money, so long as they do not make it something which cannot reasonably be described as a public school. The defenders point out that the terms of the three provisos are being observed in the transferred school, and that although it is now merely an infant school it is still being maintained as a public school. The pursuers on the other hand contend that the statutory duty of the defenders is to maintain the school in substantially the same condition educationally as it existed when transferred. They aver that the character and status of the school have been changed by what the defenders have done and its identity entirely destroyed. I have ultimately formed the opinion that the pursuers' contentions are well founded. I do not regard the phrase "as a public school" as being exegetical of the term "maintained." That phrase was in my opinion inserted for two reasons—(1) to make it plain that the transferred school was to be open to all children in the area, (2) to indicate that the school was to be supported by public funds. It was suggested that if it had been meant to preserve the *status quo* of the transferred school this would have been specifically stated. But this is just what seems to have been done by the use of the term "maintained," as this term necessarily means "continued in its existing condition"—see *Attorney-General* v. *West Riding of Yorkshire County Council*, [1907] A.C. 29; *Wilford* v. *West Riding of Yorkshire County Council*, [1908] 1 K.B. 685. If the sub-section is paraphrased and made applicable to this particular school it might, as I think, be expressed thus—"The defenders shall maintain as a public school St John's School." St John's School when transferred was a mixed school, having a full primary and supplementary course of instruction and containing, I assume, an infant, a junior, and a senior department. The junior and senior departments have been transported to another building. Departmentally the school has suffered amputation to the extent of two-thirds. No one who knew the school in its former condition would say that the present school is the same, or that it even resembles in character and status the school that was transferred. The defenders' statutory obligation, as I read it, is to maintain a school substantially the same in character and status as St John's School was before the transfer. They are not doing so, and the pursuers must therefore have the decree which they seek.

The Court recalled the interlocutor reclaimed against, sustained the first plea-in-law for the pursuers, and found and declared in terms of the first three declaratory conclusions of the summons, and in terms of the alternative of the fourth declaratory conclusion added on amendment.

Counsel for the Reclaimers (Pursuers)—Brown, K.C.—Burnet. Agents—Wood & Mackenzie, W.S.

Counsel for the Respondents (Defenders)—Wark, K.C.—Scott. Agents—Alex. Morison & Company, W.S.

Thursday, March 20.

SECOND DIVISION.

CUNNINGHAM'S TRUSTEES *v.* CUNNINGHAM.

Succession — Testament — Revocation — Special Destination — Destinations in Stock Certificates — Government Stock Administered in England Purchased by Scottish Testator in Names of Himself and Wife—Law Regulating Succession thereto —Law of England or Law of Testator's Domicile.

A Scottish testator by trust-disposition and settlement conveyed to his trustees his whole estate for behoof of his widow in liferent and his children in fee. He subsequently effected three investments in War Stock, the certificates of which were taken in the names of himself and his wife. Upon his decease his widow maintained that the purchase of the War Stock constituted a contract with the Bank of England, that the succession to the War Stock fell to be regulated by the law of England, and that accordingly she was entitled in terms of the certificates, interpreted by English law, to succeed to the entire amount thereof. *Held* (1) that the special destinations in these investments had not been evacuated by the trust-disposition and settlement, and (2) that the destinations in the certificates fell to be interpreted according to the law of Scotland.

John Cunningham, Glasgow, who died on 12th July 1919, left a trust-disposition and settlement dated 4th February 1898, with a codicil thereto dated 4th March 1912, both registered 20th August 1919, wherein he appointed certain trustees to carry out his testamentary directions.