

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

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

The Court pronounced the following interlocutor:—

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

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

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

Friday, December 18.

FIRST DIVISION.

JOCOBSON v. UNION BANK AND OTHERS.
Process—Cessio—Competency—6 and 7 Will. IV.,
c. 56, sec. 2.

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

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

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

Friday, December 18.

FIRST DIVISION.

[Sheriff of Perthshire.

SPALDING v. SPALDING'S TRUSTEES.

Trust—Posthumous Child—Aliment—Debt.

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

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