But it is said that no notice was given to the shareholders of the intention to pass such a resolution. There can be no doubt that notice was required. Everything depends here upon the terms of the notice, and had it contained no further intimation than that it was to be held "to consider and, if approved of, to sanction the voluntary winding-up of the Company," it is quite plain that the resolution carried at the meeting of the 3d May would be useless unless subsequently affirmed. The further statement which follows is not notice of a resolution, nor has it anything to do with a resolution which is to be moved. It is merely information. The reference to a previous circular which proposed the subscription of additional capital, has not much to do with the present question. The shareholders are informed that the Company's affairs are in a bad state, and that there is a deficiency. No doubt the balance-sheet which was sent with the notice shows a balance on the wrong side, but that fact cannot be said to exhibit the insolvency of the Company. Its capital is to a great extent lost, but it is not insolvent. The information given is to the effect (1st) that the resolution which it is intended to propose is to wind up voluntarily; and (2d), as a reason for this, that their affairs are not in a good condition. Is that notice that a resolution in terms of the third subsection under the statute is to be brought forward? I rather think a shareholder receiving this notice would be entitled to think that the resolution to be moved was one in terms of the second sub-section, and therefore requiring confirmation.

I cannot therefore say that this was a good notice, and that it conveyed to the shareholders that it was intended to proceed in terms of the third sub-section. At this meeting a liquidator was appointed, and his appointment cannot hold any more than the resolution. The petitioner's title therefore is destroyed, and the resolution passed must be held to be invalid.

Lord Deas—There are three ways in which a company may be voluntarily wound up. The third of these under the statute is by extraordinary resolution, which requires no subsequent confirmation; but there must be notice to the shareholders that it is intended to pass an extraordinary resolution. The notice of meeting in the present case does not bear that it was intended that any such resolution should be brought forward, and if there was no notice of it it is plain that all parties interested were entitled to take it for granted that no such course would be followed.

If any authority were necessary for the decision of the case, we have it in the case which was quoted to us *in re Bridport Old Brewery Company*, and one of the grounds upon which Lord Justice Turner based his opinion was, that the notice did not state that an extraordinary resolution to wind up the company would be proposed.

Lord Ardmillan—This is a case of voluntary winding-up. A Company in such a case proceeds by resolution. A Court in a judicial winding-up proceeds by orders. A resolution which requires confirmation is to be distinguished from a resolution that requires no confirmation.

The notice of a meeting to *consider* is not effectual as notice of a meeting to *resolve*; and notice of a meeting to pass a resolution requiring confirmation, and which therefore may be reconsidered, is not applicable to a meeting to pass a resolution not requiring confirmation, and which therefore is final and cannot be reconsidered. In the first case the subject could be discussed at the second meeting when confirmation of the resolution is proposed. In the last case, the resolution being final without confirmation is at once conclusive, and accordingly notice in the first case is by no means so important or so necessary as in the last case.

The expression, "extraordinary resolution," means, not a resolution at an extraordinary meeting, but a resolution which is itself of the character known as "extraordinary," and is so dealt with in the statute, and I have no doubt that, of a meeting called to pass an extraordinary resolution special notice suited to the nature of the resolution is directed by this statute, sections 51 and 129.

Your Lordship in the chair has pointed out that the first portion of the terms of the notice is all that can be properly said to be notice; the statement which follows is a mere comment or explanation, and is not meant to be anything more. In fact it is an embarrassing, perhaps a misleading, addition to the notice, and for the purposes for which the notice is now said to have been sufficient I think it was defective, as the notice in the *Bridport* case, cited to us, was held to be.

It would be hazardous to regular procedure in these cases to come to a different conclusion.

Lord Mure — I also concur, and think that there is here no express notice of the intention to pass an extraordinary resolution. The addendum to the notice is a description which is calculated to be misleading to all the shareholders, and to make them think that nothing more was to be done than had been done at the meeting a month before.

The following interlocutor was pronounced:—

"Sustain the objection stated for the respondents to the title of the petitioner; dismiss the petition and decern; find the respondents entitled to expenses; and remit to the Auditor to tax the account thereof and report."

Counsel for the Petitioners—Guthrie Smith—Henderson. Agents—Mitchell & Baxter, W.S.

Counsel for the Respondents — M'Kechnie — Guthrie. Agent—Robert Steven, W.S.

Wednesday, February 19.

FIRST DIVISION.

THE LORD ADVOCATE *v.* THE SCHOOL BOARD OF THE PARISH OF STOW.

School—Education Act 1872 (35 & 36 *Vict. cap.* 62) *—Board of Education—School Board.*

In a petition at the instance of the Lord Advocate under the 36th section of the Education Act 1872, to have a School Board ordained to comply with a requisition made upon them by the Board of Education, that they should proceed to erect certain school buildings in terms of a resolution by the School Board, confirmed by the Board of Education—the Court are under the statute

bound to grant the order craved if the proceedings in making the requisition and previously have been in conformity with the provisions of the statute.

Opinion (*per* Lord President) that if subsequent to the confirmation by the Board of Education circumstances emerge rendering the course agreed upon inexpedient or improper, it is the duty of the School Board to reconsider the matter, and to submit the resolution they may form on such reconsideration to the Board of Education, who have power either to confirm or reject the same.

This was a petition and complaint under the 36th section of the Education Act (35 & 36 Vict. cap. 62) at the instance of the Lord Advocate, praying that the School Board of the parish of Stow should be ordained to comply with a requisition sent them by the Board of Education for Scotland, also in terms of that section of the Act.

The petition set forth that on the 22d July 1873 the School Board of the parish of Stow reported to the Board of Education, in terms of the 27th section of the Act, that they were of opinion that the accommodation afforded by the various schools in the parish was sufficient. On the 25th March 1874 they further reported that their opinion had changed, and that they were taking steps to increase the accommodation. Differences having arisen among the members of the School Board, Sir Alexander Grant, Bart., a member of the Board of Education, was deputed to visit Stow and report upon the subject. He did so, and on 19th October gave in the following report:—"I visited Stow on the 17th instant, met the entire School Board, and viewed the old U.P. church and manse proposed by the majority of the Board to be purchased for school buildings. After full consideration, I came to the conclusion that the buildings were unsuitable for the public school of the village of Stow. Subsequently I was shown a site in the centre of the school population of this part of the parish, near the railway station, which Mrs Mitchell has kindly offered as a site for new school buildings. I approve of this site. And the School Board are now prepared to make arrangements for building upon it. I recommend that this course be sactioned, and that the School Board have the full approval of this Board in proceeding as soon as possible to erect adequate buildings on the site indicated, and to carry out the compulsory clauses of the Act."

At a meeting of the School Board, held on 28th October 1874, it was agreed that all necessary steps for the erection of new buildings should at once be taken, and that plans and estimates which had been received for the purpose should be forwarded to the Board of Education for suggestions and approval.

On 23d December 1874 the Board of Education, after consideration of the plans and other documents, passed a resolution, which was communicated to the School Board by letter, of which the following is an extract:—"The School Board report as their opinion that the educational requirements of the parish exceed the provisions for supplying the same, and that their determination to provide additional school accommodation is as follows, viz., (*a*) to erect at Stow, on a site to be given by Mrs Mitchell of Stow, and approved of by Sir Alexander Grant, a school capable of accommodating 200 pupils, and a teacher's dwelling-house; and (*b*) to dispose of the existing public school and teacher's dwelling-house. The Board of Education, in terms of section 28 of the Act, approve of the above opinion and determination, and authorise the School Board to act upon and carry the same into effect forthwith."

By the 28th section of the Act it was, *inter alia*, enacted that "should the said Board of Education approve, with or without qualification or addition, of the opinion and determination of the School Board with respect to providing additional school accommodation, the same shall, without unnecessary delay, be acted upon and carried into effect by the School Board accordingly; and should the said Board of Education see fit to direct that additional school accommodation be provided, although not determined upon by the School Board, they shall have power to do so, and their direction shall be acted on and carried into effect by the School Board without unnecessary delay."

It was averred in the petition that the School Board had, since the date of the letter of the Board of Education, disregarded the repeated injunctions of that Board, and had failed to erect any new buildings on the proposed site, or to provide the school accommodation necessary for the parish, in consequence of which a requisition, dated 15th September 1875, calling upon them to do so, had been sent them by the Board of Education. With this requisition they had declined to comply, and this petition and complaint was therefore rendered necessary. The petition prayed the Court, *inter alia*, "to ordain the respondents forthwith to comply with the terms of said requisition, and in compliance therewith forthwith to proceed with the erection upon said site of the necessary public school accommodation for said parish, in terms of the resolution made and adopted at the meeting held by the respondents, as aforesaid, on 25th October 1874, and approved of, as aforesaid, by the Board of Education."

The following statements were made by the School Board in answer:—When their first report was made to the Board of Education on 23d July 1873, they understood that a school which was at that time being carried on by Mrs Mitchell was to be placed under their control. It was afterwards intimated to them that she was to keep it in her own hands, but eventually, on 29th June 1874 she placed it at their disposal "until such time as the Board shall have the new buildings erected."

On 7th August 1874, at a meeting of the School Board, a temporary addition to the parish school was authorised, and at the same time a petition was presented from 89 ratepayers in the parish, requesting the Board to reconsider their decision about building accommodation. The site approved of by Sir Alexander Grant was only agreed to by the casting vote of the chairman, and was, amongst other objections to it, unhealthy and unsafe.

In March 1875 the School Board changed their minds about the erection of new buildings, because the estimated cost was found to be larger than had been anticipated, and because Mrs Mitchell had made an offer of her school at a

nominal rent. At a meeting of the Board of 9th April 1875 it was moved "that Mrs Mitchell having rented her school to the Board, and there being in that and the parish school sufficient accommodation for all the children of the district, and looking to the high price of labour from the erecting of so many public schools, that the Board delay in the meantime taking any further steps for the erection of new schools." The Board of Education were asked to sanction this, and an architect and surveyors having been called in by the Board to examine and report on the suitableness for a school and teacher's residence of the school premises, their report and plans were submitted to the Board of Education, along with a suggestion that some neutral competent party should be called in to advise upon the subject. This was not agreed to, and the School Board again represented the largeness of the estimated cost of new buildings in comparison with that of the purchase of and proposed alterations on the old; and asked that matters should be allowed to remain as they were for six months until a new School Board was elected. They further intimated to the Board of Education, on the requisition being sent them, as above stated, that "from the strong feeling displayed by the ratepayers of this parish, that we have done or are willing to do all that is required to carry out the provisions of the Education Act, they regret that they cannot comply with the requisition sent them by the Board of Education."

The other facts, so far as material, will be gathered from the opinion delivered.

At advising—

Lord President—The question we have to decide is a very clear one. The 27th section of the Act of Parliament provides that the first duty of the School Board when they come into office is to ascertain and take into consideration the educational requirements of the parish, and if they find that there is an insufficiency of school accommodation, then they are to come to a resolution as to what is necessary to supply the deficiency, and when they have done so they are to submit that resolution to the Board of Education for their approval. The Board of Education may approve or disapprove of it, or they may approve of it with qualifications and additions; or, if the School Board does not do its duty in coming to a resolution upon the subject, the Board of Education may do it for them, and may require them to make such additions to the school accommodation of the parish as the circumstances seem to require; but in all these cases it is quite apparent, from the clauses of the statute that have been cited to us, that the ultimate judgment upon what is necessary for the accommodation of the parish rests with the Board of Education. It is a statutory Board created for that among other purposes—nay, that appears to me to be the chief purpose for which it is created. Now, keeping this in view, let us consider the effect of the 36th section of the statute:—"If at any time the Board of Education are satisfied that a School Board of a parish have failed to maintain and keep efficient any school provided by them, or to provide such additional school accommodation as in the opinion of the Board is necessary to supply a sufficient amount of public school accommodation in the parish or burgh, the said Board may send them a requisition requiring them to fulfil the duty which they have so failed to perform; and the School Board shall comply with the said requisition without undue delay; and, if they fail, may be summarily compelled to do so by the Court of Session on a petition and complaint at the instance of the Lord Advocate." It is under that section that this petition and complaint is before us, and let us just see what are the conditions upon which such a petition and complaint must rest.

The School Board must report and the Board of Education must be satisfied that there is a defect in the accommodation, and the School Board must fail to provide the necessary additional accommodation, and a requisition must be made upon the School Board by the Board of Education to go on and perform their duty; and if these things have all taken place, then there is sufficient ground for petition and complaint to this Court, and it seems to me that if these requirements of the statute are all fulfilled we have no choice but to grant the order that is asked for.

Now, what are the circumstances of this case? There has been, I do not say an attempt to misrepresent the matter in any way, but there has been an attempt to confuse it by reference to a variety of correspondence with which we have nothing whatever to do. The resolution of the School Board with regard to the provision of additional accommodation is contained in their minute of the 28th October 1874, and the resolution is in these terms:—"That the site approved of by Sir Alexander Grant, and sanctioned or agreed to be given by Mrs Mitchell of Stow, for the erection of said new school buildings, be agreed to by this meeting, and that steps be taken for the erection of school buildings with all convenient speed." Then further:—"The meeting took up the plan already in hand received from Messrs Herbertson, Galashiels, together with their probable estimate of the expense to be incurred in erecting such a school as would accommodate 200 scholars; they also took up plan and probable estimate for new teacher's house, and agreed that the said plans and probable estimates be forwarded by the clerk to the Board of Education for suggestions and approval," and they appointed a committee to measure off the ground for the site. The Board of Education appear to have required answers to certain questions before proceeding to consider this resolution of the School Board; and accordingly Mr Walker, the secretary of the School Board, wrote to the secretary of the Board of Education, intimating the answers which the School Board gave to the different questions; and among other things he said the "proposed new school would accommodate 200, in regard to which there are improved plans presently in the hands of Mrs Mitchell of Stow, which will afterwards be submitted to the Board if wished for." Now, it is with the material so furnished by the School Board that the Board of Education deal in their resolution of 23d December 1874. They considered the report dated 23d July 1873 and 29th October 1874, transmitted by the School Board of the parish in terms of section 27 of the Education Act, along with other documents. The minute of that meeting further bears that "the School Board report as their opinion that the educational requirements of the parish exceed the provisions

for supplying the same, and that their determination to provide additional school accommodation is as follows—(*a*) To erect at Stow, on a site to be given by Mrs Mitchell of Stow, and approved of by Sir Alexander Grant, a school capable of accommodating 200 pupils and teacher's dwelling-house; and (*b*) to dispose of the existing public school and teacher's dwelling-house." The Board of Education, in terms of section 28 of the Act, approved of the above opinion and determination, and authorised the School Board to act upon and carry the same into effect forthwith. Certainly that is quite in accordance with the provisions of the statute. There is a distinct resolution by the School Board, and a clear and distinct confirmation of that by the Board of Education. The statute says that when that has taken place the School Board must go on forthwith to carry that into execution. It has been suggested that after the confirmation of such a resolution circumstances might so alter as to render it inexpedient or improper to proceed in terms of that confirmed resolution. I can quite understand the possibility of that. It is needless to suppose cases; but undoubtedly such a case might arise, and if so, I apprehend it would be the duty of the School Board to reconsider the matter, and to submit the resolution that they might form upon such reconsideration to the Board of Education for their approval, by whom the same would be either confirmed or rejected. But is there any case of that kind here? Nothing in the least degree like it. What takes place after this confirmation of the School Board's resolution is this, that on the 9th day of April 1875 there is a meeting of the School Board, and the minute of meeting bears "that the Board having agreed to rent Mrs Mitchell's school for a time for temporary accommodation, with the view of having ultimately both schools merged into one, and having formerly intimated to the Board of Education their determination to erect a school to accommodate 200 pupils, they now further determine to enlarge the plans to provide accommodation for 226 pupils, which they find will be ample enough for the district, and instruct the clerk to report accordingly to the Board in Edinburgh, and request their consent to the same." Now, there is nothing in that which can be said to go back on the previous resolution; it is merely an extension of accommodation beyond that already resolved on and confirmed, which is intended to be provided by the School Board. But then this resolution was also submitted to the meeting and carried—"that Mrs Mitchell having rented her school to the Board, and there being in that and the parish school sufficient accommodation for all the children of the district, and looking to the high price of labour from the erecting of so many public schools, that the board delay in the meantime taking any further steps for the erection of new schools." It seems to me that this resolution is simply in the face of the statute, which says that after a resolution providing additional accommodation has been carried and confirmed by the Board of Education, the School Board shall go on without delay to carry it into execution, and this resolution is that they shall not do so. Was that a resolution they could expect the Board of Education to consider or to give effect to? The Board of Education were bound to reject, after consideration, such a resolution as that, because it was against the statute. It was a resolution in violation of the duty of the School Board as prescribed by the statute, and accordingly they are told repeatedly by the Board of Education that it was impossible to sanction the delay—that they cannot do so consistently with their duty. The rest of the correspondence, except in so far as it is a repetition of that, seems to me to have nothing to do with the question before us. Then the Board of Education, at last finding that the School Board adhered to their resolution for indefinite delay, issued a requisition upon them in terms of the statute. It is printed in the papers before us, and seems to me to be in the proper form under the statute. That requisition has not been attended to by the School Board, and it now falls upon us to order them to proceed in terms of the statute and carry out their resolution of 29th October 1874.

The other Judges concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioners—Dean of Faculty (Watson)—Trayner. Agent—Donald Beith, W.S.

Counsel for the Respondents—Balfour—Keir. Agents—H. & A. Inglis, W.S.

Wednesday, February 23.

SECOND DIVISION.

[Lord Craighill.

CUTLAR *v.* REID AND OTHERS (M'LEOD'S TRUSTEE.)

Expenses—Tender by Defender.

An action was brought for £236. In their defences the defenders tendered £150 as in full of all claims. The Court decerned against the defenders for payment of £145 with interest, which raised the amount awarded by the Court very slightly above the tender:—*Held* that the technical rule as to expenses must be strictly addered to, and expenses found due to neither party.

Counsel for Pursuer—Moncrieff—J. A. Reid. Agents—Philip, Laing, & Munro, W.S.

Counsel for Defenders — M'Laren — Harper. Agent—J. Knox Crawford, S.S.C.

Wednesday, February 23.

FIRST DIVISION.

[Lord Rutherfurd Clark.

ACCOUNTANT OF COURT *v.* M'KINNON (GRAINGER'S CURATOR).

Curator—Investment.

Held that a *curator bonis* may invest his ward's money in loans, for security and payment of which assessments are authorised to be levied by Act of Parliament.