

and is totally wanting. The case, however, fall under yet another principle, for we have not even an averment here that Mr Campbell has assumed for his hotel the descriptive name of the appellant's house without variation. It is not stated that he has called his hotel the "Station Hotel," but that he has called it the "Royal Station Hotel." Now, where one man gives his house a merely descriptive title, and another, to whose house the description equally well applies, assumes the same descriptive title with a distinguishing addition, the latter is within his rights, and the former is not entitled to complain. Now, I am of opinion that with regard to such a descriptive title as this, even the addition of the word "Royal" is sufficient, although I by no means would say that a descriptive title may not be acquired by an hotel which could not be assumed by another without a sufficient distinguishing mark; but here we have not, I think, a case of that kind.

The contention of the respondent that he has built his hotel nearer the railway station than the older one, and is therefore better entitled to call it the Station Hotel than even the appellant, does not move me. Provided the descriptive term was fairly applicable to the appellant's hotel, I do not think the respondent was entitled to appropriate it without variation, even though truly more applicable to his own than to the appellant's house.

In this case I am quite satisfied that we should dismiss the appeal upon two grounds—(1) because there is no sufficient allegation of the assumption of the name for the purpose of injuring the appellant; (2) because the respondent's proceedings are not shown to have been a piracy or purloining of the appellant's title, nor even a colourable imitation—but the mere adoption of title with a sufficient distinction.

The other Judges concurred.

The Court dismissed the appeal, and found the respondents entitled to expenses.

Counsel for Appellant—Fraser—Moncreiff.
Agent—W. Officer, S.S.C.

Counsel for Respondent—Macdonald—Rhind.
Agent—R. Menzies, S.S.C.

Friday, November 17.

FIRST DIVISION.

BISHOP BURNET'S TRUSTEES *v.* DRUMMOND
AND BATHGATE AND OTHERS.

Charity—Bequest—Intention—Scheme for Regulation of Charity—Nobile officium.

In 1714 a fund was bequeathed to a parish for educational and other purposes. The trustees who administered it, finding that they could not carry out the whole purposes contemplated by the founder, proposed a new scheme embodying certain alterations in the regulation and distribution of the charity, and applied to the Court to sanction it.—*Held* that the application might be granted on the ground, *inter alia*, that there was no more

expedient method of expending the fund according to the founder's views, and that it was not intended to benefit any object different from that directed by him.

Expenses.

In a petition for the approval of a scheme for the regulation of a charity, expenses were refused out of the fund to a party who had appeared in the process, the Court holding that he was sufficiently represented by another party, and that it was necessary to protect a fund of the kind from being diminished by such a claim.

This was a petition at the instance of Andrew Fletcher of Salton and Baron Sinclair of Herdmanston, the trustees under the late Bishop Burnet's Trust, parish of Salton, praying the Court "to make such rules, orders, provisions, and directions for the management, regulation, support, and continuance" of the charity as should be found "agreeable to the tenor and true meaning of the will, . . . and the pious and charitable intention of the donor."

The trustee was the Right Rev. Dr Gilbert Burnet Lord Bishop of Salisbury, who died in 1714, leaving a will, dated Oct. 24, 1711, in which funds were bequeathed for the foundation of the charity in question. The funds amounted to 1000 merks yearly, to be bestowed as follows:—"Thirty children of the poorer sort shall be put to school to learn reading, writing, and casting accounts; to every one of these ten merks Scottish shall be given to cloath them in plain grey clothes, all of one sort—this is 300 merks; after they have been four years at school and are fit to be bound out to trades or to follow husbandry they shall receive forty merks a-piece—which is four hundred merks more; but this four hundred merks during these four years that they are at school shall be applied to the building a good school-house near the church-yard and for purchasing half an acre of ground for a garden and outlet to the school-house. I appoint one hundred merks a year of addition to the schoolmaster's allowance, and fifty merks a year to the increase of the library began for the minister's house and use, of which he shall every three year give an account to the Lairds of Salton and Hermistone, and to any two neighbouring ministers, which they shall be obliged to sign for his discharge, unless they can shew reason to the contrary. . . . The remaining one hundred and fifty merks to be distributed yearly to the poor of the parish by the minister, with the approbation of the Lairds of Salton and Hermeston, and such others as join with him in taking care of the poor of that parish. And this course I order to be continued for ever, as an expression of my kind gratitude to that parish." The endowment was managed by trustees appointed under a private Act of Parliament, 22 Geo. II. No. 62, in whose name the Act directed that the funds of the charity should be invested, subject to the control and direction of the Court of Session. In the words of the Act, the proceeds of the fund were to be "under and subject to such rules, orders, provisions, and directions for the management, regulation, support and continuance of the said several charities, as the said Lords of Session shall in that behalf from time to time order, direct, or appoint, and as they shall judge and determine to be agreeable to the tenor and true meaning of the said will and codicil, and the

pious and charitable intention of the donor therein expressed." The trustees had accordingly managed the endowment since the date of the Act according to their discretion, without interference from any source till 1873, when the School Board of the parish, appointed under the Education (Scotland) Act 1872, claimed that the funds of the trust, in so far as they were to be paid as in addition to the schoolmaster's allowance, or in putting the children to school to learn reading, writing, and casting accounts, should be dealt with as being for behoof of the parish school of Salton, and as such should be applied by the School Board. To this effect an action was brought by the School Board, and about the same time certain parishioners raised an action of declarator, count, reckoning, and payment, in which the management of the fund by the trustees was impugned, and reduction was asked of their rules and regulations. In the first process the Lord Ordinary (Young), in March 1876, gave judgment finding that the School Board was right in its contention so far as regarded that part of the trust-fund set apart for increasing the schoolmaster's salary, but otherwise assuizied the trustees from the conclusions of the action. In the second case his Lordship sisted procedure to allow the trustees to bring, as they intimated they would, the present petition for the authority of the Court to a revised scheme of management.

The petition, which was presented under the Act 22 Geo. II. No. 62, set forth the following explanations with reference to Bishop Burnet's scheme:—“(1) The trustees have experienced difficulty in administering the sum provided for clothing the children on account of the increase in the price of materials, and therefore in recent years comparatively small sums only have been employed in the purchase of boots and other smaller articles of dress. The fund is not sufficient to purchase clothes for the whole thirty children without encroaching unduly on other purposes; and besides, the trustees are of opinion that at the present day, and in the altered circumstances of society, it is not advisable that a number of children should be selected to be dressed ‘in plain grey cloaths, all of one sort,’ or in any other distinctive uniform. (2) The trustees have found it impossible for many years to expend beneficially, or in the manner intended by the truster, the 400 merks a-year provided for apprentice fees. The reason of this is that it has entirely ceased to be the practice in the parish and neighbourhood to take agricultural apprentices. (3) The trustees are now bound to pay this annual sum to the school board of the parish conform to Lord Young's interlocutor in the case before-mentioned. (4) For many years the payment of 50 merks for the minister's library has been increased to £5 sterling, and this increased allowance the trustees propose to continue. (5) For many years the payment to the poor of the parish of 150 merks has been increased to £10 sterling, and this increased payment it is proposed to continue. A claim having been made in the year 1855 by the Parochial Board of the parish to this annual payment, the trustees were advised by Counsel that the minister of the parish was entitled to the distribution thereof, with concurrence of the Lairds of Salton and Herdmanston, and that the money was not intended for such only as were legally paupers. It is proposed to continue the distribution on the same footing.”

It appeared from the proposed new scheme of the trustees, which was printed in an appendix to the petition, that the whole fund at their disposal amounted to £85 per annum, under deduction as above of £5, 12s. paid to the School Board, and £5, 8s., the expenses of management. It was proposed that the £74 thus remaining should be expended as follows:—£5 upon the purchase of books and maintenance of the Burnet Library; £10 for distribution among the poor of the parish—the fund to be distributed by the minister, and not to be confined to those who were legally poor; £30 for the education of thirty children, their school fees and school books; £29 for bursaries for four more advanced scholars. The fund provided for bursaries was to be administered as follows:—“The trustees shall each year choose from among the children on the fund one child to receive and hold for four years one of said bursaries, to be paid to or applied by the trustees for behoof of said child while continuing his or her education in one or other of the schools in said parish, or at any other school that the trustees may select, or while learning such trade or business as may be approved of by the trustees.”

The petition when presented was ordered to be intimated and served upon the Rev. T. N. Drummond, the minister of the parish, who lodged answers objecting to certain of the proposed alterations.

Certain parishioners also lodged answers, stating that in several respects the scheme was disconform to the will and intention of the founder.

At advising—

LORD PRESIDENT—The fund bequeathed by Bishop Burnet in his will, dated 24th October 1711, for the benefit of the parish of Salton, and which is here in question, has been administered by the trustees under the Act 22 Geo. II., No. 62, subject to the sanction of the Court since the date of the Act being obtained, and it is not now stated that there has been any departure from the directions of the will or anything wrong in the management. The trustees, however, suggest a change, in order to make it more practically useful, and the scheme which they propose is in the main quite consistent with the design of the donor.

They represent that the four hundred merks which is appropriated by the will to the purpose of setting out the children in life, by binding them as apprentices, is no longer desirable or practicable. Salton is an agricultural district, and apprentices for such work are quite unknown in Scotland, and therefore it is stated that that direction of the testator cannot be carried into effect, and that the money may be more expediently applied for the benefit of the charity. It is important to observe that there is no design to bestow it upon an object different from that contemplated by the founder. On the contrary, thirty children are still to receive the whole benefit of the charity except in so far as the Bishop directed otherwise.

It is proposed to institute bursaries, the money for that object being obtained by setting free these four hundred merks. The trustees suggest that by giving bursaries to the most prominent scholars they are coming very near the main design of the founder, and acting expediently for the benefit of the objects of the charity. That raises the most serious question in the new scheme. But it appears to me that the course is a very rea-

sonable one, and that it is quite within the powers of the Court to sanction it in the circumstances. We must be satisfied that the trustees cannot use the four hundred merks for the main purpose contemplated by the founder, and that there is no more expedient method of paying it out according to the views expressed in the will. On the whole, I am very much inclined to approve of that proposed change.

The other change suggested is also one of a slight kind, and it is certainly very much in harmony with modern ideas upon the question of such charities. Three hundred merks were to be given to clothe the children who were being educated. The Bishop's intention to provide them with a uniform is not desirable for either the children or the school. It is a kindred purpose which is now proposed. It will be for the benefit of the children, and therefore I propose that it should be approved of. The money thus set free is to be devoted to the payment of fees and school books, and it was explained in the course of the argument that the trustees intend to provide necessary articles of clothing, *e.g.*, boots, &c., without providing a uniform. That is a slight change, but it is expedient and desirable.

These are the two main points of difference between the new scheme and the scheme hitherto in use. [There were one or two points of mere detail, upon which his Lordship gave an opinion, which need not be noticed here.] I think the scheme should be approved, and that the prayer of the petition should be granted.

LORD DEAS and LORD MURE concurred.

The trustees and the minister were granted their expenses out of the trust-funds, but expenses were refused to the parishioners on the ground that there was no necessity for their appearance in the process, their interest being safe in the hands of the minister, and their statements against the administration of the fund by the trustees being unsubstantiated. The Court expressed their opinion that it was necessary to protect so small a fund from being diminished by such a claim.

Counsel for Petitioners—Lee—Jameson.
Agents—Scott, Moncrieff, & Wood, W.S.

Counsel for the Minister—Pearson. Agents—
Macrae & Flett, W.S.

Counsel for the Parishioners—M'Kechnie.
Agent—R. A. Veitch, S.S.C.

Saturday, November 18.

FIRST DIVISION.

THE LORD ADVOCATE *v.* THE SCHOOL
BOARD OF STRATHMIGLO.

School—Education Act 1872 (35 and 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, the duty of the Court is simply ministerial, and they will only have

regard to the question of the regularity of the proceedings under the statute.

Observed that the Board of Education are quite entitled, after refusing sanction to an "opinion and determination" of a School Board, to change their views and give their approval.

This was a petition and complaint by the Lord Advocate against the School Board of the parish of Strathmiglo, brought under the 36th section of the Education (Scotland) Act, 35 and 36 Vict. cap. 62, in the following circumstances:—

On 23d December 1874 the School Board resolved to provide for the educational requirements of the western district of the parish by the erection of a new school to the west of Gateside; and this resolution was intimated by the School Board Secretary to the Board of Education on 2d January 1875. The intimation was—"I am to state that my Board decline to take a transference of Burnside School, and propose to make provision for the educational requirements of the parish by erecting a new school a little to the west of Gateside. That your Board may the better understand the matter, I am to submit to you the following copy of proceedings, and report on the subject." Accompanying the intimation were copies of minutes of several meetings of the School Board. The minute of the meeting of 23d December 1874, *inter alia*, bore—

"This, then, is the resolution and determination of the majority of my Board, *viz.*, To provide for the educational requirements of the western district of the parish by the erection of a new school a little to the west of Gateside, upon a piece of ground belonging to the governors of Philp's Trust, and specified in Mr Thom's motion. I therefore now ask the sanction of your Board to this proposal, so that the providing of the necessary school accommodation for this district may no longer be delayed." Delay took place in the proceedings, though communications went on between the two Boards until 1st March 1876, when the School Board met, and it was resolved that accommodation be provided for 100 children. Following thereupon, the Board of Education wrote to the clerk of the School Board upon the 3d March 1876—"Sir, The Board of Education have duly considered the report, dated 23d December 1874, transmitted to them by the School Board of the parish of Strathmiglo, in terms of the 27th section of the Education (Scotland) Act. . . . 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.*, To erect upon a piece of ground a little to the west of Gateside, belonging to the governors of Philp's Trust, a new public school for the accommodation of 100 scholars, and a residence for the teacher. 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." Notwithstanding that letter, the School Board failed to proceed with the building, and in answer to a requisition, under the 36th section of the Act, had intimated their declination to comply with it. Thereupon this petition was brought to have them ordained to do so.