

with principal. They had agreed to nothing except that they would delay making an immediate demand for payment, and leave the account in the meantime in its actual position. The account was accordingly treated as an open account down to October 1887.

For the reasons already given, I think it clear that if the bank were entitled to state the account in this way against the company, they are bound to state it in the same way against the defenders.

On all the other points I agree with Lord Adam, and have nothing to add.

The LORD PRESIDENT concurred.

LORD M'LAREN was absent.

The Court found that the pursuers had failed to establish the agreement between themselves and Mr Bennet Clark, alleged upon record as amended; therefore found and decreed in terms of the interlocutors of 13th and 19th March 1889.

Counsel for the Pursuers—Asher, Q.C.—C. K. Mackenzie. Agents—Melville & Lindsay, W.S.

Counsel for Pattison's Executors and Somerville's Trustee—Graham Murray—C. S. Dickson. Agents—Macandrew, Wright, & Murray, W.S.

Counsel for Robertson's Trustees—Comrie Thomson—Rhind. Agent—William Officer, S.S.C.

Thursday, February 5.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

M'QUAKER v. GOVERNORS OF BALLANTRAE EDUCATIONAL TRUST AND OTHERS.

College—Bursary—Qualification of Candidates—Pupil of School—Scheme of Education Endowment Commissioners.

By section 25 of a scheme framed by the Commissioners under the Educational Endowments Act 1882, it was provided that the governors should apply a certain annual sum in establishing a bursary for university or technical education, to be awarded by competitive examination "among those who have been pupils in public or State-aided schools in the parish of B for at least six months before the date of examination, and whose parents or guardians require aid for giving them higher education."

In 1889, after an examination, the Governors awarded the bursary to W, and placed M second.

In an action at the instance of M's father, the Court held—(1) that M having been enrolled as a pupil of a school in the parish of B during the six months preceding the examination, was not disqualified as a candidate by the fact

that he had been absent from school with leave during part of that time, and therefore found that the pursuer had a good title to sue; and (2)—*diss.* Lord M'Laren, and *rev.* Lord Wellwood—*reduced* the award of the bursary to W, in respect that he had not been a pupil of any school in the parish during the six months preceding the examination, and with the consent of the defenders *awarded* the bursary to M.

Observed that the Court would have been slow to interfere with the governors' award on the ground that the successful candidate's parents did not require aid in giving him higher education, that being a matter largely for their discretion.

Under a scheme framed by the Commissioners appointed under the Educational Endowments (Scotland) Act 1882 for the administration of the educational endowments in the parish of Ballantrae, a governing body was appointed by the name of "The Governors of Ballantrae Educational Trust," and by section 25 of the scheme it was provided as follows—"The Governors shall apply the annual sum of not less than £20, nor more than £25, in establishing a bursary for university or technical education, which shall be called the Caddall Bursary. This bursary shall be awarded by competitive examination among those who have been pupils in public or State-aided schools in the parish of Ballantrae for at least six months before the date of examination, and whose parents or guardians require aid for giving them higher education: it shall be tenable for such period, not exceeding four years, as the Governors may determine, at a university or school for higher or technical or professional education, to be approved of by the Governors."

By direction of the Governors, a competitive examination was held on 25th April 1889, for the purpose of determining who should be the bursar or holder of the said Caddall Bursary for the period of four years thereafter. Several competitors appeared, and among them Hugh Wason and John M'Quaker. As the result of the examination, the Governors awarded the bursary to Hugh Wason, and placed John M'Quaker second.

The present action was raised by William M'Quaker, crofter, the father of John M'Quaker, who was in pupillarity, against the Governors of Ballantrae Educational Trust, Hugh Wason, and James Wason his father, for reduction of the award of the bursary to Hugh Wason, to have it found that the Governors ought to have awarded the bursary to the pursuer John M'Quaker, to have them interdicted from paying it to Hugh Wason, and ordained to award and pay it to John M'Quaker.

The pursuers founded on the 25th section of the scheme above quoted, and objected to the award of the bursary to Hugh Wason on the grounds (1) that he had not been a pupil of any public school in Ballantrae parish during the six months pre-

ceding the examination, and (2) that his parents "carried on the only baking business in Ballantrae," and his father held "the offices of postmaster, inspector of poor, collector of rates, clerk to the local authority, sanitary inspector, clerk and treasurer to the school board, and clerk to the said Governors," and was well able to give higher education to his son.

The defenders denied that Wason's parents did not require aid to give him higher education, and averred that John M'Quaker had not been a pupil of any public school in Ballantrae during the six months preceding the examination.

The defenders pleaded—“(1) No title, *et separatim*, no interest to sue. (4) The defender, the said Hugh Wason, having been eligible to compete for, and having been duly awarded the said bursary, the defenders should be assiozied from the whole conclusions of the summons.”

The facts with regard to the attendance of John M'Quaker and Hugh Wason in Ballantrae public schools were as follows:—John M'Quaker attended Auchenflower public school, in the parish of Ballantrae, for several years. From the beginning of the school year on 1st April 1888 he attended up till and including 29th May 1888, and from 19th November 1888 until the date of the examination on 25th April 1889. The school holidays during the said year extended to six weeks, viz., from 22nd June to 7th August. School attendances were marked twice daily, and the total number of John M'Quaker's attendances for the school year ending 31st March 1889 was 175, and for the year immediately preceding 25th April 1889 was 181. Between 29th May and 19th November 1888 he was absent from the school, with the permission of the teacher, for the purpose of assisting his father in his outdoor work. During all that period his name remained on the daily register of attendances, and he was marked absent. Hugh Wason attended the Ballantrae public school for several years prior to 26th October 1888. During the year immediately preceding 26th October 1888 his attendances were 383, and during the school year ending 31st March 1889 his attendances were 190, the whole of these being prior to 26th October 1888, when he left the school. On 1st November 1888 he was enrolled as a pupil of Allan Glen's Technical School in Glasgow.

On 20th June 1890 the Lord Ordinary (WELLWOOD) sustained the defenders' second plea and dismissed the action as irrelevant.

“*Opinion.*—By section 25 of a scheme framed by the Commissioners under the Educational Endowment Act 1882, it is provided that ‘the Governors shall apply the annual sum of not less than £20, nor more than £25, in establishing a bursary for university or technical education, which shall be called ‘The Caddall Bursary.’ This bursary shall be awarded by competitive examination among those who have been pupils in public or State-aided schools in the parish of Ballantrae for at least six months before the date of examination, and whose parents

or guardians require aid for giving them higher education.’

“A competitive examination for this bursary took place on 25th April 1889. After competition the bursary was awarded to the defender Hugh Wason, the pursuer's son John M'Quaker being second in the examination. In this action William M'Quaker, father of John M'Quaker, seeks to have the award reduced, and that the bursary should be given to his son, on the ground that the successful candidate, Hugh Wason, was ineligible, firstly, because he had not been a pupil in a school in Ballantrae for the six months immediately preceding the date of the examination, and secondly, because his parents did not require aid for giving him higher education. The first and more important of these objections depends upon the construction of the 25th section of the scheme. Before considering this it may be stated that a joint-minute of admissions has been lodged, from which it appears that Hugh Wason, the successful candidate, attended Ballantrae public school for several years prior to 26th October 1888, when his attendance ceased. It also appears that John M'Quaker attended up till 29th May 1888, and from 19th November 1888 until the date of the examination, 25th April 1889, but that he was absent from 29th May 1888 till 19th November 1888, it is said, by permission.

“Taken literally, the words quoted simply mean (1) that the candidate must have been a pupil in a public or State-aided school in the parish of Ballantrae for at least six months, and (2) that the six months' attendance must have been completed before the date of examination. But it is objected that if the clause is thus construed the bursary would be open to anyone who, perhaps years before the examination, had attended a school in the parish for six months. The answer to this is, I think, that the clause must be read and applied reasonably, and that it was not an unreasonable decision on the part of the Governors to allow a boy to compete whose connection with a public school in the parish terminated not quite six months before the examination. They have power by clause 32 to make regulations and bye-laws in so far as not inconsistent with the scheme, and the question might be fairly tested by considering whether a bye-law would be valid which allowed an interval of six months between the latest date of attendance and the examination.

“The pursuer's construction again involves the reading in of the word ‘immediately,’ and the contention, that in order to qualify, the attendance must continue till the examination. The difficulty of maintaining this construction is shown by the boy M'Quaker's own case. He had not attended for at least six months immediately before the date of examination, but only since 19th November 1888, having been absent since 29th May 1888, a period of nearly six months. If the clause, as read by the pursuer, is to be construed strictly the boy M'Quaker was also ineligible, and on that ground the pursuer has no title to

sue; but, says the pursuer, not very consistently, the clause must be construed reasonably as regards the beginning of the six months, and this he proposes to do by eking out the necessary six months by attendance before 29th May 1888.

“Now, while I think the matter calls for regulation, I prefer a construction which does not disqualify a candidate who has left school a few months or weeks before the examination, and which admits of reasonable latitude as to the time or times at which the pupil must have finished his six months' attendance. Besides, the pursuers' construction would lead to results quite as unfair and foreign to the spirit of the scheme as any which could result from that put upon the clause by the defenders, because there would be nothing to prevent a boy not connected with Ballantrae coming at any time, and attending only for six months immediately before the examination in order to gain the bursary. The pursuer states a second objection to the award, viz., that Hugh Wason's father, the defender James Wason, does not require aid for giving his son a higher education and in support of this contention makes the following averments (Condescence 5):—‘The parents of the said Hugh Wason do not require aid in giving him a higher education. They had, as already mentioned, sent him to a technical school in Glasgow. They carry on the only baking business in Ballantrae, and his father, the defender, the said James Wason, holds the offices of postmaster, inspector of poor, collector of rates, clerk to the local authority, sanitary inspector, clerk and treasurer to the school board, and clerk to the said Governors, and he is well able to give higher education to his son.’ It appears to me that the question whether a parent requires aid for the higher education of his son is peculiarly one for the consideration of the Governors. It would require a very strong case of injustice to induce the Court to interfere. Now nothing that is stated is inconsistent with Hugh Wason's father requiring such aid. Nothing is said as to his liabilities and burdens, or even as to the amount of his income. The very number of the offices which he is said to hold indicates that the remuneration in each must be small. I am therefore not disposed to allow a proof as to the state of Wason's affairs. Since the case was debated, and indeed since my opinion was written, the case of *Angus Macdonald v. The Synod of Argyll* was decided by the First Division of the Court, 17th June 1890. The circumstances of that case were very similar to those of the present, and the Inner House, affirming the judgment of Lord Trayner, held that the pursuer had no title to sue. The defenders in the present case plead that the pursuer has no title and no interest to sue, but the only arguments stated to me in support of that plea was that the pursuer had no title to sue, in respect that on his own showing his son John M'Quaker had not attended school for at least six months before the date of the examination.

“Now, it may be that the terms of the deed

in the case of *Macdonald v. The Synod of Argyll* conferred wider powers of selection upon the administrators of the trust than the scheme in the present case, and that there are stronger grounds in this case for maintaining that there was something of the nature of a contract to the effect that the bursary should be given according to priority in the competition. At the same time, as I read the opinion of Lord Trayner, which was adhered to, it seems to me that the grounds of judgments in the case of *Macdonald* are wide enough to rule the present case.

“As, however, the point was not argued to me by the defenders, and as I have arrived at the conclusion that the action must be dismissed on other grounds, I have not thought it necessary to postpone giving judgment until the case of *Macdonald* is fully reported.”

The pursuer reclaimed, and argued—The questions for the Court to decide were two in number—(1) Whether the pursuer's son was or was not eligible for the bursary? For if he was not, the pursuer could have no title or interest to sue the action. And (2) Whether Hugh Wason was or was not a qualified candidate and so rightly elected? Both these questions depended on the construction of the 25th clause, and the proper construction was that only present pupils of Ballantrae schools, who had been pupils for the six months preceding the examination, were qualified to compete for the bursary. The pursuer's son satisfied this test, for though he had not been in actual attendance at school for the whole six months preceding the examination, he had been a pupil of the school all the time, as he had been absent with leave to assist his father with outdoor work, and his name had never been removed from the roll. Such absence was allowed by the Scotch Education Code, article 206, and would not disqualify for the Government grant, and clearly a boy so absent did not cease to be a pupil of his school. Wason's case was quite different, as it was admitted that he had ceased to be a pupil of any Ballantrae school six months before the examination, and had been for almost the whole of these six months enrolled as a pupil of a school in Glasgow. Wason accordingly did not satisfy the test of qualification, and the Governors, who had a discretion in some matters connected with the bursary, had no power to award it to a candidate who had not been a pupil of a Ballantrae school during the six months preceding the examination—in *re Smith*, L.R., 17 Q.B.D. 4.

Argued for the defenders—The pursuer's construction of the 25th section of the scheme made it necessary to read the word “immediately” into the section before the word “before,” or otherwise to add to the clause, but the clause required no such addition to make it intelligible, and there was no reason to limit the period of necessary attendance to the six months immediately preceding the examination. The discretion was left with the Governors to see that the latitude allowed by the terms of

the section were not carried too far, and they were given power to frame byelaws for the regulation of the competitions under section 32 of the scheme. If Wason was not qualified, neither was the pursuer's son, as practically he could not show a better record of attendance for the last six months before the examination. If it should be found that Wason was not, and that M'Quaker was a qualified candidate, then the defenders were willing that he should be found entitled to the bursary without the necessity of another examination.

At advising—

LORD PRESIDENT—This is a very important and somewhat difficult question undoubtedly, but it appears to me to depend entirely upon the construction of the 25th section of the scheme. The Governors are empowered thereby to apply, or rather they are directed to apply—the words are imperative—“the annual sum of not less than £20, nor more than £25, in establishing a bursary for university or technical education, which shall be called the ‘Caddall Bursary.’” Now, the Governors are the Governors of the Ballantrae school—of the foundation I mean—which the Education Endowment Commissioners regulated by this scheme, and were incorporated under the name of “The Governors of the Ballantrae Educational Trust.” The bursary is to be awarded by competitive examination, and here again the words are imperative—“The bursary shall be awarded by competitive examination”—so that so far there can be no dispute whatever as to what the duty of the governors is. They must apply an annual sum of between £20 and £25 in establishing a bursary, and they must award that by competitive examination. Then comes the definition of those who are eligible candidates for this bursary. The competitive examination is to be “among those who have been pupils in public or State-aided schools in the parish of Ballantrae for at least six months before the date of the examination, and whose parents or guardians require aid for giving them higher education; it shall be tenable for such period, not exceeding four years, as the Governors may determine, at a university or school for higher or technical or professional education, to be approved by the Governors;” and “in the event of equality in examination between candidates a preference shall be given to those resident in the *quoad sacra* parish of Glenapp.”

Now, that is the clause to be construed, and the first thing that appears to me to be pretty clear upon the face of the clause is, that this is properly speaking a school bursary. It is not a bursary which is to be held at a particular university, or a particular technical or advanced school, but it is a bursary which is to be held by a Ballantrae pupil. That is made, I think, very clear by the words of the clause, and accordingly the competitors for this bursary are described to be those who have been pupils in Ballantrae schools for at least six months before the date of the examination.

The state of the facts as regards the two competitors here is this:—The defender of the action, Wason, is in this position. He had ceased to be a pupil of the Ballantrae school. I think that as a matter of fact cannot be disputed, because he had severed himself from that school and all connection with it, and had betaken himself to another school in a different part of the country, for the purpose of proceeding with his education, and therefore in any ordinary sense the term “pupil of Ballantrae school” could not be applied to him. He was a pupil of a school in Glasgow—Allan Glen's Technical School—and the objection to him therefore is, that he does not fall within the description of a pupil within the meaning of section 25 of the scheme.

On the other hand, the pursuer of the action, M'Quaker, is in this position—He has not attended the Ballantrae school continuously during the whole period of six months preceding the date of the examination, and therefore if that be essential as a qualification for competition he does not possess it. But it rather appears to me that that is not the meaning of the section. The question whether a boy is a pupil of a particular school does not depend upon his actual attendances. He may be a pupil although not in attendance, and I use the word “pupil” as exactly synonymous to the word “scholar” as used in the code. I do not think there is really any difference between them. It means a boy who is bound under ordinary circumstances to attendance at that school, whose name is on the school roll, and whose absence from school, unless it be satisfactorily accounted for, is a fault for which he can be punished. Now, that is precisely the position of M'Quaker. His name was on the roll of the school during the whole of the period of six months preceding the examination. His absence is accounted for in this way. During the period that he was absent there was a certain period of vacation, which it is needless to say anything more about. The rest of the period of absence he was engaged in useful work, assisting his father, who was a crofter, in out-door labour, and all this with the perfect approval and sanction of the school authorities. Therefore, not only was his name on the school-roll, but his absence was justified by the employment in which he was engaged outside the school. It was therefore a justifiable absence, and being a justifiable absence it appears to me that it could not possibly be an absence that disqualified him from being a pupil or scholar of the school during the time of that absence.

Now, that being so, my opinion is that the pursuer, M'Quaker's son, fully comes up to the condition required in the 25th section of the scheme, and that he has been for at least six months before the date of the examination a pupil in the Ballantrae school. But then Wason, on the other hand, has not been an enrolled pupil or scholar of the Ballantrae school for a considerable period. The length of the period is not very material, because this is not a question of majors and minors; it is a ques-

tion whether, during six months immediately preceding the date of the examination, the condition of this 25th section had been complied with. Now, as I have said before, all connection between Wason and this school was put an end to a period that in that view disqualifies him entirely as a pupil of any Ballantrae school. And therefore if I am right in my construction of the clause—that it means that this shall be treated and dealt with as a school bursary in the proper sense of the term—the pursuer's son has a qualification and the defender has not.

That is the view of the case which I take, and I do not think it necessary to go into any of the other details at all. There are a number of things left to the discretion of the Governors, and with these we do not interfere in any degree, and among other things I would hesitate very much to interfere with the discretion of the Governors in determining whether the parent of a competitor was in such a condition of life as to require the aid of this bursary to enable him to send his son to a university or technical school. At all events, that is a matter for consideration by the Governors in the first instance. If they went flagrantly wrong, and conferred the benefit upon a boy whose parent was quite able to send his son to a university at his own cost, probably there might be means found to restrain that, but there is no case of that kind before us.

I am sorry to say I cannot agree with the interlocutor of the Lord Ordinary, and I think the pursuer is entitled to prevail.

LORD ADAM—It appears that on 25th April 1889 the Governors of Ballantrae Educational Trust held a competitive examination for a bursary of the value of £20 to £25 a-year, with the result that they awarded the bursary to Hugh Wason, and placed John M'Quaker second. The present action is raised by John M'Quaker's father to have it found that the Governors in so awarding the bursary to Wason acted wrongly, and ought to have awarded it to his son, on the ground that Wason was not qualified under the conditions under which the bursary fell to be awarded, and that his son as second is entitled to have the bursary awarded to him. If it is proved to our satisfaction that Wason was not and that M'Quaker was qualified, counsel for the defenders do not contest M'Quaker's title to the bursary, or, in other words, they do not contend that a second examination must be held before the bursary can be awarded, and I think they rightly abstain from putting forward that contention, as in my opinion if M'Quaker were the best of the qualified candidates he is entitled to have the bursary awarded to him.

The first question is, whether Wason was qualified as a candidate under the conditions imposed by the scheme? The facts which raise this question are these:—It is beyond dispute that Wason ceased to be a pupil of any school in Ballantrae in October 1888—that is, in the October preceding the

April in which the examination took place—and that he became a pupil of Allan Glen's Technical School in Glasgow on 1st November 1888. The question arises, whether, on a construction of the 25th section of the scheme, a person in that position was qualified to compete for the bursary? I agree that the question depends entirely on the construction of that section, and I also agree that the bursary is intended to be what is entitled a school bursary, to be competed for by persons who are pupils of the public schools in Ballantrae. The intention of the scheme and the construction of the scheme, as I read it, are that the bursary should be awarded among those who are at the time of the examination pupils of one of the public schools in Ballantrae, with this further qualification added, that they must have been pupils of such school for the six months before the date of the examination. To make the section bear that interpretation it is not necessary to interpolate any words, though no doubt the meaning might be expressed in another way by saying that the bursary was to be awarded among those "who are and have been pupils" in the Ballantrae public schools for six months. I also think we are quite entitled to look at the possible consequences of reading the section otherwise. It is to be observed that the Governors have no discretion as to awarding the scholarship. If a duly qualified candidate appears they must award it. The defenders say that the only necessary qualification is that a candidate must have been at some time a pupil in a public school at Ballantrae for six months—no matter when or how long before the competition—and that if a candidate so qualified is successful, he is entitled to have the bursary awarded to him. It is a very startling conclusion to reach, that a person who as a lad of five had been a pupil in one of the Ballantrae public schools for six months could come back and claim a right to compete for the bursary against present pupils of these schools. That would be an unlikely condition to attach to any bursary, and it would require a great deal more distinct language than I can find in the section to make me put that interpretation upon it. If, however, that were to be taken as the proper interpretation of the scheme, I think the observation made by Mr Jameson would be correct, that there was no use of the phrase six months "before the date of examination." These words would appear to me to be in that case mere surplusage, but if the other view is adopted, that a candidate must have been a pupil of a Ballantrae school for the six months immediately preceding the examination, then the presence of these words is explained.

I agree, therefore, that on the construction of section 25 of the scheme the bursary is a proper "school bursary," to be awarded to a boy who has been a pupil of a Ballantrae public school during the six months preceding the date of the examination.

If, then, that is the true construction of the 25th section of the scheme, the result as to Wason's claim to the bur-

sary is quite clear, because it is beyond doubt that he was not a pupil of any school in Ballantrae at the time of the competition. He had six months before withdrawn from the school at Ballantrae, and had become a pupil of a school in Glasgow, and if there had been a similar bursary there he might have competed for it. It is clear that as he was not a pupil of a Ballantrae school at the date of the examination he was not qualified to compete for the bursary. Even if he had happened to be a pupil of such a school nearer the time of the examination than he actually was, that would not in my opinion make any difference, the conclusive and cardinal fact being that he was not on the rolls of, and was not a pupil of any school in Ballantrae at the date of the examination. I think, therefore, that Wason was not entitled to compete for the bursary or to have it awarded to him.

The next question is, whether M'Quaker has a qualification? Now, the facts bearing on this question are these:—The competition, as I have already said, was held on April 25, 1889, and M'Quaker's attendances at the Auchenflower public school in Ballantrae during the preceding year were as follows:—From the beginning of the school year on 1st April 1888 till 29th May 1888, and from 19th November 1888 until the date of the examination, 25th April 1889. He was accordingly absent from the school between 29th May and 19th November in that year, but six weeks of that period—from 22nd June to 7th August—were taken up by the school holidays. It is, however, beyond all doubt that he was a pupil of a Ballantrae public school at the date of the examination, as he was then on the rolls of the Auchenflower school, and had been attending that school during the five months preceding the date of the examinations, and the only question which remains is, whether he was or was not a pupil of that school for six months preceding the date of examination. It is contended by the defenders that he was not, because he did not attend the school during the month prior to 19th November 1888, but it is necessary to point out that the question is not one of attendance, but simply whether he was a pupil of the school during the necessary period. As a matter of fact, he was absent during the month in question, but with the permission of the school authorities, and he was on the roll during that period, and was marked as absent because he was regarded as being on the roll and as a pupil of the school. It is not, I think, necessary to go into the question whether the authorities of the school ought or ought not to have treated him as a pupil of the school. In that part of the country, schoolmasters, with some authority from the code, are in the way of allowing lads during the summer leave of absence to assist their parents in the field-work, and that is regarded, and apparently quite properly regarded, as an ordinary ground of absence, and was so treated in this case, as the master of the school, with the authority of the Governors, treated him as a

pupil of the school, and marked him as absent. The question however is, not whether he was entitled to earn the Government grant, but whether he was a pupil, and I think he was. If so, he was qualified as a candidate for the bursary, and it ought to have been awarded to him, and that being the view of the Court, no difficulty is raised as to his being found entitled to it.

With regard to the question whether Wason satisfies another condition of the competition, namely, whether his parents require assistance in giving him higher education, I shall only say that that question does not arise for consideration in this case. If I had to express an opinion upon it, I should say that that was a matter almost entirely within the discretion of the Governors. They know the locality and the circumstances of each candidate's parents, and they are the persons to judge whether or not they require assistance in educating their children. I do not say that we would not interfere if they had awarded the bursary corruptly, but there is no such case here, and I should not be inclined to interfere with the Governors' award on this second ground. Therefore I agree that this interlocutor should be reversed.

LORD M'LAREN—We are reviewing the decision of the Lord Ordinary in an action brought to have it found that the successful competitor for a bursary is disqualified and that the second best competitor is to be preferred. The disqualification is rested on two grounds. It is said that the boy Wason who was preferred did not comply with the conditions of the order of the Education Endowment Commissioners, in respect that he was not a pupil in a public or State-aided school in the parish of Ballantrae for six months immediately preceding the date of the competition; and then it is said that his parents or guardians are not in the position of requiring aid to give him a higher education. On the latter question I entirely agree with the observations which have fallen from your Lordship in the chair and from Lord Adam. I think that a condition of this kind does not mean that it is absolutely impossible for a parent to give his child that higher education out of his own means—that he cannot, even by exposing himself to privation, send his son to a higher school or to a university. It means that in the ordinary acceptation of the language he is a person who requires aid for that object, whose circumstances are not such as to make it easy for him to send his child to a university or higher school without pecuniary assistance. Without professing any accurate local knowledge, I may say, from anything I know of the locality, I should think it would be difficult to find a boy in a village like Ballantrae who was disqualified on the ground that his parents were too well off to need assistance. But, of course, it might happen that a person with a large income had settled down in a country village, and it would not be right that if he were in easy circumstances his son should be allowed to

competent. That is no doubt a sufficient reason for the insertion of this very suitable restriction.

Passing from that part of the case I come to the more important matter, which is the construction of the first condition—"The bursary shall be awarded by competitive examination among those who have been pupils in public or State-aided schools in the parish of Ballantrae, for at least six months before the date of the examination." I agree with your Lordship that this points to what is usually known as a school bursary. I think one may gather from the clause as a whole, and from the character of the order, that it was intended to enable boys to pass direct from the parish public school to a school or college of higher instruction. I could not for a moment entertain the view that it would enable a grown-up person at any distance of time to come forward and compete with the proper recipients and objects of this foundation upon the plea that he had in early life attended six months at this public school at Ballantrae. But I arrive at that result entirely by implication—implication from the whole object of the foundation, and especially from the tenor of this particular clause; because, as I read the clause, there is no restriction in words as to the time at which the attendance may have been given. On that subject I would venture, as the Lord Ordinary's opinion was not very fully brought under our notice by the bar, to read a sentence from it which fully expresses my view on this question. His Lordship says—"Taken literally, the words quoted simply mean (1) that the candidate must have been a pupil in a public or State-aided school in the parish of Ballantrae for at least six months; and (2) that the six months' attendance must have been completed before the date of examination. But it is objected that if the clause is thus construed the bursary would be open to anyone who, perhaps years before the examination, had attended a school in the parish for six months. The answer to this is, I think, that the clause must be read and applied reasonably, and that it was not an unreasonable decision on the part of the Governors to allow a boy to compete whose connection with a public school in the parish terminated not quite six months before the examination." I have nothing to add to this expression of opinion on the question of the reasonable construction, as I should consider it, of this clause, but as to the literal construction of the clause I should like to add a word. I think the expression "those who have been pupils for at least six months before the date of the examination" is not a strictly accurate expression, because if read literally it would mean only those who had attended school before the passing of the order. The words are "who have been," referring to time past. What is really meant is attendance in the future. I am not finding fault with the language; it is good colloquial language; but if it were in an Act of Parliament we should expect it to read, "among those who shall have been pupils

at least six months before the date of the examination." Now, that is a form of speech which is no doubt equally applicable to a period of six months completed immediately before the examination, or to a period completed at any previous time. But then if the former is to be the meaning, one would expect that the word "immediately," or some equivalent word, would have been inserted, or that the clause might have been put, "among those who are at the time of the examination and have been pupils for the period of at least six months." The Lord Ordinary holds—and I agree with him—that the pursuer's construction involves the reading in of the word "immediately," and the contention that in order to qualify the attendance must continue until the examination. Now, there are cases where a court of construction may justifiably introduce into the clause which is construed some word which is not there, but which is clearly implied, and is necessary either to make the clause sensible or to give effect to what may be reasonably supposed to be its meaning when the whole clause is read consecutively. But it seems to me that it is at least a conceivable construction that the Commissioners by whom this order was made intended to leave the competition open, not only to boys who had just completed a period of six months' attendance, but also to those who had completed it only a short time before the examination commenced, and who had not done anything that might be considered to be an impediment to their passing from the school to the university. I see no particular public advantage in limiting the competition to those whose attendance has exactly and punctually terminated at the time of the examination, and I see no disadvantage in letting in those who had completed their school attendance a few months before. And therefore I cannot assume that the insertion of the word "immediately" (if it is to be inserted) is necessary in order to make sense of the clause, or in order to give full effect to the general intention of the order. I rather understood your Lordship to think that "immediately" was implied, because you used the word in giving your view of the sense of the clause. But in my humble opinion we are not entitled to read the clause in that sense, because there are no words, so far as I can see, that impose any such strict limitation as to time.

I have only to add that, for the reasons which I have given, I think that M'Quaker also was qualified. I have no doubt of it, although, strictly speaking, he had not been in attendance during six months immediately preceding the examination. The difference is that you had to add a period at the beginning to M'Quaker's attendance to complete the six months, while you have to add a period at the end to the attendance of the other young man to bring him within the clause. Both, I think, are quite legitimate according to my interpretation of the scheme. I do not think it necessary to proceed at all—indeed

I doubt very much the relevancy of proceeding upon the rules of the Department of Education, which are not in any way referred to in this enactment. If Wason is disqualified, I should doubt very much whether M'Quaker would be in any better position, but if the view of the majority of your Lordships is taken, this point does not call for further consideration. My opinion is that the judgment of the Lord Ordinary should be affirmed.

LORD KINNEAR—I concur with your Lordship in the chair, and with Lord Adam. The first question to be considered is whether the pursuer has a good title to sue, and that depends upon whether his son has or has not a qualification to compete for this bursary in terms of the scheme. That of course requires us to construe the scheme, and I agree with the construction which your Lordship and Lord Adam put upon it. The 25th section is certainly not expressed in very precise or accurate language, and I do not think it could be made more precise or accurate by the mere insertion of any additional words. I agree with an observation which was made by Lord M'Laren, that we are not to criticise too severely the grammatical structure of a scheme of this kind, but that we ought to accept the language which the Commissioners have used as being in conformity with colloquial usages although not in accordance with strict grammatical rule. Now, reading it in conformity with that observation, I should be disposed to agree also with the observation Lord M'Laren made in the course of the discussion, that if this sentence had been expressed grammatically it would have run thus—"The bursary shall be awarded by competitive examination among those who at the date of the examination shall have been pupils in any of the public or State-aided schools in the parish of Ballantrae for a period of at least six months." If that is the meaning of the clause, and I think it is, then I think there can be no question at all that the pursuer's son did satisfy the qualification. What is required is, that he shall have been a pupil of the school, and it is proved to us that he began to be a pupil of the school more than a year before the date of the examination, that he was still a pupil of the school at the time that examination took place, but that his continuous attendance during the period immediately preceding the examination had lasted for five months only, his previous attendance having been interrupted by absence, which was sanctioned by the head-master and the authorities of the school. And therefore it comes to this, that he had been a pupil for a year, that he had been in continuous attendance for five months before the date of the examination, but that he had leave of absence for the part of the period preceding the five months. I am of opinion that a pupil who has leave of absence is still a pupil of the school, and therefore that the pursuer's son has satisfied the qualification required by the scheme. I should agree with the observation made in the course of

the discussion, either from the bar or from the bench, that to keep a boy's name upon the roll will not of itself make him a pupil, if it is not done in good faith and in the ordinary course of school administration. But then there is no suggestion that in this case anything that was done was not done in the ordinary course of the administration of the school. It would be altogether out of the question to exclude from the benefit of a bursary of this kind a boy who during a portion of the period of six months required by the scheme had obtained leave of absence from the school for a sufficient cause. If he were absent through illness I suppose nobody would raise a question about his right to be considered a pupil of the school. If he is absent for such a reason as that which was sanctioned in the present case by the master—namely, that his father required his son's help in cultivating his croft, and that the son might be absent without prejudice to his study at school, I should think that such a case was exactly in the same position as a case of illness. But we are not, as it appears to me, to inquire into the reason of absence, and the grounds upon which the master sanctioned it. It is enough that the school authorities sanctioned his absence, and I think, therefore, that he must be held to have remained a pupil of the school. I only desire to add upon that point that it does not appear to me that in order to bring him within the position of a pupil we are to take into account the attendance for a certain period and add the period during which he did attend. All we have to consider is whether this boy was or was not a pupil. It is conclusive upon that subject that he having attended the school his name was retained upon the roll by the head-master, and his absence during the period at which he was not at school was with the head-master's sanction.

If the pursuer has a title, the next question is, whether the boy Wason who beat him in the competition had also a qualification? and I am of opinion that he had not, because he was not a pupil of the school. I agree with your Lordship that what is established by this scheme is an ordinary school bursary. It is a bursary to be given by competitive examination among scholars of Ballantrae schools, and not among boys or young men who have already obtained a higher education at a university or a technical school. Now, the boy who has succeeded had left Ballantrae school for months, and before the date of the competition I think he had been for some months at a technical school in Glasgow. It is not material during what period of time his attendance at that school had lasted. The material point is that he had absolutely left the school in Ballantrae and had gone to a higher technical school. Now, if that were not held to disqualify, it would appear to me that the scheme must be read so as to let in all boys and young men who had at any time of their lives been even for six months at any Ballantrae public school. That would be altogether inconsistent with the design of the scheme,

and we cannot arrive at a construction involving such an inconsistency—an inconsistency that would be a sufficient reason for rejecting the construction. I think the only reasonable construction is in favour of the pursuer's view, and of the view your Lordship has expressed.

The Court pronounced the following interlocutor;—

"The Lords having considered the cause, and heard counsel for the parties on the reclaiming-note for the pursuer William M'Quaker against the interlocutor of Lord Wellwood dated 21st June 1890, Recal the said interlocutor: Reduce, decern, and declare in terms of the reduction and declaratory conclusions of the summons: Interdict, prohibit, and discharge the defenders the Governors of the Ballantrae Educational Trust from making payment to the defender Hugh Wason of the Caddall Bursary, or any instalment thereof: Further, decern and ordain the said Governors to award the said bursary to John M'Quaker, to be held by him for four years commencing at 1st November 1889, and to make payment to him or the pursuer William M'Quaker, as his administrator-in-law, of the sum of £20, 16s. annually, the tenure of the said bursary by the said John M'Quaker being subject always to the conditions and provisions of the scheme for the management, *inter alia*, of said bursary approved by the Queen's most Excellent Majesty in Council the 3rd day of April 1886, and particularly article 27 of said scheme: Find the pursuer and claimer entitled to expenses," &c.

Counsel for the Pursuer—D. F. Balfour, Q.C.—Jameson. Agents—R. R. Simpson & Lawson, W.S.

Counsel for the Defenders—H. Johnston—Macphail. Agents—Murray, Beith, & Murray, W.S.

Saturday, February 7.

FIRST DIVISION.

KING, BROWN, & COMPANY v. ANGLO-AMERICAN BRUSH ELECTRIC LIGHT CORPORATION (LIMITED).

(*Ante*, vol. 27, p. 963; and 17 R.)

Process—Petition for Execution pending Appeal—Expenses of Appeal and of Extract.

In granting an order for interim execution of a decree for expenses, the Court declined to include therein the expenses of extract and of the petition for interim execution.

The defenders in this case having appealed to the House of Lords, the pursuers petitioned the Court to approve of the Auditor's report on their account of expenses, decern against the defenders for the amount thereof, and to allow the decree to be extracted and execution to proceed thereon to the effect of enabling the petitioners to recover from the said defenders the taxed amount of said expenses "with the expenses of extract and of this petition."

In moving the Court to grant the prayer of the petition, the petitioners specially asked the Court to allow them the expenses of the petition and the dues of extract.

The Court declined to pronounce any order save in the usual terms, and thereafter pronounced the following interlocutor:—

"Having resumed consideration of the petition for execution pending appeal, along with the Auditor's report upon the petitioners' account of expenses, Approve of said report, and decern against the Anglo-American Brush Electric Light Corporation (Limited) for the sum of £1114, 18s. 4d., the taxed amount of said expenses: Allow said decree to go out and be extracted and execution to proceed thereon, all as prayed for in said petition, upon the petitioners finding caution in common form to repeat whatever sum or sums they may recover under this decree in the event of the interlocutors appealed against being reversed in the House of Lords."

Counsel for the Petitioners—Daniell. Agents—Davidson & Syme, W.S.

Tuesday, February 17.

SECOND DIVISION.

[Sheriff of Renfrew.]

GALLACHER v. WOODROW.

Reparation—Relevancy—Master and Servant—Foreman—Known Danger—Employers Liability Act 1880, sec. 1, subsec. (3).

In an action of damages for personal injury brought by a workman against his employer, the pursuer averred, *inter alia*, that he had met with the injuries he complained of from having conformed to an order of the defender's foreman, to whose orders he was bound to conform; that he was inexperienced in the work which was being carried on, but, as it appeared to him that there was danger in the way in which it was being done, he had called the attention of the foreman to the matter, and had been assured that there was no danger, and ordered to carry out his instructions, and that he had done so, with the result that he had been severely injured.

Held that the pursuer's right of action was not barred on the ground that he had worked in the face of a