Thursday, May 25.

FIRST DIVISION.

TRUSTEES OF GATESIDE SCHOOL, PETITIONERS.

Educational Trust — School — Religious Education—Scheme for Administration of Endowment in Place of Maintenance of School—Provisions of proposed Scheme not approved.

The trust-deed founding a school proceeded upon the narrative of the truster "being sensible of the benefit of extending religious education to the children of the working-classes," and contained a direction "that it shall be a fundamental regulation and practice of the said school that the Bible be daily read therein by the children." It having become impossible to continue the school, a scheme was prepared for the administration of the endowment in another manner. The Court approved this scheme in so far as it provided for technical instruction, but deleted therefrom provisions enabling the trustees to apply the funds in promoting instruction in Scripture knowledge, in establishing a Sunday-school library, and in providing prizes in the Sunday-school of the district, and also a provision empowering the trustees to establish evening classes in the Board school.

In this petition (reported *ante* February 3, 1903, 40 S.L.R. 345) presented by the Rev. J. G. Sutherland, minister of the parish of Beith, and others, the trustees and committee of the management of the Gateside School, the petitioners now moved the Court to approve of a scheme for the administration of the trust prepared by them. It was intimated that under the power conferred by an interlocutor of 3rd June 1903 the school buildings and schoolmaster's house had been sold, and that the trust funds now consisted of the proceeds of such sale, amounting to about £550, and an annual rent of £25 per annum.

The original deed constituting the trust whereby the school was founded and partially endowed proceeded on the narrative of the founder "being sensible of the benefit of extending religious education to the children of the working classes, and having in consequence of the increase of population in the village of Gateside, near Beith, considered it advisable that additional facilities should be afforded for the education of the children of the inhabitants," and it contained this direction as to religious education—"And it shall be a fundamental regulation and practice of the said school that the Bible be daily read therein by the children, but no child shall be required to learn any catechism or other religious formulary, or attend any Sunday-school or place of worship which respectively his or her parent or guardian shall on religious grounds object, and the selection of the Sunday-school and place of worship shall in all cases be left to the free choice of such parent or guardian without the child's thereby incurring any loss of the benefits and privileges of the foresaid school."

The scheme submitted to the Court proposed to authorise the committee of management to apply the funds at their disposal, after meeting the annual expenses of the trust (Article 2), "in any one or more of the following purposes as may seem in the discretion of the trustees to be most desirable for the time being, viz., (1) in promoting instruction in the Bible and in Scripture knowledge to be given in or near the village of Gateside; (2) in establishing and maintaining a Sunday-school library in connection with the Sunday-school at Gateside; (3) in providing prizes to the children attending the said Sunday-school; (4) in providing such technical instruction in any of the following subjects as the funds will permit, viz., 1. technical instruction in manufactures; 2. instruction in agriculture and dairy work; 3. instruction in ambulance work and first aid to the injured."

The scheme also contained the following provision:—"(8) The committee shall have power, subject to the approval of the School Board, to establish evening classes in the Board School at Gateside for boys, girls, and adult persons, under such regulations as may be made from time to time by them."

Counsel for the petitioners moved for approval of the scheme, and referred to *Kirk Session of Prestonpans* v. *School Board of Prestonpans*, November 28, 1891, 19 R. 193, 29 S.L.R. 168.

LORD PRESIDENT—This scheme relates to a somewhat small endowment consisting of an annuity of £25 and the interest of the proceeds of the sale of the school, being £550, the school having been sold under power granted by this Court because it had been found impossible to carry it on in view of modern educational requirements. The scheme has been submitted to us so that we may consider whether it is feasible and as far as possible in accordance with the testator's views.

Though it was natural, from a wish to follow the testator's wishes with regard to religious education, that the three subsections dealing with that matter should have been inserted, I do not think we should approve of them. The testator's provision as to religious instruction was part of his scheme of having a school. But the school being gone and the trustees having no control over the religious education given in Gateside, I think it is better that these subsections should come out.

The eighth section of the scheme is unnecessary, unless it is meant to provide for the institution of ordinary continuation classes. That is the business of the School Board, and I do not think it would be right to devote the funds to that purpose. This section therefore should be deleted.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The petitioners having lodged an amended scheme in accordance with this opinion, the

Court (The LORD PRESIDENT and LORDS ADAM, M'LAREN, and KINNEAR) granted approval.

Counsel for the Petitioners—Hon. H. D. Gordon. Agents—Carment, Wedderburn, & Watson, W.S.

Friday, May 26.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

RUTHVEN AND OTHERS *v.* RUTHVEN.

Process—Reclaiming Note—Competency—Interlocutor of Lord Ordinary Inoperative—Reclaiming Note with a View to Correct Interlocutor.

A pursuer reclaimed against an interlocutor pronounced by the Lord Ordinary on the pursuer's own motion, on the ground that the interlocutor as pronounced did not give effect to the pursuer's motion, and was unworkable. The Court *recalled* the interlocutor reclaimed against.

In November 1903 The Hon. Walter Patrick Ruthven, Master of Ruthven, and others, his trustees acting under an agreement entered into between the Right Hon. Walter James Hore Ruthven, Baron Ruthven, his father, as represented by his attorney George Auldjo Jamieson, C.A., with consents therein mentioned, of the first part, and himself the said Hon. Walter Patrick Ruthven, dated 30th March and 11th April, and registered in the Books of Council and Session 7th June 1892, raised an action against the said Lord Ruthven for implement of the obligations under said agreement, concluding, *inter alia*, for execution and delivery to the pursuers as trustees foresaid of a valid and sufficient conveyance of the estate of Harperstown, County Wexford, Ireland, in terms of the form produced.

On 27th March 1905 the Lord Ordinary (STORMONTH DARLING) pronounced an interlocutor finding that the defender was bound, in implement of the agreement mentioned in the summons, to execute and deliver to the pursuers, as trustees acting under the said agreement, a valid and sufficient conveyance of the estate of Harperstown; and continued the cause that the terms of the said conveyance might be adjusted and approved of.

A conveyance was subsequently prepared for signature, and on 16th May 1905 the Lord Ordinary pronounced the following interlocutor on the pursuers' motion:—"The Lord Ordinary, in respect of the finding contained in the interlocutor of 27th March last, and of the letter No. 19 of process, decerns and ordains the defender to execute and deliver to the pursuers Charles James George Paterson and Archibald Robert Craufurd Pitman, as trustees under the agreement mentioned in the summons, the conveyance No. 6 of process, and that within fourteen days from this date."

The letter No. 19 of process, referred to in this interlocutor, was a letter written by the defender's agents to the pursuers' agents stating that the defender declined to sign any conveyance, and that they had no instructions to adjust the conveyance with the pursuers' agents.

On 19th May the Lord Ordinary granted leave to the pursuers to reclaim against the interlocutor of 16th May.

In the Single Bills counsel for the defender objected to the competency of the reclaiming note, and argued—The reclaiming note was incompetent in respect that the interlocutor reclaimed against had been pronounced on the motion of the reclaimers themselves—*Watson* v. *Russell*, January 30, 1894, 21 R. 433, *sub. nom. Watson* v. *Morrison and Others*, 31 S.L.R. 352. The present case was even stronger, since the defender was not represented by counsel when the interlocutor was pronounced.

Argued for the pursuers and reclaimers—The interlocutor as it stood was unworkable. Though pronounced on pursuers' motion the interlocutor was not in terms of the motion. The fourteen days within which the conveyance was ordained to be executed should have been made to run from the date of charge and not from the date of the interlocutor. Also expenses were not dealt with, for which the pursuers had moved. These were in effect clerical errors and should be corrected. Moreover, Irish procedure demanded the signing of a memorial corresponding to the Scots warrant for registration, and if this reclaiming note were sustained it was proposed to move for a decree ordaining the defender to sign this memorial.

The Court recalled the interlocutor reclaimed against and remitted the case to the Lord Ordinary.

Counsel for the Pursuers and Reclaimers—Fleming, K.C.—Pitman. Agents—J. & F. Anderson, W.S.

Counsel for the Defender and Respondent—Hon. W. Watson. Agents—Hope, Todd, & Kirk, W.S.

Tuesday, May 30.

FIRST DIVISION.

[Sheriff Court at Dundee.

COOPER & GREIG *v.* ADAM.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7, *sub-secs.* (1) *and* (2)—*Factory—Undertakers—Temporary Employment in Factory not Belonging to the Undertakers—Engineering Work.*

A workman in the employment of a firm of boilermakers was sent by them to repair a boiler in a spinning-mill