

the pursuer's term of entry (Whitsunday 1869), and that the sum for which liability had so arisen and been incurred was not of the nature of a continuing burden periodically arising, but being once paid and discharged came to an end, and was extinguished for ever, the Lord Ordinary is of opinion that it must be held to have been one of the burdens which fell to be paid by the defenders themselves as the owners of the subjects at the time when the liability therefor arose. He is disposed to think that to have rendered the pursuer liable in payment of that burden as in a question with the defenders an express provision or condition to that effect in their contract would have been necessary. The Lord Ordinary cannot think that it is sufficient to relieve the defenders, as was contended for by them, and transfer the obligation of payment over upon the pursuer, that the Commissioners acting under the Edinburgh and Leith Sewerage Act happened not to fix the precise sum payable for the subjects and exact payment of it till after Whitsunday 1869, the term of the pursuer's entry. Although the precise amount of the burden was not fixed or payment demanded till after that term, the important and, as the Lord Ordinary thinks, the conclusive consideration is that the burden had been created and the liability of the defenders for it as the then owners of the subjects had arisen and taken effect prior to the pursuer's entry. It not unfrequently happens, the Lord Ordinary believes, that payment of burden and taxes are not and cannot well be levied or exacted or their precise amount known till some time after the lapse wholly or partly of the time for and in respect of which they are payable.

"Upon the whole, and although the point in dispute is somewhat peculiar, and may not be altogether unattended with difficulty, the Lord Ordinary considers the pursuer is entitled to prevail, and he has so decided."

The defenders reclaimed.

The SOLICITOR-GENERAL and BALFOUR for them.  
The DEAN OF FACULTY and THOMS in answer.

The Court adhered.

Agents for Pursuer—Hill, Reid, & Drummond,  
W.S.

Agents for Defenders—Lindsay & Paterson,  
W.S.

Thursday, November 16.

#### SPECIAL CASE—ADAMSON'S TRUSTEES.

*Trust—Intention of Testator.* The trustees of a deceased gentleman being empowered to employ the residue of his estate in the establishment of an institution "in or near Cupar," to be called the "Adamson Institution," determined to build an infirmary at Bridgend of Ceres, which was 2½ miles from Cupar. Held that in so doing they had not defeated the purpose of the trust-deed, which was to erect an institution "in or near Cupar."

The question in this Special Case turns on the construction of the words "in or near Cupar" occurring in a settlement providing for the erection of a public institution. The late Mr Adamson of South Callange, Ceres, near Cupar-Fife, on 11th December 1865 conveyed his whole property to certain trustees, one of whom was Mr Andrew Taylor, banker, Cupar. The third purpose of the

deed was as follows:—"My trustees shall hold and apply the residue and remainder of my estate and effects for the establishment of an institution in or near Cupar, to be called the 'Adamson's Institution,' the object of which shall either be the education of persons above the age of ten years, or as an hospital or infirmary for the care of diseased and treatment of injured persons, as the trustees for the institution hereinafter appointed may, on a consideration of the comparative benefits to the district of an educational establishment and hospital or infirmary, in their discretion determine to be preferable."

The permanent trustees for the management of the institution were to be the minister of Ceres, two persons appointed by the Parochial Board of that parish, and four by the Town Council of Cupar, who were to be conjoined in the above order with his original trustees on the death or resignation of the latter, the number being kept up to seven.

The truster had indicated a preference for an educational establishment, and he provided that if that should be the choice of his trustees, twelve pupils from his native parish of Ceres should receive a free education there. In the event of an hospital being preferred, he expressed a wish that some preference should be accorded to the inhabitants of Ceres, and he further desired that Mr Taylor, one of his original trustees, should be appointed factor and clerk to the institution, on the ground that he was cognisant of his affairs and with his views in regard to it.

Mr Adamson died in 1866, and ultimately the trustees resolved that the institution should be an infirmary, and they fixed Bridgend of Ceres, between Ceres and Cupar, and distant about two miles and a-half from the latter place. Mr Andrew Taylor of Cupar objected to this site, on the ground that it was not in or near Cupar in the sense of the truster's settlement, and a Special Case was brought for the opinion and judgment of the Court on this point.

FRASER and BALFOUR, for the trustees favouring the Ceres site, argued that the truster had clearly indicated a preference towards Ceres, and that the distance from Cupar was not so great as to operate an exclusion of the condition of the trust that the institution should be "in or near Cupar."

SOLICITOR-GENERAL and MILLIE answered that it must be taken to have been the intention of the truster to prefer the immediate neighbourhood of Cupar, as he had appointed the majority of the permanent trustees to be nominated by the Town Council of Cupar, and had fixed on Mr Taylor as factor, who was resident in Cupar. *Separatim*, the district which the truster intended to benefit could not include both Cupar and Ceres parishes, seeing that he had had a school in view, and that for the higher branches of education. In any event Cupar was a more suitable locality for a public institution than Ceres.

To-day the Court unanimously upheld the choice of site made by the majority of the trustees, holding that it was not so far from Cupar as to defeat the purposes of the truster, and that it sufficiently qualified the condition of the settlement "in or near Cupar."

Agents for First Parties—Jardine, Stodart, & Frasers, W.S.

Agents for Second Parties—Fyfe, Millar, & Fyfe, S.S.C.