Friday, June 10.

FIRST DIVISION.

HADDOW *v.* SCHOOL BOARD OF GLASGOW.

School—Duties of School Board—Whether Bound to Supply Books — Education (Scotland) Act 1872 (35 *and* 36 *Vict. cap.* 62), *secs.* 23, 24, 36, 69, 70 — *Education (Scotland) Act* 1883 (46 *and* 47 *Vict. cap.* 56), *sec.* 4 — *Scotch Education Code* 1897, *Titles* 6 *and* (32) *b.*

Held that a school board is not legally bound to supply books for the use of children attending the school, and is not bound to admit to the school a scholar presenting himself for admittance without being provided with such books as are needed for his efficient education.

Observed (*per* Lord President) that this decision does not imply that the school board has not the power in its discretion to provide books for the use of scholars where this is necessary for the maintenance of the efficiency of the school as a whole.

Section 23 of the Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62) enacts that "the parish and other schools which have been established and now exist in any parish under the recited Acts, or any of them, together with teachers' houses and land attached thereto, shall be vested in and be under the management of the school board of such parish . . . . and the said school board shall thereafter with respect to school management and the election of teachers, and generally with respect to all powers, obligations, and duties in regard to such schools now vested in or incumbent on the heritors qualified according to the existing law and the minister of the parish, supersede and come in the place of such heritors and minister."

Section 24 deals with the transference of burgh schools to school boards, which is effected *mutatis mutandis* in the same words as are used in section 23.

Section 36 enacts that "the school board of every parish and burgh shall maintain and keep efficient every school under their management, and shall from time to time provide such additional school accommodation as they shall judge necessary."

Section 69, as amended by section 4 of the Education (Scotland) Act 1883 (46 and 47 Vict. cap. 56), enacts that "It shall be the duty of every parent to provide efficient elementary education in reading, writing, and arithmetic for his children who are between five and fourteen years of age." . . .

The last part of the section, which directed the parochial board to pay the fees for children of parents so poor as to be unable to pay them, was repealed by section 88 of the Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50).

The Scottish Education Code of 1897 contains the following regulations — "6. In every school or department of a school in respect of which grants were made, the following regulations must be strictly observed—. . . . No school shall be eligible for grants if (*a*) the average fee exceeds ninepence per week, or (*b*) more than one-third of the scholars in it pay fees exceeding ninepence a week. Compulsory payment for books or material must be included in reckoning the fee. (32) The amount which may be claimed by the managers may be reduced (*b*) by not less one-tenth nor more than one-half in the whole upon the inspector's report, for . . . or (after six months' notice) for failure on the part of the managers to remedy any defect in the premises which seriously interferes with the efficiency of the school, or to provide proper furniture, books, maps, and other apparatus of elementary instruction."

A special case was presented by (1st) Alexander Haddow, 124 Salamanca Street, Glasgow, the father of Isabella Haddow, a scholar attending Parkhead Public School, and the said Isabella Haddow; and (2nd) The School Board of Glasgow.

The following facts, *inter alia*, were stated in the case:—"(2) Since 25th April 1892 the said Isabella Haddow has been in regular attendance at the Parkhead Public School. She is now in Standard V. Said school is maintained and administered by the parties of the second part under and in terms of the Education (Scotland) Acts, 1872-93. (3) No fees for attendance at said school are exacted by the parties of the second part in respect that they participate in the grants in relief of fees provided in terms of the Local Taxation (Customs and Excise) Act 1890, and the Education and Local Taxation Account (Scotland) Act 1892, as the same are distributed by the Scotch Education Department in terms of the said Acts, and of the Scotch Education Code annually submitted to Parliament. No fees are accordingly demanded from or paid by the parties of the first part to the parties of the second part in respect of the said Isabella Haddow's attendance at said school. (4) In the said fifth standard instruction is provided by the parties of the second part in the following subjects, viz. — English, arithmetic, writing, drawing, sewing, cookery, drill, and music. The following are the books and materials used and required by pupils in said fifth standard in connection with these subjects, viz. — For English, Crown Reader No. V., Royal Scottish Reader No. V., Blackwood's Grammar No. V., and dictation copy-book; for arithmetic, arithmetic book and arithmetic exercise book; for writing, writing book; for drawing, two drawing copies, geometry book, Barrodale's free hand drawing-book, pencils and indiarubber; and for music a song-book. The total cost of these books and materials is 5s. or thereby. To enable the children attending the school to receive and benefit by the masters' instructions and school exercises in the above-mentioned subjects of English, arithmetic, drawing, and music, it is necessary that the children

should themselves have copies of the said books, and should be provided with the said materials for their own use in class. Moreover, it is the practice in said school, approved and carried out under the directions of the second party, to set certain lessons and exercises for preparation or performance by the children at home after school hours. These lessons or exercises cannot be properly prepared or performed unless the children in said fifth standard are provided with the following books for their own use at home, viz.—Crown Reader No. V., Royal Scottish Reader No. V., Blackwood's Grammar No. V., arithmetic book, and arithmetic exercise book. (5) The said parties of the second part are not in the practice of supplying any of the said books or materials for the use of the children either during school hours or for preparation or other work at home. Up to 1892 they uniformly refused to do so. Recently, owing to the inconvenience caused by certain pupils attending school without books and materials, books and materials have in some instances been supplied *ex gratia*. The said parties of the second part have, however, never admitted any obligation to supply any of the said books or materials for use either in school or at home, and they have maintained this position since the passing of the Education (Scotland) Act 1872."

It was further stated that the first parties, though able to supply the necessary books and materials, believed it to be the duty of the second parties to provide them, and in spite of the request of the second parties had refused to do so themselves; and that Isabella Haddow having on 5th November 1897 presented herself at the school unprovided with books had been refused admittance by the master, acting under the instructions of the second parties.

The following questions were submitted for the opinion of the Court:—"(1) Are the second parties bound to provide the said Isabella Haddow with the books and materials above mentioned, or any of them, for her use—(*a*) in class, or (*b*) for preparation or other work at home, or (*c*) both in class and for preparation or other work at home? (2) Are the second parties bound to admit the said Isabella Haddow as a scholar to the said school, and to allow her to attend the classes therein, although the first parties refuse to provide, and do not provide, the said Isabella Haddow with the said books and materials? (3) In the event of the first question, or any part thereof, being answered in the affirmative, are the parties of the first part or the said Isabella Haddow entitled to retain the said books and materials as their or her own property?"

Argued for first parties—By section 36 of the Act of 1872 the School Board were bound to keep schools "efficient." But it could not be said that a school was efficient if these books and materials were not supplied. They were necessary if children were to receive and benefit by the instruction, and were not personal to the children in the sense that clothing and food would be. It was not enough, as the second parties contended, to provide only the building and teacher. They were also bound to provide apparatus, maps, boards, ink, &c., and, if so, why not books which were equally necessary? It was no answer to this contention to turn to sections 69 and 70 of the Act and say that a parent who failed to provide books could be prosecuted for not providing elementary education. The penalty was only enforced when a parent failed to pay fees. Moreover, even in the latter case the school board was not entitled to refuse a child admittance to the school; accordingly, even if it were held that a parent was bound to supply books, the board were not entitled to refuse a child admittance if he appeared without them. But the duties of the parent were at an end when he saw that his child presented himself at the school door, and that would satisfy an attendance order under sec. 9 of the 1883 Act. 2. Under the Education Code, and the Acts of 1889 and 1892, the school board received their grants under the condition that they charged no fees. But having lost the right to charge fees, they lost any right they might have had to charge for books, the cost of which must be included in such fees—Scotch Education Code, 1897, Titles 6, 32(b), and 133. Counsel for the first parties stated that they abandoned their contentions upon the third question.

Argued for second parties—This was a matter of great importance, as the cost of supplying books would be some £15,000 per year. Under the Act of 1872 the duty of the school board was to provide proper school accommodation and a teacher. The providing of elementary education was a duty laid by section 69 upon the parent. That duty was, except in the case of great poverty, to be performed at the expense of the parent. Accordingly, if he sent his child either without proper clothing or without books, he was not carrying out his duty, and was liable under the 70th section to a penalty. Presence at the school door was not sufficient attendance in the sense of the Act, the child must come properly equipped with books, or the board might refuse him admittance, just as though he were not properly clothed—*Saunders* v. *Richardson*, 1881, L.R., 7 Q.B.D. 388; *London School Board* v. *Wood*, 1885, L.R., 15 Q.B.D. 415. There was nothing in the Act to indicate in any way that books were to be covered by the payment of fees. That being so there was nothing in the Acts providing so-called free education to impose this duty on the school board. Free education was really a misnomer, for these Acts in fact only relieved the public from payment of fees, and these fees were paid for attendance at school, and had nothing to do with books. It was true that in England the board was bound to supply books, but that was due to the different phraseology of the Acts—The Elementary Education Act 1870 (33 and 34 Vict. cap. 75), sec. 19; The Elementary Education Act 1891 (54 and

55 Vict. cap. 56), sec. 3. The first parties were not entitled to appeal to the code, which was a private minute of the Education Department with which the public had no concern. It could not affect the construction of the statutes, or give a privilege not given by them. In point of fact, however, the terms of the code referred to did not bear out the contentions of the first parties. Thus the "books" referred to in section 32 were not the books demanded by them for each scholar, but part of the ordinary school fittings.

LORD PRESIDENT—The main question for determination under this special case is whether a school board is bound to supply school books out of the rates to school children who, or whose parents, are able to supply those books themselves. The Glasgow School Board, which has come here to have this question tried, has never admitted any such obligation, and has maintained this position since the passing of the Education (Scotland) Act 1872.

In considering the validity of the parents' claim to free books it is necessary to observe that the claim is made as of legal right, and the question is, on what does that claim rest? This inquiry may be most conveniently conducted by ascertaining, first, whether this alleged duty of school boards was imposed on them by the Act of 1872 which established them, and next, whether it has been imposed on them by subsequent legislation.

In examining the Act of 1872 in this relation, the first set of sections which demands attention is that by which the schools were transferred to the school boards from their former administrators. Section 23 deals with ordinary parochial schools, and section 24 with burgh schools. By those sections the schools are declared to vest in the school boards, and then the Act goes on—"and the said school board shall thereafter, with respect to school management and the election of teachers, and generally with respect to all powers, obligations, and duties in regard to such schools now vested in" the old administrators "supersede and come in the place" of them. Now, these are the words in the Act of 1872 which most directly bear upon the present controversy. They establish the criterion by which, in the first place at least, it is to be judged whether there is an obligation on a school board to supply books to children who are able to buy them for themselves, and that criterion is—were the predecessors of the school boards—were the heritors and minister—were the town councils—under such obligation? Now, I have not heard it suggested that there was any such obligation on those bodies, or that in fact the heritors and ministers or the town councils acted as if there had been.

It is said, however, that section 36 supports the parents' claim, for it imposes on the school board the duty of maintaining and keeping efficient every school under their management. Now, the words founded on are very general words, and they are abundantly satisfied without reading into them an alteration of the relative obligations of the administrative body on the one hand and the parents on the other, as these existed in Scotland in 1872. If I am right in holding that prior to 1872 a child attending school and able to get books for itself could not have compelled the minister and heritors to supply them for its use, then it was a condition of the child receiving instruction that it should get the necessary books for itself. We have seen that the transferring sections put the school boards in the shoes of their predecessors in the matter of obligations and duties. If it had been intended to alter these obligations or duties in a specific matter such as this, specific enactments would have been inserted. There being no such enactment, the proper way to keep a school efficient in the matter of books is to insist that children whose parents can pay for books shall be sent provided with them. The argument for the parent under this section would equally support demands which are palpably inadmissible. The efficiency of a school could not be maintained if some of the parents insisted on sending their children to school without clothes, but it does not follow that the school board, in order to fulfil their duty of keeping the school efficient, are to clothe the scholars. Their proper course is to send the naked children home, and if the parents who, as in the case before us, are able to pay, refuse to clothe them, then to prosecute them for failing to send their children to school. The school will thus be kept efficient whether the children of the recalcitrant parent come back clothed or stay at home. The position thus taken up by the school board in the case which I have figured is equally justifiable in the case before us. Both clothes and books are necessary for efficient education; but neither by positive law nor by custom did the provision of those necessities for people who could pay for them fall on the managers of Scotch schools before 1872. In 1872, by express enactment, the providing of education was imposed as a duty on every parent; and in the case of poverty special provision was made for the rates bearing what in all other cases was a pecuniary burden falling on the individual. The very argument used by the first party (the parent) under section 36, viz., that books are indispensable to efficient education, would equally prove that the provision of books is a part of the duty which section 69 lays on every parent in the words "it shall be the duty of every parent to provide efficient elementary education in reading, writing, and arithmetic for his children." That this duty was, except in cases of poverty, to be performed at the parent's expense is proved by this, that in the days when, by custom, fees were payable in all Scotch schools, a parent financially able was bound to pay them, and if he did not the child could be refused, and the parent if recalcitrant prosecuted for a contravention of the Act. Unless, then, we shall find in the sequel that since 1872 the parent has been relieved of the duty of equipping

his child with school-books, that duty remains.

No other sections of the Act of 1872 can be advanced as supporting the parent's contention; and I pass from that statute with one observation. I have been careful to point out that the question before us is a question of right on the part of the parent. To negative that right on the part of the individual does not imply that the school board has not the power in its discretion to provide books for the use of scholars where this is necessary for the maintenance of the efficiency of the school as a whole. The varying circumstances of a vast community like Glasgow may conceivably present various occasions for the exercise of such discretion where the maintenance of the efficiency of the schools is involved, and it is for this reason that I point out the true limits of the question submitted for our decision.

The next question is, has legislation subsequent to 1872 imposed on school boards the obligation to provide books free? This question admits of brief treatment. The Local Government (Scotland) Act 1889 and the subsequent statutes, which are popularly referred to as establishing free education, do nothing more than effect within certain limits the abolition of school fees. They do not touch the question of books. It is true that by statutory authority the successive Education Codes state the conditions as to abolishing fees under which school boards participate in those Parliamentary grants which came in place of fees; and it is true that the Code in other passages unrelated to the fee grant does make mention of books, alongside of furniture and maps, as part of the apparatus of instruction requiring to be provided by school managers as a condition of receiving the general Parliamentary grants.

In considering the appeal thus made to the Code, it is necessary steadily to bear in mind one fact which did not largely enter the discussion before us. The regulations of the Code have no relation whatever to school boards as such, but only to them *qua* school managers. The Code lays down the conditions under which Parliamentary grants in aid of education are administered, and those conditions apply to all the schools receiving grants—board schools and voluntary schools alike—and bind all school managers alike, whether school boards or voluntary committees. Accordingly, if the appeal to the Code be made on the theory that its provisions evidence an antecedent obligation on school boards to supply books the Code proves too much, for it establishes just as much about voluntary schools. On the other hand, if it is maintained that the Code creates for the first time a duty on the part of the school boards to supply books to all the scholars in attendance as a condition of receiving Parliamentary grants, then the same conclusion must be drawn as regards voluntary schools, for the words founded on, as well as the whole Code, apply equally to both classes of schools. It is unnecessary to point out that this contention would be entirely alien to the whole of the rest of the first party's argument.

But when the terms of the regulation in question are referred to (it is 32 (*b*) in the Code of 1897) it is clear that they do not support the wide construction which alone would open the questions to which I have adverted. No one doubts that in order to keep a school efficient some books must be provided by the managers; and this is all that the regulation implies. It does not imply or even suggest as a condition of receiving the grants that in every school all the scholars, rich and poor, must be supplied with their school books by the managers.

The only other part of the Code to which our attention was seriously invited was a passage in what, for shortness, is called the ninepenny rule. It is perhaps unnecessary, except by way of reminder, to say that no school is eligible for Parliamentary grants if on certain methods of calculation a fee of more than ninepence a week is paid by a certain number of scholars. Well, now, in the question how much—that is to say of course how much money—is paid to the school managers, the rule of the Code tells us that compulsory payments for books or material must be included in reckoning the fee. It does no more. Once the thing is explained, it becomes apparent that this rule of calculating a money payment to school managers has no relation at all to a case where no payment is made to them at all. The rule does not even indirectly elucidate the question.

I am for answering the first and the second questions in the negative. The third question in this view does not arise.

LORD M'LAREN—I concur. The question between the parent and the school board is, whether as matter of legal right the parent can compel the school board to supply books to his children gratuitously. Whether the school board may lawfully resolve to supply books gratis is a question which may arise in an action between a school board and a ratepayer. Whether the Education Department as a condition of giving a share of the grant payable under the Customs and Inland Revenue Acts, may require the school boards to provide books gratuitously as well as to give gratuitous education, is again a question between the Education Department and the school board. With these questions we have nothing to do. The condition of this case appears to me to be that while under the Act of 1872 parents continue to be liable for school fees, yet in the exercise of Parliamentary powers the Education Department are entitled to affix conditions to the participation by any school board in this additional grant of public money; and the condition which they have affixed is that no fees shall be payable. Nothing is said about books in the minute laying down that condition. The condition has been fulfilled by the School Board of Glasgow. They charge no fees, and this is all that can be demanded of them.

LORD ADAM and LORD KINNEAR concurred.

The Court answered the first two questions in the negative.

Counsel for the First Parties—Guthrie, Q.C. — Salvesen. Agents — Kinmont & Maxwell, W.S.

Counsel for the Second Parties—Sol.-Gen. Dickson, Q.C.—Clyde. Agents—W. & J. Burness, W.S.

Saturday, June 4.

SECOND DIVISION.

[Sheriff-Substitute of Glasgow.

GRANT *v.* GRANT'S TRUSTEES.

Interest — Rate of Interest — Legitim — Parent and Child.

A testator died on 14th January 1891, leaving a trust-disposition and settlement in which he directed his trustees to hold his whole estate for his daughter in liferent and her issue in fee. The trustees paid the whole income of the estate to the daughter down to 4th December 1897, when she attained majority. On that date she claimed her legitim, and it was paid to her.

Held that she was not entitled to interest at 5 per cent. per annum on the amount of her legitim from the date of her father's death, but only to the actual income of the trust received by her.

Observations by Lord Young on the legal rate of interest now exigible.

William Grant, wine and spirit merchant, Dunoon, died on 14th January 1890, leaving a trust-disposition and settlement whereby he directed his trustees to hold his estate (subject to payment of two annuities) for Agnes Hood Grant, his daughter, in liferent and her issue in fee, and in the event of her dying without issue, for his two sisters equally between them, and failing them their issue.

The trustees accepted office and administered the trust, and down to 4th December 1897, the date when Agnes Hood Grant came of age, they paid to her the whole income of the trust (less annuities and expenses) amounting to £1240.

When Miss Grant came of age she at once claimed her legitim, and it was paid to her on 6th December 1897, reserving the question of interest. Miss Grant maintained that she was entitled to interest at 5 per cent. per annum on the amount of her legitim from the date of her father's death, amounting to £1445, 4s., under deduction of the income actually paid to her during her minority, viz., £1240. The trustees, however, maintained that Miss Grant was only entitled to interest at the average rate earned by the trust during her minority, which was £3, 6s. 10d. per cent., while she had been paid the whole income, amounting to £1240, which was more than 4 per cent. on her legitim.

In these circumstances Miss Grant raised against the trustees in the Glasgow Sheriff Court an action for £205, 4s., being the difference between £1445, 4s. and £1240.

The pursuer pleaded—"(1) The pursuer being entitled to interest on her legitim at five per centum, decree should be given for the sum sued for, with expenses. (2) The delay in payment of the legitim not being the fault of the pursuer, and the defenders never having put her to her election, decree should be granted as craved."

The defenders pleaded—"(1) The pursuer is entitled to interest only at the rate of £3, 6s. 10d. per cent., being the average rate earned by the trust during her minority. (2) The pursuer having already received an amount equal to more than four per cent. is not entitled to any further payment in respect of interest."

On 25th February 1898 the Sheriff-Substitute (BALFOUR) pronounced the following interlocutor—"Repels the defences: Decerns against the defenders for payment of the principal sum concluded for."

Note.—. . . "There are various decisions on the subject, and with one exception they all point in the same direction. The first case is *M'Murray* v. *M'Murray's Trustees*, 14 D. 1048, where it was held that legitim is a debt to be measured by the amount of the fund at the father's death, and the Court decerned for the legitim, with the legal interest thereof since the death. The point of this case is that legitim is treated as a debt, and is due from the date of the father's death, with the legal interest. The next case is *Gilchrist* v. *Gilchrist's Trustees*, 16 R. 1118, where legitim was characterised in the same manner as in *M'Murray's* case, and the Lord Ordinary (Fraser) held that if the executor, without justifiable excuse, delays to pay legitim he is liable in interest at 5 per cent. The next case is *Bishop's Trustees* v. *Bishop*, 21 R. 728, where the Court (dealing with the contention of trustees that interest was only chargeable at the average rate actually earned) held that legitim bears interest at 5 per cent. from the date of the father's decease till payment, and without remark they followed *M'Murray's* case. The next case (and this is the exceptional one) is *Ross* v. *Ross*, 28 R. 802, where the son, claiming legitim, was found entitled to interest at the rate of 4 per cent., that being the rate which the estate had earned. The facts of the case were that Sir Charles Ross at the time of his father's death was a minor, and thirteen years after his father's death, when he had become a major, he elected to claim his legitim, which he could not have done earlier. During his minority his mother was in possession of the estate, and 4 per cent. was taken to be a fair estimate of the actual income of the estate. There was no *mora* on the part of the executrix, and she had no power to accelerate her son's election. She had been in possession of the estate for thirteen years, and the amount claimed for interest was