

those contained in sections 24, 25, and 26 the School Board took possession of the two schools on the assumption that by virtue of the Act the schools were transferred to the Board. The Board have ever since continued to be, and still are, in the possession and management of these schools. On the 15th of November 1873 the School Board made application to the Magistrates and Council of the burgh for payment, in pursuance of section 46 of the Act, of the sum of £100, which prior to the passing of the Act it had been the custom of the burgh to contribute to the burgh schools; but under deduction of one-half thereof for the year 1873, in respect the burgh paid the teachers their salaries up to Whitsunday in that year. The Magistrates and Council maintained that they were not liable to pay the sum demanded, or to continue in future years the contribution of £100, and also, that the schools themselves were not, by force of the statute, transferred to the School Board, and that the burgh was entitled to retain or resume possession of the schools.

The questions of law which were submitted for the opinion and judgment of the Court of Session were the following, viz.:—“(1) Whether, in virtue of the provisions of the Education (Scotland) Act, 1872, the Burgh Grammar School and Burgh English School are now vested in and belong to the party hereto of the first part as the School Board of the parish of Peebles? (2) Whether the parties hereto of the second part are bound, in pursuance of the 46th section of the Education (Scotland) Act, 1872, to pay at the term of Martinmas yearly, to the parties hereto of the first part, the sum of £100 sterling, being the sum which it was the custom of the burgh prior to the passing of the said Act to contribute to the Burgh Schools out of the common good of said burgh; the said sum to be applied and administered by the parties hereto of the first part for the purpose of promoting higher instruction.”

Argued for the School Board—The Act, by section 12 and section 24, clearly seems to hand these schools over to the Board. The words “Public School” receive in the interpretation clause a specific meaning. Under even the section (section 24) on which the Magistrates rely, the School Board for the parish becomes that for the burgh also. This is putting it in the supposition even that the Court takes a view of section 26 unfavourable to the parties of the first part.

Argued for the Magistrates—These schools are purely burgh schools, and entirely supported from the common good. We do not need to consider any point but whether the expressions of the Act are strong enough to operate a transfer of property. We maintain that (1) either the Magistrates are intentionally not within the Act, or (2) that there has been on this matter an omission in the Act. Section 18 seems to provide for some such position. The schools in this burgh (section 23) are not within the recited Acts at all. Taking the School Board view, the burgh school would cease to be so, and would become a parish one. [LORD NEAVES—If for educational purposes the burgh has ceased to exist, how can there be a burgh school?] Unless the Act expressly takes these schools out of the management and control of the Magistrates, they remain with them. Now, looking at the Act, section 25 and section 26, we maintain it does not so remove them.

At advising—

LORD JUSTICE-CLERK—The questions raised by this Special Case do not seem to me to be invested with any difficulty at all. I am clearly of opinion that the statute covers the position of matters at Peebles, and that the two schools in question are vested in the School Board of the parish of Peebles. That being so, the two questions must both be answered in the affirmative.

LORDS BENHOLME and NEAVES concurred.

Counsel for School Board—Clark, Q.C., and Marshall. Agents—J. & F. Anderson, W.S.

Counsel for Magistrates—Watson and Pearson. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Tuesday, March 2.

SECOND DIVISION.

[Lord Gifford, Ordinary.]

M'DONALD'S TRUSTEES v. M'DONALD.

Process—Expenses.

Circumstances in which held that no expenses should be given against any of the parties.

This case of *M'Donald's Trustees*, reported in the current volume of the *Scottish Law Reporter* (*ante* p. 290 to p. 302), came before the Second Division to pronounce judgment in accordance with the decision arrived at by the majority of the seven Judges before whom it was reheard. On the question of expenses—

LORD BENHOLME—I do not think that any expenses should be given in this action. In arriving at this decision I am influenced by a consideration of the nature of the questions raised and of the circumstances under which the parties have come into Court.

LORD NEAVES—I am of the same opinion, and there are several circumstances which lead me to that result. No one can suppose that in this case Sir John and Lady M'Donald had any desire other than that of doing what they deemed their duty in making this deed of settlement and division, nor can it be supposed that the eldest son, Colonel M'Donald, is actuated by other than a natural and pious desire to carry out the intentions of his parents. On the other hand, these ladies are getting a handsome addition to their fortunes which otherwise they would not have obtained.

LORD JUSTICE-CLERK—Then your Lordships find no expenses due to either party since the date of the Lord Ordinary's interlocutor.

Counsel for Colonel M'Donald (Reclaimer)—Fraser and Moncrieff. Agents—H. G. & S. Dickson, W.S.

Counsel for John Allan M'Donald—Watson and Trayner. Agents—Dewar & Deas, W.S.

Counsel for Misses M'Donald—Clark, Q.C., and Balfour. Agents—Webster & Will, S.S.C.

Counsel for A. B. M'Grigor and Pursuers—Miller, Q.C., and Marshall. Agent—A. J. Napier, W.S.