dum it occurred to us that the evidence, which has since been taken, should be allowed, because on the assumption that the Lord Ordinary was right in thinking this was only a cautionary obligation the second question arose as to whether the defenders, by reason of the letter of 1st February 1884, which was the beginning of the negotiations to obtain a reduction of the interest and which has been so often referred to, lost the benefit of the statute.

Upon the first question the impression I formed at the conclusion of the argument before was in favour of the Lord Ordinary's judgment, that is, that according to the bond the defenders and the predecessors of those who are now here as trustees were cautioners and not principals—that it was a cautionary obligation to which the Act applies that they entered into. That was my opinion and after such further consideration as I have since given to the case that opinion still prevails and is confirmed. If, then, it was a cautionary obligation and the Act applies, the result is that upon the expiry of seven years from the date of the bond, which was executed in 1874, these cautioners were by force of statute relieved altogether. No doubt that view of their position, which I agree with the Lord Ordinary is the true view, was not laid before them, nor was the existence of the statute brought under their notice, but the statute must have effect nevertheless and if so then no obligation lay upon any one of these obligants after seven years.

That leads me to the second question, which we had argued to us to day, namely, whether the letter of 1884, written more than three years after the obligants were free, and the circumstances following upon it, that is the continuation of the loan at a reduced rate of interest, put the defenders under the obligation again. I think it did not. There was nothing in that letter to put this obligation upon them. It is plain from its terms that Mr Neilson who wrote it had not the Act 1695 before his mind, but the fact that he wrote this letter agreeing to the reduction of the interest without having the Act before him will not impose or restore the obligation. It happens that here in this particular case he did not change the impression and belief of the borrowers, for they had not the Act before their minds any more than the lenders had. It was a simple case of both borrowers and lenders having taken no account of the Act and of the loan continuing. But that will not prevent the statute having effect, and the latter not having restored the obligation the obligation has disappeared. That is the whole case. I do not know that any of the decisions have a direct bearing on this question. In the case of *Carrick* the money was paid by the cautioner after the lapse of seven years, in error as he alleged that the seven years had run, and the Court ordered the money to be restored. That case is strong upon this point, that upon the expiry of the seven years the obligation is gone, and no claim can be made against the cautioner, unless he has entered under a new obligation. I think the cautioners here entered into no new obligation, and that no new life was infused into the dead body of the old one.

My opinion accordingly is that the interlocutor of the Lord Ordinary should be affirmed.

LORDS JUSTICE-CLERK, LORD RUTHERFURD CLARK, and LORD LEE concurred.

Counsel for the Pursuer and Reclaimer Peter Stocks—D.-F. Balfour, Q.C.—Low. Agents—J. & R. A. Robertson, S.S.C.

Counsel for the Pursuers and Reclaimers Aitchison's Trustees—Sir C. Pearson—W. Campbell. Agents — Fraser, Stodart, & Ballingall, W.S.

Counsel for the Defenders and Respondents Peter M'Lagan and Others—Dickson. Agents—Davidson & Syme, W.S.

Counsel for the Defenders and Respondents Hugh Morton's Trustees—Asher, Q.C. — Rutherfurd Clark. Agents — Morton, Smart, & Macdonald, W.S.

Tuesday, July 15.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

CADELLS *v.* BALFOUR AND OTHERS.

School—Medical School for Women—Refusal to Re-admit Students.

A school of medicine for women having been established and certain preliminary classes opened, a prospectus was thereafter issued setting forth that a full medical curriculum would be provided extending over four years, with the fees payable therefor, which might either be paid in one sum of £80, or in four yearly instalments of £35, £25, £15, and £10. It was declared that the decision of the executive committee respecting the admission or exclusion of a student should be final, and each student was required to sign a form of application by which she undertook to pursue a complete course of qualifying medical study, and to present herself in due course to the examining boards with a view to obtain a registrable diploma, and to conform in all respects to the regulations laid down by the organising secretary.

During the year which followed the issuing of the prospectus, two ladies, who had already attended the preliminary classes, took a full course of medical instruction, and paid the first instalment of £35. The following year they were refused re-admission to the school by the executive committee.

In an action at the instance of the two ladies against the executive committee, the following facts were proved:—On one occasion, more than a month before the end of session, the pursuers had broken the regulations by staying after the prescribed hour at the hospi-

tal. For this offence they had been suspended from admission to the hospital, but on apologising for their conduct had been re-admitted. On another occasion, when the secretary had unjustly characterised the conduct of one of their fellow students as mean and underhand, they had taken the part of their fellow-student, applauded her when she made her defence, and expressed their approval of her conduct. There was also evidence to the effect that on various occasions they had criticised and questioned the necessity of some of the regulations.

The Court *awarded* a sum of damages, holding (1) that the defenders had contracted to provide the pursuers with a full course of medical instruction extending over four years; and (2) that the conduct of the pursuers had not been such as to justify the defenders in refusing to re-admit them to the school.

In the year 1886 notices were issued to the public under the heading—"Triple Qualification of the Colleges of Physicians and Surgeons of Edinburgh and Glasgow," setting forth that medical classes for women had been organised (according to a notice "by private arrangement") in Edinburgh for the Winter Session of 1886-87, comprising courses of 100 lectures each on anatomy and chemistry, with a six months' course of practical anatomy, and a three months' course of practical chemistry. The notices also stated that students were required, before entering on medical study, to pass a preliminary examination in arts recognised by the General Medical Council, and to register as a student of medicine, as no classes taken before registration could be counted as qualifying for examination. Where this had not been done, however, ladies were urged to join the classes at once, so as "to begin the full curriculum next year at very great advantage." Intending students were also required to sign the following form of application:—"I hereby apply to be admitted as a student of the school, and I declare that I intend to pursue a complete course of qualifying medical study, and to present myself in due course to the examining boards with a view to obtaining a registrable diploma. I undertake to conform in all respects to the regulations laid down by the organising secretary, and, in particular, to abstain from presenting myself to any examining board until I have received full permission to do so."

In October 1886 Miss Grace Cadell and Miss Georgina Cadell, having signed applications for admission in the above form, began to attend the classes.

During the Winter Session 1886-7 Miss Georgina Cadell attended all the classes which had been organised, for which she paid fees amounting to £19, 19s., and Miss Grace Cadell attended the classes of practical anatomy, paying a fee of £5, 5s.

In April 1887 Miss Grace Cadell passed her first professional examination, and in July 1887 Miss Georgina Cadell passed the same examination.

On 1st January 1887 a prospectus was issued to the public and distributed to the students, stating that medical classes for women had now been organised in the Extra-mural School of Edinburgh, and a full curriculum of instruction in all subjects would be provided. A full curriculum extending over four years was set forth, with the fees payable for the whole curriculum, which, it was stated, might either be paid in one sum or in four yearly instalments. These amounted to £80 (excluding extras) if paid in one sum, and if paid in instalments to £35 the first year, £25 the second year, £15 the third year, and £10 the fourth year. Addtional fees had also to be paid to the Colleges of Physicians and Surgeons for the various professional examinations. The prospectus also contained the following clause:—"The decision of the executive committee respecting the admission or exclusion of a student will be final, and students admitted to these classes will be required to conform in all respects to the regulations in force from time to time."

During the Winter and Summer Sessions 1887-1888 the Misses Cadell took full courses of medical instruction, each paying fees amounting to £35, being the instalment mentioned in the prospectus.

On 26th July 1888 they each received a letter from the secretary to the School of Medicine informing them that the executive committee were unable to re-admit them to the school the next October, but giving no reasons for their decision.

On 28th September 1888 the Misses Cadell raised an action against Dr G. W. Balfour, the chairman, Dr Jex-Blake, the dean and secretary, and the other members of the executive committee, seeking to have it found and declared that the defenders had contracted and agreed to provide each of the pursuers, as duly admitted professional students in said school, with a full and complete course of qualifying medical instruction; and further, that the pursuers were each of them entitled to re-admission as professional students to the said Edinburgh School of Medicine for Women, and to all the privileges of professional students of said school, and in particular that they were each of them entitled to continue and complete their course of qualifying medical study at said school, and to attend all such classes thereat, including attendance on hospital instruction, as were still necessary to qualify them respectively for professional examination and qualification to practise in medicine, and that upon each of them making payment to the defenders of the remaining instalments of fees payable by them respectively, in respect of said classes, when the same respectively became due; and craving decree ordaining the defenders to admit the pursuers, or alternatively to make payment to each of them of the sum of £500 in name of damages.

The pursuers founded on the prospectus dated January 1, 1887, and the form of application required to be signed by students, as showing that the defenders undertook to provide students with a complete course

of medical instruction. They further averred that when they were paying their fees in October 1886, and again at a meeting of the lady students in the same month before the classes opened, Dr Jex-Blake, on behalf of the committee, guaranteed a full medical curriculum of four years, and that she was authorised to give that undertaking by the committee. "The pursuers were each of them induced to enter upon the course of study prescribed by the foresaid prospectus, and to pay the fees exigible under the same, and to attend said classes and to make the other necessary expenditure, upon the faith that the defenders would provide them with the whole course of study thereby offered and necessary for professional examination and qualification to practise. The defenders agreed with the pursuers, and contracted that they would provide each of the pursuers with such a course of study upon the terms mentioned. Both pursuers are ready to pay the instalments of fees not yet paid either immediately or when due." They denied that they had done anything to justify dismissal.

The defenders founded on the undertaking in the application for admission signed by students that they would "conform in all respects to the regulations laid down by the organising secretary," and also on a prospectus of date 1st September 1888, which they averred was the prospectus regulating admission to the school at the date of the action, and which, under the head "Admission to the School," contained the following provision—"The committee" (that is the executive committee) "always reserve to themselves the right of judging whether a student's progress and general conduct is satisfactory to them, and of declining to re-admit her for subsequent sessions if they deem it expedient to do so." They further stated certain circumstances which they said had compelled them to refuse to re-admit the pursuers if the good discipline and order of the school were to be maintained.

The pursuers pleaded—"(1) The defenders having contracted to provide the pursuers with a complete course of qualifying medical study, the pursuers are in the circumstances entitled to the decree of declarator concluded for, and the defenders are bound to re-admit the pursuers or to pay damages. (2) The pursuers having qualified themselves for admission, and been admitted as professional students, and attended the classes and undergone the various examinations and made the various payments condescended on, all on the faith of the statements made by the defenders as condescended on in said prospectus or otherwise, the pursuers are entitled to the various decrees craved."

The defenders pleaded—"(1) The pursuers' averments are not relevant or sufficient in law to support the conclusions of the summons. (2) The contract between the pursuers and defenders having terminated on 20th July 1888, and the defenders having admittedly implemented all the obligations undertaken by them in favour of the pursuers up to that date, the defenders ought to be assoilzied from the conclusions for declarator and damages. (3) The decision of the defenders in regard to the admission or exclusion of students being final, the pursuers are not entitled to sue the present action. (4) In any event, the whole actings of the defenders having been justified by the action of the pursuers as condescended on in the defenders' answers and statement of facts, the defenders are entitled to absolvitor from the said conclusions."

On 19th December 1888 the Lord Ordinary (FRASER) repelled the 1st and 3rd pleas-in-law for the defenders and allowed both parties a proof of their averments.

"*Opinion.*—The pursuers in this case demand a proof, and they are met by two preliminary objections. The one is stated in the third plea-in-law for the defenders, in the following terms:—'The decision of the defenders in regard to the admission or exclusion of students being final, the pursuers are not entitled to sue the present action.' This is founded upon a clause contained in the prospectus issued by the executive committee, dated 1st January 1887. Before this prospectus had been issued the pursuers had been several months students in the college, but they set forth on the record that the prospectus was distributed to all the students when it was issued. This prospectus contains a clause in the following terms:—'The decision of the executive committee respecting the admission or exclusion of a student will be final.' There is no such clause as this in other prospectuses which were issued in the year 1886; but holding that the prospectus dated in January 1887 contained conditions which the executive committee were entitled to make, and which were accepted by the pursuers, the question is what is the true construction to be put upon the clause declaring the decision of the committee respecting 'the admission or exclusion' of the student to be final? It is contended by the defenders that exclusion implies the power of expulsion after a student has been accepted and entered. This interpretation of the word the Lord Ordinary cannot accept. Exclusion means the shutting out of the person before entry, not the turning out after entry. But it is further said that there was a later prospectus dated 1st September 1888, which contains a new clause giving express power to the committee to do what is here complained of, in the following terms:—'The committee always reserve to themselves the right of judging whether a student's progress and general conduct is satisfactory to them, and of declining to re-admit her for subsequent sessions if they deem it expedient to do so;' and they justify this enactment by a clause in the prospectus of January 1887, which says that 'Students admitted to the classes will be required to conform in all respects to the regulations in force from time to time.' The pursuers contest the right of the executive committee to make such an *ex post facto* rule as this,

which, they maintain, materially alters the terms of the contract entered into between them and the committee. It was upon the 26th July 1888 that they received the letters from Miss Black, the secretary, informing them that the executive committee were unable to re-admit them to the school in October. By this time the committee had been awakened to the fact that their power of expulsion was challenged. They had received letters from the pursuer's agents, beginning with 1st August 1888. That correspondence closed with a letter from Mr William White Millar, the defenders' agent, declining to communicate the committee's reasons for the refusal to re-admit, and adding that 'your clients are, of course, at liberty to take whatever steps they think proper in the circumstances.' Whereupon the committee met and issued the new prospectus containing an additional power upon which the defenders rely. The Lord Ordinary is unable to give that effect to this clause for which the defenders contend. It is one which changes altogether the conditions of the contract between the two parties, and hands over the student, who had a right to rely upon a continuing instruction, entirely into the discretionary power of the committee. The obligation upon the student to conform to the regulations to be used from time to time plainly had reference to such matters as the time and order of instruction and similar things. The phrase occurs in the application for admission in these terms:—'I undertake to conform in all respects to the regulations laid down by the organising secretary, and in particular to abstain from presenting myself to any examining board until I have received full permission to do so.' It would be contrary to justice to allow the defenders to make such an alteration upon the terms of the contract as this new law would imply, and therefore, unless the defenders have the right otherwise, they cannot obtain authority from the new prospectus.

"That there was a contract between the pursuers and the defenders does not really seem open to question. The defenders published what is called a prospectus, in which they invited students to their classes, promising them in return for moneys to be paid, instruction in the science of medicine. A contract to give instruction is a very ordinary and common one. The contract of apprenticeship is a very good illustration of what it is, and what are the remedies for a breach of it. Instruction is the hire given to the apprentice in return for his apprentice fee, and if the master fails to give such instruction, he is liable in damages—*Lyle* v. *Service*, 12th November 1863, 2 Macph. 115. Probably specific implement could not be enforced, and although that is concluded for as an alternative, the Lord Ordinary was not asked to give such a decree. The pursuers went upon the other alternative, for damages. Lord Chief-Justice Cockburn, in the case of *Fitzgerald* v. *Northcote and Another*, 1865, 4 Foster & Finlayson, 656, expressed his opinion upon the relation between the authorities of a school and its scholars, as follows—'I hold that there is an implied contract between the parent and the preceptor—that the latter will continue to educate the child so long as his conduct does not warrant his expulsion from the school, and when we consider the serious consequence to a child of his being so expelled, it is the more essential that this implied contract should not be broken, and therefore it will be a question, under all the circumstances. Making due allowance for the discretion undoubtedly vested in the presidents of such educational establishments, and which is certainly not overruled upon light grounds; still the question must be submitted to the jury whether, under all the circumstances, this contract has not been broken.' The contract in the present case is not between the parent of the student and the instructor, but between the students and the instructors themselves, the former being capable of entering into a contract. The averments of the pursuers are that they were to obtain instruction during a curriculum of four years, and that they have been cut short in their career in the middle of that period by their expulsion from the school. It is said that in the prospectuses which were published at the time when the pursuers became students, that there is no mention of four years; but these documents do contemplate undoubtedly a period of instruction extending over a period of several years, and the matter was made perfectly clear by the delivery of the prospectus of January 1887, which specified the number of years of the curriculum. The students were to be allowed to pay down £80 at once, which would carry them over the whole four years,—or by instalments amounting in the aggregate to a larger sum. Now suppose that the pursuers, who commenced payment by instalments, had paid down their £80, it cannot surely be disputed that that was a contract to instruct during the four years. But it comes to the same thing although the pursuers have taken advantage of the option of paying by instalments. Again, it is said that in a contract both parties must stand upon an equal footing, and this is quite true, with however, a qualification. If the master does not teach an apprentice in the whole mysteries of his trade, he is liable in damages; and if the apprentice does not conform to the articles of his indenture, by attendance and attention, he also is liable in damages to the master. But this mutuality of right and of obligation, it is said, does not exist in reference to a case like the present. While the defenders are sought to be held bound to give instruction for four years, the pursuers may at any part of that period give up attendance, and give up payment of the future instalments. Would they be liable in damages for this cessation on their part in attendance at school? It is enough to say that that question has not been raised in the present case, and so far as the Lord Ordinary knows, has not been raised in any case. This action therefore must go to proof. There can be no doubt whatever as to the power of a governing body of such

an institution as this school of medicine, apart from all printed rules, to dismiss from the institution any unruly student who will not conform to the discipline of the school. The case is well put in a note to the report of the case of *Fitzgerald* v. *Northcote and Another*, in the following terms—'The question then would be whether a scholar or student holds his position in a school at pleasure, or during good behaviour. Now undoubtedly, assuming the relation to be one of contract, ordinarily the latter would be the case, and certainly in an ordinary case, and assuming the relation not subject to a condition of subjection to a discretionary power, there would only be a power of expulsion for cause. That the ordinary classes of cases of the relation of schoolmaster and scholars are of contract there can be no doubt; for on one side there must be reasonable notice apart from misconduct—*Eardly* v. *Price*, 2 N.R. 333, 5 Bing. 132; *Collins* v. *Price*—and so on the other side.' Sufficient notice was given in the present case to the pursuers by the letters of the secretary in July 1888, intimating the non-admission of the pursuers to the winter session of that year, which commenced in October, and the defenders have set forth upon the record the grounds upon which they justify their act. Clearly this is not a case for trial by jury, looking to the nature of the charges brought against the pursuers, and consequently the Lord Ordinary has appointed a proof before himself."

The defenders reclaimed, and after hearing parties the Court adhered.

At advising—

LORD PRESIDENT—The defenders are the Executive Committee of the Edinburgh School of Medicine for Women. They are so described in the summons, and I think that they have adopted the description in the defences. The leading conclusion of the summons is for declarator that the defenders "contracted and agreed to provide each of the pursuers, as duly admitted professional students in said school, with a full and complete course of qualifying medical instruction." The question raised in the first plea-in-law for the defenders is, whether the pursuers have relevantly averred the contract pursuers seek to have declared, that "the defenders contracted and agreed to provide each of the pursuers, as duly admitted professional students in said school, with a full and complete course of qualifying medical instruction?" or, in other words, whether they have relevantly averred a contract to supply a four years' curriculum? As I agree with the Lord Ordinary in his conclusion on the first and third pleas-in-law for the defenders, I feel very much restrained from entering into details in regard to the documents which form part of the contract, because until we have the full evidence before us we cannot say conclusively whether there has been a contract or not, for the contract does not consist of documents only. It is, in short, a parole contract, of which the documents merely form a part. The documents may in themselves be nothing beyond or greater than the parole evidence, and the contract which I understand to be libelled is undoubtedly a contract consisting not of writings only but of a variety of facts and other circumstances fully set out in this condescendence. I shall therefore confine my observations only to what I may call the *prima facie* view of the relations between the parties before us. It is quite true that in October 1886 the Edinburgh School of Medicine for Women had not taken practical shape. It was in course of organisation, and apparently in very able hands, and Miss Jex-Blake, or Dr Jex-Blake—I beg her pardon—and her associates were at that time endeavouring to establish a school which should afford a complete medical curriculum of four years, and they were well advanced in their arrangements for that purpose as was shown by the fact that a complete prospectus was furnished on the 1st January following. Of course in estimating the prospects of such an institution one of the most important considerations which the organisers of the institution must have had in their minds was the prospect of securing the requisite number of students, and therefore it is no exaggeration, I think, to say that the students who came forward in the autumn of 1886, and enrolled themselves in the then imperfect institution, if I may call it so, and took advantage of the then very imperfect arrangements for medical education, may be said to be coadjutors of the defenders, or Dr Jex-Blake and her associates, in getting up and instituting that which became the Medical School for Women. If there had been no students to come forward the prospects of organising such an institution would have been perfectly hopeless. The students were of course encouraged to come forward, and were informed of what the ultimate object and end of the present arrangements was to be. They must have been informed of this fully, for it is stated upon record that they were informed—and I think they must have been informed—that the ultimate object was to establish a four years' curriculum, and with that prospect of benefit they were invited to come and take such instruction as the promoters were able then to give. Well, this is followed by the prospectus of 1st September, and then the institution is complete, the four years' curriculum is provided, and it followed as a matter of course that the students who had come forward to help in the formation of this institution, and who took their medical education, or as much of it as they could get under the imperfect arrangements of October 1886, formed the nucleus of that body of students who were to have the benefit of the full medical curriculum established by the prospectus. I therefore think it is quite a misrepresentation of the general character of the pursuers' case to say that the contract that was entered into between the pursuers and the defenders, or those who preceded the defenders in getting up this institution, was made in October 1886. It was begun in October 1886, but it could not

be completed or matured until the final arrangements had been made for the institution of this school of medicine. A school of medicine would be worth nothing if it were not in a position to give qualifying lectures for obtaining diplomas at authorised medical colleges. Therefore the contract, in my view of it, consists not in any verbal arrangement or contract made in October 1886, but it consists of all that took place, including both writings and other communings, and facts and circumstances occurring during the winter of 1886 and 1887. It is a very common thing for a contract to grow from one stage to another, and this is just one instance. As arrangements are perfected the contract becomes matured. That being the nature of the contract alleged upon this record, I cannot see the possibility of denying the pursuers an opportunity of proving their averments. It may be unnecessary at the present stage to advert to what took place subsequently to the period I have been now speaking of, but it certainly is a very important circumstance, as showing the understanding of the defenders, that these two young ladies who are now pursuing this action were charged each of them £35 for the session of 1887-88. The explanation attempted to be given of that is plainly not admissible. Mr Balfour says they were charged that because they got value for it. Now that is impossible. It is quite plain that that £35 charged is the first instalment of £85 for the whole four years' curriculum. The arrangement made in the prospectus was to give the students the option of either paying down £80 or paying by instalments, the first of which was £35. But then, said Mr Balfour, these tickets will not square with the prospectus at all, because the £35 is charged for the second year. To be sure it is, because there was no opportunity to charge it before. It is nevertheless the first instalment. In 1886 the prospectus was not in existence which authorised the charge; it was charged as soon as it possibly could be charged. I observe from these tickets that the payments are all initialed by the organising secretary, and every one of them contains a separate compartment to enter the payment for each of the four years that constitutes the curriculum. It is not a receipt for one year—it is not a note of fees payable for one year—but it is a note which is intended to express as the course goes on each year's payment according to the instalments as set forth. How the ultimate payments may be arranged is of very little consequence, but I cannot read these tickets without coming to the conclusion that the charge made against these two pursuers in 1887-88 at the commencement of the session apparently was a charge of a first instalment of the sum of £85 to be paid for the entire four years' curriculum. Now, as regards the third plea-in-law, I have only this to say, that I do not think the words of the passage in the prospectus on which that plea is founded will at all justify the act of expulsion, or, if the defenders prefer the phrase, the refusal to re-admit to the second, or third, or fourth session. The matter dealt with in that section is admission or exclusion, and looking to the part of the prospectus in which these words occur, it is to me perfectly plain that they refer to the first and original admission or refusal to admit a student to the school. Upon that ground I think the Lord Ordinary is quite right in repelling the third plea also. These pleas having been maintained as absolutely exclusive of this action altogether, and having been repelled, first by the Lord Ordinary and now by your Lordships, I think the proof must proceed not as a proof before answer, but as a proof upon the assumption that the action is relevant, and that the third plea is groundless.

LORD ADAM—I concur in the opinion that the averments of the pursuer are relevant to go to proof. As your Lordship has pointed out, the case is founded upon an alleged contract, and that contract depends not upon the documents referred to, but upon facts to be ascertained. In these circumstances I do not propose to criticise or consider the particular documents in process, because it is possible or probable that the case may again come before us at a later stage. For my part I do not criticise it at present. With reference to the third plea-in-law, I also agree with your Lordship.

LORD LEE—I also agree, first, in thinking that there is a relevant allegation of a contract for a complete course of medical instruction; secondly, that it is not a part of that contract, as alleged, that the defenders should have power to stop in the middle of the course without cause; and thirdly, that there is in this way a relevant allegation of a breach of contract by the refusal of the defenders, without cause assigned, to allow the pursuers to come back again in 1888, and I have nothing to add to what your Lordship has said with reference to the grounds.

LORD MURE and LORD SHAND were absent.

A proof was thereafter taken before the Lord Ordinary, the result of which is fully given in the opinions of the Lord Ordinary and Lord Adam.

On 2nd November the Lord Ordinary (KYLLACHY) pronounced the following interlocutor:—"Finds that the pursuers do not insist in the conclusions of the summons other than the conclusion for damages; and having considered the proof and heard counsel, Finds the defenders liable, conjunctly and severally, to each of the two pursuers in the sum of Fifty Pounds in name of damages, and decerns, &c.

"*Opinion*.—The pursuers in this case are two young ladies, aged respectively 33 and 30 years, who have been in effect expelled from what is known as the Edinburgh School of Medicine, and have been so in the middle of their curriculum, and who complain of this expulsion as unwarranted, and as constituting a breach of the contract between them and the Executive Committee of the institution.

"It may be explained at the outset that although the expulsion complained of was the act, in the first instance, of only two members of the committee, no question is raised as to the responsibility of the whole defenders. On the other hand, the pursuers, while they conclude in their summons for re-admission to the benefits of the curriculum, do not now insist for that remedy, but are content to rest on their conclusion for damages.

"The questions to be decided are—(1) Was there a contract between the pursuers and defenders whereby the latter undertook to provide the pursuers with a full curriculum of instruction extending over four years; and (2) Did the defenders, by refusing to re-admit the pursuers after the close of the second year, commit a breach of their contract, or were they, on the other hand, justified in what they did.

"Having considered the proof which was led before me at the close of last session, and heard counsel upon the whole case last week, I have come to be of opinion that upon both of these points my judgment must be for the pursuers. I think that there was a contract such as the pursuers allege; and I think that the dismissal or expulsion, or whatever else it may be called, of which the pursuers complain, involved a breach of that contract, for which the defenders are answerable.

"First, as to the contract, I adopt generally the opinion of my predecessor, Lord Fraser, appended to his interlocutor of 19th December 1888. I quite acknowledge that had the question arisen at the end of the session of 1886-87 it would have been a different question. The prospectus of 1886 did not, as I read it, offer a complete curriculum, and as Miss Jex-Blake explains in in her evidence, the arrangements for that year were only tentative, and were made at her individual risk. It would, therefore, I think, have been putting undue stress on the language of the 'Form of Application' then (and still) in use, to hold that the declaration there exacted, to the effect that the student intended to pursue a complete course of medical study, implied a corresponding obligation on the part of Miss Jex-Blake to provide such a course. Nor should I have been prepared to rear up into a legal obligation the assurance which Miss Jex-Blake appears to have verbally given to the original students in 1886, that they might trust to her to see them through the complete course. It is, however, a different matter when I come to consider the prospectus of January 1887. That prospectus, I agree with Lord Fraser, puts matters on a totally different footing. By that time full arrangements had been made, a committee had been organised, pupils had been secured, and, as I read it, the prospectus then issued contains in express terms an offer and undertaking to provide a full and complete curriculum of instruction—that curriculum extending over four years, and the classes for each year being specified. No doubt, qualifications are expressed with respect to the order of the classes, the size of the classes, and other matters, but these serve only to make more marked the general nature of the undertaking. And indeed, it is perhaps enough to forclose all question on this head that the fee was to be a fee for the whole course, and that if not paid in one sum, which it might be, the sums paid in each year were to be paid as 'instalments. I have not, I confess, been able seriously to doubt that when the two pursuers entered to their second year's course in October 1887, they did so under this new prospectus, and from that date, at all events, were entitled, so long as they performed their part of the contract, to continue to receive the complete course of instruction which the defenders had undertaken to provide.

"But such being the defenders' obligations, what were on the other hand the counter-part obligations of the pursuers. So far as expressed in the prospectus or in the letter of application, they were simply these—(1) To pay certain fees; and (2) to conform in all respects to the regulations in force from time to time. There is, as to this last matter, a contrast between the language of the prospectus and that of the form of application (prepared, it will be observed, in 1886), which may suggest a doubt whether the regulations mentioned in the prospectus did not mean regulations formally issued by the executive committee, but I am content to assume that as expressed in the 'Form of Application,' the students were bound to obey all regulations laid down by the organising secretary. I shall also assume what, of course, is clear enough, that the pursuers and the other ladies were also bound to conduct themselves with propriety, to maintain order in the several classes, and to treat with due politeness the lecturers and officials with whom they came in contact. But it is, I think, important to observe that that was the extent of their obligation. They were not in my opinion bound to abstain from criticism of the arrangements made for their tuition, whether by the executive committee or by the organising secretary. They were entitled to be dissatisfied with those arrangements, and to express their dissatisfaction. If the regulations laid down by the secretary seemed unnecessary or unreasonable they were entitled to discuss them, and to complain of them, and while obeying them to do so if they pleased under protest. In short, they were not children sent to school by their parents, but grown-up women, who were providing themselves with medical education which the defenders had agreed to furnish on specified terms. To these terms they had to submit, because they had agreed to do so, but beyond that everything had to depend on mutual goodwill and friendly feeling. In particular, the lady students were not, in my opinion, bound to submit to be lectured by the organising secretary, still less to be insulted by her. If occasion arose they were as much entitled to complain of and to her as she was entitled to complain of and to them. Nor could the contract of parties be altered, or their relations changed, by the defenders subsequently conferring

on the organising secretary the somewhat ambitious title of Dean. That may have been a quite proper recognition of her distinguished services in the cause of medical education, but it could not, at least in a question with the pursuers, extend her jurisdiction or enlarge her powers.

"Now, such being the contract (and I have so far dwelt upon it because a good deal of what has occurred appears to me to have been due to a misconception of the contract), such being the contract, the next question is, whether the defenders have broken it, or whether they have established that the pursuers broke their part of it, so as to entitle them (the defenders) to put an end to it.

"Upon this matter I have, first, to observe that the defenders did not dismiss the pursuers (I use the expression for shortness) on the ground of any alleged fault. They did so (or rather Miss Jex-Blake, the organising secretary, with the consent of Dr Balfour, did so), because they thought that at the end of the session they were entitled to do so, and to do so without reason assigned, and at their pleasure. This is made quite clear by the evidence of Dr Balfour, who explains quite frankly that he made no inquiry, and never thought of making any, because he thought that the pursuers had got all that they paid for, and Miss Jex-Blake intimated that either they or she must leave the school. In point of fact the pursuers received no notice of what was intended, nor were they given any opportunity of explanation or answer, and when, after being dismissed, they asked the reason, they were informed in effect that no reason would be given. In short, Dr Balfour accepted (I venture to think rather rashly) Miss Jex-Blake's version of her quarrel with the pursuers, and sharing also her somewhat exaggerated views of the position and power of the executive committee, he was induced to take a course which I am sure he would not have taken had he considered that the pursuers had the rights which in my opinion they had.

"The defenders have now, however, in their defences to this action, taken up the ground that the pursuers' conduct was such as to warrant their dismissal, and, apart from some charges of a general kind, as to which I shall say a word afterwards, they have tabled and taken their stand on two specific charges, to which the recent proof was mainly directed. These are (1) alleged breach of regulations on 8th June 1888 by staying in Leith Hospital beyond five o'clock; and (2) alleged insubordinate conduct in connection with the matter of Miss Sinclair's certificate.

"As to the Leith Hospital incident, the facts are shortly these—According to the defenders' published time-table the hours for attendance at the hospital were from three to five o'clock, but until the summer session of 1888 the hour of leaving appears to have been left very much to circumstances, and the students were accustomed to remain when there were cases of interest sometimes until after seven o'clock. In May 1888, however, the organising secretary, Miss Jex-Blake, had some communication on this subject with Miss Perry, the lady matron of the hospital, and at the weekly meetings or conferences which she seems to have generally held with the students, she appears twice to have drawn their attention to the five o'clock rule, and to have urged that it should be strictly kept. This does not appear to have been a very popular intimation, the students, as Miss Perry expresses it, 'disliking to be hurried out of the hospital at five o'clock if there were anything interesting going on.' And perhaps, not unnaturally, this discontent found expression. At the same time, the rule does appear to have been quite strictly observed up till the day in question (the 8th of June), when an interesting case having come in a little before five o'clock, the students, four in number, including the pursuers, were, when leaving the hospital, invited by the house surgeon to come back and see it. They did so, and remained till ten minutes after five, when, having been reminded by Miss Perry that it was past their hour, and having learned that she was displeased, they went away. Unfortunately, as they passed out, Miss Perry thought it necessary to again address them, and she and the pursuer Miss Grace Cadell had some words, and Miss Perry appears to have rather resented some reference which Miss Grace Cadell made to the house surgeon, which she (Miss Perry) took, I suppose, as suggesting some doubt as to her supremacy in the hospital. At anyrate she was (at the time) offended, and wrote Miss Jex-Blake, and then followed, I think, rather an undue commotion, including a suspension of the young ladies from hospital privileges, and a joint apology on their part to Miss Perry, and various other incidents, mainly ludicrous, into which it is not necessary to enter. The upshot of the matter, however, was that Miss Perry was satisfied and the authority of the five o'clock rule established, and, as Miss Perry puts it, 'all the young ladies came back to the hospital, and the unpleasant affair was at an end. I never again had occasion to complain of breach of the five o'clock rule during the rest of the summer.'

"I am bound to say that on this matter I think Miss Jex-Blake was in the right, and the young ladies—including the pursuers—in the wrong. The five o'clock rule was a regulation which I think the defenders were entitled to make, and which the ladies were bound to obey. They might complain of it and grumble about it, but they were bound to obey it. Nor do I think that Miss Jex-Blake was wrong in treating the matter seriously. She made, I venture to think, too much of it, and showed a little want of tact and temper in dealing with it; but it was probably right and necessary, if the rule was thought important, to insist upon its being punctually observed.

"It is not, however, necessary to consider whether for this single breach of the regulations the defenders could have put an end to their contract with the pursuers and with the other young ladies who were in fault. In point of fact, they did not do so

or think of doing so. On the contrary, the matter was allowed to take end, and all the parties so treated it. And accordingly the defenders' counsel very properly conceded that unless he established some further and subsequent cause of complaint, he could not go back upon this affair as justifying the defenders' action at the end of the session.

"And this brings me to consider whether the Sinclair affair, which did occur afterwards and was the proximate cause of the defenders' action, involved any just ground of complaint as against the pursuers. The affair in question was this—The General Medical Council require as a condition of graduation, that before beginning his or her medical studies the student shall pass a certain preliminary examination, and there are various examining bodies whose certificates are accepted—the Educational Institute of Scotland being one. Miss Sinclair, a friend of the pursuers, and one of their fellow students, had gone up for this examination on the 8th of April 1888, and had, as she understood, failed to pass in two subjects, the certificate which she received being confined to the other four. But shortly afterwards—when residing in the country in the month of June—she received from the examiners, through Dr Gibson, the secretary to the College of Physicians, a new certificate bearing that she had passed in all the subjects, and this certificate she accepted without question, having, as she says, been simply told that the examiners had reconsidered her papers and that this certificate was to supersede the other. She had not asked for anything of the kind and knew nothing whatever as to the examiners' reasons, but it afterwards appeared that the reconsideration of her papers had been brought about in this way. It became known to Dr Gibson (who was one of the defenders' lecturers) that Miss Sinclair had been ill on the day of the examination, having just lost her father, and been otherwise very unwell. He also came to know that she had not passed in two of the subjects, and being of opinion that the examiners ought to have the above facts before them he entirely of his own motive communicated with the examiners, and suggested that they should reconsider the young lady's papers in view of the circumstances referred to. The examiners did so, and hence the revised certificate which, as I have said, Miss Sinclair received in June. She came back to Edinburgh shortly afterwards, and having, towards the middle of July, mentioned the matter to Miss Black, the assistant secretary, Miss Jex-Blake heard of it and appears to have considered that it was a matter on which she was bound to interfere. How she came to think so, or what she had to do with it, I do not know, but in some way she seems to have thought she had to do with it, and indeed that she was charged with a general oversight over the whole actions and conduct of the young ladies who were attending the lectures which she had organised.

"What followed was this—She sent for Miss Sinclair and charged her with acting dishonourably, and disbelieved or refused to accept her explanation. She then communicated with Dr Gibson, and although he seems to have told her the whole story, she seems to have doubted or disbelieved even him. And then in that frame of mind she seems to have gone down to Leith—to her next meeting with the students—and there, in the presence of them all, and in a set speech, made a violent attack on Miss Sinclair's conduct, characterising it as 'mean and dishonourable,' or 'mean and underhand.'

"It is upon the part taken by the pursuers in the proceedings which followed this occurrence that the defenders now rest their (the defenders') justification. And what they complain of appears to be (1) that the pursuers, the Misses Caddell, applauded Miss Sinclair when she defended herself against Miss Jex-Blake's charge; (2) that they or one of them informed Dr Gibson of what had passed in order that he as the party responsible should clear Miss Sinclair by making known the facts; (3) that Dr Gibson having made a statement at his next lecture, they along with eleven others (the majority of the students) signed a paper addressed to Miss Jex-Blake, expressing their approval of Miss Sinclair's conduct; and (4) that they finally took Miss Sinclair's part in a somewhat heated altercation at the close of the session when Miss Jex-Blake had an interview with the students in connection with the above paper, and when being pressed to retract the charge which she had made she took up the ground that she had made no charge against Miss Sinclair, distinguishing—in some way which I do not follow—between attacking Miss Sinclair and attacking Miss Sinclair's conduct.

"In my opinion in all these matters the pursuers were in the right. They were certainly within their rights so far as regards their contract with the defenders. But, moreover, they, in my opinion, acted in every respect as became young ladies in their position. It is not necessary to go into details, but they were, in my opinion, justified in being indignant and in expressing their indignation, and in doing their best to have their friend's character cleared. On the other hand, I regret to be obliged to say that in my opinion Miss Jex-Blake was in this matter entirely in the wrong. She was of course entitled to have her own views as to the propriety of the examiners' action, or even as to the propriety of Dr Gibson's action, and she was at liberty to express those views as strongly as she pleased, but in attacking Miss Sinclair as she did, she acted, in my opinion, gratuitously and unjustly. I am satisfied upon the evidence that she made the imputation complained of. I am satisfied that it was an altogether unjust imputation, and I think that neither she nor the defenders have any cause to complain of the—so far as I can see—quite fair and temperate manner in which Miss Sinclair and her friends expressed their displeasure and sought redress.

"I therefore consider that the defenders

have entirely failed to justify their action by reference to either of the specific instances which they allege. I only add a word as to the general evidence of discontent, grumbling, disputing regulations, &c. &c., of which the defenders' evidence is full. I confess I attach very little value to that evidence. It struck me as a good deal exaggerated and highly coloured, and whenever brought to the test of particulars it came to nothing. I have no doubt that, especially in connection with Miss Sinclair's matter, there was a good deal of grumbling and discontent. I am not surprised at it. I have no doubt also that the pursuers and others desired to know the reason of many of Miss Jex-Blake's orders, and even ventured to remonstrate against some of them. I should expect also that the young ladies generally canvassed those matters among themselves and sometimes approved and sometimes disapproved. But all this seems to me to have been entirely within their rights, and that nothing more than this is meant by the vague and general phrases which are on the record and throughout the proof applied to their conduct is, I think, well illustrated by one answer which Miss Jex-Blake gave in cross-examination. 'When I speak,' she says, 'of disputing regulations, I mean that Miss Black (the assistant secretary) repeatedly told me that one or other of the pursuers said, why should we do this, or why is it necessary for us to do so and so.' That is really what, as I read the evidence, it all comes to. The truth is that Miss-Jex Blake from the first, I am afraid, rather mistook and overrated her position, and by demanding too much perhaps failed to receive the consideration to which she was well entitled. I think it is very possible that the young ladies—including the pursuers—sometimes forgot, under the provocation of her masterful ways, how much they owed her, and how large a title she had to their consideration and gratitude. These, however, are topics which lie outside the sphere of legal obligation, and which I think scarcely even affect the matter of damages. Upon that matter I have only to say in conclusion, that I do not consider that the pursuers have suffered in their character, or that they are entitled to or desire large damages. I think the sum of £50 each will probably repay their pecuniary loss, and sufficiently mark the sense which I entertain of the wrong which they have sustained."

The defenders reclaimed, and argued—(1) That the contract between the pursuers and defenders was only a yearly one, that there was no contract for re-admission; and (2) that the pursuers' conduct had been such as to justify the defenders in refusing to re-admit them.

The pursuers and respondents argued—(1) That there was a contract for a full course of medical study, and that therefore the defenders were bound to re-admit the pursuers unless their conduct had been such as to justify dismissal; and (2) that there had been no such gross breach of discipline on the part of the pursuers as to justify their dismissal—*Fitzgerald* v. *Northcote*, 1865, 4 F. & F. 656; *Dean* v. *Bennett*, December 21, 1870, 6 Ch. App. 489; *Weir* v. *Crawfurd*, June 14, 1847, 6 Bell's App. 112; *Fisher* v. *Keane*, December 2, 1878, 11 Ch. Div. 353.

At advising—

LORD ADAM—The pursuers were students of the Edinburgh School of Medicine for Women during the session 1887-8, which terminated on the 20th July in the latter year.

On the 26th July they each received a letter from the secretary of the executive committee of the school intimating that they would not be admitted to the school next October. In reply to a request made by their agent on their behalf, that the committee would inform them of the reason of this intimation, they were informed that the committee declined to communicate these reasons, and that they were at liberty to take whatever steps they thought proper in the circumstances. The course which the pursuers thought proper to take was to raise this action.

It is clear that the committee, in replying as they thus did, thought it was entirely within their own discretion whether or not they should admit the pursuers to the school in the ensuing session.

If the committee were right in this view of their powers, of course there is an end of the action, but the pursuers think differently, and have raised this action to have it found and declared that the committee contracted and agreed to provide each of the pursuers, as duly admitted professional students in said school, with a full and complete course of qualifying medical instruction.

The first question accordingly is, whether the committee did so contract? The Lord Ordinary is of opinion that they did, and has fully stated the grounds of his opinion, in which I entirely concur.

It appears that the school had been commenced in the preceding year, 1886, by Dr Jex-Blake, tentatively and at her own risk, and that the pursuers were students during the session 1886-7, but I do not think it is necessary to go back on these matters, because I think that it is quite clear that at the time the pursuers received notice that they would not be re-admitted to the school in 1888 they were students of the school under the terms and conditions contained in the prospectus issued by the committee in January 1887.

Now, that prospectus set forth that medical classes for women had been organised in the Extra-Mural School of Edinburgh, and that a full curriculum in all subjects would be provided, and the order in which it was proposed to give the classes in each of four years was appended. The prospectus then set forth that the fees payable for the whole curriculum of lectures and of clinical instruction would be £80 if paid in one sum, or if paid in instalments, would be £35 the first year, £25 the second year, £15 the third year, and £10 the fourth year.

Each of the pursuers paid a fee of £35, and this was the first year's instalment of

the fees payable for the whole curriculum of lectures. If the pursuers had paid the fees for the whole curriculum in one sum, there could, I suppose, have been no possible question. But it appears to me to be equally clear that the instalment of £35 paid the first year was not made as a payment for the instruction given during that year, but was a part of the fees payable for the whole curriculum. If that be so, then on the pursuers paying the second instalment they were entitled to the benefit of the second year of the curriculum, and so on during the remaining years. They had, in point of fact, already paid, and the committee had received part of the fees payable for the second year of the curriculum.

I am therefore of opinion that the committee could not at their own discretion, and without good cause, refuse to admit the pursuers to the school for the session 1888-9, and that raises the next question in the case, viz., whether the committee had good grounds for so refusing?

As I have said, the committee refused to give their reasons at the time. We now find these reasons recorded in the minute of their meeting of 26th July at which they resolved not to re-admit the pursuers. It bears that the Dean (Dr Jex-Blake) reported that a case of insubordination at Leith Hospital had been met by the suspension of the four offenders for a week from hospital practice by the sub-committee, but that since this time two of the students implicated, the Misses Cadell, had become a centre of insubordination in the school, and that for the sake of general discipline and order it seemed necessary to exclude them from the next session of the school.

The committee made no independent inquiry into the matter, but acted on Dr Jex-Blake's representation, and entertaining the opinion which they did of their powers, it is not surprising that they acted as they did, because Dr Jex-Blake made it very clear to them that either she or the Misses Cadell must leave the school.

The matter has now, however, been fully investigated, and the question is whether the committee have proved that the conduct of the pursuers was such as to justify the committee in breaking their contract with them, or perhaps it may be more accurately stated as being, whether it is proved that the pursuers broke the contract by failing to comply with rules and regulations, express or implied, of the school.

The proximate cause of the pursuers being prohibited from re-entering the school was their conduct with reference to Miss Sinclair and her pass certificate.

The matter was in itself simple, and arose in this way—It seems that the students are required to pass a preliminary examination in arts, and that Miss Sinclair in April 1888 had appeared before the Educational Institute of Scotland for that purpose, but had failed to pass in two of the subjects. Dr Gibson, one of the lecturers, was informed of this by Miss Marsh, a fellow student, a day or two after the examination, and that Miss Sinclair had been unwell at the time, and this was afterwards confirmed by Miss Sinclair herself. Subsequently, in June, Miss Sinclair lost her father, and Dr Gibson being desirous of assisting her, entirely of his own motive, applied to the examiners to see if her papers might not be reconsidered in view of the fact of her illness at the time. The result was that the examiners did so revise her papers, and sent to Dr Gibson a certificate of Miss Sinclair's having passed, and he registered it and sent it to her, simply informing her that the examiners had reconsidered her papers and given her a pass. Miss Sinclair took advantage of this certificate, and did not go up for examination in July, which otherwise she would have had to do, and this seems to have greatly displeased Dr Jex-Blake. I cannot myself think that there was anything mean, underhand, or dishonourable in Miss Sinclair's conduct throughout the transaction. She states her case in a few words in her letter to Dr Jex-Blake of 12th July—"I certainly asked (she says) no one to get me the certificate, nor should I ever think of doing such a thing. I cannot see what object they could have in sending me a certificate unless I was entitled to it. It was not my place to question it, nor should I think of doing so."

But Dr Jex-Blake took an entirely different view. She thought it was quite wrong in the examiners to have granted this pass certificate after having refused it—and so far I am disposed to agree with her—and she seems to have been the more sensitive on the subject because of certain rumours being abroad that lady students were more leniently dealt with in such matters than male students.

I think Dr Jex-Blake would have been entitled to state the facts as to how the certificate came into Miss Sinclair's possession to the students, and her opinion that a certificate so obtained ought not to be taken advantage of.

But Dr Jex-Blake did not take that course. After making inquiries into the subject she sent for Miss Sinclair on 12th July, and, most improperly I think, accused her of dishonourable conduct. Again, on the 17th July, she brought the matter before the students, and judging only from Dr Jex-Blake's own account of what then took place, she there very distinctly charged Miss Sinclair with having been guilty of mean and underhand conduct, and put it in such a way that if Miss Sinclair had remained silent she must have been taken as confessing that she was guilty of such conduct, and was ashamed of it.

It is not therefore a matter of surprise that Miss Sinclair should upon the spot have resented this charge, and that such of the students as knew the facts should have supported her. I think they were quite entitled to do so. Then, again, Dr Jex-Blake had mentioned none of the facts as to the manner in which Miss Sinclair had got the certificate. But it is evident that the construction to be put on Miss Sinclair's conduct depended entirely on the nature of these facts. I think therefore that she and her fellow-students were quite entitled to

insist in her vindication that these facts should be made known, and to go to Dr Gibson, who was the party responsible for having got the certificate, and to ask him to make them known to the class. Dr Jex-Blake tried to prevent his doing so, but Dr Gibson very rightly, I think, both in justice to himself and Miss Sinclair, laid the facts before the class, and allowed them to draw their own conclusions. On the 19th July a letter was addressed by thirteen of the students, including the pursuers, stating that having been asked, on hearing her statement, to give their opinion as to Miss Sinclair's honour or dishonour with regard to the certificate, they desired a second opportunity of giving their opinion on the subject before herself and the class.

Next day, after the distribution of the prizes, Dr Jex-Blake had a meeting with the students. As might have been expected, the meeting seems to have been attended with considerable noise and confusion. One thing, however, appears—that the pursuers seem to have given great offence to Dr Jex-Blake by insisting that she had charged Miss Sinclair with underhand conduct, and that the charge should be retracted, while Dr Jex-Blake protested that she had not charged Miss Sinclair, and refused to retract.

These seem to be the principal incidents connected with the matter, and I do not doubt that they were very disagreeable to Dr Jex-Blake and injurious to the discipline of the school, but then I agree with the Lord Ordinary in thinking that Dr Jex-Blake brought them all upon herself. So far as I can see, neither of the pursuers did or said anything that they were not entitled to do or say in the circumstances. Plain speaking is all very well, but when it comes to charging a student before her fellow-students with mean and dishonourable or underhand conduct, and that is naturally and properly resented, and excitement and what Dr Jex-Blake calls insubordination is the result, she is herself responsible for it, and cannot make it a ground for what is tantamount to expelling the Misses Cadell from the school.

If this be the correct view of the Sinclair matter, the Leith Hospital case, and some other small matters founded on by the defenders, seem to be of little importance. They were properly dealt with at the time they occurred, and there was an end of them. Nobody suggests that if the Sinclair incident had not subsequently occurred they would have justified or led to the pursuers' expulsion from the school. But they are now sought to be revived in connection with that matter, and I am far from saying that if the pursuers' conduct had been reprehensible therein their previous conduct in the school would not have been a proper subject for consideration in dealing with it. But as I am of opinion that the pursuers were not to blame in that matter, I do not see how their previous conduct in the school can now be gone back upon.

But however that may be, I have only to say that I entirely agree with the Lord Ordinary's opinion as to these previous incidents, and do not desire to add anything to what he has said.

I am therefore of opinion that the Lord Ordinary's interlocutor should be affirmed.

LORD M'LAREN—While concurring generally in the opinion of my brother Lord Adam, I should wish to be understood as not expressing a definite opinion on any of the questions in controversy between Dr Jex-Blake and the students of the Edinburgh School of Medicine for Women.

It is quite possible for a servant or a pupil to be habitually disrespectful or even insolent towards a master or a mistress, and yet that disrespect may be shown in such an intangible way that it is almost impossible to establish the fact by proof which shall carry conviction to the minds of a jury or a judge.

Such conduct on the part of a pupil may be subversive of the discipline of the school, and may furnish a good reason for desiring the removal of the pupil, even when legal proof of the cause of complaint is not forthcoming. The proprietors or trustees of public schools very generally protect their master against this kind of annoyance by giving him or reserving to themselves the power of requiring the withdrawal of a pupil without reason assigned.

It is unfortunate that such a power was not reserved by the rules of the Edinburgh School of Medicine for Women, because, as I think, a head master or mistress is entitled to be treated with submission or deference by the scholars, even when he is in the wrong in the matter before them, and I can well believe that a lady in the position of Dr Jex-Blake would find it intolerable that her decisions should be questioned, and her actions publicly criticised by the students for whose education and good behaviour she was in a sense responsible.

On the evidence, I think that Dr Jex-Blake had cause of complaint against the pursuers, and that she was entitled to bring their behaviour towards herself under the notice of the committee. But it has not been proved to my satisfaction that their behaviour was such as to warrant their compulsory removal from the roll of students in the absence of any provision in the rules of the school for the arbitrary dismissal of a student.

LORD PRESIDENT—I entirely concur in the opinion of Lord Adam, and I do not desire to add anything by way of detail, because I had an opportunity when the case was before us in March of last year on the question of relevancy of expressing my views on the nature of the contract between the parties and the relevancy of the averments which have now been proved respecting the relation of parties.

LORD SHAND was absent.

The Court adhered.

Counsel for the Pursuers—Low—W. C. Smith. Agent—W. B. Rainnie, S.S.C.

Counsel for the Defenders—Jameson—Guthrie. Agents—Millar, Robson, & Innes, S.S.C.