opinion they only mean a recommendation to the Magistrates to consider whether at the next licensing Court they should give or withhold a licence to the pursuer's premises, and such a recommendation is not slanderous.

LORD TRAYNER—This action is based on both the letter and the leaderette which appeared in the defender's paper. It is now conceded that the letter is not actionable, and it is admitted that the facts therein stated are true. With regard to the leaderette, I entirely concur in the views stated by Lord Rutherfurd Clark. I cannot see anything in the terms of that article to justify the innuendo which is sought to be put upon it. I do not go into a detailed examination of the language there used, but I may say with regard to the words "one or two black sheep" that the pursuer took no exception to them on record, or made them a ground of action; and further, with regard to the words "disgraceful scenes," I think that that is simply a statement of opinion on the character of scenes which admittedly took place. If the article had stated that the pursuer's conduct had led to the disgraceful scenes the case might have been different.

LORD YOUNG was absent.

The Court refused the appeal and dismissed the petition.

Counsel for Appellant—G. Stewart. Agents—J. & J. Galletly, S.S.C.

Counsel for Respondent—Glegg. Agent J. D. Walker, S.S.C.

Thursday, July 6.

SECOND DIVISION.

[Sheriff of Argyllshire.

EDUCATION TRUST GOVERNORS *v.* MACALISTER.

Property—Bounding Title—Possession for Prescriptive Period on Title which could be Construed as Embracing such Possession.

By charter dated 20th September 1854 a proprietor disponed to the Society in Scotland for Propagating Christian Knowledge "All and whole that piece of ground, part of the lands of Glenbarr, with the house erected thereon, sometime occupied by the said Society as a schoolhouse, afterwards for a short period occupied as the parish schoolhouse, and presently standing empty, together with the small piece of ground adjoining thereto and immediately behind the said house, as the same is fenced off from the other lands of Glenbarr by a turf fence dyke, bounded the said lands and others before disponed as follows, viz., on the west by the high road leading from Campbeltown to Tarbert, and on the east, north, and south by the said lands of Glenbarr, lying in the parish of Killean and shire of Argyll."

Prior to 1892, for more than the prescriptive period, the said Society and their successors, the Governors of the Trust for Education in the Highlands and Islands, in terms of the scheme under the Educational Endowments (Scotland) Act 1882, possessed about five acres of grounds with the schoolhouse erected thereon, the ground being fenced off and bounded in the same manner as the ground described in the charter of 1854.

Held that the Society and their successors were proprietors of the land so possessed by them under a title which could be construed as embracing the whole of that land.

By charter of novadamus dated 20th September 1854, Mr Keith Macalister of Glenbarr, on the narrative that the Society in Scotland for Propagating Christian Knowledge had asserted that they formerly held a valid title to certain lands after described, and that the said title, if it ever existed, had been lost, gave, granted, and disponed, and for him, his heirs and successors, perpetually confirmed to the said society, "All and whole that piece of ground, part of the lands of Glenbarr, with the house erected thereon, sometime occupied by the said Society as a schoolhouse, afterwards for a short period occupied as the parish schoolhouse, and presently standing empty, together with the small piece of ground adjoining thereto and immediately behind the said house, as the same is fenced off from the other lands of Glenbarr by a turf fence dyke, bounded the said lands and others before disponed as follows, viz., on the west by the high road leading from Campbeltown to Tarbert, and on the east, north, and south by the said lands of Glenbarr, lying in the parish of Killean and shire of Argyll, but always with and under the conditions and declarations" therein set forth. Briefly stated these conditions were two—that the lands were to be retained by the Society while in the opinion of the minister and kirk-session of the parish of Killean the use of a school and accommodation for a teacher were required for the district of Barr, and that the said lands were not to be sold without offering the same in the first instance to the disponer or his successors in the entailed estate of Barr.

In September 1892 the Governors of the Trust for Education in the Highlands and Islands of Scotland, to whom the whole funds and estate belonging to the Society for Propagating Christian Knowledge had been transferred by the scheme under the Educational Endowments (Scotland) Act 1882, raised an action in the Sheriff Court of Argyllshire at Campbeltown against Major Charles Brodie Macalister of Glenbarr, in which they prayed the Court "to interdict the defender, and all others acting for him or under his instructions, from entering or encroaching in any way on the

pursuers' property of all and whole that piece of ground, extending to five acres and one hundred and fifty-nine decimal or one-thousandth parts of an acre imperial measure or thereby, part of the lands of Glenbarr, with the houses and others erected thereon, as the same is fenced off from the other lands of Glenbarr by a turf fence-dyke, and is marked Nos. 679 and 680 on the Ordnance Survey map of the united parish of Killean and Kilkenzie, bounded the said piece of ground as follows, viz., on the west by the high road leading from Campbeltown to Tarbert, and on the east, north, and south by the said lands of Glenbarr, lying in the parish of Killean and shire of Argyll; and from laying down any materials or proceeding with any operations of any kind thereon; and to grant interim interdict; to ordain the defender instantly to remove a wire fence or other erection which he has recently erected or made thereon, and to restore the said piece of ground belonging to the pursuers to the condition in which it was before the defender's interference therewith, and failing his removing and restoring as aforesaid within such period as the Court shall appoint, to grant warrant to the pursuers to get the said removal and restoration effected, and to find the defender liable in the expense thereof and of this application." The value of the ground in dispute was stated not to exceed £1000.

The pursuers averred—"The defender has recently, without leave or authority from the pursuers, entered upon the said piece of ground belonging to them as aforesaid, and has erected thereon a wire fence, running across said piece of ground from south to north, thereby fencing off a portion thereof extending to about four acres, and has unlawfully and unwarrantably taken possession of, or attempted to take possession of, said portion so fenced off. Until the acts complained of in this action the pursuers and their authors and tenants have, in virtue of their titles, been in the exclusive and uninterrupted possession for more than the prescriptive period of the said piece of ground comprehended in their titles, and described in the prayer of the petition."

The defender averred—"Said fence is erected on the defender's own land. Between it and the public road there is an area of ground of more than one acre in extent, upon which stands Glenbarr public school. The defender avers that even if the titles founded on by the pursuers be valid they do not contain the area of ground described in the petition, and he has not encroached upon any part of the ground disponed by, or comprehended in their charter, which only embraces the area of ground between said fence and the public road. Explained further that the site of the turf dyke mentioned in the charter founded on by the pursuers, if the same ever existed, is now entirely obliterated. The defender believes and avers that the dyke which at present surrounds the piece of ground in dispute was either in whole or in part erected in or about the year 1861, and encloses more ground than was conveyed by the said charter."

Proof was led before the Sheriff-Substitute (RUSSELL BELL). The proof showed that for more than twenty years the pursuers and their predecessors had been in possession of a piece of ground, with the schoolhouse erected thereon, fenced round by turf walls, and bounded as described in the charter of novodamus. There was some proof that about 1856 there had been some changes made in the marches of the land possessed by the pursuers and their predecessors, and the proof on that point was somewhat vague. The defender attempted to prove that the description in the charter of novodamus applied to a small kailyard beside it which the witnesses averred had formerly existed at the back of the old schoolhouse within the ground claimed, but all traces of which were obliterated after the erection of the new schoolhouse in 1854.

On 25th March 1893 the Sheriff-Substitute pronounced the following interlocutor:—"Finds that it has not been proved that the defender has entered on, or encroached in any way on the property of the pursuers; therefore refuses the prayer of the petition, recals the interim interdict, and assoilzies the defender."

The pursuers appealed to the Court of Session, and argued—There were two questions in this case—(1) Could their title be construed so as to embrace the ground in question? (2) Had they possessed that ground for upwards of twenty years? If these two questions were answered in the affirmative they were entitled to succeed whatever other construction might be put upon the words of the deed. They had possessed this ground for upwards of twenty years, and it exactly corresponded with the description in the deed. Even if the description in the charter could apply to the smaller portion of ground (which it did not) the exclusive possession of the larger piece of ground, to which the description also applied, for the prescriptive period, was sufficient to exclude all inquiry—*Auld* v. *Hay*, March 5, 1880, 7 R. 633. A glebe of a few acres to the schoolmaster was a common grant in former days in this part of the country.

Argued for the defender and respondent—The Sheriff-Substitute's judgment was right. The schoolmaster's cow had grazed on the land by the tolerance of the proprietor, but there had been no effectual possession by plough or spade. The evidence showed that the ground given by the charter was a smaller piece of ground than the one in question, and that being so the proprietor could not prescribe a right to ground beyond the former boundary—*Reid* v. *M'Call*, October 25, 1879, 7 R. 84. It was to be presumed from 3 and 4 Vict. c. 48, sec. 1, and 4 and 5 Vict. c. 38, sec. 2, which conferred power on heirs of entail in possession to feu or lease one acre for schools, that Keith Macalister, being an heir of entail, made this conveyance of the smaller piece of ground.

At advising—

LORD YOUNG—This case is in regard to a piece of ground, five acres in extent, very distinctly specified in the prayer of the petition. The case is presented in the form of a simple interdict against trespass, and was brought in the Sheriff Court, but the parties, on the recommendation of the Sheriff, agreed that the question of property should be tried in the present case, and counsel in arguing the case did so on the footing that our judgment should determine the question of property. Dealing with this question of property the pursuers have produced a charter of novodamus as their title. They say that on that title they have been in possession of the ground specified in their petition for upwards of twenty years. It is certain that from the date of the charter, and as far before as memory can reach, the ground in question has been in possession of the pursuers and their predecessors. The question therefore is, whether that possession following on the charter of novadamus entitles us, and indeed compels us to deal with the pursuers as the proprietors of the ground. My opinion is that it does, and indeed that it must, unless the description in the charter of novodamus does not fit the ground so that possession can be referred to it as the title. There is no ground for that contention. The charter indeed refers to an antecedent title, but the granter acknowledges the antecedent title, and it must be presumed to be the title on which possession was held anterior to the date of the charter of novodamus.

The charter is not a bounding charter though it refers distinctly to boundaries. It states that the ground is bounded on the west by the high road, and on the east, north, and south by the lands of Glenbarr. The ground possessed by the pursuers is so bounded, and it is completely identified as the ground on which the schoolhouse is situated. The only objection stated to the charter as not fitting the ground possessed is, that it is of too great an extent, and the Sheriff-Substitute proceeds in a great measure on that in finding in favour of the defender. The ground is over five acres in extent, and it does seem at first sight a very large piece of land for the accommodation of a schoolmaster. I do not think that in any case I could have attached much significance to this argument of too great extent. But it is explained, and quotations were made from the Statistical Account, showing that it is a common thing in this part of the country to give what is called a glebe to the schoolmaster.

Being of opinion that possession of the ground by the pursuers for over twenty years has been distinctly proved, and that the title produced by them will fit that possession, I think that the pursuers must be dealt with as proprietors of the ground in dispute, and judgment pronounced accordingly.

There was some argument presented on the fact that the marches of the land in question had been altered. But this straightening of the marches took place in 1857, upwards of thirty years ago, so that there has been possession beyond dispute of the land within the present boundaries, and now claimed for a period approaching forty years.

I think it quite according to law that if there are two adjoining proprietors, the title of each of whom will fit a piece of ground, the property title in that ground may pass from the one to the other by mere possession.

My opinion on the whole matter is, that the Sheriff-Substitute has arrived at an erroneous conclusion, and that the pursuers must be dealt with as proprietors, and therefore that they are entitled to interdict.

LORD RUTHERFURD CLARK—I agree that the pursuers, having possessed this piece of ground in dispute for the prescriptive period on a title the description in which will fit the ground, are entitled to interdict as proprietors.

LORD TRAYNER—For the reasons stated by your Lordship I have considered this case as involving a question of property, and not merely of possessory right. The question turns to a large extent on the meaning and construction of the dispositive clause in the charter in favour of the pursuers granted by the defender's father, who was at the date of that charter heir of entail in possession of the lands of Glenbarr. I cannot adopt the view of the Sheriff-Substitute that by that charter nothing more was conveyed than the ground on which the school-house was erected, and the small piece of garden ground behind the same. These are no doubt conveyed, but the reference to the school-house and the piece of garden ground is, in my opinion, more of the nature of description than anything else —they are mentioned as features which help to the identification of the subject—rather than as taxation of the extent of the grant. What I think was conveyed was the piece of ground which lies bounded on the west by the high road leading from Campbeltown to Tarbert, and on the east, south, and north, by the other lands of Glenbarr, from which it was fenced off by a turf fenced dyke, on which piece of ground there is a school-house and a small piece of garden ground behind the same. The description of the subject conveyed is vague enough. It gives no measurements along any of the boundaries, and it does not specify the quantity or extent of the ground conveyed. It requires, therefore, to be ascertained how that vague description has been interpreted by possession, and on this matter the proof is clear enough. It is ascertained that for a period beyond the years of prescription the pursuers have exclusively possessed the land now claimed by them, and the charter in question is the title to which they attribute their possession. There is nothing in the charter inconsistent with the pursuers' possession being attributable to the right

thus conferred. On the contrary, the possession and the charter are quite consistent. That being so, the principle of the decision in *Auld* v. *Hay* is applicable to this case, and being applied leads to the pursuers being successful in their claim.

It was said that certain changes had been made on the marches of the land in question after the date of the charter, and that the boundaries now claimed by the pursuers are not the boundaries as they existed when the grant was executed. It does appear that in or about 1856 or 1857 some changes were made on the boundaries, although what these exactly were is not, in my view, satisfactorily established. That such changes increased the total extent of the land possessed under the charter is not certain, and if such changes were to be relied on as materially affecting the pursuers' right or title, we should have had fuller information regarding them both by way of averment and proof than has been afforded. But these changes, whatever they were, do not affect the view I take of the case. For more than the prescriptive period the pursuers have possessed the whole land now claimed by them, under a title which can be construed as embracing the whole of that land. I think, therefore, as in a question of right of property, the pursuers are entitled to our judgment.

The Court pronounced the following interlocutor:—

"Find in fact (1) that the pursuers and their predecessors in title are, and have been for upwards of twenty years prior to the raising of this action, in exclusive possession of all and whole the subjects described in the prayer of the petition, under and in virtue of the charter of novodamus by Keith Macalister, Esquire, of Glenbarr, in favour of the Society in Scotland for Propagating Christian Knowledge, dated 20th September 1854, and instrument of sasine following thereon recorded in the New General Register of Sasines, &c., at Edinburgh, 15th January 1855, but always with and under the burdens, reservations, conditions, declarations, and others specified in the said charter of novodamus, and in the instrument of sasine following thereon and executed as aforesaid; and (2) that the defender has recently entered and encroached on the said subjects and erected a wire fence thereon: Find in law, that the pursuers are in virtue of the said charter of novodamus and sasine and possession following thereon, proprietors of the said subjects, viz., all and whole that piece of ground, extending to five acres and one hundred and fifty-nine decimal or one-thousandth parts of an acre imperial measure or thereby, part of the lands of Glenbarr, with the houses and others erected thereon, as the same is fenced off from the other lands of Glenbarr by a turf fence-dyke, and is marked Nos. 679 and 680 on the Ordnance Survey map of the united parish of Killean and Kilkenzie, bounded the said piece of ground as follows, viz., on the west by the high road leading from Campbeltown to Tarbert, and on the east, north, and south by the said lands of Glenbarr, lying in the parish of Killean and shire of Argyll: *Quoad ultra*, in respect that the defender by his counsel at the bar, has undertaken not to trespass on the said subjects, and forthwith to remove the said wire-fence, and to restore the said subjects to the condition in which they were before the defender's interference therewith, Find that it is unnecessary further to dispose of the prayer of the petition, and dismiss the same accordingly, and decern."

Counsel for Pursuers and Appellants—Clyde. Agents — Mackenzie, Innes, & Logan, W.S.

Counsel for Defenders and Respondents—Mackay — Kincaid Mackenzie. Agents — Melville & Lindesay, W.S.

Tuesday, July 11.

FIRST DIVISION.

M'KENDRICK AND OTHERS (TRUSTEES OF "JOHN REID" PRIZE), PETITIONERS.

Trust—Educational Endowment—Cy-près.

A truster "for the purpose of assisting students in the sciences and practice of medicine" disponed certain heritable subjects to trustees in 1882, and directed that the annual proceeds should be applied for the foundation of a prize of the annual value of £25, declaring that the competition for the prize should only be open to "students in the sciences and practice of medicine of not less than two years standing," who had attended a course of instruction in certain subjects in the University or one of the medical schools of Glasgow, and that the prize should be awarded for the best original research relating to the sciences and practice of medicine, and should be held for not more than three years.

In 1893, the Court, on the petition of the trustees, who stated that the prize had not so far been useful for its intended purpose, *authorised* the petitioners, while continuing to admit students of two years standing and upwards to the competition, also to admit qualified medical men of not more than two years standing, who could show that they were still attached to the University or one of the medical schools of Glasgow, "as *bona fide* students not engaged in practice," and who should undertake to give up the prize in the event of their entering upon practice.

By disposition dated 10th May and recorded in the register of sasines 30th June 1882, Miss Mary Reid, on the narrative that