

Counsel for the Respondent—Clyde, K.C.  
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S.S.C.

Tuesday, February 3.

FIRST DIVISION.

TRUSTEES OF GATESIDE SCHOOL,  
PETITIONERS.

*Educational Trust—Endowed School—Gratuitous Transfer of School Buildings to School Board—School—School Board—Education (Scotland) Act 1872 (35 and 36 Vict. c. 62), sec. 38.*

The trustees and committee of management of an endowed school, on the narrative that the funds at their disposal were insufficient to pay a schoolmaster and carry out the purposes of the trust, petitioned the Court to settle a scheme for the administration of the endowment. It was an essential part of the suggested scheme that the Court should authorise the petitioners to convey the school and teacher's house gratuitously to the school board of the parish in which the school was situated. The Court *refused* to sanction the gratuitous conveyance by the trustees of the heritable subjects held by them to the school board.

*Observed (per Lord M'Laren and Lord Kinneir)* that section 38 of the Education Act 1872 did not entitle trustees holding a school under an educational endowment trust to convey the school buildings to the school board of the parish gratuitously.

The Education Act 1872 (35 and 36 Vict. c. 62), sec. 38, enacts—"With respect to schools now existing . . . in any parish, . . . erected or acquired and maintained or partly maintained with funds derived from contributions or donations (whether by the members of a particular church or religious body or not) for the purpose . . . of promoting education: be it enacted that it shall be lawful for the person or persons vested with the title to any such school, with the consent of the person or persons having the administration of the trust upon which the same is held, to transfer such school, together with the site thereof and any land or teacher's house held and used in connection therewith to the school board of the parish . . . in which it is situated, to the end and effect that such school shall thereafter be under the management of such board as a public school in the same manner as any public school under this Act." Section 37 enacts:—"In performing their duties under this Act, it shall be lawful for any school board . . . to acquire by purchase . . . any existing schools and teachers houses, together with any land used or suitable to be used in connection therewith, not being schools, houses, and land of the description to which the provisions of this Act in the two immediately succeeding sections regarding

the transference of existing schools are applicable." . . .

The Rev. J. G. Sutherland, minister of the parish of Beith, and others, the trustees and committee of management of Gateside School, near Beith, acting under the trust-disposition of the late William Patrick of Roughwood, petitioned the Court to settle a scheme for the administration of an endowment bequeathed by the truster for educational purposes, and "to authorise such of the petitioners as are vested in the said school, school-house, and buildings, to convey the said subjects to the School Board of the parish of Beith in terms of a draft disposition to be approved" by the Court.

By trust-disposition and endowment dated 8th August 1855, and registered 17th April 1871, the late William Patrick of Roughwood, on the narrative that he desired to afford additional facilities for the education of children at Gateside, and had some time before built a schoolroom and offices there, and desired to permanently settle and endow the school and provide a dwelling-house for the schoolmaster, gave to the minister of Beith and his successors in office certain ground at Gateside upon which the school-house and play-ground as well as a dwelling-house and garden for the schoolmaster were situated. By the same deed he granted an annual rent of £25 out of his estate of Roughwood, and obliged his successors in the said estate to be at the whole expense of keeping the school-house, dwelling-house, and buildings in sufficient repair in all time coming, the obligation being made a real burden on the lands. The management of the school and ground-annual was entrusted to a committee of management.

The school, which continued to exist entirely apart from the School Board, was attended by about 131 children. The schoolmaster's salary was made up, in addition to the annual payment to him from the trust, from school fees and Government grants earned.

Owing to the abolition of school fees and an intimation by the Education Department that unless the accommodation of the school was largely increased so as to bring it up more nearly to modern requirements they would not continue to pay the Government grants, the petitioners averred that they found themselves without sufficient funds to carry on the trust, with the result that the school would be closed. In these circumstances the petitioners put themselves into communication with the School Board of the parish of Beith. The School Board intimated their willingness to take over the school, schoolmaster's house, and other premises, and to provide buildings to meet the requirements of the Education Department so that the school might be carried on. In respect that there was no other mode of effectually carrying out the purposes of the trust, the petitioners submitted to the Court a request for authority to hand over the premises to the School Board of the parish of Beith.

Under the scheme proposed by the peti-

tioners the endowment was to continue to be administered by the petitioners, and they suggested that the Court should sanction the application of the revenue to provide instruction in agriculture, dairy work, ambulance work, and other subjects.

No answers to the petition were lodged, but a minute was lodged for the School Board of the parish of Beith, in which it was stated for the Board that though they did not lodge answers they were desirous that certain suggestions made by them as to the revenue of the endowment should be given effect to. It was stated for the School Board that they would not consent to any sum being paid to the trustees in respect of the conveyance of the heritable property.

A remit was made to Mr R. A. Lee, Advocate, who in his report expressed doubt as to the proposal of the petitioners to convey gratuitously the heritable property held by them to the School Board. The reporter referred on this subject to *Philp's Trustees*, June 27, 1893, 20 R. 900, 30 S.L.R. 790; *Kirk-Session of Prestonpans v. School Board of Prestonpans*, November 28, 1891, 19 R. 193, 29 S.L.R. 168; *M'Lean v. School Board of Alloa and Others*, November 4, 1898, 1 F. 48, 36 S.L.R. 46.

Argued for the petitioners—It was only by the Court sanctioning the conveyance of the buildings to the School Board that this school could be carried on and the purpose of the truster in providing the buildings carried out. The buildings were of no value except as a school. In *Kirk-Session of Prestonpans v. School Board of Prestonpans*, *supra*, the Court sanctioned a scheme because it was most nearly in accordance with the original purpose for which the fund was established. That ratio applied here. The case of *Philp's Trustees* was different, for the proposal there was to alienate part of the trust property to persons who would not have been under any obligation to administer it in terms of the trust. Here, in the draft disposition of the subjects to the School Board which the Court was asked to sanction there was an express provision that the buildings should be forever appropriated and used as a school. The Education Act 1872, sections 37 and 38, contemplated and provided for the acquisition of school buildings by school boards and the divestiture of existing trustees. This case came within this provision—*M'Culloch v. Kirk-Session and Heritors of Dalry*, July 20, 1876, 3 R. 1182, 13 S.L.R. 717.

LORD ADAM—This is a petition at the instance of the trustees and committee of management of Gateside School, near Beith. This school, which was established so long ago as 1855, has hitherto been a prosperous one. It was indeed attended by so many scholars that the number of scholars outgrew the dimensions of the building. Hitherto the school has been carried on by means of the school fees and a Government grant. Owing to the abolition of school fees, followed by an intima-

tion from the Education Department that unless the accommodation was largely increased they would not continue to pay the grant, the petitioners come and tell us that they have no funds. The result is that the school is threatened with being brought to an end because the annual rent of £25 is insufficient to pay a schoolmaster and carry out the purposes of the truster.

The petitioners in these circumstances propose to convey the school buildings to the School Board of the parish of Beith, who will make the requisite improvements and carry on the school. But the School Board tell us that they will only take over the buildings on the footing that they are to get them gratuitously. That being so, the question is whether we are to authorise the trustees to convey these buildings to the School Board gratuitously. Now, I must say that I see no reason why we should authorise the trustees to convey gratuitously to the School Board the property handed down to them by the truster, and therefore I think we should refuse the prayer of the petition in so far as it asks us "to authorise such of the petitioners as are vested in the said school, school-house and buildings to convey the said subjects to the said School Board of the parish of Beith."

If the school buildings are not to go to the School Board, what is to be done with the endowment? There are a number of suggestions as to the purposes to which the endowment may be applied, but there is no actual scheme before us. Accordingly my opinion is that the petitioners should be given an opportunity to propose and lay before us such a scheme for the application of the funds as seems to them best fitted to carry out the purposes of the truster in the altered circumstances.

LORD M'LAREN—I agree with your Lordship. I am quite satisfied that this is not a case intended to be covered by the provisions of the Education (Scotland) Act 1872 to which we have been referred. The case contemplated in these sections is that of schools existing prior to the Act belonging to religious bodies or maintained by private subscriptions. It was contemplated that such schools would not be wanted after the introduction of public schools supported by the State, and power was accordingly given to school boards to take over by purchase or otherwise any existing schools of the kind mentioned. In the case of an endowed school held in terms of a trust a gratuitous transference to a school board would neither come within the terms or the spirit of the Education Act nor fall within the scope of the sections referred to.

I am far from saying, however, that the Court could not authorise the transference of such a school to a school board if the circumstances showed that there was no choice between giving the school away gratuitously or allowing it to go to ruin. Each case must depend on its own circumstances, but I do not think that in the present case we are driven to this alternative because we are told that if this school is not given to the board they will have to

build a new one. If the school is worth anything, the School Board, if they desire a transfer of it ought to make some equivalent. It further appears that it would still be of use if retained by the petitioners as a lecture-hall for promoting education in the district among young persons who have left school. While disapproving of the proposal to convey the school gratuitously to the board, I am prepared, in common with your Lordship, to consider, when formulated, an alternative scheme such as that which has been suggested by Mr Gordon.

LORD KINNEAR—I have no doubt that this matter has been carefully considered both by the trustees and by the School Board, and that the arrangement proposed seemed to them the best in the circumstances. But it is an essential part of their proposal that we should authorise the trustees to hand over the land and buildings of the trust gratuitously to the School Board. I agree that this is not within their power as trustees, nor is it in accordance with the practice of the Court to sanction gratuitous conveyances of a trust estate to persons who are not beneficiaries under the trust. It is clear enough that according to the ordinary principles of trust administration such a proceeding is out of the question. But it was said to be justified by certain clauses of the Education Act, which are supposed to sanction such conveyances to a school board. I agree, however, with what was said by Lord Shand in the case of *M'Culloch v. Kirk-Session and Heritors of Dalry*, that it cannot be held that by these provisions the Legislature intended that trustees, in the administration of endowed schools throughout the country, should be entitled to divest themselves of their school buildings, with the result of defeating the trust under which these are held. I think that the petitioners derive no aid from the provisions of that Act.

Some alternative suggestions have been put before us, but I do not think we are in a position to deal with them decisively at present. So long as it seemed possible that the Court might sanction their own scheme it was hardly to be expected that the petitioners should give the same diligence to the consideration of other methods for relieving the board of its difficulties, as they may probably find necessary now that it has been decided that the trust estate cannot be handed over gratuitously to the School Board. I agree that we should refuse the petition so far as it seeks authority for a gratuitous conveyance of the buildings, and that for the rest the petitioners should have an opportunity of preparing and presenting to us a new scheme.

The LORD PRESIDENT was absent.

The Court pronounced this interlocutor—

“Refuse to authorise the petitioners to convey the heritable subjects belonging to the trust gratuitously to said School Board, and allow the petitioners to prepare and lodge a scheme for the

administration of the endowment in question.”

Counsel for the Petitioners—Gordon.  
Agents—Carment, Wedderburn, & Watson,  
W.S.

Counsel for the School Board—Skinner.  
Agents—Macrae, Flett, & Rennie, W.S.

Thursday, February 5.

## FIRST DIVISION.

### ELDER'S TRUSTEES, PETITIONERS.

*Process—Bankruptcy—Discharge of Trustee—Death of Trustee—Discharge of Trustee's Representatives—Expenses—Petition to Inner House—Procedure by Representatives of deceased Trustee to obtain Exoneration of his Intromissions as Trustee—Bankruptcy Act 1856 (19 and 20 Vict. c. 79), sec. 152.*

It is competent for the representatives of a trustee in a sequestration who has died during the dependence of the sequestration to obtain discharge by taking the proceedings directed by sec. 152 of the Bankruptcy Act 1856 to be taken by the trustee, and, if the representatives of the deceased trustee proceed by petition to the Inner House for exoneration and discharge of the deceased trustee's intromissions, the expenses of such petition will be authorised to be paid out of the sequestrated estate only to the extent of £5 5s., that being the amount required for a discharge in the ordinary form under sec. 152 of the Bankruptcy Act 1856.

The late Mr John Elder, S.S.C., was trustee on the sequestrated estate of Henri Marie Louis Pompe, 13 Royston Terrace. The sequestration had been awarded by the Sheriff of the Lothians and Peebles at Edinburgh. Mr Elder was elected trustee on the sequestrated estate on January 18, 1893. His election was confirmed by the Sheriff on January 25, 1893. Mr Elder lodged a bond of caution, and proceeded to realise and distribute the estate. On February 9, 1900, a first and final dividend was paid to the creditors whose claims had been duly lodged and admitted.

On May 24, 1901, Mr Elder died undischarged as trustee. Mrs Annie Hurst Whyte or Elder and others, the testamentary trustees of the deceased John Elder, presented a petition to the First Division of the Court praying for their exoneration and discharge as the trustees and representatives of the deceased John Elder of his whole intromissions as trustee, for warrant for delivery of his bond of caution, and for an appointment that the expenses of the petition should be paid out of the sequestrated estate.

The petition, besides narrating the facts above set forth, stated that a meeting of creditors of the sequestrated estate, on