be thrown if no father can be found to contribute towards its support. However that may be, it seems to me that *Butter's* case does not establish that where the Court think that one of the persons who has admittedly had intercourse with the pursuer is much more likely to be the father than the other, they are precluded from giving effect to that view merely because it is impossible for the woman to exclude the chance of the other man being the father. I for my part think that no such onus is put upon her. All the onus that is put upon her is to show that there are adequate reasons in fact for holding that the defender was the father rather than the other person to whom paternity might possibly be attributed.

In this particular case it seems to me that we have adequate grounds on which to go. The Sheriff-Substitute held it proved that the pursuer had menstruated between the 1st and the 7th of December in the ordinary way. That conclusion in fact did not rest entirely upon the pursuer's evidence, because it was corroborated by the mother, who gave very good reasons why she remembered this particular menstrual period. I do not know how the fact of menstruation could be more completely established than by the evidence of the woman herself and by her credible mother, because it is the kind of fact that is generally known only to these two persons, and very often known to no one except the party herself. Now that being established I think the medical evidence for the defence goes no further than that there are known cases where women have menstruated after they become pregnant, and also that there may be bleeding at the menstrual period after pregnancy which may sometimes be mistaken for normal menstruation. These cases are extremely rare, and I think every doctor who gave an unbiassed opinion would concur in this, that if menstruation had occurred as stated by the pursuer between the 1st and the 6th of December her pregnancy is much more likely to have occurred after that date than to have been existent at that date. In addition to the extreme rarity of the cases of menstruation after pregnancy I found upon the testimony of the medical witness for the pursuer, who I think states what is ordinary common sense. He says that intercourse midway between menstrual periods is least likely to result in pregnancy. Intercourse immediately following menstrual periods is extremely likely to result in pregnancy. Further, the normal period of gestation more nearly coincides with the 7th or the 8th December as the beginning than it does with the 18th or the 20th November. All these things point to what I think is a reasonable conclusion in common sense—that the defender was the author of this woman's condition and the father of her child.

While it is said in evidence that it is quite a common occurrence for a woman to menstruate after pregnancy, I have great difficulty in discovering how that can be medically established seeing that the very same doctor who said it states that neither doctors nor patients can distinguish between the menstrual discharge and the bleeding which is said sometimes to occur. Here I accept the evidence of the medical witness for the pursuer, that if this had been a threatened abortion and had gone on for five days it is very unlikely that any child would have been born at all. The pursuer and her mother speak to it being the ordinary menstrual period, while if there had been threatened abortion it would have been accompanied in all probability with pain in excess of that which ordinarily accompanies menstruation. But all these things are questions of fact, and I think that all that the defender succeeded in proving was that notwithstanding that the evidence pointed to the conclusion of his being the father, there was yet a medical possibility that he might not be, but that the paternity might be due to the other man. Such a possibility could never be excluded in any judgment in such a case, and if we never pronounced a judgment unless we were certain it was right, I am afraid we would feel ourselves incapable of disposing of a great many cases where there is a division of opinion on the Bench. But our duty is to arrive at the conclusion which we think is supported by the evidence, and not to entertain mere possibilities as disturbing the conclusion at which we would otherwise have arrived.

On these grounds I agree with your Lordship in the chair that the pursuer has established her case, and that she is entitled to the decree which she seeks.

LORD ORMIDALE did not hear the case.

The Court recalled the interlocutor of the Sheriff and granted decree.

Counsel for the Pursuer—J. G. Jameson—Fisher. Agents—Herbert Mellor, S.S.C., and R. D. C. M'Kechnie, Solicitor.

Counsel for the Defender—Wark, K.C.—Fenton. Agent—Charles T. Nightingale, S.S.C.

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*Wednesday, July* 20.

## FIRST DIVISION.

## GLASGOW EDUCATION AUTHORITY, PETITIONERS.

*Charitable and Educational Bequests and Trusts — Administration — Alteration of Scheme—Poverty Test.*

The governing body administering an educational bequest under a scheme framed in terms of the Educational Endowments (Scotland) Act 1882, by which bursaries tenable at intermediate and secondary schools were provided to children attending schools in a certain district "whose parents or guardians are in such circumstances as to require aid for giving them higher education," presented a petition for alteration of the scheme. By the alteration proposed the class of institution at which the bur-

saries were tenable was to be extended, and the bursaries were to be awarded by competitive examination, the condition as to the circumstances of the parents or guardians being omitted. The Court having intimated that they would not sanction this omission, the petitioners amended the proposed alterations accordingly. The Court *granted* the application as amended.

The Education Authority of the City of Glasgow, as the governing body administering an educational trust known as the "Gilchrist Bequest," presented, with the consent of the Scottish Education Department, a petition for alteration of the scheme of administration of the bequest, which had been framed under and in terms of the Educational Endowments (Scotland) Act 1882 (45 and 46 Vict. cap. 59), and approved by the Court on 21st December 1912.

The petitioners averred—"The provision of the said scheme as to the beneficial enjoyment of said bequest is as follows:—'The governing body, after paying the expenses of management and the burdens and taxes affecting the endowment, shall apply the free income of the endowment in establishing bursaries to be called the Gilchrist bursaries and to be tenable at intermediate or secondary schools. These bursaries shall be awarded among pupils attending public or State-aided schools in the district which was formerly the district of the School Board of Maryhill, and whose parents or guardians are in such circumstances as to require aid for giving them higher education.' During the period since the said scheme was approved the demand for the said bursaries from pupils qualified by residence has greatly diminished, so much so that already on two occasions, by reason of there being no qualified applicants, the School Board have added balances of income to the capital as provided in article 4 of said scheme, and the capital, which amounted in 1912 to £2050, now amounts to £2378, 11s. 2d. By reason of the provisions of section 4 of the Education (Scotland) Act 1918 the claims for the present bursaries are likely to become still less and the utility of the present scheme still further diminished. The said School Board of Glasgow on 6th May 1919 adopted the following resolution of one of its committees, viz.—'Committee recommended that the new Education Authority make application to the Court in order that section 8 of the present scheme . . . be amended to read—The governing body, after paying the expenses of management and the burdens and taxes affecting the endowment, shall apply the free income of the endowment in establishing bursaries to be called the Gilchrist Bursaries, and to be tenable at any Scottish university or at the day classes of any central institution, as the term central institution is defined by the Education (Scotland) Act 1908. The bursaries shall be awarded by competitive examination among pupils attending public or State-aided schools in the district which was formerly the district of the School Board of Maryhill, and whose parents or guardians are resident and have been resident for not less than five years in the district.' The existing scheme provides—'It shall be in the power of the Court of Session to alter the provisions of this scheme upon application made to them, with consent of the Scottish Education Department, by the governing body or any party interested, provided that such alteration shall not be contrary to anything contained in the Educational Endowments (Scotland) Act 1882.' The petitioners have submitted the proposed alteration of the existing scheme to the Scottish Education Department, and the Department have consented to the present application being made." They therefore craved the Court to alter the scheme in terms of the above resolution.

On 7th April 1921 Mr J. H. Millar, Advocate, to whom the Court remitted to consider the proposed alteration, reported, *inter alia*, as follows:—"The salient feature of the proposed alteration is not so much the extension of the class of institution at which the Gilchrist bursaries may be held, which appears to be unobjectionable, as the omission of what is generally called *brevitatis causâ* the poverty test. The petitioners, in other words, desire to make a bursary a species of prize or reward of pure merit irrespective of the circumstances of the winner. Such a proposal at first sight seems to come into conflict with section 15 of the Educational Endowments (Scotland) Act 1882, which, *inter alia*, provides that 'where the founder of any educational endowment has expressly provided for the education of children belonging to the poorer classes . . . or otherwise for their benefit, such endowment for such education or otherwise for their benefit shall continue so far as requisite to be applied for the benefit of such children.' The difficulty thus raised, however, appears to be met by the circumstance that an implicit poverty test is contained in sub-sections (1) and (3) of section 4 of the Education (Scotland) Act 1918, which authorise an education authority to grant assistance to any child or young person in their area who is qualified for attendance at an intermediate or secondary school. It humbly appears to the reporter that this enactment supersedes the necessity of continuing the poverty test in the case of this endowment, and he would accordingly recommend your Lordships to sanction the proposed alteration of the scheme subject to the following adjustments:—The words 'or otherwise' should be inserted after the words 'competitive examination,' so that the petitioners may not be tied down to a single method of ascertaining merit. The residential qualification contained in the last words of the proposed alteration might be dispensed with, more especially as it appears neither in the bursary clause (section 11) of the original scheme, nor in section 8 of the scheme as altered by your Lordships. The founder's predilection for the district of the School Board of Maryhill seems to be sufficiently secured by restricting the award of bursaries to pupils attending public or State-aided schools in that district."

Argued for the petitioners—Under the present scheme the usefulness of the bequest

had ceased, as the funds could only be applied for purposes which were now provided for out of the rates. This was contrary to the policy generally followed in administering such bequests—*Kirk Session of Prestonpans* v. *School Board of Prestonpans*, 1891, 19 R. 193, 29 S.L.R. 168; *Governors of Anderson Trust*, 1896, 23 R. 593, 33 S.L.R. 430. The proposed alteration would enable the funds to be applied to purposes for which no provision was made out of the rates.

The Court, without delivering opinions, modified the existing scheme so as to read as follows:—"The governing body, after paying the expenses of management and the burdens and taxes affecting the endowment, shall apply the free income of the endowment in establishing bursaries to be called the Gilchrist bursaries, and to be tenable at any secondary school or any Scottish university or at the day classes of any central institution as the term central institution is defined by the Education (Scotland) Act 1908. These bursaries shall be awarded by competitive examination or otherwise among pupils (1) attending public or state-aided schools in the district which was formerly the district of the School Board of Maryhill, (2) who or whose parents or guardians are resident and have been resident for not less than five years in the district, and (3) who or whose parents or guardians are in such circumstances as to require aid for giving them higher education."

Counsel for the Petitioners—J. A. Christie. Agents—E. A. & F. Hunter & Company, W.S.