sonable one, and that it is quite within the powers of the Court to sanction it in the circumstances. We must be satisfied that the trustees cannot use the four hundred merks for the main purpose contemplated by the founder, and that there is no more expedient method of paying it out according to the views expressed in the will. On the whole, I am very much inclined to approve of that proposed change.

The other change suggested is also one of a slight kind, and it is certainly very much in harmony with modern ideas upon the question of such charities. Three hundred merks were to be given to clothe the children who were being educated. The Bishop's intention to provide them with a uniform is not desirable for either the children or the school. It is a kindred purpose which is now proposed. It will be for the benefit of the children, and therefore I propose that it should be approved of. The money thus set free is to be devoted to the payment of fees and school books, and it was explained in the course of the argument that the trustees intend to provide necessary articles of clothing, *e.g.*, boots, &c., without providing a uniform. That is a slight change, but it is expedient and desirable.

These are the two main points of difference between the new scheme and the scheme hitherto in use. [There were one or two points of mere detail, upon which his Lordship gave an opinion, which need not be noticed here.] I think the scheme should be approved, and that the prayer of the petition should be granted.

LORD DEAS and LORD MURE concurred.

The trustees and the minister were granted their expenses out of the trust-funds, but expenses were refused to the parishioners on the ground that there was no necessity for their appearance in the process, their interest being safe in the hands of the minister, and their statements against the administration of the fund by the trustees being unsubstantiated. The Court expressed their opinion that it was necessary to protect so small a fund from being diminished by such a claim.

Counsel for Petitioners — Lee — Jameson. Agents—Scott, Moncrieff, & Wood, W.S.

Counsel for the Minister—Pearson. Agents—Macrae & Flett, W.S.

Counsel for the Parishioners — M'Kechnie. Agent—R. A. Veitch, S.S.C.

Saturday, November 18.

FIRST DIVISION.

THE LORD ADVOCATE *v.* THE SCHOOL BOARD OF STRATHMIGLO.

School—Education Act 1872 (35 *and* 36 *Vict. cap.* 62)*—Board of Education—School Board.*

In a petition at the instance of the Lord Advocate under the 36th section of the Education Act, the duty of the Court is simply ministerial, and they will only have regard to the question of the regularity of the proceedings under the statute.

Observed that the Board of Education are quite entitled, after refusing sanction to an "opinion and determination" of a School Board, to change their views and give their approval.

This was a petition and complaint by the Lord Advocate against the School Board of the parish of Strathmiglo, brought under the 36th section of the Education (Scotland) Act, 35 and 36 Vict. cap. 62, in the following circumstances:—

On 23d December 1874 the School Board resolved to provide for the educational requirements of the western district of the parish by the erection of a new school to the west of Gateside; and this resolution was intimated by the School Board Secretary to the Board of Education on 2d January 1875. The intimation was—"I am to state that my Board decline to take a transference of Burnside School, and propose to make provision for the educational requirements of the parish by erecting a new school a little to the west of Gateside. That your Board may the better understand the matter, I am to submit to you the following copy of proceedings, and report on the subject." Accompanying the intimation were copies of minutes of several meetings of the School Board. The minute of the meeting of 23d December 1874, *inter alia*, bore—"This, then, is the resolution and determination of the majority of my Board, viz., To provide for the educational requirements of the western district of the parish by the erection of a new school a little to the west of Gateside, upon a piece of ground belonging to the governors of Philp's Trust, and specified in Mr Thom's motion. I therefore now ask the sanction of your Board to this proposal, so that the providing of the necessary school accommodation for this district may no longer be delayed." Delay took place in the proceedings, though communications went on between the two Boards until 1st March 1876, when the School Board met, and it was resolved that accommodation be provided for 100 children. Following thereupon, the Board of Education wrote to the clerk of the School Board upon the 3d March 1876—"Sir, The Board of Education have duly considered the report, dated 23d December 1874, transmitted to them by the School Board of the parish of Strathmiglo, in terms of the 27th section of the Education (Scotland) Act. . . . The School Board report as their opinion that the educational requirements of the parish exceed the provisions for supplying the same, and that their determination to provide additional school accommodation is as follows:—viz., To erect upon a piece of ground a little to the west of Gateside, belonging to the governors of Philp's Trust, a new public school for the accommodation of 100 scholars, and a residence for the teacher. The Board of Education, in terms of section 28 of the Act, approve of the above opinion and determination, and authorise the School Board to act upon and carry the same into effect forthwith." Notwithstanding that letter, the School Board failed to proceed with the building, and in answer to a requisition, under the 36th section of the Act, had intimated their declinature to comply with it. Thereupon this petition was brought to have them ordained to do so.

In their answers the School Board explained that at the time when their resolution to erect a school at Gateside was come to, the Board of Education prevented its being carried into effect, and on 20th April 1875 wrote refusing their sanction, and intimating "that the educational requirements of the western district of the parish will be more suitably provided for by a school at Burnside." The School Board had previously had under consideration the advisability of taking over the Burnside School for their purposes, but had found, from the nature of the trust under which it was held, that it could not be legally transferred to them. They had failed to get an opinion from the Board of Education upon the subject of the legality of the transfer, and had then appealed to the Education Department in London against the refusal by the Board of Education to sanction the proposal to build at Gateside. Meantime, under pressure of the Board of Education, they obtained temporary use of the Burnside School, and in the beginning of 1876 the Board of Education was petitioned by the ratepayers to sanction its retention. At the second election of a School Board, on 29th April 1876, a majority was returned in favour of the school being at Burnside.

In these circumstances—the Board of Education having given no reason for the change of opinion indicated by the order of the 3d March 1876, to proceed with the school at Gateside, and it being now ascertained that the Burnside School could be obtained and was sufficient for the accommodation of the parish—it was submitted that the prayer of the petition should be refused.

The case of *The Lord Advocate* v. *School Board of Stow and Others*, February 19, 1876, 3 R. 469, was referred to.

At advising—

Lord President—I do not think that there is any room for doubt in this petition. The only question is, Whether the proceedings are within the statute? If so, we have nothing to do with the merits of the dispute between the local Board and the Board of Education. As regards discretion in the matter, the Board of Education is supreme and final, and we cannot interfere.

Are the proceedings, then, within the statute? The provisions of the 27th, 28th, and 36th sections of the Act are all very simple I think, and there cannot be much difficulty upon the question. The original proposal—I call it so, for all the subsequent proceedings took their departure from it—was the communication of 2d January 1875, from the School Board to the Board of Education. The only part of the documents of any consequence which, in accordance with the terms of that letter, accompanied it, was the minute of meeting of the School Board on 23d December 1874. A motion was submitted that Burnside School should no longer be kept in view, for the reason that it was held under a special trust, and that the proprietor then vested in it declined to sanction the transference, and the motion further suggested that the Board should consider Burnside not suitable for a school for the western portion of the parish, and should take the necessary preliminary steps for erecting buildings on another site. It has been contended that the resolution with which the minute closes [*reads as above*] is imperfect under the 27th section, because it is a determination without an opinion, and not in the words of the section, that the requirements "exceed the provisions" for supplying education. That is a most critical and ingenious exception to take to the action of a School Board. What the School Board did was to look at the requirements of the parish, and their proceedings presume a want of accommodation. The clerk then writes to the Board of Education to ask their sanction to what was proposed, which it was necessary to have. So that I disregard that objection. It is clearly a determination within the plain meaning of the 27th section.

The way in which this communication was received is seen from the letter of 20th April 1875, written by the Secretary to the Board of Education to the School Board. They express disapprobation of the scheme, or, as they put it, refuse sanction of it. And that is an end of it. It is quite plain why they refused. They thought Burnside a better site than Gateside, and that the school there might be transferred; but as time went on they found reason to change their mind.

It is further clear from the communications between the two Boards that the Board of Education had resumed consideration of the resolution of the School Board, communicated in their letter of 2d January 1875. The School Board could be under no doubt about this. If it were incompetent for the Board of Education to go back and reconsider, the course they took might be inept. But I cannot imagine any such objection. Circumstances might emerge to make the Board of Education look at a proposal in a more favourable light, and if they refused sanction at one time there is no reason why they should not give it at another after a change of mind.

After various communications implying a reconsideration of the matter, the Board of Education, at their meeting on the 3d of March 1876, authorise their chairman to write to the School Board to say that they have had before them various documents—the school schedule, the report of 3d March 1876, and previous communications and reports by Principal Tulloch, &c.,—and that upon a consideration of all these they approve of the opinion and determination of the School Board to erect a new school for 100 scholars at Gateside on the ground belonging to Philp's Trust.

That determination is in the terms of the 28th section of the Act, and I can conceive no objection to it. The School Board, after receiving the sanction were bound to go on without delay, but instead of that they think fit to open up the negotiations again. Whether that was expedient or not it is not for us to say. The question is, whether there is an opinion and determination by the School Board in terms of the 27th section of the Act, sanctioned by the Board of Education in terms of the 28th section. Whether, further. the School Board has failed to carry that out, and has continued to do so notwithstanding the requisition served upon them in terms of the 36th section. These facts appear to me to be quite made out on the papers before us, and I therefore think the prayer of the petition should be granted.

Lord Deas—It was pleaded to us that there was a statutory objection to the course taken by the Board of Education, but I cannot discover that that is so from the proceedings before us.

While the School Board changed their views on the plan to be adopted for supplying the deficiency in the means of education, the Board of Education changed theirs also, and came to think the school should be erected at Gateside, as had been the opinion of the School Board at first. There is no statutory provision to prevent either the one or the other from altering their views. Apparently the Board of Education only changed in this sense, that they found the obstacles in the way of getting the Burnside School were so great that the proposals should not be persevered with. But supposing their reasons were not so clear, it lies with the Board of Education to act as they think right, and when they make their requisition without any effect, our duty is merely ministerial. It is not for us to judge whether there is anything unreasonable in their view, but I would only urge that in this case, so far as I see, it is only right and reasonable.

Lord Mure—I am satisfied that these proceedings are within the statutory powers of the Board of Education, and that is all that we have to consider. I cannot say that the Board of Education have not given the School Board full time to carry out the proposal which they had sanctioned.

The Court granted the prayer of the petition.

Counsel for Petitioners — (Lord Advocate) Watson—Trayner. Agent—Donald Beith, W.S.

Counsel for Respondents—Balfour—J. C. Smith. Agents—Graham, Johnston, & Fleming, W.S.

Wednesday, November 22.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

M'MEEKIN *v.* ROSS (SCOTT'S TRUSTEE.)

Bankrupt—Sale—Mercantile Law Amendment Act (19 *and* 20 *Vict. c.* 60) *sec.* 1—Res Specifica—*Delivery.*

S sold to M all the scrap-iron he had then in stock, and as much more as should be made up to a certain date. M allowed S to draw upon him for £200, and to renew a bill granted for a similar transaction three months before. On the bankruptcy of S, M claimed all the scrap-iron then in S's yard, under the 1st section of the Mercantile Law Amendment Act.—*Held* that, there being no specific *corpus* or quantity, the transaction was not a sale, and the Act did not apply.

The pursuer, John M'Meekin, an iron merchant in Coatbridge, accepted an offer made to him by Messrs Scott, iron ship builders, Inverkeithing, on 24th September 1875, of thirty tons of scrap-iron then in their hands, and of all that they might make for six or eight weeks thereafter, allowing the defenders to draw on him for £298, 12s. 6d. Under this agreement two deliveries were made, whose value amounted to £190, 17s. 6d. The latter of these deliveries took place on 25th December 1875. On 11th January Messrs Scott again wrote to the pursuer, offering him all the scrap-iron they had then in stock, and all they should make up to 1st April 1876, if they were allowed to draw on him to the amount of £200. This offer was accepted by the pursuer, and the former bill for £298, 12s. 6d. was renewed to the extent of £140. No portion of this scrap-iron was delivered. The estates of Messrs John Scott were sequestrated in March 1876, and John Ross, the defender, appointed trustee.

The pursuer brought this action to have it declared that "the pursuer was, and that he still is, entitled to demand and receive delivery of the whole scrap-iron which the defenders John Scott & Sons had in stock in or about their works or other premises at Inverkeithing at 11th January 1876, and also of the whole scrap-iron thereafter made or produced by them, and which was in their possession at their said works or premises or elsewhere, or under their control, at the date of the sequestration of their estates as aforesaid;" and pleaded—"The pursuer having purchased and paid for the said scrap-iron as aforesaid, and the same having been allowed to remain in the custody of John Scott & Sons as aforesaid, the pursuer is entitled to decree of declarator, as concluded for."

The defender pleaded—"2. The alleged contract of sale being incomplete as to subject, quantities, and prices, the pursuer has no ground of action. 3. There having been no sale of specific and existing goods at a certain price, the Mercantile Law Amendment Act has no application."

The first section of the Mercantile Law Amendment Act is as follows:—"Where goods have been sold, but the same have not been delivered to the purchaser, and have been allowed to remain in the custody of the seller, it shall not be competent for any creditor of such seller after the date of such sale to attach such goods as belonging to the seller by any diligence or process of law, including sequestration, to the effect of preventing the purchaser or others in his right from enforcing delivery of the same, and the right of the purchaser to demand delivery of such goods shall from and after the date of such sale be attachable by or transferable to the creditors of the purchaser."

The Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having considered the cause, assoilzies the defender Ross from the conclusions of the action, and decerns.

"*Note.*—The pursuer seeks to recover from the defender Ross, as trustee on the sequestrated estate of John Scott & Sons, the whole scrap-iron which the bankrupts had in stock at 11th January 1876, and also the whole scrap-iron thereafter made by them and remaining in their possession at the date of their sequestration.

"The contract founded on by the pursuer stands upon three letters, dated 11th, 15th, and 18th January 1876. In the first of these letters the bankrupts wrote—'We will have another lot of scraps soon from a ship we are about to plate, besides what we have still in stock. You may have them secured to you if you promise market price during the next two months. If you have no objections, we will draw at three or four months to the extent of £200 for what we make —say to 1st of April.' This offer was accepted by the pursuer's letter of 15th January, subject to the condition that a bill which was then