acts prohibited by this section must be in a reasonable sense "to the neglect of duty." The conviction does not specify any particular offence; it repeats the general words of the statute, and there is no specification except of the time, place, and names of parties. But it is fixed that a conviction of this kind must either express the essential facts on which it proceeds or must indicate them by reference to the complaint, and here the complaint is ambiguous, as it presents two alternatives.

Lord Craighill concurred, on the ground that the conviction was bad as regards one constable, and must therefore be quashed altogether. Had the conviction related to two constables in uniform only, he would not have been disposed to interfere with it.

Lord Justice-Clerk concurred, on the grounds —(1) That the conviction did not specify either alternative of the charge; (2) that the conviction was bad as regards one of the constables. The 24th section of the statute, he thought, disclosed two distinct and substantive offences, to both of which the proviso "to the neglect of duty" was applicable. He reserved his opinion on the important question whether a constable on duty was entitled to go into a public-house and get a glass of whisky, and whether the publican, knowing him to be on duty, was entitled to serve him with it. The guilty knowledge would no doubt be a question of circumstances in each case, but in the general case the publican knew the constable on the beat, and if the constable in uniform was served with drink it would hardly do for the publican to say that he did not know the constable was on duty.

The Court answered the question in the negative, quashed the conviction, and gave the appellant £7, 7s. as expenses.

Counsel for Appellant—R. V. Campbell. Agent —R. A. Veitch, S.S.C.

Counsel for Respondent—Trayner. Agents— D. & W. Shiress, S.S.C.

Friday, February 23.

APPEAL—CAMPBELL *v.* JAMESON.

School—Compulsory Education—Education (Scotland) Act 1872, *sec.* 70.

Held that a highland ghillie who did not send to school his two daughters, aged respectively five and nine, the nearest school being distant 3½ miles from his house, had not failed grossly and without reasonable excuse to provide elementary education for his children within the meaning of the 70th section of the Education (Scotland) Act 1872.

This was a case stated by the Sheriff-Substitute at Perth in a prosecution instituted by the respondent, Procurator-Fiscal for the county of Perth, at the instance of the School Board of the parish of Kinloch-Rannoch against the appellant, a ghillie residing at Auchtarsin, in said parish, charging him with an offence against "the Education (Scotland) Act 1872," in so far as from a date specified in 1875 he had neglected to send his children to school. The case stated that the nearest school to Auchtarsin was 3½ miles from the appellant's house; that the children in question were both girls, aged respectively five and nine; and that the School Board had been required by the Board of Education to erect a school at Auchtarsin, but had failed to do so. This last circumstance the Sheriff did not feel himself entitled to take into consideration, and after some conversation with the appellant (who was in Court), the purport of which, however, was not stated, he convicted the appellant, and imposed a fine of 10s.

The 70th section of "The Education (Scotland) Act 1872," 35 and 36 Vict. cap. 62, imposes a duty on School Boards to appoint an officer to ascertain and report what parents have failed and omitted and are failing and omitting to provide their children with elementary education in terms of the 69th section of the Act; and of such parents and their children the clerk of the School Board is directed to keep a list. The School Board is further authorised to summon such parents to appear before them and to require every information and explanation with respect to their failure in duty; and if the parent shall fail to appear or to satisfy the Board that he has a reasonable excuse, and shall not undertake to the satisfaction of the Board to perform his duty in future, it then becomes the duty of the Board to certify in writing that the parent has been and is grossly and without reasonable excuse failing to provide his children with elementary education. On this certificate being transmitted to the Procurator-Fiscal, he is bound to prosecute before the Sheriff for the failure of duty specified in the certificate, and on conviction the parent shall be liable to a penalty not exceeding 20s. or to imprisonment not exceeding 14 days; and such procedure may be repeated against the same parent, and in respect of a continuance of the same failure of duty, at intervals of not less than three months.

Argued for appellant—There was here no evidence of gross and unreasonable failure. There had formerly been a school at Auchtarsin, maintained by the Society for promoting Christian Knowledge, to which the appellant's children were sent; and there was a prospect of a Board School being opened.

Argued for respondent—By section 71 the judgment of the Sheriff is made final; and this appeal raises no question of law under the Summary Prosecutions Appeals Act 1875. Reasonable excuse was purely a matter of fact, and was negatived by the Sheriff. In *Grant* v. *Wright*, May 31, 1876, 3 Rettie, Just. Rep. 28, the wilful taking of sea-trout was held to be a question of fact, and the appeal was dismissed.

Replied for appellant—In *Grant's* case the Court held there was evidence before the Sheriff on which he might legally convict.

At advising—

Lord Young—The question here is, Whether on the facts stated by the Sheriff there can be held to be sufficient evidence in law of gross and unreasonable neglect to discharge the statutory duty? It must be kept in view that compulsion for the purposes of education was introduced for the first

time by this statute, and the language of the statute is such as clearly to indicate that the compulsory clause is to be carried out judiciously, discreetly, and even gently and tenderly. The parent is not to be punished for mere failure to provide with elementary education his children between the ages of five and thirteen, unless in the circumstances of each particular case the failure is gross and without reasonable excuse. There might, for instance, be a great difference in this matter between highland and lowland parishes, for even the Legislature could not overcome geographical limitations, except sometimes at incommensurate expense. It might in the present case be a subject of reasonable doubt whether the appellant has simply neglected his duty as a father; but, at least in the case of the younger child, I cannot conceive that there is any room for doubt on this other question, whether he has so failed grossly and without reasonable excuse. There may be *ex facie* cases of gross failure under this section, but the present is not one of them, and the public prosecutor has not laid before the Sheriff any evidence of gross neglect or want of reasonable excuse, which it was incumbent on him to do. The conviction must therefore be quashed.

The other Judges concurred.

Counsel for Appellant—Rhind. Agent—R. Menzies, S.S.C.

Counsel for Respondents—Asher—Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

COURT OF SESSION.

Friday, February 23.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

FERGUSON *v.* HUNTER AND OTHERS (FERGUSON'S TRUSTEES).

Succession—Mineral Lease—Capital and Income—Husband and Wife—Trust—Residue.

Circumstances in which *held* that a direction to trustees to pay over the free annual income of a truster's whole means and estate to his widow did not indicate an intention that she should have the whole profits of mineral leases wherein he was tenant, but merely the interest accruing on these profits.

Held that all such provisions must be interpreted according to the intention of the truster.

The pursuer of this action was the widow of James Ferguson of Weston, who died without issue on 2d March 1872, leaving a trust-disposition and settlement dated 17th February 1872, whereby he assigned and disponed his whole property, heritable and moveable, to certain trustees, the defenders of this action. The trust-deed, after providing various legacies, &c., proceeded as follows:—"In the fourth place, after satisfying or providing for the foregoing purposes, and after deducting the whole annual expense of maintaining the trust-estate and carrying on the trust, of which annual expense, both as regards amount and particulars, my trustees shall be sole judges, I direct my trustees to pay or apply a sum, not exceeding £250 yearly, out of the free annual income of the residue of my estate towards the education and maintenance of the family of the said Allan Andrew Ferguson (of M'Leod's farm, Picton, Nova Scotia), and that half-yearly or oftener as they see fit, so long, but only so long, as my trustees are satisfied that it is necessary or proper, of which they shall be sole judges; and to pay the balance of such free annual income of the residue of my estate to my said wife in case she shall survive me, half-yearly, during all the years and days of her life after my death, unless and until she enters into another marriage, whereupon she shall cease to have right to occupy either Auchenheath Cottage or Wiston Lodge, or to enjoy any provisions in her favour connected therewith, or to the said balance of income, and shall be entitled only, in lieu and in place thereof, to a free yearly annuity of £250 during the remainder of her life, payable half-yearly, at two terms in the year . . . but I provide and declare that so long as my said wife is entitled to the said balance of income, and the same shall in any year exceed £2750, she shall be bound to pay over one-fourth of the excess of each such year, but not exceeding the sum of £100, to my sister Mrs Margaret Ferguson or Reid, wife of John Reid junior, commission merchant in Glasgow, in case she shall then be in life; another one-fourth of said excess, but not exceeding the sum of £150, to my sister Mrs Eliza Ferguson or Davidson, wife of John Davidson, surgeon, residing in Newmilns, Ayrshire, in case she shall then be in life, and the remaining two-fourths, but together not exceeding £200, to the said Allan Andrew Ferguson, or his children in the event of his death equally among them."

The question at issue in this action turned upon the interpretation of this fourth purpose of the trust, the truster having been engaged at the time of his death in working the minerals in the estates of Auchinheath and Blackwood, in Lanarkshire, under leases with Mr Hope Vere, the proprietor, at a large profit, and these leases having five years to run from the date of his death, a question arose between the widow and the trustees whether the widow was entitled to receive the whole of the profits derived from these leases as income, or was merely entitled to the interest on the profits as they were realised.

The trustees were empowered to "sell and convert into money" the truster's means and estate as they might see fit, and were directed after the disposal of the liferent of his means to invest the whole in the purchase of lands to be entailed on a certain series of heirs. The leases were taken to James Ferguson "and his heirs, and any person or persons to be assumed by him or them as partners in the working of the minerals after mentioned, but expressly secluding all other assignees or sub-tenants, legal or voluntary, unless consented to by the said William Edward Hope Vere or his heirs or successors, by a writing under their hand."

At the date of the truster's death the annual profits from his mineral leases amounted to £20,000; since that date they had only yielded about