the instigation of older people who might be possibly moved thereto by motives not of the best description.

In the next place, and supposing that the action had been at the instance of the pursuer's grandfather, I am of opinion that the Sheriff-Substitute made a mistake in allowing a proof, I suppose with the object of enabling himself to determine the question whether the defenders were justified in excluding the pursuer from their school owing to his mental condition, and it seems to have been in the contemplation of the Sheriff-Substitute that after evidence of the kind usually given in cases involving inquiries of this kind, which, as everyone knows, is generally lengthy and conflicting, he should then decide whether the pursuer was entitled to be educated at the Pitlochry Public School or elsewhere. Now it appears to me that under the Education Acts School Boards are the proper judges of questions of this kind, and that their actings ought not to be interfered with unless, as the Sheriff puts it, their decision is capricious or unconscionable or founded on an erroneous view of the law, and, I might add, or if their conduct has been oppressive. But there is no suggestion in the whole proceedings in this matter that the School Board have acted otherwise than regularly and fairly, and not only have they after careful investigation determined this question in the way they have done, but the matter has been investigated by the Scotch Education Department with the assistance of an able expert in such matters, and I think it is out of the question to propose that there should now be a proof, and that the Sheriff-Substitute should upon that proof review the resolution that has been come to by the School Board and has been approved of by the Board of Education.

By section 26 of the Education (Scotland) Act 1872 it is provided that all public schools shall be under the management of the school board of the parish or burgh in which they are situated. The exercise of their discretion in regard to the management of the school, including of course the question of the exclusion or admission of any pupil, forms part of the functions of the School Board as managers of the school, and resolutions arrived at by them with regard to such matters ought not, in my opinion, to be interfered with except on very weighty grounds, and none such exist here.

As I agree with what has been said by the Lord Justice-Clerk, by Lord Stormonth Darling, and by the Sheriff in his note, it is unnecessary for me to add more.

LORD LOW was absent.

The Court recalled the interlocutors of the Sheriff-Substitute and Sheriff (except in so far as they had dismissed the action as against the defender MacGowan, and which the Court affirmed), sustained the first plea-in-law for the defenders the School Board, and dismissed the action.

Counsel for the Pursuer (Appellant)—T. B. Morison, K.C.—Macdonald. Agent—John C. Sturrock, Solicitor.

Counsel for the Defenders (Respondents)—Hunter, K.C.—Jameson. Agents—Carmichael & Miller, W.S.

Tuesday, March 17.

FIRST DIVISION.

[Sheriff Court at Arbroath.

GOURLAY *v.* MURRAY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, c.* 58), *Sched.* I (1), *a*, (*ii*)—*Compensation—"Sum Reasonable and Proportionate to the Injury"—Illegitimate Child—Funeral Expenses.*

In an application for compensation under the Workmen's Compensation Act 1906 at the instance (1) of a deceased workman's illegitimate pupil daughter, who at the date of his death was partially dependent upon him under a decree of affiliation and aliment, and (2) of his father, the Sheriff-Substitute found, *inter alia*, that the sum available for compensation was £150; that the deceased's father was entitled to payment out of that sum of £5, 10s., being the amount paid by him for the deceased's funeral expenses; and that the illegitimate daughter was entitled to a reasonable sum proportionate to the injury to her, which he assessed at £144, 10s. At the date of the workman's death the capitalised value of the decree of aliment was £78.

Held, in an appeal, that in awarding the whole balance of the sum available for compensation as compensation to the illegitimate daughter the Sheriff had proceeded on a wrong principle, the Act not requiring the whole sum to be disposed of, and a *remit* made to him to put a value on the prospective contributions which the deceased would probably have made had he lived towards his daughter's support.

Opinion per curiam that reasonable funeral expenses were a proper charge on the fund available for compensation. *Bevan* v. *Crawshay Brothers (Cyfartha), Limited*, [1902] 1 K.B. 25, *followed.*

The Workmen's Compensation Act 1906 (6 Edw. VII, c. 58), First Schedule, enacts—"(1) The amount of compensation under this Act shall be—(*a*) Where death results from the injury—(i) if the workman leaves any dependants wholly dependent upon his earnings, a sum equal to his earnings in the employment of the same employer during the three years next preceding the injury, or the sum of one hundred and fifty pounds, whichever of those sums is the larger, but not exceeding in any case three hundred pounds. . . . (ii) If the workman does

not leave any such dependants, but leaves any dependant in part dependent upon his earnings, such sum, not exceeding in any case the amount payable under the foregoing provisions, as may be agreed upon, or, in default of agreement, may be determined on arbitration under this Act to be reasonable and proportionate to the injury to the said dependants. . . ."

Margaret Ann Murray, 11 Wallace Street, Arbroath, pupil illegitimate child, aged four months, of Helen Murray, residing there, and of the deceased John Murray, blacksmith and golf club maker, Carnoustie, claimed compensation under the Workmen's Compensation Act 1906 for the death of the said John Murray, from his employer James Gourlay, golf club maker and blacksmith, Carnoustie. James Murray, labourer, Olive Cottage, Carnoustie, the father of the deceased, also claimed compensation. In a joint-arbitration in the Sheriff Court at Arbroath the Sheriff-Substitute (LEE) awarded the first applicant £144, 10s., allowing the second applicant £5, 10s. for funeral expenses. Gourlay took a stated case for appeal.

The case stated—"The Sheriff-Substitute as arbitrator in his award, of date 23rd December 1907, *found in fact* that it is admitted that the deceased John Farquharson Murray was killed on 9th August 1907 by accident arising out of and in the course of his employment, and that his average weekly earnings were 18s. 6d. Found further in fact that the claimant Margaret Ann Murray is the illegitimate daughter of the said deceased, conform to extract decree of affiliation and aliment obtained on 17th July 1907, and that she was at the time of his death partially dependent upon his earnings; . . . . that the said claimant James Murray is an able-bodied labourer in receipt of regular wages, and that he was not, at the time of the deceased's death, either wholly or partially dependent upon the deceased's earnings. Found further in fact that the deceased's funeral expenses, amounting to £5, 10s. or thereby, have been paid by the claimant James Murray. Found that the sum available for compensation in terms of the Workmen's Compensation Act 1906 is £150. *Found in law* that the claimant James Murray not having been dependent on the deceased had no claim to compensation under the Act, but is entitled out of the sum available for compensation to repayment of the amount paid by him for funeral expenses, and that the claimant Margaret Ann Murray having been partially dependent on the deceased is entitled to a reasonable sum proportionate to the injury to her through the deceased's death as compensation therefor. Assessed the compensation due to the said claimant at £144, 10s."

The *question of law* for the opinion of the Court was—"Whether the sum assessed is reasonable and proportionate to the injury to the claimant Margaret Ann Murray in so far that it exceeds in amount the aggregate of the alimentary contributions in which the deceased workman would have been liable had he lived?"

Argued for appellant—The arbiter was in error in thinking that the sum he had awarded was reasonable and proportionate to the injury suffered by the claimant. He had treated the claimant as a total dependant, whereas she was only partially dependent on the deceased. [As to the meaning of "dependants" reference was made to section 13 of the Workmen's Compensation Act 1906 (6 Edw. VII, c. 58).] The claimant was partially dependent on her mother, and the arbiter should have taken that fact into consideration—*Osmond* v. *Campbell & Harrison, Limited*, [1905] 2 K.B. 852. The extent of the deceased's liability was the sum in the decree for aliment, the capital value of which was at the date of his death £78. The date of the deceased's death was the *punctum temporis* to be looked at, and at that date the claimant's mother was alive and partially liable for her support. The award so far as in excess of £78 was not therefore reasonable and proportionate to the injury suffered in the sense of section 1 (*a*) of the First Schedule of the Workmen's Compensation Act 1906 (*cit. sup.*)

Argued for respondent—The question whether the claimant was totally or partially dependent was one of fact on which the arbiter was final—*Baird & Co., Limited* v. *Birsztan*, February 2, 1906, 8 F. 438, *per* Lord President at p. 440, 43 S.L.R. 300. The arbiter was entitled to exercise his discretion as to what was reasonable compensation so long as the sum awarded was within the maximum allowed by the Act—*Osmond* (*cit. sup.*), *per* Romer, L.J., at 958; *Bevan* v. *Crawshay Brothers* (*Cyfartha*), *Limited*, [1902] 1 K.B. 25, *per* Collins, M.R., at p. 29. The sum in the decree of affiliation was not conclusive as to the deceased's measure of liability. He might have been liable for an indefinite period had he lived and the claimant been unable to support herself. The arbiter was entitled to take into account all circumstances affecting the amount of liability—*Oncken's Judicial Factor* v. *Reimers*, February 27, 1892, 19 R. 519, 29 S.L.R. 384; *A B* v. *C D's Executor*, February 15, 1900, 2 F. 610, 37 S.L.R. 421.

[The question as to the funeral expenses was not argued].

At advising—

LORD M'LAREN—In this case the important facts are that the deceased John Murray was killed by an accident arising out of and in the course of his employment, and that he left an illegitimate child, Margaret Ann Murray, who was partially dependent on his earnings. The Sheriff-Substitute, acting as arbitrator under the Workmen's Compensation Act 1906, has found that the sum available for compensation is £150, and he has awarded this sum, less £5, 10s. for funeral expenses, as the compensation due to the child. I may here notice that it has been held in England—*Bevan*, 1902, 1 K.B. 25—that in such a case reasonable funeral expenses are a

proper charge on the available fund, and I propose that we should follow this decision. The question then remains whether the Sheriff-Substitute was right in awarding the balance of the available fund to the child as compensation.

The Act of 1906 puts illegitimate children and grandchildren into the category of dependents, and in their case, just as in the case of lawful children, the question must be, What is the measure of the parents' obligation to maintain the child?

According to the judgment of the House of Lords in *Main Colliery Company* v. *Davies*, 1900 A.C. 360, this is a question of fact in each case to be determined neither by strictly legal considerations nor by any supposed standard of living in the class to which the workman belongs, but by taking into consideration the extent to which the applicant was in fact dependent on the injured workman, and putting a value upon the benefit which the applicant derived from being so dependent.

In the question put to us it is stated (inferentially) that the sum assessed "exceeds in amount the aggregate of the alimentary contributions in which the deceased workman would have been liable had he lived." Now it is evident that the deceased was not a willing contributor to the support of his illegitimate child, because he allowed a decree of affiliation and aliment to go out against him, and no facts are stated which warrant the inference that the deceased would have contributed anything in excess of what he could be compelled by law to pay. If there are grounds for holding that the deceased voluntarily recognised an obligation to contribute to a larger extent than he was legally bound to do, he would be right in taking such evidence into account. But I think that in awarding the whole available fund, less funeral expenses, the Sheriff-Substitute has proceeded on a wrong principle, because the Act of Parliament does not prescribe that the maximum sum available for compensation should be awarded in every case, but only that reasonable compensation within that limit should be paid. We cannot in this Court determine the amount, because we are not judges of the issue of fact in such cases, though we may in some cases be under the necessity of determining such subordinate facts as raise a question of law for our decision. All that we can do in this case is to remit to the Sheriff with instructions to put a value on the prospective contributions which the deceased would probably have made if he had lived, keeping in mind that an exact estimate of the deceased's responsibility is seldom possible and is not required by the statute.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD PEARSON was absent.

The Court pronounced this interlocutor—

"Recal the award of the Sheriff-Substitute, dated 23rd December 1907: Remit the case back to the Sheriff-Substitute with instructions to him to put a value on the prospective contributions which, if he had lived, the deceased John Murray would probably have made towards the support of his illegitimate child, and to proceed as accords: Find it unnecessary further to answer the question of law in the case, and decern: Find the appellant entitled to the expenses of the stated case on appeal, and remit," &c.

Counsel for Appellant—Orr, K.C.—Duncan Millar. Agents—Inglis, Orr, & Bruce, W.S.

Counsel for Respondent—Wilton—Chapel. Agents—Armstrong & Hay, S.S.C.

Tuesday, March 17.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

ALLAN'S EXECUTOR *v.* ALLANS AND OTHERS.

Succession — Uncertainty — "Foreign Missions" — "Or any other in the Foreign Field Suitable" — Executor — Charitable Bequest.

A layman in his holograph general settlement provided—"The residue of my estate I give and bequeath for the benefit of Foreign Missions in India, China, Africa, and South America, or any other in the foreign field suitable. I appoint the Rev. W. Watson, Kiltearn, as my executor, at a remuneration of £20 sterling."

Held that the bequest was not void for uncertainty, but was a bequest to a particular class with a power of selection in the class to a trustee, to wit, the executor, and was, as a charitable bequest, entitled to favourable construction—*Dundas* v. *Dundas*, January 27, 1837, 15 S. 427, *followed*.

Observations on the question whether a bequest for religious purposes is a charitable bequest.

On April 12, 1907, the Rev. William Watson, The Manse, Kiltearn, Ross-shire, executor-nominate of the late Donald Allan, M.D., Evanton, Ross-shire, under his holograph will dated June 23, 1900, and recorded September 3, 1906, brought, as pursuer and real raiser, an action of multiplepoinding against Robert Allan, Mapumulo, Victoria County, Natal, and others, for the purpose of deciding the disposal of the residue of the testator's estate.

The clause in the testator's will, which was holograph, dealing with the residue, is quoted *supra in rubric*.

Claims were lodged by (1) Robert Allan and others, the parties interested in the testator's intestate succession, the heir-at-law having collated, on the ground that the residuary bequest was void from uncertainty; (2) the Very Rev. John