ninety days three months' imprisonment, and fined the said Thomas M'Clounnan £25, and in default of payment within ninety days two months' imprisonment."

The *question of law* was—"Did the facts above stated, held by me to be proved, constitute evidence upon which it could competently be found that the appellants David Hislop senior, David Congalton, and Thomas M'Clounnan had been guilty of the offence charged?"

Argued for the appellants—At common law it was essential to the offence of keeping a gaming house that it should be libelled and proved that the house was run for the profit of those keeping it—*H.M. Advocate* v. *Greenhuff and Others*, 1838, 2 Swinton 236. The Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. cxxxii), sec. 284, which made a similar enactment to the Glasgow Police (Further Powers) Act 1892 (55 and 56 Vict. cap. clxv), sec. 15, did not create any new offence different from the common law offence—*Traynor* v. *Macpherson*, 1911, S.C. (J.) 54, *per* Lord Salvesen at p. 60, 48 S.L.R. 92, 6 Adam 407. Here there was no finding that the appellants derived anything from the profits made from gaming. The question should be answered in the negative.

Argued for the respondent—Section 15 of the Glasgow Police (Further Powers) Act 1892 was a substantive enactment complete in itself, and an offence under it had been fully proved. *Greenhuff's* case (*cit.*) was not in point, for there the accused was charged with keeping a gaming house for profit.

LORD JUSTICE-GENERAL—The accused in the first case were charged with being concerned in the management and conduct of a certain gaming-house in Glasgow, and the magistrate before whom the case was tried found that the premises in question were during the period libelled under the joint care and management of the appellants, and that they were directly and knowingly concerned in the management and conduct thereof as a gaming-house. In other words, he found that they committed the offence charged under the statute. It is said that although that is so, nevertheless as it does not appear in the Stated Case that the premises were conducted by a keeper for his own profit they were not a gaming-house. I can find no authority and certainly no reason to support that proposition. They were none the less a gaming-house, although nobody made profit, if gaming was carried on therein.

It has been suggested that the 15th section of the statute here libelled is merely a re-enactment declaratory of the common law. I do not agree. Even if that were so, I am not of opinion that according to the common law this was not a gaming-house because the person keeping the house made no profit. The old case of *Bernard Greenhuff and Others*, 1838, 2 Swinton 128, 236, was cited to us in support of that proposition, but an examination of that case will show that it cannot be relied upon in support of the proposition that according to the law of Scotland it is not an offence to keep a gaming-house unless there is profit made in it. That is not the test. The test is that laid down by Lord Justice-Clerk Boyle—Whether or not the accused carried on games which are morally detrimental to the community. I have not the slightest hesitation in saying that the magistrate was quite right in deciding that these three accused were concerned in the management of a gaming-house at the time the offence is alleged to have been committed. [*His Lordship then proceeded to deal with a point which is not reported.*]

LORD HUNTER and LORD ANDERSON concurred.

The Court answered the question in the affirmative.

Counsel for the Appellants—M'Laren. Agent—R. D. C. M'Kechnie, Solicitor.

Counsel for the Respondents—Watson, K.C.—Greenhill. Agents—Campbell & Smith, S.S.C.

COURT OF SESSION.

Friday, July 13.

SECOND DIVISION.

CHALMERS' TRUSTEES *v.* TURRIFF PARISH SCHOOL BOARD.

Succession—Trust—Uncertainty—Charitable and Educational Bequests—"Such other Charitable Purpose or Educational Scheme for the Poor."

Testators directed their trustees to pay annually an annuity to certain charitable institutions. The deed of settlement provided that in the event of such an institution ceasing to exist it should "be in the power of our said trustees to apply the said bequests for such other charitable purpose or educational scheme for the poor as they may deem fit and proper." *Held* that, a provision for an "educational scheme for the poor" being equivalent to a bequest for a charitable purpose, the provision was not void from uncertainty.

James Taggart, Provost of Aberdeen, and others, the trustees acting under a deed of settlement, dated 24th July 1844, and numerous codicils, granted by George, James, and Alexander Chalmers, *first parties*, and the School Board of the Parish of Turriff and others, being the recipients of benefits under the deed of settlement, *second parties*, brought a Special Case to decide whether a provision in the deed of settlement was void from uncertainty.

The *deed of settlement* provided, *inter alia*, for the annual payment of an annuity of £20 to the treasurer of the House of Refuge in Aberdeen for behoof of that institution. It contained the following direction:—"Declaring that in the event

of any of the said institutions to which bequests are made as above ceasing to exist and being discontinued, then and in that case it shall be in the power of our said trustees to apply the said bequests for such other charitable purpose or educational scheme for the poor as they may deem fit and proper."

The Case stated—"7. In 1885, under the provisions of the Aberdeen Reformatory and Industrial Schools Act 1885, there were amalgamated into one trust the Oldmill Reformatory for boys, the Mount Street Reformatory for girls, the Industrial School for boys at Oakbank, the Industrial School for girls at Whitehill, and the said House of Refuge. . . . The said House of Refuge ceased to exist and was discontinued in or about June 1885. . . . The directors of the Aberdeen Reformatory and Industrial Schools and Houses of Refuge have intimated by letter to the factor, dated 23rd September 1913, that they do not intend to make any application for the said annuity and may be held as having acquiesced in its discontinuance from the date thereof. . . ."

These *questions* were, *inter alia*, submitted —"1. Are the first parties entitled to apply the annuity of £20 bequeathed to the House of Refuge in Aberdeen in respect of its discontinuance to such other charitable purpose or educational scheme for the poor as they may deem fit and proper? 3. Is the provision in question void from uncertainty?"

Argued for the first parties—This bequest was not void from uncertainty. It had been established that the Courts would sustain any bequest for a charitable purpose, and an educational scheme for the poor was just one particular branch of charity—*Milne's Executors* v. *Aberdeen University Court*, (1905) 7 F. 642, 42 S.L.R. 533. As the bequests were really for charity the mode of their application was not of the substance of the legacy—*Mayor of Lyons* v. *Advocate-General of Bengal*, (1876) 1 A.C. 91, at p. 113.

Argued for the second parties—A bequest for purposes of education even of the poor was not a bequest for a charity — *M'Conochie's Trustees* v. *M'Conochie*, 1909 S.C. 1046, 46 S.L.R. 707. If it has been held that "religious" purposes was too vague, then *a fortiori* "educational" purposes was too uncertain also. The trustees were only entitled to apply the funds to charitable purposes in the strictest sense of the term, as the testators had in their wording of the deed carefully delimited their application.

LORD JUSTICE-CLERK—In this case I do not think there is really any serious difficulty about any of the questions. By the testator's deed of settlement a number of bequests are made in favour of certain named charitable institutions, and then it is provided that in the event of any of these institutions ceasing to exist and being discontinued the trustees are to "apply the said bequests for such other charitable purpose or educational scheme for the poor as they may deem fit and proper." Now one of the named institutions — the House of Refuge in Aberdeen—has ceased to exist, and the question is raised whether the provision by which the trustees are empowered to apply the bequest so released for such charitable purpose or educational scheme for the poor as they may deem fit is void from uncertainty. On the authorities I think it is quite clear that this question must be answered in the negative. In my opinion it is settled that the Court will sustain any bequest for a "charitable" purpose, and in accordance with what was said in the case of *Commissioners for Special Purposes of Income Tax* v. *Pemsel*, [1891] A.C. 531, with reference to *Baird's Trustees* v. *Lord Advocate*, 15 R. 682, 25 S.L.R. 533, I am of opinion that a provision for an "educational scheme for the poor" is a bequest for a charitable purpose, not only according to the law of England where the Statute of Elizabeth rules, but also according to the law of Scotland. Accordingly I am unable to hold that this provision is void from uncertainty.

LORD DUNDAS, LORD SALVESEN, and LORD GUTHRIE concurred.

The Court answered the first question of law in the affirmative and the third question in the negative.

Counsel for the First Parties — Wilton. Agents—Nisbet, Mathison, & Oliphant, W.S.

Counsel for the Second Parties — Scott. Agents—Tawse & Bonar, W.S.

Tuesday, July 18.

FIRST DIVISION.

[Lord Cullen, Ordinary.

HAWTHORNS & COMPANY, LIMITED v. WHIMSTER & COMPANY.

Contract—Ship—Implement of Contract—Reasonable Time—Strike of Workmen—Repair of Ship — Impossibility of Performance—Subsequent Agreement.

A firm of engineers contracted to repair a ship. The contract fixed no time for completion of the repairs. When the repairs were in part carried out the engineers' workmen came out on a sympathetic strike with the engineers on sea-going vessels whose demands had been refused by the shipowners' federation. Some shipowners, however, conceded the demands of the sea-going engineers and so escaped the consequences of the strike. The shipowners in question on hearing of the difficulty discussed the matter with the ship engineers, and in so doing suggested that they would bring workmen from another locality to complete the repairs if the engineers would supply the use of tools and gear. They thereafter moved the ship from one dock to another and arranged with another firm to complete the repairs, without intimation or disclosure of the terms of the agreement to the engineers, and without any statement