for supplying the same, and that their determination to provide additional school accommodation is as follows—(*a*) To erect at Stow, on a site to be given by Mrs Mitchell of Stow, and approved of by Sir Alexander Grant, a school capable of accommodating 200 pupils and teacher's dwelling-house; and (*b*) to dispose of the existing public school and teacher's dwelling-house." The Board of Education, in terms of section 28 of the Act, approved of the above opinion and determination, and authorised the School Board to act upon and carry the same into effect forthwith. Certainly that is quite in accordance with the provisions of the statute. There is a distinct resolution by the School Board, and a clear and distinct confirmation of that by the Board of Education. The statute says that when that has taken place the School Board must go on forthwith to carry that into execution. It has been suggested that after the confirmation of such a resolution circumstances might so alter as to render it inexpedient or improper to proceed in terms of that confirmed resolution. I can quite understand the possibility of that. It is needless to suppose cases; but undoubtedly such a case might arise, and if so, I apprehend it would be the duty of the School Board to reconsider the matter, and to submit the resolution that they might form upon such reconsideration to the Board of Education for their approval, by whom the same would be either confirmed or rejected. But is there any case of that kind here? Nothing in the least degree like it. What takes place after this confirmation of the School Board's resolution is this, that on the 9th day of April 1875 there is a meeting of the School Board, and the minute of meeting bears "that the Board having agreed to rent Mrs Mitchell's school for a time for temporary accommodation, with the view of having ultimately both schools merged into one, and having formerly intimated to the Board of Education their determination to erect a school to accommodate 200 pupils, they now further determine to enlarge the plans to provide accommodation for 226 pupils, which they find will be ample enough for the district, and instruct the clerk to report accordingly to the Board in Edinburgh, and request their consent to the same." Now, there is nothing in that which can be said to go back on the previous resolution; it is merely an extension of accommodation beyond that already resolved on and confirmed, which is intended to be provided by the School Board. But then this resolution was also submitted to the meeting and carried—"that Mrs Mitchell having rented her school to the Board, and there being in that and the parish school sufficient accommodation for all the children of the district, and looking to the high price of labour from the erecting of so many public schools, that the board delay in the meantime taking any further steps for the erection of new schools." It seems to me that this resolution is simply in the face of the statute, which says that after a resolution providing additional accommodation has been carried and confirmed by the Board of Education, the School Board shall go on without delay to carry it into execution, and this resolution is that they shall not do so. Was that a resolution they could expect the Board of Education to consider or to give effect to? The Board of Education were bound to reject, after consideration, such a resolution as that, because it was against the statute. It was a resolution in violation of the duty of the School Board as prescribed by the statute, and accordingly they are told repeatedly by the Board of Education that it was impossible to sanction the delay—that they cannot do so consistently with their duty. The rest of the correspondence, except in so far as it is a repetition of that, seems to me to have nothing to do with the question before us. Then the Board of Education, at last finding that the School Board adhered to their resolution for indefinite delay, issued a requisition upon them in terms of the statute. It is printed in the papers before us, and seems to me to be in the proper form under the statute. That requisition has not been attended to by the School Board, and it now falls upon us to order them to proceed in terms of the statute and carry out their resolution of 29th October 1874.

The other Judges concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioners—Dean of Faculty (Watson)—Trayner. Agent—Donald Beith, W.S.

Counsel for the Respondents—Balfour—Keir. Agents—H. & A. Inglis, W.S.

Wednesday, February 23.

SECOND DIVISION.

[Lord Craighill.

CUTLAR *v.* REID AND OTHERS (M'LEOD'S TRUSTEE.)

Expenses—Tender by Defender.

An action was brought for £236. In their defences the defenders tendered £150 as in full of all claims. The Court decerned against the defenders for payment of £145 with interest, which raised the amount awarded by the Court very slightly above the tender:—*Held* that the technical rule as to expenses must be strictly addered to, and expenses found due to neither party.

Counsel for Pursuer—Moncrieff—J. A. Reid. Agents—Philip, Laing, & Munro, W.S.

Counsel for Defenders — M'Laren — Harper. Agent—J. Knox Crawford, S.S.C.

Wednesday, February 23.

FIRST DIVISION.

[Lord Rutherfurd Clark.

ACCOUNTANT OF COURT *v.* M'KINNON (GRAINGER'S CURATOR).

Curator—Investment.

Held that a *curator bonis* may invest his ward's money in loans, for security and payment of which assessments are authorised to be levied by Act of Parliament.

M'Kinnon was *curator bonis* to Grainger, who suffered under mental disease. On the curator presenting his annual account for year 1874-1875, the Accountant of Court reported as follows:—

"The Accountant has found it necessary to object to the following investments made by the *curator bonis*, viz., on mortgage by the commissioners under 'The Aberdeen County and Municipal Buildings Act 1866,' and 'The Sheriff Court-Houses Act 1860,' . . . £4500

"On mortgage by the trustees acting under 'The Aberdeenshire Roads Act 1865,' . . . 6500

"These are objected to, in respect that the securities are not heritable, and are thus of a class not hitherto sanctioned by the Court. But they have been passed temporarily on the personal responsibility of the *curator bonis*, who has been required to realise the amount of the said mortgages before the period for closing his next and final account."

Upon this the curator laid before the Accountant a detailed account of the nature and position of the investments objected to.

The £4500 was lent to the Aberdeen County and Municipal Buildings Commissioners as commissioners under "The Sheriff Court-Houses Act 1860."

It appeared that the total cost to the county of that half of the Court-House was £15,852, 14s. 8d., which had been reduced at this date by £4179, 7s. 6d.

The security was the assessment imposed in terms of the Act. The rate was not limited by the Act, and was imposed at the rate of one-sixth of a penny per pound, which yielded £923 per annum. The commissioners had resolved that the cost should be defrayed in thirty years, and had fixed the rate accordingly.

The £6500 was invested in a loan to the Aberdeen Road Trustees on the security of the assessments under "The Aberdeenshire Roads Act 1865." From the accounts of the Road Trustees, under their Act, for the year ended Whitsunday 1875, it appeared that the amount of money borrowed and then due for payment of the road debt was £28,600. This includes the loan of £6500 by the curator. The turnpike road debt amounted at the passing of the Act to £43,000, the whole of which sum was borrowed and the debt paid off. The borrowed money presently due amounted, as above stated, to £28,600, so that since 1866-67, the first year of the assessment under the new Act, the debt had been reduced by £14,400. By sections 46 and 83 of the Act the trustees were empowered to borrow money to pay off the debt specified in the schedules annexed to the Act, and to assign in security for payment of it the assessment authorised to be levied under the Act, and to grant mortgages for the sums borrowed. By section 47 the money so borrowed must be applied to the payment of the debt, and to no other purpose whatever. The annual assessment for payment of interest of the debt exceeded £3000 considerably. For the year ended Whitsunday 1875 it amounted to £3364, 15s. 4d. By section 82 the assessment was recoverable in the same way as the land tax and assessed taxes.

The Accountant accordingly reported to the Lord Ordinary as follows:—

"At audit of the curator's accounts for the year ending 30th September 1875, the Accountant has seen cause to object to certain investments made by the *curator bonis*, and has required him to realise the same before his next annual account falls due. Copy of the Accountant's report to that effect is hereto annexed.

"These investments are on mortgages granted by trustees under certain Acts of Parliament. The curator, in answer to the Accountant's report, submitted evidence which has satisfied him that the securities are in themselves unexceptionable; but as the Court has not hitherto sanctioned investments of funds under judicial management on securities of that class, the Accountant has felt it incumbent on him to object to them, and require them to be realised. By desire of the curator, the Accountant now reports the matter to the Lord Ordinary.

"The investment of funds under judicial management is not regulated by statute, and no special authority as regards investments is conferred by the Pupils Protection Act other than that specified in the 12th section thereof, which is somewhat general in its terms. But by the decisions of the Court the general rule has been held to be, that judicial factors appointed under the Pupils Protection Act can only invest the money of their wards in—

"1. Consols or other national funds.

"2. Heritable securities.

"3. Deposits, or operating accounts, with one of the chartered banks in Scotland.

"The Accountant would refer to Fraser's treatise, 'Guardian and Ward' (2d edition, p. 475), and the decisions in the cases there noted.

"The Lord Ordinary will observe that, though it may be very desirable that greater latitude should be given for the investment of funds under judicial management, it is essential for the guidance of factors and of the Accountant of Court that the power of investment shall be regulated by fixed and clearly defined rules. The securities taken by the factor in this case are of a class that is now numerous in Scotland; and if they are sanctioned by the Court, the probable effect may be that a large amount of funds now and in past years invested in consols, on heritable securities, or in bank at a low rate of interest, will be transferred to such trust-mortgages as have been taken in this factory, as the greater facilities of investing, and the higher rate of interest that can be obtained on the latter, will always form strong inducements for such transfer.

"The Accountant requests the instructions of the Lord Ordinary."

The Lord Ordinary reported the case to the Inner House.

Counsel appeared for the curator, and argued—There is no statutory enactment defining what are the securities which may form the subject of investment in such cases. The present practice seems based on the case of *Haldane*, and another in 1848. In both these cases money had been invested on personal security, and the Court ordered the uplifting of the sums and their re-investment in Government or heritable securities. But this was before the Pupils Protection Act, which placed *curators bonis*, &c., under the supervision of the Accountant of Court. Section 13 of the statute provides—"That the Accountant shall see that the factor's accounts of charge and