

only consequence would be that it might be dismissed as a petition in the Sheriff Court, but it would still remain a perfectly sufficient intimation of the workman's claim to satisfy the requirements of the statute. Therefore it appears to me that that objection completely fails.

As to the second point, I agree with your Lordships. The material point appears to me to be that all the considerations which ought to go to affect the maintenance of a claim for compensation are very plainly set out in the case stated by the Sheriff-Substitute, and have been fairly considered by him. I confess that it appears to me that a great part of the appellants' argument was based upon a misconception of the question which is really raised in this appeal, and especially of that part of the argument which was founded upon the second section and the First Schedule. We have nothing to do in this appeal, as I think, with what the Sheriff is required to consider in estimating the amount of the award which he is to give. If it had been said that certain facts, and, in particular, the fact upon which so much weight was laid, that the Railway Company have offered this man employment and that he has refused it, had been brought before the Sheriff, and that he had refused to consider it, I daresay that might have been a relevant objection to his award. And if it could be shown that such a refusal was due to a failure on the part of the Sheriff to have regard to one of the things which the second section requires him to consider, we should have to send the case back to him. But nothing of the kind is stated in the case. It is perfectly clear from the statement of the case that the Sheriff has had regard to all these facts which the appellants bring before us, because they are all very clearly set out in the case, and having had regard to them all he has proceeded to fix the amount of the compensation. Now, that we, of course, cannot review, and we are not asked to review it, but the only point that was taken is this, not that that compensation was not reasonable, not that it has not been fixed upon a careful consideration of all the elements which the statute requires, and which the Sheriff is bound to take into account, but that although it may be a proper award, the respondent is not entitled to have decree for the amount, because his employers have offered him an employment which he has declined to accept. I can quite see the force of what Mr Salvesen said, that in many cases it is very right and proper for a company to give a workman such employment as he may be fit for after he has been injured in their service, although he is no longer a perfectly able-bodied man, and it may be very right that an injured workman to whom such an offer is made should accept it, and should not endeavour, as Mr Salvesen said, to eat the bread of idleness. All that is perfectly proper, but it merely suggests considerations for an arbitrator in estimating the amount of his award. If he should find, upon taking all these considerations into account, that the

compensation due under the statute is so much, then this Court cannot interfere with the process by which he has reached that conclusion. The point really came to this, that the respondent was bound in law to undertake the work which was offered to him by the Railway Company. I confess I know of no principle in law which would enable us to affirm that proposition. I can conceive no reason why he should be bound in law to accept an employment which he does not choose to accept, although the offer and refusal may be properly taken into account in fixing the amount of his compensation. When one looks at the case and finds that what is set out is that the man is satisfied that he is not equal with one hand to the work which he used to do when he had two hands, and that the Sheriff says that that is matter of fact, that he is not equal to his former work of engine-cleaner, and that he could not get wages at that work if he tried it, it seems to me that it would be a very arbitrary proceeding in a court of law to say that in these circumstances the man was bound to undertake the work merely because it was offered to him. I am therefore unable with your Lordships to find anything in the statute which would justify our saying that the respondent is to be deprived of compensation, because in the circumstances set out in this case he has declined to undertake the work which the Railway Company offered to him.

The Court pronounced this interlocutor—

“The Lords having heard counsel for the parties upon the stated case on appeal, Find in answer to the first question in the case that the proceedings were competently maintained; and in answer to the second question, that the respondent is in the circumstances entitled to be awarded the sum of six shillings per week, and decern,” &c.

Counsel for the Appellants—Salvesen, K.C. — Ferguson. Agents—Gordon, Falconer, & Fairweather, W.S.

Counsel for the Respondent—Dove Wilson Agent—Alexander Ross, S.S.C.

Tuesday, June 11.

FIRST DIVISION.

[Lord Low, Ordinary.

BARR v. ARDROSSAN CASTLE CURLING CLUB.

*Succession — Legacy — General or Special
Legacy — Ademption — Demonstrative
Legacy.*

A, by his trust-disposition and settlement executed in 1878, directed his trustees “to pay or transfer . . . the legacies following, namely, to pay” legacies of sums of money to two persons named and “to transfer” to the officials of a certain club “two five per

cent. guaranteed shares of £100 each" of a railway company. The truster in 1878 held among other stocks of the company £310 five per cent. preference consolidated stock; he held no shares of £100 each, and none such were issued. In 1880 the truster conveyed his whole estate, *inter vivos*, to trustees for certain purposes and for payment of the balance of the estate to himself or his heirs. A died in 1884, and in 1896 the balance of his estate, in which there was no stock of the said railway company, was paid over to his testamentary trustees, who raised an action of multiplepointing. The residuary legatees maintained that the legacy to the club was a special legacy and had been adeemed, or was void from uncertainty. *Held* (aff. judgment of Lord Low) that the legacy was not special but demonstrative, and consequently had not been adeemed, and that the club were entitled to be ranked and preferred to the amount which at the date of the truster's death would have been required to purchase an amount four per cent. guaranteed stock (converted) equivalent to £200 five per cent. preference consolidated stock of the railway company.

The following narrative is in substance taken from the opinion of the Lord President:—By trust-disposition and settlement dated 4th September 1878, the late John Barr conveyed his whole estates to trustees for certain purposes, and by the sixth purpose he directed his trustees "to pay or transfer, free of legacy-duty and charges, the legacies following, namely, to pay" legacies of sums of money to two persons named, "and to transfer to the president, vice-president, and treasurer for the time being of the Ardrossan Castle Curling Club two five per cent. guaranteed shares of £100 each of the Glasgow and South-Western Railway Company, to be held by them" for the purposes therein mentioned.

At the date of his testamentary settlement Mr Barr held £400 ordinary stock, £310 preference consolidated stock, and £70 perpetual guaranteed stock of the Glasgow and South-Western Railway Company. Interest was payable at the rate of five per cent. per annum upon the preference consolidated stock and the guaranteed stock. No part of the capital of the company was issued in shares of £100 each. Its capital, yielding £5 per centum per annum, consisted of guaranteed consolidated stock, preference consolidated stock, perpetual guaranteed stock, perpetual guaranteed stock No. 2, Castle-Douglas preference stock, and £20 five per cent. preference shares. The company issued no part of its capital in shares of £100 each, but it had certain preference shares of £20 each bearing interest at the rate of £5 per centum per annum. The said stocks were converted in 1881 by the company under their parliamentary powers into guaranteed four per cent. preference stock, each £100 of the original three stocks being entitled to £125 of the new stock, so as to yield £5 per centum per annum as prior to the conver-

sion. The said £20 preference shares were also converted into stock upon the same basis.

Mr Barr was a shareholder in the City of Glasgow Bank, and on 9th July 1880 he executed a trust-disposition and assignation whereby he conveyed to trustees his whole estates, heritable and moveable, with the exception of his household furniture. The leading purposes of the trust were repayment of certain advances which had been made to Mr Barr to enable him to pay calls upon his shares in the bank, relief of certain cautioners who had interposed to enable him to obtain an advance of money for that purpose, payment of calls to the liquidators, and after satisfying the whole specified purposes, re-conveyance of the residue, if any, to him his heirs and assignees. The purposes of this trust had not been fully carried out at the date of Mr Barr's death in September 1884, but after the whole purposes were fulfilled, a house which had belonged to him, and which was subsequently sold, certain property in Johnston, and a cash balance of £456 representing the price of his furniture, remained in the hands of the trustees under it.

Mr Barr died on 2nd April 1884. On 23rd December 1896 the balance of his estate was paid over to his testamentary trustees in terms of the trust-disposition and assignation.

Questions having arisen as to the distribution of the estate, the testamentary trustees raised an action of multiplepointing. A claim was lodged by the office-bearers of the Ardrossan Castle Curling Club in which they claimed (1) the sum of £338, 2s. 6d., or such other sum as would purchase such an amount of stock in the Glasgow and South-Western Railway Company as would yield £10 per annum for transfer to them in trust for the purposes specified in the testator's settlement; and (2) such a sum as represented £10 yearly for the period from Whitsunday 1884 to the execution of the said transfer, to be applied by the claimants in accordance with the provisions of the said legacy.

Claims were also lodged, *inter alios*, for certain of the residuary legatees, in which they claimed their respective shares of the residue of the trust estate.

On 20th July 1900 the Lord Ordinary (Low) pronounced an interlocutor whereby he found that the legacy to the Ardrossan Castle Curling Club was not a special legacy, but a legacy of such sum as might be required to purchase as at the date of the testator's death £250 guaranteed four per cent. preference stock of the Glasgow and South-Western Railway Company, and ranked and preferred the claimants, the officials of the Ardrossan Curling Club, to the sum of £271, 12s. with interest on £268, 15s. at 3½ per cent. from 15th May 1884.

Opinion.—[After narrating the facts and dealing with the claims of other claimants, his Lordship proceeded]—"The only other question which was argued related to the legacy to the Ardrossan Castle Curling Club. It is in these terms—"I direct my trustees to transfer to the president, vice-

president, and treasurer for the time being of the Ardrossan Castle Curling Club two five per cent. guaranteed shares of £100 each of the Glasgow and South-Western Railway Company, to be held by them' in trust for certain purposes.

"At the date of the settlement the truster held £460 ordinary stock, £310 preference consolidated stock, and £70 perpetual guaranteed stock of the Glasgow and South-Western Railway Company. The preference consolidated stock and the guaranteed stock yielded interest at the rate of five per cent. The company issued no part of its capital in shares of £100 each.

"I do not think that the legacy was a special legacy, and therefore it was not deemed by the granting of the *inter vivos* trust. The question, however, is whether it is not void from uncertainty?

"I think that the intention of the truster was that his trustees should transfer to the Curling Club a part of the railway stock held by him. I come to that conclusion (1) because the direction to the trustees is simply to 'transfer,' and (2) because the truster in fact held stock in the Glasgow and South-Western Railway Company.

"In the next place, it seems to me that the description 'guaranteed shares' may fairly be read as meaning (or at all events as including) preference consolidated stock. Suppose that the bequest had been of '£200 five per cent. guaranteed shares,' and that the truster had held the stock which he did hold with the exception of the £70 guaranteed stock. In that case I think that it would not have been difficult to conclude that the word 'guaranteed' was used in contradistinction to 'ordinary' stock, and that the truster intended his trustees to transfer £200 of the £310 preference stock which he held. I am disposed to take the same view, although the truster did hold guaranteed stock, because I think that he intended his trustees to transfer to the legatees a portion of some particular parcel of stock which he then held, and if so there was nothing which would at all fit the bequest (ordinary stock being out of the case) except the £310 preference stock.

"The chief difficulty which I feel arises from the description 'two shares of £100 each,' because such a thing as a share of £100 did not exist. If, however, I am right in thinking that the subject intended to be transferred was part of the £310 preference stock which the truster held, I do not think that it is an unduly strained construction to hold that he was dealing with the £310 preference stock as composed of parcels or shares of £100 each, two of which he desired to be transferred to the legatees.

"I think that this is a case of an incorrect description of the subject of the legacy, where, however, that subject can be sufficiently ascertained from the settlement and the circumstances existing at the time when it was made.

"The truster intended to give to the legatees part of certain stock which he held in the railway company; what that stock is is defined to this extent, that it

was five per cent. stock, and was not ordinary stock; the truster held stock of that description of sufficient amount to allow of the legacy being given out of it, and the amount given was two shares of £100 each out of a holding of, in round numbers, £300.

"Therefore, although the question is one of difficulty, I am of opinion that the claimants, the president and treasurer of the Curling Club, are entitled to the amount which at the date of the truster's death (or it may be six months thereafter) would have been required to purchase £200 preference consolidated stock, or an equivalent amount of the stock into which the preference consolidated stock was by that time converted."

The residuary legatees reclaimed against this interlocutor in so far as it sustained the claim of the Ardrossan Curling Club, and argued—The legacy to the Curling Club was a special legacy and had been adeemed. The direction to the trustees to "transfer" this legacy in contradistinction to those which they were to "pay" differentiated it from those others, and the word "transfer" was sufficient to make it special. There were passages in the Lord Ordinary's opinion involving a finding to this effect. Apart from the question of ademption the legacy was void from uncertainty, there being no shares of the kind named. Even assuming that the direction was to purchase and transfer, there were several five per cent. stocks of the Glasgow and South-Western Railway, and the trustees could not know which was intended—*Dresser v. Gray* (1887), 36 Ch. D. 205. No doubt it was a demonstrative legacy in the sense of pointing out the source from which it was to be satisfied, but that was not inconsistent with its being a special legacy—*Bell*, Pr. 1877; *Ersk.* iii. 9, 11; *Anderson v. Thomson*, July 17, 1877, 4 R. 1101.

Argued for the claimants and respondents, the Ardrossan Curling Club—The terms of the bequest amounted to a direction to transfer, or purchase and transfer, 5 per cent. guaranteed stock of the Glasgow and South-Western Railway. Some more precise language was necessary to render a legacy specific, such as "my" stock—*Sibley v. Perry* (1802), 7 Ves. Jr. 522; *Webster v. Hale* (1803), 8 Ves. Jr. 410; *Macdonald v. Irvine* (1876), 8 Ch. D. 101. The truster's intention was to benefit the Curling Club, and the legacy was one of a sum that would yield a certain annual value—*Devar v. Kirk Session of Torryburn*, March 23, 1864, 2 Macph. 910; *Melvin v. Nicol*, May 20, 1824, 3 S. 21. A direction to purchase and transfer shares was effectual as a bequest of stock—*Morrice v. Aylmer*, June 23, 1875, L.R., 7 H. of L. 717. The reclaimers' contentions were self contradictory. They maintained that the legacy was void from uncertainty, and at the same time that it was so specific that it had been adeemed. The Court always preferred the view which upheld rather than that which destroyed a legacy.

At advising—

LORD PRESIDENT—[*After narrating the facts his Lordship proceeded*—Upon these facts two questions of law have been raised—(1) Whether the legacy of the shares of the Glasgow and South-Western Railway Company in favour of the Ardrossan Castle Curling Club was adeemed by the trust-disposition and assignation of 9th July 1880, and (2) Whether, assuming that legacy not to have been adeemed, it is void from uncertainty.

It was maintained by the claimer that the legacy is specific, and that consequently it was adeemed by the conveyance of Mr Barr's estate contained in the trust-disposition and assignation of 9th July 1880. A specific legacy is thus defined by Lord M'Laren (*Wills and Succession*, p. 575, 3rd ed.)—"A specific legacy is a gift of a specified subject, which may be either corporeal or incorporeal—a definition which includes sums of money invested on specific securities." I am of opinion that the legacy in question does not satisfy this definition, and that it is not a specific, but a general, or perhaps more correctly, a demonstrative legacy. The case might have been different if Mr Barr had given the direction with respect to two of "my" five per cent. guaranteed shares of £100 each of the Glasgow and South-Western Railway Company, or had used other language unequivocally limiting the directions to particular shares which he possessed at its date. While, however, I agree with the Lord Ordinary in thinking that Mr Barr probably intended the direction to apply to shares which he then possessed, he did not limit it to such shares. His trustees could have fulfilled the direction to transfer the shares to the officials of the Curling Club as well by purchasing shares of the specified character and value in the market, and making them over to the officials, as by conveying shares which Mr Barr possessed at his death. The mere fact of a testator having had shares answering the description in a legacy at the time when he made it, does not, in my judgment, render the legacy specific. In the case of *M'Donald v. Irvine*, 8 Ch. Div. 101, it was held that a legacy of "500 Egyptian nine per cent. bonds" was not specific, though the testator had such bonds at the time when he made the bequest; and in the case of *Dresser v. Gray*, 36 L.R. Ch. Div., it was decided that a bequest of "50 shares in the York Union Banking Company," in which the testator held 70 shares of the nominal value of £100 each at the date of the will, was not specific but general, it being in effect a bequest of such a sum as at the date of the testator's death should be the value of 50 shares of £100 each in the unlimited company, although in that case the bequest failed because owing to events of which the testator was aware, it had become impossible to determine that value. Although, therefore, I agree with the Lord Ordinary in thinking that Mr Barr intended that the legacy should be satisfied out of stock which he possessed, I consider that the legacy was not adeemed by the trust-deed of 9th July 1880, because by its terms the

bequest was not limited to such stock. I may add that a bequest of railway "shares" will carry railway "stock," unless there is some valid reason for placing the more restricted construction upon it (*Morrice v. Aylmer*, 10 Ch. App. 148, overruling *Oakes v. Oakes*, 9 Hare 666).

The case is further complicated by the facts that the stocks above mentioned were in 1881 converted by the Glasgow and South-Western Railway Company, under Parliamentary powers, into guaranteed 4 per cent. preference stock, each £100 of the original three stocks giving right to £125 of the new stock, so as to yield 5 per cent. per annum as prior to the conversion, and that the £20 preference shares were converted into stock upon the same basis. I consider, however, that the conversion did not operate ademption.

The question, however, remains whether the legacy is void from uncertainty. It is true that no part of the stock of the Glasgow and South-Western Railway Company consisted of "5 per cent. guaranteed shares of £100 each," and indeed that the company issued no part of its capital in shares of £100 each. But the question is one of intention, and I agree with the Lord Ordinary in thinking that the description "guaranteed shares" may fairly be held to mean, or at all events to include, preference consolidated stock. It seems to me reasonable to hold, as the Lord Ordinary has done, that the term "guaranteed" was used in contradistinction to "ordinary" stock, and that Mr Barr intended that his trustees should either transfer to the Club £200 of the £310 preference stock which he held, or that if he should possess no such stock at the time of his death, his trustees should acquire and transfer £200 of that preference stock. It appears to me that in such a case the construction which will result in the legacy receiving effect should be preferred to the construction which would lead to its failing.

For these reasons I am of opinion that the Lord Ordinary's interlocutor should be adhered to.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Reclaimers and Claimants, the Residuary Legatees—A. S. D. Thomson—Younger. Agents—F. J. Martin, W.S.—Webster, Will, & Company, S.S.C.

Counsel for the Claimants and Respondents, The Ardrossan Curling Club—Wilton. Agent—Alexander Bowie, Solicitor.