

slenderest basis for an action of this kind. But I am quite ready to agree with your Lordship in holding that if you go to the substance of the case nothing serious in the nature of misrepresentation has been proved, and that on the contrary these promoters were in possession of what, in the somewhat loose language of the money market, is called options to various mineral fields in South Africa answering to the description in the prospectus.

LORD KINNEAR concurred.

The Court, both in Sleigh's and MacKirdy's cases, refused the prayer of the petitions.

Counsel for the Petitioners—Ure, K.C.—Readman—Horne. Agents—Drummond & Reid, W.S.

Counsel for the Respondents—The Lord Advocate (Dickson, K.C.)—C. N. Johnston, K.C.—T. B. Morison. Agent—Thomas Henderson, W.S.

Friday January 15.

SECOND DIVISION.

[Lord Low, Ordinary.]

MACINTYRE v. GRIMOND.

Succession — Trust — Uncertainty—“*Such Charitable or Religious Institutions and Societies as my Trustees may Select.*”

A testator by his trust-disposition and settlement directed his trustees, in events which happened, to divide a portion of the residue of his estate “to and among such charitable or religious institutions and societies as my trustees or the survivors or survivor of them may select, and in such proportion to each or any as they may fix.” *Held* (aff. judgment of Lord Low—*diss.* Lord Moncreiff) that the bequest was valid.

Alexander Dick Grimond, merchant and manufacturer in Dundee, died on 29th January 1903 leaving a trust-disposition and settlement whereby he directed his trustees, with regard to one-third of the residue of his estate, as follows:—“They shall divide, pay, and convey the same to and among such charitable or religious institutions and societies as I may direct, and in such proportions to each or any as I may fix by any writing, whether holograph or tested, or under my hand, and failing thereof in whole or in part, then as regards such whole or such part not disposed of by me to and among such charitable or religious institutions and societies as my trustees or the survivors or survivor of them may select, and in such proportions to each or any as they may fix.”

Mr Grimond left no directions as to the particular charitable or religious institutions and societies amongst which the said one-third equal part or share of residue should be divided, nor did he fix by any

writing, whether holograph or tested or under his hand, the proportions in which such institutions and societies should benefit from his said bequest.

The present action was raised by Mrs Margaret Isabella Grimond or Macintyre and another, two of the next-of-kin of the deceased Mr Grimond, against his trustees, for declarator that the above bequest in favour of charitable or religious institutions was void and ineffectual, and that the portion of residue referred to fell into intestacy.

The pursuers pleaded — “(1) The direction and appointment as to the application of the one-third equal part or share of the residue of his estate to and among such charitable or religious institutions and societies as his trustees or the survivors or survivor of them may select, and in such proportions to each or any as they may fix, contained in the trust-disposition and settlement of the said Alexander Dick Grimond, being invalid on the ground of vagueness and uncertainty, the said one-third equal part or share falls to be dealt with as intestate moveable succession and to be paid over to the pursuers to the extent of their shares on equal division among the whole next-of-kin, as being two of the next-of-kin of the deceased.”

The defenders pleaded — “(2) The testator's directions regarding the one-third share of residue in question being valid and effectual, the defenders should be assuizied with expenses.”

On 31st October 1903 the Lord Ordinary (Low) assuizied the defenders.

Opinion. — “The deceased Alexander Dick Grimond directed his testamentary trustees (to whom he conveyed his whole means and estate) to ‘divide, pay, and convey’ one-third of the residue of his estate ‘to and among such charitable or religious institutions and societies’ as he might direct, and in such proportions to each or any as he might fix by any writing, whether holograph or tested or under his hand, and failing thereof to and among ‘such charitable or religious institutions and societies’ as his trustees might select, and in such proportions to each or any as they might fix.

“Mr Grimond left no writing in regard to the institutions and societies which he desired to benefit, and the question raised in this case is, whether the direction to his trustees to apply the fund to such charitable or religious institutions and societies as they might select constitutes a valid testamentary direction to which effect can be given?”

“It is not disputed that the words ‘charitable or religious institutions and societies’ must be read disjunctively, and that it would be in the power of the trustees to apply the fund wholly to religious institutions and societies, and the question is whether that is not a description of the object of the bequest which is too vague and general to be the subject of a valid bequest.

“It is necessary to determine, in the first place, whether a bequest to religious

institutions and societies is a bequest for charitable purposes, because if it is so it is admitted that it would be effectual. Apparently in England such a bequest would be regarded as falling within the category of 'charitable,' but I do not think that the English decisions as to what constitutes a charitable bequest can be safely appealed to, because the courts of that country have, following the analogy of certain old statutes, given a much wider and more artificial significance to the word charity than has ever been adopted in Scotland. In the latter country, although I do not think that the term 'charitable bequest' would now be limited to the bequest of an eleemosynary nature, it seems to me that it cannot be extended so as to embrace a bequest only for religious purposes, especially where, as here, the trustor has named religious purposes as being in contradistinction to charitable purposes.

"If therefore the bequest is not a charitable bequest, the next question is whether, as the pursuers contend, it is too vague to receive effect.

"That question appears to me to be one of great difficulty. There is no precise rule by which such a question can be solved, each case falling to be determined upon a reasonable construction of the language used. Perhaps the nearest approach to a rule of general application is that laid down by Lord Lyndhurst in the case of *Crichton v. Grierson*, 1828, 3 W. & S. 329. He there said that by the law of Scotland it was competent for the disposer to point out particular classes of persons and objects which are intended to be the object of his favour, and then to leave it to an individual or a body of individuals after his death to select out of those classes the particular individual or the particular objects to whom the bounty of the testator shall be applied.

"Now, in this case, the trustor has pointed out a particular class of objects—religious institutions and societies—among which his trustees may make a selection. The pursuers, however, argued that although in one sense a class of objects was pointed out, the description was so wide and indefinite that it could not be made effectual, seeing that it embraced the whole world and every religion professed by mankind.

"I agree that there is no local limit within which the trustees must exercise their discretion, but I cannot assent to the view that all religions are embraced. I think that it is extravagant to say that the trustees would be entitled to apply the fund to such an object as the endowment of a Mohammedan mosque or a Hindoo temple. It seems to me that, considering that the trustor was a Scottish gentleman who is not said to have held any peculiar views upon matters of religion, the word 'religious' cannot reasonably be read as including anything beyond (at all events) the Christian religion. I imagine that it is certain that the trustor did not intend his trustees to go outside of the Christian religion, and it seems to me that in this

country that is the natural meaning to attach to the word 'religious' in the absence of any more precise definition. There is but little authority on the subject, but I observe that in *Attorney-General v. Pearson*, 3 Merivale 353, Lord Chancellor Eldon said (p. 409)—'I take it that if land or money were given for the purpose of building a church, or a house, or otherwise, for the maintaining and propagating the worship of God, and if there were nothing more precise in the case, this Court would execute such a trust by making it a provision for maintaining and propagating the established religion of the country.'

"If, then, I am right in thinking that the word 'religious' must be construed as referring to the Christian religion, I am not prepared to say that a direction to trustees to apply a fund to such institutions and societies of that religion as they might select is so indefinite as to be inextricable and incapable of being carried out.

"As I have said, each case must be decided upon a consideration of its own language and circumstances, but I think that the view which I have taken of the present case receives some support from the decision of the House of Lords in *Whicker v. Hume* (7 Clark 124), where a bequest of a scope somewhat similar to (but as I think wider than) that with which I am dealing, was upheld.

"In that case a fund was conveyed to trustees 'to be applied by them according to their discretion for the advancement and propagation of education and learning in every part of the world.'

"In giving judgment in that case the Lord Chancellor (Chelmsford) said—'There is no difficulty whatever with regard to the extensive character of this gift, for the subject upon which the discretion of the trustees is to be exercised is specific and limited. It is for "education" and for "learning," in the sense of teaching and instruction. . . . The mere circumstance that this spacious area' (every part of the world) 'is open to the discretion of the trustees would not prevent the gift being available as a good charitable bequest, the direction being sufficiently pointed and specific to be definite and certain.'

"Now, it seems to me that 'religious institutions and societies' (reading the word 'religious' in the sense in which I think it must be read) form an object of bequest as specific and limited as 'teaching and instruction,' and if that is so, then, according to Lord Chelmsford, the fact that no local limits are fixed within which the discretion of the trustees must be exercised is of no moment.

"It was argued, however, that the case of *Whicker* could not be regarded as an authority here, because the question was whether the bequest fell within the very wide category of what by the law of England are regarded as charitable purposes. That is true, but upon the other hand it is to be remembered that although the scope of purposes regarded as charitable is much wider in England than in Scotland, the English Courts have not adopted

so liberal and benignant an interpretation of charitable bequests as has obtained in Scotland.

"For these reasons I am of opinion that the defenders should be assoilzied."

The pursuers reclaimed, and argued—The word "religious" was so employed by the testator that it was necessary to read it as referring to institutions of a different class to those designated "charitable," and the bequest to religious institutions was void as it did not specify any such institution from which the trustees might make a selection—*Blair v. Duncan*, December 17, 1901, 4 F. (H.L.) 1, 39 S.L.R. 212; in *re White*, L.R. (1893), 2 Ch. 41; *Baird's Trustees v. Lord Advocate*, June 1, 1888, 15 R. 682, 25 S.L.R. 533. The English decisions on the present question could not be accepted as authoritative in Scotland—*Williams v. Kershaw* (1835), 5 Clark and Finely, 111 (note); *Cobb v. Cobb's Trustees*, March 9, 1894, 21 R. 638; 31 S.L.R. 506. The rule relied on by the respondents was applicable only to charitable bequests—*Crichton v. Grierson*, July 25, 1828, 3 W. & S. 329; *Hill v. Burns*, April 14, 1826, 2 W. & S. 80; *Low's Executor and Others*, June 21, 1873, 11 Macph. 744, 10 S.L.R. 505; *McGregor's Trustees v. Bosomworth*, January 8, 1896, 33 S.L.R. 364.

Argued for the respondents—The rule referred to by the Lord Ordinary, laid down in *Crichton v. Grierson*, *cit. sup.*, was not limited to charitable trusts—*Town Council of St Andrews v. Wemyss*, July 17, 1845, 17 Scot. Jur. 583; *Robbie's Judicial Factor v. Macrae*, February 4, 1893, 20 R. 358, 30 S.L.R. 411. The religious purposes contemplated by the testator should be held to be charitable—*Morice v. Bishop of Durham* (1805), 10 Vesey Junr. 521, Lord Eldon, p. 539; *Whicker v. Hume* (1858), 7 Clark 124; *Attorney-General v. Herrick* (1772), Ambler 712; *Mills v. Farmer* (1815), 1 Merivale, 55; *Townsend v. Carns* (1843), 3 Hare, 257; *Commissioners of Income Tax v. Pemsel*, L.R. (1891), App. Cas. 531.

At advising—

LORD JUSTICE-CLERK—I am of opinion in this case that the decision at which the Lord Ordinary has arrived is right and ought to be adhered to. The only ground on which the bequest in question is impugned is the ground of "vagueness and uncertainty." The bequest is distinct enough in its terms as regards the words used. It is that his trustees shall divide the residue of his estate into three equal parts, and "with regard to one of the said parts or shares, they shall divide, pay, and convey the same to and among such charitable or religious institutions and societies as I may fix by any writing, whether holograph or tested, under my hand, and failing thereof in whole or in part, then as regards such whole or such part not disposed of by me to and among such charitable or religious institutions and societies as my trustees or the survivors or survivor of them may select, and in such proportions to each or any as they may fix." It is not maintained that any part of this bequest is open to the imputation of vagueness or uncertainty,

except the words in which the object is described, viz., "charitable or religious institutions and societies." The testator left no directions, and therefore the selection is in the power and discretion of the trustees. But I do not think that it can be reasonably suggested that the testator himself could not have selected institutions or societies which would have been in accordance with the word "charitable" or the word "religious." Many objects might include both charitable and religious, and others might be more directly charitable as distinguished from religious, and *vice versa*. It can only be by the exercise of honest discrimination by those entrusted with the fund that the desire of the testator can be made effectual. But the desire is clear enough, that either charitable organisations or religious organisations shall be benefitted. He has left the selection to his trustees, presumably he having confidence in them, and relying upon their integrity, discretion, and judgment. The range of objects which he gives them is the range of the charitable or the religious, as embodied in existing institutions or societies. The choice is the trust they have to carry out, a trust of discretion, but a trust as regards which trustees cannot be in any real difficulty as to the class of objects which they are to have in view in making their selection of the bodies to which they will give grants. Charitable and religious are both expressions of limited range, and with limits which are quite intelligible to an ordinary mind. Both in England and Scotland the term charitable has not been held to be so general as to make a bequest bad from vagueness and uncertainty. Therefore if the words "or religious" had not been added the bequest could not have been impugned. Can it be said that the word "religious" is vague and uncertain and "charitable" is not? I am unable so to hold. In England a bequest to religious institutions has been held not to be void from uncertainty as being a charitable bequest. That of course does not directly bear upon the interpretation of a Scotch bequest, for the reasons pointed out by the Lord Ordinary, but I think the decision is useful as illustrating that "religious" can be interpreted as being not a general but a restricted expression. For it is difficult to see how "religious" could be held to fall within "charitable" if it was an expression of so wide a range as not to be compressible within any category of definition at all. As to what may fall under the word "religious" I express no opinion as to the limit of the bequest, such as is expressed by the Lord Ordinary. I feel myself unable to hold that the term "religious" as used in this bequest is vague and uncertain so as to make the bequest void, and I would move your Lordships to adhere to the judgment under review.

LORD YOUNG—It would be sufficient for me to say that I concur, but though I agree in the result at which the Lord Ordinary has arrived I do not agree with all that he has said in his opinion. I would

not be prepared to hold that the word "religious" in its natural meaning refers only to the Christian religion; if a Jewish testator were to leave money to religious institutions it could not be said that Jewish institutions were not religious.

LORD TRAYNER—I think this bequest is valid. The truster directs his trustees to distribute a part of his estate among "such charitable or religious institutions and societies" as they may select, and in such proportions as they may fix. If the trust deed had said "charitable and religious societies" there would have been no question that the bequest was valid. I think our decisions have settled that. But the use of the disjunctive "or" instead of the copulative "and" does, as the Lord Ordinary holds, give the trustees the power (although it by no means compels them) to exclude charitable institutions and to confer the whole benefit of the bequest on "religious institutions and societies." I take it that the rule by which we must be guided in our decision of the present question is that laid down by the Lord Chancellor in the case of *Crichton v. Grierson*, quoted in the Lord Ordinary's opinion. Now, applying that rule here, I think the truster has distinctly specified the class of objects he intended to favour. "Religious institutions and societies" is a definition or description in no way less specific than "charitable institutions" or "benevolent institutions," and bequests to the last two named classes have been held good and valid.

I am not to be held as concurring in the Lord Ordinary's view that the bequest is limited to institutions connected with the Christian religion. This bequest, it rather seems to me, leaves the trustees a discretion which is not limited to any locality or any creed.

LORD MONCREIFF—This case, which affects the disposal of a very large sum of money, involves an important legal question.

The words to be construed are—"such charitable or religious institutions and societies as my trustees, or the survivors or survivor of them, may select." The settlement contains nothing to aid us in the interpretation of these words. Up to a certain point I agree with the Lord Ordinary. He holds that these words must be read disjunctively, and that it would be in the power of the trustees to apply the fund wholly to "religious purposes." He further holds (and rightly in my opinion) that in this deed a "charitable" bequest cannot be read as embracing a bequest for "religious" purposes only.

He has therefore considered and decided the case as if the bequest were simply one "for religious purposes." He has decided that a bequest in these terms is not void from uncertainty on the ground that the word "religious" must be construed as confined to the Christian religion, and that the bequest so interpreted is sufficiently specific to be supported. Here I differ from him. The trustees' power of selec-

tion is not limited to institutions and societies for the propagation of the Christian religion—indeed, in the course of the discussion counsel for the respondents admitted that under the power conferred upon them the trustees might if they chose endow religious bodies who did not profess the Christian faith, provided always that the tenets and practices of such societies were such as a court of law in this country would recognise and enforce as lawful. Not to take an extreme illustration, I apprehend that it would be within the powers of the trustees to apply the fund for the maintenance of a Unitarian or a Theistic chapel or a Jewish synagogue.

But even if the Lord Ordinary were right in holding that the selection must be confined to societies professing the Christian religion, I should not be prepared to hold that such a bequest is sufficiently specific to admit of being enforced. The distinctions between different churches and denominations professing the Christian religion are sharply defined and strictly enforced. The deed gives us no clue to the truster's religious belief. He may have been a Presbyterian, yet under this power the trustees would be entitled to apply the bequest for the support of an Episcopal or Roman Catholic church. Again, he may have shared the views of the minority of the Free Church and yet a court of law could not prevent his trustees from applying the bequest to the Sustentation Fund of the United Free Church. In short, there is not only no local limit but no specific selection among a number of Christian churches and denominations differing widely not only as to Church government and ritual but as to the importance and authority of fundamental articles of faith.

The same difficulty does not arise with a bequest for "charitable purposes" in the ordinary sense of the term which can be applied in relief of poverty irrespective of Church or creed.

It is said that the term "religious purposes" is more restricted and definite than "public purposes." This may be true, but it does not follow that the term "religious purposes" is sufficiently specific to be enforced. Indeed, there may be as much doubt and dispute as to its interpretation as in regard to "public purposes." Many "public purposes" are charitable purposes, but all are not. The same may be said in regard to "religious purposes."

But it was argued that a "religious purpose" is a "charitable purpose," thus substantially accepting the wide construction that has been put on a bequest for "charitable purposes" in England, which is traceable to the construction placed upon the expression "charitable purposes" in the statute of 43 Eliz. cap. 4. These words have been held to cover "religious," "educational," and "public" objects, and numerous illustrations are to be found in the English decisions to this effect which will be found conveniently collected in Lord Fraser's opinion in *Baird's Trustees v. The Lord Advocate*, 15 R. 685, and in the Lord Chancellor's (Lord Halsbury) opinion in

The Commissioners for Special Purposes for Income Tax v. Pemsell, L.R., App. Ca., 1891, at p. 544. It appears from these decisions that in England public purposes of general utility are held to be charitable uses within the sense of the Act of Elizabeth. But for the favour shown to bequests for "charitable purposes" a power to trustee to select objects for such a bequest would probably be held void from uncertainty. But a charitable bequest never fails from uncertainty. The process by which in England it has been held that a trust for "religious purposes" must receive effect is thus concisely stated by Lindley, L.J., in the case of *White v. White*, L.R., 1893, 2 Ch., at p. 53—"We come therefore to the conclusion (first) that the gift is for religious purposes, and (secondly) that being for religious purposes it must be treated as a gift for charitable purposes unless the contrary can be shown. If once this conclusion is arrived at the rest is plain. A charitable bequest never fails from uncertainty."

I am not aware, however, of any decision in the Scottish Courts which sanctions so wide a construction in a private deed of a bequest for "charitable purposes." In the case of *Blair v. Duncan* in this Court and the House of Lords, 3 F. 274 and 4 F. (H.L.) 1, it was decided that a bequest for "charitable or public purposes" was void from uncertainty, because (1) it was held that the expressions were used disjunctively; (2) therefore the trustees were empowered to apply the bequest solely to public purposes; (3) all public purposes are not charitable purposes, although some of them may be; and (4) a bequest for "public purposes" alone is too vague to receive effect. That was a decision in a Scottish case depending upon the construction of a Scottish settlement. If, therefore, I am right in holding that although perhaps not so wide as "public purposes," "religious purposes" equally with "public purposes" may not be sufficiently specific to be enforced, the same result should follow in this case as in the case of *Blair v. Duncan*.

I have not lost sight of the decision in the House of Lords in the English case of *The Commissioners for Special Purposes for Income-Tax v. Pemsell*, L.R. 1891., App. Cas. 531. It was not a decision in a Scottish case, although the law of Scotland was much discussed. It was a decision on an Imperial taxing statute, into the construction of which considerations entered which do not necessarily apply to the interpretation of a private deed. Lastly, there was great difference of opinion in the House of Lords, Lord Halsbury and Lord Bramwell dissenting strongly. The case was fully in view of the House of Lords in the recent case of *Blair v. Duncan*, 4 F. (H.L.) 1. In regard to it the Lord Chancellor said—"I will only say that in my view the decision in that case is an authoritative determination, and in speaking of a Taxing Act which applies to both countries the decision of that case must of course be supreme. But speaking of a Scottish instrument and the interpretation to be given to the word 'charitable'

in Scotland I should regard the decision of *Baird's Trustees v. Lord Advocate* as still an authoritative exposition of the law of Scotland."

In conclusion, I would observe that our decision cannot be affected by the consideration that the trustees would have no difficulty in applying the bequest to religious purposes which would have met with the truster's approval. The same might be said of any direction however vague and uncertain. The truster's own religious views, of which we are told nothing, do not seem to me to affect the question. He has left his trustees unlimited discretion, and the trustees who have the ultimate disposal of the capital are grandnephews who may have no special knowledge of the truster's private views or wishes, and who, if they knew them, are certainly not bound by them, as he has left them unfettered.

On the whole matter I am of opinion that the bequest is void from uncertainty.

The Court adhered.

Counsel for the Pursuers and Reclaimers—The Lord Advocate (Dickson, K.C.)—Wilson, K.C.—J. D. Millar. Agents—Duncan & Black, W.S.

Counsel for the Defenders and Respondents—Campbell, K.C.—Clyde, K.C.—Cullen—D. Anderson. Agents—W. & J. Cook, W.S.

Saturday, January 16.

SECOND DIVISION.

WEBB v. CLELAND'S TRUSTEES.

Minor and Pupil—Foreign—Father as Administrator-in-Law—Application by Father Domiciled in England for Payment by Scotch Trustees of Fund Held by them for Pupil Child.

Circumstances in which the Court authorised and ordained the trustees in a Scotch trust to pay for the next five years the free income of the share of a pupil beneficiary to her father, although he was not by the law of his domicile (England) the guardian or administrator-in-law of his pupil daughter.

A petition was presented by William George Webb, colour-sergeant, Second Battalion Black Watch (Royal Highlanders), for himself and as tutor and administrator-in-law for his pupil daughter Catherine Alice Cleland Webb, in which the petitioner prayed the Court to authorise the trustees of the deceased James Cleland, LL.D., Glasgow, to make payment to him of a portion of the residue of Dr Cleland's trust estate, bequeathed in terms of his trust-disposition and settlement to the petitioner's pupil daughter. Alternatively, the petitioner sought to have the trustees authorised to make payment to him of the free income of his daughter's share