

THE  
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WINTER SESSION, 1913-1914.

COURT OF SESSION.

Thursday, October 16, 1913.

FIRST DIVISION.

MAITLAND AND OTHERS,  
PETITIONERS.

*Charitable Trust—Administration—Settlement of Scheme—Application for Authority to Transfer Trust Funds to Local Association.*

The directors, *ex officio*s, of a local fund for the benefit of female domestic servants petitioned the Court to allow them to transfer the trust funds to a local association for improving the condition of the poor, to abolish the existing basis of membership, and to pay the sole member of the fund a sum in full of her contingent claim as a contributor thereto.

The Court sanctioned the proposed scheme.

On 13th May 1913 Adam Maitland, Lord Provost of Aberdeen, and others, being the directors *ex officio*s of the Aberdeen Female Domestic Servants' Benevolent Fund, presented a petition to the First Division in which they craved the Court to sanction one or other of two alternative schemes proposed by the petitioners for the administration of the Fund, and to authorise them to pay to the sole member of the Fund a sum in full of her claims as a contributor thereto.

The petition stated—"The said fund was instituted at a meeting held in Aberdeen on 7th October 1853, apparently on the initiative of a lady resident in Aberdeen, who is stated to have paid a handsome donation thereto. The rules adopted at the said meeting provided, *inter alia*, that the society should be for the benefit of female domestic servants employed in Aberdeen, and in that part of the parish of Old Machar lying south of the river Don, while afflicted with sickness and unable to main-

tain themselves, and who are at the time members of the society; that every member shall pay half-yearly at least one shilling, and to entitle any servant who is a member to prefer a claim on the funds of the society she must have paid thereto at least two consecutive half-yearly payments of not less than one shilling each at the distance of six months from each other; and that any person, male or female, not a domestic servant, may also become a member of the society under the regulations on payment of at least two shillings each year, but without thereby creating any claim of benefit from the funds. The said rules further made provision for the appointment of a considerable number of directors.

"The earlier history of the fund is involved in obscurity, but it appears that at a meeting of the directors held on 20th December 1881 the late Mr William Kendall Burnett, advocate in Aberdeen, who died on 17th July 1912, was appointed treasurer and secretary to the fund, with instructions to revise the rules dealing with the constitution thereof with a view to rendering it more efficient, and to report to the directors as soon as possible. The rules so revised were approved at a meeting of directors held on 28th January 1882, and were printed and circulated in the following month. . . .

"In addition to the circular already referred to, advertisement of the fund and its objects appears to have been made in 1882 in the local newspapers. The number of members of the fund, which in 1882 stood at 23, rose in 1883 to 25. Since that date, however, it has steadily diminished. In 1886 only five members, and in 1889 only three members, remained, and from 1893 onwards there has been only one member of the fund, Miss Amelia Crombie. No benefits have been distributed since 1897, and the funds of the society, which in 1894 were augmented by the receipt of two legacies, have continued to accumulate.

"The accounts for the financial year ending 17th January 1913 show that as at

that date the funds amounted to £436, 14s. 11d. . . .

With a view to testing the possibility of resuscitating the fund upon its existing basis, the petitioners, in the month of November 1912, caused an advertisement to be inserted thrice in each of the two morning newspapers and four times in each of the two evening newspapers circulating in Aberdeen and the adjacent district, calling attention to the conditions and benefits of the fund and inviting applications for membership. No such application has been received. . . .

"From the experience of the past twenty years the petitioners are satisfied that it is impossible to carry on the fund upon the present footing, and that a continuance of the contributory element will necessarily involve a complete failure of the trust purposes. Any prospect of a revival of the fund upon the old lines appears to be irrevocably closed by the coming into operation of the National Insurance Act 1911. If, accordingly, your Lordships should be satisfied of the expediency and competency of carrying on the administration of the fund upon a non-contributory basis, the petitioners would humbly crave your Lordships' authority to denude of the trust and to transfer the trust funds, as well as the duty of administering the same, to the Association for Improving the Condition of the Poor in Aberdeen. The said association was founded in the year 1869, and has conducted various branches of charitable work among the poor in the city of Aberdeen. It devotes special attention to the obtaining of accurate information of the state of the poor and the verifying of such information by personal investigation. The work of the association is controlled by a large and representative acting committee, under whose supervision the detailed work is conducted by sectional committees and a body of visitors. The association expends on various charitable objects a yearly income of over £1100, and is possessed of funds exceeding £3900. One of the chief objects of the association is by the gradual consolidation of existing charitable agencies to diminish the expenditure of money and labour attending numerous distinct organisations. The association has already been entrusted with the custody and administration of funds belonging to other charitable organisations, and in particular there were transferred to it in the year 1898 the funds of the Aberdeen Sick Man's Friend Society, a benevolent institution dating from 1792. The petitioners believe that they themselves are not a suitable body to administer a trust of this character, and that if they are to do so with any success they must be almost entirely guided by such information and advice as the said association or some similar body may be prepared to supply them with. The petitioners have lodged a draft scheme giving effect to the foregoing proposal, and embodying the rules under which they would suggest that the association should henceforth administer the fund, and the association has

intimated that it is prepared to accept and execute the trust under the regulations and conditions therein contained.

"If, however, it should appear to your Lordships to be incompetent or inexpedient to allow the petitioners to denude of the trust, the petitioners would crave your Lordships' sanction to an alternative scheme of administration, under which they would themselves propose to administer the trust for the future.

"In either event the rights of the said Miss Amelia Crombie, the sole member of the fund, would require to be safeguarded, and the petitioners would respectfully suggest that they be authorised to pay to her the sum of £20, which she has agreed to accept in full of her contingent claims upon the fund."

The scheme proposed was as follows:—

"1. The property belonging to the fund shall be transferred and paid over by the existing directors to the Aberdeen Association for Improving the Condition of the Poor, who shall have charge of the administration thereof, and who are hereinafter called the 'managers.' 2. The fund shall be held and applied by the managers for the benefit of female domestic servants employed in the city of Aberdeen while afflicted with sickness and unable to maintain themselves. 3. The managers shall be the sole judges of the qualifications and eligibility of any person desiring to participate in the benefits of the fund. 4. Sickness shall, if required, be certified by a medical practitioner approved by the managers. 5. The amount and form of the allowance to be granted to those receiving benefit, and the endurance thereof, shall be in the sole discretion of the managers. 6. The property of the fund shall not be immixed with other funds held or administered by the managers, and separate accounts shall be kept thereof, and an account shall be made up annually at such date as the managers may appoint, showing the intromissions of the managers for the preceding twelve months."

On 5th June 1913 the Court remitted the petition to the Right Hon. Lord Kinross, advocate, for inquiry.

In his report the reporter stated—"In the view of the reporter the first consideration is whether in the circumstances the application is competent. If the society is within the category of charitable trusts it is well settled that the Court will in certain circumstances intervene to give its sanction to any scheme of which it approves. If, on the other hand, the true character of the society is of the nature of a benefit or friendly society whose funds are mainly contributed by the members who themselves hope to enjoy benefits therefrom the Court will not intervene—*Smith v. Lord Advocate*, 1 F. 741, 36 S.L.R. 547. . . .

"The objects of the society are charitable, in that aid is only given where members are afflicted with 'sickness, and unable to maintain themselves.' The amount of the allowance so granted and the duration thereof are entirely within the discretion of the directors, who are not

themselves participating members. While the contributions of the beneficiaries no doubt bring them directly within the sphere of the society, it appears to the reporter that the benefits paid are paid as contributions from a charitable fund, and are not of the nature of contractual claims by contributing members as in a friendly society proper—*Smith v. Lord Advocate, cit. sup.*; *Spiller v. Maude*, 32 Ch. D. 158, note; *in re Buck*, 1896, 2 Ch. 727. . . .

“The two schemes tabled by the petitioners have this in common, that they are designed to throw the benefit of the fund open to all domestic servants in Aberdeen while in sickness and in want, and to abolish the existing basis of membership as a condition of participation. They differ in this, that the scheme proposed *primo loco* involves the handing over of the whole fund and administration presently in the hands of the petitioners to a body called The Aberdeen Association for Improving the Condition of the Poor; the scheme proposed *secundo loco* does not involve denuding by the present directors of the management, but contains a clause empowering the directors to entrust the duty of investigating the circumstances and qualifications of applicants for assistance to any individual or corporation they may choose.”

“The Court will grant authority to charitable trustees to denude if the expediency of doing so is obviously manifest—*M'Grouther's Trs.*, 1911 S.C. 315, 48 S.L.R. 220. In *M'Grouther's* case the Court authorised two private trustees acting on a charitable and educational trust to denude in favour of the General Trustees of the United Free Church. Such a course had the effect of substituting a permanent body to act as trustees *ex officio* in place of private individuals whose tenure of office could only be limited. The proposal here is that a body of permanent *ex officio* trustees should denude in favour of a charitable institution possessing no particular attribute of permanence. The reason alleged for the proposal is that the existing trustees, who with one exception are municipal dignitaries, are an unsuitable body to distribute benefits designed in the interests of a class of beneficiaries with whom the said trustees are not in contact. The petitioners think the Aberdeen Association for Improving the Condition of the Poor would if they were in control come in contact with many possible beneficiaries outwith their own ken, and would be in a better position to examine the surrounding circumstances of any applicant. In this view the reporter agrees, but it does not appear to him to be necessary in order to invoke the aid of a society like the Aberdeen Association for Improving the Condition of the Poor to replace the existing trustees. In point of fact the alternative scheme, which does not involve denuding, by clause 6 thereof proposes to confer upon the directors the power of entrusting the duty of inquiring into the circumstances of applicants to any individual or corporation; such power would appear to the reporter to enable the

directors to obtain the maximum amount of assistance which the Aberdeen Association for Improving the Condition of the Poor could give them in the administration of their fund.

“The reporter is humbly of opinion that it is impossible usefully to carry on the society in its existing form, and that the Court may sanction the proposed alternative scheme.

“There remains the question of the rights of the sole surviving member Miss Amelia Crombie. The petitioners propose to give Miss Crombie £20 in full of all her claims as a member of the society. This sum is just a rough and ready sum, but taking into consideration that under the existing rules Miss Crombie could claim no benefit unless sick and in want, it seems quite a liberal discharge of her contingent rights as a member. The reporter is satisfied that Miss Crombie has had the position fairly put before her, and has had full opportunity for consideration of the offer of the trustees, which she is prepared to accept.”

The petition was heard in the Summar Roll of 16th October before a Court consisting of Lords Kinnear, Johnston, and Mackenzie.

Argued for petitioners—This was clearly a charitable fund, and that being so the Court had a discretionary power to approve of the proposed scheme, and to authorise the petitioners to denude where, as here, the expediency of doing so was obviously manifest—*M'Grouther's Trustees*, 1911 S.C. 315, 48 S.L.R. 220, *distinguishing M'Lean v. Alloa School Board*, November 4, 1898, 1 F. 48, 36 S.L.R. 46.

The Court, without delivering opinions, approved of the proposed scheme, and authorised the petitioners to make payment to Miss Crombie of the sum of £20 in full of her claim upon the fund as a contributor thereto.

Counsel for Petitioners—J. H. Millar.  
Agents—Mackenzie & Kermack, W.S.

Friday, January 31.

## OUTER HOUSE.

[Lord Cullen.

PENANG FOUNDRY COMPANY,  
LIMITED (IN LIQUIDATION) AND  
OTHERS v. GARDINER.

*Company—Liquidation—Call on Shareholder—Liability of Allottee of Unpaid Shares which were ex facie Fully Paid—Representation by Company on Share Certificate—Personal Bar.*

A accepted an allotment of shares in a limited company, for which he paid no cash consideration. The certificates issued to him in respect of the shares bore that they were fully paid up, and the evidence established that A believed, and was justified in believing, that the shares were fully paid, although in fact