

Friday, January 15.

EXTRA DIVISION.

WORDIE'S TRUSTEES v. WORDIE.

Trust—Charitable and Educational Bequests—Uncertainty.

Held that a direction to trustees to realise and "pay over the balance or residue of my estates . . . to such charitable institutions or societies which exist for the benefit of women and children requiring aid or assistance of whatever nature, but said institutions and societies to be under the management of Protestants," was not void from uncertainty.

Mrs Mary Storey M'Gregor or Wordie, widow of Peter Wordie of Millersneuk, Lenzie, who died on 27th June 1913, and others, the trustees acting under the trust-disposition and settlement of the said deceased Peter Wordie, dated 28th February 1911, and codicils, *first parties*, and Miss Janet Wordie and others, the testator's whole next-of-kin, *second parties*, brought a Special Case to determine whether a certain bequest by the testator was valid.

The said *trust-disposition and settlement* provided, *inter alia*—"In the last place, I direct my trustees to realise and convert into cash the rest, residue, and remainder of my means and estate then remaining in their hands, and pay and divide the same as follows, namely—(First) To pay to the Stirlingshire Charitable and Sons of the Rock Society, Glasgow, the sum of £500, to be paid upon the receipt of the treasurer for the time being of said society; (Second) To pay over the balance or residue of my estates to and for behoof of such charitable purposes as I may think proper to name in any writing, however informal, which I may leave; but failing my leaving such writings, then to such charitable institutions or societies which exist for the benefit of women and children requiring aid or assistance of whatever nature, but said institutions and societies to be under the management of Protestants." There were no other writings of any kind dealing with the residue of the estate.

The *question in law* was—"Is the direction to the trustees to pay over 'the balance or residue of my estates . . . to such charitable institutions or societies which exist for the benefit of women and children requiring aid or assistance of whatever nature, but said institutions and societies to be under the management of Protestants,' a valid and effectual bequest capable of receiving effect, or is such bequest void from uncertainty?"

Argued for the first parties—Such bequests were benignantly construed. A bequest to "charity" or "charitable institutions" had been held good. Here the scope of the bequest was further delimited—*M'Phee's Trustees v. M'Phee*, 1912 S.C. 75, 49 S.L.R. 33; *Weir v. Crum Brown and Others*, 1908 S.C. (H.L.) 3, 45 S.L.R. 335; *Hay's Trustees v. Baillie*, 1908 S.C. 1224, 45

S.L.R. 908; *Clelland's Trustees v. Clelland*, 1907 S.C. 591, 44 S.L.R. 412; *Young's Trustees v. Young's Trustee*, December 17, 1901, 4 F. (H.L.) 1, 39 S.L.R. 212, December 14, 1900, 3 F. 274, 38 S.L.R. 209.

Argued for the second parties—In such bequests a power in the trustees to select the charities to be benefited must be expressed or implied—*Allan's Executor v. Allan*, 1908 S.C. 807, 45 S.L.R. 579; *Dundas v. Dundas*, January 27, 1837, 15 S. 427. No such power was expressly given here, and the terms of the deed excluded any implied power to select. The bequest was therefore void. Alternatively, even if power to select was to be implied, while to use "charitable" itself was good, the testator here attempted to pick out a certain class of charitable institutions, but he did so in such vague terms that it was impossible to identify the class, and therefore the bequest was void from uncertainty.

LORD DUNDAS—The late Mr Peter Wordie died in 1913, leaving a trust-disposition and settlement dated in 1911, and we are here concerned with the provision which he made for the disposal of the residue of his estate, which seems to have been a considerable one, certainly over £100,000.

The portion of the clause dealing with residue which, as circumstances have turned out, calls for attention consists in the direction to his trustees to pay over the balance or residue of his estates to and for behoof of "such charitable institutions or societies which exist for the benefit of women and children requiring aid or assistance of whatever nature, but said institutions and societies to be under the management of Protestants." The question raised in the case, and argued at our bar as between the trustees on the one hand and the next-of-kin of the deceased on the other, is whether the direction I have just quoted is a valid and effectual bequest capable of receiving effect, or is a bequest void from uncertainty.

I have little hesitation in affirming the first of these alternatives and negating the second. When one looks at the words of the residue clause one observes, in the first place, that the institutions or societies are to be charitable, and that they thus fall under the category most favoured by the law—the category of charity. One observes, in the next place, that there is not here—what there has been in some of the cases reported in the books—any other adjective employed either cumulatively with or alternatively to charitable, the introduction of which might have been fatal to the clause, as, for instance, if the bequest had been "for charitable or public purposes." Again, one may observe that the sphere of the clause does not seem too wide to enable it to receive effect, because bequests have been sustained to "charitable institutions" or, as in the case of *Dundas*, 15 Shaw, 427, to "charities." No suggestion was made that the word "Protestants" could afford any room for doubt or difficulty. It appears to me, accordingly, that the case falls very much under the rule expressed by Lord Chancellor Loreburn in the case of *Weir v.*

Crum Brown, 1908 S.C. (H.L.) 3, 45 S.L.R. 335, where he said—"All that can be required is that the description of the class to be benefited shall be sufficiently certain to enable men of common sense to carry out the expressed wishes of the testator"—a rule which has since been approved, for example, by Lord Kinnear in the case of *Allan's Executor v. Allan*, 1908 S.C. 807, 45 S.L.R. 579, and in this Division in the case of *M'Phee's Trustees v. M'Phee*, 1912 S.C. 75, 49 S.L.R. 33; and I do not suppose that trustees of common sense would have any serious difficulty in carrying out the directions the testator has here expressed.

Mr Brown, in addition to contending that the description of the beneficiaries was unintelligibly vague, presented an argument to the effect that upon a proper construction of the language used no power of selection was left to the trustees, because the institutions or societies were to be such charitable institutions or societies of the kind specified which exist, namely, all existing societies coming within the region of the words which follow. I think it is idle to contend that by implication the trustees here are not given a discretion, and I think an argument very similar to Mr Brown's has been put forward and rejected by the Court in several of the cases, notably perhaps in *Allan's Executor v. Allan*. I think it would approach the ridiculous to affirm that the trustees would be bound to accept, and, if I may so phrase it, to put upon their list all such societies or institutions, or any such society or institution, which might claim to be put thereupon, or that the trustees are not free to vary the amount of their donations when making the distribution among such institutions or societies as they may put upon their list. That argument therefore seems to me to fail, and without further amplifying the matter I propose that we should answer the question by finding that the direction quoted in the question is a valid and effectual bequest, capable of receiving effect, and is not void from uncertainty.

LORD MACKENZIE—I am entirely of the same opinion.

LORD CULLEN—I also concur.

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

Counsel for the First Parties—Cooper, K.C.—Paton. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Second Parties—Macmillan, K.C.—C. H. Brown. Agents—Martin, Milligan, & Macdonald, W.S.

Friday, January 15.

FIRST DIVISION.

CAMERON'S TRUSTEES v. MACKENZIE AND OTHERS.

Succession—Testamentary Writings—Validity—Holograph Writing on Paper Pinned to Deposit-Receipt—Intention.

On a lady's death there were found in her repositories two deposit-receipts for £450 and £300 respectively. The deposit-receipts were taken in name of the deceased and were endorsed by her. Attached by a pin to the deposit-receipt for £450 was a slip of paper bearing the words "£150 to Mrs A., £150 to Mrs B., £150 to Mrs C.—MARY CAMERON" (deceased's signature). Attached by a pin to the deposit-receipt for £300 was a slip of paper bearing the words "John Cameron for annuity—MARY CAMERON." These writings were holograph of the deceased. *Held* that the holograph writings did not show testamentary intention, and were not valid testamentary bequests of the sums in the deposit-receipts.

Succession—Charitable Bequests—Trust—"Such Charitable Institutions, Persons, or Objects as my Trustees may Think Desirable"—Uncertainty.

A testatrix bequeathed the residue of her estate to her trustees "with power to them to distribute the same amongst such charitable institutions, persons, or objects as they may think desirable." *Held (dub. Lord Skerrington)* that the bequest was not void from uncertainty.

On 17th March 1914 a Special Case was presented to the Court by George Duncan Collie and another, the testamentary trustees of the late Miss Mary Cameron (*first parties*), Mrs Elizabeth Rachel Mackenzie, who was mentioned in certain writings of the testatrix (*second party*), John Cameron, a brother of the testatrix mentioned in certain writings (*third party*), and Miss Annie Elizabeth Cameron, a niece who with the said brother was the next-of-kin of the testatrix (*fourth party*).

The Special Case stated, *inter alia*—"1. Miss Mary Cameron, who resided in Crown Street, Aberdeen, died upon the 2nd of August 1913, leaving a trust-disposition and settlement dated 14th September 1904 and a relative codicil dated 12th June 1911.

"2. By her said *trust-disposition and settlement* Miss Cameron, on the narrative therein stated, and in implement of certain conditions set forth in the said narrative, disposed and conveyed her estate, both heritable and moveable, to the first parties as her trustees in trust for the following purposes, viz.—(1) for payment of debts; (2) to allow her brother John Cameron the liferent use of her whole heritable and moveable means and estate; (3) on the death of the said John Cameron or her own, should he predecease, she directed her