

obviously used interchangeably; the one is synonymous with the other in every instance where the expressions are used.

I am for adhering to the interlocutor of the Lord Ordinary.

LORD JOHNSTON—The terms used in this feu contract, which after the undertaking to pay a feu-duty of blank pounds sterling “yearly, and that at two terms in the year, Whitsunday and Martinmas, in equal proportions, beginning the first term’s payment thereof” at the term of Martinmas 1878 for the half year immediately preceding, and the like sum at the term of Whitsunday 1879, &c., in name of feu-duty in all time coming, are “and further to pay . . . a duplicand” of the said feu-duty at the termination of every period of twenty years counting from the term of Whitsunday 1878.

These terms are in my opinion even more favourable to the views which I entertain and ventured to express in the case of *Finlay v. Adam* than the terms of the clause in question in that case, and I cannot even now convince myself that the application of the judgment pronounced in that case to the present is in accordance with the intention of the parties to the original feu contract. It is certainly an index not to be ignored, that when the first duplicand under this feu contract fell due the then superiors, represented by a firm of lawyers, entertained the same view of the meaning of “a duplicand” which I respectfully still entertain, and accordingly claimed no more than one additional feu-duty payable at the end of the first twenty years, which was duly paid. They must now be held to have been mistaken. But the mistake, as I must now assume it to have been, of a firm of lawyers of the last generation, is a somewhat strange concomitant of the practice which in the case of *Finlay v. Adam* the main ground of judgment of the Court assumed to have followed on the earlier case of the *Earl of Zeland*.

But in the case of *Finlay v. Adam* this Court, with the aid in consultation of three Judges of the Second Division, have decided that the term “a duplicand” has the fixed technical meaning of *twice the amount of*, in feudal conveyancing, and that judgment is binding on this Court. The judgment which your Lordship proposes follows therefore, I think, as a matter of course.

LORD SKERRINGTON—In every case of this kind the first question which has to be determined is whether the obligation to pay a duplicand is intended to mean a duplicand which shall include the feu-duty for the year, or whether the duplicand is to be paid over and above the feu-duty for the year. It was conceded by the defenders’ counsel that the language used in this feu contract was susceptible only of one construction, namely, that the duplicand was not to include the feu-duty for the year but was to be something over and above and exclusive of it. It was further conceded, in view of the authorities, that the word “duplicand” *prima facie* means two feu-duties. But of course any word, however technical, may be shown from the context to bear

some other meaning, and it was maintained that in the present case it sufficiently appeared that “duplicand” ought to be construed as meaning only a single feu-duty, because in a later clause of the feu contract it was spoken of as a “duplication.”

Now it seemed to be assumed that the word “duplication” has a clear and definite meaning in the English language inconsistent with the primary and technical meaning of the word “duplicand.” If that contention had been made out it would have been necessary for us to determine which meaning represented the true intention of the parties as expressed in this feu contract. That question, however, does not arise, because the word “duplication,” so far as I know, is not inconsistent with the word “duplicand” as that word has been construed by our Courts. “Duplication” is generally used as meaning the process of doubling, but it may equally be used to mean the result of doubling. If one substitutes the word “double” for the word “duplication” the position of the defenders is not in any way improved. Indeed I rather think that, according to the decision in the case of *Heriot’s Trust*, “double” has been held to mean the same as “duplicand.” But upon the most favourable view of the defenders it can only be regarded as a word of ambiguous meaning, which may be taken either as meaning a “replica,” or, on the other hand, as meaning that the original thing is repeated twice over. Accordingly I am clear that the defenders’ argument, which was based entirely upon the use of the word “duplication,” breaks down, and that in view of the prior authorities there must be paid three times the feu-duty, once in name of feu-duty and twice in name of duplicand.

LORD MACKENZIE was absent.

The Court adhered.

Counsel for the Pursuers (Respondents)—Chree, K.C.—Greenhill. Agents—W. & J. Burness, W.S.

Counsel for the Defenders (Reclaimers)—The Lord Advocate (Clyde, K.C.)—R. Macgregor Mitchell. Agents—J. Miller Thomson & Co., W.S.

Tuesday, June 26.

SECOND DIVISION

[Lord Ormidale, Ordinary.

TURNBULL’S TRUSTEES v. LORD ADVOCATE.

Succession—Trust—Uncertainty—“Public, Benevolent, or Charitable Purposes” in a Particular Locality.

A testator by her trust-disposition and settlement directed her trustees to apply the residue of her estate to “such public, benevolent, or charitable purposes in connection with the parish of Lesmahagow or the neighbourhood . . . as they in their discretion shall think

proper." Held (*dis.* Lord Dundas) that the bequest was void from uncertainty.

Authorities considered.

John Houston, British Linen Bank, Lanark, and others, trustees under the trust-disposition and settlement of the late Mrs Anna-bella Robertson Paterson or Turnbull, *pursuers*, brought an action of multiplepointing and exoneration. Claims were lodged, *inter alios*, by the pursuers, for administration, and by the Lord Advocate, as *ultimus hæres*.

The testatrix, widow of the Rev. Thomas Turnbull, one of the ministers of the parish of Lesmahagow, died on 23rd October 1894 leaving a trust-disposition and settlement whereby she conveyed her whole means and estate to the pursuers as trustees. The *trust-disposition* directed them with regard to the disposal of the residue of the estate "to hold such residue till such time or times as they see fit, and apply the same for such public, benevolent, or charitable purposes in connection with the parish of Lesmahagow or the neighbourhood in such sums and under such conditions as they in their discretion shall think proper."

The pursuers as claimants *pleaded*—"On a sound construction of the said trust-disposition and settlement, the claimants being bound or otherwise entitled to administer the fund *in medio* in the manner condescended upon, should be ranked and preferred in terms of their claim."

The Lord Advocate *pleaded*—"The truster's direction for the disposal of the residue of her estate being void from uncertainty cannot be given effect to."

On 4th July 1916 the Lord Ordinary (ORMIDALE) repelled the claim for the Lord Advocate and sustained the claim for the trustees, and ranked and preferred them to the fund *in medio*.

Opinion.—" . . . The question whether or not a particular bequest is void from uncertainty has been the subject-matter of many decisions in recent years. The case on which the Lord Advocate chiefly founds in the present action is *Blair v. Duncan*, 3 F. 274 and 4 F. (H.L.) 1. It was there held that a bequest 'for charitable or public purposes' was void on the ground that the words fell to be read disjunctively, that it would therefore be in the power of the trustees to apply the whole fund to 'public purposes,' and that that was a description of the objects of the bequest which was too vague and indeterminate to be capable of receiving effect. The bequest in the present case is for public, benevolent, or charitable purposes. It is said that these words must be read disjunctively, so that it would be in the power of the trustees to apply the bequest wholly for one or other of them and therefore for public purposes. An argument was directed against the view that the words must be read disjunctively which I shall consider later, but, assuming that they must be read disjunctively, then if there is no other expression in the bequest restricting the generality of the phrase 'public purposes,' the bequest would be invalid. The trustees, however, maintain

that the words 'in connection with the parish of Lesmahagow or the neighbourhood' supply a sufficient determination of the purposes to make the law of *Duncan v. Blair* inapplicable. This raises a question of some difficulty.

"A rule which has been accepted as of general application in cases of this class was thus stated by Lord Lyndhurst in *Crichton v. Grierson*, 3 W. & S. 329, at 338-9—A party 'may in the disposition of his property select particular classes of individuals and objects and then give to some particular individual a power after his death of appropriating the property or applying any part of his property to any particular individuals among that class.' In *Weir v. Crum Brown*, 1908 S.C. (H.L.) 3, the Lord Chancellor (Loreburn) at p. 4 says—'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.' I may also refer to the case of *Allan's Executor v. Allan*, 1908 S.C. 807, where Lord Kinnear (at p. 814) puts the matter thus—'That is therefore the rule which is held to be established by *Crichton v. Grierson* and the subsequent cases, and the question to be put in each particular case is whether the description of the class to be benefited is sufficiently exact to enable the executor of common sense to carry out the expressed wishes of the testator.' Putting that question in this particular case the answer must, in my opinion, be in the affirmative. It was not decided, as I read the judgments in *Duncan v. Blair*, that the words 'public purposes' are in themselves so absolutely vague and indefinite, so absolutely 'misty,' to adopt Mr Watson's description of them, as to be wholly incapable of receiving effect in any circumstances. Now the want of any limitation by locality appears to have been present to Lord Robertson's mind in *Duncan v. Blair*. 'The testatrix,' he says, 'has done nothing like selecting a particular class or particular classes of objects. She excludes individuals, and then leaves the trustee at large with the whole world to choose from.' There is 'nothing affecting any community on the globe which is outside the ambit of his choice.' As Lord Brampton says in the same case, the trustee had conferred upon him the power 'to apply the whole of the bequest solely to any one or more of innumerable public purposes comprised within an unlimited area. In short, the intentions of the testatrix are on the face of the will and codicil so far as relates to the "public purposes" to be benefited in absolute "uncertainty." That cannot be predicated of the truster's intentions here. The 'public purposes' to be benefited are not left in absolute uncertainty. They are 'public purposes' connected with the parish of Lesmahagow or the neighbourhood. The words 'public purposes,' which standing by themselves are entirely vague and indefinite, become in my judgment sufficiently precise and determinate when read in connection with an area so restricted as a particular parish

to enable the trustees of the will to carry into effect the express wishes of the testatrix. I admit the force of the distinction drawn by Mr Watson between the word 'institutions' and the word 'purposes' when read with reference to a particular locality—*M'Conochie's Trustees*, 1909 S.C. 1046. It would certainly have been easier to reach the decision I have arrived at if the word in this case had been 'institutions' and not 'purposes'; but the distinction is not to my mind necessarily vital and conclusive. Each case must of course be decided on its own merits with reference to the particular form of words used by the truster; but that the limitation of the operation or application of the bequest to a precise locality may, to say the least, be helpful towards reducing the indefinite to the definite, has been recognised in the cases of *Smellie's Trustees*, 13 S.L.T. 450, and *M'Phee's Trustees*, 1912 S.C. 75. No doubt on the other hand it was not given effect to in *Brown's Trustees*, 1905, 13 S.L.T. 72, and *M'Grouther's Trustees*, 1907, 15 S.L.T. 652. In *Shaw's Trustees*, 8 F. 52, there was a special power given to the trustees which, as Lord Stormonth Darling observed, 'left the trustees as free to make a will for the testatrix as were the trustees in *Grimond's* case, 7 F. (H.L.) 90, which of course is the thing struck at by the rule which makes a bequest void from uncertainty.' In the present case it seems to me that the limitation of the bequest to the parish of Lesmahagow or the neighbourhood excludes entirely the power of the trustees to make a will for the testatrix, and I cannot think that they will have any difficulty in the exercise of their discretion in determining what is a public purpose in connection with the locality thus defined by the testatrix—*Clelland's Trustees*, 1907 S.C. 591.

"I did not understand it to be maintained that the word 'benevolent' created any difficulty, and in the light of decided cases I do not think it does—*Hay's Trustees v. Baillie*, 1908 S.C. 1224; *Paterson's Trustees*, 1909 S.C. 485; *Macpherson's Trustees*, 1909 S.C. 1041.

"Accordingly, I am prepared to hold that the residuary bequest under Mrs Turnbull's settlement is not void from uncertainty.

"Alternatively it was maintained by the trustees that the words 'public benevolent or charitable' fell to be read 'public benevolent or public charitable,' the word being given the force of an adverb rather than that of an independent adjective. The case of *Cobb's Trustees v. Cobb* was cited in support of this contention. There, however, the words under construction were 'useful benevolent and charitable institutions.' The conjunctive was 'and' and not 'or,' and the words therefore fell naturally to be read together and not disjunctively as alternatives to one another. Here, moreover, we have the word 'purposes' and not 'institutions.' Accordingly, while I recognise that I am bound to adopt a construction which sustains a will rather than one which destroys it, I can only do so if the construction so adopted is one which the words can reasonably and fairly bear. It appears to

me that to read the words in the will in question as if they meant 'public benevolent purposes' or 'public charitable purposes' would be to give them a forced and unnatural construction not intended by the testatrix. . . ."

The Lord Advocate reclaimed, and argued—It had been decided that a bequest such as the present one was void—*Blair v. Duncan*, 1901, 4 F. (H.L.) 1, 39 S.L.R. 212—and a bequest in favour of charitable or religious institutions not particularly defined had similarly been declared void—*Macintyre v. Grimond's Trustees*, 1905, 7 F. (H.L.) 90, 42 S.L.R. 466. A general bequest for public purposes was not rendered a good bequest by describing the area to be benefited in geographical or topographical terms, especially when the benefits could be extended to a district so vaguely defined as "the neighbourhood." The wording of the bequest was such as practically to give the trustees a free hand in its administration. They had had conferred upon them a full discretion both as to the time at which and the purposes for which they could apply the bequest. Counsel also cited the following cases—*Shaw's Trustees v. Esson's Trustees*, 1905, 8 F. 52, 43 S.L.R. 21; *Brown's Trustees v. M'Intosh*, 1905, 13 S.L.T. 72, per Lord Johnston; *M'Grouther's Trustees v. Lord Advocate*, 1908, 15 S.L.T. 652, per Lord Mackenzie; *Hill v. Burns*, 1826, 2 W. & S. 80; *M'Phee's Trustees v. M'Phee*, 1912 S.C. 75, 49 S.L.R. 33; *Miller v. Black*, 1837, 2 Sh. & Macl. 866, per Lord Brougham at p. 892.

The trustees argued—The word "charitable" although it was considered to bear a more defined meaning in England than in Scotland, yet was sufficiently definite to prevent a bequest to charitable purposes being held void from uncertainty in the latter country—*Crichton v. Grierson*, 1828, 3 W. & S. 329. The words of the bequest ought to be read conjunctively, qualifying and describing each other. A bequest for benevolent or charitable purposes of a public nature was legally a valid one. The limitation of the area to be benefited to the parish and neighbourhood was important. Lords Robertson and Brampton took into account the absence of limitation of area in the case of *Blair (cit.)*; cp. *Weir v. Crum Brown*, 1908 S.C. (H.L.) 3, 45 S.L.R. 335, and *Allan's Executor v. Allan*, 1908 S.C. 807, per Lord Kinnear at p. 814, 45 S.L.R. 579. The test suggested by Lord Kinnear, viz., "whether the description of the class to be benefited is sufficiently exact to enable an executor of common sense to carry out the directions of the testator" had been followed in *Hay's Trustees v. Baillie*, 1908 S.C. 1224, 45 S.L.R. 908; *Paterson's Trustees v. Paterson*, 1909 S.C. 485, 46 S.L.R. 406; and *Mackinnon's Trustees v. Mackinnon*, 1909 S.C. 1041, 46 S.L.R. 792. A bequest for religious purposes if limited by certain qualifying words was sufficiently definite to be valid—*Bannerman's Trustees v. Brodie*, 1915 S.C. 398, 52 S.L.R. 315.

At advising—

LORD JUSTICE-CLERK—The truster by her trust-disposition and settlement directed

her trustees to hold the residue of her estate "till such time or times as they see fit, and apply the same for such public benevolent or charitable purposes in connection with the parish of Lesmahagow or the neighbourhood in such sums and under such conditions as they in their discretion shall think proper." The only question which I think ought to be disposed of now is whether that provision can receive effect, or whether it is so vague and uncertain as to be void in law. The Lord Ordinary has held that the provision is not void, but I have ultimately come to be of opinion that he is wrong.

I agree with the Lord Ordinary that the clause must be read as if it had been expressed "for public purposes, benevolent purposes, or charitable purposes," subject to the geographical limitation and to the discretionary powers given to the trustees. *Blair v. Duncan*, 4 F. (H.L.) 1, 39 S.L.R. 212, decided that a bequest for "such charitable or public purposes as my trustee thinks proper" is void for uncertainty. The ground of the decision I take to be that "public purposes" is not within the description of a particular class of individuals or objects as that phrase was used by Lord Lyndhurst, Lord Chancellor, in the case of *Crichton v. Grierson*, 3 W. & S. 329, at p. 338.

But it is said the legal result is different when you have, as here, a geographical limitation. I cannot accept that view. Such a limitation does not in my view remove or limit the fundamental vagueness and uncertainty of the term "public purposes" so as to destroy its quality of legal invalidity. What is "public" and what is "a public purpose" must still remain vague and uncertain whatever the locality be. The selection of the purposes and the time or times and the conditions of the bequest are left to the unfettered discretion of the trustees. In my opinion under such terms, even with the geographical limitation, the truster did not herself make a testamentary disposition of her residue, but left it to her trustees to do so. As Lord Halsbury said (*Blair v. Duncan*)—"The disposition here given to A B to determine what particular public purposes should be the objects of the trust is too vague and uncertain for any court either in England or Scotland to administer."

The judgment of Lord Loreburn, L.C., in *Weir v. Crum Brown*, 1908 S.C. (H.L.) 3, was referred to by the respondents and is quoted by the Lord Ordinary in support of his view. In my opinion that judgment does not affect the present case. Lord Loreburn begins his judgment by saying—"The question in this case is whether a charitable request is to be treated as void for uncertainty." He goes on to say "the recipients of this bounty . . . were to be indigent, a provision which stamps the bequest as charitable." Then his Lordship proceeds to consider the problem which was presented in that case, whether the class of persons who were to be the recipients of this charitable bequest had been sufficiently described, and in dealing with that question he says—"There is no better rule than that a benignant construction will be placed

upon charitable bequests," and later on he adds the sentence, which is now founded on in support of the bequest, "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. I have no doubt that this can be done here. . . . I am satisfied that the trustees, or failing them the Court, would find no difficulty in giving effect to the bequest." The argument which the Lord Chancellor was there dealing with is thus expressed in the report in [1908] A.C. p. 165—"It is a condition precedent of a valid charitable bequest that there should be a sufficiently precise direction to enable it to be carried into effect. This bequest fails because no intelligent conclusion can be arrived at as to the particular class of persons intended to be benefited." In my opinion there was no such question there as was decided in *Blair v. Duncan*, or as we have now to consider *Blair's* case was apparently not cited in the argument in the House of Lords in *Weir v. Crum Brown*. All that was decided and all that Lord Loreburn said was that in a charitable bequest the objects of the testator's bounty had been sufficiently described so as to enable his trustees to identify the persons entitled to share in the bounty. In my opinion nothing was said in that case that is of assistance in determining whether such a bequest as we have here is void for uncertainty. The opinion of Lord Kinnear in *Allan's Executor*, 1908 S.C. 807, was also founded on, but that is I think open in great part to the same observations. There, too, the bequest was a charitable one, and nothing in my opinion was said which truly affects the present case. If there was any ambiguity in what Lord Kinnear said in *Allan's* case—and I think there was none—it is, I think, made quite clear by what the same noble and learned Lord said in the case of *Wordie's Trustees*, 1916 S.C. (H.L.) 126, 53 S.L.R. 291, which had also to do with a charitable bequest. Lord Kinnear there said (p. 129)—"That there may be difficulties in the actual selection is possible enough, but that is not a point that goes to the validity of the will." Then he refers to Lord Loreburn's statement, and adds—"I am unable to believe that men of common sense would find any insuperable difficulty in selecting proper objects to satisfy the testator's bequest in this case." These observations appear to me to be carried beyond their true province when they are used as they are by the respondents and the Lord Ordinary. This seems to me clear from the observations themselves, and in my opinion this argument is exactly countered by Lord Moncreiff in his opinion in *Macintyre v. Grimond's Trustees*, 6 F. 285, where he says (p. 294)—"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"—a view which, as I understand it,

was accepted by the House of Lords—7 F. (H.L.) 90.

Similar geographical limitations have occurred in more than one case. In *M'Conochie's Trustees*, 1909 S.C. 1046, 46 S.L.R. 707, a bequest "amongst such educational, charitable, and religious purposes within the city of Aberdeen as he shall select" was held bad on the authority of *Grimond's* case. In the case of *Shaw's Trustees*, 3 F. 52, a direction to trustees to apply the residue of an estate "at their discretion from time to time towards such charitable, benevolent or religious objects or purposes within the city of Aberdeen as they themselves shall institute or select" was again held bad, following *Grimond's* case. With respect to the geographical limit Lord Stormonth Darling said—"But then it is said that the adjection of a local limit . . . makes all the difference."

In my opinion the trustees are equally unfettered in the present case, inasmuch as they are not restricted to existing public purposes. These were two unanimous judgments of this Division, and I cannot consistently with them hold that the present bequest is good. Lord Johnston took a similar view in the case of *Brown's Trustees*, 13 S.L.T. 72, as did Lord Mackenzie in the case of *M'Grouther's Trustees*, 15 S.L.T. 652.

On the other hand, Lord Dundas came to a different conclusion in the case of *Smellie's Trustees*, 13 S.L.T. 450. But in the case of *Hill v. Burns*, 2 W. & S. 80, to which he refers, the bequest was a charitable one, and the same observation applies to the case of *M'Phee's Trustees*, 1912 S.C. 75, in which latter case, referring to *M'Conochie's* case, Lord Dundas says—"Every case must be decided on its own language, and I am far from saying that I would have differed from the decision in *M'Conochie's Trustees*, 1909 S.C. 1046. But what I think turned the scale, certainly in the opinion of Lord Low, was that the word used was 'purposes' and not 'institutions.' That is the ground of Lord Low's opinion, and I think the circumstances must necessarily have affected the minds of the other learned judges who decided that case." But the word here is also "purposes."

The result is that in my opinion the Lord Ordinary's view that this bequest is not void from uncertainty is unsound and the interlocutor ought to be recalled.

LORD DUNDAS—I think the interlocutor reclaimed against is right. A general rule applicable to cases of this kind, and not necessarily confined to purely "charitable bequests" (see per Lord Kinnear in *Allan's Executors*, 1908 S.C. at p. 814, *sub fin.*), was laid down by the Lord Chancellor (Lyndhurst) in *Crichton v. Grierson*, 1828, 3 W. & S. 329, at p. 338, in language often since quoted and followed. His Lordship said the "whole question" is "whether it is competent for the disposer by a deed of this description to point out particular classes of persons and objects which are intended to be the objects of his favour, and then to leave it to an individual or a body of indi-

viduals after his death to select out of those classes the particular individuals or the particular objects to whom the bounty of the testator shall be applied." After repeating the question in slightly different language, Lord Lyndhurst answered it thus—"I apprehend that according to the authorities in the law of Scotland it is quite clear a party has this power," and he proceeded to review the prior authorities at length. Eighty years later, in *Weir v. Crum Brown*, 1908 S.C. (H.L.) at p. 4, the Lord Chancellor (Loreburn), after observing that in the description of a class such as Lord Lyndhurst postulates "the language used must of necessity be general, and there must always be numerous cases on the border line," and that in each case criticisms might be advanced to destroy the validity of the will on the head of undue generality in description, said—"There is no law requiring that kind and degree of certainty. 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." In thus speaking Lord Loreburn was not, I apprehend, instituting any new departure, or enlarging in any way the limits of Lord Lyndhurst's rule, but was merely explaining its true scope and intent, and indicating that it must be a question of degree whether in any particular case the description of the class is or is not sufficiently distinct. So in *Allan's Executors* Lord Kinnear, after quoting Lord Loreburn's words, says—"That is therefore the rule which is held to be established by *Crichton v. Grierson* and the subsequent cases, and the question to be put in each particular case is whether the description of the class to be benefited is sufficiently exact to enable an executor of common sense to carry out the expressed wishes of the testator." The general rule thus firmly established has been expressly followed in all the recent cases down to and including *Wordie's Trustees*, 1915 S.C. 310, *affd.* 1916 S.C. (H.L.) 126.

The words of the clause here to be considered in the light of this rule are as follows:—"I hereby direct my trustees to hold such residue till such time or times as they see fit, and apply the same for such public benevolent or charitable purposes in connection with the parish of Lesmahagow or the neighbourhood in such sums and under such conditions as they in their discretion shall think proper." It is conceded that if the words had been to "benevolent or charitable purposes" the bequest would have been good, but the Solicitor-General contended that the introduction of the word "public" as an alternative to "benevolent or charitable" casts the whole description loose and renders the will void from uncertainty. He urged that *Blair v. Duncan*, 4 F. (H.L.) 1, rules the present case, and decides it absolutely. I do not think this is so. *Blair's* case did not, in my judgment, decide that the introduction of the words "public purposes" must in all cases, without regard to context or words of qualification or limitation, be fatal

to a bequest. It did decide that a bequest to "public or charitable purposes" was bad, because "public purposes"—the words came (I think) before the Court's consideration then for the first time—was a phrase in its bare and unqualified expression so vague as to be void from uncertainty. Lord Davey, 4 F. (H.L.) at p. 5, put it thus—"Can it be said that 'public purposes' is within the description of a particular class of individuals or objects? I think not." It seems to me that *Blair v. Duncan* did no more than decidethis general proposition. I think Lord Robertson's opinion shows pointedly that this was so. After citing Lord Lyndhurst's rule as touching "the very core" of the case before him, Lord Robertson applies it by asking, "has this testatrix done what Lord Lyndhurst describes? has she selected a particular class or particular classes of objects among which her trustee is to select?" and answers the question by saying that she "has done nothing like selecting a particular class or particular classes of objects. She excludes individuals and then leaves the trustee at large with the whole world to choose from. There is nothing affecting any community on the globe which is outside the ambit of his choice." In *Allan's Executors* Lord Kinnear, having referred to Lord Robertson's opinion as I have done, concludes, "therefore in the application of the rule to that case" (*Blair v. Duncan*) "the bequest was held to be too wide, because there was nothing approaching the particularisation of the class to be benefited." I respectfully agree with Lord Kinnear's deduction as to the true scope of the judgment. The case of *Grimond's Trustees*, 1905, 7 F. (H.L.) 90, was much referred to in the argument at our bar. A bequest to "such charitable or religious institutions or societies" as the trustees might select was there held void because the word "religious" was so vague and uncertain that the testator could not be said to have described a class of institutions and societies, but had in effect left it to his trustees to make a will for him. The case has obviously no direct application here. But I do think it has a useful bearing, by way of analogy, in the respondents' favour. A bequest to "religious purposes" is too vague to be given effect to. But it by no means follows that by words of limiting and qualifying import religious purposes might not be sufficiently brought within the description of a class to be benefited (see *per* Lord Dunedin in *Allan's Executor*, 1908 S.C. at p. 816). An actual example of this seems to have recently occurred in *Bannerman's Trustees*, 1915 S.C. 398. Similar considerations appear to me to apply in regard to "public purposes."

If then I am right in thinking that *Blair v. Duncan* does not absolutely decide this case, we must still consider whether or not "public . . . purposes in connection with the parish of Lesmahagow or the neighbourhood" is a description of the class of objects "sufficiently exact to enable an executor of common sense to carry out the expressed wishes of the testator." I am unable to answer this question in the nega-

tive. No doubt, as the Lord Ordinary points out, the word "purposes" may be less favourable to the respondents' view than "institutions" or the like would have been. On the other hand, I do not think "in connection with" really differs materially from "in"—*cf. Cleland's Trustees*, 1907 S.C. 591, 44 S.L.R. 412. But these are small matters; one must look at the clause as a whole. The Solicitor-General asserted that no words of local limitation can affect or cure the radical invalidity of "public purposes" as a description of a class. I do not agree with this view. The importance and effect of geographical or topographical limitation in the terms of such bequests was recognised by the House of Lords as long ago as *Hill v. Burns*, 1826, 2 W. & S. 80, and *Miller v. Black's Trustees*, 1837, 2 S. & M. 866, 892, and also in more recent decisions in our Courts, to some of which the Lord Ordinary refers. It is true that in *Shaw*, 1905, 3 F. 52, a bequest was held void in spite of such words, but Lord Stormonth Darling, who delivered the only opinion, while apparently leaving it open whether "the definition of a local area" might not "save such a bequest," thought that, as the trustees were expressly authorised to benefit "religious objects or purposes" which they themselves might "institute," the whole definition was thrown loose, and the trustees left as free to make a will for the testatrix as were those in *Grimond's Trustees*. In *M'Conochie's Trustees*, 1909 S.C. 1046, words of local limitation seem to have been left out of account alike by counsel and by the Court. Neither of these cases, however—assuming them to have been well decided—seems to be directly in point here. When one considers the clause before us I find it difficult to suppose that "public purposes in connection with the parish of Lesmahagow or the neighbourhood" is a phrase too vague for comprehension; or that instances would not present themselves to trustees acquainted with the locality such as would enable them to carry out the trustor's intentions in this respect. Such instances might not be sufficient to exhaust the funds bequeathed. But that consideration, if it should emerge, would be of little moment. An argument of this sort was put forward, and negatived by the decision in *Macdruff v. Spence's Trustees*, 1909 S.C. 178, 46 S.L.R. 135. Besides, the trustees are not, of course, bound to devote the whole fund to the "public purposes" indicated. The Court will not, I take it, declare a bequest void, and put an end *ab ante* to the trust, merely because it is possible that from failure of suitable objects on the one hand, or undue delay or malversation by the trustees on the other hand, the purposes in regard to the whole or part of the fund might come to be inoperative (*cf. per* Lord Dunedin in *Dick's Trustees*, 1907 S.C. 953, at p. 961, 44 S.L.R. 680, at 685, *affid.* 1908 S.C. (H.L.) 27, 45 S.L.R. 683). The question here must be, I suppose, to some extent one of impression, but my own view coincides with that which the Lord Chancellor expressed in *Weir v. Crum Brown*, 1908 S.C. (H.L.) 3, upon the

terms of the settlement before him—"I am satisfied that the trustees, or failing them the Court, would find no difficulty in giving effect to the bequest." I can see no good reason for setting aside this will on the ground of uncertainty, which as Lord M'Laren observed in *Macduff's* case, "is really a counsel of despair."

I am therefore for adhering to the Lord Ordinary's interlocutor substantially for the same reasons as those which he gives for its support in his careful judgment. I should add, with regard to an alternative argument pressed upon us by Mr Chree for the respondents, that I consider it to be unsound. The suggestion was that the clause in question might be read as if it had said "benevolent or charitable purposes of a public character." I am disposed to think, with the Lord Ordinary, that "public" must be taken to be a true alternative and not as merely exegetical of the other words, and that the proposed construction is not one which the Court can adopt.

LORD SALVESEN—The question in this case is whether a direction to trustees to apply the residue of the trust estate "for such public benevolent or charitable purposes in connection with the parish of Lesmahagow or neighbourhood in such sums and under such conditions as they in their discretion shall think proper" is a valid bequest, or as the Lord Advocate on behalf of the Crown contends, is void from uncertainty. There is a great mass of authority dealing with somewhat similar bequests. If the question had been open I should have concurred with the Lord Ordinary in the result at which he has arrived, for, to adopt the language of Lord Chancellor Loreburn (*Weir v. Crum Brown*, 1908 S.C. (H.L.) 3)—"The description of the class to be benefited" seems to me "sufficiently certain to enable men of common sense to carry out the expressed wishes of the testator." The trustees selected are three gentlemen all resident in Scotland, who do not suggest that they have any difficulty in selecting such objects for the bestowal of the testatrix's bounty as would have commended themselves to her had she been alive. The area within which these objects are to be found, although not precisely defined, is comparatively limited, but even if it were not so I think it may generally be assumed that Scotch trustees would not select foreign institutions or beneficiaries as the recipients of a Scotch lady's charitable bequests. A perusal of the authorities however has led me to the conclusion that the matter is foreclosed by decision, and that we must hold in accordance therewith that the bequest is void.

It has been more than once definitely decided that a bequest for charitable purposes without any limitation of area is valid. One might reasonably think that it followed from this that a bequest for religious purposes would also have been good. The contrary, however, has now been decided—*Macintyre*, 7 F. (H.L.) 90. There was a difference of opinion between the Court of Session and the House of Lords in that case,

but they were agreed in holding that a bequest for such public purposes as the trustees might select was void, as it did not designate the particular class of objects from which the trustees might make a selection—*Blair v. Duncan*, 4 F. (H.L.) 1. The Lord Ordinary thinks that *Blair's* case is distinguishable from the present in respect that there was not any limitation of locality in the former, while in the present case the bequest is limited to the parish of Lesmahagow or neighbourhood. It is true that two of the learned Lords of Appeal—Lord Robertson and Lord Brampton—in their opinions referred to the absence of any such limitation in *Blair's* case, but I do not find that that was the ground of judgment, nor is there any reference to it in the rubric. The Lord Chancellor said—"The disposition here given to A B to determine what particular public purposes should be the objects of the trust is too vague and uncertain for any court either in England or Scotland to administer." Lord Shand said—"I concur in thinking that a bequest for public purposes to be selected by a person or persons named by the testator, unlike a bequest expressly limited to a charitable purpose, is not sufficiently definite, but is too vague and wide to form the subject of a valid bequest." Lord Davey in the course of his opinion put to himself the question, "Can it be said that 'public purposes' is within the description of a particular class of individuals or objects?" and answered this question in the negative. The two extreme illustrations which Lord Robertson referred to as showing how comprehensive the words "public purposes" might be are equally applicable to the present case although the area from which the objects may be selected is limited. I have myself much sympathy with the view of Lord Young that "public purposes" is a very wide and indefinite expression—"quite as wide and indefinite as the expression 'private purposes'"—and it is too late to go back on the rule that a man cannot make a valid bequest of his estate by disposing it to trustees in whose judgment he has confidence to apply it for any purpose that the trustees may think fit, or to suggest what would otherwise have commended itself to my mind, that a bequest for three alternative objects should not wholly fail because one is too vague to form the subject of a valid gift. I cannot see that there is any true distinction between the terms of the present bequest—which I think must clearly be read disjunctively—and those which were the subject of decision in the case of *Blair v. Duncan*. I am accordingly of opinion that we ought to sustain the contention of the Lord Advocate on behalf of the Crown.

LORD GUTHRIE was not present.

The Court recalled the interlocutor of the Lord Ordinary, repelled the claim for Mrs Turnbull's trustees, sustained the claim for the Lord Advocate, and ranked and preferred him to the fund *in medio* accordingly.

Counsel for Pursuers and Real Raisers—Chree, K.C.—M. P. Fraser. Agents—Webster, Will, & Company, W.S.

Counsel for the Lord Advocate—Solicitor-General (Morison, K.C.)—Forbes. Agent—James Ross Smith, S.S.C.

Counsel for the Rev. Thos. Burns, D.D.—Anderson, K.C.—W. T. Watson. Agents—Hill, Dougal & Company, W.S.

Thursday, June 28.

FIRST DIVISION.

LANARK COUNTY COUNCIL v.
INLAND REVENUE.

Revenue — Local Government — Stamp — Exemption — Housing of the Working Classes Act 1890 (53 and 54 Vict. cap. 70), secs. 57 (1) and 94 (3)—The Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44), secs. 31 (1) and 53—The Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), sec. 168.

Held (dis. Lord Johnston) that a feu contract granted to a county council as local authority for the purposes of the Housing, Town Planning, &c., Act 1909 is not exempt from stamp-duty under section 168 of the Public Health (Scotland) Act 1897, in respect that it is not granted under and in pursuance of the powers conferred by the Act of 1897.

The Housing of the Working Classes Act 1890 (53 and 54 Vict. cap. 70) enacts—Part III—*Working Class Lodging-Houses*—Section 57 (1)—“Land for the purposes of this part of this Act may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act 1875, and sections 175 to 178 both inclusive of that Act (relating to the purchase of lands) shall apply accordingly. . . .” Part V—*Application of Act to Scotland*—“In the application of this Act to Scotland the following provisions shall have effect:—Section 94— . . . (3) The Public Health (Scotland) Act 1897, and the Acts amending the same shall be substituted for the Public Health Acts, and in particular (a) with respect to the purchase of land a reference to section 90 of the said Public Health (Scotland) Act 1897 shall be substituted for a reference to sections 175 to 178 of the Public Health Act 1875.”

The Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44) enacts—Section 31 (1)—“The expenses incurred by a rural district council after the passing of this Act in the execution of Part III of the principal Act (i.e., *Housing of the Working Classes Act 1890*) shall be defrayed as general expenses of the council in the execution of the Public Health Acts. . . .” Section 53—“In addition to the provisions of the principal Act respecting the application of that Act to Scotland the following provisions shall have effect in the application of the Housing Acts to Scotland:— . . . (3) The expression Public

Health Acts means the Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), and any Act amending the same. . . . (4) The reference in section 57 of the principal Act to sections of the Public Health Act 1875, relating to the purchase of lands shall be construed as a reference to the corresponding sections of the Public Health (Scotland) Act 1897. Provided that for the purposes of Part III of the principal Act the procedure under section two of this Act for the compulsory purchase of land shall be substituted for the procedure for the compulsory purchase of land under section one hundred and forty-five of the Public Health (Scotland) Act 1897. (5) The district and the local authority for the purposes of the Public Health (Scotland) Act 1897 shall respectively be the district and the local authority, and the public health general assessment shall be the local rate for the purposes of the Housing Acts. . . .”

The Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38) enacts—Section 168—“All bonds, assignments, conveyances, instruments, agreements, receipts or other writings made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp-duties.”

The County Council of the County of Lanark, *appellants*, being dissatisfied with a determination of the Commissioners of Inland Revenue, *respondents*, charging them with stamp-duty upon a feu contract obtained by the appellants for the purposes of the Housing of the Working Classes Acts 1890 to 1900, appealed by Stated Case.

The *Case* set forth—“ . . . By a feu contract, dated 16th and 21st February 1916, entered into between William Hugh Murray, W.S., Edinburgh, Francis John Carruthers of Dormont, in the county of Dumfries, and Robert Octavius Pitman, W.S., Edinburgh, the trustees acting under the testamentary writings of the late Miss Isabella Dennistoun Meiklam, The Towers, Havant, Hampshire, of the first part, and ‘the County Council of the county of Lanark incorporated by law, acting under the powers conferred on them by the Public Health (Scotland) Act 1897 and the Housing of the Working Classes Acts 1890 to 1900, for themselves and for behoof of the District Committee of the Middle Ward District of said county as a local authority under the said Public Health (Scotland) Act 1897 and Housing of the Working Classes Acts 1890 to 1900, of the second part, the first parties feued to the second parties the said ‘the County Council of the County of Lanark and their successors according to the true intent and meaning of said Public Health (Scotland) Act 1897 and Housing of the Working Classes Acts 1890 to 1900, and to their donees and assignees whomsoever,’ a portion of the lands of Unthank, extending to five acres or thereby, lying in the parish of Bothwell and county of Lanark. It is provided in the said feu contract, *inter alia*, ‘that the second party shall be bound and obliged to erect upon the said area of ground hereby feued within twelve months from the term of entry after mentioned buildings to be used and occupied as and for dwelling-