

MARCH 21, 1867.

THOMAS SPENCER LINDSAY and Others (Trustees of the late Richard Alexander Oswald), *Appellants*, v. ALEXANDER OSWALD (now Alexander Haldane Oswald) of Auchencruive, and Others, *Respondents*.

Entail—Defect in Prohibition—Deed of Alienation—Altering Succession—*A deed of entail of 1790 contained a valid prohibition against altering the succession, but the prohibition against alienation had the word irredeemably written on an erasure. In 1838, R. A. O., the then heir of entail in possession, by his trust disposition, conveyed all his lands to trustees for certain purposes with power to sell.*

HELD (affirming judgment), *That the trust disposition of 1838 was a deed altering the order of succession, and not a deed of alienation, and therefore it was invalid under the prohibition against altering the succession, and not affected by the defect in the prohibition against alienation.*

Alienation is rather a destruction of the succession than an alteration of the order of succession; and alienation by an heir of taillie, who is not prohibited from alienating, must, in order to be effectual, be made by him while he is in possession as such heir of taillie.—Per LORD CRANWORTH.¹

This was an appeal from a judgment of the Second Division of the Court of Session as to the validity of a deed of entail. The action of declarator was raised in 1861, and the condescendence set forth, that the late Richard Alexander Oswald of Auchencruive made a trust disposition and settlement, dated in 1838 giving all his lands to his wife and others as trustees; that the truster had right and power to convey certain lands, particularly the lands included in a deed of entail, dated 1790, which in its dispositive clause provided, that it should not be in the power of any of the heirs male, general or of taillie (including the truster), to “sell, alienate, impignorate, or dispone the said lands and estate, or any part thereof, either *irredeemably* or under reversion, or to burden the same, etc., with debts, nor to contract debts or grant deeds whereby the said lands and estate may be evicted from them.” In this clause, the word *irredeemably* was written on an erasure. That therefore the lands contained in the deed of entail were effectually conveyed in the trust disposition of 1838, and the trustees were now entitled to make up their title, and to obtain the full heritage and irredeemable right thereof, established in their persons.

The defenders, in their answer, set forth, that a deed of entail embracing the said lands was executed in 1780, and took effect in 1784, and in pursuance thereof the deed of 1790 was executed, and it had been acted on and possessed by the heirs of taillie up to 1838. That the said deed sufficiently complied with the Act of 1685, c. 22, and, at all events, it was a valid and effectual entail to the effect of excluding all gratuitous alienations; that the estate had been held under charter and sasine effectually prohibiting gratuitous alienations or alterations of the order of succession for more than forty years; and that the truster had no power to convey the said estate by his trust disposition.

The Lord Ordinary (Jerviswoode) held, that, though the word *irredeemably* was written on an erasure, still the prohibition against altering the succession was in force, and struck at the trust disposition of the late Richard Alexander Oswald.

On reclaiming note to the Second Division, the Lord Justice Clerk (Inglis), Lords Cowan, Benholme, and Neaves unanimously adhered, and gave judgment for the defenders, holding the deed of entail, though defective in other points, to be sufficiently effective to prevent the trust deed of 1838 from affecting the lands entailed.

The appellants (the pursuers), in their *printed appeal case*, gave the following reasons for reversing the interlocutors:—1. That the deed of entail was vitiated and erased *in essentialibus*; that, in the absence of any notice of erasure in the testing clause, it must be presumed *juris et de jure*, that it was erased after the deed was executed; that this presumption could not be redargued by a reference to the entail of 1780, or by any extraneous evidence whatever, so as to turn an improbativum into a probativum writ, which must be complete in itself and prove itself, but that, assuming it to be competent to refer to the prior entail, the evidence relied upon does not

¹ See previous report 2 Macph. 249; 36 Sc. Jur. 128.
H. L. 12: 39 Sc. Jur. 339.

S. C. L. R. 1 Sc. Ap. 99: 5 Macph.

establish, that the erasure was made before the deed was signed. 2. The deed of entail of 1790 not containing a valid prohibition against alienation, the late Richard Alexander Oswald was entitled to alienate the lands; and he did validly and effectually alienate them by his trust disposition and settlement and codicil to his trustees. 3. Richard Alexander Oswald was not barred from conveying the estates by his trust disposition and settlement merely because, during more than the prescriptive period of forty years, he had possessed the estates, or at least portions of them, under charter and sasine containing a valid prohibition against irredeemable alienation, and no act of homologation or adoption by him of the deed of entail of 1790 will bar him from effectually alienating.

Anderson Q.C., and *G. Young*, for the appellants.—The interlocutor of the Court below was wrong. 1. It was assumed in the Court below, that the word “irredeemably” being written on an erasure vitiated the prohibition against sales. That ought not merely to be assumed, but it is correct in point of law, for an erasure is presumed to have been made after execution of the deed—*Kedder v. Reid*, 1 Rob. Ap. 183; *Boswell v. Boswell*, 14 D. 378; *Shepherd v. Grant*, 6 Bell’s App. 153; *Gollan v. Gollan*, 4 Macq. Ap. C. 585; *ante*, p. 1209. And if there is an erasure *in essentialibus*, no extrinsic evidence is admissible to shew what the original word was. The case of *Earl of Strathmore’s Trustees v. Strathmore*, 1 Rob. Ap. 189, was not an authority to the contrary, for in that case there were duplicate deeds, and each duplicate was incorporated as part of the other. 2. Assuming, that the erasure vitiated the prohibition against alienation, then there was nothing to prevent R. A. Oswald from alienating, and he did alienate by the trust disposition of 1838. A deed of alienation differs from a deed altering the order of succession in this, that the heir of entail in the former case alienates from himself to third parties, it being immaterial whether he does so onerously or gratuitously or *mortis causâ*, whereas in this case of altering the succession, he resigns the estate for new infeftment to himself and his heirs general—Bankt. 2, 3, 137; *Brown v. Countess of Dalhousie*, M. App. Tailzie No. 19; *Logan v. Drummond*, 5 Br. Sup. 798; *Oliphant v. Oliphant*, 13 D. 1174. *Carrick v. Buchanan*, 3 Bell’s Ap. 342, was a different case from the present, which resembles the case of *Syme v. Dickson*, 3d March 1821, F. C., where a similar deed to the present was held not to be an alteration of the succession. That case was overlooked by the Court below, and must be overruled if the House sustain the judgment of the Court in the present case. So here the trust disposition of 1838 is an alienation and not an alteration of the succession. It is of no consequence, that the alienation is gratuitous—*Hamilton v. Macdowall*, 3d March 1815, F. C. The mere fact, that these estates had been held for forty years and more under charter and sasine did not bar R. A. Oswald from now conveying irredeemably—*Montgomery v. Eglinton*, 2 Bell’s Ap. 149; *Smith v. Rankine*, 13 S. 464; *Shepherd v. Grant*, 6 D. 464; *Boswell v. Boswell*, 14 D. 378.

The *Attorney General* (Rolt), and *A. R. Clark*, for the respondents, were not called upon.

LORD CHANCELLOR CHELMSFORD.—My Lords, this is an appeal from an interlocutor of the second division of the Court of Session, adhering to an interlocutor of the Lord Ordinary in an action of declarator and reduction at the instance of the pursuers.

The object of the action is to have it declared, that the pursuers, as trustees under a trust disposition and settlement executed by Richard Alexander Oswald, on the 19th October 1838, had full right to the whole lands and heritages, goods, gear, debts and sums of money, claims and demands, and in general, the whole means and estate, heritable and moveable, real and personal, of what nature or kind soever and wheresoever situated, which belonged to the said Richard Alexander Oswald.

The defenders in answer allege, that Oswald had no power under the trust disposition and settlement, being prohibited by a deed of tailzie of the lands and heritages, dated the 22d January 1790, under which he was heir of entail in possession.

This deed of tailzie was made by trustees in execution of a trust contained in a tailzie of the estate of Auchencruive, of the date of the 24th March 1780, but it must be regarded as an independent tailzie, and not as depending upon any reference to the prior deed.

It contains two prohibitory clauses, upon one of which the whole question turns. The first of them is a prohibition against changing the order of succession, “That it shall not be lawful to or in the power of the said Richard Alexander Oswald, or any of the heirs male general or of tailzie, who shall succeed to the said lands and estate, to alter, innovate, or change this present tailzie, or nomination or order of succession herein prescribed, or do or grant any act or deed, that may import or infer any alteration, innovation, or change thereof, directly or indirectly.” The second is against alienation, in these words, “that it shall not be in the power of the said Richard Alexander Oswald, or of any of the heirs male general, or of tailzie, who shall succeed to the said lands and estate, to sell, alienate, impignorate, or dispoise the said lands and estate, or any part thereof, either irredeemably or under reversion.”

In this latter clause, the word “irredeemably” is written upon an erasure, and this being an alteration *in essentialibus*, the whole clause is vitiated, and in consequence there is no valid prohibition against alienation.

The only prohibitory clause, which is effective, is that against altering the order of succession.

The question therefore is, whether the trust disposition and settlement of the 19th October 1838 is to be regarded as an alteration of the order of succession, and therefore prohibited; or as an alienation, and within the competency of Richard Alexander Oswald, by reason of the invalidity of the clause prohibiting alienation.

The deed in question is a *mortis causâ* disposition by Oswald to trustees, and the purposes of the trust are declared to be for payment of the truster's debts and legacies, and after these payments in trust during the life of his widow, when she should think proper, to sell and dispose of the trust estate and effects, and to invest the money in the funds, and pay the whole of the dividends to her, and after her death to lay out and invest a sum of £30,000 for the use of the truster's granddaughter, with trusts for his grandchildren and nephews and nieces, and in failure of all the preceding trusts, the residue to be distributed under the English Statute of distributions.

The appellants contend, that this deed is an alienation of the estate, and not a mere alteration of the order of succession. First, because the trustees are singular successors. And secondly, because it directs an entire conversion of the estate into money, and so produces not a mere alteration, but a complete termination of the order of succession. And in support of this view, they rely strongly upon the case of *Syme v. Dickson*, as a decision which ought to govern the case.

In *Syme v. Dickson*, there was an entail, with a prohibition against alteration and contracting debts, but none against altering the order of succession. The heir of entail in possession made a *mortis causâ* disposition to trustees, to sell and dispose of the lands for payment of his debts, and to pay the residue to his heirs and assigns. In order that this deed should be valid, it was necessary to establish, that it was not an alienation, but an alteration of the order of succession. The Court of Session, in the first place, found, that the entail did not contain a valid prohibition against altering the order of succession. Therefore the trustees brought an action to have it found, that by the trust deed the heir of entail in possession did actually alter the order of succession. The defender pleaded, that the pursuer never altered the order of succession, and that by executing the trust deed for the purpose of selling and paying debts, he committed a contravention of the entail. The Court, after the Lord Ordinary had sustained the defences generally, adhered to his judgment, on the ground, that the truster had not by the trust deed made an effectual alteration of the succession.

Now, upon this case it must be observed, that the deed was a disposition to trustees for payment of debts, and therefore in its terms an alienation within the prohibitory clause. The trustees, in order to take it out of the operation of that clause, endeavoured to give the deed the character of one effecting an alteration of the succession. But unless the pursuer could have satisfied the Court, that if it actually altered the order of succession, it was not by means of a deed which amounted to an alienation, he could not have succeeded. I do not understand *Syme v. Dickson* to be an authority, for the proposition apparently contended for in this case, that if the deed had been one altering the order of succession, it could not, at the same time, be an alienation. There seems to be no reason why a deed should not at once violate both prohibitions. But the argument of the appellants appeared to make the object of the two prohibitory clauses so entirely different as to be capable of only separate and distinct infringement. Thus, after speaking of the three cardinal prohibitions against alienation and contracting debts, and altering the order of succession, and of the distinction preserved between them in the Statute of 1685, and the Act of Parliament of 1848, they quoted the following words of Lord Fullerton in *Oliphant's case* (13 D. 1179):—"The question is brought to this point, whether the deed of 1816 is an alienation or an alteration of the order of succession. No doubt every question of this kind may be stated so as to raise an apparent difficulty. For a deed altering the order of succession is an alienation as to those heirs who are excluded, and, on the other hand, an alienation is a most effectual alteration of the former order of succession."

These observations were made in a case in which the entail effectually prohibited alienation, but did not prohibit alteration of the order of succession, and in which the deed was clearly of the latter description, for the heiress of entail gave, granted, and disposed the estate to and in favour of herself, and failing her to and in favour of her second son and his heirs, whom failing to a series of heirs different from those called in the original destination, and Lord Fullerton, remarking, that the deed was in the ordinary form of a deed of alteration, added an observation which completely meets the present case. He said, "I do not think, that a disposition leaving the disponent in full possession, and conveying the estate after her death to a third party, would have been an alienation, but an alteration of the order of succession." In the present case, Richard Alexander Oswald, whilst he was heir of entail in possession, might have made an effectual disposition during his life, there being no valid prohibition against an alienation. But his trust disposition and settlement was not to come into operation until his death, when the succession immediately opened to the next heir of entail. It seems impossible to deny, that the trust disposition and settlement, if permitted to take effect, would innovate and change the order of succession, and divert the estate into a different channel. The observation of Lord Fullerton

in *Oliphant's case*, to which I have just referred, is in exact accordance with the unanimous judgments of the Lord Ordinary and the Judges of the Second Division in the present case, that the deed in question is not an alienation but an alteration of the order of succession. With such a weight of authority against the appellants, I have no hesitation in advising your Lordships, that the interlocutors appealed from ought to be affirmed.

LORD CRANWORTH.—My Lords, it is hardly necessary to remind your Lordships, that a Scotch entail, in order to be to all intents effectual, must be protected by three properly framed prohibitory clauses, *i.e.* a clause against alienation, a clause against incurring debts, and a clause against altering the order of succession.

Before the passing of Lord Rutherford's Act in 1848, a defect in any one of these prohibitions did not make the tailzie void, but simply left to the heir of tailzie in possession the liberty to do the act not duly prohibited, the other provisions of the tailzie remaining in force; and the question in this case having arisen in 1841, must be solved irrespectively of the Act of 1848.

I assume for the present argument, that there is here no valid prohibition against alienation, and therefore if what was done by the *mortis causâ* deed of 1838 is to be treated as an alienation of the entailed estate by Richard Alexander Oswald, and not as an altering of the order of succession, then the appellants are right and the Court below was wrong. But I am of opinion, that what was done by the *mortis causâ* deed, assuming it to apply to and to comprise the entailed lands, was as to those lands not an alienation within the meaning of the Statutes regulating entails, but was an altering of the order of succession.

A separate meaning ought to be given to every one of the three restrictions, and therefore, although every alienation may popularly be described as altering the order of succession, yet that is not in my opinion the meaning of the word "alienation" as used in the Statutes. Alienation is a destruction of the succession rather than an alteration of its course. It removes the subject alienated from the operation of the tailzie, and leaves it as if no tailzie existed. If that be a correct interpretation of the language of the Statutes when they speak of alienation, as I cannot doubt it is, there was here no alienation. For alienation, to be valid, if made by an heir of tailzie not prohibited from alienation, must be made by him while he is in possession as heir of tailzie. He may in his lifetime by alienation destroy the succession, but as soon as he dies his power over the entailed property is at an end, and the title of the person next in succession under the tailzie takes effect, and if the right of that person is defeated by the *mortis causâ* deed, the effect of that deed is to divert the course of succession from the person entitled under the tailzie, and to carry it to the person or persons entitled under the *mortis causâ* deed. It can make no difference, that the person claiming to be entitled under the *mortis causâ* deed is thereby directed to sell. He can only do that after he has succeeded to the estate in an order of succession different from that prescribed by the tailzie.

On these short grounds the decision of the Court below appears to me to have been perfectly correct.

LORD WESTBURY.—My Lords, I am ready to grant, for the purpose of the present judgment, to the appellants, that the erasure contained in the prohibitory clause against sale, alienation, and impignoration vitiates the whole of that prohibition. I am also ready to grant or to assume, for the purpose of the present argument, that if the settler in the deed of 1838 had been an unrestrained fee simple proprietor, the lands in question might have been taken as passing by virtue of that instrument.

It may be unnecessary to mention (but, perhaps, it may be desirable to do so, in order to shew, that we have not forgotten it) the well established principle, that an heir of entail, according to the Scotch law of entail, is absolute fiar, and has all the characteristics of a fee simple proprietor, save to the extent to which he is restrained by the fetters of the entail. One other observation may be necessary, namely, this is a case *inter hæredes*, and deeds of entail being by Scotch law good at common law, it is here simply necessary to inquire, whether the deed of 1838 is struck at by any prohibition; because if there be a prohibition within the terms of which that deed falls, it will be sufficient to avoid that instrument.

The argument, on the part of the appellants, consists of two propositions—one forming the major premiss of their syllogism, the other the minor. Their first proposition was this: No gratuitous deeds of alienation fall within the terms of a simple prohibition against altering the order of succession. They attempted to maintain that general proposition by two or three cases, the principal of which were, first, the case of *Syme v. Dickson*, and then, secondly, *Lady Dalhousie's case*. Now, in the case of *Syme v. Dickson*, there was a prohibition against alienation, but there was no prohibition against altering the order of succession. The instrument which was executed against the heir of entail had an immediate operation, because it conveyed to trustees the lands then belonging to him, and which he should possess at the time of his death, and the trust was present and immediate, namely, to sell those lands. It was not a revocable instrument, nor was a liferent reserved to the granter. That deed therefore was struck at by the prohibition against alienation. But the contention was to give it a different character from that of alienation, and to bring it, if possible, within the character of a deed of succession. The Court of Session, however,

held, that it was an alienation, and refused to bring it within the compass of any prohibition, if there had been a prohibition against altering the order of succession. That case by no means proves this conclusion, that a gratuitous deed of alienation may not be bad as an instrument altering the order of succession.

In *Lady Dalhousie's case*, the circumstances were reversed. In that case the nature of the instrument was of this kind. I take the statement in both these cases from the statements made by the appellants themselves. In *Lady Dalhousie's case*, the heir of entail executed a disposition in favour of himself and the heirs male of his body, and it was attempted to be contended there, that that was an alienation. But it was held, that inasmuch as the estate of the disponent was reserved to the disponent, it was not an alienation, but was a deed altering the order of succession.

With regard to this first general proposition of the appellants, it appears to me to be effectually disproved by the language of the Judges in the case of *Oliphant*, which has been already referred to by my noble and learned friend, the Lord Chancellor, and also by the decision of this House in the case of *Innes v. Ker*, 2 Dow, 149; 5 Paton, 362; Mor. Tailzie, App. 1, both of which cases appear to me effectually to dispose of the assertion, that a gratuitous deed of alienation cannot be struck at by a clause against altering the order of succession.

The next proposition, the minor premiss of the appellants, is, that this particular instrument of 1838 is a deed of alienation, and being a deed of alienation, they say it cannot be brought within the compass of the prohibition against the order of succession. Now, it is this proposition, as in most instances of false reasoning, that the error of the appellants principally lies. This deed has none of the characteristics of alienation. In the first place, the life interest of the settler is absolutely reserved. In the next place, the deed is purely *mortis causâ*, and therefore in its own nature revocable. In the third place, it is expressly made subject to revocation *ex capite lecti* even at the last moment of the grantor's life. Now, what is the character of an instrument of that kind? Can it be properly termed an alienation? It has no operation whatever *inter vivos*. It has no operation until the death of the settler. Then, on the death of the settler, what is the effect? Why that, under the deed of entail, the heir of tailzie under the destination of that deed becomes entitled. But what would be the operation of this trust deed of 1838? Its only operation, its only object, aim, and purpose would be to give to the estate a different owner from the successor, that would be entitled to it under the destination of the entail. But can any one say, that an instrument, the object and effect of which are clearly to alter the ownership at the death of the settler, is not an instrument which has, for its sole purpose and aim and its only operation, to give to the estate a different succession at the death of the settler.

This case appears to me so plain, that I should hardly have supposed, that it could be made capable of any serious discussion but for the able and learned argument which we have heard. But these being the characteristics of the deed, I submit to your Lordships, that unquestionably the conclusion of the Court of Session was right; and I therefore concur in these words of the Lord Justice Clerk, in which he says, "Such a testamentary conveyance seems to be in every sense of the term a contravention of the tailzie—an alteration and an innovation of the order and course of the succession or substitution of a new succession for the tailzie—the nomination of new successors, not members of the tailzie. The pursuers therefore, in my opinion, as trustees, are the successors of Mr. Oswald in the true testamentary sense of the term, because they take from him by an instrument which is gratuitous, executed *mortis causâ*, revocable until delivered, and ineffectual during the lifetime of the maker."

But an instrument of which these things may be truly predicated cannot be called an alienation except by a misnomer. It is nothing to say, that it would be competent to the trustees to feudalize their titles under that deed. If they had done so, the destination of the deed still remained revocable, having no effect whatever on the enjoyment of the property till the death of the settler. These are the characteristics not of a deed of alienation operating *in presenti inter vivos*, but of an instrument, the effect of which is postponed till the death of the settler, and then intended to operate upon the destination contained in the deed of entail by substituting a new line into the order of succession.

I have not therefore the least doubt, nor have I for a moment felt any doubt from the commencement of the argument, as soon as the facts of the case were ascertained, with regard to the correctness of the decision of the Court of Session.

LORD COLONSAY.—My Lords, I have very little to say in addition to the observations which have been made by your Lordships, because I concur entirely in those observations, and in the conclusions at which your Lordships have arrived. It appears to me, that this deed in form partakes of the character of an alienation, but it does not on that account cease to be a deed altering the order of succession.

I see it stated in the written argument for the appellants, that "a deed altering the succession is a deed whereby an heir of entail in possession of the estate under a destination to himself and his heirs male resigned it in favour and for new infestment to himself and his heirs general. In such a case the heirs general take through him, and not from him." Now it is true, that that is a most common mode of altering the order of succession. But it is not the only mode of altering

the order of succession. I know no authority for holding, that an alteration in the order of succession may not be effected, although the heir in possession does not first convey to himself. Indeed, I think the appellants were unable to sustain this argument, even in their *printed case*, because in a subsequent part of it they fall off from that position, and seem substantially to admit, that if this deed had been one conveying the estate to trustees in the manner in which it is attempted to be conveyed, with instructions to make it over to another set of heirs, in that case it would have been a deed altering the order of succession. That implies, that a conveyance to trustees, though it be not in form an alienation, may still be a step in the alteration of the order of succession, and that it is not merely by a resignation in favour of himself and his heirs that an alteration in the succession can be effected.

This leads us to look at the nature of this deed. The deed is one which is made by the settler for the purpose of settling his affairs at his death. It is a deed which conveys to trustees, but it is revocable, and not to take effect during his life; it is *mortis causâ*, in every sense a gratuitous deed. And that being the nature of the deed, it attempts to put the estate into the hands of trustees, with directions to do certain things; one is to give a liferent to a party who is not entitled to a liferent under the entail. Therefore it is a deed which takes away the succession to the estate from the heirs who were appointed by the entail. That appears to me an incompetent mode of proceeding. It has not the ordinary force of an alienation, nor what I think is meant by an alienation under the Statute of 1685. It is not a *de presenti* conveyance. The party did not divest himself of the estate at all, he did not put it away from him. He did not give it over to any other person. And, therefore, though partaking in form of the character of alienation, it is not a conveyance such as is contemplated under the clause of the entail which prohibits alienation, but it is an attempt to alter the order of succession, and it is therefore a contravention of that clause of the entail which effectually prohibits alterations of the order of succession.

I abstain from giving any opinion upon a point which was raised in the argument as to the effect of this erasure. I do not think it necessary to do anything further than to assume, that it may be conclusive at all events against irredeemable alienation. Nor do I give any opinion upon the further point, whether this general conveyance would be effectual to carry an estate which was settled by an entail without any particular mention of the lands. That question may afterwards come before the House, but at present I abstain from expressing any opinion on it.

Mr. Anderson.—My Lords, with respect to costs, your Lordships may remember, that there was a great volume which you thought unnecessary, and which aggravated the cost very considerably.

LORD CHANCELLOR.—The House does not allow any discussion as to costs after judgment has been given.

Interlocutors affirmed, and appeal dismissed with costs.

Appellants' Agents, Hunter, Blair, and Gowan, W.S.; Preston, Karlake, London.—
Respondents' Agents, Dundas and Wilson, C.S.; Loch and Maclaurin, Westminster.

MARCH 22, 1867.

MRS. CATHERINE BRUCE or MITCHELL and Others (next of kin of James Bruce), *Appellants*, v. THE MINISTERS AND KIRK SESSIONS of the PRESBYTERY OF DEER, *Respondents*.

Testament—Bequest to poor of a Presbytery—Charity—Void for uncertainty—*B. by his will said "the whole balance of my property I leave to poor of this Presbytery, to be divided, I mean the interest, by the sessions of the several churches, but to be paid to all Christians except Roman Catholics."* No executors were nominated.

HELD (affirming judgment), *The bequest was not void for uncertainty.*¹

This was an appeal from interlocutors of the Lord Ordinary and Second Division in an action of multiplepinding, at the instance of Alexander Bruce, Esq., executor dative of the late James Bruce, Esq., as to the construction of a clause in the testament of the said James Bruce, which was as follows :—“The whole of the balance of my property I leave to poor of this Presbytery, to

¹ See previous report 3 Macph. 402 ; 37 Sc. Jur. 198. S. C. L. R. 1 Sc. Ap. 96 ; 5 Macph. H. L. 20 : 39 Sc. Jur. 343.