

for the application of the fund in question, the proposal that it should be applied towards the building of a church hall to be used for Sunday school purposes as well as for congregational purposes, and a library, is most nearly in accordance with the original purpose for which the fund was established; and therefore authorises the petitioners to apply the said fund accordingly; and remit to Mr Gillespie to adjust the details of a scheme in accordance therewith, regard being had to the undertaking of the petitioners to raise the balance of the money required for the building of the hall, and of the other terms of said proposal, and discern."

Counsel for the Petitioners—Sol.-Gen. Graham Murray, Q.C.—Kennedy. Agents—Macpherson & Mackay, W.S.

Counsel for the Respondents—C. S. Dickson—C. K. Mackenzie. Agents—Melville & Lindsay, W.S.

Tuesday, December 1.

SECOND DIVISION.

MURRAY AND ANOTHER (GILL'S EXECUTRICES), PETITIONERS.

Will—Charitable Bequest—No Directions for Management—Petition for Scheme for Administration.

A testator bequeathed one-third of the proceeds of his property, heritable and moveable, to be invested for behoof of the poor of a burgh who were not on the roll of the parochial board of any parish, but he appointed no trustees and left no directions for the administration of the bequest.

The executrix-dative of the testator petitioned the Court to settle a scheme for the administration of the bequest, but the Court held that the governors of an existing trust who managed a similar charity and were willing to undertake the bequest in question without additional expenses, were the most suitable parties to administer it.

John Hoyes Gill, postmaster at Forres, died on 6th June 1889. He left a holograph settlement in the following terms—*"Forres, 6th June 1889.*—In order to do something to benefit the needy, I hereby bequeath one-third part of the proceeds of my property, heritable and moveable, to my cousin Eliza Murray, presently residing at thirty-five Moray Street, Elgin; and one-third to my aunt Mary Ann Forsyth, presently residing at Bournemouth. The remaining third part to be invested for behoof of the poor people of Forres who are not on the roll of the parochial board of any parish.—Signed by me this sixth day of June Eighteen hundred and eighty-nine.—J. H. GILL."

Gill left both heritable and moveable property. The heritable property was worth about £4000, but part of it was burdened with a heritable security amounting to £2000. The moveable property amounted to £1800. The heritable and moveable estate remaining for division after deduction of debts, &c., was expected to amount to about £3000, and one-third of that, viz., £1000, fell to be set aside to meet the bequest contained in the settlement for behoof of the poor of Forres.

Miss Eliza Murray, residing at Greenwood Cottage, Forres, and Mrs Forsyth, the beneficiaries under the will, residing at Bournemouth, were confirmed executrices-dative on 25th July 1889.

Upon 20th October 1891 these parties presented a petition to the Second Division of the Court of Session to settle a scheme for the administration of the charitable bequest, and to grant power to such persons as might be appointed to administer the fund to make up a title by notarial instrument or otherwise to the share of the heritable estate falling to the poor of Forres, and to sell the same either by public roup or by private bargain.

The petition was served upon the Lord Advocate, the Governors of Jonathan Anderson Trust (a charitable institution in Forres), the minister and kirk-session of the parish of Forres, the Parochial Board of that parish, and Mr Gill, the deceased's next-of-kin.

The Governors of Jonathan Anderson's Trust lodged answers.

The trust-disposition and deed of settlement of Anderson provided—"I appoint the remainder of the foresaid feu-duty or ground annual to be paid annually to and among poor housekeepers in Forres of the description to be descended upon by me in any note thereof which may be found lying by me after my death, and failing my leaving such subscribed note, I appoint the Provost, Magistrates, and Town Council of Forres to pay the same to and among such poor housekeepers of the town of Forres annually as they shall judge proper, but not to exceed £5 sterling yearly to any individual."

This trust, which had been managed from the date of the foundation in 1804 by the Town Council, was now carried on by a scheme under the provisions of the Educational Endowments (Scotland) Act 1882, approved by Her Majesty in Council on 3rd May 1888, by which the administration handed over to a body composed of seven Governors, of whom three were elected by the Magistrates and Council of Forres, two by the School Board of the burgh of Forres, and one by each of the School Boards of Kinloss and Rufford.

The Governors were directed to apply the annual sum of £70 for the educational purposes of the scheme, and if there was any surplus income it was to be applied for the charitable purposes set forth in the trust-disposition and settlement of Jonathan Anderson. The Governors were

also entitled to receive additional donations or endowments for the purposes of the scheme or for any special objects connected with the endowment which should not interfere with the due working of the provisions.

The Governors therefore contended that the fund in question ought to be handed over to them for these reasons—“(1) Because the deceased, when he framed his will, had in view the benefit of those who had been in receipt of doles from the charity managed by the respondents. (2) Because the respondents already administer a similar charitable fund, and are prepared to administer the fund now in question without additional cost. (3) Because, from their numbers and otherwise, the respondents are a more suitable body to administer the said fund than the Town Council. (4) Because the same reasons which, after full inquiry before a Royal Commission, induced transference of the administration of the charitable funds presently administered by the respondents from the Town Council in 1888, apply to the present case.”

The Town Council and Magistrates of the burgh of Forres also lodged answers. They averred that the main purposes of Mr Anderson's trust were (1) for assisting the education of poor children in the parishes of Forres, Rafford, and Kinloss; and (2) for the distribution annually among poor people in the burgh of Forres, not in receipt of parochial relief, of the residue of the fund; that during the time in which the fund had been administered by the Town Council a sum of about £67 had been distributed annually among the poor, but under the new scheme of 1888 the funds had been administered solely, or almost solely, for educational purposes; that Mr Gill had in contemplation the restoration of the fund previously distributed under the Anderson Trust among the poor, and that it was reasonable to assume that he would have approved of the administration of his fund by the same body which had administered the Anderson fund so long as there was anything to distribute among the poor of Forres.

At advising—

LORD YOUNG—The wording of the prayer of the petition is a little perplexing when we come to deal with the matter practically. I understand that the whole estate of the deceased gentleman, heritable and moveable, is carried by his will, but that no trustees or executors were nominated by him, and that the beneficiaries have made up a title as executrices. The petition is only concerned with one-third of the heritable estate and one-third of the moveable estate. That state of affairs makes it necessary to realise not only the part of the heritable estate affected by this petition, but the whole of it as well as the personal estate. The question for the parties then is, what is the best and most economical method of getting that done? When that is done, my opinion regarding it as a matter of expediency is that the one-third

part of the heritable and of the moveable estate should be handed over for administration to the respondents the Governors of Jonathan Anderson's Trust for the purposes mentioned in the will.

What recommends that course to my mind is that the Governors are now administering another trust fund of about the same amount as this will be, and for very much the same ends as this fund is directed to be administered, viz., “for behoof of the poor people in Forres who are not on the parochial board of any parish.” We are assured that they are willing to add this sum to the funds already under their charge, and that no additional expense will be incurred in its administration. Whatever is the course chosen for realising the heritable estate left under the testator's will, I think that one-third of the proceeds, along with one-third of the moveable estate, should be handed over to the Governors of Jonathan Anderson's Trust, and that they should administer the fund to the best of their judgment and discretion. There is no necessity for forming a scheme as asked in the petition.

LORD RUTHERFURD CLARK, LORD TRAYNER, and the LORD JUSTICE-CLERK concurred.

The Court pronounced this judgment—

“Find that the most suitable parties to administer the estate falling within the charitable bequest contained in the will of the deceased John Hoyes Gill mentioned in the petition are the Governors of Jonathan Anderson's Trust: Grant warrant to authorise and empower the petitioners Eliza Murray and Mary Anne Gill or Forsyth to make up a title in their own names to the whole heritable estate of the said deceased John Hoyes Gill, to sell the same either by public roup or private bargain, and to grant all necessary dispositions to purchasers and other deeds, and to apply the proceeds of said heritable estate in terms of the said will; and upon the estate, heritable and moveable, of the said John Hoyes Gill being realised, ordain the said petitioners to pay over one-third of the free proceeds thereof to the said Governors of Jonathan Anderson's Trust, to be administered by them for behoof of the poor people of Forres who are not on the roll of the parochial board of any parish, in the manner which seems to the said Governors in their discretion to be most expedient: Find the expenses incurred herein by the petitioners and the said Governors chargeable against the amount falling within said bequest, and no expenses due to or by any other party, and decern,” &c.

Counsel for the Petitioners — Wilson.
Agent—Robert Stewart, S.S.C.

Counsel for the Town Council — H. Johnston. Agents — Stuart & Stuart, W.S.

Counsel for the Governors of Anderson's Trust—Guthrie—C. K. Mackenzie. Agent—Robert Stewart, S.S.C.

Agent for the Lord Advocate—J. Auldjo Jamieson, W.S.

Tuesday, December 1.

FIRST DIVISION.

BOWMAN v. MACKINNON AND OTHERS.

Petition—Trust—Sequestration of Trust-Estate—Removal of Trustees—Judicial Factor.

One of his next-of-kin of a truster presented a petition for sequestration of the trust-estate, removal of the trustees, and appointment of a judicial factor, on the ground that the trustees intended to remove the trust-estate to England, which would prejudice the petitioner's rights in an action of reduction of the settlement which she was about to bring.

In respect that the trustees stated they had no intention of removing the trust-estate from Scotland, the Court refused the prayer of the petition.

Thomas Melville Russell, who died on 3rd February 1891, by trust-disposition and settlement dated 24th October 1890 conveyed his whole estate, heritable and moveable, to the trustees therein named, and directed them, *inter alia*, to realise and pay over the whole residue to the Mildmay Mission to the Jews in London. He further gave his trustees the right "to take over themselves, or make over to their friends, such parts, of my stock, funds, or securities as my trustees may feel disposed or in their own absolute discretion think to be right and proper, and at such prices as they alone may regard as the fair market value of the day of such stocks, funds, or securities as may be taken over or made over as aforesaid."

Of the trustees named, Duncan Mackinnon, an East India merchant resident in London, alone accepted office, and assumed Neil Macmichael, an East India merchant in Glasgow, as his co-trustee.

The value of Thomas Melville Russell's estate was over £90,000, the greater part of which was invested in East Indian and American companies, and elsewhere furth of Scotland. There was not within Scotland any heritable estate belonging to the deceased.

Mrs Helen Taylor Russell or Bowman, a niece of the testator, and one of his two next-of-kin, on 2nd November 1891 presented a petition to the First Division of the Court of Session praying for sequestration of the trust-estate, removal of the two trustees from office, and the appointment of a judicial factor, and until any answers could be considered she prayed the Court to sequester, remove, and ap-

point, all *ad interim*. The reason alleged by the petitioner was that she was about to bring an action of reduction of the trust-disposition and settlement of 24th October 1890, on the ground that the testator was not of sound mind, and that the officials of the Mildmay Mission to the Jews had acquired undue influence over him.

She averred—"The said Duncan Mackinnon is resident in London, and is not subject to the ordinary jurisdiction of the Scottish Courts, and it is believed and averred that he and Neil Macmichael contemplate immediately removing the trust-estate entirely out of Scotland, and winding it up in England, with the view of trying to defeat any results favourable to the petitioners which may be obtained in the said action of reduction in the Scottish Courts. The contemplated removal of the trust-estate will further put it under the jurisdiction of the Chancery Division of the High Court of Justice in England, and the petitioners fear that in that event their rights in the said trust-estate could only be vindicated, if at all, after long and costly litigation in courts not those of the testator's domicile. Further, it is believed and averred by the petitioners that the said Duncan Mackinnon and Neil Macmichael, in the interests of the said Mildmay Mission to the Jews, and indeed as directed by the said trust-disposition and settlement under which they act, will realise as rapidly as possible the trust-estate and pay it over to the Mildmay Mission. As the said Mission has no domicile in Scotland, and the Scottish Courts have no ordinary jurisdiction over it, it would be extremely difficult, if not impossible, for the petitioners, in the event of their being successful in the said action of reduction, to recover the estate thus paid over to the said Mission."

The trustees opposed the petition, and stated in their answers that they had no intention of removing the estate out of Scotland, or immediately winding-up the trust in prejudice of the petitioner's action of reduction.

At advising—

LORD PRESIDENT—I think that this petition must be refused. I am at a loss to know on what ground the petitioner comes here into Court. The testator left a trust-disposition by which he appointed certain gentlemen as trustees. He died on 3rd February 1891, and we are now at the 1st of December. I have listened attentively to Mr Cooper's statement, and I have failed to discover one single reason for taking the grave and unusual step of removing trustees who tell us—and this is not contradicted—that they have been careful to do nothing to alter the state of the trust-estate, and that if an action of reduction is raised they will hold their hands and hold the estate for the benefit of all who may be found entitled thereto. Mr Cooper has hinted at danger to the petitioner's right if the trust-estate be transferred to England and placed under the jurisdiction of the English Courts. I cannot, however, see any ground for inter-