proper charge on the available fund, and I propose that we should follow this decision. The question then remains whether the Sheriff-Substitute was right in awarding the balance of the available fund to the child as compensation.

The Act of 1906 puts illegitimate children and grandchildren into the category of dependents, and in their case, just as in the case of lawful children, the question must be, What is the measure of the parents' obligation to maintain the child?

According to the judgment of the House of Lords in *Main Colliery Company* v. *Davies*, 1900 A.C. 360, this is a question of fact in each case to be determined neither by strictly legal considerations nor by any supposed standard of living in the class to which the workman belongs, but by taking into consideration the extent to which the applicant was in fact dependent on the injured workman, and putting a value upon the benefit which the applicant derived from being so dependent.

In the question put to us it is stated (inferentially) that the sum assessed "exceeds in amount the aggregate of the alimentary contributions in which the deceased workman would have been liable had he lived." Now it is evident that the deceased was not a willing contributor to the support of his illegitimate child, because he allowed a decree of affiliation and aliment to go out against him, and no facts are stated which warrant the inference that the deceased would have contributed anything in excess of what he could be compelled by law to pay. If there are grounds for holding that the deceased voluntarily recognised an obligation to contribute to a larger extent than he was legally bound to do, he would be right in taking such evidence into account. But I think that in awarding the whole available fund, less funeral expenses, the Sheriff-Substitute has proceeded on a wrong principle, because the Act of Parliament does not prescribe that the maximum sum available for compensation should be awarded in every case, but only that reasonable compensation within that limit should be paid. We cannot in this Court determine the amount, because we are not judges of the issue of fact in such cases, though we may in some cases be under the necessity of determining such subordinate facts as raise a question of law for our decision. All that we can do in this case is to remit to the Sheriff with instructions to put a value on the prospective contributions which the deceased would probably have made if he had lived, keeping in mind that an exact estimate of the deceased's responsibility is seldom possible and is not required by the statute.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD PEARSON was absent.

The Court pronounced this interlocutor—

"Recal the award of the Sheriff-Substitute, dated 23rd December 1907: Remit the case back to the Sheriff-Substitute with instructions to him to put a value on the prospective contributions which, if he had lived, the deceased John Murray would probably have made towards the support of his illegitimate child, and to proceed as accords: Find it unnecessary further to answer the question of law in the case, and decern: Find the appellant entitled to the expenses of the stated case on appeal, and remit," &c.

Counsel for Appellant—Orr, K.C.—Duncan Millar. Agents—Inglis, Orr, & Bruce, W.S.

Counsel for Respondent—Wilton—Chapel. Agents—Armstrong & Hay, S.S.C.

Tuesday, March 17.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

ALLAN'S EXECUTOR *v.* ALLANS AND OTHERS.

Succession — Uncertainty — "Foreign Missions" — "Or any other in the Foreign Field Suitable" — Executor — Charitable Bequest.

A layman in his holograph general settlement provided—"The residue of my estate I give and bequeath for the benefit of Foreign Missions in India, China, Africa, and South America, or any other in the foreign field suitable. I appoint the Rev. W. Watson, Kiltearn, as my executor, at a remuneration of £20 sterling."

Held that the bequest was not void for uncertainty, but was a bequest to a particular class with a power of selection in the class to a trustee, to wit, the executor, and was, as a charitable bequest, entitled to favourable construction—*Dundas* v. *Dundas*, January 27, 1837, 15 S. 427, *followed*.

Observations on the question whether a bequest for religious purposes is a charitable bequest.

On April 12, 1907, the Rev. William Watson, The Manse, Kiltearn, Ross-shire, executor-nominate of the late Donald Allan, M.D., Evanton, Ross-shire, under his holograph will dated June 23, 1900, and recorded September 3, 1906, brought, as pursuer and real raiser, an action of multiplepoinding against Robert Allan, Mapumulo, Victoria County, Natal, and others, for the purpose of deciding the disposal of the residue of the testator's estate.

The clause in the testator's will, which was holograph, dealing with the residue, is quoted *supra in rubric*.

Claims were lodged by (1) Robert Allan and others, the parties interested in the testator's intestate succession, the heir-at-law having collated, on the ground that the residuary bequest was void from uncertainty; (2) the Very Rev. John

M'Murtrie, D.D., and others, as representing the Foreign Mission Committee of the General Assembly of the Church of Scotland; and (3) the Rev. Alexander Miller, D.D., and others, as representing the Foreign Mission Committee of the United Free Church of Scotland. The second and third sets of claimants made averments to show that their foreign mission was the particular object or objects intended by the testator though insufficiently designed.

On November 21, 1907, the Lord Ordinary (MACKENZIE) allowed parties a proof of their averments before answer.

Opinion.—"This is a multiplepoinding with reference to the residue of the estate of the late Dr Allan, Evanton, Ross-shire, who died on 24th August 1906.

"He left a holograph will dated 23rd June 1900, by which, after leaving certain special legacies, he dealt with the residue of his estate in the following manner . . . [*quotes, supra in rubric*] . . . The next-of-kin maintain that this bequest of residue is void from uncertainty, and that they are accordingly entitled to succeed as heirs *ab intestato*.

"Claims have been lodged by the office-bearers of the Foreign Mission Committee of the General Assembly of the Church of Scotland, and also by the joint-secretaries of, and as such representing, the Foreign Mission Committee of the United Free Church of Scotland, and the joint-general treasurers of the United Free Church of Scotland, who, as such, are joint-treasurers of the Foreign Mission Committee. These two sets of claimants originally claimed that each was entitled to the whole of the residue, but these claims are not insisted in, and they now make common cause against the next-of-kin. Their claims are alternative—(First) each claims to be ranked and preferred along with the other to the whole of the residue in equal portions absolutely; or otherwise, they claim to be ranked and preferred to the whole of the residue in equal portions, subject to such directions with regard to the distribution of the said equal portions among the foreign missions as may be directed by the pursuer and real raiser, the executor. No claim is lodged by the executor.

"The first alternative is based upon the argument that on a sound construction of the settlement the bequest of residue was not for the benefit of the purposes of foreign missions, but was for the benefit of certain definite foreign mission schemes, that is to say, the churches put their claim upon the ground that this is a case of a bequest to definite legatees insufficiently designed, and that under the authorities they are entitled to prove who the testator intended to benefit—*Scottish Missionary Society*, 20 D. 634; *Wilson's Executors*, 8 Macph. 233. It is averred . . . [*His Lordship summarised the averments*] . . . These averments appear to me to be sufficient to entitle the claimants to a proof.

"The alternative contention for the churches is founded upon a proposition well settled in law, and which is thus stated by the Lord Chancellor (Lord Lyndhurst) in *Crichton* v. *Grierson*, 3 W. & S. 329—'According to the authorities in the law of Scotland it is quite clear that a man 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 whom that person may select'—*Blair* v. *Duncan*, 4 F. (H.L.) 5.

"If, however, the testator did not intend to bequeath his residue to certain foreign mission schemes, if he intended to bequeath it for the benefit of foreign mission purposes generally, I am unable to hold, in view of the decided cases, that this was a sufficient selection of particular classes of individuals and objects. Assuming that the term foreign missions occurring in a will such as this is necessarily confined to religious missions and excludes all others, *e.g.*, medical missions, the case seems to me to fall directly under the case of *Macintyre* v. *Grimond's Trustees*, 6 F. 285, 7 F. (H.L.) 90, for the reasons given by Lord Moncreiff in the Court of Session, which were expressly approved by the Lord Chancellor in the House of Lords. I am of opinion that Dr Allan's bequest, if it is so interpreted, is not sufficiently specific to be supported. A bequest for religious purposes is not in Scotland construed as meaning a bequest for charitable purposes.

"Even if it could be held that the testator had selected particular classes of individuals and objects, he has failed to give to some particular individual power after his death of appropriating the residue. It is to be observed that there is here no trust. The bequest of residue is a direct bequest. The testator's brother-in-law is appointed as his executor. It is said that under the Executors (Scotland) Act 1900, section 2, the term executor is equivalent to trustee. In my opinion, this does not affect the point of importance, which is that no discretionary power of selection is given to anyone under the will, nor do I think that such a power can be implied—*Low's Executors*, 11 Macph. 744. As is pointed out by Lord M'Laren in *Robbie's Judicial Factor*, 20 R. 358, the appointment of *hæres fiduciarius* with a power of selection is essential to the existence of such a bequest, because, in the absence of such a grant of power of selection, the legacy would fail from uncertainty.

"If the claimants represent the foreign missions which the testator intended to benefit, they do not need to be selected by the executor in the exercise of any discretionary power. (On the mere question of relevancy I do not find it stated on record that he has selected them.) If the claimants require to be selected by the executors before becoming entitled to anything under the residue clause, then they are obliged to found upon a bequest which, as I have already said, is not sufficiently definite. The duty which would, according to the claimants' argument, be placed upon the executor would be the definition of a class, not the selection from a class defined.

"It only remains to notice that an argument was stated against the title of the claimants. It was maintained that the bequest was to foreign missions, and that they were not foreign missions that were claiming. I do not think there is anything in this plea. The only persons *in titulo* to grant a discharge for the foreign missions of the Church of Scotland and the United Free Church of Scotland would be the persons in whose names claims have been lodged."

The claimants Robert Allan and others reclaimed, and argued—This was obviously, from the terms of the bequest, not a case of *falsa demonstratio*. A proof was therefore inadmissible and useless. Nor was it a case where the testator had given a legacy to a class with power to someone to select the individuals out of the class—*Crichton* v. *Grierson*, July 25, 1828, 3 W. & S. 329; *Dundas* v. *Dundas*, January 27, 1837, 15 S. 427—for there was no sufficient specification of the class and no appointment of an individual to select. The class must be distinctly specified—*Blair* v. *Duncan*, December 17, 1901, 4 F. (H.L.) 1, 39 S.L.R. 212 (*sub. nom. Young's Trustees*); *Macintyre* v. *Grimond's Trustees*, January 15, 1904, 6 F. 285, 41 S.L.R. 225, *rev.* March 6, 1905, 7 F. (H.L.) 90, 42 S.L.R. 466. The disjunctive clause "or any other" would include missions of any kind existing or not existing at the testator's death. There was no appointment of a trustee to select, and that was quite essential—*Dundas* v. *Dundas*, *cit. sup.*; *Robbie's Judicial Factor* v. *Macrae and Others*, February 4, 1893, 20 R. 358, Lord M'Laren at 361, 30 S.L.R. 411 (*sub. nom. Davidson* v. *Macrae*). This was not a charitable bequest but at most only a religious bequest, and it was consequently not entitled to a favourable construction—*Macintyre* v. *Grimond's Trustees*, *cit. sup.*, esp. Lord Moncreiff at 6 F. 293; see also *Murdoch's Trustees* v. *Weir*, 45 S.L.R. 335. The wider interpretation given to "charitable" in *Income-Tax Commissioners* v. *Pemsel*, [1891] A.C. 531 would not include this bequest, and was a judgment with dissents by Lords Halsbury and Bramwell. *Scottish Missionary Society* v. *Home Mission Committee*, February 19, 1858, 20 D. 634, was also referred to.

Argued for the claimants (respondents), the Foreign Mission Committees—The will was holograph, prepared by the testator himself, who was not a lawyer, and it was therefore to be construed favourable. Keeping that in view the particular bequest was clearly a case of *falsa demonstratio*, and the proof allowed by the Lord Ordinary was right. But if a contrary view were taken, still the bequest did not fail. It must then be read as to a class. The specification of the class was quite clear. If a term was capable of various meanings, the Court must take the one which was required to give validity to the bequest—*Whicker* v. *Hume*, 1858, 7 Clark 124, *per* Lord Chancellor Chelmsford at 154. "Foreign Mission" in ordinary language meant a religious mission operated from this country, and "Home Mission" was also recognised—*Scottish Missionary Society* v. *Home Mission Committee*, *cit. sup.*; *Miller's Trustees* v. *Kirkcaldy and Others*, October 27, 1905, 13 S.L.T. 454. And in that sense the claimants' foreign missions were the only ones, while the disjunctive clause only extended the sphere of operations, not the character of mission. This case was therefore quite different from such a case as *Low's Executors*, June 21, 1873, 11 Macph. 744, 10 S.L.R. 505 (*sub nom. Grant* v. *Macdonald*), where there was no class and no one to select. Here there was some one to select, namely, the executor who was appointed for that very purpose, to carry out the will, and he was in existence, which was the only wanting element for validity in *Robbie's Judicial Factor*, *cit. sup.*, Lord M'Laren, 20 R. at 361. It was not to be overlooked that this was a charitable bequest (religious coming under charitable), therefore it was to be given effect to if possible, even if necessary by supplying the machinery—*Deer Presbytery* v. *Bruce*, January 20, 1865, 8 Macph. 402; *Dundee Magistrates* v. *Morris and Others*, 1858, 3 Macq. 134; *Income Tax Commissioners* v. *Pemsel*, *cit. sup.*, Lord Watson at [1891] A.C. p. 561; *White* v. *White*, [1893] 2 Ch. 41, Lord Justice Lindley at 53; *Wilson's Trustees* v. *Scottish Society for the Conversion of Israel*, December 2, 1869, 8 Macph. 233, Lord President Inglis at 237, 7 S.L.R. 137. Even apart from the question of a charitable bequest, the Court was bound if possible to find out what the testator meant and give effect to it—*Scott* v. *Sceales*, July 20, 1865, 3 Macph. 1130, Lord Neaves at 1139. A proof should be allowed, or, in the other view, the bequest should be maintained and if necessary given effect to by a scheme.

At advising—

LORD KINNEAR—The question in this case is whether a certain bequest is void by reason of uncertainty. The will is a very simple one, and whatever doubt may arise as to the efficacy of the bequest in dispute, its mere interpretation in my opinion does not present any serious difficulty.

The testator leaves certain legacies of no great amount to relations, and a legacy of £10 to a servant, and then he proceeds—. . . [*quotes, supra in rubric*] . . . It appears to me that there can be no uncertainty as to the meaning of these words. I cannot think it doubtful that "Foreign Missions" in the mouth of a Scottish testator means an enterprise conducted by some church or association in this country for the propagation of the Gospel in foreign parts. The bequest therefore is, in my opinion, very clearly a bequest for the benefit of foreign missions. But then the testator does not define the particular missions which are to be benefited, nor the particular church or association by which these missions are to be conducted. It is a bequest in favour of foreign missions in general; and so considering it I should agree with the observation of the Lord Ordinary that it is not sufficiently specific to be supported unless the testator has

given a power to a trustee acting for him to select among the class of foreign missions those to which the bequest is to go. But then immediately following the bequest to the foreign missions there is the appointment of the Rev. Mr Watson to be the testator's executor. This is a will in ordinary language, written by a layman, and in ascertaining what he means by appointing an executor I do not think that we are concerned at all with any technical difficulties arising from the distinction, if there be such in the present state of the law, between the office of a trustee and the office of an executor strictly so called. What the testator means is to appoint somebody who is to carry out the purposes of his will, and as mere matter of construction it appears to me that when he says, "I give certain legacies to certain people, and give the residue for foreign missions, and appoint Mr Watson to be my executor," he means that Mr Watson is to execute all the provisions of the will, not only by paying the legacies to the persons named, but also by carrying out what is really in point of money the largest interest in the will, and so giving effect to the provision for the benefit of foreign missions.

As matter of construction that appears to me to follow, because I cannot imagine that the testator intended to appoint an executor to carry out the provisions of his will and to exclude from the provisions which are so to be executed any one of those which the will contains. He is to carry into execution the will and every part of it and that imports in my opinion a power to the executor to do whatever is requisite in order to carry out these provisions. I put this as mere matter of construction, but I add that since the passing of the Executors Act of 1900 the argument founded upon the difference between trustee and executor is no longer maintainable, because under that Act an executor has all the powers of a trustee.

The point, however, appears to me to be directly decided in the case of *Dundas* v. *Dundas*, 15 S. 427, which I think is entirely in point. In that case, after leaving certain legacies, the testatrix provided as follows:—"Any money left after paying all expenses I wish may be laid out on charities. I leave and bequeath to my nephew John Dundas the sum of £200 sterling with power to see this will executed." It was held that the bequest, when combined with the appointment of the defender as executor, imported a discretionary power on his part to select the charities upon which the benefit was to be conferred. Lord Fullarton (Ordinary) says "that in sound construction this must be held to import a discretionary power in the executor to make that selection of charities without which her will in regard to the immediately preceding legacy could not be carried into effect." Then he adds—"This construction, of course, brings the case within the rule established in the case of *Crichton* v. *Grierson*." Following that decision it appears to me that the question we have to determine is whether the bequest to foreign missions, with an appointment of executor, which implies the power to carry out all the directions of the will, does or does not fall within the rule which the Lord Ordinary cites in *Crichton* v. *Grierson*, where the Lord Chancellor (Lord Lyndhurst) says—as quoted in *Blair* v. *Duncan*, 4 F. (H.L.) 1, *per* Lord Robertson at p. 5—"According to the authorities in the law of Scotland it is quite clear that a man 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 whom that person may select." The Lord Ordinary observes that giving effect to that rule the bequest in question is not sufficiently specific to be supported, and adds — "A bequest for religious purposes is not in Scotland construed as meaning a bequest for charitable purposes." There can be no doubt that these two words have different significations, but they are not mutually exclusive. A bequest for religious purposes may very well be a bequest for charitable purposes, and if there were any question as to the meaning of the words it appears to me that that is not a question which requires to be considered in this case. It is not necessary that we should define either the one or the other of these expressions exactly. If it were necessary I myself think that since the decision of the House of Lords in the case of *Pemsel*, [1891] A.C. 531, I should not be able to admit that the meaning of the word "charity" has been in this country so narrowed by popular usage as the learned Judges who decided the case of *Baird's Trustees* v. *The Lord Advocate*, 15 R. 682, held that it was. But then, as I have said, I do not think that is a question we need to determine. It may very well be that a bequest for religious purposes in general could not be sustained as sufficiently specific even although a bequest for charitable purposes could be made effectual. But it does not follow that a will for a special purpose is the less capable of being sustained because that special purpose falls within the general description of religious purposes. The rule for the application of the doctrine laid down in *Crichton* v. *Grierson* appears to me to be found in a comparison of the recent decisions of the House of Lords — the cases of *Blair* v. *Duncan*, 4 F. (H.L.) 1; *Macintyre* v. *Grimond's Trustees*, 6 F. 285, 7 F. (H.L.) 90; and *Murdoch* v. *Weir*, 45 S.L.R. 335. In the first of these cases the rule is stated with great precision by Lord Robertson, who says—"What has been established as regards the intervention of a trustee is thus stated by Lord Lyndhurst in *Crichton* v. *Grierson*, and the passage touches the very core of the present case." His Lordship then goes on to cite the passage quoted by the Lord Ordinary, and adds—"This is the rule which is to be applied in the present case, and the question is, Has this testatrix done what Lord Lyndhurst describes? Has she selected the particular class or the

particular classes of objects among which her trustee is to select." Applying that test to the will before them in which a bequest had been made for charitable or public purposes, Lord Robertson was of opinion, and the House was of the same opinion, that in making this bequest "this testatrix 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." Therefore in the application of the rule to that case the bequest was held to be too wide because there was nothing approaching the particularisation of the class to be benefited.

A similar decision was given in the later case of *Macintyre* v. *Grimond's Trustees*. The question concerned a bequest for religious purposes which was also held to be too wide as embracing a great variety of possible objects without particularisation of the class. On the other hand, in the last case of all, in *Murdoch's Trustees* v. *Weir and Others*, the House of Lords came to a different decision and the bequest was sustained, the Lord Chancellor putting the rule in this way—he says, with respect to the criticisms which are applied to charitable bequests "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." 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. I cannot entertain any doubt that an executor of reasonable common sense and reasonable knowledge of such affairs as the will deals with will have no difficulty in determining whether any particular purpose is or is not a purpose falling within the class to be benefited by the bequest to foreign missions.

It is said that in order to have the benefit of the general rule, the bequest must be what has been described as a charitable bequest. I do not think that is the true deduction from the leading decision of *Crichton* v. *Grierson*, because the Lord Chancellor in examining the whole series of the decisions cites a great number of cases which have no relation to charity at all. But if there be any particular favour which the law requires Courts to show in construing charitable bequests, then I am of opinion that this particular bequest now in question falls within that class. I think that is the necessary conclusion from the judgment of Lord Watson in the case of *Pemsel*, 1891 A.C. 531, where his Lordship, after narrating the considerable number of legislative provisions, goes on to say "that Scotch trusts which are *ejusdem generis* with trusts falling within the statute of Elizabeth (in England), are charitable in this sense, that they are all governed by the same rules which are applicable to charitable trusts in England" (page 561). That a trust for the benefit of foreign missions falls within the description of "pious and godly uses," which Lord Watson says is equivalent to charitable uses, seems to me beyond all reasonable doubt.

But I think that has been directly decided by this Court in the case of *Wilson's Executors* v. *The Scottish Society for the Conversion of Israel*, 8 Macph. 233. The precise question to be determined in that case was different from that with which we are now concerned, because the testator had certainly designated the particular association to be benefited by the bequest, and did not merely bequeath, as I think this testator does, to a class of associations among which his trustee is to select. But the point for which I cite the decision is that in considering how far effect should be given to the evidence adduced for the purpose of identifying the particular society as that which the testatrix intended to benefit, the Lord President treated the case as a charitable bequest, and upon that ground only finds it possible to give weight to evidence which, if he were dealing with another class of bequests, he would not have thought sufficient. His Lordship says—"Having arrived at the conclusion that the testatrix, in making a charitable bequest of this kind, intended to give her money to some society for promoting the conversion of Jews, and that there are several societies more or less nearly answering to the description in the will, it is the duty of the Court to decide which of them she meant, even though they are not all claiming in this process, and although we can only arrive at a decision by reasonable conjecture as to her probable meaning"; and on that principle, which in the last sentence of his opinion he says is not entirely satisfactory to his mind as a lawyer, he nevertheless founds his judgment. It is to be observed that notwithstanding the somewhat restricted meaning which he found it necessary to put upon the word "charity" in construing the Income Tax Acts the Lord President has no hesitation in describing the bequest for the conversion of the Jews as a "charitable bequest"; and on that ground he thinks it proper to follow the course of the decisions requiring bequests for charities to be favourably interpreted by the courts.

I think we ought to follow the same rule in this case, and that we must therefore find that the residuary bequest of the testator when it is combined with the appointment of the real raiser as executor imports a discretionary power on his part to select the missions on which the benefit of the bequest is to be conferred. He is of course to exercise his discretion as a trust committed to him, and not merely according to his own favour for one or other association for prosecuting foreign missions. It is a discretion which, as I read the will, the testator intended to confer upon him and which he is therefore empowered to exercise. Taking this view, I think it

follows that the Lord Ordinary's interlocutor ought to be recalled. The Lord Ordinary has allowed parties a proof of their averments. Now the averments to be proved are averments made by the Established Church of Scotland on the one hand and the United Free Church on the other as to certain circumstances in the history of this testator which are supposed to indicate a favour on his part either for the Established Church or for the United Free Church. If the question were whether this testator intended to benefit one or other of these Churches to the exclusion of the other or to the exclusion of other missionary associations, I am not persuaded that the facts specified would aid the Court very much in forming a judgment upon that question. They would come to nothing more than evidence which might suggest to the mind of a judge a conjecture in favour of one or other of the Churches. But since I hold that the testator did not intend to favour either Church to the exclusion of the other but foreign missions generally, it is obvious that the proof allowed could not assist the Court in coming to a conclusion.

I do not think it would be proper at this stage to repel the claims of these two Churches. While each has stated its own case, they have combined to state a case as against the next-of-kin in support of the validity of the bequest however it is to be administered, and I think it would be premature to pronounce any judgment which would put them out of Court at any further stage which must be reached before final judgment can be given.

I suggest that it would be proper to recal the Lord Ordinary's interlocutor and to remit to him to allow the real raiser, if so advised, to lodge a claim in order that the trusts of the will may be executed, and thereafter to proceed as shall be just. The parties are in Court, and I think they ought to be allowed to remain in the process until we see what course the real raiser may be advised to take.

LORD PRESIDENT—I agree entirely with the opinion which Lord Kinnear has just delivered, and I only propose to add a very few words. It is impossible in my opinion to read the will and to suppose, as the Lord Ordinary has done, that this is a case of a certain scheme or schemes insufficiently designed, and that the claimants are entitled to prove whom the testator intended to benefit. My reason is that the phrase "or any other in the foreign field suitable" clearly points, I think, to a power of selection somewhere. Accordingly, I cannot agree with the propriety of allowing a proof to substantiate the averments to which Lord Kinnear has alluded, because I do not think it would forward the case one iota. The general question is, whether the bequest shall stand. Now, as to the general rule, of course, there is no doubt. It is the rule laid down by the Lord Chancellor in *Crichton* v. *Grierson*, 3 Wilson & Shaw, 329. But then it was argued that this bequest fails in two particulars.

It was said that there was not a selection of a particular class of objects, not a sufficient specification. I think there is, because I agree with what Lord Kinnear says, that foreign missions in the mind of a Scottish testator has a perfectly well understood meaning. It does not seem to me to help the matter to introduce the discussion which was handled by the House of Lords in *Blair and Duncan* and *Macintyre and Grimond*, because there is here no question as to the interpretation of "religious." Of course it has now been decided that a bequest for "religious purposes" is two wide to be given effect to. That does not mean that you may not have a perfectly well-defined purpose which might be properly characterised as a religious purpose. And accordingly it seems to me that a bequest to foreign missions is sufficiently defined, and that it is not hurt by saying that it is a religious purpose. Then comes the second alleged defect, that there is here no power of selection. But there is the appointment of an executor. It is quite true that it is not said that that executor is to do the choosing, but then there comes in the other canon, namely, that the Court will always help the execution of a charitable bequest. There again I agree with Lord Kinnear that a bequest of which it is possible to say that it is a religious bequest may also be a charitable bequest. I have no doubt that this is a charitable bequest, and if that is so, then the Court will be helpful so far as machinery is concerned to have the purpose carried out. In other words, we have a direct application of the old authority of *The Magistrates of Dundee* v. *Morris*, 1858, 3 Macq. 134, a Dundee charity, and I think the very recent case of *Murdoch* against *Weir*. Accordingly, I concur with what your Lordship has proposed. But in case there is any doubt about it, I should like to explain that the pursuer and real raiser should be allowed to lodge a claim, and it follows that if he does lodge a claim in accordance with the judgment pronounced his claim will be sustained. It is not because there is any doubt about that that Lord Kinnear proposes at this stage not to repel the claims of the two churches. It is only because one cannot force Mr Watson to make a claim, and it would not be right to have the multiplepoinding disappear altogether. Should Mr Watson not do so, it would then be for the churches to make some other proposition, such as to move for the appointment of a judicial factor. There is no doubt that the effect of this judgment is that if Mr Watson puts in a claim his claim will be sustained.

LORD M'LAREN—I agree in the judgment proposed. Apart from the power of selection I should not have been disposed to sustain the bequest to foreign missions as sufficiently precise to satisfy the rule which has been laid down in many cases, that there must be not only specification of a definite class representing the object, but also a power of selection amongst the various bodies professing to carry out the

object which the testator had in view. I should have great hesitation in expressing an opinion which differs from that of Lord President Inglis, but so far as his Lordship in the case relating to the Society for the Conversion of Israel (5 Macph. 233) professes to apply the principles of interpretation applicable to charitable trusts to a society whose object was solely the conversion of people from one form of religion to another, I should wish at all events to reserve my opinion, first, because his Lordship says that these considerations were not altogether satisfactory to his own mind, and secondly, because it does not appear to me that the case in question was one in which the principle of the special construction of charitable trusts would arise. It was a case of the identification of a particular society which was described in general terms, and was not a case of the determination amongst a class of objects indicated in general terms of the particular object to which the fund was to be appropriated.

While I should not be of opinion that a bequest for purely religious purposes was entitled to the benefit of the benignant construction accorded to charitable trusts, it may very well be that the objects indicated are partly charitable and partly religious, or partly secular objects other than charity. I suppose it is generally known that the foreign missions of the Scottish Churches have education as one of their principal motives, and in Africa especially they have been very successful, whether for good or for harm, in educating the Kaffir races to the ordinary standard of education which prevails amongst the European population. It may very well be that so far as the educational purpose is concerned a bequest of this kind might receive favourable interpretation, and I should certainly not hesitate to say, where the primary object was charity or education, such as a school or college, that the institution would be entitled to the benefit of the "charitable" rule of construction, although it was required that there should be religious services conducted or even a chaplain appointed. Each case must of course depend upon its special circumstances and the character of the body or class of bodies indicated by the testator. In the present case I think there is no difficulty whatever, because missions in the sense in which the testator has obviously used the word are a sufficient limitation of a definite class; and then of course there is the appointment of an executor which is equivalent to the power of selection. I therefore agree that if a claim is put in by the executor it must be sustained.

LORD PEARSON was not present.

The Court recalled the Lord Ordinary's interlocutor, and remitted to him to allow the pursuer and real raiser to lodge a condescendence and claim, if so advised, and for further procedure.

Counsel for the Pursuer (Real Raiser)—Chree. Agent—Harry H. M'Bean, W.S.

Counsel for the Claimants (Reclaimers) Robert Allan and Others—Scott Dickson, K.C.—Macmillan. Agent—Alex. Ross, S.S.C.

Counsel for the Claimants (Respondents) The Church of Scotland Foreign Mission—Clyde, K.C.—Hon. W. Watson. Agent—Alan S. Menzies, W.S.

Counsel for the Claimants (Respondents) U.F. Church Foreign Mission—Clyde, K.C.—Cowen. Agents—Cowan & Dalmahoy, W.S.

Tuesday, March 17.

SECOND DIVISION.

BEVERIDGE'S TRUSTEES *v.* BEVERIDGE.

Trust—Trustees—Ultra vires—Investments—Liability—Local Authorities Loans (Scotland) Act 1891 (54 *and* 55 *Vict. cap.* 34), *sec.* 44—*Liferenter and Fiar—Purchase at Premium of Stock Redeemable at Par—Arrangement with Liferenter.*

The Local Authorities Loans (Scotland) Act 1891, by sec. 44 (sub-sec. 1), gives trustees who have authority to invest trust funds in the mortgages, &c. of railway or other companies, the same power of investing in stock issued under the provisions of the Act, but provides (sub-sec. 2) that when two or more persons are successively interested in trust funds "no investment thereof shall be made in stock at a price exceeding the redemption value of the stock" unless the instrument creating the trust shall otherwise expressly provide.

Trustees who held a fund in liferent for A, with fee to B, purchased (B refusing her consent) 3 per cent. corporation stock at 2 per cent. above the redemption value, at the same time entering into an agreement with A under which it was arranged that he was to receive interest at the rate of 2¾ per cent. per annum, the remaining ¼ per cent. being retained by the trustees to form a sinking fund to meet the difference between the sum paid for the stock and that at which it was redeemable; it was farther provided that if the stock was not realised at a loss, the sinking fund should be paid to A or his heirs, and A undertook, in the event of the sinking fund proving insufficient to meet any loss arising on realisation or redemption, that the deficiency should form a charge against his estate.

At A's death the stock stood in the market at about 10 per cent. below its redemption value. The sinking fund was sufficient to pay the premium of 2 per cent. paid by the trustees.

Held, in a question between the trustees and the fiar B, that the latter's claim was not limited to the amount of the sinking fund, but that the trustees were