and amalgamations, was to allow the *Gazette* notice of intention to make application to run concurrently with notice or intimation of the petition and with the time for lodging answers. Counsel submitted that it was expedient that the practice of all courts in the United Kingdom should be uniform, and that the practice referred to was justified by construing the expression "before application" as applying to the ultimate motion to the Court to approve of the agreement, and that the requirements of the statute were satisfied by publication of the intention to make the application in the *Gazette* after the issue of the first order for intimation and answers. Counsel exhibited to the Court an application to the High Court of Justice in Ireland in a similar petition in which the practice above stated was followed.

The Court (LORD JUSTICE-CLERK, LORDS DUNDAS and GUTHRIE) after hearing counsel, without delivering opinions, pronounced the following interlocutor:—

"Appoint the petition to be intimated on the walls and in the minute book in common form: Also appoint notice of the presentation of the petition to be given once in the *Edinburgh Gazette* as required by section 13, sub-section (3) (*a*), of the Assurance Companies Act 1909: And allow all parties having or claiming interest to lodge answers within eighteen days after such intimation and notice."

Counsel for the Petitioners—A. M. Mackay. Agents—Bruce & Stoddart, S.S.C.

Saturday, February 7.

SECOND DIVISION.

CAMPBELL'S TRUSTEES *v.* CAMPBELL.

Succession — Trust — Charitable Bequest — Uncertainty — "Such Charitable or Other Deserving Institutions in Connection with the City of Glasgow."

A testator directed his trustees "in the event of there being any residue to apply the same for behoof of such charitable or other deserving institutions in connection with the city of Glasgow as my said trustees shall think fit."

Held (*dis.* Lord Dundas) that the bequest was not void from uncertainty.

Authorities referred to.

James Robert Tait and others, the testamentary trustees of William Campbell, sometime of Singapore, and thereafter residing at 3 Alfred Terrace, Hillhead, Glasgow, *first parties;* Mrs Agnes Millicent Anderson or Campbell, executrix and sole residuary legatee of her deceased husband William Frederick Mostyn Campbell, the only son of the testator, *second party;* and William Campbell and others, nephews and nieces and the children of deceased nephews and nieces of the testator, *third parties*, brought a Special Case to determine, *inter alia*, whether the testator's residuary bequest was void from uncertainty.

The *trust-disposition and settlement* dated 2nd April 1896 provided—"*In the last place*, I direct my trustees, in the event of there being any residue, to apply the same for behoof of such charitable or other deserving institutions in connection with the city of Glasgow as my said trustees shall think fit: Declaring that as regards the whole of the before-written bequests it shall be entirely in the discretion of my trustees in what form or manner the said sums shall be applied for the benefit of the several beneficiaries, and at what times and on what conditions the capital sums or the income thereof may be paid to them respectively, but while payment of the capital is postponed, the income shall be payable to the beneficiaries respectively, and as regards said public institutions shall take the form of an annual subscription, to be known as 'Campbell's Bequest.'"

The *question of law* was—"Is the said bequest void by reason of uncertainty?"

Argued for the first parties—The bequest was not void from uncertainty, because (1) the word "or" was not used in a disjunctive sense, and the expression "charitable or other deserving institutions" meant "charitable institutions or other like institutions *ejusdem generis*"—*Shaw's Trustees* v. *Esson's Trustees*, 1905, 8 F. 52, 43 S.L.R. 21, *per* Lord Stormonth Darling at 8 F. 54, 43 S.L.R. 22; *Weir* v. *Crum Brown*, 1908 S.C. (H.L.) 3, 45 S.L.R. 335; *Hay's Trustees* v. *Baillie*, 1908 S.C. 1224, 45 S.L.R. 908; *Mackinnon's Trustees* v. *Mackinnon*, 1909 S.C. 1041, 46 S.L.R. 792, *per* Lord President (Dunedin) at 1909 S.C. 1045, 46 S.L.R. 794; *Turnbull's Trustees* v. *Lord Advocate*, 1918 S.C. (H.L.) 88, 55 S.L.R. 208, *per* Lord Atkinson at 1918 S.C. (H.L.) 94, 55 S.L.R. 211; *Delmar Charitable Trust, In re*, [1897] 2 Ch. 163; *Stockport Ragged, Industrial, and Reformatory Schools, In re*, [1898] 2 Ch. 687. (2) The object of the bequest was limited to institutions "in connection with the city of Glasgow"—*Turnbull's Trustees* v. *Lord Advocate, cit., per* Lord Atkinson at 1918 S.C. (H.L.) 93, 55 S.L.R. 210, and Lord Shaw at 1918 S.C. (H.L.) 96, 55 S.L.R. 212.

Argued for the second and third parties—The bequest was void from uncertainty because the word "or" was used in a disjunctive sense—*Blair* v. *Duncan*, 1901, 4 F. (H.L.) 1, 39 S.L.R. 212, *per* Lord Robertson at 4 F. (H.L.) 6, 39 S.L.R. 214; *Symmers Trustees* v. *Symmers*, 1918 S.C. 337, 55 S.L.R. 280; *Turnbull's Trustees* v. *Lord Advocate*.

At advising—

LORD DUNDAS—The sixth question is whether the direction to the trustees to apply the residue "for behoof of such charitable or other deserving institutions in connection with the city of Glasgow as my trustees think fit" is void by reason of uncertainty. This is a substantial question, and it is not in my judgment free from diffi-

culty. My own view, the reasons for which I shall state, leads me to answer the question in the affirmative, but as both my brethren who heard the case with me are of a contrary opinion, in which I regret that I am unable to concur, the answer of the Court will be in the negative.

In support of the validity of the bequest Mr MacRobert and his learned junior presented an able argument. It took, as I understood it, the form of two alternative propositions — first and mainly, that the word "or" was not here used in a disjunctive sense so as to separate "charitable institutions" from other "deserving institutions," and the phrase used, fairly read, was equivalent to "such charitable or other kindred institutions *ejusdem generis*" as the trustees might select; secondly, and in the alternative, it was argued that the bequest would in any event be saved from uncertainty by the specific limitation "in connection with the city of Glasgow."

I do not see my way to accept the main proposition thus put forward. The case is very like that of *Symmers' Trustees*, recently decided by this Division (1918 S.C. 337), where a bequest to "such charitable institutions or deserving agencies in Aberdeen or Stonehaven as" the trustees "may select" was held void from uncertainty. I think Mr MacRobert was justified in suggesting that the word "agencies" was more vague and uncertain than "institutions," but I do not think, when I read the opinions delivered in *Symmers' Trustees*, that if the bequest had been to "such charitable institutions or deserving institutions," &c., the decision of the case would have been different. The word "deserving" seems to me to be so vague and indefinite that I do not think "deserving institutions" could have been held any more than "deserving agencies" to constitute a sufficiently particular class in the sense of the decisions to avoid uncertainty. If this be so, this case is differentiated from *Symmers' Trustees* only by the introduction of the word "other." It was argued that this word makes all the difference, because it makes the phrase read "charitable institutions, or other like institutions *ejusdem generis*." I cannot accept this view as matter of construction and of the ordinary signification of plain language. The genus, I assume, is "charitable institutions." Either, then, the words which follow are mere surplusage—a construction which I do not think can be entertained—or they stand in direct antithesis to the generic phrase as importing institutions which though not charitable are deserving, and which are thus excluded from the class of charitable institutions. It seems to me to follow that the bequest must fail. I think the word "or" must here be a true disjunctive. We were referred to cases of which *Mackinnon's Trustees* (1909 S.C. 1041) and *Hay's Trustees* (1908 S.C. 1224) are examples, where such words as "philanthropic" or "benevolent" were so linked with "charitable" as to be held to be not indeed synonymous with but so far resembling "charitable" as to be easily understood to be exegetical of that word. But any argument of that sort is in my judgment excluded by the introduction of the word "other." Then Mr MacRobert appealed to Lord Loreburn's dictum in *Weir* v. *Crum Brown* (1908 S.C. (H.L.) 4), accepted and followed by this Court in *Allan's Executor* (1908 S.C. 807), and by the House of Lords in *Wordie's Trustees* (1916 S.C. (H.L.) 126) — "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 the recent case of *Turnbull's Trustees* (1918 S.C. (H.L.) 88), however, Lord Atkinson (at pp. 94, 95) pointed out that the dictum must not be divorced from its context and from the special facts of *Weir's* case, and that it is not legitimate to treat it "as laying down an absolute rule for the solution of all doubts in the construction of clauses in wills such as that to be construed in this case." The class to be benefited or from which selection is to be made must be indicated with a sufficient degree of precision, which in my judgment is here lacking.

Nor in my opinion can Mr MacRobert's alternative contention materially aid him towards success. I am not satisfied, to begin with, that the words used would confine the selection by the trustees to institutions actually existing "in connection with the city of Glasgow" at the testator's death. I can see nothing in the words used to prevent them if the clause be valid from benefiting some institution in existence at any time before the funds were actually divided, as to which considerable latitude is expressly conferred upon them by the settlement. Even assuming the point, however, in Mr MacRobert's favour, it was, I think, clearly enough laid down by the noble and learned Lords in *Turnbull's Trustees* that while local limitation may in certain circumstances aid in avoiding uncertainty, it will not do so unless the reference to locality removes or helps to remove uncertainty as to the nature and scope of the class of objects to be benefited, among which the selection is to be made; and this in my judgment it fails here to do, if my understanding of the language of the bequest is correct. I adopt as applicable here what Lord Chancellor Finlay said in *Turnbull's Trustees* (at p. 90) — "The purpose is too vague, and the vagueness of the purpose is not cured by the specification of the locality to be benefited"; and I would venture to adapt to the case before us Lord Shaw's observation (at p. 96) that "local limitations expressed by the words 'in connection with' the city of Glasgow" do not "add any definiteness to the class of purposes or objects which it was in the mind of the testator to benefit or promote." In my view therefore we should answer the question in the affirmative. But as the majority of the Court think otherwise the answer will be in the negative.

LORD SALVESEN—I have had an opportunity of reading Lord Dundas' opinion and agree with him as to the way in which all the questions in the case should be answered, with one exception. That excep-

tion relates to the sixth query—no doubt the most important from a pecuniary point of view. The answer to it depends on the construction to be put on the words "For behoof of such charitable or other deserving institutions in connection with the city of Glasgow as my trustees shall think fit." Now if these words mean "such charitable or deserving institutions other than charitable" the authorities by which we are bound seem to decide that the gift is void from uncertainty, for it would be difficult for trustees to know how to interpret the words "deserving institutions," and I think these words would be no less vague than "deserving agencies"—the phrase which was the subject of decision in the case of *Symmers' Trustees*. On the other hand, if the true meaning of the words is "such charitable or other such like deserving institutions," then I apprehend the bequest would be good, for the genus to be benefited would be institutions of a charitable or quasi-charitable nature. A Scotch testator not being acquainted with the statute of Queen Elizabeth, on which so much of the case law of this subject depends, might well regard the term charitable as in strictness limited to the provision of food, clothes, housing accommodation or medical comforts for the poor, and might desire to give his trustees the wider powers of assisting institutions which, although not charitable in this sense, were intended for the benefit of the poorer classes. For instance, a society for the prevention of cruelty to children is not a charitable institution in the narrower sense, and yet promotes the wellbeing of the children for whom it is called upon to act. I confess that I have no strong impression one way or another, but I prefer the construction which makes the bequest valid to a construction which renders it void—the words in my view being equally capable of either construction. I would accordingly answer the sixth query in the negative.

LORD GUTHRIE—I concur with all Lord Dundas' answers and with the reasons assigned by him to all the questions in this case except question 6. That question I think should be answered in the negative. [*His Lordship here dealt with a point which this report does not refer to.*]

The question raised is a difficult one. I concur with Lord Dundas in rejecting Mr MacRobert's first argument, which was presented on the assumption of the absence of the word "other." I do not think that a bequest to "such charitable or deserving institutions in connection with the city of Glasgow as my trustees shall think fit" is saved by the opinion in the House of Lords in the case of *Turnbull's Trustees* v. *Lord Advocate* (1918 S.C. (H.L.) 88), as was argued by Mr MacRobert. No doubt in that case a distinction is taken between a bequest in favour of institutions actually existing or projected to be established in a particular district and a bequest entitling the trustees to select any objects they might think fit. I observed that Lord Haldane in the passage from his opinion which was relied on does not use the general term institutions, but confines his observations to "a special class of institutions." Similarly Lord Atkinson refers to "institutions of a particular class," and Lord Shaw figures the case of a bequest so expressed as to "provide the means of identifying the particular institution which the testator has meant to identify." I cannot hold that the hypothetical clause Mr MacRobert has asked us to consider contains any means of differentiating one institution from another. All institutions have supporters who consider them as a whole deserving of support, and I do not know of any institutions which may not be considered deserving from one or more points of view, whatever may be thought of their work as a whole.

In my opinion Mr MacRobert's clients can only succeed through the occurrence in the present clause of the word "other," an element which has not been present in any Scotch case, and in England is found only in the recent case of *Bennett*, reported in the Weekly Notes under date January 31, 1920, p. 40. If the words are read disjunctively, and the bequests be to charitable institutions and to all and any other deserving institutions, whether *ejusdem generis* with charitable institutions or not, then for the above reasons I think the bequest is void. But if the proper reading of the clause is that the residue shall be applied by the trustees for behoof of such charitable or other kindred deserving institutions *ejusdem generis* with charitable institutions, then I think the bequest is not void from uncertainty. The clause is capable of either reading, and I see no sufficient reason why the reading should be preferred which defeats the testator's bequest and throws the money into intestacy. It seems to me that the opposite view gives in result no sufficient effect, if any effect at all, to the word "other." It cannot be said in this case that the principle of *ejusdem generis* is inapplicable because there is no antecedent genus; nor, as it appears to me, can it be said that charitable institutions belong to so distinct a genus that no institutions not technically charitable institutions can belong to the same genus. A charitable institution confers benefits on those who could not otherwise obtain these benefits. A present given to a man who could have bought the article for himself is not charity. And the charitable institution confers these benefits voluntarily without legal obligation. An institution maintained out of the rates is not a charitable institution. But there are institutions which may be said to be of the same genus as charitable institutions because they possess one although not both of these characteristics, such as institutions which, although paying their own way in a straitened fashion, are provided for the poor and are only used by the poor to provide comforts and reasonable accessories—for such institutions would, it appears to me, be reasonable fulfilment of a bequest to institutions which, although not from all points of view charitable, because they pay their own way, yet possess the essential element that they are provided for the poor.

I therefore come to the conclusion, although with difficulty, that the bequest referred to in question 6 is not void from uncertainty.

The LORD JUSTICE-CLERK was absent.

The Court answered the question in the negative.

Counsel for the First Parties—MacRobert, K.C.—Fenton. Agents—Cowan & Stewart, W.S.

Counsel for the Second Party—Wilson, K.C.—Graham Robertson. Agent—Wm. C. Dudgeon, W.S.

Counsel for the Third Parties — Chree, K.C.—Candlish Henderson. Agents—Kinmont & Maxwell, W.S.

VALUATION APPEAL COURT.

Saturday, February 7.

HOWARD & WYNDHAM, LIMITED, THE KING'S THEATRE (EDINBURGH), LIMITED, MOSS' EMPIRES, LIMITED *v.* EDINBURGH ASSESSOR.

Valuation Cases — Value — Theatre — Increase of Attendance and Profits—Contractor's Principle.

There were only four theatres in a city. One of the theatres had been built within recent years but before the rise in building costs. Apart from that no theatre had been built or let in the city for many years, and the theatres had all for many years been occupied by the owners. The assessor proposed increased valuations and led evidence that the attendance of the public at the theatres had materially increased; that the charges for admission, except in the case of one theatre, had been raised; that the dividends paid to the shareholders of the companies owning the theatres and the capital value of the shares had materially increased; and that these increases had been maintained for some time. The owners of the theatres opposed a call by the assessor for documents showing the actual drawings for admission and profits, and the Valuation Appeal Committee refused to order production. The Committee, subject to certain adjustments, upheld the increased valuations. *Held* on appeal (1) that the owners of the theatres having failed to produce documents showing the actual drawings and profits, which information was in their possession, the evidence was sufficient to prove that the profits had increased, and that such increase was reasonably stabilised, and consequently that the assessor had discharged the *onus* upon him of showing cause for reconsidering the old valuations; (2) *per* Lord Salvesen and Lord Mackenzie, that while the bearing of the profits derived from the use of heritable subjects upon their valuation was a question of circumstances depending on the nature of the subjects, their use, competition, actual and probable, in the same business, and the permanency of the profits, in the present case the increase in profits had resulted in an increase in the value of the theatres to a hypothetical tenant; (3) *per* Lord Salvesen, that in applying the contractor's principle the question was what would it cost at the time in question to erect similar premises elsewhere, and if the increased valuations were checked by that principle, they were justified; and (4) that in the whole circumstances the increase in the valuations must be upheld.

Howard & Wyndham, Limited, The King's Theatre (Edinburgh), Limited, and Moss' Empires, Limited, *appellants*, being dissatisfied with a decision of the Burgh Valuation Committee at Edinburgh increasing the value of their theatres inserted in the valuation roll, took a Case in which the assessor for Edinburgh was *respondent*. The three cases all involved the same questions and were taken together.

The *entries* appealed against were:—

Description and Situation of Subjects. Description.	Situation.	Proprietor.	Occupier.	Yearly Rent or Value.
Theatre Royal	Broughton St.	Howard & Wyndham, Ltd.	Proprietor	£1750
Theatre (Royal Lyceum)	Grindlay St.	Do.	Do.	£2000
Theatre	Leven St.	The King's Theatre (Edinburgh) Ltd.	Do.	£2455
Theatre (Empire Palace)	19 Nicolson St.	Moss' Empires, Ltd.	Do.	£2655

Before the Valuation Committee the respondent *moved* for an order on the appellants for papers and documents showing (1) the rates of admission charged in the various parts of the appellants' theatres during the years 1914 to 1919; (2) the actual drawings for admission received; and (3) the actual profits earned by the respective appellants during each of the five last completed financial years. Counsel for the appellants opposed the motion, but undertook to lodge particulars of the seating accommodation in the theatres and of the rate of the charges for admission to the various parts of the houses in 1914 and in the current year. Counsel for the assessor withdrew his motion for the first item. The Valuation Committee refused to grant an order for items (2) and (3).

A proof was allowed. At the proof counsel for the appellants, in respect that the respondent had increased the valuations, *moved* that he should lead in the proof, the *onus* being on him to prove a change of circumstances to justify his valuation. The Committee refused the motion.

The Case set forth—"The appellants craved that the entries in the name of yearly rent or value should be as follows:—

(1)	Theatre Royal	£1400	instead of	£1750
	as fixed by the assessor.			
(2)	Lyceum	£1600	do.	£2000
	do.			
(3)	The King's Theatre	£1965	do.	£2455
	do.			
(4)	The Empire	£2125	do.	£2655
	do.			