

rubric may be amended. I have seen cases in which the clause was so framed as to express the idea which was expressed in the rubric, and the clause was altered but the rubric remained the same. The preamble is a different thing; that is submitted to Parliament and is voted upon; I think the preamble may be quite fairly referred to. I find this, which I think is really by Lord Tenderden although adopted into Broom's Maxims [p. 509, 3d ed.]—"Although the enacting words of a statute are not necessarily to be limited or controlled by the words of the preamble, but in many instances go beyond it, yet on a sound construction of every Act of Parliament the words in the enacting part must be confined to that which is the plain object and general intention of the Legislature in passing the Act; and the preamble affords a good clue to discover what the object was." It is merely a clue to discover the object with reference to which you will construe the words of the statute. The rule established in the Act of 1850 applies to Acts passed prior to as well as subsequent to that date, so that the words month in this complaint must be held to be calendar months, and the appeal must be refused.

On the other question I concur with your Lordship.

LORD CRAIGHILL—I think section 4 in the Act of 1850 means that which your Lordships have adopted as the true meaning of the Act. It is a matter of concern, and would conduce to convenience, if in prior Acts the word month should mean the same as in subsequent Acts. I think I could have come to the same opinion even outside the Act of 1850. In the case of *Smith* [supra cit.], in which we have the opinions of five Judges, the matter was solemnly argued, and although it was not necessary to make that particular point a ground of judgment, all the Judges came to the conclusion that in the common law of Scotland the word month means a calendar month. I have therefore come to the same conclusion, and for the reasons given by your Lordships.

On the other questions I also concur.

The Court sustained the appeal and found no expenses due to or by either party.

Counsel for Appellant—Kennedy. Agents—Paul, Dickie, & Paul, Solicitors, Dundee.

Counsel for Respondent—M'Kechnie. Agents—Whyte & Freeman, Solicitors, Forfar.

COURT OF SESSION.

Wednesday, February 3.

FIRST DIVISION.

ALISON AND ANOTHER, PETITIONERS.

Trust—Resignation of Trustees.

Circumstances in which the Court, *ex nobili officio*, allowed the resignation of testamentary trustees who could not resign under the Trusts Acts, and who had not power to resign under the settlement.

The late James Black, merchant in Glasgow, who died in September 1844, left a trust-disposition and settlement by which he conveyed to the persons named therein as trustees his whole means and effects for the purposes narrated in the deed.

One of the persons appointed as trustee by the trust-disposition was Alexander Drew, merchant in Glasgow. The deed contained a power of assumption, under which power various persons were assumed into the trust, and among others, Sir Archibald Alison (designated Lieutenant-Colonel Archibald Alison, C.B., unattached).

This was an application by Lieutenant-General Sir Archibald Alison, and the said Alexander Drew for authority to resign their office as trustees.

Sir Archibald Alison offered as his reason of resignation, that he held an important military command, which prevented his attendance at the trust-meetings; that in the course of fifteen years he had only been able to attend three meetings of the trust, and that he was liable at any time to be sent abroad.

Alexander Drew stated that he had been an original trustee, and had taken an active part in the trust for more than forty years, that advancing age would prevent his attending future meetings, and that as the trust funds exceeded £50,000 the investments were numerous and required closer supervision than he saw his way in the future to give.

Mr Drew was a man of 74 years of age

By the tenth purpose of his trust-deed Mr Black bequeathed an annuity of £20 to each of his trustees, original and assumed, who accepted office, to be payable to them so long as they continued to act.

The petitioners stated that for the due administration of the trust it was necessary that trustees who were unable to attend to their duties should resign, but that they had no power to resign under the Trusts Act, because each received the annuity above-mentioned on condition of accepting office (see sect. 1 of Trusts Act 1867), and the trust-deed did not provide for their resignation.

Authority—*Gordon*, 2d June 1854, 16 D. 884.

The Court, after intimation and service, as no objections were stated to the proposed resignation, and as exoneration was not prayed for, granted the prayer of the petition, allowed the petitioners to resign, and found that the expenses of the application and relative procedure formed a proper charge against the trust-estate.

Counsel for Petitioners—Rankine. Agents—J. S. & J. W. Fraser-Tytler, W.S.