

guish between the charity and the means which are directed to the attainment of that charity." His Lordship simply says that the courts of equity—and in this jurisdiction he recognises no distinction between the English and the Scottish courts of equity—"The courts of equity have always exercised the power of varying the means of carrying out the charity from time to time according as by that variation they can secure more effectually the great object of the charity, namely, the benefit of the beneficiary." In pursuance of these rules laid down in that case the House of Lords directed that a sum of money which had been obtained as compensation under the Lands Clauses Act for an hospital was not to be applied to rebuilding the hospital, but to enlarging the pecuniary benefits of the endowment which should be continued on the ground that that would be a more advantageous application of the funds. Following that decision a case was stated to us in which an endowment originally intended for the support of the inmates of the house was applied to the more beneficial carrying out of the charity in the establishment of outdoor pensioners. I only refer to this illustration of the principle laid down by Lord Westbury for the purpose of saying that though we refuse that part of the prayer of the petition which relates to the sale of the building, we only do so because it does not appear that the necessity for such a radical change on the administration has yet arisen.

The other suggestions seem to be all improvements in themselves—the alteration of the constitution of the governing body, and the enlargement of the class of persons by whom the benefit is to be received. Now, it would require a very strong case to admit a different class of persons from those whom the testator had intended to benefit. Probably nothing short of the entire failure of that class would be sufficient to justify such a change. But in this case I do not consider that we are altering the class, because it is evident from the scope of the scheme of the endowment that the persons intended to be benefited were those ladies who had been dependent on persons occupying the position of merchants or burgesses of Old Aberdeen, and the fund being only capable of maintaining ten persons per annum, the preference was naturally given to those according to their degree and claim on deceased burgesses. As there is a difficulty in finding always a sufficient number of applicants under that class, I think we are only carrying out the main purpose of the charity by admitting daughters and granddaughters who are not within the words but who are certainly within the spirit of the intention of the testator.

I agree with your Lordships that it has not been shown that there is a necessity for interfering with the trust's directions regarding the mode of investment of his funds, for apparently the income of the endowment at present is adequate to the maintenance of the ladies who have actually applied.

And in regard to the sale, I concur in thinking that it must be reserved for future decision, because it would not be consistent with the mode of exercising our discretion that we should anticipate. What is now apparent is that through a change of circumstances it is no longer possible to give full effect to the charitable intention in accordance with the manner which the founder contemplated. At present it is admitted that a certain number of beneficiaries have been found, and there is a great deal to say in favour of the founder's plan of entertaining the ladies in one family where the money can be economically applied.

I am therefore of opinion that *hoc statu* we should grant the petition in accordance with the views which have been expressed.

LORD KINNEAR—I concur.

The Court pronounced this interlocutor:—

"The Lords having resumed consideration of the petition with Mr Macpherson's report, and heard counsel thereon, Approve of the said scheme annexed to said report as amended at the bar: Appoint said amended scheme to be the scheme for the future administration of the trust, and find the petitioners entitled to charge against the trust estate the expenses of the application as the same shall be taxed by the Auditor, and decern."

Counsel for the Petitioners—Dove Wilson.  
Agent—Arthur B. Paterson, W.S.

Saturday, March 15.

## SECOND DIVISION.

LOWSON v. LOWSON.

*Process—Motion to Sist Mandatory—Respondent in Petition for Discharge of Judicial Factor Reclaiming against Interlocutor Granting Discharge.*

In a petition for discharge of a judicial factor objections were lodged by a beneficiary upon the trust estate who was resident in Russia. These objections having been repelled by the Lord Ordinary, and the objector having reclaimed, the Court upon the motion of the petitioners *ordained* the claimer to sist a mandatory.

In a petition by J. A. Lowson and others for appointment of a new judicial factor on the estate of the deceased Andrew Lowson, and for the discharge of a deceased factor, answers were lodged for A. B. Lowson, who was one of the beneficiaries on the trust estate. After various procedure, including three reports by the Accountant of Court, who reported in favour of the petition, and after hearing counsel upon objections for A. B. Lowson, who maintained that the judicial factor had not fully accounted for the whole funds in his hands, the Lord Ordinary (PEARSON) on 1st March 1902 repelled the objections and discharged the deceased factor.

A. B. Lowson reclaimed.

On the case being called in the Single Bills the petitioners moved the Court to ordain the reclamer to sist a mandatory, on the ground that he was resident in Russia and had no funds in this country, a balance being due by him to the factory estate, and that in objecting to the factor's accounts he was truly a pursuer.

Argued for the reclamer—Doubtless, if he was a pursuer and had no funds in this country, the reclamer would have to sist a mandatory; but he had been brought into Court and was maintaining that a sum, larger than the balance found due to the estate by him, had not been accounted for. He was entitled to have his objections to the factor's accounts considered and determined upon without sisting a mandatory—*Graham v. Graham's Trustees*, October 15, 1901, 39 S.L.R. 3.

LORD JUSTICE-CLERK—It is entirely in the discretion of the Court to consider whether even a defender should not be required to sist a mandatory. Here the reclamer is very much in the position of a pursuer, and I think it is proper that he should be ordained to sist a mandatory.

LORD MONCREIFF— I am of the same opinion. Of course it is right that the objector should have a reasonable time in which to sist a mandatory.

LORD KINCAIRNEY concurred.

LORD YOUNG and LORD TRAYNER were absent.

The Court ordained the reclamer to sist a mandatory by the third sederunt-day in the next ensuing session.

Counsel for the Petitioners and Respondents—T. B. Morison. Agents—Webster, Will, & Company, S.S.C.

Counsel for the Respondent and Reclamer—Lyon Mackenzie. Agents—Mill, Bonar, & Hunter, W.S.

Tuesday, March 18.

SECOND DIVISION.

[Dean of Guild Court,  
Glasgow.

BANNERMAN'S TRUSTEES v.  
HOWARD & WYNDHAM.

*Property—Building Restrictions—Ground Annual—Enforcement by One Disponee against Another of Obligations Imposed by Common Author—Assignment to Disponee of Benefit of Restrictions against Other Disponees.*

A contract of ground annual was entered into between A and B, in which A conveyed a certain plot of ground to B and imposed certain building restrictions upon him, and bound himself to insert similar restrictions in

conveyances of other ground belonging to him in the same locality, "to the benefit of which the said second party (B) is hereby assigned." Thereafter A entered into a contract of ground annual whereby he conveyed to C a plot of ground immediately adjoining that conveyed to B, subject to building restrictions similar to those in B's title, but C's title did not contain any intimation that these restrictions were enforceable by B and his successors under their title or were part of a common scheme, or any reference to a common plan, or any clause conferring right upon C and his successors to enforce similar restrictions contained in the titles of neighbouring proprietors, or any obligation to insert similar restrictions in other conveyances. In a question between B's trustees and singular successors of C, held that B's trustees had no right to enforce the restrictions contained in C's title against singular successors of C.

This was an appeal against an interlocutor of the Dean of Guild of Glasgow granting warrant to Messrs Howard & Wyndham, theatrical proprietors, to erect a theatre on a certain site in Glasgow.

The following narrative of the facts is in substance taken from the interlocutor of the Dean of Guild:—The petitioners were proprietors of a plot of ground situated at the south-west corner of Bath Street and Elmbank Street in the City of Glasgow. The respondents were proprietors of a steading of ground in Bath Street, adjoining and to the west of the plot of ground belonging to the petitioners. The petitioners proposed to erect and asked authority to erect on the plot of ground belonging to them a theatre with appurtenances and pertinents, conform to plans produced. The respondents objected to the petitioners' proposed operations, and pleaded that these operations would contravene the titles under which the petitioners held the said plot of ground, and that the respondents were entitled to found upon and enforce the conditions and restrictions contained in the title of the petitioners. The petitioners pleaded (1) (b) that the respondents had neither right nor title nor interest to enforce the conditions and restrictions contained in the title of the petitioners.

Prior to and in 1851 the properties now belonging to the petitioners and respondents and other ground to the west belonged to James Grierson and others as *pro indiviso* proprietors. By contract of ground annual, dated 15th and 17th February and 5th March 1851, and recorded (Sheriff Court Books of Lanarkshire) 7th March 1851, Grierson and others, the *pro indiviso* proprietors, disposed to Walter Bannerman the steading of ground now belonging to the respondents, who were Bannerman's testamentary trustees, and took Bannerman bound to erect and thereafter maintain on the ground houses and buildings of the description therein mentioned, declaring "that the buildings to be erected on the ground before disposed shall be used only