The Commissioners for Special Purposes for Income Tax v. *Pemsell*, L.R., App. Ca., 1891, at p. 544. It appears from these decisions that in England public purposes of general utility are held to be charitable uses within the sense of the Act of Elizabeth. But for the favour shown to bequests for "charitable purposes" a power to trustee to select objects for such a bequest would probably be held void from uncertainty. But a charitable bequest never fails from uncertainty. The process by which in England it has been held that a trust for "religious purposes" must receive effect is thus concisely stated by Lindley, L.-J., in the case of *White* v. *White*, L.R., 1893, 2 Ch., at p. 53—"We come therefore to the conclusion (first) that the gift is for religious purposes, and (secondly) that being for religious purposes it must be treated as a gift for charitable purposes unless the contrary can be shown. If once this conclusion is arrived at the rest is plain. A charitable bequest never fails from uncertainty."

I am not aware, however, of any decision in the Scottish Courts which sanctions so wide a construction in a private deed of a bequest for "charitable purposes." In the case of *Blair* v. *Duncan* in this Court and the House of Lords, 3 F. 274 and 4 F. (H.L.) 1, it was decided that a bequest for "charitable *or* public purposes" was void from uncertainty, because (1) it was held that the expressions were used disjunctively; (2) therefore the trustees were empowered to apply the bequest solely to public purposes; (3) all public purposes are not charitable purposes, although some of them may be; and (4) a bequest for "public purposes" alone is too vague to receive effect. That was a decision in a Scottish case depending upon the construction of a Scottish settlement. If, therefore, I am right in holding that although perhaps not so wide as "public purposes," "religious purposes" equally with "public purposes" may not be sufficiently specific to be enforced, the same result should follow in this case as in the case of *Blair* v. *Duncan*.

I have not lost sight of the decision in the House of Lords in the English case of *The Commissioners for Special Purposes for Income-Tax* v. *Pemsell*, L.R. 1891,, App. Cas. 531. It was not a decision in a Scottish case, although the law of Scotland was much discussed. It was a decision on an Imperial taxing statute, into the construction of which considerations entered which do not necessarily apply to the interpretation of a private deed. Lastly, there was great difference of opinion in the House of Lords, Lord Halsbury and Lord Bramwell dissenting strongly. The case was fully in view of the House of Lords in the recent case of *Blair* v. *Duncan*, 4 F. (H.L.) 1. In regard to it the Lord Chancellor said—"I will only say that in my view the decision in that case is an authoritative determination, and in speaking of a Taxing Act which applies to both countries the decision of that case must of course be supreme. But speaking of a Scottish instrument and the interpretation to be given to the word 'charitable' in Scotland I should regard the decision of *Baird's Trustees* v. *Lord Advocate* as still an authoritative exposition of the law of Scotland."

In conclusion, I would observe that our decision cannot be affected by the consideration that the trustees would have no difficulty in applying the bequest to religious purposes which would have met with the truster's approval. The same might be said of any direction however vague and uncertain. The truster's own religious views, of which we are told nothing, do not seem to me to affect the question. He has left his trustees unlimited discretion, and the trustees who have the ultimate disposal of the capital are grandnephews who may have no special knowledge of the truster's private views or wishes, and who, if they knew them, are certainly not bound by them, as he has left them unfettered.

On the whole matter I am of opinion that the bequest is void from uncertainty.

The Court adhered.

Counsel for the Pursuers and Reclaimers—The Lord Advocate (Dickson, K.C.)—Wilson, K.C.—J. D. Millar. Agents—Duncan & Black, W.S.

Counsel for the Defenders and Respondents—Campbell, K.C.—Clyde, K.C.—Cullen—D. Anderson. Agents—W. & J. Cook, W.S.

Saturday, January 16.

SECOND DIVISION.

WEBB *v.* CLELAND'S TRUSTEES.

Minor and Pupil—Foreign—Father as Administrator-in-Law—Application by Father Domiciled in England for Payment by Scotch Trustees of Fund Held by them for Pupil Child.

Circumstances in which the Court authorised and ordained the trustees in a Scotch trust to pay for the next five years the free income of the share of a pupil beneficiary to her father, although he was not by the law of his domicile (England) the guardian or administrator-in-law of his pupil daughter.

A petition was presented by William George Webb, colour-sergeant, Second Battalion Black Watch (Royal Highlanders), for himself and as tutor and administrator-in-law for his pupil daughter Catherine Alice Cleland Webb, in which the petitioner prayed the Court to authorise the trustees of the deceased James Cleland, LL.D., Glasgow, to make payment to him of a portion of the residue of Dr Cleland's trust estate, bequeathed in terms of his trust-disposition and settlement to the petitioner's pupil daughter. Alternatively, the petitioner sought to have the trustees authorised to make payment to him of the free income of his daughter's share

of Dr Cleland's estate for her suitable maintenance and education.

The petitioner's domicile was English.

Dr Cleland's trustees lodged answers, in which they maintained that the petition was incompetent, on the ground that by "the law of England a parent is not entitled, without special appointment as guardian, to receive payment of a legacy on behalf of his infant child, to give a good discharge for such legacy, or to sue as guardian of his infant child in respect of any such legacy."

The petitioner's daughter was six years of age; her share of Dr Cleland's estate amounted to over £1200.

On 13th June 1903, after hearing counsel for the petitioner—who referred to the cases of *Edmiston* v. *Miller's Trustees*, July 11, 1871, 9 Macph. 987, 8 S.L.R. 645, and *Seddon*, March 18, 1893, 20 R. 675, 30 S.L.R. 526—the Court delayed consideration of the petition to allow the petitioner to make application to the English courts to be appointed guardian to his daughter.

The petitioner took out an originating summons in the Chancery Division of the High Court of Justice in England to be appointed guardian, and offered to give an undertaking in writing that he would pay into Chancery any funds which he received from the trustees on behalf of his daughter.

The petitioner was not appointed guardian, Mr Justice Kekewich, before whom the application was heard, holding that the appointment could not be made unless it was secured to his satisfaction that the money would be paid into Court. His Lordship was ready to pronounce an order giving the trustees liberty to pay the money into Court, but before doing so he directed the petitioner's solicitors to inquire whether the trustees would act upon his order.

In reply to inquiries the trustees' agents wrote that as the trust was a Scotch trust, not subject to the orders of the English courts, they were anxious to know what discharge they would obtain to protect them against being called in question by the infant after she attained majority if they paid her money into the English Court.

The trustees being unable to undertake unconditionally to implement the order proposed by Mr Justice Kekewich, the petitioner lodged a note for special powers in the present petition, in which, after narrating the facts stated with regard to the proceedings in England, he prayed the Court "to grant the prayer of the petition in so far as it craves payment of said income, or otherwise to direct the respondents as trustees foresaid to make payment of the trust funds into the English courts."

At the calling of the note in Single Bills counsel were heard; the cases of *Edmiston* and *Seddon, cit. sup.*, were referred to for the petitioner.

At advising—

LORD JUSTICE-CLERK—The difficulty in this case arises from the fact that the petitioner is a domiciled Englishman, and by the law of England (as we are informed) is not the legal guardian of his child, and is not competent to receive money on her behalf or give a valid discharge for it until appointed guardian by the English Court. He has applied to the Court in England, but he has been told that he will not be appointed guardian unless the money is paid into the English Court. There is no suggestion that the petitioner is not a fit person to act as guardian and to receive the money—his rank and position are evidence of that—and I think that in the circumstances the reasonable and proper course is to issue an order on the trustees for payment of the annual proceeds to him for behoof of his child for a certain period, say for the next five years.

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The Court pronounced this interlocutor—

"Authorise and ordain the trustees of the late James Cleland to make payment to the petitioner of the portion of the free income of the trust funds to which his pupil daughter Catherine Alice Cleland Webb is entitled, and that for the period of five years from 2nd April 1903, and decern: Find the petitioner and respondents entitled to their expenses as the same may be taxed by the Auditor, to whom remit, out of the capital of the portion of the said trust estate to which the said Catherine Alice Cleland Webb is entitled, and continue the petition."

Counsel for the Petitioner—T. B. Morison. Agent—George F. Welsh, Solicitor.

Counsel for the Respondents — Tait. Agents—Forrester & Davidson, W.S.

Tuesday, January 19.

FIRST DIVISION.

[Lord Pearson, Ordinary.

ARDAN STEAMSHIP COMPANY, LIMITED, *v.* WEIR & COMPANY.

Ship—Charter-Party—No Fixed Time for Loading—Obligation to Provide Cargo—Reasonable Time—Custom of Port.

By charter-party, which did not fix any time for loading, a ship was chartered to go to the port of N and there load "in the usual and customary manner" a cargo of coals which the charterers bound themselves to ship. By the custom of the port of N, of which both parties were aware, a berth to load coal cannot be obtained until a coaling-order from the colliery is produced.

The charterers duly ordered a cargo of coals from the W colliery, and instructed their agent at N to attend to the loading of the ship. When she arrived, owing to an exceptional press of business at the W and other local colleries, she failed to obtain coaling